

TEACHING, SKILLS AND OUTCOMES IN AUSTRALIAN PROPERTY LAW UNITS: A SURVEY OF CURRENT APPROACHES

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Globally, higher education and legal education have embraced the development of skills as an integral part of student learning. It is no longer enough that graduates enter the workplace armed only with a body of disembodied discipline knowledge. It is expected that graduates have complementary skills – both generic and professional. These skills do not appear ‘magically’; rather it is the role of the law teacher to facilitate students’ development of these skills during their studies. The imperative to design curricula that embed skills development has become more urgent with the advent of discipline standards and the new quality regime in Australia. This paper reports on a survey of Australian property law teachers undertaken in late 2011. The paper analyses teaching methods, skills and outcomes in the teaching of property law. In particular, the paper considers how property teachers deal with the development of skills in the property law curriculum, testing Gray’s suggestion that ‘[i]t is in Property Law that consciously or unconsciously the student learns a basic competence in a number of skills which are of immense importance in later life.’¹ If this is true, this paper asks, how and to what extent do Australian property law curricula embrace the teaching of skills?

I INTRODUCTION

Tertiary education is going through a period of significant transformation. In particular, over the past two decades, Australian universities have experienced increasing pressure to encourage not only the development of knowledge but also skills and attributes in their graduates. Law schools have not escaped this pressure. Law graduates are now expected to possess not just contextual discipline knowledge, but also a range of professional skills and attributes.² Likewise, students themselves demand a legal education that equips them with a

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¹ Kevin Gray, ‘The Teaching of Property Law’, in Peter Birks (ed) *Examining the Law Syllabus: The Core*, (Oxford University Press, 1992), 15.

² Canvassed in Sally Kift, Mark Israel and Rachael Field, *Bachelor of Laws Learning and Teaching Academic Standards Statement* (Australian Learning and Teaching Council, 2010) <http://www.altc.edu.au/system/files/altc_standards_LAW_110211.pdf>.

range of professional and vocational skills.³ As noted by Gray, property law provides fertile ground in which to cultivate and nurture generic, academic and professional skills in law students.⁴ The question must then be asked: to what extent do property law units develop such skills, and how is this development achieved?

This paper reports on aspects of the authors' 2011 survey of property law teachers from Australian law schools regarding their teaching of the compulsory property law unit.⁵ The survey covered various aspects of teaching property law including content; teaching format; learning outcomes; the methods of assessment; the developing areas of property law; and the challenges faced by property law teachers in the 21st century. This paper focuses on the survey results dealing with teaching methods, skills and outcomes. The survey results dealing with content⁶ and assessment⁷ are analysed elsewhere.

II LEGAL EDUCATION IN THE 21ST CENTURY

The nature and quality of Australian legal education is, it seems, under constant review. Through a series of national reviews and reports it is clear that the purely doctrinal approach of traditional legal education is no longer enough. Legal education must be both contextual and skills-focused. In terms of contextual learning, for example, in 1987 Pearce, Campbell and Harding suggested that 'all law schools should examine the adequacy of their attention to theoretical and critical perspectives, including the study of law in operation and the study of

³ Annan Boag, Melanie Poole, Lucinda Shannon, Christopher Patz and Fern Cadman, *Breaking the Frozen Sea: The Case for Reforming Legal Education at the Australian National University* (ANU Law School Reform Committee, 2010), 10-11.

⁴ See Gray, above n 1 in which Gray notes at 15 that 'The teaching of property law has a particularly important – perhaps even central – role in forming the mind-set not just of the law student, but also of the lawyer, and, in some degree, of the thoughtful and responsible citizen. The teaching of property law implants tremendously structural features in the mind of the student, and here can be included rigour of thought and analysis, the capacity for abstract manipulation of complex ideas, and some sense of the workability of entire bodies of statutory machinery. ... It is in Property Law that consciously or unconsciously the student learns a basic competence in a number of skills which are of immense importance in later life. Indeed, most of the classic dilemmas of private law are here – all human life is here, if we only choose to look'.

⁵ In this paper the 'compulsory property law unit' is used as a generic term covering all those aspects of property law that are prescribed by the 'Priestley 11' including property concepts, land law and personal property. The 'Priestley 11' is the list of prescribed areas of legal knowledge identified by the Law Council of Australia that a student must cover within his or her law degree in order to be admitted to legal practice. See http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uuid=3043E5A9-1C23-CACD-2244-5630B0BFA046&siteName=lca.

⁶ The authors' analysis of the survey results regarding the content of the property law unit may be found in Penny Carruthers, Natalie Skead and Kate Galloway, 'Teaching Property Law in Australia in the 21st Century: What we do now, what should we do in the future?' (2012) 21 *Australian Property Law Journal* 57.

⁷ The authors' analysis of the survey results regarding assessment in property law units may be found in Kate Galloway, Penny Carruthers and Natalie Skead, 'Assessment in the Law School: Contemporary Approaches of Australian Property Law Teachers' (2012) *Journal of Australasian Law Teachers Association* (forthcoming).

relations between law and other social forces.’⁸Kift, Israel and Field also identify law in context as an integral part of legal education.⁹

Parallel with this changing focus of doctrinal legal education has been a national drive towards the identification and effective implementation of graduate attributes and skills development in higher education generally. Over the past two decades, the higher education sector has witnessed an increasing pressure on Australian universities to encourage the development of knowledge, skills and attributes in their graduates. The Final Report of a Review Committee set up in 1997 to undertake a review of ‘the state of Australia’s higher education sector’¹⁰ concluded that, in relation to higher education, ‘the most positive approach is to identify the attributes that all graduates ought reasonably be expected to have acquired during their university studies’ and, further, ‘that the quality of education must be measured in terms of what students know, understand and can do at the end of their educational experience.’¹¹ Since the release of this report, the Department of Employment, Education, Training and Youth Affairs and its successors have required Australian universities to develop policies which identify their generic graduate attributes as part of national funding and reporting arrangements.¹²

In its 1998 Report, *Managing Justice: A Review of the Federal Civil Justice System* (ALRC Report 89) published in 2000, the Australian Law Reform Commission recognised the increasing importance of skills teaching in law and suggested that ‘law schools should make explicit the nature and extent of their skills development programs ... and how they examine these skills.’¹³ In keeping with this changing emphasis, in a 2003 report on a ‘stocktake’ of Australian legal education, Johnstone and Vignaendra noted that, despite diversity in approach, ‘[m]ost, if not all, law schools’¹⁴ had shifted from a teacher-focused approach to legal education to a student-focused approach with a greater emphasis on outcomes and skills.

