# The Groupwork Experience in Civil Procedure

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*In Western Australia the only means for graduates to qualify for admission as a legal practitioner are by the articles process or by going interstate to qualify at a college of laws. The expectation of the legal profession in WA is that graduating students will have done at least some court document drafting while studying Civil Procedure during their law degree.*

*In 2002, 2004 and 2005, students enrolled in Civil Procedure at the Murdoch School of Law have been required to form and work in groups to complete drafting exercises involving preparation of court documents, memos to file and letters. The exercises are based on a single fact scenario that unfolds as the semester progresses. While an important graduate attribute is to work in a team environment, it seems that law students can find groupwork a challenge. Group disputes are not uncommon. From a co-ordinator's point of view, a significant degree of administration is required to manage groupwork. This paper discusses methods used to minimise and resolve group disputes and concludes with reflections on improving the groupwork experience.*

## 1. Introduction- Managing the shortcomings and emphasising the positives of groupwork: an impossible dream?

Amongst educators, the benefits of groupwork are undisputed.[1] However, the potential disadvantages are also well known. In particular, it is notoriously difficult to encourage law students to work collaboratively.[2] There are difficulties with "individual motivation and personal schedules clash[ing] with group objectives; not all students may believe that they benefit from groupwork; and there are issues of equity of contribution...."[3]

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[1] See Ann Holmes, 'Improving the quality of the Teaching and Learning Experience by using collaborative learning' conference papers from the 12th Commonwealth Legal Educational Conference 1998 at p 20, Le Brun & Johnstone *The Quiet Revolution – Improving student learning in law* (LBC 1994) at p291.
[2] Samantha Hardy "Role playing in Consumer Protection Law: the Market Day Project" 2004 (14) *Legal Education Review* 204 at 207.
[3] Ibid. See also the observations made by Israel, Handsley & Davis 'It's the Vibe: Fostering Student Collaborative Learning in Constitutional Law in Australia' (2004) 38 *The Law Teacher: International Journal of Legal Education* 1 at 1 and 8.

Based on discussions with my students, one factor for the unpopularity of groupwork would seem to be the pressure to achieve higher grades which stems from the intense competition for employment. Certainly, some students at least do not like to be beholden to a group for the outcome of a substantial part of their grade and consider that they can achieve a better grade alone than they will in a group.

The issue of logistics is another significant reason why groupwork is unpopular with law students. Gone are the days when a student attends law school with few outside commitments, able to focus almost entirely on the course of study. Now, students look for ways to cram as many on campus lectures into the fewest number of days, so that other days are freed up for other commitments. Groupwork is inconvenient as it requires students to fit in with the commitments of other students. As such, it creates an added level of complication for students in timetabling their lives and this leads to resentment. In a survey of the 2004 cohort of Civil Procedure students, by far the most common problem encountered by groups was logistics: 48.8% found the logistics of meeting and working as a group to be a problem.[4]

So why persist with groupwork in civil procedure? There are several pedagogical and several pragmatic reasons for doing so. The pedagogical ones are:

- That groupwork is a reflection of life in general and legal practice in particular. We all need to learn how to work collaboratively. Learning to get along with others of differing viewpoints is something you cannot avoid in legal practice, nor should you avoid in life. Part of the groupwork experience is to encourage the students to reflect on the fact that there is often more than one right way of doing many tasks. One only has to think about the different methods and styles of pleading adopted by different barristers. It is useful for students to realise that 'their' way is not the only way, and is likely to be just 'one' way; and to value the opinions of other members of their group. These benefits are recognised in desired graduate attributes: the relevant attribute at Murdoch University says graduates should have:

> A capacity to relate to and collaborate with others to exchange views and ideas and to achieve desired outcomes through teamwork, negotiation and conflict resolution.[5]

- That groupwork provides a good opportunity to question what constitutes ethical behaviour in a broad sense. Is it Ok to change the work of a group member without discussing it first? Is it Ok to tell a fellow group member that their

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[4] This result is consistent with that found by Adiva Sifris and Elspeth McNeil "Small Group Learning in Real Property Law" 2002 (13) *Legal Education Review* 189 at p 202 where they noted logistics to be the most common problem, being cited as such by 56.7% of respondents to their survey. The 2004 and 2005 Civil Procedure surveys will be discussed in further detail later in this paper.

[5] See http://www.tlc.murdoch.edu.au/gradatt/attributes.html accessed 28 March 2005 Indeed, there is a push to encourage law schools in particular to develop "high level professional skills". See the recommendation by the Australian Law reform Commission *Managing Justice: a review of the Federal Civil Justice System* No 89 Canberra AGPS 2000 recommendation no 2; as noted by Israel, Handsley & Davis above n 3 at p 4.

work is rubbish?  How should we behave toward one another in a group? How do lawyers behave towards one another in their own firm?   Again, this feeds into desired graduate attributes.  The relevant attribute at Murdoch University is:

> An awareness of and sensitivity to ethics and ethical standards on interpersonal and social levels, and within a field of study and/or profession.[6]

- That the subject of civil procedure is difficult to teach without a context and is easier to learn by doing.  In forming a group, the students get to imitate a firm of lawyers and then be 'personally involved in their learning'[7] by dealing with a fact scenario as it unfolds, in imitation of a real case in practice.  The benefits of this are multi layered: application of principles they have learnt in class, the testing of this against what others in their group have taken from the same classes, dealing with the administrative requirements of forms and precedents, co operation in arriving at a final product and trusting the efforts of others.  These are all important qualities and experiences for students soon to make the transition from student to graduate lawyer.

