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Teaching Legal Ethics to First Year Law Students

DIANA HENRISS-ANDERSSEN*

This paper will discuss incorporating the teaching of legal ethics into the first year undergraduate program of the law degree. Teaching legal ethics in law schools is a subject that has generated renewed interest in recent years. In 2000, the Council of Australian Law Deans¹ endorsed the recommendation of the Australian Law Reform Commission (ALRC),² that the development of a deep appreciation of ethical standards and professional responsibility be one of the main aims of university legal education in Australia.³ There is little discussion by the ALRC in its report as to what is meant by ethical standards, and how this “deep appreciation of ethical standards and professional responsibility” should be taught.

The purpose of this paper is to explore the meaning of ethical standards and professional responsibility, and how this can be taught to develop the students’ “deep appreciation”. This paper will consider particularly how ethics teaching can be incorporated into the first year program. The design of the James Cook University subject LA 1006 *Legal Studies* will be used as a case study.

In particular, the following issues will be addressed. Firstly, what is legal ethics? The meaning of ethics in the legal context will be explored, and the traditional notion of legal ethics (as proscriptive rules of behaviour) compared to broader concepts of legal ethics. A broad definition of legal ethics will be adopted. The paper will then address the justification for teaching legal ethics at an undergraduate level. This will entail a review of the arguments for incorporating the teaching of legal ethics into the undergraduate program. The third issue relates to the objectives of ethics teaching. What learning outcomes do we desire for our students? A set of

objectives for teaching legal ethics will be suggested. Fourthly, the paper will examine the question of how ethics teaching should be incorporated into the undergraduate degree course. It is suggested that the teaching of legal ethics should be pervasive, and integrated into substantive law subjects and skills subjects (such as the moot program) throughout the degree structure. Hence the need to develop an introduction to ethical issues at the first year level, so that this can be built upon in later year subjects. Finally, what teaching strategies (including assessment) are best employed to achieve these objectives? The design of teaching strategies and assessment for the first year subject will be discussed.

WHAT IS LEGAL ETHICS?

The term “legal ethics” has for some time been synonymous with the professional rules of conduct governing members of the legal profession. This reflects the traditional separation between law and morality that is part of the ruling legal positivist paradigm within which the legal academy and profession have operated.

There have, however, been recent calls in common law countries for increased ethical education of lawyers.⁴ Whatever the drivers of these calls (changes in the nature of legal practice, consumer pressure for greater accountability, economic rationalism, competition reform, and access to justice movements, to name a few), they reveal a need to broaden the concept of legal ethics.

A review of recent published literature reveals a concept of legal ethics that includes the values underpinning the legal system,⁵ and the role of the lawyer in the legal system (including professional rules and personal values).⁶ This paper will therefore adopt a definition of legal ethics as the study of:

- the values underpinning the legal system, and
- the role of the lawyer in that system, including:
 - professional rules, and
 - personal values.

This definition, while encompassing the rules governing professional behaviour, is both broader and deeper than the traditional definition. It is broader in that it also includes an understanding of the values underlying the legal system (sometimes referred to as system or macro ethics).⁷ This necessitates an

understanding of the institutions of law, its processes and structures, and its philosophical, historical and sociological context. It also involves considerations of the concept of justice, and the relationship between the legal system and justice. The new definition is deeper in that it allows for the development of the individual's own ethical or value framework which forms the basis for ethical judgement (sometimes referred to as micro ethics).⁸

An appreciation of ethical standards and professional responsibility therefore involves:

- understanding the institutions of law, its processes and structures;
- understanding the values underlying the legal system;
- understanding the role of the lawyer in that system;
- consideration of the relationship between the roles of lawyer, legal system and justice;
- understanding broader notions of justice;
- the personal and professional values of individual lawyers;
- the development of moral competence;⁹ and
- the ability to exercise ethical judgement.

THE JUSTIFICATION FOR TEACHING LEGAL ETHICS AT AN UNDERGRADUATE LEVEL

Some of the main arguments for teaching ethics at an undergraduate level can be categorised broadly under four main headings. The first is the promotion of justice – according to this argument, the link between the law, the legal system, the legal profession and justice necessitates the ethical education of lawyers. As Webb succinctly argues, “‘just’ legal systems need ethical lawyers.”¹⁰ The promotion of justice in society requires a legal profession that understands and is committed to justice.¹¹ Legal training must therefore include ethical training.