By 2009 it was confirmed in the final report on the Learning and Teaching in the Discipline of Law project jointly commissioned by the Australian Learning and Teaching Council (ALTC) and the Council of Australian Law Deans (CALD) that graduate attributes beyond just content and knowledge as prescribed by the

⁸ Dennis Pearce, Enid Campbell and Don Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission*, AGPS, Canberra, 1987, 149.

⁹ Above, n 2, 10.

¹⁰ Senator The Hon Amanda Vanstone, Minister for Employment, Education, Training and Youth Affairs, *The Review of Higher Education Financing and Policy Terms of Reference*, January 1997, <<http://www.dest.gov.au/archive/highered/hereview/terms.html>>.

¹¹ Review Committee on Higher Education Financing and Policy, *Learning for Life: Review of Higher Education Financing and Policy*, Final Report, 1998, Department of Employment, Education, Training and Youth Affairs, Canberra, <<http://www.dest.gov.au/archive/highered/hereview/toc.htm>>.

¹² Precision Consulting, *Graduate Employability Skills 2007* <<http://www.dest.gov.au/NR/rdonlyres>>.

¹³ Australian Law Reform Commission (ALRC), *Managing Justice*, Report 89, 2000, [2.80] <<http://www.alrc.gov.au/report-89>>.

¹⁴ Richard Johnstone and Sumitra Vignaendra, *Learning Outcomes and Curriculum Development in Law: A Report Commissioned by the Australian Universities Teaching Committee (AUTC)*, 2003, 117, <http://www.cald.asn.au/docs/AUTC_2003_Johnstone-Vignaendra.pdf>.

'Priestley 11'¹⁵ were the focus of all Australian law schools.¹⁶ Since then, Kift, Israel and Field¹⁷ have published the *Discipline Standards for Law*.¹⁸ The development of these academic standards for law built on foundational work developing graduate attribute templates and summaries for law schools undertaken jointly by the ALTC and CALD¹⁹ as well as the resultant non-prescriptive Standards for Australian Law Schools adopted by CALD.²⁰ However, the *Discipline Standards for Law* go further in identifying six *Threshold Learning Outcomes* (TLOs) that represent what a law graduate should be able to do – including not just discipline knowledge, but extending also to skills and attributes.

It is likely that these TLOs will form the basis for the quality assurance assessments that will be undertaken across the higher education sector by the Tertiary Education Quality and Standards Agency (TEQSA) from January 2012.²¹ TEQSA will evaluate the performance of higher education providers and courses against the *Higher Education Standards Framework*, including the Qualification Standards. These Qualification Standards are based on the national qualifications framework, the *Australian Qualifications Framework* (AQF), which provides minimum standards for a range of Australian qualifications, including law degrees, against which individual courses are to be evaluated.

A Property law contradiction?

At a micro-level, while this increased focus on graduate attributes (including skills and outcomes), rather than pure doctrinal content and knowledge, may be

¹⁵ The 'Priestley 11' is the list of prescribed areas of legal knowledge identified by the Law Council of Australia that a student must cover within his or her law degree in order to be admitted to legal practice. See

<http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uid=3043E5A9-1C23-CACD-2244-5630B0BFA046&siteName=lca>.

¹⁶ Australian Learning and Teaching Council and Council of Australian Law Deans, *Learning and Teaching in the Discipline of Law: Achieving and Sustaining Excellence in a Changed and Changing Environment* Project Final Report 2009 (ALTC/CALD Final Report), 20.

<http://www.cald.asn.au/docs/altc_LawReport.pdf>.

¹⁷ Above, n 2.

¹⁸ The development of these standards was commissioned in 2009 by the Australian Government which provided \$2 million to the Australian Learning and Teaching Council's Learning and Teaching Academic Standards Project to define disciplinary academic standards.

¹⁹ Australian Learning and Teaching Council and Council of Australian Law Deans, *Learning and Teaching in the Discipline of Law: Achieving and Sustaining Excellence in a Changed and Changing Environment*, Project Final Report 2009 (ALTC/CALD Final Report), 54-70. <http://www.cald.asn.au/docs/altc_LawReport.pdf>. In drafting the TLOs for Law, the discipline scholars drew on national and international precedents as part of a comprehensive benchmarking process. Appendix 3 of the Final Report provides national and international comparison tables of relevant learning outcomes, see p29-54.

²⁰ Council of Australian Law Deans, *The CALD Standards for Australian Law Schools* (CALD Standards) adopted on 17 November 2009

<<http://www.cald.asn.au/docs/CALD%20-%20standards%20project%20-%20final%20-%20adopted%2017%20November%202009.pdf>>.

²¹ It is intended that TEQSA will evaluate the performance of higher education providers and courses against the Higher Education Standards Framework, including the Qualification Standards which are based on the Australian Qualifications Framework which provides minimum standards for a range of Australian qualifications, including law degrees, against which individual courses are to be evaluated. The TLOs for law represent these minimum standards. For further information on TEQSA see <<http://www.teqsa.gov.au/>>, and for further information on the AQF see <<http://www.aqf.edu.au/>>.

reflected in the teaching of certain individual subjects taught within a law degree, the survey results indicate that this is not necessarily the case in relation to property law as currently taught in the Australian universities surveyed in this project.

It appears from the analysis of the project survey results that Australian property law units cover – to some extent at least – most, if not all, the substantive topics relating to property law as prescribed by the ‘Priestley 11’.²² In contrast, as discussed below, the survey results reveal disparities between the respondent universities as to meaningful *skills* development within property law curricula. In those universities where skills development is minimal, this deficiency may be the result of the traditional view of property law as ‘the most difficult subject [lawyers and law students] studied in law school’ perhaps because ‘[t]he language was arcane and each class introduced something which seemed wholly unrelated to everything else [they] had encountered previously in property law, other law subjects, and life in general.’²³ Might it be the case that this perceived difficulty and abstraction of property law results in a focus on substantive content to the exclusion of taking advantage of the rich opportunities property law provides for skills development?

