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PRACTICE ARTICLE

BRINGING THE COURT AND MEDIATION ROOM INTO THE CLASSROOM

JACQUELINE HORAN* & MICHELLE TAYLOR-SANDS**

I INTRODUCTION

Civil litigation is a dynamic process. One of the great challenges for teachers of civil litigation is conveying the dynamic nature of litigation in the formal environment of a lecture theatre. Teaching the rules of civil procedure can potentially be a very dry exercise, for both teacher and student alike. Having practised as litigators for many years, the authors know how exciting and creative litigation can be. The question many civil litigation teachers face is how to teach the rules of civil litigation in a context that both makes sense to students and facilitates an understanding of the role of civil litigation rules in the broader administration of justice.

There are many strategies for teaching law, and a well-rounded syllabus will attempt to achieve a balance of instructional methods. These methods include lecturing, Socratic discussion, problem-solving, demonstration, role-play exercises, simulations, reflective discussion, and appropriate use of new technologies. By using a variety of instructional methods, teachers are able to accommodate and foster the diverse range of learning styles of individual students. Traditional lecturing may appeal to students who are ‘verbal learners’¹ in that they prefer to process information by reading and listening. Other students who are ‘visual learners’ learn better through visual representations of material and may become disengaged by what they perceive as a ‘dry’ lecture.

Witnessing litigation in action is an ideal way for students to develop a sense of ‘how it all works’ in practice. Where student numbers permit, court visits are a very successful method for both

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¹ For a discussion of the difference between ‘visual’ and ‘verbal’ learning styles, see Richard M Felder and Joni Spurlin, ‘Applications, Reliability and Validity of the Index of Learning Styles’ (2005) 21(1) *International Journal of Engineering Education* 103.

engaging students and contextualising the rules of court.² It is much more difficult to bring the subject of civil litigation alive in larger classes where student numbers pose a logistical barrier to court visits and in-class group exercises.³ Taking large numbers of students to the courts is not a viable option. The superior Victorian courts request that students attend court in groups of no more than four. The available educational tours are rudimentary. They are designed for high-school students and do not address civil procedure. Locating a courtroom where an interlocutory application is being heard in its entirety is not simple. Even if you are able to find an interlocutory application that runs, it is difficult for students to follow what is happening in court without the court file or access to the lawyers. The question therefore arises as to how teachers can visually represent a dispute to students without court visits.

Another important factor in teaching civil litigation is that most civil court cases 'are resolved without a hearing, through direct negotiations between parties, conciliation, mediation and other processes'.⁴ A vital aspect to teaching civil litigation is therefore to convey how negotiation and mediation interplay with the traditional court processes. Negotiations are a step by step process mainly

² The authors first taught the rules of civil litigation in Procedure, a subject in the Juris Doctor law program, or JD. The JD is a postgraduate law degree with a limited student intake. Procedure classes consisted of approximately 20 students and were taught for three hours over 12 weeks. The subject featured a court visit where students witnessed some interlocutory applications and talked to judges and barristers about their role in the process. Some of the students visited a litigation law firm and were able to discuss with current practitioners how to use the rules of procedure in negotiating on behalf of their clients. The subject was a joy to teach and the student feedback was very positive. According to the students, the on-site visits were the highlight of the course. For a discussion of the advantages of sending students to observe actual Alternative Dispute Resolution (ADR) sessions for teaching ADR in the United States, see Robert A Baruch Bush, 'Using Process Observation to Teach Alternative Dispute Resolution: Alternatives to Simulation' (1987) 37 *Journal of Legal Education* 46.

³ The authors faced this challenge when they taught Civil Litigation to a group of over 200 undergraduate students in the Bachelor of Laws (LLB) course. Assessment consisted of one drafting exercise and one open book examination. The subject was unrewarding to teach and left students disinterested in the subject matter, which was reflected in student feedback. The authors were not alone in this negative teaching experience. Colleagues within the Law School complained of similar problems. These concerns were resoundingly echoed at the *Civil Litigation Teaching and Research Symposium* held at Flinders University on 15–16 April 2005. See also Kirsten Anker, Catherine Dauvergne, Mark Findlay and Jenny Millbank, 'Evaluating a Change to Seminar-Style Teaching' (2000) 11 *Legal Education Review* 97, 104.

⁴ Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System*, Report No 89 (2000) [6.53]. For an interesting insight into the level of integration of ADR teaching in the curricula of Australian Law Schools in the past, see Richard Calver, 'Teaching Alternative Dispute Resolution in Australian Law Schools: A Study' (1996) 2 *Commercial Dispute Resolution Journal* 209. See also Jennifer David, 'Training Issues in Dispute Resolution: Three Perspectives — I. Integrating Alternative Dispute Resolution (ADR) in Law Schools' (1991) 2 *Australian Dispute Resolution Journal* 5.

conducted informally between the parties' legal practitioners. Mediation is increasingly becoming a routine step in the litigation process, imposed by many courts under their case management procedures.⁵ Due to the private nature of mediation in Australia, it is not viable to arrange for students to observe mediation in practice.

