

## Conference on Educating Lawyers for Transnational Challenges

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### Discussion paper for session: Special Methods and Tools for Educating the Transnational Lawyer

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The development of legal education has seen a variety of experiments that are more common in other fields of education, such as medicine, engineering and information technology. Examples of these experiments include case studies using:

1. Group project simulations;
2. International collaboration; and
3. Cross-cultural negotiations.<sup>2</sup>

These three types of case study are attractive in a class environment where:

- Students come from international backgrounds and will return to practise or work in different jurisdictions from the place of study;
- The material covered includes comparative or cross-jurisdictional issues;
- The material is relevant to practice or business;
- The objectives of the class include an understanding of new material via students' experiences;
- The objectives of the class include the development of teamwork and useful problem solving skills for complex transactions in addition to the other skills that the teaching methodology will develop.<sup>3</sup>

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<sup>2</sup> These should be developed based firmly on models such as the learning cycle of DA Kolb, *Experiential Learning: Experience as the Source of Learning and Development* (1984 New Jersey).

<sup>3</sup> As per ABA, *Legal Education and Professional Development - An Educational Continuum: Report of The Task Force on Law Schools and the Profession: Narrowing the Gap* (1992 ABA) ("MacCrate Report"). Ironically, the MacCrate Report appears to be more discussed in skills-oriented Australian law schools, than in US law schools.

At Bond University Faculty of Law all of the above conditions exist. The environment has proved to be therefore ideal to implement the three types of case study in different forms. We are still experimenting and developing this type of learning experience. What follows is necessarily an over-abbreviated description of our experience of each of the different approaches to the case study method relevant to cross-jurisdictional transactions.

### **1. Group project and simulation – International Business Taxation**

The subject involves the study of the taxation implications of international business transactions. It is an elective designed for students from any jurisdiction and normally has 30 students or less in the class. The students learn the principles of international business taxation. They also learn how to apply those principles to complex structures. The subject is designed to develop, among other objectives, high level problem solving and communication skills that are applicable in whatever jurisdiction they end up working.

The element of the class relevant to this paper is a group study project using a problem and a presentation. It could be used for domestic problems but is well-suited to study of complex international business transactions. The problem aims to illustrate common transactions which graduates will/may soon encounter. The lecturer and a designated senior manager from a local international tax advisory firm (a top tier accounting firm in this instance) collaborate. They design a series of problems using complex transactions to illustrate the application of key principles taught within the subject. The problems are of a similar standard of difficulty.

At a class two weeks prior to the group presentations the students receive a copy of the problem. The lecturer first describes the problem, its parameters, reiterates the process, the expectations and the assessment criteria. The students then divide into groups of three or four on a self-selected basis with intervention only to ensure that some account is taken of individual preferences. They are advised in the course materials and it is explained in the first and subsequent classes that this will take place. Normally by this stage of the semester, small groups are established. Where students do not self select, the lecturer assigns the remaining students to a group with

mutual agreement. The groups choose the problem they wish to study based on an informal mix of preference and allocation. Once the groups are established and they each have a problem the lecturer reverts to the normal class program.

The students work in their small groups to develop a preliminary answer to their case study problem. At the next class the firm sends three to four of their mid-level staff familiar with such transactions in practise to assist the students. At the commencement of the class the lecturer and firm representatives deal with any general questions. The firm representatives and the lecturer then circulate among the groups to review their preliminary answers, suggest alternative approaches where appropriate, identify where students should explore further to avoid obvious errors, and answer the many questions. Once the students are satisfied with their progress they move to the library in their groups and the lecturer and firm representatives remain available for the remainder of the class for further discussion as the class follows up some of the issues raised in the initial discussions. The classes are normally run in three-hour blocks.

The following week sufficient time is set aside for each group to present a proposed solution to their case study.

### **Assessment, Role-modelling and Feedback**

Each group member must present on an aspect of the problem, usually for five to seven minutes. The group must also provide a written, note-form summary of their presentation. The presentation is made to the class with assessment by the lecturer and a partner of the firm. After each group presentation the partner and the lecturer give verbal feedback. The lecturer can give subsequent written feedback, which adds to the learning experience. The presentations usually take approximately half an hour each and, in a large class, half a day needs to be set aside. The presentations should preferably be videotaped for subsequent review by both the lecturer and students if required. At the end of the session the partner provides a twenty minute summary of the principles he/she would use in practise to solve the problems particularly given their international dimension.

