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## Breathing Life into Commercial and Property Subjects: Visiting Practitioners Creating the Right Learning Environment

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*Ian McCall\**

Providers of pre-admission practical legal training (PLT) aim to equip their graduates with a range of attitudes, skills, and strategies to enable them to function as ethical and competent newly admitted practitioners. In attempting to achieve those objectives, PLT providers need to try to gauge students' intentions and perceptions in the learning process by considering how students approach learning, for this "has become one of the most significant and widely researched concepts in higher education. It is a central concept in the framework of teaching and learning law."<sup>1</sup>

An important part of this "central concept" relates to students' intentions in approaching a learning task – whether they intend to seek meaning and understanding from it, or merely to acquire what they perceive to be sufficient knowledge to complete part of a process.<sup>2</sup> Consistently higher quality learning outcomes, more satisfactory results and increased student satisfaction have been linked to students adopting a "deep" approach to learning.<sup>3</sup>

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1 G Joughlin and D Gardiner, *A Framework for Teaching and Learning Law* (Sydney: Centre for Legal Education, 1996), p 64.

2 Aspects of students' approaches to learning have been identified and explored in terms of *deep* approaches (where students seek to understand), surface approaches (where the focus of the student is to be a passive recipient of knowledge and to memorise without seeking meaning) and *achieving* or *strategic* approaches (where students adopt whatever approach (deep or surface) they believe will lead to optimal results), eg Marton and Säljö, "On Qualitative Differences in Learning: 1 Outcome and Process (1976) 46(1) *British Journal of Educational Psychology* at 4-10; P Ramsden, *Learning to Teach in Higher Education* (London/New York: Routledge, 1992); M Le Brun and R Johnstone, *The Quiet Revolution – Improving Student Learning in Law* (Sydney: Law Book Company, 1994), pp 6-9.

3 Ramsden, note 2, Ch 4.

Creating conditions in which students are assisted and encouraged to learn and to adopt the most productive approach to their learning, is one of the most important challenges facing teachers. Attempting to do so is an especially important, and often difficult, task in a post-graduate PLT course where the students already have many years of study behind them. In some instances, perhaps understandably, these students do not perceive a PLT course, whoever the provider might be, to be an opportunity to learn usable and transferable skills, but merely the final hurdle to overcome to qualify for admission to practice. This article suggests that providing students with more stimulating opportunities for interaction with visiting practitioners<sup>4</sup> in PLT courses can help create an improved environment for learning in the somewhat “lifeless” world of commercial and property subjects.

Of course there is nothing new in utilising the skills of legal practitioners to teach law or legal practice subjects – higher education institutions and PLT providers have done so for many years. In both undergraduate and postgraduate law and PLT courses, legal practitioners are often relied on to deliver information about current law and practice. These sessions very often take the form of lectures and so may call for little, if any, interactivity with the student audience.<sup>5</sup>

Given this background, it is suggested that simply engaging legal practitioners to deliver curriculum content and practice knowledge may not necessarily provide students with a sufficiently effective learning stimulus. Indeed, as Goldring<sup>6</sup> has pointed out, it should not be assumed that legal practitioners necessarily make the best legal educators, no matter how competent they may be in practice. However, the main thrust of this article is that, for PLT students, both the prospect of interaction with expert legal practitioners in “real-life” tasks and the interaction itself, can make a difference to the process of their learning, especially in so called “lifeless” commercial and property subjects.

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4 Used here, the expression means external professionals, including members of the legal profession such as judges, barristers and solicitors.

5 It is not suggested that lectures, as a means of learning, are without merit, whether delivered by a visiting legal practitioner or a lecturer member of staff. It may be that, eg, because of large student numbers, or a variety of other reasons peculiar to the particular subject matter, a lecture happens to be the most efficient medium to employ. Equally, lectures need not involve information transmission only – they *can* be motivational and be utilised efficiently to provide interactive learning opportunities.

