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Harnessing Assessment and Feedback to Assure Quality Outcomes for Graduate Capability Development: A Legal Education Case Study.

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Abstract

In recent times, employers, graduates, government and professional bodies have all called upon tertiary educators to embrace a notion of graduate quality that is concerned, not just with knowledge acquisition, but equally with how to use and what to do with that discipline knowledge once acquired. Legal educators have also responded to this stakeholder mood. Under two Teaching and Learning Large Development Grants, the QUT Law Faculty has been progressing an integrated and incremental approach to the development of both generic and discipline-specific capabilities in core undergraduate curriculum. Particularly, the challenge has been to ensure the alignment of assessment and feedback practices with the revised course goals and identified learning objectives.

This paper will detail the formulation of a coherent, incremental and holistic framework that has been mapped onto law curriculum for the teaching, learning and assessment of embedded capabilities. It will outline the intent and methods of curriculum design for more authentic learning and assessment tasks. It will also examine some of the implications and issues that arise for tertiary education and educators when the academy embraces graduate capability development as an aspect of graduate quality and embarks on, what is essentially, wholesale curriculum review committed to assuring that these broader learning outcomes are directly linked to course assessment and feedback methods supportive of this new learning.

1.0 Introduction - The Changing Agenda

In recent years, Australian higher education generally, and the legal education sector particularly, have been under sustained pressure to adapt to the demands of a changing, discriminating and competitive higher education marketplace. Tertiary legal education

has been subjected to intense scrutiny by government, employers, University management, professional bodies, the judiciary, law reform agencies and, not least of all, an extremely diverse student cohort. All stakeholders demand that law faculties should be accountable at every level for the quality and efficacy of the professional education they offer. The result has been that the fundamental orientations of legal curricula have had to be reconsidered. In 2000, the Australian Law Reform Commission (ALRC), in a major review of the Federal civil justice system cited the American Bar Association's 1992 *MacCrate Report*, and concluded that legal education should now focus on what lawyers need "to be able to do" (rather than what lawyers "need to know") (ALRC 1999:2.20).

The contemporary dynamics of the tertiary sector have aligned with such calls: universities are now recognising "that there is a need to ensure that graduates have the generic skills desired by employers such as analysis, communication, team-work and leadership skills" (Nelson 2002:9).

These drivers have delivered the opportunity to effect significant structural and philosophical change to core undergraduate law curriculum that may otherwise have been too radical to envision. Contemplating a clean review slate, the QUT Law Faculty has been afforded the luxury of progressing a "whole of course" approach to curriculum redesign. Critically, it has been possible to articulate "up front" the type of graduate practitioner we would desirably wish to produce. While we expect our students to graduate with sound technical knowledge of substantive law content, in more recent times, the challenge has been to inculcate both generic and legally specific skills in a holistic way to advance graduate outcomes. As legal educators, we are answerable to the diversity of stakeholder interests identified above. It is also appropriate therefore to seek out correlation between what it is that we as teachers want for and from our students *and* what it is that employers value in terms of graduate suitability for the workplace and job preparedness.

The conjunction of these academic and employment aspirations dictate that, while technically competent practitioners are obviously desirable, it is also imperative that graduates are equipped with the skills necessary to be able to use that technical knowledge effectively to succeed and evolve in the workplace. Graduates must therefore be equipped with transferable skills, a commitment to lifelong learning and the ability to work cooperatively and collaboratively with others in a workforce that is diverse and globalised. They must be capable of practising as reflective practitioners in changing and challenging work environments, which will require a skilling in moral and ethical competence so that they may deal with the complexity and ambiguity they will inevitably face. In sum, both academics and employers trust that the "wholly-prepared" graduate will have the necessary ability to integrate experience, information and knowledge to act as a competent professional in a diverse global and technological society.

This paper will detail the formulation of a coherent, incremental and holistic framework that has been designed for the teaching, learning and assessment of both conceptual knowledge and transferable generic and discipline specific skills, in the legal education context.

Specifically, the paper examines:

- The context in which this innovative curriculum framework has been developed to embed graduate capability development in core curriculum;
- The issues regarding the identification of, and the interrelationships between, desirable capabilities and skills (both generic and discipline specific);
- The investigations that led to the formulation of "course objective descriptors" for each of the identified skills, following which a further deconstruction was required to designate appropriate competency levels for the demonstration of staged acquisition of skilled behaviour by students as they progressed through the course;
- The process of mapping skill development onto appropriate units in year levels, to embed capability development within the curriculum.
- How the issue of developing appropriate criteria, tools and assessment tasks has been addressed in this context.

Exemplars from the undergraduate law curriculum will be used to show how graduate capabilities have been embedded and are being assessed incrementally through the course. Finally the paper will look at some of the implications and issues that arise for tertiary education and educators when the academy embraces an explicit capability development approach in embarking on, what is essentially, wholesale curriculum review.

2.0 Integrated and Incremental Graduate Capability Development - Starting with First Year.

When the QUT Law Faculty undertook a reconceptualisation of the teaching and learning experience offered by its undergraduate law programs, an obvious and crucial starting point was the first year experience of our student cohort. If we could not get this right then the platform upon which any subsequent review was to be constructed would be fatally flawed.

Given that tertiary law in Australia is essentially an undergraduate degree, the prospect of advancing the first year experience to presage student attainment of our vision of the graduate practitioner was, to say the least, a challenging one. Not only did we wish to address the generic issues of first year transition - diversity, the great divide between the expectations of staff and students and the crisis of large classes - we were also committed to providing the first year cohort with a package of teaching and learning opportunities that combined substantive content, theoretical and practical knowledge with the development of certain generic (and some discipline specific) skills; all of this in a legal context to a basic level of competency for all students, regardless of the diversity of their prior background and experience.

In particular, the review for the new first year considered:

- The first year objectives for a modern law program and the consequent redesign of a holistic integrated first year program (eg, issues such as the first year's status

- as the foundation of the course which requires that certain content and skills be desirably addressed);
- The balance of skills to be inculcated across the first year curriculum;
 - How to make explicit to students what was to be achieved in terms of skills development by the end of each unit and also at the end of the year;
 - How to change the teaching and learning approaches to ensure that the process of instruction, practice and reflection could be embedded within the new units;
 - The redesign of the assessment criteria and methods to facilitate this teaching and learning approach.

