**The importance of ethics in the law curriculum: essential or incidental?**

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Recently, the debate as to whether ethics should be a compulsory requirement of a law degree was refuelled when the English and Welsh Legal Education Training Review (LETR) recommended that professional ethics should be primarily addressed in vocational Legal Services and Education Training programs and that learning outcomes in the academic curriculum, should include reference to morality and the law, the values supporting the legal system and their connection to the role of lawyers. This debate is also occurring in other jurisdictions. In Australia the debate is focused on the proposal that ethics be removed as a compulsory subject in the law degree. This proposal has raised a concern that law students will be denied the opportunity to develop as ethically-competent lawyers. This paper argues for the continuation of ethics as a core component of a law degree and evidences the model used for the teaching of ethics in the law degree at the University of Technology Sydney in support of our argument. The background to the model is examined to highlight the significance of student feedback and ongoing curriculum review, including the alignment of parallel pedagogical factors. This model serves as an example of why ethics should not only be core to a law degree but, in order to provide graduates who are ethical and reflective practitioners, ethics should be pervasively taught throughout the degree and supported by an introductory and capstone presence.

**Introduction**

There is an ongoing debate in Australia as to whether, and to what extent, legal ethics should be a substantive subject in the law curriculum and where it should be situated in a law degree. In 2015 the Law Admissions Consultative Committee (LACC) is conducting a limited review of the Academic Requirements for Admission to the Legal Profession in Australia.[[1]](#footnote-1) Currently the Priestly 11[[2]](#footnote-2) prescribes the 11 core subjects, referred to as “areas of knowledge”,[[3]](#footnote-3) that are required to be successfully completed for admission as a legal practitioner in Australia. “Professional Conduct” is one of those subjects. Although the descriptor for the area of knowledge “Professional Conduct” does not refer to the word “ethics”, generally law schools have included “ethics” in the subject name that meets the requirements of this prescribed area.[[4]](#footnote-4) The LACC review is examining what areas of knowledge should be prescribed and, importantly for this paper, whether Ethics and Professional Responsibility should continue to be a fundamental threshold area of knowledge.

In its Review paper, LACC took significant account of the findings and recommendations of the English and Welsh Legal Education Training Review (LETR) discussed below. LACC interpreted the LETR’s recommendations[[5]](#footnote-5) to mean that in England and Wales, ethics is not required as a compulsory component of the academic stage of law study.[[6]](#footnote-6) LACC also relies on the Scottish and Indian jurisdictions where ethics is not a mandatory academic requirement.[[7]](#footnote-7) Apart from that justification, LACC provides little in the way of evidence as to why this subject should be omitted from the academic requirements of a law degree. LACC seems to consider that it is sufficient that Ethics and Professional Conduct is situated within Practical Legal Training (PLT), which is undertaken either in the final stage of, or following, the degree where professional conduct and trust accounting is the focus.[[8]](#footnote-8) However, this is a narrow conception of legal ethics and restricting it to the vocational stage of legal education and training ignores that legal ethics involves more than the law of lawyering,[[9]](#footnote-9) the literature on pedagogical approaches to legal ethics and what some students think is important to their learning and future careers.

Internationally the same debate as to the place of legal ethics in the law degree has recently occurred, resulting in varied outcomes. In 2013, in England and Wales, the Legal Education Training Review (LETR) commissioned a report into legal education and training.[[10]](#footnote-10) The Report, while acknowledging stakeholder response for increased coverage of ethics and conduct,[[11]](#footnote-11) did not recommend that ethics be a component of foundational subjects in the law degree or at all in undergraduate (LLB) and postgraduate (GDL) law courses.[[12]](#footnote-12) However, the Report did recommend that professional ethics be included at some stage of Legal Services Education Training (LSET).[[13]](#footnote-13) The Report emphasised, in its Conclusion, that it did not recommend “professional conduct should become a Foundation of Legal Knowledge or should otherwise be required within the LLB or GDL curriculum”.[[14]](#footnote-14) Although, in a concessional approach, the Report suggests that professional ethics could be included in the academic phase of law study to enable “authorised persons”, to be introduced to “legal values” and the “law on lawyering”.[[15]](#footnote-15)