## PLT: Combining Theory and Planned Experience

A consistent challenge in PLT courses has been to devise materials and activities that not only cover the desired content but also, by creating interest and stimulation, encourage students to take an appropriate approach to learning – motivating them to become more actively involved in their learning. This challenge has been seen in terms of “combining theory with planned experience so that professional knowledge and skills can be learned more efficiently”.<sup>7</sup>

In New South Wales, since the articling system was abandoned, graduates who wish to qualify for admission to practice need to acquire a combination of academic knowledge, practical legal training and professional experience. Each has a part to play in producing a competent entry-level practitioner. The acquisition of theory, as well as practical training and experience, is particularly important, as students may not acquire all they need to know about professional competence in an office environment, or solely by experience.<sup>8</sup> The combination of theory and experience is seen as “systematic and coherent”, while experience alone can be “irregular and unpredictable”.<sup>9</sup>

At the time they commence a postgraduate PLT course, students may have already been in the workforce for some time performing legal or non-legal tasks with competence and diligence. They may have already acquired a useful knowledge base and skills, such as drafting and communication skills. Other students may have had little work experience apart from an engagement in a brief professional experience program or a summer clerkship.

Whatever the experience of individual students, the aim of good PLT curriculum design should be to ensure that the professional skills and strategies for analytical thinking that students can acquire will be useful to graduates long after the conclusion of the PLT course. Creating awareness in students of basic procedures is an important part of PLT. However, the transferable skills, qualities and values that students can acquire from effective course design are likely to have a longer shelf-life than the mere acquisition of knowledge about steps in litigation processes and commercial and property transactions, or learning how to “join the dots”.

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6 J Goldring, Book Review of: *A Framework for Teaching and Learning Law* in (1996) 14(2) *Journal of Professional Legal Education* 241 at 241.

7 S Nathanson, “Designing a Powerful PLT Program” (1998) 16(2) *Journal of Professional Legal Education* 229 at 230.

8 A Sherr, “The Value of Experience in Legal Competence”, (Sydney: APLEC, 1996), p 133.

9 Nathanson, note 5, p 230.

## Teaching Commercial and Property Subjects: The Challenge

One of the principles of good teaching has been described as: “encouraging high quality learning. It discourages superficial approaches to learning ... and energetically encourages active engagement with subject content”.<sup>10</sup> This “*active engagement*” on the part of students is achieved in a number of ways in most PLT courses: the conduct of student/student transactional or litigation files, interviewing and advising, negotiation exercises and advocacy, to name only some, are common features of most courses.

The difficulties inherent in teaching and learning in a PLT course that encourages student learning as opposed to, predominantly, knowledge acquisition, are particularly relevant in the parts of the curriculum, such as estate planning, will drafting and property, and small business practice, which are viewed by students as less interesting and stimulating than, say, the robust exchanges that are seen to be inherent in litigation practice. From a student’s perspective, it is not difficult to see why. One is perceived to involve mostly performing transactional steps with (seemingly) little scope to motivate students to do anything in the learning process but acquire sufficient knowledge to perform pre-determined procedural tasks. The other, litigation practice, requires the students to get involved with their learning, that is, preparing for stimulating activities, such as advocacy sessions – active, “real-life” individual assessable performances conducted before visiting practitioners: members of the judiciary, barristers or solicitor advocates.

In further developing assessment activities and reflecting on the teaching and learning process in commercial and property subjects, in the University of Wollongong PLT course, it was decided to attempt to devise activities to emulate the motivational impetus of the kinds of interactions with visiting practitioners that had traditionally been so successful in teaching litigation. These activities were to involve assessable tasks, requiring one-on-one student interaction with visiting practitioners, which would be designed to stimulate students to perform well and which would be as close to the reality of commercial and property practice as possible.

