

pants did go beyond assessments of risk alone.

A third component of the study tested students' evaluation of the fairness of market forces. The authors found that, with regard to resource allocation, law students at UCLS deviated from experts in giving weight to factors other than number of lives saved, when any such information was presented to them. That is, they also cared about equitable issues of fairness and breadth. With regard to risk assessment, the law students were able to act like 'experts' in assessing risk levels alone.

When establishing funding priorities, however, they were responsive to the concerns of laypersons, even when such concerns were not supported by expert assessments; and they appreciated factors such as voluntariness, the availability of solutions aside from government funding, and potential effects of each risk. But UCLS students also differed, strikingly, from ordinary people in their judgements about the role of fairness in certain markets. Among ordinary people, about 80 percent found the specified market outcomes unfair and 20 percent found them fair. For these law students the proportions were almost precisely reversed: 20 percent found unfairness and 80 percent fairness. It is unclear from study, however, to what this remarkable finding might be attributed. Quite possibly it is indicative of UCLS training.

SKILLS

Integrating procedure, ADR and skills: new teaching and learning for new dispute resolution processes

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Clinical legal education as a method incorporates the key elements of structured experience and reflection. As a substantive focus, it looks at what lawyers really do and what really happens in practice. Clinical legal education methods

and insights can be effectively combined with conventional legal education to further the goals of legal education.

This paper elaborates on those teaching and learning ideas, in the specific context of teaching civil procedure. The second part of the paper describes a program designed to integrate theoretical, critical and practical approaches to the formal rules of civil procedure.

Ideally, university education should enable students to acquire, develop and use information and ideas for themselves, and to apply, evaluate and connect diverse new ideas and information. Law schools must enable graduates to analyse critically legal institutions and the place of law and legal institutions in society and encourage scholarship which develops broader doctrinal and theoretical understandings of law.

At the same time, legal education necessarily includes a competence component, but it must be generalisable. Students must be able to locate, understand and apply new law, rather than reproducing doctrines learned in law school. Increasingly, many law graduates will not practise law at all. For all these reasons, competence in legal education cannot be limited to knowledge and legal rules and skill at legal analysis and adversarial advocacy. Legal education must include transferable skills as well as the intellectual abilities expected of university graduates. The changing nature of law, legal practice and the future careers of law graduates also demand a greater stress on ethical values in a broad sense.

Critics argue that university legal education is simply not doing the professional training job expected of it and that law graduates lack the skills or competence necessary before they can be released upon an unsuspecting public. However, such criticisms are quite broad and general and are no longer generally applicable. Many Australian law schools, perhaps especially the newer schools, pay substantial attention to critical theory, consider law in con-

text and integrate skills with the undergraduate curriculum.

Related and similar criticisms can be made of skills components, such as interviewing/counselling, negotiation and advocacy. A skills component can intensify the focus on adversary litigation as central and reinforce the false image of litigation and trial as the dispute resolution norm. When put into a lawyer role in a skills activity, without substantial preparation, students tend to emulate extreme or stereotypical lawyer behaviour.

Another concern about the way procedure is taught and the ways skills are taught is their relationship with ethics and professional responsibility. The consideration of ethics may be limited to attention to formal rules of professional conduct or adversarial etiquette. Adversarial strategy can too easily be used to ignore the moral complexity of much that lawyers do.

A recurring issue in legal education is the tension between mainstream and special focus subjects. For example, curricular issues arise with considerations of race, gender, ethics or theory and the same question arises with ADR, procedure and skills. Should there be a separate procedure topic, a separate ADR topic, a separate skills or lawyering topic? Or should any or all of these be integrated with substantive law topics? The author rejects divisions such as theory and practice or procedure and substance, so, in this context, she supports integration of ADR, procedure, substantive law and skills in first year and in later years, with specialist optional topics for those with greater interest.

ADR is a piece of the process puzzle that is missing from the picture of litigation we present to students. Combining ADR and procedure enables us to break away from a false image of litigation as the norm and as what ought to happen. It also illuminates the strategic and practical relationship between various stages of litigation and the parallel settlement processes.

