The role played by conflict-blocking lawyers is one of the least understood and most neglected in law schools. Law schools spend much of their time on sources of law, such as judgments and legislation, but the one source that probably produces more law than any other is overlooked. That source is conflict-blocking lawyers who are engaged in the enterprise of law-making. This, of course, is not the law-making that goes on in legislatures or the courts, although it is related to these sources. This is the vast business of law-making that goes on every day in lawyers' offices and in the legal departments of thousands of firms: the creation of private law accomplished through the negotiation and drafting of agreements and transactions that govern legal relations between people.

The study of law is a mere prerequisite to the main aim of developing lawyers who can solve problems. In traditional legal education, legal theory is knowledge-oriented — focused on the classification of, and relationship between, legal concepts. But professional education requires more of a process orientation. It regards lawyering theory as a problem-solving process.

In the traditional legal education map, lawyering education is not prominently displayed; lawyering and teaching about lawyering are merely a small, remote region in the grand continent of the law. But on the new map, lawyering and teaching lawyering occupy a much larger and clearly identifiable region of intellectual work. Substantive law, although critical to legal education, is just one of numerous knowledge and skills prerequisites from which the complex intellectual project of lawyering can benefit.

INDIVIDUAL SUBJECTS/ AREAS OF LAW

Teaching native title
M Castan & J Schultz
8 *Legal Educ Rev* 1, 1997, pp 75–98

The aims and objectives of introducing native title material into Property Law are twofold. In a general sense this material enables students to develop some familiarity with the historical, social and political factors which have shaped the principles and rules forming part of modern property law. More specifically, indigenous perspectives are important in terms of evaluating the conflicts inherent in orthodox legal doctrines of Property Law. Doctrines such as possession, tenure and estates cannot be taught without a detailed examination of native title and the Australian cases which surround it.

Property starts with its core, the concept of property, and moves on to the classification and interaction of property interests. The *Mabo* decision is fundamental to the contemporary understanding of Australian Property Law. The difficulty is where to start discussing it in detail. Thus *Mabo* exemplifies the Property Law teacher's dilemma. It is a detailed and lengthy case which raises a number of complex new concepts. The challenge for teachers is to know where to introduce the case and, once introduced, to know how much detail is required at any particular point in the course.

In the Law Faculty of Monash University the authors teach the *Milirrpum* case in the early 'concepts' part of the course to illustrate what were traditionally recognised as essential characteristics of proprietary interests, leaving the *Mabo* and *Wik* cases and the *Native Title Act* until students are more familiar with the context of Property Law.

The application of the principles expressed in *Mabo* can be perceived as ambiguous by law students because they are determined by reference to the customs and traditions of the claimants. Students have difficulty marrying the black letter common law doctrine with the apparent fluidity of the indigenous title. Further, they struggle with concepts such as extinguishment, the co-existence of interests and the effect of the legislative schemes. Often this leads to difficulties in applying the concepts and laws of native title to problem based questions. The transformation of 'propositional' knowledge into 'practical' knowledge is tricky in all Property problems but with the added complexity of indigenous title, special attention is needed for students to come to grips with the process.

University teaching may have traditionally been viewed as the transmission of a knowledge base from teachers to students. However, recent academic attention has focused on developing a wider range of skills in students. One of the ways to achieve student based learning, rather than 'top down' teaching, is to break the large groups into smaller groups to work on the issues raised by native title. This can be achieved by utilising teacher-based tutorial or discussion groups, by student led self-learning groups and group presentations to the class.

The inclusion of alternative voices and perspectives within the teaching of native title issues is an important counter to the sometimes frenzied hype surrounding the subject. Ideally, one may be able to include presentations by indigenous representatives. If this is not possible, students should be provided with material written by indigenous people or videos that convey their perspectives.

In terms of the traditional examination based curricula, native title is

often examined through essay style questions. However, students' understanding of the topic can also be effectively examined through the use of problem-style questions. Skills-based training can be introduced into teaching native title in a number of ways. Legal research skills, such as student knowledge and use of legal research tools, can be tested through research projects. To emphasise the importance of the research component of the task, in addition to writing up the research paper, students can also be asked to provide an outline of the process through which they conducted their legal research.

The challenge for the law teacher is to address these issues at an appropriate level and to be armed with a diversity of teaching tools.

Small business: the forgotten client
D Considine & R Handley
15 *J Prof L Educ* 1, 1997, pp 77–115

Legal education lacks a client perspective and, in particular, fails to recognise the significance of small business clients and their need for legal services. The corporate law taught in our law schools is principally focused on the larger corporation and does not accommodate small business. Their need for appropriate legal structures is largely overlooked. This is a missed opportunity for legal education and lawyers alike, one that also contributes to the relatively high rate of small business failure.

At law school, the traditional focus of most subjects studied is the development of the common law, relevant legislation and perhaps law reform. The bulk of legal education is directed at case law, that is, on the outcomes of litigation. As a result, students are taught to view adversarial litigation as the fundamental aspect of legal practice. Such a focus lacks a client perspective. The outcome of the case and its effect on the individual client are not considered. To understand the law requires that it be located in its political, social, economic and cultural context. Part of that context should include a recognition of the client's perspective.

All law schools teach a Company/Corporations Law subject. Because most such subjects deal predominantly or even exclusively with corporate law, students may assume that corporate law is *the* vehicle of business enterprise. To skew students' perceptions even more, the in-depth study of corporate law tends to concentrate on the large corporation.

Thus a small business perspective on business structures is rarely studied in the law school. This is a significant oversight, given that small business makes a major contribution to the generation of income and provision of employment in the community. Small business is largely invisible in all aspects of legal education and this is a reflection of the fact that there is currently no relevant available information about the legal needs and expectations of the small business client.

Law schools' tendency to concentrate on corporate law — thereby implicitly suggesting that the corporate form is the final and most desirable evolutionary product of legal structure — is misguided. Regulation of the vehicles of business enterprise has focused on corporations, and in particular, public corporations. Legal education has also mirrored this emphasis. Yet the justification for the emphasis is certainly not supported by available statistics on small business numbers and structures.

With data clearly establishing that small businesses exhibit a vast array of personalities and attributes, an important question which requires discussion is the impact of the legal system and lawyers on the viability and success of small business. Government funded legal services, if available at all, are generally only provided to those who meet established criteria, typically based on either income or status. Small business is rarely identified as a sector of the community which may have distinct and identifiable legal needs.

Small business is reluctant to consult a solicitor. The nature of legal practice contributes to public ambivalence towards lawyers, for example, that the adversary system and its win/lose outcome often exacerbates tensions between the parties to a dispute, both of whom submit to the system at considerable personal cost. To small business clients, accountants outperform lawyers in the understanding and provision of quality services to small business.

Law schools play an important role in the socialisation of would-be lawyers, promoting shared ideologies and values which, together with the relatively high degree of social homogeneity, serve to maintain the status quo of the profession. Recent studies suggest a progressive loss of idealism which has a significant effect not only on a student's choice of law school subjects, but also on extra curricular activities and, ultimately, on career choice after graduation. The loss of idealism is reflected in public interest practice becoming less attractive at the same time as an increasing preference for corporate law practice. The latter commonly means specialising in legal services for larger corporations rather than small business.

A principal aim of the law school — teaching students to think like a lawyer — also has the effect of promoting a *game* view: that the ability to argue has as its end (and the ultimate professional accomplishment) winning the game. Emphasis on the