Whatever the reason, it is suggested that, with the increased focus on skills development within the profession and the academy and the looming spectre of robust quality assurance, it is timely that Australian property law teachers re-assess both the content and learning outcomes of their unit/s so as to ensure that property law contributes in a significant and content-appropriate way to the development of generic, academic and professional skills in Australian law graduates.

III THE PROJECT

A *Methodology and Response Rate*

The survey of property law teachers undertaken in this study complies with the National Health and Research Council of Australia’s National Statement on Ethical Conduct in Human Research. Institutional ethics approval for the survey was obtained from the Human Research Ethics Committees of both the University of Western Australia and James Cook University.

Information for the project was gathered by way of an anonymous online survey. Emails were sent to the property law teachers of all Australian law schools inviting them to participate in the survey. Apart from the first introductory section dealing with general information regarding the degree structure, the survey was divided into four sections dealing with: teaching methods; unit content; skills acquisition; and assessment and outcomes. The survey also included open-ended questions inviting participants to comment further on: desirable changes in the teaching and assessing of property law and any barriers to implementing those changes; and, more generally, on the challenges of teaching

²² See the discussion regarding the content of the compulsory property unit in Carruthers, Skead and Galloway, above n 6.

²³ Robert Chambers *An Introduction to Property Law in Australia* 2001 LBC Information Services, Preface, v.

property law in the 21st century. A total of 18 responses were received from 14 different universities.

B Results

1 Unit Structure

The structure for the teaching of the compulsory property law unit varies considerably across the different universities surveyed. For example, although in most universities the unit is taught over two semesters (67 percent of respondents), in a number of universities it is taught in one semester and in two of the respondent universities the unit is taught over three semesters. In some universities the content is delivered as part of a Property and Trusts or Property and Equity and Trusts unit and in other universities the content is delivered over three semesters as Property Law, Land Law and Personal Property. A number of respondents also noted that the structure of the property law unit was in a state of transition and that the content of the unit would in the future be spread over three units, for example, Principles of Private Law, Equity and Trusts and Land Law. In yet another university, the whole degree structure is in a state of transition with the Bachelor of Laws being phased out and replaced with a Juris Doctor.

Generally property law is taught at either the second or third year level of the law degree and there is a relatively even split between teaching property law within an LLB or JD course structure.²⁴ The property law unit typically runs for 12 or 13 weeks per semester and the required contact hours varies from two and a half to five hours per week, with the majority of respondents reporting three contact hours per week, although one third of respondents report contact hours of between four and five hours per week. The number of students enrolled in the property law unit varies from 50 to 400, though most enrolment numbers fall within the 150-300 range (60 percent).

2 Teaching Format

With only a few exceptions, surveyed respondents indicate that property law is taught on campus with student attendance expected and anticipated. The typical mode of teaching property law is via lectures (94 percent) and tutorials (75 percent), with a minority of universities implementing small group/seminar sessions (31 percent).

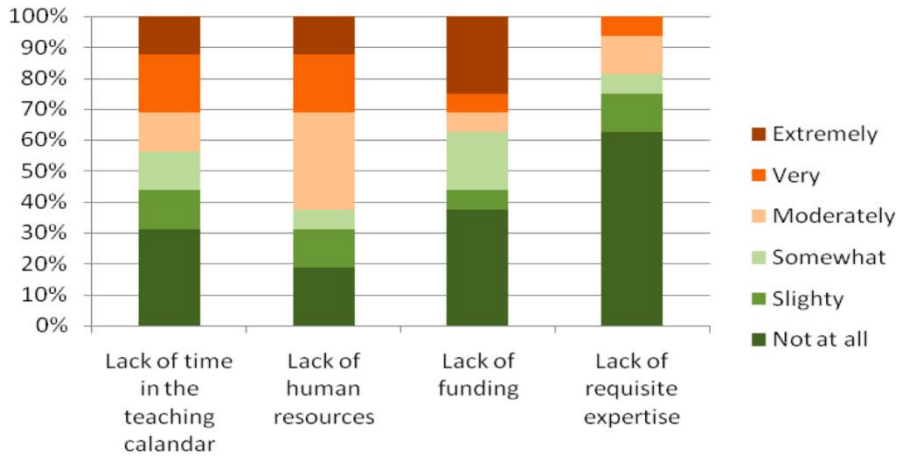
Respondents were asked whether they would like to adopt a different teaching format. A majority of respondents indicated a strong preference for small group teaching allowing for more interaction, student participation and problem solving. For example, respondent B noted 'I think students would learn more if the unit were taught in small groups. In smaller groups students are more likely to come to class prepared - if they turn up!'

Despite this preference, lectures remain the primary teaching format in property law. In anticipation of this outcome, the authors included a question in the survey

²⁴ There appears to be a trend in Australian universities towards offering the law degree within a JD course structure.

aimed at identifying the barriers to implementing the desired changes to the teaching format. The results to this question appear in Figure 1.

Figure 1: To what extent do the following factors act as a barrier to implementing changes to the teaching format of the unit?



A 'lack of requisite expertise' does not appear to be of much concern with 75 percent of respondents indicating this is only slightly or not at all applicable. However a 'lack of funding', 'lack of human resources' and 'lack of time in the teaching calendar' are all reported to be at the very least 'somewhat' of a barrier for the majority of respondents. Closer inspection of the data reveals that 'lack of time in the teaching calendar' is primarily a concern for universities which teach property law in a single semester.

Respondents were asked a further open ended question as to whether there were other barriers to changing the teaching format. Two respondents would not seek to change their units at all; one reporting that the course was 'ideal after 10 years of development'²⁵ and the other that he or she was '[p]erfectly happy with the present format'²⁶. Other respondents identified the following additional barriers: poor staff-student ratio; institutional resistance; difficulty achieving consensus between the teaching staff in the unit and changing teaching personnel.

