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A book-end approach to ethics: the increasing importance of incorporating ethics into the first-year curriculum

Abstract

Recently, the law degree has become a more generalist degree. Yet the Council of Australian Law Deans advises that almost two-thirds of law graduates ultimately seek admission to practice. This means that the majority of students commencing a law degree intend to become a solicitor or barrister. Few first-year students, however, are aware of the processes surrounding admission to the profession. They are unaware that merely completing an LLB degree does not make a solicitor. Prospective law students often do not realise that the degree needs to be supplemented by practical legal training (PLT). Beyond that, having satisfied these two academic requirements (the LLB/JD and PLT) students find themselves merely "eligible" for admission. There still remains the question of being "suitable for admission". Legal profession legislation around the country restricts admission to the profession to individuals who are considered "fit and proper". In deciding whether an applicant is "fit and proper", the admission boards have the power to admit only applicants who are defined as "suitable". Suitability matters relate generally to the ethical suitability of the applicants: an applicant must be deemed of "good fame and character" to be suitable for admission as a legal practitioner.

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A 'Book-End' Approach to Ethics: The Increasing Importance of Incorporating Ethics into the First Year LLB Curriculum

Karina Murray¹

Recently, the law degree has become a more generalist degree. Yet the Council of Australian Law Deans advises that almost two-thirds of law graduates ultimately seek admission to practice.² This means that the majority of students commencing a law degree intend to become a solicitor or barrister. Few first year students, however, are aware of the processes surrounding admission to the profession. They are unaware that merely completing an LLB degree does not a solicitor make. Prospective law students often do not realise that, beyond completing their university studies, the degree needs to be supplemented by practical legal training (PLT). Beyond that, having satisfied these two academic requirements– (the LLB/JD and PLT) students find themselves merely 'eligible' for admission.³ There still remains the question of being 'suitable for admission'.⁴ Legal profession legislation around the country restricts admission to the profession to individuals who are considered 'fit and proper'. In deciding whether an applicant is 'fit and proper', the admission boards have the power to admit only applicants who are defined as 'suitable'.⁵ These 'suitability' matters relate generally to the ethical suitability of the applicants: an applicant must be deemed of 'good fame and character'⁶ to be suitable for admission as a legal practitioner.

Even under eligibility requirements, ethics matter. Australian law graduates must complete a degree that satisfies the Academic Requirements⁷ known as the 'Priestley 11'.⁸ These include eleven core subjects, one of which is a compulsory study in 'Ethics and Professional Responsibility'.⁹ Even after their degree, students must separately achieve certified competency in 'Ethics and Professional Responsibility' as part of PLT.

Law schools retain discretion in how to incorporate the eleven Academic Requirements into their degree. In 2008, the *Learning and Teaching in the Discipline of Law* Project, commissioned by the Council of Australian Law Deans, compiled a catalogue of the teaching of legal ethics and professional responsibility by law schools across Australia. They found that the majority of Australian law schools teach ethics in a stand-alone subject towards the end of their degree.¹⁰

¹ Lecturer, Faculty of Law, University of Wollongong.

² Council of Australian Law Deans, *Studying Law in Australia – Legal Education in Australia* (2010-2011) <<http://www.cald.asn.au/slia/>>.

³ See, eg. *Legal Profession Act 2004* (NSW) s 24; *Legal Profession Act 2007* (Qld) s 30.

⁴ See, eg. *Legal Profession Act 2004* (NSW) s 25; *Legal Profession Act 2007* (Qld) s 30.

⁵ See, eg. *Legal Profession Act 2004* (NSW) s 9; *Legal Profession Act 2007* (Qld) s 9.

⁶ Ibid.

⁷ Since 1992, when the Law Admissions Consultative Committee set out *Uniform Admission Rules*.

⁸ See Law Admissions Consultative Committee, *Uniform Admission Rules 2008 – Schedule 1 Prescribed Areas of Knowledge*.

⁹ Previously termed 'Professional Conduct'.

