

# A PROBLEM-BASED LEARNING CURRICULUM AND THE TEACHING OF THE CRIMINAL LAW

---

*BRIANNA CHESSE*\*

## ABSTRACT

This paper evaluates the adoption of a problem-based learning model for Criminal Law. Problem-based learning is uniquely well-suited to the complex and self-contained criminal law curriculum. The pilot program has been active for three years, and has been continually revised and refined. The new model has been received positively by students and staff, particularly after incorporation of a flipped classroom methodology. There remain several identifiable areas for improvement, both structural and pedagogical. Student satisfaction and academic achievement have improved commensurately with the integration of problem-based pedagogy.

## I INTRODUCTION

The teaching of criminal law is mandatory in all law schools in Australia. This course is often taught in the earlier years of the law degree and in some cases, it is a first year, first semester subject. Criminal law curricula are also required to meet the standards for admission to practice in various states, as is mandated by the Council of Legal Education. Whilst this course is arguably, one of the most interesting to teach, it faces some unique difficulties in that this subject must often compete with years of exposure to sensationalised media coverage and popular representations of what criminal law should be and do, rather than what it is, or does.<sup>1</sup> The criminal law classroom provides an excellent opportunity to challenge students to change pre-conceived notions by separating facts from legally relevant facts and to apply the law to hypothetical scenarios.

Academics have long since accepted that as part of our role, we must assist students to think independently and to solve problems.<sup>2</sup> Traditional teaching methods are well established in criminal law, as with other areas of law. Information about key legislation and facts are transmitted to students, usually in the form of lectures or large group seminars that provide context for the readings which the student completes before attending class. Academics only provide hypothetical problems for students after this process, which are designed to lead them back to particular crimes and cases. The purpose of these problems is to test the students' degree of acquired knowledge. Academics in criminal law may therefore seem to some, to have always relied on some variation of the problem-based learning (PBL) method. However this is not the case because whilst problems are solved, the traditional teaching method is quite different to PBL and is in fact the reverse. PBL reverses the traditional transmissive approach by using the discussion and analysis of a problem as the beginning of the process of learning. This dichotomy is discussed in greater detail in the section below.

Unlike our counterparts in medical academia, lecturers in criminal law have not yet utilised PBL methods to their fullest extent. This could be perhaps due to resistance among teaching and leadership academic law staff, to make significant, unconventional changes to long-established

---

\* Dr Brianna Chesser is a Lecturer in the Thomas More Law School of the Australian Catholic University (ACU). The current project was funded by an ACU Teaching Development Grant. The author wishes to thank Mr. Leon Harper, Senior Research Assistant.

1 Roger Fairfax Jr, 'Challenges and Choices in Criminal Law Course Design' (2013) 10 *Ohio State Journal of Criminal Law* 2, 659-661.

2 John Bransford, Robert Sherwood, Ted Hasselbring, Charles Kinzer and Susan Williams, 'Anchored Instruction: Why we need it and how technology can help' in Don Nix and Rand Spiro (eds) *Cognition, Education, and Multimedia: Exploring ideas in High Technology* (Routledge, 1990) 115.

‘traditional’ methods of teaching in legal education, or the cost of implementing a full PBL curriculum. However what is clear is that law degree curriculum reform is necessary in order to effectively adapt to meet the changing needs of contemporary cohorts of law students studying criminal law.<sup>3</sup>

This paper will examine the use of the PBL method in a flipped criminal law classroom, and will discuss the implementation and success of a pilot PBL curriculum in the Thomas More Law School (TMLS) of the Australian Catholic University (ACU).

