

‘BUSINESS, LAW AND REGULATION’: A MODEL FOR DEVELOPING ‘CRITICAL THINKING’ SKILLS IN FUTURE LAW GRADUATES

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ABSTRACT

In Australia, it is generally accepted that the role of legal education is to satisfy the academic requirements prescribed for admission to legal practice as a practitioner. As the nature of legal practice changes, legal education must adapt to meet the needs of the legal profession. Recently, the legal profession has seen substantial changes due to a significant growth in globalisation and advancement in technology. These changes have led the profession to hypothesise the role and purpose of lawyers in society moving into the future. In a changing and dynamic profession, it is important to equip law graduates with core legal knowledge and skills in order to adequately prepare them for the evolving legal profession.

Undisputedly, the teaching of black letter law forms a substantial basis of most undergraduate Bachelor of Laws curricula. Although discipline knowledge is a prominent aspect of the Australian Qualification Framework, the Australian Learning & Teaching Council’s Learning and Teaching Academic Standards Project for the Bachelor of Laws, and the Council of Australian Law Deans’ Standards, each of these frameworks also place emphasis on the importance of the acquisition of core legal skills, such as critical thinking.

The skill of critical thinking is a pivotal part of tertiary education in many disciplines, and an essential aspect of ‘thinking like a lawyer’. When engaging in legal research and problem solving, it is important that law students and graduates are able to critically analyse, evaluate and create solutions. In an increasingly technological world, where artificial intelligence is used as a means of conveying legal knowledge, it is important to equip law students and graduates with the skill to critically analyse and create solutions to solve legal problems. These skills are often reflected in University Graduate Attributes, and employers frequently cite the ability of engaging in critical analysis as an essential and valuable skill in law graduates.¹

The incorporation of critical thinking into the law curriculum varies between institutions and disciplines, creating much scholarly commentary on the best approach. This paper outlines the approach adopted by the Curtin Law School to promote critical thinking skills in the first-year compulsory unit, ‘Business, Law and Regulation’. It is argued that the introduction of this skill during the first year of legal studies is essential. By promoting the skill of critical thinking in first year, students are given a robust foundation upon which they can build refined critical thinking skills in later years of study, before they graduate.

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¹ See, eg, Duncan Bentley et al, *Internationalising the Australian Law Curriculum for Enhanced Global Legal Education and Practice* (Final Report, 2012) <<http://www.olt.gov.au/project-internationalising-australian-law-curriculum-enhanced-global-legal-education-and-practice-20>>; Duncan Bentley and Joan Squelch, ‘Employer Perspectives on Essential Knowledge, Skills and Attributes for Law Graduates to Work in a Global Context’ (2014) 24(1&2) *Legal Education Review* 93.

*Education is our passport to the future, for tomorrow belongs only to the people who prepare for it today.*²

– Malcolm X.

I INTRODUCTION

Undisputedly, the acquisition of discipline knowledge is a fundamental component of higher education.³ This prominence is reflected within the legal discipline through the Australian legal education framework, which places significant emphasis on the 11 substantive areas of law that are required in order to gain admission into professional legal practice in Australia.⁴ These substantive areas of law are colloquially referred to as the ‘Priestley 11’.⁵ Whilst it is widely accepted that discipline knowledge is a priority in legal education, it is contended that not enough emphasis has been placed on the development of skills, and that the teaching of technical legal skills is, or at least should be, treated as being as important as the teaching of legal theory.⁶ It is argued that students will have a limited ability to fully appreciate the discipline knowledge they subsequently acquire as part of their studies without the acquisition of these technical legal skills.

As indicated in the 2017 Future of Law and Innovation in the Profession Report (**FLIP Report**), prepared by the Law Society of New South Wales, ‘the legal profession ... across Australia is undergoing change at a pace never experienced and in ways most lawyers would have found hard to predict at the beginning of the 21st century’.⁷ As a result, the landscape of legal education has and will continue to change in order to meet the needs of the legal profession.⁸ For example, artificial intelligence has been used to supplement traditional legal tasks such as document review and data entry. The nature and scope of these technological changes are beyond the scope of this paper.

² Malcolm X (Speech delivered at the Founding Rally of the Organisation of Afro-American Unity, New York, 28 June 1964).

³ Australian Qualification Framework Council, *Australian Qualifications Framework* (Australian Qualifications Framework Council, 2nd ed, January 2013) <<https://www.aqf.edu.au/sites/aqf/files/aqf-2nd-edition-january-2013.pdf>>.

⁴ Law Admissions Consultative Committee, *Model Admission Rules 2015* (December 2016) <https://www.lawcouncil.asn.au/files/web-pdf/LACC%20docs/212390818_8_LACC_Model_Admission_Rules_2015.pdf>. The Model Admission Rules have generally been adopted by all the Australian State and Territory Admitting Authorities within their respective admission rules: *Legal Profession Act 2006* (ACT) s 21; *Court Procedures Rules 2006* (ACT), r 3605; *Legal Profession Uniform Admission Rules 2015* (NSW) s 17; *Legal Profession Uniform Law Application Act 2014* (NSW) s 4; *Legal Profession Admission Rule* (NT) reg 4; *Legal Profession Act 2006* (NT) s 29; *Legal Profession Act 2007* (Qld) s 30; *Supreme Court (Admission) Rules 2004* (Qld) r 6; *Legal Practitioners Act 1981* (SA) s 15; *Rules of the Legal Practitioners Education and Admission Council 2004* (SA) r 2; *Legal Profession Act 2007* (Tas); *Legal Profession Uniform Law Application Act 2014* (Vic) s 4; *Legal Profession Act 2008* (WA) s 21; *Legal Profession (Admission) Rules 2009* (WA) ss 5-6.

⁵ See eg, Geoff Monahan and Bronwyn Liffie, ‘Competency-Based Education and Training for Law Students’ (2001) 3 *University of Technology Sydney Law Review* 181; see, eg, Anna Huggins, ‘Incremental and Inevitable: Contextualising the Threshold Learning Outcomes for Law’ (2015) 38(1) *University of New South Wales Law Journal* 264.

⁶ See Sally Kift, ‘Lawyering Skills: Finding their Place in Legal Education’ (1997) 8(1) *Legal Education Review* 43; but see Peter Toll Hoffman, ‘Teaching Legal Theory versus Practice: Are we training lawyers or plumbers?’ (2012) *Michigan State Law Review* 625.

⁷ The Law Society of New South Wales, ‘FLIP Report: The future of law and innovation in the profession’ (2017) 2 <<http://lawsociety.com.au/ForSolicitors/Education/ThoughtLeadership/flip/Onlinereport/index.htm>>.

⁸ See generally, Vai Io Lo, ‘Before Competition and Beyond Complacency – The Internationalisation of Legal Education in Australia’ (2012) 22(1&2) *Legal Education Review* 3.

In times of unprecedented change, it is important to equip law students with the necessary knowledge, skills and values to adapt to the changes within our legal system. That is, changes that are brought about by globalisation and advancement in technology, but also as a product of the dynamic nature of the law. In times of uncertainty, it is critical to equip students with the core tools that constitute a ‘good lawyer’. Encouraging the acquisition of these types of skills ensures that students’ skills remain agile in a dynamic environment. The authors contend that, in addition to legal knowledge and values,⁹ it is essential to equip students with the ability to think critically in relation to the function and application of law in society. By teaching law students this core legal skill, law schools are creating informed graduates who enter the profession with independent judgment and are capable of questioning assumptions and challenging the status quo, in order to ensure that the law continually fulfils its intended purpose. Such qualities are important in law graduates as it equips them with the ability to constantly evolve and adapt in a profession that is experiencing rapid change.