¹⁰ See Gary Davis, 'A Catalogue of the Teaching of Legal Ethics, Professional Responsibility, etc in Australian Law Courses' (*Learning and Teaching in the Discipline of Law: Achieving and Sustaining Excellence in a Changed and Changing Environment*, Item 4.1, Council of Australian Law Deans, 5 November 2008).

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This paper explores the danger this approach presents. It seeks to address the question of whether law schools have a duty to the first year cohort to ensure students are aware of the implications of 'unfit' or 'improper' behaviour, particularly during their university years, given the focus that the courts have placed on unsuitable conduct in the years leading up to admission. This paper contends that if law schools incorporate ethics into the first year program, this results in a 'book-end' approach to ethics: an appropriate and timely introduction to legal ethics at the beginning of their degree reinforced by the ethical requirements covered in their PLT.

Our present first year students are considered 'digital natives' because they were born since the advent of digital technology.¹¹ A term coined by Mark Prensky,¹² it captures the concept that current first year students are of the first generation to have grown up with the internet, mobile phones and digital technology and to know nothing else. To address the question of any responsibility law schools may have to articulate ethical and admission requirements to their first year students, this paper looks to examine two issues that are relevant to our digital native students. The first is the burgeoning issue of plagiarism—a recurring topic that has come before the courts in the last few years—and the impact that this academic misconduct can have on a student seeking admission. The second issue, to be explored more briefly, is the potential future problems that may be presented by the infiltration of social networking media.

Each state has separate legislation governing the legal profession and the rules of admission. However, it is appropriate to look at rules and case law across Australian jurisdictions for two reasons. First, there is a general level of uniformity nationally due to the *Uniform Admission Rules (Rules)* set out by the Law Admissions Consultative Committee in 1992. Second, and perhaps more importantly, there is a 'pending' move towards a National Legal Profession instigated by the Council of Australian Governments. The last few months have seen approval by New South Wales, Queensland, Victoria and the Northern Territory to move towards a more uniform, nationally-regulated profession. This will result in a further 'unifying' of the *Rules* and case law on admission.

¹¹ See Mark Prensky, 'Digital Natives, Digital Immigrants' (2001) 9(5) *On the Horizon* 1.

¹² Ibid.

The Impact of Academic Misconduct upon Admission

Plagiarism—and the impact it can have on an applicant's request for admission—is particularly relevant to digital native students. Indeed, 'there is considerable evidence that student plagiarism is widespread'.¹³ As Teresa Fishman, Director of the Centre for Academic Integrity at Clemson University (US), notes, '...we have a whole generation of students who've grown up with information that just seems to be hanging out there in cyberspace and doesn't seem to have an author.'¹⁴ These are our digital native students.

Plagiarism, under the banner of academic misconduct, requires explicit disclosure under admission requirements around the country. Admission forms constructively require applicants to declare that they have 'not and have never been the subject of disciplinary action in a tertiary education institution... that involved an adverse finding'.¹⁵ For example, the Form 10 used in New South Wales and the Form 7 used in Queensland both require the applicant to disclose any academic misconduct as well as authorise the admitting boards to obtain or exchange necessary information with universities and PLT providers to verify this.

Victorian admission procedures go considerably further, requiring applicants to provide Academic Conduct Reports from each educational institution where they have undertaken tertiary studies. The Victorian Board of Examiners articulate that these reports need to:

disclose any incident of misconduct in respect of which the educational institution holds a record. The Report must disclose academic and general misconduct and should not be limited to misconduct, which has been found proven as a result of formal proceedings. ...Matters which a Report should disclose include circumstances where a student has received a warning, marks have been deducted, an allegation was made, or an investigation took place, even if the student was subsequently exonerated.¹⁶

The heightened ethical requirements implemented in Victoria are interesting for all jurisdictions to consider, especially those committed to the nationalisation of the profession. In particular, law schools and law academics may not find themselves currently equipped to meet these increased ethical requirements should they be implemented 'nationally'.¹⁷ In addition to the additional administrative arrangements, law schools

¹³ Mary Wyburn, 'The Confusion in Defining Plagiarism in Legal Education and Legal Practice in Australia' (2009) 7 *Journal of Commonwealth Law and Legal Education* 37, 37.