This shopping list for the new first year identifies quite clearly that it was never going to be possible to settle immediately to curriculum reform by simply selecting some inalienable, graduate capabilities and append them to a unit or two: such an approach could only ever address part of a very complex whole. Hence it was that first year curriculum review transformed itself into a review for graduate capability. But first year curriculum review could not be done in a "whole of course" vacuum. Just as the placement and assessment of substantive content is carefully considered in line with unit, year and course objectives, so also it was necessary to be deliberately cautious about the placement and assessment of generic (and discipline specific) skills as a "whole of course" exercise. Just as we seek to develop content in an integrated and incremental fashion in core curriculum - building blocks on a basic stable platform of knowledge (which, for undergraduate law, is the whole of the first year) - so also generic skills development should be approached and embedded in an intergrated (both horizontal and vertical) and incremental way. The course objective is to produce a whole (knowledgeable and skilled) graduate package. With respect to any skill, the framework and context (ie, curriculum) in which it is to be developed is critical - how else may the learning objectives for the skill be sensibly determined, implemented and then assessed? To bolt graduate capabilities on to certain units and to consider their assessment in isolation of the whole teaching, learning and assessment objectives of the curriculum is incongruous.

During 2000-2001, the QUT Law Faculty obtained a Teaching and Learning Development Large Grant to design an integrated and incremental approach to embedding "graduate capabilities" in core curriculum and to develop teaching strategies for facilitating student acquisition of the generic and legally specific (ie, discipline specific) skills that underpin those capabilities in the undergraduate law program. "Capabilities" has been settled on by the Law Faculty to reflect QUT's involvement in the ATN Project. "Graduate capabilities" are there described as

"...the qualities, skills and understandings a university community agrees its students should develop during their time with the institution. These attributes include, but go beyond, the disciplinary expertise or technical knowledge that has traditionally formed the core of most university courses. They are qualities that also prepare graduates as agents for social good in an unknown future." (Bowden, Hart, King, Trigwell and Wells 2000:2)

QUT has developed its own statement of graduate capabilities. In 2002, the Faculty secured a further Large Grant to examine and address the challenges of re-formulating assessment and feedback practices to assure their validity and reliability in this new teaching and learning environment. These two Grants have built on the platform on first year curriculum review for graduate capability development and have focused our attention on the necessity to harness associated assessment and feedback practices to assure the desired educational improvement in graduate outcomes.

3.0 Outline of Graduate Capability Development in Law.

The national and international recognition that discipline knowledge is but one of a broader set of competencies that influence the success of graduates in their chosen professions was the impetus for the QUT Law Faculty to apply for Teaching and Learning Development Grants to develop an integrated framework for the teaching and assessment of both conceptual knowledge and transferable skills. It has long been recognised that skills must be embedded within the processes and content of learning to ensure that learning objectives are met. Teaching and learning approaches and assessment methods are also desirably developed and executed in an authentic learning environment.

Therefore, the aim of our curriculum redesign for capability acquisition was to develop these authentic learning environments for students through the adoption of appropriate learning objectives, teaching and learning approaches and assessment methods. In this way, students would be facilitated in their development of both generic and specific (legal professional) skills in conjunction with the ethical and discipline framework they would need to practise as reflective practitioners on graduation. In the past, while universities may have expected their graduates to acquire certain implicit capabilities, the structured development of those capabilities was either non-existent or left to skills based units divorced from the rest of the curriculum. The focus of our curriculum redesign was to ensure that graduate capabilities should be seen as inextricably linked with the learning of disciplinary content in an *explicit* rather than implicit manner. Thus, students would be equipped to proceed into the workforce with the appropriate level of skills acquisition to enable a seamless transition from the academic to the professional environment. As stated by the Australian Law Reform Commission in 1999:

...properly conceived and executed, professional skills training should not be a narrow technical or vocational exercise...rather it should be fully informed by theory, devoted to the refinement of the higher order intellectual skills of students, and calculated to inculcate a sense of ethical propriety, and professional and social responsibility. (ALRC 1999: 2.85)

3.1 Capability and Skills Identification.

The first step required us to identify the generic and discipline-specific capabilities required by and of our graduates. This was done using a variety of sources:

- Feedback from employers and graduates, including the 2000 research report of the Evaluation and Investigations Programme (EIP), Higher Education Division of

the Department of Education, Training and Youth Affairs (DETYA), undertaken by ACNielsen Research Services on *Employer Satisfaction with Graduate Skills*. This latter Report highlighted that, taking into account the relative importance of the skills to employers, the greatest skill deficiencies among new graduates were perceived to be in the areas of creativity and flair, oral business communications and problem solving (EIP DETYA 2000; National Centre for Vocational Education Research (NCVER) 2001).

- Surveys produced by various studies conducted by professional bodies; in the discipline of law particularly, the survey produced by the Centre for Legal Education concerning the use of skills by law graduates ("Vignaendra Report") which indicated that the skills most frequently used by law graduates in any type of law related employment were oral and written communication, computer skills, time management and document management. Legally specific skills, whilst rated as important, were not the most frequently used (Vignaendra 1998:39).
- The list of graduate capabilities produced by QUT in its *Manual of Policies and Procedures*.
- Various international studies; particularly relevant for the discipline of law was the list of core skills and values set out in the American Bar Association's MacCrate Report (1992) though much work has also been done in the UK (Law Discipline Network 1998; UK Centre for Legal Education 1998; UK Centre for Legal Education 1997; Bell 1996; Bell and Johnstone 1998).

The task of identifying the capabilities and the various skills that might go to making up those capabilities was not an easy one. In the end result, the decision was taken to agree on a set of capabilities, the totality of which was considered to adequately describe a desirable graduate practitioner. Rather than then seek to list the various skills (generic and discipline specific) that might go to constituting *each* of the capabilities separately (as was first attempted and which led to much duplication), the approach taken was to deconstruct the capabilities holistically and to identify sets of generic and/or discipline specific skills that, *taken together*, go to making up the graduate capabilities. This is explained and exemplified further below. Though the capabilities settled on attempt to define desirable qualities, skills and understandings comprehensively at this point in time, it is recognised that the statement cannot be allowed to become frozen. The types of capabilities and skills necessary in the workplace will change over time and the list should be subject to continual review.

