

The problems faced by junior barristers in getting started in practice, which are probably shared by the newcomers to any profession, are the subject of chapter 5. A great wealth of data was collected about problems experienced in such diverse areas as adequacy of legal knowledge, relations with solicitors' clients chamber clerks and other professionals, dealing with ethical dilemmas, obtaining a sufficient range and volume of work, being able to ask senior chamber members for advice and whether they personally suffered discrimination. In the process the researchers have been able to compile a very detailed picture of the challenges confronting barristers at the outset of their careers at the Bar.

Although this description of the UK junior Bar today bears comparison with similar studies of the early years of practice for the other branch of the legal profession, solicitors, what is of particular interest to the bystander is not the specific research results as such, but the way this research project was designed in order to yield its findings. The great advantage of this project, which has obviously been generously funded, is that it is not merely one snapshot but a series of snapshots taken over a three year timespan. By tracking the experiences of the original cohort group, the researchers have been able to detect changes in the work patterns of junior barristers. They have also been able to gauge how the students' initial judgments of the value of their vocational training have measured up against the more rigorous standard of the demands of practice at the Bar.

Editor

SKILLS

Why do we moot? Exploring the role of mooting in legal education

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Mooting is widespread in law schools but rarely called into question. Mooting programs seem to exist because of tradition and their apparent correlation to legal practice. This article seeks to present valid educational and practical justifications for the continued existence of mooting. The three theoretical bases for mooting as a means of learning are constructivism, experiential learning and problem-based learning.

The genesis of moots can be traced to the establishment of the Inns of Court in medieval times where aspiring lawyers were required to perform moots over several years before being admitted as practitioners. Indeed, moots were one of the few formal features of legal education of the time. From the Inns of Court moots three key features of mooting have remained: (1) students assume the role of advocates before a simulated bench; (2) they argue points of law arising from a hypothetical scenario supplied to them; and (3) they are expected to answer questions from the bench relating to the arguments presented or any other relevant law that they may not have raised.

The different approaches taken in three university mooting programs are described. Because it involves a vast amount of administrative co-ordination and other resources, a law curriculum should not be criticised solely on the mooting opportunities it gives students. However, by examining the kind of learning which mooting seeks to foster, a clearer understanding can

be gained of its role in undergraduate education.

In terms of the educational theory moots represent a perfect example of assessment in law which involves a high degree of cognition and metacognition in an affectively charged context. Students are expected to respond and operate on a variety of levels. Mooting promotes constructivist learning, that is, learners construct their own knowledge, recognising that the teacher is not an omnipotent being capable of transferring knowledge to the student. It has also been observed that a key feature of effective experiential learning is the involvement of the whole person, that is intellect, feeling and sense. These appear to be a key factor in moots, so we can conclude that they are a good example of effective experiential learning. Because of the hypothetical fact situation element, moots also involve problem-based learning. They are a good example of a piece of assessment in legal education where the importance of the process applied in responding to the problem is at least equal to, if not more than, the emphasis on the actual solution reached.

Qualitative data relating to students' experiences and reactions to mooting were collected, with the aim being to describe the salient behaviours, events, beliefs, attitudes, structures, and processes occurring as a result of mooting. Four groups each of five students from Griffith University in Queensland, Australia, were interviewed. They were asked what their experiences of mooting were like, the features of that experience and whether they enjoyed it and would repeat it.

From an analysis of the group interviews emerged four *categories*

of description: (1) The students stated that moots prepared them for the *real world* through the acquisition of various skills and the opportunity to use their knowledge. Students clearly valued the practical dimension that mooting adds to their education. (2) Mooting provides an opportunity for students to learn from their peers and develop group skills. (3) Mooting is an activity which causes in most students a powerful mixture of fear and elation. (4) Finally and most importantly, students felt that mooting was an excellent way to learn the substantive law and stimulated their interest and enthusiasm for it.

As an assessment tool moots have served a formative rather than a summative purpose. They encourage students to immerse themselves in an area of substantive law, work closely with their peers and develop several important practical skills. An increased understanding of which educational theories are in operation when mooting occurs and what mooting actually means to students will lead to the continued use of moots in legal education for undergraduates, in the manner most appropriate to the circumstances of each law school.

Mooting in an undergraduate tax program

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Mooting is seldom used in taxation courses. The author sets out to determine if mooting can be useful in an undergraduate program that includes or is entirely made up of non-law students.

Mooting has long been a preserve of the law school. It is not generally

found in tax and commercial law courses because mooting is not seen as a skill required by business and tax professionals. However, tax professionals are required to research, evaluate and analyse law and administrative regulations and express their views to clients and government authorities in either written or oral form. There is a strong view that good lawyering skills are not exclusive to the legal profession. However, one of the challenges facing teachers of tax professionals is the interdisciplinary nature of the subject. While the list of skills required may be similar to those relevant to legal problem solving, the exercise of those skills may be different. For example, the business decision making process is contextually different to the legal, yet tax professionals are required to take both into account. Further research into the skills relevant to tax professionals is required.

Possibly the most important skill that a tax professional requires is the ability to think critically. Yet traditional educational processes rarely promote it. Accordingly, it is vital that tax teachers adopt methodologies to develop critical thinking skills. The mooting component of a tax course has a different educational objective to the substantive part of the course, which seeks to focus on knowledge and concepts. Mooting focuses on skills development.

Mackie has put forward an eight-point plan aimed at matching the objectives of the skills component with the substantive subject objectives of a course. A failure to complete this exercise is likely to create a tension between the skills training component and the rest of the course content.

These eight points, which have been applied to tax and mooting, are: (1) The mooting program should encompass the objectives of the substantive component. (2) The criteria for a skilled performance should be provided. (3) Practical examples of a model performance should be given because they attract more attention than theoretical discussions. (4) Opportunities to practise must be provided to boost student motivation. (5) Feedback on performance is an essential part of the learning process. (6) Progress towards a model performance is to be supported. (7) Practice is the best method of consolidation, although this is not always possible within a single subject offering a moot program. (8) And finally, earlier steps should be repeated under different and/or more difficult conditions. Mooting within a tax program can clearly fit within Mackie's plan and can be a valid way of developing the skills required of a tax professional. Hence it should be considered for integration into any substantive tax course.

The mooting model has been employed in a tax course at Bond University in Australia as part of its integrated skills program, using a process that flows easily from Mackie's eight point plan, namely explanation, demonstration, application and actual practice, reflection and review, and repetition. Business and law students are taught together at Bond and so the mooting program has to take this into account. A moot need not take place in court but could be in an administrative tribunal, thus requiring less formality. In setting the problem a reasonable amount of case law should be relevant, preferably with competing views, or even arguing a case on appeal before the appeal is heard. The