The team of visiting practitioners engaged to assist with commercial and property subjects was made up of practising lawyers each of whom had accumulated many years of

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<sup>10</sup> Ramsden, note 3, Ch 9.

experience. Some had prior teaching experience in higher education. From the beginning, all displayed a sustained and enthusiastic commitment to teaching. The question, then, was how best to “tap” this wealth of experience, expertise and enthusiasm in order to produce the best teaching and learning outcome.

## Combining a Problem-based Learning Focus with Visiting Practitioner Interaction

The principal learning methods utilised in the course are problem-based learning and experiential learning. The problem-based strategy of learning on a “need-to-know” or “discovery” basis, using materials that attempt to simulate the reality of professional practice, has been described as “a more effective and more motivating way to learn than via didactic methods such as lectures, which are principally concerned with information transmission”.<sup>11</sup> Thus the problem-based learning focus would, it was thought, be an ideal medium for the proposed student interaction with visiting practitioners. It would allow the practitioners to be directly involved at critical points in the learning process, not in lectures or group discussions but in interactions with students which would allow the practitioners to “be themselves” – that is, simulating real practice and assisting in motivating students to seek to learn from that process.

In developing this aspect of the commercial and property section of the course, it was decided to utilise features of two assignments for appropriate interaction between visiting practitioners and students: *Trusts, Wills and Estate Planning* and *Small Business Practice*. In these assignments the students receive files in which some initial work has been done. The students must then take responsibility for completing the files in accordance with issued guidelines, directions and assessment criteria. Outlined below are some important features of the assignments tasks and the specific interaction between the students and visiting practitioners.

### *Trusts, Wills and Estate Planning Assignment*

In this assignment, the students’ principal tasks are to:

- advise the client on the principal issues to be taken into account when planning the contents of a will;

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11 J Macfarlane and J Manwaring, “Using Problem Based Learning to Teach First Year Contracts” (1998) 16(2) *Journal of Professional Legal Education* 271 at 272.

- draft a functional and effective will in accordance with instructions;
- explain to the client the basic characteristics of inter vivos and testamentary trusts, including fixed and discretionary trusts;
- observe the conventions and requirements of drafting and ensuring effective execution of wills; and
- recognise and observe the ethical and other responsibilities of solicitors in the making and retaining safe custody of wills.

The students receive the client instructions with the client file. They need to individually analyse the instructions and recall their prior learning in estate and trust law to determine the issues and the elements they consider relevant to prepare for a class discussion. In that discussion, the students, in groups, share information and, as necessary, seek information from the lecturer on the main issues and the areas in which they need to complete further research.

### *Student/Visiting Practitioner Interaction*

Some of the principal features of the student/visiting practitioner interaction are as follows:

- One of the first tasks students are asked to do is to prepare a comprehensive letter of advice to their client. They then prepare a draft will. These are distributed to allocated visiting practitioners in preparation for the “client” interview.
- On the scheduled date each student “interviews” his or her allocated visiting practitioner as the client. Each interview lasts a minimum of 30 minutes. The student’s task is to explain the provisions of the will and the issues raised in their written advice. This is an opportunity for the student to exhibit a clear understanding of sometimes complex testamentary provisions. They need to explain the terms of “their” draft will in plain language, without resorting to legalese. Many students prepare an agenda for the interview, noting important points for explanation as well as flowcharts to assist them (and their client) in that process.
- Although the students have general management of the interview, the practitioner selects the parts of the will that he or she requires the student to explain. The precepts of sound interviewing technique are fundamental to the success of the student’s performance, as an experience approaching the reality of practice.

- At the conclusion of each interview, the visiting practitioners provide oral and written feedback to the students on their drafting, interviewing technique and explanations, in accordance with specifically referenced criteria.<sup>12</sup>

### *Small Business Practice Transaction Assignment*

In this major assignment, the students' principal tasks are to:

- act for the purchaser of a small business (such as a restaurant, supermarket or health and fitness centre);
- advise the client concerning the advantages and disadvantages of appropriate entities;
- identify and undertake the necessary searches and inquiries on behalf of their client;
- analyse and further negotiate the contract with the vendor's solicitor;
- undertake the procedures necessary to transfer or assign all relevant assets of the business, including the goodwill, chattels, stock and any lease of the premises;
- attend on settlement of the transaction with their visiting practitioner to finalise the purchase.

