

cal responsibilities of lawyers and now ethical issues arise in practice; to enable students to appreciate the importance of ethical behaviour, especially in relation to criminal law; to determine the potential application of this teaching method across the law curriculum; and to enhance the involvement of the legal profession in the teaching of legal professional responsibility.

A Project Reference Group, made up of legal practitioners and academics, was consulted to assist in identifying examples of each of the key ethical responsibilities of criminal lawyers.

The discussion of issues related to ethics in criminal law has worked very well. The students respond enthusiastically to the ethical issues included in their materials and raise a wide range of questions. Some students recall matters from the ethics teaching in the first year foundation study. An evaluation of the ethics component of the 1999 offering of the subject was conducted during the final large group class. The evaluation responses were encouraging and provide useful feedback on how the coverage of ethical issues can be improved.

Discussing in detail the ethical issues related to the practice of criminal law has been a valuable addition to the teaching of this subject. The students responded enthusiastically and hopefully gained a strong appreciation of the importance of ethical behaviour to the integrity of our criminal justice system. The next challenge relates to working with colleagues to explore the potential for the incorporation of greater legal ethics content in the substantive law subjects they teach.

## LEGAL PROFESSION

### Professional work, professional careers and legal education: educating the lawyer for 2010

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The results of specialisation in the legal profession, competition and changes in legal aid have led to a form of industrialisation within the legal sector. Legal work is often organised in a more standardised and

repetitive fashion. Work is deskilled and broken up into different activities which can be handled by lower-level operatives. Many working within this new system find it easier to begin areas of highly complex work. However, long hours and the repetitive nature of the work have caused many young solicitors stress and worries about whether they have made the right choice of career.

Instead of one lawyer carrying out all the work on an individual client's matter from first interview to closing the file, the paradigm has now changed. Different lawyers, paralegals and others may deal with the different elements of a legal matter and with the client through the course of each case. Different skills therefore become important, as do different levels of understanding and assumption and therefore possibly different approaches in education, training and socialisation of neophyte lawyers to these tasks.

In this article it is intended to pose questions about the future content, style and objectives of legal education, in order to initiate a discussion. It will, as always, be easier to ask the questions than to answer them. But failing to ask the questions means that answers are even less likely to appear.

What is the best approach to educating law students, some of whom may be actually going into legal practice and many more of whom will be wanting to go into legal practice, beyond the turn of the century? Legal practice itself seems to have provided, until now, some guide for what an undergraduate law degree should contain and involve. Will legal practice continue to provide such a plan? Should it? Can we afford to ignore modern or post-modern legal practice?

How should one begin the process of constructing legal education for a globalised, internationally regulated, industrialised, 'deprofessionalised' legal profession with its resultant effects on legal careers, legal concepts and legal subject classifications?

Recent research on 'graduateness' considers notions of what it means, or should mean, to complete any degree-level program of study. Consideration of such is-

ssues across the range of different subjects and disciplines stimulates a more general view of the skills which need to be taught in order to prepare graduates for life beyond university, the world of work and their own self-development. These core 'transferable skills', produced, as they have been, in the context of present-day employment needs, are a useful guideline to and comparison with the traditional and current practices of the law degree.

Although no specific attempt has been made to take into account the changing nature of legal professional work in the production of the law benchmarking currently being undertaken in the UK, the exposure of draft standards to the legal professions and the knowledge of those involved in the exercise of the current nature of legal work seem to have led to a vision of a law degree which may be closer to the current conditions of legal work.

If legal education needs to think quite differently about the nature of legal careers, then it would be sensible to think through what types of legal career, different from our traditional perspectives, can already be seen to be evolving in law firms. Not only are lawyers specialising within particular subject areas or sub-subject areas, they are also beginning to specialise, at different points in their careers, in different elements of the work process involved in those subject areas.

The nature of jobs and occupations is changing both inside and outside of law and it is clear that fewer lawyers in the future are likely to have the same certainty of job tenure as in the past. There is already much more movement between firms at both the assistant solicitor level and the partner level than there has been in the past. A new division of labour within the profession is a further distinction related to the 'industrialisation' of the legal enterprise, forced by costs and high competition levels, as well as the large numbers of potential entrants to the legal profession. A small selection of the occupations observed currently to be evolving within the profession include: draftsman; information officer; specialist technician; advocate; manager; client handler/manager/partner; strategist; and risk manager.

