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Law Teaching in an Ever Changing World: Are We on the Right Track?— Some Reflections and a Case Study from Western Sydney University

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Law Teaching in an Ever Changing World: Are We on the Right Track?—Some Reflections and a Case Study from Western Sydney University

Michael Blissenden*

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I. INTRODUCTION

In 2007 I wrote the following in an article published in *The Law Teacher*, a UK legal publication:

The lecture model, however does not appear to sit well with the general acceptance that students need to be actively engaged in the learning process rather than through passive learning. There is also the problem that students can easily find a good deal of such content through internet

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sites. There is the added expectation from both the student and the university that lecture material be made available through intra web based sites. If lecturing still forms an integral part of the teaching methodology then law teachers need to be careful to structure their lectures in a manner that will enrich the experience for the student. A more structured lecturing approach may include utilising the lecture notes already provided on the web based sites as a *starting* point to facilitate discussion, to promote critical thinking, and to engage students during classroom time.

The above discussion revolves around teacher-led learning. Regardless of whether the teacher utilises a lecture, the casebook method or a combination of the two in conjunction with a Socratic style of delivery the underpinning context is that the law teacher is driving and guiding the learning experience. There have been responses to such approaches with a general move towards facilitating a greater emphasis on student learning.¹

In the past ten years, there have been major changes in the higher education sector that have impacted many aspects of learning and teaching.² This paper will examine the various aspects I have mentioned above to see whether such points are still relevant today.

II. STUDENTS ACTIVELY ENGAGED IN THE LEARNING PROCESS IN A TECHNOLOGICAL ERA

The lecture model is based on the premise of a lecturer providing students with content with little interaction from students.³ In many ways, such an approach satisfies the need for students to be knowledgeable in their discipline, but this may not satisfy the ongoing lifelong learning that is required for students in an ever changing social, political, and economic world. The lecture model also does not seem to fit well with the general understanding that student learning can be enhanced through a student-centred learning environment.⁴ It would also seem

1. Michael Blissenden, *Using Storytelling as a Teaching model in a Law School: The Experience in an Australian Context*, 41 L. TCHR. 260, 261 (2007).

2. Peter Sankoff, *Taking the Instruction of Law Outside the Lecture Hall: How the Flipped Classroom Can Make Learning More Productive and Enjoyable (For Professors and Students)*, 51 ALBERTA. L. REV. 891, 893 (2013–2014) (there are driving forces of change that make it inevitable that the future will involve different learning techniques).

3. Suriyakumari Lane, *Information Age to Interaction Age in Legal Education: How Far Have We Progressed?*, 3 AM. J. EDUC. RES., no. 12, 2015, at 1511, 1516 (2015).

4. *Id.* at 1511.

that the lecture model does not sit well with the modern lifestyles of the current generation of students.⁵ This has heightened remarkably in the past ten years.⁶

Technological advances since 2007 changed how much students are comfortable with the use of iPads, laptops, and iPhones for social interaction.⁷ Young people use such technology to converse with each other, to organise their daily lives, and to keep in touch with the world around them.⁸ This does not mean that students are able to utilise such technology for *educational* purposes.⁹ In their day-to-day lives and the time pressures that they seem to be under, technology is used to communicate and stay in touch on an immediate basis. Within hours, some other matter becomes important and things move on. Using technology for educational purposes requires attention and application. So although students may download, watch, and interact with educational materials online when the time suits them, there is still a need to apply him or herself to be able to absorb and learn. This is also important for faculty members who need to be aware of the need to prepare materials that students see as relevant, capable of consuming in digestible portions online, and, most importantly, having a direct correlation with assessment.

III. ONLINE MATERIAL AND THE FLIPPED CLASSROOM

In the quote from above, I mention using lecture notes as a starting point to facilitate discussion, critical thinking, and to engage students during classroom time.¹⁰ There is very little doubt that, since 2007, the learning environment and the technological platform has changed dramatically, and that the lecture notes type of approach is now not sufficient for a student-centred learning experience.

The term “flipping the classroom” suggests the inversion of expectations as opposed to the traditional classroom. The model is based on the approach of replacing the traditional in-class lecture with pre-delivered instructional materials and an in-class tutorial.¹¹ It does fit in with the concept of active learning but far

5. *Id.* at 1512.

6. See Gerald Hess, *Blended Courses in Law School: The Best of Online and Face to Face Learning?*, 45 MCGEORGE L. REV. 51, 58–59 (2013) (explaining that students and the legal profession are becoming increasingly digital).

