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It is not often that legal education can celebrate a win. Usually in the popular press and even in the articles digested in the pages of the Digest are reports of programs being reduced or even made redundant in order to save costs. Such was the recent Australian experience when Julia Gillard, the Australian Prime Minister, announced the abolition of the Australian Learning and Teaching Council (ALTC), previously the Carrick Institute, and its ongoing programs as part of funding cuts in order to finance disaster relief. This decision caused dismay in tertiary education circles, particularly among law academics, as the quality of law programs and specifically legal teaching had greatly improved under the aegis of the ALTC. This has included recent financial support for three ALTC Scholars in Law: Professors Des Butler, Mark Israel and Sally Kift and an ALTC Funded Research Project in Cooperation with the Council of Australian Law Deans entitled: Learning and Teaching in the Discipline of Law: Achieving and Sustaining Excellence in a Changed and Changing Environment. However, because the Prime Minister needed the support of Independent Members of the House of Representatives to ensure the passing of her Flood Levy legislation, Andrew Wilkie MHR (Ind), made the existing program of grants and awards to the value of $50m over four years conditional upon his support for the Prime Minister’s legislation. This means that the ALTC grants and awards program which has had such a beneficial effect on legal education since its establishment in 2005, will now continue, albeit under the direction of the Federal Department of Education, Employment and Workplace Relations for 2012, but crucially benchmarked against the existing ALTC criteria.

The two books which have been selected for review are complimentary in that the first, Glanville Williams’: Learning the Law, was first published in 1945, and at that time was unique in the United Kingdom for offering advice to potential law students. It was thought that this was the appropriate time to revisit the book, now in its 14th edition and republished in 2010 under the Editorship of Professor A.T.C. Smith, thus celebrating 65 years of continuous publication.

In comparison there is also a review of a new text by Martina Muller and Duncan Nulty entitled Survive and Thrive. This projects a more holistic approach which is being adopted by authors and publishers when advising new law students not only on how to study law, but also how to adapt to life both in the Law School and within the University.

When reflecting on the articles digested in this edition the reader might be forgiven for having a sense of déjà vu when the first article is designated under the heading of Assessment Methods. However the experienced law academic will realise that the searching for new approaches to assessment, as reflected in the development of the curriculum, is the very life blood needed to be injected in order to ensure the continuous renewal of legal education programs. In their article Sharp and Datt are concerned with improving the linkages between assessment and the quality of student learning, whilst striving to instil both Atax students and those studying tax law at the University of Auckland, New Zealand into a culture of learning as well as making them information literate. The focus of this article is on how the authors, having reviewed the literature and methods adopted by both Atax and the University of Auckland, are best able to utilise this knowledge and suggest how teaching and learning outcomes could be enhanced when teaching tax.

Education Theory is the subject heading for two articles. In the first Castan, Paterson, Richardson and Watt are concerned with the relationship between law students’ interest and expectations and their academic achievement. They comment on studies which indicate that there is often a misalignment between those expectations and the actual experience of studying and life at university. In this respect they also report on the outcomes of their own investigations of the career expectations of first-year law students in the early stages of law degree studies. One interesting aspect of this study is the fact that a large majority of first-year law students contemplated working in the law rather than regarding law as a ‘generalist’ degree, the latter being a common misconception as to why students take up the study of law. In the second article under this category Adcroft reflects on the growing concern about the quality of feedback to law students and how this might impact on their learning. The author’s reaction to this question is based on a study which was carried out by a questionnaire administered online to both law academic staff and students at a pre-1992 university in the UK. It will not surprise readers that there was a dichotomy between perceptions of academics and students as to what feedback is and its meaning.

Elder law is evolving as key subject in the law curriculum as more of the general population reach retirement age. Under Individual Subjects/Areas of Law Kohn and Spurgeon report on their findings arising from an empirical analysis conducted by them among all members of the Association of American Law Schools’ Section on Ageing and the Law.

Digest readers are aware of the problem which sometimes arises over the allocation of an appropriate category for a particular article being considered in the Digest. Such was the dilemma for the Working Paper by Smits concerning the impact of European legal education. After much
debate it was categorised under Learning Styles recognising its link to Teaching Methods & Media. In this article Smits argues that students should not just learn one system of law but should be exposed to alternative ways of achieving justice. The view put forward is that such a teaching method means moving away from teaching law as an authoritative system.

Under Legal Education Generally, Martin and Rand use an eye catching title to their article to attract legal educators to consider how they might engender hope in their students by revitalising legal preparation, as espoused in the Carnegie Foundation for the Advancement of Teaching’s recent report: Educating Lawyers: Preparation for the Profession of Law.

Legal Ethics is a mandatory subject both in law degrees and most continuing legal education programs. It is also a category which is increasingly the topic of many articles in the Digest the majority of which involve the vexed question of plagiarism on the part of law students and their submitted course-work assignments. In his article Todd considers some refreshing new aspects of both the problem and how it may be resolved. His approach may be encapsulated in the words which form part of his opening statement: In principle, at least, the Internet can be used to conquer plagiarism, at least as successfully as, up to now, it has facilitated it.

The Carnegie Foundation’s recent report as mentioned above is again quoted by Terry in the first of two articles under Practical Training. Terry is particularly concerned with that aspect of the report described as signature pedagogy which reflects the emphasis placed by law schools on what could be regarded as cognitive apprenticeship to the detriment of the apprenticeship of professional identity. To remedy this defect Terry advocates an externship program centred on the development of professional identity and values.

The merging of theory with practice is considered by Ver Ploeg and Hilbert in the second article under this category, when explaining how William Mitchell College of Law introduced a capstone course which involved students assuming full responsibility for completing a substantial and complex project for a real client. The course, entitled Advanced Alternative Dispute Resolution, is described as an extended exercise in creative problem solving.

There are three articles covered by Skills. In the first, Rabé and Rosenblaum propose that clinical and skills professors, as well as legal writing professors use their sabbatical leave to consider practising law rather than follow the traditional scholarship path of most tenured law academics. In the same manner, in the second article, Becker wishes law academics to instil in their students a sense of agency and competence which reflects the practice of law as a source of satisfaction in itself.

In the third article under this category De Jarnatt and Rahdert examine the best ways in which students can be prepared to deal with transnational law, particularly relating to by incorporating it into the legal writing curriculum.

Whilst Butler’s article is focused on ethics, its concentration on clinical training through the use of technology-based learning environments places it under the category of Technology. The article focuses on an innovative approach to an experimental learning environment – Second Life machinima – which proponents claim plays a significant role in engaging students.

As can be seen there is no doubt that this edition of the Digest includes a wide and varied collection of articles reflecting the increasing emphasis of diversity within legal education.
To equip students for working life it is essential that we instil a culture of learning and make our students information literate. It is essential that they are able to think laterally and operate in the real world. In seeking to achieve these goals Atax and the University of Auckland strive to provide a basis for students to become critical thinkers, to enable them to continue their learning and understanding and maintain their excitement for their discipline for the rest of their lives.

As a benchmark for the effectiveness of their teaching and learning methods, Atax and the University of Auckland must ensure that the corporate and professional world looks to their graduates as employees of choice. Assessment forms an important tool in achieving this goal.

If teachers of taxation law are to equip their students with the attributes necessary for professional practice, to become critical thinkers and problem solvers as part of their lifelong learning, then it is important to examine the assessment methods used.

Ramsden identifies the link between different ways of thinking about assessment and the quality of student learning. He notes that the conventional view of assessment is seen primarily as a way of assigning grades, which develops in students cynicism and negativity towards the subject matter and superficial approaches to studying. He advocates that teachers should choose assessment methods that are based on goals for student learning where students can demonstrate how much they understand rather than achieving a single score for comparative purposes.

According to Brown there should be a clear alignment between expected learning outcomes, what is taught and learnt, and the knowledge and skills being assessed. Lack of alignment is a major reason why students adopt a surface approach to learning. This also often results from such institutional policies that require assessment results to be reported in percentages or ‘marks’, or require results to be distributed along a predetermined curve.

An essential feature of assessment is the feedback that accompanies a task that has been assessed. Feedback enables teachers to adapt and adjust their teaching and students to adjust their learning strategies. Generic feedback gives clarification of misconceptions on a broad scale with the advantage of having as a component a comparison with peer responses. From a learning perspective feedback must be timely, perceived as relevant, meaningful and encouraging, and offer suggestions for improvement. Often, it seems, students do not read the feedback they receive or use it to improve future performance and/or understanding of concepts they have failed to grasp. It is therefore necessary to teach students how to use the feedback they receive and to check to see whether they have applied the feedback in current assignments.

The vast majority of Atax students are studying part-time while in full-time employment. Students demonstrably need to be more disciplined when studying part-time, in a delivery mode that is not entirely face to face and balancing work and family commitments.

The Atax student population is diverse. They are located throughout Australia and overseas.

As tax is multidisciplinary, Atax adopts a multidisciplinary approach to its teaching and uses not only lawyers but also accountants and economists to deliver its teaching program.

Unlike the practice at the Open University, Atax does not have students divided into tutorial groups, but self-help groups are encouraged and a list of willing persons is placed on a peer group list and is published in part to facilitate student contact and in part to encourage group work. Members of self-help groups communicate either by direct contact between students or via the internet-based platform used to deliver teaching materials.

Distance students do not have the advantage of being able to resolve misconceptions and problems promptly with their teacher. Therefore, the formative aspect of the learning experience should be designed to give these students more opportunities to evaluate their progress through self-directed activities.

Students receive with each course paper-based study materials that are designed to enhance effective self-directed distance learning and provide opportunities for self-assessment. Their purpose is to stimulate deep-level as opposed to surface-level learning and to give students the ability to study at times and for periods convenient to them. The American Distance Education Consortium has suggested that study materials be modular, stand-alone units that are compatible with short bursts of learning. The Atax study materials are formatted this way.

Atax courses are designed to meet the needs of students and to cater to the needs of employers that require specific skills from graduates. Primarily teachers seek to instil a sense of excitement in students about their chosen discipline to enable them to continue to ‘maximise their understanding of things, read widely, discuss issues and reflect on what they have seen and heard’.
Students must be able to communicate both orally and in writing. Students must be able to undertake complex searches on a multitude of databases to ensure that they develop a thorough understanding of the law (both legislative and common) upon which they rely.

Finally students must be able to work in groups and have the ability to communicate with their peers and others in such a way as to be able to convey sometimes complex facts, issues and arguments in a way that is easily understood by the target audience.

Before the semester commences: students are invited to attend an orientation day at which students are given details about the program, research tools, Blackboard (formerly Web CT) and information designed to help them in the transition to university study.

Subsequently, study materials are couriered to the student. The course materials are divided into modules and refer to learning objectives and key concepts and contain material on each aspect to be covered in that module. Each module also has a reference to suggested and prescribed readings as well as activities designed to test the student's assimilation of matter contained in the study materials. Suggested answers to the activities are provided. The basis on which assignments are assessed form part of this material. Each module builds on the preceding one.

All of the above is designed to manage students' expectations, inform them about the skills required and, assessment criteria used, describe how the course material and skills fit into the 'tax' environment, and explain how the things learnt in the program will be used on a daily basis in their practice as tax professionals.

Audio conferences (each is a telephone link between lecturer and students scheduled for 90 minutes per session generally four times a semester, although some lecturers schedule five audio conferences for specific courses) are used to enable students to clarify any issues. Their prime function is to facilitate a discussion between the students themselves and the students and the lecturer. Prior to assignments and exams the assessment criteria are paraphrased and reinforced at these conferences. Audio conferences are not compulsory and are not assessed, but they will greatly assist the student in the formative assessment process used at Atax.

A full day 'regional class' is held once each semester as an intensive review of the skills to be acquired by the students and the technical issues of that course. Lecturers travel to all the main centres in Australia, when student numbers warrant it, to deliver these classes. During these classes examples are given of what are considered good and bad responses to assignment questions. Again students are given an opportunity to raise issues that are of concern to them. Where student numbers do not justify a regional class in a centre, it will be held by way of an audio conference that lasts about three to four hours.

In all communications with students they are encouraged to discuss any questions or queries with colleagues, peers, superiors or the lecturer to ensure a proper understanding of issues. The availability of the lecturer is stressed. This is in part an attempt to allow the students to feel part of a larger group and to help them communicate with peers and colleagues.

Atax takes the view that assessment forms a vital element in determining if students have achieved, and assisting students to achieve, required outcomes. Assessment is generally by way of two assignments and a final exam. Assignments usually consist of problems where students must demonstrate an ability to apply technical knowledge utilising acquired skills. Stress is placed on word limits in assignments as this avoids undue prolixity and ultimately assists students in composing clear and concise documents in a professional context.

The exam contains both problems and essays where an understanding of technical issues must be demonstrated.

The assessment criteria for assignments include students having to identify the issues and material facts, evidence a critical mind at work, tie arguments back to the problem and to produce a properly referenced, concise, logical and a linguistically well-written paper. The assessment criteria appear before each assignment topic. Certain of these criteria are emphasised in each audio conference and the regional class. They also form part of the course profile in the study guides.

For Halpern and Hakel 'practice at retrieval' is essential. This means that students must be given as many opportunities as possible to apply technical knowledge using the essential skills acquired over a period of time. Atax follows this approach in both its support and assessment functions. Students are given many opportunities to practice their skills and the application of their knowledge.

An important part of the assessment process is what takes place in the audios, regional classes and other contacts with students. Here students are encouraged to raise issues and voice opinions that may not coincide with those of the lecturer provided they can support those views with reference to authority. The discussion itself ultimately assists students in the formative assessment process in that it stimulates a critical analysis of cases and issues and facilitates students communicating.
their ideas in a verbal but logical fashion. These opportunities to practise the application of skills and knowledge help the student attain the course objectives.

The assessment tasks, both formative and summative, require students to use the same competencies, or combinations of knowledge, skills and attitudes that they need to apply in professional life. Gulikers et al suggest that for authentic assessment students need to integrate knowledge, skills and attitudes as professionals do. This means the assessment task should resemble real-life situations utilising the same skills and knowledge a professional would use.

The University of Auckland teaches taxation to students who require New Zealand Institute of Chartered Accountants (NZICA) accreditation as part of their Bachelor of Commerce degree. As is the case with Atax, study materials are handed out in self-contained sections which incorporate both concepts and extracts from the relevant case law.

Internal assessment consists of three parts. First, students learn about tax research through an electronic based series of workbooks. This is followed by an online test, which they must complete in their own time within two weeks. The test is not meant to be failed and students are allowed up to 10 attempts to achieve the passing grade. The research component was introduced to make students aware of some of the electronic resources available on taxation law that they would need in professional practice.

Second, the introductory taxation course includes seven tutorial classes of one hour per week. Students are assessed on attendance and participation at the tutorial classes held over the semester. The tutorials have set questions on various key topics and require students to apply their knowledge of the case law and legislation to the tutorial questions. The scenarios given require critical thinking by the students and are linked to authentic situations that the students will face in the professional world.

The third internal assessment component is a mid-semester test. The test question(s) are made available three weeks ahead of the actual test date, allowing students time to research their answers which they then write under test conditions. There is also a series of four, five marks per question, multiple-choice pop-quiz (MCPQ) tests that can be marked electronically. The best two marks of the four MCPQ tests are included in the final assessment mark.

For assessment purposes the above internal component is worth 30 per cent and the final exam is worth 70 per cent of the final mark. The exam has a practical component where students must inter alia complete a tax return and explain why, in their opinion, income and deductions are declared (or not) as well as 10 multiple-choice questions and two problem questions.

The test assessment method in introductory taxation underwent some changes in 2008 with the introduction of an Assurance of Learning rubric testing system in the University of Auckland Business School. The Assurance of Learning committee, set up in the business school and made up of representatives from the various departments including commercial law, developed a series of rubrics in order to evaluate the standard of student assessment in writing, ethics, critical thinking and knowledge.

Consequently, there has been greater emphasis given in the taxation lectures to introducing ethical principles and several of the taxation tutorial questions pose ethical issues for discussion with students. Teaching ethical principles has also been incorporated into the stage one and stage two commercial law courses. However, it is too early yet to evaluate the success of the new strategy on student understanding of ethical principles in taxation.

Atax, in contrast, includes two general education courses and an ethics course for students to undertake as part of their degree. Since the 2008 review, the University of Auckland allows students who are undertaking a Bachelor of Commerce degree to enrol in up to two university papers from any other faculty as part of general education; however, it has no specific ethics or general education course for students. There has been a recognition that general education complements the more specialised learning undertaken in a student’s chosen field of study and that it contributes to the flexibility which graduates are increasingly required to demonstrate.

Employers repeatedly point to the complex nature of the modern work environment and advise that they highly value graduates with the skills provided by a broad general education as well as the specialised knowledge provided in the more narrowly defined degree programs.

Ethics and general education courses form an essential component in the skills that need to be acquired by tax graduates, so it is encouraging to see the various commercial law courses at the University of Auckland since 2009 including the ethical component in their courses. Widespread teaching of ethical principles in all business courses could ensure students have a greater awareness of ethics prior to them entering the workforce, making the training task simpler for professional bodies.
Having reviewed the literature and the methods adopted by both Atax and the University of Auckland, the authors now seek to utilise this knowledge in suggesting what in their opinion could facilitate enhanced teaching and learning outcomes when teaching tax. This process seeks to utilise the best features used by both Atax and the University of Auckland to ensure students achieve their potential and become valued members of professional teams.

At the commencement of each course students should be given a set of materials that are modular, stand-alone units compatible with short bursts of learning. Each module should build on those that precede them and contain self-assessment tasks with suggested solutions or approaches to enable students to determine for themselves whether they have gained an understanding of key concepts and achieved the learning objectives of each module. These study materials should be supplemented either by formal lectures and tutorials or, as is the case at Atax, audio conferences and regional classes.

Lecturers should be available at fixed times (and if possible at other times as well) to clarify and explain issues students find challenging. Where possible, the lecturers should seek to understand the individual make-up (characteristics) of each student and especially be alert to any limitations students have set for themselves. This of course is far more difficult in a distance environment where there is little or no face-to-face contact with students. The support process is fundamental to an effective assessment program and forms an essential component of the formative assessment process.

There should be consequences in the event of students failing to comply with course requirements such as reading or submission of assignments on time. For example, at Atax late submission of assignments results in a progressive penalty (more than 10 days late results in a 100 per cent penalty not of the mark obtained but of the total available marks for that assignment).

The use of bell curves and similar devices should be avoided in determining marks of students. They should be assessed on that which they produce not on some formula that gives an artificial or contrived result.

As part of the formative assessment process for a tax program there should be at least one ethics course to enable students to operate effectively in the workplace plus at least one and possibly more general education courses unrelated to their program to ensure a well-rounded graduate able to function in the real world with an ability to think beyond the narrow confines of their speciality. Again these criteria may seem beyond a pure assessment regime, but in the authors’ opinion assessment is not limited to one course in a program; it should be holistic, designed to ensure students are able to function effectively in their chosen profession.

Assessment tasks must include a requirement that students perform as they would in the professional environment – utilising lateral thinking, critical analysis, research skills and both oral and written communication skills. In order to facilitate and enhance research and communication skills, Atax has a moot as one of the assessment tasks in its undergraduate program.

Exams must be well timed so that they sample content well but allow most students to finish. They must afford all students the opportunity of doing well but allow the ‘good student’ to excel.

All assessment tasks should be designed to simulate real-life examples that must be approached as professionals would approach the specific issue. For all mid-semester assessment tasks, whether formative or summative, there should be early and sufficient feedback to enable students to understand not only the areas in which they have gone wrong but also to understand what steps need to be taken to improve. Subsequent assessments should, in so far as time permits, seek to ensure that early feedback has been assimilated.

Finally, all assessment tasks must test each student’s ability to understand and apply concepts and principles. Simple regurgitation of information will not adequately prepare the student for professional life.

The development of appropriate and carefully constructed assessments, support materials to assist student learning and opportunities to develop understanding and skills must be a priority in any course offered in the study of taxation law. An important aspect of this assessment regime is that sufficient teacher support is given to students to enhance and encourage the learning process.
Early optimism? First-year law students' work expectations and aspirations

M Castan, J Paterson, P Richardson and H Watt


In Australia, students embarking upon studies leading to a professional legal qualification have traditionally enrolled in an undergraduate degree (‘Bachelor of Laws’ or ‘LLB’). Students entering LLB degree programs are usually expected to have achieved high academic results in their previous studies, whether Year 12 in high school or towards another tertiary degree. First-year law students usually study up to four units per semester, one of which must be a subject introducing legal reasoning and method; for example, ‘Introduction to Legal Reasoning’. In addition, they might study substantive units, such as contract, torts and criminal law. Considerable effort is invested into orientating incoming students to the demands of studying law. As we might expect, when students have an accurate understanding of the nature and demands of their selected course of study, their levels of academic achievement and satisfaction with their studies improve. It is less clear that students have a realistic understanding of what it means to practise law on completion of their degree.

In Australia, there are relatively few studies of law students and those studies that have been conducted have focused on different elements of the student experience. Livingston Armytage and Sumitra Vignaendra’s study found that 70 per cent of final-year law students in Australia intended to work in the law. Similarly, a study by Maria Karras and Christopher Roper also found that approximately 80 per cent of Australian graduates were in law-related employment. This is consistent with recent figures which indicate that 87.7 per cent of Australian law graduates who graduated in 2008 reported being in full-time employment. These studies show that most law students intend to work in the law, and actually do utilise their legal education, upon graduation.

Wendy Larcombe, Pip Nicholson and Ian Malkin considered the relationship between law students’ interests and expectations and their academic achievement. They found that the first semester results for LLB students were associated with their realistic expectations of workload and support, self-ratings of academic ‘readiness’ and initial levels of interest in law. Karen Nelson, Sally Kift and John Clarke reported that, whilst students’ expectations of their first year in law studies had an important impact on their experience of transition from school to university, there was often a misalignment between those expectations and the actual experience of studying and life at university.

The discrepancy between expectations and perceived reality of learning to practise in the law could result in some individuals developing serious psychological disorders, such as depression. In a study of depression among law students at the University of New South Wales in 2005, Massimiliano Tani and Prue Vines observed that law students began to suffer depressive illnesses within the first 6 to 12 months of beginning their studies. They pointed out that earlier studies had shown that there were no discernable differences in wellbeing between prospective law students and the general population, so it was not the case that young people with depressive tendencies chose to study law. They also found that law students’ attitudes to their education may be connected to a number of traits which have been described as factors contributing to depression, such as lack of autonomy, high levels of competitiveness and lack of social connectedness. They proposed that these traits might help to explain the disproportionate rate of depression in law students.

The literature on why people choose to study law at university, and their motivations and expectations, is more extensive in North America than in Australia. Students in North America study law after completing a Bachelor degree. They are therefore slightly older and might be expected to demonstrate greater insight into their own motivations, expectations and choices. Debra Schleef’s study into the motivations of law and business students in the United States attributed a strong role to class status and the importance of gaining a professional qualification for the purpose of maintaining social status. She concluded that students’ choice to study law was not always a rational or even a conscious decision. Students often cited reasons such as ‘keeping options open’ and other ‘default’ reasons (that is, being the best of all available alternatives). She interpreted her results to mean that ‘students were making investments in human capital, not long term occupational decisions … [and] that maintaining the professional class status of their parents was a priority’. Schleef also drew upon Pierre Bourdieu’s concept of *habitus* to refer to the early and deeply held tendencies and assumptions that shape the choice to study law. Although based on a small sample size of 79 individuals, Schleef suggested some interesting categories of reasons for law career choice, several of which resonate with our study. She described these as ‘professional status, intellectual interest, upper middle class lifestyle, parental influence and “default”’. More
recently, Catherine Carroll and April Brayfield asserted that in United States law schools women had lower expectations of their career trajectories than men, and both men and women identified ‘family concerns’ as a potential barrier to career advancement. Some caution is required in applying these results to an Australian context. Nonetheless, we were interested to explore this gendered difference in expectations in our study.

