

Reimagining the Teaching of Land Law

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Reimagining the Teaching of Land Law

This report was commissioned and produced by Oxford University Press and written by Emily Carroll of the University of Birmingham. Since the conference, Emily has worked with Martin George from the University of Leicester to launch a Network of Teachers of Land and Property (NETLAP) website, accessible at <http://netlap.org>, to stimulate discussion and facilitate idea-sharing amongst members of this community.

'When you sit down and map out a subject for the first time that is a work of imagination. You have to make choices about how to bring some order [to the content]. But it's also important to *reimagine* a subject.' Professor Robert Lee, Head of Birmingham Law School

In September 2017, 45 land law enthusiasts (both teachers and practitioners) attended a workshop at the University of Birmingham to discuss current and emerging approaches to teaching this core area within the law degree. The day took the format of 14 short talks by delegates, interspersed with Q&A sessions and more informal discussions in the breaks.

The workshop was funded by Birmingham Law School's Centre for Professional Legal Education and Research and organised by Emily Carroll, who co-ordinates the School's land law stream, with the purpose of reflecting on the changes in government, society, and the market which shape the organisation, aims, and delivery of legal education, particularly land law. The workshop coincided with the beginning of teaching term, when land law academics were revisiting their teaching materials and considering their approach for the new academic year.

Three key themes emerged from the day's discussions and talks:

- Pressures on learning outcomes
- Evolving assessment methods
- Developing innovative approaches to teaching

Pressures on learning outcomes

Broadly summarising the various tensions currently or soon to be exerting pressure on law schools in an initial overview, Emily Carroll spoke, on one hand, of the massification of higher education and the expectations of law degrees created by rising fees, student debt, and a focus on employability, and on the other, about the idea of law as a broader, traditional liberal arts degree.

Emily made the first mention of a topic that would recur throughout the day, raised by nearly all the speakers and discussed at length in the Q&A sessions and breaks: the change proposed by the SRA to the stage and method of entry into the solicitors' branch of the legal profession. The SRA propose that this would not be marked by the gaining of a law degree (or equivalent), but by the passing of independent exams (the Solicitors' Qualification Exams – 'SQE') which would be taken post-graduation, akin to an American bar-style exam.

Emily noted that the significance of this change would be twofold. First, pinpointing an independent post-graduation exam as the entry point into the solicitors' branch of the legal profession means

that it will no longer be necessary to undertake a law degree (or conversion course) to meet the minimum academic requirement to qualify as a solicitor. Secondly, it raises questions regarding the perception of a law degree: to what extent will prospective law students expect their degree to teach them the content of the SQE? It became increasingly clear throughout the day that, as Emily summarised, law schools across the country are grappling with these questions and the best way to balance dual messages and purposes: offering a traditional liberal arts education but potentially also – or alternatively – needing to prepare cohorts for the SQE.

'We're all on separate boats navigating the storms, and we'll have to make individual decisions but I hope we'll do it collaboratively [...] and come up with something that really meets all our ends.'

Antonia Layard, University of Bristol

Many speakers and delegates suggested during the day that law schools in the upper quartile of the Russell Group were unlikely to make significant changes to their curricula in response to the SQE, although subjects such as company law and wills and succession may become more prominent and, in the case of the latter, more widely taught. Michael Draper from Swansea University observed that some institutions will continue to offer an academic experience as part of their law degree while others will include a practice-based pathway at the expense of 'academic' options and suggested that these decisions would be driven by market forces and student choice.

In his talk, 'The Customer is Always Right', Mark Wonnacott QC from Wilberforce Chambers put forward views that were counter to most others in the room. He saw a need for greater alignment between academics and practitioners, given that the legal profession is the recipient of the 'product' of academic teaching (the students). Mark detailed an extensive list of topics he thought the syllabus should cover and argued that law schools should aim to give students a wide-ranging knowledge of the whole landscape of land law, rather than in-depth knowledge of a particular area. (Later in the day, Graham Ferris of Nottingham Trent University noted that whilst land teachers would happily devote '50% of the degree' to land law, this is not possible, and teachers have to select material carefully so that it is coherent, considering both the discipline and development of the learner.)