Given the logistical problems in facilitating court visits and exposing students to real-life negotiations and mediation, the authors decided to bring the court and mediation room into the classroom through a simulated dispute, which students were able to watch on DVD. There are a number of recognised benefits of 'role-playing' simulations in legal education (where students actively participate in the simulation). These include bringing the subject to life, promoting active learning, developing basic interpersonal skills, encouraging constructive student interaction and involvement, increasing student confidence, and providing a framework within which to raise ethical issues.⁶ The use of a simulated dispute which students watch on DVD (rather than directly participate in) has many of these benefits. Another key benefit of using DVD clips is that they provide a visual method of instruction, which balances the more traditional verbal method of delivery used in lectures and assists students to learn in context. Getting students to watch a simulated dispute also enhances interactive or experiential learning as it allows students to model the behaviour they see in a DVD in subsequent role-playing simulations.⁷ In the context of civil disputes, simulations can also bring to life the rules of procedure and the theory of dispute resolution, which can only really be understood in the context of a dispute.

A multimedia project called 'Litigation in Action' was devised in an attempt to bridge the gap between the classroom and the court

⁵ For example, see *Federal Court of Australia Act 1976* (Cth) s 53A. Similar rules exist in state and territory jurisdictions.

⁶ For a detailed discussion of the educational benefits of utilising simulations or role-playing exercises in legal education, see Jacqueline Lipton, 'Role-Playing Exercises in First Year Legal Process Classes' (1999) 16(1) *Journal of Professional Legal Education* 97. See also: Robert G Vaughn, 'Use of Simulations in a First Year Civil Procedure Class' (1995) 45(4) *Journal of Legal Education* 480; Karl S Okamoto, 'Learning and Learning to Learn by Doing: Simulating Corporate Practice in Law School' (1995) 45(4) *Journal of Legal Education* 498; Susan Carr-Gregg, 'Alternative Dispute Resolution in Practical Legal Training — Too Little Too Late?' (1993) 10 *Journal of Professional Legal Education* 23, 34–5.

⁷ Watching a video has been described as a 'substitute experience', which provides students with an opportunity to reflect in class on what they have seen in the video: Sally Kift, 'Lawyering Skills: Finding Their Place in Legal Education' (1997) 8 *Legal Education Review* 43, 65. For example, following the video, the teacher can ask students specific questions about the approaches used in the video and whether or not they were effective. Reflection is a vital component in experiential learning as 'experience alone is not sufficient for learning': *Ibid.*, 62. For a description of the type of activities involved in the various stages of the experiential learning cycle, see Graham Gibbs, *Learning by Doing* (1988) 13. See also David A Kolb, *Experiential Learning: Experience as the Source of Learning and Development* (1984) 20. See also Susan Carr-Gregg, above n 6, 34–36.

and mediation room. The project generated a DVD entitled, *Keeping Your Cool — A Guide to Civil Dispute Resolution*, which simulated the common steps involved in a civil dispute, from the initial client interview through to informal negotiations, mediation and several interlocutory hearings, culminating in a trial.⁸

This article explains the objectives of the multimedia project 'Litigation in Action', how it was implemented in the classroom, and teacher and student responses to the DVD. The DVD is used as a teaching tool in Dispute Resolution, a first year compulsory law subject. As mentioned above, one of the key aims of the DVD was to assist contextual learning by providing a visual method of instruction in Dispute Resolution. The significance of incorporating visual learning into teaching law will be discussed in Part II. Part III will provide an overview of the multimedia project and explain how the DVD and file documents were used in class. Informal teacher feedback from the first use of the multimedia product is discussed in Part IV. Feedback obtained from the students as to the effectiveness of the multimedia product will be reviewed and analysed in Part V. Finally, Part VI provides some general comments about the overall success of the multimedia project and the continued viability of the DVD as a teaching and learning tool.

II INCORPORATING VISUAL LEARNING INTO THE SUBJECT

The majority of first year law students are used to having information, such as the daily news on television, being provided to them in summary form with plenty of spectacular footage and delivered by an attractive presenter. If they become bored with a television program, they reach for the remote control and surf for something more interesting. In a traditional law school lecture, students are predominantly faced with words and more words. They have no control over what they listen to. They cannot rely on an advertisement break every 12 minutes. They are unable to rewind the DVD when they lose concentration and miss something important. Particularly in large classes, students are at high risk of becoming disengaged.

The development of television, computers and the internet has revolutionised how people communicate. In a society bombarded with visual images, it is not surprising that many people process information more easily when it is presented in a visual format. While all students differ in their learning styles and preferences,

⁸ The DVD and file documents are not publicly available.