A file is issued to each student with a file note requesting them to assist a "partner" and take over the transaction. The file contains:

- a comprehensive file note of an initial partner interview with the clients;
- the contract for sale of business, with appropriate annexures, as received from the vendor's solicitors;
- a copy of the registered lease of the premises; and
- other documents, such as the vendor's last depreciation schedule and form of transfer of lease and business name.

In the initial class discussion, the students analyse the contents of the file in small groups and collaborate to identify the need for further instructions and recall their existing knowledge about the applicable law and practice. Perceived problems and areas requiring further research are identified and emerge in the class discussion. After this initial discussion, they proceed to conduct the file from the pre-contract stage to completion of the sale.

The student's work involves them in all phases of the transaction, from pre-contract tasks to settlement of the

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<sup>12</sup> See Appendix 1.



purchase. The timetabling of activities is scheduled so that the transaction will take the “normal” six weeks<sup>13</sup> to complete from exchange of contracts.

During the course of the transaction, the students interact with:

- the lecturer, who takes the role of the client purchaser (and, as appropriate, relevant authorities and government departments); and
- an allocated visiting practitioner, acting as the vendor’s solicitor.

At the commencement of the transaction, each student is supplied with guidelines on their impending interaction with their allocated visiting practitioner. They are informed that the main purpose of the interaction, from the pre-contract stage to settlement, is to enable them to learn from the experience of controlling a “real” matter and dealing with a real practitioner. Importantly, it is made clear to the students that the visiting practitioners do, in fact, run a “real” file and treat the transaction likewise.<sup>14</sup> In particular, they are alerted to the fact that their practitioner’s interaction with them will reflect the practitioner’s individual practice style in dealing with a similar legal matter.<sup>15</sup>

Students are encouraged to try to keep on top of their matter and, in particular, to deal with any instances of delay by their visiting practitioner, just as they should in practice: telephone, fax or email the practitioner to see what the problem is, get an idea of when they can expect an answer. The students are told that the visiting practitioners expect them to do this. Of course, the students must also keep their clients informed of the position.

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13 The contract used is the standard Law Society of NSW copyright form of Agreement for Sale of Business, which allows a standard six weeks for completion from exchange of contracts.

14 Student numbers are, of course, of prime importance. The number of students in each course is limited to 40 and the actual numbers have not exceeded 36 in any course so far. Groups of students, up to a maximum of six, are allocated to each visiting practitioner. The difficulties and staff implications inherent in managing large groups of students in a format such as the one described here are readily acknowledged.

15 This is not to say that the students are left to flounder in their dealings with their visiting practitioner. Apart from the PLT lecturer providing feedback to students at pre-determined stages in the transaction, the students are free (and encouraged) to make contact with the lecturer at any stage to check on their progress and understanding of any issue.

The interaction with the allocated visiting practitioner occurs at two phases of the transaction: pre-contract and settlement.

### *Phase 1– Pre-contract Negotiation*

- The students must examine all of the contents of the file, in particular the client instructions, the contract and lease and consider pre-contract searches. They need to understand the effect of the contractual provisions in the context of both the client’s transaction and file instructions. The contract, as drafted, is weighted towards the interests of the vendor but not unrealistically so. The students are required to consider ways in which their clients can achieve better protection and business outcomes at this pre-contract stage of the transaction, for example by negotiating more favourable restraint of trade provisions.
- The students then write to their allocated visiting practitioner. They are free to seek any information or request any changes to the contractual provisions that they perceive to be in their client’s interests.<sup>16</sup>
- Following receipt of the visiting practitioner’s response to the student’s letter, each student must contact the “client”, in this case their lecturer, by telephone for further instructions. The students first need to justify their recommended changes to the contract and fully explain why they considered those changes to be in their client’s interests. The reaction he/she received from the visiting practitioner is then discussed. The contact with the lecturer at this stage of the transaction, while intensive and time-consuming, has proved to be an extremely useful opportunity to allow students to reflect on the lecturer’s advice and receive timely feedback on their progress. In the discussion, if a student convinces the lecturer that a proposed amendment to the contract is definitely in the “client’s” interests, he or she is instructed to contact the visiting practitioner, press their point of view and report back. Some students have reported achieving very favourable results for their “client” in this process.

