

Statutory Interpretation and Legal Ethics: *Once and done or taught throughout the curriculum?*

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Educating lawyers in Australia, and making a patch work quilt have much in common. Certain patches (or Priestly 11 subjects), are required, whereas others may be electively added to build the whole. Each patch (subject) is worked on individually, and the whole taken together forms the quilt (degree).

A woven quilt by contrast, is created as an integrated whole. The warp threads provide the structure, and the weft provides the strength. Is a ‘good lawyer’ patched or woven?

Before seeking to answer this, we should consider why we are asking this question. Why the focus on the ‘good lawyer’? Not, I would suggest, because we have seen a rash of bad lawyers – those who couldn’t service their clients properly, or who were struck off for failure to observe the ethical standards of the profession. This is not a re-active discussion, or a commentary on perceived failings in the present system. Rather it is a pro-active discussion, with which a healthy profession always engages. How can we continue to ensure that members of the profession are operating well? This discussion becomes more complex because of the large number of stakeholders involved. Consider the ongoing discussions of accreditation of law schools and the core of curriculum which needs to be covered – these are discussions which only surround professional courses such as Law, and simply do not happen with Arts or Science degrees. The profession, but also the broader community, is very invested in the question of how we prepare ‘good lawyers’.

It is also a question we are asking because we are living in a time of great change in the profession, and in the education which leads to entry to the profession. As the NSW Law Society’s recent FLIP report¹ has made clear, technology, growing internationalisation, increasing competition – including from non-legal sources, and societal change are having an impact on legal practice. How do we continue to be good lawyers in a time of change? What do good lawyers need to know, and be able to do?

One of these changes is the increasing number of law students, and the number of those who either do not intend to, or may not have the opportunity to, enter legal practice at the conclusion of their degree. Is there a difference between good law students and good

¹ *The Future of Law and Innovation in the Profession* Law Society of NSW 2017.

lawyers? Should we be separating the two? This discussion will be informed by the final report on the Graduate Tracking Study undertaken by the NSW Law Society in 2015, due to be presented by Urbis to the Law Society next month.² Interesting preliminary work from the Law Society's 2015 Report into *Future Prospects of Law Graduates* indicated that there was a critical lack of authoritative data in this area, and two of their key recommendations were that there was a need to gather more statistics and data on graduate numbers and to track law graduates to obtain evidence of employment trends.³ Demonstrating the problem with data was their comparison of figures in 2015 taken from the *Australian Financial Review* and data obtained by the Council of Australian Law Deans (CALD) which directly surveyed all law schools in Australia. The *Australian Financial Review* reported that in 2015 there were 15,000 law graduates seeking to enter a market of 66,000 solicitors – however the CALD figures reported that the number of law graduates in 2015 was half this amount⁴. We need better data, but we do know anecdotally that not all law students seek to enter the profession, and these numbers appear (again, anecdotally) to be increasing. Do we need to maintain the connection between 'good' law students and 'good' lawyers?

Regardless of this distinction, we recognise that the 'good lawyer' has to look after themselves. Personal wellness is the essential foundation for effective professional practice, and we need to ensure that this foundation is built and maintained.

The traditional way we have sought to prepare good lawyers might be likened to a patchwork quilt. If you are a quilter you will know that each block or square is worked independently, and then when they are all sewn together, form a quilt. Consider the typical law degree – students work their Contracts block, their Real Property block, their Criminal Law and Administrative Law blocks, and then put them all together to claim a degree. Hopefully before, but most probably not until students enter practice, do these blocks start to coalesce and make sense as a unified whole. This block on block of knowledge method is a very sensible and practical way to develop technical mastery of a new field, and continues to work well. But it does treat each area as a discrete block – not necessarily connected to the others at all, or in a particular way. (If you want to know how discrete ask students in a 5th year elective what they remember from 2nd year Contracts or 3rd year Constitutional Law – and see how shocked they look when you suggest that this subject will actually be building on that assumed knowledge!)

Is it time to re-assess the patchwork quilt approach? In part, yes. There are some areas of knowledge, required by a good lawyer, which would be better integrated into the

² *Future Prospects of Law Graduates Report and Recommendations* Law Society of NSW Feb 23, 2017 – see Recommendation 9.

³ *Ibid* 2.