We set out to investigate the career expectations of first-year law students in the very early stages of their degree to see how realistic these expectations might be. In our study, we used the ‘Motivations for Career Choice’ (‘MCC’) scale, which was developed to assess career motivations and perceptions among diverse populations. The first section, ‘about you’, asked about the participants’ age, gender, and the degree in which they were enrolled. The following section, ‘your career plans’, asked participants to nominate details of their ideal career. In the third section, participants were presented with 64 items and asked to rate on a scale from 1 (not at all) to 7 (extremely) the extent to which their professional domain (in this case, law) allowed for the realisation of their ideal career. The final section elicited demographic information relating to the participants’ parents’ country of birth, qualifications, occupation and income. The MCC survey examines altruistic, utilitarian and intrinsic motivations together with ability-related beliefs, all of which are the focus of the broader career choice literature. This approach provided an empirically- and theoretically-tested framework to generate reliable results regarding law students’ aspirations and expectations. The MCC survey was administered to first-year LLB (undergraduate) students at Monash University.

The participants were 371 students enrolled in an LLB degree, and all were undertaking the first compulsory unit, ‘Introduction to Legal Reasoning’. Students in this unit are divided into six ‘streams’ of approximately 90 students. All streams were surveyed, with a response rate of 82 per cent, 59 per cent of those students completing the survey being female. All commencing law students attending classes in early 2009 were given the opportunity to participate in the survey.

Participating students were asked to nominate details of their ideal career. In the first section, participants were asked about expectations relating to altruistic or social utility outcomes (for example, a career in the law will offer the opportunity to ‘benefit the disadvantaged’); personal utility values (for example, a career in the law will offer a ‘clear pathway for career development’ or ‘hours that fit with family responsibilities’); and intrinsic values (for example, ‘matches my skills’ or ‘suits my abilities’).

Expectations about the legal profession were summarised by mean scores for each factor. A mean of, for example, 5.5–5.7 would indicate a high level of expectation about a specific aspect of a law career; whereas, a response below 3 would indicate a low level of expectation. Responses of 3–5 indicate a medium level of expectation about a particular feature.

The surveys were administered by the authors early in the first semester of studies in 2009. Ethics approval, consent of the Faculty and unit coordinators, and the informed consent of participants were obtained. It took about 15–20 minutes for participants to complete the surveys.

Nearly one-third of those surveyed reported a combined parent annual income of over $120,000; while just over 10 per cent reported a combined parent annual income of under $30,000. Nearly one-third reported that their father had at least one tertiary degree; just under two-thirds reported that their mother had at least one tertiary degree. Close to 10 per cent of students reported that their parents did not complete high school.

Just over half (55 per cent) of the students surveyed were ‘considering’ a career in the law, and 42 per cent ‘may consider’ a career in the law. Of those students considering a career in the law, the largest proportion (28 per cent) were considering working in a medium to large law firm (this term was not defined in the survey, but is typically 20–200+ lawyers).

Students were asked a series of questions about the workload in legal practice. They consistently disagreed with questions indicating that the work load required ‘little effort’ ($M = 1.66$) or was ‘light’ ($M = 1.89$). Students considered that a career in law would be rewarding in the sense of being ‘well paid’ ($M = 5.94$); because it ‘is a well-respected career’ ($M = 6.19$); and because it offers a ‘clear pathway for career development’ ($M = 5.56$). Students also expected that law involved a high degree of specialised knowledge, reporting that a career in law would be ‘strongly related to university studies’ ($M = 6.18$) and involve a ‘high level of expert knowledge’ ($M = 6.37$). Students considered that a career in law would allow them to ‘provide a service to society’ ($M = 5.73$), and to ‘fight against injustice’ ($M = 5.70$). Students’ understanding of what the work–life conditions of legal practice might be like fell into the medium band. Students gave mid-range responses as to whether a career in law would offer ‘job flexibility’ ($M = 3.21$) and ‘hours that fit with family responsibilities’
opportunity. The attrition rates of females in legal practice might suggest that strategies to ensure ‘protected’ environments that schools (and then universities) provide in relation to gender equity and female first-year law students. In the case of women students, this perhaps also indicates the expectations.

However, we did not ask students about mental health concerns, instead concentrating on career expectations. The findings contrast with high levels of depression and stress within the legal profession. We might expect students starting a university degree to be generally optimistic about their chosen career. The data presented in our study are not entirely consistent with the literature from the United States on career expectations and gender. In our study, the expectations of incoming male and female law students were similar; in fact, the data suggest that they were similar, even for most categories of career expectations. Studies from the United States seemed to indicate a stronger divergence between male and female students’ expectations about their careers in the law. In part, this may reflect the different structure of a law degree in Australia as compared to the United States. As already noted, in the United States, law is studied as a postgraduate course, so that students would be at least four years older than the average first-year LLB student surveyed in our study. It may also be evidence, however, of the changing ‘sexual contract’ that now sees young women increasingly attributed with social, political and economic capacity; ‘indeed they are now the privileged subjects of capacity, including the capacities for success, attainment and social mobility’. As McRobbie has argued, this incitement toward capacity is particularly visible in the fields of education and employment, where young women are increasingly compelled to be active, motivated and aspirational.

Students did not express strong opinions about whether a career in the law would fit in with their ‘family responsibilities’ or offer some ‘job flexibility’. This is not altogether surprising, given the age and experience of the students surveyed. It is possible to argue that for many, if not most, respondents the prospect of family responsibilities is a distant one and hence their interest or need to consider how these will mesh with their professional aspirations is limited. These issues are likely to impact more directly and heavily on women as they move into a career in the law.

While women account for around 55 per cent of law students, they represent only 45 per cent of all solicitors in NSW and Victoria, and leave private legal practice at a significantly higher rate than men. At the ‘elite’ level of the profession, women account for just 19 per cent of barristers and 19.5 per cent of partners in private law firms. A number of surveys have examined the reasons why women decide to leave the law and to make a change of career. Thornton has written extensively on the experiences of discrimination and harassment reported by women in their professional lives. The difficulty of combining private practice with parenting responsibilities is another factor identified as contributing to the attrition of women from private legal practice. Lawyers in private practice are usually expected to work long hours which leaves little room for other commitments.

The first-year law students in our study showed somewhat optimistic views about the reality of legal practice. Whilst students recognised they would have to ‘work hard’ in the law, they also indicated that they expected considerable return from their work; such as, a high social status, opportunities for advancement and high salaries. Students expressed a belief that working in the law would also enable them to advance socially useful goals of helping others. These views suggest that students consider that their hard work will be balanced by other forms of reward, be they material or altruistic.

In our view, this is an optimistic view of the profession as, for many lawyers, the reality of legal practice is very different. The wealth of scholarly research on the peculiarly disproportionate rate of depression and dissatisfaction amongst lawyers attests to this. It would be useful in future research to ask enrolling law students explicitly about mental health concerns and career plans. Moreover, other Australian research into career satisfaction generally demonstrates that a significant factor in low job satisfaction for this generation is the failure to find that their post-graduation employment fully utilises their abilities and knowledge; in short, that they do not find the work challenging and fulfilling – something they strongly desired.

Our study found a number of interesting characteristics of first-year law students commencing their studies. The majority (97 per cent) were contemplating working in the law – rather than, for example, regarding law as a ‘generalist’ degree. These students appeared to consider that the high level of commitment demanded in the legal workplace would be compensated by a range of factors, including financial reward, high social status, merit-based opportunities for advancement and opportunities to give back to society. Perhaps these findings are unsurprising on the basis that we might expect students starting a university degree to be generally optimistic about their chosen career. The findings contrast with high levels of depression and stress within the legal profession. However, we did not ask students about mental health concerns, instead concentrating on career expectations.

We found that there was very little difference between the career expectations of male and female first-year law students. In the case of women students, this perhaps also indicates the ‘protected’ environments that schools (and then universities) provide in relation to gender equity and opportunity. The attrition rates of females in legal practice might suggest that strategies to ensure
equity and opportunities for females have not been successfully embedded structurally into the work practices of law firms. These differences must be confronting for women who have previously experienced an emphasis on equity and achievement in school and university. Nonetheless, the study does highlight a disjuncture between expectations of first-year law students commencing their degree and the rigours and routines of practising law in their futures. Law schools traditionally concentrate on training law students for legal practice, and this study demonstrates that law students are generally optimistic about their aspirations and prospects for working in legal practice. Further research needs to be undertaken as to whether later-year students hold similar levels of optimism as first-years. However, given the realities of careers and practices in law, we believe that it is necessary for law schools to consider carefully their responsibilities to students in relation to their prospective careers and to address the preparedness of their students to negotiate the often difficult workplace environment ahead of them.

EDUCATIONAL THEORY

Speaking the same language? Perceptions of feedback amongst academic staff and students in a school of law

A Adcroft


Within both the generalist and the specialist legal education literature, there is a growing body of evidence which suggests that there is growing concern about the quality of feedback to students and how it impacts on learning.

The review begins, therefore, with the assumption that feedback is central to learning and a crucial part of the whole student learning experience. This assumption is accepted by practically all the literature from both a generalist and specialist legal education perspective.

Quality feedback, according to Miller, should clarify what is expected of students. Gibbs and Simpson elaborate on this by suggesting that quality feedback will have a number of characteristics based around its specificity, factors under the control of students, its timeliness and that it is in a form which allows students to both receive and act upon it. The logical outcome of this is that the diverse student body in higher education will require feedback in a variety of forms and through a variety of processes if it is to have a positive impact on performance. This approach mirrors the work of Nicol and MacFarlane-Dick who offer a number of principles which should underpin quality feedback such as how it clarifies what good performance is, promotes independent learning, motivates and encourages students and identifies gaps in knowledge and understanding. Broadly speaking, there is little in this issue which distinguishes feedback in legal education from feedback more generally across higher education. The real test of feedback is more in the implementation of these principles than in the principles themselves.

The key question is, therefore, why there is a gap between the principles which underpin the practice of feedback and the outcomes which result. Vardi argues that this gap is the result of poor practice such as feedback being too brief, not specific enough, involving arbitrary judgements about standards and using terms which may be vague, cryptic, sarcastic and lacking in praise. Burke also suggests that poor practice is the primary cause of poor outcomes: 'it is too brief, too negative, too difficult to decipher or to understand'. For many, however, this explanation is too one-dimensional because the cause of the problem is a gap in expectations between academics and students. The main manifestation of this gap is the body of evidence which suggests that students do not understand the content and purpose of feedback: Crisp points out that what may be 'self evident' to academics is often not to students; Orrell raises issues of the 'expert language of academic disciplines'; Hyatt argues that the 'rhetorical conventions' of feedback are frequently confusing to students; Williams suggests that academic language is 'opaque to many university students'; and Weaver's evidence suggests that students do not have a significant understanding of academic discourse to make best use of feedback.

The sample for this study was drawn from undergraduate students in the School of Law (SoL) at a pre-1992 university in the UK. SoL is predominantly an undergraduate school; just over 95 per cent of all full-time students study on SoL's undergraduate programmes in Law and, of these students, over 90 per cent study on the LLB degree. All degree programs are three years in duration and students have the option of undertaking a professional training year between the second and final year although very few students take this opportunity. The School has 24 members of academic staff in a range of posts from professor through to reader, senior lecturer, lecturer and tutor.

The method of data collection chosen for this study was primarily determined by the ethical regulations of the university in which SoL is located. These regulations insist that students are made
aware of a clear separation between their degree studies and surveys they may participate in. In practical terms this meant that a paper based survey distributed in, for example, large lectures was not possible even though ‘response rates for web surveys are lower than those for paper and pencil surveys’. The instrument for the study was, therefore, administered online and all undergraduate students and academic staff in SoL were invited to participate.

In total, 240 fully completed responses were received from students giving an overall response rate of 44 per cent. There is variation in response rate across levels of study. These response rates were, on the whole, not surprising although the response rate amongst second year students was a little disappointing. This is, however, consistent with Sax et al’s study which shows that university students are ‘responding at lower rates than in previous decades’. The study does offer significantly higher response rates and sample size than similar studies. No demographic data such as age, gender or ethnicity were collected on advice from the University’s Ethics Committee. The implications of this are two-fold. First, any conclusions drawn from the data must be tentative as generalisability may be an issue and, second, findings of this study need to be examined in relation to findings of previous studies in this area.

The study was conducted in two parts with a similar questionnaire used in each. The first part of the study was for academic staff and the second part of the study was for students. In both cases, invitations to participate were emailed, reminder emails were sent weekly and the survey was kept open for four weeks. The questionnaire for the survey was in three parts. The first part contained 15 questions, modified slightly between the student and staff parts of the study, which asked about expectations of feedback, outcomes of feedback and experiences of feedback. For each of these questions, staff and students were offered a statement and asked to respond on a five point Likert scale which ranged from ‘Strongly disagree’ to ‘Strongly agree’. All the questions were derived from the generalist education and legal education literature on feedback and were pre-tested in a focus group of five academic staff and a focus group of eight undergraduate students. One of the most significant outcomes of the focus groups was the discrepancy in understanding of feedback between academics and students which manifested itself in a number of ways. Academics, for example, were keen to stress the importance of the diversity of feedback given to students in terms of both content and process whereas students were much more focused on feedback as something which was written on assignments. In assessing these discrepancies, therefore, the instrument was designed to assess the diversity of feedback offered and also to ask specific questions about written feedback.

The second part of the questionnaire concerned the types and frequency of feedback given by staff and received by students. From the staff focus group, a list of different mechanisms through which feedback is given to undergraduate students was produced. In order to ensure validity, this list was cross-referenced with the literature on types of feedback to produce a final list of nine items which were then used in the study; staff were asked about the frequency with which they used each type of feedback and how useful they found it. A four point Likert scale was used to measure frequency (ranging from ‘Frequently’ to ‘Never’) and a five point Likert scale ranging from ‘Not at all useful’ to ‘Very useful’ was used to measure usefulness. The final part of the instrument concerned the use and understanding of words and phrases used in feedback. Staff were asked in the focus group to produce a list of frequently used words and phrases in feedback to undergraduate students which was, again, cross-referenced with the literature. From this, a final list of 12 items was created and staff were asked how often they used these phrases using a four point Likert scale ranging from ‘Frequently’ to ‘Never’. An open comment box was also used in the staff survey for staff to list additional comments but no additional suggestions were provided. In the student version of the survey they were first asked about how frequently they received these words and phrases in their feedback and they were also asked to comment on how confident they were in understanding what these comments meant using a four point Likert scale which ranged from ‘Very unsure’ to ‘Very confident’.

Within SoL there are a number of key differences in the perceptions of staff and students across all of the different dimensions of feedback investigated.

The most significant difference in perception between academics and students is that concerning the role that feedback plays in improving performance; almost twice as many students as academics felt that feedback is the crucial mechanism through which a student’s performance is improved. The extent to which feedback helps students self-diagnose their performance also shows marked differences whereby a much higher proportion of staff felt that this was a key role of feedback compared to students. There is much less of a gap between staff and students as far as establishing
what good performance is and identifying gaps in knowledge and understanding. This contributes to the mixed signals about the expectations of feedback generated by the data. There is also an interesting question about how important feedback is to the whole student experience; practically all staff surveyed placed feedback as a central component of the wider student experience compared to just three in four students who felt the same way. If there are gaps in the expectations of what feedback should deliver, there are also significant gaps between what academics believe feedback does deliver and the beliefs of students.

Students do not believe that feedback delivers on many of its key purposes. For example, just under half of the students surveyed felt motivated and encouraged by feedback or that feedback helped them improve their study habits and only slightly more than one third of students felt that feedback helps them progress towards independent learning through self-assessment and self-correction. More positively, a significant majority of students did feel that feedback was successful in bridging the gap between how they did perform and how they wanted to perform. Student perceptions of outcomes, however, stand in stark contrast to those of academics, who have much higher perceptions of what feedback delivers. For example, two-thirds of staff believe that feedback motivates their students yet less than 50 per cent of students feel the same way. These differences in perception are, in many cases, at their most extreme when we consider the experiences of students as far as feedback is concerned.

There is clearly an issue between what academic staff in SoL are doing and what students believe they are receiving. For example, 88 per cent of staff say they give frequent feedback which goes beyond assessed work but only 12 per cent of students say they receive this kind of feedback. Almost all academics say they give a variety of written and non-written feedback but only one in four students claim to receive both written and non-written feedback and whilst just one academic felt that a grade or mark is the most important element of feedback, more than one in four students have the same belief. Overall, therefore, the gap between academics and students appears to be very wide and this is the case even when they meet directly; over three-quarters of academics believe that students get feedback whenever they meet to discuss an academic issue compared to just 12 per cent of students.

There are five different types of feedback which more than 80 per cent of academics suggest are delivered frequently or often to students compared to just three which students say they receive frequently or often. The most popular form of feedback used by academic staff, individual written comments on assessed work, is received by only 61 per cent of students even though 100 per cent of staff use this type of feedback. The converse of this is feedback in the form of just grades on a piece of assessed work which a quarter of staff use but 61 per cent of students receive. In terms of variety, therefore, there is a gap between the types of feedback that are given and the types of feedback that are received. Perhaps a more important issue is not what types of feedback are used but rather how useful students find different types of feedback.

On a positive note, the most useful form of feedback that students receive is individual written comments on work which all staff give on a regular basis (although only 61 per cent of students receive it). The relationship between usefulness and frequency, however, does raise a number of areas for concern. For example, 80 per cent of students believe that model answers are a useful feedback mechanism but only 37 per cent of students feel they regularly receive this kind of feedback (compared to 69 per cent of staff who say they give this kind of feedback). Conversely, 94 per cent of staff give feedback on a group bases whereas only 41 per cent of students find this feedback useful. Similarly, the two most frequent forms of feedback students say they receive, general feedback and grades only feedback, are seen by students as being less useful than four other forms of feedback.

There is a common vocabulary of feedback used by staff. For example, all staff comment on the structure of a student’s written work and 94 per cent of staff comment on how an assignment is referenced, its descriptiveness and the quality of critical reflection it contains. The key issue is, however, not necessarily what is written but what is understood by students. Almost one-third of students have only a limited understanding of what the most commonly used phrase in feedback means and, of the 12, seven are not fully understood by more than 30 per cent of students. The effort put into feedback by academic staff does not, for a substantial minority of students, result in understanding. What these results suggest is that there is a clear breakdown between the work that academic staff are doing in giving feedback to students and what students are receiving in terms of feedback and the outcome of this is that staff and students are working with different levels and types of expectation, they experience feedback in fundamentally different ways and do not share much of a common understanding of what feedback is and what it is supposed to do.
The first implication of this study is that there is little which makes feedback in legal education stand out from the rest of the higher education sector; it faces the same pressures, is built on the same assumptions and has many of the same problems. In the more specific issues raised by the data, there are many similarities between SoL and other elements of higher education. For example, Parikh et al identified a gap between what is given and what is received in terms of feedback, Williams noted the difficulty many students have in understanding the language used by academics and Crisp’s work pointed out that many students are more interested in grades than feedback, all of which are conclusions drawn from the data in this study. There is also evidence which suggests that SoL is not exceptional compared to other schools or departments of law in relation to feedback issues. As well as the psychological comfort that may come from knowing that you are not alone is dealing with difficult issues, the positive from all this is that SoL (and legal education in general) should not be deterred from looking outside the world of legal education for ways to deal with these problems.

The most important of these issues for SoL is the perceptions gap between academics and students; there seems to be little common understanding of what feedback is and means. Staff think it more important than students in the wider learning experience, staff see it as an ongoing iterative process compared to students who see it mainly in terms of assessment; staff focus on a wide variety of feedback mechanisms whereas students feel they receive only a few and staff give feedback in forms that students cannot engage with. It is unlikely that there is any quick fix for this kind of problem, especially when the growing emphasis on independent learning in higher education is increasingly at odds with the ethos in pre-university education in the United Kingdom. Studies from elsewhere suggest that this gap can only be addressed and closed with a systematic and coherent set of interventions which go beyond individual effort in the classroom. Mutch, for example, sees this as an issue of ‘program design’ which begins with how students are inducted and oriented into higher education and continues throughout their studies. With this kind of effort it could be possible to soften the contrast in SoL between National Student Survey (NSS) scores which rate feedback as poor and external examiner reports which are much more positive.

The main manifestation of all this is in the lack of understanding of the key terms used in feedback. This is a problem for two reasons. First, as Bone has pointed out, for law students feedback only has value if it is acted on and students in SoL cannot act on what they do not understand. Second, much of the lack of understanding is in the higher level academic skills like critical analysis and application of theory. From a staff perspective there is also the issue of workload and, in a lot of cases, the pointless exercise of writing feedback that is not understood. There is more to dealing with this issue than, for example, handing out dictionaries to all new undergraduates as this is probably a symptom of the wider systemic problem identified earlier. Nevertheless, the basic point that feedback must be understood to be acted on should not be lost especially in an increasingly competitive sector where the NSS and the promotion of independent learning are likely to become more, not less, important.

There are two main limitations of this study. The first is that it focuses on just one school from one university and so questions about generalisability are inevitable. Given that, demographically, there is little that makes SoL’s staff or students particularly different from other schools or departments of law in the same part of the sector and that the evidence presented is consistent with evidence from elsewhere, it is probably realistic to make the claim that SoL is pretty typical of the legal and higher education sector overall. The second limitation is that the paper offers a snapshot of perceptions of feedback rather than a running commentary which tracks how these perceptions change over time. The data gathered do allow for analysis of different levels of study, analysis which is beyond a paper of this length, and which is perhaps the best suggestion for future research in the field.

Oscar Wilde suggested that truth was rarely pure and certainly never simple and so too is it with feedback to law students. What this paper illustrates more than anything else is that there is probably no natural or automatic process through which something is transmitted from an academic and arrives at a student unencumbered and unchanged by experience, expectation and interpretation. What the paper does not really illustrate is that it is often easier to identify a problem than it is to solve a problem and in this specific case the problem and solution is multi-dimensional and complex. Dealing with this is most likely one of those rare and simple pleasures that can come from more research in the area.
Elder law teaching and scholarship: an empirical analysis of an evolving field
N A Kohn and E D Spurgeon

Within the next year, the first Baby Boomers will reach traditional retirement age and over 40 million Americans – more than 13 per cent of the American population – will be at least 65 years old. As the legal profession faces the serious challenge of responding to the needs of this burgeoning elderly population, the field of elder law is poised to play a key role.

Elder law is a specialty focused on counselling and representing older persons or their representatives on later-in-life planning and other legal issues of particular importance to older adults. Although elder law is still a young field, today many American law schools offer elder law courses and attorneys across the country hold themselves out as elder law specialists.