¹⁴ Quoted in Trip Gabriel, 'Plagiarism Lines Blur for Students in Digital Age' *New York Times* (New York), 1 August 2010, A1.

¹⁵ See, eg, Form 10, *Legal Profession Admission Board* (NSW); Form 7, *Legal Practitioners Admission Board* (Qld).

¹⁶ See 'Academic Conduct Reports' (Practice Direction No 3 of 2009, Council of Legal Education and Board of Examiners Victoria, 2009) <http://www.lawadmissions.vic.gov.au/admission_requirements>.

¹⁷ 'Nationally' used here to mean the States and Territories that implement the 'National Profession' legislation.

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may have some work to do to engender the importance of dealing strictly with plagiarism in the mindsets of some academics, not only in law but also in other disciplines. The anecdotal evidence is that some tertiary teachers tend to categorise possible referencing defects—or, indeed, plagiarism—as poor academic practice and give the student a warning. This is either out of concern not to make a 'permanent mark' on the students' record or, perhaps, to pursue the easier administrative option.¹⁸ As shown by the case law, discussed below, this is not the approach currently supported by the courts, regardless of whether the misconduct occurred during the LLB or any other degree. The courts have demonstrated a stricter approach to academic misconduct and plagiarism. This willingness by the judiciary to zealously investigate plagiarism may indicate potential support for the Victorian 'Academic Conduct Report' approach.

A number of recent cases have demonstrated the active interest of the judiciary (representing the profession) and the admitting authorities in considering academic misconduct issues as they relate to admission. Cases such as *Re OG: A Lawyer*,¹⁹ demonstrate the court's vigour in reviewing alleged cases of academic misconduct. This case concerned two students, OG and another, both undertaking combined Business and Law degrees, who were found to have engaged in collusion relating to an assignment in their business course. They both received a zero mark for the assignment. Their academic dishonesty was not formally recorded in their transcripts. After completing LLB and PLT requirements, OG 'disclosed' the incident, although in terms that it was more a misunderstanding than a misconduct issue; the other student was more forthright in his disclosure to the Victorian Admissions Board. OG was admitted; however, the other student, who had been more candid, had his application flagged for a hearing before the Board. OG's name, as well as his recent successful admission, were raised during the hearing. The Board resolved to review his application. Following a number of hearings in which both students gave somewhat conflicting and changing versions of events, the Court ultimately revoked OG's admission, stating a lack of candour and failure to make full and frank disclosure. The other student also had his admission application rejected.

Interestingly, over 36 pages of the judgment are taken up outlining the circumstances of the assignment and the alleged collusion, specifically discussing the 26 similarities between the assignments and comparing the assignments to hand-written notes. In reaching their decision, the Judges called evidence from both implicated students, the relevant members of university staff involved in the misconduct investigation years earlier and a number of other students. The Court requested copies of the assignments, notes made by the students and emails between the two students, expletives and all. This case sends a clear message that the courts are prepared to investigate thoroughly to satisfy themselves of an applicant's suitability for admission where issues of academic misconduct come to light.

¹⁸ This is taken from personal experience and requires more research to test these hypotheses.

¹⁹ (2007) 18 VR 164.

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A number of other cases have made similar strong statements in relation to academic misconduct. In *Re AJG*,²⁰ AJG engaged in plagiarism during his PLT course. In line with what would be considered the appropriate action, he disclosed the circumstances of the misconduct and expressed contrition over his behaviour in his application for admission. Additionally, the Queensland Solicitors Board did not oppose his admission. However, the Court rejected his application for admission. They commented that '[o]ver the last couple of years, the Court has, in strong terms, emphasised the unacceptability of this conduct [plagiarism] on the part of an applicant for admission to the legal profession'.²¹ They went on to make the following strong statement:

Cheating in the academic course which leads to the qualification central to practice at a time so close to the application for admission must preclude our presently being satisfied of this applicant's fitness.²²

