Our findings after many uses of the exercise show that the vast majority of players opt for the 'logic of defection'. This is a negative-defensive strategy which starts by seeing the interaction as a competitive one in which not losing is its principal interest. The overriding strategy adopted by the authors' groups, no matter where on the program the exercise was used, was negative-defensive. That is, groups opted to adopt a strategy which gave them the highest possible positive score or the lowest possible negative score.

It does not take participants long to realise that without cooperation between both teams, there is no realistic possibility of either ending up with a positive score. Why, then, does the strategy of defection continue throughout the exercise, in spite of any agreements to co-operate that might have been reached at the negotiation points? Why do teams persist with a 'lose–lose' strategy, when they have previously discussed and reflected on the value of mutual cooperation? Moreover, why does it persist when it is clearly consistent with the team's self interest to cooperate?

A cooperative approach to negotiating over the long term affords a positive aggregate result for the lawyer and the clients. The risk for the lawyer is that this overall outcome is premised on a 'win some/lose some' approach. Few individual clients would consider it in their interests to be among the 'lose some' group. The risk for the lawyer over her negotiating career is similar to that in the Red/Blue exercise. Each time she opts to cooperate, she is taking the risk that the other side may defect, leaving her client with a very unsatisfactory settlement. The gains of cooperating, however, in any individual case may well be less than could have been obtained by being uncooperative. On the other hand, being uncooperative from the outset could, in the right circumstances, deliver a highly satisfactory result for her client, while if both sides refuse to cooperate, the negative outcome might be tolerable.

This poses a dilemma for lawyers. They recognise the professional, practical and commercial benefits of cooperating over the aggregate of a bargaining career and, by implication, the dangers of non-cooperation. The dilemma is brought about because of the lawyer's perception that clients want an aggressive advocacy of their case which maximises benefit to them. What is apparent here is that the anti-cooperative theory of action is present as far as the needs of the individual client are concerned, whilst the lawyer has come to understand that her professional success is premised on the notion of cooperation with co-professionals over the long term. Consequently, lawyers experience a conflict of interest: their own against the perceived interest of the client.

The lawyer's theory of action is that she must behave competitively because the client expects it of her. Her own interest, however, is probably to act cooperatively. This signals a ritualised war dance between adversaries, beneath which lies a desire to maintain profitable long-term relationships and aggregate client satisfaction whilst giving the impression of going for a win at all costs.

The Red/Blue exercise is a powerful experiential exercise which the authors have used for a number of years on negotiation programs. Its use is primarily to bring to the surface theories of action that students use in potentially conflictual negotiating situations. These theories of action can then be discussed and evaluated against the evidence we have of lawyer bargaining behaviour.

The authors' experience of using Red/Blue demonstrates, first of all, that participants are quick to behave according to an adversarial theory of action, and secondly, that the theory of action required to reach a satisfactory outcome to the exercise is significantly different from this. Students quite readily espouse a variety of negotiating strategies including bargaining co-operatively. Their experience shows that there is a discrepancy between the espoused theory and the theories they are actually able to call upon.

The problem-based education approach at the Maastricht law school
J H C Moust
32 *Law Teacher* 1, 1998, pp 5–36

The necessary instructional models for educating our future professionals in law-related domains must have two aims: to prepare students for continuing education and to help them become effective problem-solvers. Although the case method of legal education is a very useful instructional approach to teach students legal reasoning, how to analyse appellate opinions and synthesise legal areas, it fails to teach them to come up with solutions of their own. Advocates of the problem method in legal education have written repeatedly on how to present this approach to law students and on the advantages and disadvantages of this method. Problem-solving seems more relevant to lawyers than ever before and is the single intellectual skill on which all legal practice is based.

Students are not trained to solve problems. In spite of the fact that the case method has its advantages over such didactic approaches as lecturing, it does not lend itself to teaching students all the skills needed in legal practice. There are four advantages for the problem method: it is an adequate

preparation for the students' future profession; knowledge will be better remembered; students acquire problem-solving skills; and the knowledge acquired will be better applied to new situations.

The Faculty of Law at Maastricht University, Holland, implements the problem-based approach to learning. It offers its students a four-year curriculum. Each year is divided into four courses of nine weeks ('units'), during which students are required to study topics organised around a particular theme. Teachers of various disciplines, organised in 'planning groups', collaborate to produce a wide range of learning incentives and resources in order to provide students with a basis for understanding the topics brought together from the various disciplines. The members of the planning group are responsible for all teaching activities in the course. They put together a so-called 'unitbook', organise small-group tutorials, skill-training practicals and lectures. They are also responsible for the tests at the end of the course. At the start of a block period, each student receives a unitbook. Apart from an introduction to the theme written by the members of the planning group, it contains approximately 32 assignments designed to offer students an incentive to study the topics related to the theme and an extended list of references from which students may choose study materials.

In building a curriculum in this problem-oriented and integrated way, the Faculty strives to stimulate students, in the early stages of their studies, to collect and synthesise information from a broad range of disciplines and teach them to glean such information selectively and efficiently from a variety of sources. The staff also hope that students will acquire an attitude of actively applying their knowledge and that students are continuously trained in problem-solving skills. By being educated in this way, students discover from the outset that working on problems calls for the integration of different subject matters.

Problem-based learning can be briefly described as a collection of carefully constructed and engaging problems presented to small groups of students. Tutorial groups meet twice a week for two hours. The task of the group is to discuss these problems in terms of the underlying theory, their legal definition, the applicable legal rules and relevant case law and they elaborate on tentative explanations for the phenomena or events described. Essential to the method is that students' prior knowledge of the problem is, in itself, insufficient to understand the problem in depth. During the initial analysis, students will try to build a preliminary mental model of the processes, principles or legal rules responsible for the phenomena described. However, since their prior knowledge is limited, questions will come up and dilemmas will arise, which can be used as learning goals for subsequent, individual, self-directed learning. After a period of individual study, students return to their group to exchange the information found in the literature.