The pragmatic reasons are:

- Western Australia has no college of laws system so students who wish to practice either secure articles with a law firm or go interstate to a college of laws type system.  Where the students do articles, the profession requires that students have had some exposure to drafting court documents.  I believe that I need to have an assessment process that reflects this, by requiring court document drafting. Although this factor speaks more of drafting exercises than groupwork per se, it is linked to the next factor;

- My perception of the beneficial spinoff – reduced marking load.  With dwindling resources and reduction in casual teaching allowances, marking say 30 exercises instead of 120 makes swift marking of drafting exercises a viable proposition.  However, my experience is that the time saving is illusory, as one spends so long dealing with the administration of the drafting programme and the groups themselves.  This conclusion is supported by others who have trodden the same path.[8]  Perhaps, then, what groupwork achieves for the co-ordinator's teaching load is that it distributes the effort over the whole semester instead of clumping it around assessment marking time.

Whilst it is very noble to say that there are benefits to groupwork drafting exercises, it is quite another thing again to try to administer groupwork in a way that reduces the

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[6] Ibid.

[7] Le Brun & Johnstone above fn 1, p292.

[8] Ann Holmes above fn 1, p 25, Sifris & McNeil above fn 4, p 191.  Israel, Handsley & Davis above fn3 noted that there were significant savings in that staff spent half the time marking than they did previously (p 24) but that the initial set up of their collaborative learning project was supported by a 'one off university grant' which was used to free a member of staff to undertake a literature review and troubleshoot (p 15.) Their observation that the funding of these projects 'seem to rely on the enthusiasm and time commitment of individual staff members or the existence of a very small class.' (p 15)

shortcomings whilst emphasising the positives. (I should stress that this article aims to share my experience and reflections rather that putting a model forward that is worthy of duplication.)

I was well aware of the general dislike of groupwork amongst the student cohort when I first set up the groupwork component of this course. As a result, I was of the view that in order for students to view groupwork positively, there needed to be mechanisms built in to the process so that groups could manage their group to ensure all members contributed to the enterprise.

I have attempted to gradually build up a system to encourage students to view groupwork as something that can be a positive learning experience. The primary goal of this strategy is to encourage groups to behave in an appropriate manner towards one another and make a fair contribution from the outset. Nevertheless, the experience is often still a mixed one for many groups and improvement is necessary. As will be discussed in this paper, the survey of the 2004 students shows this in stark detail. Changes to future offerings as a result are foreshadowed in the conclusion to this paper.

This paper will first outline the process of the groupwork experience at Murdoch:

- Forming groups
- Code of ethics
- The pattern of groupwork
- Rules of engagement
    o Groupwork programs and individual worklogs
    o Right to refuse to share grade
    o Right of exclusion.
- The unit co-ordinator's power of arbitration

After discussing those, I will then take you through some reflections on the groupwork experience using the 2004 survey results to look at:

- Self selecting groups
- Code of ethics – useful or more red tape?
- Problems faced by groups
- Some case studies of groupwork

Finally, I will look at some of the notable results from the 2005 survey and share my thoughts on groupwork in Civil Procedure and the future – valuing groupwork.


## 2.    The process in groupwork

### Forming groups

The students are required to self select groups and have to have finalised this by the end of week 2. As there is an expectation that groups can make a common meeting time it

seemed to me it was easier for them to take on the task of finding a compatible group, rather than me. In the first 2 years the groups had 5 members, but in 2005 I have experimented with groups of 4. In 2005 using the WebCT to 'advertise' for fellow group members has proved successful, particularly amongst those who are new to * and do not have an established circle of friends.

Students are told, in the unit outline and in class, of the importance of finding a group that can not only meet at the same time, but ideally one that is compatible in its expectations and commitment level as well. [9]

## Code of ethics

One week after nomination of groups close, each group is required to draft a code of ethics. This idea is one I adopted after reading the paper "Smallgroup Teaching in Real Property Law" by Adiva Sifris and Elspeth McNeil.[10] I provide a pro forma code of ethics with suggestions as to what it might cover. However it is left to the group to outline the duties & obligations to which they consider all should be bound. The code of ethics is not marked, but must be submitted electronically to the co-ordinator via the website by the end of week 3.