In *Re Liveri*,²³ Liveri committed 'a blatant case of academic misconduct'.²⁴ She submitted an assignment that was found to have been authored by another individual and published on the internet. The university investigation concluded that she had only deleted two paragraphs and changed a heading before submitting this work as her own. After finding the plagiarism allegation proven, the university delegate reviewed earlier assessment material submitted by the student and found two more assignments had been significantly plagiarised. Throughout the misconduct proceedings, Liveri denied any wrongdoing. The University Committee found her to have demonstrated little to no contrition. At the end of her studies, she sought admission, disclosing that charges of academic misconduct had been 'leveled'²⁵ at her by the University. Her application was denied. Seven months later (and the subject of this case in 2006), the applicant sought admission again, this time with a statement admitting her mistakes and proffering some contrition. Her application was again denied, since the Court felt that the 'mere lapse of time would not, without more, ...warrant the Court's concluding that fitness has been demonstrated'.²⁶ The Court declared:

[I]t should go without saying that an applicant seeking admission to the legal profession should not have to be warned about the unacceptability of cheating in the course of securing the prerequisite academic qualification.²⁷

²⁰ [2004] QCA 88.

²¹ Ibid [2].

²² Ibid [4].

²³ [2006] QCA 152.

²⁴ *Re Liveri* [2006] QCA 152, [10].

²⁵ Ibid [16].

²⁶ Ibid [24].

²⁷ Ibid [19].

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Respectfully, I disagree. Students need to have a clear understanding of the impact that academic misconduct and plagiarism can have on their suitability to be admitted to the profession. 'A significant issue for students is the potential for confusion when they move between what is accepted practice for sharing within the online community, to the much stricter plagiarism rules of the community of scholars.'²⁸ What courts see as 'cheating' students—in particular those in the early part of their academic careers—may view as simply not strictly adhering to all those 'difficult referencing practices'. Law academics, and in particular first year teachers, should take the opportunity to ensure that any potential for confusion is removed at the earliest stage of their tertiary career. Otherwise, students may find themselves at the end of a very long academic track that could reach a dead-end: a denial of admission to practice.

The Impact of Social Media Issues upon Admission

The emergence and penetration of social media is a topical issue with the potential to be a future impediment for today's students and their admission to practice. Social networking media, sites such as Facebook, Twitter and MySpace, are pervasive and increasingly becoming part of the legal landscape. Recent decisions in Australian courts have held companies liable for information posted on their social networking sites.²⁹ Overseas jurisdictions have included references to the use of social networking sites by lawyers in their ethics opinions,³⁰ advising lawyers on the appropriate use of such sites in the exercise of their professional duties. For example, the New York Bar Association has indicated that it is acceptable to view and use any publically available Facebook information on an opponent, but it is not appropriate to go so far as to 'friend' them in order to access their more personal information.³¹

In Australia, some members of the profession are warning that '[s]ocial networking sites can prove ethically dangerous'³² The Victorian Bar Association has issued an Ethics Committee Bulletin, reminding practitioners that professional conduct rules 'apply equally to their activities on social networking sites... as they ordinarily do in other aspects of their day-to-day professional and personal lives'.³³ The potential impact this social media has upon admission can be seen when considering that sites, such as Facebook, have resulted in a 'blurring of the line between broadcasting and personal communications'.³⁴ Previously, information, photographs, comments that may have been traditionally communicated orally, in writing or even email were restricted in their audience. Social media has expanded the audience to an individual's thoughts and opinions exponentially.

²⁸ Wyburn, above n 13, 41-2.

²⁹ See, eg, *Australian Competition and Consumer Commission v Allergy Pathway Pty Ltd (No 2)* (2011) 192 FCR 34.

³⁰ See, eg, New York State Bar Association, 'State Bar's Committee on Professional Ethics Issues Opinion on Lawyer's Use of Public Information Obtained through Social Networking Websites' (News Release, 10 September 2010).

³¹ Ibid.

³² Gino Dal Pont, 'Social Networking Site Can Prove Ethically Dangerous' (2011) 49 *Law Society Journal* 46, 46.

³³ Ibid 46-7, quoting Victoria Bar Association, *Ethics Committee Bulletin No 2* (2010), cl 1.

