

ENHANCING STUDENT LEARNING AND ENGAGEMENT IN THE JURIS DOCTOR THROUGH THE RICH TAPESTRY OF LEGAL STORY-TELLING

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ABSTRACT

The human species thinks in metaphors and learns through stories.

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The written hypothetical problem scenario is one of the most common methods for teaching and assessing in law. Whilst this device is considered to be an effective and appropriate teaching tool, it has limitations. In legal practice, it is rare for a problem to be presented entirely in written form. More usually the problem is presented verbally. Another common limitation of the written hypothetical is that hypothetical scenarios tend to focus on a single issue. A real-life legal problem may raise multiple legal issues.

This article examines the use of visual media in teaching the Juris Doctor ('JD') law degree at the University of Western Australia Law School ('UWA'). This paper particularly discusses a visual media project introduced at UWA in February 2017, which modified the use of hypothetical problems in law teaching. The project involved creating a filmed hypothetical scenario that was shown to law students in the first class of the foundational unit in the JD. The film raised a range of legal topics as well as moral, ethical and professional issues that may arise in legal practice. The film will continue to be used at UWA as the basis of problem-solving, role-plays, and case studies throughout the JD degree and will form the core around which legal education issues of: wellbeing, work-readiness and legal professionalism, will be developed. The film's arguable benefits are: enhanced law student engagement, critical thinking, legal problem-solving and communication. The film also aims to provide a more cohesive and integrated capstone learning experience for all JD students, and to build a learning community across JD year groups to promote a sense of belonging, connectedness and well-being. Significant benefits for staff include a reduced need to create different problem scenarios and, importantly, increased collaboration and sharing of ideas across JD teaching teams.

I INTRODUCTION

It is perhaps true that legal practice, as we know it, might be 'on the line'. From declining law graduate employment rates, to digital disruption, to the globalisation of legal practice – 'change, in all its chaotic grandeur, is in the air'.¹ Inevitably, these changes will require a new emphasis in the way law schools teach law. However, teachers of law are no strangers to change. The Australian law degree and the outcomes which are required of our law graduates have constantly evolved. One particular learning outcome 'communication and collaboration', is now formally

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1 Australasian Law Teachers Association 2017 Annual Conference
<http://www.aomevents.com/alta2017/Call_for_Papers>.

endorsed as one of the six ‘threshold learning outcomes’ (TLO) identified by the Learning and Teaching Academic Standards project.²

There is no doubt that communication is a fundamental and essential legal skill. Frequently, the way communication is taught and assessed in law schools is via the written hypothetical problem scenario. As Saunders and Levine note, using written hypothetical scenarios as the basis for teaching problem-solving in law is an appropriate and very effective tool in facilitating students’ ability to think critically and analytically, and to improve their written and oral communication skills.³ Further, as noted by Angela Burton, ‘storytelling suffuses the work of lawyers ... the law is only meaningful in relation to some situation of factual circumstance’.⁴

Despite the effectiveness of written problem-solving exercises, they have limitations. In legal practice, it is rare for a problem to be presented entirely in written form. More usually, the facts and evidence of a problem are presented verbally face-to-face, and through other forms of audio and visual media such as CCTV footage and phone conversations. Another common limitation of the written hypothetical, is that the scenarios tend to focus on a single issue. A real-life legal problem may be multi-faceted, raising a wide range of legal issues.

This article examines the use of visual media in teaching the JD law degree at UWA. The paper particularly discusses a visual media project introduced at UWA in February 2017, which modified the use of hypothetical problems in law teaching. The project involved creating a filmed hypothetical fact scenario that was shown to students in the first class of the foundational unit in the JD. The legal storytelling film raised a range of legal topics as well as moral, ethical and professional issues that may arise in legal practice, and it will continue to be used as the basis of problem-solving, role-plays, and case studies throughout the JD degree. The legal story telling film will also form the core around which Australian legal education issues of wellbeing, work-readiness and legal professionalism, will be developed. The film’s benefits are to enhance student engagement, critical thinking, legal problem-solving and communication. The film also aims to provide a more cohesive and integrated capstone learning experience for all JD students and to build a learning community across year groups to promote a sense of belonging, connectedness and well-being. Significant staff benefits from the use of the legal storytelling film include a reduced need to create different problem scenarios and, importantly, increased collaboration and sharing of ideas across JD teaching teams. This article also discusses the use of another visual media teaching resource, ‘Caseflix’, which was also introduced into core teaching in UWA’s JD.

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- 2 Sally Kift, Mark Israel and Rachael Field, ‘Learning and Teaching Academic Standards Project: Bachelor of Laws’ (Learning and Teaching Academic Standards Statement, Australian Learning and Teaching Council, December 2010) <<http://www.cald.asn.au/media/uploads/KiftetalLTASStandardsStatement2010%20TLOs%20LLB.pdf>>. Council of Australian Law Deans, *Juris Doctor Threshold Learning Outcomes* (March 2012) <[http://www.cald.asn.au/assets/lists/ALSSC%20Resources/JD%20TLOs%20\(March%202012\)%20Andrew%20Kenyon.pdf](http://www.cald.asn.au/assets/lists/ALSSC%20Resources/JD%20TLOs%20(March%202012)%20Andrew%20Kenyon.pdf)>.
 - 3 Kurt M Saunders and Linda Levine, ‘Learning to Think Like a Lawyer’ (1994-1995) 29 *University of Southern Florida Law Review* 121, 133-135.
 - 4 Angela Olivia Burton, ‘Cultivating Ethical, Socially Responsible Lawyer Judgment: Introducing the Multiple Lawyering Intelligence Paradigm into the Clinical Setting’ (2004) 11(15) *Clinical Law Review* 15, 34.