It is evident from the responses on this issue that a common concern on the part of property law teachers is lack of resources: time, people, and money. Universities as a whole and law faculties more specifically have an important role in this regard. As noted by Witzleb and Skead:

Australian universities across the board have endorsed the ever-increasing emphasis on [Graduate Attributes ('GA')] development and are now coming to grips with TLOs in higher education. This 'rhetoric' by government, universities and faculties now needs to be backed up by practical assistance both in the planning of GA programs and, more importantly, in their implementation. If GA development is taken seriously, it is critical that university and faculty management enable teachers to make the required changes in their individual subjects because these activities form the building blocks of a whole-of-curriculum GA development

²⁵ Respondent F.

²⁶ Respondent R.

program. Such support and incentives to teaching staff may include teaching and marking support commensurate to the role attributed to a subject within the curriculum, academic development programs, mentoring schemes, and awards recognising efforts and achievements in skills development.²⁷

3 *Online delivery*

Of further interest is the absence of online teaching in the majority of property law units. The survey responses reveal that a basic website typically exists for online access of recorded classes. Eighty seven per cent of respondents report recording classes, with 86 percent of those respondents indicating that there is no time limit placed on the accessibility of recorded classes. The availability of recordings with associated power-point slides and a basic discussion forum is relatively common practice. However, there is an absence of more innovative online teaching methods in this subject area.

The respondents who record classes were also asked to estimate what proportion of their students listen online instead of physically attending class. The majority of respondents believe that 50 percent or more of their students listen online instead of physically attending. Previous research has shown that law students value the flexibility and revision benefits afforded by recorded classes, however the associated decrease in physical attendance can have a negative impact on skills development and teacher morale.²⁸

As university student numbers continue to increase at a faster rate than academic placements, the preference to introduce more interactive teaching methods by way of smaller groups is arguably going to be difficult to achieve. Rather than addressing this difficulty by trying to secure additional funding so as to increase staff, it might be time for property law teachers to explore more innovative ways of delivering content-based material online so as to free up face-to-face time for more interactive classroom activities. This blending of online and face-to-face teaching is increasingly recognised as a legitimate and appropriate trend in tertiary education. Stacey and Weisenberg comment that '[t]he importance of using a form of blended learning that combines some face-to-face interaction or technologically mediated synchronous communication, with online interaction, is an important trend in teaching practice.'²⁹

4 *Skills*

Respondents were asked to rate from very low to very high the emphasis placed in their unit/s on developing specific skills including: professional ethics, oral communication; writing; collaboration; statutory interpretation and practical

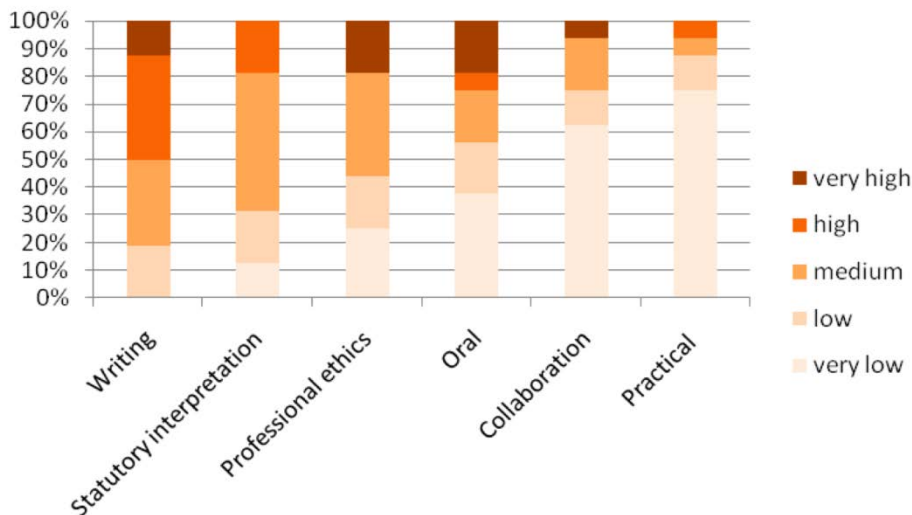
²⁷ NormannWitzleb and NatalieSkead, 'Mapping and Embedding Graduate Attributes across the Curriculum', in SallyKift, MichelleSanson, Jill Cowley, Penelope Watson, *Excellence and Innovation in Legal Education*.LexisNexis Butterworths Australia, 2011, 72.

²⁸ SharonMascher and NatalieSkead 'On the Record: The Trials and Tribulations of Lecture Recording in Law' (2011) 35 UWALR 407; Shanton Chang *Academic perceptions of the use of Lectopia: A University of Melbourne example*. Paper presented at the ASCILITE, Singapore (2007); Jocasta Williams and MichaelFardon*Recording lectures and the impact on student attendance*. Paper presented at the ALT-C, Nottingham (2007).

²⁹ Elizabeth Stacey and Faye Wiesenbergl 'A study of face-to-face and online teaching philosophies in Canada and Australia' (2007) 22 (1) *Journal of Distance Education* 19, 38.

property conveyancing skills. The results appear at Figure 2. While it is acknowledged that there may be a disconnect between what respondents say they are doing and what they are actually doing in their unit/s, it is not surprising that the respondents reported the greatest emphasis is on the development of writing skills followed by statutory interpretation, professional ethics and oral communication skills. Collaboration and practical property conveyancing skills receive only a low to very low emphasis for most respondents.

Figure 2: Emphasis placed on developing different skills in the unit.



There are a number of comments that may be made concerning these results. First, the relatively strong emphasis on statutory interpretation is both pleasing and expected given the number of statutes that impact on property law.³⁰ The importance of statutory interpretation as an essential outcome for law graduates has been the subject of increased focus over the past decade. In 2003 Justice Kirby noted that:

... the construction of statutes is now, probably, the single most important aspect of legal and judicial work. In Australia, courts have discovered that many lawyers intensely dislike this feature of their lives. They find the obligation to read Acts of Parliament, from beginning to end, so distasteful that they will do almost anything to postpone the labour. The High Court of Australia has been moved to protest at this unwillingness to grapple with the words of the statutory text, instead of returning to the much loved words of judges, written long ago and far away, who uttered them before the legislature's text became the law. Whilst this tribute to the judiciary is touching, it does not represent the law. The world of common law principle is in retreat. It now circles in the orbit of statute. Where statute speaks—and particularly a curious statute like a Constitution or a Human Rights Act—there is no escaping the duty to give meaning to its words. That is what I, and every other judge in the countries of the world that observe the rule of law, spend most of