The second main argument is that law can never be value-free. The claims of contemporary legal critiques, such as feminist legal theory, critical legal studies and postmodernism, that the law is not as objective and neutral as has been claimed, have now become more widely accepted. The argument is that doctrinalism, or “black-letter legalism”, has disguised the value-laden nature of the law. As Le Brun and Johnstone note, “the practice of law is an ethically saturated arena.”¹² The value-laden nature of law

necessitates the inclusion of ethics teaching in law schools. Teaching ethics is therefore not a choice but a responsibility.¹³

The third category argues that teaching can never be value-free.¹⁴ As Menkel-Meadow argues, “Law teachers cannot avoid modeling some version of ‘the good lawyer’; thus, they cannot avoid teaching ethics. By the very act of teaching, law teachers embody lawyering and the conduct of legal professionals. We create images of law and lawyering when we teach doctrine through cases and hypotheticals”.¹⁵

The fourth argument focuses on the changing role of the legal profession in society. The general perception of lawyers as self-interested and otherwise “ethically incompetent”,¹⁶ changes in the nature of legal practice, consumer pressure for greater accountability, economic rationalism and competition reform,¹⁷ have all increased the pressure on educators of the legal profession to produce ethical lawyers.

Each of these arguments assumes the broad concept of legal ethics described above, rather than the traditional one. The final argument indicates that the existing ethical training of lawyers is inadequate. The first three assume the teaching of values, both in the sense of system ethics or macro ethics, and in the sense of individual values (micro ethics).

DEVELOPING OBJECTIVES FOR ETHICS TEACHING

Incorporation of the teaching of legal ethics into the undergraduate law degree requires a consideration of the aims and objectives for ethics teaching. In the context of teaching legal ethics, it is necessary to determine what learning outcomes we desire for our students.

The use of objectives is an important part of planning curriculum.¹⁸ For teachers, the use of objectives “provide criteria against which we can begin to guide, assess, evaluate and monitor our students’ learning”.¹⁹ For students, objectives can be used as a reference for directing and measuring their progress.²⁰ In order to teach to the “whole person” Le Brun and Johnstone suggest that teachers involve students in learning experiences which engage not only their intellect (the “cognitive” domain), but also their emotions, values, attitudes, habits and beliefs (the “affective” domain), and their abilities (for example, communication and

negotiation) (the ... “skills” domain).²¹ Objectives should ideally then be set in each of these three domains – cognitive, affective and skills.

Drawing on the broad definition of legal ethics outlined above, objectives for teaching legal ethics could be designed as follows:

Cognitive (intellectual)

- understanding of the role of law in society;
- knowledge of concepts of justice;
- understanding of the institutions of law – the processes and structures of the legal system;
- understanding of the philosophical concepts underpinning the law and the legal system;
- knowledge of the historical context of the legal system;
- understanding of the role of the legal profession in the legal system, its structures and responsibilities;
- understanding of the relationship between the role of lawyer, legal system and justice.

Affective (values)

- development of a sense of purpose of commitment to justice;
- reflection upon the students’ own individual values;
- awareness of the situatedness of students’ own identity, experience, and values;
- motivation to continually question and reassess students’ own values and attitudes;
- consideration of the importance of the role and responsibilities of lawyers in the legal system and in society;
- enhancement of integrity;²²
- motivation to prioritise ethical concerns;²³
- development of character to convert ethical thought into ethical action.²⁴

*Skills*²⁵

- ability to recognise ethical problems;
- ability to resolve ethical problems;
- ability to reflect upon the process of recognising and resolving ethical problems.

The objectives outlined above are suggested as desirable learning outcomes for students by the end of the undergraduate law degree. Obviously, the standard or level of these objectives needs to be adjusted appropriately for the year level at which ethics is taught. This will depend upon how the teaching of legal ethics is incorporated into the course structure.

HOW SHOULD ETHICS TEACHING BE INCORPORATED INTO THE UNDERGRADUATE DEGREE COURSE?

Frank D Armer, in his research on the teaching of ethics in Australian Law Schools,²⁶ identified two major methods of teaching ethics. The first is the “discrete method” where it is taught in one (or more) discrete subject(s) on legal ethics. The second is the pervasive method where ethical teaching is incorporated into substantive law subjects throughout the curriculum.²⁷

The traditional means of teaching legal ethics has been by way of a single subject, often offered in the final year of university study. Frequently, the subject is not included in the degree structure, but is required for admission purposes only.²⁸ This traditional method of teaching of legal ethics, while widely accepted, has attracted criticism from advocates of the broader approach to ethics teaching. The criticisms cover a number of grounds, the most common being that the teaching focuses too narrowly on codes of conduct and rules governing behaviour. Webb argues that stand-alone courses offer too little too late.²⁹ If the broader definition of legal ethics outlined above is adopted then clearly this method of teaching is inadequate. Learning proscriptive rules of behaviour does not necessarily impart to students an understanding of the values underlying the legal system or allow them to develop their own value framework that becomes the basis for ethical judgement.