II BACKGROUND

A Australian Legal Education

Australian law school teaching tended to focus on ‘the transmission of knowledge about legal rules and doctrine to students who adopt a largely passive role’.⁵ However, by 2003, Johnstone and Vignaendra commented that:

Most law schools in the mid-1980’s ... were concerned with teaching legal rules ... and there was very little attention to the teaching of legal ethics, legal theory, or generic or legal skills ...the situation has radically changed and many law schools ... have embraced the teaching of legal ethics and legal skills ...⁶

No doubt, one of the catalysts for this changed emphasis in legal education was the Australian Law Reform Commission’s (ALRC) 2000 ‘Managing Justice’ report which recommended that ‘law schools should make explicit the nature and extent of their skills development programs ... and how they examine these skills’.⁷ Shortly after the release of the ‘Managing Justice’ report, Australian law schools began to focus on law graduate attributes beyond just the content and knowledge prescribed by the ‘Priestley 11’.⁸ In 2009, the process of identifying and defining academic standards and learning outcomes in discipline areas, including law, was tackled formally at a national level by the Australian Government funded Learning and Teaching Academic Standards (‘LTAS’) project.⁹ The LTAS project identified six ‘threshold learning outcomes’ (TLOs) for Australian graduates in the Bachelor of Laws (LLB) and Juris Doctor (JD) degrees. The Council of Australian Law Deans subsequently endorsed the LLB and JD TLOs in November 2010 and March 2012 respectively. The six TLOs prescribed for the LLB and JD are broadly: knowledge (TLO 1); ethics and professional responsibility (TLO 2); thinking skills (TLO 3); research skills (TLO 4); communication and collaboration (TLO 5); and self-management (TLO 6).¹⁰

The Law Associate Deans Network was established in 2010, renamed the Legal Education Associate Deans Network (‘LEAD’) in 2013, to promote collaborative research-based

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- 5 Des Butler, ‘Second Life Machinima Enhancing the Learning of Law: Lessons from Successful Endeavours (2012) *Australasian Journal of Educational Technology* 383.
 - 6 R Johnstone and S Vignaendra, *Learning Outcomes and Curriculum Development in Law: A Report Commissioned by the Australian Universities Teaching Committee (AUTC)* (2003). <http://www.cald.asn.au/docs/autc_2003_johnstone-vignaendra.pdf>.
 - 7 Australian Law Reform Commission (ALRC), *Managing justice: A review of the federal civil justice system* Report 89, 2000, [2.80] <<https://www.alrc.gov.au/sites/default/files/pdfs/publications/ALRC89.pdf>>.
 - 8 The ‘Priestley 11’ is the list of prescribed areas of legal knowledge identified by the Law Council of Australia that a student must cover to be admitted to legal practice see; Law Admissions Consultative Committee, Model Admissions Rules 2015 <https://www.lawcouncil.asn.au/files/web-pdf/LACC%20docs/212390818_8_LACC_Model_Admission_Rules_2015.pdf>.
 - 9 Australian Learning and Teaching Council and Council of Australian Law Deans, ‘Learning and Teaching in the Discipline of Law: Achieving and Sustaining Excellence in a Changed and Changing Environment’ (Project Final Report, 2009). <http://www.cald.asn.au/docs/altc_lawreport.pdf>. For a general discussion of the changed emphasis from the traditional knowledge approach to the embedding of teaching learning outcomes in law degrees in Australia, see; Natalie Skead, Sarah Murray and Penny Carruthers, ‘Taking up the Challenge: Embedding, Mapping and Maintaining Threshold Learning Outcomes in the Transition to the JD – the UWA Experience’ (2013) 47(2) *The Law Teacher* 130, 135.
 - 10 Kift et al, above n 2, 3-4. <[http://www.cald.asn.au/assets/lists/ALSSC%20Resources/JD%20TLOs%20\(March%202012\)%20Andrew%20Kenyon.pdf](http://www.cald.asn.au/assets/lists/ALSSC%20Resources/JD%20TLOs%20(March%202012)%20Andrew%20Kenyon.pdf)>.

approaches to teaching and learning in Australian legal education.¹¹ In an effort to ensure good curriculum design within the TLOs, the LEAD Network produced 10 ‘Good Practice Guides’ described by Project Leader Kate Galloway, as a foundation resource ‘not just for TLO implementation strategies, but also in terms of essential features of comprehensive legal education that continue to represent a challenge in curriculum design – such as critical thinking and communication skills.’¹²

Since the introduction and endorsement of the TLOs, there has been a myriad of challenges facing the Australian legal education sector: from the embedding of statutory interpretation into the law degree curriculum,¹³ to law student wellbeing,¹⁴ the professional development of sessional law teachers¹⁵ to Indigenous cultural competency.¹⁶ An emerging area of significant challenge for current and future legal education in Australia is the impact of disruptive technologies on the practice of law and how law is taught:

While the full impact of technology on legal practice is yet to be realised, there is no doubt that significant change is afoot and its momentum is building, both in relation to what the profession does and how the profession does it. The legal profession is at a ‘tipping’ point.

