

## WHAT IS THE “Q” FOR?

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### **Abstract**

This paper is based on the Law Teacher of the Year keynote speech delivered at the Association of Law Teachers’ Annual Conference in April 2011 in Cardiff, Wales. Some refinement of the ideas expressed then took place and a further presentation formed my inaugural Readership seminar at Nottingham Law School in June 2011. The essence of the speeches was to seek to address the fitness for purpose of the Qualifying Law Degree (QLD) in the context of contemporary legal education, but more recently has focused the need for the requirements of the QLD better to reflect and promote what is best about law and legal education. Thus, rather than skills being incidental to academic legal study, I suggest that certain discipline-specific cognitive professional skills should replace the foundation subjects in the QLD. This paper concludes with some sample programmes designed to meet legal intellectual professional skills that meet the needs of the law student in the early 21<sup>st</sup> century whilst respecting institutional autonomy in legal curriculum design.

### **Introduction**

All higher education is experiencing unprecedented change. From 2012, the direct financial costs of undergraduate degrees set a scene involving a great deal of economic and political complexity across the sector. Institutional decisions have resulted in the setting of fees above the previously anticipated average level of £7500 which will almost inevitably lead to increasing loss of institutional autonomy.

Whilst commentators have suggested that institutions in the educational sector do not operate as truly

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<sup>1</sup> I should like to thank my colleagues in the Legal Education Group of the Nottingham Law School for their continued support and patience, and in particular Jane Ching, John Hodgson and Graham Ferris. Thanks are also due to Professors Duncan and Webb for their advice on an earlier draft. The opinions expressed here are my own.

commercial organisations within a free market, and that therefore the normal rules of competition do not apply, it is also true that institutions which recruit rather than select students are and will continue to be competing against each other for those students. Each programme therefore has to market itself as unique, at least locally, and probably nationally; and if uniqueness is not possible, given the relatively homogenous face of the legal education sector, then for each programme to differentiate itself in the market. There is a three-stage golden rule applicable across many activities, but notably in the field of marketing, which asks, “Who is my audience? What do they want? How am I going to give it to them?” The audience in higher education is fee-paying (loan-taking) students. Those students want an education that will fit them for *their* purpose, which is usually to get jobs. The context for this paper starts therefore by addressing whether law schools have the ability to ‘give it to them’, that is to offer students a unique learning experience (or at least to offer a product sufficiently differentiated from that of the competition). Before we consider the answer, we need to acknowledge that law schools are affected not only by the changes in the wider higher education sector, but law-specific changes as well.

David Edmonds has described the legal services market as in a “state of transition – or rather, one of rapid evolution.”<sup>2</sup> His list of factors influencing this evolution includes regulation, consumerism, technology and the broader social change. Changes in post-qualification organisation and regulation necessarily impact on pre-qualification education. Even before the full impact of the current evolutionary changes are felt, fewer than 50% of law graduates ultimately enter the ‘legal profession’ (a term which has become antiquated over a period of just four years: the deregulation of the legal profession in the Legal Services Act 2007 has necessitated a quick lexicon shift to the ‘legal services sector’). Because a student cannot embark on the Legal Practice Course (LPC) or Bar Professional Training Course (BPTC) without a QLD or equivalent, the academic stage of legal study clearly serves a

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<sup>2</sup> D. Edmonds, “The Lord Upjohn Lecture 2010, Training the lawyers of the future – a regulator’s view” (2011) 45(1) *The Law Teacher* 5

purpose or purposes in preparation for vocational study and professional training. However, Webb<sup>3</sup> suggested in 2009 that only 30-40% of law graduates entered the legal profession (60-70% wanted to) so the academic stage cannot be described as being just or even mostly preparation for later vocational and professional stages. Furthermore, a significant number of QLD graduates are employed in the legal sector without necessarily having attained the LPC or BPTC, never mind a training contract or pupillage. Nowadays many law schools look to the number of paralegal positions secured as showing employability success. That is not to criticise paralegal work in any way, but simply to illustrate the changing nature of the sector and the law schools' changing perspective.

