

A COMPREHENSIVE LLB TAX TEACHING PROGRAM

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ABSTRACT

Teaching taxation presents peculiar challenges for academics, especially when delivered as part of a law program. This paper documents the approach taken in the two-subject taxation course available as part of the LLB program at La Trobe University. Particular attention has been given to the design of the assessments used in each subject, which include an optional moot, in-class presentation and extended research paper. The paper concludes by identifying those features of these taxation subjects to suggest a model generalisable to the delivery of other law subjects.

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I INTRODUCTION

Teaching taxation as part of any undergraduate curriculum presents special challenges. From the students' perspective, this is most likely due to the interdisciplinary nature of the subject, with elements of law, accounting and economics, at a minimum, featuring heavily. Additionally, the legal content of taxation itself, with a heavy emphasis on both complex statutory provisions and equally difficult case law, contrasts with other law subjects which usually can be safely categorised as biased towards one or the other. As well are common preconceptions that taxation study involves complex legal technicalities, heavy mathematics and little in the way of recognisable coherent legal policies and principles.¹ Given these factors, it is little wonder that students in LLB programs,² especially those without a business (accounting, finance and/or economics) background, often feel intimidated when embarking on taxation as a course of study.

The challenges are no less on the side of those delivering these courses. In addition to the problems that students face, lecturers are presented with the issue of designing courses that are engaging and motivating to a student audience that is often skeptical of taxation's relevance to their future plans. Much of the literature that considers these student engagement issues does so in the context of teaching taxation as part of an accounting degree program.³ As taxation forms an integral component of most accounting degrees, lecturers in such programs are much less likely to be confronted with such skepticism as opposed to their colleagues in LLB programs.

This paper considers the approach taken at La Trobe University in incorporating taxation subjects into its LLB program. Designed specifically to be distinct from the subjects offered as part of the accounting courses, the taxation program in the La Trobe LLB comprises of two subjects that are designed to build on each other. The first of these is Income Tax Law (ITL), which is followed by Advanced Tax Law (ATL). The relative roles of each subject are described more fully in the next section.

¹ See Michael Oberst, 'Teaching Tax Law: Developing Analytical Skills' (1996) 46 *Journal of Legal Education* 79, 80.

² LLB programs are used in this paper as a shorthand label for entry level law degrees and, therefore, comments are equally applicable to the relatively new Juris Doctor (JD) programs that are being offered at some Australian law schools.

³ See, for example, Jennifer Butler, 'Researching Tax Using Technology: A Survey of Student Attitudes' (2006) *Journal of the Australasian Tax Teachers Association* 178; Lin Mei Tan and John Veal, 'Tax Knowledge for Undergraduate Accounting Majors: Conceptual v. Technical' (2005) 3 *eJournal of Tax Research* 28; Colleen Fisher, Judy McDonald and Katherine Ritchie, 'Bridging the Gap - The Challenge of Teaching Tax in a Multicultural Classroom', paper presented at the 17th Australasian Tax Teachers' Conference, January 2005, Wellington, New Zealand; Bernadette Smith and Sonia Shimeld, 'Drawing Accounting Students into Tax', paper presented at the 17th Australasian Tax Teachers' Conference, January 2005, Wellington, New Zealand; Lin Mei Tan and John Veal, 'Tax Curriculum in New Zealand Approved Tertiary Educational Institutions', paper presented at the 15th Australasian Tax Teachers' Conference, January 2003, Wollongong, Australia; Andrew Maples and Adrian Sawyer, 'Simulating Professional Experience through a Case Study: Assessing the Delivery of Transferable Skills from the Students' Perspective', paper presented at the 12th Australasian Tax Teachers' Conference, January 2000, Melbourne, Australia; Helen Hodgson, 'Teaching Legal Skills to Commerce Students or Turning a Commerce Student into a Tax Specialist', paper presented at the 8th Australasian Tax Teachers' Conference, January 1996, Brisbane, Australia.

As at November 2011, ITL had been taught eight times (since 2004) and ATL four times (since 2007). As such, this paper serves two purposes, being an exercise in reflective teaching as described by Biggs and Tang⁴ designed to improve the content and delivery of these two subjects, and also as a record for what has transpired, with a view to allowing other teachers to adopt and/or adapt the techniques and methods used.

The next section of the paper sets out the basic design of these two subjects, including a brief overview of the assessment tasks used. This is positioned in the context of teaching theory, focused on the higher education sector. The section following that briefly discusses the notion of principles-based teaching, which is an underlying principle used in the delivery of these subjects. Following this, a more detailed discussion of the assessments and the experience taken from their implementation is provided. These observations are collated to suggest a model in the final substantive section that may be adapted for use for other legal disciplines. Short concluding comments are then provided in the final section.

II COURSE DESIGN

Taxation law was reintroduced into the LLB curriculum at La Trobe Law in 2004.⁵ At first, taxation was limited to a single offering, Income Tax Law (ITL). This was (and still is) delivered in the standard lecture-tutorial mode, with a two-hour lecture and one-hour tutorial across a thirteen week semester. While the major opportunity for interaction is in the tutorials, lectures have tended to be generally of medium size (55 to 70 students), so some moderate interaction takes place in this environment.

The assessments used in ITL consist of two tasks, with students provided with a choice in respect of the first. This first choice is between a moot (undertaken as group work) and a problem-based written assignment (undertaken individually). The second task is a traditional open-book written examination of two hours duration held in the standard University examination period.