³⁰ The main legislation concerns land and includes: the Torrens legislation; the general property law statutes; the numerous statutes relating to leasing; and strata or community title legislation. As noted in Carruthers, Skead and Galloway, above n 6, since personal property law is not considered in great depth in most of the respondent universities, legislation dealing with personal property is less likely to be considered in the compulsory property unit.

our time doing.³¹

Brown, Mcnamara and Treloar have pointed out that '[g]iven the importance of legislation in the practice of law the teaching of statutory interpretation is a fundamental part of legal education: "Any course that fails to introduce students to the principles and techniques of statutory interpretation fails to equip them with tools that are essential in legal practice and indeed in most other law jobs."' ³²

It is pleasing to note that Australian property law teachers recognise the important role that their units can play in the development of this essential skill. It would be valuable to know the nature and extent of the statutory interpretation emphasis in the property unit/s. For example, are the fundamental principles of statutory interpretation taught in the property law unit or is the skill of statutory interpretation simply developed through the straightforward reading and application of particular property law statutes? This information was not elicited from the survey. The scholarship in this area suggests that the preferred approach would be for the fundamental principles of statutory interpretation to be explicitly taught in a stand-alone subject or as part of a compulsory introductory unit.³³ However, it is recognised that students require more knowledge of the substantive law to be able to fully appreciate the intricacies of statutory interpretation.³⁴ It follows that once students have a basic grasp of the fundamentals of statutory interpretation through a first-year introductory unit, they should then be given the opportunity to develop further more advanced interpretation skills through statute-based substantive units. The compulsory property law unit may be a perfect candidate.

A second point to note, concerning the emphasis placed on developing different skills in the property unit, relates to the lack of emphasis on practical property conveyancing. This may be explained by the fact that this skill is either covered in a compulsory professional practice unit or is removed completely from the academic degree and dealt with, post degree, in a legal practice training course.³⁵

However, even where practical conveyancing skills are dealt with in another unit or course, the authors suggest that it is still desirable to incorporate some level of practical skills development within the property unit. Providing such an authentic

³¹ Michael Kirby 'Towards a Grand Theory of Interpretation: The Case of Statutes and Contracts' (2003) 24 (2) *Statute Law Review*, 95-96.

³² Catherine Brown, Judith McNamara and Cheryl Treloar 'Australian Learning and Teaching Council, Good Practice Guide (Bachelor of Laws), Statutory Interpretation', 2011, 2 citing Chief Justice Robert French *Legal Education in Australia – A Never Ending Story*. Paper presented at the 2011 Australasian Law Teachers' Association Conference, Brisbane, Australia <<http://www.hcourt.gov.au/publications/speeches/current/speeches-by-chief-justice-french-ac?print=1&tmpl=component>>.

³³ John Burrows 'The Difficulties of Teaching Legislation to Students' (2010) 2 *The Loophole, Journal of Commonwealth Association of Legislative Counsel* 24, 33-34; Oliver Jones, 'Statutory Interpretation: The Case for a Core Subject' (2007) 5 (2) *Journal of Commonwealth Law and Legal Education*, 85-96.

³⁴ Brown, McNamara and Treloar above n 32, 4-5.

³⁵ For example, The College of Law's Practical Legal Training program requires students to complete the subject 'Property Practice'.

setting enhances student learning through contextualisation of content and theory.³⁶

Third, interestingly a majority of respondents (55 percent) have indicated a medium to very high emphasis on professional ethics. As additional questions regarding the nature of the coverage of professional ethics were not specifically asked, it is not possible to identify the aspects of professional ethics that are developed in the property unit at the respondent universities. It seems reasonable to surmise however that it is unlikely that property law teachers focus specifically on the philosophy and rules of professional ethics and responsibility. It is more likely that in teaching property law teachers aim to ‘sharpen students’ abilities to recognise and resolve professional dilemmas in the classroom’³⁷ so as to better equip them with the ethical decision-making skills they will need in professional practice. For example, in the context of property law there are, in addition to those delicately poised situations involving professional moral dilemmas, numerous cases concerning fraud by lawyers. These cases provide an obvious platform to discuss professional conduct and ethics.³⁸ As Robertson recommends, law teachers should encourage students to appreciate that ‘lawyers need constantly to make judgment calls that often involve personal choices.’³⁹

Finally, although one respondent has reported a very high emphasis on collaboration, a majority of respondents have indicated a very low emphasis on the development of this skill. This is despite the fact that the ALTA’s Learning and Teaching Standards project report identifies ‘communication and collaboration’ as one of the six TLOs for the discipline of Law.⁴⁰

A reason for this may be the time-consuming nature of collaborative exercises. As noted by Handsley:

[t]eaching of collaboration skills requires the devotion of some class time. This may require a different approach to ‘coverage’, for example, the ‘letting go’ of some content; a search for other ways to support students’ learning of material that can no longer be covered in class.⁴¹

The survey results reveal that property law teachers are already finding lack of time as a barrier to introducing new content into their units.⁴² It is likely that this

³⁶ See eg Sally Kift’s reference to ‘authentic’ learning settings, that is ‘as authentically work-like as possible’, in Sally Kift, ‘Transforming the First Year Experience: A New Pedagogy to Enable Transition’ (Paper presented at the Enhancing Student Success Conference, Central Coast Campuses, 11 April 2005), 14; Sally Kift, ‘Lawyering Skills: Finding Their Place in Legal Education’ (1997) 8 *Legal Education Review* 43.

³⁷ Deborah Rhode ‘[Professional Ethics and Professional Education](#)’ (1992) 1 (1-2) *Professional Ethics, a Multidisciplinary Journal* 31-72.

³⁸ See for example *Frazer v Walker* [1967] 1 AC 569, *Registrar of Titles (WA) v Franzon* (1975) 7 ALR 383 and *Gibbs v Messer* [1891] AC 248.

³⁹ Michael Robertson, ‘Challenges in the Design of Legal Ethics Learning Systems: An Educational Perspective’ (2005) 8 *Legal Ethics* 222 as cited in Maxine Evers, Leanne Houston and Paul Redman, ‘Australian Learning and Teaching Council, Good Practice Guide (Bachelor of Laws), Ethics and Professional Responsibility’, 2011, 6.