## **2. International Collaboration – Information Technology and the Law**

This subject depends on links with another institution in another jurisdiction. There are numerous possible variants. This particular subject is run simultaneously with a similar subject at a partner institution in the United States of America (US). Both classes have a common group project designed collaboratively by the Australian and US instructors. The project usually involves a simulated transnational transaction. Information Technology law is ideal for this type of project as it is a rapidly changing area, stimulating intense international debate and highlighting numerous issues for transnational transactions.

The project generally takes the form of a negotiated transaction between two companies. The classes each work on a joint negotiating position representing the company operating from their home jurisdiction. The problem is broken down into its component issues and small groups work on their component. The instructor provides regular feedback to each group in addition to the general instruction in the class.

The negotiation is held about two thirds the way through the class. Preliminary documents and opening negotiating positions are exchanged via email. A video conference is used for the negotiation itself between the representatives of each class. The video conference runs for some two hours and each element of the problem is negotiated by the relevant group from each class. It is often impossible to conclude the negotiation, but when time is up for each element of the problem, each side summarises its position. The negotiation continues electronically subsequent to the video conferencing session.

### **Assessment and Feedback**

Each side is assessed on the quality of the overall negotiation process. The electronic discussions are preserved through list discussions on a subject website. The individual instructors receive comprehensive documentation from their own classes. There is some collaboration between the instructors in the marking. Feedback is given from both instructors to both classes to broaden the learning process.

The process provides an intimate understanding of the difficulties of transnational negotiation even between two similar legal jurisdictions with common heritage and apparently common culture. Students are exposed, for example, to issues of different location, jurisdiction, cultural perception, legal methodology, legal understanding and learning. The value of the subject is enhanced for those students subsequently able to go on exchange to the other institution.

### **3. Cross- Cultural Negotiations**

The Faculty of Law at Bond University has a tradition of depth in teachers, researchers, post-graduate subjects, and an integrated skills program in the field of dispute resolution.<sup>4</sup> Classes on dispute resolution are popular with students, especially post-graduate students from other countries who have not been exposed to the subject area to or certain types of learning and teaching.<sup>5</sup> These classes are usually a mini version of the United Nations.

In the post-graduate Negotiations class (about 30 students), one particular learning module has proved repetitively to be inspirational to teacher and students alike.

Groups of two or three students from the same country are given written instructions

- to:
- (a) prepare a twenty minute presentation
  - (b) with visual aids
  - (c) with a one page handout for the rest of the class
  - (d) which describes several key features of their own culture
  - (e) based on research and illustrated from their own experiences in their home country

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<sup>4</sup> See Bond University Dispute Resolution newsletter at <http://www.bond.edu.au/law/centres/drc/newsletter.htm> ; B. Wolski, "Why, How and What to Practise: Integrating Skills Teaching and Learning in the Undergraduate Law Curriculum" (2002) *52 J of Legal Education* 287.

<sup>5</sup> Bond University Faculty of Law was voted the best teaching law school in Australia in 1994, 1996-2001 in yearly student surveys conducted by the Australian Government - see <http://www.bond.edu.au/law/index.htm> . However, these surveys also indicated that the Bond students considered the learning load to be heavy.

- (f) using common categories of description for cultural behaviour<sup>6</sup>
- (g) and then act as professional advisors to the rest of the class (and to the instructor) to tell them how to, and how not to, behave in concrete terms when visiting their own country/culture as professional negotiators.

These cross-cultural advice sessions are developed late in the semester and so the selected students have has many excellent role models from other students on how to present with clarity, humour, questions and role plays. Invariably, quieter students have excelled once asked to relate new material to their own familiar, but previously unsystematised, culture. Particularly informed and inspiring presentations have occurred from groups of students from France, Russia, Lebanon, Columbia, China and Japan.

### **Assessment and Feedback**

Each presentation is marked on the basis of a list of criteria including clarity of material, research, engagement of class and ability to answer questions. Invariably, the presenters are peppered with questions – “How would you recommend that I behave when .....” Additionally, about one half of those presenting, have elected to carry the topic further with a major research paper on a similar topic on cross-cultural negotiations. Every member of the class is required to write a journal entry for each class, and these are also assessed at the end of the course. These entries regularly record student astonishment at the subtleties of other cultures and sub-cultures, and appreciation of the articulate and sophisticated insights from often “quiet” fellow students.<sup>7</sup>

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<sup>6</sup> The starting point for this research on culture is the course text, RJ Lewicki et al, *Negotiation* (2003 McGraw Hill) ch 11.