As the changes, both current and impending, begin to take their effect on legal practice, it is incumbent on legal educators to think about how best to equip graduates for a future in law. We must think about the skills future lawyers will need, what we teach and how we teach it, to ensure that relevant professional skills development is embedded into our academic programs.¹⁷

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- 11 The network is comprised of the Associate Deans (Teaching and Learning) (or equivalent) of Australian Law Schools. Information regarding the LEAD network may be found at <<http://www.lawteachnetwork.org/index.html>>.
- 12 Kate Galloway, ‘Networking supports legal education’ *Campus Review* 28 May 2012.
- 13 Jeffrey Barnes, Jacinta Dharmananda, Jeffrey Goldsworthy and Alex Steel, *The Council of Australian Law Deans: Good Practice Guide to Teaching Statutory Interpretation*, June 2015 <<http://www.cald.asn.au/assets/lists/Resources/GPGSI-June15.pdf>>.
- 14 See, eg, Norm Kelk, Georgina Luscombe, Sharon Medlow And Ian Hickie, *Courting The Blues: Attitudes Towards Depression in Australian Law Students and Legal Practitioners* (2009) Sydney: Brain & Mind Research Institute of the University of Sydney; Wendy Larcombe and Katherine Fethers, ‘Schooling the blues? An investigation of factors associated with psychological distress among law students’ (2013) 36(2) *University of New South Wales Law Journal* 390; Wendy Larcombe, Sue Finch and Rachel Sore, ‘Who’s distressed? Not only law students: Psychological distress levels in university students across diverse fields of study’ (2015) 37(2) *Sydney Law Review* 243; Natalie Skead and Shane L Rogers ‘Stress, anxiety and depression in law students: How student behaviours affect student wellbeing’ (2014) 40(2) *Monash Law Review* 564; Rachael Field, James Duffy and Anna Huggins, ‘Supporting transition to law school and student well-being: The role of professional legal identity’ (2013) 4(2) *The International Journal of the First Year in Higher Education* 15, <<http://dx.doi.org/10.5204/intjfyhe.v4i2167>>.
- 15 See, eg, <<https://smartlawteacher.org>>.
- 16 See, eg, <<http://www.icclap.edu.au>>.
- 17 Kate Galloway, Kate Offer and Natalie Skead, ‘Disrupting Legal Education’ *Brief*, November 2017, 10. It is beyond the scope of this article to explore the use and impact of digital learning technologies in Australian Law Schools. However, see Stephen Colbran and Anthony Gilding, ‘E-Learning in Australian Law Schools’ (2013) 23(1) *Legal Education Review* 201, for a discussion of the results of a survey of Australian law schools revealing the widespread adoption of blended learning approaches. See also Melissa Castan and Kate Galloway, ‘Extending public law: Digital engagement, education and academic identity’ (2015) 25(2) *Legal Education Review* 331, 332 at footnote eight, for a detailed list of journal articles dealing with the integration of online technologies in legal education.

B *The Juris Doctor ('JD') at UWA*

In 2012, UWA commenced a broad-based restructure of its courses so as better to prepare graduates 'for the challenges of a changing world'. Under this new structure, the undergraduate Bachelor of Laws degree is no longer offered at UWA and from 2013, law at UWA can only be studied at a postgraduate Masters level, as a three-year professional JD law degree. This transition from an undergraduate to a postgraduate professional law course allows the Law School, in teaching the JD, to focus on equipping students with the more advanced professional legal skills expected of law graduates.

Following consultation with students and staff, the UWA Law School further restructured its JD in 2017. A new foundational unit, Foundations of Law and Lawyering (FLL), was introduced and delivered as a blended intensive/semester-based unit. The unit was taught intensively in the first two weeks of the first semester of the first year, with unit tutorials continuing fortnightly through the semester's remaining weeks at which time students also picked up the remaining substantive core first semester, first year units of: Criminal law, Contract and Property.

This restructure was designed to address the concern that, without pre-learning of foundational legal concepts, JD students were not adequately prepared to undertake the substantive first semester first year core units. Delivering the foundational unit as an intensive unit at the start of the new JD helped to establish a robust theoretical and skills-based scaffold, which enabled our students to tackle the substantive core units that follow, with more confidence. Aside from this benefit, the restructured course provided an opportunity to embed the issues of: wellbeing, professionalism, critical thinking and diversity training, into the JD from the outset. A social and pragmatic objective associated with the unit was to assist in building a stronger sense of cohort, and to establish effective and healthy study techniques and strategies in the first weeks of the course.

As noted in the Introduction, the legal story-telling film raises a range of legal topics as well as moral, ethical and professional issues that may arise in legal practice. The film's potential benefits are to enhance student engagement, critical thinking, legal problem-solving and communication. The JD TLO's that stand to be advanced by the legal story-telling project, include: TLO 1, knowledge;¹⁸ TLO 2, ethics and professional responsibility;¹⁹ TLO 3 thinking skills;²⁰ and, of particular relevance for the purposes of the legal storytelling project, TLO 5, communication and collaboration.

18 The legal story-telling film will advance TLO 1 Knowledge, which requires the demonstration of an understanding of a complex body of knowledge that includes '(b) The broader contexts within which legal issues arise; and (c) The principles and values of justice and of ethical practice in lawyers' roles'.

19 TLO 2 provides that 'Graduates of the Juris Doctor will demonstrate: (a) An advanced and integrated understanding of approaches to ethical decision making; (b) An ability to recognise and reflect upon, and a developing ability to respond to, ethical issues likely to arise in professional contexts; (c) An ability to recognise and reflect upon the professional responsibilities of lawyers in promoting justice and in service to the community; and (d) A developing ability to exercise professional judgment.

20 TLO3 provides that 'Graduates of the Juris Doctor will be able to: (a) Identify and articulate complex legal issues; (b) Apply legal reasoning and research to generate appropriate jurisprudential and practical responses to legal issues; (c) Engage in critical analysis and make reasoned and appropriate choices amongst alternatives ...'

