method, a teaching technique that does not simply supplement cases with explanatory problems, but one that uses problems as a central tool for learning the rules and principles. Problems become equal to cases and at times even supersede them in the teaching methodology hierarchy. Why use the problem approach? Many teachers use problems to supplement the primary learning methodology, case analysis. It is perhaps no coincidence, however, that property law is one of the courses that least utilises problems and is the most perplexing to students. A problem orientation would offer students formative feedback, allowing them to improve on their performance as the course progresses.

Property law is a rich and rewarding course to teach and ought to be the same for the students who study it. By using organisational schema and methodologies relevant to even the youngest group of students, connections can be made to enhance the educational value and enjoyment of the course. The experience of property law is tied both to the course content and its presentation. When instructors experiment with a problem-method and a reconceived synthesis of the course framework, the benefits are palpable.

Teaching important property concepts: teaching about inequality, race and property
FW Roisman
46 *St Louis L J*, 2002, pp 665–698

One of the most salient facts about property is the inequality that characterises its control. The US, like the rest of the world, is divided between haves and have-nots. This inequality is great, and has been increasing in recent years. We who teach about property ought to teach about this inequality, in both its international and domestic manifestations. This article addresses a particularly striking aspect of the inequality: that it is clearly colour-coded.

There is no question that in the United States there are large differences between whites and minorities, particularly African-Americans, with respect to control over property. These gaps characterise all measures of property control: income, wealth, and the particular form of wealth represented by home ownership. The incomes of blacks and Hispanics lag behind those of whites by wide margins. Moreover, the racial income gap, like inequality generally, has increased in recent years. The disparities are particularly striking with respect to characteristics of residence, whether one is a home-owner or a tenant, and the value of the home, in financial and other respects.

This racial disparity means that minorities are disadvantaged with respect to what is for most middle-class households in the US the greatest source of household wealth. Home ownership affects the ability to finance education, self-employment and other capital development. It is the principal source of family wealth that is transmitted from one generation to another, and family wealth, in turn, largely determines whether and to what extent home ownership is possible.

Racial property disparities are maintained by everything in our property regime that makes minorities disproportionately renters, rather than home-owners, or segregates them in neighbourhoods where property values appreciate relatively little, and schools, safety and employment opportunities are relatively poor. The causes of the racial disparities have been the subject of considerable analysis and discussion. Although some argue that they are due to choices or attributes for which minorities are responsible, substantial scholarship shows that concepts of white supremacy, racial dominance and similar racial attitudes, their implementation in racial discrimination and segregation, and their embodiment in social structures, all contribute to the racial disparities in control of property.

Many cases that appear in all parts of the property curriculum illuminate ways in which white supremacist ideology and action have been a substantial cause of racial disparities in control of property. These involve, among other things: conquest; slavery; disposition of public lands to predominantly white, male, Anglo beneficiaries; explicit racial zoning; racially restrictive covenants; 'manifest destiny'; 'Negro removal' by the urban renewal and interstate highway programs; racially discriminatory donative transfers; the implementation of the public housing program; the treatment of farm workers; and the use of zoning to establish and maintain exclusively white, Anglo settlements.

In addition to these cases and related material, the author teaches a class that explicitly explores the forces driving the larger distribution of advantage and the structural underpinnings of inequality, seeking to focus attention on the ways in which the opportunity structure has disadvantaged blacks and other minorities and helped contribute to massive wealth inequalities between the races.

Great property cases: using property to teach students how to think like a lawyer — whetting their appetites and aptitudes
P Wendel
46 *St Louis L J*, 2002, pp 733–759

Like many law professors, particularly those who teach first-year courses, the author subscribes to the theory that it is not his job to teach students 'Property', but to teach them 'to think like a lawyer'. So when he was invited to write an article about 'teaching Property', he began to construe the invitation in light of his teaching philosophy and style. To the extent that he claims to 'teach students how to think like a lawyer', could an essay be written about how the law of property can be used to achieve that goal?

