ROUNDTABLES

Law in Broader Contexts (Session 3H)

Professor Stephen Bottomley, Professor Prue Vines, Ms Anne Hewitt, Associate Professor Alex Steel

The Threshold Learning Outcomes (TLOs) for the Bachelor of Laws were developed in 2010 as part of the Learning and Teaching Academic Standards (LTAS) Project, led by Professors Sally Kift and Mark Israel.TLO 1 states: 'Graduates of the Bachelor of Laws will demonstrate an understanding of a coherent body of knowledge that includes: … (b) the broader contexts within which legal issues arise …'

The Roundtable will discuss what this means and how broader contexts can be included in law curricula without being at the expense of other curricula requirements such as the 'Priestley 11' Areas of Legal Knowledge. The discussion will draw on the *Good Practice Guide* recently published on this issue (www.lawteachnetwork.org/resources.html).

Recent Legal Developments in the South Pacific (Session 6H)

Tokelau: Strengthening the ciminal law to protect women and children
Ms Danica McGovern

Family Law Reform for Niue
Professor Tony Angelo

Amendments to the Criminal Code in PNG
Professor Jennifer Corrin

CONCURRENT SESSION ABSTRACTS

(in alphabetical order of first author)

A

Teaching Commercial Law for Economics Students in USIM

Dr Amalina Ahmad Tajudin

Recent teaching of the subject 'Commercial Law' finds that most Economics students, of no legal background, faced a variety of problems in comprehending both substantive and case law. To overcome the issue, the subject is explained using practical examples, such as 'A and B entered into a commercial dealing', rather than directly discussing the facts of the case. This teaching session also discovers that students' first impression of 'Commercial Law' being 'complicated' and 'challenging to their English language proficiency' are the two stumbling blocks to better understanding in the subject. Hence the paper discusses the teaching delivery methods tailored to the students' economic background and level of English in ensuring a satisfactory grasp of the subject within the fourteen week semester.

The Rise and Fall of our Constitutional Legal Systems: Part I—and a potential solution to the debate between Professor Goldsworthy and Kirby J of the High Court of Australia?

Mr Julio Altamirano

The following paper will address the debate between Professor Jeffrey Goldsworthy and Kirby J (formerly) of the High Court of Australia.

The question posed, regardless of which constitutional methodology is accepted at a constitutional referendum the reforms so mentioned would enhance the rule of law, democracy and in the Australian context federalism. The paper proposes the codification of constitutional interpretation through a constitutional document on how the constitutions throughout the World should be interpreted, and in particular, the Australian Constitution. The paper will also illustrate the form and substance of the proposed code based on McHugh J of the High Court of Australia's approach to constitutional interpretation.

The hypotheses, can progressivism or radical non-originalism actually enhance the rule of law, democracy and federalism rather than resulting in their destruction? And would the reforms so mentioned be constitutional from a separation of powers perspective as an amendment to the Australian Constitution? The paper will seek to answer these major constitutional questions.

Recovery of Unremitted Superannuation from Corporate Employers

Associate Professor Helen Anderson

When corporate employers become insolvent, their employees' immediate concern is usually not their superannuation but rather their unpaid wages, annual leave, payment in lieu of notice and

redundancy entitlements. Protection of these entitlements is critical, so that employees who have lost their jobs do not suffer unnecessary financial stress. However, for the reasons noted in this paper, of equal significance is superannuation, which often has not been remitted to the employees' nominated fund by the employer for months, years or ever. The recovery of unremitted superannuation contributions is exacerbated by corporate insolvency because one of the targets of enforcement action—the company—is likely to have insufficient assets to meet the claim. This then confines regulators to actions against the company's controllers. However, the difficulties for workers whose employers have not remitted their contributions to their funds are not limited to the insolvency situation, nor are the Government's concerns about, and responses to, unremitted superannuation.

The paper aims to show the enormity of the issues surrounding unremitted superannuation and argues that more should be done to improve detection and recovery of non-payments because of the importance of superannuation to both employees and the government. Any model of enforcement that shifts the detection of unpaid superannuation to the employees affected, whether their employer is insolvent or not, is flawed. This is the model that the Government is increasingly embracing.

Law Teachers as Gatekeepers in Myanmar? A recent picture after decades of isolation

Associate Professor Don Anton

We still have much to learn about law teaching and legal scholarship in Myanmar as its law schools emerge from decades of isolation. However, several aspects about law teachers as 'gatekeepers' are becoming clearer. First, it is an overwhelmingly female enterprise. Second, it is still highly regulated gate-keeping. Third, retaining law teachers as gatekeepers will be difficult as investment pours in and law firms and others come recruiting. This paper explores these issues and others. It builds on the presenter's early 2013 experience as the second Visiting Professor of Law at the University of Yangon Law Department in more than forty years.

B

An Avalanche of Law Schools: 1989 to 2013

Professor David Barker

The period 1989 to 2013 was a pivotal period for the expansion of Australian legal education. Despite the fact that a ground breaking report relating to Australian legal education, the 1987 Pearce Report, had recommended that no further law schools be established in Australia, the two decades or so which succeeded it heralded an unprecedented establishment of twenty three additional law schools, an expansion which has continued until the present time.

This paper considers the reasons for this massive expansion of legal education and questions why Australian universities chose to establish so many new law schools during the period under review, whilst also reflecting on the overall effect which they have had on the development of the future legal profession and the legal community in general.

The paper incorporates a study of the way historians have been able to classify the various historical groupings of the dates of the foundation of various law schools into successive groups

or ‘Waves culminating in the commencement of the ‘Third Wave’ law schools in 1989 onwards, a period which incorporates those law schools reviewed in this paper.

The Australian Law Reform Commission (ALRC) was of the view that the expansion of legal education in Australia could be attributed to the dynamic changes which had come about in the legal profession, such as national admission and practice, globalisation, the application of competition policy, emergence of multi-disciplinary partnerships and the influence of new information and communication technologies. the more cynical were inclined to adopt the alternative view also put forward by the ALRC which was that law faculties were attractive propositions for universities bringing prestige, professional links and excellent students at a modest cost as compared to the professional programmes such as medicine, dentistry and engineering.

Do Companies Dream of Juristic Sheep? Corporate Claims to Human Rights: A humanist approach

Dr Jonathan Barrett

This paper critically discusses corporate claims to human rights. Before such a discussion may be commenced, the particular concepts of human rights and the company used must be identified: here a scheme of universal human rights founded on respect for inherent human dignity and the contractual theory for the company are used. These concepts, which emphasise the ultimate importance of human beings and human interests, are outlined and compared with competing theories. Practical examples of corporate human rights claims are adduced to demonstrate their incompatibility with the dignity-based scheme of human rights, which only admits humans into its ambit. The paper concludes by commending the exclusion of companies from human rights Acts enacted in Australia, and argues that the corporate rights affirmed by the New Zealand Bill of Rights Act 1990 should be narrowly interpreted.

The Criminalisation of New and Emerging Drugs

Mr Malcolm Barrett & Dr Nichola Corbett-Jarvis

The misuse of pharmaceuticals and ‘new and emerging drugs’ (NEDs), also referred to as legal highs, herbal highs, herbal ecstasy and synthetic cannabis, has recently caught the media and public’s attention. As a result, Australian parliaments have responded by attempting to once again address the ever-evolving drug industry. The Queensland parliamentary response is wide-reaching and includes amendments which pre-empt future developments in the illicit drug industry by prescribing existing drugs that are yet to come to the attention of legislature and yet to be developed ‘drug like substances’. This paper will critically analyse Queensland’s analogue provisions and compare them with the legislative responses of other jurisdictions.

The Reluctant Gatekeeper?: The role of law teachers in postgraduate law research networks

Ms Felicity Bell & Dr Rita Shackel

Growing attention is being directed in the pedagogical literature toward the role of postgraduate research student groups in HDR student learning and experience. This paper focuses on the institutional framing of such groups, and specifically the role of academics in their operation and sustainability. It asks how academics act as gatekeepers in the particular context of groups, and how this role might be both limiting and productive. This paper also reflects on the discipline-specific nature of HDR law student needs and legal scholarly inquiry that might impact on the role of law academics as gatekeepers in this context. Through analysis of survey and interview data the paper seeks to identify factors promoting group sustainability. HDR students surveyed indicated a strong desire for academic involvement, perhaps reflecting a desire for longevity and stability in groups, but also a need for continuation or reiteration of the traditional 'master-apprentice' type relationship between student and academic. Although impermanence is a particular challenge given the transient nature of student populations and the sometimes onerous administrative burden placed on coordinators of groups, developing academic independence in students is also key to achieving sustainability. We suggest that the most sustainable groups are non-hierarchical and create a community of practice in which new members are guided by those of longer standing, through which students can obtain both skills and support. Thus, although students seek a law academic to control or mediate group interaction, we suggest ways in which academics might retreat from this 'gate keeping' function to enable independent academic development amongst HDR students. Simultaneously, the paper explores strategies to promote sustainability amongst groups. We focus on the legal discipline and its particular tendencies towards isolationism and reductionism and consider whether successful strategies for longevity utilised by inter-disciplinary groups, primarily from the humanities, might be successfully applied to a group based within the law faculty.

Unconscionability and the Consumer Law Reform Bill (NZ)

Dr Matthew Berkahn

The Consumer Law Reform Bill (NZ) aims to simplify and consolidate New Zealand's consumer law, introduce some new provisions and improve alignment between New Zealand and Australian law. In October 2012 the Commerce Select Committee reported back to Parliament and it is expected that the reforms will be in place around October 2013.

Among the issues considered by the Commerce Committee was whether provisions dealing with unconscionable conduct, along the lines of those included in the Australian Consumer Law, should be added to the Bill. The inclusion of such provisions had been recommended by the Ministry of Consumer Affairs. The Committee, however, after weighing up the views of business and consumer representatives, did not recommend adding provisions on unconscionable conduct. The Committee noted 'technical problems' encountered in Australia and considered that uncertainty would result if similar provisions were enacted in New Zealand. It recommended that the position be reviewed once the Australian courts have had the chance to develop a body of authoritative case law on the matter.

This paper reviews the application of Australia's unconscionability provisions and assesses the merits of introducing such provisions into New Zealand consumer law. Alternatives such as the

wider test of 'oppressive' conduct, as set out in the Credit Contracts and Consumer Finance Act 2003 (NZ) and (potentially wider still) a prohibition on 'unfair' conduct in trade, are also considered.

Compulsory Income Management: Exploring counter narratives amidst colonial constructions of vulnerability

Dr Shelley Bielefeld

The paper explores counter narratives to the dominant colonial narrative about Indigenous welfare recipients classified as 'vulnerable' under the compulsory income management laws. The compulsory income management laws and policies were implemented initially in 2007 as part of the Northern Territory Intervention, and modified to some degree in 2010, in what the government controversially alleges to be a non-racially discriminatory manner. These laws were further entrenched and extended in June 2012 as part of the Stronger Futures legislative package. The laws have a particularly significant impact upon Indigenous welfare recipients in the Northern Territory, and increasingly, across some other Indigenous communities outside that jurisdiction. This paper contends that law constructs, rather than merely describes, the vulnerability that the government claims to seek to redress via these laws. Law seeks to tell a certain narrative about law, and consequently, a certain narrative about power. These narratives are presented as natural. However, there are other marginalised narratives that shed light upon the compulsory income management discourse. This paper will explore some of these counter narratives, and consider whether BasicsCards are instruments that can effectively facilitate what may be described as 'bureaucratically administered violence'. (Graeber, 2012: 123) It will also examine a counter narrative of the strength of Indigenous resistance, a narrative that appears to have been entirely overlooked in government interpretations of income management reports and evaluations. Yet there remains the possibility that the trace of something other than mere 'vulnerability' is present when Indigenous welfare recipients 'lose' their BasicsCards (which is one of the government constructed indicators of vulnerability). Indeed, it is possible that such conduct could be seen as an attempt to resist the 'structural violence' embedded within the compulsory income management scheme. (Graeber, 2012: 112) This in itself could be interpreted as an act of considerable strength.

Setting the Tone for Young Law Graduates in the South Pacific Region?

Mr Nilesh Bilimoria

My paper examines reactions by members of the judiciary and experienced practitioners on young law graduates engaged in legal practice in various jurisdictions in the South Pacific Region. The analytical framework that predominantly guides my paper relies on testimonies so far presented in seven (7) newSPLAsh issues published under the auspicious of the recently established South Pacific Lawyers Association, the peak legal representative body for the Region, since 2011. Whether young law graduates are receiving strong undergraduate education in preparing them to enter the legal profession in the South Pacific Region or are law teachers failing to adapt to the changes occurring in various jurisdictions in the South Pacific Region through its skills education (clinical and skills courses), is the question that guides my paper?

Law Teachers as Gatekeepers: Anecdotes from the Pacific experience

Sunita Bois-Singh

The Pacific culture is such that all teachers and not just the law teachers are looked upon as individuals who will impart huge degrees of knowledge and wisdom to their students. With this expectation already imbedded in the minds of the students, law teachers in the Pacific and especially at the University of the South Pacific are not just gatekeepers but also role models for their students.

USP being a regional university comprised of 12 small countries of the South Pacific, the law school has to cover all the laws of the regional countries represented in class. This can lead to some exciting juggling and debates as to what should be part of the law school curricular. What should be compulsory to teach and what is not so important and can be left as electives. To this, add individual teacher's opinions, preferences and expertise in teaching and/or research and you can get into quite a tangle!

A law teacher at USP is responsible for preparing the next generation of lawyers or legal persons in the South Pacific and is expected to have several responsibilities including being able to instil the ideals of professionalism, ethics and highest standards of conduct in their students.

How the law teacher is expected to achieve this is not told to the teacher when he or she starts with a new class every semester. What role students should play in preparing them for the legal profession is also not told to the teacher.

Given the small size of the USP regional countries, most of the law graduates would very early into their careers become heads of sections, politicians, attorney generals, judges and even chief justices. Does four years of law school prepare them for such roles?

Less Cerberus, More Dumbledore: UOW'S first year law immersion program

Margaret Bond, Dr Cassandra Sharp & Karina Murray

The first year of law school is a challenging time: adapting to new surroundings; making new friends; and developing new ways of learning, thinking, speaking and performing—all with the added pressure of high academic achievement.

This paper explores the important role of modern law teachers as guides and mentors for the students' transformative journey.