⁴ *Ibid* 6.

curriculum as a whole, rather than dealt with once, and never touched again. We recognise this implicitly when we talk about embedding across the curriculum, and indeed the Threshold Learning Outcomes⁵ are predicated upon the assumption that the curriculum will build towards a set of competencies, acquired across a number of subjects. The first of these, Knowledge, requires the development of an understanding of fundamental areas of legal knowledge – the blocks of the quilt as it were. But TLOs 2 and 6 (Ethics and Professional Responsibility and Self-management) both call for graduates to have the ability to reflect on ethical issues likely to arise in professional contexts, the professional responsibilities of lawyers, and their own capabilities and performance. Such reflection happens best when opportunities are provided across the curriculum, and the different contexts in which ethical issues may arise are able to be explored.

Similarly thinking skills and critical analysis (TLO4) need to be developed across the curriculum. For lawyers, it is particularly important to be able to think about and engage with the sources of the law. Increasingly important is the ability to deal with legislation. As Gleeson CJ observed, speaking extra-judicially:

One of the changes making the work of modern judges different from that of their predecessors is that most of the law to be applied is now to be found in Acts of Parliament rather than judge-made principles of common law (in which I include equity). A federal judge devotes almost the whole of his or her judicial time to the application of an Act of the federal Parliament, whether it be about corporations law, or bankruptcy, or family law, or migration⁶

The good lawyer needs both to know the corporations law, but also how to think about the legislation in which much of that law is now found – the legal principles which govern the interpretation of statutes.

Legal Ethics and Statutory Interpretation, while very different, raise some of the same issues when we are thinking about curriculum design for the ‘good lawyer’. They will be used as examples to explore the idea of integration. Should they be taught as discrete blocks of knowledge – once and done - and left for connections to be formed in legal practice, or are they better taught by being woven throughout the whole curriculum? Should they be the weft to the warp of Contracts and Administrative Law, and woven together as an integrated whole?

Statutory Interpretation

⁵ *Learning and Teaching Academic Standards Project Bachelor of Laws Learning and Teaching Academic Standards Statement* December 2010 Australian Learning and Teaching Council.

⁶ Victoria Law Foundation Oration *THE MEANING OF LEGISLATION: CONTEXT, PURPOSE AND RESPECT FOR FUNDAMENTAL RIGHTS* 31 July 2008 Gleeson CJ.

The paper prepared for this conference by Emeritus Professor Sandford D. Clark, “Regulating Admissions – Are we There yet”⁷ provides an excellent background to the ongoing debate about dealing with Statutory Interpretation in the curriculum.

Clark recounts the situation prior to 1982, when the Victorian COLE rules required an applicant for admission to have basic understanding and competence in Statutory Interpretation. This was left largely undisturbed by the McGarvie Report of 1982 which required Statutory Interpretation to be dealt with as part of a Legal Process/Introductory course but also called for a ‘shift in emphasis’⁸ from study of case law to study of legislation. Interestingly, one of the reasons given by the McGarvie report for excluding each of Bankruptcy, Company Law, Consumer Protection Law, Conveyancing, Succession, Employment law, Mercantile or Commercial Law, Social Security Law, Taxation and Town Planning as a core requirement for admission was that much of the relevant law was embedded in legislation, and a “practitioner will have developed a skill in statutory interpretation from Legal Process and other prerequisite subjects.”⁹ The view of the McGarvie report demonstrates the broad reach of legislation, and the way in which statutory interpretation is necessarily woven throughout the whole curriculum.

The Law Admissions Consultative Committee (LACC) followed the McGarvie approach, and did not require the specific study of Statutory Interpretation, on the grounds that it would be dealt with adequately in foundation, and other subjects.

This was not enough for critics such as Dr CL Pannam QC – who, in his comments on the McGarvie Report, and which are extracted in Professor Clark’s paper, argued that this approach was insufficient as it:

ignores the crucial impact on the legal system of legislation.... Legislation is the dominant source of law in this century...And yet I look at the curriculum and where do I find the basic education a lawyer needs to grapple with statutory and regulatory provisions?”¹⁰.

The argument about dealing with Statutory Interpretation is framed here, not in terms of whether to include it or not, but rather the comparative weight of coverage – introductory or more substantial; stand alone, or embedded across the curriculum.

The voices calling for a more substantial treatment of statutory interpretation grew over time, not least of all because of the changing legal landscape. As Spigelman CJ commented, extra-judicially in 2001:

⁷ *Regulating Admissions – Are we there yet?* Sandford D. Clark August 2017.

⁸ *Ibid* 8.

⁹ *Ibid* 9.

¹⁰ *Ibid* 8.