In the United States, the focus on ethics in legal education is in the experiential context of law study. In 2014, the American Bar Association[[16]](#footnote-16) prescribed the mandatory completion of at least one experiential course, of a minimum duration of six hours, that integrates “doctrine, theory, skills and legal ethics”[[17]](#footnote-17) and enables students to demonstrate and self-evaluate skills in one or more areas, one of which is the “exercise of proper professional and ethical responsibilities to clients and the legal system”.[[18]](#footnote-18) The Report prescribes that law schools have an obligation to provide “substantial opportunities” for students to participate “in pro bono legal services, including law-related public service activities”.[[19]](#footnote-19)

In 2014 the Canadian Bar Association acknowledged the place of ethics in the future of lawyers in Canada, equating the importance of “ethics and values” with “economics and values”.[[20]](#footnote-20) The importance of ethics as an area of knowledge is commonly recognised by the relevant bodies in Australia, England, Wales, the United States and Canada. What is not universally agreed upon is where ethics as an area of learning should be situated - in academic or vocational legal education and training, in the continuing professional development phase or as a continuum of all three stages? However, we argue that legal ethics should be included in the academic phase of a law degree in jurisdictions such as Australia, where PLT is optional and in jurisdictions where there is no separate practical legal training stage. Without this many students who study law will not have any exposure to legal ethics, which as mentioned before goes beyond the law of lawyering, and encompasses notions of justice, service, resilience and personal morality. Factors and attributes that are not just relevant to practising law but enhance any professional career.

Within the context of this debate, this paper seeks to inform the discussion about legal ethics within Australian law curricula and the pedagogical approaches that are best applied to this issue. Part A explains the current approaches to teaching ethics and professional conduct in Australian law curricula. The purpose of this discussion is to provide the context in which the Law Faculty at the University of Technology Sydney (UTS) developed its legal ethics curriculum. The curriculum review at UTS Law is used, in Part B, to demonstrate why legal ethics is an important knowledge and skill component of a law degree and to articulate the pedagogical justifications for the approach adopted. In parallel to how the ethics curriculum was developed at UTS Law were other factors, such as student feedback suggesting that legal ethics should be taught earlier in the degree, the First Year Experience (FYE) Program at UTS and an expanded conception of legal ethics to include resilience, justice and reflective practice. These factors, which are discussed in Part C, together with the Faculty’s curriculum review, converged and a new first year subject, “Ethics, Law and Justice”, was introduced into the curriculum. In addition to this first year foundation subject, UTS Law also embeds ethics pervasively into selected core law subjects and has a vocational subject in the PLT program where professional responsibility and trust accounting are taught. The evidence used to support the change to the UTS Law model of legal ethics education was not based on empirical research rather; it was based on the evaluation of the curriculum, which was influenced by scholarship in this area, and the evaluation of both formal and informal student feedback.

The entire legal ethics curriculum at UTS Law is aimed at developing students as ethical and reflective practitioners who also have a strong sense of personal integrity. In this regard, legal ethics is defined as the decisions lawyers make about the ethical aspects of their work lives, which are guided by objective considerations such as formal rules that embody norms and principles, and subjective considerations such as moral orientation, personal values and emotion. It is argued that a curriculum that has a first year foundational ethics subject combined with a pervasive approach to learning legal ethics and a vocational subject, is the most effective way to achieving broader and deeper learning outcomes for students and thus producing more ethical and well-rounded practitioners. This paper concludes by arguing that there are cogent and important reasons for maintaining ethics as a compulsory component in the study of law.

1. **Current approaches to teaching ethics and professional conduct in Australian Law curricula**

The aim of this part is to explain the current approaches to teaching ethics and professional responsibility in Australian law curricula. The part considers single foundational and vocational subjects, and the pervasive, incremental and judgment approaches, thereby providing the context in which UTS Law has developed its legal ethics curriculum.

