created so that students may be made aware of what and why a particular action was taken or not taken.

American law schools have come a long way since the time when women were not even allowed to attend. However, the latest research suggests that high levels of gender hostility continue to pervade this nation's law school classrooms. Consequently, women law students are subjected to unequal educational opportunities.

Teaching torts – gender matters – teaching a reasonable woman standard in personal injury law
M Schlanger
45 St Louis L J, pp 769-778

'Reasonable care' is, of course, a concept central to any torts class. But what is it? One very standard doctrinal move is to conceptualise reasonable care as that care shown by a 'reasonable person' under like circumstances. The next step, logically, is to visualise this reasonable person. Visualisation requires some important choices. For example, is the reasonable person old or young? Disabled or not? But, oddly, no casebook deals with the trait that nearly invariably figures in our description of people: sex.

If the casebooks are silent, however, the cases and commentary are not. Judicial opinions frequently used to refer to the 'reasonable man' rather than the reasonable person. Feminism has not let the masculine origin of the reasonable person go unremarked. Feminist scholars have argued that tort law used to evaluate care against a standard that was not just linguistically but substantively masculine – that the reasonable man is the mascot of tort law's oppression and exclusion of women. The interaction of gender norms and the law are key to any adequate presentation of sexual harassment, negligent infliction of emotional distress and damages, but gender is relevant to other topics as well.

The first and most sustained discussion of gender difference and what the law might do about it occurs quite early in the class, when the author asks her students to consider what tort law might look like if it treated a defendant's or plaintiff's gender as relevant to jury assessment of due care. What, that is, would it mean for the law to talk about reasonable women as well as men?

For many scholars and activists, a central question for legal feminist theory is whether women's equality and welfare is best fostered by insisting on adherence to universal legal standards or on recognition and even privileging of women's difference from men.

The author tries to vary her pedagogical approach in Torts, to accommodate students' different learning styles. Several of the cases studied by her students, which come from the 19th century and involve women driving carriages, introduce concretely the idea of gendered standards of care, highlighting that reference to a person's sex in defining the care required of her necessarily rests on some presumption of sex difference. Students are asked to accept for the sake of argument that, on average but not for all people, this difference was, in the mid-19th century, real. The author also asks them to assume that equality of men and women is an important (if not necessarily trumping) value. This last assumption is important for teaching purposes, because an attempt is made to focus the conversation on the complex conceptual and implementation problems raised by a norm of equality – not on the issue of whether sex equality is politically appropriate on its own merits.

The idea is for the class discussion to develop the implications of each option. The author elicits from some students the point that holding women to a masculine standard seems unfairly punitive. Others counter that perhaps the higher standard pushes women to eliminate their driving deficit. If, however, the difference is not something easily eliminated, the result of a masculine standard is a disincentive for women to drive. With some guidance, the topic then opens up into debate about the potential for either tort judgments or judicial reasoning to influence behaviour. The students are encouraged to move from speculation about the possible incentive effects of tort judgments to normative discussion of whether law should simply reflect, or rather mould, a community's ideological commitments.

Those students who think it appropriate for common law rules to shape society typically argue that holding men and women alike to a universalised standard has the advantage of not reifying gender inequality and perhaps even of making perceived feminine driving inadequacies less salient to observers of court cases. But they are forced by others to concede that the 'universal' standard has a disparate impact on women, and is at least problematic for this reason. The author further challenges those who are moved by economic arguments, asking whether it is socially optimal for the law to require women to live up to a masculine standard, given that achieving a certain level of safety is typically more 'costly' (if not monetarily then in terms of effort) for women than for men.

The class on 'reasonable women' gives students a chance to explore the interaction of law and social norms in a doctrinal context that grips them more directly than many. It reveals that doctrinal implementation of an ideal of equality between the sexes is more complicated than most of them would have thought. The author hopes that it helps to counter the alienation some law students report is caused by law school classes' facade of 'perspectivelessness,' by authorising students to attend to both male and female perspectives, for the day and thereafter. And it reinforces the value of close attention to judicial language.

LEGAL ETHICS

Challenges to the academy: reflections on the teaching of legal ethics in Australia
M Castles
12 *Legal Educ Rev* 1-2, 2001, pp 81-104

Approaches to teaching legal ethics have varied considerably over the years in Australia. Inquiries undertaken by the Law Council of Australia in 1988 indicated that

the majority of law schools at that time dedicated course time to legal ethics, most as discreet subjects, some by integration in a substantive law context.