⁹ See: Richard M Felder and Linda K Silverman, 'Learning and Teaching Styles' (1988) 78(7) *Engineering Education* 674, 676; Walter B Barbe and Michael N Milone, 'What We Know about Modality Strengths' (1981) 38(5) *Educational Leadership*, 378–80; Felder and Spurlin, above n 1, 106.

several studies have shown that most people of tertiary age and older describe themselves as predominantly visual (as opposed to verbal) learners.⁹

The categorisation of ‘visual’ and ‘verbal’ learning styles is based on the Felder-Silverman tertiary education model. This model distinguishes between learning style preferences based on four dimensions, one of which is visual/verbal.¹⁰ Visual learners learn best from what they see, such as pictures, diagrams, graphs, flow charts, films and demonstrations. Verbal learners learn more effectively from words. For example, they prefer either written or spoken explanations and learn even more by explaining things to others. Felder and Silverman assert that teachers should cater for different student learning style preferences by striving for a balance of instructional methods.¹¹

Broadly speaking, educators recognise the significance of a communication trend based on visual images and are eager to bring education up to speed.¹² Law schools, however, have been slow to integrate technology in the classroom. The law degree is still heavily based on reading vast amounts of written words. This might be due to the fact that there is no body of research on the design, use and value of multimedia systems in education.¹³ Ultimately, given the diversity of learning styles of individual students, a variety of teaching methods is essential to a balanced learning environment.¹⁴ The remainder of this paper will focus on the use of multimedia technology to develop a visual learning environment in civil litigation classes, to enhance (rather than replace) other more traditional methods of teaching law. The goal of the ‘Litigation in Action’ multimedia project was to provide students with a simulated dispute in visual format to enhance their understanding of the process of litigation in the context of a ‘real-life’ dispute.

III MULTIMEDIA PROJECT: ‘LITIGATION IN ACTION’

The ‘Litigation in Action’ project was developed to enable students to observe the dispute resolution process inside the classroom,

¹⁰ The other learning-style categorisations in the Felder-Silverman model are sensing/intuitive, active/reflective and sequential/global: *ibid.*

¹¹ *Ibid.*, 105.

¹² ‘Educational institutions are increasingly engaged with integrating technology into the delivery of course materials and in the provision of alternate methods of learning.’: Derek Muller, John Eklund and Manjula D Sharma, ‘The Future of Multimedia Learning: Essential Issues for Research’ (Paper presented at the Association for Active Educational Researchers, Sydney, 2005) <<http://www.aare.edu.au/05pap/mul05178.pdf>> as at 4 December 2008. See also Marlene J Le Brun et al, ‘Producing Multi-Media Teaching/Learning Materials for Teaching Legal Ethics and Professional Responsibility in Australian Law Schools: And the Lesson is ... Soldier On’ (2001) 12 *Legal Education Review* 157.

¹³ Muller, Eklund and Sharma, above n 12, 1.

¹⁴ Calver, above n 4, 221.

by viewing a simulated dispute on DVD. The presentation of the material on a DVD was an attempt to assist contextual learning and the acquisition of core legal skills¹⁵ within the limits of large student enrolments. Students were given an insight into core legal skills by observing solicitors, barristers, judges and mediators employ those skills in their various roles.

A Scope of Project

The 'Litigation in Action' multimedia project took three years to complete. The management of the multi-disciplinary team (lawyers, teachers, actors and multimedia experts) proved to be 'demanding and exhausting — but rewarding'.¹⁶ Delays were expected and experienced. The project was made under a strict budget of less than AUD \$50,000. This was made possible by using in-kind services of law staff, the university's multimedia department and members of the profession (such as the judges and lawyers that appear on screen). The project was financed through a small faculty multimedia grant in collaboration with the Leo Cussen Institute, Melbourne. Minor compromises on the end product were made due to the tight budget involved.¹⁷

The project involved the drafting of a fully scripted scenario and a suite of background documents, including a court file. The script was professionally edited to ensure a realistic production. The authors recruited actors (both professional and amateur) to play the various characters involved in the dispute. The various scenes were filmed over four days. The footage was then edited and graphic designers were used to prepare a user-friendly end product. The scenario related to the plaintiff purchasing an air-conditioning unit from the defendant that exploded shortly after being installed by the plaintiff's brother in law. The subject matter is a typical consumer

¹⁵ 'Core legal skills' are practice-oriented or vocational skills which include interviewing clients, drafting, negotiation and advocacy. The new LLB curriculum aimed to strengthen core legal skills in addition to developing students' critical theoretical capabilities or 'intellectual skills'. For a discussion of the importance of integrating core legal skills and intellectual skills in Australian law school curricula, see Dennis C Pearce, Enid Campbell & Don Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (1987) ('the Pearce Report'). See also Craig McInnis and Simon Marginson, *Australian Law Schools after the 1987 Pearce Report* (1994). For an international perspective, see American Bar Association Section on Legal Education and Admissions to the Bar, *Legal Education and Professional Development — An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* (1992) ('the MacCrate Report'), in which the American Bar Association called for a greater focus on the development of core legal skills in American legal education. See also Bobette Wolski, 'Why, How and What to Practice: Integrating Skills Teaching and Learning in the Undergraduate Law Curriculum' (2002) 52 *Journal of Legal Education* 287.