As experienced first year teachers in the LLB program, the authors have devoted considerable efforts to developing a program which facilitates a smooth transition for law students. We believe law teachers have a unique opportunity as well as a responsibility to facilitate positive transformation.

This paper outlines the unique First Year LLB program that has been developed and refined over a number of years at the University of Wollongong ('UOW'). The authors' efforts in this regard have been recognised in 2013 by the 'Vice Chancellor's Award for Outstanding Contribution to Teaching and Learning' at the University of Wollongong for their First Year Immersion Program.

Critical Reflection and the Practice of Teaching Law

Mr Tin Bunjevac

Recent shifts towards greater student diversity in legal education have had important consequences for the practice of teaching law in many Australian law schools. Law lecturers are no longer expected to serve as mere 'repositories of legal knowledge,' but also as pro-active participants in their students' learning processes.

This paper highlights the importance of modern educational theories of learning to the practice of teaching law, because it is now widely accepted that the more engaged, student-centred teaching approaches can be used effectively to narrow the gap between high achieving students and those with lower ENTER scores.

The author describes how the proposed approach works in practice by reference to recent teaching episodes that demonstrate the importance of practicing 'reflective thinking,' 'scaffolding' and the use of a range of blended learning approaches.

In the first reflection, the author highlights the importance of educational theories about how students learn to the practice of teaching law in a more challenging learning environment. The second episode involves the management of group activities and learning spaces in tutorials, while the third episode concerns the use of blended learning approaches and new technologies in a law lecture.

Embedding Rule of Law Concepts in Introductory Law Subjects

Ms Kate Burns

Like motherhood, the rule of law is generally thought of as a good thing. However, there is a lack of agreement about what it means and its application to daily legal life.

The paper will explore the range of meanings accorded to the concept, the work being done to promote the concept internationally, its relevance to contemporary Australian society, and methods for encouraging students to think critically within a rule of law framework, with a focus on current legal issues. It will draw on the work of the Rule of Law Institute over the past four years in producing participatory resources for legal studies secondary students and seek to generate discussion as to appropriate methods to embed rule of law concepts in introductory law course for university students.

C

Interventions for Well-being in First Year Law

Ms Sher Campbell & Ms Katherine Lindsay

Since 'Courting the Blues' was published by the Brain and Mind Research Institute in 2009, legal educators across Australia have been implementing and evaluating strategies to support students' well-being. Notable examples of published work to date include Tani and Vines (2009), Field and Kift (2010) Townes O'Brien, Tang and Hall (2011), and Larcombe et al (2013).

This paper reports on initiatives implemented at the Newcastle Law School in 2012 designed to reduce performance anxiety around a compulsory first year mooting assessment, and the implementation of a self-management curriculum in 2013, involving a partnership between legal academics and professional colleagues from the University Counselling Service. In particular, the paper will analyse the use of the My journey transition resource, input on growth mindset, reflective practice, resilience training and practical mindfulness as strategies to support well-being of law students.

Property Law Teachers: Gatekeepers to a broader legal understanding through the rich tapestry of property law

Penny Carruthers & Natalie Skead

In 1991 two editors of the University of Michigan *Journal of Law Reform* commented that 'the influence of law professors extends well beyond the classroom. Law professors are both the gatekeepers and molders of the profession'. Likewise, Lyman Johnson, of the University of St Thomas in Minneapolis has commented that if 'Law school is the "gate" through which students must pass if they wish to become lawyers' then it follows that law teachers 'are "gatekeepers" into the profession'. It would seem, therefore, that as law teachers we accept the responsibility for being the intellectual gatekeepers to the legal profession. However, hand-in-hand with that responsibility comes the exciting opportunity that we, through our teaching, have the capacity to determine not only 'the way in which our students understand the law' but also, if not more importantly 'what it is to be a lawyer.' This opportunity invites us to reflect upon how we, through our teaching, are able to shape how students 'conceive of the intellectual and ethical parameters of the law' and signal to students 'what is important in learning about the law.'

The purpose of this paper is to evaluate how Australian property law teachers can fulfil their responsibility as gatekeepers to the legal profession in their teaching of property law. In doing so the authors identify the opportunities that are open to property law teachers: first, to facilitate the development of the crucial skills and attributes our students will require if they are to make a meaningful and effective contribution to the legal profession; and second, to help forge our students' broader understanding of the social, ethical and normative role of law, lawyers and legal practice.

Engaging Indigenous Perspectives in Australian Constitutional Law Education

Ms Melissa Castan

The Constitution provides the legal framework for governance of Australia. Yet the Constitution, and thus the laws of Australia, still reflect the fundamental denial of Indigenous identity, presence, laws, and rights. Past examples include so called protection laws associated with policies of dispossession, assimilation and child removals, and laws that denied basic civil and political rights, such as voting, political participation, citizenship and freedom of movement and association. Current examples include laws regarding the administration of criminal justice or welfare policy that ostensibly appears neutral yet are applied in a manner that disclose ingrained racism. The current debate over the recognition of Indigenous Australia and the necessity for a referendum epitomises the dissatisfaction with the fundamental legal denial of the particular place of Indigenous peoples in Australian law. But there is no reason for the teaching of Australian constitutional law to reflect the same denial. The recognition of the role that the Anglo-Australian constitutional, legal and political system have played in the discrimination and dispossession of Indigenous Australians is

as essential now as it was in 1901, 1967 or 2000. Unless we explicitly incorporate Indigenous issues in the teaching of Constitutional law, we can only expect our law students to keep perpetuating the legal mistakes and omissions of the past. This paper will examine some ways that the unambiguous incorporation of Indigenous issues into the constitutional law curriculum for law-students is a necessary aspect of contemporary legal education.

The Matrix as the Gatekeeper: Effective integration of online technologies in maximising research impact and engagement

Ms Melissa Castan, Kate Galloway & Kristoffer Greaves

Legal academics are not only teachers, but are creators of knowledge. In terms of the role of an academic, it is our responsibility to share this knowledge through engagement not just of our students, but of the wider community. In addition, there is increasing emphasis on legal academics having to account for the so called 'impact' of research. In selecting both the topic of research and the mode of publication of our knowledge, legal academics act as gatekeepers. There is an increasing critique of the existing paradigm of research publication and its emphasis on the metrics of impact. This critique recognises the limitations of the commercial publication paradigm in the present context of open access and the vast array of citizen-mediated fora useful for dissemination of legal knowledge and innovation. Susskind (2013) for example identifies expert crowd-sourced legal information as breaking down barriers to access to justice. Tracking the experience with publication of a paper on social media in legal education from this conference in 2012, the authors share insights into the potential for both impact and engagement of a diverse audience in their research. This highlights the ways in which various media can be used strategically to redefine the role of the gatekeeper.

Gate Keeper or Gate Opener? Teaching law and literature to provoke and inspire

Mr Gary Cazalet

In 2011 I introduced the subject Law and Literature to the Melbourne Law School. Law and literature has a rich and at times contested history as a subject suitable for legal education. How might the subject be structured? What are realistic teaching and learning objectives? In this paper I discuss my reasons for introducing the subject, how and why I decided to open rather than keep gates and my key learnings over the past three years. I suggest that law and literature can respond to recognised gaps in the teaching of traditional law subjects and provoke and inspire students into a deep examination of their personal relationship to law.

How far can we Stretch the Stakeholder Definition in Corporate Governance?

Dr Josephine Coffey

The conference theme explores the proposition that law teachers may act as intellectual gatekeepers to the discipline of law. Lyman Johnson specifically refers to Corporate Law teachers in this ‘gatekeeper metaphor’. Johnson explains that Corporate Law asks certain questions, assumes certain paradigms but ignores others. One such example is the dominant concept of shareholder primacy and the duties owed by directors to this principal stakeholder. However, entities listed on the Australian Securities Exchange (ASX) must comply with Listing Rule 4.10.3,

which supports the principles and recommendations set by the ASX Corporate Governance Council. The Corporate Governance Principles and Recommendations require a listed entity to include in its annual report a statement disclosing the extent to which it has followed the recommendations. If the entity has failed to do so then it must state the rationale for not pursuing them during the reporting period. Principle 3 recommends that entities should actively promote ethical and responsible decision-making by establishing a Code of Conduct that would consider the reasonable expectations of 'stakeholders'. The definition of stakeholders in this context moves beyond the model of shareholder pre-eminence to encompass suppliers, consumers, the broader community and policies involving product quality or environmental protection policies. Can Corporate Governance unlock these policies to stretch the stakeholder definition even further? As corporate law teachers can we 'open the gate' for our students to a wider definition of stakeholder?

When Will the Legal Academy Get It?

Ms Pauline Collins

The use of alternative dispute resolution (ADR) mechanisms are now obliged and encouraged by legislative means. Despite this, courses in ADR are not part of the Priestly 12 nor are they offered as core courses in most degrees. When will the academy acknowledge it should be mainstreaming teaching for the 95% of matters that do not go to court to prepare students for a very different focus in their profession? This paper reports the experience of teaching an ADR course as part of the core at third year level in a third wave law school. The experience of students vindicates the need to mainstream ADR in law courses. There seems to be a lack of understanding by other legal educators of not only the need for this focus but also the benefits for mental wellbeing of students.

How unfairness and social exclusion in the workplace are promoted by Part 3-1 of the Fair Work Act

Mr Chris Coney

Fairness and social inclusion are two objectives of the Fair Work Act as stated in s. 3. However, in Part 3-1 of this Act, both closed shop arrangements and bargaining fees are prohibited. I argue that these prohibitions have the effect of promoting both unfairness and social exclusion in the workplace. The prohibition of bargaining fees means that non-union members easily free-load on union members, especially in the context of collective bargaining negotiations. The prohibition of closed shops means that employees cannot be required to join a union that has coverage of a particular workplace. Free-loading is inherently unfair—the freeloading employees receive benefits whose provision has been made possible by the union fees paid by union members. The prohibition of closed shop arrangements erodes the sense of social solidarity in workplaces that unions can nurture. This paper demonstrates that these are the corrosive effects of this dual prohibition. It is argued that the prohibition on closed shops is based on a thin and abstract idea of 'freedom of association' which is reinforced by the prohibition on bargaining fees. In democracies like Australia, and in particular in its workplaces, the notion of 'freedom' should take account of correlative 'responsibility', rather than having a purely formal value. Finally, it is argued that the important objectives of fairness and social inclusion might be advanced by removal of these prohibitions.

Creating 'Movie Magic' in First Year Legal Skills Subjects

Dr Nichola Corbett-Jarvis

The use of technology in legal education is a rapidly evolving area but incorporating digital content into existing teaching resources can often appear daunting and resource-intensive. Those willing to experiment with new technologies have achieved significant success in embedding such technologies into existing subjects (Butler; DA, 2009 and Butler; DA, 2011). In many cases, the focus of such projects has been on providing a virtual legal environment for students through the use of Second Life or similar virtual reality platforms. This paper will focus on the use of different software, which provides an environment in which those who would not usually engage with virtual worlds can build a movie set, characters and on-screen action with a view to creating a virtual reality movie designed to address the specific needs of the particular subject. This technology has been employed to create a series of movies set in a virtual law firm, which were embedded into the content of a compulsory first year legal skills subject with the aim of enhancing student engagement and assisting with the development of students' legal writing and statutory interpretation skills. An initial pilot study of student response to the use of this new media will also be discussed.

Keeping it Civil: The application of French and English laws in Vanuatu

Professor Jennifer Corrin

Prior to Vanuatu's Independence in 1980, in the absence of applicable joint regulations, French law applied to French citizens and English law applied to British citizens. Members of the indigenous population were governed by customary law; joint regulations; administrative and police regulations; and a criminal code. Subjects or citizens of other countries were required to 'opt' for either the French of the English legal system within one month of arrival (or on the commission of any action involving the application of the law). At Independence, French and English laws continued in force, unless revoked by the Vanuatu Parliament or incompatible with the independent status of Vanuatu. However, the opting provisions were repealed and it was not made clear when and to whom each system of law was to apply. In practice, French law is rarely applied. This paper examines State recognition of English and French law as sources of law in Vanuatu. Drawing on case law and empirical work, it also considers the extent of their application in practice and discusses the reasons why French law has been marginalised.

The Reasonableness of Marine Stinger Warning Signage in Response to a Duty to Warn of the Irukandji Public Health Risk in Marine Stinger Enclosures at Australian Beaches

Associate Professor Lynda Crowley-cyr

This paper discusses the reasonableness of warning signs as a beach safety management strategies used by public authorities to respond to the rising Irukandji marine stinger public health threat at Australia's popular beaches. By turning the negligence lens onto warning signage, this paper discusses the complexity of 'good' signage as a communication tool, the use of signage by public authorities to warn of actual risks, and the confusion in superior courts about the meaning of 'effective' signage in terms of their reasonableness as a response to a duty to warn in changing contexts, especially where the risk is life threatening. The main proposition is that marine stinger

specific warning signage is ineffective in communicating Irukandj injury risk to an unsuspecting public while bathing inside stinger nets.

The concerns and ideas raised are novel. To date, they not been tested in Australia's courts. This is not to suggest that such negligence claims against public authorities have not yet been initiated or will not arise in the future.

Putting Civil Procedure into Action: Investigating the effects of implementing an experiential learning tutorial program

Mrs Katherine Curnow

Most law students study the procedural law applicable to civil litigation ('Civil Procedure') during their law degrees. Civil Procedure necessarily involves a focus on the legal rules and procedures governing the conduct of civil litigation and the formal adjudication of civil disputes. However, it also presents an opportunity for students to gain an appreciation of the civil legal system in action as well as to introduce students to skills inherently connected to Civil Procedure such as pleadings drafting and negotiation.

While an experiential learning model is considered an appropriate pedagogical approach for legal skills training, neither the use of an experiential learning model in large, later year law subjects nor the impact on student learning experience of using such a model have been comprehensively explored.

Most University of Queensland (UQ) students take the Civil Procedure subject in their final or penultimate year. It is a large course with an enrolment of 250 students in 2012 and 360 students in 2013. A project lead by Katherine Curnow has developed a series of 'real-world' legal drafting and negotiation activities, implemented the activities using an experiential learning model in the UQ Civil Procedure subject and evaluated the impact of the activities on student learning experience.