The deregulation of the legal market place started in the mid 1980s. The first major legislative change was the Courts and Legal Services Act 1990, the impact of which on legal education was slight, requiring a tinkering to the English Legal System/Process/Method module. Although solicitor advocates had the potential significantly to reduce the number of students entering the Bar, the number called each year has in fact increased since 1990. The point is that to date the impact of legislative and regulatory changes has been negligible on the QLD, so legal educators might be tempted to think the *status quo* is appropriate and sufficient. However, the Legal Services Act 2007 is a sea change in the legal services market. It signals a paradigm shift in the way lawyers will work and the nature and amount of work reserved for lawyers who have particular qualifications. Fewer QLD graduates of the future may choose to proceed to the LPC or BPTC without a guaranteed training contract or pupillage. Rather than law firms, they are likely to work for businesses specialising in legal services, working alongside accountants, financial advisers, estate agents, taxation consultants, conveyancers, trademark attorneys, work based learning students, risk assessors, insurers and underwriters; the list is potentially limitless. Many will be doing jobs that have not yet been created. This is the future for which their higher education must, in

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<sup>3</sup> J. Webb, HEaDspace (blog) October 2009

part at least, prepare them. The time has come for us to consider whether there is a single, uniform model of legal education that will fit a diverse model of a lawyer in future.

Prior debate on the purpose of the law degree is extensive. However, the new context requires a fresh consideration to address the demands of marketing uniqueness or at least differentiation, for Law School autonomy in offering, for the foreseeable new legal services landscape and for the work many of our students will do after graduation. It is the contention of this paper that now is the time to address the requirements of the QLD. We should evaluate the legal educational purpose in terms of its current and likely outcomes; what students need from it. The complication is that as educators we always have to assess current processes to future needs and to various future purposes.

### **The Qualifying Law Degree**

The point must be made with some emphasis; a law degree is not a general studies degree. There is something very special about law, about what lawyers do. We need to identify what makes law and the study of law unique. The Joint Academic Stage Board (JASB) Joint Announcement 1999<sup>4</sup> mandates certain skills and knowledge for a law degree to qualify for progression into the legal profession. If all students who proceed to the LPC or BPTC have a 'qualifying' law degree, (or CPE/GDL; the conversion degree to enable students with a first degree in a non-law subject) the specialness of the degree must be found here.

Briefly, the requirements are threefold. First, students must achieve some 'general transferable skills'

Students should be able to apply knowledge to complex situations; recognise potential

alternative conclusions for particular situations, and provide supporting reasons for them; select

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<sup>4</sup> Available at <http://www.barstandardsboard.org.uk/Educationandtraining/academicstage/JointAcademic/> last accessed 8<sup>th</sup> July 2011. From 31<sup>st</sup> August 2011, the JASB will be managed by the SRA.

key relevant issues for research and to formulate them with clarity; use standard paper and electronic resources to produce up-to-date information; make a personal and reasoned judgement based on an informed understanding of standard arguments in the area of law in question; use the English language and legal terminology with care and accuracy; conduct efficient searches of websites to locate relevant information; to exchange documents by email and manage information exchanges by email; and produce word-processed text and to present it in an appropriate form.

These general transferable skills evidently are not designed to and do not make the law degree unique. They are called general, and graduates with any higher education qualification should be able to meet such requirements.

So, if not the skills set as currently mandated, is it legal knowledge that makes the law degree unique?

The second requirement is in respect of 'core knowledge':

Students should have acquired knowledge and understanding of the fundamental doctrines and principles which underpin the law of England and Wales particularly in the Foundations of Legal Knowledge; a basic knowledge of the sources of that law, and how it is made and developed; of the institutions within which that law is administered and the personnel who practice (*sic*) law; the ability to demonstrate knowledge and understanding of a wide range of legal concepts, values, principles and rules of English law and to explain the relationship between them in a number of particular areas; the intellectual and practical skills needed to research and analyse the law from primary resources on specific matters; and to apply the findings of such work to the solution of legal problems; and the ability to communicate these, both orally and in writing, appropriately to the needs of a variety of audiences.

This list is more law-specific than the general skills, but it cannot be said to be this knowledge which makes the degree special or unique because there are many students studying law on non-law, non-QLD programmes who nevertheless develop similar legal knowledge (for example many forensic science, criminology and politics programmes provide this knowledge). However, in order to be a *qualifying* law degree, the third requirement is that the student must also pass the seven foundation subjects: Public Law (including Constitutional Law, Administrative Law and Human Rights); Law of the European Union; Criminal Law; Obligations usually including Contract and Tort; Property Law; and Equity and the Law of Trusts.