III THEORETICAL CONTEXTS²¹A *Communication Skills In Law*

Communication is one of the most important legal skills for law graduates, and particularly for law graduates who intend to work as practising lawyers. A lawyer's work involves, among other things: oral and written communication including taking clients' instructions; giving clients legal advice; negotiating contracts and settlements; and presenting arguments and submissions in court and in other dispute resolution fora.²² The ability to communicate clearly and effectively is central to how well a lawyer performs their role. Accordingly, it is not surprising that the LTAS project identified communication as an essential learning outcome for all Australian law graduates, and incorporated it into the TLOs for the JD as follows:²³

TLO 5: Communication and collaboration:

Graduates of the Juris Doctor will be able to:

- (a) Communicate in ways that are effective, appropriate and persuasive for legal and non-legal audiences; and
- (b) Collaborate effectively.

Typically, communication in law is broken down into written and oral communication.²⁴ The literature which emphasises the integration of communication skills into law courses, has tended to focus on written,²⁵ rather than oral,²⁶ communication skills. To the extent the literature deals with oral communication skills, the discussion is limited to the development of students' unilateral oral communication skills; that is, their ability to present and develop their arguments through speaking. But, genuine oral communication is 'binary'²⁷ in nature; it is

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- 21 Parts of the discussion in this section are drawn from Natalie Skead and Kate Offer, 'Learning Law through a Lens – Using visual media to support student learning and skills development in law' (2016) 41 *AltLJ* 186; and Natalie Skead, 'Uncle Jack, Jaycee and the equitable doctrine of estoppel: using Second Life to support the development of advanced oral communication skills in law students' (2016) 50 *The Law Teacher* 230.
 - 22 Rowena Cantley-Smith, 'Put Down Your Pen': The Role of Oral Assessment in Undergraduate Law Studies' (2006) 13 *James Cook University Law Review* 30.
 - 23 Kift et al, above n2, 10; CALD, Juris Doctor TLO above n2, 4
 - 24 Sharon Wesley, 'Good Practice Guide (Bachelor of Laws): Communication (Threshold Learning Outcome 5)' (Research Report, Australian Learning and Teaching Council, 2011) <<http://www.lawteachnetwork.org/resources/gpg-communication.pdf>>; Nikolas James and Rachael Field *The New Lawyer* (John Wiley & Sons Australia, Ltd, 2013) 317.
 - 25 Dean Bell and Penelope Pether, 'Re/writing Skills Training in Law Schools – Legal Literacy Revisited' (1998) *Legal Education Review* 113; Samantha Hardy, 'Improving Law Students' Written Skills' (2005) unpublished paper for University of Tasmania EDGE program; Tonya Kowalski, 'Toward a Pedagogy for Teaching Legal Writing in Law School Clinics' (2010) 17 *Clinical Law Review* 285; Bryan A Garner, *Legal Writing in Plain English: A Text With Exercises* (University of Chicago Press, 2001); Justin Gleeson & Ruth Higgins (eds), *Rediscovering Rhetoric, Law Language and the Practice of Persuasion* (The Federation Press, 2008); Mark P Painter, *The Legal Write: 40 Rules for the Art of Legal Writing* (Casemaker Print Publishing and Jarndyce & Jarndyce Press Cincinnati, 3rd ed, 2005).
 - 26 James C McCroskey, *An Introduction to Rhetorical Communication* (Prentice-Hall, 4th ed, 1982); Jane Summers and Brett Smith, *Communication Skills Handbook* (John Wiley & Sons, 2006); Stephen E Lucas, *The Art of Public Speaking* (McGraw-Hill, 10th ed, 2008); Adrienne Hancock and Matthew Stone, 'Public Speaking Attitudes: Does Curriculum Make a Difference' (2010) 24(3) *Journal of Voice* 302; Matthew McKay, Martha Davis and Patrick Fanning, *Messages* (New Harbinger, 3rd ed, 2009).
 - 27 Skead and Offer, above n 21, 187.

a shared experience, involving two or more persons sharing information, ideas and feelings.²⁸ *Listening* and *non-verbal* communication are equally important components of effective and meaningful communication.²⁹ As Skead and Offer note:³⁰

[E]ffective communication is an exercise in aural and visual multi-tasking and requires the identification and interpretation of the explicit and implicit messages embedded in the ‘larger-than-life communication’ of both the sender and the receiver. The implicit messages are transmitted visually, vocally and verbally, through, for example, fluency, tone, pitch, body language, facial expression and eye contact. Receiving these implicit messages requires deep listening.

Although there are some units in law courses that develop this binary aspect of communication, for example Dispute Resolution, Negotiation and Mediation and clinical legal education programmes,³¹ overall there seems to be little focus on the development of these critical deep listening skills in some law curricula in Australia.

B *Hypothetical Problem-Solving Exercises*

Typically, analytical and thinking skills in law are developed and assessed through written problem-solving exercises. The exercises may require students to ‘identify and articulate the legal issues, present an argument, represent a player in the scenario and/or provide legal advice’.³² Although problem-solving exercises are appropriate and effective tools for the development of thinking and analytical skills, they are not perfect. In practice, a legal problem is rarely delivered as a neat and concise written summary of all material facts in a particular field of law – invariably the facts are messy, oftentimes irrelevant, encompassing multiple fields of law and communicated orally or through other audio and visual media. The written hypothetical does not, therefore, assist students to develop the broad-based communication skills³³ that are essential in providing appropriate and proper legal advice and legal services.³⁴ These broader skills encompass ‘careful critical and active listening to the problem; asking clarifying questions to establish the true complexity of the facts; summarising and synthesising what is said; and communicating empathy’.³⁵ In addition, the ability to ‘analyse and interpret non-verbal language

28 Joseph A Bolarinwa and Doreen Y Olorunfemi, ‘Organizational Communication for Organizational Climate and Quality Service in Academic Libraries’ (2009) *e Journal: Library Philosophy and Practice*, <<http://www.webpages.uidaho.edu/~mbolin/bolarinwa-olorunfemi.htm>>; Sandra Hybels, & H.R. Weaver, *Communicate effectively* (McGraw-Hill, 6th ed, 2001).