What I hoped to achieve with the code of ethics was to focus the minds of the group members, before starting the main exercises, on both the practicalities (when are we going to meet and where?) and the level of commitment they make to the group. Groups often promise to deliver a 'warning' before exercising any of the powers of the group to discipline a wayward member. Another common feature is the promise to make group meetings a priority. Whether the code of ethics achieved its aims will be discussed in the context of the 2004 survey later in this paper.

## Pattern of groupwork

At Murdoch the unit offerings are all provided on a semesterised basis. Civil Procedure is taught with 4 hours of lectures per week for 13 weeks. It has no tutorials as such, but each group attends a workshop for each of the 3 drafting exercises and other workshops on other topics.

The drafting exercises are based around a fact scenario handed out in lecture 1 which is also used in lectures to illustrate the workings of civil procedure. These fact scenarios are time consuming to create and are usually drawn from those from my time in practice. The

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[9] Originally I would have the notices for nomination of groups available for day one of semester. However I was dismayed at the ruckus this caused as students seemed to feel obliged to finalise their group as soon as possible, sometimes seemingly at the expense of wise decision making. In 2005, I changed the procedure. On the first day of class I informed the students of the need to form groups by the end of week 2. I did not open the nominations for 5 days. By then, most people had their groups sorted and there was no repeat of the difficulties of previous years.

[10] Above fn 4, at 194

ones that work best, for my aims, are those that have a reasonably simple cause of action – tort, contract or s52 TPA. I also make liability reasonably clearcut. The aim is to ensure that the substance of the dispute does not distract too much from the process.[11]

Each exercise contains a number of tasks, and for them to be done in 9 days requires a concentrated period of effort on the part of the group.[12] Each exercise is marked out of 10 and is worth 10% of the final grade. All members get the same mark unless the group indicates to the unit co-ordinator that some member has not contributed as agreed.

The first exercise usually involves a letter of advice to the client, a draft indorsed writ of summons and a letter of demand. The second requires pleading a statement of claim[13] and writing a letter to the client concerning the obligations of discovery. The third exercise will vary in content from year to year, but has often been on preparing a list of documents and affidavit verifying,[14] together with preparing an interlocutory application and supporting affidavit.[15]

## Rules of engagement – group workprograms and individual worklogs

The groupwork endeavour is designed so that each group has some autonomy and control over its members for the duration of the groupwork. For each exercise the group is asked to design a workprogram, detailing who is to do what. Again this was an idea I poached from Sifris & McNeil.[16] I also encouraged each student to keep a worklog, outlining their own work. The keeping of records again mimics what happens in practice (although not quite in 6 minute units!) while giving the unit co-ordinator a tool to assist resolution of a dispute should it be necessary. Before introducing this, in the event of a dispute there was no way of establishing who had agreed to do what – other than rely on recollections of discussions from now warring parties. [17] The workprograms and worklogs are not checked, so it would only be in the event of a group dispute that I would find out whether there had been compliance.

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[11] (having said that, I usually engineer a complication in the final drafting exercise that mimics the real life experience of watching a new piece of evidence crumbling your strong case…)

[12] Any grumbles from students on this front I dispatch with a reality check – this level of intensity is designed to replicate that in practice! Nevertheless the students do seem to find it hard to juggle all their respective commitments to devote a solid period of time to working on the exercise as a group: see the graph at text accompanying fn 27. As a result of this, I have gradually increased the time available for the task from 7 days to 9 days.

[13] The tendency of students to 'divide up' the tasks has led me to include, for 2005, a requirement that all group members attempt the statement of claim independently, those drafts be handed in together with a 'worked up' final draft to which all have had input. This is designed to ensure that all group members 'try their hand' at this important skill.

[14] As articled clerks often 'cut their teeth' on matters of discovery, it seems to me important to emphasise this aspect.

[15] Ideally one would include several further exercises to deepen the experience – but that would be very unpopular with students who are trying to balance assessment for other units, and preparation for exams.

[16] Above fn 4 at 194.

[17] I do wonder if I am over legislating with the requirement of worklogs – but in a sense it encourages students to arm themselves with evidence of their own contributions and their agreement as to work distribution, and it is a useful tool for the co-ordinator.

**Right to refuse to share grade – the group declaration**

When handing in an assessment, each member of the group signs a declaration that all the members of the group have participated as negotiated by the group and that the group is happy to share its mark accordingly. A failure to make such a declaration sets in train a process of review by the unit co-ordinator. [18]

**Right of exclusion**

In 2004 for the first time, groups were given the power to exclude a member who was not substantially complying with their code of ethics or agreed workprogram.[19] There is a pro forma letter for this on the unit website, and a simple requirement for service. Its purpose was largely to encourage compliance. The unit materials point out that a member excluded may well have to complete the remaining exercises on their own.[20] No groups used this in 2004, the first year it was in place. However in 2005, one group exercised this power in the very first week that an exercise was handed out, when the ousted member had missed several scheduled meetings and had failed to undertake his allocated share of the preparation for the exercise.