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<sup>16</sup> To encourage the students to think for themselves and to appropriately analyse their reasons for seeking amendments to the contract, they are asked to assume that they had sought instructions from their clients and that the clients had accepted their recommendations as to changes to the contract, whatever they were. It is impressed on them, of course, that, in practice, they must get their clients’ instructions first.

- The visiting practitioners are encouraged to react to the students in the transaction very much as they would be inclined to do in practice. Sometimes this means that a practitioner will reject some or all of a student's proposed amendments to the contract. It is then up to the student to decide on the next step before contacting the client, particularly if the student is not satisfied with the practitioner's explanation.
- The practitioners are also encouraged to impress on the students the reality of the matter, particularly where correspondence or documents are not received from students in accordance with set timelines. At the pre-contract stage, where the student has not submitted correspondence by the due date, a practitioner might remind a student by telephone or fax and, if a response is still not received, the student might be informed that the business is to be "put back on the market" or "sold to another interested buyer". This "real-life" strategy usually produces a speedy student response. Every endeavour is made to make it clear to students that they must do their best to adhere to the specified timelines for submission of their transactional work to the visiting practitioners. In particular, they are made aware that, if they cannot meet a timeline then, as they would be expected to do in practice, they must contact the practitioner, explain their problem, and undertake to get the relevant letter or document to the practitioner within an agreed period. The visiting practitioners report that most students do this.<sup>17</sup>

### *Phase 2 – Settlement*

- After exchange of contracts,<sup>18</sup> the students draft appropriate documentation and submit it to the lecturer, as the client, for assessment and feedback. The next contact with the student's allocated visiting practitioner is made as the transaction approaches settlement – that is, the finalisation of the transaction.
- Prior to the "settlement" of the transaction, the students prepare settlement figures and a settlement agenda or

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17 Anecdotally, a significant number of students have commented to the author that they feel motivated to "get it right" in their dealings with their allocated visiting practitioners because the visiting practitioners operate in the "real world".

18 The students are encouraged to complete the exchange "face to face" with their practitioner where possible, adding an another "real-life" dimension to the assignment.

checklist, detailing the documents and other items they expect to be handed over and received on settlement. These are sent to the visiting practitioner for approval.

- The settlement between the student and the allocated visiting practitioner, which takes a minimum of 30 minutes, occurs on-campus as part of the final course assessment sessions. Apart from the mechanics of the settlement itself and the usual questions about background and destination of certain documents, the settlement is an important opportunity for the visiting practitioner to check their allocated student's understanding of his/her pre-contract approaches in the context of the now completed transaction. Again, at the conclusion of the "settlement" session, the visiting practitioners provide oral and written feedback to their students, in accordance with specifically referenced criteria.<sup>19</sup> Similarly, feedback is provided by the lecturer on each student's interaction with the "client". Overall assessment of the file is undertaken by the lecturer in accordance with specific assessment criteria.

## Student Evaluation of Visiting Practitioner Input

In most courses since the University of Wollongong PLT course commenced, the students have been asked to complete an evaluation of specific aspects of the course, such as the extent to which it met its stated objectives and effectiveness of course design, materials and delivery.<sup>20</sup>

When student interaction with visiting practitioners was developed in the commercial and property assignments previously described, questions were added to the course evaluation document that were designed to compare a student's rating of their interaction with visiting practitioners in the litigation component of the course with that in commercial and property assignments. It was hoped that the results would indicate that, because of their interaction with the visiting practitioners, the level of the commercial and property students' motivation to learn in their interactive assignments would at least approach that of the litigation students in their advocacy sessions.