¹⁶ Le Brun, above n 12, 171.

¹⁷ *Ibid.*

type dispute and would be considered too dull to make a television plot line but is realistic enough to hopefully engage the students.

The final DVD includes a number of live demonstrations (or clips) which form the basis of the dispute. The scenes depict the various stages of litigation, including courtroom activities and other dispute resolution processes, e.g. client interview, settling a statement of claim, mediation, directions hearings, two interlocutory applications (summary judgement and joinder) and trial extracts. The DVD scenes are complemented by a large file of documents. The file is not dissimilar to what a party's legal practitioner's file would look like in such a dispute. There are file notes of telephone calls, the client interview file note, a brief to counsel, court documents and correspondence between the parties and between the plaintiff and his legal practitioner.

B How the Multimedia Product Was Used in the Classroom

A selection of the DVD clips was incorporated into the teaching syllabus for Dispute Resolution in 2006. The classes in which the DVD was utilised incorporated other tasks, such as reading, discussion, role-plays and reflection, to build on the information presented in the DVD. The aim of this approach was to provide a meaningful learning experience for students and to promote an active learning environment in which students are encouraged to analyse, synthesise and evaluate the information provided.¹⁸ The authors were also wary of the potential for students presented with a DVD to turn into passive viewers and 'zone out' of the learning environment if they were not given relevant tasks.¹⁹ One of the basic premises on which active learning is based is that people learn in different ways.²⁰ A key feature of the DVD is that it caters to those students who are more able to process information presented in a visual format than that which is delivered under the traditional lecture-based model.

Individual clips were shown to students in classes which covered the subject topics in the clips. So, for example, in the class on commencement of proceedings, students were shown the client interview clip where the solicitor discussed with the client the nature

¹⁸ For a discussion of the general principles of active learning, see Paul L Caron and Rafael Gely, 'Taking Back the Law School Classroom: Using Technology to Foster Active Student Learning' (2004) 54(4) *Journal of Legal Education* 552–5.

¹⁹ *Ibid* 555: Caron and Gely discuss the 'backlash' against the use of technology in the classroom, which has arisen as a result of passive learning environments created by unchecked technology in the classroom. See also Douglas L Leslie, 'How Not to Teach Contracts, and Any Other Course: PowerPoint, Laptops and the CaseFile Method' (2000) 44 *St Louis University Law Journal* 1289, 1304–06, where Leslie argues that the use of PowerPoint slides and laptops in classrooms create a passive-learning environment by destroying student interactions.

²⁰ Caron and Gely, above n 18, 552.

of the claim and considerations relevant to commencing proceedings. Ideally, students were provided with a selection of corresponding file documents relevant to the clip a week before they were to be used in class.²¹ The documents were made available to students via the online subject page, which included downloadable versions of these materials. Also the clips were made available on the online subject page immediately after the class in which the clip was viewed and discussed.

The timely and limited publication of the clips and corresponding documents to the students enrolled in the subject was designed to encourage students to attend class and not just rely on the notes collated by, for example, a student who took the class last year. A common problem that Dispute Resolution teachers experience with this course is that they do not have enough class time to cover all the materials.²² The limited publication of the documents also gives each teacher the choice of whether or not to use particular documents in the file. The document file is detailed and was created with the knowledge that it would be unrealistic to discuss all the documents in a first year introductory subject.

As part of the multimedia package, a list of questions pertinent to each clip was also created for discretionary use by the teachers. Students were given a list of questions to consider, based on the scenario in the clip, immediately before being shown the clip. The questions attempted to integrate the practical matters dealt with in the clip with the theory contained in the readings. For example, in relation to the client interview clip, students were asked: 'What is the dispute about? Is the dispute suited to litigation? What options to litigation does the lawyer mention?' These questions required students to understand not just the legal practicalities of a dispute but also elements of dispute resolution theory covered by the readings. Class discussions, based on the list of questions provided, occurred after the clips were viewed.

In some instances, students were required to participate in role-play exercises relevant to a particular subject topic. For example, after students were introduced to ADR theory and shown a clip on mediation, they were then divided into groups to participate in various negotiation and mediation simulations. Students were given the opportunity to play a variety of roles, including that of the client, lawyer and/or mediator. This was a valuable experience for students as, later on in the course, they were assessed on their performance in a negotiation. The negotiation assessment exercise was based

²¹ The approach by different teachers varied.

²² This assertion is based upon the authors' own experience and observations made at the Civil Litigation Teaching and Research Symposium held at Flinders University on 15–16 April 2005.

on a different factual scenario from the one shown in the DVD.²³ Following the negotiation exercise, students were also asked to reflect on their experience, including those aspects of the negotiation that were successful and unsuccessful.