**The unit co-ordinator's power of arbitration.**

The 2005 unit outline now states that the unit co-ordinator has an absolute discretion as to how to resolve any group dispute. In previous years there was no such statement and indeed the only scenario I had truly provided for was the 'freerider'. As we shall see, my experiences of 2004 showed that exclusion of one member is not always going to be the appropriate solution and there was a need to make it clear from the outset that the unit coordinator could and would step in and dictate the outcome if a mediated response was not possible.

# 3. Reflections on groupwork

I strongly believe in the benefits of groupwork and drafting exercises and to my mind the two do complement one another. I have discovered that designing a groupwork experience is very much one of trial and error, observation and improvement. Each year that I teach it, I learn many new things about groupwork– not only ways to improve process in some respects, but also about human nature. The designing and improving of

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[18] Within 24 hours the group must make an appointment to see the co-ordinator.

[19] This exclusion cannot take place in the weeks when exercises are due – rather, in those weeks there should be a refusal to sign the group declaration (as above). The reason for this is that it would seem unfair to allow a group to exclude a member just before an exercise is due.

[20] There is a discretion built in, which allows the co-ordinator to adapt the work given to the ousted member depending on the circumstances.

the process of groupwork is complicated by the fact that it underlies a substantive drafting exercise which also takes time and care to create.

In 2004 a survey on the groupwork experience was conducted in class. There were 2 broad aims. One was to determine the attitude of the class to potential changes to the weighting of the groupwork and the possibility of random allocation to groups.[21] The other was to determine how that cohort found the groupwork experience and what advice they would give to subsequent students. Out of an enrolled class of 104 students, 65 responded (a 62% response rate). Participation was voluntary and anonymous. The results of the 2004 survey have assisted my reflections on the groupwork process as outlined above.

The survey results demonstrate that, despite my attempts at managing the groupwork experience, there is still significant scope for improvement. I have found that rather than the prevalent problem being the coasting or skiving student, this in fact has nowhere near the impact of serious personality clashes within a group. Whilst in three years I have had no students ejected from their group for coasting, there <u>has</u> been, each year, one spectacular collapse of a group caused largely by personality clashes and differing opinions.[22] There have also been a good proportion of other grumbling groups who have managed the situation amongst themselves rather than involve the unit co-ordinator, sometimes because they do not want to lose a friendship.[23] The rest of the groups seem to have had a positive experience, focussing primarily on their group outcome and helping each other. In the 2004 survey, just over one fifth (22%) of students said that they had either no problems within their group, or only issues with logistics.

## Self selecting groups

Most students end up in groups of friends, and as already mentioned, approximately 13% of the survey responses volunteered that this posed them problems. Each time I have taught the unit I have been approached by a student who is unhappy with the level of commitment shown by one or more members of their group but the student is not willing to exercise their right to refuse to sign the group declaration.

In particular, the remainder of the group were unlikely to exercise rights of expulsion against a friend because it was not worth the friendship:

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[21] While it is perhaps only tangentially relevant to the topic of this paper, of the respondents to the 2004 survey 62.9% of students from would have preferred the exercises to be worth 15% each of their grade. In fact the Murdoch University policy on assessment makes it difficult to allocate groupwork more than 30% of each student's grade unless the student's individual contribution can be individually assessed: http://www.*.edu.au/vco/secretariat/admin/codes/advice.html accessed 4 April 2005.

[22] When that happens, the outcome is based on the co-ordinators discretion. One example is discussed below at text accompanying fn 28.

[23] Again this is an interesting ethical choice especially given their perceived concern about grades.

"..in practice the code was difficult to enforce particularly when you don't want to hurt friends' feelings"

"it is very hard to use the enforcement procedure against friends."

"..At the beginning everyone is always enthusiastic and believes they will put in the work. But when it comes down to it, you usually find that people who don't have the time and energy to put in. Therefore some do a hell of a lot more than others. And if you don't want problems you certainly don't point to your ethics statement and demand more. Maybe in a workplace- but not in a classroom."

As described in the Sifris & McNeil article,[24] this is an example of the student making the moral choice not to 'rock the boat' because, in a group of friends, the consequences are too severe. I point out to them that they have an ethical issue here, but it is their decision – I can only provide them with the mechanism to use.

Anecdotally, the most conflict in groups appears to occur when there are friends in a group who have no inhibitions in criticising or amending work, even without seeking approval of the others. In fact those groups who have had little to do with one another before forming a group appear to have a veneer of courtesy that lasts them through the 3 exercises. In the 2004 survey, when asked what advice they would give to students about to embark on groupwork, by far the most frequent response was to choose a compatible group (55%).

An interesting outcome of the 2004 survey was that despite this concern about working with friends, when asked if they would have preferred to have been randomly allocated to a group sorted only by compatible available times, 82% said they would prefer to self select a group. Even amongst the cohort who made negative comments about being in a group with friends, 71% were still opposed to random allocation of students to groups.