The six desirable capabilities of a law graduate, designed to encapsulate broad descriptors of graduate quality and expressed in terms of the abilities a graduate will be expected to possess upon graduation have been determined as follows:

Discipline Knowledge

Graduates will possess detailed and comprehensive knowledge of Australian legal principles and statutory regimes, knowledge of legal systems and influences outside Australia, an understanding of the latter's relationship with the Australian legal system and a fundamental knowledge of extra legal factors impinging upon substantive law.

Ethical Attitude

Graduates will possess a sense of community and professional responsibility and will be able to identify and offer appropriate solutions to ethical dilemmas.

Communication

Graduates will be able to clearly, appropriately and accurately communicate both orally and in writing having regard to the appropriate language for a variety of contexts.

Problem Solving and Reasoning

Graduates will possess critical thinking and problem solving skills, which enable effective analysis, evaluation and creative resolution of legal problems

Information Literacy

Graduates will be able to use current technologies and effective strategies for the retrieval, evaluation and creative use of relevant information as a lifelong learner.

Interpersonal Focus

Graduates will be able to work both independently and as a productive member of a team, practice critical reflection and creative thinking, be socially responsible and inclusive, and be able to work effectively and sensitively within the global community in continually changing environments.

3.2 The Skills and Competency Levels

The next stage in the process was to identify the various skills, and, then, to define the expected levels of achievement for each of those skills as a guide for both students and staff: for students as they progress through the degree and for staff as they design curriculum and related assessment tasks. A *Table of Core Skills* has been developed and is explained below. As has already been briefly mentioned, it is important to reiterate that many of the skills identified interrelate. Very few generic or discipline specific skills exist in a vacuum: many skills draw upon others to demonstrate effective acquisition of a particular skill (eg, problem solving draws on many of the other skills) while some skills are so fundamental that they permeate the application of nearly every other skill (reflective practice is a good example of the latter). This is essentially why the Law Project Team found it impossible to delineate exhaustively which skills should be assigned to which specific graduate capability. The fact is that generic and discipline specific skills interrelate with each other *and* also overlap *and* underpin effective (holistic) skills development and the (ultimate) attainment of the desirable graduate capability package.

The identified list of generic and legally specific skills for incorporation within the course were categorised broadly as:

- Attitudinal skills
- Cognitive skills
- Communication skills
- Relational skills.

The skills within each category (both generic and legally specific) that have been identified by the Project Team are as follows:

Attitudinal skills	Cognitive skills	Communication skills	Relational skills
<ul style="list-style-type: none"> • Ethical values • Creative outlook • Reflective practice • Inclusive perspective • Social justice orientation • Adaptive behaviour • Pro-active behaviour 	<ul style="list-style-type: none"> • Problem solving • Legal analysis • IT literacy • Legal research • Document management • Discipline & ethical knowledge 	<ul style="list-style-type: none"> • Oral communication • Oral presentations • Advocacy • Legal interviewing • Mooting • Negotiation • Written communication • Drafting 	<ul style="list-style-type: none"> • Work independently • Teamwork • Appreciate race, gender, culture and socio-economic differences specifically and diversity generally • Time management

To example the interrelationship discussed above as between the capabilities and the generic and discipline specific skills, take the example of the capability, "Ethical Attitude". This capability encompasses (at least) the skills of "ethical values" (from the Attitudinal Skills category) and "discipline and ethical knowledge" (from the Cognitive Skills category). Each of these skills has both generic and discipline specific (ie, legal) applications. The capability (cf skill) "Ethical Attitude" includes that:

1. The graduate is able to value and promote truth, accuracy, honesty, accountability and ethical behaviour.
2. The graduate possesses knowledge of and an understanding of the nature and sources of ethical standards and their enforcement.
3. The graduate recognises and applies possible processes for resolving ethical dilemmas.

But this level of detail is nowhere near sufficient to be of assistance in terms of how the various skills will be developed and assessed. Therefore, each of the identified skills has been further de-constructed in the *Table of Core Skills* to identify each skill in the following order of detail:

- the broad *skill category*: from the four categories set out above;
- the *specific skills* within those categories: from the more detailed shaded table above;
- the *course objectives*: that is, the level of competency expected of a graduate by the end of his/her course regarding the specific skill; and
- the *demonstrated abilities* of the graduate for each of the skills: that is, a statement that to meet the (final) course objectives for the specific skill, the graduate will have demonstrated certain abilities.

Example - Skill (cf Capability) of Problem Solving

Graduate Capability: Problem Solving and Reasoning

- **Skill Category**: Cognitive skills.
 - **Particular skill**: Problem Solving
 - **Course Objective**: The graduate is able to develop effective strategies for applying knowledge and solving problems to achieve objectives.
 - **Demonstrated Ability**: To demonstrate that the graduate has met this objective and has attained this skill on graduation, a student will need to be able to do the following:
 - Identify information needed, formulate questions, refine questions through answers, identify issue(s)
 - Research and analysis
 - Synthesis of research and ability to draw on analogy
 - Reflection and review (which may require review of 1-3)
 - Articulate possible solutions to problem - where appropriate a creative practical solution should be offered.

At certain, identified stages within the process, a student will need to be assessed on his/her level of attainment. The requirements for assessment and reporting led the Project Team to further break down each skill into three broad levels of progression or development (the *Assessment Criteria for Skills in Levels*). For each level, the skills need to be mapped onto appropriate core units within the years of the undergraduate curriculum ("appropriate" in the sense that there is thoughtful matching of skill with unit content in which the teaching, learning and assessment of the skill is to be embedded), so that it is clear which units take responsibility for a particular skill's development to which level of attainment. Each level of progression relates broadly to the notion that a student should move, in an incremental way, through various stages of development in the acquisition of skilled behaviour. In the specific terms of the undergraduate (law) degree, this may be represented generally as follows:

- ***Skill Level 1*** - At this level (notionally year 1), the student will be instructed on the theoretical framework for and application of the skill, usually at a *generic* level. The skill may be practised with guidance and feedback provided. Assessment will usually include a critique of the skill as practised.
- ***Skill Level 2*** - At this level (notionally year 2), a degree of independence is required of the student. This may involve some additional guidance at an advanced level of the skill, an environment in which to practise the skill in a real world legal scenario and feedback to students on their progress. Students will be encouraged to reflect on their performance and on ways in which that performance might be improved. At this level, individually or within a group, a student should be able to complete a task utilising a range of skills in relation to a simple legal matter.
- ***Skill Level 3*** - At this level (notionally years 3 and 4), students should be able to draw on their previous instruction and transfer the use of the skill to a variety of different circumstances and contexts without guidance. Students should be able to adapt and be creative in the ways in which they approach the context for and use of particular skills. Reflection on performance will be a key aspect. At this level, individually or within a group, a student should be able to complete a task for a knowledgeable and critical audience utilising a range of skills in a complex legal matter.

