

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

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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 sys-

tem 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

game excludes a consideration both of other goals, such as ethical practice and client service, and the social consequences of a particular outcome.

Law schools pay very little attention to their culture and the process of socialisation to which their students are subject. Yet these elements will have an important effect on framing lawyers' attitudes and the way in which they approach their work and also on shaping the legal profession of the future. In particular, small business — their interests, needs and problems — is largely missing from the law school gaze.

There are significant barriers obstructing the development of constructive relationships between small business and the legal profession. There is an obvious need for both quantitative and qualitative research into the frequency and range of services provided by the legal profession. The difficulty in attempting to remedy problems inherent in both the legal treatment of small business and the lawyer/client relationship is to avoid a band-aid solution which will lead to temporary and superficial change. In order to remedy these significant problems, it is necessary to involve all the stakeholders in a thorough and far-reaching process of evaluation and change, so that all are committed to the outcomes. Any such process should not ignore the significance of legal education as a determinant of quality legal services.

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LEGAL EDUCATION GENERALLY

REVIEW ARTICLE

Law in context: enlarging a discipline

W Twining

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365pp.

This book is a collection of essays written over the space of 30 years by William Twining, Quain Professor of Jurisprudence at University College London, and the author, four years ago, of the acclaimed *Blackstone's Tower*.¹

In the eyes of many legal educators, Twining enjoys an enviable reputation as the most eminent and erudite scholar in the common law world on the study of law, particularly within the context of the function of law in society. Hence, a book which collates most of his important writings over almost the full span of his professional life is to be welcomed.

The theme he embraces for this collection is 'law in context'. Indeed, he states in the largely autobiographical first chapter, 'Wandering jurist', that the book presents the reflections of an involved insider on *the institutionalised discipline of law as an enterprise which includes legal education, legal scholarship, legal theorising, and the production of legal literature*. (p.1) However, the emphasis, as the book's sub-title, 'Enlarging the discipline', suggests, is upon providing a detailed exploration of what is involved in trying to develop broader approaches to the study of law. (p.1)

Twining has arranged his 16 essays into three groups. As he states, the first

four chapters establish a historical context and articulate an approach to broadening the study of law from within in accordance with the classical values of a liberal education. The second group of seven chapters is concerned with implementing the program in particular fields, particularly legal theory, evidence, legal method and skills teaching. The final group of five chapters canvasses international trends and policy issues in legal education and scholarship in common law countries.

Within the confines of a Digest review article, it is impossible to evaluate this book in the detail it deserves, but merely to provide a brief resumé of the contents. Several of the essays are very familiar, for example, *Taking facts seriously*, written in 1980, presents Twining's views on the need to teach Evidence, Proof and Factfinding as an integral part of the core curriculum. However, by far the most celebrated of his papers, reproduced in this book, is *Pericles and the plumber* from 1967. In this essay he argued that most discussion on the education of lawyers was based on two contrasting images of the end product of professional formation: the image of Pericles as the enlightened policymaker, lawgiver and wise judge and the plumber, a no nonsense competent technician concerned with socially useful but essentially mundane tasks. In a newly written chapter for this book he revisits these polarised notions of the lawyer to see whether after the lapse of 30 years his views have changed. He concludes that he would still maintain that monolithic models of the lawyer are too simple as a basis for designing legal education or establishing individual or collective professional identities. Twining's outlook is that law and legal practice are even more varied now than 30 years ago and he remains sceptical of attempts to re-

¹ Reviewed in *4 Legal Education Digest* 3, January 1996, pp 9-11.