IV TEACHER REFLECTIONS

The 'Litigation in Action' multimedia project was designed with a number of teacher expectations in mind. First, and one of the primary aims, was to bring the mediation and courtroom into the classroom. Many students have not been in a courtroom or a mediation room before. Secondly, the authors wanted to provide students with an interesting and enjoyable narrative that would engage students who do not relate easily to abstract concepts. Thirdly, the authors hoped to assist students who are visual learners by providing a visual medium for learning. Fourthly, the authors wanted to provide a context in which to explain civil procedure rules and dispute resolution theory. Finally, the authors hoped to give students an opportunity to view, and reflect on, the core legal skills they would need to acquire as legal professionals.

While the focus of this paper is on student feedback, some informal discussion with teachers²⁴ was carried out to obtain their views on the multimedia project. Teachers were generally positive about the use of the DVD as a teaching tool. Some teachers found the clips to be very useful for providing a factual matrix to explain difficult concepts. For example, the interlocutory application seeking to join a third party made the often confusing topic of multi-party joinder much easier to teach. This is because the students were familiar with all the particular parties in the dispute and could therefore focus on the legal concepts rather than be distracted by which party is which. Another great time-saving benefit was the use of the same fact scenario throughout the course. This avoided the need for teachers to explain the facts in each class as the students were intimately familiar with them. This familiarity also allowed for a more detailed discussion of individual topics as the students were not caught up in absorbing new fact scenarios in class.

The teachers observed that class discussions that followed the showing of the clips were lively. By showing the clips in class, students were given information on a topic in an easily digestible and engaging form. Many students who otherwise did not talk in

²³ The DVD was intended as a teaching resource rather than to be used for assessment purposes. The cost of producing such a product means that it must be able to be used every year. Therefore, it does not provide any continuing assessment opportunities. It could, however, have been used for assessment purposes the first time it was introduced in the curriculum.

²⁴ There were four teachers, apart from the authors, who taught Dispute Resolution in 2006 and were asked to give their views on the value of the DVD as a teaching tool.

class spoke up. Students who hadn't done the reading were able to participate in the class discussion, based on what they saw in the clips. The teachers observed that the students thought more about some of the issues when the theory was put in context.

Some of the teachers believed that by giving students a glimpse into the background to a dispute, the clips facilitated student-directed learning and encouraged students to make connections between different topics in the course. This assisted the teachers in conveying an important conceptual point: although the course is taught in specific topic order, according to how the 'usual' litigation steps may proceed, there is no set order of process in litigation.

The teachers also observed that the students thought more about different possibilities when given real examples. For example, after the first clip showing the client interview, one student asked why the plaintiff didn't sue his brother-in-law (who installed the faulty air-conditioner) instead of the manufacturer. The student raised the concept of joinder in one of the earlier classes. Joinder is a topic addressed later in the course. The student's observation showed the class how all the discrete topics dealt within the course do not necessarily play out in the chronology that they are taught.

Another topic that the students raised, after seeing the first clip of the client interview, was costs. Even though this topic is dealt with at the end of the course, it is important for students to understand that costs are relevant to every step of the litigation process. The importance of informed client consent to each step in litigation and the legal practitioner's professional responsibilities was therefore highlighted early on in the course. The issue of costs was regularly raised in discussions following the viewing of the clips. For example, at the end of each interlocutory application made, costs were sought by the successful party. The students were therefore better able to understand that the issue of costs does not constitute a discrete topic.

The teachers observed that the clips also enabled students to see the important role played by ADR in the resolution of civil disputes, not just at the beginning but throughout the life of a dispute. For example, ADR was discussed in the initial client interview clip. There was also a formal mediation clip and other clips which provided examples of informal negotiations between the parties prior to the trial.

V STUDENT FEEDBACK

A The Survey

The authors designed a survey to obtain feedback from students, which was distributed before the conclusion of the Dispute Resolution subject held in Semester 2 of 2006. The survey questions

were designed to gain a broad overview of student perceptions of the product and gain some insight into how to improve the use of the current product. Furthermore, the feedback would assist in making a better product next time. It was the producers' intention to create another such product for Dispute Resolution which could highlight other aspects of the course that the 'Keeping Your Cool' DVD does not address. For example, there is no clip that shows an arbitration. Clips visualising other interlocutory applications, such as an injunction application or an application seeking further and better discovery of documents, would be useful to show students how these issues play out in the courtroom. A similar product could be used in other subjects (such as torts or criminal law).

B *Survey Responses*

We received a solid response rate to our survey, with just over two thirds of the classes we surveyed responding. Collection of a representative sample enables one to make generalisations from the results obtained.²⁵ The response rate, as a percentage, is more important than the actual number of responses in enabling reliable inferences to be made about the population.²⁶ Of the six streams of Dispute Resolution classes, we surveyed four of the streams. There were 168 students enrolled in those four streams and 113 of those students responded to the survey. Those who did not respond either did not attend class the day the survey was taken or chose not to participate in the voluntary survey.

The following results are based on survey responses of 112 students.²⁷ Of the students taking this course, 85 per cent were in their first year of law studies and were, on average, 20 years of age. The students had viewed the following clips:

- client interview between the plaintiff and his lawyer;
- mediation between the parties to the dispute; and
- third party application by the defendant to join the plaintiff's brother in law to the proceedings.