<sup>7</sup> See B Ballard and J Clancy, *Teaching Students from Overseas* (1991 Longman Cheshire); A O'Donnell & R Johnstone, *Developing a Cross-Cultural law Curriculum* (1997 Cavendish).

## Conclusion

The three examples above are developing each time they are used. There are many well-documented challenges to the introduction of any quality and sustainable changes to the “traditional” law school curriculum.<sup>8</sup>

These challenges multiply when attempting to introduce successful learning across cultures and legal systems.<sup>9</sup>

The three example courses from Bond University are no doubt symptomatic of many other experiments across the globe. It is a worthwhile project to share both anecdotal and systematic study on why some of these cross-cultural courses flourish; why others fade; and at what cost to the learning ecosystem at law schools.<sup>10</sup>

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<sup>8</sup> WL Twining, *Law in Context – Enlarging a Discipline* (1997 Clarendon) esp chapters 3 & 4; 14-16; Social Sciences and Humanities Council of Canada, *Law and Learning* (1983) (“Arthurs Report”); ABA, *Legal Education and Professional Development – An Educational Continuum* (1992: “MacCrate Report”). *Law Schools and Professional Education* (ABA, 1980: “The Cramton Report”); J Richardson, “Does Anyone Care for More Hemlock?” (1973) 25 *J of Legal Education* 427; DD McFarland, “Self-Images of Professors: Rethinking the Schism in Legal Education” (1985) 35 *J Legal Educ* 232; FA Allen, “The Causes of Popular Dissatisfaction with Legal Education” (1976) 62 *ABAJ* 447; DC Bok, “A Flawed System of Law Practice and Training” (1983) 33 *J Legal Educ* 570; BB Boyer and RC Cramton, “American Legal Education: An Agenda for Research and Reform” (1973-74) 59 *Cornell Law Rev* 221; R Cramton, “Professional Education in Medicine and Law: Structural Difference, Common Feelings, Possible Opportunities (1986) 34 *Clev St Law Rev* 349; A D’Amato, “The Decline and Fall of Teaching in the Age of Student Consumerism” (1987) 37 *J Legal Educ* 461; ML Levine, *Legal Education* (1993 Dartmouth); “Legal Scholarship in the Common Law World” (1987) 50 *Modern Law Review*; D Pearce et al, *Australian Law Schools (1987 AGPS)*; JH Wade, “Legal Education in Australia – Anomie, August and Excellence” (1989) 39 *J of Legal Educ* 189; A Ziegert, “Legal Education and Work: The Impossible Task of Teaching Law” (1998 AULSA Conference); P Spiller, *The History of New Zealand Legal Education: A Study in Ambivalence* (1993) 4 *Legal Educ Rev* 223; W Twining, “Developments in Legal Education: Beyond the Primary School Model” (1990) 2 *Legal Educ Rev* 35; JH Wade, “Legal Skills Training: Some Thoughts on Terminology and Ongoing Challenges” (1994) 5 *Legal Educ Rev* 173; W Twining, “Preparing Lawyers for the Twenty-First Century” (1992) 3 *Legal Educ Rev* 1; W Twining, “Bureaucratic Rationalism and the Quiet Revolution” (1996) 7 *Legal Educ Rev* 291; T Voon and A Mitchell, “Footnotes and the Internet: A Critical Examination of Australian Law Reviews” (1998) 9 *Legal Educ Rev* 1; V. Brand, “Decline in the Reform of Law Teaching?: The impact of Policy Reforms in Tertiary Education” (1999) 10 *Legal Educ Rev* 109; P Ramsden, “Improving the Quality of Higher Education: Lessons from Research on Student Learning and Educational Leadership” (1995) 6 *Legal Educ Rev* 3; E Clark, “Australian Legal Education a Decade After the Pearce Report” (1997) 8 *Legal Educ Rev* 213; D Weisbrot, “Competition, Cooperation and Legal Change”, 4 *Legal Educ Rev* 1; O Kahn-Freund, “Reflections on Legal Education” (1966) 29 *Modern Law Rev* 121.

<sup>9</sup> See *supra* note 7 – Ballard and Clancy; O’Donnell and Johnstone.

<sup>10</sup> See J Biggs, *Teaching for Quality Learning at University* (1999 SRNE); P Ramsden, *Learning to Teach in Higher Education* (1992 Routledge).