Self selection has proved problematic for those students new to Murdoch, such as overseas lawyers required to pass the course to requalify. However, there are usually enough of them to form several groups of like minded students, and I encourage them to use the unit's WebCT site to locate other students in the same position.[25]

## Code of ethics – useful or more red tape?

In the 2004 survey, the students were asked if they found the code of ethics useful either at the time of entering the code, during the exercises, or not at all. The results are shown by this graph:

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[24] Above fn 4 at p 195

[25] In 2005, a group made up of 2 undergraduates and 2 requalifying lawyers is experiencing problems. The undergraduates complain of feeling marginalised as the requalifying lawyers take a 'we know best' attitude. The undergraduates feel the pressure to obtain good grades to maximise their prospects of obtaining articles, while the requalifying lawyers, already employed, are keen just to pass. The group is making a substantial effort to accommodate all its members. In future years I will quarantine the requalifying lawyers into their own groups so that the aspirations and attitudes of the groups are better aligned.
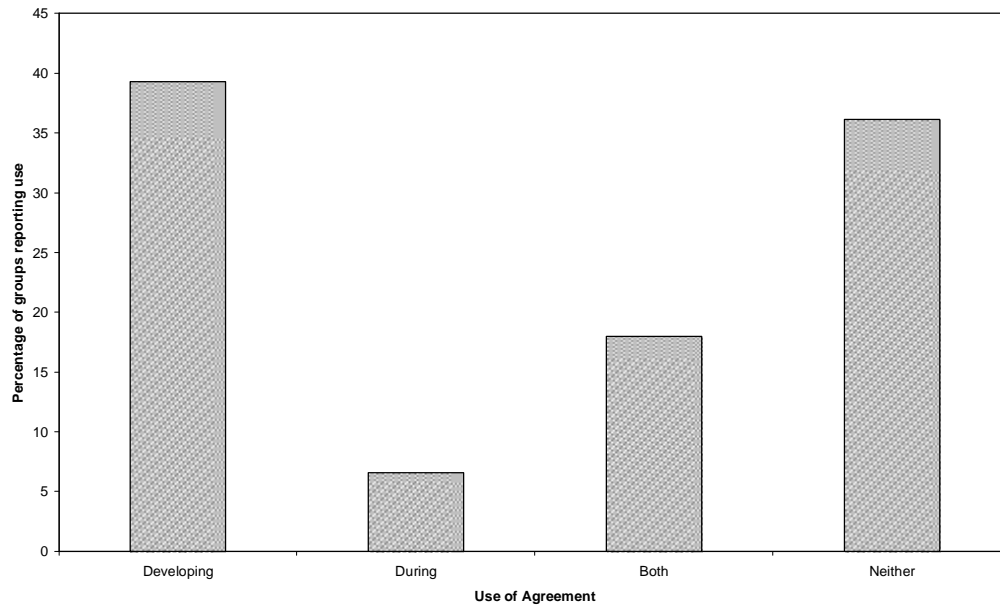
When one adds the three left columns, then one can see that a majority of students (63.9%) found the code of ethics useful at one stage or another, as opposed to 36.1% who did not find it useful at either stage.

The survey also asked students to stipulate the sorts of problems they had in the group. That particular topic is canvassed in more detail under the next heading, but this next graph cross-references the number of problems the student identified within the group by their perceived usefulness of the code of ethics.
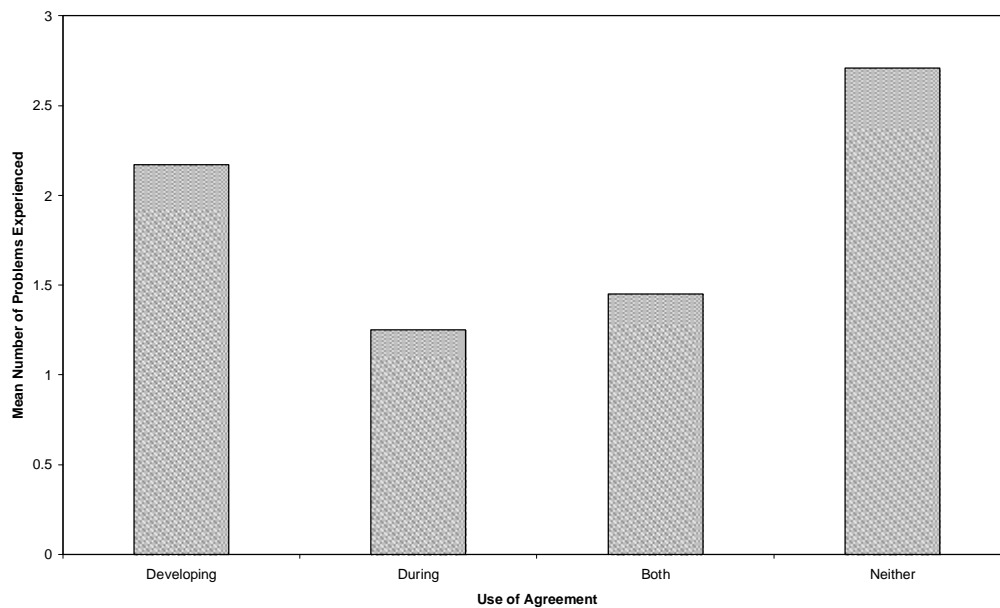
We see that those who said the code was not useful in any way did in fact suffer the highest mean number of problems.  Of course what the data does not tell us is whether the problems came about because of their lack of engagement with the process of the code of ethics, because of their failure to comply with it in their conduct with one another, or whether their problems were so great that the code of ethics could not have assisted in any event.  Yet, as breaching the code of ethics was grounds for expulsion of a member, the groups with many problems still chose not to expel an errant member: there were no expulsions in 2004.