So is it these seven foundation subjects, in conjunction with the general skills and core knowledge that make the law degree unique? It cannot possibly be. As Birks pointed out in his criticism of the foundational legal knowledge in 1995:

The greatest absurdity which will now be continued for the best part of a decade is the combination of a list of compulsory subjects and the impossibility of substitution. It means in effect that nearly half the time available must be clogged up with courses pitched at the most superficial level. There is so much that has to be done in each compulsory module that superficiality is inevitable. Look for example at Public Law, and calculate the time available for administrative law or human rights. A law school which wants to give depth a priority over breadth is crippled by these prescriptions, for no reason at all beyond a bureaucratic refusal to contemplate a more flexible system. If, for example, someone has done company law,

commercial law, family law and labour law, no case whatever can be made for worrying about the omission of some part of the so-called foundations.<sup>5</sup>

But Birks proposed to replace mandated knowledge specialism for other mandated knowledge specialism (“some other subjects might serve just as well as those on the compulsory list”), unlike this paper, which calls for a replacement of knowledge with skills linked to knowledge, articulated below.

So the question posed here is not what the law degree is for, but simply whether the QLD either reflects or promotes what law students must know and do as a *sine qua non* of future legal practice. Boon and Whyte revealed that

despite recognition [by respondents to their survey] of the need for a secure base of knowledge, at its worst, the initial stage [the QLD or CPE/GDL] is an exercise in “memorisation and regurgitation” of a content thereafter largely forgotten. It seems fair to conclude that the proliferation of new content is valuable only *insofar as it introduces students to new repertoires of skills...*<sup>6</sup> (emphasis added)

This must be true. Knowing ‘what’, on its own, does not generate understanding and cannot necessarily lead to a problem being solved, or different problems being solved with the same or different legal solutions.

These seven foundations subjects are no more special than any other legal subjects. Birks asserted in 1995 that

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<sup>5</sup> P. Birks, “Compulsory Subjects: Will the Seven Foundations ever Crumble?” (1995) 1 *Web Journal of Current Legal Issues*.

<sup>6</sup> A. Boon and A. Whyte, “Looking Back: Analysing Experiences of Legal Experience and Training” (2007) 41(2) *The Law Teacher* 189

the implementation of Seven Foundations is a victory for both minimalism and for conservatism - that is, for those who think a smattering of legal education is all a lawyer needs and for those who dislike change of any kind

and also that

the fixed list of compulsory subjects is the most obvious symptom of an attitude to legal education which weakens English legal science.<sup>7</sup>

Some institutions already 'blend' the foundation subjects with certain legal skills (for example, a mooted assessment in contract or criminal law, a negotiation assessment with commercial law, report writing EU law, and so on). That does not make the seven foundations any more foundational; indeed, if institutions are working around the foundation subjects to embed skills and values into curricula, the tail of the foundation subjects is wagging the dog of the degree content and, in part at least, limiting innovative legal undergraduate skills-orientated curricula. If we recall the context of the higher education sector above, there is a need to identify the uniqueness or differentiation of each institution's degree from 2012 because of competition. Whilst the JASB continues to mandate minimum subject knowledge, the 'Q' part of the QLD lags behind the changes to the HE sector and unnecessarily limits law schools' autonomy.

### **A suggested reformulation of the QLD**

It is the contention of this paper that there should continue to be a form of QLD to provide a nationally recognised standard, however, in order properly to reflect what students achieve through their legal studies, that QLD should contain minimum (credit point driven) *intellectual professional legal skills*, enhancing the current general skills and replacing prescribed knowledge. This thesis rejects a

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<sup>7</sup> Birks (supra n. 5)



prescriptive canon of knowledge to be recited like a catechism. The current system risks not providing the student with the skills needed for later professional work. It would be for each law school to decide which area of law or module should be linked to each prescribed skill or skills.