With the growth in popularity of ITL, a second subject, Advanced Tax Law (ATL) was introduced into the curriculum in 2007. Unlike ITL, ATL is offered in intensive mode, with all classes taking place during one week in the break (either summer or winter) immediately following the last regular semester in which ITL was taught (i.e. winter break if ITL was taught in semester one). Cohorts have tended to be much smaller (which is to be expected, with ITL as a prerequisite for ATL⁶), allowing for a much greater level of interaction. This interaction culminates in the last two days of classes, in which the students effectively take over the leadership of the class (as part of an assessment task).

⁴ John Biggs and Catherine Tang, *Teaching for Quality Learning at University* (Open University Press, 3rd ed, 2007) 41-46.

⁵ LLB students wishing to study Taxation had previously been referred to the School of Accounting to undertake the unit offered as part of the B.Com curriculum.

⁶ One student to date has not completed ITL, although they had completed the equivalent subject at another university (and undertook ATL for cross-institutional credit).

The assessment in ATL comprises of two tasks, being an in-class presentation of half an hour's duration and a research paper. Each assignment is worth 50% of the student's final grade. Both tasks are undertaken individually. For each project, the student is able to choose their own topic, in consultation with the lecturer, with only minor restrictions on the presentation (topics that are not covered in the formal syllabus for ITL or ATL and have not been chosen by a classmate). Choice of topic for the research paper is limited only by the topic's feasibility for the parameters of that assignment.

The two primary features of both subjects are the use of principles based teaching and the specific design of the assessment. In brief, principles based teaching is designed to present the principles underlying the relevant law before analysing the technical content (including the specific wording of the relevant legislation). This provides students with a frame of reference by which they can understand the technical content of the law, building on prior knowledge and not losing sight of the forest for the trees. This is a form of constructivism in teaching and falls within Biggs and Tang's preferred Level 3 theories of teaching.⁷ This approach to teaching is discussed further in the next section.

The intention behind ITL is to provide a broad foundational knowledge of taxation, which will provide students with a sufficient understanding of the basics of the area to contribute on at least a small scale should they enter tax practice. This goes beyond the mere issue-spotting ability Oberst attributes to many taxation courses taught in law degrees in the United States.⁸ ATL then seeks to build upon this foundation by providing students with the opportunity to develop some specialist knowledge in one or two areas.

The net effect of the complete course is that deep learning, where students actively engage with the subject material and achieve a level of understanding in which the relationships between complex concepts are realised,⁹ is fostered while recognising the practical limitations of the modern university classroom. Taxation cannot be taught in a vacuum; some technical detail needs to be transmitted to the students for the concepts to have meaning. This serves the purpose identified in the following section, at least to a limited extent, of preparing students for a professional career in taxation. To the extent that technical knowledge is required, students may adopt surface learning techniques such as rote learning and memorisation.¹⁰ While not ideal, the realities of teaching an inherently complex subject such as taxation in a thirteen-week semester coupled with other practical restrictions, such as a large part-time student cohort with many demands on their time, inhibits the ability to foster a purely deep learning approach.¹¹ To mitigate these limitations, analysis of technical content and assessment that are

⁷ Biggs and Tang, above n 4, 20-21.

⁸ Oberst, above n 1, 80.

⁹ Biggs and Tang, above n 4, 24.

¹⁰ See Biggs and Tang, above n 4, 22-25 for further discussion of the distinction between deep and surface approaches to learning.

¹¹ A mix of teaching approaches is recognised within higher education literature as being appropriate, if not inevitable. This is an observation applicable across all subject disciplines and is consistent with the reflective approach to teaching that members of academe are encouraged to adopt; see Heather Fry, Steve Ketteridge and Stephanie Marshall, *A Handbook for Teaching & Learning in Higher Education – Enhancing Academic Practice* (Kogan Page, 1999) 210-213.

likely to lead to a surface learning approach is restricted to ITL, with ATL designed to encourage the more desirable deep learning leading to better understanding of taxation concepts. This is consistent with the more homogenous student cohort undertaking ATL, who are particularly characterised by choosing to take this subject to identify themselves (whether to potential employers or other third parties) as having obtained a higher level of achievement in undergraduate taxation study than students having completed only ITL.

Finally, to provide a context in which student learning can take place, and also to encourage students to adopt deep learning techniques, an explicit theme is adopted in each subject. This is intended to provide a purpose for student learning, a reference point to allow them to which they may constant refer. By doing so, sight of the forest is not lost among the trees of legislative and case law detail that is studied. The respective themes used in each subject may be loosely referred to as tax planning in ITL and tax reform in ATL.

The focus on tax planning¹² in ITL requires students to, for example, appreciate the distinction between capital and income receipts and the implications of so classifying a specific receipt. The purpose of this theme is not so much to encourage tax planning per se, as such an approach can have clear negative implications, but rather to foster deep learning, in that students will often be required to adopt a reverse approach to answering questions compared with the method normally used. Students will be able to respond to such questions adequately if they have properly engaged with learning the material. For instance, a traditional client advice problem would pose a specific fact scenario and ask the student to apply the law in resolving the client's query. This is also the case for a typical problem in ITL. It is the extension questions where the difference comes in. The traditional model typically alters some aspect of the original fact pattern and requires students to revise their answer accordingly. While this may test a broad spectrum of the knowledge covered in a course, students may adopt surface learning approaches in that the alteration may prompt particular responses or signal where students may expect to find the answer. More to the point, students go through the same thought process as for the original question of comprehending a fact pattern, identifying the relevant law and then applying that law to resolve the questions posed. Under the rubric of tax planning, though, a typical extension question in ITL will ask an open ended question along the lines of "what would you change about the proposed transaction to produce a more favourable tax outcome?". Such questions typically deal with very fundamental matters, as opposed to the cynical identification and exploitation of perceived loopholes or artificial arrangements. Common examples used in ITL are converting an income stream (taxed as ordinary income) to a lump sum such that it is treated as a capital receipt, which may then allow access to the CGT discount or be offset against prior year capital losses, neither of which are treatments available to ordinary income receipts. The fact pattern in the High Court's decision in *FCT v Hart*¹³ is studied as a prime case study of a practical example of (albeit ineffective) tax planning, largely

¹² While inclusion would have been likely in any event, as a direct result of the tax planning theme two of the 13 lectures are devoted to anti-avoidance to ensure that students appreciate the role of legitimate tax planning and are able to distinguish this from the illegitimate practices of tax evasion, tax fraud and tax avoidance.

