

legal fact patterns and the process of legal reasoning is largely an acquired skill. Student use of the structure improved slightly over the semester, consistent with their increased exposure to it. Use of the structure did not increase pure marks, although there was a string of correlations between the 'good' use of the structure and good marks. *'Legal reasoning is not some mystical talent given to the fortunate and favoured. It is a skill to be taught as part of a structured and incremental curriculum...'*

#### **Acquiring basic legal skills and knowledge: what and where?**

J de Groot

12 *J Prof L Educ* 1, 1994 pp 1-16

It is generally accepted that one of the goals of legal education is to produce competent lawyers. Data were gathered from the leaders of the Queensland legal profession in private practice about what they consider best describe the characteristics of a competent lawyer. Those participating in the study were asked to select from 65 characteristics broadly classified under the headings 'knowledge', 'skills', 'values' and 'other attributes/abilities', ten which they considered to be the most important for a lawyer to possess. They were asked to grade each of the ten characteristics selected on a scale of 1 to 3 with 1 = 'important', 2 = 'very important' and 3 = 'vital'. A knowledge of substantive law ranked first, with 48% of participants grading it as vital. This was followed by professional attitude to the practice of law (37.9%) and the ability to identify legal issues raised by a fact situation (22.7%).

Zemans and Rosenblum conducted a similar study in 1975/6, obtaining responses from a random sample of 548 Chicago lawyers. In that study participants were asked the relative importance of 21 skills and areas of knowledge. Of the 21 skills and areas of knowledge from the Zemans and Rosenblum study, the top 10 are listed for comparison purposes.

Only two characteristics are common to the top 10 of both studies. 'Substantive knowledge', which ranked first in the Queensland study ranked sixth in the Chicago study, while the 'ability to identify legal issues raised by a fact situation' was ranked third in the Queensland study and second in the Chicago study.

When the characteristics as a whole are considered, it is clear that there were clusters which were indicative of the same dimension of professional conduct. Eight core characteristics were established by the author which the survey indicated described a competent lawyer: knowledge of legal practice and procedure; knowledge of substantive law; attention to professional housekeeping; enthusiasm for dedication to the law; client oriented; fact gathering/analysis ability; orientation to practical solutions to clients' problems; and proficiency in the professional/ethical dimensions of legal practice.

The questions then arise as to where such skills and knowledge are acquired, where should they be acquired and, if it is through a course of practical legal training (LPC), where should such a course be located. Perceptions of students who took articles of clerkship (AC

and those who completed the LPC at the Queensland University of Technology showed that most of the core characteristics were acquired through experience for AC students and through experience and the LPC for LPC students. The exception was that substantive knowledge was largely acquired from the LLB course for both AC and LPC students.

The compartmentalisation of legal education into academic and skills learning as proffered by the Ormrod Committee is in question. Many law schools are integrating professional skills into their degree courses. The physical location of LPC is in issue. Should it be located within the universities, so as to make use of resources such as libraries, staff, and the interdisciplinary environment of a campus, or should it be separate, so as to signify to students that they are moving to the professional arena? The arguments are reviewed by the author, who observes that no one view can be said to have prevailed.

#### **Law schools and the construction of competence**

B G Garth and J Martin

43 *J Legal Ed* 4, Dec 1993, pp 469-509

The article reviews the results of many surveys carried out by the authors to investigate the assertion that legal education and legal practice occupy different worlds. Young graduate lawyers in Chicago found communication skills to be the most important lawyerly skill, followed by instilling confidence in others, legal analysis and reasoning, drafting of documents-solving and knowledge of substantive law. The skills that were essentially learned



at law school and the value of the same skill to the potential law practice showed a marked disparity. Whether law school was the appropriate site to learn certain skills was also surveyed. An investigation as to where young rural, urban and city lawyers actually learned their skills followed.

Hiring partners were found to take, first and foremost, the law school attended and the class ranking of the applicant into account and then communication abilities and general appearance and demeanour when hiring graduate lawyers. In contrast to the findings from a similar survey done in the 1970s, today's law schools have an increased role in teaching legal ethics, communication skills, and 'confidence inspiring' skills. Hiring partners in the 1970s placed much heavier emphasis on the substantive and procedural knowledge possessed by the graduate than they do today.

Explanations as to the survey results centre around law schools as sorting places for legal hierarchies, the emergence of clinical law teaching and the business nature of modern legal practice. A reconciliation of legal science and legal practice is offered through the realisation of the skills common to both. Furthermore, the sophistication that legal science brings to new emerging areas of practice, such as negotiation and ADR, is inherently useful in practice and serves as a marketable product within a legal practice.

## RESOURCES

[no material in this edition]

## SKILLS

### Legal skills training: some thoughts on terminology and ongoing challenges

JH Wade

5 *Legal Educ Rev* 2, 1994, pp 173-193

The definition of a skill can be broken down into three elements: action, practice, and a degree of competence. Learning a skill will necessarily involve doing, doing repetitively, and doing until a level of objective competence is achieved. To educational psychologists the main features of skilled behaviour is that it is goal-directed, learnt, entails co-ordinated activity that is responsive to the environment, involves a repertoire of micro-skills and that the transition from learning to accomplishment is generally accompanied by a shift to intuitive levels of response for the micro-skills elements. The definition of 'skills' is flexible and can be manipulated for many purposes.

The traditional goals of legal education, which the author does his best to list in 14 categories, are quite overwhelming. Lawyers as modern day problem analysts need to know something about everything and everything about something. Amongst the goals of law schools are the learning by rote of certain rules, the ability to manipulate rules, the ability to criticise rules, the development of broad research skills, the various philosophies of law, the sociological study of the law and the identification of ethical issues.

Out of these goals of legal education, which are skills goals? All require action, practice and a

level of competence. It would appear that every goal involves teaching skills. Skills, however, have come to have a more narrow meaning in legal education and include goals such as writing, interviewing, communication, advocacy, identifying ethical issues and more technical transaction skills. Such skills supposedly involve a greater degree of physical activity. Those excluded from the narrow definition of skills involve a greater degree of reflection and internal cognitive activity. There have been three identifiable waves of skills: (1) traditional skills, that is the ability to manipulate and critique rules, in thought, word or writing; (2) the skills of paper and people management, interviewing, negotiating, drafting and advocacy which emerged in the 1970s with the clinical education movement; and (3) the skills of interviewing, drafting basic correspondence and technical documents, which also emerged in the 1970s but through postgraduate PLT and CLE courses. A fourth wave of skills training is difficult to identify or define. It may involve law schools re-emphasising macro problem-solving and social planning.

The challenges involved with teaching third wave skills are lack of time, lack of a systematic curriculum structure to accommodate the teaching and learning of these skills, lack of commitment from both inside and outside the law schools, lack of resources, student unwillingness to engage actively in skills exercises, lack of experiential learning opportunities, the branding of skills acquisition as mere training or indoctrination, the labour intensive nature of skills training, teacher burnout, structural and institutional disincentives, interference with the