'Personally, I am optimistic – I suspect that more of you are teaching all the black letter law we need and we just don't know about it, so if SQE 1 widens our gene pool, so much the better.'

Mark Wonnacott QC, Wilberforce Chambers

Mark recognised that academics would not take a positive view of the idea that the purpose of a law degree was to provide a 'product' for law firms, given discussions around the consumerisation of higher education, and recognised that legal practitioners are not best placed to provide legal education, but for him, the 'worst kind' of student arrived in practice with huge 'unexplored hinterlands of land law' and instead, knowledge about sociological and anthropological approaches. He asserted that these approaches would develop good family lawyers, but land lawyers need to know *all* the rules in order to exploit the law to achieve a successful outcome. For this reason, Mark was in favour of the SQE exams, standardisation, and the publication of results, as he felt they would allow professionals to assess which universities were teaching in the 'right' way, but he suspected that Russell Group universities would probably escape scrutiny and the largest change of approach. He anticipated that the scrutiny would mainly affect the middle- to lower-ranked universities.

A number of speakers noted that the SQE syllabus omits certain key traditional elements of land law teaching, such as estoppel and adverse possession, and instead includes an extensive list of items relating to conveyancing and property taxation – formerly the remit of the Legal Practice Course – exemplifying the tension first highlighted by Emily Carroll between the academic (liberal arts) and the practical legal education. Whilst the general consensus amongst attendees was that no one wanted to teach a collection of the least interesting aspects of conveyancing, Abigail Jackson from the University of East London pointed out that conveyancing is a practice largely undertaken on standard form contracts by paralegals and licenced conveyancers, and that property litigation (the resolution of disputes) might better engage students with the ‘difficult, nitty gritty stuff that is land law’.

‘The law doesn’t allow for these nice simple answers most of the time [... The SQE] has the potential to rob us of the intellectual creativity at the heart of [...] English land law. We will be left with a generation of lawyers who can simply answer set questions on a TR1 form but can’t tell us about the concept of a trust or why a court might be wrong.’ Martin George, University of Leicester

It was widely agreed that a law degree would not become a substitute for the Legal Practice Course given, for instance, the relatively large numbers of non-law students entering the profession each year. The wider question is therefore how to help students engage with the messiness of this area of the law, and there was consideration of how this has shaped some universities’ curricula. For instance, Emma Waring from the University of York saw the use of problem-based learning at York Law School as meaning that the university is able to simultaneously teach black letter law and address ‘big picture thinking’. Martin George from the University of Leicester strongly rejected the idea that a law degree curriculum should be designed solely to enable students to acquire a ‘functioning legal knowledge’ that allows them to produce a ‘right’ answer to ‘client-based problems’. He suggested that teaching land law should be about facilitating student curiosity, and developing both intellectual creativity and the ability to argue. These were sentiments echoed by Ben McFarlane of University College London, who considered that his approach to teaching land registration was to foster ‘creativity about interpreting those rules, as even if you have a judge who is sympathetic you need to give them a way of getting to that point and reaching the result that accords with basic notions of justice’. Elizabeth Cooke, Principal Judge of the Land Registration Division First-Tier Tribunal, who brought the event to a close, noted that better land law teaching would lead to better legal advice and timelier, more cost-effective negotiation and resolution of issues.

‘Being involved in a land dispute is a terrible situation [...] Many people could have been saved from ending up in court by just 10 minutes of good legal advice.’ Professor Elizabeth Cooke, Principal Judge of the Land Registration Division First-Tier Tribunal

Although the debate largely focused around the reception of the SQE, there was also background discussion of the subject-level TEF that looms on the horizon. There was a concern amongst some, including Warren Barr from the University of Liverpool, that this could potentially have a bigger influence on the syllabus than the SQE and pose a more significant threat of prompting a ‘popularity contest’ in the metrics between law schools.

Evolving assessment methods

Whilst the day's discussions were in many ways framed by the introduction of a new assessment, the SQE, many of the speakers spoke of curricula reviews that had been undertaken or were ongoing at their universities. Whilst some speakers acknowledged that engaging their students in the subject did not mean a change from the '*Street v Mountford* nature of the exam', others, including Warren Barr, suggested that change was crucial in order to engage not only students but also their teachers, to avoid the pain of marking piles of essays in 15-day turnaround times.