This paper sets out the theoretical underpinnings of the project and explains the development and implementation of the activities. It then examines the results of the empirical research investigating the effect of the activities on the learning experience of students. Finally, the broader implications of the project findings are discussed.

D

The Principle of Non-regression in Environmental Law

Mr Trevor Daya-Winterbottom

The legal principle of non-regression is founded in human rights law and seeks to prevent to erosion of established rights. Environmental law is firmly based on administrative law principles that seek to promote justice and fairness. Recently, statutory reforms in a number of jurisdictions including New Zealand have sought to streamline and simplify environmental law and practice, particularly in relation environmental adjudication. Side effects of the reforms are reduced opportunities for public participations and limits on the availability of merits review. This paper will critically analyse these trends and their implications for future environmental justice.

The Creaking Gate: When good students go bad

Mrs Marianne Dickie & Ms Natalie Dawson

As teachers of law we stand as guardians to the gateway of a profession known for vulnerable clients and the need for the highest of standard of ethical behaviour.

The requirement for a formal qualification as the entry point for a profession meant the role of ultimate arbiter of knowledge moved from professional stakeholders to academia. The resulting need to focus on both declarative and procedural knowledge within a university setting has led to renewed engagement with the profession itself.

Law is one area where universities have engaged practitioner academics on a sessional basis to provide this clear link between the campus and the workplace. Practitioner teachers ensure students are taught relevant skills for the workplace and strengthen the impact individual student can have on future peers and employers.

But there is more at stake in the formation of a graduate than knowledge and skills. In our preparation of students for practice we have a duty of care that reaches beyond the student, their classmates and teachers to their future clients, stakeholders and the broader profession.

So what happens when something goes wrong? When student behaviour goes beyond the boundaries of ordinary? How do we approach unethical or unstable behaviour and how will this period of a student's life impact on their work in the future work, their clients and their relationships with others in the profession?

As teachers we are often blinded by the restrictions of privacy and discrimination legislation. We search for a pathway to respond that falls under university medical, ethical or disciplinary frameworks.

Drawing on the work of Maxine Papadakis and David Stern this paper will examine the complex issue of student behaviour and its impact and implications for graduate's professional behaviour. It will discuss ways of embedding professional behaviour within the curriculum which not only will support and enhance future practice but ensure that our responses to students can be timely and effective.

Should Indigenous Law Lecturers act as gatekeepers in the teaching of indigenous law?

Mr Matiu Dickson

In teaching the indigenous system of law in a mainstream Law Faculty the question always arises for me as an indigenous Law Lecturer as to how much of my cultural laws I should teach to give validity to the indigenous laws and customs which I am still practising. Indigenous law is most effective in the own cultural context so if it is to be part of a dominant legal system, how much should the student really know? Sometimes there is a resistance to having to learn about indigenous law by non-indigenous students, but as the numbers of indigenous students grow there is also a demand for indigenous law to be taught more in the degree.

What part should the indigenous language play in the teaching? Most indigenous knowledge is handed on as part of an oral tradition, the language has its special nuances of meaning that can be lost to non-speakers of the language.

Should indigenous law only be taught by its indigenous practitioners and if so is this effectively gate-keeping? This paper will look at the presenter's experience in teaching Maori customary practises in several of the core papers, Legal Systems and Jurisprudence, in the undergraduate law degree in Te Piringa Faculty of Law at the University of Waikato.

Insanity, Automatism and the Mental Health (Forensic Provisions) Act, 1990 (NSW)

Mr Ian Dobinson

On 7 June 2013 the NSW Law Reform Commission tabled its Report on People with Cognitive and Mental Health Impairments in the Criminal Justice System: Criminal Responsibility and Consequences. The Commission has recommended significant reforms including the amendment of the Mental Health (Forensic Provisions) Act 1990 to include a statutory test for the defence of mental health or cognitive impairment. The Commission also recommends the inclusion of statutory definitions of 'mental health impairment' and 'cognitive impairment'. In addition to the traditional limbs of the McNaughten Rules, the recommended statutory test includes circumstances where a person who was suffering from a mental health impairment or a cognitive impairment was unable to control the conduct. Further to this, the definition of 'mental health impairment' includes a temporary or continuing disturbance of volition.

This paper aims to assess these recommendations from both a theoretical and practical perspective in terms of their impact on the defences of insanity (mental illness) and automatism (insane and non-insane). From a theoretical position, the paper will build upon existing literature but in particular the recent and significant work by Loughnan. From a practical perspective, the paper will consider the recommendations, their possible effect on the frequency of the defences as well as the management and care of those found not guilty by reason of mental illness.

Mediation Skills Training: A reflective account

Dr Susan Douglas

Mediation is an area of developing professional practice in its own right. Mediation practice has, since 2008, been subject to a voluntary system of accreditation and practice standards. Not all mediators are lawyers and a study of law is not a prerequisite for practice. Yet mediation and other forms of alternative (or appropriate) dispute resolution are taught in many law schools with a range of theory and skills components. Legal scholars have identified ADR as a significant site for the achievement of the threshold learning outcomes (TLO's) 5 and 6. These TLO's represent a newer emphasis in legal practice on collaboration and communication, and on well-being. Law teachers are gate keepers to these expanding constructions of legal practice, which are particularly evident in ADR scholarship and practice. An emphasis on reflective practice has also gained momentum in legal education as a consequence of efforts to embed practice skills and ethical dimensions into the traditional doctrinal study of law. Reflective practice represents a key concept and skill useful in navigating the sometimes subtle shifts from traditional legal reasoning in an adversarial context to more holistic approaches that emphasise collaborative outcomes. This

paper provides an example of reflective learning by an account of mediation skills training recently undertaken by the author. The account provides reflections on the theoretical and skills components of the training. It highlights issues in relation to the core mediation principles of mediator neutrality and party self-determination. It provides reflections on experiential learning and teaching methods used in the training, including role plays. It also offers an example of reflecting on feelings or emotions elicited by the experience. It offers law teachers an example of what might be sought and might be found in reflective assessment items generally, and for ADR in particular.

Why Alternative Dispute Resolution Must be a Mandatory Subject in the Law Degree

Mr James Duffy & Associate Professor Rachael Field

The profession of law is deeply steeped in tradition and conservatism. The content and pedagogy employed in law faculties across Australia is similarly steeped in tradition and conservatism. Indeed, the practice of law and our institutions of legal education are in a relationship of mutual influence; a dénouement which preserves the best aspects of our common law legal system, but also leaves the way we educate, practice, and think about the role of law, resistant to change. In this presentation, we lay down a challenge to legal education orthodoxy and a call to arms for legal academic progressivists. It is our simple argument that alternative dispute resolution should be a compulsory, stand alone subject in the law degree. There has been traditional pushback against the notion that alternative dispute resolution should have a place amongst black letter law subjects in the legal curriculum. This position cannot be maintained in the modern day legal climate. We put forward ten simple arguments as to why every law student should be exposed to a semester long course of ADR instruction. With respect to relationships of mutual influence, whether legal education should assimilate the practise of law, or shape the practise of law makes no difference here. Both views necessitate the inclusion of ADR as a compulsory subject in the law degree.

Gatekeepers Meet Stakeholder Interests: Managing the tensions arising from the changing nature of professional dialogues in legal education

Ms Lynn Du Moulin & Dr Chris Trevitt

The legal profession comprises a range of educational stakeholders: practical educators, academics, practitioners—gatekeepers all, in that they make judgments about students' preparation for practice. Multiple stakeholders mean diverse gatekeeping expectations: to do with professional standards, course content, learning objectives and delivery. Practical legal education courses must prepare students for the vicissitudes and accountabilities of practice by embedding requisite knowledge, cultivating necessary skills and fostering appropriate attributes. They must verify students meet minimum competency standards, accommodate external requirements of curriculum and professional standards, deliver on student expectations and on the teacher's employer requirements.

Balancing diverse expectations has long been the raison d'etre of experienced teachers of legal practice. Perversely, it now seems that institutional expectations of teacher performance, while well-meant at one level, are impinging on and/or cutting across the rhythmic pattern of these proven practices.

We wish to find professionally acceptable and dialogic ways to accommodate an increasing institutional management requirement of convenors to achieve a satisfactory—if not exceptional—performance in the institutional student evaluation process, despite the all-to frequent limitations of the questions employed. The presentation will illustrate practical examples of such accommodation for one particular course in the ANU Legal Workshop's Graduate Diploma in Legal Practice (GDLP).

This case study explores stakeholder dialogue and feedback processes that infuse ongoing attempts to successfully balance regulatory gatekeeping pressures, individual teacher agency, professional and institutional performance expectations in everyday educational decision-making processes. We speculate about important personal attributes that make this possible, including extended experience; a well-rehearsed sense of professional integrity, both as a lawyer and educator; knowledge of successful written and oral communication at work; confidence to enact approaches to experiential learning and a capacity to continue learning through self- and peer-directed reflective processes, even after decades 'in-the-job'.

F

Growing the Business Practitioner: The nature and purpose of legal studies for the non lawyer

Ms Patricia Finlayson

Lyman Johnson explained the tenuous relationship between business people and the law in his paper, Corporate Law Teachers as Gatekeepers (2009). He draws upon the work of Milton Friedman explaining that 'executives must also conform not only to the law but also to rules "embodied in ethical custom"'. Recent global corporate collapse has demonstrated that while many business practitioners complied with the law, they did not embody the ethical custom of their time. The Global Financial Crisis (GFC) has caused business people, governments and educators to consider the nature of business education and how is serves the wider community. Of particular focus is the nature and extent of ethical education in our business schools. This paper explores the current nature of business education and suggests that future graduate profiles should include statements which reflect the specific behavioural requirements of graduates' workplaces. Students should be provided with the opportunity to experience and explore values in team learning situations, work integrated learning and significant projects. Teachers are challenged to create assessments which will measure student learning achievement and success in a broader business perspective. This will require a change in curriculum design to incorporate affective behaviours in business practice and embody an ethical framework reflecting society's growing expectations of a socially responsible business community.

Spinning the Wheel of Fortune: Can the common law or equity ever come to the rescue of the pathological gambler?

Ms Susan Fitzpatrick

The recent unanimous High Court decision in *Kakavas v Crown Melbourne Limited* [2013] HCA 25 (5 June 2013) rejecting the claim that the Crown Melbourne Casino unconscionably took advantage of Kakavas' problem gambling raises a number of interesting issues. Of particular interest are the issues of the circumstances in which a casino's conduct will be treated as unconscionable and when an individual gambler's autonomy is sufficiently compromised for the

common law or equity to provide protection. This paper examines these issues and it explores the interplay between the various categories of law under which claims for pure economic loss of this kind could arise.

Religious Anti-Vilification Laws: Gatekeeping freedom of religion and freedom of speech in Australia

Associate Professor Neil Foster

Freedom of religion and freedom of speech, two fundamental human rights, intersect and may clash when the law prohibits 'vilification' of others on the basis of their religion, especially if the word is defined broadly enough to include mere offence or annoyance. The paper addresses the current state of religious 'anti-vilification' laws in Australia, and recent important appellate decisions on freedom of speech, to discuss whether current laws adequately provide an appropriate balance in this important area of public life.

G

Practicing the Study of Public Law: A skills based teaching and learning model for undergraduate law students

Dr Brendan Gogarty

This paper describes an award winning and cited program of practice based teaching in the core public law unit at the University of Tasmania.

The undergraduate practice based teaching model was developed over a four-year period as a response to directives by key national bodies to better equip students with skills for practice and ensure professional engagement as part of the undergraduate law degree. Students are lectured by both academics and practitioners and shadow ongoing matters in the courts. Assessment centres upon mooting, case management and firm-work.

The model is designed to, and evidence suggests it has succeeded in, improving student engagement and imparting a better understanding of the role, duties and responsibilities of the law student as a future legal practitioner, no matter what are of law they go on to practice.

This paper will: describe the undergraduate practice based teaching model; review the challenges and benefits arising from its implementation to date; and discuss how it might be used to deliver engaging, practice-focused delivery of other core law units.

'A Unanimous Tacit Complicity': Does Reproduction Inculcate Gatekeeping?

Mr Kristoffer Greaves

Greaves is interested in how lawyers who teach lawyers' skills at the post-graduate pre-admission stage engage in scholarly activities regarding their teaching work. This paper reviews recent literature around Bourdieu's 'reflexive sociology of law', and relates it to a current study focused on how Australian lawyers teaching lawyers' skills engage in scholarly activities about their teaching work. Existing literature proposes motivation and capacity of teachers to engage in

scholarly activities and schools' symbolic support and allocation of resources for scholarly work are critical considerations in this field. In this context, Greaves draws on Bourdieu and Passeron's theory of 'reproduction' in education and culture, Bourdieu's reflexive sociology of law (together with Dezalay and Madsen's recent comprehensive review of the latter work), to discuss whether teachers and schools are tacitly inculcated as 'gatekeepers'. Conversely, by drawing on de Certeau's theory of 'practice in everyday life', Greaves questions whether teachers adopt tactics that avoid or subvert a gatekeeping strategy.

'New' Approaches to Justice: Law teachers as gate keepers of non adversarialism

Mrs Judy Gutman

Negative comments about the efficacy, suitability and sustainability of the adversarial system have resonated from the judiciary, government agencies, lawyers and other stakeholders. In response to such criticisms, there has been an increasing emphasis upon non-adversarial approaches to justice and alternative dispute resolution (ADR). Proponents hold that these 'new' approaches to legal disputes will enhance justice in many areas and reduce negative factors such as the cost, time investment, delays, stress and disempowerment often experienced by those involved in the litigation process. What is the role of the law teacher in the context of the evolution of legal practice from the traditional adversarial model to a paradigm of justice that embraces a collaborative problem solving approach?

This paper considers a response to this question based on the recent introduction and development of practice-based courses now offered in Australian law school curricula.

H

The Under-development in Australia of the Doctrine in Kruse v Johnson

Dr Bede Harris

This paper examines the status in Australian administrative law of the rule in Kruse v Johnson, as it relates to the reviewability of delegated legislation. The paper starts by explaining how the case is used in the England to review delegated legislation on grounds of unreasonableness. The paper then examines its use in South Africa during the apartheid era, where it provided litigants with some success in challenging racially discriminatory subordinate legislation. Then follows an analysis of the narrow approach adopted by Australian courts to Kruse v Johnson, focusing on the recent decision of the High Court in Attorney-General (SA) v Corporation of the City of Adelaide. The paper then argues that courts in Australia ought to adopt a more liberal approach to unreasonableness of delegated legislation, given the not uncommon instances of questionable laws produced by local governments, and the fact that the extensive use of delegated legislative powers by the executive branch under anti-terrorism laws has significant adverse implications for civil liberties.