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<sup>19</sup> See Appendix 2.

<sup>20</sup> The evaluation document is fairly lengthy. It seeks answers to 56 questions and takes a minimum of 20 minutes to complete. While all students are actively encouraged to complete the evaluation, that they do so is entirely voluntary. Many choose not to take the time to complete it. In past courses, the number of responses has varied between 50%-75% of the class.

In the first course to be evaluated using these additional questions (course 1999/1) the responses from students (19 from a possible 32) suggested that the students considered that the visiting practitioner involvement in the small business practice transaction was valuable as a learning experience – five stated that the experience was “moderately valuable”, eight thought it was “quite valuable” and three rated it as “very valuable”.<sup>21</sup>

In the next course to be evaluated (course 2001/1) the responses from students (22 from a possible 29) suggested that the visiting practitioner involvement in the small business practice transaction was having a positive influence on motivation and learning – 16 stated that their motivation to perform at the appropriate level was either “increased” (11) or “greatly increased” (5).

In their evaluation of Course 2001/2 the students’ responses (18 from a possible 24) again revealed the value of the visiting practitioner input in the small business practice assignment – four stated that their motivation to perform remained the same; four stated that their motivation was increased, and 10 stated that it was greatly increased. Their interaction with visiting practitioners in the file was rated as moderately valuable (5), quite valuable (6) and very valuable (7).

In the evaluation document, students are invited to provide written comments on their interactive experiences with the visiting practitioners in the commercial and property assignments. The responses have been generally favourable, as indicated by these samples:

“It was good dealing with a real practitioner. I thought he would really be able to help me. His letters from his own firm added to the reality of it.”

“Ideally, it would be great to deal with visiting practitioners for all files. It gives it a greater sense of realism and makes you put in a bit more effort.”

“I didn’t feel confident at first. I think I learnt a lot but it was more daunting than dealing with [lecturer].”

“Although, initially, I would rather have dealt with [lecturer] I’m glad we did it the way we did. I put more effort into my work.”

“I felt I really had to prepare for the settlement and know why I did things.”

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21 See Appendix 3.

“[Practitioner] gave excellent, useful, comprehensive feedback that extended my knowledge.”

“A good ‘baptism’ into the real life legal practice world! – set the ‘feeling’ of being in the system delivering legal services.”

“Made extra effort with VP’s – it paid off. Good training.”

However, as might be expected, not all student reactions were positive:

“I didn’t get a lot out of it. My correspondence wasn’t answered on time. I’d rather have dealt with [lecturer] from the start.”

“[Practitioner] took a long time to answer my letter. Even then the letter just said ‘agreed’ and ‘not agreed’ and didn’t explain anything.”

“When my practitioner wrote back she didn’t give me the stuff I needed to calculate settlement figures.”

Overall, however, the students’ evaluations of visiting practitioners’ interactions with them in the commercial and property assignments were encouraging. They suggested that the number of students that had reacted positively to visiting practitioner engagement in the small business transaction was at least close to the number that reported a similar positive reaction to the visiting judges and practitioners’ involvement in the court appearances. The evaluations suggested that the students were approaching the commercial assignments motivated to perform at an appropriate level – adopting a “deep”, as opposed to a “surface”, approach.

## Conclusion

As has been acknowledged elsewhere in this article, the mostly favourable teaching and learning outcomes recorded here resulting from visiting practitioner involvement in the assignment tasks described could be attributable to the relatively small numbers of students in each course. Further, the resource implications and constraints involved in utilising such high levels of visiting practitioner interaction with a greater number of students is similarly acknowledged.<sup>22</sup> That said, a study of students’ formal course evaluations of the impact of visiting practitioner interaction in the specific

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22 For example, in comparison to the large numbers of PLT students administered by the College of Law, Sydney.

assignments discussed in this article does suggest that, for those students, their interaction with visiting practitioners did add significant value to their approach to the process of learning. This is encouraging, especially in relation to the teaching of commercial and property subjects that are traditionally seen as less likely to stimulate a student to learn than, say, the challenge and excitement of court room appearances. Overall, the students' assessment of the visiting practitioners' contribution to their learning suggested that the prospect of their interaction with visiting practitioners motivated them to perform at an appropriate level and, therefore, should have made the tasks themselves more meaningful.