*The law of statutory interpretation has become the most important single aspect of legal practice. Significant areas of the law are determined entirely by statute. No area of the law has escaped statutory modification.*¹¹

Some in the profession however were concerned that the law schools did not respond to this change in emphasis in practice, with Sandford Clark commenting that: ‘*the failure of law schools [over a 25 year period] to place greater emphasis on knowledge and skills in statutory interpretation led*’¹² in 2007 to the Chief Justice and President of the Court of Appeal in Victoria, supported by the Chief Justices of Australia and NSW, to write to LACC, asking them to:

*review the present Academic requirements in the light of the prevailing practices in Australian law schools, in order to ensure that the teaching of statutory interpretation is given the prominence and priority which its daily importance to modern legal practice warrants...we consider that the law of statutory interpretation has a [strong claim] to a separate, substantive place in the curriculum.*¹³

In response, LACC invited CALD to survey Australian law schools – 20 of the 29 replied, and indicated overwhelmingly that statutory interpretation was taught in an introductory course, and then embedded in the other substantive subjects. Only La Trobe had a separate elective which provided a substantive treatment.¹⁴ In an effort to consult more widely, LACC established a working group to canvass views about the understanding and competence required of a law graduate, and in 2010 they developed a Statement on Statutory Interpretation. It identified expected student outcomes, but did not require Statutory Interpretation to be taught as a separate subject. According to Clark ‘*it adopted this course, rather than recommending that Statutory Interpretation be added to the 11 academic requirements, because of staunch opposition from certain law schools.*’¹⁵

Again, the issue is not whether or not law students should understand how to think about legislation, and use and determine the relevant legal principles governing its interpretation. The question is whether or not it should be taught as a discrete body of knowledge, in a dedicated subject, or integrated across the curriculum, and discussed wherever the discussion of statutes arises.

¹¹ James Spigelman, ‘The Poet’s Rich Resource: Issues in Statutory Interpretation’ (2001) 21 *Australian Bar Review* 224.

¹² Above n7, 9

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*

LACC sought to determine the effect that its Statement had on the teaching of statutory interpretation, and in June 2013 considered a report developed from the responses of 31 of the 37 surveyed law schools. According to Professor Clark, of the 31 responses 19 were either brief or superficial and only 9 really attempted to answer the particular questions asked by LACC. *'LACC felt unable to conclude that its Statement on Statutory Interpretation had a marked effect on either the structure or the content of the teaching of Statutory Interpretation in most law schools'*¹⁶. In its report to the Council of Chief Justices, LACC noted that the:

overwhelming majority of responses would not justify conclusions that law schools which 'embed' the teaching of statutory interpretation in later substantive subjects:

- a) Separate out particular techniques of interpretation for special, precise analysis as techniques, or consider the limitations placed on their use by accumulated judicial application; or*
- b) Set out to forge the interpretative examples given to students into a coherent body of knowledge and skills about statutory interpretation; or*
- c) Effectively assess whether students have, indeed, acquired a coherent body of knowledge and skills about statutory interpretation which they may immediately deploy with confidence, when they are admitted to the legal profession or are otherwise employed as lawyers.*¹⁷

After further consideration and discussion with CALD, LACC looked at amending the Priestley 11 to include specific references to statutory interpretation decided against this¹⁸. Instead, and following these discussions, CALD, sponsored the preparation of a Good Practice Guide to Teaching Statutory Interpretation. This was released in June 2015, and *'recognises that statutory interpretation is a discrete area of law of critical importance to the practice of law.'*¹⁹ It suggests that Statutory Interpretation should be taught by laying a strong foundation in early subjects and then *'ensuring that that foundation does not diminish but develops through iterative learning.'*²⁰ The Guide further suggests that Statutory Interpretation should constitute a 'hurdle requirement' so that students may only progress if they have demonstrated satisfactory competence in the interpretation of legislation.²¹ With respect to consolidating knowledge of statutory

¹⁶ Ibid 10.

¹⁷ Ibid.

¹⁸ Ibid 11.

¹⁹ THE COUNCIL OF AUSTRALIAN LAW DEANS GOOD PRACTICE GUIDE TO TEACHING STATUTORY INTERPRETATION Prepared for CALD by Dr Jeffrey Barnes (La Trobe), Assistant Professor Jacinta Dharmananda (UWA), Professor Jeffrey Goldsworthy (Monash) and Professor Alex Steel (UNSW) June 2015

²⁰ Ibid.

