



Developing the Law Curriculum to Meet the Needs of the 21st Century Legal Practitioner

A Tale of Two Sectors: Dynamic Curriculum Change for a Dynamically Changing Profession

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Abstract

Recent decades have witnessed dynamic change in the working environment of 21st century lawyers. While the practice of law has changed radically, it is not clear that legal education reform has kept pace with the demands of modern practice. In an environment where the tertiary sector has also been transformed by external drivers beyond its control, the QUT Law Faculty has undertaken a major reconceptualisation of its undergraduate law programs. Encouraged by the Australian Law Reform Commission's 2000 exhortation to re-orientate legal education around "what lawyers need to be able to do", rather than remaining bound to the traditional focus of "what lawyers need to know", the Faculty embarked on curriculum renewal centred around the development and implementation of a graduate capability framework. The Faculty wished not only to address the generic issues of first year transition, it was also committed to providing a package of teaching and learning opportunities that combined substantive content, theoretical and practical knowledge with the development of certain generic (and some discipline specific) skills; all of this in a legal context to a basic level of competency for all students, regardless of the diversity of their prior background and experience. This paper will describe this particular pedagogical response to meeting the needs of the 21st century legal practitioner.

A TALE OF TWO SECTORS: THE CHANGING AGENDA.

The closing decades of the 20th century witnessed a period of dynamic change unparalleled in the history of Australian legal service practice and delivery. Twenty-first century Australian legal graduates enter a complex, and quite structurally different, professional environment from that of their predecessors, even those of a decade ago. The content, methods and foci of legal knowledge are now also changing so rapidly that, in many areas of practice, the doctrinal law learnt at Law School is no longer current, even on graduation. At a broader level, legal practice has been transformed by external drivers such as globalisation, competitiveness and competition reform, information and communications technology and by a determined move away from the adversarial system as the primary dispute resolution method.

The tertiary sector in Australia has been similarly subjected to dynamic change from a range of external drivers. Information and communications technology has, and will continue to have, a dramatic transformative influence.¹ There has been significant growth in higher education participation, which has contributed to increasing student diversity (in terms of both demographics and preparedness for tertiary study). Public funding, however, has not correspondingly increased to match the impact that massification has had on the sector. For many Law Faculties this has translated into a further serious diminution in public funding, in an institutional environment where law has historically been viewed as a relatively cheap, though desirably prestigious, course into which to recruit high-achievers. Understandably, since the federal government's introduction of the differential Higher Education Contribution Scheme (HECS) for undergraduates, law students, who pay the *highest* rate of contribution (though, as the Australian Council of Law Deans points out, are generally funded at the *lowest* level within the

¹ See, for example, M Bell, D Bush, P Nicholson, D O'Brien, T Tran, *Universities Online: A survey of online education and services in Australia*, DEST Occasional Paper Series 2002 02-A, available at <http://www.dest.gov.au/highered/occpaper.htm> (accessed Feb, 2003).



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university)² now see a very clear nexus between the quite considerable financial burden they are required to bear and the quality of their university education.

The competitive need for innovation sees institutional providers striving to be responsive to student demands about flexibility in course delivery, the quality of their teaching and learning environments, and the suitability of their courses as preparation for future employment and career advancement. Government expectations of the sector align with student demands: universities are assumed to have recognised “that there is a need to ensure that graduates have the generic skills desired by employers such as analysis, communication, team-work and leadership skills.”³

The final element in the contemporary mix is that there has also been a significant shift in teaching and learning approaches in higher education in recent times: from “teacher-centred” teaching to “student-centred” and “independent” learning. As Coaldrake and Stedman have noted “we understand more about teaching”⁴ –

Deeper understandings of the nature of student learning, and pressures to reposition the teaching and learning environment around learning outcomes, demand a more professional approach to university teaching. Academics are being asked to meet the needs of more diverse student groups, to teach at more flexible times and locations, to master the use of information technology in teaching, to design curricula around learning outcomes and across disciplines, to teach in teams, to subject their teaching to evaluation and develop and implement improvements, to monitor and respond to the evaluations made by students and graduates, to improve assessment and feedback, to meet employer needs, and to understand and use new theories of student learning.

The question that now has to be asked is - have legal educators kept pace with the contemporary demands of 21st century legal practice, changing student expectations and the new agenda for higher education? This paper will address that issue, using the innovations that have been implemented in the undergraduate law program at the Queensland University of Technology (QUT), Australia as the exemplar.

AND THE RESPONSE HAS BEEN...

The brief environmental snapshot outlined above makes it obvious that, to ensure legal education’s currency, the traditional law curriculum requires a fundamental reconceptualisation so that students might be more effectively prepared for the changing, challenging and globalised work environments into which they now enter. However, while there has been a plethora of reports produced both nationally and internationally exhorting a re-orientation of traditional approaches to legal education, the more recent of these analyses have found that calls for change have not been enthusiastically embraced by legal education providers.

In 2000, the Australian Law Reform Commission (ALRC) found that, while the working environment of Australian lawyers had undergone dynamic change, there had been a critical and “relative stasis in legal education, which appeared frozen in time”.⁵ The President of the ALRC, Professor David Weisbrot, speaking in America in 2001, noted that:⁶

² Council of Australian Law Deans, *The Funding of Law Schools: A Resource Document prepared for Law Deans*, December 2000, at 3, available at <http://www.cald.asn.au/funding.html> (accessed Feb, 2003).