This last deconstruction draws attention to the necessity for there to be objective assessment criteria specified for each level of each skill so that the student's progress towards the *ultimate* attainment of the skill (as designated by the stated course objective) can be assessed. Fundamental to nominating these levels of progression have been the dual imperatives of:

1. Making explicit for students the incremental path of the skilling process (and thus also providing the opportunity for student reflection on their own development); and
2. Providing staff with the platform on which they can implement the particular assessment strategies in their own units.

This staged assessment of skill development also provides the framework for a reporting procedure that will eventually be utilised for the development of a student capability profile.

Together the two documents - *Table of Core Skills* and *Assessment Criteria for Skills in Levels* - encapsulate the taxonomy that has been adopted of skill category, specific skills, course objectives, demonstrated abilities of the graduate for each skill and skill levels (the latter describing generally the incremental levels of skills development and also the undergraduate units which have designated responsibility for each skill as against a particular level of competency acquisition - this last aspect will now be discussed).

3.3 Embedding Capability Development and Assessment Practices.

The undergraduate law curriculum was then reviewed in its entirety to embed this explicit approach to capability development. Central to the achievement of this objective has been the dual imperatives of integrating the skills within the processes and content of the substantive units and the striking of an appropriate balance as between skills development and content knowledge acquisition.

Skills integration requires *both* a macro course level approach, to ensure appropriate distribution of skills, *and* a micro unit level approach that encompasses a review of existing competency levels of students entering the unit, learning objectives, teaching methods and related assessment tasks. Some of the strategies our Faculty has developed to facilitate this mapping exercise include:

- The identification of appropriate units (in terms of content correlation) in which to position the development of the various skills and the planned articulation of those skills with other units throughout the degree;
- A reconsideration of the learning objectives, teaching and learning approaches and assessment methods for each unit to reflect the balance struck between substantive content and skills development;
- A re-assessment of the mode of delivery and the teaching and learning approaches in units so as to achieve authentic learning environments for the development of skills within the course;
- Developing appropriate assessment tools and mechanisms (including identification of criteria and publication of feedback sheets) for assessing competency levels within each of the skills;
- Establishing an appropriate reporting procedure for the students to track their development by documenting skills attainment (at the various levels of competency) through a reflective process that will lead ultimately to the development of a "student capability profile" at a university level.
- Creation and implementation of a staff development model to enhance the staff-as-instructors' abilities to facilitate, guide and assess capability development in students;
- Compiling of staff resources for the teaching and assessing of graduate capabilities.

It is perhaps useful to emphasise that this whole-of-course approach to mapping integrated and incremental capability development onto the curriculum requires that Faculty wide consultation be held to ensure that the skills are integrated into units both horizontally (across a year of the degree eg. first year) and vertically (incrementally developed from first year to final year). In operationalising this process, it is not necessary for any one unit to take on the responsibility for the *whole* development of a particular skill: it may be necessary (and is usually more desirable) to spread students' experiences across a number of units in a number of years (particularly, for example, in the case of multi-faceted skills such as written or oral communication, both of which have discipline specific applications in legal education). Nor is it necessary that

capability development be confined exclusively to compulsory units: further enhancement of skilled behaviour may occur in elective (cf core) units later in the course. To take a legal education example, generic oral communication skills may be developed to an advanced level in a legal context as (oral) conciliation skills in an elective unit such as *Industrial Law* - an obvious alignment of skill development with apposite discipline content.

Further, while the undergraduate course undoubtedly has a significant role to play in student acquisition of skilled behaviour, it should be stressed that the classroom is not the only place where students are able to develop desirable capabilities. Some skills are acquired in the activities of everyday life. Students should anticipate that, and take responsibility for, skills development outside of the classroom context. The course itself should be viewed as *providing the environment* for students to develop the nominated skills. But it is not the role of academics in the course to be solely responsible for students' skills attainment: a significant part of that responsibility lies with the student. The potential for students taking responsibility for their own learning in this regard may be exemplified by Attitudinal Skills such as pro-active behaviour and reflective practice and by Relational Skills such as time management and working independently. In these cases, students should be directed to resources made available for self-development and improvement, but it may not be necessary to devote large amounts of course time to their explicit acquisition.

A particular aspect of curriculum design that flows from this last matter is that the Law Faculty has purposely developed the concept of both *implicit* and *explicit* development of skills. This notion is directed specifically at delineating between those skills for which a unit will take responsibility for explicit instruction *and* those skills which the unit recognises are desirable both generally (for law studies) and specifically (for the particular unit) but which will not be explicitly developed. The *implicit* skills are identified as matters which students should be consciously developing and refining or regarding which they should otherwise be seeking their own further instruction (eg, basic computer skills, time management, note taking skills *etc*).

4. Assessment Practices.

Given the acknowledged role that assessment plays in shaping students' approaches to learning, a major consideration in the implementation of this model of course design has been the review of assessment practice. If we purport to teach to a broad range of capabilities that envisages student acquisition of generic and discipline specific skills, then our assessment practice must keep pace: authentic assessment tasks must be designed to test for mastery of both content knowledge and skilled behaviour. To promote acquisition of this new learning, attention also needs to be focussed on improving the quality of formative and summative feedback students routinely receive. In short, the driver is to "harness the full power of assessment and feedback in support of learning," (Nightingale, Te Wiata, Toohey, Ryan, Hughes and Magin 1996:6) because "[a]ssessment is not an end in itself but a vehicle for educational improvement" (American Association for Higher Education (AAHE)).

For us as legal educators, this has been one of the greatest challenges in implementing such large-scale curriculum review. Like many tertiary educators, academic assessment in law has traditionally been based on a quite narrow set of tasks, which have emphasised knowing rather than doing. To the extent that skills assessment has been addressed in law in the past, it has been primarily done indirectly through conventional assessment method: for example problem solving and critical thinking skills are demonstrated through exams and/or assignments; research skills are demonstrated implicitly through assignments (Law Discipline Network 1998). The result has been that only a limited range of skills has been developed and that students' ability to transfer skills from one context to another has not been very well developed (Oxford Centre for Staff and Learning Development 2002a).