**What problems did the students face with groupwork?**

Turning then to the issue of problems faced.  The 2004 survey asked "what have been some of the problems you have encountered with groupwork?" and invited respondents to outline their own or select from a number of choices:

Disagreements on method of approach
Personality clashes
Checking other people's work
Changing of work without consultation
Differing standards of work/work ethic between group members
Logistics in finding a common time to meet.

Respondents commonly selected more than one option.  The graph below sets out the responses for each choice, with an additional column to deal with the issue of freeloaders which were mentioned by a number of students.
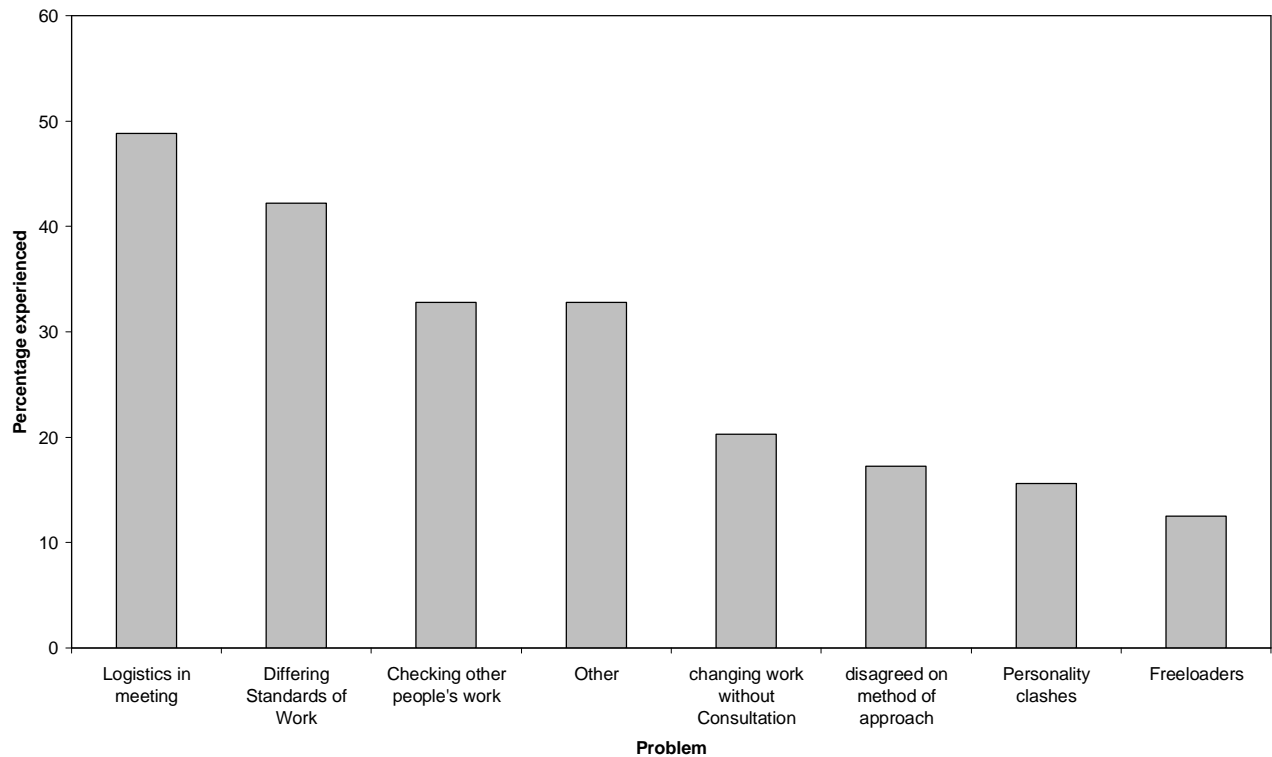
4 students (6%) indicated that their group had no problems during the groupwork process while 11 students (16%) had problems only with logistics.[26]

When asked "what, if anything, do you wish that you or your group had done differently in your/your group's approach to the drafting exercises", a clear majority (40.7%) said that they would have met more often and/or devoted more time to the exercises. It was interesting to note that the next most common response (18.5%) was to ensure equal standard of work and/or effort amongst the group. Those responses seem to indicate that getting started on the exercises quickly was a real problem and it is likely that this contributed to other difficulties sustained. In order to ensure this advice was not lost to later students, a summary of those results, with comments made by the 2004 students in the survey, was made available to the 2005 cohort before they embarked on the drafting exercises.