³ B Nelson, *Higher Education at the Crossroads – An Overview Paper*, DEST, Canberra, April 2002, available at <http://www.dest.gov.au/crossroads> (accessed Feb 2003)

⁴ P Coaldrake and L Stedman, *Academic Work in the Twenty-first Century Changing Roles and Policies*, DEST Occasional Paper Series 99-H, 1999, available at <http://www.dest.gov.au/highered/occpaper.htm> (accessed Feb, 2003), at 13.

⁵ Professor David Weisbrot, President, Australian Law Reform Commission, Conference Paper entitled “What lawyers need to know, what lawyers need to be able to do: An Australian Experience” at *Erasing Lines: Integrating the law School Curriculum* held July 26-28 2001, at the University of Minnesota Law School in Minneapolis, MN at 15, citing Australian Law Reform Commission (ALRC), *Managing Justice – A Review of the Federal Civil Justice System*, ALRC 89, 2000 (“ALRC Report No 89”).

⁶ *Ibid.*



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Over the same period in which the organisation of legal work in Australia has changed radically, there has been an emerging awareness of the importance of skills training and some growth in the development of clinical programs, but doctrinal law still dominates law school teaching and curriculum, and there is disappointingly little reaction to the changing environment or reflection about the implications of all of this for education and scholarship.

I suspect that if Professor Langdell walked into a contemporary law school in the US or Australia – and the rapid advances in genetic technology and cloning may soon make this possible – he would feel right at home. Although the elective programs at modern law schools have expanded enormously and become ever more specialised, and clinical electives are now available, the nature of the core curriculum, the dominance of doctrine, and the basic approach to pedagogy have changed very little. (Contrast with this the likely bafflement of a 19thC professor of medicine, architecture, engineering or chemistry who strayed into a modern program in their discipline.)

Similar concerns were also expressed in the recent review of legal education by The Steering Committee on the Review of Legal Education and Training in Hong Kong. In its 2001 Report *Legal Education and Training in Hong Kong*, the Committee stated:⁷

The pace of change in legal practice – in the range of legal services provided, the mode of delivery and the mode of organisational and structure of the law firm units – is dramatic. What is less clear is the necessary adjustment that needs to be made to thinking about legal education, its foci and methods.

The ALRC's 2000 Report echoed to a large extent the findings of earlier discipline studies into Australian legal education. Both the 1987 *Pearce Report*⁸ and the subsequent *McInnis and Marginson Report* in 1994,⁹ specifically noted that movement toward skills development within law schools had been slow. The 1994 Report in particular found that, while many Law Faculties had made progress on the earlier *Pearce* recommendations concerning the inculcation of theoretical and critical perspectives, crucially, there was still no blueprint or taxonomy for the development of skills programs within core curriculum. The Australian Universities Teaching Committee (AUTC) has recently commissioned a further project on learning outcomes and curriculum development in law, which has been undertaken with the support and cooperation of the Council of Australian Law Deans. This project, which aims to perform a stocktake of Australian legal education and to identify best teaching practice, is due to be published shortly and should provide further valuable insight into the contemporary response of law curricula to the changing agenda described above.¹⁰

WHAT LAW STUDENTS NEED TO BE ABLE TO KNOW TO DO.

Traditionally, educators of undergraduate lawyers-in-training have approached curriculum planning from the perspective of what graduating lawyers “need to know”. While this approach will usually lead to graduates with good technical skills, in the current dynamic professional climate, where research has consistently shown that only 50%-60% of law graduates will remain in longer term legal practice,¹¹ a doctrinal-heavy education does not equip graduates with many of the necessary generic skills needed to perform effectively in the modern workplace. Nor is it what employers and graduates in the legal sector most desire. For example, in 1998,

⁷ The Steering Committee on the Review of Legal Education and Training in Hong Kong, *Legal Education and Training in Hong Kong: Preliminary Review*, Report of the Consultants, August 2001, (the “*Hong Kong Report*”) available at <http://www.hklawsoc.org.hk> (accessed Feb 2003).

⁸ Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission, Canberra, ACT, Australian Government Publishing Service, 1987 (“*Pearce Report*”).

⁹ C McInnis and S Marginson, Department of Employment, Education and Training, Australian Law Schools after the 1987 *Pearce Report*, AGPS, Canberra, 1994.

¹⁰ R Johnstone and S Vignaendra, *Learning Outcomes and Curriculum Development in Law*, AUTC, Canberra, 2003 (forthcoming).

¹¹ See, for example, the *Hong Kong Report* above n 7, at 27, citing *Scottish Legal Education in the Twenty-first Century: A report to the Joint Standing Committee on Legal Education in Scotland* (April 2000), para 4; M Karras & C Roper, *The Career Destination of Australian Law Graduates*, Centre for Legal Education, Newcastle, 2000: 58% of those who completed their legal education in 1997 in Australia were still working in private legal practice three years later.