'For me, the student issue with land law – where the fear comes from – is that it's a very technical subject [...] There are wrong answers and there are correct answers in the sense of application of rules, which they're not used to from other subjects.' Warren Barr, University of Liverpool

Warren spoke about an internal curriculum review at Liverpool, which had been undertaken a few years ago in response to growth in student numbers and was intended to prevent 'the repeat teaching' that bores teachers and students. Warren also spoke of students struggling with the 'application' of land law in a final exam and that explained that this had prompted a review of the delivery method, to replace seminars/tutorials with individual, marked exercises with individual feedback. Similarly, Sandra Clarke from the University of Greenwich spoke of keen, assessment-driven students who produced a huge amount of content for marking that was illegible. In part to address the volume of marking to work through in a narrow window but also to engage students in thinking about land law in a different way, Sandra created an online multiple choice exam. Students were allotted an eight hour window to answer eight multiple choice questions (MCQs). The element of the assessment given over to the MCQs amounted to a small fraction of the students' overall second year summative grade, but this gave Sandra the space in the curriculum she needed to develop a new form of assessment.

Sandra spoke of trialling this assessment and the research she undertook to help her write the questions. Using an example of a question based on a register of title, she shared that the key to writing a successful question is to create a good 'stem' that includes the background, context, and facts of the question, following this with the 'lead in', which is the actual problem set to the students. The students are then asked to identify the correct answer from four possible choices, the incorrect choices consisting of 'distractors'. Sandra discussed the difficulties in drafting questions that ensured students were tested on their *understanding* of a concept and their ability to apply this, rather than their recall of set information. It was widely acknowledged in the ensuing discussion that there was skill involved in drafting an MCQ that was tricky enough to challenge the most able students. A common theme amongst those with experience of trialling new assessments was that it was difficult and time-consuming. Whilst no one spoke of an appreciable time *saving* from their trialled method, the sense was that they enjoyed the creativity associated with developing a new type of assessment and the extent to which this engaged their students. Sandra noted that a review of the students' marks showed that they were concentrated between 65-98, which has opened up the first class bracket and has been positively received by students, but in the coming year she plans to make the questions 'all or nothing' in accordance with the proposed SQE assessment, i.e. no marks for partly incorrect answers. Michael Draper also spoke of using MCQs for assessment

purposes, as did Warren Barr, partly as a formative feedback aid and also as a 'reward' element of summative assessment.

Adam Baker from the University of Leeds described an internal push to diversify assessment, with an eye on trying to reduce time-intensive marking loads. He had undertaken a review of the assessment methods employed on LLB programmes across the country and found that they remain centred around traditional essays and exams. In contrast, Adam has developed a presentation assessment at Leeds which accounts for 25% of the module mark. Students are tasked with presenting their answer to a set land law question and are encouraged to work in teams to develop their critical thinking and individual arguments. Adam spoke of the difficulties of finding the balance between developing students' knowledge of land law and incorporating the teaching of presentation skills. He found that students needed support in developing these skills and that it is not enough for a student to be 'brilliant' if they are not able to present. Whilst Adam acknowledged that setting up a new innovative assessment was time consuming, and relied on support of colleagues in sharing ideas and collaborating to adapt and improve the assessment, his overall sentiment was that the change was positive.

Adam commented on the extent to which assessment influences everything that students do and noted that teachers' ability to change their students' experience of the subject by altering the assessments was interesting. Adam explained that having to orally present their thoughts on a given topic not only helped students to engage but also improved the quality of their thinking, and this was a point supported by student feedback (he shared a quote from a fellow academic which observed that 'Improving the quality of presentation actually improves the quality of thought and vice versa') and also made by other presenters, including Michael Draper, who commented that he did not fully understand land law until he had to lecture on it himself. Adam found that as his new method of assessment required students to be able to articulate the law and their argument clearly, it also proved a good indicator as to who would be successful in graduate employment.