Diving into the Culture of Law: Lessons from legal literary masters

Ms Karina Heikkila

Through the ages, legal masters have implored the profession to develop and exercise advanced literary skills. From Aristotle and Cicero, to Cardozo and Posner, through to contemporary Australian former justices, the call resounds. However, Australian and international legal leaders have indicated that law's literary culture has begun to lose its way. Reigniting appreciation of the benefits of a literary approach is a challenging goal in our 'twitterised' world. It appears that law school curriculums are necessarily overloaded with technical legal subjects. It seems logical that law students should strive to assist each other in development of skills.

This paper recounts some established links between the effective practice of law and the associated benefits of a literary approach. These include deepened understanding and knowledge of the world, of literary techniques, of legal philosophy and of legal history which all positively impact upon practical lawyering skills.

As a law student, I believe that naturally, as part of a literary approach to the study of law and its beneficial consequences, students can arrive at a deeper appreciation of legal culture. In this way, lawyers and law students can more easily settle into, and become part of the culture of law rather than experiencing law merely as operational contributors.

Victoria University Law School supported my efforts to develop and run a pilot program of workshops entitled Improving Legal Literacy Through Literature. The aim is to continue to run these workshops and thus help develop and motivate future literary lawyers. The workshop feedback appears to demonstrate substantial benefits for students within participatory style, small workshops. Significantly, students have indicated interest in participating in a network group to continue to share our learning, to discuss study challenges applicable to literary skills, and to share and celebrate our efforts toward becoming literary lawyers. We now have a basis for our 'Future Literary Lawyers' network.

Using e-learning Tools to Open the Gate to Professional Skills Acquisition

Ms Anne Hewitt & Dr Matthew Stubbs

As a professional qualification, strict rules regulate the content of the law degree, and to be admitted into the profession law students must demonstrate their competence in a precisely articulated series of subjects. This has a tendency to prioritise the teaching of substantive legal material, often to the detriment of the development of fundamental professional skills.

However, in their role as gatekeepers to the legal profession, there is an imperative for legal academics to ensure that law students are given the opportunity to develop legal skills as well as legal knowledge. In recent years, this has become increasingly important as it is necessary to demonstrate to professional accreditation bodies and government quality authorities that students are acquiring Threshold Learning Outcomes (TLOs).

Accommodating the competing demands to teach substantive legal material required for admission and develop students' skills is often difficult, especially given the subject-specific focus of the law degree at present. In addition, skill development must meet student needs for flexibility of timing and approach—by being available whenever needed and being adaptable to differing rates and modes of learning—and be efficient.

In 2013 the presenters attempted to reconcile these demands by developing interactive, online learning experiences which contribute to skills development across a LLB program. It is hoped this project will facilitate appropriate scaffolding of skills learning throughout the degree, ensure students can access the skills training they need when they need it, and thereby increase both student engagement and the student experience.
This presentation will introduce the skills development program, and discuss the lessons that the presenters have learned about using e-learning tools to open the gate to professional skills acquisition.

Retirement Savings and Gender: A transgender comparison

Dr Helen Hodgson

The issues associated with low levels of retirement savings for women are well established. This study examines the extent of the problem in Australia and New Zealand and investigates the primary causes of the issue.

The paper commences by providing background information on the Australian and NZ policy arrangements, in order to establish the contextual environments for the following discussion and analysis. In particular, whereas the Australian three pillar approach relies extensively on a mandatory retirement savings approach, with the Age Pension being means tested, in NZ the Age Pension is universal and non means tested, and there is no mandatory superannuation system. In both countries voluntary retirement savings are encouraged through subsidies and, in Australia, tax expenditures.

We then outline the problem and provide data relating to the extant differences in retirement savings accumulated by men and women in each country, as well as the OECD. We go on to examine a range of tools that have either been implemented in other countries or recommended as potential options for addressing the different levels of retirement income savings among men and women and analyse the appropriateness of each of these tools in the Australian and New Zealand environments, making recommendations for future policy.

There are several reasons why the gender gap is not yet as apparent in NZ as Australia. The Australian mandatory superannuation system is based on earnings, thus the gender gap in wages is continued into retirement; the role of the Age Pension differs between the two systems; in NZ tax incentives are not generally used to influence taxpayer behaviour and finally the NZ system has been in operation for a shorter period than the Australian system, thus the effect of the gap is still emerging.

Despite these differences, however, we argue that retirement income policy in both countries must address the gender gap to reduce poverty rates among older women.

Reframing Human Rights in Sustainable Development

Dr Laura Horn

Environmental issues are increasingly complex and difficult to resolve. Human rights may provide an avenue for individuals to gain protection against damage caused by environmental

degradation. At the Rio+20 United Nations Conference on Sustainable Development (Rio+20 Conference) in June 2012 a number of human rights were canvassed. 'The Future We Want' is the agreement of 193 member states of the United Nations who were represented at the Rio+20 Conference. The final version of 'The Future We Want' focusses on poverty eradication and discusses many important human rights including access to food, water, health, employment and education as well as the procedural rights to participation and access to information. This paper explores how human rights can be reframed in sustainable development as a possible approach to addressing environmental problems. One commentator who has adopted this approach is Linda Hajjar Leib in her book, *Human Rights and The Environment: Philosophical, Theoretical and Legal Perspectives*. This commentator outlines a theory of reconfiguring the human rights system in a way that is inspired by sustainable development. The question proposed in this paper are whether placing human rights in the context of sustainable development provides a useful framework for addressing environmental problems in international environmental law.

J

'If You Can't Beat Them, Join Them': Appropriating vocationalism in the law school

Professor Nick James

A ‘vocational’ approach to legal education is one that emphasises the importance of developing practical legal skills, drawing connections between legal knowledge and legal practice, and ensuring graduate employability. The vocational approach has in recent years re-emerged as one of the dominant approaches to teaching law, to the extent that for many academics it is taken for granted that the primary purpose of a law degree is to prepare students for a legal career, whether as a legal practitioner or as some other worker with legal expertise. Vocationalism within the law school is not, however, unopposed. Vocationalism’s critics point to other, equally valuable (perhaps even more valuable) roles played by legal education, such as preserving the rule of law, or identifying and addressing social injustice, or preparing students for lifelong learning and lives as broadly educated and responsible citizens.

Given the value to university administrators of law schools as mechanisms for attracting high quality students to the institution, the vocal demands by students for qualifications that will lead to salaries generous enough to justify their university fees, and the ever closer ties between the academy and the practicing profession, the juggernaut of vocationalism is unlikely to be stopped, or even slowed down, by its critics.

This paper presents and critically evaluates the argument that vocationalism’s critics should instead seek to appropriate vocationalism’s momentum to achieve their own objectives. They should embrace the notion that law schools must focus upon preparing their students for legal careers, and participate in—and thereby influence—vocational initiatives with a view to creating law graduates who are not only ‘work ready’ (thereby satisfying students, employers and university administrators) but also broadly educated, committed to the rule of law, and/or concerned about social justice.

K

The Gatekeepers of the Law: Revisiting the roles of academics, students and the profession

Dr Leonie Kelleher & Mr Hubert Algie

Before the law, there stands a guard. (Kafka)

This paper examines two innovative law teaching concepts. The first, an innovative advocacy program, led by students, encouraged outlying students. Slotting into a university with no established mooting/advocacy program, students led the program as both educator and learner. Students negotiated involvement by the profession for individual workshops, providing face-to-face networking. A critical safe 'padded wall' environment, protecting and motivating students, allowing cross-fertilisation of ideas and improved learning outcomes. Non-competitive and non-judgemental, the program was popular with students whose passion for the law outshone their academic results. They shared an anti 'spoon feed' attitude, seeing a direct path from improved skills to addressing injustice. In reversing the roles of educator and student, its unique approach interlinking students, academics and professionals allowed new freedoms.

The second concept was an 'on country' Indigenous Clinical Legal Practice program. Students 'acted for' an Indigenous Elder located in remote Central Australia—the 'client'. Initiated, designed, taught and assessed by the Aboriginal Elder, the 'lecturer' merely shaped the Elder's approach to curriculum essentials. The first of its kind in Australia, the Aboriginal was the gatekeeper. The 'on country' experience was fundamental to legal learning. A student assessed Brief to Counsel ultimately formed a base for an actual Federal Court test case. The case gave hope to the 'client' that the legal system might actually help him and his People.

These two law teaching innovations 'played' with 'gatekeeper' notions. Teaching was led by student and Indigenous 'client' respectively. Outcomes demonstrated the power of student energy when placed proximate to injustice. Law students have a powerful and unique window. Re-imagining the legal knowledge hierarchy can lead to creative new approaches involving minimal university expense or effort turn them into vital conduits of hope. Both programs demonstrated the value to student learning that has immediacy to 'real life' professional life.

Preparing Students for Rural and Regional Legal Practice: Creating 'place conscious' law curricula

Dr Amanda Kennedy

This paper will present the outcomes of a curriculum development project which sought to examine what role the undergraduate law curriculum could play in better preparing students for legal practice in rural and regional areas. Aligned with the theme of this year's ALTA conference, this paper presents a curriculum redevelopment project which may be utilised to shape the ways in which students understand the law and what it means to be a lawyer.

Whilst practice as a lawyer in rural and regional areas can be rewarding, and accompanied by a range of lifestyle benefits, it can also be professionally and personally demanding. Students however are insufficiently prepared for this unique career context, with the typical undergraduate law curriculum oriented towards substantive content rather than the 'places' in which the law plays out. Where acknowledgement is given to 'place', anecdotal evidence suggests that the

focus is generally upon metropolitan practice, with rural and regional contexts often overlooked. With the recruitment and retention of lawyers in rural and regional Australia emerging as a significant issue, it is timely to investigate what role the undergraduate law curriculum might play.

Research into the recruitment and retention of professionals in other disciplines indicate that the provision of a place-based discipline-specific curriculum at the tertiary education level may assist in better preparing students for rural and regional professional roles. The curriculum redevelopment project discussed in this paper highlights how place may be incorporated within the undergraduate law curriculum, sensitising students to the rural and regional context, and developing the necessary skills for overcoming challenges and taking advantage of opportunities which may arise. The paper will demonstrate how law teachers, through the adoption of a more rurally and regionally-inclusive curriculum, can present to students a broader concept of what it means to be a lawyer, interrogating the influence of location upon the professional and ethical landscape of the lawyer's role.

Changing Patterns in China's Participation in the WTO Dispute Settlement System: Lessons and implications for international court systems

Simon Kozlina

The paper examines the evolution of China's participation in WTO dispute settlement and argues that change has been due to a changing understanding of what can be achieved through the dispute settlement system. In this regard, the paper supports the recent work of Mercurio and Tiyagi ('China's Evolving Role in WTO Dispute Settlement: Acceptance, Consolidation and Activation', 2012 3 European Yearbook) although on different grounds. This paper adopts a more 'constructivist' approach to the analysis of China's dispute settlement practices in line with the work of Ford (*A Social Theory of the WTO: trading cultures* (Palgrave, 2003) and Rajagopal. (International Law from Below: development, social movements and third world resistance (Cambridge, 2003).

The paper concludes by noting the consequences of China's behaviour for the future of WTO dispute settlement, in particular that the dispute settlement process continues to be the small pinprick of hope for the WTO's continued relevance but that this 'hope' is contingent on continuing levels of 'sufficient' compliance by Member States.

L

Section 46 of the Competition and Consumer Act 2010 (Cth): The need for change

Mr James Laman & Dr Marina Nehme

Section 46 of the Competition and Consumer Act 2010 (Cth) ('CCA') is concerned with the anti-competitive consequences of corporations who misuse their market power for an illegal purpose. This is one of the crucial provisions in the CCA as this section aims to protect consumers. However, the Australian Competition and Consumer Commission ('ACCC') has faced a number of difficulties enforcing this provision. In fact, in 37 years, only 31 alleged breaches of s 46 have been pursued by the ACCC and its predecessor the Trade Practices Commission ('TPC') through either civil or administrative actions. This is despite the fact that, on a number of occasions, s 46 was one of the top five conducts that have led to complaints lodged by third parties with the ACCC.

Consequently, this paper first considers s 46 of the CCA (formerly, s 46 of the *Trade Practices Act 1974* (Cth)) and the way it has been enforced by the ACCC over the years. It then proposes to make alterations to the provision to ensure that the section takes into account workable competition and a broader view of markets. The authors believe that such a move will enhance the application of s 46 and may therefore benefit the wider community.

Re-tooling: A property lawyer teaches interpretation

Ms Patricia Lane

Recent debate about the place of legal interpretation as a subject in law teaching has prompted some universities to introduce the subject of Interpretation as an elective, or in some cases, a compulsory part of the curriculum. Who teaches these courses? And what sort of shift in perspective is necessary if lecturers are to be able to 'pick up' legal interpretation and teach it as a coherent subject? This paper discusses the ways in which Interpretation is not like other law school subjects; the thrills and pitfalls of teaching it as an elective, and the issues arising if teaching legal interpretation is 'embedded' in the compulsory law school curriculum.

An Exploratory Study on the Perception of Minority Shareholders' Legal Protection in China and Hong Kong

Dr KL Alex Lau, Dr Angus Young & Danny Ho

La Porta et al (1998) found that ownership concentration is exceedingly high in 49 countries. On average about half of a listed firm is owned by the three largest block shareholders, due to weak legal protection of shareholders. The latter reduces agency problems (La Porta et al. 2000). They suggested an effective way to reduce opportunities for expropriation by improving legal protection of outside investors or minority shareholders' rights.

'Plays Well with Others': Examining the different types of small group learning approaches and their implications for law student learning outcomes

Mr Julian Laurens, Associate Professor Alex Steel & Ms Anna Huggins

'Group work' provides deep learning and professional skills development opportunities. However these benefits are not always realised for law students. An issue is that what is meant by 'group work' is not always clear, resulting in a learning regime that may not support the attainment of desired attributes.