¹³ (2004) 217 CLR 216.

as it is relatively simple (compared with the fact patterns of other anti-avoidance cases), relies only on substantive law that is covered in the syllabus (primarily s 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) and its predecessor) and does not depend on the exploitation of any special concessions (unlike most other schemes subject to Part IVA of the *Income Tax Assessment Act 1936*).

The tax reform theme in ATL provides an alternative focus from that in ITL, but has the similar advantage of fostering deep learning. Arguably, the deep learning encouraged in ATL occurs at a higher cognitive level than that in ITL. In ITL, students still take a positivist approach, applying the law as it currently stands. The tax reform theme of ATL, in contrast, requires students to take a more normative view of the law and actively forces students to question the current form that the law takes. This goes beyond mere policy inquiry; students are required to critique the law as it currently stands and, especially for the research assignment, not only identify problems with the current law and why these are problems, but to provide solutions as to how the law should be reformed to solve the identified problems. Vague discussion of theory or references to public policy are insufficient; students must provide solutions. For example, how particular provisions should be redrafted or repealed, in all cases being demonstrably cognisant of the predictable consequences of such changes. In the context of the principles based learning described in the next section, this process takes students one step further back in the legal process; whereas the principles based learning approach provides the intended effects of the law as a framework for understanding the existing provisions, the tax reform theme in ATL forces students further back to decide what those intended effects should be (including questioning whether the current intended effects are appropriate).

The next section provides a discussion of the concept of principles based learning. This is the technique that has been employed in teaching the La Trobe LLB tax program to facilitate the deep learning that represents the course's ultimate objective.

III PRINCIPLES BASED TEACHING

One major challenge in teaching tax law is the temptation that students face to learn tax as a series of unrelated rules. This is the case regardless of the student's educational background. Students who have not done any previous accounting studies do not have a body of prior knowledge that they can readily draw upon. Accounting students, though, will realise very quickly that there are significant differences in the specific application of accounting principles as opposed to tax rules, despite dealing with similar subject matter. Students who view taxation as a series of unrelated rules are likely to undertake surface learning techniques with the result that they acquire very little actual knowledge of taxation.

To mitigate against this prospect, where possible, the content of the law is explained in terms of a general framework based on the intention underpinning the relevant provisions; these are the principles to which the title of the technique refers. This framework is couched in terms to which students should be able to relate. The technique comes into its own primarily with intermediate to advanced topics.

Once fundamental concepts have been learnt and understood, the principles based teaching framework may be used to greater effect. The framework is constructed relating the material under inquiry to the knowledge that has already been obtained and in this way is an application of Biggs and Tang's constructivist learning methodology, where students build upon their existing skill or knowledge base (rather than acquiring information anew).

To illustrate, one substantive area in which this approach is taken is with dividend imputation. Dividend imputation is first explained as rendering corporate tax to be a prepayment of shareholder tax (rather than a separate tax in its own right). This comes about through the gross-up and tax offset mechanism and is illustrated with numerical examples, particularly in explicit contrast with the treatment under the classical system of dividend taxation. Students by this stage of their learning are familiar with the concept of income from business and income from property being two categories of ordinary income, as well as the notion that a company is a legal entity separate from its shareholders. The classical system demonstrates the historical issue of double taxation of company profits, and contrasted with the relief from double taxation provided through imputation. The tax offset mechanism, in particular, is highlighted as providing the prepayment of shareholder tax effect.

One purpose behind this teaching technique is to equip students with the skill set to be able to cope with changes in the law. This is an outcome of obtaining deep learning that arises through close engagement with the subject matter. The deep learning fostered by taking a constructivist approach, relating the material first to concepts with which students are already familiar, allows students to appreciate better the operation of the law, be able to integrate subsequent changes in the law's technical detail much more quickly and be able to critique those changes (for example, as being inconsistent with the overall policy intention).

IV THE ASSESSMENTS

A Income Tax Law (ITL)

Three forms of assessment are used in ITL, students choosing one of the first two and then undertaking a common traditional form examination. As has been noted, the demands upon this subject are not conducive to fostering only deep learning, so elements of the assessment used may be open to the criticism that students may adopt surface learning techniques. This is acknowledged, although the assessments are designed to mitigate this outcome as far as possible.

To assist in student preparation for the ITL assessments (although this is highly relevant as well for students taking ATL), a session is scheduled in the library every semester (more than one if there is sufficient demand) to train students in the use of the electronic tax resources that are available. This session is conducted by the Law Librarian at La Trobe University, goes for one hour and is scheduled outside of class time. While some students are disadvantaged in that the limited sessions may clash with another class, the librarian has been willing to date to conduct individual sessions if necessary. In any event, a quick survey of students during class prior to the session

being scheduled is usually able to identify a time that does not clash with another class for more than 90% of students in a particular cohort. While strictly voluntary, these sessions are very well attended (capacity is normally reached and additional sessions required) demonstrating their usefulness. This is further supported by the use of authorities (such as ATO Interpretative Decisions, Tax Determinations and overseas cases) in assessments outside those studied in the course. On inquiry, students have indicated that they located these sources through electronic resources covered during these training sessions. As indicated below in the discussion of the moot assessment, evidence in student performance supports the understanding that these sessions have had a positive effect on student research skills.

