

quired of them; and encourage students to develop the ability to reflect on their difficulties, their learning and their progress.

Analysis is a high-level skill and the results of this project highlight the need for a different teaching methodology and design of materials. By considering each skill individually and changing from a consistent approach to a more flexible approach, the IPLS will achieve the most effective teaching of the skill of analysis.

## TEACHING METHODS & MEDIA

### Designing problems to teach legal problem solving

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A problem-centred curriculum is different from a traditional, knowledge-based curriculum. In the latter the curriculum is organised into subjects and teachers are regarded as experts in their subject. They impart their subject knowledge to learners who are expected to remember, understand and apply it.

In the problem-centred approach, the curriculum is organised around problems and students are active learners who work on problems or simulate problem solving. Teachers are facilitators who guide students in the process of learning by doing. During this process students work, usually in small groups, discovering solutions on their own, gaining insights into their own performance and acquiring skills and knowledge as they solve problems.

In the knowledge-based approach, teachers concentrate on building their own subject expertise and sharing it with students. In the problem-centred approach, teachers are focused on

meeting students' learning needs through curriculum design, by promoting student responsibility for their own learning and by devoting resources to developing students' problem-solving skills.

Professional schools, including law schools, use factual scenarios in their learning activities. Some involve explicit skills learning. Law schools tend to use them for simulations in skills, such as negotiation, advocacy, interviewing, advising, opinion writing, commercial drafting, letter writing, and drafting pleadings. But factual scenarios are also used in activities that do not necessarily focus on one specific skill. Good examples can be drawn from professional education in other disciplines, such as business, where case studies and the case study method are used to teach knowledge, analysis and general problem solving skills. Case studies are also used in problem-based learning (PBL), a learning method developed by medical schools to help students manage large amounts of information in problem-solving contexts. In PBL, problems are used as engines for learning, motivating students to use their own initiative to learn the skills and knowledge they need to solve the problem.

Until very recently, legal education did not stress problem solving as an explicit theme, although it found indirect expression in the teaching of legal skills which requires the simulation of client problems. These developments are a response to the growing realisation of how important problem solving is to professional education. If one accepts that learning how to solve problems is the ultimate goal of legal education and that learning through problems is an essential learning method then, insofar as curriculum design for law is con-

cerned, nothing can be more important than the design of good problems.

The first and most basic feature of good problems is that students and teachers find them easy to read and use. Unclear, poorly written problems impede learning. If students have difficulty understanding a problem, they need to ask the teacher to clarify it. This takes time away from learning and the teacher may not be able to clarify it.

The second feature of good problems is that they are realistic. When problems resemble real life, they are intriguing and students are motivated to solve them. Problems that are unrealistic or outmoded do not call for solutions contemplated by today's practising professional. Thus, they are unlikely to be very meaningful to students.

In addition to being realistic, problems should be relevant. In the design of professional legal training courses, one design policy calls for the selection of certain types of transactions for students that are demonstrably common in legal practice. The usual rationale for this policy is to cover as many bases as possible with the expectation that the more common the transactions are, the more likely that larger numbers of students will encounter them in their future practice. Relevant problems prepare students for practice in the real world.

The fourth feature of good problems is that they are consistent with objectives. In a problem-centred curriculum, students do learn to transfer knowledge to the real world, but only if the curriculum is well designed. Realistic problems cannot be solved merely by reference to traditional disciplines such as Torts or Contracts. Thus, what is learned by students when they work on these problems

does not unfold topically or coherently. Realistic problems require knowledge and skills from a variety of disciplines connected to each other in disordered ways. In contrast to this messiness, students need coherence in the process of learning. Therefore, in the design of a problem-centred curriculum, a natural disharmony exists between the students' need for coherence and the designer's need to create realistic problems. If the needs of both designers and students are to be met, coherence and realism must be reconciled.

How can this be accomplished? The first strategy, problem-generated design, is an approach to design whose purpose is to reconcile coherence with realism. Using this strategy, designers adhere to a systematic, staged approach to curriculum design: setting objectives, designing learning activities to meet those objectives, and trying out and evaluating the curriculum. The second strategy applies specifically to skills teaching. This strategy requires you to choose the appropriate legal context for the skill you are trying to teach. It assumes that while teaching the skill is the primary objective and legal context is of secondary importance, the legal context is still essential to create a meaningful problem. Carefully designed standardised formats also increase efficiency and moderate difficulty, enabling students to meet certain objectives more quickly in the face of resource or time constraints.

The fifth feature of good problems is that they are similar to, but different from, each other. Problems should be similar enough to promote transfer of learning, but different enough to broaden the base of practice, thus stretching and deepening problem-

solving skills. To achieve this state in skills teaching, two techniques can be used: format similarity and context similarity.

The sixth feature is that problems should present an interesting puzzle that the students know something about but cannot solve right away. This is what is meant by 'challenging'. One way of achieving this familiar-but-novel feature in designing problems is to view problem solving as having two aspects: linearity and flexibility. Linearity is the step-by-step aspect of problem solving that requires familiarity with routines and precedents applicable to the legal context. Flexibility is the higher-level skill needed to modify the routines and precedents or to create something novel to solve the problem.

Obviously, the features of good problems and the principles for designing good problems need to be understood in relation to these other elements of the curriculum – elements, including the complex role of the facilitator, that this article has not explored. Even so, it is worth studying good problems separately from these elements, because good problems are the core of the problem-centred curriculum.

### **Creative problem solving vs. the case method: a marvellous adventure in which Winnie-the-Pooh meets Mrs Palsgraf**

J Kerper

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For over a century, the 'case method' of instruction has been the predominant mode of law school instruction. The case method remains the centrepiece of legal education, although the last quarter of the twentieth century has witnessed increased experimentation with other models such as law

clinics, simulations, learning-by-doing and the problem method.

Inflated claims for the effectiveness of the case method are based on flawed premises and are demonstrably false. It is time for law school teaching to relegate the case method to its appropriate position – as only one analytical tool among many which can be employed in the resolution of a client's problems. The skills developed by the case method are at best rudimentary; the much-touted 'legal analysis' of the case method is little more than a new articulation of rather obvious adversarial positions. Accompanied by the selective matching of factual data with more sophisticated models of problem solving, case analysis is a blunt instrument. Even worse, as a methodology it is antithetical to the effective resolution of most clients' problems.

Particularly in the early stages of representation, good lawyering requires skills of listening, fact investigation, interest clarification, negotiation and planning. However, the case method does not even purport to address these skills. As a result of continuing criticism of the limitations of the case method in particular and law school education in general, courses teaching such essential lawyering skills are gradually being introduced into law school curricula. They have by no means surpassed or supplanted the case method, which continues to be the centrepiece of legal education.

In contrast, creative problem solving proceeds on the theory that lawyers can join together with other professionals to provide more effective solutions to clients' problems. Creative problem solving assumes that not all problems require legal solutions and not all legal problems re-