workshop, there is now a core of senior and influential Indian law teachers who know about the contribution that Australia is making, and continues to make, to excellence and innovation in legal education.

LEGAL ETHICS

Ethics and legal education
B Brooks
28 *Vict U Wellington L Rev,* 1998, pp 157–165

The present low standards of ethical behaviour and responsibility about which concerns have been and continue to be expressed are substantially due to the fact that the subject is an unrecognised and untreated casualty of the development of the full-time course of university study which is now the normal path to the law degree.

There is no part of the legal landscape which is not illuminated by ethics. That being so, it follows that ethics ought to be taught. If ethics can be taught, what is the desired outcome? What effect, if any, does formal education and training have on the ethical values and professional conduct of lawyers? A troubling answer is found in the Cotter/ Roper Report which found that: lawyers do not know the rules of professional responsibility; and/or lawyers know the rules but, when confronted with a situation, they are unable to recognise the ethical issues involved; and/or lawyers know the rules and can recognise issues but they do not have the ability to analyse the issues and come up with a satisfactory solution; and/or lawyers can do all these things, but they choose not to follow the ethical rules, because of external or internal pressures.

The formal rules of professional conduct can be learnt by rote but that is not true of the capacity to be sensitive to ethical dilemmas. To achieve this capacity requires training in ethics to have a broader focus beyond the formal rules covering a lawyer's professional duties. In other words, we expect that a lawyer will be able to identify and select and operate within a framework of professional, ethical and socially responsible behaviour and practice. What is not agreed is how lawyers, or those who aspire to be lawyers, are best encouraged to be ethical.

There are very real problems in introducing ethics into university level legal education. One powerful argument against a compulsory program is that any prescribed course would be a form of social indoctrination. Any prescription must be open-ended and flexible. The aim should be to provide a reasonable grounding in the principles of ethical professional practice, professional responsibility and etiquette. What is to be encouraged is a capacity to recognise when an ethical issue exists.

Another problem in introducing ethics into law school programs is that such programs are necessarily inter-disciplinary. Inter-disciplinary programs are resource intensive and are likely to be the most at risk when resources become scarce. Inter-disciplinary programs are vulnerable to academics becoming anxious to protect their own patch. Behind these issues lies the fact that there is a lack of teachers competent to present a program on ethics.

It is frequently asserted by legal academics that they teach ethics interstitially in each of the substantive law subjects, that they impart ethics by example, that ethics is all pervasive in the curriculum and that, therefore, there is no need for a stand-alone program on ethics. Even if the argument is conceded that a stand-alone program is desirable, the further hurdles are: the absence of research and information; the problems of designing a curriculum; the lack of materials; the need to train teachers; the resource burdens thereby imposed on the law schools; and the need for other providers of legal education to carry their share of responsibility in ensuring that lawyers are sensitive to ethical issues.

Law schools are one provider of legal education. Together with other providers they have a role to play in producing people trained in the law, who have the capacity to be able to recognise ethical problems when they arise, the practical know-how to resolve the problems and to avoid practising unprofessionally and an attitude to their work which makes ethical practice a daily habit in approaching and resolving dilemmas.

MANDATORY CLE

REVIEW ARTICLE

Comparison of the features of mandatory continuing legal education rules in effect as of July 1998
New York State Bar Association, 1998
107pp

This very useful publication, which appears annually, contains a very comprehensive analysis of the main features of the mandatory CLE (MCLE) schemes in operation throughout all jurisdictions in the United States, as well as a brief comparision with the MCLE requirements in other countries.

We learn, for example, that the current position is that 41 out of the 52 US states now have some form of MCLE prescription for practising attorneys, whereas there were 15 less only ten years ago. However, of the remaining 12 jurisdictions (including Washington DC), all but four have proposals for the introduction of MCLE under consideration and/ or specific requirements in place for new admittees.

The amount of data presented about the characteristics of the 41 current sets of MCLE requirements reveals a very complicated picture nationally, with significant variations between the states. The distinguishing features as reported