## II WHAT IS PROBLEM BASED LEARNING?

The PBL method has been used in medical academia for many years,<sup>4</sup> with the first educational institution to pioneer faculty-wide PBL in Medicine being the University of Maastricht.<sup>5</sup> This form of PBL was based on the ‘anchored instruction model’,<sup>6</sup> rather than on a ‘cognitive apprenticeship model’<sup>7</sup> where complex scenarios were used to teach a variety of skills.<sup>8</sup> In practice based vocational professions such as law, linking theoretical concepts and practical situations is difficult when they are taught and thus learned, discretely. The role of PBL is to bring theoretical concepts and practice, together.<sup>9</sup> Although the PBL model was initially created for trainee doctors, in the late 1970s American law professors began to recognise the possible utility of this method in law schools.<sup>10</sup> The PBL method was introduced in American law schools as the first major alternative to the case-based model of instruction.<sup>11</sup> The key advantage of using the PBL method for teaching in law school, is training students to ‘think like lawyers’ by encouraging their role as a legal problem solver, through creating tasks that are very similar to real world legal problems.<sup>12</sup> Indeed, one of the primary aims of PBL is to develop ‘active learning’ amongst students. PBL has students use worked examples as an initial mode of instruction, in the hope that they will perform better than those who are simply asked to undertake the process for the first time, without any worked example. Here, the academic acts as a guide to help students absorb knowledge, rather than just to supply answers.<sup>13</sup> The ultimate goal, is to encourage students to apply acquired knowledge flexibly.<sup>14</sup>

3 Susan Sturm and Lani Guinier, ‘The law school matrix: reforming legal education in a culture of competition and conformity’ (2007) 60 *Vanderbilt Law Review* 515, 517-519.

4 David Gijbels, Filip Dochy, Piet Van den Bossche and Mien Segers, ‘Effects of problem-based learning: a meta-analysis from the angle of assessment’ (2005) 75 *Review of Educational Research* 27, 28-29.

5 Henk van Berkel, ‘Assessment in a problem-based medical curriculum’ (1990) 19 *Higher Education* 123.

6 The anchored instruction model situates instruction within authentic contexts and tasks. See for example, Janet Mannheimer Zydney, Arne Bathke and Ted Hasselbring, ‘Finding the optimal guidance for enhancing anchored instruction’ (2014) 22:5 *Interactive Learning Environments* 668

7 The Cognitive apprenticeship model focuses on practice performing tasks (eg. facts analysis) and the use of metacognitive strategies. See for example Susan Williams, ‘Putting case-based instruction into context: examples from legal and medical education’ (1992) 2 *Journal of the Learning Sciences* 367, 369-375.

8 Susan Williams, ‘Putting case-based instruction into context: examples from legal and medical education’ (1992) 2 *Journal of the Learning Sciences* 367, 369-375.

9 Debbie Lam, ‘Problem-based learning: an integration of theory and field’ (2004) 40 *Journal of Social Work Education* 371, 372.

10 The PBL model has since been used in a variety of faculties, including engineering, business, education and mathematics faculties, in tertiary settings at institutions all over the world.

11 Gregory Ogden, ‘The problem method in legal education’ (1984) 34 *Journal of Legal Education* 654.

12 Ibid.

13 Henk van Berkel, above n 6, 123-124.

14 David Gijbels, Filip Dochy, Piet Van den Bossche and Mien Segers, ‘Effects of problem-based learning: a meta-analysis from the angle of assessment’ (2005) 75 *Review of Educational Research* 27, 30.

### *A Definition and Application*

‘A teaching and learning method which puts a problem first, and in which further learning is conducted in the context of that problem.’<sup>15</sup> PBL is a fundamentally student-centric model where learning is conducted in small groups and where teachers act as facilitators<sup>16</sup> with problems that encourage students to develop independent problem-solving skills. PBL is sometimes described in other ways, for example as ‘problem-focused’ or ‘issue-based’.<sup>17</sup> The PBL model has seven key steps:

1. Students receive the hypothetical problem;
2. Students define the problem and identify relevant legal issues;
3. Students brainstorm, using prior knowledge to create possible solutions;
4. Students try to create a personal theory/case;
5. Students work out what issues they need to learn more about;
6. Self-directed study; and
7. Sharing findings with the group.<sup>18</sup>

The key role of PBL is to trigger law students’ awareness that these issues exist,<sup>19</sup> and to create an interest in them by highlighting their real-world ramifications.<sup>20</sup> In the PBL model, the discussion and analysis of a problem starts the process of learning, rather than acting as the end point.<sup>21</sup> Here the PBL hypothetical sets out a factual scenario that raises legal issues which the student has not yet studied. This process takes the place of a traditional lecture delivery mode. In this way, students are interacting with real-world skills,<sup>22</sup> thereby increasing their motivation to learn.<sup>23</sup> Importantly, utilising the PBL method does not mean that courses would be devoid of any lecture material or ‘real content’, as each problem scenario should be carefully crafted to lead students to particular cases and particular legislation. Essentially, problems form the organising focus for the course and act as the stimulus for learning. The process of PBL encourages free enquiry in students<sup>24</sup> and mimics that which they will find in every day legal practice where students may come across a problem to which that they do not immediately know the answer.<sup>25</sup>