It is suggested that the challenge for those designers of commercial and property assignments in PLT courses, who wish to get the best out of the wealth of available expertise and enthusiasm of legal practitioners, is to devise appropriate assignments that involve meaningful interaction with those practitioners. By doing so they can provide stimulating opportunities for students to learn from the "real-life" element that visiting practitioners can bring to the "artificial" PLT world. It is also suggested that visiting practitioners can add significant value and credibility to a PLT program and a student's motivation to learn, not necessarily solely by transmitting information about law and practice, but by being themselves – by presenting themselves as valuable examples of skill, professional and ethical conduct, knowledge, competence and experience – that is, the reality of professional legal practice in the appropriate setting of the office, court or settlement room.

## APPENDIX 1

### Faculty of Law

### Legal Practice Unit

LLB 846 – Commercial and Property Practice

Module 6 – Trusts, Wills and Estate Planning

### ASSESSMENT CRITERIA

Student

Visiting Practitioner

#### Letter of Advice

- drafted the letter in plain language with clear expression;
- identified nature of any problems;
- identified options for dealing with any problems;
- furnished correct legal advice

#### Draft Will

##### *Instructions*

Instructions followed and the client's assets effectively disposed of

##### *Expression*

- clarity of provisions
- plain language (as appropriate)
- correct grammar/spelling

##### *Structure*

- followed conventional or prescribed form (as appropriate)
- logical sequence of content
- use of headings
- use of paragraphing
- use of numbering

#### Client Interview

- put the client at ease
- effectively explained relevant aspects of the will
- arranged for an effective execution of the will

Visiting Practitioner additional comments:



## APPENDIX 2

**Faculty of Law**

**Legal Practice Unit**

LLB 846 – Commercial and Property Practice

Module 8 – Small Business Practice

### ASSESSMENT CRITERIA

**Date:**

**Student:**

**Visiting Practitioner:**

*Note: Visiting Practitioners to assess only those parts marked \**

#### **1 Costs Agreement**

Costs Agreement prepared showing accurate and appropriate description and scope of work to be completed for client and costs and disbursements to be charged or the basis of charging, in accordance with the *Legal Profession Act*.

#### **2 List of Pre-Contract Searches and Inquiries**

All appropriate and relevant searches listed and fees noted

#### **3 Accounting**

Trust and office account recording of all appropriate and relevant accounting entries must be maintained in accordance with the requirements of the *Legal Profession Act* and the *Legal Profession Regulation*

#### **4 Performance of Designated Tasks**

The following tasks in the transaction must be completed in accordance with the stated criteria:

##### **4.1 Pre- Contract Letter of Advice to Client**

- contains all relevant and correct advice/reporting to *exchange stage*
- clear and comprehensible expression including use of plain language, as appropriate
- logical sequence of content
- indicates '*what happens next*' as appropriate

#### 4.2 Contract for Sale\*

- clear and appropriate drafting of amendments and additional conditions (if any)
- all aspects of the contract legally effective and in the interests of the clients

#### 4.3 Deed of Assignment of Lease

- conventional structure
- logical sequence of provisions
- clear expression including plain language as appropriate
- use of headings short paragraphs and logical numbering
- legally effective

#### 4.4 Deed of Restraint of Trade

- conventional structure
- logical sequence of provisions
- clear expression including plain language as appropriate
- use of headings short paragraphs and logical numbering
- legally effective