The word 'skill' is often used in a pejorative way. This is to be regretted but may justify the use of synonyms. Rather than an intellectual legal professional skill, we could adopt a legal 'accomplishment'; a 'craft' of the lawyer; an 'aspect' of legal expertise or proficiency; or legal '*savoir faire*'. The word 'skill' is defined in the Oxford English Dictionary as "an ability to do something well" and there is a risk of inexactitude in the use of the word because although effective performance of a skill implies a blending of both knowledge and ability, 'skill' does perhaps focus too much on 'know-how' rather than appreciating the necessary connections between 'know-how' and 'know-what'. The proposals here are emphatically not rejecting the academic nature of legal study or academic rigour in a QLD. The skills elaborated below must be linked to legal knowledge because there are no skills that do not require knowledge. The essence of these proposals is that the QLD should require students to have abilities to know and do 'law things' (what such 'law things' are is explored below), and do them well. Many of these law things are already learnt as part of undergraduate legal study but without being express requirements of the QLD. The fact that such skills are developed but are not required by the governing bodies reinforces the view that the QLD does not reflect best legal educational practice or promote the development of innovative legal curricula.

The connection between knowledge and skills in legal education is well documented<sup>8</sup> but there has been something of a resistance to identify a skill set with undergraduate legal study, partly through fear of the

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<sup>8</sup> See, for example, R. Burrige, et al., (eds.), *Effective Learning and Teaching in Law* (London: Kogan Page, 2002); N. Duncan, "The Skill of Learning: Implications of the ACLEC First Report for Teaching Skills on Undergraduate Law Courses" (1997) 5 *Web Journal of Current Legal Issues*; C. Menkel-Meadow, "Aha? Is creativity possible in legal

loss of academic standards, but also because that has not been seen as what the law degree is for.

Bradney<sup>9</sup> suggested in respect of the 1994 Advisory Committee on Legal Education and Conduct (ACLEC) report that:

The paper distinguishes between 'intellectual and other skills associated with degree-level education' and 'the analytical and conceptual skills needed by lawyers' (ACLEC 1994a, para 2.1). Since 'intellectual skills' presumably refers to high order cognitive skills which underpin and infuse all academic disciplines this dichotomy makes sense only if the phrase 'analytical and conceptual skills needed by lawyers' refers either to low level technical skills particular to law (for example, the use of citators) which are not in fact 'analytical' or 'conceptual' or to professional skills which are not intellectual.

It is my contention that Bradney perhaps should have acknowledged that there *are* high order legal cognitive practical legal skills. We do not always recognise that what we do as lawyers, academic or practising, or both, is special. It is my contention that what we already do, and ask students to do in terms of skills should be recognised, and heralded, as being what makes a law degree unique.

### **Intellectual Professional Legal Skills**

Perhaps it has always been such an obvious part of our studies and our teaching that we have forgotten that developing a command of cases and legislation is very hard and in comparison with lay people, is one part of what makes a lawyer unique. To begin with, therefore, there are therefore two suggested

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problem solving and teachable in legal education?" (2001) *Harvard Negotiation Law Review* (6) 97; S. Nathanson, *What Lawyers Do, A Problem-solving Approach to Legal Practice*, (London: Sweet & Maxwell, 1997); J. Webb and C. Maughan, (eds.), *Teaching Lawyers' Skills* (London: Butterworths, 1996); W. Twining, "Pericles and the Plumber" (1967) (83) *Law Quarterly Review* 396; A. Sherr, "Legal Education, Legal Competence and Little Bo Peep" (1998) 32(1) *The Law Teacher* 37.

<sup>9</sup> A. Bradney, "Raising the Drawbridge: Defending University Law Schools"( 1995) 1 *Web Journal of Current Legal Issues*.

intellectual professional legal skills in the new legal landscape. The first relates to cases and the second to legislation.

### *Cases*

To articulate more fully, the skill surrounding command of cases would require students to demonstrate an ability to find a particular case as directed (basic research in finding law reports), or a case or cases in response to a legal problem (advanced legal research techniques). Once the case is found, it has to be read. This is easier said than done and there are techniques to reading cases (which many law schools teach as foundational knowledge but which the Joint Statement only implicitly provides as foundational). Next there is case comprehension, because the law has to be understood both in itself and the wider legal or social context. Finally for the case-law skill, there has to be an application of the case to novel situations, also known as problem solving. Each component of this skill is assessable diagnostically, formatively and summatively.

### *Legislation*

The intellectual processes or skills involved in developing a command of primary and secondary legislation involve an understanding of Parliamentary supremacy, an ability to research relevant statutory provisions, to read, interpret and construe legislative language and an ability to 'map' legislative provisions (which means to navigate statutes internally across sections, parts and schedules, and to navigate externally to see the relationship between different Acts, and assess the nature of the law from a variety of legislative sources). Given the tension between national and international legal structures, and the increasing amount of UK legislation, finding and understanding legislation is a key legal intellectual skill, but not one which benefits from explicit recognition in the qualification requirements.