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Vignaendra¹² identified that the most frequently used skills by law graduates in any type of law-related employment were those of communication (both oral and written), time management, document management and computer skills. Legally specific skills, while important to private professional practice, were not the most frequently used. The 2000 report on *Employer Satisfaction with Graduate Skills* highlighted that, taking into account the relative importance of skills to employers, the greatest skill deficiencies among new graduates were perceived to be in the areas of creativity and flair, oral business communications and problem solving.¹³

As pointed out by the UK studies in the field,¹⁴ it is also now the case that, in any discipline (and law is no exception), students will go through several changes of career in their working lives. These studies therefore emphasise that tertiary education should focus on developing students' ability to transfer skills from one context to another and to managing their own learning appropriate to new tasks. In 1998, the UK Centre for Legal Education Report on *General Transferable Skills in the Law Curriculum: A Survey Discipline in Law Network* concluded that formal curricula were not addressing various skills required by employers (for example, oral communication, teamwork, written communication, leadership, personal drive and commitment and business awareness).¹⁵

The ALRC, in its 2000 *Managing Justice Report*,¹⁶ cited the American MacCrate Report, *Legal Education and Professional Development – An Educational Continuum*,¹⁷ and concluded that legal education should be orientated around “what lawyers need to be able to do” (rather than anchored in outmoded notions of “what lawyers need to know”).¹⁸ Amongst other criticisms, the ALRC urged Law Schools to question their “solitary preoccupation with the detailed content of numerous bodies of substantive law” and, referring to the constraining influence of the Priestley Committee’s 11 compulsory doctrinal areas required for admission purposes, the ALRC also was critical of the arbitrary imposition of a set of “core” study areas centred around substantive law.¹⁹

As we come to “understand more about teaching”,²⁰ tertiary educators across all discipline areas have been according greater attention in recent times to curriculum renewal to address “what is taught, how it is taught, and how learning is assessed”.²¹ Somewhat serendipitously, their efforts have also largely answered the demands made by employers and graduates who seek course objectives extending beyond the acquisition of “mere” technical expertise and analytical ability. Fundamentally, the pedagogical solution to the mismatch between traditional graduate preparation and prevailing workplace demands lies in the acceptance that procedural knowledge – the “how to do”; how to communicate orally, how to write, how to work in teams – is just as important as conceptual knowledge and that a curriculum which successfully integrates and fosters the

¹² S.Vignaendra, *Australian Law Graduates Career Destinations*, Centre for Legal Education, Sydney, May 1998 at 39.

¹³ Evaluation and Investigations Programme, Department of Education, Training and Youth Affairs (EIP DETYA), *Employer Satisfaction with Graduate Skills: Research Report*, 99-7, Canberra, February 2000 available at <http://www.dest.gov.au/highered/eippubs1999.htm> (accessed February 2003)

¹⁴ UK Centre for Legal Education, *Benchmark Standards for Law Degree in England, Wales and Northern Ireland*, November 1998, Warwick, UK at <http://www.ukcle.ac.uk/resources/ldn/index.html> (accessed Feb, 2003); and J Bell and J Johnstone, *General Transferable Skills in the Law Curriculum*, 1998 reproduced at <http://www.leeds.ac.uk/law/lawdn/survey.htm> (accessed Feb 2003)

¹⁵ Bell and Johnstone, above n 14.

¹⁶ *ALRC Report No 89*, above n 5, at para 2.21.

¹⁷ American Bar Association, *Legal Education and Professional Development – An Educational Continuum*, ABA Chicago 1992 (“MacCrate Report”). The MacCrate Report formulated a list of fundamental lawyering skills and professional values and recommended that all Law Schools aim to instill these within their graduates. The identified skills were: problem solving; legal analysis and reasoning; legal research; factual investigation; communication; counselling; negotiation; litigation and alternative dispute resolution; organisation and management of legal work; and recognising and resolving ethical dilemmas (at pp 138-141). The Report led a majority of US Law Schools to redesign their curricula to entrench a clinical legal education model for their law courses.

¹⁸ *ALRC Report No 89*, above n 5, at para 2.21. The relevant recommendation of the ALRC was: “Recommendation 2. In addition to the study of core areas of substantive law, university legal education in Australia should involve the development of high level professional skills and a deep appreciation of ethical standards and professional responsibility.”

¹⁹ *Ibid* at paras 2.82-2.84. The “Priestley 11” were endorsed by the Consultative Committee of State and Territorial Admitting Authorities, chaired by Justice Priestley of the New South Wales Court of Appeal.

²⁰ Coaldrake and Stedman, above n 4, at 13.

²¹ R James, “Students’ Changing Expectations of Higher Education and the Consequences of Mismatches with the Reality” in Organisation for Economic Co-operation and Development, *Responding to Student Expectations*, OECD, 2002 at 81.



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development of a combination of personal qualities and meta-cognitive functions (particularly self-reflection) will produce a highly desirable graduate.²²

Educational theory recognises that, to ensure that these broader learning objectives are met, skills training should be embedded within the process and content of learning and that teaching and learning approaches and assessment methods are desirably developed in students in an authentic learning environment (ie, as near as possible to real world performance).²³ The Australian Technology Network,²⁴ of which my University is a part, has recently concluded a major teaching and learning project on transferable “graduate capabilities” which has designed a systematic and explicit strategy to cultivate and evaluate the development of relevant generic capabilities (the “ATN Project”). For definitional purposes, “graduate capabilities” are described by the ATN Project as:²⁵

...the qualities, skills and understandings a university community agrees its students should develop during their time with the institution. These attributes include, but go beyond, the disciplinary expertise or technical knowledge that has traditionally formed the core of most university courses. They are qualities that also prepare graduates as agents for social good in an unknown future.