***Single foundational and vocational subjects***

In 2008 the Australian Council of Law Deans (CALD) produced a catalogue of teaching legal ethics and professional responsibility in Australian law schools, for the purpose of ongoing analysis of the educational approaches in this area.[[21]](#footnote-21) This strategy accorded with CALD”s goal to “develop effective means to inculcate in Australian law students the values of professionalism, ethics and service”.[[22]](#footnote-22) The CALD catalogue discloses a range of subjects offered by Australian law schools. Ethics teaching in Australian law schools can be divided into academic (undergraduate legal studies or postgraduate legal studies through the Juris Doctor) and vocational (legal practice course) phases.

Typically during the academic phase, universities offer foundation subjects in the first or second year of study. For example, at the Australian National University students undertake the subject “Lawyers, Justice and Ethics” in first year and at Macquarie University students undertake the subject “Law, Lawyers and Society” in second year. In the vocational phase, universities who offer PLT programs[[23]](#footnote-23) teach subjects in “Professional Conduct”, “Ethics and Professional Conduct” or “Legal Ethics and Trust Accounting”. Subjects such as these typically focus on professional responsibility rules. These universities may provide other learning opportunities or exposure to legal ethics. However, the important point is, that whilst students undertaking such units of study are exposed to legal ethics or professional conduct, a single subject on its own, does not provide opportunities for pervasive and incremental learning about ethics and the development of judgment, skills and knowledge throughout the curriculum. It is argued below that legal ethics education should begin with a foundational ethics subject and then pervade the curriculum so that students have opportunities to acquire knowledge and skill incrementally and to develop an ethical and resilient character.

***Pervasive, incremental and judgment approaches***

Literature in legal ethics education, some of which includes empirical evidence, suggests that the preferred approach to teaching and learning ethics is a pervasive and incremental approach.[[24]](#footnote-24) The pervasive approach means that legal ethics is embedded throughout the law curriculum. It is preferred because, when legal ethics pervades the curriculum, opportunities to explore ethical issues and to practise making ethical judgments are frequent and arise in different contexts. The pervasive approach should ideally coincide with the incremental approach. The incremental approach allows time for students to recognise and reflect upon ethical issues and develop knowledge and skills gradually. The incremental approach means that knowledge and skills are developed in stages with increasing complexity. These approaches are preferred by many legal educators because students can practise exercising ethical judgment at different points during the curriculum, consider different ethical problems and perspectives, enhance skills and ethical analysis, gain awareness of structural and regulatory issues, and reflect on their values and how those influence ethical judgment.[[25]](#footnote-25) These approaches to curriculum design are intended to give students the opportunity to develop their capacity for ethical judgment and problem-solving.

The “judgment approach” is less of an approach to curriculum design and more of an approach to ethical decision-making.[[26]](#footnote-26) This approach acknowledges that ethical questions arise in every subject and this provides opportunities to explore the ethical issues, rules and obligations, and the way judgments are made.[[27]](#footnote-27) The judgment approach relates to teaching because of the recognition that acquiring ethical knowledge and learning how to make ethical judgments should pervade the curriculum. As an approach to ethical decision-making, the judgment approach encompasses a broad conception of legal ethics. It emphasises the process of decision-making and encourages students to learn that discretion is inevitable in practice, that reflective deliberation and justification for choices are key professional attributes, that legal ethics and morality are not mutually exclusive, and that lawyers need to develop their own sense of morality.[[28]](#footnote-28)

In the last decade, Australian law faculties have embarked on projects to increase the ethical and professional acumen of students. For example, many Australian universities and law faculties, including UTS, formulated graduate attributes,[[29]](#footnote-29) amongst them ethics and professionalism, with the aim of giving students the opportunity to develop these attributes throughout their degrees. Graduate attributes are “the qualities, capabilities and understandings of a graduate” that will be developed during their degree and include technical skills, disciplinary knowledge and broader skills such as communication, teamwork and self-management.[[30]](#footnote-30) According to Christensen and Kift, the majority of research indicates that “the most effective way of developing skills within a graduate attribute is to embed those skills within the curriculum” because this allows students to develop skills and acquire knowledge incrementally.[[31]](#footnote-31) However, the success of this approach depends largely on the proper co-ordination and deployment of substantive material and skills components throughout the degree.[[32]](#footnote-32)