This paper describes different types of 'group work', each associated with distinct learning outcomes. It suggests 'group work' as an umbrella term to describe these types is confusing, as it provides little indication to students and teachers of the type of learning that is valued and is expected to take place. 'Small group learning' is the preferred general descriptor.

Identifying different types of small group learning allows for a structured approach to its implementation across a law program. Different types of small group learning are more appropriate at certain stages of the program. This structured approach is consistent with social

cognitive theory—with the guidance of a supportive teacher students develop skills and confidence (self-efficacy) in one type of activity before participating in another. Student self-efficacy in turn influences their motivation and persistence.

Are There Sign Posts at the Entry Gate? How utilising graduate qualities, threshold learning outcomes for law and inherent course requirements might impact on satisfactory completion of a law course

Ms Tania Leiman

Graduate qualities are those that a university expects will have been developed by their graduates by completion of their studies, and shape more detailed educational aims and learning outcomes specified for the law degree and in in turn each topic within that degree. They commonly include a 'personal development' graduate attribute.

The Threshold Learning Outcomes [TLOs] for the Bachelor of Laws degree state six expected minimal threshold standards of performance for law graduates, adding an additional layer to more generic institutional graduate qualities, and will impact on the design of curricula and the structure of learning environments and activities. They include TLO 2 Ethics and professional responsibility and TLO 6 Self-management.

Increasingly, universities are also developing statements of inherent course requirements (fundamental skills/abilities students must be able to achieve to demonstrate essential learning outcomes of the course) to enable students to make informed decisions about their capacity to meet course requirements prior to enrolment in the course. Inherent requirements may be broadly categorised as: observations skills, communication skills, motor skills, behavioural and social skills, intellectual skills. For law students, the behavioural and social skillset is likely to relate to the fundamental skills and abilities necessary to develop any 'personal development' graduate attribute and both TLOs 2 and 6.

Where students do not have the core behavioural social skills necessary to allow them to deal with uncertainties, manage stressful and emotionally traumatic situations, recognise personal limitations and when and where to see assistance or professional advice and support, student may find that they are unable to complete their law degree, particularly where competency in practical legal skills is a compulsory requirement of that degree.

This paper explores whether the graduate qualities, TLOs for Law and inherent requirements may be utilised to educate students about the challenges they face in choosing to undertake law studies, and what signals we send our students about the skills they will need as future legal professionals.

Sounds and Silence: Contemporary Australian judicial biographers at work

Ms Katherine Lindsay

Whilst there has been no strong tradition of biography of High Court Judges in Australia, the last two decades have seen the publication of several important biographies of Sir Own Dixon, Sir Ronald Wilson, Mary Gaudron and Michael Kirby.

This paper explores the data from extensive interviews with Philip Ayres, Toni Buti, Pam Burton and AJ Brown, about the biographers' motivations, methods of work and in depth of researching and writing a judicial biography. In analysing the experiences of contemporary judicial biographers, various hypotheses about the roles of judicial biography in legal education and legal scholarship will be explored.

Teaching Legal History 'Backwards' Through Case Studies

Ms Katherine Lindsay

Legal History has frequently been taught in the common law world as the history of the development of causes of action in the English Royal Courts. This form of legal historical study is well-supported by resources and scholarly tomes (eg the works of Baker). Similarly, there are works which support the teaching of Australian legal history.

In the 21st century, there are fundamentally two types of law student who might seek out an elective course in Legal History: the historically aware and the blissfully unaware. In devising a legal history elective to meet the needs of this heterogeneous student base, I drew on suggestions made by an American legal educator in 1965 (M S Mason (1965-66) 18 J Legal Educ 156), the graduate attributes statement for the Newcastle LLB (requiring graduates to understand and be capable of contributing to the process of law reform), the work of Angela Brew on research in the undergraduate curriculum (Brew ALTC 2010), and my own great passion for 19th century political and social history, to craft a series of case studies, complete with a sourcebook of primary legal sources to illustrate core examples of 19th century law reform. Integral to the success of the legal history elective in this form is the 'Legal History research circle', in which students and teacher together explore the diverse dimensions of statutory and common law reform.
This paper explores the development of the legal history curriculum, its implementation and evaluation by students through the lens of 'legal history teacher as gatekeeper'.

(Ab)using the court system: helping our students to get it right

Ms Oyiela Litaba

Ethical and professional conduct issues related to abuse of process are a key element in a curriculum which seeks to develop in our students 'an ability to recognise and reflect upon, and a developing ability to respond to, ethical issues likely to arise in professional contexts' TLO 2 (b).

How best can we assist students to move beyond the first step of recognising the need to prevent court processes being used for injustice?

This paper explores the use of a role play exercise to provide a forum for students' wider assumptions, expectations and experiences (about client and law firm motivations) to be made explicit, to be examined and discussed. The exercise has been used to engage large cohorts in discussion, reflection and decision making in a supported environment.

The open ended nature of the activity is intended to allow students to make connections between various areas of study enhance their ability to exercise professional judgment.

A Transnational Law Course: Why and how?

Professor Vai Io Lo

In view of an increasingly globalised legal market, this paper argues that a transnational course introducing international and comparative law should be incorporated into the LLB or JD curriculum. It explores the reasons why it is judicious to give law students some exposure to non-Australian laws and what innovative pedagogical methods can be used to achieve the desired outcomes.

Telling it Like It Is: Oral presentations and peer assessment for business law students

Mr Rocco Loiacono

As academics we are constantly encouraged to devise assessment tasks that engage students. Much research has been conducted into devising assessment that is FOR learning, rather than OF learning. Such research suggests this can be best achieved by giving students regular, low-stakes assessment, which aids both the student and teacher in measuring progress and gives an opportunity for more feedback to be provided to the student, thereby creating a more inclusive learning environment.

In three business and taxation law units over the past three years one assessment task that has been utilised is that of an oral presentation which is assessed by peers as well as the tutor. One of the reasons this assessment was chosen was that assessing and being assessed by peers reflects the realities of the workplace: peer assessed presentations are therefore useful both as a form of summative assessment and as a means to develop work-ready graduates. Assessing someone else can also be one of the best ways of learning about ourselves.

A study into perceptions of this approach was undertaken to ascertain if students believe it creates a more inclusive learning environment for them. This study suggests that students (as well as staff) strongly believe that their needs are better served by having regular, low-stakes in-class assessment such as an oral presentation. The outcomes of this study are transferable across many disciplines.

Indigenisation of the Curriculum: Current teaching practices in law

Dr Amy Maguire

Indigenous engagement is one of the strategic priorities of the University of Newcastle, Australia. The University is committed to developing pathways for academic attainment for Indigenous students, embedding Indigenous knowledge systems into programs, fostering commitment to social justice in our students, and developing the cultural competence of staff and students.

The Indigenisation of curricula is essential in signalling to students that Indigenous-related content and perspectives are important in learning about the law. By integrating Indigenous material throughout the law curriculum, we can shift the expectations of students and teachers regarding the intellectual boundaries of their fields of study, and challenge them to critique the relationship between the Australian legal system and Indigenous people. These actions can promote curricular

justice for Indigenous students, and meet our wider responsibility of educating all students for social justice and anti-racism.

In this paper, we review literature pertaining to the Indigenisation of curricula. Key themes include the need to take a whole-of-curriculum approach to the treatment of Indigenous issues, and the value of introducing Indigenous perspectives to unsettle assumptions embedded in the teaching of Anglo-Australian law.

We also present the findings of our initial quantitative study, which explored the extent to which Indigenous-related content and perspectives are currently incorporated into the Newcastle Law School curriculum. Our study involved interviews with teaching staff, who reflected on the degree to which they deal with Indigenous issues, and the teaching methods used to convey Indigenous-related content.
Finally, we raise some qualitative questions regarding the Indigenisation of curricula. This allows us to reflect on our responsibilities as teachers of Indigenous-related material, the scope we have to make distinctive contributions to the Indigenisation of curriculum, and the ways in which we may enhance our capacities. As gatekeepers for student learning, we represent the Indigenisation of curricula as a key means of broadening the scope of student enquiry, and reinforcing the centrality of justice in teaching and learning about the law.

Mediation: A panacea for the resolution of tax disputes in New Zealand?

Associate Professor Andrew Maples

The current New Zealand (NZ) tax disputes resolution process can trace its origins back to a recommendation made by the 1994 Organisational Review Committee of the Inland Revenue Department. The process, which was introduced with effect from 1996, has been subject to a number of reviews. Despite various changes, in 2008 the New Zealand Institute of Chartered Accountants and the New Zealand Law Society in a joint submission raised concerns about taxpayers (especially small taxpayers) being 'burnt off' because of the costs involved in complying with the formal disputes resolution process (along with the potential costs of litigation). In response to these concerns in 2010 changes were made by Inland Revenue, including the introduction of facilitated conferences. A number of other suggested reforms, however, including the use of mediators, have not been adopted to date.

In response to calls for the incorporation of mediation within the tax disputes resolution process and given the limited NZ literature on this issue, in Jone and Maples (2012) considered the possible features for a tax mediation regime informed largely by a documentary analysis of the experiences of the USA and Australia with tax mediation.

This paper outlines the results of a study undertaken to refine the features of Jone and Maples proposed NZ tax mediation regime. Specifically, utilising a sequential mixed methods approach, consisting of a quantitative survey questionnaire followed by a qualitative focus group interview, feedback on their proposed regime was sought from selected practitioners (experts) in the tax disputes resolution and mediation fields. This study finds that the most important aspect of the refined proposed tax mediation regime is the inclusion of a mediator that is independent of both parties and moreover, that the mediator is foremost trained and qualified in mediation as opposed to being a tax specialist.

The Role of Theory in Legal Research

Associate Professor Scott Mann

There is a tendency amongst legal research methodologists to distinguish empirical or doctrinal research in law on the one hand from theoretical legal research on the other, as two different, exclusive and independent sorts of pursuit.

The idea of the possibility and legitimacy of such separation itself derives from a particular theoretical perspective, a positivistic theory of the essential nature of law.

This paper develops a critique of this theory in favour of an alternative, realist, perspective upon legal theory and legal research. The paper moves from considerations of common underpinnings of all forms of academic research, to considerations of how different theories of the essential nature of law inform and guide legal research.

Cognitive Realism and Real World Learning Experiences as a Gate Way to Practice

Ms Anne Matthew & Professor Des Butler

Blended learning initiatives targeting simulated real world learning experiences offer a valuable mechanism for students to experience what it is like to be a lawyer. It can be difficult and costly to replicate the real world of the lawyer for law students, though it is apparent that there are considerable advantages to exposing students to what it is like to be a lawyer early in their studies. Where cost efficiencies can be achieved via the use of machinima in real world learning, questions arise as to whether simulated learning environments are an appropriate platform for authentic learning. How real does it have to be? What must we do as gatekeepers to ensure that the learning is sufficiently cognitively real to for such activities to have sufficient real world relevance to be meaningful and effective learning experiences?

At the QUT Faculty of Law, second year students studying the core Trusts law unit undertake an item of assessment in which they receive instructions for the assignment in the form of a brief to counsel. Facts are presented in various formats, including letters, e-mails, newspaper articles and Second Life machinima videos. Students use this information to construct a legal advice and a negotiation plan which aims to address the complex interpersonal relationships and resolve trust law related conflicts among family members. This paper explores how questions of cognitive realism in simulated learning were addressed and answered in the development and evaluation of this assessment strategy.

Clarifying the Object of Directors' Endeavours: What Australia can learn from the United Kingdom

Dr James Mayanja

The law currently governing the duties of directors in Australia does not provide a reliable guide regarding the critical question as to whose interest directors are bound to promote when they exercise any of the powers conferred on them. Presently, actions taken by directors may be sustained by the courts if they are shown to have served the interests of the company as a legal entity. In other instances, they may be upheld if it is established that they were taken for the

benefit of the members of the company. At the same time, there are suggestions that in exercising their powers, directors must not be guided solely by the interests of members or the corporate entity but must also consider the interests of other stakeholders such as employees, suppliers, consumers and the community generally. Because of this, current law creates a degree of uncertainty as to what constitutes a permissible exercise of directors' powers. This is undesirable. The uncertainty so created renders it extremely difficult to challenge suspect director actions except in cases of patently egregious conduct. There is thus need to reform the law to remove this conundrum. In undertaking this exercise, Australia could draw some helpful insights from reform initiatives implemented in the United Kingdom. Very recently, that jurisdiction introduced reforms to its scheme of law governing the duties of directors. Among other things, these reforms impose a direct obligation on directors to promote the success of the company. Very importantly, the new governing rules make it explicitly clear that in exercising their powers, directors must seek primarily to advance the interests of the members of the company. This is a very significant development. It removes any doubt as to whose interests directors' actions must be aimed at promoting. To the extent it provides very clear guidance on this crucial issue, this measure provides a very useful model that Australia would be well advised to adopt.

Engagement of Distance Law Students Through the Learning Management System: Core and elective courses

Dr Noeleen McNamara

The Learning Management System (Moodle) acts as a 'gatekeeper' for the interactive course materials in my law school. Like many others, my law school mandates a minimum level of staff involvement with Moodle, which includes uploading some form of lecture recording and engaging in various other activities (discussion groups, formative assessment items and the like).

Over the years that I have been teaching Contract Law and Environmental Law to law students studying in distance mode, students have provided anecdotal feedback about the utility, or otherwise, of such resources. Yet I remained unsure just how many distance law students were listening to these lectures and reviewing the formative assessment exercises. Whilst recognising that students have different learning styles and needs, I was interested to discover whether students who listened to the recorded lectures performed better than those students who did not listen to lectures or otherwise engage with the content on Moodle.

Accordingly, I conducted a quantitative audit of the use made of a number of tools which were placed on the Moodle site for my courses (recorded lectures and formative assessment items) to determine student use of these resources. This audit was completed for Contract A, Contract B and Environmental Law.

My presentation will report on the findings of this audit. I will compare the level of use made of recorded lectures and formative assessment items with final results achieved in the courses to determine whether there is a correlation between a high level of engagement and better results. The presentation will also compare and contrast levels of engagement both between Contract Law A and B (core first year law courses). Finally it will compare results between these core courses and Environmental Law (a second year elective course). Relevant conclusions about engagement of students and results will be drawn.

Should Law School Focus on the Discipline or the Profession of Law?