7. Jessica Vitak, *New Communication Technologies’ Impact on Young Adults*, PEW RESEARCH CENTER (May 15, 2008), <http://www.pewinternet.org/2008/05/15/new-communication-technologies-impact-on-young-adults/> (on file with *The University of the Pacific Law Review*).

8. *Id.*

9. Helen Farley et al., *How Do Students Use Their Mobile Devices to Support Learning? A Case Study from an Australian Regional University*, 14 INTERACTIVE MEDIA EDUC. 1, 1, 11 (2015).

10. Blissenden, *supra* note 1.

11. Dan Berrett, *How ‘Flipping’ the Classroom Can Improve the Traditional Lecture*, THE CHRON. OF HIGHER EDUC. (Feb. 19, 2012), <http://chronicle.com/article/How-Flipping-the-Classroom/130857/> (on file with *The University of the Pacific Law Review*).

exceeds the suggestion in my quote of making lecture material available on intraweb based sites for students.¹²

When faculty staff just provide material online and nothing else, this is just an attempt to make it easier for students to access content. A flipped classroom goes much further and utilises multimedia applications, which support student self-directed learning by integrating e-learning and reinforcing this with face-to-face tuition.¹³ The emphasis is on providing students with an e-learning platform, which will prepare the students for face-to-face learning and teaching.¹⁴ For faculty, the flipped classroom also provides a challenge. Academic staffs need to come to class prepared to adjust their teaching styles to the students' engagement, as part of the overall learning and teaching methodology. Some staff may respond to the learning needs of students by interacting with them through the e-learning platform prior to class and adjust their teaching styles during the face-to-face instruction. This style of learning and subsequent teaching method has been described as just-in-time teaching.¹⁵ It may also be necessary for academic staff to be ready to deal with associated issues that arise in class that are not necessarily seen as specific to the topic being covered. This means answering questions on the spot in the classroom, which may challenge the staff. Alternatively, such a scenario provides an opportunity for engaged discussion to take place and enable all to be part of the learning and teaching experience.

IV. STUDENT CENTRED LEARNING AND THE FUTURE OF A LAW DEGREE

In the above quote, I refer to the need to enrich the experience for students, to engage students and to emphasize student learning.¹⁶ A recurring aspect is the need to refer to students as a focus of the learning and teaching methodology.¹⁷ Today, this could be explained as a need to have student-centred learning as the focus of any learning and teaching methodology. The key aspect would now appear to be the need to examine a variety of learning strategies as critical to effective law teaching. Since 2007, I have focused on utilising the concept of storytelling inside and outside the classroom. This has had an immense impact on the learning for law students, particularly in the area of Revenue Law, which is rich with many interesting and varied cases.¹⁸ Students are able to investigate the background of the stories of the litigants, which helps bring the cases to life and enables an engaged and enriched learning experience within and outside the

12. *Id.*

13. *Id.*

14. *See id.* (explaining that students read before class to come prepared for face-to-face learning).

15. *Id.*

16. Blissenden, *supra* note 1.

17. *See* Blissenden, *supra* note 1 (“there have been responses to such approaches with a general move towards facilitating a greater emphasis on student learning”).

18. *Id.*

classroom. The concept of storytelling is not the only way that faculty staff can engage and enable active learning. Role plays, mootings, and practical legal placement can also be utilised within and outside the classroom and are student-centred in their approach. However, all of these active learning models have an underlying theme of teaching law students to think like a lawyer.

Thinking like a lawyer has always been the underlying purpose of a professional law degree. Is this the most appropriate approach in the current environment, particularly since the Global Financial Crisis of 2008? In addition, as there are so many law students at law schools, is it realistic to expect that they will all become lawyers? Maybe now is the time to start to rethink the value and purpose of a law degree. Maybe this is the time to consider a successful adaptive strategy for the future.¹⁹ The above discussion highlighted innovative learning and teaching methodologies, using technological advances as the key driver. Is this really enough for the modern day law student and law faculty?

Of course there is also the issue of learning outcomes and graduate attributes. Within such a discussion there is the need to consider the scaffolding of oral and written skills, research skills, statutory interpretation, case analysis, and critical thinking. This still overlooks the need for the relevant units of study law degree to be interconnected and interrelated, so that a law graduate is able to tackle legal problems, legal issues, and see such problems and issues within the context of society, the community, and the economy.²⁰ In doing so, this opens up various employment options, and graduates may not necessarily apply such knowledge and skills as a professional lawyer.²¹ In short, a law degree provides such opportunities within the workforce that law faculty need to be aware of.