29 Gary Slapper and David Kelly, *The English Legal System* (Routledge Taylor & Francis Group, 14th ed, 2013) 72; Jojappa Chowder, ‘The Nonverbal Dimensions of Presentation’ (2013) 1(4) *Research Journal of English Language and Literature* 1; Peter Andersen, *Nonverbal Communication: Forms and Functions* (Waveland Press, 2nd ed, 2007); Janine Driver, *You Say More Than You Think* (Crown Publishers, 2010); Loretta Malandro, *Nonverbal Communication* (Newbery Award Records, 1989), 8.

30 Skead and Offer, above n 21, 187.

31 Joanne Martin and Bryant Garth, ‘Clinical Education as a Bridge between Law School and Practice: Mitigating the Misery’ (1994) 1 *Clinical Law Review* 443; Debra Poggrund Stark, ‘See Jane Graduate. Why can’t Jane Negotiate a Business Transaction?’ (1999) 73(2) *St John’s Law Review* 477.

32 Skead and Offer, above n 21, 188.

33 Jaqueline Horan and Michelle Taylor-Sands, ‘Bringing the court and mediation room into the classroom’ (2008) 18 *Legal Education Review* 197.

34 James and Field, above n 24, 325.

35 Nadja Alexander, Jill Howieson and Kenneth Fox, *Negotiation: Strategy Style Skill* (LexisNexis Butterworths 3rd ed, 2015) 118-23.

such as facial expressions, eye contact, posture, body language, silent responses and gestures³⁶ are all essential in interpreting fully the client's instructions.³⁷

Developing these broader communication skills in students is 'difficult, arguably even impossible, to achieve using only written hypothetical problems.'³⁸ In order to develop the more expansive communication skills of 'interpreting and understanding the personal, social, cultural and legal dimensions'³⁹ of a client's instructions, requires a realistic representation of a legal scenario; that is, it requires simulation.⁴⁰ The benefits of simulation provide enhanced law student engagement and reflection,⁴¹ and, as noted by Skead and Offer, 'by imitating real life, simulation can provide a multi-layered opportunity for law students to learn through a transformative process of understanding "reality" during which their perceptions of the world, people and the law evolve.'⁴² The Legal Storytelling and Caseflix projects discussed in this article, were developed to achieve a number of outcomes. Perhaps most significant of these was to foster the critical listening, viewing and questioning skills required for the development of expansive communication skills, while at the same time engaging with the other relevant TLOs of knowledge, thinking and ethics and professional responsibility.

IV THE FILMS – AN OVERVIEW

A Legal Storytelling Film

The team's initial plan was to create the scenario in animated form. We considered a number of different options, including: GoAnimate, Second Life and MovieStorm. However, as noted by Ambelin Kwaymullina, the School's Indigenous Advisor and author of the script, it was apparent that there were potential limitations with animated platforms, most notably that this format did not necessarily provide for the representation of a fully diverse range of characters, from a multiplicity of ethnic backgrounds. In addition, digital avatars are not able to fully replicate the complexity and subtlety of the gestures and expressions of human faces and bodies, resulting in potential reinforcement of gender and other stereotyping. As a result, the team decided that it was preferable for the scenario to be filmed, thereby allowing us to use student actors to introduce a more realistic representation of characters and bring a wider and uniquely diverse group of people to the project. In this context, it is worth noting that the team had the advantage of having a script writer who is a legal academic, a published fiction writer, and an expert commentator on issues relating to diversity and representation in narrative. Among the issues considered by the team – and that will form the subject of a broader conversation at UWA Law School going forward – are the perils of stories (hypotheticals) that either fail to reflect human diversity or offer only tokenistic or stereotypical representation.

The film's script raised a wide array of legal issues in areas such as Criminal Law, Torts, Property and Administrative Law, in an accessible and entertaining format. This scenario involved an idealistic young lawyer, Jessica Justice, who is sought out by a hypothetical client, Ms Lily Lane, to assist her in dealing with numerous problems she was facing. Those issues included: noxious smoke being pumped out from a nearby factory and interfering with the air

36 Skead, above n 21, 236.

37 James and Field above n 24, 325.

38 Skead and Offer, above n 21, 188.

39 Skead, above n 21, 237.

40 Skead and Offer, above n 21, 188.

41 Caroline Strevens and Roger Welch, 'Simulation and the Learning of Law: Constructing and Using an Online Transactional Assessment in Employment Law' in Caroline Strevens, Richard Grimes and Edward Phillips (eds), *Legal Education: Simulation in theory and Practice* (Routledge, 2016).

42 Skead and Offer, above n 21, 188.

quality around her property, a government fine she received after making an unauthorised public speech in the mall that was critical of the *Cat Act* as well as a variety of problems she had with her neighbour, Ms Rosy Parker, involving interference with water access and the construction of a mine that potentially ran under Ms Lane's land. Additionally, Ms Parker had accused Ms Lane of theft of a cat that Ms Lane insisted she won fairly in a competition. Finally, when speaking with the government official who arrived to tell Ms Lane about the outcome of her appeal against the fine, Ms Parker accidentally struck him and is accused of assault. The scenario also showed Jessica Justice navigating some professional issues of her own.