1 *The Moot*¹⁴

The moot is one of two choices that students have for their first assessment, worth 40% of their final grade.¹⁵ Students undertake this exercise in groups of four, with one pair representing the Commissioner and the other the taxpayer. Students are encouraged to prepare in their groups of four, with the intention of fostering peer learning, as each member of the group picks up a line of inquiry and then tests it against the other group members. This interaction is encouraged as it is made explicit that marks are not dependent on having the stronger substantive argument (which would translate in real litigation as winning the case), so students are not effectively penalising themselves by assisting their opponents with their arguments. This approach has the additional benefit that students have the opportunity to immerse themselves in all aspects of the relevant law, fully working through arguments, rather than the relative surface-level approach that may be taken if merely anticipating possible arguments that the other side may raise. Further, any feedback that students provide to each other is a form of peer assessment, specifically formative assessment, since it is feedback received during the preparation stage and does not affect the final grade.¹⁶ While Biggs and Tang argue that this form of assessment is generally more effective than traditional summative assessment,¹⁷ it is often easier said than done to implement given the resource constraints in the modern university environment to provide opportunities for true formative assessment. The environment created here in the preparation stage for the moot provides an effective means by which students may obtain the benefits of formative assessment, especially through peer interaction (which also encourages independent learning) rather than viewing the lecturer as the sole oracle of all relevant information.

The exercise comprises of two components, a written submission and oral arguments. This is consistent with how other moot programs are structured within a tax

¹⁴ A more detailed exposition of the moot as employed in ITL is provided in Keith Kendall, 'Mooting in an Undergraduate Tax Program' forthcoming in the *Journal of the Australasian Law Teachers Association*.

¹⁵ In 2004, the moot was compulsory (there was no option of a written assignment). While this did not cause problems in that year, the structure of the moot is such that problems are created if the number of students enrolled is not a multiple of four (24 were enrolled in 2004). The option of the written assignment was introduced in 2005 to allow an alternative where students could not find mooting partners.

¹⁶ On the distinction between formative and summative assessment, see Biggs and Tang, above n 4, 163-165.

¹⁷ *Ibid* 164.

curriculum.¹⁸ Unlike Bentley's model, submissions in the ITL moot are required two weeks prior to oral argument. This is due to the different purposes for which the written submission is used from the Bentley model. While there is a common purpose in that the written submission is designed to give some notice to both the moot judge and the pair's opponents as to what arguments are to be raised, the assessment is more heavily weighted to the oral argument component. In reality, the written submission is a requirement that is imposed largely to ensure that students begin preparing arguments at an earlier point in time; by forcing a substantial component to be handed in earlier in the timeframe, students are forced to begin work earlier. The purpose behind forcing students to commence work earlier is to improve the quality of the oral arguments presented; the generally high standards achieved over the last eight years appear to have borne this expectation out.

Students are permitted to make amendments to their arguments between finalising their written submission and presenting their oral argument. This recognises that students will continue to research and refine their arguments during this interim period, possibly jettisoning some arguments that they realise are not tenable, or discovering an alternative line of argument based on an authority they had not previously found. Such changes are required to be communicated to their opponents reasonably contemporaneously with the change being finalised. This applies for both additional arguments (so opponents have as much notice as possible to prepare counterarguments) and removing arguments (so opponents do not waste any additional time preparing rebuttals). This is consistent with the collaborative learning purpose of this assessment.

The problem that is set is always based on an actual transaction (or currently controversial issue that can be packaged sufficiently well into a transaction) consistent with ITL's practical focus. The sources for such material are varied. In some cases, they are based on a transaction in respect of which the lecturer (or a former colleague) has had to provide advice, or a case that is currently before the courts¹⁹ or a current controversy as indicated in an ATO publication.²⁰

In the case of the latter two sources, which are based on publicly available material, care is taken in the wording of the problem to ensure that easily identifiable searchable terms present in the source material are not used in the moot problem (for example, sell-back rights and earn-out rights). The content of such concepts is used, but a different label is attached, to guard against the prospect of students locating the source material and thereafter relying on that material as the sole source for their research.

Notwithstanding this step, many students have found the source material when researching their arguments. Three positives are borne out of this. First, students who do uncover these sources have almost universally attended the library training session

¹⁸ See, for example, Duncan Bentley, 'Mooting in an Undergraduate Tax Program' (1996) 7 *Legal Education Review* 97, 115.

¹⁹ For example, the fact pattern in *FCT v McNeil* (2007) 229 CLR 656 was used as the basis for the moot problem fact pattern in 2007, prior to the High Court handing down its decision in that case.

²⁰ A transaction incorporating an earn-out right was used in the moot problem in 2008 and 2010 as a result of the controversy surrounding this issue since the ATO's release of TR 2007/D10.

described at the beginning of this section and have generally acknowledged that they expect they would have been unlikely to have found these materials without having undertaken that training. Note that the moot problem was worded carefully to avoid near-unique search terms, so it is only by using alternative advanced research methods (as opposed to basic word searches) that students are able to locate these sources. Second, the non-use of easily identifiable labels (usually coupled with the use of a deliberately different label) requires students to recognise and align the substance of the moot problem with that in the source material. Third, there has not been a single instance where students have relied solely upon this material as the basis for their argument. Not all have recognised the source material as being such, rather, these students have recognised the material as being on point, but have used it as but one component of the overall foundation for their argument. But, most pleasing, even those who have recognised the source material as playing this role (remembering students have been told that the moot problem is based on an actual problem, but they are not told anything more, including whether it was a private transaction, current litigation or something else) have continued their research and fashioned much stronger arguments as a result.