V. CASE STUDY: LAW DEGREE AT WESTERN SYDNEY UNIVERSITY (WSU)—THE MOVE TOWARDS BLENDED LEARNING AND A FLIPPED CLASSROOM

In 2015, the School of Law at WSU, through the Learning and Teaching Committee, decided to review “whether law students were gaining the requisite knowledge, skills, and attributes in their first year”—components which would be necessary for the remainder of their degree and beyond.²²

There were several aspects to consider, including the fact that a number of students were first in families to attend university, as such there may be literacy concerns amongst those students including oral and written communication skills.²³ The focus was on the first year experience and examining the sequencing

19. Steven Friedland, *Adaptive Strategies for the Future of Legal Education*, 61 *LOY. L. REV.* 211, 213 (2015).

20. *Id.* at 220, 221.

21. *Id.* at 221–22.

22. Michelle Sanson, *WSU First Year Law Review, Final Report 1–20* (Aug. 2016) (unpublished report) (on file with *The University of the Pacific Law Review*).

23. *Id.*

of the units in first year and then throughout the remainder of law school.²⁴ In addition, there was a need to consider the manner in which legal education was to be delivered, in the context of the move towards student-centred learning in a technological era.²⁵

In the WSU First Year Law Review prepared by Dr. Michelle Sanson,²⁶ it is noted that WSU is moving towards a combination of online material and face-to-face teaching. This move was a major change from the existing three-hour seminar style of face-to-face teaching and is a move to a one-hour online material and a two-hour face-to-face teaching tutorial.²⁷ The following points were made in relation to this move to blended learning:

1. The goal of blended learning should be to improve the learning experience, not merely to put online a component of the face-to-face instruction. It should generate active learning, and it should be authentic.
2. It should not be assumed that first year Law students are familiar with discussion boards, online quizzes, or blogs. In this regard skills in using blended learning need to be taught and not merely assumed. This reinforces the notion that modern day students do not use technology for education-based activities.
3. A recorded talking academic is not blended learning, it is just a lecture recording. Blended learning requires development of online material which may include podcasts, webcasts, webinar, quizzes, etc.

Example of a Blended Learning Module

Introductory Webcast: 3-5 minutes. What the topic is about, its importance, structure, and time required.

Content Webcast or Webcasts: 5 minutes.

Scenario: Video clip with reading of related materials.

Quiz: Multiple choice questions arising from the video clip.

Feedback: Student to check right and wrong answer for the quiz.

24. *Id.*

25. *Id.* at 7.

26. *Id.*

27. *Id.*

Wiki: Students collaborate and comment on a sample answer on the scenario.

Discussion question.

4. Academics bring the content knowledge and the Blended Learning team design the actual modules²⁸

VI. BLENDED LEARNING AND THE FLIPPED CLASSROOM

The Blended Learning approach, suggested above, provides only one aspect of an overall learning and teaching methodology for the modern law student. In the context of the online delivery of material, there is also the need to consider: (1) what should be undertaken during the face-to-face tutorial time; and (2) by whom?

There is a temptation for the lecturer/tutor to provide a mini-lecture at the start of the two hour face-to-face contact time. This is a mistake. Providing this re-cap defeats the purpose of students looking and digesting the podcasts or webcasts that have been prescribed *before* the class. In addition, it is a mistake for students to come to class on the misunderstanding that the lecturer/tutor will bring the class up to speed with all the relevant material that should have been looked at and digested *before* the class.²⁹

This leads to the question of what should be undertaken within the face-to-face tutorial time. The notion of the flipped classroom is a natural extension of what is undertaken with blended learning. The lecturer/tutor provides discussion questions, problems, or scenarios *before* class, which are related to the online material. The expectation is that students come to class focusing on application, problem solving and analysis.³⁰

The flipped classroom is the combination of online instruction and face-to-face class time, while blended learning relates to online instruction replacing some class time.³¹ The flipped classroom places the onus on students to be well prepared for class and to actively engage in the classroom activities.³² For the lecturer/tutor, a flipped classroom will require the teacher to be aware that the class will be student-centred, and that the manner in which the class will proceed will depend on the direction that the students will take the material.³³ On that

28. *Id.*

29. Sankoff, *supra* note 2, at 900.

30. *Id.* at 899.

31. Gerald Hess, *Blended Courses in Law School: The Best of Online and Face to Face Learning?*, 45 MCGEORGE L. REV. 51, 56 (2013).

32. Sankoff, *supra* note 2, at 898, 900.

33. *See* Berrett, *supra* note 11 (noting that students spend class time solving problems).

basis, the teacher will need to be fully prepared to respond, on the spot, to student questions and queries.