³⁴ Andrew Ailwood and Matt Vitins, 'Regulating Social Media: Concepts of Content and Communications' (2008) 11(8) *Internet Law Bulletin* 122, 122.

Although most cases where an applicant is denied admission to the profession relate to issues of dishonesty, this is not the only ethical flaw that indicates a lack of 'good fame and character'. Consider the 'fit and proper' requirements in the *Australian Solicitors' Conduct Rules*³⁵ (*Conduct Rules*), for example. Drafted in mid-2011 as part of a move to create a 'National' Legal Profession but (at the time of writing) yet to be implemented into appropriate State legislation, their content has been finalised and published. These *Conduct Rules* are designed to provide solicitors with 'a common set of professional obligations and ethical principles when dealing with their clients, the courts, their fellow legal practitioners and other persons'.³⁶ The purpose of the *Conduct Rules* is 'to assist solicitors to act ethically and in accordance with the principles of professional conduct'.³⁷ Of particular interest is that, immediately after stating the solicitor's primary duty to the Court and the administration of justice,³⁸ the other 'fundamental' duties of the solicitor are outlined to be their 'fundamental ethical duties'. These are spelt out specifically in their own clauses, before the more traditional rules follow:

4. OTHER FUNDAMENTAL ETHICAL DUTIES

4.1 A solicitor must also:

- 4.1.1 act in the best interests of a client in any matter in which the solicitor represents the client;
- 4.1.2 be honest and courteous in all dealings in the course of legal practice;
- 4.1.3 deliver legal services competently, diligently and as promptly as reasonably possible;
- 4.1.4 **avoid any compromise to their integrity** and professional independence; and
- 4.1.5 comply with these Rules and the law.

5. DISHONEST AND DISREPUTABLE CONDUCT

5.1 A solicitor must not engage in conduct, in the course of practice or otherwise, which demonstrates that the solicitor is not a **fit and proper person** to practise law, or which is likely to a material degree to:

- 5.1.1 be prejudicial to, or diminish the public confidence in, the administration of justice; or
- 5.1.2 **bring the profession into disrepute.**³⁹ (Emphasis added)

These new *Conduct Rules* support the recent focus by the courts to ensure that members of the profession have not demonstrated 'compromise to their integrity' in the form of academic misconduct. The criterion of not bringing the profession into disrepute may be the new hurdle for applicants in the near future. *Law Society of Tasmania v Richardson*⁴⁰ (another admission case considering the 'fit and proper' requirement) noted, 'A member of the profession must command the personal confidence and respect of clients and fellow members of the profession.'⁴¹ The proliferation of 'footballer/celebrity scandals' should indicate a warning to students on the judicious use of social media in order not to be found to 'bring the profession into disrepute'.

³⁵ Law Council of Australia, *Australian Solicitors' Conduct Rules* (at June 2011).

³⁶ *Ibid* 2.

³⁷ *Ibid* r 2.1.

³⁸ *Ibid* r 3.1.

³⁹ *Ibid* rr 4-5.

⁴⁰ [2003] TASSC 9.

⁴¹ *Ibid* [76].

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An in-depth discussion of the potential problems that can be created by students' non-judicious use of social media is beyond the scope of this paper; however, anyone who has taught first year students will know that, of the growing number of students sitting in seminars with a laptop, up to half may be on Facebook rather than engaging with what you are teaching! This constant and overwhelming interest in, and use of, social networking sites has the potential for students to find themselves 'broadcasting' inappropriate personal communications that could, at the end of their degree, be used to demonstrate their failure to be a 'fit and proper' member of their chosen profession.