The purpose of the moot is explained as testing students' knowledge of substantive taxation law. To this end, a number of measures are put in place to ensure that aspects that may affect an individual student's performance are not confounded (as far as possible). Problems are usually set as being heard by the High Court, to pre-empt any argument that the court is bound by some precedent. This also guards against the potential for any student to cease researching if they believe they have found "the" binding authority.

The potential problem associated with appellate litigation, that generally only arguments used previously in the lower court hearings may be used, is pre-empted by not detailing the arguments that had been used and instructing students that they may assume that any argument they formulate has indeed been used in the lower courts.

To assist students with potential nervousness and to ensure they focus on the substantive tax law raised in the problem, usual procedural requirements are dispensed with during oral argument. An unused tutorial room is normally used for the hearings, rather than the dedicated moot court, formal address (Your Honour, my learned friend)²¹ and introductions are not compulsory, participants stay seated and business attire is not required. This is to guard against the possibility that students may perform poorly for lack of familiarity with procedural requirements, or neglect their preparation of the substantive tax law in familiarising themselves with these procedures.

The oral arguments themselves are conducted in one hour blocks. Each pair is allocated twenty minutes total speaking time, with each partner to speak for at least five minutes. This last requirement acknowledges that there may be some unevenness in the amount of time each partner may require.

²¹ Experienced mooters have indicated that they are more comfortable maintaining the formal address due to this experience. As such, students are told they may adopt the form of address with which they are most comfortable.

Unlike many competitive moots, opponents alternate in the delivery of their arguments. For example, if the pair representing the taxpayer speak first, the order of argument will be TP(A), FCT(A), TP(B), FCT(B).²² This is designed to allow students the opportunity to respond to arguments that their opponents have raised, rather than needing to anticipate what their opponents are likely to say.

Mooters are subjected to questions from the bench during oral argument. Students are advised in advance of this prospect; it is not merely a matter of being able to deliver a prepared argument verbally. The unpredictability of the questions as part of this exercise requires students to be genuinely familiar with the material to ensure that they are not caught out by an unexpected question. The unpredictability of this element of the assessment is designed to promote deep learning as students undertake their preparation.²³

A potential problem is that each member in a pair is awarded the same mark. This was a deliberate decision and has been in place since ITL's first offering in 2004. This decision reflects the team nature of the exercise and is designed primarily to remove conflict within groups, to encourage pair members to act co-operatively with the knowledge that better performance by one member means an improvement in the mark for the other. As such, students are free to allocate tasks how they see fit, with one, for example, taking major responsibility for research if the other is a better oral arguer. It also pre-empts any disputes subsequent to oral argument that if one member argues for more of the pair's aggregate twenty minute allocation than initially expected, the other member is not unduly disadvantaged by being denied their chance to shine. Of course, this raises the problem of potential free riders, although this is mitigated by the mark allocation being explained clearly to students, both verbally and in writing, and requiring students to select their own moot partners (so they are at least partly to blame for choosing a poor partner). Despite initial concerns, there has not been a single complaint about this mark allocation in eight years.

This last observation is an example of how what Biggs and Tang refer to as a Theory Y assessment may be used in tax teaching.²⁴ Theory Y teaching takes place where responsibility is placed on the students for their learning, rather than requiring them to operate within strict parameters. Given the practicalities of the modern classroom, this can be a difficult ideal to achieve, but this moot assessment demonstrates to some extent that it is not a utopian ideal.

2 The Written Assignment

As noted, students in ITL have the option of choosing a more traditional written assignment in preference to the moot. The form of the assignment is a client-focused problem in which the student is required to provide advice on the expected tax

²² The first speaker is not given the opportunity for additional right of reply speaking time after the fourth speaker.

²³ It is also worth noting that the questions from the bench are generally handled very well, demonstrating the understanding that is claimed.

²⁴ Biggs and Tang, above n 4, 37-39.

treatment. As with the moot, the fact pattern is based on an actual transaction or controversy taken from a practical context.

Unlike the moot, which focuses on teamwork and oral arguing skills, the written assignment requires students to consider alternative means of structuring the relevant transaction (an example is the sale of a business) in a more tax effective manner. While there are various permutations that this can often take, there is usually a specific method in mind. An example that has been used is during a corporate takeover, the students may propose that the target shareholders accept shares in the acquirer rather than cash as consideration for the sale. Such a restructure allows the shareholders access to the scrip-for-scrip CGT rollover contained in Subdivision 124-M of the ITAA 1997, allowing a deferral of any CGT that would otherwise arise. Alternatives that achieve the desired effect are given appropriate credit and, therefore, this assessment is aligned with Biggs and Tang's notion of a standards model of assessment, in which marks may feasibly be awarded for qualitatively equal yet substantively different student responses from the answer that the lecturer expects.²⁵

Unlike the moot, students undertake the written assignment individually, so the opportunities for peer and formative assessment are not available to the same extent. Deep learning is promoted, though, through the restructuring element described in the previous paragraph.

Students are actively encouraged to undertake the moot where possible, with the written assignment presented as the option available only for students who feel strongly compelled not to participate in the moot. While there was some variability when enrolments were small, ITL enrolments appear to have now stabilised in the 55-70 range, with roughly two-thirds of every cohort choosing to undertake the moot.

3 The Examination

All students sit a common examination at the end of the semester in the standard University examination period worth 60% of the final grade. The examination is open book and consists of three questions, two problem-type questions (client advice scenarios) and one short essay. The questions are attributed 40, 10 and 10 marks respectively, with the 40 mark question being one of the problem questions.