Despite the field’s growth and the prospect of a dramatic increase in the need for its services and insight, relatively little is known about the state of elder law teaching and scholarship. Thus, although increasing numbers of law schools offer elder law instruction, questions abound: What types of courses are taught? What is taught in them? Who teaches them? What challenges and opportunities do they face? What kinds of scholarship are in production, by whom, and with what impact? These are important questions because their answers will shape how this field of law develops, and ultimately, its impact on the legal academy, legal practice, and policy.

Three types of studies were conducted to provide a comprehensive view of elder law’s status and role in academia.

First, we conducted two direct response surveys. In fall 2008, a 10-page ‘Professor’s Survey’ of 35 questions (with many sub-questions) was mailed to all 177 members of the Association of American Law Schools’ Section on Aging and the Law, those who were identified by the Association as elder law teachers, and those who fell in both categories. Surveys were also sent to those identified by the Association as deans of academic affairs at US law schools. The deans were asked to (1) help identify persons teaching and writing in the field of elder law; and (2) give an enclosed copy of the Professor’s Survey to ‘persons who teach elder law at your school’.

Fifty-four Professor’s Surveys were completed and returned, 47 of them by those who currently teach or previously taught elder law (hereinafter referred to as ‘respondents’). The majority (26) were tenured, but many (40 per cent) were not in tenured or tenure-track positions.

Second, we conducted an Overview Study to determine the extent of elder law course offerings and to assess the representativeness of responses to the Professor’s Survey. As part of this overview, we examined online course catalogues or schedules from ABA-accredited law schools in all 50 states to determine (1) if the school offered an elder law course; and (2) the academic status of the person or persons teaching that course. We also sought to identify, if possible, how frequently the school offered an elder law course to achieve a better sense of the depth and frequency of such offerings.

Third, we sought to assess the impact of elder law scholarship. We tapped the Washington and Lee University Law Journal Submissions and Rankings Database, which contains comparative information and rankings of law reviews based on data about citations to articles in the preceding eight years of publication.

The Overview Study found that 112 out of 192 law schools have an elder law course listed as part of their curriculum. This represents a dramatic change over the past 20 years. A 1988 survey of elder law offerings found that only 37 schools offered elder law courses, and a 1993 survey identified only 50 schools that did so. The fact that a majority of schools include elder law in the curriculum does not necessarily mean, however, that in any given year a majority offer an elder law course. Not all schools that have added the subject to their curriculum currently offer an elder law course, and even those that plan to offer one regularly may not have run one in several years.

Typically, schools with multiple elder law courses offer both a doctrinal and a clinical course. In addition to an elder law course for Juris Doctorate (JD) degree students, a handful of schools offer specialty instruction aimed at students in non-legal fields and two offer a Masters of Laws (LLM) degree in elder law.

It should be noted, however, that the fact that a school does not offer an elder law course – or that a student does not take an elder law course – does not necessarily mean that he or she will not have the opportunity to engage with elder law issues. In spring 2008, the Centre for the Applied Study of Legal Education (CSALE) conducted the first in what it hopes to be a series of longitudinal studies of applied legal education. As part of its work, CSALE identified persons with primary responsibility for or considerable knowledge of the applied legal programming at every US
law school. When asked to identify legal fields in which law students at their schools were placed as interns or externs, 69 such persons responded and 10 identified ‘elderly law’ as a field in which students were placed. Notably, a few of these respondents were affiliated with schools that lack elder law course offerings.

Only approximately half of law schools offering elder law use a tenured or tenure-track faculty member to teach the course.

Moreover, approximately one-third of law schools offering an elder law course rely exclusively on adjunct faculty to teach it. The reliance on adjuncts to teach elder law may be a growing trend.

Many who are teaching elder law came to the field later in their careers. Respondents with tenure teaching doctrinal courses typically did not become involved in teaching elder law until well into their teaching careers. Of the tenured strictly doctrinal respondents, approximately two-thirds began teaching it at least six years into their teaching careers, commonly waiting until 10 to 20 years into their careers. By contrast, clinical faculty members who were not adjuncts, regardless of tenure status, tended to begin teaching elder law earlier in their careers – typically within the first six years.

It appears that those teaching elder law generally have experience practising in the field. More than three-quarters of respondents reported having experience representing clients on elder law issues. Since adjunct faculty were under-represented in the Professor's Survey responses, it seems likely that the actual percentage of elder law teachers with practice experience in the field is somewhat higher.

Our survey findings indicate that there is significant student interest in taking elder law classes. On average, respondents currently teaching elder law teach it to 32 students a year. Since some respondents were not the only person teaching elder law at their school, the average number of students enrolled in elder law courses at law schools that offer them is likely somewhat higher.

One reason for such significant student interest may be that students see elder law courses as preparing them for elder law-related careers.

While most respondents said their elder law course had a final examination, as is traditional for upper-level law courses, other less traditional components are often included as well. For example, nearly half of the respondents reported requiring students to complete exercises, and a distinct minority incorporated speakers from other disciplines into the classroom experience. The majority of respondents reported that they taught elder law courses with an experiential component. A sizeable portion of this experiential learning is direct client representation, although it also takes the form of an elder law focused externship, or simply a visit to a local senior centre.

There is great consistency among schools as to what topics are included in an elder law course. All respondents with the exception of one cover ethics, determination of capacity, and guardianship and its alternatives in their courses. Almost all respondents include Social Security, Medicaid coverage, Medicare coverage, end-of-life care, advance directives, and elder abuse. Nearly three-quarters of respondents cover the demographics of aging, pensions, Medicaid planning, nursing home rights and senior housing. The majority of respondents also report covering age discrimination, estate planning, other health coverage, and local/regional aging services. In addition, significant numbers of respondents cover grandparents’ rights and disability rights. Despite the apparent agreement about the subjects to be included in an elder law course, there is significant diversity in the texts used to teach those subjects.

The diversity of teaching materials appears to reflect both a mismatch between clinical teaching needs and published materials, and some dissatisfaction with existing published materials among those teaching doctrinal courses. While many respondents praised the breadth of coverage offered by existing casebooks and teaching materials, they expressed desire for works with more in-depth discussions of policy issues and for a more problem oriented approach in teaching materials – including more questions based on hypothetical scenarios and more policy-oriented questions that could be used to engage students in robust classroom discussion. Other complaints about existing materials included that they were poorly suited for experiential learning and that they would benefit from more focus on litigation.

The fact that an individual teaches elder law does not mean that he or she writes in the field. Only slightly over half of respondents currently write in the field. The sizeable majority of tenured faculty (both doctrinal and clinical) currently write in the field, as was the case although to a lesser degree for other non-adjunct faculty. By contrast, adjuncts typically do not currently write in the field.

Those writing in the field of elder law tend to see practising attorneys and policymakers as their key audiences, although other legal academics are also a commonly cited target audience. When respondents were asked what their preferred forum for publication was, the most common response was a specialty law review. By contrast, general law reviews, practitioner-oriented periodicals,
books, were less likely to be preferred publication fora. The extent to which articles published in specialty elder law reviews reach practitioners – and the extent to which they are more or less likely to reach practitioners than scholarship published in other fora – likely varies on a myriad of factors, including the review itself. For example, the NAELA Journal, a publication of the National Academy of Elder Law Attorneys (NAELA), tends to focus on issues of direct relevance to elder law practice and is distributed to the Association’s membership of practising attorneys at no additional charge. The Elder Law Journal, a specialised law review published by students at the University of Illinois, by comparison tends to have a somewhat broader focus and is aimed at a more academic audience.

Respondents are more likely to publish in practitioner-oriented periodicals or books than their apparent preference for specialised law reviews might suggest.

As is the case with publication preferences, where respondents actually publish also differs by academic status. Tenured and tenure-track doctrinal faculty are far more likely to publish in general interest law reviews than other elder law teachers. Not surprisingly, adjunct faculty and faculty who are not part of the tenure system disproportionately publish in practitioner-oriented periodicals.

One way to evaluate the impact of elder law scholarship is to determine the extent to which leading general law reviews have published it. By that measure, elder law scholarship fares poorly. A review of the articles published between 2004 and 2008 in the general law reviews of ‘top 20’ law schools indicates that elder law scholarship has had relatively little penetration. Other than articles published in the Cornell Law Review as part of a one-time symposium on Social Security, no article focusing on elder law was published in these journals during that five year span. These findings, however, do not mean that such journals did not publish any elder law-relevant articles during that time. Elder law covers a broad range of substantive subject matter areas and brings them together under a holistic practice model. Articles looking at these substantive issues outside of the elder law context were not identified in our review.

Another way to measure the impact of elder law scholarship is to look at the impact of specialised elder law journals. This approach is valuable for three key reasons. First, as the survey data indicated, specialised law reviews are a preferred forum for publication for elder law authors. Second, specialised elder law journals are in many ways the public face of the field. Thus, both the quality and nature of the work these journals publish has the potential to send a powerful signal about the field in general. Third, the specialised law reviews appear to publish a significant portion of elder law related articles.

There are currently three specialised elder law reviews. They provide plentiful opportunities for academics, practitioners, and students to communicate about important issues and developments in the field. In addition, by soliciting articles and by conducting symposia, such journals encourage the production of elder law scholarship as well as dialogue within the elder law community.

A review of the three specialised journals indicates that the Elder Law Journal, published by the University of Illinois, has the most impact. Compared with the others, the Elder Law Journal is the most likely to have its articles cited in other law review articles and the most likely to have its articles cited in court cases.

While it is clear that the specialised journals play a valuable role in the field of elder law, comparing the leading elder law journal to other leading specialised law journals suggests that elder law scholarship may not be having the level of impact that scholarship in other specialised legal fields has. The Washington and Lee University School of Law’s Law Journal Submissions and Rankings Database (the ‘WL Database’), the leading source for comparative information and rankings of law reviews, assigns journals an ‘impact rating’ based on the average number of citations each of its articles receives annually. According to this system, while the Elder Law Journal has an ‘impact rating’ of .38 (more than three times that of the next specialised elder law journal), its score is far less than those of other leading subject-specific law reviews.

Elder law courses typically cover a broad range of legal issues of importance to seniors. Many embrace the client-focused nature of the field by providing direct representation to seniors or providing hands on engagement with older adults through other means. The interdisciplinary nature of the field is also reflected in classroom practices such as incorporating speakers from non-legal disciplines.

Student interest in elder law courses appears to be substantial. Indeed, it is sufficient for many law schools to support multiple elder law courses. Students in elder law courses, moreover, are likely to be exposed to creative teaching approaches and learning opportunities that give them first hand experience interacting with the elderly.
Although specialised elder law journals play a critical role in encouraging analysis and discussion within the field, the absence of elder law articles in top general law reviews suggests that the field may have difficulty reaching a wider audience and, thus, have a more limited impact than would otherwise be possible. Similarly, the rarity with which elder law professors publish in interdisciplinary and non-legal forums may undermine the field's ability to have an impact across disciplines. Moreover, the apparent trend toward adjuncts teaching elder law courses may further reduce the field's scholarly impact – or, at the very least, impede efforts to enhance it – as adjuncts are significantly less likely to publish, and, when they do so, tend not to publish in general law reviews or other forums likely to reach persons not already part of the specialty.

The tendency of schools to staff elder law courses with adjuncts and other faculty who are not part of the tenure system also raises concerns that extend beyond scholarship. For example, having core doctrinal faculty members teach in this field appears to facilitate the integration of elder law issues into other areas of the law school curriculum. Excluding adjunct faculty, the majority of respondents teaching doctrinal elder law courses reported that they integrate age-related issues into non-elder law courses. By contrast, most respondents teaching in clinical settings and most adjuncts reported that they do not do so. This is troubling, as it suggests that exposure to elder law issues and considerations may be limited to the relatively small subset of law school students who elect to receive specialised instruction in elder law. It also raises the question of whether those interested in promoting the integration of aging issues into law school curricula should focus on developing new elder law courses or should instead (or in combination) focus on creating aging-related modules to be integrated into other courses.

Assessing the current state of the field and recognising its critical position is, however, merely a first step. Subsequent, thoughtful work is needed to formulate good ideas for guiding and supporting the field's development during this critical period. We therefore intend to build upon this study and the expertise of those practising, teaching, and writing in elder law with a second phase of inquiry aimed at generating concrete, manageable recommendations that can be used to help shape the future of elder law positively and productively.

Time is, of course, of the essence. The American population will not wait to age until law schools and legal professionals learn how to meet the needs of elderly clients. If US law schools are to help prepare law students and the legal system to meet the challenges posed by an aging population, law schools must make quality elder law education and knowledge a priority today.

**European legal education, or: how to prepare students for global citizenship?**

J Smits

Teaching law in an international curriculum is fundamentally different from teaching (one or more) national laws: it assumes not only a different conception of law, but also a different attitude of both lecturer and student. For programs that offer a complete transnational curriculum (such as McGill and Maastricht), it is therefore necessary to identify what makes them unique (even though some of the provided answers can also be valuable for programs devoted to the study of two or more different national jurisdictions).

Until around 1990, legal education in Europe was primarily national: the law of one jurisdiction was taught to students of usually one nationality by lecturers of that same nationality, aiming at the production of graduates that would mostly work within their country of study. In the last two decades, however, this changed dramatically: apart from courses on international law and European law (that were already part of the traditional law curriculum), almost everyone now accepts that it is no longer possible to teach the classical areas of law (such as private law, constitutional law, criminal law and tax law) without taking into account European and international influences. This led to whole new fields of academic study: many European law faculties now have professorial chairs for, e.g., European private law, European criminal law and European tax law to name just a few. It is also widely accepted that it is beneficial to have students and lecturers from abroad at one’s own law school, and perhaps even better to have one’s own students and lecturers spend some time at a foreign university.

As indicated above, this phenomenal change in attitude led to different degrees of internationalisation in individual law schools.

The first argument in favour of a truly European education is that the law itself is no longer a national phenomenon, but increasingly flows from other than national sources. In private law
(as well as in all other traditional sub-disciplines), we accept law of European and supranational
origin, as well as a variety of rules originating from private initiative (ranging from the Common
Frame of Reference for European Private Law to standard form contracts and codes of conduct on
corporate, social and environmental responsibility). Any modern legal education should take these
norms into account, not only because they are indispensable in understanding the existing law (and
consequently play a big role in practice), but also because it makes the students realise that law is
not necessarily tied to the nation-state. This does not mean that the law is taught ‘without the State’,
but it does imply that a legal education exclusively based on the intricacies of national legislation
and court decisions is a poor one.

At this point, it is important to address a likely counterargument. It is sometimes argued
that a European legal education is impossible because a European private law, criminal law or
constitutional law do not really exist: such fields would (at least to a large extent) not be based on
the authoritative statements of legislatures and courts, but at best be ‘a brooding omnipresence in
the sky’. The flaw with this argument is that it gravely misunderstands the nature of legal authority.
Apart from the fact that there is a rapidly increasing number of European treaties, regulations,
directives and court decisions in these fields, it denies that the authority of legal sources is not
necessarily dependent on the political institutions. In fact, it is often the legal profession and not
the legislature that determines the authority of a text. This makes it important not to limit legal
education to those elements that are laid down in legislation and court decisions: law schools
should not only react to legislatures and courts, but they also play an important role in shaping the
future law.

Even when the graduates stay in their home country, they are increasingly advising multinational
and foreign clients who want to know about different solutions. This calls for a much more rigorous
international curriculum in which alternative approaches are sketched from the first day onward.
Teaching one national law does not adequately prepare students for the world they have to work
in.

The second argument in favour of an international legal education is that it better meets the
requirements of an academic study. In brief, students should learn to use the law not only as an
instrument, but also to think about law in an intellectual way.

This means that an academic legal education, in my view, should educate students about the
contingency of the law. They should learn about the fact that different societies give different
weight to issues such as social justice, efficiency, equality of man and woman and the value of life.
They should learn to think through the consequences of choices made in different societies, to
understand why these choices were made, and to argue why they think one choice is better than the
other. If this ‘dialogue with otherness’ is at the core of legal education – as I think it is – to focus on
only one or two jurisdictions would be a poor and rather limited curriculum.

One should realise that of the almost 1000 years in which law is taught at universities, the
last 200 years have been exceptional: before 1800, students learnt about more than one law, be it
Roman law and Canon law, common law and mercantile law or Roman law and local law. It was
self-evident that all these laws had a rationality of their own and could not be brought under one
heading.

The final argument for why an international legal education is preferable over a national one is
that it will attract better motivated students. A European or cosmopolitan legal education can be a
real intellectual challenge, attracting more capable students and producing better graduates.

Instead of Dutch, English or Polish law, the curriculum then consists of courses on European
Private Law (possibly split into European Contract Law, European Tort Law and European Property
Law), European Criminal Law, European Constitutional Law, European Procedural Law and
European and International Law per se. Courses on these topics are at the heart of any law study in
Europe, not only because many countries require these courses in order to enter the bench and the
bar, but also because of their substance: they make the discipline of law.

Another aspect of the question is much more difficult to answer: what do we actually teach
in these ‘European’ courses? In so far as private, criminal, constitutional and procedural law are
governed by binding rules of European origin (as is increasingly the case), it is still possible to
teach these topics in the same way as one teaches national law. This traditional way of teaching
usually takes the form of telling students how ‘the law’ reads: they are informed of the law as it
stands today in the particular country they study in. But while I think it is wrong to teach national
law in this way, it is outright impossible when teaching European courses. In order to cover the
whole field of, e.g., contract law or criminal law, there is simply not enough binding law produced
by the European institutions.
Students should not just learn one system of law, but ought to be exposed to alternative ways of achieving justice. The focal point is no longer the national legislation and case laws of a particular doctrinal system. Instead, the full range of materials that informs us about how we can possibly deal with normative conflicts should be brought to the fore. These materials can come from civil law and common jurisdictions, but also from, e.g., Chinese law, ethics, conventions, religion or private documentation (such as contracts, general conditions and memorandums of understanding). When discussing these materials, the emphasis is on the arguments behind the choices made by the relevant authorities (and others) and not on the doctrinal intricacies. It also means that the starting point of the discussion is a case or a problem that is functionally defined (such as ‘When is a contract binding?’) and not some doctrinal term (like ‘consideration’). It is out of these materials that students can construct their own understanding of the problem and its possible solutions.

Accepting this ambitious teaching method means a turn away from teaching law as an authoritative system. Case law and legislation are no longer regarded as authoritative statements about what is law in a certain jurisdiction, but viewed as empirical material on how to deal with conflicting normative positions. It is used to unveil the arguments pro and against certain outcomes. Existing jurisdictions are thus seen as experimenting laboratories and it is through the comparative method that we learn about alternative outcomes to similar questions. To make this the goal of legal education may have as a consequence that graduates are less versed in the details of one particular legal system, but this is compensated by their ability to apply the legal way of thinking in various jurisdictions.

It is important to emphasise two things. The first is that this method may invoke the criticism that students no longer learn to reason in a clean and precise way. This is wrong: analytical reasoning must be a quality every law graduate must possess and I believe that a broader European legal education is much more conducive to teaching this skill than a purely national education.

The second point is admittedly a contested one. An important strand of legal scholarship claims that the ultimate goal in fields like European private law and European criminal law is to draft and implement common European principles. In particular, private lawyers have invested a lot of time and energy in such projects, leading to, inter alia, principles on European contract law, tort law, trust law, family law and private law in general. Apart from the objections one can have against representing law through principles, it cannot be denied that they are useful in teaching. Their importance should however not be overestimated. Too much focus on what jurisdictions have in common can conceal very real divergences, endangering what is at the core of the legal discipline: divergent views of what is the right answer to a legal problem. European legal education therefore should not only seek common ground, but also expose difference.

What kind of teaching method this requires was already alluded to earlier: it is one in which a functional problem is identified and solved, thus allowing students to construct their own understanding of the possible solutions.

The first question is in what sequence the various legal systems are to be discussed. Two different approaches are possible. The first is to introduce students consecutively to different jurisdictions: one starts with one legal system and gradually confronts others.

The second approach is to expose students to civil law, common law and other jurisdictions right from the start. This means legal systems are examined and contrasted simultaneously: teaching never takes place on basis of one national law, but integrates alternative approaches to functionally defined problems. Interestingly, both McGill and Maastricht changed the structure of their original curriculum to adopt this integrative approach. This change was prompted by the idea that it is much more natural to look at law in a comparative way if one is used to doing so from the very beginning (in particular for students expecting to participate in an international program). In the case of Maastricht, there was also the practical aspect that requiring students to start with one year of Dutch law (naturally taught in Dutch) was not helpful in building up an international student population.

I have no doubt that the integrative model is best suited to meet the needs of an international legal education. Students addressing a specific problem by moving back and forth from one jurisdiction to another is much more conducive to the ‘dialogue with otherness’ than the sequential model. Starting with one jurisdiction makes it likely that students regard all the rest as irrelevant.

In this approach, students are denied ‘the comfort of the familiar’, which forces them to develop a pluralistic legal mind. Within their first year, they have to realise that legal views differ and that there is not one legal system or one solution to the problem at hand.

A second important question concerns the approach to teaching: what model of teaching is the most effective in persuading students to consider a wide variety of sources to construct their own understanding (and not that of the learned author) of the legal problem? In my own experience,
confirmed by distinguished colleagues elsewhere, the ideal teaching method is certainly not to focus on doctrinal questions or to teach ‘comparative law’ as such. What works best, is to select a topic and to provide materials on how this topic is dealt with in various jurisdictions.

Small group teaching, with the lecturer as an initiator of discussion and students giving presentations and writing papers, is often seen as a much better method. Working with the materials allows students to construct their own understanding of what is right or wrong, shifting the responsibility of learning away from the lecturers onto the students.

I believe this practice fits in with various ‘teaching theories’. One of these theories is problem-based learning (PBL), adopted at various law schools throughout the world including Maastricht University’s Faculty of Law. In my own experience, it is of vital importance that the lecturer is a highly qualified academic and much more than a mere ‘facilitator’ of discussions.

The Socratic method, consisting of a dialogue among lecturer and students in question and answer format, also enables ‘deep’ learning. In American law schools, this Socratic method is seen as a highly successful method to do the two things PBL also does: teach students to think like a lawyer and to practice their skills. I do not think PBL and the Socratic method differ fundamentally, except for the fact that in PBL, there seems to be a preference for groups of maximum 12 students. However, the American experience shows it is very well possible to teach larger groups of students. I therefore believe that it is worth emulating the American system of splitting the (first year) class into sections that stay together for the entire year, adding considerably to the group feeling and the perception of students that they are part of a small school. At top law schools like Yale and Chicago, these sections usually consist of no more than 30 students. What Europeans may dislike about this option is that not all of the sections are taught the same way or even use the same materials. Each lecturer will teach the course and assess the students as they see fit. I do not think this is wrong: differences among the different lecturers, within the parameters set for the course, will only add to the diversity of a law school.

Student oriented teaching requires student oriented assessment. This does not rule out there is still some form of a final exam, but in my experience it is best to combine this with essays and presentations. One of the problems with grading systems that are too detailed is that the students focus too much on obtaining high grades, whereas their focus should be on the intellectual stimulus they get out of their study and the contribution they can make to the intellectual community they are part of. This (combined with the problem of grade inflation) is why several American law schools (including Harvard and Stanford) recently decided to abandon the old grading system. Students’ performance is now graded as ‘honours’, ‘pass’, ‘low pass’ or ‘fail’, one third of the class to receive the top mark (‘honours’) and the bottom 8 per cent to receive a ‘low pass’ or ‘fail’.