The question remains whether the adoption of the PBL model could really work in a law school. One such example of a successful implementation in a law school comes from the law school at the University of York, England. The York Law School (YLS) was established in 2007 and designed an undergraduate Bachelor of Laws (LLB) program, based largely around

15 York Law School, ‘Guide to problem-based learning’ (2012) University of York Law. This definition comes from the York Law School, which uses the problem-based learning model and the guided discovery method to administer all first year law courses, where students are placed into ‘firms’ with one ‘senior partner’, the lecturer, and one ‘junior partner’, the tutor, per ‘firm’. This form of problem-based learning is considered the best practice model due to its whole of school approach.

16 Howard Barrows, ‘Problem-based learning in Medicine and Beyond: a brief overview’ (1996) 68 *New Directions for Teaching and Learning* 3, 5-6.

17 Debbie Lam, above n 10, 371, 374.

18 Jos Moust Henk van Berkel and Henk Schmidt, ‘Signs of Erosion: reflections on three decades of problem-based learning at Maastricht University’ (2005) 50 *Higher Education* 665, 668.

19 Eric Werth, ‘Student perception of learning through a problem-based exercise: an exploratory study’ (2009) 32 *Policing: An International Journal of Police Strategies & Management* 21.

20 Laura Donohue, ‘National Security Law Pedagogy and the Role of Simulations’ (2012) 6 *Journal of National Security Law & Policy* 489, 521-523.

21 David Gijbels, Filip Dochy, Piet Van den Bossche and Mien Segers, above n 15.

22 Debbie Lam, above n 10.

23 Karim Nasr and Bassem Ramadan, ‘Impact assessment of problem-based learning in an engineering science course’ (2008) 9 *Journal of STEM Education* 16.

24 Suzanne Kurtz, Michael Wylie, and Neil Gold, ‘Problem-based learning: an alternative approach to legal education’ (1990) 13 *Dalhousie Law Journal* 797, 799.

25 Henk van Berkel, above n 6, 128.

the principles of PBL.<sup>26</sup> At the YLS, the PBL cycle changes or adapts problems in a weekly cycle. Students are introduced to a problem scenario at the beginning of the week and they are aided by a tutor who facilitates a structured conversation in order to illuminate the necessary learning outcomes for the problem.<sup>27</sup> Professor Caroline Hunter, Head of the YLS, states that if the problems are designed well, the learning outcomes will emerge as questions from the subsequent discussion.<sup>28</sup> This program has not yet been officially evaluated, but preliminary indications of its success can be found by looking at student engagement, student success and the employability of students from the YLS.

### B *Problem-based learning versus problem-solving*

As lawyers, we have a tendency to emphasise the importance of problem-solving, and the hypothetical problems used in traditional approaches reflect this, with an emphasis on advising the client or constructing an argument for one side or the other.<sup>29</sup> While the problem-solving method is more expansive than case learning,<sup>30</sup> it is not quite as expansive as PBL. Both problem-solving and the PBL method promote meta-cognitive learning and a self-awareness of learning processes, and while there is a correlation between the two processes, there is also a critical distinction.<sup>31</sup> Most law subjects draw on problem-solving techniques to contextualise student learning, where the facts of a particular case may be disclosed to allow students to construct arguments on those facts, before revealing the actual decision that was made by the court in the case. However, the PBL method is concerned with much more than simply teaching a student to solve a problem,<sup>32</sup> as its principal goal is developing knowledge and understanding through the use of real world or hypothetical problems from the *outset of a course*, where these problems serve as a springboard for achieving a deeper knowledge and understanding of legal rules. Here, the problem acts as more than a learning activity; it forms the basis for the course structure.