The Project recognises that, while universities may generally view their graduates as having acquired certain implicit capabilities, any structured development of those capabilities is either non-existent or left to skills-based units divorced from the mainstream curriculum. The ATN Project suggests that generic capabilities should be seen as inextricably linked with the learning of disciplinary content in an *explicit* (rather than merely implicit) manner.²⁶

At QUT, after a period of extensive curriculum review and consultation with staff, students and professional stakeholders, we concluded that the content-based approach of traditional law curricula does not adequately prepare graduates with the skills necessary to succeed and evolve as reflective practitioners and lifelong learners in 21st century legal practice. The challenge to provide a coherent framework for the teaching of conceptual knowledge *embedded with* transferable generic and legally specific skills has been taken up by the Faculty of Law with the assistance of two University Teaching and Learning Development Large Grants.²⁷ The projects have sought to progress a “whole of course” approach to curriculum redesign through the development of authentic learning environments supported by the adoption of revised learning objectives, a range of teaching, learning and assessment approaches including, importantly, online delivery.²⁸ The integrationist reforms and online delivery approaches which we have implemented to ensure a seamless transition from the academic to the professional environment for our students, will now be briefly described.²⁹

²² Hart, Bowden and Watters, “Graduate Capabilities: A Framework for Assessing Course Quality” (1999) 24(2) *Higher Education in Europe* at 301-308.

²³ *Ibid.* See also de la Harpe, Wyber, Radloff and McKenna, “Quality and generic (professional) skills”, Curtin University Western Australia, unpublished paper, at 3.

²⁴ A collaboration of five Australian universities: Queensland University of Technology, Royal Melbourne Institute of Technology, University of Technology Sydney, University of South Australia and Curtin University.

²⁵ J Bowden, G Hart, B King, K Trigwell and O Watts, “Generic Capabilities of the ATN University Graduates” a report from the Australian Technology Network, January 2000, (“The ATN Project”) <http://www.clt.uts.edu.au/ATN.grad.cap.project.index.html> (accessed Feb 2003) at 2.

²⁶ *Ibid.*

²⁷ QUT’s Large Grants program provides assistance of up to \$150,000 over two years for major educational improvement projects. The project proposals are assessed by a panel (of internal and external experts) not only on matters of feasibility and sustainability, but also on the match between institutional priorities and proposed projects.

²⁸ S. Kift, “Harnessing assessment and feedback to assure quality outcomes for graduate capability development: A legal education case study”, AARE Conference, Brisbane, December 2002, available at <http://www.aare.edu.au/index.htm>; S. Christensen and S Kift, “Graduate Attributes and Legal Skills: Integration or Disintegration?” (2000) 11(2) *Legal Ed Rev* 207-237; S. Kift, “Lawyering Skills Finding Their Place in Legal Education” (1997) 8 *Legal Education Review* 43-73.

²⁹ Professor Weisbrot has commented that “The level of thinking and research which supports the integrationist reforms at QUT is probably the most advanced in Australia”: Weisbrot, above n 5, at 27.



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THE MISSING LINK: A TAXONOMY FOR DEVELOPING AND ASSESSING GRADUATE CAPABILITIES IN LAW

As has already been discussed, the imperative to produce legal graduates with readily transferable skills has been recognised at an international level, in the United States,³⁰ the UK,³¹ Canada³² and Hong Kong³³ and also at the national level in Australia.³⁴ What has been crucially absent to facilitate such an explicit skills approach to curriculum renewal is a “blueprint or taxonomy”³⁵ for a capability framework to guide innovative curriculum reform..

When the QUT Law Faculty approached its reconceptualisation of the LLB curriculum, a number of factors and strategies combined to lead to the successful development of a capability framework.

A whole of university approach

Critical amongst these factors was the commitment of the University as a whole to a systematic approach to the explicit development of transferable skills, in the sense both of its stated institutional vision to this effect³⁶ and in its allocation of funding to support curriculum innovation. This “whole of University” ethos has been identified as vital to the success of such wholesale curriculum renewal in the research conducted by both the Australian ATN Project and the UK studies mentioned above.

Starting with a new customised first year.

During the development of the capability framework, it was recognised that the type of teaching, learning and assessment environments experienced by students in the first year of their degree would impact significantly on the development of their capabilities through the remainder of the course. The external drivers for change in the legal and tertiary sectors mentioned in the introduction, delivered to the Faculty the opportunity to effect significant structural and philosophical reform to core undergraduate law curriculum that may otherwise have been too radical to contemplate. Critically, the changing tertiary and professional environment required the Faculty to reflect on and then articulate “up front” the type of graduate practitioner it would desirably produce for 21st century legal practice. This vision was then tested for acceptance by communicating with students, staff and other stakeholders for feedback and agreement prior to its implementation.