The Tertiary Education Quality and Standards Agency (**TEQSA**), the Australian Learning & Teaching Council (**ALTC**), and the Council of Australian Law Deans (**CALD**) have all recognised that, in addition to discipline knowledge, a Bachelor of Laws graduate is expected to develop the skill of critical thinking,¹⁰ amongst other technical legal skills.¹¹ However, TEQSA, ALTC and CALD do not prescribe how this legal skill is to be embedded into the law curriculum. This is largely left to the discretion of the individual law schools. It is contended that, in order to assist law students to develop the skill of critical thinking over time, and to a sufficient level prior to graduation, it is important to embed this skill in the first year of the law curriculum. By explicitly teaching law students the skill of critical thinking in first year, students are given the opportunity to develop and build on this skill in subsequent years of their legal education, and therefore engage more deeply with any discipline knowledge acquired throughout the course of their studies.

This paper outlines the approach adopted at Curtin Law School, through the first-year compulsory unit 'Business, Law and Regulation' (**BLR**). The paper examines the unit material on taxation law and the Australian Taxation Office (**ATO**) covered in the BLR curriculum, to illustrate how the unit develops and nurtures critical thinking. The authors argue that by promoting the skill of critical thinking in first year, through a unit like BLR, students are given a foundation upon which they can build in later years of study, before graduation and entry into the legal profession.

It must be noted that the focus of this paper is on the Bachelor of Laws curriculum and does not consider other legal qualifications, such as Juris Doctor, Graduate Diplomas, Master of Laws and Doctor of Philosophy. However, the structure and pedagogical underpinning adopted by BLR could be applied to other levels of legal qualifications and, arguably, other disciplines.

II WHAT IS CRITICAL THINKING?

Benjamin Bloom, American educational psychologist, conceptualised the taxonomy of educational objectives. Bloom identified six levels in the taxonomy:

1. Knowledge
2. Comprehension

⁹ A detailed analysis of the required legal values that make a ‘good lawyer’ is beyond the scope of this article. For a general discussion of the legal values that a lawyer should possess, see, eg, Christine Parker, ‘What Do They Learn When They Learn Legal Ethics?’ (2001) 12(1&2) *Legal Education Review* 175; Jonathan Goldsmith, ‘The Core Values of the Legal Profession for Lawyers Today and Tomorrow’ (2008) *Northwestern Journal of International Law and Business* 442.

¹⁰ Other commonly used terms to refer to ‘critical thinking’ include: critical analysis, critical judgment, critical reasoning, or critical reflection.

¹¹ Council of Australian Law Deans, *The CALD Standards for Australian Law Schools* (March 2013) <<http://www.cald.asn.au/assets/lists/ALSSC%20Resources/CALD%20Standards%20As%20adopted%2017%20November%202009%20and%20Amended%20to%20March%202013.pdf>>.

3. Application
4. Analysis
5. Synthesis
6. Evaluation.¹²

The skill of critical thinking is akin to Bloom's educational objective of 'evaluation'.¹³ According to Bloom, this level of cognitive learning represents higher-order thinking, as it involves a combination of all the other levels of learning.¹⁴ To demonstrate the skill of evaluation, students are required to make 'judgments about the value ... of ideas, works, solutions, methods, materials, etc. [Evaluation] involves the use of criteria as well as standards for appraising the extent to which particulars are accurate, effective, economical, or satisfying'.¹⁵ By engaging in 'evaluation', students are encouraged to interpret, analyse and appraise the information before reaching conclusions or solutions, instead of accepting the information they obtain on face value.

Critical thinking reflects a deep approach to learning, which encourages students to think analytically and reflectively. The skill of 'critical thinking' is often cited as a desirable graduate attribute across various disciplines.¹⁶ This deep approach to learning fosters lifelong learning skills¹⁷ — skills often promoted by universities as one of their graduate attributes,¹⁸ which are highly valued by employers.¹⁹ As critical thinking is a desired graduate attribute within most professions, this skill is usually embedded in course curriculum and appears as a unit learning objective across an array of units.

The Australian Qualifications Framework (AQF), the national policy regulating education and training qualifications in Australia, outlines generic learning outcomes for each qualification level.²⁰ Generic learning outcomes are defined as:

transferable, non-discipline specific skills a graduate may achieve through learning that have application in study, work and life contexts. The four broad categories in the AQF are: fundamental skills; people skills; thinking skills and personal skills.²¹

The learning outcomes identified under the AQF are not discipline specific, but instead represent transferrable skills that a graduate is expected to acquire upon completion of the requisite education or training qualification. The AQF does not specify how the learning outcomes or skills are to be embedded into the education and training qualification.

¹² Benjamin Bloom (ed), *Taxonomy of Educational Objectives: The Classifications of Education Goals* (Longman, Book One, 1956) 18.

¹³ Ibid 185.

¹⁴ Ibid. See also Nicholas James, Chair Hughes and Clare Cappa, 'Conceptualising, developing and assessing critical thinking in law' (2010) 15(3) *Teaching in Higher Education* 285, 289. The authors demonstrated how they taught the skill of critical thinking across all levels of the Bloom's taxonomy of educational objectives.

¹⁵ Bloom, above n 12, 185.

¹⁶ See Nick James, 'Embedding graduate attributes within subjects: critical thinking' (2012) 20(1) *Legal Education Digest* 22; see, eg, Aoife A Ahern et al, 'Critical Thinking in the University Curriculum' (Paper presented at the 3rd International Symposium for Engineering Education, University College Cork, Ireland, 2010); Xianlin Song, "'Critical Thinking" and Pedagogical Implications for Higher Education' (2016) 33(1) *East Asia* 25; K Fraser and T Thomas, 'Challenges of assuring the development of graduate attributes in a Bachelor of Arts' (2013) 32(4) *Higher Education Research and Development* 545.

¹⁷ Keith Trigwell, 'Pedagogical practice and the potential for lifelong learning: An analysis of one higher education context' (2012) 4 *International Journal of Continuing Education and Lifelong Learning* 35.

¹⁸ For example, from an analysis conducted of the 38 Australian universities that offer the study of law, 21 of the universities explicitly state 'lifelong learning' skills as either a graduate attribute or as a descriptor of a graduate attribute.

¹⁹ Council of Australian Law Deans, *Studying Law in Australia: Australia's law schools* <<http://www.cald.asn.au/slia/lawschools.cfm>>.

²⁰ See Australian Qualification Framework Council, *Australian Qualifications Framework* (Australian Qualifications Framework Council, 2nd ed, January 2013) <<https://www.aqf.edu.au/sites/aqf/files/aqf-2nd-edition-january-2013.pdf>>.

²¹ Ibid 95.

Under the AQF, the Bachelor Degree is classified as a level 7 qualification and graduates at this level are required to have developed the skill of critical thinking, amongst others, upon attainment of the qualification.²² Therefore, a graduate who has been awarded a Bachelor degree from an authorised Australian university is expected to have learnt the skill of critical thinking as a part of their higher education.