⁴⁰ Kift, Israel and Field, above n 2. See relevantly the Notes on TLO 5 at 20-22.

⁴¹ Elizabeth Handsley, ‘Australian Learning and Teaching Council, Good Practice Guide (Bachelor of Laws), Collaboration’, 2011, 21.

⁴² See the discussion of this in Carruthers, Skead and Galloway, above n 6.

similarly acts as a barrier to the introduction of time-consuming collaborative exercises.

An obvious solution is to remove content from the unit in order to incorporate collaborative skill development.⁴³ It is noted, however, that most respondents considered there was very little material that could be removed from their unit/s rendering this solution unpalatable to most.⁴⁴ Alternatively collaborative skills could be developed online. Handsley suggests that this can be done effectively,⁴⁵ and Baskin reports on an online collaboration exercise in an undergraduate management unit as follows:

[T]he online environment improved the process of collaborative small-group learning, since it was adapted from face-to-face classroom practice ... students learned collaboratively through assessment tasks of problem-solving activities. Students responded positively to the experience of meeting online; they shared and interpreted data, and also shared resources and fieldwork results.⁴⁶

In any event, it is clear that property law teachers need to consider the incorporation of collaborative exercises and assessments into their units and there is scope and context for doing so.

Further questions regarding skills acquisition were asked of respondents. These questions concerned the way in which the development of the particular skill was incorporated into the unit. A number of alternative methods of incorporation were suggested in the survey, specifically: online activities; assignments; exams; small group classes and/or lectures. These results appear in Figure 3.

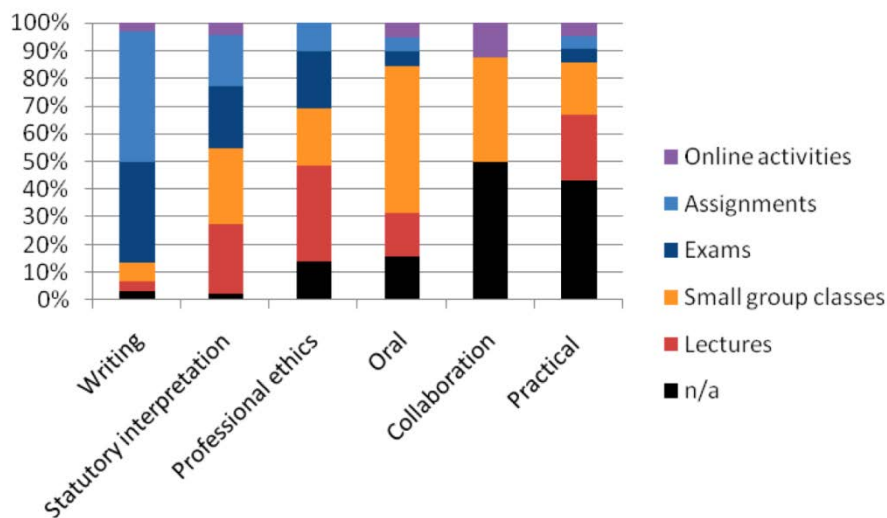
⁴³ Handsley, above n 41, 21.

⁴⁴ Carruthers, Skead and Galloway, above n 6.

⁴⁵ Handsley, above n 41, 21.

⁴⁶ Colin Baskin, 'The Titanic, Volkswagens and collaborative group work: Remaking old favourites with new learning technologies' (2001) 17 (3) *Australasian Journal of Educational Technology* 265-278.

Figure 3: The methods adopted to incorporate skills into the unit



The responses detailed in Figure 3 are for the most part self-explanatory. It is entirely to be expected that: writing skills are incorporated into the unit via exams and assignments;⁴⁷ oral communication skills are incorporated through small group classes; and the relatively high rate of ‘not applicable’ for collaboration, practical skills, professional ethics and oral skills reflects the very low emphasis reported by a number of respondents on the development of those particular skills.⁴⁸

The minimal adoption of online activities as a means of incorporating skills or professional ethics into the property unit is, however, noteworthy and is consistent with the earlier responses regarding the absence of online teaching in property in the majority of the respondent universities. It appears that online activities are used to some extent by some of the respondents to facilitate collaborative exercises, and to incorporate practical conveyancing skills and statutory interpretation.⁴⁹ As suggested above, this may be an area that requires further exploration by property law teachers. If class time is freed up by the use of online activities, this will provide valuable additional class time which may be used to consider unit content more broadly or in greater detail;⁵⁰ or to develop the various skills that currently receive minimal or no attention in the property unit.

⁴⁷ It is acknowledged that while exams and assignments are appropriate strategies for assessing students’ writing skills, it is essential that these forms of assessment be accompanied by effective mechanisms for providing formative feedback if they are to assist in the development and acquisition of writing skills. For a more detailed discussion of the purpose and effect of written assessments in property law see Galloway, Carruthers and Skead, above n 7.

⁴⁸ See Figure 2.

⁴⁹ It would appear one respondent, respondent J, also uses online activities to incorporate oral communication skills, although it is not immediately apparent to the authors how this is achieved.

⁵⁰ A number of respondents reported that they would like to introduce developing areas of property law into the unit but were unable to do so due to time constraints. At the same time the respondents considered there was very little material that could be removed from the unit. See the discussion in Carruthers, Skead and Galloway, above n 6. The creative and thoughtful

In order to ascertain other skills that may appropriately and successfully be incorporated into the property law unit, the authors asked respondents two further questions: 'Are there other skills, not listed above, that are covered in the unit? Please specify'; and 'Are there any innovative and/or successful practices you have adopted in the unit to enhance the development of skills?' The answers to these questions were wide-ranging and, in some cases, refreshing and thought provoking. At one end of the spectrum one respondent, respondent E, commented that '[n]o skills are explicitly taught and learned in property as taught here. Emphasis is on content, skills are assumed to exist already or develop magically.' Respondent M noted that changes were imminent, '[c]lasses are mainly lecture/discussion format. In 2012 additional teaching hours will allow for more group work, problem solving and discussion which will improve collaboration and oral communication.' At the other end of the spectrum, some respondents indicated the incorporation of a number of additional skills including self-management and self-learning skills; and critical thinking and problem solving skills.