The scenario was filmed in and around the Law School at UWA. Law students played the main roles, with a number of staff members making short cameo appearances. The students came from a variety of backgrounds.⁴³



Figure 1: One of the concluding scenes from the legal story-telling film

B *Caseflix*

In addition to the legal storytelling film, teaching staff had also been integrating Caseflix into some of the first-year core JD units. Caseflix is a subscription-based resource that provides short animated videos representing the facts from seminal cases in a range of prescribed areas of knowledge. Many of the cases used in our courses are particularly well-suited to the visual presentation of facts, and the use of Caseflix provides another opportunity to engage law students by introducing storytelling and visual media into the classroom.⁴⁴

43 A short extract of the film is available here <<https://youtu.be/pNROUw-goVE>>. The extract depicts a collision in a street scene and raises a number of issues in the Criminal Law area dealing with assault. This scene is discussed further below.

44 The Caseflix website includes a pilot film of the seminal English Contract case *Carlill v Carbolic Smoke Ball Co* [1893] 1 QB 256; [1892] EWCA Civ 1, see <<https://www.caseflix.com.au/>>.

V IMPLEMENTATION OF FILMS IN JD TEACHING

A Legal Storytelling Film

1 FOUNDATIONS OF LAW AND LAWYERING

In 2017, Foundations of Law and Lawyering (FLL) was taught intensively in the first two weeks of the first semester to our JD students. The legal storytelling film was shown to law students on the first day of the intensive with the aims of: introducing students to the film in preparation for use in the core units that were to follow; introducing students to the idea that legal issues do not arise in discrete and neat silos but rather that they can be interwoven, overlapping and messy; and also, to assess the cohorts' pre-knowledge of law and legal issues.

The film was used as part of a two-stage activity on the first day of the intensive. In stage one, students watched the film with no introduction or explanation. They then watched the film a second time, after which students formed groups of six to eight. Within these groups, students were given 20 minutes to identify the legal issues that arose in the film, using plain, non-legal language. Each student recorded the legal issues identified by the group on a separate worksheet, which were collected at the end of the exercise. At the end of this phase, the lecturers facilitated a brief discussion of the legal issues identified by the students.

In stage two, sheets of paper containing the UWA Handbook description of each JD core unit along with a photograph of the unit coordinator were placed on the walls around the classroom. The worksheets from stage one were distributed to students randomly. The lecturers worked through each of the core units (starting with first year first semester units and ending with the second semester third year units) asking students if any of the legal issues identified on the worksheet they had been given, aligned with that core unit. If an issue on the worksheet aligned with a core unit, students placed a note identifying that issue on or near the relevant sheet of paper (see Figure 2 below).

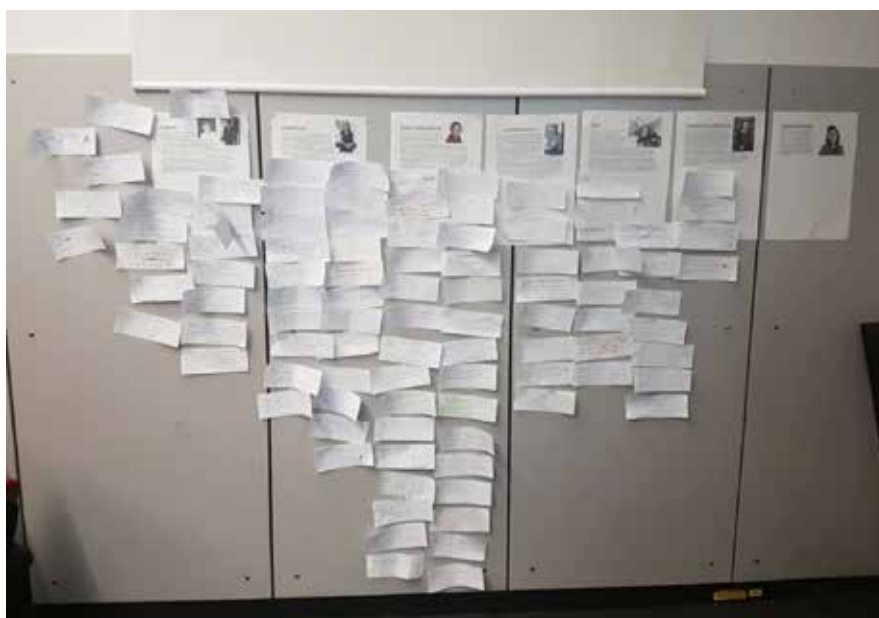


Figure 2: Outcome of stage two of use of Legal Storytelling film in Foundations of law and Lawyering

2 CRIMINAL LAW

As noted, from the outset it was the project team's intention for the Legal Storytelling film to be used as the basis for: problem-solving, role-plays, case studies and assessments throughout the degree. The Legal Storytelling film was also developed incrementally and tailored for use in all the core units of the JD degree, gradually incorporating different elements of substantive law as well as a range of moral, ethical, professional and personal challenges that commonly arise in legal practice.

Reflecting this intention, following the intensive delivery of FLL in the first two weeks of semester, the film was used in teaching a particular topic in Criminal Law. The topic for the week was non-sexual offences against the person, several of which revolved around the two types of common assault under the *Criminal Code 1913* (WA).

Prior to the class, law students were required to do pre-reading and work through a worksheet exploring the limits of legal consent to assault. The film was then shown to a class of 90-100 students. Working in groups, students were asked to identify the possible criminal offences in the film. The students focused quickly on three particular hypothetical scenarios; the first was a collision between Jessica Justice and two professional women, the second was Ms Lane striking Mr Bland, and the third was Sam Shark touching Jessica Justice. The first scenario in particular, was the focus of a series of questions which permitted the students to engage with the question of whether contact in the course of ordinary daily life can constitute the first form of common assault under the *Criminal Code 1913* (WA), and if not, why not.