## *Legal theory*

It is possible to achieve a QLD now by learning what the law *is* across the required curriculum. Reciting and applying legal rules in the absence of an understanding of legal theory does not prevent a student graduating with a QLD. This could be described as an absolute positivist approach to legal learning (a contract is ..., a primary victim is ..., the *mens rea* for murder is..., the jurisdiction of the court is ...). It is scandalous that the QLD does not require a depth of thought, because without an understanding of the nature of law, or the conflicting views on the nature of law, the social context and normative nature of the law cannot be grasped<sup>10</sup>. Therefore, legal theory should be, as Ferris has suggested

not restricted to one theorist, or one school of theorists, or even one canonical collection of theories that would receive acknowledgment within standard works of jurisprudence. The idea of legal theory is therefore an inclusive one.<sup>11</sup>

Legal theory would therefore embrace a traditional taught jurisprudence module, as well as any module enabling students to consider the values and principles of the law<sup>12</sup>, provided the conflict between (or at least the incommensurability of) those values is explored. It would be hypocritical to suggest that jurisprudence becomes a core or foundation subject, not least because of the importance of law school autonomy in programme design, but the theories and principles underlying the law should be clearly

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<sup>10</sup> G. Ferris and R. Huxley-Binns, *Are we all going to the same place: pluralism and value driven legal education*, Presentation given at the Learning in Law Annual Conference, Warwick 2010; G. Ferris and R. Huxley-Binns, "Escaping the Wasteland: The Multiple Needs for an Explicit Incorporation of Values into the Core Curriculum of Contemporary Legal Education" (2009) *Journal of the World Universities Forum* 3

<sup>11</sup> G. Ferris, "We Should Look to Legal Theory to Inform the Teaching of Substantive Law" (2009) 3 *Web Journal of Current Legal Issues*.

<sup>12</sup> G. Ferris, R. Huxley-Binns and A. Nicholson, *This is why I took a law degree in the first place*, Presentation given at the Association of Law Teachers' Annual Conference Cardiff 2011

embedded into aspects of the taught curriculum. For example, freedom of contract and equality of bargaining power could be used as theoretical bases for learning contract law, or employment law. Autonomy and liability based on moral responsibility could be the theoretical basis for criminal law. Libertarianism lends itself to a study of constitutions. And so on.

### *Critical legal reasoning*

Critical legal reasoning (please note this is not Critical Legal Studies) includes deductive reasoning, casuistry and legal logic. It includes the ability to use theory to solve problems, to weave moral reasoning into hypotheses to solve problems (therefore encompasses ethics, below), and to identify and use rhetoric. Legal reasoning may be learned as a separate discipline, like jurisprudence above, but it would be better learned as an inherent part of the process of applying law and morality to novel fact patterns to reach an informed and sensible conclusion on reliable evidence. It might be exemplified by, for example, the testing of a hypothesis against an antithesis in a dissertation or extended essay.

### *Ethics*

There is a wide debate and a huge literature about the definition, role and location of ethics in the QLD. Without repeating that which is widely available, suffice to say here that strict code compliance in the professional conduct sense can be left for the LPC or BPTC or even continuing professional development (CPD) programmes. However, for the QLD, ethics should be a compulsory element, is easily designed as part of the QLD curriculum<sup>13</sup> and it is a skill because, in the general value sense, ethics is a skill, it is how to behave.

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<sup>13</sup> A. Boon, *A model curriculum for legal ethics*, available at <http://www.lawsociety.org.uk/new/documents/2011/Model-ethics-syllabus-Nov2010.pdf>, last accessed 29<sup>th</sup> July 2011

## *Legal writing*

Writing well is important for any professional work, but is vital for law students because of the role of words in the law. Students need to develop a respect for and command of language that appears to be lacking from their pre-HE studies. Although the current JASB requirements (above) do include 'use the English language and legal terminology with care and accuracy ... and the ability to communicate these, both orally and in writing, appropriately to the needs of a variety of audiences', LPC and BPTC tutors, as well as law firms are well documented<sup>14</sup> as being of the view that students with a QLD do not and cannot recognise the nature of the cultural discipline of writing about the law in a legally professional way. This skill is not just about writing course works and exams, but also about law-specific and culturally situated documentation. For example, this skill can be taught and could be assessed by requiring students to draft

- an exclusion clause in a contract/commercial law module,
- a restraint of trade in an employment law module,
- an indictment in criminal law or evidence,
- a clause in a will for trusts,
- a lease in land law or landlord and tenant law,
- a clause in a conveyance,
- counsel's opinion, in any module at all,
- and so on, according to programme design.