When designing the questionnaires, common social research techniques to ensure face, content and construct reliability of the questionnaires were employed. Whilst ideally we would have liked to have gone into great detail about the students' experiences with

²⁵ It is relevant for the reader to be aware that such generalisations are subject to common empirical limitations. For example, student respondents are influenced by social desirability — the desire to please their teacher by providing answers that they think their teacher wants to hear: David A De Vaus, *Surveys in Social Research* (5th ed, 2002) 107.

²⁶ Michael Zander, 'The Royal Commission's Crown Court Survey' (1992) 142 *New Law Journal* 1730, 1730. See generally, regarding sample size: De Vaus, above n 25, 80–83.

²⁷ Not all students responded to every question in the survey. Where this is the case, we have adjusted the total survey response figure to reflect this.

the multimedia product, we were conscious not to overburden the students with the voluntary task of filling out the survey. The length of the questionnaires was kept within two pages.²⁸ There were five broad areas addressed in the survey. The results are summarised as follows:

1 *Value of DVDs as a Learning Tool*

The students were asked how strongly they agreed with the following statement: 'I found the clips to be helpful as a learning tool'.²⁹ Of those who responded, 93 per cent (n = 103/111) either strongly agreed or agreed with the proposition.³⁰ The remainder of students, seven per cent (n = 8/111), were neutral about whether the clips were helpful.³¹ Students were then asked to elaborate on their answer by explaining why the scripts were helpful or unhelpful. Several positive themes resulted from this question.

Students found it helpful to see (sometimes abstract) theory and rules put into practice. Some students expressly stated that visualisation/illustration of the process assisted them in understanding the theory and its application in practice. Some students observed that learning from a 'real-life' scenario would assist them in applying theory to real-life disputes in future. Another common theme was that the clips gave context to the theory and rules that students were learning. Some students commented that the use of actual parties involved in actual disputes made the subject matter more accessible. Others noted that it was easier to remember the theory/rules when they have been contextualised in a real-life scenario.

The students also found it helpful to follow the same scenario through a number of different topics — this assisted them to bring the subject together at the end of the course.³² Several students said that the questions based on the clips and post-clip discussions were very

²⁸ Earl Babbie, *Survey Research Methods* (2nd ed, 1990) 130. See generally, De Vaus, above n 25, 94–119.

²⁹ This leading question will result in more respondents agreeing with the proposition contained in the question than if the question had been formulated in a non-leading way. However, in order not to overburden the students with a totally open-ended survey, the survey contains a mix of leading and non-leading questions. It is relevant for the reader to take this limitation into account when interpreting the results of the survey. These reported findings should not be interpreted as highly as conclusions accorded the mantle of fact. However, the results do provide some insight into whether the multimedia product provided any benefit for the students' learning outcomes.

³⁰ For students who agreed, 23 per cent (n = 25/111) strongly agreed and 70 per cent (n = 78/111) agreed.

³¹ None of the students disagreed or strongly disagreed with the proposition put. A five-point structured Likert scale was used for this and some other questions in the survey. Compared to a two-response question (yes or no) this allowed for greater sensitivity of opinions to be expressed.

³² In the authors' experience, the question by students, 'How does it all fit together?' is a common problem in the teaching of civil litigation.

helpful in clarifying the issues. Many found the clips to be clear and easy to follow and some said the clips engaged them by providing an interesting narrative from which to learn about litigation.

Some students commented that the clips provided a good insight into the behaviour and different roles of lawyers, who not only appear in court but also at client meetings and in negotiations and mediation. This feedback reveals that the DVD helped at least some students understand the relationship between ADR and civil procedure. It also reinforces the importance of the clips in portraying not just a realistic depiction of lawyers but also a good model for students, in terms of ethical and professional behaviour. Finally, students commented that the clips provided a nice change from lecturing and that it was good to have different modes of teaching.

The students were also asked whether they thought that the clips were effectively integrated into the subject matter of the classes. All but one student who answered this question said that the clips were effectively integrated into the subject matter of the classes.

2 Student Learning Styles and Experience

To give us greater insight into the results of the survey and to assist us in improving the subject in the future, we asked students two questions about themselves. The two characteristics were helpful in interpreting some of the responses to the survey questions.

First, we asked them if they thought they were visual or verbal learners. Whilst a traditional law course caters primarily for students who are verbal learners, the multimedia product was designed to appeal to those who are visual learners. It is relevant to know if the multimedia product fits its intended audience's needs. A strong majority of the students who responded to this question perceived themselves to be at least partially visual learners: 83 per cent ($n = 87/105$).³³ Only 17 per cent ($n = 18/105$) of students described themselves as verbal learners.³⁴ These results appear to be consistent with Felder's assertion that most students of tertiary age (at least in Western cultures) are visual rather than verbal learners.³⁵ Given that 83 per cent of students described themselves as either visual or equally visual/verbal learners, it is not surprising that the vast majority of students found the clips to be useful.