Dr Michael McShane

Disciplinary and professional knowledge are not necessarily identical: the values and beliefs on which the discipline of law is constructed, and the curricular practices to which it gives rise, can be seen as inimical to the development of the skills, values and dispositions likely to be required of future professionals. Law school curricular privileges conceptions of law as intellectual discipline and assumes a distinction between the theoretical knowledge dispensed at the academic stage of legal education and practical knowledge acquired in post-LLB 'vocational' or CPD courses. Despite differences, they all share the view that knowledge acquired in a formal setting can be applied to solve problems arising in practice. Research in other professional fields presents very different views of professional learning and knowledge

Law School's conception of knowledge is contrasted with an epistemology of practice or praxis in which theory guides/ guided by experience. Here, a disposition towards reflection is valued: i.e., one who reflects on theories informing practice. While this heuristic has been developed in other professional contexts such as education and nursing, little attention has been paid to it in the context of legal education where skills are framed in terms of deference towards authoritative sources of knowledge and modes of reasoning—exemplified in the hegemony of IRAC, banking modes of teaching and summative assessment. Even those who write from a position of critique and ground the law school in a sociological context frame criticisms at an intellectual level that co-exists 'with uncritical acceptance of adversarialism as the best approach to conflict resolution'.

The paper critiques the view of legal education inherent in curricular practices: it should be oriented towards the needs of professional practice and informed by a conception of practice that reflects a shift from an adversarial to a settlement-based culture. ADR is seen as a vehicle to further the values and skills required of the reflective practitioner such as interviewing, counselling and negotiation.

Exploring the Use of Video in Tutorials for Commercial Law

Ms Clare Miller

RMIT University's Commercial Law Group is seeking to improve the teaching and learning experience of Commercial Law for non-law students by offering a blended teaching and learning experience. The RMIT Commercial Law course has a large cohort of up to 1,000 students per semester, many of whom are international students. Each week 30-40 face to face tutorials are conducted. Tutorial attendance is sporadic for some students depending on study preferences and life circumstances.

This year, for the first time, Commercial Law students were invited to participate in a video tutorial. The video took the format of a discussion between two experienced commercial law teachers. After the video was viewed by the students, they were encouraged to respond to four questions on the RMIT discussion board. The questions were designed to assist students with their learning of Commercial Law as well as to encourage reflection on the learning experience. Students were asked to identify legal principles to apply to a hypothetical problem and feedback was sought on the utility and efficacy of the video tutorial.

This paper outlines the blended learning design developed by the Commercial Law Group and the findings to have emerged from student responses to the Video Tutorial. The paper considers how

the following consistent themes to have emerged from student responses can inform a blended learning and teaching experience and improve learning and teaching excellence:

1. Self Paced Learning
2. Engagement
3. Feedback / Dialogue
4. General Preferences for Learning
5. Future Delivery—what do students want?

As well as exploring the above themes in context to the teaching and learning of Commercial Law for non-law students, an analysis of relevant literature in relation to the student responses to the Video Tutorial is provided. This in turn supports this paper's conclusions on blended teaching and learning for Commercial Law to non-law students as well as broader preferences and utilities with respect to blended learning in general.

Preparing Students for Legal Practice: How law teachers can assist students to develop teamwork and collaboration skills

Ms Moira Murray & Ms Anneka Ferguson

Our research on experiences and learning environments encountered by students in their undergraduate degrees (from over 30 law schools in Australia) indicates that law students are likely to have become accustomed to working independently without much opportunity to collaborate with their peers. This may lead students to believe this is how they will operate in legal practice. While there is no denying the degree of individual responsibility a lawyer has in legal practice, it is simply not true that lawyers never collaborate. Most lawyers practice in firms where increasingly, work is shared among a team of lawyers and other professionals.

In preparing students for legal practice, how can law teachers assist students to develop teamwork and collaboration skills? This presentation will look at the online Professional Practice Core course (PPC) taught by ANU Legal Workshop that is based on teamwork and collaboration.

In the PPC, students work wholly online in teams or 'virtual law firms'. Some of the aims of the PPC course are to encourage students to learn to work collaboratively and to recognise and utilise the skills and strengths each student brings to the team.

This presentation will focus on:

- student expectations/experiences of team based learning and dealing with conflicts within these teams upon entering their course
- team dynamics and the role they play in team based learning
- the advantages and disadvantages of teamwork in the online environment
- facilitating collaborative team learning
- the impact of team based learning on perceptions of professionalism and
- the impact that team work has on student learning, attitudes and experience.

The presentation will conclude with a consideration and discussion of ways to enhance the positive educational outcomes that can be achieved through good teamwork.

N

Dispute Resolution Techniques Towards the Internal and External Security Threats of Pakistan

Ms Farah Naz

Pakistan faces both externally and internally security threats. The immediate ones are water issues, Kashmir & Siachin disputes, and terrorism & extremism. The post 9/11 developments are also the major benchmarks that have shaped Pakistan's security calculus. Being U.S. ally in the Global War against Terrorism has allowed Pakistan not only to re-shape its domestic and foreign policies as well as has accentuated into security vulnerabilities. This research aims to understand and explain the relationship between internal and external accounts of security and to explore how the interplay between these two dimensions shapes, distorts and drives Pakistan's foreign policy. In this regard a comprehensive research analysis of immediate threats will be conducted to find out the core reasons behind the big powers strategic interest in the region and its impacts up on the stability and security of Pakistan.

The extent of terrorism & extremism is always considered as a fatal threat for the security and integrity of a state. It is of great significance to identify whether extremism is innate in Pakistani society or is a product of different socio-political and geo-political factors.

The present study explores the domains and scope of immediate security threats to Pakistan and points out dispute resolution techniques to overcome the existing issues. The focal point of the study lies in the securitisation of the military, the political structure, the economy, the society and the environment as it is essential for the stability and development of Pakistan.

The Australian Charities and Not-for-profits Commission

Dr Marina Nehme

The Australian Charities and Not-for-profits Commission ('ACNC') is the newly established Federal regulator for the not-for-profits ('NFP') sector. It commenced operation on 3 December 2012 after a decade of inquiries and recommendations about the establishment of an independent 'one-stop-shop' regulator for the sector. The introduction of this new regulator is a move that recognises the unique and distinctive role that charities and NFP organisation play in Australia. Prior to this date, there has not been a single institution responsible for the regulation of the NFP sector.

This paper considers the powers available to the ACNC to determine if this regulator has the necessary tools to enforce the law it administers. As a result, this paper examines the investigatory powers available to the ACNC and considers the enforcement powers of the new body. The paper then considers if the powers of the ACNC are sufficient to enable it to perform its role as the new Federal regulator of the NFP sector effectively.

O

Opening the Gates to Legal Research for Foreign Students: Teaching comparative constitutional law

Imtiaz Omar

This paper examines the necessity of overcoming barriers commonly perceived to be methodological problems in research on comparative constitutional law by overseas students interested in study in Australian Law Schools. It proposes that methodological problems encountered in teaching on themes of comparative private law in common and civil law jurisdictions do not necessarily apply in the areas of constitutional law. The themes of comparative constitutional law in both common law jurisdictions are, for example, powers and functions of the executive, intra-executive relationship, legislative powers, and the extent of judicial review of executive policies and parliamentary legislation. Themes of comparative constitutional law of common law and civil law jurisdiction would also include issues of fundamental rights of individuals and the extent of their protection through the judicial process. Thus, for example, it is possible to have overseas students pursuing PhD research in Australian Law Schools on themes of comparative constitutional law without encountering some of the inherent methodological difficulties in research on comparative private law.

P

Environmental management of mining activities in the exclusive economic zone and continental shelf of New Zealand

Associate Professor Kenneth Palmer

The presentation will assess the evolving legal position in New Zealand regarding regulation of deep sea mineral exploration and mining. The obligations under international law contained in the United Nations Convention on the Law of the Sea 1982 (UNCLOS) are outlined. The former obligations under New Zealand law are considered, with reference to the Greenpeace (Petrobras) case challenging the grant of an exploration permit in the exclusive economic zone.

The subsequent reform of the law under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (NZ) is assessed. The Environmental Protection Authority becomes the primary decision-maker in granting marine consents, in place of the Minister of Energy. The purpose of the Act to achieve sustainable management, and scope of the regulatory powers, are analysed. The provision for public participation is noted. The criteria for decision-making is addressed. Comparative reference is made to the scope of regulation and procedures of the International Seabed Authority. A conclusion is offered as to the adequacy of the EEZ legislation.

The paper is an update of an article by Kenneth Palmer ‘Environmental Management of Oil and Gas Activities in the Exclusive Economic Zone and Continental Shelf of New Zealand’ (2013) 31 Journal of Energy and Natural Resources Law 123.

You are my Hand Grenades: Experiences of an Aboriginal constitutional law lecturer

Mr Darren Parker

The study of constitutional law is rigorous and seminal. Hitherto, education and scholarship in constitutional law is viewed as highly rewarding with a plethora of positive attributes. These are certainly sentiments which the author supports and endorses. Yet, wretchedly, it is possible to teach law students our Constitution void of social context, as if in a vacuum. Additionally, and as wicked, it is possible to be taught constitutional law without reference to its obvious and on-going political background. However, the beautiful thing about a constitution is that when viewed as a foundational instrument of government and its structures, it can be truly regarded as a 'living document'. From such a vantage-point, the teaching of constitutional law becomes 'alive' with not only its text and convention, but with its actors and setting.

As an Aboriginal constitutional law lecturer the feeling of 'gatekeeper' is ever present. This is not to say that the feeling is oppressive or burdensome. Conversely, knowing that I do indeed control access allows me to teach our Constitution in ways that give meaning and context to that access. Furthermore, as an Aboriginal constitutional law lecturer, controlling access to our Constitution is framed by my heritage, remembering that Aboriginal people have had an adverse history with regards to 'gates'. But, this is not to say that in teaching our Constitution I relax on the 'law' and concentrate on the 'politics'. Not at all. Quite the opposite, as many of my students would attest. Nonetheless, what is taught is constitutional law as placed within its cultural, social and political settings.

The title of my presentation comes from a discussion with a past student, who asked; 'why don't you go into politics?' To which I replied; 'I feel I do more good teaching. You are my hand grenades. I fill you up with knowledge to explode at a later time.' This brief exchange represents what truly humbles me as a 'gatekeeper'.

Q

Cracking the Code: A checklist tool to complement CRAs for first year justice students

Dr Carol Quadrelli & Ms Nancy Grevis-James

It is well recognised in the literature on first year higher education that there is a need for Universities to provide further support and development in student learning skills and engagement. Assessment and feedback is an area with differing expectations and understandings among academics and students (e.g. AUSSE, CEQ). Consistency and explicitness in academic feedback is fundamental in assisting students in their transition to university education and learning.

This paper reports on the current progress of an 18 month project which sought to develop and trial an assessment checklist/diagnostic tool to accompany Criteria Referenced Assessment sheets for students within the School of Justice, Law Faculty, Queensland University of Technology (QUT). The purpose of this project was to provide clearer and more consistent feedback on student assessment, specifically academic skills; to increase student engagement with feedback enabling 'feedforward' into current and future assessment; and to assist students to make links to resources and university services. The research team anticipated the following outcomes: a tool that provides consistent feedback from tutors/markers; a tool that allows students to monitor their development in basic learning skills during their transition year; the ability

for tutors to identify early on specific skills students require further with, and the ability for tutors to direct students to support services for specific skills.

This project was funded by the Faculty of Law Teaching and Learning Grant scheme (QUT). The checklist/diagnostic tool was trialled across four units in the School of Justice (Law faculty) amongst an estimated cohort of over 600 students undertaking single and dual degrees. This paper presents an overview and results of the checklist trials drawing on data collected from students, Unit Coordinators and tutors in these units.

R

Why We Should Embrace Swearing in Our Teaching

Dr Heather Roberts

Swearing-in ceremonies are an important ritual in the life of a court, the judge and the community. The speeches made by the legal profession in welcome, and the judge in reply, reflect on the attributes of the ideal judge, the nature of the judicial function, and the controversies and challenges facing the legal system. As well, swearing-in ceremonies are a means to (re)introduce students to judges as individuals. This paper illustrates how swearing-in ceremonies can be used by law teachers to reinforce the human face of law, and explore assumptions about judges, lawyers and their place in Australian society.

Teaching Collaboration in Family and Child Law

Dr Nicola Ross

Increasingly, lawyers are required to collaborate with other professionals to resolve legal problems. The ability to 'collaborate effectively' is recognised in the threshold learning outcomes for law graduates. Current research supports the positive impact of interdisciplinary collaboration, which is profoundly important in some areas of law. For instance, collaboration between lawyers and social science professionals (social workers, psychologists) leads to better services provision for clients who have family violence, family law and child protection issues. Constitutional and organisational fragmentation of services in these areas is a significant barrier to effective collaboration. Differences in the education, knowledge, ethics and practices of professionals also make collaboration difficult. As the delivery of legal services evolves to meet the changing needs of the community, lawyers and legal educators need to reconsider 'silo' approaches to specialised professional roles. This paper calls for a greater focus in undergraduate education on collaborative practice, particularly in the area of family and child law. The author reviews current literature and discusses methods she has used to encourage collaborative practice amongst law and social work students enrolled in the combined discipline subject, 'Child Law' at the University of Newcastle. These methods are considered critically, with a focus on the challenges involved in teaching a combined discipline subject. The author argues that lawyers and other professionals who work in family and child law need to be able to understand, respect, and negotiate interdisciplinary boundaries in order to work effectively on behalf of clients. This is more likely to be achieved if legal educators start the ball rolling by working with academics in other disciplines to create opportunities for undergraduate students to engage in multidisciplinary collaborative practice.

S

Reinventing the Box: Teaching non-lawyers

Mr Andrew Salmon

The definition of 'Gatekeeper' is complex to assess when it comes to teaching non-lawyers. A law student learns one subject at a time, nominally four courses per semester at most. A non-law student may learn in one course, the basic fundamentals of the first 18 months of a law degree, in one semester.
The Box within which a course for non-lawyers course is designed and taught, has external factors that require contemplation on the part of the course designer. What is the purpose? Our starting point is not to produce lawyers that will represent clients. Even so, the industry that employs non-law graduates has an expectation of those individuals, and their understanding of the legal framework and systems that they will bring to their position as an employee or contractor.