#### 4.5 Pre-settlement Letter to Purchasers

- contains all relevant and correct advice/reporting to *settlement* stage
- clear and comprehensible expression including use of plain language, as appropriate
- logical sequence of content
- indicates '*what happens next*' as appropriate

#### 4.6 Post-settlement Letter to Purchasers

- reports on all relevant and important matters to this stage
- clear and comprehensible expression including use of plain language as appropriate
- logical sequence of content

#### 4.7 Settlement Statement\*

Clearly and correctly specifies the components to be taken into account in the calculation of the balance of the purchase price, adjustments and any additional

amounts due to the vendor and others on settlement in accordance with the contract for sale

#### **4.8 Settlement Agenda/Checklist\***

Clearly and correctly specifies the documents and cheques to be handed over on settlement by the purchaser's practitioner and the documents to be received from the vendor's practitioner and any other party.

#### **4.9 Bill of Costs and Trust Account Statement**

- Bill properly drawn in accordance with the costs agreement with the client and the *Legal Profession Regulation* ; and
- Trust account statement properly prepared in accordance with the *Legal Profession Regulation*.

#### **5 File Management\***

- contents appropriately separated, labelled and secured
- maintained file notes and correspondence as relevant and in chronological order
- kept client informed, as appropriate

#### **Visiting Practitioner additional comments:**

## APPENDIX 3

**1 Students' evaluation of Course 1999/1**

41. In the Small Business Practice module, how did the interactions with visiting practitioners affect your motivation to perform at an appropriate level?

Greatly reduced	Reduced	Kept the same	Increased	Greatly increased	No opinion
2	1	4	7	5	0

42. How valuable did you find the interaction with the visiting practitioners in the Small Business Practice file, as a learning experience?

Of very little value	Not particularly valuable	Moderately valuable	Quite valuable	Very valuable	No opinion
2	1	5	8	3	0

43. In the court appearances how did the interactions with real-life judges and senior advocates affect your motivation to perform at an appropriate level?

Greatly reduced	Reduced	Kept the same	Increased	Greatly increased	No opinion
0	0	5	8	7	0

**2 Students' evaluation of Course 2001/1**

41. How valuable to you were the interactions with visiting practitioners on the files?

Of very little value	Not particularly valuable	Moderately valuable	Quite valuable	Very valuable	No opinion
1	1	6	8	6	0

42. In the Small Business Practice module, how did the interactions with visiting practitioners affect your motivation to perform at an appropriate level?

Greatly reduced	Reduced	Kept the same	Increased	Greatly increased	No opinion
1	1	4	11	5	0

43. How valuable did you find the interaction with the visiting practitioners in the Small Business Practice file, as a learning experience?

Of very little value	Not particularly valuable	Moderately valuable	Quite valuable	Very valuable	No opinion
1	2	4	10	4	

44. In the court appearances, how did the interactions with real-life judges and senior advocates affect your motivation to perform at an appropriate level?

Greatly reduced	Reduced	Kept the same	Increased	Greatly increased	No opinion
0	0	3	10	9	0

### 3 Students' evaluation of Course 2001/2

43. How valuable to you were the interactions with visiting practitioners on assignments?

Of very little value	Not particularly valuable	Moderately valuable	Quite valuable	Very valuable	No opinion
			6	12	

44. In the Small Business Practice module, how did the interactions with visiting practitioners affect your motivation to perform at an appropriate level?

Greatly reduced	Reduced	Kept the same	Increased	Greatly increased	No opinion
		4	4	10	

45. How valuable did you find the interaction with the visiting practitioners in the Small Business Practice file, as a learning experience?

Of very little value	Not particularly valuable	Moderately Valuable	Quite valuable	Very valuable	No opinion
		5	6	7	

46. In the court appearances, how did the interactions with real-life judges and senior advocates/practitioners affect your motivation to perform at an appropriate level?

Greatly reduced	Reduced	Kept the same	Increased	Greatly increased	No opinion
			4	12	2