Secondly, we asked the students what they based their understanding of legal practice on (eg. television, personal experience, etc).

³³ Of the 87 students who described themselves as at least partially visual learners, 33 students said they were visual learners and 54 said they were both verbal and visual learners.

³⁴ Three students did not respond to this specific question. The categorisation of the students as verbal and visual learners is of limited reliability as it is based on the respondents' self assessment. Nevertheless this question does serve to indicate what type of learning the students feel that they respond well to.

³⁵ Felder and Silverman, above n 9.

About a third of those who responded to this question, 32 per cent (n = 34/105), said that they based their knowledge of legal practice on what they saw on television (including US dramas, news and current affairs shows). A quarter, 25 per cent (n = 26/105), said that they based their understanding on personal experience (including work experience, family and friends and court attendances).³⁶ It is useful to know that over a third of the students derived their understanding of legal practice from television when evaluating the student criticisms of the DVD discussed below.

3 *Areas for Improvement*

Students were given the opportunity in the survey to comment on any problems they had with the clips and/or the documents used in conjunction with them. Some of the criticisms are directly related to the subject matter itself and may not be avoidable. However, the comments by students have highlighted areas which could be improved in the future, given greater teacher awareness of the problems faced by students.

The students were asked if they understood what was going on in the clips. Of the 14 students (13 per cent, n = 11/105) who did not find the clips or some parts of them easy to follow, most explained that they found the first part of the third party application clip confusing. Some observed that the use of legalese made it difficult for them to follow this part of the clip. Others identified the unfamiliar processes as confusing. The third party application was part of several mentions before a Master (those matters were either by consent, unopposed, adjourned or referred out to another Master). The first part of the clip did not deal with subject matter that the students needed to know and understand. It was designed to introduce students to a typical application day before a Master. The rollcall that occurs at such hearings is chaotic to observe, so it is not surprising that some students felt overwhelmed by the first part of the clip. The student feedback has highlighted to the instructors the need to preface the showing of the third party application clip with a short explanation as to its purpose.

The students were also asked how the clips could have been changed (if at all) to enhance their learning. More than half the students did not offer any suggestions for improving the clips when asked. The two main suggestions for improving the clips were better acting and shortening the clips. Thirteen students commented that the acting was poor. The four main characters in the DVD were professional actors. Some of the lawyer performers who play lawyers in the DVD appear a little stilted. Eight other students thought the clips were too long. However, it is possible that these complaints were

³⁶ Multiple answers were possible for this question.

influenced by the students' perceptions of how lawyers should look on screen. Television shows and lawyer actors are unrealistically slick and fast. A young student who has had little exposure to real lawyers would be likely to perceive real lawyers as dull and awkward. Given that over a third of students said that they based their knowledge of legal practice on what they saw on television, the influence of the slick lawyer on US shows has likely impacted upon the students' perceptions of how a courtroom scenario should be played out. The clips are generally about 15–20 minutes long. Once again, students might have thought that they were unduly long because they are used to television shows having regular advertisement breaks.

Whilst the greatest complaint about the clips was the poor acting, some of those students noted that the poor acting did not detract from the usefulness of the clips in understanding the subject matter. The students were asked if they found the clips to be a realistic depiction of legal practice. Over two thirds of the students who responded agreed with this proposition (69 per cent, $n = 72/105$). Only 12 students (11 per cent, $n = 12/105$) disagreed. Fifteen students (14 per cent, $n = 15/105$) said that they didn't know whether they were realistic as this was their first introduction to legal practice. The perception by students of what constitutes a realistic depiction of legal practice also needs to be considered in light of the fact that approximately one third of students said they based their knowledge of legal practice on what they saw on television.

The only other common suggestion for improving the clips came from nine students who requested more explanations before and after the clips. This suggestion is something that the teachers can take on board by taking more time to introduce the clips and discuss them afterwards. There were requests for more clips, which is something that teachers are able to provide, subject to time constraints.

4 *Uses of Documents*

In addition to the DVD, students were provided with a selection of court documents relevant to the dispute. Students who participated in the survey were shown some or all of the following court documents:

- the writ and statement of claim;
- a summons and affidavit seeking leave to file a third party notice; and
- documents relevant to the third party application.

The documents themselves are more accurately described as verbal rather than visual.³⁷ It is useful, however, to discuss the use

³⁷ See clarification by Felder of the visual/verbal as opposed to the earlier visual/auditory distinction in learning styles in Richard M Felder, *Author's Preface to Learning and Teaching Styles in Engineering Education* (June 2002) <<http://www4.ncsu.edu/unity/lockers/users/f/felder/public/Papers/LS-1988.pdf>> at 4 December 2008.

of the documents as they were intended to complement the DVD in providing a range of learning activities. Varying degrees of use of the documents were made by the teachers. The main factor in discouraging greater use of the court file was time. Those teachers that regularly referred to, and used, the documents were positive about their benefit to the students.