We have therefore been required to re-evaluate the validity and reliability of our current assessment and feedback methods and to think critically about their transferability to the new imperatives of assessing authentic learning tasks. This work has largely been progressed under the second Teaching and Learning Development Grant referred in 2.0 above. The task we have set ourselves is to develop an assessment framework that will provide the theoretical basis for models of best assessment practice for certain of the graduate capabilities. The hypothesis is that it should be possible to assure the quality of assessment methods for capability development by evaluating the efficacy of those tasks as against the framework developed. The framework will be discussed further below.

Many resources for Law Faculty staff have already been posted on the Faculty's staff intranet, in particular amongst which are Assessment Examples (from both within and outside the Faculty) modelling how skills assessment may be optimally undertaken. A particular imperative here is for staff to be sufficiently informed by good practice to be equipped to design assessment tasks that are as clear and transparent as possible to students.

Of course, the role of any assessment will depend on the learning objectives being pursued. At a fundamental level of unit design, the type of information that can facilitate the efficacy of assessment tasks and *which should be communicated to students* is suggested by the following headings, all of which are directed at the necessity to be explicit about the skills objectives in the unit assessment information. Sample extracts from the Study Guide of one of the new first year units, *Legal Institutions and Method*, are provided under each head to illustrate unit practice:

- ***State the skills explicitly and implicitly developed in the unit:***

Example -

In this unit, the ***skills explicitly developed*** are:

- oral communication;
- critical thinking and legal analysis;
- problem solving; and
- written communication including the use of plain English.

In this unit, the **skills implicitly developed** are:

- time management;
 - independent worker;
 - ethical behaviour;
 - computer skills and information technology.
- **Why these skills have been chosen for this unit:** both in the *general sense*, for example that the skills in the 1st semester, 1st year unit are intended to provide a platform for the development of higher level skills in 2nd semester and the balance of the degree; and *specifically* for each of the explicit and implicit skills:

Example -

Explicit Skills:

- "Good **communication skills** are essential not only for success in your studies but also for success as a lawyer. In a recent survey of graduates and employers by the Centre for Legal Education (S Vignaendra, *Australian Law Graduates Career Destinations*, Centre for Legal Education, 1998) graduates and employers were asked to indicate the skills most frequently used by law graduates. Both employers and graduates rated oral communication as the skill most used in the work place."
- "The study and practice of law will require you to possess highly developed problem solving skills. We will be introducing you to two of the legal methodologies for **problem solving**. Problem solving will also be part of the skill development in the other first year units of *Fundamentals of Torts and Contracts A*."

....

Implicit Skills:

- "**Time management:** You should be developing and refining your time management skills very early in your studies. We have placed information about time management skills on the on-line site under Skills Material."
- "**Ethical Behaviour:** In its 1993 Report *Complaints against Lawyers*, the New South Wales Law Reform Commission (NSWLRC) affirmed its strong belief (and recommended accordingly) that the study of legal ethics and professional responsibility should be an integral part of any law school program, whether this involves mounting a discrete, compulsory subject of dealing with these questions as a significant part of a larger subject. It is only during this formative period in a lawyer's education that there is an opportunity for sustained study, discussion and reflection. As part of a general requirement for ethical [and honest] behaviour in the profession you will be required to exhibit ethical behaviour in all your dealings at law school. This includes your interactions with other students and with staff of the law school. To aid you, the Faculty has developed '*Student Conduct Guidelines*' which set out certain expectations relation to your conduct between students and lecturers, between students and administrative staff, student conduct generally, and e-mail and voice mail etiquette. You will notice that compliance with the '*Student Conduct Guidelines*' is one of the criteria specified in relation to tutorial conduct. Ethical behaviour will also be addressed in *Law Society and Justice* in semester 1 and in *Criminal Law and Procedure* in semester 2 of 2nd year."

...

- ***What is the learning objective in relation to the particular skills:*** eg, what is the level of achievement expected for each skill on completion of the unit (in a first year unit by having regard to Level 1 criteria taken from the *Table of Core Skills*):

Example -

Skill	Level 1
Oral Communication	<p>Can use active and passive listening with effect in communication in group settings such as tutorials.</p> <p>Is aware of the range of difference types of questions and their uses.</p> <p>Is aware of possible interpretations of non verbal communication.</p> <p>Is aware of techniques for effective verbal communication and is aware of the limits of verbal communication.</p> <p>Is aware of cultural difference in this context generally.</p>

- ***How will each of the skills be developed in the unit*** (in terms of a process of instruction, practice, formative feedback, reflection and summative assessment)? This should reflect how the unit objectives, the teaching and learning approaches and the assessment are all related:

Example -

Oral Communication:

The elements of oral communication are set out in the extract from L Boulle, *Mediation: Principles, Process, Practice* in the Cases and Materials volume. You will note that the criteria for tutorial participation [set out infra and which accounts for 15% of the assessment in the unit] is closely linked to the criteria for effective communication in that extract. Your tutor will expect that you have read this material and are attempting to follow the criteria when participating in tutorial discussions.

You will receive feedback in relation to your performance in tutorials from the tutor. Prior to each tutorial you should use the questions posed under 'Tutorial Performance Criteria' [set out infra] in 7.4 of this Introductory Guide as a checklist. Following the tutorial you should again address the questions listed for tutorial performance and consider how your performance could be improved.

In Week 7 of the semester, your tutor will ask you as part of the tutorial to reflect on your performance to date in tutorials. The tutor will ask you to assess yourself against the criteria provided for tutorial performance stating reason for your assessment and ways you will try to improve your performance prior to the end of semester. The tutor will collect this self assessment."

- ***How does this unit's skills development relate to the year's curriculum as a whole and, then, to the course as a whole?*** Students should be informed very early in their studies how and why they are going to be taught generic skills, how these skills preface the development of discipline specific skills (in the motivational "real world" sense), and what part they, as students, should play in developing these skills:

Example -

How does this relate to the first year curriculum as a whole?