Implications for Law Schools: Incorporating Ethics into the First Year LLB Curriculum

Do law schools owe a 'duty' to their students to make them aware of their ethical requirements at the earliest possible stage? In the United Kingdom earlier this year, a law graduate instigated proceedings against her Legal Practice Course provider (similar to our Graduate Diploma of Legal Practice). She argued that the provider failed to prepare her adequately for taking these final examinations.⁴² In Australia, too, 'students tend to see themselves as paying customers for services delivered by universities'.⁴³ Although the courts have not yet thoroughly explored the issue of educational negligence, some argue that 'a growing consumerism mentality among students... make[s] negligence suits brought by injured students against their universities a very real possibility'.⁴⁴

There are traditionally two models for incorporating ethics instruction into the law degree: the discrete ethics subject approach or the 'pervasive method' (where ethics is integrated into all subjects in the curriculum).⁴⁵ Either can serve to introduce legal ethics into the first year law degree. Arguably, it is, at best, unfair and possibly a breach of our duty to our students not to make clear from the outset what the end 'hurdle' will be, especially the potential impact of being found not to be a 'fit and proper' person. Even for institutions that currently use the 'end-on' approach to ethics instruction, it would not require a complete curriculum restructure to incorporate ethics into the first year program or, indeed, in any LLB course.

Three options have been explored and trialled by the Law Faculty at the University of Wollongong (UOW). The first option, the most comprehensive but with curriculum adjustment implications, is to create a compulsory 'Ethics and Professional Responsibility' module into a stand-alone subject in the first year of the LLB. There are advantages as well as challenges to this approach (outlined below). The second and third

⁴² *Student Sues LPC Provider for Failing to Prepare Her for Exams* (8 February 2011) Lawyrs.net—The Lawyers Network <<http://www.lawyrs.net/news/show/4541/student-sues-lpc-provider-for-failing-to-prepare-her-for-exams>>.

⁴³ Mary Wyburn, 'Disclosure of Prior Student Academic Misconduct in Admission to Legal Practice: Lessons for Universities and the Courts' (2008) 8(2) *Queensland University of Technology Law and Justice Journal* 314, 316.

⁴⁴ Stanley Yeo, 'The Responsibility of Universities for their Students' Personal Safety' (2002) 6 *Southern Cross University Law Review* 77, 77. Note: this article specifically discusses physical injury.

⁴⁵ See, eg, Deborah L Rhode, 'Ethics by the Pervasive Method' (1992) 42 *Journal of Legal Education* 31.

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options are simpler and therefore easier to incorporate. They are: (ii) the incorporation of the rules and processes relating to admission into a first year skills subject; and (iii) the incorporation of basic ethical concepts and admission procedures into the first year introductory legal systems subject.

Option 1: *Lawyers and Australian Society*—the UOW example

As outlined at this beginning of this paper, a growing number of Law faculties are choosing to incorporate the 'Ethics and Professional Responsibility' module into the first year of the LLB program. The UOW Faculty of Law trialled this approach in 2006 and has since delivered the first year subject *Lawyers and Australian Society* to each first year cohort. *Lawyers and Australian Society* is a first year subject that not only incorporates the ethical requirements of admission but also places those requirements within the context of the overall ethical obligations of the profession. The subject looks broadly at 'who is a lawyer?' as well as the history of the profession. It covers the duties that solicitors owe to their clients, the court, the profession, the administration of justice and to the law itself.

The curriculum also includes discussion of the profession's role in assisting and achieving access to justice and encourages students to think about this important dimension of professionalism from early on in their career. Students are given the opportunity to discuss the profession's role in shaping the law. Exercises include a task where students are asked to consider current legal topics that have relevance to their lives and propose changes or improvements to inadequate or out-dated laws, as well as considering processes they could use to effect these changes. This has proven to be a highly valued opportunity for many first year students.⁴⁶ This activity is undertaken at a time, in first year, when some students are beginning to develop negative feelings about a career in law,⁴⁷ possibly due to the focus in many subjects on the analysis of legal 'problems' which results in 'the imposition of enforced pessimism'.⁴⁸ This positive focus on the power of legal education can help those altruistic first years to embrace their idealism.

The admission and discipline procedures are covered in depth, and students are encouraged to identify and consider potential problems for themselves—such as academic misconduct or the issue of bringing the profession into disrepute. In covering the rules on admission thoroughly, students who may already have concerns as to their 'suitability' for admission are informed of the opportunity to seek an early declaration of suitability afforded by the legislation in most jurisdictions.⁴⁹

⁴⁶ Indicative feedback gathered through Teacher Evaluations completed by students undertaking *Lawyers and Australian Society* during the period 2009-2011.