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<sup>14</sup>Much of the discussion is outside the academic press and is particularly to be found in editorials and blogs, too numerous to cite all. Examples include: A. Clarke, *Student Angst*, *The Law Society Gazette*, 21 July 2000, available at [www.lawgazette.co.uk/news/student-angst](http://www.lawgazette.co.uk/news/student-angst); see also [www.thelawyer.com/speaking-your-language/134978.article](http://www.thelawyer.com/speaking-your-language/134978.article); C. McPartland, *SRA Director slates trainees' English*, *The Lawyer*, 29 September 2008, available at <http://www.thelawyer.com/sra-director-slates-trainees'-english/134931.article>; <http://www.legalweek.com/legal-week/blog-post/2042773/pupillage-advice-homework-weaknesses-cheque-youre-spelling>. All web addresses were last on accessed 2 September 2011

Student work would be assessed not only for accuracy of legal content but also for the quality of the legal language.

We may already require students to do many of these activities despite the current QLD requirements, but we certainly do not require them because of the JASB Joint Statement. The requirements of the QLD should inspire best pedagogical practice and vice versa, which at present, they do not.

#### *Legal commercial awareness*

The business context of lawyering is a skill which many readers may be surprised to see here as a (i) skill and (ii) law-specific skill, but in the Legal Services Act 2007 landscape, it is no accident that 'law firms' co-exist with alternative *business* structures. Legal commercial awareness does not mean making students study Commercial or Business Law. Rather it means that students on a QLD should be required to have to show an appreciation of the business context of the legal services sector and an ability to behave appropriately according to context. Profit and loss, top and bottom lines, client relations, strategy, mission; these are terms our students need to know and understand if they are to do well in the new legal services sector<sup>15</sup>, as are firm, limited liability, self-employed, employed, and indemnity to name a few more. Law schools who offer an undergraduate credit bearing work placement in law firms would easily facilitate this skill component. Other law schools could, for example, introduce a clinic or simulated clinic to facilitate a practical understanding of this skill. Legal commercial awareness belongs as a 'Q' of the QLD because in future, many QLD graduates may enter paralegal work (or other professional non-law work) without taking the vocational qualifications. It is therefore inappropriate for this skill to be studied for the first time on the LPC/BPTC/future version thereof as many students may

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<sup>15</sup> See, for example, <http://www.allaboutlaw.co.uk/index.php/careers/commercial-awareness/so-what-is-commercial-awareness/>

not take them, but also because employability skills and understanding belong in undergraduate study to meet student needs and expectations.

### *Dispute resolution*

The final skill is one of dispute resolution; negotiation, mediation and litigation. The QLD is not a general studies degree. Law is about avoiding and resolving disputes; dispute resolution should therefore be an explicit requirement of a qualifying law degree. So, although negotiation is ubiquitous in life, it is a common dispute resolution mechanism in law which can and should be taught on the QLD as being a legal skill. Mediation is a more formal, less ubiquitous and therefore more legal method of dispute resolution. Litigation, the last port of call for dispute resolution, consists of understanding the court structures, hierarchies, jurisdictions, appellate routes and powers, as well as mooted and making legal oral presentations.