Of more interest in this regard are those responses that revealed the adoption of innovative practices to facilitate the acquisition of skills. Two of the respondents reported the incorporation of a statutory interpretation assignment which required students independently to learn an entirely new area of law by reading the relevant legislation and applying the law to a hypothetical legal problem scenario. This exercise facilitates the development of self-learning; statutory interpretation; problem solving and clear, concise writing skills. It has the added advantage of covering an important area of property law without taking up valuable class time.⁵¹ In addition, the respondents at each of these universities report a high level of satisfaction with the quality of work produced by the students despite the absence of any formal tuition.

At another university, a high priority is placed on the development of negotiation skills in property law 'through an early lecture, small group on theory/ethics of negotiation, formative exercise in small group and summative exercise in small group.'⁵² Not only are negotiation skills developed by this exercise but it would appear enhanced oral communication and collaborative skills are spin-off benefits.

The development of oral communication skills through either oral presentations on property law topics; or the rigorous and robust incorporation of class participation, is also reported by respondents L and O. In the latter case, the respondent reflected upon the importance of oral communication as a professional legal skill:

It is not optional. I tell them that they cannot take \$5000 from a client in good conscience, telling them they will represent them, if they cannot open their mouths

use of online exercises and programmes may, if adopted, significantly relieve the time and coverage pressures that are reported by respondents.

⁵¹ Each of the respondent universities which has adopted this statutory interpretation exercise has used legislation concerning leases. One of the universities uses either residential tenancies legislation or commercial tenancy legislation and the other university uses a comprehensive suite of strata titles and community land legislation.

⁵² Respondent C.

on their client's behalf. I let the really shy students tell me in advance a case they would like to explain but I don't make it obvious they have prepared it. Prepared presentations just put the rest of the class to sleep. I make it clear that I am not assessing whether what they say is correct, just whether they have done the reading and thought about the law. "I didn't understand p458", counts as CP. Students like being made to do CP and a number of students have thanked me for making them participate for the first time ever, in particular the very quiet overseas students.⁵³

This latter sentiment, which comments on the initially reluctant student's gratitude for mandatory class participation, is something that many teachers may have experienced when encouraging shy, or possibly ill-prepared, students to speak out and participate. For the teacher, this is a reward in itself. This observation is worth highlighting as, at times, the pursuit of content coverage coupled with non-contributing students, makes the passive, information transferral type class, appear as the attractive, and possibly the only, option. However, the incorporation of oral communication, either through class presentations or class participation, is to be encouraged. Not only are oral communication skills enhanced but other benefits flow: developing independent and critical reading skills; enforcing students to pre-read and prepare for classes; and generally, fostering the greater engagement of students with the material.

A range of other thoughtful and effective practices have been adopted by respondents to enhance the development of skills including the drafting of court submissions as part of an assignment; the writing of an assessable weekly reflective journal; and undertaking an in-class exercise where students read a trust deed and relate its provisions to the background substantive law relating to the creation of trusts and trustee's powers and duties. Although this latter exercise relates to the trusts component of this particular property unit, it may easily be transferred to a property context. For example, reading a mortgage or lease document, or an appropriately drafted will, and requiring students to comment on the particular provisions of the document in the light of a hypothetical fact scenario and the relevant substantive property law.

5 *Outcomes*

Respondents were asked to identify the learning outcomes for their unit/s and the level at which these outcomes were achieved through the question: 'What are the key outcomes for the unit and at what achievement level (advanced, intermediate, introductory)? Please indicate how the assessment aligns with the key outcomes.'⁵⁴

The responses to this question were wide ranging. The diversity in the responses may be attributable to the fact that this question came towards the end of a very long survey and for some respondents the question lacked clarity: 'Question is

⁵³ Respondent O.

⁵⁴ While the authors are conscious of the crucial role that both formative and summative assessment plays in the achievement of learning outcomes, the focus of this paper is on how outcomes and skills are developed in Australian property law units through teaching practices rather than through assessment. The survey results dealing with assessment are dealt with in Galloway, Carruthers, Skead, above n 7.

somewhat advanced for the co-ordinator!’⁵⁵ and ‘Don’t follow the question – sorry.’⁵⁶

However, most respondents provided detailed information regarding outcomes, skills, achievement level and/or the assessment alignment in their unit/s. In some cases the respondents interpreted outcomes to mean skills and provided an achievement level in relation to the acquisition of particular skills. In other responses the broader outcomes, including skills, were reported. In the latter cases the outcomes were linked with either the achievement level or the assessment type or both.

a) Responses linking skills with achievement level

The skills identified by respondents included: problem solving skills; statutory interpretation; oral and written communication; independent learning; critical thinking and knowledge. In most responses the level of achievement of the more fundamental academic skills of knowledge, problem solving and written communication was reported as being at an advanced level, while the more sophisticated, professional skills such as statutory interpretation, oral communication and critical thinking were rated as being at an intermediate level of achievement.

b) Responses Linking Broader Unit Outcomes with Achievement Level

Some responses included more detailed information regarding learning outcomes. For example:

1 Appreciate the complex relationship between state regulation and private property rights (intermediate). 2 Have a thorough understanding of a number of key areas of property law doctrine, particularly easements, freehold covenants, mortgages and leases (advanced). 3 Apply property law doctrines in hypothetical problem-solving (advanced). 4 Have acquired and applied basic negotiation skills (introductory). 5 Have further practiced group work skills (advanced).⁵⁷

Of interest in this response, is the emphasis placed on group work skills, problem solving and knowledge, all of which are at an advanced level. In addition, basic negotiation skills are introduced into the unit.

Another response was more detailed placing emphasis on the integration of knowledge; theoretical and comparative perspectives in understanding the social and economic effects of property law principles; and effective and persuasive communication:

1. Integrate knowledge of property law principles and exercise analytic skill and professional judgment to generate appropriate responses to moderately complex problems - tested by problem solving exercises in exams. 2. Critically evaluate the social and economic purposes and effects of property law principles, using theories, broader contexts and comparative perspectives - assessed through

⁵⁵ Respondent E.

⁵⁶ Respondent N.