A ‘Critical thinking’ in the discipline of Law

In 2010, the Australian Government commissioned the ALTC to facilitate the development of Learning and Teaching Academic Standards (LTAS) in eight broad discipline areas, of which Law was one.²³ The AQF generic learning outcomes were used as a basis for formulating the LTAS within each of the eight broad disciplines. Each discipline developed a set of Threshold Learning Outcomes (TLOs) which outlined ‘minimum discipline knowledge, discipline-specific skills and professional capabilities ... that are expected of a graduate from a specified level of program in a specified discipline area’.²⁴ Therefore, the TLOs represent the minimum learning outcomes expected of a graduate within the specific discipline area. The discipline-specific TLOs are to be read and applied in conjunction with the generic AQF standards.

The LTAS Project for the discipline of Law, specifically the undergraduate Bachelor of Laws degree program, was led by Discipline Scholars Professor Sally Kift, Winthrop Professor Mark Israel and Dr Rachel Field.²⁵ Six TLOs were identified for the Bachelor of Laws qualification:

- TLO 1: Knowledge
- TLO 2: Ethics and professional responsibility
- TLO 3: Thinking skills
- TLO 4: Research skills
- TLO 5: Communication and collaboration
- TLO 6: Self-management.²⁶

Each TLO is further explicated to include specific skills that are expected of each TLO. Under TLO 3: Thinking skills, it is explained that Bachelor of Laws graduates are expected to ‘engage in critical analysis and make a reasoned choice amongst alternatives’,²⁷ along with other thinking skills such as identifying legal issues, legal reasoning and thinking creatively.²⁸ According to the TLO Statement:

“Critical analysis” is the practice of examining a text, claim or argument and identifying the hidden structures: for example, legal and non-legal issues; premises and hypothesis; factual, theoretical and ideological assumptions; undisclosed biases and prejudices; and so on. The word “critical” emphasises that analysis is a high-level, conceptually analytical activity; it does not mean simply being confrontational or negative – the outcome of critical analysis can be agreement with the text, claim or argument.²⁹

²²

Ibid.

²³

Sally Kift, Mark Israel and Rachael Field, *Bachelor of Laws Learning and Teaching Academic Standards Statement* (Australian Learning & Teaching Council, 2010)

<<http://www.cald.asn.au/media/uploads/KiftetalLTASStandardsStatement2010%20TLOs%20LLB.pdf>>.

The eight broad disciplines were: Architecture and Building; Arts, Social Sciences and Humanities; Business, Management and Economics; Creative and Performing Arts; Engineering and ICT; Health, Medicine and Veterinary Science; Law; and Science.

²⁴

Ibid 3.

²⁵

Ibid.

²⁶

Ibid 10.

²⁷

Ibid 17.

²⁸

Ibid.

²⁹

Ibid 18.

The six TLOs identified for the Bachelor of Laws were endorsed by CALD in November 2009.³⁰ Furthermore, the CALD Standards for Australian Law Schools (**CALD Standards**), which were originally formulated in 2009,³¹ were amended to make specific reference to the TLOs.³² Section '2. The law course' states that the CALD Standards 'incorporate and should be read in conjunction with the Threshold Learning Outcomes'.³³ Furthermore, TLO 3 is also aligned to the CALD Standards, which state, '[t]he teaching and learning methods encourage students to be active participants in the learning process and to engage with the law in an analytical and critical way'.³⁴

B 'Critical thinking' is a required attribute of a 21st century law graduate

It is important that students acquire and develop thinking skills as part of their higher education, as evidenced by the AQF and LTAS.³⁵ This is particularly so in the case of legal education.³⁶ The phrase 'think like a lawyer' is routinely cited by law academics, despite the fact that there is no consensus within the discipline as to what 'thinking like a lawyer' actually entails.³⁷ The 'TLO 3: Thinking skills' now provides some guidance on what it means to 'think like a lawyer', or, at the very least, the minimum standard that is expected of a graduate who has acquired a Bachelor of Laws.³⁸

Whilst it is important to teach students the current state of the law, due consideration must be placed on the fact that the law is dynamic as it develops and changes due to political, economic and social factors. Furthermore, it is arguable that technology makes the acquisition of legal content easier. However, it is the ability to interpret and appraise such information that is imperative. By teaching students the fundamental legal skill of critical thinking, legal academics are equipping students with the necessary tools to adapt to change when law reform occurs, or to initiate law reform in circumstances where the law falls short of achieving its intended purpose.

Despite the rapid change brought about by advancement in technology in the legal profession, the FLIP Report recognised that the traditional legal knowledge and skills that are taught within the current law curriculum be maintained as 'critical thinking, problem solving and self-learning skills ... [are] crucial to success as a lawyer'.³⁹ The skill of critical thinking is a key aspect of 'thinking like a lawyer' and in times of change and uncertainty, is important to strengthen and sharpen the core tools that make a 'good lawyer'.

Additionally, critical thinking is a skill that is necessary for a broad range of professions. Even though 'thinking like a lawyer' is cited as a necessary skill to be mastered during a Bachelor of Laws, the reality is that many law graduates today do not practise as barristers or solicitors, or even enter the

³⁰ See Council of Australian Law Deans, *The CALD Standards for Australian Law Schools* (March 2013) <[http://www.cald.asn.au/assets/lists/Education/CALD%20Standards%20As%20adopted%2017%20November%202009%20and%20Amended%20to%20March%202013\[1\].pdf](http://www.cald.asn.au/assets/lists/Education/CALD%20Standards%20As%20adopted%2017%20November%202009%20and%20Amended%20to%20March%202013[1].pdf)>.

³¹ Council of Australian Law Deans, *The CALD Standards for Australian Law Schools* (17 November 2009) <[http://www.cald.asn.au/assets/lists/Education/CALD%20-%20Standards-%20final%20-%20adopted%2017%20November%202009\[1\].pdf](http://www.cald.asn.au/assets/lists/Education/CALD%20-%20Standards-%20final%20-%20adopted%2017%20November%202009[1].pdf)>.

³² Council of Australian Law Deans, *Introduction and Context to the CALD Standards for Australian Law Schools* (March 2014) <<http://cald.asn.au/assets/lists/ALSSC%20Resources/CALD%20Standards%20Introductory%20Context%20Statement%20March%202014.pdf>>.

³³ Council of Australian Law Deans, above n 30, 4.

³⁴ *Ibid.*

³⁵ Australian Qualification Framework Council, above n 3; Kift, Israel and Field, above n 23.

³⁶ See generally Kate Galloway et al, 'Working the nexus: Teaching students to think, read and problem-solve like a lawyer' (2016) 26(1) *Legal Education Review* 95.

³⁷ *Ibid.*

³⁸ For detailed analysis of the TLO 3: Thinking skill see Nick James, 'Logical, critical and creative: Teaching 'thinking skills' to law students' (2012) 12(1) *QUT Law & Justice* 66.

³⁹ The Law Society of New South Wales, above n 7, 77.

legal profession.⁴⁰ The applicability and versatility of the law degree has meant that law graduates are able to pursue diverse careers in various industries and professions, such as academia, business, and the public service. Therefore, it is important to embed transferrable legal skills within the law curriculum to equip law graduates for their chosen vocation, whether it is in legal practice or otherwise. Indeed, this was the approach that was adopted by Professor Kift, Winthrop Professor Israel, and Dr Field when formatting the TLOs for the Bachelor of Laws.⁴¹

Regardless of whether a law student decides to pursue a career in legal practice or otherwise, critical thinking is an essential skill which is imperative despite advances in technology or the globalisation of professional markets.