²¹ Ibid.

interpretation the Guide recommends that ‘*a coordinated effort [be] made within each law school to ensure that statutory interpretation is taught and assessed*’²² in other subjects in which students are expected to deal with and understand legislation. The effect of this on the teaching of Statutory Interpretation has not yet been assessed.²³

What emerges clearly from this discussion is that Statutory Interpretation is an area of legal knowledge which everyone – academic and practitioner - agrees is core to legal practice, yet there are two very different views about how to teach it appropriately.

LACC, and the Council of Chief Justices have argued strongly for Statutory Interpretation to be dealt with as a substantive body of law. In response, a number of law schools argue that this is not just a substantive body of law – a discrete block of a quilt like Criminal law - but one which crosses most substantive areas of the curriculum (that is, all those based on legislation). Accordingly, it needs to be looked at in the context of these other subjects, and embedded across the curriculum.

So who’s right? Should it be taught as a separate substantive block, or embedded across the curriculum? Or can we, as the Good Practice Guide suggests, attempt to do both? This would appear to be an area where we should look at a spiralling curriculum – introduce the ideas in an early subject; provide discussion of examples where they arise in other subjects; and consolidate at an advanced level in a later subject – either core or elective. As the Chief Justices have noted, there is clearly a body of substantive law of statutory interpretation and a range of interpretative tools which need to be understood by lawyers. But equally, these tools, this law of interpretation, needs to be seen in the context of the legislation on which it actually operates, and students need to be given opportunities to develop their understanding and practice the application of this law. We are familiar with the concept of a spiralling curriculum in other areas – statutory interpretation would seem to be ideally suited to be taught by way of a spiralling curriculum – where the substantive content was covered, and then revisited, again and again throughout the curriculum to encourage a deeper understanding in the context of other legislation being studied.

Legal Ethics

In contrast to Statutory Interpretation, Legal Ethics is part of the required substantive curriculum. The debate here is whether teaching this as a stand-alone subject is adequate, or if an understanding of ethics is best consolidated by discussion across the whole curriculum. Deborah L. Rhode has written extensively about teaching Legal Ethics by

²² Ibid.

²³ Above n7, 11.

what she has called the pervasive method²⁴ and notes that with respect to the teaching of Legal Ethics, “*too often the issue is cast as a choice between separate courses or integrated coverage; too seldom do professional schools seriously attempt both.*”²⁵ She argues for “*teaching professional responsibility as a course in its own right and as a topic to be addressed throughout the curricula*”.²⁶

Schedule One of the *Legal Profession Uniform Admission Rules 2015* (NSW) sets out the prescribed areas of legal knowledge, an understanding of and competence in which, is part of the academic qualifications prerequisite to admission to practice.²⁷ It makes clear that it is adapting, as far as is practical and convenient, the *Prescribed Areas of Knowledge* published by LAAC.²⁸ Interestingly, and addressing the issue of whether Legal Ethics can only be taught as part of a discrete subject, or could be taught across the curriculum, the interpretative provision provides:

*Although the topics below are grouped for convenience under the headings of particular areas of knowledge, there is no implication that a topic needs to be taught in a subject covering the area of knowledge in the heading rather than in another suitable subject.*²⁹

At 13, we find the prescription for Ethics and Professional Responsibility, which requires that students develop and understanding of:

*... the various pertinent rules concerning a practitioner’s duty to the law, the Courts, clients and fellow practitioners, and a basic knowledge of the principles relating to the holding of money on trust.*³⁰

Traditionally, law schools have responded to this requirement by teaching a stand-alone Ethics subject. The different ways in which law schools have engaged in the task of teaching legal ethics has been usefully documented in CALD’s 2008 *Catalogue of the Teaching of Legal Ethics*.³¹ While no doubt there has been change in the last 9 years, the method employed seems to be overwhelmingly to teach Ethics as one subject, with about half the law schools introducing this very early in the curriculum, typically first year, to allow time for reflection throughout the degree; and roughly the other half teaching Ethics as a final year subject, in preparation for entry into the profession. Reflection is an important feature of the Learning Outcomes for many of these courses, and assessable in

²⁴ See for example, *Ethics by the Pervasive Method* Deborah L. Rhode *Journal of Legal Education* Vol. 42, No. 1 (March 1992), pp. 31-56

²⁵ Ibid 31.

²⁶ Ibid 32.

²⁷ See also Rule 5 and s17(1)(a) of the *Legal Profession Uniform Law (NSW)* 2014.