Following an extensive three-year planning period, a new first year LLB curriculum was developed and introduced in 2000. The foundation of the undergraduate degree is now provided by four completely new and integrated units - *Legal Institutions and Method*, *Law Society and Justice*, *Legal Research and Writing* and *Laws and Global Perspectives*.³⁷ From this customised base, we could then progress a effective “whole of course” approach to curriculum redesign: one which could build incrementally on a stable, tailor-made first year platform of substantive content, theoretical and practical knowledge and the development of certain embedded generic (and some discipline specific) skills; all in a legal context to a basic level of competency for all students, regardless of the diversity of their prior background. A collateral benefit of the new program is that this careful

³⁰ *MacCrate Report*, above n 17.

³¹ *Benchmark Standards for Law Degree in England, Wales and Northern Ireland*, above n 14; *General Transferable Skills in the Law Curriculum*, above n 14; *Scottish Legal Education in the Twenty-first Century: A Report to the Joint Standing Committee on Legal Education in Scotland*, above n 11.

³² Committee Responding to Recommendation 49 of the Systems of Civil Justice Task Force Report *Attitudes-skills-knowledge: proposals for legal education to assist in implementing a multi-option civil justice system in the 21st century*, Discussion Paper Canadian Bar Association, Ottawa, August 1999.

³³ *Hong Kong Report*, above n 7.

³⁴ *Pearce Report*, above n 8; McInnis and Marginson, above n 9; *ALRC Report No 89*, above n 5.

³⁵ McInnis and Marginson, above n 9, 168-70, 387-91.

³⁶ Prior to the ATN Project, Queensland University of Technology had already developed a set of generic attributes for all students graduating from the university. This statement has since been reformulated and updated: see Queensland University of Technology (QUT), *Manual of Policies and Procedures*, http://www.qut.edu.au/admin/mopp/C/C_01_03.html.

³⁷ Unit outlines for each of these units setting out their aims, learning objectives, basic content, teaching and learning approaches, assessment as it relates to the learning objectives and resource materials are available at <http://www.law.qut.edu.au/courses/ugrad/lunits.jsp> Full time students also undertake *Contracts* and *Torts*.



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combination of learning objectives also goes a significant way towards addressing various of the first year transitional issues that frequently impede students' engagement with their learning in the early stages of tertiary study.

The notion of taking the diverse student body and developing them all to (at least) a basic level of skills acquisition (the first of three levels through the course of the degree) on which second level learning can then confidently proceed, is a great strength of the new integrated program. In the first year of skills tuition, students are instructed on both the theory of the skill and its application, usually at a generic level (for example, generic questioning skills at level one as a precursor to legal interviewing at a higher level). The generic level of the skill is practiced under guidance and feedback on the novice's performance is provided. Assessment usually includes a critique and/or reflection on the skill as practiced.

As regards skills acquisition in this context, it should be emphasised that, just as the placement and assessment of substantive content is carefully considered in line with unit, year and course objectives, so also is it necessary to be deliberately cautious about the placement and assessment of the generic (and discipline specific) skills as a "whole of course" exercise. The teaching team for each of the first (and later) year units nominated particular skills that might be appropriately matched to and practiced in the context of the substantive content of that unit (for example: information literacy in *Legal Research and Writing*; ethics and social justice in *Law, Society and Justice*; client interviewing in *Torts*; negotiation in *Contracts*; advocacy in *Criminal Law*). In this way, the skills developed vary from unit to unit and from year to year; though the intent is to achieve both horizontal and vertical integration across any curriculum year and across the entire degree respectively.

What are the capabilities and skills?

The major undertaking in transforming the LLB curriculum through the development and implementation of a capability framework embedded in the 24 core units of the LLB, required the Faculty first to agree on a distillation of the capabilities and skills in a legal context. The task of identifying the capabilities required by and of QUT law graduates (and their subsequent deconstruction into skills) was a task that occupied the Faculty for a period of approximately 6 months. The methodology adopted was first to consult a variety of sources (including feedback from employers and graduates, surveys produced by various studies conducted by professional bodies, QUT's own university-wide list of graduate capabilities, and various international studies)³⁸ and then to draft several alternatives for discussion by stakeholders (staff, students, graduates, employers) in various forums (such as staff meetings and focus groups) which were then reviewed and resubmitted for ultimate stakeholder agreement and adoption.

Ultimately the decision was taken to agree on a set of capabilities, the sum of which was considered to describe satisfactorily a desirable graduate. In reaching that decision, it was agreed that the graduate capabilities chosen should meet the following criteria:³⁹

1. The capabilities should be compatible with the list of graduate capabilities for students graduating from QUT;
2. The capabilities should provide a valid and sustainable description of a law graduate and adequately identify the most important and frequently used skills of a lawyer;
3. The capabilities should include values as well as skills;
4. The capabilities should be described so they are clearly understandable by teaching staff, students and employers;
5. The capabilities should be capable of being integrated into the program and developed over a period of 3-4 years in an incremental manner;
6. The description of the capabilities should be sufficient for the purpose of:
 - a. guiding teaching staff in the development of their teaching programs;

³⁸ These have already been referred to in the earlier discussion.

³⁹ S Christensen and N Cuffe, *Graduate Capabilities in Law: QUT Teaching and Learning Development Large Grant Project Report*, QUT Faculty of Law, 2003 at 18.



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- b. assisting students with the tracking of their development and creation of their resumes; and
 - c. assisting employers with the determination of students' abilities and values.
7. The capabilities should not be a static list and should be reviewed regularly to maintain their relevance to the workplace.