⁵⁷ Respondent C.

assignments. 3. Research independently, synthesise and analyse property law information in standard formats to create new understandings or new applications - through assignments. 4. Interpret, communicate and present property law ideas effectively and persuasively to specialist and non-specialist audiences and peers - through class discussion and assignments.⁵⁸

Yet another respondent emphasised the integration of property law knowledge with other areas such as Equity, Contract, Torts and Succession and requires students to 'understand the international aspects of land law in particular in relation to native title.'⁵⁹

Respondent I, confirmed the emphasis in property law units of statutory interpretation; problem solving and written communications skills, in this case said to be at a high level:

Knowledge 1. to understand the fundamental principles relating to property law, and the policy factors which underlie these principles; 2. to develop an understanding of the relevant statute and case law relating to property law; 3. to gain an appreciation of the context in which property law operates; 4. to critically evaluate the implications of land law principles in Australia and explore potential areas for reform; and 5. to develop a working knowledge of fundamental land law, including land title systems, sufficient to satisfy professional requirements for legal practice. Skills 6. to use the skills of statutory interpretation and case construction in addressing law problems; 7. to develop the ability to recognise and discuss property law issues; 8. to develop internet based communication skills; 9. to demonstrate high level written communication skills; 10. to develop oral communication and presentation skills; Attitude 1. to never rely on memorised statutes or cases; 11. to always check the currency of any source of information; 12. to never be satisfied with an indirect report of what the law states; 13. to consider the ethical and practical dimensions of property law. Course is introductory Assignment and exam aligns with attitude and skills.⁶⁰

This respondent also noted other skills which are not always developed in property units including the development of internet-based communication skills and oral communication and presentation skills. Interestingly, the respondent, under the heading 'Attitude', articulates and flags some basic, though wise, warnings for students.

In reflecting upon the variety of responses it seems that, despite the concerns that property law teachers may have regarding funding, resources and teaching format, property law teachers have high hopes for the learning outcomes of their students. A number of outcomes were regularly reported by respondents to be achieved at an advanced level: knowledge of property concepts and doctrines; written communication; and problem solving. Outcomes achieved at an intermediate level include statutory interpretation; oral communication; and independent learning. A number of respondents also noted some outcomes to be achieved at an introductory level: negotiation; group work; independent learning and internet-based communication.

⁵⁸ Respondent M.

⁵⁹ Respondent L.

⁶⁰ Respondent I.

In addition to these outcomes, many other outcomes are mentioned by respondents without indicating a particular achievement level. These include critical thinking and analysis; appreciating policy implications and the broader social, economic and political perspectives; appreciating theoretical, international and comparative perspectives; integrating property law knowledge with knowledge of other areas; and awareness of legal reform areas.

An outcome which is notable by its absence is research. Although a few respondents do mention research it does not appear to be an outcome which is generally developed in the property units of the respondent universities. This may be a reflection of how the survey questions were posed. In the skills section of the survey, research was not included as an alternative and this may have affected the way in which respondents answered the outcomes section.

6 *Teaching of Property Law in the 21st Century?*

Respondents were asked a final question: ‘Do you have any other comments regarding the teaching of property law in the 21st century?’ Responses to this question were again wide ranging, however, it was possible to discern some common threads running through the responses.

Respondents identified a number of diverse factors that had the potential to impact on the teaching of their unit/s. The factors included the transition to the Juris Doctor; the switch to a trimester system; the low staff-student ratio; and the intrusion of more significant statutes. Respondents expressed concern that these factors could detrimentally affect assessment practices; feedback; skill development; class sizes; and the ability to teach broad principles in a more comparative context.

Other responses reflected upon the need to move away from the traditional teachings in property. Respondent Q was critical of the traditional content emphasis in property law and commented:

I think we can be a lot more creative by moving away from the content-based approach. All the text books look similar - we're stuck in such a traditional framework and not sure how beneficial it is for our students.⁶¹

Another respondent suggested a radical rethink of the role of property law teachers. Respondent F noted the disparities in the distribution of the world’s property, ‘[i]n a world approaching 7 billion people and with women owning 1% of world property and the richest 20% of the world owning 80% of property it is time to start critically assessing western notions of property’ and, further, that ‘as property lawyers we have just as much responsibility for teaching students doctrine as we do teaching them to critique the unsustainable and unjust allocation of property.’

Together these responses highlight that skills are to be developed in students within a complex matrix of structural, doctrinal, contextual and philosophical issues that are inherently interrelated.

⁶¹ Respondent Q.

IV CONCLUSION

The authors' survey of property law teachers reveals that, in line with the contemporary Australian higher education environment as well as legal education more specifically, property law students are being exposed to a variety of generic, academic and professional skills. However, the depth and extent of this exposure varies.

While a number of skills including writing, oral communication and professional ethics are commonly integrated into property law curricula, other skills including collaboration and practical skills are under-represented in the property law units surveyed. In terms of collaboration, this bears out findings elsewhere that often unit content must be displaced to situate the teaching of this skill within the curriculum.⁶² This is likely to be a challenge for property law teachers, particularly in light of the project's findings that teachers are happy with their units' existing content.⁶³

As is so often the case, property law teachers feel constrained by lack of time and resources to make changes to curricula even where they have the inclination. This suggests systemic constraints to more widespread and deeper engagement of property law curricula with student skills development. The survey results do show, however, that the online teaching environment is under-utilised in property law units around Australia. Online teaching has potential for the development of resources, activities, assessments and interactions that could serve as a supplement to class (face-to-face) time either to expose students to content or to facilitate skills development.

It is therefore likely that a multi-faceted response is needed if property law teachers are to maximise the opportunity for student skill development in the context of property law. First, a greater understanding of *how* skills may be taught is required. Secondly there is a need for greater institutional support for expanding the traditional curriculum, both in terms of increasing the teaching of skills, and increasing the variety of teaching and learning settings. Thirdly, a change in the infrastructure of the discipline area may be required through the introduction of skills-based resources.

Finally, it is noted that property law is only one unit within a law degree. In terms of skills as much as content, it is vital that the degree be considered as a whole, to scaffold and to reinforce skill development from an introductory base until consolidated in later level units. Only then can the intent of the Discipline Standards for Law and the threshold of what students know and are able to do be fully realised.⁶⁴

⁶² Handsley, above n 41.

⁶³ Carruthers, Skead and Galloway, above n 6.

⁶⁴ Witzleb and Skead, above n 27.