III THE TRADITIONAL AUSTRALIAN BACHELOR OF LAWS CURRICULUM MODEL

Although TEQSA and CALD have enacted standards outlining the minimum expectations with regard to discipline knowledge and skills expected of Bachelor of Laws graduates, they do not specify how such knowledge and skill is to be taught. However, the Australia Government has allocated the TEQSA the task of ensuring education and training institutions comply with the AQF and discipline-specific TLOs. Compliance with the CALD Standards is technically voluntary, however, in order to be certified by the Australian Law Schools Standards Committee as complying with the Standards, the law school must demonstrate that they have implemented the CALD Standards. Even so, as certification is voluntary, law schools cannot be compelled to apply for certification.

Law schools tend to design their Bachelor of Laws curriculum to satisfy the academic requirements set by the relevant State or Territory Admitting Authority in order to ensure that their graduates can gain admission into the legal profession within their jurisdiction. Provided a law graduate satisfies the academic and practical legal training requirements, the graduate can apply to the local Legal Profession Admission Board or Council for admission.⁴² If accepted, the graduate is subsequently admitted by the Supreme Court of their State or Territory.

A Academic admission requirements

In 1992, the Consultative Committee of State and Territorial Law Admitting Authorities recommended that a set of national uniform admission requirements be enacted throughout Australia, so that a law graduate who has gained admission in one Australian jurisdiction could apply for admission in another Australian State or Territory.⁴³ With respect to academic requirements, the Consultative Committee recommended State and Territory Admitting Authorities to prescribe that an applicant for admission demonstrate a level of understanding and competence in the following broad areas of knowledge:

Criminal Law and Procedure;
Torts;

⁴⁰ See, eg, Jane Lee, 'Graduates shun legal profession' *The Age* (online) 20 May 2012 <<http://www.theage.com.au/victoria/graduates-shun-legal-profession-20120519-1yxt0.html>>; Michael Douglas and Nicholas van Hattem, 'Australia's Law Graduate Glut' (2016) 41(2) *Alternative Law Journal* 118.

⁴¹ Kift, Israel and Field, above n 23, 8.

⁴² See above n 4.

⁴³ Consultative Committee of State and Territorial Law Admitting Authorities, *Uniform Admission Requirements: Discussion Paper and Recommendations* (April 1992) 25 <<https://www.lawcouncil.asn.au/files/web-pdf/LACC%20docs/UniformAdmissionrequirementsDiscussionPaper1992.pdf>>. However, the other States and Territories ultimately reserve the right to determine whether the applicant is 'fit and proper person' to be admitted within their jurisdiction.

Contracts;
Property (including Torrens Land);
Equity (including Trusts);
Administrative Law;
Federal and State Constitutional Law;
Civil Procedure;
Evidence;
Company Law; and
Professional Conduct (including basic trust accounting).⁴⁴

Colloquially, these 11 areas of knowledge are referred to as the ‘Priestley 11’, named after Justice Priestley, who chaired the Consultative Committee. This recommendation has since been accepted and enacted by all State and Territory Admitting Authorities as evidenced by the consistent academic admission requirements.⁴⁵

When formulating the Priestley 11 areas of knowledge, the Consultative Committee of State and Territorial Law Admitting Authorities and other similar Consultative Committees canvassed members of the legal profession and judiciary for input.⁴⁶ There were varying opinions about the appropriate areas of knowledge that law graduates should possess in order to gain admission into legal practice. Some contended that other areas of knowledge, such as Taxation, Consumer and Competition Law, and Conflicts of Laws, should be prescribed areas of knowledge required in legal practice.⁴⁷ Although the Priestley 11 have been reviewed and debated since their inception, they have remained largely unchanged.⁴⁸

The Priestley 11 areas of knowledge are the extent of the academic requirements prescribed for admission [by the States and Territories] – law graduate attributes or skills are not specified.

Critics of the Priestley 11 have suggested that the prescribed academic requirements are too focused on what lawyers ‘need to know’, instead of what lawyers need ‘to be able to do’.⁴⁹ It is contended that too much attention and emphasis is placed on teaching substantive black letter law and not enough on teaching legal skills,⁵⁰ such as critical thinking. Although it is expected that a Bachelor of Laws graduate possesses the skill of critical thinking, there is no prescription by the TEQSA, CALD or the State and Territory Admitting Authorities as to how it is to be taught. As a result, the issue of how critical thinking is to be incorporated into the law curriculum of each institution is left to the discretion of the individual law school, creating much scholarly commentary on the best approach.⁵¹

⁴⁴ Ibid 24–5. Technically, Australian law schools are not mandated to provide the Priestley 11 areas of knowledge as individual compulsory subjects. However, in order to satisfy the academic requirements for admission to legal practice, Australia law schools tend to set the Priestley 11 as core units.

⁴⁵ See above n 4.

⁴⁶ Consultative Committee of State and Territorial Law Admitting Authorities, *Uniform Admission Requirements: Discussion Paper and Recommendations* (1992) <<https://www.lawcouncil.asn.au/files/web-pdf/LACC%20docs/UniformAdmissionrequirementsDiscussionPaper1992.pdf>>. In particular the Victorian Academic Course Appraisal Committee (‘McGarvie Committee’). However, there is contention as to whether this occurred. See Sam Garkawe, ‘Admission Rules’ (1996) 21(3) *Alternative Law Journal* 109.

⁴⁷ Consultative Committee of State and Territorial Law Admitting Authorities, above n 43, 3; Law Admissions Consultative Committee, *Rethinking Academic Requirements for Admission* (2010) 18 <<https://www.lawcouncil.asn.au/files/web-pdf/LACC%20docs/RethinkingAcademicRequirementsforAdmission.pdf>>.

⁴⁸ See Huggins, above n 5, 269–71.

⁴⁹ Australian Law Reform Commission, *Managing justice: A Review of the Federal Civil Justice System*, Report No 89 (2000) 126.

⁵⁰ See, eg, Kift above n 6; Denis Pearce, Enid Campbell and Don Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (Commonwealth Tertiary Education Commission, 1987); Mary Keyes and Richard Johnstone, ‘Changing Legal Education: Rhetoric, Reality and Prospects for the Future’ (2004) 26 *Sydney Law Review* 537, 541.

⁵¹ See, eg, Nicholas James, Chair Hughes and Clare Cappa, above n 14; Barbara Hamilton, ‘Getting Them Early: Teaching a Critical Perspective on Legal Ethics and Adversarialism in an Introductory LLB Unit at

It can be argued that the lack of extensive academic prescriptions concerning law graduate attributes and skills is an advantage as it prevents standardisation amongst the Australian law schools.⁵² This degree of flexibility incentivises Australian law schools to develop distinct and innovative curricula to set them apart from their competitors locally, nationally and internationally. The law curriculum, teaching practices, work integrated learning programs, approaches to internationalisation and extra curricula activities are becoming increasingly more important marketing tools for law schools.

In addition to teaching the Priestley 11 areas of knowledge, Curtin Law School has developed a first-year law unit that specifically focuses on promoting critical thinking to ensure that their law students acquire this essential legal skill prior to graduating.