²⁸ Schedule One 1(a)

²⁹ Schedule One (2)

³⁰ Schedule One (13)

³¹ Australian Council of Law Deans *A Catalogue of the Teaching of Legal Ethics, Professional Responsibility, etc in Australian Law Courses* November 2008

a number, including the ANU's LAW1202 Lawyers, Justice and Ethics and QUT's LWB433 Professional Responsibility.

Interestingly, QUT (and to a more limited extent Flinders University) identified that they were undertaking a program of both teaching Legal Ethics as a substantive subject (LWB433 Professional Responsibility) and integrating it throughout the curriculum.³² Griffith University³³ teaches Legal Ethics as a vertical subject, where students consider aspects of Legal Ethics in the 11 core subjects, but there is also a dedicated capstone unit, designed to consolidate the ethics material embedded throughout the degree.

Different ways of teaching Legal Ethics are developing, and the process of curriculum review described by Maxine Evers and Lesley Townley at UTS³⁴ is a good discussion of the different approaches to teaching Legal Ethics. Their process led to:

*the implementation of a first year foundation subject, the ethics graduate attribute being pervasively taught throughout the degree and the retention of a capstone subject covering professional responsibility for those students undertaking PLT.*³⁵

So, not just a substantive subject, and not just integrated across other core subjects, but somewhat akin to a spiraling curriculum, an attempt to do both. One of the key reasons driving this curriculum change at UTS is identified as '*student feedback requesting that ethics be taught earlier in the degree so that subsequent learning would have more relevance.*'³⁶ The 'subsequent learning' is facilitated by a curriculum which explicitly builds on the substantive material by embedding a consideration of ethics in other subjects, because, as Evers and Townsley argue:

*This is important because developing an ethical character and being able to recognise and reconcile ethical issues requires time to reflect and practise. Just as it would be unrealistic to expect students to learn statutory interpretation in one subject, it is equally unrealistic to expect students to leave university with the ability to apply professional responsibility rules if they have had no, or little, exposure to the context in which those rules operate or how to apply their own judgment.*³⁷

A good argument for thinking about both Legal Ethics and Statutory Interpretation as taught neither just as a discrete block, or embedded across the curriculum, but rather as both.

Issues

³² Ibid, 29.

³³ Ibid, 19.

³⁴ *The importance of ethics in the law curriculum: essential or incidental?* by Evers, Maxine; Townsley, Lesley The Law Teacher, 01/2017, Volume 51, Issue 1 17 -23.

³⁵ Ibid 22.

³⁶ Ibid.

³⁷ Ibid 23.

No curriculum change comes without issues which need to be navigated, and the idea of integrating the teaching of Legal Ethics and Statutory Interpretation across the curriculum is no different. There are a number of difficulties which need to be addressed before we could confidently proceed. Chief of these, is who would we be asking to teach this material. We are used to subject specialists teaching stand-alone subjects in which they have expertise. Who will teach the embedded subjects? Can we expect company lawyers to be experts in legal ethics, and criminal lawyers to be able to teach the finer points of Statutory Interpretation? A related issue is how do we ensure that students focus on the embedded content as well as the substantive content? This is an issue currently raised in relation to the teaching of statutory interpretation. Are we embedding the study of the principles of interpretation into, for example Criminal or Commercial Law, or simply focusing on the relevant legislation as a source of legal principles? And without assessment which clearly relates to the use of statutory interpretation principles, are students concentrating on these, or focusing on the substantive matters in the curriculum? The curriculum is crowded and it is asking a lot of law teachers to include additional material and teach and assess outside their area of expertise.

Team teaching is one possible approach, in which an Ethics or an Interpretation specialist would take specific classes, or run identified assessments. Alternatively, specialized materials could be developed to assist lecturers to truly integrate these areas of the law into their subjects. Law schools have a long tradition of practitioners as teachers. Practitioners who are subject specialists, but have practical experience of legal dilemmas arising in practice, are very well placed to integrate an informed discussion of legal ethics into their subjects.

But regardless of who teaches, the other fundamental issue is how we find time to integrate additional material into existing subjects. One possibility is to explore the idea of a vertical subject. UNSW Law School has identified a number of vertical themes in its new curriculum³⁸ - to what extent is it possible to run a subject which actually operates across the whole degree? Griffith University has pioneered this³⁹ in the areas of ethics, legal theory, Indigenous issues, and internationalization.⁴⁰ Vertical subjects have the advantage that time can be allocated throughout the degree, taught as say 36 hours across three years instead of in one Semester. It also means that assessment in these areas is clear, and clearly related to identifiable outcomes in either statutory interpretation or legal ethics. However, there are obvious difficulties as well. There are significant student issues – many related to the increasing mobility of students, both between subjects and

³⁸ *Curriculum Change — A Multidimensional Task* University of New South Wales Law School Chief Justice Robert French AC 20 October 2014, Sydney 5.