Another criticism of this method of teaching ethics is that it gives students the message that ethics is relatively unimportant,³⁰ and something that can be partitioned and kept separate from the law itself. As Burns points out,

Unlike courses in substantive law subjects which are relatively self-contained, issues of ethics pervade many if not all substantive law courses. To limit the consideration of ethical issues to one course limits the ability of students to recognise ethical issues when they arise in diverse areas of practice as they are bound to do.³¹

By contrast, teaching legal ethics by the pervasive method means that ethical issues are explored as they arise in substantive law subjects and skills-based subjects, such as mooted and drafting. A number of problems have been identified with the pervasive method of teaching ethics. First, the insistence that all subjects be adapted to integrate ethical issues may infringe the autonomy of individual teachers, and there may be some reluctance on their part to integrate the teaching of ethical issues into their subject. Secondly, some teachers may not feel qualified to teach these issues. Thirdly, extensive coordination (and the corresponding resources) may be required to ensure that the ethical instruction did not become haphazard and inconsistent. Nina Tarr argues, however, that inconsistency in this regard may not be the problem that it appears to be.³² She argues that repetition and overlap can be beneficial and in fact necessary to learning, as one exposure or learning experience may be insufficient.³³ Further, as students acquire greater understanding through the course of their studies, the same issues can be explored to greater depth and analysis.³⁴ Tarr further argues that inconsistency can be important because ethics issues do not usually have clear answers:

Exposing students to a variety of approaches illustrates for them that reasonable people may respond differently to the same circumstances. If part of the goal is to enable students to recognise various ethical situations and exercise judgment, exposing them to inconsistent responses will enhance their development.³⁵

While some inconsistency may not be a problem, without extensive coordination ethics instruction left to the pervasive method alone may become so haphazard that “quality control” is lost. The obvious answer to this problem is to either have tight monitoring and control of the teaching and instruction, with careful assessment and recording of students’ attainment of ethical objectives throughout the degree,³⁶ or to supplement the pervasive method with one or more discrete legal ethics subjects. This is discussed further below.

If one accepts the broader definition of legal ethics then the pervasive method of teaching it is ideal. A critical understanding of the values underpinning the legal system, the role of the lawyer in that system, the development of ethical judgement from understanding and developing the students’ own individual values can only be taught developmentally. For example, the skill of

ethical judgement will develop later than, and is dependent upon, development of many of the cognitive and affective objectives. In order to develop ethical judgement students must be exposed to ethical issues as they arise in the course of their studies. Given the pervasive nature of ethical issues, the pervasive teaching method is ideal. This would ideally be supplemented by compulsory subjects, one in first year introducing ethical objectives, and in later years, in jurisprudence and applied ethics. The study of professional conduct rules would fall into the latter. The benefits of having this subject in the final year of study are that with the pervasive method, the students should have already attained a reasonable standard in many of the ethical objectives which will allow them to place the professional rules in context, and that this should occur immediately prior to the students entering the profession when it is directly relevant. It is also an ideal vehicle for the final assessment of the students' attainment of the ethical objectives.

THE IMPORTANCE OF INTRODUCING LEGAL ETHICS IN FIRST YEAR

Webb and Armer both support the argument that the ideal method of teaching legal ethics would be a combination of pervasive ethics instruction and at least one discrete legal ethics subject.³⁷ Armer, however, does not discuss the content of this discrete subject, except to suggest that it include moral philosophy and jurisprudence,³⁸ nor its place in the degree structure. Webb suggests that there needs to be at least one first year subject and ideally a second year subject.³⁹ The first year subject would ...

... set out the major ethical assumptions and implications of the due process model, the system of delivering legal services, and possibly introducing the core ethical assumptions underlying the professional role. The obvious choice for this would be a modified "English Legal System" or "Law in Society" module.⁴⁰

It seems that although Webb talks about a "core" legal ethics subject, this first year subject would not be an exclusively legal ethics subject, but rather an introductory subject modified to include the teaching of ethical issues. The second year module (presumably an exclusively ethics subject) would develop specifically professional legal ethics within a philosophical framework.⁴¹ One disadvantage of placing this module in the

second year, as opposed to the final year, is that the students have not had as much opportunity of developing their own ethical awareness, and therefore do not have the same opportunity of placing the conduct rules in their wider ethical context. Further, although with the pervasive method, ethical instruction will continue throughout the rest of the degree, students may not retain the full import of the professional conduct rules in context. For these reasons it would be better to place the discrete “legal ethics” subject towards the end of the degree, assuming that pervasive ethics instruction is ongoing throughout the degree.