In addition to the new forms of legal practice, some new sets of legal concepts are becoming more familiar within a whole range of legal subject categories and may now need to be considered as part of the foundational elements of legal conceptual material to be studied. The development of these concepts arises from a mixture of factors, and not only the development of new forms of practice. Changing law and policy, through both statute and common law, and changes of practice and procedure have all equally been involved in crafting these concepts. These new concepts include: relative need; risk; right; relationship; responsibility; remedy; and quality of life.

Finally, with respect to the structure of the curriculum itself, old legal subject boundaries are based on limitations defined by precedential accident and legal work area over generations of development. But the lawyer of the future will be a specialist in the particular needs of elements of client work which transcend all legal subject boundaries and centre on the transaction or the litigation itself, or the individual client. It may therefore be necessary to reconsider legal subject categorisations in accordance with legal work. Such classification was, in any event, serendipitous. It now needs to be rational.

Changes within legal practice mirror changes within society. Professions are undergoing major changes in status, organisation, work patterns and work content. The nature of professions and professionalism is changing. Professions are not accorded the special status of untouchable occupational groups whose word is respected and whose competence is undoubted. Sub-professions and sub-specialisations abound. The question is whether legal educators should be ahead of these changes, understanding their meaning and preparing both the lawyers of the future and those who study law and what lawyers do for the world in which law will operate. It is essential that we begin the discussion of these issues so that we can prepare the curriculum, the approach, the subject matter and the skills with which to educate the lawyer of 2010.

So far, despite the increasing clarity of the movements portrayed above, legal edu-

cation at the undergraduate level has remained remarkably unchanged. Not to ask these questions means not even to begin the discussion as to whether legal education should be considering or reflecting these issues.

## **SKILLS**

### **A focused-practice exercise in commercial drafting**

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To learn by simulation, students need to practise on realistic problems. These problems are the core material of the problem-centred curriculum and its most important feature. When well designed, they motivate students to learn the knowledge and skills they need to solve problems lawyers are confronted with in practice. For law teachers, designing realistic problems is an important job and to see these problems work in the classroom is immensely satisfying.

The purpose of this paper is to share such a problem and the rationale for its design with readers. Although well-designed problems are critical to student learning, they are not ordinarily published in academic journals. Indeed, they are not ordinarily published except in student learning materials. As products of academic effort they tend to go unrecognised beyond the classroom. If law teachers are encouraged to submit their problems for publication, it is likely that criteria for excellence in problem writing will eventually be developed. Referees can then use these criteria to evaluate future submissions. The result may be that more law teachers will be motivated to write more and better problems and that ultimately student learning will benefit.

The problem set out in the article was designed for the Commercial Law and Practice course at the University of Hong Kong's PCLL (Post-graduate Certificate of Laws) program. The PCLL is the rough equivalent in Hong Kong of the Legal Practice Course (LPC) in England.

The format of the problem is what is referred to as focused practice. It is 'fo-

cused' in the sense that students are asked to perform a few pieces of the problem but not the whole of it. This focused-practice format has certain advantages. One advantage is that it streamlines realism. In real life, areas such as commercial drafting are dense with documents and detail, so absolute fidelity to realism tends to overwhelm both students and teachers. In that situation, there are just too many things students need to know and to consider to make sense of the problem. With focused practice, however, the problem writer can reduce the detail to streamline the problem and make it more manageable. Objectives can be focused using a series of specific questions or instructions. The problem remains realistic, but it takes account of limits on time, resources and pre-existing knowledge.

Another advantage of focused practice is in the evaluation of performance. When students are asked to draft a whole document from a set of instructions, without a specific focus, it can take a long time for teachers to evaluate their work. But with focused practice, evaluation can be fast and efficient. Because each specific instruction in the problem can demand a different skill or a different level of skill, focused practice obliges students to demonstrate skills, one at a time, enabling teachers more easily to identify and evaluate each. The resource efficiency of focused practice becomes particularly obvious with larger classes or when teachers are in short supply. A large group of students can perform the problem with minimal supervision. One or two teachers can then grade all the students' work. Alternatively, where there are even fewer resources, one teacher can simply hand out and discuss the solutions with students who can evaluate their own work.

The problem involves drafting and document analysis in a joint venture context. The students are asked to play the role of solicitor for one of the joint venture partners. Prior to working on the problem students have attended a lecture on the drafting of joint venture agreements, reviewed a sample joint venture agreement, worked on a simpler joint