So, who is appropriate to teach a non-lawyer? Where the typical law academic is a specialist, the standard law course for non-lawyers is generalist, encompassing multiple topics that would normally be taught by various, different law-school academics. At the same time, to successfully inculcate the understanding of the various topics as presented in such a course, requires a complex process of demonstrating to non-law students how those various topics overlap, interface, and present various options of looking at an issue with a legal mindset.

The role of the student and the faculty they belong to is important. Over the 7 years I taught Engineering Law, the cultural differences between ANU Colleges had a profound influence on the design and teaching of the course. Most importantly we need to understand the fundamental differences between a law student and a non-law student, how people think and how they approach problem-solving. And that, does not happen overnight. We need to pull part the box, and make a new one. Albeit, one without a lock, and preferably an open lid.

Revisiting Comparative Contract Law: An overview of its purpose, discourse and methodology

Mr Eliezer Sanchez Lasaballett

While it is undeniable that there are commonalities between the contract law of different legal systems, there is no agreement on how these commonalities should be identified. This paper reviews the literature of comparative analysis in contract law as a methodology that allows contrast of rules ordering the exchange of goods and services in various jurisdictions. Particularly, this paper examines nine leading comparative studies in contract law in order to provide an overview of the purposes sought, the discourses embedded, and the methodology adopted in it. As a result, this paper suggests that during last four decades comparative contract law has evolved from embracing a broad scope into a more focused approach. This process reflects a shift from (i) pursuing unification towards harmonisation, (ii) from seeking the 'ideal law' towards practical solutions, and (iii) from using legal-family-based taxonomies towards more flexible, inclusive systems of classifications. This process has resulted in comparative contract law undergoing a streamlining process that has channelled its scientific aspirations into legal education applicability.

Modernising Transfer Pricing Rules: As useful as moving the deck chairs on the Titanic

Dr Elfriede Sangkuhl

Multinational Enterprises (MNE's) are routinely under paying tax in Australia and abroad with devastating effects on government revenues and ability to provide services. The Australian tax laws with respect to the taxation of MNE's operating in Australia are about to be modernised. The modernisation is aimed at ensuring that MNE's operating in Australia pay taxes in Australia on profits made in Australia. The changed rules will not prevent MNE's from avoiding tax into the future. This article will demonstrate that the changed rules will be as effective at stopping tax shifting as moving the deck chairs on the Titanic was in avoiding an iceberg and sinking.

Surveillance Technologies and the Law: Where to from here?

Prof Rick Sarre

This paper reviews the impact of the juggernaut of surveillance technologies that are now pervasive throughout the world. It examines their technological capacities in detail, and highlights their enormous potential for those promoting crime prevention and crime reduction. On the other side of the coin, the intrusive power of these new technologies requires policies and laws that will hold accountable those who use (and abuse) them. Legislators and policy-makers in Australia must remain abreast of current developments, being constantly mindful of the difficulties that will challenge any society that keenly embraces mass surveillance without putting in place appropriate regulatory mechanisms and regimes.

Gatekeeping: Transdisciplinary legal practitioners as gatekeepers to the Family Court and law teachers as gatekeepers to interdisciplinary practice

Mrs Marilyn Scott

This paper examines the impact on Legal Education of the mandatory requirement in Family Law for a dispute resolution process to be genuinely attempted by parents before lodging a claim in children's matters and the changed role of lawyers in this context; the role of the Family Dispute Resolution Practitioner (FDRP)as gatekeeper to the Court; and the emergence of Collaborative Law and Interdisciplinary Collaborative Practice.

In the context of these recent professional advances the role of the Law Teacher as Gatekeeper to the development of transdisciplinary advocacy is examined.

Gatekeeper of Learning in the Digital Age

Ms Elen Seymour & Assoc Prof Michael Blissenden

Student centred learning has been at the heart of an education revolution for the last decade. The traditional lecture format gave way to student presentations, student self-assessment and student led discussions. Legal education, in recognition of the rapidly changing nature of laws, is moving away from a focus on content and towards a skills and values acquisition process.

More recently technological advances have given educators and their students portable tablet computers, 'smart phones' and easy to use software tools (or 'apps') that facilitate development of teaching tools for use inside and outside the class room. Furthermore advances online have led to Massive Open Online Courses ('MOOCs). MOOCs allow students anywhere in the world with access to the Internet to take subjects from any number of universities, including some of the elite Harvard, Yale and here in Australia ANU and Melbourne University.

However in the excitement of moving content and courses online a fundamental question must be asked: Who is the gatekeeper of knowledge? Is the role of the educator that of mere digital curator thereby allowing students to self-determine content, timing and breadth of learning. Or are virtual classrooms and online readings an upgrade in classroom technology masking a return to traditional pedagogy of teacher led and content focussed learning?

Unfair Contract Terms: The death knell for classical contract law theory and the rational consumer?

Associate Professor Alexandra Sims

New Zealand's recent substantive review of consumer law identified the lack of regulation of unfair contract terms as a major gap in New Zealand's consumer law. The resulting Consumer Law Reform Bill's provisions on unfair contract terms have been modelled on those contained in the Australian Consumer Law. Traders will bear the burden of proving that the terms are in fact fair by showing that they are reasonably necessary to protect the trader's legitimate interests. While the regulation of unfair contract terms is welcome, there are concerns in both jurisdictions that the courts may not give proper effect to the provisions and so would allow unfair contract terms to continue to be used. That is, there is a danger that the courts will fall back on the classical contract theory that contract law is not concerned about substantive fairness and will continue to work on incorrect assumptions about consumers' behaviour. The courts must accept that both the classical theory of contract law, in relation to consumers, is dead, so too is the rational consumer. This paper argues that for the unfair contract term provisions to achieve the legislatures' desired outcome of eliminating unfair contract terms in consumer standard form contracts, the courts in both New Zealand and Australia must move from their traditional focus on procedural fairness to addressing substantive fairness and give effect to both the wording and purpose of the provisions

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Lawyer as Gate Opener

Prof Tania Sourdin & Ms Suzanne Gremaux

There has been ongoing discussion for more than a decade in many law schools around Australia about whether or not alternative dispute resolution (ADR) should be taught as part of the core law curriculum and how this can be achieved. Despite numerous reports, the revision of the 'Priestley 11' (or '12' depending on your view) and the articulation of core graduate skills and attributes that incorporate ADR concepts and processes, not all law schools teach ADR whilst those that do teach ADR are more likely to teach it as an elective or as a small, non-skills-based inclusion in an existing subject.

This paper examines the lack of a relationship between the practising and academic branches of the legal and ADR professions and asks the simple but fundamental questions, what type of

education does the modern legal practitioner need and what is the responsibility of teachers to provide this education? The view that the modern justice system includes the much broader ADR system has been expressed by numerous Attorneys-General and Chief Justices and it is increasingly clear that traditional practice continues to change and requires lawyers to be skilled in ADR. Law students who understand ADR will function more effectively in the justice system and those who lack this education will find it difficult as a modern legal practitioner. Moreover, ADR provides the basis for the paradigm of 'lawyer as gate opener'—the concept that lawyers act as problem solvers and facilitators that respect the interests of all stakeholders and open doors to solutions that otherwise remain hidden behind positions. This requires minds skilled in systems thinking, communication and creativity. This article discusses the new paradigm of lawyering and the responsibility of teachers to adhere to the changing landscape. Teachers do not shape the legal marketplace they shape students and understanding this distinction is crucial to the discussion of teachers as gatekeepers to the discipline of law.

The 'Flipped' Classroom: Fact or fantasy

Associate Professor Joan Squelch

In 2013 Curtin University commenced piloting a 'new' teaching model referred to as 'flipped teaching'. Although this approach is not new or even innovative it gained momentum and international awareness when in 2007 two high school science teachers Jonathan Bergmann and Aaron Sams from Colorado (USA) decided to 'flip' their science class by recording their lessons for students to listen to at home so that class time was freed up to focus on learning activities. The basic premise of 'flipped teaching' is that instead of the lecturing being done in the class and learning tasks at home; the lectures are covered at home and the learning task are done in the class. So what's new about the 'flipped classroom' and 'flipped teaching'? The advancement of technology has certainly opened up increasingly innovative approaches to non-traditional ways of teaching and learning evidenced by the use of social media, blogs, podcasts and the like, which has given greater impetus to 'flipped teaching'. Nonetheless, the traditional approach of lecturing to large groups of students in large impersonal lecture rooms is still common place in universities, and implementing 'flipped teaching' is possibly more challenging and demanding than expected. However, a core aspect of 'flipped' teaching is to place far more responsibility for learning on the students, so that there is shift from the lecturer being the font of all knowledge and the gatekeeper of learning, to students having more control over and responsibility for their own learning. Against this background, this paper will (a) provided an overview of the fundamental pedagogical principles underlying 'flipped teaching' and (b) critically review the trials and tribulations of implementing a 'flipped teaching' approach in a unit on company law for business students that that had a strong focus on preparing students as independent thinkers and responsible corporate citizens.

Shaping the Shift to Professional Learning: Transactional learning online in ANU Legal Workshop's Graduate Diploma in Legal Practice

Ms Aliya Steed, Ms Margie Rowe & Ms Elizabeth Lee

Many students see Professional Legal Education(PLE) as a final hurdle to be overcome with as little effort and time expended as possible. They are keen to launch into their careers as legal practitioners and anxious about what this may entail. Teachers, for their part, are aware that they cannot possibly introduce students to the myriad of diverse experiences they may face and

practical skills they will need (even as early career practitioners), during PLE. Instead, teachers aim to balance practical preparation with promoting a reflective and critical approach to professional identity development.

Underlying the shift to simulation-based, transactional learning in the Graduate Diploma in Legal Practice was an attempt to encourage students to take a more active, critical, reflective and professional approach to their period of professional legal education. This approach to transactional learning involves students working together in 'virtual law firms' to conduct authentic legal 'transactions' through an online simulation platform. Students engage with teachers, resources, assessment, feedback and each other all within the context of the simulation. In practice, this has required a careful and deliberate crafting of environment, technology, curricula and materials in order to balance practical need, with intellectual aspiration.

The shift needed to be accomplished within a demanding program context, demonstrating how as teachers and curriculum designers in legal education, our role as 'intellectual gatekeepers' involves negotiating not only decisions about optimal student learning, but also dealing with the pragmatics of program delivery, the requirements of the Australian legal practice regulatory environment, as well as the diversity of experience and expectations of students (and employers). Based on work in progress, this presentation will explore these tensions and some of the strategies we have employed to address the practical challenges they present.

Clarifying Assessment: Developing typologies for forms of assessment in law

Associate Professor Alex Steel & Mr Julian Laurens

The form and nature of types of assessment in the law degrees can vary from course to course. There are good pedagogic reasons for this. Key graduate skills of research, extended writing for different audiences, communication skills, etc. require repetition for students to gain expertise. Varying the format of assessment types avoids staleness, permits development of different perspectives on a task but yet allows for formative repetition of the underlying skill assessed. However, the use of the same name to describe different variations of an assessment task can create confusion for students and new members of staff. In order to avoid this, and to more clearly demonstrate the focus of the particular assessment, this paper sets out a preliminary typology of assessment types with associated definitions. The aim is to begin a conversation about how best to differentiate and describe forms of assessment in law. By doing so the learning outcomes of each assessment type can be more clearly differentiated and teachers will be more able to make informed choices about which form of assessment is best suited to achieving course learning aims.

The MOOCS Have Arrived: But where does the real challenge lie?

Dr Helen Sungaila & Peter Boulot

It is hardly an exaggeration to say that each office along the corridor of every Law School in the nation has become an actual (or potential) recording studio and that Law School staff are being urged to undertake the 'commodification' of their knowledge 'product', to effect its attractive packaging and to ensure its competitive dispatch to the nation's borders, and far beyond. In all these circumstances it would seem teachers of the law must reflect long and hard on the bold (but recently nationally advertised assertion) that being a student on-line is 'just like being-there'. It

is really? And if it is, what needs to be done to make 'being—there' the unique experience it ought to be? That to the authors of this paper is the real challenge of the advent of the MOOCS!

But are they just to be summarily dismissed as contemporary, legal education Luddites? That is for others to judge. What the paper presents is a 'works in progress' report on two initiatives the authors undertook in the first semester of this year. The first was to explore the potential of computer animation in the presentation of a legal ethics issue. The second and parallel initiative, in a sense, was to explore the creative presentation of a second legal issue, not through the use of technology this time, but through theatre.

The authors present this paper as a cautionary tale. They hope to advert their colleagues to the promise of, and the pitfalls in, pursuing a more creative way forward in the teaching of law—whether the learning of law is being pursued by students 'out there' on-line or off-line, but 'in here', with us!

Opening the Gate of the Law with the Sacred Key of Entrusted Self-Governance: A proposal for law reform

Dr Helen Sungaila & Mr Peter Boulot

This conference has embraced the metaphor of gatekeeper to depict its theme. The authors of this paper are of the view that the law itself can be very much a gate—or as Kafka wrote in his work 'The Trial', a Door. A man waits at that Door to be admitted. The Door-keeper tells him that the Door is just for him. The man dies, waiting for entry.

It is clear to even the most un-interested observer that, despite the Native Title Act, Aboriginal communities are still largely dysfunctional. The authors propose that there an urgent need—not just for the review and reform of existing laws—but for new laws based in a quite different philosophy. They argue their case for that proposal on the basis of a study of the Aurukun Aboriginal Community in Far North Queensland.

The paper identifies a first step that might be taken to prise open that Gate (or that Door) of the Law just a little—the creation of a National or Uniform Indigenous Law. But the authors' proposal goes beyond this. The authors urge that consideration be given to the United Nations trusteeship model as a transitional measure towards Aboriginal self-government. The paper concludes that this way forward could mean the Gate or Door of the law could be unlocked and thrown fully open with the sacred key of entrusted self-governance.

The Relationship between Regulation and Governance: some empirically based insights from Queensland

Dr Helen Sungaila, Ms Emille Boulot & Mr Peter Boulot

This paper was inspired by the colloquial comment, often made by Queenslanders, that their State is increasingly becoming a 'Nanny State'. This expression captures the growing perception of the Queensland populace that the law is increasingly trespassing upon, if not undermining, their personal rights and freedoms.