Although we now have more comparative casebooks and textbooks in the traditional areas of law compared to 20 years ago, we still need more. We need their authors to adopt different approaches and consider different materials. Only in that way, will we be able to create a critical mass of materials out of which students can choose what they like best. Although these materials are likely to be written in different languages, I believe they should as much as possible be written in English.

I did not say too much about what this means for the organisation of the law school as a whole, although it is clear that the ambitious program propagated here can form a true challenge for the law school that offers it. In this respect, it is important to emphasise that not every law school can or should offer a European or international program.

It is no coincidence that McGill and Maastricht not only teach international programs, but also have a strong tradition in doing internationally oriented research. The two reinforce each other considerably: students profit from the internationally acclaimed academics teaching their courses and faculty is able to try out new ideas when teaching and to attract teaching assistants from the student body.

A law school can only decide to offer European legal education if there is sufficient faculty expertise to do so, or it has the resources and prestige to attract new colleagues.

The distinction between public and private law has set the discourse in the last 200 years, but it does not make much sense anymore today. Therefore, I do not believe that the common departmental structure in continental universities, with its sharp distinction between departments of private law, public law, criminal law, European law and legal theory, is conducive to promote high quality teaching and research. It is a much better strategy to form interdisciplinary groups in which academics of different backgrounds work together, also because the more creative research is often at the intersection of disciplines.
In the Carnegie Foundation’s recent report about legal education, Educating Lawyers: Preparation for the Profession of Law, the authors stated, ‘Critics of the legal profession, both from within and without, have pointed to a great profession suffering from varying degrees of confusion and demoralisation. A reawakening of professional élan must include, in an important way, revitalising legal preparation’. They urged legal educators to begin this revitalization and reawakening in the law school environment. One important way that legal educators can accomplish these goals is by engendering hope in their students.

Hope and optimism, both members of the positive psychology family, are personality traits that have been shown to confer performance and adjustment benefits in stressful situations. Given this prior research, we conducted a study to measure first-semester law students’ levels of hope and optimism to determine their influence, if any, on law student performance and wellbeing. Consistent with other research, our study suggests that hope predicts both academic performance and psychological well-being in the first semester of law school.

Although research has shown that law students begin their first year of law school with normal or even higher levels of well-being than undergraduate comparison groups, research has also shown that these levels significantly decline over the course of the first year. Indeed, studies have shown that law school is a ‘breeding ground’ for depression, anxiety, and other stress-related illnesses.

Further, research has suggested that, unfortunately, these problems do not end when law students graduate. According to one study, out of 104 professions, lawyers have the highest rate of depression, suffering at a rate four times the general population. Other studies have shown that lawyers have higher rates of anxiety than the general population and greater frequency of substance abuse.

In light of these findings, a movement to humanise legal education, led by Florida State University College of Law Professor Lawrence Krieger, is afoot. One of its main goals is to improve law students’ well-being while in school, which may ultimately lead to better well-being when they become lawyers.

Positive psychology is the scientific study of human strengths and their influences on performance and well-being. Two members of the positive psychology family are hope and optimism; both personality traits have been shown to predict performance and adjustment benefits, even in stressful circumstances.

Hope theory was created by Dr. Snyder. It ‘is a cognitive model of human motivation,’ which explains ‘goal-related thinking.’ In his theory, Dr. Snyder describes three interrelated components of hope: goals, pathways thinking, and agentic thinking.

Goals are ‘the endpoints or anchors’. They represent mental targets that guide human behaviours. Pathways thinking is a person’s perceived ability to produce ways to reach a goal. The more strategies a person can generate, the stronger that person’s pathways thinking is. Agentic thinking ‘is the motivational component to propel people along their imagined routes to goals.’ It relates to ‘willpower’ or determination. According to Dr. Snyder’s hope theory, pathways thinking and agentic thinking ‘enhance each other in that they are continually affecting and being affected by each other as the goal pursuit process unfolds’. In addition, they are both affected by emotions, which provide useful feedback about the progress of a particular goal pursuit. ‘[T]he unimpeded pursuit of goals should produce positive emotions, whereas goal barriers may yield negative feelings.’

Optimism is defined as a ‘generalised outcome expectancy’. Relating to undergraduate school, greater optimism has been shown to predict better academic performance. In law school, however, research has suggested that the opposite is true – greater pessimism has been shown to predict better academic performance. If pessimism is defined as ‘prudence’ or a ‘healthy scepticism’, however, as the researchers in the University of Virginia School of Law study defined it, these results seem to make some sense. To succeed, law students need to consider all sides of an argument and question outcomes, for example.

It should be noted that hope and optimism, although related, are considered distinct areas of positive psychology. Hope is more strongly related to expectations for outcomes within a person’s control, whereas optimism is more strongly related to expectations outside of a person’s control. For example, a student can be hopeful about getting good grades, an outcome within a student’s control based on study habits and the like; in contrast, a student can only be optimistic that it will not rain on graduation, an event over which the student has no control.
Our study was conducted to answer two questions: (1) whether hope and optimism predict academic performance in law school above and beyond Law School Admission Test (LSAT) scores and undergraduate grade point averages (GPAs); and (2) whether hope and optimism predict psychological well-being in law school.

At the beginning of Fall 2007, we solicited all entering first-year law students, both full and part time, at Indiana University School of Law – Indianapolis, to participate in the study during their first semester. Our recruitment efforts yielded a sample size of 86/300 first-year law students, or 28.67 per cent of the first-year class. Participants were asked to complete online surveys at the beginning and end of the semester.

Based on the demographic information reported by our participants, we determined that the mean age of our sample was 26.33 years, which was not significantly different from the mean age of the entire first-year class of 26.00 years. The ethnic composition of our sample was 81.4 per cent Caucasian, 4.7 per cent African American, 3.5 per cent Asian American, and 2.3 per cent Hispanic Americans. The remaining participants identified their race as ‘other’ (1.2 per cent) or failed to indicate their race (7 per cent). This ethnic composition closely corresponded with ethnic composition of the overall first-year class, which was 78 per cent Caucasian. As for gender, the sample was 62.8 per cent female, but the entire first-year class was only 47 per cent female.

Related to our sample’s academic representation, the entire first-year class had a mean undergraduate GPA of 3.47 and a mean LSAT score of 153.80. Our sample had a mean undergraduate GPA of 3.49 and a mean LSAT score of 155.99. The mean undergraduate GPA for our sample was not significantly different from the mean undergraduate GPA for the entire class. The mean LSAT score for our sample, however, was slightly higher, statistically, than the mean LSAT score for the entire first-year class.

In our surveys, we used psychological assessments that measured our sample’s level of hope, optimism, and life satisfaction. We measured hope and optimism at the beginning of the semester, and life satisfaction at the end of the semester, just before finals.

To measure hope, we used the Adult Hope Scale, which is a twelve-item measure. Four items measure agentic thinking (e.g., ‘I energetically pursue my goals’); four items measure pathways thinking (e.g., ‘I can think of many ways to get out of a jam’); and four items are fillers. Respondents are asked to rate the extent of their agreement with the items on a scale from 1 (definitely false) to 8 (definitely true).

To measure optimism, we used the Life Orientation Test – Revised, which consists of ten items: six items measure optimism (e.g., ‘In uncertain times, I usually expect the best), and four items are fillers. Respondents are asked to rate the extent of their agreement with the items on a scale from 0 (strongly disagree) to 4 (strongly agree).

We measured psychological well-being using the Satisfaction with Life Scale, which is a five-item test (e.g., ‘The conditions of my life are excellent’). Respondents are asked to rate the extent of their agreement with the items on a scale from 1 (strongly disagree) to 7 (strongly agree).

In our study, hope, optimism, undergraduate GPAs, and LSAT scores were modelled as predictors; first semester law school GPA and life satisfaction were modelled as criterion variables. (1) LSAT score was not a significant predictor (NP) of first semester law school GPA ($\beta =.13$); (2) Undergraduate GPA was the strongest predictor of first-semester law school GPA ($\beta = .38$); (3) Hope was the second strongest predictor of first-semester law school GPA ($\beta = .25$); (4) Optimism was not a significant predictor (NP) of first-semester law school GPA ($\beta = - .07$); and (5) Hope ($\beta = .39$) and optimism ($\beta = .38$) were significant predictors of life satisfaction.

The study only sampled a portion of the first-year class, which raises the question of whether our sample is representative of the entire class. Comparisons between the sample and the first-year class, however, showed that several important characteristics were similar, including undergraduate GPA, age, and ethnic composition. On the other hand, our sample had a disproportionate number of female participants and slightly higher LSAT scores than those of the entire first-year class. The fact that we found several significant relationships, even with the modest sample size, however, increases our confidence that these relationships are real and meaningful. A further limitation is that we only followed these students in their first semester of law school. Because first semester is particularly stressful, though, these results may be especially pertinent. Indeed, research has suggested that general expectancies, such as hope and optimism, may have their greatest influence in new and uncertain situations.

Focusing on academic achievement, in a six-year longitudinal study, Dr Snyder and colleagues found that hope predicted higher graduation rates and higher undergraduate GPAs, even above and beyond the levels predicted by intelligence. High-hope students were more engaged in learning and employed less disengaged coping with academic stressors. Disengaged coping involves
Legal educators can do a better job of encouraging all students to adopt learning goals related to these activities, regardless of the students’ rankings. Students can learn a great deal about lawyering by participating in clinics, law journals, moot court programs, pro bono programs, externship programs, student government, and community service. Legal educators can do a better job of encouraging all law students to adopt learning goals related to these activities, regardless of the students’ rankings and beyond any superficial benefits these activities may provide for their resumes.

Hope theory further postulates that a teacher can play an important role in encouraging students in the pursuit of their classroom goals. In fact, research has shown that virtually all students raise their hope levels when taking part in school hope programs.

Thus, legal educators can play an important role in maintaining and creating hope in law students by enhancing the components of hope: goals, pathways thinking, and agentic thinking.

For hope to thrive, law students must first learn to set appropriate goals. Legal educators can help students (1) formulate learning rather than performance goals, (2) set more concrete rather than abstract goals, and (3) set approach rather than avoidance goals.

Hope theory proposes that students’ levels of hope direct them to choose either learning or performance goals. ‘Learning goals reflect a desire to learn new skills and to master new tasks. Students who choose this type of goal are actively engaged in their own learning. . .’ Conversely, ‘those who exhibit a helpless response when confronted with challenges are interested primarily in performance goals or low-effort goals that enable them to look good and be assured of success.’ Those students who select performance goals are more likely to take easier classes, for example. Research has shown that high-hope students tend to choose learning instead of performance goals.

Legal educators can help all students select learning goals. Legal writing professors can encourage students to focus on learning how to organise using IRAC (learning goal) rather than on obtaining an A in legal writing (performance goal). For example, after returning papers, it is better to focus in-class discussions on common organisational problems (encouraging learning goals) rather than on the distribution of grades on the papers (encouraging performance goals).

Of course, legal education inherently encourages performance goals in one significant way. Forced grade distributions, which rank-order student performances, encourage performance rather than learning goals. Although forced grade distributions may always be present, to a certain extent, in legal education, educators can still explicitly encourage students to pursue worthy learning goals while in law school – regardless of their ranking. Students can learn a great deal about lawyering by participating in clinics, law journals, moot court programs, pro bono programs, externship programs, student government, and community service. Legal educators can do a better job of encouraging all law students to adopt learning goals related to these activities, regardless of the students’ rankings and beyond any superficial benefits these activities may provide for their resumes.
‘Getting good grades’ is not a productive goal for students because it is too abstract. Abstract goals are less desirable because a student has a difficult time knowing when such a goal is met and because they are generally harder to achieve than more concrete goals. Instead, it is better to encourage students to set more concrete goals, such as to work on a contracts outline every Saturday or to work on a legal writing paper for two hours every other day. Students will know when these types of goals have been met and will experience a sense of success after meeting them.

It is important to encourage students ‘to establish approach goals in which they try to move toward getting something accomplished’ instead of avoidance goals ‘in which students try to prevent something from happening.’

Hope correlates positively with perceptions of control. Indeed, high-hope students are aware of their goals and believe that they are in control of how to attain them because of their high pathways thinking. Further, research has shown that having greater control, even while experiencing highly stressful situations, results in less deleterious health consequences. Thus, legal educators should try to provide more, or at least maintain the perception of more, student autonomy. Some examples are to let students choose the day upon which they will be ‘on call,’ to let them choose between taking an in-class or take-home exam, to let them create an exam question, to let them choose for which client they will argue in moot court, to let them help design the course, and even to let them choose one or more classes in their first year. By increasing student autonomy, even minimally, legal educators encourage hopeful thinking.

‘Perhaps the most common strategy for enhancing pathways thinking is to help students to break down large goals into smaller sub goals. The idea of such ‘stepping’ is to take a long-range goal and separate it into steps that are undertaken in a logical, one-at-a-time sequence’.

Low-hope students have difficulty in stepping; instead, they try to meet a goal all at once, which causes anxiety and feelings of being overwhelmed. ‘Stepping’ can be learned, however.

While teaching the learning process, it is also important to stress that there are preferred and alternate strategies for reaching any desired goal or sub goal. Students need to learn that if one pathway does not work, they have alternate strategies to try. Further, ‘it is crucial for the production of future pathways, as well as for the maintenance of [agentic thinking], that the student learns not to attribute a blockage to his or her lack of talent.’ Instead, a blockage should be considered merely information that a particular strategy does not work.

High-hope students use feedback as information to help them find alternative strategies for reaching their academic goals, thereby enhancing pathways thinking. They may also use feedback to help them set clear markers for reaching their academic goals. In contrast, those students who view grades as pure evaluation or judgment tend to adopt performance goals, a trait of low-hope students. To encourage hopeful thinking for all students, legal educators need to help them understand grading as performance feedback.

In addition, to be effective, feedback needs to be respectful, constructive, and depersonalised. Thus, even if a student is struggling, feedback should be respectful and constructive, addressing both successes and weaknesses. Further, depersonalising feedback encourages students to believe, like high-hope students do, that any failure was the result of an unworkable strategy rather than a lack of talent on their part.

Agentic thinking is ‘mental willpower’. High-hope students have a ‘can do’ attitude, and are highly motivated and energetic. Legal educators can help teach agentic thinking by modelling and encouraging it in several ways: encourage healthy habits, teach students to talk to themselves in a positive voice, encourage students with stories of hope, and display enthusiasm in teaching. To maintain or help build high levels of energy, which is a trait of high-hope students, students need to ‘[focus on [their] physical health, including diet, sleep, physical exercise, and avoiding damaging substances (e.g., caffeine-laden products, cigarettes, alcohol).’ Legal educators can encourage students to focus on these physical needs. For example, during a review session, legal educators may want to remind students about the importance of getting enough sleep and eating well before the exam.

Another way to model agentic thinking is to teach with a positive voice, thereby teaching students to talk to themselves in the same positive voice. From the legal educator’s perspective, encouragement is the key.

Another form of encouragement that legal educators can use is to tell stories of hope. ‘Hopeful children often draw upon their own memories of positive experiences to keep them buoyant during difficult times’. Analogising to legal education, law students would benefit from hearing hopeful stories about others who have overcome adversity. Perhaps it is a story about a former student who is a well-respected lawyer or jurist even though he or she did not ‘ace’ law school.
Research has also suggested that well-being predicts responsible, pro-social behaviour. Thus, law student well-being is in the best interests of students, educators, legal employers, and, ultimately, the public at large. Although implementing these principles may not be easy, revitalising legal education by instilling hope is worth the investment.

Plagiarism detection software: legal and pedagogical issues
P Todd

If universities are to continue to use essay-based coursework as a basis of assessment, we have to have confidence in it. The ease with which students can compile essays from Internet-based sources is a known and probably growing problem. Knowing of its existence, as professionals we are surely under an obligation to employ the best available techniques to counter it. In principle, at least, the Internet can be used to conquer plagiarism, at least as successfully as, up to now, it has facilitated it. But using the Internet to fight a problem exacerbated by the Internet raises issues of both a legal and pedagogical nature. It is these issues which are examined in this article.

It is necessary to dispel the myth that plagiarism detection software is effective only at combating cutting and pasting from Internet sources, and not, for example, the more traditional types of plagiarism, such as copying passages from books. It may not happen for other reasons, but from a purely technical standpoint it should be possible to counter all types of plagiarism, at any rate in essay-based coursework, and put ourselves into a better position than we were in during the pre-Internet era.

Nor are the uses of plagiarism detection software limited to the matter of guarding against the known and obvious pitfalls of plagiarism. It can assist examiners by showing how essays are constructed, whether or not they are technically plagiarised. It can be useful in supervision and examination of theses. Plagiarism detection software can be useful for the students themselves, before finally submitting their work (arguably they should already know where their essays are sourced from, but poor note-taking may lead to mistakes and failures of attribution).

One way of avoiding plagiarism is to set tasks which make plagiarism more difficult. We may nonetheless legitimately conclude that there are skills which can be best assessed using the traditional long essay, written over an extended period – it is, after all, essentially what we are doing when we write our own academic pieces. If that is accepted, then the issue is whether we should be forced by the cheats to abandon an assessment practice for which there are sound pedagogical justifications. Surely not, if there are other ways of countering the problem.

In order to use plagiarism detection software, it is necessary for the marker to have the essays in a digital form. Alternatively, scanning and OCR software can be used, but the OCR software needs to be almost 100 per cent accurate to be of value. With the continuing improvement of screens, and the increasing familiarity of academics with on-screen reading and editing of email, it seems difficult to believe that objections to online submission are sustainable, other than in the very short term.

A fear held by students is that we will not use it properly, that we will place too much reliance on the machine. Clearly, it is our responsibility to act professionally, to allay these fears.

There are three main techniques used by the software packages currently available. First (fairly obviously), there are those which employ search engine techniques, to find matches on the Internet. Secondly, there are those which find similarities between files on a single computer; these are intended primarily to detect collusion. Thirdly, there are those, of which Turnitin is the best-known example, which build up their own archive databases from past essay submissions, and agreements with publishers. It is this third type which provides us with the tools to defeat plagiarism from any source, whether or not that source is Internet-derived.

Many packages use only the first or only the second technique. For example, EVE2 only finds matches on the Internet, whereas CopyCatch Gold and WCopyfind are collusion-detectors. Turnitin uses the first and third techniques (and it is also possible to use its archive to check for collusion). Viper uses all three.

Plagiarism from an Internet source can sometimes be detected simply using a search engine, such as Google, especially if the plagiarised source uses unusual words or language. A marker restricted to using Google will be working at a handicap, however, quite apart from the sheer hassle of making what could be many searches, for each essay submitted. Nonetheless, software that automatically tests every sentence of a file using a search engine, such as PlagiarismDetect.com, can be surprisingly informative.
Running the same essay through PlagiarismDetect.com, Viper and Turnitin will produce different results. Because it is not possible to search the whole of the Internet in an acceptable period of time, various devices are used to cut down the search. Search engines use indexes, and order their results on a probabilistic basis. But because most people who use Google are not looking for plagiarised sources, one cannot expect the search to be optimised for that activity. Software written explicitly for plagiarism detection should be able to index more effectively (after all, only a very small part of the Internet is likely to be useful as a plagiarism source), and other techniques are also used to reduce search times. Probably the most effective tools will be subject-specific, and it is notable that Viper asks, for each document tested, for a subject category. Search times can also be very much longer (and hence find more) than would be appropriate for a Google search, especially if the marker is organised and performs the search while doing something else, or batch-processes the essays. Nonetheless, because only a small part of the Internet is actually searched, even the most blatant verbatim copying can sometimes go undetected.

There is also the issue of what is searched for. Restricting the search to an exact string will not catch the student who makes minor changes to a plagiarised passage, whereas not so restricting it can result in many false leads. A software package needs to be able to compare passages of realistic lengths, and not be fooled by minor differences between the target and the checked passage. If the report allows the marker to easily compare suspicious parts of the essay with original sources, the match need not be particularly exact, especially if the software is to be of value in discovering how students construct essays, as well as in detecting plagiarism strictly so defined.

Even packages which only find material sourced from the Internet should become increasingly more effective, as material is increasingly made available online, unless digital rights management techniques are used to protect such material.

Nonetheless, quite a lot of plagiarised material is not accessible on the Internet. Some packages, for example Turnitin and Viper, archive submitted essays, so that future submissions can be compared, not just against Internet sources, but also against these archives. A passage copied from a textbook or other source, which is accessible in printed form only, will not be picked up in the first essay submitted. All future essays using the same source will appear similar, however, not to the original source, but to the first essay submitted. As the archive grows, this technique can be expected to capture most sources, including not only books, but also essay banks. Turnitin also has arrangements with publishers, enabling it to further increase the comprehensiveness of its archive databases. It would be a great mistake to assume that plagiarism detection software is effective only against the copier and paster from the Internet.

Moreover, the more we use it, the more we increase the effectiveness of the software by helping to increase the archives, and also to help the software writers to better optimise the searches. Care and professional judgement are needed to interpret the results. For example, Turnitin’s ‘Overall Similarity Index’, which records the percentage of the essay which matches an Internet or archived source, means very little, and a marker has to read the report very carefully to evaluate it. Many legal phrases, statutory provisions, etc., will naturally be on the Internet, and an ‘Overall Similarity Index’ of zero (even assuming the option has been taken to exclude direct quotes) would be neither expected nor indeed desirable. To some extent, perfectly legitimate paraphrases might also be caught, or conceivably the adoption of a writer’s views, but in an original context. It properly remains the role for the academic, and not the machine, to make a final judgement.

Any marker will check for plagiarism, as thoroughly as time and other resources allow. It is reasonable for any student submitting anything for assessment to expect this, if only to ensure that the assessment is as fair as possible.

There has been litigation in the United States, however, about the archiving of essays. In 4/ v iParadigms LLC, high school students sued iParadigms, the producers of Turnitin, claiming that the archiving of their essays amounted to a breach of their copyright in them. iParadigms claimed that they were entitled to the defence of fair use, and also that the students, by clicking on an ‘I Agree’ button when they created their user profiles to submit essays to Turnitin, had consented to the use. In the US Court of Appeals, iParadigms succeeded on the fair use issue, and the court did not need to consider the issue of consent.

If a student’s reason for objection were because he or she intended later to sell the essay to an essay bank, it is likely that the public interest defence would apply, even on the narrow test adopted by Aldous LJ in Hyde Park Residence Ltd v Yelland. It must be strongly argued that an essay bank encourages deception for gain, and ‘no court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act’. However, the objecting student could argue that an essay bank provides essays only as guidelines and models for future students, in which case the public interest defence would have no application. In any case the student may have other
objections to this use of his or her copyright, and it cannot be certain that a public interest defence would apply.

That is not the end of the problem. A student whose essay contains an appropriate proportion of quotes from elsewhere, properly acknowledged, will not infringe the copyright of the author quoted, but a plagiarised essay will, and the archiving might therefore infringe third party rights. Again, it would be wise, if possible, to deal with this through consent, and it is probable that many publishers would indeed consent to allowing their material to be used in the fight against plagiarism.

Consent might not always be obtainable, however, an obvious category of objectors being writers of essays intended for sale in paper mills, and the owners of such sites. The writers of such essays would not necessarily be current university students, and their consent might therefore be difficult to obtain. The application of the public interest defence would be the same for paper mills as already observed for essay banks, and, given its fragility, it would be wise for software designers to design so as to be able to exclude essays where plagiarism is identified, as well as material where stringent objection is taken, by the copyright owners, to its use.