### C *PBL and the Flipped Classroom*

As its name suggests, flipping the classroom describes the inversion of expectations in the traditional classroom. The ‘inverted’ or ‘flipped’ classroom is a pedagogical model that replaces the traditional in-class lecture format with pre-delivered instructional materials and an in-class learning workshop.<sup>33</sup> As with the PBL method, the purpose of the flipped classroom model is to encourage students to be active learners rather than passive receivers of information. This can take numerous forms, including interactive engagement, just-in-time teaching,<sup>34</sup> and peer instruction.<sup>35</sup> The use of a flipped classroom breaks the ‘cycle of bulimic learning’; a pattern of taking in information, regurgitating, and forgetting.<sup>36</sup> Flipped classrooms use multimedia

26 York Law School, ‘Guide to problem-based learning’ (2012) University of York Law.

27 Ibid.

28 Caroline Hunter, ‘How to use problem-based learning’ (2013) UNSW Law School Visit.

29 York Law School, ‘Guide to problem-based learning’ above n 29.

30 Gregory Ogden, above n 12, 662-664.

31 Cheryl Preston, Penee Wood Stewart, and Louise Moulding, ‘Teaching “Thinking Like a Lawyer”: metacognition and law students’ (2014) *Brigham Young University Law Review* 1053, 1073.

32 John Craig & Sarah Hale, ‘Implementing problem-based learning in politics’ (2008) 7 *European Political Science* 165.

33 Catherine A Lemmer, ‘A view from the Flip Side: Using the “Inverted Classroom” to Enhance the Legal Information Literacy of the International LL.M. Student’ (2013) 10 *Law Library Review* 2, 461-491.

34 Students respond to web-based questions before class, and the academic uses this feedback to inform his or her teaching.

35 Dan Berrett, ‘How ‘flipping’ the classroom can improve the traditional lecture’ (2012) *The Chronicle of Higher Education* 12, 1-14.

36 Cristina Rotellar & Jeff Cain, ‘Research, Perspectives and Recommendations on Implementing the Flipped Classroom’ (2016) 80 *American Journal of Pharmaceutical Education* 1, 1-2.

resources to support self-directed learning<sup>37</sup> by blending e-learning and face-to-face in-class instruction, a model that suits the delivery of a PBL curriculum. PBL is complemented by the use of a flipped classroom to introduce information to students prior to the face-to-face classes.<sup>38</sup>

### *D Possible Barriers to Adopting the PBL Method*

Both the flipped classroom and PBL methods are well supported in theory and development, but their implementation leads to several key issues. Law students are traditionally reluctant to participate in group-based activities; scholars point to a tendency for students to put less effort into group-based assignments and to a possible reduction of higher achievers' grades when placed in group activity.<sup>39</sup> There is also the eternal problem of some students putting more effort into group-based assignments than others and the possibility of complaints about lack of structure and guidance.<sup>40</sup> However, this form of group activity mimics what most lawyers face early in legal practice, and they work in close conjunction with colleagues in what is essentially a team environment. Following the PBL model does not mean that students are left to their own devices as students operate under the close supervision and guidance of academics. PBL in a flipped classroom encourages both individual students and groups of students, to find their own way to communicate and organise problem-solving.<sup>41</sup>

One key misconception with the use of the PBL model in a flipped classroom is that as these methods are student centric, the curriculum is somehow less important, giving way to the whim of the student who is learning whatever they wish. However, the stability of the curriculum is of the utmost importance to the success of these methods; here the curriculum is supported by the collection of problems that are designed to stimulate learning in a way that is consistent with the needs of the curriculum.

A further criticism relates to the difficulty in assessing the success of a PBL course due to the esoteric nature of skills imparted<sup>42</sup> such as: problem-solving aptitude, critical thinking and self-directed learning.<sup>43</sup> However these skills are already assessed on a regular basis in Australian law schools and are reflected in graduate attributes and learning outcomes for assessment tasks. For example, effective problem solving and specifically, 'Thinking Skills' are Threshold Learning Outcomes for all LLB Courses,<sup>44</sup> which are usually reflected in individual subjects in some way, either through the University's graduate attributes, or the learning outcomes for individual assessment tasks.

## III CASE STUDY: TEACHING CRIMINAL LAW IN THE THOMAS MOORE LAW SCHOOL (TMLS)

Designing a new curriculum, developing new teaching tools and skills is a difficult and time consuming task for any new law school. The Thomas More Law School at the Australian

37 Andrew Tawfik & Christopher Lilly, 'Using a flipped classroom approach to support problem-based learning' (2015) 20 *Technology, Knowledge & Learning* 299, 300.

38 Edward Westermann, 'A half-flipped classroom or an alternative approach?: Primary sources and blended learning' (2014) 38 *Educational Research Quarterly* 43, 44.