IV 'BUSINESS, LAW AND REGULATION' MODEL

BLR is a first-year compulsory unit in the Bachelor of Laws curriculum at Curtin Law School. Law students usually undertake BLR in their second semester of law studies, after they have successfully completed the prerequisite units 'Legal Research and Writing' and 'Legal Foundations' in first semester.⁵³ Although the unit is not technically a Priestley 11 prescribed area of knowledge, it does broadly cover the prescribed area of company law. The unit introduces students to the concepts of commercial law and regulation in the first year of their Bachelor of Laws studies.

A key learning objective of the unit is critical thinking. This is reflected in three of the five unit learning outcomes. To support student learning and to assist students in achieving the unit learning outcomes, particularly the acquisition of the skill of critical thinking, John Biggs' constructive alignment model was adopted in BLR.⁵⁴ All teaching patterns, resources and assessments were intentionally designed to align to the learning outcomes.

A negative aspect of incorporating BLR as a compulsory unit within the Bachelor of Laws curriculum, is that it limits the law students' choice when selecting optional units in their penultimate and final years of study. Although the BLR model reduces student choice, the authors contend that the associated benefits of the unit outweigh any indirect negatives.

A Syllabus

BLR aims to provide students with a holistic understanding of the Australian commercial legal environment. The unit outlines the framework in which businesses operate and the interrelationships between business, government, regulators, and society. The unit includes examination of key areas of commercial law, and the corresponding Australian regulatory bodies that oversee those areas of law,

the Queensland University of Technology' (2001) 12(1&2) *Legal Education Review* 105; Anne Macduff, 'Deep Learning, Critical Thinking and Teaching for Law Reform' (2005)(1&2) 15 *Legal Education Review* 125; Gabrielle Appleby, Peter Burdon and Alexander Reilly, 'Critical Thinking in Legal Education: Our Journey' (2013) 23(2) *Legal Education Review* 345; Lucy Maxwell, 'How to Develop Law Students' critical awareness? Change the Language of Legal Education' (2012) 22 *Legal Education Review* 99.

⁵² Contrast this to the article: Margret Thornton and Lucinda Shannon, "'Selling the Dream': Law School Branding and the illusion of choice' (2013) 23 (1&2) *Legal Education Review* 249.

⁵³ The Legal Research and Writing unit introduces students to specific legal research goals, methodologies and databases which are used to find, update and critically analyse the primary and secondary sources of law used in a problem-solving context. The Legal Foundations unit provides foundational knowledge of law and the Australian legal system, including its historical development and constitutional framework. It contrasts common law and other legal systems and introduces students to the key sources of law while developing the skills of case analysis, statutory interpretation and legal reasoning.

⁵⁴ John Biggs and Catherine Tang, *Teaching for Quality Learning at University* (McGraw-Hill Education, 4th ed, 2011).

and considers a range of regulatory approaches from prescriptive to self-regulatory. This includes consideration of the role of regulatory bodies in the economy and society as a whole, and the approaches that the regulatory bodies adopt in fulfilling their functions. Students are required to critically assess the effectiveness of the commercial law framework enacted by lawmakers, and the operation of the relevant regulatory bodies, taking into account economic, political, and social factors. This allows students to critique individual regulators, but also to draw parallels and comparisons between different areas of law. Furthermore, by focusing on economic, political and social factors, students are encouraged to look beyond the legal framework that provides the regulator power and think about the context in which those powers are granted. Arguably, this type of comparative and contextual analysis provides a more effective mechanism for retaining knowledge and building awareness of these areas.

The BLR curriculum is aligned with the Australian Learning & Teaching Council Academics Standards Project for the Bachelor of Laws and CALD Standards.⁵⁵ Specifically, the CALD Standards state that the law curriculum should also provide students with a broader understanding of the context of the law and its role in society.⁵⁶ This objective promotes a holistic approach to the study of law, facilitates a purposive interpretation of legislation, and reflects a deep approach to learning, which encourages students to think critically, analytically, and reflectively.

B Program

The BLR curriculum broadly covers the following sectors of commercial law and the corresponding regulatory body that is charged with the oversight of those areas:

Commercial law	Corresponding regulatory body
Company law	Australian Securities & Investment Commission
Competition law	Australian Competition and Consumer Commission
Consumer law	Australian Competition and Consumer Commission
Employment law	Fair Work Commission Fair Work Ombudsman
Environmental law	Clean Energy Regulator
Intellectual property	IP Australia
Occupational health and safety law	Work Safe WA
Taxation (excluding state taxes and the Office of State Revenue)	Australian Taxation Office

By teaching a unit like BLR in a first-year law program, law students gain better understanding of the commercial law landscape in Australia. A key aim of the unit is to equip law students with knowledge of the fundamental aspects of these areas of commercial law to better assist them when they elect specialised optional units later in their legal studies. Even if the students do not go on to complete specialised units in the area of commercial law, the unit provides them with a working knowledge of the commercial law framework that exists within Australia. Furthermore, BLR introduces these areas in a critical thinking manner – promoting the skills of critical thinking throughout the course. By introducing these skills in first year, students are able to evaluate their subsequent units in a more critical and evaluative manner.

Furthermore, a concrete definition of critical thinking, as enunciated in TLO 3: Thinking Skills, is explicitly conveyed to students in the first lecture, and there is a discussion of how to engage in critical thinking. To further assist students to develop this important legal skill, in 2017 an optional critical thinking program (comprising of an online lecture, activity and workshop) was developed.

⁵⁵ Kift, Israel and Field, above n 23; Council of Australian Law Deans, above n 11.

⁵⁶ Council of Australian Law Deans, above n 11.

Whilst the online lecture and activity are made available to students towards the start of the semester, the workshop is held during the tuition free week, which is usually week five of the semester period. The program offers students additional resources to assist them with developing and practicing their critical thinking skills. Involvement in the program is voluntary and students are permitted to withdraw from the program without notice at any point. In this regard, explicit teaching is combined with a teaching design structure that promotes critical thinking.

By broadly covering various areas of commercial law, the unit can address key areas of commercial law that are not prescribed as a Priestley 11 required area of knowledge, for example Taxation. However, arguably, these are areas that are essential for legal practitioners and it is essential that students have a workable knowledge of the law in these areas. Whilst not a prescribed unit in legal studies, taxation law permeates many areas of legal practice — for example, conveyancing, commercial practice, settlement, and family law. Therefore, it is essential that graduates have a workable knowledge of the institutional framework of taxation and the broad obligations of taxpayers in Australia. The same could arguably be said about other areas of commercial law, such as consumer law, competition law, and employment law. Furthermore, this integrated approach to teaching commercial law provides students with a clear outline of the various areas of law that may be taken into account in a commercial transaction.

C Tuition pattern

The BLR tuition pattern is a one-hour lecture and two-hour interactive tutorial each week. The lectures are recorded and are made available for students to access on the university's online learning portal. However, the tutorials are not recorded and student attendance is highly recommended. The tutorial is one of the main platforms where the students develop their critical thinking skills, and therefore attendance at tutorials is a fundamental part of engagement with this skill.

To enable scaffolded learning and to assist students in engaging in deep critical analysis, each topic follows the same lecture and tutorial structure — only the content changes for each topic. Adopting the same structure each week assists students to grasp the legal content quickly, so that in the tutorials they can focus their attention on engaging in deep learning and consideration of the purpose and effectiveness of the regulatory framework.