In order to help students work with problems in a proper, methodological way, a procedure has been developed, which is called the 'Seven Steps' method, which, when applied to problem-based learning, are: clarify terms and concepts not readily comprehensible; define the problem involved; analyse the problem by brainstorming; analyse the problem by making a systematic inventory of the results from the brainstorm; formulate learning objectives; collect additional information outside the group (independent study); and synthesise and test the newly acquired information.

A very active role is required of students in acquiring subject knowledge in the problem-based learning process. Students must explain to each other the principles, theories or rules involved and the reasons why they are relevant to the phenomena described in the problem assignment. They must also establish the weak and strong points of a theory and the way in which certain aspects of a legal process are to be understood. The students are more or less each other's teachers. The small-group tutorials are based on co-operative learning behaviour. However, students, who are novices in many legal domains, need support in order adequately to analyse problems and to be able to synthesise the relevant knowledge. Hence, each small group tutorial is guided by a tutor, who has two main tasks: to facilitate students' learning process by guiding the students' self-directed exploration of new domains of knowledge; and to spur students' autonomy.

There is substantial improvement in order to create a learning environment that for the greater part meets the requirements of effective education. First, many students, especially first-year students, fail to take maximum advantage of the program offered. This has to do with the great heterogeneity in motivation, expectations and capabilities of the newcomers. In order to better motivate students, a greater emphasis must be placed, for example, on the learning context in which students have to perform. In designing unitbooks, for instance, more attention should be paid to coherence between problem assignments and strategy assignments. Students ought to be confronted more expressly with the different professions they might practise later on, irrespective of the theme of the unitbook. Secondly, students often have problems in dealing with problem-based learning

methods, because they often lack prior knowledge and fail to sense the vital importance of activating prior knowledge in the process of acquiring and retaining new information.

An aspect deserving more attention is the way in which tutors act when guiding students. Although only a few among the staff still think in terms of 'educating is like filling a bucket', in daily practice, a number of staff nevertheless tend to act on the basis of this heritage, when students appeal to them. If this type of behaviour occurs frequently, students' independence and responsibility for their learning process are thwarted.

The development of a curriculum in which full learning capability is the central issue requires a lot of planning and good co-ordination skills from curriculum designers. Harmonisation of unitbooks, establishing a *leitmotif* throughout the curriculum years and continuous sensitising of students and staff with regard to the objectives based on the premises is no easy task.

TEACHERS

Legal scholarship for new law teachers
R P Buckley
8 *Legal Educ Rev* 2, 1997, pp 181–212

There are five reasons for law teachers to try their hand at legal scholarship. The principal reason may be the enjoyment of the process and the challenge. Another major reason to write is for the advancement of one's career, because in most law schools promotion is based primarily upon scholarly output. A third reason to write is as a self-education tool; research and preparation is rarely as thorough for teaching as for writing. A further reason to write is to contribute to the development of law through the cases and legislation; legal change is typically slow and one way to promote it is through writing. The final reason to write is to contribute to others' understanding of the law — academics and practitioners alike — and to be part of the community of scholars.

The threshold issue on what to write is 'what is legal scholarship?' This seemingly simple question admits of no simple answer. The range of work which can comprise legal scholarship is broad. In addition to the traditional doctrinal article or text, it includes theoretical analysis, sociological studies, law reform reports and draft legislation and empirical research. None of these non-doctrinal areas are well served in Australia. Most legal scholarship is concerned with the exposition, analysis and reform of doctrine. In particular, empirical work has been neglected. Until appointment and promotion committees regularly rank empirical work more highly than doctrinal research, the larger skill base and greatly increased investment of time it requires is apt to go unrewarded.

There are a number of paths open to a new law teacher in search of topics on which to write. One approach is to ask around. Ask more experienced academics or practitioners what are the gaps, what is in fashion, what needs to be explored. Strive, if possible, to attach yourself to a group of scholars. Another approach is to get yourself on the conference circuit — present as many papers as possible and hope for feedback. A third approach is to enroll in an LLM or SJD which is assessed by research papers. A fourth approach is to write for publications which need regular, shortish contributions, such as law society and some professional niche journals.

The new scholar has to decide upon the type and extent of treatment of the topic. The options are to write large, sophisticated articles for university law reviews or professional niche journals; chapters in books or legal encyclopediae; shorter, more practical articles for professional niche journals; short, practical pieces for law society journals; and short, commissioned pieces for loose-leaf services.

This is a question of personal taste and temperament. One view is that learning to write well is an incremental process and new law teachers should set their sights accordingly. The production of a body of scholarship is a long journey. Follow your interests and passions in choosing topics and try to write initially in the marketable size range of 3,000 to 8,000 words.

The writer yearns to be published. How does one achieve this? The focus is on the publication of journal articles in Australia. Step One is to choose a journal. Many new law teachers find this difficult. Academe is in many ways a status game. Publication in university law journals is well regarded with greater status often attaching to publication in the journals of the older universities. Publication in an established university law journal is probably a safer course for the new teacher, as there is less scope for any quibbles about the forum, although such publication is potentially more political and difficult to obtain than publication in a specialist professional journal. People making promotion and appointment decisions will often gauge the quality of your scholarship by the journal's size and place of publication.

Step Two is to produce a manuscript that looks professional: one and a half or double spaced with wide margins and in a good typeface. Spell checking the piece is essential. Having a colleague read it for clarity and correct expression is also an excellent