The experience of teaching legal ethics by the pervasive method at the Notre Dame Law School in the United States is described by Link.⁴² There the pervasive method is supplemented by three compulsory ethics subjects – a first year legal ethics subject, a jurisprudence subject and a third year applied-ethics subject. The content of the first year subject is described in detail by Link, and includes the study of the various roles of the lawyer (principally as protector of justice), explores notions of justice, and introduces ethical theories and practical aspects of ethical decision-making.⁴³ In this model, students are introduced to professional conduct rules within the context described above, in their first year. This is taken up and developed in the later year applied ethics subject.

If legal ethics is taught by the pervasive method, there needs to be some introduction to ethical issues at first year level. It stands to reason that, given the developmental nature of many of the ethical objectives, introduction of these objectives in the first year allows for their maximum development throughout the course of the degree. Further, if ethical objectives are incorporated into the teaching of mainstream law subjects throughout the law degree, there needs to be some introduction to these objectives at the outset of the degree. Just as the legal research, writing and analysis skills necessary for the study of law are introduced at the commencement of the students’ study of law, and developed throughout their studies, so the ethical objectives to be developed throughout the course of study must be introduced at the commencement of that course.

Even in the absence of pervasive teaching of ethical issues in later years, the introduction of some of the groundwork for ethical awareness at first year level would be an improvement on the current absence of broader ethical teaching. Further, if the students are to be taught to develop their own individual ethical or value

framework for exercising ethical judgement, then it is important to “get in early” before they are “desensitised” by traditional legal scholarship. As Webb points out, “a primary effect of conventional legal education seems to be to *desensitise* students to justice issues”.⁴⁴ Elsewhere Webb says:

...Students learn early on that the instinctive *moral* reaction of the first year student – “... but that’s not right” is simply not valued by the system. They become detached from the wider non-technical issues and often increasingly passive or plain cynical in the face of attempts to get them to respond to a situation.⁴⁵

It is therefore important to introduce ethics teaching in the first year, and work towards the development of ethical awareness by building on the students’ existing values before they become desensitised. This can be achieved either by an exclusive or discrete legal ethics subject such as described by Link, or by the integration of ethics teaching into an introductory law subject as described by Webb. The redesign of a first year law subject at James Cook University is an example of the latter.

REDESIGNING THE FIRST YEAR CURRICULUM AT JAMES COOK UNIVERSITY TO INCORPORATE AN INTRODUCTION TO ETHICS

Any discussion of the ideal methods of teaching assumes the resources to implement these methods. In the absence of extra resources, however, the integration of ethics teaching into mainstream law subjects can be achieved where teachers are committed to the ideals of ethics teaching. It is in this way that the introductory elements of legal ethics have been incorporated into the redesign of a first year subject at James Cook University. This is similar to Webb’s idea discussed above of a modified first year “Law in Society” module. It remains an introductory law subject that has integrated ethics teaching and is not an exclusively legal ethics subject.

The writer is an associate lecturer at the James Cook University Law School, and course coordinator of the first year subject *Legal Studies*. *Legal Studies* is offered in the second semester of first year, and has been something of a “Law in Context” subject. As such it has required little amendment and is therefore an ideal subject to incorporate much of the elements of ethics teaching described above.

The subject matter of the *Legal Studies* subject is divided into three modules – Legal Institutions, Access to Justice and an Introduction to Legal Theory. The content of each of these modules will be described, and related to the ethical objectives to which they are directed.

Module One – Legal Institutions

The first module consists of an introduction to the role played by the legal institutions such as the judiciary, the jury system, the legal profession and the courts, within the jurisprudential and constitutional framework of the Australian legal system. In the first week the students are introduced to the jurisprudential and constitutional framework of the Australian legal system. The rule of law is discussed, as are the principles of responsible government, parliamentary sovereignty, federalism and separation of powers. Within this framework, the roles of the judiciary, juries, the legal profession and the courts are examined.⁴⁶ For example the role of the judiciary is examined in the context of its independence, both in the separation of powers' sense and in the sense of its capacity for objectivity and neutrality. When the students study the legal profession, they are introduced to the structure of the profession, traditional legal ethics and the lawyer-client relationship, as well as issues in the push for reform. In their study of the courts, students study the nature of the adversarial system and examine the impact of the courts on those who use them. Issues such as the architecture and design of the court buildings, the roles of judicial and support staff, the relationship between the various players (for example the legal profession, their clients, interpreters, and support staff), and the effect of language and ritual are discussed.

