

In addition to the new forms of legal practice, some new sets of legal concepts are becoming more familiar within a whole range of legal subject categories and may now need to be considered as part of the foundational elements of legal conceptual material to be studied. The development of these concepts arises from a mixture of factors, and not only the development of new forms of practice. Changing law and policy, through both statute and common law, and changes of practice and procedure have all equally been involved in crafting these concepts. These new concepts include: relative need; risk; right; relationship; responsibility; remedy; and quality of life.

Finally, with respect to the structure of the curriculum itself, old legal subject boundaries are based on limitations defined by precedential accident and legal work area over generations of development. But the lawyer of the future will be a specialist in the particular needs of elements of client work which transcend all legal subject boundaries and centre on the transaction or the litigation itself, or the individual client. It may therefore be necessary to reconsider legal subject categorisations in accordance with legal work. Such classification was, in any event, serendipitous. It now needs to be rational.

Changes within legal practice mirror changes within society. Professions are undergoing major changes in status, organisation, work patterns and work content. The nature of professions and professionalism is changing. Professions are not accorded the special status of untouchable occupational groups whose word is respected and whose competence is undoubted. Sub-professions and sub-specialisations abound. The question is whether legal educators should be ahead of these changes, understanding their meaning and preparing both the lawyers of the future and those who study law and what lawyers do for the world in which law will operate. It is essential that we begin the discussion of these issues so that we can prepare the curriculum, the approach, the subject matter and the skills with which to educate the lawyer of 2010.

So far, despite the increasing clarity of the movements portrayed above, legal edu-

cation at the undergraduate level has remained remarkably unchanged. Not to ask these questions means not even to begin the discussion as to whether legal education should be considering or reflecting these issues.

SKILLS

A focused-practice exercise in commercial drafting

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To learn by simulation, students need to practise on realistic problems. These problems are the core material of the problem-centred curriculum and its most important feature. When well designed, they motivate students to learn the knowledge and skills they need to solve problems lawyers are confronted with in practice. For law teachers, designing realistic problems is an important job and to see these problems work in the classroom is immensely satisfying.

The purpose of this paper is to share such a problem and the rationale for its design with readers. Although well-designed problems are critical to student learning, they are not ordinarily published in academic journals. Indeed, they are not ordinarily published except in student learning materials. As products of academic effort they tend to go unrecognised beyond the classroom. If law teachers are encouraged to submit their problems for publication, it is likely that criteria for excellence in problem writing will eventually be developed. Referees can then use these criteria to evaluate future submissions. The result may be that more law teachers will be motivated to write more and better problems and that ultimately student learning will benefit.

The problem set out in the article was designed for the Commercial Law and Practice course at the University of Hong Kong's PCLL (Post-graduate Certificate of Laws) program. The PCLL is the rough equivalent in Hong Kong of the Legal Practice Course (LPC) in England.

The format of the problem is what is referred to as focused practice. It is 'fo-

cused' in the sense that students are asked to perform a few pieces of the problem but not the whole of it. This focused-practice format has certain advantages. One advantage is that it streamlines realism. In real life, areas such as commercial drafting are dense with documents and detail, so absolute fidelity to realism tends to overwhelm both students and teachers. In that situation, there are just too many things students need to know and to consider to make sense of the problem. With focused practice, however, the problem writer can reduce the detail to streamline the problem and make it more manageable. Objectives can be focused using a series of specific questions or instructions. The problem remains realistic, but it takes account of limits on time, resources and pre-existing knowledge.

Another advantage of focused practice is in the evaluation of performance. When students are asked to draft a whole document from a set of instructions, without a specific focus, it can take a long time for teachers to evaluate their work. But with focused practice, evaluation can be fast and efficient. Because each specific instruction in the problem can demand a different skill or a different level of skill, focused practice obliges students to demonstrate skills, one at a time, enabling teachers more easily to identify and evaluate each. The resource efficiency of focused practice becomes particularly obvious with larger classes or when teachers are in short supply. A large group of students can perform the problem with minimal supervision. One or two teachers can then grade all the students' work. Alternatively, where there are even fewer resources, one teacher can simply hand out and discuss the solutions with students who can evaluate their own work.