1 Lecture

Generally, at a tertiary education level, lectures are the most common means used to transmit information to students.⁵⁷ For this reason, in BLR the lectures are used as a means of outlining the laws and regulations that are enacted to monitor and regulate specific areas of commercial law within Australia. For each topic, the lecture follows the same structure:

- regulatory body;
- area(s) of law the regulatory body regulates;
- arguments for regulating the area(s) of law;
- arguments against regulating the area(s) of law;
- the lawmaker's objectives in establishing the regulatory body;
- the regulatory body's role in society;
- the regulatory body's exemption powers and the factors it considers in deciding whether to grant an exemption (if applicable);

⁵⁷ See generally, Donald Bligh, *What's the Use of Lectures?* (D A & B Bligh, 1972) 3; Helen Edwards, Brenda Smith and Graham Webb (eds), *Lecturing: Case studies, experience and practice* (RoutledgeFalmer, 2012) 1; Bruce Charlton, Sam Marsh and Nick Gurski, 'Are lectures the best way to teach students?', *The Guardian* (online) 31 March 2015 <<https://www.theguardian.com/higher-education-network/2015/mar/31/are-lectures-the-best-way-to-teach-students>>.

- the regulatory body’s investigatory powers and the factors it considers in deciding whether to pursue an investigation (if applicable); and
- the regulatory body’s enforcement powers and the factors it considers in deciding whether to take enforcement action (if applicable).

Even though the content is new for each topic, the methodology and framework applied is known and understood by the students. The consistency in the lecture structure assists students in grasping the legal content. Furthermore, by adopting a uniform framework, comparisons and differences can be readily drawn between the regulatory bodies covered in the unit, promoting critical thinking.

Given that the same lecture structure is followed for each topic, in addition to the provision of lecture PowerPoint slides, a lecture worksheet was created as an additional learning resource to assist students grasp the legal content covered in the lecture. Based on the assumption that students generally take a passive role in lectures,⁵⁸ the lecture worksheet was designed to encourage and assist students to actively take notes during the lecture and reflect upon what they are learning rather than just simply record it.⁵⁹ Through the use of headings, the lecture worksheet outlines the lecture structure and provides space for students to take notes under each heading. The lecture worksheet also aids in assisting students to grasp the legal content quickly, enabling deep learning during tutorials as explained above.

2 Tutorial

A student-centred conversational framework is adopted in the tutorials to encourage students to actively participate in the tutorial. Students are encouraged to voice their opinions on the effectiveness of the current regulatory framework with respect to various areas of commercial law. To augment and extend authentic learning to the tutorials, students are required to complete two tasks in the tutorial, being:

- a set of analytical questions; and
- a set of questions pertaining to a factual problem.

Like the lecture, the tutorial for each topic follows the same structure and students are required to consider the same set of questions. However, the subject matter that forms the basis of the analytical and problem questions changes according to the area of commercial law and the corresponding regulator that was covered in the lecture.

For each topic, when addressing the set of analytical questions, students are required to analyse a high-profile incident relating to the relevant area of law and corresponding regulator. Students are provided with a document, containing primary and secondary sources, which explains the incident that they are required to analyse. Students are then required to address the following set of analytical questions:

1. Which Australian regulatory body was involved? What is the role of this Australian regulatory body?
2. What was the legal issue reported? What area of law does this concern?
3. Was the legal issue reported beneficial or harmful to society? Explain your answer from the perspective of all relevant stakeholders.
4. What actions and/or powers were exercised by the Australian regulatory body?

⁵⁸ See, eg, Anne Matthew, ‘Managing Distraction and Attention in Diverse Cohorts: 21st Century Challenges to Law Student Engagement’ (2012) 12(1) *Queensland University of Technology Law & Justice Journal* 45.

⁵⁹ See generally, Andrea Revell and Emma Wainwright, ‘What Makes Lectures ‘Unmissable’? Insights into Teaching Excellence and Active Learning’ (2009) 33(2) *Journal of Geography in Higher Education* 209; Rohan Havelock, ‘Law studies and active learning: friends not foes?’ (2013) 47(3) *The Law Teacher* 382.

5. Do you agree with the actions and/or powers exercised by the Australian regulator? Explain your answer.
6. In the given circumstances, what other actions and/or powers could the Australian regulatory body have exercised?

Whilst questions 1, 2 and 4 are close-ended questions which do not facilitate critical thinking, questions 3, 5 and 6 are opened-ended questions which require students to critically analyse the actions of the regulator in the assigned incident. Greater emphasis and time is allocated in the tutorials to discussing questions 3, 5 and 6.

The second part of the tutorial concerns the factual scenario. When addressing the set of questions pertaining to factual problem, students are required to critically read a fictitious factual scenario. Students are then required to address the following set of questions:

1. Which Australian regulatory body or bodies will likely intervene?
2. What investigatory powers can the relevant Australian regulatory body or bodies (identified in question 1) exercise to determine whether person X's actions were unlawful?
3. What enforcement powers, sanctions and/or remedies can the relevant Australian regulatory body or bodies (identified in question 1) exercise, if the body or bodies finds person X's actions contravened the law?

By requiring students to regularly engage in critical thinking — i.e. on a weekly basis in relation to each distinct topic — students are encouraged to develop their own opinions about the law, administrators, and legislative frameworks. Furthermore, students are able to make value judgments about the appropriateness of certain powers, and the purposes of the various regulators within the context of, and by comparison to, other regulatory bodies. For example, students are challenged to consider whether there are reasons why certain regulators should be provided with more pervasive powers. It also allows students to draw clear parallels between regulators in different areas.

The structure of BLR provides students with the opportunity to think critically and broaden their understanding of the nature of studying law. Students are encouraged to question, rather than accept, the status quo. In this sense, the unit encourages students *how* to think rather than instructing them on *what* to think.

D Assessment

There are four assessment tasks set in BLR: Online Quiz, Group Presentation, Written Assignment and Examination. To promote the overarching unit learning outcome in this unit, students are assessed on their ability to critically and reflectively critique the law in both the Written Assignment and Examination.

A contributor to law students' stress is the number of assessments set per study period.⁶⁰ To alleviate stress, whilst ensuring assessment integrity, two interrelated assessments are set in BLR: Group Presentation and Written Assignment. For the Group Presentation, students are allocated into groups, and assigned one of the eight regulatory bodies covered in the unit to form the basis of their assessment. For the purposes of the Group Presentation, the students are required to present on a recent media example of their assigned regulator exercising its regulatory powers (students cannot use the same media example that was used in the tutorials to form the basis of their assessment). For the Written Assignment, students are required, individually, to consider whether the regulator is currently fulfilling its role in society, drawing upon the same media example used to form the basis of the Group Presentation. Whilst the Written Assignment is an opinion-based assessment, students are expected to conduct academic research in formulating and discussing their opinion.

⁶⁰ See Penelope Watson and Rachel Field, 'Promoting Student Well-being and Resilience at Law School' in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (LexisNexis, 2011).

The Group Presentation requires students to demonstrate their understanding of the regulator's legislative powers, whereas the Written Assignment requires students to engage in critical analysis. This developmental approach scaffolds learning, whilst alleviating the student's overall workload as they are completing two assignments on the same topic, but the focus of each assessment is different.