The content of the first module meets the following cognitive objectives of legal ethics teaching:

- understanding of the role of law in society,
- understanding of the institutions of law – the processes and structures of the legal system,
- knowledge of the historical context of the legal system,
- understanding of the role of the legal profession in the legal system, its structures and responsibilities, and
- understanding of the relationship between the role of lawyer, legal system and justice.

It is directed at the following affective (value) objectives:

- development of a sense of purpose of commitment to justice, and
- consideration of the importance of the role and responsibilities of lawyers in the legal system and in society.

Module Two – Access to Justice

The second module examines the impact of the Australian legal system and law on cross-sections of the Australian community. The study includes considerations of gender, language, age, race, disability and socio-economic background. The module begins by looking at some general problems of access to justice and possible means of redressing these problems. The focus then shifts to access to justice for Indigenous Australians. Topics include Government policy and practice toward Indigenous Australians since 1788, the “Stolen Generation”, and an introduction to Native Title and Land Rights. The module concludes with the introduction of the global perspective of international human rights standards.

The content of this module addresses the cognitive objectives of understanding the role of law in society, knowledge of concepts of justice, and understanding the relationship between the legal system and justice. The study of the problem of cost⁴⁷ as an inhibitor to access to justice, for example, further enhances understanding of the relationship between the role of lawyer, legal system and justice.

This module addresses the following affective objectives:

- development of a sense of purpose of commitment to justice,
- reflection upon the students’ own individual values,
- awareness of the situatedness of students own’ identity, experience, and values,
- motivation to continually question and reassess students’ own values and attitudes,
- consideration of the importance of the role and responsibilities of lawyers in the legal system and in society,
- enhancement of integrity, and
- motivation to prioritise ethical concerns.

It is directed at the skill objective of ability to recognise ethical problems.

Module Three – Introduction to Legal Theory

The third and final module introduces a range of philosophical perspectives on the law. It begins with a study of Liberalism, and then outlines Critical Legal Studies and Feminist Legal Theory. This component is introduced at the end of the course, so that the students are less likely to be disconcerted or threatened by the theoretical material. By the time the theories are introduced, the students have already become familiar with the process of critique in the less theoretical content of the first two modules.

The content of the third module is directed at the following cognitive objectives:

- understanding of the role of law in society,
- knowledge of concepts of justice,
- understanding of the philosophical concepts underpinning the law and the legal system, and
- understanding of the relationship between the role of lawyer, legal system and justice.

It is aimed at the following affective objectives:

- development of a sense of purpose of commitment to justice,
- reflection upon the students' own individual values,
- awareness of the situatedness of the students' own identity, experience, and values,
- motivation to continually question and reassess the students' own values and attitudes,
- consideration of the importance of the role and responsibilities of lawyers in the legal system and in society, and
- motivation to prioritise ethical concerns.

DESIGNING TEACHING STRATEGIES AND ASSESSMENT

The teaching strategies employed in *Legal Studies* reflect a teaching philosophy that sees teaching as facilitating active student learning, and embraces Ramsden's six key principles of effective teaching in higher education.⁴⁸ The strategies are designed to encourage students to adopt a "deep" learning approach in which the student seeks depth of understanding.⁴⁹ A "surface" approach in which the student seeks to simply reproduce information is actively discouraged.

For resource reasons, the didactic method is the main teaching

method for the subject. Students attend a two-hour lecture and one-hour tutorial per week. The lectures are as interactive as possible. The tutorials are limited to twenty students and participation in tutorials is assessed. Assessment is used as an incentive to promote active learning, and the assessment of tutorial participation ensures that students turn up to the tutorials prepared and ready to engage in meaningful discussion.

As mentioned above, assessment is used as a major teaching strategy. Probably the most important piece of assessment, as far as teaching legal ethics is concerned, is the court report and presentation.⁵⁰ As part of this formative assessment, students are required to attend sessions of the courts. They are first required to submit to their tutors a piece of written work which summarises the literature they have been required to read for Module One, and canvasses where appropriate opposing points of view. This ensures that they have read the relevant literature and made some attempt to at least reproduce it, if not to understand it. The tutors hand the written work back to the students with feedback. They receive no assessment mark at this stage – it is an opportunity for students to learn from the feedback they receive. The work will then be improved by the students and used as the basis for their written report (see below).