One of the objections taken by the students, in AV v iParadigms LLC, to the archiving of their essays, was that if they later submitted the same work to a literary journal it would appear to be plagiarised, though their own work. The District Court, whose view was upheld in the US Court of Appeals, had said:

Anyone who is reasonably familiar with Turnitin’s operation will be able to recognise that the identical match is not the result of plagiarism, but simply the result of Plaintiff’s earlier submission. Individuals familiar with Turnitin, such as those in the field of education, would be expecting the works submitted to have been previously submitted.

If this reasoning is convincing, it is another example of the care that needs to be taken when considering a Turnitin (or similar) report. The machine does not relieve us of our obligation to exercise a professional judgement.

It is possible to counter plagiarism by setting tasks which make plagiarism more difficult. Jude Carroll, for example, suggests (among other things) making tasks more individual, requiring more individualised answers, requiring a signed statement of originality, assessing the process as well as the final product, requiring submission of drafts, asking for an outline or list of resources instead of a finished product, and thinking carefully about assessment titles, for example by asking about narrow and recent topics. In law, from my own experience I know that we can set problem questions, changing them each time the assignment is set, and use very short deadlines, making plagiarism more difficult.

In any case, as has already been observed, plagiarism detection software has uses other than countering plagiarism alone. Whether or not we alter the assessment tasks we set, we should not turn our backs on a useful tool.

If our arsenal includes routine use of plagiarism detection software, that will force us to think more carefully about how we teach and assess. At the very least, information on how students construct essays will inform us how to set future work. We may find, for example, heavy reliance on a particular source, and set future assignments to discourage its use. If students know in advance that their essays will be tested, and in particular if they can see the reports, it is unlikely that they will be tempted to cut and paste substantial amounts of material, but they might instead be tempted to try to reduce their ‘Overall Similarity Index’ (or equivalent) as far as possible. To some extent this activity might be a useful exercise, but students should be warned against taking it too far. Unless the software becomes sufficiently sophisticated to ignore standard legal phrases, students should be advised not to aim for a zero score.

Plagiarism requires at a minimum the copying of a text document from another source without acknowledgment. Various motivations are possible:

Often, students have not understood the conventions of academic writing or have not yet learned to use the skills of citation, paraphrasing and using others’ ideas to underpin their own arguments. Sometimes, students deliberately break the rules, choose to cheat, and have little or no interest in upholding the values that underpin academic integrity.

Whatever the motivation, plagiarism constitutes bad work, but if it results from a failure of understanding, or from time pressure or incompetence, it may not be appropriate to penalise it further. The reason why plagiarised work cannot simply be treated as bad work is that there are also more sinister motivations: ‘plagiarism is an act of fraud. It involves both stealing someone else’s work and lying about it afterward’. What causes our concern is the student who deliberately passes off another’s work as his or her own, pretending to a merit that he or she does not possess. We take plagiarism so seriously, and punish it, because the motivation might be of the second type, rather
than the first. It is this motivation which threatens the integrity of our assessment practices. The possibility of bad work does not; we simply accord the work an appropriate mark.

If plagiarism detection software becomes sufficiently effective, the variety of plagiarism which constitutes cheating will become literally impossible. Suspicions of dishonesty will no longer have any part to play in the marking process, which will be geared solely toward assessing the quality of the work. Copying will be evidence of incompetence, rather than dishonesty. Indeed, once the taint of dishonesty is removed from the equation, we might even place a value on the ability simply to find material effectively on the Internet (while the value we place on this skill may not be high, we cannot entirely deny its utility in the modern world).

Plagiarism detection software will never be able to defeat the determined and well-funded cheat. Students will still be able to buy bespoke essays, written by others on their behalf, and if they are never re-used they will continue to go undetected. Since these essays will lose their value after just one use, and since the ghost-writers will know that their own work will be tested, it may be supposed that this form of cheating will become more expensive, and therefore rare. We may prevent only 95 per cent or 99 per cent of cheats, but that is a lot better than nothing, even if we cannot detect 100 per cent. That is, after all, the basis of much crime prevention.

We can probably turn the tables in the plagiarism arena pretty effectively even if not totally. We can enjoy the other advantages of plagiarism detection software, apart from its intended and obvious use. But far from abandoning our professional judgement to a machine, we will have to use the software carefully, and to think harder about what exactly we are examining. Universities and the software providers will have to address the copyright issues which archiving, at least, throws up. Software providers may have to counter new techniques for cheats, as yet undevised.

### PRACTICAL TRAINING

**Exterships: a signature pedagogy for the apprenticeship of professional identity and purpose**

K S Terry


Most observers of legal practice agree that our craft faces a professionalism deficit. Former Chief Justice Warren Burger sounded a warning over 15 years ago, declaring, ‘the standing of the legal profession is at its lowest ebb in the history of our country due to the misconduct of a few judges and all too many lawyers in and out of the courtroom’. Since that time, judges, academics, and practitioners alike have continued to lament a decline in attorney professionalism.

A study by the Carnegie Foundation for the Advancement of Teaching recently concluded that the current system of legal education exacerbates this professionalism deficit. *Educating Lawyers* frames legal education in terms of three apprenticeships: a ‘cognitive’ apprenticeship that teaches ‘the knowledge and way of thinking of the profession’; a ‘skills and practice’ apprenticeship that teaches the ‘forms of expert practice shared by competent practitioners’; and a ‘professional identity and purpose’ apprenticeship that teaches ‘the ethical standards, social roles, and responsibilities that mark the professional’. While the three apprenticeships are equally important in educating students, the Carnegie Report found that legal education neglects the apprenticeship of professional identity in favour of the cognitive apprenticeship.

Indeed, law schools place so much emphasis on the cognitive apprenticeship that they have developed what the Carnegie Report calls a ‘signature pedagogy’ to teach it. That pedagogy is the quasi-Socratic dialogue that many professors employ, especially in first-year courses. Notably, however, the Carnegie Report fails to identify a signature pedagogy for the apprenticeship of professional identity, which provides further evidence of its disregard. To correct this deficiency, the Carnegie Report asserts that law schools must ‘deepen their knowledge’ of the apprenticeship of professional identity and ‘attend more systematically to the pedagogical practices that foster the formation of integrated, responsible lawyers’.

An externship program centred on the development of professional identity and values is a pedagogical device that law schools can employ to meet this goal. This combination of work experiences in an actual practice setting and guided reflection on those experiences in the seminar provides students with an ideal opportunity to explore the moral, ethical, and professional dilemmas that lawyers regularly encounter. Through such exploration, students learn and evaluate the fundamental values and principles of their chosen profession. By observing and assessing professional norms in this manner, they can begin to incorporate those norms and to form their own emerging professional identities.
The apprenticeship of professional identity and purpose is the means through which law schools teach students the legal profession’s guiding values and principles. At a minimum, this apprenticeship includes the formal regulations that govern lawyers’ professional conduct. It also includes ‘wider matters of morality and character’ such as ‘respect and consideration for one’s clients’ and ‘basic honesty and trustworthiness – financial propriety, accurate representation of one’s experience, and the like’.

The apprenticeship of professional identity also extends to deeper, more philosophical questions, such as what it means to be a lawyer and the special obligations that lawyers have to society. Thus, this apprenticeship is the forum in which students may explore and answer such fundamental questions as ‘Who am I as a member of this profession? What am I like, and what do I want to be like in my professional role? And finally, what place do ethical-social values have in my core sense of professional identity?’

The apprenticeship of professional identity matters because it is the means through which students can develop an internal compass for navigating among the competing, and sometimes conflicting, roles and responsibilities that lawyers have.

The apprenticeship of professional identity and purpose also is important because it gives students a forum in which to think about the type of lawyer that they want to become. There are various types of lawyering styles, ranging from the ‘hired gun’ to the ‘officer of the court’ to the ‘moral individualist’.

Signature pedagogies are the ‘typical practices of teaching and learning by which professional schools induct new members into the field’. Through signature pedagogies, ‘the novices are instructed in critical aspects of the three fundamental dimensions of professional work – to think, to perform, and to act with integrity’. Such teaching methods are considered ‘signature’ because they are ‘readily identifiable and uniquely individual to the field’. According to Professor Shulman:

Signature pedagogies are important precisely because they are pervasive. They implicitly define what counts as knowledge in a field and how things become known. They define how knowledge is analysed, criticised, accepted, or discarded. They define the functions of expertise in a field, the locus of authority, and the privileges of rank and standing.

Notably, the Carnegie Report does not identify a signature pedagogy for the apprenticeship of professional identity as it does for the cognitive apprenticeship. Instead, the report surveys various forms of law school teaching, ranging from ‘the academic teaching of the case-dialogue classroom through various approximations of legal practice to clinical training’, that can be used to help form professional identity. This survey, however, devotes only three paragraphs to the role of clinical education in the apprenticeship of professional identity. Those three paragraphs, in turn, contain no mention of externships. This omission is disappointing given the significant educational value of externships.

The observable features of an externship program typically include four basic components: field placement, journals, supervision, and a seminar class. Through this placement, the student assumes a professional role and performs legal work in a real-life setting. The student also observes other participants in the legal system in their professional roles. Depending on an externship program’s pedagogical goals, the placements may be limited to the public sector, or they may include positions with private law firms and corporate counsel. In the externship program I direct, the placements are limited to positions with non-profit organisations and with state and federal judges, legislators, and government agencies. This restriction is consistent with our program’s express goals of exposing students to public-service practice settings and encouraging them to consider careers in public service.

Journals are another component of the externship’s surface structure. ‘For students in any instructional setting, the journal encourages writing; probing beneath the surface of problems; thinking more deeply about the materials, products, and processes of learning; and taking more responsibility for their own learning’. Students in our externship program must submit a two-page journal entry each week that ‘discusses the type of work the student is doing, reflections about the student’s work, and issues the student is facing’.

I also ask students to put themselves in the place of attorneys and judges they observe and consider whether they would be comfortable in such roles. Thus, journals provide a means for students ‘to explore the role of personal values and beliefs in the work experience, possible moral conflicts in personal values and beliefs with the work experience, changing perceptions in the role of law and the practice of law in society and their role, both as a student and in the future as a lawyer, in the institutions comprising the legal system’.
Our externship program employs a two-tier system, including a faculty supervisor and a field supervisor. As the faculty supervisor, I manage the overall program, select the students for the program, select and train field supervisors, teach the seminar classes, provide feedback on the students' journals, and meet individually with students. The field supervisors, who include judges, practising attorneys, and legislators, are responsible for directing the day-to-day work that the extern performs at the placement site. Thus, the field supervisors direct the students' work assignments, critique the students' work product, manage their workload, and determine the proceedings and events that they will have the opportunity to observe. Field supervisors also serve as mentors, sharing their insights and experiences and answering students' questions about what it is like to be a practising lawyer. While the faculty supervisor also may serve as a mentor, she generally is a step removed from the students' daily work and acts as a "meta-guide" … to assist the students to set, maintain, revise, and meet their goals, and also to help them interpret their experience.

One of the tools the faculty supervisor uses to help students interpret their experience is the seminar class – the remaining element of the externship's surface structure. In the seminar, the externs meet with the faculty supervisor to discuss their field experiences and assigned readings pertinent to their externships.

A signature pedagogy's deep structure consists of the underlying intentions, rationale, or theory that the behaviour models. If the deep structure of the case-dialogue method is 'thinking like a lawyer', then the deep structure of externships is 'thinking like a professional'. This thought process is the essence of the apprenticeship of professional identity and purpose, and it encompasses all values and norms associated with that apprenticeship: integrity, civility, competence, honesty, individual and social justice, and personal meaning in one's work. It also includes an awareness and appreciation of the heightened professional obligations of lawyers, such as engaging in public service and seeking access to justice and improvement of the law. Learning to think like a professional, however, is "an undervalued, or at least underemphasised, component of legal education".

Externships are uniquely positioned to fill this void because they immerse students in the professional role, expose them to professional norms and values in actual practice settings, and then allow them to evaluate and incorporate those norms and values. Through this process, students learn to think like professionals and to form their own professional identities. This learning occurs through several aspects of the externship, including the externs' pre-placement training, their work experiences, and the seminar class.

The development of professional identity and values can begin in the extern's training. Our program requires students to attend a training workshop before they start their externships. The workshop includes a session on the extern's ethical responsibilities that covers workplace confidentiality, recognising and avoiding conflicts of interest both during and after externships, and the duty of competence.

I also use the training session to begin an exploration of professional values and norms, going beyond the minimum standards set by the formal rules of conduct. As an opening exercise, I ask each student to name one trait of a 'good' lawyer. We compile a list of the qualities and discuss the meaning and significance of each one. The exercise is designed to make the students aware of their own preconceptions about the attributes of lawyers and to heighten their consciousness of the presence, or absence, of these qualities in the lawyers they encounter during their externships. By stressing all of these ethical and professional norms in the initial training session, my goal is to cause students to think seriously about their professional identity and the values and standards of the profession they are preparing to enter.

Externs continue their formation of professional identity through their work experiences. They see actual professionals in practice, including judges, attorneys, and other officers of the legal system. They can evaluate whether these people, including their own externship supervisors, meet professional standards or fall short. They reflect on this conduct in their journals and in discussions with their field supervisors as issues arise. In addition, students must exercise their own professional judgement in maintaining workplace confidentiality, completing assignments, and interacting with clients, opposing counsel, and their supervising attorneys.

Externship work experiences also can enhance the development of professional identity by engaging students in public service. Lawyers are obliged to perform public service and promote the public good. However, opportunities for students to work and gain experience while in law school are typically more plentiful in private law firms than in the public sector. Our externship program attempts to correct that deficit by limiting placements to positions with non-profit organisations, courts and legislators, and government agencies.

An externship program can, and often does, implicitly model at least two valuable lessons to students: that the actual practice of law differs from their preconceptions, and that practice
involves more than just ‘thinking like a lawyer’. Through their externship, students learn that the practice of law under real conditions is more complicated than they imagined and differs from their previous law school experiences. In externships and other clinical experiences, students learn that ‘unlike the pre-digested presentation of facts in appellate court opinions, the facts in most cases are ambiguous and transitory’. They may be ‘unavailable, obscure, disputed or distorted … Clients and witnesses sometimes evade, fail to remember, exaggerate, or lie outright. Stories conflict. Documents conceal’. Students also learn that writing a research memorandum under the time constraints of actual practice differs from writing a memo for their legal writing class. They learn that attorneys sometimes do not live up to the high standards set by the rules of professional conduct. They also learn that the stress and pressure of practising law can have deleterious effects on one’s health and well-being.

Externs also confront the reality that the justice system is not always fair and does not always treat people equally. ‘They witness all kinds of behaviour against which they inevitably measure their own sense of fairness and justice. Often they learn some harsh lessons about race or gender bias, lawyer immorality, indifference and incompetence, or judicial temperament’. Students in public-service settings who work with people of limited financial means also see the additional burdens and obstacles that those in poverty face when they encounter the justice system. While these realities may be disconcerting, students need a forum during law school in which to examine these problems and explore their reactions to them.

Principles of adult learning theory further support the use of externships as a signature pedagogy for the apprenticeship of professional identity and purpose. First, externships satisfy adult learners’ need for self-direction. In the externship setting, students are placed in the professional role and direct many aspects of their field experience. For example, they set their own individual learning goals for their externships. They articulate the goals they would like to achieve, experiences that would be helpful in achieving those goals, and events or proceedings they would like to observe. They also have the duties of junior attorneys in their placement offices, often being asked to take a project and see it through from initiation to completion. They assume responsibility for these projects and proceed on their own, seeking guidance from their field supervisors on an as-needed basis. Through these self-directed experiences, students learn professional values such as diligence, competence, and dependability.

Second, externships fulfil adult students’ desire to learn from personal experience. Through their experiences with clients, supervising attorneys, opposing counsel, and other participants in the legal system, externs have many opportunities to observe the exercise, and the absence, of professional values and ideals. Indeed, learning from experience is the essence of an externship. This type of experiential learning also works well for the current generation of students known as the ‘Millenials’, since members of this cohort ‘learn well through discovery’ and ‘prefer to learn by doing rather than by being told what to do’.

Moreover, research indicates that even though students arrive at law school with their own moral beliefs and values, their education and experiences can influence their adoption of professional values and norms. ‘Research on ethics education finds that moral views and strategies change significantly during early adulthood and that well-designed courses can improve capacities for ethical reasoning’. Indeed, Professor Daicoff has found that:

there appears to be a shift in moral decision-making style during the first year of law school among students who enrol with an ‘ethic of care’. These students shift to a rights orientation, which demonstrates that legal education can profoundly affect what law students value when making decisions.

Thus, students’ externship experiences can have a significant impact on the development of their professional identity, which is still in its formative stages.

Third, externships are consistent with the premise that adults learn better if the subject is related to ‘the performance expected of them in their social role’. Externships place students directly into their professional and social roles as burgeoning lawyers.

Finally, externships support adult learners’ inclination to ‘acquire knowledge that is able to be immediately applied’. Because externships place students in actual work situations, they present students with problems such as determining the most effective approach to take in representing a client, ethical questions, and conflicts between personal values and professional values. These questions are not hypothetical; because students are able to immediately apply their knowledge to a real problem at hand, the work is meaningful and resonant.

Law schools, like all professional schools, face a daunting challenge. They must convey the substantive knowledge of their field, train students in practise skills, and impart the professional norms and values that will enable students to employ their knowledge and skills competently,
ethically, and morally. This is no small task. A thoughtfully crafted externship program, however, is
an effective pedagogical device to promote professional identity and purpose. Externships provide
students with significant learning experiences in the fundamental values of the legal profession and
the roles and responsibilities of lawyers in society. They also offer students opportunities to reflect
on and critique professional norms and values, and to explore important issues and questions not
typically addressed in other law school courses. Externships exemplify the dimensions of a signature
pedagogy, and they answer the Carnegie Report’s call for law schools to ‘attend more systematically
to the pedagogical practices that foster the formation of integrated, responsible lawyers’. Legal
educators should recognise the value that externships have to foster the apprenticeship of
professional identity and purpose, and they should use externships to provide students with a more
integrated and well-rounded educational experience.

**PRACTICAL TRAINING**

**Without a net: advanced ADR students problem solve for real**

C D Ver Ploeg and J Hilbert


Seven years ago William Mitchell College of Law (WMCL) took a leap of faith and offered an
experimental course in which interested students were given the chance to assume full
responsibility for commencing and completing a substantial and complex project for a real client.
That opportunity – titled Advanced Alternative Dispute Resolution for lack of a better name – had
no textbook, no tidy lesson plan, and no teacher’s manual. Instead, the project was premised on
faith that a group of 15 students, most of whom did not know each other, could come together and
design, from scratch, a quality dispute resolution procedure for a Fortune 500 company that needed
a thoughtful approach to recurring internal disputes.

That early experiment proved so successful that every year since then WMCL has
continued to offer upper level students the opportunity to complete their ADR training by
undertaking similar work on behalf of a new client. This spring students worked with our eighth
client. In 2005 the course was awarded the CPR Institute for Dispute Resolution’s Award for

It is true every class experience has been different, and other schools who undertake to offer a
similar program will face their own unique challenges. However, we also believe that the concept
we have created and developed can be implemented wherever interested teachers possess
the requisite experience, community connections, and facilitation skills and wherever there are
organisations with vexing internal and external disputes.

WMCL’s Advanced ADR class is neither a lecture course nor a seminar. Rather, it is best
viewed as an extended exercise in creative problem solving. Students determine and direct their
work to the fullest extent possible. Faculty members participate as little as possible, stepping in
only to facilitate, to inject an occasional dose of reality and to ensure the quality of the students’
final work product. The students’ most immediately apparent challenge is to design an effective
dispute resolution process for their client. However, they soon discover that learning how to work
together effectively as a team poses an equally important challenge. Project management is central
to all that the students do as they conduct legal and field research, meet with their client, draft
materials, and make presentations.

Thus, throughout the semester the students must work collaboratively to analyse their client’s
unique needs and design customised ADR procedures to meet them. The client, who in all but the
first project has been a non-profit organisation, has genuine and complicated problems.

Students assume, at least initially, that their only goal is to produce a useful dispute resolution
process. However, project management is at least as important goal as the work product itself, for a
group that cannot effectively collaborate will rarely, if ever, be able to produce quality work. In this
way, the project replicates the practice of law. Lawyers rarely work in isolation. They negotiate,
they problem solve, they meet in committees, they serve on task forces. A strong argument can be
made that law schools provide insufficient opportunities for students to learn to work together
in significant ways.

In time, most students appear to appreciate that for the group to move forward, everyone must
not only feel comfortable expressing their own views but must also learn to respond diplomatically
to others’ contributions. The important thing is to facilitate forward movement, not to provoke
defensive resistance.

Many students are uncomfortable that there is no text, no agenda, no boilerplate model
that simply awaits discovery. It takes time for the students to realise that they themselves must
create a customised process and that no roadmap lies before them. Thus it has sometimes been necessary to explain to uneasy students that the challenge of the semester’s project, indeed the challenge of the practice of law, is to ‘figure out what to do when you don’t know what to do’.

In short, the Advanced ADR project gives students the opportunity to work together on behalf of an authentic client with a real problem for which there is no ready-made solution, to design a strategy to tackle that problem, and ultimately to create a customised work product that addresses the client’s problem in the best way possible.

The greatest challenge has typically been finding the right client. The ideal client is an organisation which experiences recurring, often festering, interpersonal difficulties and where organisation leaders recognise—or are open to considering—the value of developing a thoughtful approach to addressing those problems. Clients are ultimately selected based on three criteria. One factor is the suitability of the client’s needs for a one-semester student project. Although clients are not always able to identity and clearly articulate their needs, especially at the outset, faculty members must be able to grasp the direction the project might take.

A second factor used to select a client concerns the person or persons who will serve as the students’ primary contact or contacts. The key to the success of any project is on-going student interaction with a client liaison who understands and can communicate the organisation’s needs, who can be contacted regularly for additional necessary information, who will attend a formal mid-semester ‘course check’ to ensure that the students are proceeding in the right direction, who will attend the end-of-semester formal presentation, and who will assume responsibility for implementing the final work product. The best clients have been those who were not only enthusiastic about the project but could also provide insights into highly relevant, but not immediately apparent, political and personal dynamics that would affect the success of any final process.

Third, we strongly prefer to provide these services to non-profit organisations; our first client has been the only for-profit entity we have served. Also, at the beginning of each semester we impress upon the students that they will be providing a quality work product for which attorneys typically charge, and clients pay, quite high fees. The students can better appreciate the value of their efforts if they are assisting a non-profit organisation, rather than providing their work product ‘for free’ to a for-profit business that would otherwise pay fair market value for it. Finally, both the client and the students understand that they are entering into an attorney-client relationship. For that reason, this article has not identified our past clients.

Students are upper level law students, most will graduate at the end of the semester. Advanced ADR is considered a ‘capstone’ course in which students have the chance to combine theory with practice. Enrolment, which is now capped at 15 students, has ranged from eight to 25 students. Large groups are not only unwieldy, they tempt some students to ‘hide out’ and coast as ‘free riders’. By contrast, our smallest group—eight students—worked together very effectively and produced a high quality product.

Although one hallmark of Advanced ADR is its nimbleness and any classroom will suffice, the ideal classroom is a relatively small, seminar type room which has technical capabilities. Faculty members have been pleasantly surprised by the way in which students have quickly led the way in creating online methods to communicate with each other, share all information, collectively edit documents during class time, and prepare manuals, power point presentations, web sites and electronic materials for their clients.