In the first year of your studies you will be given the opportunity to develop a basic competency level in each of the four explicit skills detailed above. This will be achieved by an integrated and developmental approach the first year curriculum. You will be required to use and build on the skills acquired in *Legal Institutions and Method* in your second semester units and in the later years in your degree. For example, you will be expected to use and develop your problem solving skills in *Legal Research and Writing, Torts and Contract*. **You should not assume that just because you were assessed on that particular skill in *Legal Institutions and Method* you will not need to use it again.**"

Equally as important as painting the big picture for students is the issue of explaining each piece of assessment to students in terms of, for example:

- The skills objectives of *this* assessment task;
- How those skills objectives link with the unit objectives;
- How do the skills developed in this unit form linkages with skills developed in other units (both horizontally and vertically);
- What reference materials/resources are necessary to complete this assessment task;
- Specific assessment criteria for this skills assessment task;
- The process for *this* skill's development in *this* assessment task: explicit and precise details of the task to be undertaken together with details of the formative and summative assessment to be undertaken.

By way of example as to how a specific assessment task in a unit might then look, the following is provided. These instructions to students deal *only* with the procedural aspects of the task (the written assignment) and are intended to be later supplemented by the specific substantive content. Each assessment task is dealt with in similar detail in the Study Guide for the unit and is available at the commencement of the semester.

Example: Assignment

First semester first year example

Legal Institutions and Method Assignment

Both internal and external students are required to do the assignment

The assignment will comprise 20% of the assessment for the unit. The assignment will require you to demonstrate written communication skills, critical thinking and legal analysis skills.

Collection date: xx April 200x (available at Level 4 C Block or via on-line site)

Submission date: xx May 200x.

What should you read as reference material?

The assignment will not require you to undertake any research in the library. The assignment will concentrate on your ability to read, analyse and evaluate a piece of legal writing (this may be a case or legislation) and then communicate the results in clear concise and plain language to a particular audience. Prior to commencing the assignment, you should make sure that you have read and understand the following:

- the *Good Practice Guidelines for Comprehension and Legal Analysis* (these can be found on the on-line site);
- D Clarke-Dickson and R Macdonald, *Clear and Precise - Writing Skills for Today's Lawyer* (prescribed text)

If you are an internal student, you will also have received written feedback from your tutor in relation to two tutorial questions commenting on the style and clarity of your writing and your demonstrated legal analysis skills. You should take that feedback into account when preparing your assignment.

If you are an external student, you will have received similar written feedback in respect on your External Exercise 1.

How does this link with unit objectives?

The Assignment is designed to assess Objective 4: demonstration of the skills of communication, comprehension, synthesis and evaluation with a view to developing life long learning skills and practices.

What skills are being developed?

The Assignment is particularly aimed at the development of your critical thinking and legal analysis skills and your ability to articulate your views in a clear and concise manner. Upon completion of the unit, it is expected that you will be able to demonstrate an ability to comprehend and analyse simple articles, cases and legislation. You should refer to the statement of skill levels under **Skills Developed** [infra in this Introductory Unit Guide].

How will my performance be measured?

Your competency in critical thinking and legal analysis will be measured by both the assignment and the exam. The criteria which will be used to measure your performance [and which are specifically articulated on the feedback sheet that you must attach to your assignment on submission] include:

- Presentation;
- Clarity of expression, grammar and spelling;
- Use of plain English;
- Demonstrated ability to properly acknowledge the source of material and properly cite cases and legislation;
- Demonstrated understanding of principles articulated in the case or legislation;
- Demonstrated ability to comprehend meaning in the text and make inferences;
- Ability to analyse text, identify lines of reasoning, arguments, consequences and logical flaws in the text; Ability to evaluate reasoning or an argument in light of the existing law;
- Ability to reflect on own perspective of issue, evaluate other perspectives to determine the weakest and strongest arguments;
- Communicate results of evaluation in a clear and concise manner having regard to the principles of plain English writing to an appropriate audience.

How will I receive feedback on my performance?

As a part of your tutorials (including tutorials held at the Attendance School for external students), you will receive feedback on your critical thinking and legal analysis skills prior to undertaking the assignment. In addition, individual written feedback will be provided to you on your assignment while general feedback will be provided on the unit's on-line site to assist you in improving those skills prior to the exam.

[The instructions go on to require the submission of an "Assignment Acknowledgement Form" with the student's assignment which, inter alia, deals with the issues of copying another student's work and plagiarism and requires certification by the student that this has not been done in this case. Plagiarism is explained and the relevant Faculty Policy is extracted in the Study Guide. This is an example of the implicit development of the "Ethical Behaviour" skill mentioned earlier. A "Practice Tip" is also offered concerning the desirability of retaining a copy of the submitted work in case of unavoidable loss or destruction.]

The criteria/feedback sheet which was developed to go with this piece of assessment is sampled as follows:

LWB141 Legal Institutions and Method

Assignment Feedback - Semester 1, 200x

Name:

Mark: (20)

- Assignment Acknowledgement Form completed and attached **YES NO**
- Cover Sheet attached (with word count) **YES NO**

Criteria	Excellent	Good	Adequate	Fair	Poor
Written Communication					
Well organised and presented (eg use of headings <i>etc</i>). In particular, has complied with procedural requirements as identified in Instructions (eg, double spacing, <i>etc</i>).					
Uses plain English and appropriate writing style					
Demonstrates ability to proofread and answers are free of errors in grammar, punctuation and spelling.					
Correctly acknowledges sources; esp correct citation of cases and statutes.					
Critical Thinking and Analysis					
Responds to the questions asked fully and in sufficient detail.					
Demonstrates comprehension of meanings and inferences in text .					
Demonstrates understanding of difference between summarising and analysis and critical thinking skills. In so doing, demonstrates own critical thinking and analysis skills.					
Demonstrates ability to analyse sources of law utilised in judgment cogently (esp re Q1)					
Demonstrates an ability to evaluate a line of reasoning and provide own opinion (esp re Q4)					
Reached a conclusion based upon arguments presented.					

Examiner's Feedback

Reflection on Examiner's Feedback

After reading the feedback from the examiner reflect on whether your previous ideas for improvement need reviewing. After completing this reflection you should consider adding it to your **Skills Journal for First Year Law**

In developing the resources and examples mentioned, the Project Team has derived much assistance from the case studies that form part of the ATN Project's Final Report (Bowden et al 2000; Nightingale et al 1996) and also from the discipline specific studies (and examples given therein) (see UK Centre for Legal Education 1998; UK Centre for Legal Education 1997). Ultimately however, no matter how many examples are provided, every academic eventually will have to sit down, put fingers to keyboard and see what falls out. The desire to be a little more scientific about this process is what has driven the development of an assessment framework, which is the work on which the Project Team is currently engaged. The preliminary outcomes of this work are now discussed.