Ultimately, the Faculty settled on the following six desirable capabilities of a law graduate which are designed to encapsulate broad descriptors of graduate quality and are expressed in terms of the abilities a graduate will be expected to possess upon graduation:

Discipline Knowledge
Graduates will possess a detailed and comprehensive knowledge of Australian legal framework and principles, an understanding of comparative and international legal systems, an understanding of the ethical framework in which the Australian legal system operates and a fundamental knowledge of the extra legal factors impinging upon the substantive law.
Ethical Attitude
Graduates will possess a sense of community and professional responsibility and be able to identify and offer appropriate solutions to ethical dilemmas.
Communication
Graduates will be able to clearly, appropriately and accurately communicate both orally and in writing having regard to the appropriate language for a variety of contexts.
Problem Solving and Reasoning
Graduates will possess critical thinking and problem solving skills, which enable effective analysis, evaluation and creative resolution of legal problems
Information Literacy
Graduates will be able to use current technologies and effective strategies for the retrieval, evaluation and creative use of relevant information as a lifelong learner.
Interpersonal Focus
Graduates will be able to work both independently and as a productive member of a team, practice critical reflection and creative thinking, be socially responsible and inclusive, and be able to work effectively and sensitively within the global community in continually changing environments.

A graduate who possess the nominated capabilities will generally be able to demonstrate a variety of skills. The next stage in the process was therefore to identify the various skills, and then to define the expected levels of achievement for each of those skills as a guide for both students and staff. It is important to emphasise that many of the skills identified interrelate. Very few generic or discipline specific skills exist in a vacuum: many skills draw upon others to demonstrate effective acquisition of a particular skill (for example problem solving) while some skills are so fundamental that they permeate the application of nearly every other skill (reflective practice is a good example). The fact is that generic and discipline specific skills interrelate with each other and also overlap and underpin effective (holistic) skills development and the ultimate attainment of the desirable graduate capability package.

The identified list of generic and legally specific skills for incorporation within the course were categorised broadly as attitudinal, cognitive, communication and relational skills. The table below sets out the skills identified by category. It is these skills that have been integrated within the content of the core undergraduate LLB units and then incrementally developed through the degree in 3 broad levels of skills progression, generally from generic practice through the discipline specific application to the more complex and creative utilisation.



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Table of Skills by Category

Attitudinal skills	Cognitive skills	Communication skills	Relational skills
<ul style="list-style-type: none"> Ethical orientation Creative outlook Reflective practice Inclusive perspective Social justice orientation Adaptive behaviour Pro-active behaviour 	<ul style="list-style-type: none"> Problem solving Legal analysis IT literacy Legal research Document management Discipline & ethical knowledge 	<ul style="list-style-type: none"> Oral communication Oral presentations Advocacy Legal interviewing Mooting Negotiation Written communication Drafting 	<ul style="list-style-type: none"> Work independently Teamwork Appreciate race, gender, culture and socio-economic differences specifically and diversity generally Time management

A simple example of the interrelationship as between capabilities and skills can be seen in the instance of the capability, "Ethical Attitude". This capability encompasses (at least) the skills of "ethical orientation" (an Attitudinal Skill) and "discipline and ethical knowledge" (a Cognitive Skill). Each of these skills has application both generically (eg, truth, accuracy, honesty, accountability and ethical behaviour) and in a discipline specific context (eg, knowledge and understanding of ethical standards and their enforcement).

But the identification of capabilities and their deconstruction into skills is no particular advance per se. To assist in the development and assessment of the various skills, each of the identified skills has been further deconstructed in the following order of detail:

- the broad **skill category**: from the four categories set out above;
- the **specific skills** within those categories: from the more detailed shaded table above;
- the **course objectives**: that is, the level of competency expected of a graduate by the end of his/her course regarding the specific skill; and
- the **demonstrated abilities** of the graduate for each of the skills: that is, a statement that to meet the (final) course objectives for the specific skill, the graduate will have demonstrated certain abilities.

This might be exemplified as follows:

Example – Skill (cf Capability) of Problem Solving

Graduate Capability: Problem Solving and Reasoning

Skill Category: Cognitive skills.

➤ **Particular skill:** Problem Solving

- **Course Objective:** Demonstrate an ability to apply problem solving methodology to problem resolution taking into account multidisciplinary, practical and creative solutions.
 - **Demonstrated Ability:** At Level 3 must demonstrate ability to:
 - Identify the problem from a given set of facts and state clearly with regard to client goals;
 - Identify relevant facts from a given scenario and also suggest additional facts which may be necessary;
 - Undertake critical thinking, legal analysis and research at level 3
 - Reflect and review above steps as appropriate (reflection level 3)
 - Identify options available and suggest solutions to the problem, where appropriate a creative, practical solution should be offered (requires use of other skills – mediation, negotiation, creativity, adaptability, reflection)
 - Convey the solution to a variety of audiences either orally or in writing (oral and written communication level 3)
 - Implement the solution to the problem
 - Monitor the implementation – refine and adapt solution after reflection.