39 Anne Hewitt, 'Producing skilled legal graduates: avoiding the madness in a situational learning methodology' (2008) 17 *Griffith Law Review* 87, 106-113.

40 David Tait and Robert de Young, 'Displaying the law: a cross-disciplinary learning experiment using the internet and multimedia technology' (2000) 14 *International Review of Law, Computers & Technology* 191, 197.

41 John Craig & Sarah Hale, above n 35, 172.

42 Eric Werth, 'Student perception of learning though a problem-based exercise: an exploratory study' (2009) 32 *Policing: An International Journal of Police Strategies & Management* 21, 24.

43 David Gijbels, Filip Dochy, Piet Van den Bossche and Mien Segers, above n 15, 32-34.

44 The Council of Australian Law Deans has listed 'Thinking Skills' as a threshold learning outcome for both undergraduate LLB and postgraduate JD courses.

Catholic University was established in 2012 and accepted its first cohort of students in 2013. The need to create an entire law school curriculum provided opportunities to experiment with new approaches to teaching and learning. The TMLS asks students to attend a lecture, workshop and tutorial for a total of four face-to-face hours per core subject per week. As is the case in other law schools, some units within the TMLS have been separated from their natural pair; for example in the TMLS, Evidence is a stand-alone subject, and Criminal Law and Procedure is covered in another joint unit. This project, funded by an ACU Teaching Development Grant, piloted the use of a specially designed 'brief of evidence' to contextualise student learning within a practical context, in line with the PBL model.

### *A The Unit: Criminal Law and Procedure*

The Criminal Law and Procedure Unit<sup>45</sup> (Unit) in the TMLS, with its blended academic/professional teaching teams, provided an ideal environment within which to experiment with fundamentally student-centric models of teaching. This Unit:

deals with the nature, purpose and justification of the criminal law and the various forms of conduct that constitute crimes in those Australian jurisdictions where criminal law is largely supported by the common law (in contrast to those jurisdictions which have a codified criminal law). This Unit also examines the procedures used to detain, prosecute and bring to trial, persons charged with criminal offences.<sup>46</sup>

This Unit is currently taught to a mixed cohort of first year and second year LLB students across two campuses of the ACU, Melbourne and North Sydney.<sup>47</sup> The cohort consists of largely domestic school leaver students, and material is delivered via a blended-learning program that includes four hours face-to-face per week<sup>48</sup> combined with online learning activities. The learning outcomes for the criminal law and procedure unit are:

1. Describe and critically evaluate the nature of Criminal Law and its justifications (GA1, GA2, GA3, GA4, GA5, GA9).
2. Describe and critically evaluate the offences created by the Criminal Law in Victoria and New South Wales (GA4, GA5, GA6, GA9).
3. Apply the Criminal Law to factual situations and thereby advise clients and others of their rights and liabilities (GA3, GA4, GA6).
4. Compare and contrast Victorian and New South Wales Law with that in certain other jurisdictions and evaluate its effectiveness (GA1, GA2, GA3, GA4, GA6).

The learning outcomes link to ACU's graduate attributes; GA1- GA6, and GA9.<sup>49</sup> This Unit was created and is implemented with the consulting assistance of legal practitioners who are usually senior members of the Victorian legal profession, to assist the National Unit Coordinator to prepare course materials and provide accounts of legal practice experiences to enrich the course.

---

45 The Criminal Law and Procedure Unit was created in 2012 and was delivered for the first time in 2013.

46 TMLS, 'LAWS106 Criminal Law and Procedure Unit Outline' (2016) ACU.

47 The TMLS runs both an undergraduate LLB and a graduate entry LLB program. Students enrolled in the undergraduate stream will complete this Unit in the first semester of their second year, whereas students enrolled in the graduate entry stream will complete this Unit in the first semester of the first year of the LLB program.

48 Each week, for a core subject, students are asked to attend four hours face-to-face. In the Criminal Law and Procedure Unit, this consists of a two-hour lecture (substantive criminal law content), a one-hour workshop (procedural content) and a one-hour tutorial.

49 The relevant graduate attributes for ACU are:

GA1	demonstrate respect for the dignity of each individual and for human diversity;
GA2	recognise your responsibility to the common good, the environment and society;
GA3	apply ethical perspectives in informed decision making;
GA4	think critically and reflectively;

The legal practitioner-academic team collaboration is an important element of this Unit and was drawn upon heavily to modify the existing curriculum to incorporate the PBL model.