⁴⁷ For research on this issue, see, eg, LexisNexis, 'The Pace of Change in the Australian Legal Industry' (White paper, August 2011); K M Sheldon and L S Krieger, 'Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory' (2007) 15(1) *Legal Education Digest* 29.

⁴⁸ LexisNexis, above n 47.

⁴⁹ See, eg, *Legal Profession Act 2004* (NSW) s 26; *Legal Profession Act 2007* (Qld) s 32.

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The content listed above may not necessarily be new or innovative in comparison to many ethics subjects offered around the country. However, the learning gained⁵⁰ and improvements made to the course over the last six years relate more to the relevant considerations to be taken into account when making the move from an end-on ethics course to a first year ethics course. It is important that the same subject is not simply moved up in the curriculum. Steps need to be taken to create an appropriately-framed subject for first year students. This needs to incorporate means for the students to understand the valid pedagogical reasons behind teaching students about the ethics of the profession in their first year, particularly when the typical response from a law year student faced with learning the solicitors' conduct rules in their second semester is often 'this stuff is just not relevant to me right now'.⁵¹

One way to counteract this type of response from students has been to broaden the study of professional responsibility to include general study into ethical theories and ethical decision-making models. This approach provides students with a framework in which to consider and better understand what ethics means, and it aims to 'create an environment of ethical awareness...[where] the practice of law will be more rewarding'.⁵² The incorporation of ethical decision-making exercises has been well received by the students and consistently rated as one of the best aspects of the course.

Additionally, given that approximately one third of graduates (or more)⁵³ will not go on to seek admission to the profession, a broader view of ethics helps add value to their education. For example, approaching the solicitors' duties from conceptual principles⁵⁴—such as the importance of confidentiality as an employee, partner or employer—enables students to see the relevance of ethics beyond the professional rules. This approach has equal educational value for would-be lawyers because

[w]hile conduct rules may inform our ethical judgments, they do not provide absolute guidance. ...Good ethical practice involves more than just applying the relevant practice rules – it involves a consideration of the impact of actions on justice, the integrity of the legal system and the impact of decisions on the preservation of relationships.⁵⁵

A couple of unanticipated difficulties encountered in transforming *Lawyers and Australian Society* into a first year subject relate to the law itself. Students in first year consistently display confusion in understanding

⁵⁰ Information gathered through Subject and Teacher Evaluations completed by students undertaking *Lawyers and Australian Society* during 2007-2011.

⁵¹ Indicative feedback gathered through Teacher Evaluations completed by students undertaking *Lawyers and Australian Society* during the period 2007-2008.

⁵² Nigel Duncan, 'Ethics as a Compulsory Element of Qualifying Degrees: Some Modest Expectations' (2001) 4(2) *Legal Ethics* 109, 111.

⁵³ Council of Australian Law Deans, above n 2.

⁵⁴ In addition to looking at the relevant law.

⁵⁵ Steve Mark, 'Lawyers Ethics – Values or Rules Based?' (Speech delivered at the Young Lawyers Continuing Legal Education Seminar, Sydney, 22 September 2009).

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the difference between the relevant legislation, regulations and rules. First year students have had minimal exposure to or experience in using delegated legislation. When confronted by the *Legal Profession Act 2004* (NSW), the *Legal Profession Regulation 2005* (NSW), the *Legal Profession Admission Rules 2005* (NSW) as well as the *Professional Conduct and Practice Rules*,⁵⁶ inexperienced students become confused about when to use which piece of legislation or delegated legislation. Additional care needs to be taken to explain not only the different pieces of law but the governing bodies and the role of delegated legislation. The use of flowcharts or visual aids has proven useful, as well as repetition on the different laws over a number of weeks.