VII. THE NEED TO GO FURTHER—INTERCONNECTION WITHIN THE LAW DEGREE³⁴

The First Year Law Review at WSU³⁵ noted that there is a need to integrate active learning of the course content throughout the law degree, starting with the first year units of study.³⁶ This means that there is a need to understand what the content is and how that content is being taught within and between the respective law units of the first year program. The First Year Review then proposed that all commencing students should only complete two Law units in each of their first two semesters, which are called the Autumn and Spring semesters.³⁷

First semester students complete Criminal Law and an introductory unit called Fundamentals of Australian Law, and in the second semester they complete Torts and the second introductory unit called Legal Analysis and Critique.³⁸ What is really interesting and critical is that there is a real connection between the units of study. Within the Fundamentals of Australian Law, students learn about how to interpret legislation and the way to read and understand case law.³⁹ Specific examples of legislation and case law are then discussed concurrently within the Criminal Law and Torts unit of study.⁴⁰ In this way, students are able to understand the principles for legislative interpretation and case analysis, and at the same time, apply those principles into a practical manner.

VIII. SYNERGISTIC INTEGRATED ACTIVE PEDAGOGY: A NEW PARADIGM, NOT 'BUSINESS AS USUAL'

The intention is to learn law in an iterative, interactive manner—developing knowledge, skills, and attributes in synergy through an iterative series of scenarios enabling students to actively construct their knowledge and appreciate critical perspectives.⁴¹ The example scenario provided here can *simultaneously* develop:

Knowledge of substantive law: negligence.

34. Friedland, *supra* note 19.

35. Sanson, *supra* note 22.

36. *Id.* at 7.

37. *Id.* at 8.

38. *Id.*

39. *Id.* at 10.

40. *Id.* at 10, 14.

41. *Id.* at 9.

Legal research skills.

Statutory interpretation skills: *Civil Liability Act 2002* (NSW) Part 8, application of *Interpretation Act 1987* (NSW), including use of extrinsic materials including second reading speeches, resolving ambiguity, contextual and purposive approach.

Problem solving skills.

Drafting: written submissions or essay.

Advocacy skills (such as in mock trial).

Reflection on why a society should want to encourage Good Samaritans, comparison to US approach, notion of civic responsibility, how law can encourage or discourage certain behaviour. Links to Kant, Hegel, tort law as an instrument of public policy, economic v. legal analysis. Notions of harm – she burned his chest but saved his life. Reasonableness depending on the person not just the conduct.

Product liability—responsibility for design flaws, economic dispersal through product liability insurance.

IX. ‘SALLY’S NIGHT ON THE TOWN’⁴²

Sally Taylor is a law student at Macquary University. Last weekend she went out with some friends in Sydney city. Sally was dressed in a ‘naughty nurse’ outfit as they were having a hospital theme to celebrate her friend’s graduation from medical school. She’s not into getting drunk but did have one Raspberry Vodka Cruiser each hour because she knew you can’t get drunk on one standard drink per hour. She left a club on George Street around midnight and headed to Central Station. She entered via the country trains terminal and headed down a long underground corridor towards the suburban train platforms. Sally noticed a man ahead who was clutching at his chest on the ground, his face was in a spasm and he looked to be in a lot of pain. She rushed to him, desperately looking around for someone to call for help. There was nobody in sight. She grabbed her iPhone from her pocket and found there was no service. She didn’t want to leave the man to get help because she was sure he would die. She then spotted something attached to the wall with a label ‘Emergency Use Only: Defibrillator.’ Although Sally does not have a first aid certificate, she once saw a defibrillator being used in a TV drama show she regularly watches, and she knows it can be used to restart the heart. She also recalled that there was a voice

42. Sanson, *supra* note 22, at 20.

that gave instructions so she figured it was worth a try. She yanked the box off the wall and took it to the man, undoing his jacket and shirt buttons to expose his chest. She was shaking but managed to open the defibrillator box. Bits fell out everywhere. The voice from the defibrillator recording stated 'Stick the pad on the person's bare chest.' Sally grabbed a sticky pad, peeled the back off, and stuck it on the man's chest. It then instructed 'Preparing to administer shock. Stand clear.' Sally stood back. The shock was administered but it caused the man's chest hair to ignite. Sally rushed forward, taking off her scarf to douse the flames, but the machine stated 'Preparing to administer shock. Stand clear.' She leapt back just as the second shock was administered. The man started moving, the colour returning to his face. Sally yanked the cord out of the defibrillator and used her scarf to douse the flames. She told the man to remain calm as she was going for help. He moaned with pain. Sally ran upstairs and called an ambulance as soon as her iPhone came into service, while waving madly to station officers. The ambulance came and took the man to the hospital. While they were getting him onto a stretcher, Sally asked what had gone wrong, there must have been a malfunction with the defibrillator. The ambulance officer told her that the shock is only administered when the machine determines the heart has stopped, but that it is supposed to be administered to a bare chest, and the reason for the fire was that she had not shaved his hairy chest before sticking on the pad. Sally said that she didn't realise that, and in the stress of the moment she did not notice the disposable razor that had been in the defibrillator box but had flown out when she opened it. The man, Joseph Patelli, has now commenced proceedings in the District Court of New South Wales, alleging that burns sustained to his chest, which required skin grafts and several operations, were due to Sally's negligence.