Unlike the YLS, which created a PBL curriculum from the outset, when the current Unit was first delivered at the ACU in 2013, the traditional passive transmission model was utilised and the collaborative legal practitioner-academic teaching team was not used to its full potential. For example, in 2013 the academic was responsible for the delivery of the two-hour lecture (substantive criminal law topics such as fatal and non-fatal offences) and the legal practitioner brought in other experienced criminal law specialist members of the Victorian legal profession, to teach the workshops (procedural elements of the course) which required students to follow a hypothetical criminal case from the arrest stage through to the appeal stage. Although law students were engaged directly with members of the Victorian legal profession, it was possible in any given week, for law students to end up with an hour of very interesting but non-examinable ‘war stories’ about criminal law practice. Students soon worked out however, that these ‘war stories’ were not examinable so they dwindled their attendance at legal practitioner run workshops. It became evident that the Unit’s curriculum needed to change if we were to improve student engagement and achievement.

### *B The Pilot PBL Curriculum*

After the first iteration of this Unit in 2013, a practice reference group<sup>50</sup> was formed to evaluate the curriculum and to create a set of PBL problems that could be used to contextualise the unit content. The practice reference group assisted in writing two ‘briefs of evidence’<sup>51</sup> that would see students introduced to their ‘clients’ at the beginning of the semester. Brief one covered the first six weeks of the course and consisted of three statements; two witness statements and a statement from the informant.

A further witness statement and a coroner’s report were released in week four. The first brief covered: fatal offences (murder and manslaughter), non-fatal offences (assault), arrest, search and seizure, police investigation, bail, complicity, and defences (mental impairment, intoxication, duress and self-defence). The second brief initially consisted of two statements: one made by the complainant and one made by the accused. However after much discussion, the practice reference group decided that only the complainant’s statement would be included, as this allowed students to practice a client interview situation. This second brief covered: sexual offences (rape, sexual assault), non-fatal offences (intentionally causing injury and assault), property offences (burglary, aggravated burglary and theft), the criminal trial, arrest, bail, sentencing and appeal.

The content was delivered to students via the online learning page before the lecture, and was introduced in a short video. The workshop presented an opportunity for the teaching team to focus on the issues that had arisen out of the brief that week. In this way, the substantive law topic was linked to the relevant criminal procedure for the first time.

Despite the perceived success of these changes it became clear that further changes from the teaching team would be necessary to fully commit to the PBL model. For example, although the

- 
- GA5 demonstrate values, knowledge, skills and attitudes appropriate to the discipline and/or profession;
  - GA6 solve problems in a variety of settings taking local and international perspectives into account; and
  - GA9 demonstrate effective communication in oral and written English language and visual media.

50 The practice reference group was essentially a group of experts that included: members of the judiciary from the Victorian Court of Appeal, the Victorian Supreme Court and Magistrates’ Court, as well as, barristers and solicitors in Victoria who specialise in criminal law.

51 Although we labelled these hypothetical scenarios ‘briefs’, these scenarios were a small collection of statements which fell short of the material that would be provided in a ‘real’ brief. However, the label has proven to be effective, as it introduced students to some of the vocabulary that they would come across in practice.

intention was to discuss the context in a student-centric way, on some occasions the academic had defaulted into a lecture style spiel about an issue, where the students were once again turned into passive receivers of information. Indeed on closer inspection, it seemed that some lectures had remained largely the same; a short discussion at the beginning and the end served to contextualise the learning with the 'brief of evidence'. This was not the PBL model that was envisaged at the outset of the pilot program and it indicated the pervasive nature of traditional teaching methods.

One of the concerns that was used to justify this departure was that the students were finding it difficult to identify issues relating to the procedural irregularities in the problem scenarios. This is perhaps due to the intricate nature of the procedural rules which often cannot be predicted by students or taught in a largely conceptual way. In order to address this issue, after the first semester of this new method, a criminal law and procedure handbook<sup>52</sup> was written to ensure that students had access to the necessary procedural content in a condensed format, before coming to class.

Despite these departures from the envisaged model, modest improvements were seen in student engagement; attendance had increased from around 75% to 85% and student achievement improved marginally where average grades increased by around four marks.