We also reassure the students that if at first they feel like they are adrift, this is not unusual. Others have felt the same. Our collective goal is to determine, ‘How to figure out what to do when you don’t know what to do’. On a more operational level we note that other groups have found it valuable to assign a ‘scribe’ for each work session, to ensure that important information is not lost and is readily retrievable. Similarly we encourage—but do not require—that the students conclude each work session by assigning specific tasks and preparing the next session’s agenda.

The role of faculty in the Advanced ADR course is quite different than what professors do in the typical law school classroom. As faculty in the course, our principal responsibility is supervising the work of the students, providing quality control along the way, and sharing important lessons at the appropriate moments.

The challenge for faculty is to guide that learning without being too overbearing, so that students are truly driving the process. Faculty must strike the right balance so that the final project is high quality and the students have the opportunity to learn and apply key lessons about working together and developing successful dispute resolution programs.

Since its inception, the course has been co-taught by two professors. Team teaching has been a necessary feature for a number of reasons. Having a second pair of eyes and another set of ideas
offers much needed support. Second, each faculty member brings her own unique set of skills and experiences. Third, as students break into different subgroups, the two of us can split our time and provide one-on-one observation and support to more than one group at a time. Another interesting aspect to team teaching is that it requires that we collaborate, just like the students. In some ways, our team teaching provides a model to the students of how multiple players can work together on a single project. During class discussions and in other contexts, students observe how we as co-teachers interact and work together on providing guidance and feedback, and how we work through – often on the spot – our sometimes different perspectives on how next to proceed.

Naturally, the structure of the class tends to limit the use of faculty-led activities during the course. Indeed, much of the class leadership often comes from the students themselves, who can take turns leading the discussion or asking questions of other students to move the process along.

Rather than taking direct control of the matter, we are able to ask key questions, probe other options and allow the students to find the answer and remain in control of their work. As students wrestle with their discomfort and labour to find the right next steps (or help their colleagues in the class reach the right decision), that ‘disorienting moment’ can provide some insight into the practice of law in ways that are quite powerful.

Some sense of frustration can be an important part of the learning, as students try to figure out the very real work of structuring their task and prioritising the assignments. The work of the class is driven in large part by the students themselves, as it will be for them once they graduate. The students therefore have in effect two specific tasks, which are closely related. They must put together the project, and they must do so in a collaborative fashion. The project is far too complex and large to be handled by any individual student, so they must all work together – in some fashion – to create the final project.

Part of the challenge for the students is finding the right balance for leadership. While they will work as a group, leadership is critical to keep the group moving and to help resolve the many minor disagreements that can arise on everything from agenda to direction of the project to substantive issues.

One of the first tasks undertaken by the students is to break into subgroups. As a first step on day one, we always have the students introduce themselves and share their background and relevant work experience. This can help the students assign themselves to appropriate subgroups that might use some of the individual strengths identified.

As the project continues, it is also an important lesson for the students that they critique and often rearrange their initial subgroup structure as needed. As more information is gathered, or as unanticipated obstacles arise, the students may need to reconfigure themselves into new or different subgroups during the semester. They must also, of course, maintain some degree of overall cohesion and check-in periodically as a large group to ensure a coherent project and that there are no major gaps. Toward the end of the class, additional subgroups may be needed around generating the final work product, such as an editing committee or a presentation subgroup.

For the most part, much of the formal class structure is driven by the students as they decide how best to use the time they have to work on the project. Indeed, many class sessions are used simply for meeting times for various subgroups or the full class to review work product, assign new tasks, resolve different ideas on how to proceed, or other specific tasks. Yet there are some very important structural components that we have found are crucial to keeping things moving and working smoothly.

We have found over the years that one key piece of guidance that is required from faculty is to clarify the agenda and identify the tasks to be completed between each class period. For example, at the end of each class, regardless of how the class period has been spent (and even whether the entire class time has been used), we spend a few minutes discussing what each group (or individual) will do before next class. At that time as well, we also discuss how we will spend the next class period.

Then at the beginning of the next class, we conduct a quick check-in and reminder on what is planned for that class period. That moment is also an opportunity to recap and make sure everyone is on the same page. Together the agenda between classes and the check-in at the beginning of class create an informal accountability structure to make sure things are moving along and that each subgroup (and to some extent, each individual student) has to report ongoing project activities. After one or two weeks of faculty leading this process, the students begin to catch on and they initiate the conversation at the opening and closing of each class.

In addition to the opening and closing of each class, there also must be sufficient opportunity for the class as a whole to share information and to report on any new or challenging
developments. Technology can be a useful tool for sharing information. Our class has relied on Blackboard and more recently on some of the newer features on Google and other wiki and webhosting sites. Through document sharing on Blackboard, the group can stay appraised of developments and work product of the other subgroups without spending a lot of class time presenting or reading their work. They can use other technologies to assist the project, such as creating a pilot web site for the client on one of the free website providers.

The full class sessions can also serve as a check in on the overall progress of the project. Often subgroups form early on and go off on their own in different directions. It is important for the different groups to see where each other are headed to also check to see if the overall project is coming together, such as what pieces might be missing, what areas are more complicated (questions that may not be obvious until after some work has been done). It is often common for some class periods to be used entirely by subgroups so there has to be some effort made to bring the groups together to share information and update each other on their progress.

Also, the whole class must stay in touch on how the work product is being constructed. At some point in the middle of the semester, a picture emerges of how the final work product should look, and what types of presentation formats will be used, such as flowcharts, texts, PowerPoints, and other presentation formats. Just as a group of professionals would need to regularly check-in to decide on major issues related to their work product, so too do the students need to make sure they are all on the same page, and that their work is all headed in the same direction.

While each class project is different and reflects the different needs of the particular client, there are some consistent features and observations with respect to the final work product that will be submitted and presented to the client at the conclusion of the class:

1. **Written manual:** Each client has requested the design of a dispute resolution program or process. The written manual contains the description of the program and all forms and other accompanying documents (often in appendices). The forms and other documents include everything from sign-in sheets for participants to flow charts for users to marketing materials, which includes brochures, websites and all other outreach type materials. The manual with the appendices is the heart of the work product and usually represents the largest value to the client.

2. **Presentation:** Hard copies of the manual are distributed to the representatives from the client. The content of the project is highlighted through a PowerPoint presentation or other presentation format. The presentations have usually lasted between 60-90 minutes.

3. **Electronic copies:** The client also receives an electronic copy of the manual so that it can be integrated into any other materials the client uses. The client can also update or modify the work product as needed over time. The client also receives electronic versions of all presentation materials, such as the PowerPoint presentation. This can be helpful if the client representative at the presentation needs to make a presentation of their own concerning any part of the program to others.

The final class is an opportunity for a few important last lessons. Namely, that the work of a group is better than the work of an individual. The students use the final class to review the process they used and even reminisce about how the subgroups formed and worked. It is a critical lesson to confirm. At the same time, it is a good opportunity to review what made the groups work and what did not. Class discussion can be quite spirited and productive reliving the good and the bad. We have used the last class to let students lead the discussion and actually list on the board the specific things that did and did not work to make the lesson interactive and lasting.

Typically the clients are extremely happy about the work product, so it can be fun for the class to debrief on the client excitement. To make the feedback real, we have actually gone around the room and told each student individually what particular contributions we found valuable, providing not only some positive feedback but public acknowledgement.

As with all grading and evaluation in law school, it is imperative that the standards of evaluation are communicated clearly at the beginning. Particularly here where there is no final exam or paper, and the entire grade is based on the participation in the project, students must understand exactly what is expected and how they will be measured. We also make clear at the beginning that the students are responsible for keeping track of their work and time during the course, similar to how lawyers bill their time. That way, they can track and participate in the accountability of their work, and we have documentation on their effort.

While it may at first sound hard to understand how we can know how each student contributes to a group project, particularly where subgroups are used and much of their work is done outside of our observation, it becomes pretty clear early on who is doing the most work in various groups and who the strong contributors are. Because their work is given lots of feedback and opportunities for
improvement, the grades have tended to be high in a very small range. This is the ideal. It reflects a quality project to which everyone contributed.

Although each semester’s students and clients have been different, and Advanced ADR still feels like ‘working without a net’, the students have always risen to the occasion. Students typically view their ‘real life lawyering’ as among the most satisfying of their law school experiences.

This article has detailed our experiences and suggestions, for we believe that other law schools can customise and implement their own programs to provide students this unique experience and clients a quality work product.

A ‘sending down’ sabbatical: the benefits of lawyering in the legal services trenches

S Rabé and S Rosenbaum

Legal writing classes and clinics differ from traditional law school doctrinal courses. The small class size and practical curricula in these non-traditional settings foster both active and cooperative learning. Using hands-on, realistic assignments, these writing and clinical classes prepare students for the challenges and realities of practising law. Creative, intelligent, and with a focus on professionalism and service, these experiences teach the nuts and bolts – and soul – of lawyering. In the law schools of the new millennium, many clinicians, including an increasing number of legal writing and skills professors, are tenured or on a tenure track and, thus, eligible for sabbaticals. With astonishingly few exceptions, however, most of them engage in traditional legal scholarship pursuits during their academic intermissions. No doubt, some clinicians are dogged by questions that are best answered by conventional commentary. Others may pursue traditional scholarship in an effort to gain credibility with their colleagues and the academy. Finally, the demands and expectations of the tenure-track process – even a modified clinical tenure track – may impose a duty on clinicians to produce customary scholarship.

Simply, we propose that clinical and skills professors, and legal writing professors in particular, consider practising law – in real-life, non-clinical settings – during some significant portion of their sabbaticals from teaching.

With few, if any, costs, this proposal would foster a richer engagement by clinicians and legal writing professors with the world of practice and infuse new enthusiasm into law school classes.

Moreover, this experience in practice holds promise to (a) improve the learning experience for students in clinics and writing and skills classes; (b) offer a vital public service to the under-represented; and (c) improve the overall administration of justice.

Suzanne Rabé, a director of legal writing, recently spent three months of a one-year sabbatical working in the Oakland office of California’s Protection and Advocacy, Inc., or simply PAI, the largest organisation in the nation advocating for the civil rights of people with disabilities. Stephen Rosenbaum, a staff attorney who also teaches law part-time, was her supervisor and mentor during those three months.

Clinical professors practice law along with their students throughout the academic year. And, legal writing and skills professors are often drawn from the ranks of experienced practitioners. Despite these connections with the practice of law, which typically exceed those of many of their doctrinal colleagues, clinicians report becoming more and more removed from the realities of the day-to-day practice of law in a firm, government agency, or non-profit organisation.

It would be unthinkable for a medical professor of surgery to be removed for years at a time from the operating room. By some quirk of history, however, it has become routine for law professors, even those who teach the nuts and bolts of lawyering, to be removed – sometimes for decades – from the law firm or the courtroom.

Suzanne Rabé: After seven years of practice, I joined the faculty of the University of Arizona College of Law as a part-time legal writing instructor. Twenty-five years later, as the full-time Director of Legal Writing and Associate Clinical Professor of Law, I was bound for the Bay Area again to practice disability civil rights law on my very first sabbatical.

Several months before, I had been in touch with staff attorneys at Protection and Advocacy, Inc. over a legal issue that had arisen regarding my son, a student with disabilities attending college in the Bay Area. I was impressed – in fact, bowled over – with the phenomenal help PAI provided to my son and to me as one of his advocates.

Stephen Rosenbaum: Suzanne initially approached me about apprenticing with our law office, in part, to learn more about the substantive field of disability law, her interest having been stimulated by Joe’s recently acquired disability. She saw this as a potential opportunity to understand in
practical terms the *Americans with Disabilities Act* and its precursor, the *Rehabilitation Act of 1973.* I saw her involvement as a chance to benefit from the input and output of a seasoned lawyer, but, as I did not know Suzanne, I could not fully appreciate at the outset the efficiency and empathy she would bring to our office. I did know, however, that I would relate to her more as a ‘colleague’ than her ‘supervisor and mentor’.

*Rabé:* For three months, I volunteered full time in the organisation’s Oakland office. I interviewed the bulk of the special education clients, sometimes as many as ten a day. After consulting with Steve and the other special education attorneys in the office, and often after undertaking legal research and investigation, I communicated advice to the clients whose cases were not turned over to an attorney for full representation. I had a tremendous amount of client contact, something I had not experienced in my many years of full-time legal writing instruction.

Because I was handling special education cases, my intake interviews were primarily with parents and always involved disability law questions. The parents were often at their wit’s end after pursuing other avenues to obtain educational services for their children with disabilities – or as others described them – ‘special needs’ children. The parents were searching for appropriate placements and educational technology for their children with autism, Down syndrome, blindness, deafness, ADHD, and other disabilities. I saw how legal issues arose in the day-to-day lives of parents and children, and I gained experience in spotting issues missed by the clients themselves. Many of the clients were low income, and I gained insight into the interplay of poverty and disability law.

*Rosenbaum:* What was once an ‘intake coordinator’ at PAI is now called an ‘information and referral advocate’. But, notwithstanding the glorified title, it is difficult to recruit and retain staff members who can independently and competently dispense information, make meaningful referrals, and engage in advocacy. It really requires experience, intuition, and judgement. And, I think that Suzanne’s legal training and mindset – albeit tested more recently in the classroom than at the front desk – is what made her so valuable in that role. During Suzanne’s tenure at the office, we instituted a practice of engaging more paralegal staff in the ‘triage’ of incoming calls and the monitoring of ongoing cases. This logistical and educational experiment has had mixed results in terms of increasing knowledge and improving efficiency.

*Rabé:* The knowledge, experience, and insight I gained at PAI has translated into better – and certainly more confident – teaching. After 25 years away from real clients I had lost confidence when instructing students about interviewing, mediating, and even spotting issues and forming arguments. But my experience at PAI has brought the client back into the centre of the classroom. For instance, after my return to campus, my second-year legal writing students were working on an appellate brief that had been adapted from an actual case in New York state involving a criminal defendant who had been observed opening the door of her apartment building to undercover narcotics officers at 4 am. When the students could not imagine an innocent explanation for the defendant even being awake at this hour, I was able to offer explanations that arose from my recent experience interviewing low-income clients in Oakland and San Francisco. I encouraged the students to look at a problem through their own eyes and then through the eyes of their client. My PAI experience enriched the classroom experience as my students struggled to create arguments that would persuade an appellate court to view the facts from the perspective of the neighbourhood where they arose. It is sometimes difficult for a legal writing professor – one who has been long absent from legal practice – to establish credibility with her students. The students are facing a legal system far removed from the one that most experienced professors first entered. When students ask why a certain practice makes sense, when a certain motion is best filed, or how a client will respond to certain advice, recent experience with courts, clients, and even 21st-century law office technology, can make all the difference in effectively communicating with students.

The law school trinity is often described as teaching, service, and scholarship. Many clinics provide valuable services to the under-represented, and others work closely with judges and other lawyers to promote the administration of justice. Likewise, legal writing professors strive to model professionalism and encourage public service. Despite these lofty goals and the increased visibility of clinics and legal writing programs nationwide, a divide remains between the world of practice and the world of academics. It is not unheard of for lawyers to speak negatively about their law school experiences. Law school administrators struggle mightily to convince alumni of the wisdom of supporting the law school mission. A number of lawyers leave their law school buildings never to return; in the process, they learn little about the changes and innovations occurring in the academy. It is probably fair to say that law professors know far too little about the practice of law, and practitioners know far too little about the changes in legal education. A simple response to this problem, and one that would also benefit the under-represented, is for law professors, and
especially those who teach lawyering skills, to work periodically among practitioners and judges. Because most law school policies prohibit faculty from using a paid sabbatical to earn a substantial salary elsewhere, the vast majority of any sabbatical legal work would be on behalf of pro bono clients and public projects.

Rabé: PAI receives major funding from the federal government as well as State Bar Interest on Lawyer Trust Accounts, Equal Access funds, other grants, attorneys’ fees, and donations. Despite this funding, which supports a large staff, the legal services needs of many of PAI’s clients go unmet. At the time I began my work with the organisation, in 2007, one full-time paralegal handled all intake interviews for the Oakland office, which serves nine counties in central and northern California. This paralegal’s workload was astounding, and the quality of the client interviews undoubtedly suffered. For three months, I handled all the special education intake interviews. These interviews ranged from five to 15 per day and comprised approximately a quarter of the total intake interviews for the office. By limiting myself to special education clients, I greatly increased my learning curve at the initial stages, thus becoming more valuable to the office in a shorter period of time. Had I attempted to tackle all substantive law areas of practice, my effectiveness over the long term would have increased. However, because my stay with the office was limited, the narrower focus seemed advisable.

During my time at PAI, I interviewed and relayed advice to hundreds of clients. I relieved the day-to-day advice-only workload of both lawyers and paralegals so they could focus on larger, longer term projects. I attended weekly case conferences where I presented my cases. I ate lunch in the employee lunchroom where I struck up friendships with lawyers, paralegals, and staff members. We talked about the practice of law, and we also discussed my work at the University of Arizona. Many times I heard comments such as, ‘You don’t seem like a law professor’ or, ‘You wouldn’t see any of my professors volunteering like this’. My work increased the level of legal services that the office was able to provide in special education cases. My presence probably dispelled a few stereotypes about the academy and bolstered the connections that the practitioners felt with the academy.

Rosenbaum: Suzanne was able to spend more time on the interviews on the calls, provide more detailed and individually-tailored advice. This allowed for better screening and up-front service delivery, which was prompt and more intensive and responsive than the organisational norm. She brought energy, a new work style, and a new perspective on problems, whether on the phone or in case conference. Although these traits are peculiar to Suzanne, other veteran law professors have the same potential, whatever their past experience or current area of expertise. Having a self-directed, outside professional in our midst also allowed us to consider new models of service delivery. One can always benefit from a disinterested – but, really interested – observer. For example, I believe that we do not make sufficient use of the paralegal skills of our law graduates and non-lawyer advocates in our intake and advice-and-counsel activities.

Law professors have the luxury of summers and sabbaticals to think and write about matters of importance in the administration of justice. Too often, however, what is written is read primarily by others in the academy. Judges and lawyers express increasing alienation from law review scholarship. In the effort to be creative, cutting edge, and interdisciplinary, law professors may cut themselves off from those practising in the field. Professors themselves express frustration that they write for a small audience and that much legal scholarship has little impact. Given these concerns, it is puzzling that clinicians are following their doctrinal colleagues into the practice of using sabbaticals to produce traditional legal scholarship. If even some clinicians would enter the world of practice for a portion of their sabbaticals, some of this divide could be bridged. Fewer articles would address matters of little importance to practising lawyers, and more articles would address issues that receive little publicity but often arise in practice.

Lawyers and judges see injustices and unfairness daily, and they ponder ways to improve the administration of justice. But few judges and lawyers have the time to gather data, research alternatives, and propose comprehensive change. If the academy and the practitioners could communicate more effectively, and if law professors could see the inner, daily workings of the justice system, realistic, practical change could result.

Rabé: I interviewed parents of students with disabilities, and I relayed advice to them after consulting with staff attorneys. This experience, time and time again, pointed out to me the weaknesses in my own writing program’s approach to teaching interviewing skills. In over twenty years of teaching legal writing and lawyering skills in first-year classes that directly address interviewing skills, I had never once discussed telephone interviews. I also had not discussed interviewing clients who are deaf, clients with brain injuries, or clients who are blind. I had not
discussed using a second-language interpreter in client interviews. Yet, there I was at PAI doing all those things.

Rosenbaum: While Suzanne noted how the office sabbatical helped inform her teaching of writing skills, she also brought some of those skills directly to my colleagues and to law student interns. One of her first assignments was to make editorial suggestions on a report being drafted by our investigations unit. This kind of report is an advocacy tool that can help shape public policy to change practices in institutionalised settings, schools, and law enforcement agencies. Too often, practising lawyers – certainly those in public interest settings – fail to submit to peer review, for reasons of time, pride, or unavailability of a qualified reviewer. Surely, other written work by the organisation’s lawyers and non-lawyer advocates – sometimes verbose and jargon-laden – could have benefited from Suzanne’s critical eye. Just as there is value in law teachers toiling among practising attorneys, there is also a benefit to lawyers who supervise law student externs (or junior colleagues) in spending more time in the classrooms and corridors of the professoriate.

Suzanne also performed directly and explicitly as a teacher when she gave a presentation to staff attorneys and advocates at our quasi-annual state-wide staff conference on proper style manual citation format and to summer law students on persuasive writing.

Rabé: These experiences have already changed the curriculum in my legal writing classes. This year, the students will not be learning only about in-person interviews in a lawyer’s office. They will be reading about a wider variety of interviews, and they will be practising with a more diverse group of mock clients. I would not have predicted that my three months volunteering at PAI would improve our law school’s interviewing curriculum.

Rosenbaum: I have to second Suzanne’s endorsement of the ‘sending down’ model, the occasional labouring in the trenches. This is a means for faculty to stay in touch with real client issues, in a real office setting. It will probably not yield scholarship nor necessarily another kind of valued clinical work-product, such as a stellar amicus brief or practice manual. But the value to the office is in having a professional ‘outsider’ as a role model for staff to offset tendencies to become jaded, routine, or ineffectual. For clients, of course, the bonus is in establishing quality rapport and, ideally, sound legal advice.

Meaningful change may be on the horizon in many areas of legal education. The Carnegie Foundation’s two-year study of legal education — and its recommendations for more emphasis on clinics and trial or practice simulations — has generated much discussion within the academy. Our proposal — that clinical and skills professors, and legal writing professors in particular, consider practising law during some portion of their sabbaticals — addresses many of the concerns expressed by the Carnegie Foundation. Moreover, it would improve the learning experience for students in clinics and other skills classes, while at the same time providing much-needed legal services to the under-represented. In the end, it would improve the overall administration of justice by bridging the divide between the academy and practice. Ours is a modest proposal — one with few risks and little-to-no cost — that could reap significant benefits for legal education and professional practice.

If I had a hammer: can shepardising, synthesis, and other tools of legal writing help build hope for law students?

T Becker


Are lawyers mechanics? In 1920, photographer Lewis Hines took a striking photo of a powerhouse mechanic sure-handedly wielding a large wrench to tighten bolts on a steam pump. This picture may bring to mind many things, but I suspect that many legal writing professors in our (past or present) incarnations as practising attorneys would not look at this image and think, ‘My job is a lot like that’. Indeed, many of our students might have chosen to pursue a career in law precisely as a way of escaping family traditions of this type of difficult physical labour. But the comparison between lawyer and mechanic is neither so far-fetched nor demeaning. In fact, I propose that we legal writing professors can better serve our students, and increase our chances of engendering and maintaining hope in our students by more explicitly acknowledging the connections between the tools of legal writing and tools as used in the more down-to-earth context of manual labour.

My guide throughout this discussion will be a decidedly non-legal source: Matthew Crawford’s Shop Class as Soulcraft, as well as other books of a similar vein. As Crawford acknowledges, most of his examples are drawn from mechanical repair and the building trades because that’s where his experience lies, but he believes that the arguments he offers ‘can illuminate other kinds of work as well’.
The connections I’d like students to make between legal tools and physical tools are that the legal tools are not so conceptually distinct from other modes of life with which they presumably are more familiar. These connections, in turn, can provide the students with additional perspective on the inevitable difficulties that will come in trying to learn how to use this new set of tools.