Warren Barr also thought that making changes to assessment, specifically the feedback process, had better engaged his students and helped them to identify where they could improve their work. His approach was to withhold formative marks until students had engaged in peer reviewing others' work and then marked their own work, providing a justification for the mark given. The students' actual marks were then released. Warren found this to be time intensive but extremely useful.

Developing innovative approaches to teaching

It was widely acknowledged that registration is the foundation of land law teaching. Amy Goymour of the University of Cambridge acknowledged that this was hard to teach because 'it's constantly changing, debated and becoming more and more controversial' and these are all reasons which make students think it is dull and difficult, but she and Ben McFarlane pointed out that these are the same reasons cited by students for wanting to study law. Warren Barr made the point that 'land law is the only subject that suffers from being taught on the undergraduate law degree' and that having lived some relevant experiences would help students engage better with the subject. Graham Ferris agreed that land law is a topic that needs to be brought alive by wider societal values; it is

impossible to teach land without them. Delegates enjoyed hearing about the different approaches taken by speakers to engage their students.

'Law is difficult – it's meant to be difficult. You need good grades to get onto the course to do it. It can lead to well-paying professions [...] It's important for property law to not make [apologies] but at the same time to help students develop the skills they need to understand these difficulties and [progress] in the subject.' Ben McFarlane, UCL

Amy and Ben considered technical cases such as *Scott v Southern Pacific Mortgages* where students need to grasp the big picture – that someone may lose their home – but in order to assist a judge who is sympathetic to their case to reach a favourable conclusion that accords with basic notions of justice, also need to be creative when interpreting the relevant rules. Similarly, Martin George spoke of needing students to develop the intellectual creativity not to simply accept existing judgements – to consider why a court might be wrong. In many ways, these ideas were not so far divorced from Mark's emphasis on the potential of land law to 'change society and help the oppressed, but you can't win the game unless you know all the rules'.

Emma Waring spoke of engaging students through the stories of 'the sheer human nastiness, tragedy and cruelty' that pervade land law and make it so engaging, and noted that students particularly enjoyed a Valentine's Day lecture she delivered that focused on co-ownership. The University of York's problem-based learning approach aims to represent the 'messiness' of real life – to engage students through the complexity of the material and by demonstrating that real life problems aren't neatly compartmentalised. Plenary lectures that supplement the group work on problems also help to grasp student attention; in these, lecturers including Emma discuss wider themes, such as developed vs developing countries and the transformative power of land law.

'What we're thinking about is the extent to which you can ask the big questions but still know the rules. You're not going to get through our land law exams without understanding [the key cases] and how they hang together [...] but you also have to understand that they're a set of rules [...] There's nothing natural about them.' – Antonia Layard, University of Bristol

Antonia Layard spoke of engaging students in lectures by asking them to calculate how much profit their landlord is making from their student house in Bristol, drawing on wider themes from news articles as to why 'Generation Y' are renting and not buying. Antonia uses the Flintstones to liven up her teaching and draws on modern day concepts and examples from the tabloid press. Further, Verona Ni Drisceoil from the University of Sussex spoke of implementing a new pilot film project that aimed to help students understand and engage with the broader implications of land regulation. Verona created a series of short, people-focused video clips showing different perspectives and voices associated with land law, for instance a solicitor working for the Housing Trust in Brighton speaking of the implications of the Legal Aid cuts. Snippets of the videos were used in lectures and incorporated as part of the online seminar preparation on the VLE to help put the subject and reading in context.

'[Whereas other types of litigation can usually be resolved with money], land is necessarily unique [...] and that makes it much more difficult to resolve any disputes. It means that you have winners and

losers [...] When you look at land law you often realise that it's relational [...] There's this notion of property as a story.' Abigail Jackson, University of East London

Employability emerged as one key method of ensuring student engagement. Warren Barr illustrated this through the re-branding of a module that had been called 'Land Law II' and had little take-up from the students. Once re-labelled as 'Commercial Property', with emphasis placed on the commercial aspects of the topics taught, take-up of the course increased from approximately twenty to eighty students. This idea was echoed by Abigail Jackson, whose point was that few students would go on to be conveyancers. She argued that rather than engaging with land as 'a commodity to be bought and sold', students would be better engaged by gaining insight into the complexity and messiness of land law from a litigator's perspective.

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