Both problem questions feature a tax planning element. The larger problem question is normally structured by presenting a fact pattern including the client taxpayer's personal financial circumstances, then presenting a proposed transaction, such as the purchase of a business, with the requirement to identify the most tax efficient means of raising the required funds.²⁶ This requires demonstration of such matters as recognising when the CGT discount may apply, when it is most appropriate to use capital losses (against non-

²⁵ Ibid 177-178.

²⁶ While calculations are not assessed directly and students are not required to calculate precise tax liabilities, the figures presented are sufficiently far enough apart so that students should recognise that the requisite after-tax funds will not be raised through a single transaction. Students are not penalised if precise calculations determine that insufficient, though approximate, funds would be raised with the transactions suggested. As discussed, marks are allocated based on the knowledge of legal interactions demonstrated.

discount instead of discount capital gains), interactions with tax losses, the availability of concessions such as the main residence exemption and rollovers and the loss of deductibility of interest where loans change purposes. These interactions are unlikely to be recognised where students take a surface learning approach, for, while tutorial problems are designed to provide students with practice at recognising these interactions, they are generally not explicitly discussed in class except in response to direct questioning. Due to the number of marks allocated to this question and the complexities in assessing the tax planning component, a large detailed fact pattern is required. In practice, the fact pattern alone has tended to span at least one full A4 page (single spaced). The quality of answers provided will inevitably be reduced if students were reading this fact pattern for the first time under exam conditions.

To mitigate this potential problem, the fact pattern to this large question is released to students prior to the examination, normally in the last week of classes. This gives students at least two weeks to become familiar with the fact pattern. Students are also explicitly informed that the fact pattern will be identical to that in the examination, so students do not waste time under exam conditions confirming that there are no differences with the fact pattern that they have studied. Note that it is the fact pattern only that is released; the questions posed in the examination are not included.

It is predictable that students will attempt to anticipate the questions that will be asked in the examination based upon their reading of the fact pattern and tailor their study accordingly. While this may encourage a surface learning approach whereby students research answers to the anticipated questions, script these in advance and use these scripted responses in the examination,²⁷ this is mitigated by a number of means. First, the surface learning approach will not be adequate for the remaining two questions, which are unrelated to the large question (students are informed of this (non)relationship). Second, a surface learning approach, in any event, is unlikely to assist with tax planning requirements, which is dependent on recognising interactions, so an apparent surface learning approach is actually fostering deep learning across the material that is being studied. Third, there are a large number of issues that are embedded in the fact pattern, but only some are tested. Students are informed of this in advance. As such, a student who is able to anticipate correctly every possible question that could be asked and scripts answers to these questions has, in fact, covered in detail a very large proportion of the subject material.

B Advanced Tax Law (ATL)

The purpose of ATL, compared with ITL, is to allow students to acquire some level of specialist knowledge within taxation. In recognition of this purpose, a deliberate design decision was made not to include an examination as part of the assessment for this subject. While there is some technical content delivered in the form of traditional lectures, the absence of an examination allows students the freedom to recognise that they may be weak in a particular area and choose not to apply effort to understanding that part of the material. Given the control that students have over their assessments in this subject, it is theoretically possible for students not to understand any of the lecture

²⁷ Note that the examination for ITL, as with most subjects in the LLB program at La Trobe University, is conducted under open book conditions.

material, yet perform very well. This, of course, requires students to go completely outside of the subject syllabus and learn and understand a discrete area (or two) under their own efforts, with little or no guidance. Such an outcome is in perfect keeping with the intended learning outcomes of this subject, which is designed to foster independent learning and develop research skills.

The theme of ATL is tax reform and, as such, the lecture material presented focuses on more recent developments in the law. Topics that have been covered include consolidation, GST, international tax, the taxation of off-market share buybacks and the debt/equity rules. Supplementing this lecture material, where possible, an external presenter with experience in the tax reform process is brought in to give a presentation to the class. For example, in 2009, a member of the Henry Review gave a presentation on the machinations and processes of that Review, providing an insight into the tax reform process that students would be unlikely to acquire from reading texts or their own efforts.

Deep learning is pursued on two levels in ATL. First, the tax reform theme explicitly requires students to question the nature and principles of the law that is being studied and not accept these at face value. In other words, a positivist approach, in which the law is applied as it stands (perhaps tested only peripherally with minor questions focusing on tax policy), is replaced with a more normative approach requiring students to consider what they think the law should be (and, more importantly, why). Second, both forms of assessment conform to Biggs and Tang's Theory Y teaching model, in which students take responsibility for the content of their learning. Given that the impetus for technical knowledge acquisition has been satisfied through studying ITL (ITL being a prerequisite for studying ATL), there is much greater freedom for such open-ended assessments to be used.

The intensive mode in which this subject is delivered creates an environment in which students have an unusual opportunity to form a cohesive group bond, which aids the achieving of the intended learning outcomes. In particular, this environment generates an excellent group dynamic that manifests itself most clearly during the class presentations, discussed in the next subsection. This is particularly important to achieve, since students are informed that they are expected not only to attend their classmates' presentations as a show of courtesy and support, but active participation forms part of their grade. While this stick (as opposed to carrot) approach to encourage participation is present, the feeling is that, at least to date, this has not strictly been necessary since the dynamic generated over the course of the classes naturally promotes such active engagement.