Many learned law professors have acknowledged that the primary pur-

pose of law school is to teach students how to 'think like a lawyer', yet few have attempted to explain what it means or how to go about it. The reason it is so difficult to define is that no one professor, and no one course, can achieve the objective. Learning how to 'think like a lawyer' is the cumulative effect of three years of law school, of being exposed to different methods of teaching and different methods of analysis. Since the process is larger than any one professor, no one professor can define the process. Moreover, the process of learning how to 'think like a lawyer' is a 'growing' process. Students 'grow analytically' with each class, just like children grow physically each day. Such growth is so slow and incremental that it is near impossible to notice.

There are many different parts of the property course that contribute to the process of teaching students how to think like a lawyer. No doubt some academics would argue that forcing students to chew on the difficult theoretical question of 'what is property?' helps them grow the most. Others would argue that forcing students to chew on a whole host of difficult doctrinal questions contributes the most.

At most law schools, Property is a first-year, first-semester course. The start of law school is truly a dizzying experience. The study of law is such a multifaceted endeavour, and so different from anything first-year law students have done before, it can be overwhelming. We ask them to read a different type of text – cases; we teach them using a different technique — the Socratic approach; and we test them differently — asking them to analyse fact patterns. As if these differences were not enough, within each difference are a whole host of tasks that students must perform. We ask them to perform these tasks without teaching these tasks or explaining how they are relevant to the larger law school educational process. First-year law students find the start of law school baffling. On top of that, the classroom discussion appears to pay scant attention to what they assume they are supposed to be learning — the rules of law.

Much of the reason for this is that they have been conditioned to think that the goal of the educational process is obtaining substantive knowledge, and that the text and classroom components are merely means towards that end. That end is tested by an exam, which asks them to regurgitate the substantive knowledge they have learned during the course of the class. Students begin law school salivating at the thought of reading books setting forth the relevant rules, which they will memorise and regurgitate on the exam. First-year law students are understandably confused, then, when they are asked to read cases instead of texts, which set forth the relevant rules of law.

The problem is first-year law students fail to appreciate that law school turns the educational process on its head. What they assume are the 'ends' of the course, the rules of law, are merely the means used to teach them the process of learning how to 'think like a lawyer', and what they think are the means becomes the end. No one bothers to tell this to the students though. Instead, they are simply subjected to the process and it is assumed that with time they will figure it out.

First-year law students tend to think about cases from a simplistic perspective which focuses too much on the factual nature of the case. Unfortunately, this tendency is reinforced by the classic case-briefing model that instructs students to start by stating the facts of the case. Having started down that path, students tend to stay on that path, stating the issue in a very fact-sensitive manner. They then tend to state the answer to the issue in a fact-sensitive manner. Hence the tendency to over-focus on the factual nature of the case.

After letting the students brief the case, the author gives them a chance to critique the case, or at least their fact-sensitive version of the case. 'Putting aside the court's holding, what should have been the outcome in the case, and why?' Emboldened by their apparent success so far, students jump in eagerly. Having measured the students, and left their mark on the board, the author tries to make them aware of the growth they will need to make to think like a lawyer.

The process is started by asking the students to compare their comments with the court's opinion. Most of the students recognise that their initial analysis of the case is definitely different from the court's treatment, but they are not quite sure how to articulate the differences; and they definitely are not prepared to comment on the differences. Ever since the adoption of the Langdellian approach to the study of law, students are fed a steady diet of cases during law school. Understanding what a case is, and what a judicial opinion is, goes a long way towards facilitating what it means to think like a lawyer. Nothing in the traditional Property casebook prepares the students for this question. The purpose of the question and ensuing discussion is merely to convey a sense of the judicial process.