Robust discussion followed. Two students noted that the collision appeared to be accidental, thereby questioning whether there was the necessary mental element for the offence. A number of other students concluded that the collision appeared to be the result of reckless conduct, and discussion ensued on whether this was sufficient to constitute the necessary mental element for common assault. Another legal issue was whether the depicted hypothetical scene allowed for the second type of common assault; that which is based on a threat of force or attempted application of force, although this was quickly dismissed. Our law students recognised that the potential common assaults in both scenarios one and two, concerned the first type of common assault, and therefore, it was not relevant that the victim did not anticipate the contact.

The discussion then turned to whether there was evidence that the 'victims' consented to the application of force in the first scenario, as lack of consent is a legal element of common assault under the *Criminal Code 1913* (WA). One student pointed to evidence of the facial expressions and reactions of the victims, indicating that they did not consent to this. However another student disagreed, pointing out that people who walk on pavements in a central business district do so anticipating that there may be unwanted contact with others, and therefore that consent was implied, despite the purported victim's reaction. This idea sparked another line of discussion between students, on the possibility of there being a legal defence to what might be a prima facie common assault. The legal defence of 'accidental event' was considered but dismissed, on the basis that the contact in the hypothetical scenario was clearly reasonably foreseeable because Jessica Justice's flustered search for her new client was evident in the portrayal of her character in the film. However the defence of accidental event was then raised as a possible defence in the second scenario, based on Ms Lane's clear reaction of shock when she realised she had struck Mr Bland.

B *Caseflix*

In addition to the legal storytelling film, teachers in first year core units used the Caseflix resources in lectures in those units. The video for *Victoria Park Racing and Recreation Grounds Company Limited v Taylor* (1937) 58 CLR 479 was shown in a two hour Property Law lecture as a preface to discussing the High Court's decision on the concept of property and whether there

is property in a spectacle. After watching the film, students were asked to work in small groups to identify the legal issues that were raised by the case, and how a court may resolve those issues. In Contract, the video representing the facts in *Carlill v Carbolic Smoke Ball Company* [1892] EWCA Civ 1, was used in a two hour lecture covering the fundamental principles of offer and acceptance.

In the second semester of 2017, teachers in Torts and Land Law also had the opportunity to show Caseflix videos to their students. In Torts, two Caseflix videos were used; one related the facts of *Road Traffic Authority of NSW v Dederer* (2007) 324 CLR 330, in a class on the tortious element of breach of duty of care, and the other related the facts of *Rogers v Whitaker* (1992) 175 CLR 479 in a class that outlined the necessary condition test in causation. The Caseflix videos that were shown to the Land Law class were: *Gibbs v Messer* [1891] AC 248, and *Breskvar v Wall* (1971) 126 CLR 376. These cases address fundamental issues in the Australian Torrens system of land title registration.

VI EVALUATION OF RESOURCES

A *Teacher Reflections*

1 LEGAL STORYTELLING FILM

Teachers in both FLL and Criminal Law gave positive feedback about the effectiveness of the Legal Storytelling film in supporting law students' learning. In FLL, although it was only the first day of their JD studies, students were able to identify a significant number of legal issues raised in the film. The issues identified tended to cluster around a few key incidents in the film relating to areas of law that are reasonably well understood by the general public. In particular, all students easily identified: the assault on Mr Bland, the property issues relating to the mine and river, the potential environmental tort, and the infringement of the right to freedom of speech. Many of these topics are covered in both high school politics and law courses, and in undergraduate law majors, and so it was perhaps unsurprising that our students were able to identify these issues easily.

It was very pleasing that a few students also identified some of the legal ethics and professional conduct issues embedded in the film. For instance, both the suggestion that Jessica Justice should act against the interests of her client in her own career interests and the potential sexual harassment of Jessica Justice by Mr Shark, were identified by a number of students. It is hoped that highlighting these issues to the whole cohort so early in the JD journey, will make students more alive to, and reflective of, these critical aspects of law and conduct as they progress through the degree and into legal practice.

Very few students could identify some of the more advanced legal issues which are typically covered in later year subjects in a law degree, such as the review of administrative decisions and action, and the legal status of corporate entities. As a teaching and learning tool, the film and associated activities gave an engaging and fun visual way to introduce law students to the process of identifying and categorising legal issues. The importance of humour in the classroom should also not be understated. As noted recently:⁴⁵

The judicious use of appropriate, relevant and inclusive humour can help create a friendly, unthreatening learning environment, which can in turn increase student engagement and participation. In addition, and perhaps more importantly, the literature also suggests that humour can have a significant positive impact on students' retention of material.

45 Kate Offer, Natalie Skead & Angelyn Seen "‘You must be joking’: the role of humour in the law classroom" (2017) *The Law Teacher*, 1, 1-2. <<http://dx.doi.org/10.1080/03069400.2017.1379182>>.

The mood in the class room during the activities was very positive with students laughing at various points in the film. Students appeared to appreciate the visual and kinetic elements of the activity.