Confusion relating to the appropriate use of the relevant laws has also been exacerbated during the last five years (or more) due to moves to 'nationalise' the profession. Since the National Profession Model Laws Project⁵⁷ developed a *Model Bill* and *Model Rules* for a standardised legal profession in 2003, various states and territories have taken steps to introduce these uniform provisions. However, each state modified the laws as they felt appropriate. Additionally, no two Acts or Rules had uniform nomenclature. Some textbooks and resources referred to the *Model Bill* while others used the appropriate legislation for the jurisdiction of the author. These layers, unfortunately, seemed to create for students at least more confusion than harmony. For the last year or two, the profession has abandoned the *Model Bill* in favour of a National Profession. Since 2009, the Council of Australian Governments (COAG) have been working towards implementing uniform laws regulating the legal profession.⁵⁸ The desire to consider and compare the *Draft National Law* or the *Australian Solicitors' Conduct Rules* with the current jurisdictional laws has increased the confusion for some students. Hopefully, within the next couple of years, a truly national profession will have been achieved, and these difficulties will no longer be relevant.

Option 2: Legal skills subjects in the first year program

If redesigning the curriculum is not a possibility at this stage, another option that has been incorporated at UOW is to introduce the relevance of honesty and admission requirements into a first year skills subject where legal referencing is taught. Before the legal skills workshop which introduces first year students to the *Australian Guide to Legal Citation* system of referencing used by the Faculty of Law at UOW, a workshop on the general principles of referencing and plagiarism is conducted.

Since referencing is taught very early in the curriculum, plagiarism is usually covered in week 2 or 3 of the students' studies. Students are taken through the Academic Integrity and Plagiarism policies for the

⁵⁶ Law Society of New South Wales, *Professional Conduct and Practice Rules* (at 11 December 1995).

⁵⁷ Standing Committee of Attorneys-General, *Legal Profession – Model Laws Project*, adopted 23 April 2003 at <www.lawcouncil.asn.au>, under National Practice.

⁵⁸ See Attorney-General's Department, *National Legal Profession Reform* (9 September 2011) <<http://www.ag.gov.au/legalprofession>>.

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institution which is then linked to issues relating to admission. Rather than cover the law in any depth, required reading is added from various introductory legal skills text books, such as the piece on 'Plagiarism and Admission to the Legal Profession' in Brogan and Spencer's *Surviving Law School*.⁵⁹ This again gives students who might be concerned about their present 'fitness' the opportunity to approach the appropriate member of the Faculty⁶⁰ and seek advice on this matter at the earliest opportunity.

Option 3: First year introduction to legal systems (the last resort)

If neither of the previous options is possible within the existing curriculum, a last option would be to incorporate the issues raised by admission to the profession in any introductory course relating to the Australian Legal System. Most of these courses, including *Foundations of Law A* at UOW, cover the structure of the legal system. Discussion on the legal profession and an outline of the admission requirements can simply be incorporated at this point. This at least gives students the information to seek further advice should they need it. It is important that all tutors involved in these subjects understand the significance of advising students about admission issues and refer interested students to the appropriate adviser.⁶¹

Conclusion

When reviewing the recent developments in case law and the increasing focus on an ethical profession, the benefits and importance of studying ethics in the first year of the LLB become obvious. This is particularly relevant in this era of digital native students whose increased exposure to technology—especially the retrieval and self-publication of information—potentially increases their risk of being found 'unfit' or 'improper'. Additionally, possible issues of liability for law schools who fail to bring the additional admission requirements to the attention of their students at a suitable stage adds weight to this 'book-end' model.

Incorporating ethical instruction into the first year of the LLB results in a 'book-end' approach: students are made aware of their ethical obligations at a very early stage in their tertiary career, which is then strengthened at the other end of their degree when they complete their practical legal training (which requires further study in Ethics and Professional Responsibility). This should satisfy any obligations that law schools may owe to their students as well as, more importantly, result in a robust ethical awareness among our graduates.

⁵⁹ Michael Brogan and David Spencer, *Surviving Law School* (Oxford University Press, 2nd ed, 2008) 250-3.

⁶⁰ At UOW, it is usually the First and Second Year Academic Adviser or the 'ethics academic' that fields these enquiries. It has been important to ensure that tutors involved in the skills workshops are aware of the appropriate advice procedures.

⁶¹ See *Law Society of Tasmania v Richardson* [2003] TASSC 9 for issues raised by a student claiming to have received advice in relation to admission from a member of academic staff.