At certain, identified stages within the process, a student will need to be assessed on his or her level of attainment. The requirements for assessment and reporting led the Law Faculty to further break down each skill



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into three broad levels of progression or development. (Level 3 of the cognitive skill of problem solving is set out in the example above.) For each level, the skills are mapped onto appropriate core units within the years of the undergraduate curriculum ("appropriate" in the sense that there is thoughtful matching of skill with unit content in which the teaching, learning and assessment of the skill is to be embedded). This mapping exercise across core curriculum makes it clear to all stakeholders which units take responsibility for a particular skill's development and to which level of attainment. Each level of progression relates broadly to the notion that a student should move, in an incremental way, through various stages of development in the acquisition of skilled behaviour.

This last deconstruction draws attention to the necessity for there to be objective assessment criteria specified for each level of each skill so that an individual student's progress towards the ultimate attainment of the skill (as designated by the stated course objective) can be assessed. Fundamental to nominating these levels of progression have been the dual imperatives of making explicit for students the incremental path of the skilling process (and thus also providing the opportunity for student reflection on their own development); and providing staff with the platform on which they can implement the particular assessment strategies in their own units.

This staged assessment of skill development also provides the framework for a reporting procedure that will eventually be used for the development of a student capability profile within the University.

EMBEDDING CAPABILITY DEVELOPMENT AND ASSESSMENT PRACTICES.

The QUT undergraduate LLB curriculum has now been reviewed in its entirety to embed this explicit approach to capability development. Central to the achievement of this objective has been the dual imperatives of integrating the skills within the processes and content of the substantive units and the striking of an appropriate balance as between skills development and content knowledge acquisition.

Skills integration requires *both* a macro course level approach, to ensure appropriate distribution of skills, *and* a micro unit level approach that encompasses a review of existing competency levels of students entering the unit, learning objectives, teaching methods and related assessment tasks.

An example of this incremental mapping exercise in the context of a discipline specific application of the generic skill of written communication is as follows:

Skill	Unit- Level 1	Unit- Level 2	Unit – level 3
Written Communication • Legal letter writing	Legal Research & Writing	Equity	Advanced Legal Research & Writing

While the undergraduate course undoubtedly has a significant role to play in student acquisition of skilled behaviour, it should be stressed that the classroom is not the only place where students are able to develop desirable capabilities. Some skills are acquired in the activities of everyday life. Students should anticipate that, and take responsibility for, skills development outside of the classroom context. The course itself should be viewed as *providing the environment* for students to develop the nominated skills. In some cases, students should be directed to resources made available for self-development and improvement, but it may not be necessary to devote large amounts of course time to their explicit acquisition.

The Law Faculty has thus purposely developed the concept of both implicit and explicit development of skills. This notion is directed specifically at delineating between those skills for which a unit will take responsibility for explicit instruction and those skills which the unit recognises are desirable both generally (for law studies) and specifically (for the particular unit) but which will not be explicitly developed. The implicit skills are identified as matters which students should be consciously developing and refining or regarding which they should otherwise be seeking their own further instruction (for example basic computer skills, time management, and note-taking skills).

Assessment practices.⁴⁰

Reconceptualisation of the course in terms of student mastery of both content knowledge and skilled behaviour has required a re-evaluation of the validity and reliability of our current assessment and feedback methods. For us as legal educators, this has been one of the greatest challenges in implementing such large-scale curriculum reform. Like many tertiary disciplines, academic assessment in law has traditionally been based on a quite narrow set of tasks, which have emphasised knowing rather than doing. To the extent that skills assessment has been addressed in law in the past, it has been primarily done indirectly through conventional assessment methods: for example problem solving and critical thinking skills are demonstrated through exams and/or assignments; research skills are demonstrated implicitly through assignments.⁴¹ The result has been that only a limited range of skills has been developed and that students' ability to transfer skills from one context to another has not been very well developed.⁴²

Of course, the role of any assessment will depend on the learning objectives being pursued. At the fundamental level of unit design, the type of information that can facilitate the efficacy of assessment tasks and *which should be communicated to students* is suggested by the following headings, all of which are directed at the necessity to be explicit about the skills objectives in the unit assessment information:

- Statement of which skills are to be explicitly and implicitly developed in the unit;
- Why these skills have been chosen for this unit;
- What are the learning objectives in relation to the particular skills?;
- How will each of the skills be developed in the unit?; and
- How does this unit's skills development relate to the year's curriculum as a whole and then to the course as a whole?

Equally as important as painting the big picture for students is the issue of explaining each piece of assessment to students in terms of, for example,

- The skills objectives of *this* assessment task;
- How these skills objectives link with the unit objectives;
- How do the skills developed in this unit form linkages with skills developed in other units (both horizontally and vertically);
- What reference materials/resources are necessary to complete this assessment task;
- Specific assessment criteria for this skills assessment task;
- The process for *this* skill's development in *this* assessment task: explicit and precise details of the task to be undertaken together with details of the formative and summative assessment to be undertaken.

While much work has been done already to attend to the assessment ramifications of our new course objectives, the Law Faculty is at present engaged in further development of an assessment framework, with the aim of producing a practical tool that can be used by staff (including sessional teachers) and which is also sufficiently rigorous to assure the quality of capability assessment tasks.

THE COMPLEMENTARY ROLE OF ONLINE TEACHING TECHNOLOGY

While QUT remains a firmly campus-based University with a strong emphasis on its face-to-face teaching, there has been a very high take-up rate of online delivery in the Law Faculty: every core and elective unit in the LLB has an Online Teaching (OLT) site and there are clear indications that student take-up and demand for online teaching will continue to grow at a rapid rate for the foreseeable future.