The problem involves drafting and document analysis in a joint venture context. The students are asked to play the role of solicitor for one of the joint venture partners. Prior to working on the problem students have attended a lecture on the drafting of joint venture agreements, reviewed a sample joint venture agreement, worked on a simpler joint

venture drafting problem and experienced a range of learning activities in the drafting of other commercial agreements, such as a share acquisition agreement and an employment agreement. Certain features of all the commercial agreements in the course were deliberately made similar so as to promote the transfer of learning from one context to another.

Which provisions of the agreement are selected to focus on depends on a number of factors. For example, what students have already done in the course is important. They cannot be expected to come up with solutions that require knowledge and skills for which the course has not yet prepared them. Selection also depends on the special facts or story underlying the problem. Issues are allowed to surface that are a natural outgrowth of the story. As a rule, designers should not force issues into a problem unless they fit with that story. While focused practice can lead to achieving specific learning objectives that arise from these selections, the objectives themselves are nonetheless written at a high level of generality so as to avoid giving away solutions.

There are three features of the problem that show how practice can be focused so as to enable student skill or understanding to be efficiently evaluated. The first of these features is minimisation of original drafting. Students are required to do original drafting only in relation to one short clause. In the remainder of the agreement the only drafting required is redrafting.

The second feature is minimisation of response: like a multiple-choice quiz, the exercise attempts to assess understanding and skills with the briefest responses from students. The third feature, as discussed above, is that the exercise calls for students to meet specific skills objectives in response to individual, segregated instructions and not in response to a set of general instructions that asks students simply to draft an entire agreement.

TEACHING METHODS & MEDIA

Flexible delivery, educational objectives and the (political) importance of teaching

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University administration and government policy in Australian higher education demands that institutions, faculties and departments engage in strategic marketing to attract students not merely from across the country but from around the world. The aim is to develop and deliver courses such that the market share captured is constantly increasing – and this in an environment of ever-tightening budgetary constraints. Filtered through the commercialisation of management, the demands on academics have changed: ‘flexible delivery’ is fast becoming the sine qua non of ‘innovative’ and ‘valuable’ teaching and marketing in higher education. In the Internet, more so than any other medium, lies the possibility of radical change not merely in administration and course delivery, but also in course design and teaching.

Educational objectives must remain paramount and the use of technology must be contingent upon the teaching and learning aims of a subject or course. In particular, it is suggested that the type of technology employed is very much a secondary concern. There is not necessarily a need to use technology to its limits unless the learning objectives require it.

The term ‘flexible delivery’ should not be understood as inherently requiring or limited to Web or other Internet delivery, but includes a range of factors which increase flexibility in access, teaching and learning. Flexible delivery materials may thus include a wide range of print-based materials or, for instance, video recordings, audio recordings, or CD-ROMs. Flexible delivery should also not be equated with distance education or open learning. It encompasses ‘mixed-mode’ delivery which may utilise a combination of face-to-face and flexible approaches. Nonetheless, it is the perceived potential of the Internet to dramatically enhance education and access

to education which makes it so appealing as a medium for the expansion of flexible delivery.

While many teachers desire (or are compelled) to deliver courses more flexibly and make use of Internet technologies in their teaching, anecdotal evidence would suggest this is frequently accompanied by scepticism about the educational value in using technology – what might it do for learning?

In the drive towards flexible delivery, teaching matters – not technology. It is essential to examine the predisposition to and motivation for the use of new technologies prior to determining whether particular applications of technology are either appropriate or desirable. For those who would prefer the traditional methods of classroom-based teaching, there is a need to realise not simply that the Internet is here to stay as an imposition of management, but that it provides genuine and valuable opportunities for teaching and learning, many of which require little technical skill and can still foster positive learning outcomes.

Conversely, where flexible delivery is administratively defined in terms of cost efficiency or pure technological advance, there is a need to recognise that pedagogically valuable use of Internet technology may not necessarily be interactive, and it may not necessarily utilise the very limits of computing capacities.

The first year introductory subject in the Bachelor of Laws degree at the University of Western Sydney, Australia, is Introduction to Law. The subject has traditionally been taught with a weekly one-hour face-to-face lecture and two hour tutorial class. The *Starting Out* project in 1999 set about replacing the lectures with a weekly electronic ‘web-lecture’, while maintaining the weekly tutorial, making it a ‘mixed-mode’ subject with both Web and face-to-face delivery. The project was driven by several needs, including the alleviation of administrative and resource pressures.

The subject Web site provided access to all substantive and administrative aspects of the course which in the normal