The students are then required to form groups of three or four to visit the courts, where they must attend sessions of the Magistrates and either the District or Supreme Courts.⁵¹ During their visit, the students are required to make observations about the court system, the law in operation and its impact upon the litigants, with particular reference to access to justice. The students are instructed to address issues such as:⁵²

- the nature of the proceedings witnessed and the legal issues involved;
- the architecture and design of the court buildings and court rooms, including reception areas and waiting rooms, and their impact on users of the courts;
- the roles of judicial and support staff;
- the relationship between the various players – the judiciary, support staff, the legal profession, their clients and other users of the courts;
- the effect of language, symbols, rituals and ceremony;
- the impact of the above and any other factors on persons from

diverse backgrounds within the Australian community (for example, Aboriginal, non-English speaking, male/female, youth/aged, disabled, or socio-economic background).

Each group is then required to make a presentation to their tutorial class, outlining their observations. For the purposes of the presentation, the groups are encouraged to choose a particular focus from the areas listed above. Which one is chosen will greatly depend upon what the group observed. Group work is used as a teaching strategy to encourage active student learning by requiring them to communicate, discuss and justify their ideas to their peers.⁵³ The students will need to discuss the issues, their observations and ideas within their groups, to create their presentation.

The students, as individuals, are then required to produce a written report. Using the earlier piece of written work as a starting point, the students are asked to produce a report that also records their personal observations of the courts, and synthesises their own observations with the published literature on the area.⁵⁴

The court report assessment is directed to encouraging a deep learning approach to the cognitive legal ethics objectives of:

- understanding of the role of law in society;
- understanding of the institutions of law – the processes and structures of the legal system;
- understanding of the role of the legal profession in the legal system, its structures and responsibilities; and
- understanding of the relationship between the role of lawyer, legal system and justice.

The assessment also promotes the affective objectives of:

- development of a sense of purpose of commitment to justice;
- reflection upon the students' own individual values;
- motivation to continually question and reassess the students' own values and attitudes;
- consideration of the importance of the role and responsibilities of lawyers in the legal system and in society; and
- motivation to prioritise ethical concerns.

It will be apparent from the above that the legal ethics instruction in the *Legal Studies* subject is directed primarily at the cognitive and affective objectives. Occasionally the skill objective of recognition of ethical dilemmas is targeted. The ultimate ethical objective, the ability to exercise ethical judgement can only be achieved after many of the cognitive and affective objectives have

been developed. At the first year level, the desirable outcome is the attainment of an introductory standard of many of these objectives. This is what has been attempted in the case of *Legal Studies*.

To the extent that it can be measured, the assessment and feedback from students indicates that this has been achieved. It has been argued that objectives should only be set as observable outcomes, so that success in teaching and learning can be objectively ascertained.⁵⁵ One limitation of this approach, however, is that it can effectively limit learning outcomes.⁵⁶ In contrast, the objectives set here are aspirational. Achievement of the objectives will occur along a continuum, as ethical awareness and judgement develops. While it may be possible to objectively determine a first-year standard of some of the objectives, particularly the cognitive ones, others such as the affective objectives which relate more to the students' own values are not so easily assessed according to observable objective criteria. Notwithstanding this limitation, the assessment and feedback from students indicate that a first year standard of these ethical objectives is being realised. The students' work submitted for assessment indicates that the cognitive objectives and some of the affective objectives are being achieved. Feedback from students in response to a questionnaire, which specifically addressed the issue, demonstrates that the students themselves felt that the ethical objectives had been achieved.⁵⁷ Other student feedback about the course, both formal and informal, is overwhelmingly positive. Motivation, an indication that the affective self is engaged, is high. The teething problems inevitably associated with innovation have not affected these outcomes.

Good teaching is a constant process of reflection and adjustment. A number of inspiring teaching strategies, such as the use of role modeling and storytelling,⁵⁸ are described in the published literature on ethics teaching. The next stage in the integration of ethics teaching into the *Legal Studies* subject will involve reflection upon whether ethics teaching in that subject can be improved by the use of these strategies.

CONCLUSION

The meaning of ethical standards and professional responsibility is more than the mere study of professional rules of conduct. It involves the critical study of the values underpinning

the legal system, and the role of the lawyer in that system. It includes professional rules and personal values, and the ability to exercise ethical judgement. This can only be taught developmentally, and should ideally be introduced at first year level. The design of the James Cook University *Legal Studies* subject has been used here as an example of the successful integration of ethics teaching into an introductory law subject.