The students were asked how strongly they agreed with the following statement: 'I found the precedent court documents helpful as a learning tool'. Of those students who responded to this question,³⁸ 61 per cent (n = 58/95) of the students either strongly agreed or agreed with this proposition. Only five per cent (n = 5/95) of the students disagreed. The remainder of students, 34 per cent (n = 32/95) were neutral. The relationship between the responses to this question and the use of court documents within those classes highlights that it is not just a matter of introducing legal precedents such as court documents — it is also about how those precedents are used. Careful thought must be given as to how court and other precedent documents are used in the classroom before introducing them to the students, to ensure that they are not creating superfluous reading material.

When asked about how helpful the documents were, most of those who answered found the documents to be helpful because they showed a practical example. They put theory into practice. The students appreciated looking at a precedent of what they read and talked about. As one student commented, '[t]alking about documents doesn't really create or cement the idea effectively, having an example was great!' Another student commented that the documents '[g]ave a real-life example where the dispute was already familiar to us'.

VI OVERALL SUCCESS OF THE MULTIMEDIA PROJECT

The DVD generated by the multimedia project was designed to create a more balanced syllabus for teaching dispute resolution by allowing students to witness a simulated dispute in class. The DVD enabled students to watch a dispute unfold in the context of a 'real-life' scenario and facilitated reflective class discussion about dispute resolution conduct and processes. To this end, it satisfied the pedagogical goals of promoting contextual and experiential learning and accommodating different learning styles. On the whole, student and teacher satisfaction with the DVD was reasonably high and student survey responses suggest that the DVD was a useful learning tool.

³⁸ Seventeen students did not respond to this question. Of those students who did not respond, some explained that there was little use made of the documents in their class or that they were away when the documents were discussed.

The DVD did, however, involve a significant time commitment from those involved in the production process and took several years to complete. It will be several years before the authors have the energy to embark on such a project again. Anticipating the investment of time, money and energy that this project would involve, the producers were conscious of creating a DVD that would not date too easily. They were also mindful of creating a DVD that was flexible enough to be used in different course structures. For example, the law school initially used the DVD in the first year undergraduate law subject Dispute Resolution, whereas the Leo Cussen Institute has incorporated it into its Practical Training Course for law graduates.

The law school has also incorporated the trial clip on the DVD into the final-year optional subject, Trial Practice and Advocacy. The trial clip provides the Advocacy students with an example of how to examine and cross-examine a witness and how to deliver a closing address. As future Advocacy students will have completed Dispute Resolution before they undertake the Advocacy course, they will already be familiar with the chosen scenario.³⁹ The use of the same fact scenario across two subjects highlights to the students how these subjects are connected.

The producers determined that the expense of a DVD project does not make it a good format to be utilised in assessment (other than the first time it is taught, where previous students of the subject do not exist). The primary objective of the DVD was therefore as a teaching tool rather than a means of assessment. The authors are reasonably confident that the DVD will be able to be used for several years to come. It has been regularly used to teach Dispute Resolution since 2006, without any problems of currency arising. No doubt, as the rules of practice and procedure change over time, the DVD may become dated in parts. While it may be possible to explain minor variations between the DVD and current practice to students in class, any major amendments to the civil procedure rules would necessitate the development of a new DVD in the future.

VII CONCLUSION

The 'Keeping Your Cool' DVD appears to have enhanced both teaching and learning in the Dispute Resolution classroom. Given the positive student feedback, the DVD will continue to be used in Dispute Resolution to reinforce what students learn from reading and class activities. The use of DVD clips and related court documents has proven to be an effective way to achieve the integration of theory and practice that is so important in a subject like Dispute Resolution. The

³⁹ The trial clip can be viewed as a stand-alone clip. However, teachers have the option of showing students earlier clips in the scenario, such as the initial client interview, to remind students about the background to the case.

clips also provide a visual method of teaching, which complements the more traditional verbal lecture-based style of teaching and thereby aims to foster an active learning environment.

By enabling students to view a simulated civil dispute in the classroom, the 'Keeping Your Cool' DVD has brought civil litigation to life and given students a contextual framework within which to learn about the theory and practice of dispute resolution. One important feature of this approach to teaching civil litigation has been that students are able to appreciate that the final hearing of a dispute is only one aspect of the resolution of a civil dispute. Even for those few matters that make it to final hearing, the majority of time is spent on other processes, including negotiation, mediation and preliminary hearings. By revealing these processes to students, they are able to obtain a better understanding of the role of civil litigation in the overall administration of justice and can hopefully analyse the process of litigation with a more critical eye.

This new teaching method for Dispute Resolution will be continually monitored and re-evaluated in terms of the goals it is designed to achieve and the audience for which it is tailored. As a first year subject, Dispute Resolution required teachers to cultivate core legal and intellectual skills at an undergraduate level. In 2008, the Law School's law degree became a postgraduate course, which presents new opportunities and challenges for teaching Dispute Resolution. The authors intend to make greater use of multimedia technology as an effective teaching tool in the future.