The researchers set out to quantify the actual incidence of recent government regulation in the State of Queensland at the Commonwealth, State and Local Government levels. As this was only a pilot study, the researchers concentrated on gathering data for the period 2006 to 2012. However their research attempted to encompass all forms of government regulation—the laws still extant (by way of reprints) for each of these years at all levels of government; the laws originally enacted, at every level, in each of these years; and the same, in each of these years, for the relevant subordinate legislation—including the statutory instruments. The paper proceeds to a statistical analysis and discussion of these findings.
However at the outset of this analysis one very preliminary, but totally unexpected, finding commanded the authors' attention. Contrary to public opinion, regulation was decreasing, not increasing! This finding prompted the authors to examine one manifestation of this de-regulation phenomenon more closely from a governance viewpoint, namely, a 'green tape' cutting initiative in central and western Queensland. The current Queensland government boasts that the rate of decision-making in relation to mining projects is almost 3 times higher than the previous government and criticises Commonwealth delay and procrastination in this area.

The paper presents the results of this case study and draws this tentative conclusion: such is the nature of the relationship between regulation and governance, that manifest (and much heralded) de-regulation can serve to camouflage what is the continuing subversion of personal rights and freedoms by governments with increased executive power.

Why Try to 'Keep' the 'Gate' (Shut or Open?) When the Horse has Bolted: How accurate is the metaphor for Australian law teachers?

Dr Helen Sungaila & Peter Boulot

This paper addresses the Conference Theme. It argues that, not only is the 'gatekeeper' metaphor inaccurate for Australian law teachers, it is largely irrelevant. The authors acknowledge that the gatekeeper metaphor has been drawn from the Johnson paper the particular focus of which was on the role of corporate law professors. But, as that paper recognises, whatever the discipline or aspect of the discipline the Australian law teacher addresses, 'it begins with a paradigm and that paradigm frames the ensuing inquiry …'

The main thrust of this paper is to examine what the authors believe are the critical elements in the prevailing intellectual paradigm for the study of law. They focus on its evaluative-volitional and the cognitive. The authors suggest that the evaluative-volitional aspect is currently imbued with an ideal of knowledge, an ideal of science, an ideal of science with respect to the discipline of law and an ideal of reality each of which needs to be critically reassessed. Likewise the cognitive aspect of that paradigm—reflecting an image of reality which, in turn, interacts with an image of the study of that reality—needs to be reappraised.

The point of the paper is that none of these prevailing ideals and images is of any Law School's making. It is not possible for any School to shut the gate on them. They are there—in the School, in the University, in the legal system, in the profession and in the wider society. What perhaps it is open to teachers of law to do, though, is to recognise these ideals and images for what they are, to assist their students to understand how they have come to be and to emancipate their society, their discipline, the legal profession, its future practitioners and our law students from them!

T

South Sea Bubble: Will law enrolments peak in Australia?

Associate Professor Gary Tamsitt

This paper examines the potential for Australian legal education to suffer a US-style crisis in law school enrolments and the consequent effects.

In the wake of the Global Financial Crisis, US legal education has come under increasing stress. The legal employment market has tightened, especially for entry level jobs. There have been scandals about law schools misrepresenting graduate employment and other data to improve rankings. Applications and enrolments for JD programs have declined sharply, particularly for lower ranked law schools. Some schools are already reducing academic and other staff categories. Other schools are exploring new ways of making their graduates more employable. The rapid growth in tuition fees has stopped and, in some schools, reversed.

While many expect these trends to improve as the US economy improves, a number of writers suggest that the legal services market is changing structurally. Legal services are happening in new ways that require fewer 'fully-fledged' lawyers or, at least, fledged in different feathers.

Some aspects of these changes are also appearing in other jurisdictions, eg England and Wales.

On some measures, Australia has, proportionately, a higher number of law students than the US and UK. The way Australian law schools project and market themselves is also becoming more like US law schools, generating similar potential for a loss of employment market confidence as evidence grows of change in the legal services market.

This paper compares the situation in the US with that of Australia. I examine some of the recent data, then discuss the likely effects on Australian law schools and legal education.

V

Keeping Our Word: How the skilling of students for editorship of law journals opens the gates to teaching, research, writing and publishing in the law

Mr Ilija Vickovich

This paper argues that the publication of law journals within Australian law schools should be seen not only as a vehicle for specialised or general research publications. Nor should the activity be confined to editorship by the academic staff. Rather it should be seen as a means by which students may be prepared for several fields of work without which the legal profession could not function. These are academia, research, legal writing and editing, and the legal publishing industry. In that sense, law teachers may be seen as 'gatekeepers' of the intellectual repository, inheritance and integrity of the written word in law.

By linking the publication process of a law school's journals with the teaching of skills linked to research, writing, editing and publishing, universities may contribute to the long term sustainability of the law and the legal profession. The paper will focus on the ways in which students may be taught to drive the editorship and publication of our law journals and engage with the intellectual and ethical issues they will confront. It will address how law teachers can structure teaching units

around the skills and judgment that these activities require. A model for the structure of law journal units, and the challenges that arise, will also be offered.

The Professional Negligence 'Defence' in NSW

Professor Prue Vines

Section 5 0 of the civil Liability Act 2002 (NSW) has been held to be a defence. How does this relate to the traditional common law notion of what a defence is? If it is merely when the burden of proof shifts, how is this to be determined. How do statutory definitions interact with the common law understanding of the elements of a cause of action? This paper begins to address some of these questions in the light of the increasing statutory approach to tort law.

W

The Limits of Constitutional Justice

Dr Murray Wesson

Recent decades have seen an expansion and reconfiguration of the domain of constitutional justice. This development needs to be understood along several axes. Firstly, constitutional rights have expanded beyond a core set of basic liberties (broadly corresponding to John Rawls' first principle of social justice) to a more far-reaching commitment to the alleviation of social and economic inequalities (the concern of John Rawls' second principle of social justice). Secondly, constitutional rights are increasingly conceptualised not simply as negative restraints but as imposing positive obligations on the state. Thirdly, there has been a shift from what Iris Young terms a 'distributive paradigm' to constitutional commitments to the alleviation of group-based disadvantage. Fourthly, procedural innovations such as looser standing rules have been introduced so as to facilitate the representation of disadvantaged individuals and groups in the judicial process. The net effect is that in many parts of the world constitutions are increasingly cast as ambitious statements of social justice. This paper seeks to gain historical perspective on this development. It also notes that constitutions, by virtue of their status as higher law, seek to define the political space. The expanding domain of constitutional justice sits uneasily with the reality of pervasive disagreement about the shape of the socially just society and the means whereby this might be achieved. The paper considers the implications of this tension for the framing and enforcement of constitutional rights. In other words, it seeks to gain a clearer sense of the limits of constitutional justice.

The Enigma of 'Reasonably Arguable Positions': 21 years old but still teething

Prof Robin Woellner

The Uniform Administrative Penalties ('UAP') regime was introduced in 1992. One of the more unusual provisions in the UAP was the predecessor to s 284-75(2) TAA 1953, which required that in order to avoid penalty, taxpayers with 'large' tax shortfalls which exceeded the statutory threshold had to establish that their interpretation of the legislation was 'reasonably arguable' (ie about as likely to be correct as incorrect). This was to be a 'more rigorous standard' than the 'reasonable care' defence which applied to 'smaller' shortfalls.

The appropriate test for identifying a 'RAP' caused confusion from the start, though it appeared that the test had been settled by the judgement of Hill J in Walstern Pty Ltd v FC of T in 2003, where his Honour stated in part that to satisfy the test, the ATO and taxpayer arguments must be 'finely balanced'. However, some subsequent cases seem to have watered this down to requiring only that the taxpayer's position be 'arguable'.

Overall, the case-law on s 284-75(2) has been inconsistent, creating uncertainty particularly in three key areas:
1. how likely to be correct the taxpayer's argument must be in order to satisfy the RAP test;
2. whether a taxpayer who has a RAP automatically thereby satisfies the 'less rigorous' test of taking 'reasonable care'; and
3. whether a taxpayer must have actually intended to create a RAP in order to avoid penalty.
This paper explores these issues, and seeks to identify the correct position on each.

Judge Not, Lest Ye Be Judged: The trials of a model litigant

Professor Robin Woellner & Ms Julie Zetler

Under the 'Legal Practice Guidelines on Values, Ethics and Conduct', Commonwealth agencies such as the Australian Taxation Office ('ATO') are required to act as a 'Model Litigant' in litigation in which they are involved.

This requires a Model Litigant to 'act fairly in handling…litigation brought for or against the Commonwealth … with complete propriety, fairly and in accordance with the highest professional standards', and creates 'an extremely high bar to jump over'.
At the same time, the Guidelines do not prevent agencies such as the ATO from 'acting firmly and properly to protect their interests'.

Balancing these competing pressures is not always easy. Indeed, in Indooroopilly Childcare Services (Qld) Pty Ltd, the Full Federal Court in 2007 was extremely critical of the ATO's apparent refusal to follow a series of single judge Federal Court decisions.

In 2012, in LVR(WA) v AAT, a differently constituted Full Court expressed its 'grave concern' that counsel for the ATO had failed to alert the judge at first instance to the fact that the written reasons for the AAT's decision were almost completely a direct copy of the Commissioner's submissions to the AAT. In the Court's view, the ATO had failed therefore to act as the 'moral exemplar' which the Guidelines required.
While such lapses by the ATO are striking, the manner in which tax teachers, acting as intellectual gatekeepers, 'frame' analysis of such cases may significantly influence the perception and values which students take with them into the real world.

How then—consistent with our 'gatekeeper' role—should we approach analysis of such issues?

Educating for the Future: Teaching evidence in the technological age

Ms Denise Wong

The advent of the technological age has had significant impact on litigation practice, none more so than in the area of evidence gathering and presentation in court. A significant proportion of evidence that is gathered for both criminal and civil matters is now electronic in nature, and this necessitates a change in the way that lawyers think and advise on evidential issues. It is argued here that rather than simply focusing on principles relating to the admissibility of evidence in court, the traditional course on evidence law should be modified to equip students with an intellectual framework that conceives of electronic evidence in litigation as an entire process. This process begins with the gathering and forensic examination of electronic evidence, and is followed by the admissibility of such evidence in court, ending with the effective presentation of the evidence before a judge or jury. It is argued in taking such an approach, the law teacher would be playing the role of effective gatekeeper by providing a course that is both intellectually rigorous and preparing would-be litigators for the realities of modern day practice.

X

Leading Curriculum Change: The transformational effects of the International Business and Law Study Tour

Ms Lidia Xynas & Dr Darryl Coulthard

The growing range of offerings, and importance of the international student study tour experience, represents a significance convergence of the desirability of experiential learning, work-integrated learning, and the internationalisation of the curriculum and student experience, in higher education (Pitman, Broomhall, McEwan & Majocha, 2010). This paper reviews the aims, and pedagogical and transformative effects of study tours reported in the research literature. It begins by examining existing curriculum design and assessment practices of typical business and law study tours and examines two distinct approaches: the 'industrial tour' approach and the 'intensive tour' approach (Bergsteiner and Avery, 2008). The industrial tour focuses on direct and instrumental study outcomes whilst the intensive tour focuses primarily on the transformational effect of the tour on students' beliefs and values. This paper argues that while both approaches are relevant, a study tour provides a unique opportunity for transformation and all study tours should include providing students the opportunity to reflect and change their viewpoint and their world view by engaging in properly structured critically reflective processes and attendant assessment tasks.

Y

'What's Ethics Got to do With It?' Requiring students to be cognisant of ethical parameters in commercial practice

Mr Barry Yau & Vivian Holmes

Only about half of the 2012 incoming ANU GDLP students considered that their undergraduate experience encouraged/developed ethical practice (ANU survey). In the American context, teachers of commercial law often eschew outside readings that might raise broader ethical and conceptual questions about the Commercial Code (Litowitz, 2007). A consequent challenge for Commercial Practice GDLP educators is the assumption by some students that Legal Ethics is a

discrete area of law, separate from Commercial Practice, an assumption made explicit in student statements such as 'having legal ethics mixed into commercial law tasks is confusing'.

All ANU GDLP students study Commercial Law online, as part of a large simulation involving them in team-based transactional work. In this context, the educators' role as gatekeeper is twofold. The first is to engage and challenge students in a subject area in which many later find themselves employed and desired further training (Evers et al., 2011). The second is to require students to be cognisant of the ethical dimensions of commercial law practice.

Barry Yau will firstly explain the initiatives he has taken as the Commercial Practice Convenor to make Commercial Law authentic and vibrant in this learning environment. Secondly, Barry will explain how, in this simulated environment, students understand and face the consequences of acting outside ethical parameters in their conduct as commercial lawyers.

We are engaged in ongoing course (re)design and review, and would welcome constructive discussion and input.

The Aboriginal Land Policies in Taiwan during the Qing and Japanese Periods

Ms Ruiping Ye

The Taiwanese aborigines have been subject to colonisation under different regimes: the Dutch (1624–1662), the Chinese Ming loyalist Zheng family (1662–1683), the Chinese Qing Dynasty (1684–1895), and the Japanese Imperialist regime (1895–1945).

This research focuses on the Qing and the Japanese periods. It investigates the aboriginal land laws and policies, and analyses the effect of the legal systems on these laws and policies. The research first sets the scene of Taiwan before the Qing. It then examines the 'quarantine' approaches of the High Qing and mid-Qing periods, and the active colonisation of 'opening the mountain and pacifying the aborigines' in the late Qing period. It finally examines the Japanese approach of aggressive colonisation and establishment of a modern property law regime.

The research proposes the following views:

1) Because the Qing government's main concern about Taiwan was security and because the Qing written law was criminal law and administrative law focused, the government did not actively regulate land development on the Taiwan frontier;
2) Apart from the criminal law focused written law, the Qing legislation had a strong 'ad hoc' feature. This feature determined the laws, and policies concerning aboriginal land tenure were reactive to local events.
3) The Qing empire incorporated Taiwan into its standard administration, and saw all who submitted as equal subjects. This was different from the western colonisers, such as those in Australia and New Zealand, who saw the aborigines as 'them' against 'us'. This feature has determined the Qing's protective attitude towards the aborigines, in the face of the aggressive development of the Han settlers. However, the Qing government had to extend its administration territory as the settlement extended, and later shifted to a more active colonisation policy in the wake of international crises.
4) In contrast to the Qing approaches, the Japanese saw Taiwan as a base for economic exploitation, and adopted western property law concepts to systematically colonise Taiwan.