### **Summary of the proposed content of the Intellectual Professional Legal Skills:**

<b><i>Cases</i></b>	<b><i>Ethics</i></b>
<b><i>Legislation</i></b>	<b><i>Legal writing</i></b>
<b><i>Legal theory</i></b>	<b><i>Legal commerciality</i></b>
<b><i>Critical legal reasoning</i></b>	<b><i>Dispute resolution and litigation</i></b>

In merging legal intellectual and legal professional skills, this paper is less radical than it might seem. All the author is proposing is replacing the seven foundation subjects with a mandated legal intellectual curriculum based on high order academic knowledge, and enhancing the current 'general transferable skills' with more legal professional skills. It is thus hoped that the potential criticisms that could be made of these proposals are already met, such as Bradney, "for those students who go on to become lawyers



the university stage is the only stage whose focus is directed towards them as a person rather than them as a lawyer.”<sup>16</sup> The proposals for a new QLD as articulated here would enhance a law school’s ability to focus on the whole student curriculum and design it fully to engage and motivate students.<sup>17</sup> Similarly, although the participants in Boon and Whyte’s 2007 project disagreed about whether the academic stage should be reflective of legal practice, not vocational at all, or could be more relevant or fit for practice, the responses reflected

the established debate over what students need to know in order to operate effectively in practice; a more practical, skills based legal curriculum versus the value of scholarship *per se* with the need for teaching of substantial legal theory to achieve this.<sup>18</sup>

The knowledge v. skills argument may run and run for those with the energy to pursue it. I suggest the debate is moot. Knowledge is static without skill and there is no skill without knowledge. The two are linked and mutually supportive.

### **Worked examples**

The first three examples which follow are hypothetical three year full-time programmes which are offered to illustrate how the proposed QLD could operate in a given law school. The table format is used to draw the reader’s attention to the simplicity of the design, the focus on the skill and the subject area being learned as the knowledge element of the programme. Four 30 credit point modules per year have been used for illustration to keep the exemplars as clear as possible, but the proposals would work provided the skills are no less than 180 credit points from 360 in the honours degree (no change from

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<sup>16</sup> Bradney (supra n. 10)

<sup>17</sup> G. Ferris and R. Huxley-Binns, “What Students Care About and Why We Should Care” in *Affect: The Impact of Emotion on Learning and Teaching the Law*, ed. C. Maughan and P. Maharg, Ashgate, August 2011

<sup>18</sup> Boon and Whyte (supra n. 8, 174)

the present JASB requirements). It may also help the reader to have a list of the eight proposed skills for mapping against the programme:

1. Cases
2. Legislation
3. Legal theory
4. Critical legal reasoning
5. Ethics
6. Legal writing
7. Legal commerciality
8. Dispute resolution and litigation

The final two exemplars draw parallels between the proposed skills set here and two innovative forms of legal curriculum design which already exist, but one of which is additional to the requirements of the JASB Joint Statement and the foundations.

#### Exemplar One

QLD Year	Skill linked to knowledge	Skill achieved
Year 1	Dispute resolution and litigation (negotiation) with Contract and Employment law	8
	Cases with Torts	1
	Critical legal reasoning with media/IP law	4
	Ethics with Land Law	5
Year 2	Dispute resolution and litigation (mooting) with Criminal Law	8
	Legal Theory with Jurisprudence	3

	Legal writing (drafting) with the law of landlord and tenant	6
	Professional skills, including commerciality, with The Legal Services Sector	7
Year 3	Research project	-
	Cases with medical law	1
	Legislation and critical legal reasoning with Company law	2 and 4
	Cases and legislation with Banking law	1 and 2

Contract, tort and land law feature in this exemplar, not because they have to be (in these proposals there is no mandated knowledge *per se*), but because the hypothetical law school has determined they are essential foundations or prerequisite subjects for the later study of banking law (contract), medical law (torts) and the law of landlord and tenant (land law). This programme could be representative of the totality of the law school's programme offering (i.e. every QLD student takes these skills within these modules and there are no options) or it could be based on student choice from a range of options. This is where law school uniqueness of offering within the market can be achieved.

All exemplars include a dissertation because all undergraduate students should, in my opinion, be required to formulate and test a hypothesis in depth in order to graduate.

The next example is for a more commercially driven student who belongs in the 21<sup>st</sup> century;

#### Exemplar two

QLD Year	Skill linked to knowledge	Skill achieved
Year 1	Legal writing (drafting) and cases with Contract law	1 and 6

	Dispute resolution and litigation (interviewing) with Commercial law	8
	Critical legal reasoning with Information Technology law	4
	Dispute resolution and litigation (negotiation) with Competition law	8
Year 2	Legislation with Insolvency law	2
	Legal Theory with Public International law	3
	Ethics with Trusts	5
	Commerciality with Business law	7
Year 3	Research project	-
	Cases and legislation with Banking law	1 and 2
	Legal theory with Space law	3
	Dispute resolution and litigation (mooting) with European law	8

Again we have contract law because of the commercial focus of the degree, but unlike exemplar 1 above, there is more of an international offering, so EU law and public international law feature. They are fit for the programme. It is the Law School which sets the focus according to staff specialisms and interests – even the smaller of the law schools can be said to have research interests that make the department unique.