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¹ Council of Australian Law Deans, Newsletter no 2. <<http://www.law.newcastle.edu.au/cle/cald/index.html>>

² Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System*, Report no 89 (Canberra: AGPS, 1999) Recommendation 2.

³ The ALRC recommendation identified three main aims of university legal education -the study of substantive law, the development of professional skills, and the development of deep appreciation of ethical standards and professional responsibility.

⁴ B Cotter, *Professional Responsibility Instruction in Canada* (1992); American Bar Association *Legal Education and Professional Development: An Educational Continuum* (Macrate Report) (1992); Advisory Committee on Legal Education and Conduct, *First Report on Legal Education and Training* (UK; 1996); *Cotter and Roper Report on Education and Training in Ethics and Professional Responsibility*, New Zealand Law Society (Wellington; 1996); Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System* (1999).

⁵ See for example; F Armer, The Teaching Of Ethics in Australian Law Schools (1998) 16(2) *J of Professional Legal Educ* 247, at 247; J Webb Ethics for Lawyers or Ethics for Citizens? New Directions for Legal Education (1998) 25(1) *J Law and Society* 134, at 136.

⁶ See for example; B Cotter, *Professional Responsibility Instruction in Canada* (1992); A Evans, The Values Priority in Quality Legal Education: Developing a Values/Skills Link through Clinical Experience (1998) 32(3) *Law Teacher* 274; D Link, The Pervasive Method of Teaching Ethics (1989) 39 *J Legal Educ* 485; J Webb, Ethics for Lawyers or Ethics for Citizens? New Directions for Legal Education, *supra* note 5.

⁷ J Webb, Ethics for Lawyers or Ethics for Citizens? New Directions for Legal Education, *supra* note 5; R O'Dair, Recent developments in the Teaching of Legal Ethics – A UK Perspective, in K Economides Ed, *Ethical challenges to Legal Education and Conduct* (UK; Hart Publishing, 1998) at 151.

⁸ J Webb, Ethics for Lawyers or Ethics for Citizens? New Directions for Legal Education, *supra* note 5; O'Dair, *supra* note 7.

⁹ Webb provides an excellent discussion of moral development in the context of legal education in J Webb, Developing Ethical Lawyers: Can Legal Education Enhance Access to Justice? (1999) 33(3) *Law Teacher* 284, at 290-92.

¹⁰ J Webb, Developing Ethical Lawyers: Can Legal Education Enhance Access to Justice?, *supra* note 9, at 285.

¹¹ *Id*; K Economides, Introduction: Legal Ethics – Three Challenges for the Next Millenium in K Economides ed, *Ethical challenges to Legal Education and Conduct* (UK; Hart Publishing, 1998) at xxi-xxii.

¹² M Le Brun & R Johnstone, *The Quiet Revolution: Improving Student Learning*

- in *Law* (Sydney; LBC, 1994) at 165.
- 13 A Hutchinson, Beyond Black-Letterism: Ethics in Law and Legal Education (1999) 33(3) *Law Teacher* 301, at 301.
- 14 See J Webb, Developing Ethical Lawyers: Can Legal Education Enhance Access to Justice?, *supra* note 9, at 286; C Menkel-Meadow, Can a Law Teacher Avoid Teaching Legal Ethics? (1991) 41 *J Legal Educ* 3, at 3.
- 15 Menkel-Meadow, *id.*
- 16 C Sampford & S Blencoe, Educating Lawyers to be Ethical Advisors, in K Economides ed, *Ethical challenges to Legal Education and Conduct* (UK; Hart Publishing, 1998) 315, at 316; see also A Goldsmith & G Powles, Lawyers Behaving Badly: Where Now in Legal Education for Acting Responsibly in Australia?, in K Economides ed, *Ethical challenges to Legal Education and Conduct* (UK; Hart Publishing, 1998) 119, at 122.
- 17 See generally the discussion in A Goldsmith & G Powles, *supra* note 16, at 122-31; and C Sampford & S Blencoe, *supra* note 16, at 319-23.
- 18 See the discussion in Le Brun & Johnstone, *supra* note 12, at 154- 76.
- 19 *Id* at 155.
- 20 *Id.*
- 21 *Id* at 158.
- 22 Webb uses this term to encompass honesty and trustworthiness, commitment to fairness and being true to oneself; J Webb, Ethics for Lawyers or Ethics for Citizens? New Directions for Legal Education, *supra* note 5.
- 23 J Webb, Developing Ethical Lawyers: Can Legal Education Enhance Access to Justice?, *supra* note 9, at 292.
- 24 *Id.*
- 25 The skills discussed here are all part of the ultimate ethical skill, the ability to exercise ethical judgement.
- 26 Discussed in his article, Armer, *supra* note 5.
- 27 *Id* at 252. Susan Burns identifies two further methods – in clinical courses and simulated practice: S Burns, Teaching Legal Ethics (1993) 4(1) *Legal Educ Rev* 141, at 145.
- 28 See for example the James Cook University subject Legal Ethics which is not counted to the degree but is offered to those students who require the subject for admission to the profession.
- 29 J Webb, Developing Ethical Lawyers: Can Legal Education Enhance Access to Justice?, *supra* note 9, at 287.
- 30 Armer, *supra* note 5, at 253.
- 31 Burns, *supra* note 27, at 151.
- 32 N Tarr, Teaching the Reflective Practitioner in the United States (1999) 33(3) *Law Teacher* 310.
- 33 *Id* at 312.
- 34 *Id.*
- 35 *Id* at 313.
- 36 Of course this raises the problem of infringement of academic autonomy, referred to above.
- 37 Armer, *supra* note 5, at 253; J Webb, Developing Ethical Lawyers: Can Legal Education Enhance Access to Justice?, *supra* note 9, at 293; J Webb, Ethics for Lawyers or Ethics for Citizens? New Directions for Legal Education, *supra* note 5, at 146.
- 38 Armer, *supra* note 5, at 253.
- 39 J Webb, Developing Ethical Lawyers: Can Legal Education Enhance Access to Justice?, *supra* note 9, at 294.
- 40 *Id.*