‘Tool’, ‘tools’ and related variants are a common motif in legal education. Legal writing texts and articles often refer to the various ‘tools’ that attorneys must use to adequately represent their clients (and thus that students must learn to use in the academic setting of law school), or rely upon vivid tool-based analogies to drive a point home. Nor is this usage limited to legal writing scholarship. The ‘toolkit’ metaphor runs through many different types of academic legal articles.

Shop Class as Soulcraft was published in the summer of 2009 to commercial success and largely positive reviews. The book grew out of a magazine essay Crawford originally published in 2006. One of the most powerful images in that original essay, one that stuck with me over the intervening years before the book was released, was his description of his aesthetic reaction as a young electrician:

I was sometimes quieted at the sight of a gang of conduit entering a large panel in a commercial setting, bent into nestled, flowing curves, with varying offsets, that somehow all terminated in the same plane. This was a skill so far beyond my abilities that I felt I was in the presence of some genius, and the man who bent that conduit surely imagined this moment of recognition as he worked. As a residential electrician, most of my work got covered up inside walls. Yet even so, there is pride in meeting the aesthetic demands of a workmanlike installation. Maybe another electrician will see it someday. Even if not, one feels responsible to one’s better self. Or rather, to the thing itself — craftsmanship might be defined simply as the desire to do something well, for its own sake.

One of Crawford’s goals in both the original essay and his later book was ‘to understand the greater sense of agency and competence I have always felt doing manual work, compared to other jobs that were officially recognised as “knowledge work”’. Manual work is more likely to be ‘meaningful,’ in his view, because it is more likely to be ‘genuinely useful’. That is, the psychic imbalance he identifies between manual and knowledge work comes from the greater ‘usefulness’ of the former, the tangible sense of accomplishment that comes from working with one’s hands on an actual physical object, and seeing the results of one’s labour when, for example, a previously balky engine throbs with renewed power. The disparity also is measured in terms of self-reliance: a mechanic works by himself, segregated (at least for a while) in the grime and fluorescent light of a garage from larger societal ‘channels that have been projected from afar by vast impersonal forces’. These ideals of meaningful work and self-reliance, in turn, are ‘tied to a struggle for individual agency’, which he believes to be ‘at the very centre of modern life’. A question that then arises is whether this sense of agency and competence can be replicated in an attorney’s work. I do not read Crawford to imply the contrary. He does not dismiss the possibility that knowledge work can inspire a sense of agency and competence. Rather, he simply believes the odds to be skewed against the knowledge worker as compared to the manual labourer.

The critical question raised by Martin and Rand is whether law professors can replicate that feeling in students who are in training to become lawyers. Their answer is simple: Yes.

I want to begin with a quick example of what I have in mind for how legal writing professors can use ‘real’ tools to help drive home lessons about legal tools. In the context of a discussion about legal research, display a picture of a collection of wrenches. In the middle is a wrench with an unusual-looking V-shaped open end (as contrasted to the more familiar C-shaped open end or closed end ‘box’ wrenches). Ask whether anyone knows what the wrench in the middle is called, and what it’s used for. Aptly enough, it’s an alligator wrench, used in pipefitting to hold different size tubes without needing to adjust the wrench’s jaws. Follow this up with a quick picture of a collection of research materials, such as a library table covered with treaties, digests, loose-leaf binders, and so on, and the connection becomes obvious. The collection of wrenches confronting a mechanic reaching in his toolbox is analogous to the various types of research sources research tools — that students must choose from when pursuing a research assignment. All of these tools are basically similar in form and shape, but subtle (and sometimes not so subtle) differences can have significant consequences for the way the tool is used, and what it’s used for. The trick for the mechanic, and the student researcher, is to learn how each tool can best be used, and then to choose the right tool for the job.

As I see it, students don’t need to have direct familiarity with the particular ‘real’ tool the professor uses as the basis of a comparison for the comparison to be effective. The specific tool itself doesn’t matter; the creative problem-solving process inherent in using any tool does. In other
words, thinking of the lawyer’s trade in terms of ‘real’ tools might help students visualise the process by which a lawyer accomplishes a goal. By encouraging them to draw analogies from their creative experiences (of whatever nature) with physical tools (of whatever sort), they can recall the process of learning a skill over time, of the satisfaction of completing a project, with all the humps in the road that might have entailed, the mistakes and do-overs and curse words and so on.

In the end, the goal is for the student to recall the sense of accomplishment and achievement from having produced something tangible. In doing so, perhaps they can escape the false dichotomy that many of them have probably internalised: the distinction between knowledge work and manual work. Students intuitively understand that when working with their hands, success will come only with hard work, with (figurative or literal) grime under the fingernails and skinned knuckles. Students don’t need to be convinced of this; most of them – all of them, I’d venture – have experienced this in some way or another.

Why should this hard-earned experience be hidden away when the students cross the divide and engage in knowledge work—that is, in intellectual labour? It needn’t. As Crawford and other authors have warned, the divide is a false one, but it’s one that students are trained to be wary of and reinforced by myriad societal cues. Many students have made it to law school having succeeded in their academic ventures. The work of the mind has been one of almost constant achievement. Now, for many, they are faced with something they haven’t been forced to deal with before: academic challenges, obstructions to their intellectual abilities. No wonder many of them retreat into a shell when they receive the first C+ they’ve ever seen on one of their exams or papers. If we can bridge the gap, and make them see the connection between their current difficulties with the academic rigours of law school and comparable difficulties in their prior experiences with the physical world, perhaps they will be more likely to draw from that comparison the conclusion we’d like them to reach: all is not lost, and the possibility of success still lies within their grasp.

Martin and Rand’s emphasis on learning rather than performance goals is consistent with one of Crawford’s running themes. He is not a craft mechanic, but rather a working one, with bills to total up and clients to satisfy. In such a trade, obsessiveness is not always a virtue, and a perfectionist’s need to be ‘responsible only to the motorcycle’ ignores duties to ‘another person, with a limited budget’. Forgetting this means focusing solely on the end result, the final product – the perfectly restored motorcycle, at whatever cost, or the A in legal writing – and not the process of getting there.

Don’t get me wrong. Perfection is a noble goal and students should not be dissuaded from pursuing it as an ideal. But there’s danger in this, because having overly high standards can lead to paralysis. We dither and tweak, massaging a word here and running down an obscure point of law there, just to ensure that all the bases are covered and nothing is amiss. One of my favourite legal websites, ‘What About Clients’, calls perfectionism the ‘Great Destroyer of Great Young Associates’ because it leads attorneys to be ‘so stiff and scared they can’t ever turn anything in because they want it “perfect” and they keep asking other lawyers and courts for extensions’. How many of our students turn in their papers late for the same reason, or delay even starting a project because they don’t think they’ll be able to achieve the level of quality they think is demanded of them? W e do our students a valuable service if we occasionally remind them that they can represent their clients well, and take justifiable pride in their work, without being perfect.

Downplaying the quest for perfection, in turn, feeds nicely into another of Martin and Rand’s key recommendations. Mistakes are inevitable, and, sometimes, not just mistakes but out and out failure. But, as Martin and Rand note, encouraging students to learn from any such mistakes helps reinforce the agentic and pathways thinking that is characteristic of high-hope students. According to Crawford, mechanics try to fix problems they did not make, and deal with failure every day. Here, Crawford brings philosophy into the mix via Aristotle and the stochastic arts, such as medicine, which by their nature cannot be fully effective. Inevitably, patients die, despite a doctor’s best efforts. But this need not be a reflection on the ability of the doctor, or mechanic, or scientist, or artist. ‘Mastery of a stochastic art is compatible with failure to achieve its end’. That is a wonderful thing to convey to law students, because much the same can be said of studying for and practising law. Students flub exams, lawyers lose cases, and sometimes there’s not much that could have been done to prevent it. Clients walk through the office door with problems that realistically cannot be fixed, only alleviated to the extent that circumstances allow.

One last bit of overlap derives from Crawford’s general criticism of many academic environments as artificial, contrived, and hindrances to true learning. Per Heidegger, the way we know a hammer is not by staring at it, but by grabbing and using it. This requires hands-on experience, not simply theory. This comes as little shock to legal writing professors, who know that the best assignments are those that are the most realistic, and that students can develop their legal skills only with
practice, and lots of it. Nor is this news to practising lawyers, who know that attorneys can’t rely solely on legal rules to resolve a case or convince a court, but must couple those rules with an actual set of facts.

Martin and Rand have identified numerous ways in which legal writing professors can help inculcate a sense of hope in their students. But I wonder if, at least in the present economic downturn, we aren’t whistling past the graveyard just a little. Martin and Rand use the term ‘hope’ in a specific sense, as a collection of discrete psychological attributes. What about a more colloquial sense of the term? The stress of law school fosters anxiety in even the best of circumstances. How can we engender hope, however we might define that term, if students believe the employment tournament they are about to enter is stacked against them even more than usual?

Law students know the job market they are likely to face. Well-intentioned commentary from law professors suggests that prospective law students look closely at the decision to enter law school. But despite this advice, the Law School Admissions Council reports that the number of law school applicants rose five per cent in 2009.

Moreover, students know that even if fortune shines and they do get a job after graduation, life might not be rosy. Television shows portray the glamorous life of new associates in ritzy offices; students know the reality for many of them upon entering the profession will be quite different.

Let me paint an admittedly dismal portrait. This broad-brush depiction, drawn in part from aspects of my own legal experience, is woefully incomplete, but still accurate so far as it goes. In practice, we file motions that are then settled without argument, write briefs we suspect many judges only cursorily read. We draft witness lists for cases that are never tried, and prep experts who will never testify to a jury. We negotiate and draft and re-draft contract provisions to cover contingencies that will never arise. The substance of what we do vanishes, leaving us with, perhaps, more ‘experience’ in whatever task we had been engaged, but with nothing tangible to show for it other than stacks of paper or hours on a billing sheet.

If law students know, or suspect, or fear that this awaits them in some form, then a legal writing professor’s best classroom practices, however beneficial at the time in terms of inculcating hope, might turn out to have only a temporary effect. So the inquiry must necessarily turn to whether professors can do anything that might have a lasting effect on students after the first year, when they have progressed either to upper-level classes or to the actual practice of law.

We can and should focus on what we can control during our time with the students, striving to contribute to ‘the sense of agency that the acquisition of technical knowledge and skill provides.’ To focus on the constraints that might affect students down the road after the first year ‘is to miss what it means to someone to gain through tangible, demonstrable skill the ability to exercise some control, to give some direction to things, to feel security within reach ... This sense of agency, this imagining of a future not turbulent, spawns longer views, elaborates purpose’. This, in other words, is the ‘relation of skill to hope’. Be happy with what we can do because that alone is a powerful thing; there is no shame in not being able to resolve matters that exceed our control.

Among all of the other lessons we try to convey to our students, perhaps there is room to convey the sense that whatever they end up doing in the practice of law, they should enter into it with the expectation that they do this as a way to bring meaning to their life, over and above providing material necessities, vital though those might be. I speak here of law as a vocation, not merely ‘just a job’ or even a ‘profession.’ That is, I refer to practising law as itself a source of satisfaction, not merely of material wants, but spiritual as well.

Does law offer a tight connection between ‘life and livelihood’? Crawford doesn’t say, but the examples he gives of vocations that might make this connection possible due to the very nature of the work leave hope that law too might find a place: ‘A doctor deals with bodies, a fireman with fires, a teacher with children’. In his eyes, teachers, to be true teachers, love their children, and most mechanics work on cars because in some way they love cars. We need not get hung up on whether lawyers should love their clients. Instead, simply consider whether lawyers should think of their clients as something more than just the person (speaking loosely) for whom the lawyer provides services. They are not just the means to the lawyer’s provision of services. They are ends in themselves, and worthy of respect and recognition.

I don’t want to extend Crawford’s thesis further than it can bear. He emphasises the tangible world, the ‘experience of making things and fixing things’. Court briefs and contracts can be printed on paper that can be touched and held and crumpled up and cast away, but I’d hesitate to stretch the analogy too far between preparing a memo and tearing down and rebuilding a carburettor. Still, as Crawford notes, meaningful work and self-reliance are both tied to a ‘struggle for individual agency’, and that applies across the board, whether in a garage, law office, or classroom. Speaking very broadly, if we want to engender hope in both Martin and Rand’s specialised sense and a more
colloquial meaning, we must ensure that students know (or at least suspect) that what they’re learning will be useful to them.

**Preparing for the globalised law practice: the need to include international and comparative law in the legal writing curriculum**

S L DeJarnatt and M C Rahdert  

The case for globalisation of American legal education is by now well established. Beginning in earnest in the 1990s and continuing apace to the present, legal educators of many stripes have commented extensively on the rapid globalisation of law and the consequent need to globalise legal education. Legal educators now widely agree that American law schools need to do more to bring international and foreign law prominently into the law school curriculum.

Not surprisingly, the case for globalisation has spawned a variety of explicit proposals for curricular reform. These include proposals for both significantly expanding transnationally focused upper-level electives and incorporating transnational legal issues into the traditional domestic curriculum, including first-year programs.

Many institutions now include international and/or comparative law somewhere in their first-year curriculum, sometimes as free-standing courses such as contracts, torts, and property.

Empirically, the globalisation argument rests on the assertion that cross-border legal interaction is an increasingly substantial component of law practice, one that reflects growth in both global business activity and transborder social interaction. Where legal transactions and interactions cross borders, they typically acquire a transnational character that implicates the laws of more than one nation, as well as international legal norms. To determine the rights and legal interests of the affected parties, it becomes necessary for skilled practitioners to understand and evaluate a complex set of transnational and/or international legal rules and principles.

In order fully to probe the deeper social significance of law, students need to be exposed to alternative legal systems that rely on different principles, procedures, modes of reasoning, fundamental governmental arrangements, and the like. They also need to understand the process by which competing national legal systems can produce legal synthesis through the development of international law that transcends (and potentially overrides) domestic legal arrangements.

Dealing with foreign and international law no longer remains the specialty of a select few practitioners but is becoming the norm for the ordinary lawyer. Thus, it becomes necessary to prepare students for this role by exposing them to the characteristics of transnational practice, and by affording them opportunities to utilise transnational law in both oral and written legal analysis.

If, as many have argued, exposure to international principles and the law of other legal cultures provides an important perspective on the development and operation of domestic law, then training in basic skills needed to acquire further knowledge of foreign and international law surely facilitates development of that perspective.

Including exposure to foreign and international law in LRW reinforces the importance of these topics elsewhere in the curriculum. Indeed, if American legal education is truly serious about the globalisation of law, we should demonstrate that belief by including global legal research in the ‘toolkit’ of essential skills that students are expected to acquire. Lawyers who remain ignorant of global legal skills will be at a competitive disadvantage, one that deepens as the globalisation of legal practice progresses.

What are the transnational skills that LRW should convey? The most obvious one is the ability to identify, locate, and acquire information about relevant foreign and international law. Doing so effectively calls for research skills beyond those that students acquire through working with domestic legal resources. Mary Rumsey explains that students must go beyond their dependence on domestic data bases to learn how to access the different resources relevant to international and comparative law.

International legal rules often play a complex role in domestic law, presenting issues of interpretation and enforceability that do not easily fit within traditional domestic US legislative, administrative, and judicial legal structures. Integration or application of rules from foreign nations may be even more complex, especially where those systems are substantially different from our own.

Several law schools have experimented with introducing foreign and international issues into basic LRW instruction. Typically, this has been accomplished in a largely ad hoc fashion through the creative efforts of individual instructors, who sometimes offer a special ‘international’ section of the basic LRW course.
While these experiments with globalisation of LRW are salutary developments, we do not believe that they fully respond to logic of the case for globalizing LRW. That argument, after all, posits that most (perhaps all) future lawyers will need global legal skills, not just a self-selected subgroup.

There are some important constraints on what can be done. With regard to displacement, we think the case for globalising LRW is essentially additive. It does not diminish the importance of domestic law, nor does it claim any significant reduction in the role that domestic law will play in the law practice of the future. As a consequence, students will still need all of the present domestic LRW instruction they now receive, along with the addition of global component. That component must be structured in such a way that it does not displace or undermine any of the existing important domestic objectives of LRW teaching.

Transnational legal developments, and the growth of transborder commercial and social interaction, certainly provide logical support for inferring a growth in transnational practice among American lawyers.

We began this project with the theory that international and comparative law issues are no longer the sole province of the specialist. To test our hypothesis, we determined that it might be illuminating to survey the active members of the Philadelphia Bar Association to determine whether they regularly face the need to consider such issues.

We chose Philadelphia principally because our home law school, Temple, is located there, and the region is a primary market for our graduates. Philadelphia is not known as a centre for international legal work, although it has a diverse legal community including many major corporate law firms that maintain offices in other countries.

As of the time of our survey, the Philadelphia Bar Association had 10740 active members. We received 1050 tabulated responses, representing a 9.69 per cent response rate, which seemed good enough for our purposes and within the range of what colleagues experienced in survey research identified as an acceptable response.

The most informative result from the survey is that a substantial majority, 67.5 per cent of the respondents reported that they had worked on a legal matter that required them to know something about foreign and/or international law. This response supports our original thesis that international and comparative legal issues have become part of the general practice of law. The respondents, moreover, represent a fairly wide array of practitioners in terms of demographics. The median year of graduation was 1991 (18 years in practice) with 24 per cent of respondents in practice for five years or less; 30 per cent in practice from five to 20 years, and 46 per cent in practice more than 20 years.

The majority of respondents identified themselves as lawyers in private practice but we also received responses from civil government and public interest lawyers, prosecutors and public defenders, and corporate in-house lawyers. Very few, only three per cent described the geographic base of their practice as international.

We tried to gather more details about how often needed to know about foreign law, how often international law, and how often both. Of the respondents identifying such a need, about half (48 per cent) said they needed to know only foreign law, defined as the law of another country. Eleven per cent identified only international law and 41 per cent replied they needed to know both foreign and international law.

We also asked how often the need has arisen within the last year. Nearly 83 per cent said from one to five times and only nine per cent said more than 10 times. During the last five years, approximately 47 per cent said the need had arisen one to five times and 17 per cent said more than 10 times. In an effort to determine whether the need to know about foreign or international law is growing, we also asked about the frequency of need to know foreign and international law more than five years ago. Approximately 37 per cent again said one to five times and 15 per cent said over 10 times.

It was evident from the survey responses that the bulk of our respondents encounter foreign and international law occasionally and unexpectedly, in the course of representing fairly ‘ordinary’ clients on apparently ‘ordinary’ matters that primarily involve domestic US law. We think that these survey results support and reinforce the case for globalising LRW.

Relatively few LRW programs to date have incorporated international or comparative law into the generic LRW curriculum. Pacific McGeorge School of Law has the most extensive incorporation program to date. All students at Pacific McGeorge take two years of a legal writing and skills program called Global Lawyering Skills which introduces them to and requires them to use international and foreign sources as well as domestic sources in solving client problems.
LRW is typically the only first year class that has a direct focus on advocacy. One of our fundamental beliefs is that lawyers generally – not just constitutional advocates before the US Supreme Court – need access to the scope of arguments available through a global approach. Consequently, we think the advocacy component of the traditional LRW course may be the best place to think about incorporating a global legal issue.

Expanding to include international and comparative law is important and can be energising for the LRW professor as well as the students. An effective LRW problem needs to challenge the students to think creatively about research, to use the available sources effectively, and to take on the role of counsellor or advocate. One of the skills should be some form of research that requires the students to find and use international or foreign sources.

At Temple, we are committed to teaching LRW through the process method. We teach through the problems and interact with the students throughout the research and writing process. With that commitment in mind, for the purpose of this project it was necessary for Professor DeJarnatt to try to figure out how best to add this element without losing critical steps that already form part of the course design. What follows is her first-person reflection on how that process worked over two course administrations in 2008-09 and 2009-10.

The final memo problem I designed presents the students with the challenge of predicting how the court will resolve a dispute between two couples who used the same fertility clinic. Both underwent in vitro fertilisation but, due to clinic negligence, the embryos of the first couple, the Garcias, were accidentally and mistakenly used in the IVF procedure of the second couple, the Cohens. As a result the Garcias have a genetic connection to the resulting child who the Cohens have been raising with the belief that he is the genetic child of his birth mother, Mrs Cohen. The Cohens had intended to use the wife’s eggs fertilised by donor sperm. California law does not provide any easy way to determine who the legal parents should be.

To those who do not practice family law, it may seem surprising that there are many potential international aspects to such a fundamentally domestic legal subject. Yet when we first began this project, and I asked every lawyer I met whether they ever confront international law issues, the family law specialists uniformly stressed that that need comes up frequently, particularly in the context of a divorced or separated spouse wanting to take a child on a trip outside of the United States. More recently, the Artificial Reproductive Technologies (‘ART’) subcommittee of the ABA Family Law section has been focused on several international issues involving the law relating to transnational use of ART techniques and international adoption. These issues require the domestic lawyers to access the various Hague Conventions relating to children. It was thus both logical and relatively easy to find a way to incorporate international and comparative law into my family law problem.

In 2009, I advanced the litigation so that genetic testing has already established the link between the child and the genetic parents, the Garcias, who have now been granted monthly visitation pending the final resolution of the case. Mrs Garcia’s mother lives in Guatemala, is seriously ill, and is unable to travel. The Garcias ask the court to order the Cohens to sign a passport application for the child so that he may travel with them to Guatemala to visit the grandmother during one of the monthly visits.

The students must determine that, under California law, the court uses a factors test to decide whether the travel should be allowed. Several factors implicate international and comparative law. The court must evaluate the ties that the requesting parent has to the jurisdiction. The judge must also consider the risk of abduction. Implicit in this analysis is the ease or difficulty the objecting parent may have in securing the return of an abducted child. This issue implicates the Hague Convention on child abduction. The students then need to find the convention, determine the processes it provides for return of children, determine whether Guatemala is subject to the convention, and research case law under the Convention to see how courts have handled claims of abduction.

The second way I tried to incorporate comparative law was in the motion for summary judgment on parentage that was the final project for the year. I did not think I could ask the students to consider the parentage laws of the entire world given the limited amount of time they had to conduct their research. Instead I directed them to research Canadian law. I chose Canada because it is primarily a common law jurisdiction, has a statute governing ART, and has a variety of cases, all published in English. The style of writing in the cases, however, is quite different from what is typical in US judicial writing.

This experiment was less successful because it was too artificial. Few students were able to use Canadian law in any effective way, and they all recognised that in real life it would not be particularly persuasive to try.
In 2009-2010, I altered the problem to try to address at least some of the limitations I experienced the previous year. My main goal was to make the need to examine Canadian law more realistic. Just after the genetic testing is performed and the court grants temporary custody to the Cohens and visitation to the Garcias, the students learn that the Cohens are going to move to Toronto so that Mr Cohen, a television writer and director, can work on a television show that is being produced there. I asked the students to determine whether the move makes Canadian law controlling and to evaluate the arguments their clients could make or have to rebut under Canadian law.

Professor DeJarnatt’s approach was to construct an occasion for a limited foray into the law of a sister common-law jurisdiction that conducts business in English and shares substantial jurisprudential common ground with the United States. Choosing a civil-law jurisdiction with a divergent legal structure and a different language would have added considerably to the challenge of even such a relatively simple problem.

Using the kinds of issues that ordinary lawyers face will drive home the reality that these skills are going to be useful to the students in their practice lives and will give them experience in situations that may actually arise when they enter practice.