Because ADR often employs an interest-based, problem solving mode of thought rarely demonstrated in a traditional procedure class, integrating ADR with procedure facilitates a critical understanding of adversarial and co-operative processes. Teaching ADR raises the question of the values reflected in ADR and how these values relate to aims and objectives of civil justice.

Integrating ADR with procedure challenges the traditional role of a lawyer and expands what it means to be a lawyer. Critical examination of the real world of dispute resolution will naturally raise concerns of access to justice and compel consideration of dominance and disadvantage and diversity, of gender, class, race, sexuality and power. For a law student or legal practitioner or judge to grasp these profound differences in perspective leads to valuable practical insights about basic practice skills, such as interviewing, counselling, negotiation, witness examination and advocacy. Recognising difference in this sense will also generate substantial questions about the very nature of law and justice which all participants in the legal system must consider. These insights reinforce the need for law schools to teach ethics in the broadest sense.

Part of the wider, non-adversarial, problem-solving orientation of ADR is a recognition of the importance of interpersonal communication skill such as listening, in addition to the intellectual, analytic abilities that traditional legal education fosters and to the adversarial advocacy skills fostered by some practical training programs. Integrating ADR with procedure and skills activities enables/encourages greater use of experiential teaching and learning methods. Integrating experience and skills effectively requires careful planning and attention to teaching method. Practice alone or experience alone will not necessarily lead to useful learning.

The author describes in detail a four-stage model of teaching and learning introduced at the University of Adelaide

in order to teach procedure by stressing the integration of practical and conceptual components. This learning sequence is linked to the knowledge or experience which the students already have of disputes and their resolution. It also includes group work, occurs at several different points in the curriculum, beginning in first year, and involves a progression from simpler to more complex situations.

Integrating ADR and procedure experiential skill components allows teachers and students to move away from materials and practices that promote litigation and an adversary mindset, and to use skills as a starting point for a critical and theoretical evaluation of law and legal practice. Furthermore, integrating ADR procedure with practical skills helps us understand the unbreakable nexus between substantive law, legal process and lawyer tasks, and between theory and practice.

Developing and presenting a skills program in the LLB: a discussion of design and operational issues

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The Faculty of Law at University of Western Sydney Macarthur (UWS Macarthur) aims to produce LLB graduates who combine a mastery of the basic areas of law and a knowledge of other areas of law with high level practical skills in key areas covering both generic skills and specific 'legal' skills and an appreciation of the practical application of law and of the relationship between law and its wider socio-economic and political context.

The course incorporates a practical skills program which plays an important role in achieving these aims. Both academic and skills components of the subjects are carefully structured to ensure that they are appropriate for achieving the key identified pedagogical and personal development objectives. The program canvasses a wide range of skills, ranging from generic skills such as in-

terviewing and negotiation, analysis and problem-solving, written and oral communication; to the 'legal' skills of advocacy, drafting, legal research, time and fact management, and professional responsibility.

At the planning stage, the decision was taken to include skills in the course in order to enrich students' learning experience – in particular, through the opportunity to see the practical application of the doctrinal law. The next design issue was whether to run the skills and academic elements in parallel, or to integrate skills into the LLB academic program – and if so, how they should be integrated, and how closely. While parallel streams have some advantages, a crucial disadvantage is that there is no necessary link between the academic area and the appropriate skills component. The UWS Macarthur program integrates the academic and skills elements to ensure that these two components offer the maximum opportunities for appropriate cross-fertilisation and thus achievement of the program's aims.

Another important design issue related to the nature of assessment of the skills components was whether student should be assessed only on a pass/fail basis, or would they be 'graded' in the same way as the academic components. Experience and the literature make it clear that the choice of assessment mode is an important 'signalling' device to students, from which they may take cues as to the comparative significance and relevance of components of a course. Accordingly, to emphasise that the skill component was an integral and crucial part of the LLB program, the decision was taken to grade skills exercises in the same way as academic exercises. Thus students would not be able to obtain good overall grade in a core subject unless they performed well in both academic and skills components of that subject.

There were three discernible phases through which the process of implementing the skills program passed. The first