1 The In-Class Presentation

The first form of assessment is an in-class presentation and is worth 50% of the student's final grade. This is essentially in two parts, being the presentation itself and the level of participation exhibited (primarily demonstrated through asking appropriate questions) in classmate presentations. The presentation and levels of participation are linked, though, as students are informed that one of the grading criteria for their presentation is the level of class interaction that is generated. As such, there is

something of a feedback loop occurring, with students provided with the opportunity to support each other in a productive manner, while concurrently addressing their own self interest (in terms of maximising their own mark).

Presentations are for half an hour and are conducted after lectures have concluded. To date, this has resulted in the last two days of the five day class being dedicated to class presentations. Students are required to use a Powerpoint presentation and are informed that they may use whatever other visual aids that they wish. Students typically use at least one other visual aid, normally a handout, use of a whiteboard or overhead projector. Combinations of these aids are frequent.

Students are given free choice as to their topic, subject to three constraints, being that the specific topic presented cannot form part of the syllabus for ITL or ATL,²⁸ no other student presents on the same topic (a first-in-best-dressed policy is applied)²⁹ and approval of the lecturer (which, to date, has not been denied in any case except where another student has requested the same topic). In effect, the students are given control of the classroom and what topics are studied. This takes Biggs and Tang's Theory Y teaching one step further; not only are students being granted control of and responsibility for their own assessment, but they are also being given the same control of and responsibility for part of the subject syllabus and their classmates' learning.

Relating this assessment back to the overall objective of maintaining a practical focus and providing students the opportunity to develop skills that are useful in professional practice, the in-class presentation simulates the type of training presentation that a professional may be required to present within their firm or business. Such presentations are usually on some new development in the law, most typically a new case or new bill that changes the prior law to some degree. In these cases, the presenter is required to research this new development and become informed of it under their own efforts and then present to an audience of fellow practitioners who are knowledgeable of the basic tenets of the law, but not the specifics of the presentation's subject matter. For example, a presentation to other tax practitioners discussing a recent High Court decision dealing with capital gains tax will not need to address the capital/income distinction nor the structure of the capital gains tax provisions in the legislation, as the audience can be assumed to possess this knowledge already. The audience, though, is unlikely to be aware of the specific details of the High Court's decision and how this case sits within their existing knowledge of capital gains tax.

²⁸ Recognising this parameter and the flexible nature of ATL, students are encouraged to approach the lecturer prior to the finalisation of the ATL syllabus if they have identified an intended presentation topic. This allows the lecturer to remove that topic from the ATL syllabus if it was intended to be included, allowing that student to present on that topic and satisfy the intended learning outcomes for this assessment.

²⁹ In some cases where students have requested the same topic, it is suggested that students co-ordinate the content of their presentations so that they are presenting on discrete elements of the same topic, for example, one presenting on the fundamental aspects of a particular area of the law, the other focusing on specific applications or advanced notions (such as peculiar concessions). In such cases, these presentations are scheduled consecutively, so that the remainder of the class may maximise their learning of the technical content by building upon the earlier presentation without the interruption of separate technical topics.

In the same way, ATL students are presenting to an audience with similar characteristics. Other members of the class can be assumed to have the technical knowledge that formed the content of the syllabus for ITL and ATL (representing one reason for disallowing students to present on these topics), but not the specific details of the presentation's focus.

Due to the nature of this exercise, students are not required to incorporate a tax reform element into their presentations (although some students manage to do so). Given the purpose of the presentation and the highly condensed timeframe in which preparation is undertaken (often approximately one week, including researching the relevant law), most presentations are primarily descriptive. Notwithstanding the tight timeframes in which the exercise is conducted, the vast majority of presentations are of very high quality. This demonstrates the success that the design of this assessment in motivating students to engage actively with their chosen material, being evidence of deep learning that is taking place (and the acquisition of genuine specialist knowledge).

2 The Research Paper

The remaining 50% of the student's final grade comprises of a research paper that is completed sometime (approximately two months) after ATL lectures have ceased. A nominal word limit of 3,000 words is applied, but students are informed that this is not strictly enforced and they may exceed this if they believe appropriate. Students are informed that the purpose of the exercise is to engage closely with their chosen topic, not to comply with what is essentially an arbitrary word limit. Qualifying this position, though, is that students are informed that they are to write what is necessary to address the topic properly and no more; there is no reward for writing a longer piece per se, but padding is heavily penalised. This accords with the model of assessment advocated by Biggs and Tang that rewards engagement with the material, rather than adherence to arbitrary parameters, which is more consistent with Theory Y teaching.³⁰ At a practical level, the legitimacy of this instruction is demonstrated with two examples from the 2010 cohort; while the highest mark for the research paper was awarded to the paper that happened to be the longest that had been submitted in the four years (approximately 11,000 words), the second highest mark was awarded to a paper that was almost exactly 3,000 words long. In both cases, the student had defined and outlined an appropriate topic and addressed the thinking at a high level and arrived at their own well-reasoned conclusions, thereby earning their respective marks. Most students submit papers approximately 4,000 words in length.

As mentioned, students have free choice of topic and this, coupled with the advertised non-enforcement of the word limit, further aligns ATL with Biggs and Tang's notion of Theory Y teaching. Unlike the in-class presentation, the only restriction is that topics must be approved by the lecturer (solely to ensure that the topic is viable). Students may write on topics that had been covered in the syllabus for either ITL or ATL, there is no requirement that the topic be unique (in that no other student is writing on the same area) and students may write on the same area that formed the focus of their in-class presentation. While it may be anticipated that many students would choose the same area for both assessments, due to the economies of scale in the research aspects, of the

³⁰ Biggs and Tang, above n 4, 39-40 and Chapter 10.

four cohorts, only one student has followed this path. The most logical explanation for this is that the different focus for each assignment, describing a new area of law for the in-class presentation compared with the tax reform emphasis in the research paper, causes students to choose separate areas for each assignment that are more conducive to the respective purposes of each assignment. Private conversations with students support this explanation; a large number begin preparation for the research paper with the intention of writing in the same area as that on which they presented, but soon afterwards discard this area in favour of a fresh topic. The explanation almost universally given is the inability to identify an appropriate tax reform angle to their presentation topic.