### *C The Pilot PBL Curriculum: Stage Two Implementation*

In the second year of the pilot program, the PBL model was adapted to include a flipped classroom model as well, to address both emerging procedural issues and any defaulting by lecturing staff. Furthermore, a focus group was held with students from the previous year, for feedback on the ease with which they were able to identify the key issues from the briefs. As a result of this, the briefs were fine-tuned<sup>53</sup> to increase the likelihood that students would identify the issues without heavy prompting from academic staff. Closing the feedback loop in this way was an effective tool, as students were able to speak freely about their experiences of this Unit's curriculum and be involved in making meaningful changes for the next years' cohort.

It was also clear from the previous years' implementation of the PBL model in the Unit, that students were taking several weeks to adapt to it as this Unit was the only one that used the PBL model in the law school. To facilitate this transition, labelling changes were made to classes, to link the PBL method to practice. For example, tutorial groups were referred to as 'firms' and tutors as 'senior associates.' The learning activities also became more interactive. For example: instead of discussing 'bail application', students were asked to prepare and present an application for bail on behalf of their client. In this way, the content was linked seamlessly through to the learning objectives.

The use of short videos was increased to provide introductions to content, articulated as 'Memos' from the senior partner, or 'professional development announcements' about a new area of the law or a new common law case. The two-hour substantive law lecture times were an opportunity for student firms to discuss the brief in light of the content for that week with their 'senior partner'. The tutorials became opportunities to practice practical legal skills, under the guidance of the 'senior associate'. The one-hour workshops became a capstone for the week's content and sought to consolidate learning. The cases that students had been working on went to 'trial' at the end of semester, in the form of a voluntary revision moot, which provided students with an opportunity to engage with the unit content in yet another way.

---

52 Brianna Chesser & Graham Thomas *QC Criminal Law and Procedure Handbook*. (2016) Melbourne: Thomson Reuters. This resource is a condensed version of the relevant procedural rules and associated common law for both Victoria and NSW.

53 Substantive changes also had to be made to the problem content to incorporate the changes to legislation in both the Victorian and NSW jurisdictions.



Student evaluations from 2016 show that overall, students were more satisfied with the subject,<sup>54</sup> student retention improved<sup>55</sup> and student attendance improved to over 90% at all classes. While this feedback on this pilot program has been positive, further data must be collected to determine the long-term sustainability of a model that to date has been resource intensive.

#### IV CONCLUSION: WHERE TO FROM HERE?

Although the results of this pilot study have been largely positive, in order to achieve the best results, a full-scale law school adoption should be considered, as was the case in Maastricht.<sup>56</sup> This is perhaps a lofty pursuit considering the cost of such a program and the difficulty of using this method with some law subjects. Optimal class size for the PBL method is six to eight students, and most tutorials in the TMLS are around 20 students.<sup>57</sup> Practically, the input of sessional staff is often necessary to act as the facilitators of the students' firms, and the level of training that is required to ensure that tutors do not give out too much information creates a potential issue as it could restrict the students' self-development.<sup>58</sup> Furthermore, one issue with the use of a PBL flipped classroom approach is that it could mask minimal tutorial preparation by students, which if not corrected by facilitators, could defeat the purpose of using the PBL approach.<sup>59</sup> What is clear is that the criminal law curriculum at the TMLS, is a work in progress; the flipped classroom and PBL methodology have had a positive impact on student achievement and engagement, but as always, more could be done. Ultimately, PBL provides an opportunity to enrich and redevelop the law school curriculum,<sup>60</sup> in particular the teaching of criminal law.

---

54 Of the 172 students enrolled in the subject in 2016, 98 students responded to the Student Evaluation of Learning and Teaching Survey, 94% agreed or strongly agreed that they understood the requirements and learning objectives for the unit with 95% students strongly agreeing that they were satisfied with the quality of the unit. This is a 10% improvement on previous year's statistics.

55 With only two students in 2016 deciding to complete criminal law in another year for personal reasons.

56 Henk van Berkel, 'Assessment in a problem-based medical curriculum' (1990) 19 *Higher Education* 123, 131.

57 Jos Moust, Henk van Berkel and Henk Schmidt, above n 20, 671.

58 Ibid 672-673.

59 Ibid 670.

60 Suzanne Kurtz, Michael Wylie, and Neil Gold, above n 27, 803-805.