Another approach to legal ethics education is to implement a vertical subject as Griffith Law School has done. A vertical subject is a separate subject, with separate learning objectives, content and assessment. The subject is pervasive because it is hosted by multiple substantive subjects[[33]](#footnote-33) and learning is incremental because the learning objectives “increase in complexity from one host subject to the next.”[[34]](#footnote-34) Areas of substantive law and practice are identified within the host subject where ethics is implicated and ethics learning objectives, teaching and assessment are aligned to the learning objectives of the host subject.[[35]](#footnote-35) Embedding graduate attributes is a partially vertical approach and whilst UTS has not implemented a vertical subject, there is considerable benefit from recognising an approach that develops learning objectives and assessment in a coordinated and incremental way and then applying this to the embedding of graduate attributes into core law subjects.

Amongst the advocates of the pervasive approach to legal ethics there is divergence about how curricula should be designed to maximise student exposure and increase knowledge. Granfield and Koenig argue that legal ethics courses should impart three overriding skills:

(1) An ability to recognise ethical considerations generated in various legal practice scenarios; (2) an ability to analyse such scenarios within a conceptual framework of ethical, jurisprudential, as well as legal, considerations; and (3) a capacity for and willingness to engage in reflective judgment.[[36]](#footnote-36)

Incremental learning is implicit in these three overriding skills because acquiring and developing those skills is an ongoing process that begins at university and extends into legal practice. Granfield and Koenig conclude that imparting these skills is best done by integrating ethics into the whole curriculum pervasively, because that approach enables a contextual perspective. But rather than embedding ethical components into substantive law subjects, these academics suggest that there should be “several specialised courses that address ethics across a range of professional practice areas.”[[37]](#footnote-37)

In evaluating[[38]](#footnote-38) the pervasive approach to legal ethics at the University of California, Los Angeles (UCLA), Menkel-Meadow and Sander found firstly, that the pervasive method should not be solely relied on, as students encountering ethics in up to six subjects would only cover a fraction of the material covered in a professional responsibility subject.[[39]](#footnote-39) In addition to embedding legal ethics in substantive law subjects, having a professional responsibility subject at the end of the curriculum provides students with the time to learn and understand the unifying concepts and structure of professional responsibility laws, regulations and rules. Secondly, they found that the more faculty members who participate in pervasive teaching using participatory and experiential techniques, then the more effective the method would be.[[40]](#footnote-40) According to Menkel-Meadow and Sander, the more exposure students have to ethics, the more likely they are to draw connections to other subjects and other ethical topics.[[41]](#footnote-41) In summary, Menkel-Meadow and Sander favour the embedding of legal ethics in substantive law subjects across the degree with a capstone subject in professional responsibility. This model was used at UTS Law prior to 2014.

Cramton and Koniac differ from these approaches, as theirs involves a first year foundational subject that is “supplemented with a well-designed and deliberate effort to-teach ethics through the pervasive method”.[[42]](#footnote-42) This is beneficial because a broad conception of legal ethics that includes justice issues, introduces students to topics, themes, skills and knowledge that can be refined in subsequent subjects as they arise in relation to areas of substantive law. In the 2013 curriculum review, UTS Law adopted a combination of the Cramton and Koniac, and Menkel-Meadow and Sander models.

It was decided under the 2013 curriculum review, in accordance with the Priestly 11[[43]](#footnote-43) and the literature supporting the pervasive, incremental and judgment approaches to learning, that students should have a focused and earlier exposure to ethics and that this should be re-enforced throughout the degree. Additionally, a determining factor in moving ethics to the beginning of the degree was feedback from students who had undertaken the PLT subject. This feedback suggested that a first year subject in ethics would provide more relevance to what students were learning in other subjects that addressed ethical issues. Student feedback is discussed further in Part C.