³⁹ <https://degrees.griffith.edu.au/Program/1365/Overview> (accessed 22nd August 2017).

⁴⁰ For further discussion see Michael Robertson, *Challenges in the Design of Legal Ethics Learning Systems: An Educational Perspective*, 8 *Legal Ethics* 222,239 (2005).

degrees and between Australian universities and overseas institutions on exchange. A semester abroad is a great opportunity for Australian students and helps them develop a more international perspective – but it also creates scheduling issues if subjects are to run vertically as well as horizontally.

There are also issues for staff, compounded by the fact that half of all teaching in Australian higher education is provided by sessional staff.⁴¹ Mapping across the curriculum, to identify where and how certain content is taught is different from trying to teach identified content in different subjects across the whole curriculum. Vertical subjects would require extraordinary co-operation, co-ordination and skill across a number of subjects. This is not easy with a stable teaching staff, but would be even more difficult with sessional staff coming and going.

And would any integration – whether embedded, or taught by a team or vertically – distract from the substantive material which needs to be covered. This could be a real issue in early subjects when students are still acquiring skills, but should not be overstated. An overwhelming majority of early subject law students in Australia study a double degree, where they move between French or Archaeology or Statistics and Contracts, so moving between the legal principles in the *Civil Liability Act 2002* (NSW) and the rules by which these are to be understood and interpreted should not present too many difficulties. And done well, it could enhance understanding. One short example of a possible integration in an early subject: introducing a negotiation exercise into Contracts. After students have completed their study of formation of a contract, they could be asked to conduct a short contract negotiation. Marks would need to be awarded for this exercise to ensure that all students engaged appropriately, but this would be a good vehicle for them to test their understanding of when and how contracts are formed. Integrated into this could be an opportunity for them to reflect on Legal Ethics. If the instructions were that their client had asked them to lie about one matter in the contract negotiation, how do they deal with this? They would not need to develop a concluded view, but at least begin to reflect on some of the ethical issues faced by practitioners and how they may need to deal with these within an ethical, professional framework.

Technology brings opportunities for delivering material in new ways, and there may be opportunities for integrating and embedding using on-line resources. These need to be approached with care. The point of embedding across the curriculum is not simply to deliver a body of knowledge – it is to create opportunities for spiraling, and deepening learning and to enhance opportunities for reflection. Especially in the area of Legal Ethics, this reflection should be done as part of a professional community, which shares the same ethical standards and approaches, rather than the isolation which on-line learning may engender.

⁴¹ <https://smartlawteacher.org/> (accessed 22nd August 2017).

Of course, both the examples discussed here are related to the practice of the law – ethical issues which may be faced by practitioners, and the statutory interpretation skills required by practitioners. There is a developing argument that increasingly, law students do not enter the profession, and so perhaps the curriculum should begin to reflect this, and move away from a professional focus. A full exploration of this issue is beyond the scope of this paper, and awaits the provision of better data.⁴² However students enroll in a professional course, one which provides a body of knowledge about the law, and seeks to inculcate the skills of ‘thinking like a lawyer’ – which must include an ethical awareness, and being able to think about and use legislation. Deborah L. Rhode, writing in the context of legal ethics, noted:

‘Many practicing lawyers will never encounter a shifting (or springing) executory interest; virtually all will confront issues of honesty, confidentiality, and loyalty.’⁴³

How much more likely is the non-practicing lawyer to encounter questions of honesty and confidentiality than executory interests?

Conclusion

The patchwork model of teaching every subject separately and allowing students to build their own connections has worked well, but it needs some refreshing. Statutory Interpretation and Legal Ethics are two examples of subjects which need to be covered substantively – there is a body of knowledge which must be acquired, and students need to see that this is important, assessable, and required of a good lawyer. But it is difficult to argue that they can be taught well by simply being addressed once, and not consolidated throughout the curriculum. This consolidation needs to be deliberate and structured, so it is clear to students how what they are considering in one subject is an opportunity for reflection, or deepening understanding, or critical analysis, or practice of the skills and knowledge introduced in other areas. Rather than relying on students to assemble their own quilts of knowledge we should be ensuring that, at least with Statutory Interpretation and Legal Ethics, there is a strong warp thread running throughout the whole.

⁴² See discussion at above n2.

⁴³ Above n23, 43.