X. APPLICATION TO A FINAL YEAR LAW UNIT; REVENUE LAW

As students move through their law degree course, there is also a need for a scaffolding of content and application of such content into the specific unit being studied. I have applied this perspective to a final year unit of study Revenue Law. The following illustrates provides an ideal opportunity for students to apply interconnected material across several law units.

A. *Legal Scenario*

Peter Peters owns a residential rental property in Ryde, Sydney, which he acquired in September 2005 for \$220,000. The property was weatherboard. Because of the popularity of Ryde, the property has always had tenants in it.

Over the years, Peter and his real estate agent had allowed the property to become rundown. Expenditure on maintenance was minimal. In fact, the house has not been painted inside or outside since Peter acquired the property. In addition, a substantial part of the wooden floorboards in the lounge room were so rotten that it

was now unsafe to walk on them. The last tenants refused to renew or extend the lease because of the rundown state of the house, especially the floorboards in the lounge room.

Peter decided to let his wife, Beryl Fixit, take over responsibility for the rental property. Beryl has a history of property management, renovations, and development. Peter transfers the property to Beryl on March 20, 2012. Beryl did not pay anything for the transfer of the property. The market value of the property on March 20, 2012 was \$440,000.

Immediately after the transfer, Beryl organises for a painting contractor to thoroughly paint the property, both inside and outside. The cost of the painting to Beryl was \$7,000. The painting work was completed on May 15, 2012.

Beryl also organised for a local contractor to completely replace the rotten floorboards in the lounge room with new floorboards. The cost of this replacement was \$5,000. This work was completed and paid for on May 30, 2012.

After the work was completed, Beryl rented the property to new tenants. The new tenants commenced to occupy the rental property on June 10, 2012, paying \$400 per week.

Beryl received an offer to purchase the property on April 20, 2016. The prospective purchaser offered Beryl \$850,000 for the property. Beryl immediately accepted the offer and contracts for the sale were exchanged on April 28, 2016. Settlement/completion of the purchase/sale took place on July 1, 2016.

Fully advise Peter and Beryl on the tax implications of the above by applying relevant legislation and case law.

The above scenario covers the following interlinking subject material:

From a Property law perspective. This includes sole ownership, transfer of legal and equitable interests from a Revenue Law perspective.

From a Landlord tenant perspective. This includes legal and equitable interests for the landlord/tenant from Revenue Law perspective.

From a Contract law perspective. This includes offer and acceptance, the contract date and settlement date from Revenue Law perspective.

The key aspect here is that there needs to be interaction between faculty to ensure that basic principles have been covered in the Property law, Contract law, and Landlord tenant law units *before* undertaking Revenue Law. In this way, the teacher in Revenue Law stimulates student engagement and application across the various units of study.

XI. CONCLUSION

Learning and Teaching Law in the 21st Century has many challenges. Law students have grown up in a highly technological era and use technology for

many aspects of their lives. Their lives are also very complicated, be it with relationships, casual or full-time employment, or part-time or full-time study. Law Faculty are used to a teacher-led teaching style, be it through a lecture style approach or through a Socratic style approach. Times have drastically changed with an emphasis on student-centred learning and a need to embrace technology as a mode of delivery of content and learning opportunities. The message is clear. Faculty Staff have to move with the times and provide such a basis for the modern student. However, there is no magic formula. Faculty staff must be flexible and innovative with their teaching methods, and they can employ different methods, depending on the student cohort.⁴³ One thing is clear though—the need for faculty staff to communicate with each other as to what and how they are teaching their unit content, so that an interconnected law degree program can be delivered.

43. Helen McLaren and Paul Kenny, *Motivating Change from Lecture-Tutorial Modes to Less Traditional Forms of Teaching*, 57 AUSTRALIAN U. REV. 26, 26 (2015).