LRW problems typically focus on a disputed area of law or at least a factual dispute. However, it could be worthwhile to build a memo problem that would require students to determine the requirements to properly serve process on a foreign defendant. Students need to develop familiarity with domestic rules of procedure as well as international requirements. One survey respondent reported handling the personal injury action of a woman who sued a hotel in Cairo that is part of an international chain, alleging the hotel was liable for the hotel employee who directed the woman to take a camel ride that was not hotel sponsored, and that resulted in her injury. This scenario would no doubt raise questions about jurisdiction over the Egyptian subsidiary.

As matters presently stand in most American law schools, it is quite possible to obtain a J.D. without ever having taken an international law course or without having considered how other countries might approach or solve a problem. In most jurisdictions, it is quite possible to be admitted to the bar without knowing anything at all about law outside the United States. But at this juncture it is much less possible to practice law without confronting some issue arising from international or foreign law. Leaving international and foreign law solely to specialised experts contributes to the outdated notion that such law is not part of the ordinary lawyer’s world. Opening the door to the world of international and comparative law in the context of first year legal research and writing will help our students recognise and prepare to work effectively in the global legal practice that awaits them.

**TECHNOLOGY**

Entry into Valhalla: contextualising the learning of legal ethics through the use of Second Life machinima

D Butler


Today in law schools around the common law world there is an increasing understanding that, just as an appreciation of legal ethics and professional responsibility is an indispensible part of legal practice, ethics training is an indispensible element of legal training.

Ideally, ethics training should be done in a clinical setting, dealing with the problems of real people. However, by its nature, clinical education can be offered only to a small number of students. Further, clinical programs are so expensive that only a handful of law schools have been able to fund them. Against the background of current national ‘broadening participation’ higher education policy, these circumstances serve only to compound access and equity issues. The relatively low government funding for Australian law schools has been recognised as a significant impediment to innovation in the development of curricula and resources centred on effectively inculcating attributes such as an appreciation of ethics and professional responsibility.

Technology-based learning environments, by their asynchronous nature, heighten potential learning impact by letting the student user determine their timely application, thereby addressing the issue of flexible access to resources.

Effective student learning of ethics requires a practical rather than theoretical approach which engages students, enabling them to appreciate the relevance of what they are learning to the real world and facilitating their transition from study to their working lives. In the absence of funding from government or non-government sources, any approach must be cost-effective and capable of scaling up to cater for the needs of the student body as a whole rather than a fortunate few.
It is now widely acknowledged that technology can provide an alternative to real-life settings such as clinical exercises, without sacrificing the critical authentic context. A blended curriculum drawing on digital media can be an effective means of promoting active student-centred learning activity by setting challenges, seeding ideas and illustrating problems. Nevertheless, for many academics a significant obstacle to introducing multimedia innovations into their curricula is the prohibitive cost of production, including video and computer software programming, which is often required. Other barriers include a lack of academic technical literacy and commitment to learn new technology, a perceived threat to academic freedom and autonomy, and general ‘academic inertia’.

Multimedia involving the use of virtual characters to present tasks and critical information in a simulated environment can be a useful strategy in the creation of more authentic learning environments online. It has been recognised that ‘machinima’, or computer graphics imagery created without the cost of professional software or professional programming, can be a cost-effective means of creating effective learning environments.

A feature of game-based pedagogy including machinima is its ability to teach the curriculum both overtly and covertly. Machinima allows a subject to be dealt with in a more realistic manner than if presented in a decontextualised fashion.

The program sought to address two issues: the need to impart ethical awareness and responsibility more effectively; and staff development to create cost-effective multimedia. The first issue was addressed by developing the *Entry into Valhalla* program, a narrative-centred learning environment that uses narrative to draw students into the exercise, satisfying pedagogical goals in an enjoyable, authentic, motivating and effective manner. The second involved a number of activities including workshops, presentations and a website, which contains a detailed resources manual and instructional videos on the various cost-effective resources used in making *Entry into Valhalla*.

*Entry into Valhalla* adopts elements of a ‘cognitive apprenticeship’ approach to learning including modelling, coaching, scaffolding, reflection and exploration. The five modules of the program address different areas of the legal ethics curriculum; namely, *The Legal Profession, Admission to the Profession, Confidentiality and Conflicts of Interest, the Duty to the Administration of Justice and Discipline*. Each of the five modules comprises an introductory video filmed in the real world (in which an academic provides an overview of the area to be studied), prescribed readings, self-test quizzes (which provide formative feedback on both correct and incorrect responses), machinima scenarios that depict real-world-type ethical dilemmas, questions based on those scenarios, and further readings.

*Entry into Valhalla* utilises machinima created using the *Second Life* online multi-user virtual environment and other cost-effective multimedia.

Under the *Second Life* End User Agreement, copyright in objects created in the virtual world subsists in the user creator, rather than Linden Lab. Accordingly, when filming takes place at locations owned by others, permission ought to be sought from the owner/creator for its use. Normally, this will be given in return for attribution in the project. *Entry into Valhalla* utilised both sets designed and created by the author on ‘QUT Island’, the region in *Second Life* owned by the Queensland University of Technology and, with permission, locations owned and created by other *Second Life* users.

The machinima scenarios in the modules each follow the format of a legal practitioner in a fictional law firm approaching the male and female senior partners for advice concerning an ethical dilemma which the practitioner is confronting in the course of his or her work. Each scenario ends with the practitioner positing the question ‘What do you think?’, or a variation thereof, to facilitate in-class discussions in which students role-play as either the male or female partner in providing advice that recognises and attempts to resolve the ethical dilemmas. Two of the machinima scenarios (concerning *Admission* and *Discipline*) are capable of facilitating a different form of role-play, their design allowing one student to argue in favour of admission/discipline, one opposing admission/discipline, and another playing the role of the arbiter.

The machinima scenarios combine both video and still images, the latter used mostly to depict the particular dilemma in flashback, as recounted by the practitioner.

After determining the concept and course material to be addressed in the project, the first stage was writing all scripts and other content, followed by storyboarding of video components. After the scripts and quizzes were completed, they were settled in conjunction with members of the project’s reference group. The machinima scenarios were then filmed with the author speaking all dialogue, the FRAPS capture program being configured to record only vision and not audio. Dialogue using the voice talents of Faculty colleagues and students was later recorded using the Audacity program. Video and audio were then mixed and edited using Microsoft Movie Maker 2.1, a video-editing
program that is part of the Windows XP package. This process allowed the actors’ voices to be synchronised with their corresponding avatars’ lip movements. Movie Maker was also used to edit the introductory videos, which were filmed on locations around the Faculty using a camcorder and tripod. Videos were given an additional professional finish by using music obtained via Creative Commons Search.

The resulting videos were then packaged using the Xerte eLearning system, a template program developed by the University of Nottingham and free for download. The final step in the process involved uploading the Xerte modules to a Blackboard Learning Management System site. An image map was ‘hotspotted’ so that when hotspots were clicked they would launch the various Xerte modules.

In addition, a separate folder within the Blackboard site was added and linked to the image map, which contained 340kbps broadband and dial-up versions of all videos forming part of Entry into Valhalla, and the relevant questions. Even where the approach to learning and teaching legal ethics includes small class discussions, these areas are often examined on the basis of theory questions or text-based problems.

By contrast, the machinima scenarios in Entry into Valhalla enable the same material to be covered in a rich, multi-layered real-world context that is more engaging and which more closely resembles situations students may encounter when they enter legal practice. Each machinima scenario only lasts for between four and seven minutes, but within that short time presents complex situations that, as often occurs in practice, do not yield to simple or peremptory answers.

Evaluation was a critical element embedded throughout the project cycle. Entry into Valhalla went online from semester two, 2010 at the Queensland University of Technology and should be available to other Australian universities before the end of 2010 under Creative Commons Licence. Prior to its implementation, the program was evaluated by three key groups of stakeholders: prospective students, academics and members of the legal profession. All three groups enthusiastically endorsed the program. The students highlighted the ease of use, the visuals, the transcripts that accompany all videos in the program and the summary of issues by one or other of the two senior partners at the end of each machinima scenario. They also liked the realism of the machinima scenarios.

Academics saw greater potential for enhanced engagement of their students than current approaches involving theory questions and text-based problems discussed in small groups. They liked the great detail and multiple layers in Entry into Valhalla and believed that the scenarios would be a better reflection of real-world dilemmas than single-issue theory and text-based problems.

The third stakeholder group, which included officers from the ethics department of the Queensland Law Society, liked the modelling of junior practitioners who were confronting ethical dilemmas seeking advice from more senior members in the firm, which was implicit in the program. They also expressed approval of the multilayered nature of the dilemmas presented in the machinima scenarios, noting that real-world ethical dilemmas rarely if ever involved single issues. Student response to Entry into Valhalla was evaluated by way of a paper survey rendered in class after completion of the program. The survey asked students to rate their responses to a number of statements on a 5–1 Likert scale (with 5 representing ‘strongly agree’ and 1 representing ‘strongly disagree’) and a number of open-ended questions. Responses were received from 106 students out of a total enrolment of 346 in the subject, representing a 31 per cent response rate.

A total of 82 per cent of students agreed or strongly agreed that the program helped them to understand ethics in a real world context. Indeed the relating of legal ethics to the real world was identified as being the best aspect of the program by the greatest number of students.

A total of 81 per cent of students agreed or strongly agreed that the law firm storyline assisted their learning. This is reflected by the fact that the characters/storylines in the program received the second-highest number of votes as the best aspect of the program. For some, it helped to put ethical issues into a real-world context when they had difficulty connecting theory to practical examples on their own.

A real-world storyline based in the context of a law firm also facilitated a greater degree of discussion in class than may have been possible with simple text-based problems. Students who found multimedia difficult to use or who have trouble navigating a multimedia program may be distracted from the content of the program and instead became fixated on their difficulties. Research has also identified that a small proportion of students (and academics) will resist technology, in particular game-based design, for a complex mix of personal and societal ideologies around play and learning.
A total of 85 per cent of respondents thought that the program was easy to use. Ease of use was another factor identified by students as one of the best aspects of the program. This may be taken as a reflection of the design and capability of the Xerte eLearning environment. A total of 72 per cent of students agreed or strongly agreed they enjoyed using Entry into Valhalla. The blending of an online component, with its various elements including the machinima scenarios and self-test quizzes, with traditional text-based questions focusing on theoretical and philosophical issues was preferred by the largest number of students. Legal ethics taught without a coherent philosophical and theoretical basis and with an emphasis only on practical ethical problem-solving is likely to lead students to believe that legal ethics is no more than a gloss on the substantive law. Instead, ethics training should inculcate an understanding that ethics involves a pervasive set of values that underpin the practice of law, and is an integral part of learning the law as a social phenomenon.

At the Queensland University of Technology Law School, Entry into Valhalla forms an important component of a blended learning program in a final-year core subject on professional responsibility, which also includes instruction on, and discussion of, theories underpinning legal ethics. Such understandings provide an essential foundation for addressing the challenges posed by the complex real-world-type scenarios. These scenarios are discussed in small group classes adopting a workshop approach, with participation in these discussions forming part of the assessment for the subject.

Typically, such programs represent the confluence of a number of elements including the concept and the resources required to bring that concept to its fruition. Those resources include the necessary hardware and software; the knowledge, skill and confidence to use them; and time to do so.

Effective and engaging learning experiences no longer require substantial budgets. Machinima and other cost-effective multimedia now enable such programs to be created at little or no cost at an academic’s desktop. Programs such as Second Life, Audacity, Movie Maker and Xerte do not require specialist programming or learning design expertise. Resources such as Creative Commons Search allow projects to be enhanced by music and sound effects for added realism and a professional-looking product for no additional cost. Measured in terms of the tools used in its production, the total cost of the entire Entry into Valhalla project was less than $50.

Time, however, remains perhaps the greatest challenge in the process. Indeed, academics may not be prepared to risk hours of their time in developing technology on the mere chance that it will enhance their students’ learning. Working alone, the author took between one and two weeks to create each of the seven machinima scenarios, this time including the writing of scripts, storyboarding, filming of machinima sequences, recording of the voice tracks and video-editing. Writing the scripts and filming for the real video introductions took no more than two days with a further day spent editing the footage. Compiling all the material in Xerte was done relatively quickly, and is a testament to its designers. This process took no more than one day to complete all five modules. Constructing the Blackboard website occupied no more than two or three days.

However, these 15 or so weeks were complemented by other time commitments that are more difficult to quantify accurately. The machinima sequences in Entry into Valhalla were filmed either on sets created on QUT Island or in locations owned by others. Time was required to design and build these sets and to scout the other locations and to contact their owners for permission to film on their land. Time was required to design and create the avatars that were to play the various characters in the machinima sequences. Time was also required to refine ideas and storylines even before scripts were written. Moreover, while music adds a professional touch, and Creative Commons Search provides an accessible source of music, it can sometimes be a time-consuming process to match the right music with a particular program, or particular aspect of the program.

Such programs are capable of providing the same learning experience for all students in even large cohorts, no matter whether the mode of study is full-time, part-time or at a distance. They facilitate flexible learning, enabling students to undertake them at their own convenience in a place and at a time of their choosing. They are also sustainable: the machinima scenarios in Entry into Valhalla contain no law per se, only fact situations. These fact situations are not time-specific: they could arise today in practice or in 5, 10 or even 20 years’ time. The responses to the situations might change – for example, due to a change in Professional Rules – but this is a matter for discussion in the small group classes. Even where change may be needed, such as in the pretest multiple choice quizzes, this can be done quickly and easily with the Xerte program. Measured against such benefits, the time required to produce programs like Entry into Valhalla is an investment worth making.
Narrative-based learning is nothing new: it has been utilised as an effective approach to learning in many disciplines. In law, it is the basis of the ‘law and literature’ field of study in which connections are drawn between legal theory and literature. In a limited sense, it is also used in the short problem-type questions commonly used by law schools in small group tutorials to enable students to discuss the application of legal principles and rules in the context of fact scenarios.

Narrative-centred learning environments leverage the cognitive and instructional power of stories.

Such environments have significant potential for enhancing students’ learning experiences, potentially reinforcing learning objectives and ingraining subject matter.

When students are engaged in a task for which a story offers appropriate advice, they are more likely to understand the point of the story and make useful connections between information contained in the story and their prior memory structures.

Second Life machinima adds an exciting new dimension to a narrative-centred approach to learning. A virtual environment like Second Life borrows assumptions from real life. Virtual characters can contribute to a larger narrative context which has the potential to establish solid links with pedagogical subject matter, thereby supporting assimilation of new concepts in young learners.

The experiential learning environment plays a significant role in engaging students. Research suggests that simulations enhance learning because greater engagement means improved attention spans. This in turn results in accelerated absorption of key learning outcomes and longer retention.

The use of machinima and narrative-centred learning environments is also inclusive of a range of student learning styles and teaching strategies, providing students with the opportunity to visualise ideas and concepts.

**BOOK REVIEW**

**Glanville Williams: Learning the Law**

A T H Smith

Sweet & Maxwell; Thomson Reuters, 2010, 273 pp

I still have a copy of the original first edition of this book published in 1945 passed to me when I commenced studying law in 1955 by my brother, also a lawyer. As explained in the Preface by Professor A.T.H. Smith, the editor of the 14th edition of this book, when it was first published in 1945 it was alone and unique in the United Kingdom for offering advice to potential law students, current law students and those looking for a career in law. Now of course, in a time when there are many such type of books, I believe it is of interest to readers of the Digest to discover whether there are still qualities in the revised text which enable Learning the Law to be regarded to have stood the test of time and still be the premier book of choice for those intending to enter into a career in law.

A word of caution for the Australian reader: as the book is published in the United Kingdom, it obviously focuses on the law of England and Wales where it is necessary to refer to a principal legal system. However the factual information of this kind is still of value to anyone studying law outside the English legal jurisdiction, and Chapter 12, relating to legal research, refers to the various Commonwealth jurisdictions and contains helpful information for the Australian student in respect of recommended Australian texts and the value of accessing www.austlii.edu.au when wishing to secure electronic information relating to Australian case law, legislation, journals and the law generally.

Unlike many legal books, the Preface is a worthwhile starting point for the reader. Like his predecessor Glanville Williams, Professor Smith is a law academic of great distinction who from his own teaching experience is aware of the demands of law students. His salutary advice regarding university legal examinations will strike a note with any law academic:

Legal exams taken in university seem particularly prone to two special problems; a failure to read the question carefully on the part of the examinee, and (possibly in consequence) a tendency on the part of the examinee to answer the question as though it were same question as was to be found in previous years’ examinations.

The book also incorporates Smith’s Preface to the previous edition where he points out that the audiences that Glanville Williams had in mind were those who had already decided to study law and so his objective was to make the book relevant to first year students and beyond, so that it would serve as manual that would accompany them throughout their studies and into their legal career.

It is interesting to note that throughout its various editions, successive editors, including the present one, have as far as possible managed to retain 11 of the 12 original chapter headings – the
12th, *Common Law and Equity* has been incorporated/subsumed into the opening *Divisions of Law* chapter. Obviously changes and developments in the law have necessitated considerable revision and reorganisation of the text and the addition of some extra chapters, but despite these important changes the work remains essentially the same. The current editor’s aim is still that of providing a text which is both informative and encouraging to the law student.

If one is selective as regards those elements of the text to which law students should be directed when undertaking their preliminary studies, it would be to start with Chapter 2 entitled *The Mechanism of Scholarship*. In this chapter the author gives practical advice with regard to *Navigating the Law Library*. Despite the fact that the majority of law materials are now available in electronic form, the fact that it is still necessary for the law student to be able to access these materials is often overlooked. Whilst law reports, statutes and periodicals are available in electronic form for example the potential lawyer still needs to know the basic structure of the law reports or how to interpret a statute. There is of course a clear link between the advice in Chapter 2 and Chapter 12 *Legal Research*. In the latter there are again nuggets of valuable information often overlooked in today’s lecture theatre or seminar room. George III may be condemned as history but the quote attributed to him: ‘… that lawyers do not now know much more law than other people, but they know better where to find it’ – is as true today as it was in the 18th century! There is also a helpful explanation of ‘legal research’ in that it has two rather different senses. ‘It can be used to refer to the task of ascertaining the precise state of the law on a particular point’ – and there is a useful reference to the Joint Statement of the Bar and the Law Society on the foundations of legal knowledge – but it also: ‘denotes the sort of work undertaken by lawyers (often, but not exclusively academic lawyers) who wish to explore at greater length some of the implications of the state of the law’. This chapter explains its purpose is to assist the reader to gain a more intimate knowledge of the law library and its online resources and also to guide the first steps of the research worker.

When reading the text the general effect is one of great care and competence in the advice offered to the reader whether it is as the best way to work through problems, answer essay questions or how to prepare for examinations. In this respect there is much helpful advice as to details which are often overlooked such as the spelling of ‘homicide’ or ‘consensus’, and avoiding the commonest grammatical error of the split infinitive.

Chapter 11 *Moots, Mock Trials and Competitions* is also invaluable to those law students studying externally, or in law schools where practical advice on how to conduct themselves in such simulated court exercises is not forthcoming.

The overall impression is that *Learning the Law* is as relevant as it was when it was first published in 1945. There is hardly any need to say more than that this latest edition maintains the high standards of its predecessors. This reviewer is confident that in the hands of its current editor is still has a long and useful life and yet more editions before it.

Emeritus Professor David Barker AM
Editor

**Survive and Thrive: Foundations Skills for Your First Year at University**
M Muller and D Nulty
Palgrave Macmillan, 2011, 219 pp

There have now been many books on tertiary student lifestyle, so it is important when reviewing Muller and Nulty’s text to consider what makes it different from other books on this topic. In the past there was a time when only a select few went to university and for these it was a matter of continuing a trend set by other members of their family before them. This meant there was already plenty of personal advice as to how they might plan their studies and follow the family tradition particularly where they were attending the same university and in respect of the Oxbridge or Ivy League Universities, even the same college. As we are being constantly reminded, tertiary education is big business today with thousands of students undertaking a university education so that the majority of them are unable to rely on the experiences of family or friends who in the past might have preceded them.

There is also the problem that, because of the high number of university admissions, the days of one-on-one tutorials and students having the benefit of advice from a personal tutor have long disappeared, other than in the most prestigious of universities.
The authors Muller and Nulty are well qualified to advise on how a student might successfully undertake the transition from school to university and avoid the physical and mental traps on the way. Muller’s research interests are in the underlying principles of the First Year Experience whilst Nulty’s has achieved national and international recognition of his expertise in assessment of student learning.

As explained in the Introduction the book is divided up into sections dealing with the various aspects of the student experience. In this respect the first three chapters are intended to focus on those factors that affect a students’ transition into university study as well as the characteristics and requirements of academic culture. The first chapter highlights those features which the authors consider have an effect on achieving a successful transition such as motivation, expectations and time management, and how these can contribute to learning success. Chapter 2 conducts the student through the academic environment, covering those aspects of student life as orientation week, whereby one is able to take the opportunity to familiarise oneself with the new surroundings, organise a timetable and stock-up on materials such as the purchase of textbooks. The third and final chapter in this segment, entitled *Independent learning and lifelong skills* emphasises the importance of communication in the transaction and exchange of ideas within academic culture. This chapter also incorporates a discussion on individual learning styles and the benefits and principles of critical thinking.

Following on from this first segment, Chapters 4 to 7 are concerned with the various aspects of learning strategies. Chapter 4 covers the best uses which might be made of a lecture particularly by reviewing, summarising and evaluating it, whilst Chapter 5 advises on the most effective ways of participating in and learning during a tutorial. Chapter 6 deals with aspects of learning which are not normally covered in a book of this kind but are nevertheless invaluable in the changing nature of the learning environment; those of how to study effectively at home, the term home including a temporary place a student is sharing with other students and friends such as an apartment or hall of residence. Not only does this chapter deal with the physical spaces essential for studying effectively, but it also advises on the best strategies for the improvement of motivation and concentration levels whilst studying. The concluding Chapter 7 in this segment is concerned with the strategic manner of exercising research skills, both in the use of library catalogues and search engines. This advice includes a helpful six step research cycle which incorporates both the successful evaluation and effective communication of research information.

The remainder of the book, commencing with Chapter 8, deals with the manner in which the student should communicate knowledge, especially with regard to the development of the process of undertaking a written assignment or preparing and delivering an oral presentation. Chapter 9 introduces the student to assessment processes with a very useful description of Perry’s conceptualisation of knowledge and how it may be categorised under ‘dualism’, ‘multiplicity’ and ‘relativism’ and also the SOLO taxonomy of Biggs and Collis. This is a refreshing new approach as to how students might achieve effective assessment of their academic presentations and maximise their performance rankings. Chapter 10 explains various techniques for the preparation and sitting of examinations at university. Throughout the book each chapter concludes with a chapter summary.

*Survive and Thrive* stands out from similar texts dealing with university life in that its comprehensive coverage embraces all aspects of the student experience within the university campus. Despite its use of uncomplicated language throughout the text it nevertheless takes the trouble to explain or define such words and expressions as ‘First-year pedagogy’ or ‘Academic culture’, which whilst taken for granted by the university academic, could be confusing to the new student. For first-year students, including law students, this could be a helpful text in assisting them to navigate themselves through the complexities of entering university life.

Emeritus Professor David Barker AM
Editor
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