

of description: (1) The students stated that moots prepared them for the *real world* through the acquisition of various skills and the opportunity to use their knowledge. Students clearly valued the practical dimension that mooting adds to their education. (2) Mooting provides an opportunity for students to learn from their peers and develop group skills. (3) Mooting is an activity which causes in most students a powerful mixture of fear and elation. (4) Finally and most importantly, students felt that mooting was an excellent way to learn the substantive law and stimulated their interest and enthusiasm for it.

As an assessment tool moots have served a formative rather than a summative purpose. They encourage students to immerse themselves in an area of substantive law, work closely with their peers and develop several important practical skills. An increased understanding of which educational theories are in operation when mooting occurs and what mooting actually means to students will lead to the continued use of moots in legal education for undergraduates, in the manner most appropriate to the circumstances of each law school.

Mooting in an undergraduate tax program

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7 *Legal Educ Rev* 1, 1996, pp 97-124

Mooting is seldom used in taxation courses. The author sets out to determine if mooting can be useful in an undergraduate program that includes or is entirely made up of non-law students.

Mooting has long been a preserve of the law school. It is not generally

found in tax and commercial law courses because mooting is not seen as a skill required by business and tax professionals. However, tax professionals are required to research, evaluate and analyse law and administrative regulations and express their views to clients and government authorities in either written or oral form. There is a strong view that good lawyering skills are not exclusive to the legal profession. However, one of the challenges facing teachers of tax professionals is the interdisciplinary nature of the subject. While the list of skills required may be similar to those relevant to legal problem solving, the exercise of those skills may be different. For example, the business decision making process is contextually different to the legal, yet tax professionals are required to take both into account. Further research into the skills relevant to tax professionals is required.

Possibly the most important skill that a tax professional requires is the ability to think critically. Yet traditional educational processes rarely promote it. Accordingly, it is vital that tax teachers adopt methodologies to develop critical thinking skills. The mooting component of a tax course has a different educational objective to the substantive part of the course, which seeks to focus on knowledge and concepts. Mooting focuses on skills development.

Mackie has put forward an eight-point plan aimed at matching the objectives of the skills component with the substantive subject objectives of a course. A failure to complete this exercise is likely to create a tension between the skills training component and the rest of the course content.

These eight points, which have been applied to tax and mooting, are: (1) The mooting program should encompass the objectives of the substantive component. (2) The criteria for a skilled performance should be provided. (3) Practical examples of a model performance should be given because they attract more attention than theoretical discussions. (4) Opportunities to practise must be provided to boost student motivation. (5) Feedback on performance is an essential part of the learning process. (6) Progress towards a model performance is to be supported. (7) Practice is the best method of consolidation, although this is not always possible within a single subject offering a moot program. (8) And finally, earlier steps should be repeated under different and/or more difficult conditions. Mooting within a tax program can clearly fit within Mackie's plan and can be a valid way of developing the skills required of a tax professional. Hence it should be considered for integration into any substantive tax course.

The mooting model has been employed in a tax course at Bond University in Australia as part of its integrated skills program, using a process that flows easily from Mackie's eight point plan, namely explanation, demonstration, application and actual practice, reflection and review, and repetition. Business and law students are taught together at Bond and so the mooting program has to take this into account. A moot need not take place in court but could be in an administrative tribunal, thus requiring less formality. In setting the problem a reasonable amount of case law should be relevant, preferably with competing views, or even arguing a case on appeal before the appeal is heard. The

arguments for both sides should be evenly balanced. In the preparation for the moot, students learn the skills of problem solving, legal analysis and legal reasoning. One major advantage of a moot is that students can be questioned on their responses and so they require a real knowledge of the law. They also have to develop a strategy and oral communication skills.

It is useful for students to submit a summary of their arguments the day before the moot, thus allowing opposing counsel legitimately to question the arguments and get a taste for court procedures. The moot marking sheet is provided to students in advance at Bond and followed up by formal instruction on mooting by highlighting the assessment criteria. Dialogue between the bench and the student allows the higher level skills of analysis and evaluation rather than the lower skills, such as knowledge, to be assessed. Feedback should aim to reinforce appropriate behaviour as well as point out errors and students usually learn much from listening to the assessment of peers. Videotaping moots has been found to be useful because self-analysis has proven to be a very effective form of feedback. Mooting programs take no more time than setting and marking assignments as four students can moot and be assessed in an hour. Local practitioners could also be used as members of the bench.

In the face of the increasing demand upon tax professionals to provide comprehensive value-added service to their clients, they should be given the best opportunities to acquire the skills they will need in practice. Many of these skills are also those required in a moot.

TEACHERS

The integration of teaching and research in the law department

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The author's purpose in the article is to examine the evidence about the relationship between the activities of teaching and research in law and the advantages and disadvantages of combining the two. This question is examined from the point of view of those law teaching departments which may not be eligible for the U.K.'s Higher Education Funding Council (HEFCE) funding for research. It is widely agreed that the HEFCE prefers to fund research that simply keeps up with the cases and statutes of the day.

The orthodox view on the combination of research and teaching is that the two are mutually beneficial. Nonetheless, this generally accepted wisdom has been challenged. However, there does appear to be evidence that the two activities do enhance one another, at least in relation to legal research, but it is also clear that good teaching can take place in departments with little or no research activity.

A quick survey of law teachers on this matter revealed several reasons why teaching and researching should be kept together. The experience of explaining concepts leads to a deeper appreciation of them and allows clarification of thought on the subject. Teaching keeps researchers up to date with a wider view of the subject and maintains the researcher's critical faculties. Students may be able to offer critical insight into areas of

research, especially LLM students. Research assists teaching by generating primary source material and original insights into the subject. Research leads to the introduction of new courses and the research activity of teachers helps to shape students' attitudes to scholarship generally.

There are, however, disadvantages in combining the two. In particular, time pressures can cause staff faculty to devote less effort to teaching and researchers may assume that students have a greater background than they actually do by neglecting to teach the basics and imposing too great a workload on their students. Researchers may communicate the view to their students that teaching is an inferior activity to research and distracts them from their real work.

Whilst the cuts to HEFCE funding will affect the amount and type of research conducted in many law departments, it is wrong to assume that no research activity will be conducted in them. It is possible to conduct research in law cheaply compared with other disciplines. A difficulty in such low-funded departments is that staff may become demotivated and their teaching suffer. Conversely, the pressure to conduct meaningful research may relieve some staff of stress, thereby increasing staff morale and allowing greater time to be spent concentrating on teaching. There is no possibility that any government will ever return to the old position of providing research funding to all universities.

Good teaching and good research do not simply happen and the two must be well managed. The institutional ethos must support their co-