The Examination is a three-hour open book examination. The examination assesses students' knowledge of specific areas of commercial law and the corresponding Australian regulatory body covered in the unit. The Examination contains a series of short answer questions, comprising of both analytical and problem style questions.

E Case study: Taxation content

In order to illustrate how the commercial law landscape is taught critically in BLR, the unit material on taxation and the ATO is discussed below.

1 Lecture

Taxation is introduced into BLR in a manner that immediately attempts to engage the students in critical thinking. It is argued that the model adopted by this unit is a very effective way to give a broad overview and understanding of taxation, which is often noted as being a particularly voluminous and complex area of law.⁶¹ Therefore, given the short period of time allocated to exploring taxation law, a critical analysis model allows a helicopter view to be taken of revenue policy. However, by engaging the students to think critically about this area of law, the analysis remains meaningful rather than superficial. Given the constantly changing nature of taxation law, it is argued that such an approach is not only practical but preferable. This is because it promotes an understanding of policy which tends to remain more stable than the articulation of the law which is frequently amended. Furthermore, many concepts underpinning taxation law in Australia are particularly amorphous, such as the border between unacceptable tax avoidance, tax planning, and tax evasion. Therefore, understanding these concepts requires students to appreciate not only the black letter of the law, but also the policy underpinning it. Understanding the meaning of these terms requires the student to engage in critical analysis, that is, examining the black letter of the law, and identifying the purpose of the provision and what the response of the legislature would have been had they considered particular avoidance activities.⁶²

The BLR Unit Coordinator collaborates with specialists in the taxation area to ensure that the session embodies an exploration of discipline knowledge, but does so in a critical, policy-focused manner. Although a taxation specialist typically delivers the lecture on taxation and the ATO, the lecture is designed to adhere to and promote the overall goals of the established BLR lecture structure. Therefore, when approaching this unique subject matter, students have the benefit of a strong framework or foundation that they have applied to each of the regulatory areas covered in this subject. Thus, the structure of the lecture is designed to provide students with a platform to critically think about the framework, regulation and issues that occur in taxation rather than provide limited discipline knowledge in a short period of time. Consequently, the lecture is structured to move between short instructions on discipline knowledge to thinking critically and evaluating the policy issues this legislative structure may create.

Students are initially asked to consider the policy reasons for maintaining a robust taxation system, including the function and purpose of taxation and the benefits and infrastructure. To enable this, the lecture begins with a consideration of the judicial definition of a tax in *Matthews v Chicory Marketing*

⁶¹ Australian Government, *Rethink Tax Discussion Paper* (March 2015) ch 2; Joint Committee of Public Accounts and Audit, Parliament of Australia, *Report 410: Tax Administration* (2008) ch 3.

⁶² Kift, Israel and Field, above n 23. This aligns with the definition of critical thinking provided in TLO 3.

Board,⁶³ but quickly moves on to more value-laden statements such as the oft quoted pronouncement of Justice Oliver Wendall Holmes that ‘tax is the price that is paid for a civilised society’,⁶⁴ and the infamous statement of Jean Baptiste Colbert that ‘the art of taxation consists of so plucking the goose as to obtain the largest amount of feathers with the least amount of hissing’.⁶⁵

The lecture uses these statements to discuss the importance of taxation in three key areas: the maintenance of public goods and services, economic management, and social engineering. Students are then asked to engage in a class activity regarding the use of ‘sin taxes’ — for example, taxes levied on alcohol, tobacco, or marijuana — to regulate certain behaviours. In this regard, students are asked to think about the regulatory role that taxation plays in society, and whether this should extend to encouraging or discouraging certain types of behaviours. The purpose of this exercise is to encourage students to think about the policy reasons for and against regulating this behaviour, and whether taxation is an appropriate way of regulating such behaviour. The most recent iteration of this unit had a focus on the controversial introduction of a sugar tax into various countries and whether governments should regulate sugar consumption through the use of taxation.⁶⁶ This leads students to consider the broader question of whether taxes should be used to moderate/encourage particular behaviours or if they should only be used to raise revenue. These topics are chosen because there is no clear-cut answer. Rather, it is necessary for the students to think of the political and social arguments for and against intervention.

The lecture then focuses on the practical aspects of learning taxation. Students are asked to consider the reason why all lawyers need, and, arguably have a duty, to advise on taxation.⁶⁷ The need to think of the taxation implications in different types of transactions is also canvassed. This ensures a balance between the broader overarching purposive questions and the acquisition of basic discipline knowledge.

The lecture progresses to a discussion of the institutional framework of taxation. Thus, an overview is provided of the three levels of taxation in Australia — Commonwealth, state and local. The main categories of taxation are then discussed in the form of income, corporate and consumption taxes.

There is also discussion of the regulators in the taxation field, including the ATO, Treasury, Board of Taxation, the Inspector General of Taxation and the Tax Practitioners Board.⁶⁸ A strong emphasis is placed on the role and function of the ATO. The ATO’s exemption, investigatory and enforcement powers are discussed in detail.

2 Tutorials

To extend and apply the knowledge acquired during the lecture pertaining to taxation and the administration of the taxation laws by the ATO, students are required to analyse the 2008-12 incident

⁶³ *Matthews v Chicory Marketing Board* (1938) 60 CLR 263 provides that a tax is a ‘compulsory exaction of money by a public authority for public purposes, enforceable by law, and is not a payment for services rendered.’

⁶⁴ *Compania General de Tabacos v Collector* 275 US 87 (1927).

⁶⁵ As cited in William Sharp McKechnie, *The State & the Individual: An Introduction to Political Science, with Special Reference to Socialistic and Individualistic Theories* (MacLehose, 1896) 98.

⁶⁶ See, eg, Lexi Metherell, ‘Sugar tax could cut soft drink consumption, help halt growing obesity rates: Grattan Institute’ *ABC* (online) 23 November 2016 <<http://www.abc.net.au/news/2016-11-23/sugar-tax-could-cut-soft-drink-consumption-by-15-per-cent/8048974>>; see also Lauren Kaplin and Anne Marie Thow, ‘Using economic policy to tackle chronic disease: Options for the Australian Government’ (2013) 20 *Journal of Law and Medicine* 604; Michael Colbourne, ‘Britain debates “sugar tax” to fight obesity’ (2016) 188(1) *Canadian Medical Association Journal* 24.

⁶⁷ See, eg, Gino Dal Pont, ‘The Duty of Solicitors to Give Tax Advice – A Reply’ (1999) 28 *Western Australian Law Review* 121.

⁶⁸ Please note that state taxes are not covered and therefore the Office of State Revenue is not discussed.

involving Paul Hogan for alleged tax evasion.⁶⁹ The matter between Paul Hogan and the ATO was settled in 2012 through mediation, on a no admission basis. Therefore, the documents outlining the incident are contained predominantly in secondary sources reporting on the matter and a copy of the ATO's Code of Settlement.⁷⁰ Students are expected to critically read and analyse these documents and answer the set of analytical questions assigned to the tutorial.