The students begin to see the case on two levels. There is the case, the unresolved factual dispute between the parties that needs to be resolved; and there is the issue, a novel question of law that needs to be resolved. In resolving the latter, the court is making law. When making law, the court needs to consider what is in the best interests of society, and why; the court needs to consider how similarly situated parties will be affected, not just the parties before the court. One can sense the students' level of interest and excitement picking up as the students

get their first taste of what it means to think like a lawyer.

The students are asked to compare the temporal direction of these considerations as opposed to their initial thoughts about how the case should have come out and why. The students immediately recognise that the temporal direction of the court's analysis is prospective. In making its rule of law, the court's focus is on the future implications of its ruling, not this particular case. Since the court is making law, the court's focus is on what is in society's best interests and how similarly situated parties will be affected, not just the parties before the court. The students recognise that their initial analysis of the case was completely retrospective, focusing almost completely on the facts of this particular case and not on the larger issue. To the extent the court's opinion is an example of thinking like a lawyer the students have been forced to measure themselves and their analytical abilities with those of the court.

Students must properly understand what the court did and why before they are in a position to critique what the court did and why. Having dissected and critiqued the opinion, the students need to know how to apply it. How does one apply a rule to a particular fact pattern? Intuitively most of them realise that you can break most rules down into segments or elements. In applying the elements to the facts, the students are advised to start with the elements that they think are most easily satisfied and work their way to the elements or parts of the rule in dispute.

By the end of this process the students have been exposed to the basic legal analysis skills and techniques they will need to think like a lawyer. By then, they realise they need to be more conscious of the relationship between the factual, legal, and theoretical considerations at stake in each case.

A number of students and professors say that the way law professors teach students how to think like a lawyer is like teaching students how to swim by throwing the students into the deep end of a pool. The author prefers to think that teaching law students how to think like a lawyer is like teaching children how to ride a bike. First and foremost, thinking like a lawyer is a process, an activity, which one can learn and master only by doing, like riding a bike. No matter how much or how well one describes the process, in the end one learns it only by trial and error. Some will master the process quickly, as if they were naturals, while others will struggle for quite some time. No doubt many would argue that the swimming analogy is better because students feel so overwhelmed by the process, it is like they are drowning at first. Once the students master the basics of balancing the different planes within the analytical template, then they can move on to the more creative uses of the process.

LEGAL EDUCATION GENERALLY

Legal education in Australia: currents issued and developments
The UTS Law Review No. 3, 2001
Halstead Press, Australia
242pp

This collection of 14 reports, articles and essays, contributed by prominent Australian legal education scholars, was published as a complete issue of the law review of a leading university. It is a significant addition to the critical reflection on the major problems confronting legal educators today, not only for those located in Australia but in the main shared in many overseas jurisdictions.

The objective stated by the editors is to present

> *a compendium of the critical questions and issues facing legal educators today from the perspective of law academics at the coalface of teaching practice. How do we address the challenges and opportunities thrown up by the advent of information technology? How can we maintain and improve our teaching practices in poor funding environments? Is there enough time left over to be innovative, and how can we encourage each other to become innovative teachers? (p5).*

In a brief overview of current status, Trimmer identifies the key issues for legal education as: (1) the funding crisis restricting the ability of law schools to respond to the challenges presented by current and future legal practice; (2) the impact on content and teaching of the commoditisation of legal practice and the application of technology; (3) the incorporation of skills teaching to add value to legal services; (4) the need for legal ethics training to pervade the whole curriculum; (5) the development of uniform standards in the content of the law degree; and (6) the need for training in technology to be accompanied by substantial investment in technology within law schools and law libraries.

Johnstone and Redmond describe the progress made with an ongoing research project commissioned by the Australian Universities Teaching Committee on learning outcomes and curriculum development in law. The first stage will be to collect survey data from law deans, students, teaching staff and from focus groups of key members of the legal profession and other stakeholders. The research questions have been grouped under four headings: curriculum design and review within a law school; influences on the curriculum; support for and management of teaching; and constraints on good curriculum design and teaching. The research report will be awaited with interest.