- 41 *Id.*
- 42 Link, *supra* note 6.
- 43 *Id.*
- 44 J Webb, Developing Ethical Lawyers: Can Legal Education Enhance Access to Justice?, *supra* note 9, at 285-86, citing Anthony Amato, Rethinking Legal Education (1990) 74 *Marquette Law Review* 1; Boon & Levin, *The Ethics and Conduct of Lawyers in England and Wales* (London: HMSO, 1995) at 154-56; Nicholson & Webb, *Ethics and the Legal Profession: Critical Interrogations* (Oxford: Oxford University Press) (forthcoming).
- 45 J Webb, Ethics for Lawyers or Ethics for Citizens? New Directions for Legal Education, *supra* note 5, at 138-39.
- 46 The required readings for this module are excerpts from the following texts: Hunter, Ingleby & Johnstone eds, *Thinking About Law: Perspectives on the History, Philosophy and Sociology of Law* (Allen & Unwin, 2000); Bottomley & Parker, *Law in Context* (Federation Press, 1997); G Bird, *The Process of Law in Australia* (Butterworths, 1993); K Laster, *Law as Culture* (Federation Press, 1997).
- 47 This problem is approached both from the sociological perspective and from the perspective of the legal profession.
- 48 P Ramsden, *Learning to Teach in Higher Education* (London: Routledge, 1992) at 96-103.
- 49 See the discussion of deep and surface learning styles in Ramsden, *supra* note 46, ch 4; and Le Brun & Johnstone, *supra* note 12, ch 2.
- 50 This was inspired by a colleague, Lynda Crowley-Cyr, who had implemented a similar piece of assessment on a smaller scale, for commerce students studying law for the first time.
- 51 The group requirement has the added advantage that the trip may be less intimidating for some of the first-year students who may otherwise so find it.
- 52 The coverage of these issues in the court assessment was inspired by Bird, *supra* note 46; and Laster, *supra* note 46.
- 53 It is also to promote the (non-ethics-specific) skill objectives of teamwork and interpersonal communication skills.
- 54 Students are reminded to realise the limitations of their own observations recorded during a one-off visit as a basis for drawing any wider conclusions.
- 55 Le Brun & Johnstone, *supra* note 12, at 156.
- 56 See the discussion in Le Brun & Johnstone, *supra* note 12, at 156-57.
- 57 This questionnaire was designed by the writer and undertaken in addition to the University-wide student evaluation of subjects, to obtain feedback from students on a range of issues relating to the teaching of the subject, including the effectiveness of various teaching strategies employed.
- 58 See for example the discussions in Link, *supra* note 6, and Menkel-Meadow, *supra* note 14. For an interesting discussion of Atticus Finch as a role model see also T Dare, The Secret Courts of Men's Hearts, *Legal Ethics*; and Harper Lee's *To Kill a Mockingbird*, in K Economides ed, *Ethical challenges to Legal Education and Conduct* (UK; Hart Publishing, 1998) at 39.