1. The Current Project - A Draft Assessment Framework

It may be said in short form that

It is generally recognised that good assessment is valid, reliable and fit for its purpose. The main purposes of assessment are to enable certification or classification of students' achievements and to promote and enhance students' learning. (AUTC 2001:6)

At a most fundamental level, the complex new teaching and learning environment we have embraced has prompted us to ask: How can we assure the quality of our assessment of students' capability development? The (tentative) answer we have come up with is that we should be able to assure the quality of assessment if it satisfies certain criteria (that we have distilled from the educational literature) (Biggs 1999; Brown, Bull and Pendlebury 1997; Brown, Race and Smith 1996; Newble and Cannon 1995; Brown, Rust and Gibbs 1994; Habeshaw, Gibbs and Habeshaw 1993; Ramsden 1992; Rowntree 1977). We have sought to reduce those criteria to a checklist form that staff will ultimately access by way of the faculty website (with some explanation of what we understand by each item available as an embedded explanatory link). Using the checklist, the hypothesis is that the details of each assessment method we have (or we find) can be evaluated against the criteria to check for quality. This should give us some informed-by-principle idea of a "score" for each assessment item, and will certainly highlight strengths and/or weaknesses both at the micro task level and at the macro whole-of-course level, the latter across the incremental development of a given skill. For example: one of the skills that goes to the graduate capability of "Communication" is "oral presentations" (from the skill category of "Communication Skills"). This is a skill that has been mapped onto at least nine units in the undergraduate curriculum through the three levels of skills progressions (notionally years 1, 2 and 3 of the degree). Various assessment tasks have been designed to assess this skill in the different units. When the body of these tasks is gauged as against

the assessment framework we have developed, we should be able to demonstrate whether what we are doing works and, if it works, why it works (on the basis that it meets the criteria that have been established). If some aspect of the development of the skill is lacking across the course then that too can be addressed to ensure that the skill has been assessed comprehensively.

Once we have filtered a range of assessment methods through the checklist/framework, we should be in a position to spell out the process for preferred capability assessment in a given area of skilled behaviour by reference to best practice assessment methods (which may have been constructed by amalgamating the best features of several assessment tasks). These best practice tasks will then be trialed and evaluated. The framework criteria can then be modified as appropriate on the basis of the evaluation and feedback from those trials.

Importantly for us, the framework must be a practical tool that all faculty staff (including sessionals), none of whom necessarily have any background in educational theory, will feel comfortable in using and referring to: it must be accessible in terms of its functionality and its language. On the other hand, it must also be sufficiently rigorous to achieve its stated aim of assuring the quality of capability assessment tasks. It should further promote good practice by acting as a prompt for reflection by staff on their daily teaching, learning and assessment practices. Acknowledging how resource intensive graduate capability development is and the consequent impact that it has had on academic workloads (in terms of the level of feedback required to support student learning), another very important consideration for us is that any assessment and feedback model adopted must be "manageable", in the simple sense that we can deliver on it given current staffing and resourcing constraints.

The draft checklist that has been formulated (and which will be refined once the initial assessment tasks have been trialed and evaluated) with a short explanation against each item (which will be embedded on the website) is as follows. The language used in the final version will be staff-centred to aid accessibility.

- **Is it valid?** Does it actually assess what it purports to assess? Can it be used to discover whether students have achieved the learning outcomes identified for the unit studied and does it allow students to demonstrate those achievements?
- **Is it reliable?** Would the marking of the task give the same result no matter who did it? Is it reproducible? Particularly:
- Are there clear and appropriate marking criteria which will be consistently applied?

"Arguably the most important link between learning outcomes and successful assessment methods is the use of explicit marking criteria." (Bone 1999:10)

- Is there consistency of criteria in the assessment of this skill across units?

- Do the criteria provide an adequate basis for discriminating between different categories of attainment?
- **Does it help students to develop in the area being assessed?** This is the idea of using active assessment processes for "educational improvement" (AAHE). The assessment should promote student learning by being explicitly linked to the learning objectives of the unit (and the "how" of this should be made clear to students). Particularly, as regards this most important criterion, the checklist should refer to the following issues:
- **Is it constructive?** Does it build from the more simple to the more complex?
- **Does it relate to different stages of learning?** A simple way of stating this might be to say that higher-level abilities should be demonstrated by final year students. But it is also important to ensure that we incorporate higher level thinking into assessment tasks:

There is an argument that all too often in ...higher education we assess the things which are easy to assess, which tend to be basic factual knowledge and comprehension rather than the higher order objectives of analysis, synthesis and evaluation. (Oxford Centre for Staff and Learning Development 2002a)

For example: staff might ask themselves which level of the Bloom cognitive hierarchy (in terms of learning outcomes as described by different verbs) does this assessment task address? (Oxford Centre for Staff and Learning Development 2002b; Bloom 1965, cited Bone 1999:6-7)

- *Level 1 - Knowledge: ability to recall*

Assessment verbs: identify, list, describe, outline.

- *Level 2 - Comprehension: ability to understand and rephrase knowledge.*

Assessment verbs: compare, contrast, illustrate, explain, demonstrate.

- *Level 3 - Application: Ability to apply rephrased knowledge*

Assessment verbs: advise, apply, generalise, develop, use, organise.

- *Level 4 - Analysis: Ability to discern constituent parts and the relationship between them.*

Assessment words: Explain, analyse, distinguish, categorise, classify.

- *Level 5 - Synthesis: Ability to combine separate elements of a whole.*

Assessment verbs: produce, construct, modify, plan, develop, combine.

- *Level 6 - Evaluation: Ability to make a judgment.*

Assessment verbs: Judge, argue, validate, evaluate, assess, decide, select.

Is the assessment task assessing the affective, rather than the cognitive, domain (and should thus seek to employ a different measure such as Krathwohl (1956)).