The final exemplar is the programme I would choose, if the choice were available, to take.

### Exemplar three

QLD Year	Skill linked to knowledge	Skill achieved
Year 1	Cases and commerciality with the English Legal System and the legal services sector	1 and 7

	Legislation with European legal Systems	2
	Cases and legal theory with Human Rights	1 and 3
	Critical legal reasoning and dispute resolution and litigation (negotiation) with welfare law	4 and 8
Year 2	Legislation and dispute resolution and litigation (mooting) with immigration law	2 and 8
	Legal Theory with Jurisprudence	3
	Ethics with Criminal law and procedure	5
	Cases and legislation with the Law of Evidence	1 and 2
Year 3	Research project	-
	Dispute resolution and litigation with Mooting (as its own module)	8
	Legal Systems of the United States of America	2
	Legislation and Legal Theory with Public International Law	2 and 3

I add two further exemplars in less detailed form to suggest how these proposals may support completely different approaches to learning method or course design.

#### Exemplar four

The proposals in this paper should lend themselves well to a whole programme designed according to the problem based learning (PBL) method (for example, expanding on the PBL approach at the University of York<sup>19</sup>. The whole programme could be PBL because the seven foundation subjects would no longer be required). Because in PBL, the problem is the start of learning rather than being provided once legal knowledge is transferred from tutor to student, the student develops many of the intellectual professional legal skills advocated here as a necessary and sufficient prerequisite to finding the issues in and potential solution to the problem.

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<sup>19</sup> <http://www.ukcle.ac.uk/resources/directions/issue-22-spring-2011/hunter/> last accessed 28<sup>th</sup> July 2011.

### Exemplar five

A linear approach to legal study, such as that at Griffith University, Brisbane<sup>20</sup> also would facilitate development of intellectual professional legal skills advocated here. Evidently such development could be achieved incrementally by adopting a linear approach in two years, if a Law School so chose.

### **Continuing Professional Development**

The obvious criticism of the skills model for the QLD is that it would cause a knowledge deficit in our legal work force. However, the solution already exists in the form of a fully skilled work force able to tackle changes in the law which they can master through research and, if necessary, through continuing professional development (CPD) courses. And on this latter point, some law schools might consider offering (selling) CPD courses to the legal services sector to provide exactly that service, on a short-term full-time attendance basis, on a part-time attendance basis, by Distance learning, by electronic means, and so on. Such an offering already exists in parallel professions, such as tax and accountancy, so why not in law, where we already have a regulated CPD requirement? There may, in due course, be a professional indemnity insurance connection between reserved work and proven competency by professional and/or CPD qualifications, but that is an aside, not the point of this paper.

### **Conclusions**

The requirement for uniqueness or market differentiation discussed in the context of competition in higher education above can be achieved easily through a core of new skills or attributes because each

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<sup>20</sup> M. Robertson., *Challenges in the Design of Legal Ethics Learning Systems: An Educational Perspective*, (2005) 8 (2) Legal Ethics 222. See also [www.griffith.edu.au/criminology-law/griffith-law-school/programs-courses/undergraduate-programs](http://www.griffith.edu.au/criminology-law/griffith-law-school/programs-courses/undergraduate-programs) last accessed 28<sup>th</sup> July 2011.

programme would have the ability autonomously to design the taught curriculum (the subject areas) as they wished, according to the market intelligence for their student body.

A law degree is a study of a particular literacy informed by the culture of the legal system and prevailing legal philosophy (in our context the Western Common law tradition) involving sufficient understanding of doctrinal law to develop the skill to 'think' like a lawyer (comprehend complex data quickly and distil principle to apply to a novel problem), to 'act' like a lawyer (ethically, or at least aware of the ethics) with 'lawyerly' skills (use of language, the art of the argument, tactics for the battle, etc). In other words, the QLD is where the 'what' of legal knowledge joins the 'what to do' skills relating to the knowledge; and the 'to do' means those skills which are an integral part of any legal professional practice. The QLD should be reformulated to reflect what we do, and do well.