In its inquiry into legal education and training, the Australian Law Reform Commission concluded that, whilst some law schools include formal ethics subjects in their curriculum, ethics is more commonly taught as part of pre-admission practical legal training.

This accords with the experience of many practitioners today. Legal ethics was taught at the end of the law degree. It was often a non-examinable subject taught by a practitioner who outlined the rules and applied them anecdotally. In more recent years, this approach has been overtaken by post-academy/pre admission training courses that cover professional ethics and conduct, often in more detail than in the academy.

Legal ethics can be broken into two components, philosophy/theory and the practice of legal ethics. The evolution of the timing and place of ethics teaching, at least in Australia, has tended to shift focus to the second part of the equation, the practice of legal ethics. Students who come to law school with previous studies in Philosophy or Politics or who elect to study Jurisprudence as part of their law degree program may well develop an understanding of the reason for the existence of legal ethics in society.

Most, if not all, law schools in Australia now offer foundation subjects in law that include an introduction to legal ethics. These are, of necessity, elementary in nature They are offered early in the LLB degree when students may lack the overview of law, process, and equity that will develop in later years. Aspects of legal ethics also arise in most subjects in the law curriculum. However, if the reinforcement of the underlying philosophy of legal ethics is haphazard and the focus on practical problem solving comes at a late stage in the student's course of study and is not clearly related to any underlying philosophy, the resulting perception is likely to be that legal ethics are little more than a gloss on the substantive law.

Leaders of the profession, as well as leading theorists and educators, lament the diminution of ethical conduct in the practice of law and point to increasing incidences of unethical behaviour that have an impact, not only on the participants, but on public perception of the legal community.

Can legal ethics be taught in the same way that other law subjects are taught? The answer to this question varies. A range of initiatives designed to address the perceived need for different approaches to teaching ethics in the academy have been developed. They range from the reintroduction of legal ethics as a compulsory subject through to the integration of legal ethical issues in simulated case studies, with any number of permutations in between. These initiatives, in addition to the coverage that legal ethics also achieves in introductory or foundation subjects and in other subjects where various aspects of ethical theory and outcome are touched upon, have refocussed academic attention on the methods of teaching legal ethics to potential practitioners.

One difficulty arises from the very environment within which legal ethics is taught. The rules of legal ethics tend to be turned over and examined individually in reference to particular case studies with a view to testing if it is indeed possible to assert or distinguish compliance with a particular rule in a particular case. This stands in contrast to the idea that ethics should be viewed as a pervasive set of values that underpin the practice of the law.

This begs the question, however, which is, 'Is there any wholly effective way of teaching legal ethics in a traditional law school environment?' All these issues dictate the teaching of legal ethics in a different way – not as a stand-alone subject nor as a final gloss on the other technical skills and academic values learned in the academy, but as an integral part of the learning of law as a social phenomenon.

To be effective, legal ethics must be taught in a manner so that students are presented with the opportunity to confront the many facets of ethical decision-making. It is not uncommon for students to exhibit sound understanding of the theories of ethics and to apply them more or less appropriately to a given practical situation but then state confidently that, 'It doesn't happen that way in practice'. This is a profoundly perturbing situation.

Many law students, upon graduation, embark on a career in legal practice. It seems generally accepted that there is doubt whether these practitioners have a sufficient grounding in legal ethics to be able to engage in day-to-day ethical decision-making. Technically, this inability makes them potentially 'unethical lawyers.' How many of these graduates simply lack the capacity to identify and deal with ethical issues, which usually call for immediacy of response? And where do they eventually learn legal ethics? Anecdotal evidence suggests that much learning of legal ethics comes from mentors, supervisors, and colleagues, and from experience. The process of learning by experience is a dangerous one. Too often practitioners learn legal ethics when they realise after the event that they faced an ethical issue and failed to deal with it or dealt with it inadequately.

A further issue that surrounds the student practitioner is that, unlike a law student whose ideas and understanding will ultimately be tested in the course of subject assessment, ethical decisions and actions are almost always made in private. The maker of unethical decision is often in a good position to conceal or cloud the decision made, and the nature of the lawyer-client relationship means that often the decision-maker is not accountable.

The student practitioner must enter the workplace prepared to identify and appropriately deal with ethical problems – both big and small. They must have this ability already instilled in them. The process of instillation must occur during the undergraduate period of study in a way that exposes students to the real as well as to the theoretical dimensions of legal ethics. What we, as teachers of legal ethics, must aim to do is to ensure that our

students understand the reasons why ethical rules require a particular response in a given situation. If a student has the understanding and the capacity to analyse the problem with reference to relevant values, then the student has the capacity to make an ethical decision. Whether he or she chooses to do so is another matter, but that is beyond the responsibility of the academy.