- **Does the task build in opportunities for the practice of the skill and for the provision of effective feedback and guidance to learners?** Ramsden refers to using assessment that supports learning by incorporating feedback opportunities into assessable activities (Ramsden 1992). Particularly as regards feedback, it should be:
 - *Prompt* so that it will be perceived as meaningful and relevant;
 - *Encouraging - strengths and weaknesses* identified
 - *Constructive* - addresses for students how they might improve next time
 - *Rational* by being based on clear assessment criteria that have been provided to students at time the work was set. The emphasis is on establishing an explicit relationship between what the student has done that has met or failed to meet the assessment criteria set.
- **Has an appropriate assessment type been chosen from the variety of assessment methods available?** Particularly:
 - Is this method suited to the learning outcome being assessed?
 - Consider also whether, in the overall unit context, the assessment is sufficiently varied so as to enable students to demonstrate their learning in different ways.
- **Does this assessment task promote desirable learning strategies: deep (learning to understand) rather than surface (recall of facts and memorisation) learning?**
- **Is the timing of the assessment task apposite?**
 - **Is it manageable, in the sense that it is efficient and effective for *both* students and academics?** Bone (1999:34), adapting Andersen, Nightingale, Boud and Margin (eds) (1993), has

suggested that the following strategies may help to establish economy and efficiency:

- Decide whose interests assessment is serving;
- Avoid over-sampling the course;
- Avoid over-questioning;
- Avoid over-reading student work;
- Avoid over-commenting on student work;
- Avoid over-grading student work;
- Refine current policies and find ways of using present methods better;
- Consider alternative approaches to assessment policy and practice;
- Consult original sources for how-to-do-it details.

Similarly, the AUTC Project 2001, *Teaching and Assessment in Large Classes* refers to Gibbs's (1992) suggested strategies for making assessment more manageable in large classes without unduly affecting learning. Therefore, staff may also consider asking themselves:

- Have they "front-ended" the assessment to "minimise problems that may occur later" by putting more time into
 - Preparing the assessment exercise - drafted full instructions, clarified and published the assessment criteria; and
 - Preparing students for the task by briefing them thoroughly; perhaps also engaging them in practice assessment exercises (such as peer- or self-assessed tasks) so that they can understand the criteria in use.
- Should staff spend more class time on assessment-related teaching and learning? Consider again the link between the learning objectives, the teaching and learning approaches adopted in the unit to support student learning and the assessment tasks designed.
- Have the opportunities for utilising self- or peer-assessment been explored? Consider that research on peer assessment has shown that the adoption this form of assessment can have significant workload and learning benefits to staff and students in large classes respectively: staff time spent on marking and feedback decreases, while there is an increase in the quality and quantity of comments. The learning benefits are such that students will also learn from this process as well as from doing the assessment. (Davies 2000, cited Ballantyne, Hughes and Mylonas 2001:1-3; Topping et al 2000; Falchikov 1995)
- Has the possibility of group assessment been considered? (But consider whether any training has been given to students in group work? Is the assessment task one that is "rich enough" for group work, in the sense that it has been designed to be done best by a group rather than an individual?)
- Consider "mechanising" or automating the assessment.
- **Is the assessment as authentic as possible** (in the sense that the assessment uses tasks as close as possible to those which are the course objectives)?

As a point of final reflection, it may be worth staff considering that:

"Assessment is most effective when it reflects an understanding of learning as multidimensional, integrated, and revealed in performance over time.

Learning is a complex process. It entails not only what students know but what they can do with what they know; it involves not only knowledge and abilities but values, attitudes, and habits of mind that affect both academic success and performance beyond the classroom. Assessment should reflect these understandings by employing a diverse array of methods, including those that call for actual performance, using them over time so as to reveal change, growth, and increasing degrees of integration. Such an approach aims for a more complete and accurate picture of learning, and therefore firmer bases for improving our students' educational experience (AAHE).

4. Implications and Issues

The final part of this paper will look, necessarily briefly, at some of the implications and issues that arise for tertiary education and educators when an explicit approach to capability development is embraced. The purpose of this section is not to suggest absolute solutions to these matters but to raise awareness as to their existence for those who may tread this path. Of course, I can only speak of these matters from the perspective of my own discipline, though I imagine the experience will be fairly "generic" whatever the context.

The development of these authentic new teaching, learning and assessment environments may require a significant paradigm shift in the approach to the teaching and learning within the Faculty. While a radical overhaul of units comprising the course may not be necessary (though this did occur in our first year law program which was completely revised for Year 2000 implementation), the significantly content-based approach traditionally used in many units is no longer feasible. This is not to say that large amounts of content need to be abandoned. Rather, a different *focus* needs to be developed to ensure that authentic learning environments can be created for the teaching, learning and assessment of skills *in parallel* with substantive discipline content. In all of this there are underlying issues of academic freedom.

The substantive issues of staff development and staff commitment need to be addressed in a realistic fashion by management at both the institutional and local, faculty, levels. Staff must see leadership and commitment to capability development across university curricula demonstrated by appropriate resource and workload allocations and the implementation of staff development training. Staff development will also be assisted by the compilation of readily available resources for staff on the teaching of graduate capabilities. Significant goodwill is required on the part of all involved and a "whole of university" commitment to the validity and desirability of graduate capability development is essential. To ensure that staff ownership of units is not lost, staff should be active participants in the process from an early stage, particularly in the linking of learning objectives with new teaching and learning approaches and the development of valid and reliable assessment tasks.

It would be naïve to assume that student reaction to an explicit skills approach will be completely or even necessarily favourable. Student response to a change in focus *from* content *to* skills development embedded in content may be mixed. At present, law students (who cannot be that different from their counterparts in other disciplines) evidence a strong utilitarian ethos. As for academic staff, capability development will also require a dramatic culture shift on the part of the student body, in this context from passive to active learners. While most students may see the ultimate benefit in the development of graduate capabilities at university, many may consider they already possess sufficiently developed skills competencies. Others may perceive capability attainment and/or improvement to be too confronting and as having the potential to pull down their marks in the current, very competitive, student environment.

6.0. Conclusion.

This paper has sought to demonstrate that the pursuit of integrated and incremental graduate capability development requires that all aspects of program design and delivery be harnessed to the achievement of this objective: from initial conceptualisation, to the operational level of mapping capability development onto discipline context, right through to ensuring the correlation between course objectives and assessment practices. This is a significant challenge for university hierarchies, faculty management, students and academic staff. In the end result, the objective is simply to offer our graduates the opportunity to be the best they can be in terms of their holistic acquisition of knowledge, skills and understanding. It is arguable that this is no more than that which has always been our responsibility to our students.

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