⁴⁰ This aspect is more fully discussed in Kift (2002), above n 28.

⁴¹ Bell and Johnstone, above n 14.

⁴² Oxford Centre for Staff and Learning Development, "Relevance and Transferability" in *Principles of Assessment*, 2002 Oxford Brookes University, available at http://www.brookes.ac.uk/services/ocsd/2_learnch/principles.html (accessed Feb 2003)



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In terms of graduate capability development, the online teaching environment has been a valuable addition to the course delivery options available to staff and students, and is itself a training tool replete with promise for the skilling up of the 21st century legal practitioner. It is trite to say that the IT and communications revolution has affected the legal services industry and to ignore it would be to ignore an essential part of undergraduate legal training:

The rapid development of information technology and electronic communication is pervasive and its impacts upon legal practice and professional formation still nascent. Potential developments extend beyond computer based learning and library resources to the wider use of artificial intelligence in the solution or prevention of legal problems. Law schools face the challenge of preparing graduates for a professional career in which such communication modes will be central and unremarkable.⁴³

As the work of lawyers becomes increasingly international, as the appellate courts in all jurisdictions look to international and comparative jurisprudence (cases, statutes, law reform initiatives, academic scholarship, etc) for guidance, and as more legal materials become available electronically, the “central and unremarkable” place of technology in modern teaching and learning environments is well becoming increasingly entrenched.

Online teaching in the Law Faculty is utilised for a myriad of purposes, the pedagogical value of which is not to be underestimated. At a very basic level it is delivered across all units to enhance access to course materials and to facilitate communication with teachers and peers (basic IT literacy and computing skills). Increasingly however, the OLT sites are being routinely used to complement traditional teaching with online strategies such as access to –

- discussion forums and chat rooms,
- assessment and assessment items,
- model answers to exam questions,
- generic feedback on assessment items,
- resources in the University’s digital library,
- the vast legal and skills training resources of the Internet,
- the gateway into QUT Law Library databases,
- media streamed skills training videos or presentations, and
- multi-choice questions to test students’ understand of key concepts and provide formative feedback.

In this way, students are acquiring the technological skills that will equip them for 21st century professional practice in the online workplace. While at QUT Law we are essentially still using OLT sites for skills training, communication and information delivery, greater use of more interactive course delivery options is an obvious next step. Some exciting work has been coming out of the UK and the US, which offers models for innovation.⁴⁴

CONCLUSION.

Overwhelmingly, contemporary educational literature suggests that universities should not be content to provide students only with good technical knowledge: a university education should also inculcate the skills necessary to utilise that knowledge in an ever-changing global workplace. This is also what employers and graduates now demand.

⁴³ *Hong Kong Report*, above n 7, at 44.

⁴⁴ See D Grantham, “IOLISplus - The Second Chapter”, 2000 (1) *The Journal of Information, Law and Technology (JILT)*. <http://elj.warwick.ac.uk/jilt/00-1/grantham.html> (accessed Feb 2003); D Grantham, “IOLISplus - Extending the Electronic Learning Environment”, 1999 (1) *The Journal of Information, Law and Technology (JILT)*. <http://elj.warwick.ac.uk/jilt/99-1/grantham.html> (accessed Feb 2003); R H Woods, “Order in the Virtual Law Classroom...Order in the Virtual Law Classroom’ - A Closer Look at American Law Schools in Cyberspace: Constructing Multiple Instructional Strategies for Effective Internet-based Legal”, 2001 (3) *The Journal of Information, Law and Technology (JILT)*. <http://elj.warwick.ac.uk/jilt/01-3/woods.html> (accessed Feb, 2003); A Paliwala, “Learning in Cyberspace”, 2001 (1) *The Journal of Information, Law and Technology (JILT)*. <http://elj.warwick.ac.uk/jilt/01-1/paliwala.html> (accessed Feb, 2003)



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In the legal context, the ALRC recommended in its *Managing Justice* report:⁴⁵

...properly conceived and executed, professional skills training should not be a narrow technical or vocational exercise...rather it should be fully informed by theory, devoted to the refinement of the high order intellectual skills of students, and calculated to inculcate a sense of ethical propriety, and professional and social responsibility.

Traditionally, lawyers and law teachers have been resistant to change, dismissively claiming that doctrinal content cannot be sacrificed for vocational skills training or, in the alternative, that specific legal skills (such as legal reasoning and problem solving, legal research) are more important than generic skills (such as communication and teamwork), which should be acquired in other contexts in any event.

The dynamic reality of 21st century legal practice requires an equally dynamic pedagogical response. This paper has outlined one such response: a blueprint for integration of skills training into core curriculum that recognises the necessity to reinvent legal education to ensure that our graduates *can do* what modern legal practice demands of them. As Professor David Weisbrot cogently argues –⁴⁶

...I don't believe that we can afford *not to* move purposefully in this direction: the choice for law schools is either to continue to prepare lawyers for the 1950s, or to prepare them for the challenges of operating successfully in the modern profession and the global economy.

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⁴⁵ ALRC Report No 89, above at n 5, Chapter 2 "Education, Training and Accountability" at para 2.85

⁴⁶ Weisbrot, above n 5, at 29.