At a macro-level, the film was used as a ‘reverse capstone’ or ‘footing’ to alert incoming law students to the fact that law cannot and should not be viewed in silos, but rather, that to fully understand the nuances and complexity of law, one has to approach it holistically. At a micro-level, showing the film in Criminal Law allowed students to contextualise their legal knowledge and to relate two particular scenes to the current study topic. It also enabled students to identify and interpret non-verbal communication, such as facial expressions and body language, to assess the nature of the bodily interference which occurred, and in particular, the issue of consent – a factual determination, based on all the available evidence. The visual medium facilitated consideration of the way in which legal consent may be satisfied – through express words, but also through an implied sense of agreement based on common knowledge of the realities of everyday interaction, as depicted in the city street setting. The students’ experience in Criminal Law is an excellent illustration of the ‘multi-layered opportunity’ for learning through a ‘transformative process of understanding “reality” during which [students’] perceptions of the world, people and the law evolve’.⁴⁶

2 CASEFLIX

The teachers in Contract, Property, Torts and Land Law who used the Caseflix resources, reported that using the short videos in their lecture gave a welcome break from the traditional lecture delivery format. Students found the video amusing and the group discussion that followed was animated and lively.

B *Law Student Feedback*

1 LEGAL STORYTELLING FILM

Student feedback on the legal storytelling film was obtained through an anonymous online survey for which ethics approval was obtained. All students enrolled in Criminal Law were invited to complete the survey (n=138). The survey was open for one week and 45 responses were received, representing a 32 per cent response rate.

(a) Survey Items and Results

Seventy-one per cent of students who responded to the survey, answered ‘strongly agree’ or ‘agree’ that the film helped them to identify the legal relationships between the characters in the film. By contrast, 95 per cent of survey respondents either strongly agreed or agreed that written problem-solving exercises helped them to identify legal relationships. Similarly, 76 per cent of survey respondents agreed or strongly agreed that the film helped them to identify legal issues, while 100 per cent of student respondents reported that written problem-solving exercises helped them to identify legal issues.

While slightly fewer student respondents (65 per cent) agreed or strongly agreed that the film helped them identify ethical and moral issues that might arise in law, this figure was only marginally lower than the 69 per cent of student respondents who agreed or strongly agreed with this statement in relation to written problem-solving exercises. Although this survey was conducted in relation to the Criminal law unit, this result is supported by the fact that in the FLL exercise, only a few students identified the ethical and professional conduct issues arising in the film.

⁴⁶ Skead and Offer, above n 21, 188.

2 CASEFLIX

Student feedback on the use of the Caseflix resources in Property and Contract lectures was obtained through a question included in the voluntary and anonymous online Student Perception of Teaching (SPoT) surveys undertaken in each of the units at the end of the semester. The question asked: ‘The animated film for [*case name*] helped to visualise and remember the facts of the case’.

In the Property SPoT there were 45 student responses representing a response rate of 35 per cent. Of those students who responded, 71 per cent agreed or strongly agreed with the question asked. In the Contract unit, at the time of writing this article, there were seven responses representing a response rate of only five per cent, all of whom agreed or strongly agreed with the question asked.

C Analysis

In terms of legal teaching and learning, the results show that the legal storytelling film complements the traditional legal teaching method of written problem-solving exercises well. While it is not surprising that students reported that the traditional method of written problem-solving exercises supported their learning to a greater degree, it was pleasing that the majority of those students who responded to the survey, reported that the film assisted them to identify legal relationships and issues.

An important survey result is that the film assisted student respondents, to identify the ethical and moral issues to the same level as the written exercises did. This result could stem from an ability to see the ‘law in action’ through the characters in the film, and assist the more complex ethical and moral issues to be recognised through the various forms of non-verbal communication. This is significant given that students should be considering these issues from the very beginning of their law degree.

Overall, the survey results show that the film added variety to legal teaching, as did the Caseflix resources, and at the same time deepened student learning in the fundamental aspects of: law and lawyering, legal ethics and professionalism. In this regard, it is interesting to reflect on a recent article by Paula Baron and Lilian Corbin, who discussed the development of professionalism in law students by applying ‘communities of practice’ to challenge orthodox legal education. A number of Baron and Corbin’s recommendations would arguably be advanced by the legal storytelling project discussed in this article. Baron and Corbin’s recommendations are expressed in the form of ‘we could ...’, that is, as legal educators ‘we could’ act in certain ways so as to assist in the development of legal professionalism. Recommendations relevant to our project are that ‘we could’: overtly welcome students to the legal profession; take a clearer stand on professional expectations; place greater emphasis on collaborative learning and peer review; work to humanise and contextualise the study of law; more overtly address emotional intelligence competencies; incorporate more learning about the trend to ‘new lawyering’; and encourage more fluidity in the boundaries between law school and the practice of law.⁴⁷

VII CONCLUSION

In Brandon Sanderson’s 2010 novel, *The Way of Kings*, the character Hoid says to the soldier Kaladin that ‘the purpose of a storyteller is not to tell you how to think, but to give you questions

47 Paula Baron and Lilian Corbin, ‘Thinking like a lawyer/acting like a professional: communities of practice as a means of challenging orthodox legal education’ 46 (2012) *The Law Teacher* 100, 111-115.

to think upon.’⁴⁸ In creating the legal storytelling film for students, the authors consider that we achieved our aim of providing many and varied questions for our law students to ‘think upon’ as well as identify, discuss and apply. If the practice of law is ‘on the line’ then it is incumbent on us as legal educators to future-proof our law graduates with a range of professional skills. The authors believe that our project is just one important example of the ways in which law teachers can not only improve law student engagement by providing a well-organised and integrated foundational and capstone experience, but also encourage the development of vital skills, such as critical thinking, problem-solving and communication that law graduates increasingly need, to navigate the modern legal profession. Our new lawyers will not only be great advocates but also deep thinkers who are thinking not only of the next case, but also of the next great question.

48 Brandon Sanderson *The Way of Kings* (New York, Tor Books, 2011) available here <<http://thestorytelleragency.com/goodreads/50-best-quotes-for-storytelling>>