## *Some case studies of groupwork*

There have been several interesting situations that serve to illuminate the difficulties and the benefits of groupwork, both from the students and the co-ordinator's perspective.

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[26] It is possible to overcome at least some of the issue of logistics with the help of technology. The Civil Procedure WebCT website contains a groupwork space for each group where they can send messages and post drafts for review. In 2002, some groups have had success with 'meeting' only online. However the 2004 cohort did not seem to adapt to this as readily.

Undoubtedly there have been many other situations where a problem has simply not been brought to my attention.

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*Case study 2004*

*Four students were wishing to form a group.  They placed their names on the board whilst approaching others to join them as a fifth member.  Meanwhile a student new to \* put his name down as their 5$^{th}$ member.  The group, having secured a different student as their 5$^{th}$ member, crossed out the new student's name and replaced it, making no attempt to find out who that person was, or to contact him.  The new student did not find out for another few days and was then left without a group.  He approached the unit co-ordinator for assistance in finding a group.*

*The original 4 members were called in to the unit co-ordinator.  The sequence of events was established.  The members were told that the new student was saddened by his treatment, especially not being told that his name was being deleted.  While saying the new student should also have communicated with the group he wished to join, the group conceded it had behaved badly and had unnecessarily upset the new student. They offered to make him an apology.  The apology was gratefully received.*

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This prompted a change to the administrative process of nominating groups in 2005.  The group nomination forms were not available until the end of the first week.  Students were told that they should find a group and not put their names up on the noticeboard until they had a full group.  Those looking for a group or additional members called for expressions of interest via the discussion board of the unit website and included details such as their available times to meet. This system worked well.

Each offering also sees several acts of kindness and generosity on the part of a group to another member stricken with an unexpected personal problem.

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*Case study 2004*
*In the week before a drafting exercise is due, a student's father dies overseas and she is required to leave at short notice.  As she is leaving, the student contacts the unit co-ordinator and her group to let them know.  The exercise is to be handed in while she is away and her group decide that they will include her name anyway, effectively agreeing her input for that exercise will be nil.  The student, on her return, is very grateful and a bit overcome; the group feel good about their act of generosity.*

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This is an example one of those feel good acts of teamwork where the group sees the benefits of working collaboratively.

> *Case study 2002*
> *A group is in conflict because of the failure of one student to pull their weight. Another student in the group is threatening not to sign the declaration. After counselling from the co-ordinator, the group meet to work out a solution. The errant student has offered to take on more of the final exercise, and the group have decided to let him do that. The student lives up to his bargain.*

Again this outcome was in the end a good one – the students negotiated the outcome themselves and it worked. This scenario was one that prompted me to consider introducing the code of ethics as suggested by Sifris and McNeil.[27] This group's situation showed me that the only time that the groups were considering the spread of work was when they were actually involved in the exercise. The code of ethics then encouraged them to think about how they were going to treat each other at a calmer and more reflective time before drafting exercises were underway.

## The scenario I had not envisaged: What happens when personality clashes cause a group to become non functional?

When originally setting up the groupwork component of this course, I had envisaged that there may be a member not pulling their weight. What I had not thought about was the possibility that friends, all diligent students, would so disagree with each other's approach as to question their commitment to the group and even to the friendship.[28]

Again, this might be seen as a product of a situation where there is significant importance on grades for obtaining articles, together with difficulties on finding common times to meet.

> *Scenario 2004*
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> *Two of the five women in a group were very strong personalities. A was a perfectionist, highly pedantic and competitive about grades. B was equally as strong but less perfectionist and was also heavily committed outside of University. In the week that the second exercise was due, B flew interstate and was not available to be involved in the settlement of the final draft. A was not happy about the standard of her work and changed it, whilst resenting the fact that she was left to do the final editing. On her return B was unhappy that her work had been changed. As a result of this and various other incidents, A & B were not talking to one another. A asked to be removed from the group and allowed to complete the third and final exercise alone. Likewise B wanted to be removed. The remaining 3 members of the group were oblivious to the extent of the friction between A & B and were in shock that their group was about to be split. After meeting with the group and discussing the situation, a solution was reached. A and B would each complete the final exercise on their own, while the remaining 3 would complete it as a group. Both A & B accepted that this would mean more work.*

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[27] See text accompanying fn 11 above.
[28] This observation mirrors that made by Sifris and McNeil, about difficulties experienced including loss of friendships: above fn 4, p 211.

This scenario taught me that sometimes the problems run too deep and it is too late in the groupwork process to expect the group to 'patch things up' and complete the work together. It also led to the express statement in the unit outline giving the unit coordinator absolute discretion as to how to best resolve a group dispute.

## 4.        The 2005 experience

As a result of the 2004 survey, some changes were made for the 2005 offering; in particular:

- a reduction of group sizes from 5 to 4;
- greater guidance as to finding a compatible group; and
- a longer period for completion of the work so as to assist with logistics.