Experience and legal ethics teaching
J E Moliterno
12 *Legal Educ Rev* 1-2, 2001, pp 3-9

Legal ethics, or the law governing lawyers, is law. As such, teaching about legal ethics is in an important way like teaching about any other area of law. It was not always seen in this way. Once it was thought that legal ethics was more etiquette than law; more manners than enforceable rules.

Law, at least law as seen as inclusive of the social policies and moral principles embodied in the positive rules of law, is now central to what we teach about in a legal ethics course. None of the leading teaching materials treats the subject as anything but law. Legal ethics, or the law governing lawyers, is a body of enforceable understandings and mandates no different in that respect from the law of tort or contract. And in some respects, teaching it is just like teaching contracts or torts or evidence. That was far less the case as little as 25 or so years ago when teaching legal ethics was sometimes more preaching than policy discussion, more morals than mandates.

At the same time, teaching about the law governing lawyers is different from teaching about any other area of law, because it is experienced by the lawyer directly rather than vicariously. Unlike other areas, in the law governing lawyers, the lawyer is the client. This simple observation means a great deal to the pedagogy. Since the lawyer's relationships and experiences and acts are the subject matter governed by the law governing lawyers, and since our students will be those governed lawyers soon, special advantages may be found in teaching the law governing lawyers through experiential learning devices, such as clinics and simulations. In effect, lawyers' activities create the data on which the law governing lawyers acts. Students in experiential learning settings create data, too, and their experiences are the acts to which the law they are learning about applies.

Many once thought that legal ethics was next to impossible to teach well. This position was taken, however, at a time when the goals of the course were quite different. It was common to hear the question, 'If adult students have not learned right from wrong by the time we get them, how can we hope to teach it?' Legal educators do in fact have a substantial impact on their students' character development and 'goodness', but making students better people is no longer a goal of the legal ethics course. To the modest extent that it may be, it is a goal equally shared by the entire legal education enterprise and not held exclusively by the ethics teacher.

In fact, it turns out that the subject is among the easiest and most enjoyable to teach. With a modest amount of direction, students soon see that this course is about them, it is about their chosen profession, and it is the law that governs their own behaviour. In no other law subject is the lawyer the centre.

Using explicitly experiential learning devices (such as elaborate simulations, clinics and externships that are accompanied by seminar discussion) to teach legal ethics presents special advantages. The subject is the lawyer and her relationships. Placing students in role, allowing them first-hand experience with the experience of lawyering, gives them special insights into the law governing lawyers. The data on which this area of the law are based are generated by what lawyers do. Students, in the lawyer's role, sense the application of the law to their conduct and simply learn it more effectively.

In a way, even classroom teaching of the legal ethics course is experiential teaching. Students who see themselves in role as they read the cases and work through the hypotheticals and the problem materials, have a mental experience with the role of lawyer that is different from that experienced in other law courses.

Along with professional skills courses, the legal ethics course was long a second-class subject area in American legal education. Prior to the 1960s, many schools offered either no course or a one credit course and there were few serious scholars in the subject. Considered to be both academically light and practice and profession heavy, the subject was relegated to the edges of legal education. Along with the rise of clinical legal education during the 1960s and 70s, the professional responsibility course began its ascent to respectability and beyond.

Today the subject is covered at all US law schools and through multiple courses at many. The subject is taught by a wide range of creative teaching methods, supported by numerous, excellent materials. And a substantial group of first rank scholars devote primary energy to the subject.

Our students will learn from experience what it means to be a lawyer. We have a choice: either they can begin learning what it means to be a lawyer after admission; or they can begin doing so while they are with us, at a time when and in a place where that learning can be guided, can be structured and can be taught, rather than merely learned.

On tending to the ethics in legal ethics: two pedagogical experiments
T L Shaffer
12 *Legal Educ Rev* 1-2, 2001, pp 11-18

Ethics is about what is interesting in morals. Ethics is about what is important in morals. Ethics aims at resolution. Discernment comes up with answers. Ethics is communal. It depends on insight explained and on persuasion practised without coercion. And finally, ethics seeks to learn from consensus. The author has developed two techniques for teaching ethics that have worked well: the use of daily (or at least weekly) writing by students; and teaching in and from the clin-