Whilst this incident is not directly dealt with in the lecture, what is discussed is the continuum of taxpayer behaviour. Students are encouraged to identify the difference between tax planning, avoidance and evasion. A broad overview of the penalties regime is also provided. Both of these concepts are then applied to the case study. This particular incident is chosen because it highlights an area of the law that is not clear cut, evokes different reactions about the role and importance of taxation but also applies concrete aspects of the law like the penalty regime. Accordingly, the students are not only asked to critically think about the incident, the powers and penalties held by the ATO, but also to consider the ethical dimensions of this incident. This links into the lecture which asks students to consider the overarching purpose of taxation and how taxation structure can be a result of the values placed on certain canons of taxation. It also asks students to consider the impact that tax evasion can have on the tax base.

To extend this discussion, students are also given a factual problem involving an artificial international taxation evasion scheme. After critically analysing the factual problem, students are expected to answer the set of problem questions. This includes identification of the regulatory body that is likely to intervene in the given circumstances and the powers that the regulatory body is likely to exercise when investigating and enforcing the law. Students are expected to explain their answer and provide justification for their legal reasoning where possible. In the problem question, when hypothesising which investigatory and enforcement powers they believe the ATO will likely exercise, students will need to have an understanding of the role, objectives and strategies of the ATO. Only by having a holistic understanding of the regulatory body, can students accurately predict the likely powers it would exercise when dealing with an alleged contravention of the law.

V IMPORTANCE OF EMBEDDING CRITICAL THINKING IN FIRST YEAR

The importance of the first year of tertiary education should not be underestimated. The first year of law school not only sets the foundations for students' legal education, but academic studies have suggested that the learning approaches and preferences developed by students in first year become potentially fixed, as this formative year fundamentally shapes their approach to learning.⁷¹

Given the importance of the skill of 'critical thinking' in higher education, the authors contend that such a skill should be embedded as early in the curriculum as possible, ideally in first year. By developing critical thinking in first year, students can develop and refine this skill as they progress through their legal education and, ultimately, have a strong acquisition of the skill before transitioning into their chosen profession.⁷² The benefit of learning critical thinking in first year was acknowledged by a final year Curtin Law School Bachelor of Laws student, who completed BLR in 2014 and commented in a solicited reference:

⁶⁹ See 'Tax war over as Paul Hogan settles with ATO' *ABC* (online) 1 May 2012 <<http://www.abc.net.au/news/2012-04-30/tax-war-over-as-paul-hogan-settles-with-ato/3981546>>.

⁷⁰ Australian Taxation Office, *Code of settlement* (15 January 2015) Australian Taxation Office <<http://law.ato.gov.au/atolaw/view.htm?docid=%22PSR%2FPS20151%2FNAT%2FATO%2F00001%22>>.

⁷¹ See generally, John Mudd, 'Thinking Critically About "Thinking Like a Lawyer"' (1983) 33 *Journal of Legal Education* 704, 709; Roy Stuckey et al, *Best Practices for Legal Education* (Clinical Legal Education Association, 2007).

⁷² See generally, Theda Thomas, 'Developing First Year Students' Critical Thinking Skills' (2011) 7(4) *Asian Social Science* 26, 27. The author argues that by introducing students to the skill of critical thinking in first year, academics provided students with more opportunities to practice the skill.

Looking back, Business, Law and Regulation was a concrete foundation for the development of critical thinking and analytical skills, which have been essential throughout the later stages of my degree.

Furthermore, the skill of critical thinking also assists students with developing other important legal skills, such as legal reasoning⁷³ and statutory interpretation⁷⁴ as these skills are predicated upon critical thinking. For example, to reach a ‘reasonable conclusion’ or ‘appropriate response’ students must assess the law on a purposive basis. This type of analysis necessarily requires law students to engage in the skills outlined in TLO 3 such as identifying the ‘ideological assumptions’⁷⁵ underpinning the legislation. Therefore, legal reasoning requires critical analysis.

By encouraging students to think critically about the law, students become more aware of the reach and impact that the law has on them as individuals and more broadly on society as a whole. By exposing students to the dynamic application of the law early in their studies, students can see the practical application of the legal theory and content learning as a part of their legal education. This will more than likely result in students engaging in a deep approach to their learning throughout their legal education. This outcome is evidenced by the following student qualitative responses sourced from the eVALUate BLR unit reports:⁷⁶

This unit has allowed me to gain an awareness of the many regulating bodies of businesses in Australia and how this intertwines with our legal system. It has also demonstrated the impacts of these regulatory bodies on businesses themselves, and many other stakeholders. All unit modules were thorough and had a clear format and flow, the seminars were informative and interactive. Really interesting unit and was enjoyable while still challenged me to think.

Very relevant to life, particularly those who have been working. I have gained practical life knowledge that I have already been able to implement and also strengthened my understanding of the academic requirements for this degree. ... This will carry me throughout my degree.

This unit was actually far more interesting than I thought it would be! Learning about the various regulators made reading the news far more interesting and understandable, and it was an interesting contrast to Legal Foundations, as it was focused on the real-life separation of powers rather than the theoretical separation of powers studied last semester.

VI CONCLUSION

Critical thinking is an essential skill that all Australian university graduates are expected to acquire, as mandated by the AQF and broadly prescribed in the LTAS for the eight disciplines areas. Law graduates are no exception, with this requirement further stipulated in the CALD Standards. It is the responsibility of higher education institutes and academics to ensure that their graduates are equipped with the necessary graduate attributes and TLOs prior to graduation.

Given the importance and emphasis that is placed on the skill of critical thinking, the authors contend that this skill should be developed by students in their first year of law school. By teaching students how to develop the vital skill of critical thinking early in their education, students are afforded more opportunities to practice and refine this skill. Furthermore, by embedding critical thinking in first year, this skill will shape how students learn and understand the law and its function. Mastering such a skill early in a student’s legal education also assists them to adopt a similar methodology and

⁷³ See, eg, Patricia Hughes, “‘I’ve Done the Research, What Now?’ Developing Critical Thinking Skills for Law Students’ (2011) 19(1) *Australian Law Librarian* 30, 34–6.

⁷⁴ See, eg, Catherine Brown, Judith McNamara and Cheryl Trelaor, *Statutory Interpretation Good Practice Guide (Bachelor of Laws)* (Australian Learning and Teaching Council, 2011) 5.

⁷⁵ Kift, Israel and Field, above n 23, 18.

⁷⁶ eVALUate unit reports are Curtin University’s online system for gathering and reporting student feedback on their learning experiences. Students are able to provide constructive criticism anonymously.

approach in their other law units, which subsequently promotes a deeper approach to learning and critique of the law.

By introducing the BLR curriculum in first year, students are challenged from the beginning of their legal education to not accept the law at face value, but to objectively question and assess its effectiveness and draw parallels and comparisons between different areas of law. This unit encourages students to move beyond surface learning, and consider the law critically, analytically and reflectively. BLR provides students with a platform and the necessary tools to equip them to think critically, without prescribing to the student what to think.

In times of rapid change and uncertainty in the legal profession, it is essential that law graduates entering the profession are equipped with the necessary legal tools to adapt to the changes. In order for law graduates to thrive in the midst of uncertainty, it is crucial for them to focus on the fundamental building blocks for the acquisition of essential legal knowledge and skills that make a 'good lawyer'. To face a rapidly changing future, a strong foundation is needed. The skill of critical thinking is one such skill as it is a fundamental aspect of 'thinking like lawyer'. It is almost inevitable that law graduates will struggle without a strong ability to think critically in this rapidly changing world.