It is through this assessment that the tax reform theme is promoted. In particular, students are required to identify some area of taxation law that could be reformed. While this usually takes the form of an aspect of the law that is presently deficient and in need of improvement, students are advised that it is legitimate to write on an area of the law that they believe is presently sound, but other commentators believe needs to be reformed. In all cases, students are required to identify their area, identify the perceived problems with the current state of the law and then suggest solutions and explain why their proposed solution represents an improvement on the existing law.³¹

Students are further encouraged to attain high standards in their research and writing for this assignment by the prospect discussed in class of having their piece published in one of the tax journals, subject to being of sufficient quality (and the expectation of some review). At the time of writing, none of these research papers have been published, although an unusually high proportion of the 2010 cohort (approximately 50%) submitted papers of potentially publishable quality.

This final step represents a rare instance of one assignment constituting both formative and summative assessment. The research paper is summative in the sense that no feedback is provided during the preparation of the paper and the final mark awarded cannot be amended through additional work. Formative feedback is provided, though, in the shape of very detailed comments on where the paper can be improved (students have frequently expressed their appreciation of the level of detail of feedback received), mostly with a view to having the paper subsequently published. As the potential is provided for students to continue working on and improving their research paper with a further end goal in mind, the comments as well as the mark serve as formative feedback and contribute to the student's learning in the area, supporting the intended learning outcome of the student acquiring a deep specialist knowledge in a specific area.

V A GENERALISABLE MODEL

While this paper has focused on the design and delivery of a tax curriculum, there is nothing in the subjects as implemented that limits the model used to only tax subjects. The basic model is that the curriculum comprises of two subjects, the first designed to provide largely technical knowledge, while encouraging engagement and deep learning

³¹ In the case of students arguing that the law is adequate in its current state, students are required to explain why alternative reforms would not improve the law and why the present system is to be preferred.

with the material to achieve understanding, rather than mere recall. Students that cease their study of the area after the first subject should be reasonably well equipped to commence practice in that area; while it is not to be expected that they would operate professionally at anything above beginner level, they have been equipped with sufficient technical knowledge and skills so that they can learn quickly once commencing practice and constructively contribute to their respective employers.

The second subject provides students with a keen interest in the area (and lecturers should take the opportunity presented by the first subject to foster such keen interest) to acquire some specialist knowledge. While this may have the benefit of providing these students with a point of distinction should they seek employment in this area in the future, this benefit is a by-product of the learning objectives inherent in the subject's design. In particular, the design of the assessments and the classroom environment foster the deep learning that is the idealistic, but unfortunately often utopian, goal of all university education.

A number of modifications and adaptations to this model are inevitable in any subsequent implementation. For example, there is nothing compelling a moot to be offered as one of the assessments; the important aspect is that deep learning is fostered and that appropriate learning outcomes are achieved. Many of the specifics are likely to be dependent on the strengths and preferences of the lecturer; lecturers who are uncomfortable assessing active oral presentations are unlikely to adopt a moot enthusiastically.

It is suggested, though, that some aspects of the model should be adhered to. The intensive mode of delivery for the second subject, based on experience, is a core design feature. While this was initially implemented as a matter of convenience (largely as an opportunity for students to fast track their degree), the group dynamic that the intensive mode generates, particularly with a small cohort, creates an environment rare in the modern university where all participants are focused solely on the one subject area for the duration of the class. It is difficult to see how the consistently high quality student work that has been observed in ATL could be replicated in a traditional semester format.

Further, the assessment in ATL should be used in other second subjects. While the reform theme may be dispensed with in favour of an appropriate alternative focus (one that should lend itself to high level research), the presentation/research paper combination would appear to be most suitable to the learning objectives identified. Specifics such as the length of presentation (although it is suggested that this should be substantial – at least twenty minutes) may be varied, but the overall structure should be followed.

The disadvantage with structuring the second subject in the manner described is that such a subject becomes unwieldy with more than a small cohort and, consequently, is not amenable to mass delivery. This has the potential to act as a major hurdle to its ready adoption in the resource constrained environment of the modern university. It is at this point that the post-completion objective of publishing the research paper may mitigate this problem. As well as the benefits identified for students, appropriate

submission (to refereed/ranked journals) and structuring (attention to by-lines, possible co-authorship with the lecturer if appropriate) will result in these publications being included in the school or faculty's research report. While this is not the usual vision of research-led teaching discussed, it does represent a prospect where research and teaching activities can be linked, with the one supporting the other and mitigating the additional resources required to deliver a law program that aims to reach the ideals that are often seen as unachievable.

VI CONCLUSION

This paper has documented the experiences over the last eight years that have been taken from implementing and delivering the undergraduate taxation program conducted in the School of Law at La Trobe University. These experiences have been positioned within the body of higher education theory, particularly the aspirational goal to engender deep learning in students. The notion of principles based learning, with its application to the teaching of taxation law, was also presented.

The overall design of the assessment tasks used in the two subjects described is aimed at allowing students to develop skills that they may have had limited, if any, opportunity to form during their previous LLB studies and building upon the skills already attained. In this manner, the assessments build upon each other and form a coherent tax program suitable for undergraduate law students. These observations form the basis of an overall model that may be adapted for use in the teaching of other law subjects, not just taxation.