As the 2005 year unfolded, my impression was that this cohort has had a better experience than the 2004 cohort.[29] Out of a class of 116 students, 44 responded to a survey (44% response rate) which again was voluntary and anonymous. When asked what problems were faced, 23 respondents (52%) cited logistical issues; 10 respondents (22%) said that logistics issues were the only problem faced. 9 respondents (20%) said they had no issues with groupwork. The number of respondents citing either no or logistics only issues has risen from the 2004 survey figure of 20% to 42%, Undoubtedly the reduction in group size from 5 to 4 has had an impact here.

For the first time, in the 2005 survey I asked respondents whether they had learnt about their own style of participation by being in a group. 34 respondents (77%) answered positively. Pleasingly, some respondents chose to elaborate - comments included:

"I learnt the value of being assertive yet also valuing others contributions"

"I am a bit more of a leader/task delegator than I thought"

"[D]efinitely. I have learnt how pedantic I am! I've also learnt that you need to communicate your ideas to the group because people don't always know what you mean or what you are thinking"

"I need to be given a strict deadline… and I enjoy editing work!"

"[I]t helped me stand up for my point of view"

"I am a more patient person than I originally thought!"

"The importance of compromise, ability to trust others with important tasks"

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[29] There were less complaints about group disagreements in 2005. Part of this might be that news has travelled through the student grapevine that groupwork is to be expected in this unit. As such, students are more accepting and even prepared for groupwork in that they arranged membership of their groups before semester began.

"Yes I have learnt I need to be more studious in keeping up with deadlines. I should try to avoid letting people down by handing in work late."

## 5. Valuing groupwork: Civil Procedure and the future

As already stated, I am committed to groupwork as a means of conducting drafting exercises in Civil Procedure. The changes made in 2005 seemed[30] to have had a positive effect on the student's perceptions of groupwork.

However these changes have only been tinkering with the <u>mechanics</u> of groupwork – and as important as that is, it is only one part. On reflection, the process I have developed might be inadvertently emphasising the shortcomings by focussing so much on what happens if things go <u>wrong</u> rather than the immense benefits a group reaps when things go <u>right</u> in groupwork. For a more satisfying experience, groupwork needs to be valued not only by educators but by students, and not only as a means to an end (a way to get the drafting exercises done) but as an outcome in itself. The positive response to the question on personal styles of participation in the 2005 survey struck me as being the beginning of the way forward.

My focus is now for future offerings of Civil Procedure to develop this idea of valuing of groupwork. Some thoughts at this stage are:

- o encouraging reflection on the groupwork process at the beginning of the course, particularly as a study in the sorts of behaviours required when working with people, and with an emphasis on the question of ethical behaviour. This might take the shape of a guest lecturer who is an expert in groupwork or showing extracts from films displaying lawyers working in a team and discussing the behaviours involved.[31] I am considering introducing a requirement for a formal reflection on the groupwork experience, for assessment;

- o becoming more focussed on the code of ethics to ensure that it is an effective document dealing with what will happen when problems occur; in particular that it contains an 'in group' conflict resolution procedure. It may even be beneficial to rename it a 'partnership agreement' in order to emphasise the teamwork aspect.

- o to talk in more detail about how lawyers operate (collaboratively) within a firm, not just (combatively) between firms.

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[30] The results need to be viewed with some caution given the relatively low response rate; it might also reflect the idiosyncrasies of that particular cohort.
[31] Israel, Handsley & Davis above fn 3, at 14 report doing this in their collaborative learning project.

- o finding an effective debrief mechanism[32] so students are obliged to give members of their group feedback at the end of each exercise – and to do so in a constructive manner.[33]

- o encouraging better use of the technology by demonstrating the WebCT groupwork facility.

At the outset, this paper asked whether it is an impossible dream to manage the shortcomings and emphasise the positives of groupwork. I do not consider it is an impossible dream. What is needed, I believe, is a balancing of the necessary sanctions and controls within the process, together with a strong and positive message about the value of learning in and through a group.

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[32] M Le Brun & R Johnstone, above fn 1, at 293 discuss the importance of debriefing as 'purposeful reflection' on the groupwork experience.

[33] I have considered the idea of introducing a small component of peer assessment, however it seems fraught with difficulties. First there is the danger that the group agreeing to award each other full marks in any event. Second, when tempers are running high it seems to me that it might be more inflammatory than anything else for the parties to have it within their power to 'mark down' a person. However, on the other side of the ledger, the 'carrot' of a good peer assessment may be more effective in encouraging collaborative behaviour than the current negative consequence of exclusion or reduction of grades. I note in particular that it was something that Hardy had some success with: above fn 2 at p 208-209. I intend surveying the 2005 group of students for their response to this idea as well as the 'milder' alternative of peer feedback. A broad range of possible assessment methods are outlined in the article by Burton "Assessing Teamwork Skills in Law School: A Window of Opportunity" E-Law; Murdoch University Electronic Journal of Law Vol 10 no 2 (June 2003).