1. **The 2013 curriculum review at UTS Law**

In 2012, UTS Law initiated its own curriculum review which involved reformulating the graduate attributes to accord with the Threshold Learning Outcomes (TLOs) recommended by the Council of Australian Law Deans in 2012. Additionally, UTS required faculties to formulate Course Intended Learning Outcomes (CILOs) for degrees that reflected and complied with the Australian Qualification Framework (AQF) levels. All of these factors are discussed in more detail below. UTS Law appointed an academic to co-ordinate the Graduate Attributes Project. A faculty wide consultation and workshop reformulated the graduate attributes and sub-committees were formed to translate an attribute into subject learning objectives for the subjects embedding the particular attribute. The rationale behind dedicating a group of academics to formulate learning objectives was to ensure the pervasive and incremental implementation of the graduate attributes into core law subjects.[[44]](#footnote-44) Subject outlines link learning objectives to the relevant graduate attribute, so that students are aware of and can demonstrate the attainment of the attributes at the end of their degree.

Prior to 2014, UTS Law embedded the ethics graduate attribute in core law subjects in the academic phase. In addition, a separate vocational subject “Ethics and Professional Conduct” was a part of the PLT program[[45]](#footnote-45) at the end of the curriculum. As a capstone subject, it was here that ethics and professional responsibility had its primary focus. With the implementation of the curriculum review at UTS in 2014, the subject “Ethics and Professional Conduct” was discontinued and the professional responsibility content is now situated in the PLT subject “Legal and Professional Skills”. The ethics content of “Ethics and Professional Conduct” has been expanded and is situated in the first year foundational subject “Ethics, Law and Justice”, which commenced in semester one of 2014. That subject is a core subject and covers the philosophical, social, professional and personal substance of ethics, as well as decision-making, justice, resilience and reflective practice. The ethics program at UTS Law now comprises a first year foundational ethics subject, embeds ethics pervasively across select core law subjects and, for students enrolled in PLT, a vocational subject that covers professional responsibility and trust accounting. Why this holistic approach was adopted is discussed below.

In 2013, UTS Law finalised the curriculum review that began in 2012 and the new curriculum was implemented in 2014. As mentioned above the process involved reformulating the graduate attributes to accord with the Threshold Learning Outcomes (TLOs) developed by Professors Sally Kift and Mark Israel in 2010[[46]](#footnote-46) and endorsed by the Council of Australian Law Deans in 2013.[[47]](#footnote-47) TLOs are a benchmark standard intended to apply to all Australian law faculties. Six TLOs[[48]](#footnote-48) were developed having regard to national and international statements on the competencies, skills and knowledge that law graduates should have. TLO 2 relates to Ethics and Professional Responsibility and is stated as:

Graduates of the Bachelor of Laws[[49]](#footnote-49) will demonstrate:

1. An understanding of approaches to ethical decision-making
2. An ability to recognise and reflect upon, and a developing ability to respond to, ethical issues likely to arise in professional contexts
3. An ability to recognise and reflect upon the professional responsibilities of lawyers in promoting justice and in service to the community
4. A developing ability to exercise professional judgment.

Prior to the 2013 curriculum review, there were ten graduate attributes. These were amalgamated into six graduate attributes. The attributes were reformulated to accord with the six TLOs and the differences between the LLB and JD in the Australian Qualifications Framework (AQF) levels, which are discussed below. The new attributes were merged with the TLOs to formulate the Course Intended Learning Outcomes (CILOs) also discussed below. Table 1 depicts the new formulation of the Ethics and Professional Responsibility graduate attribute at UTS Law.

Table 1. Ethics graduate attribute 2013 curriculum review

|  |  |
| --- | --- |
| **Course** | **Ethics Attribute** |
| LLB - AQF level 7 | Ethics and professional responsibility - A capacity to value and promote honesty, integrity, accountability, public service and ethical standards including an understanding of approaches to ethical decision-making, the rules of professional responsibility, and an ability to reflect upon and respond to ethical challenges in practice. |

UTS required faculties to formulate Course Intended Learning Outcomes (CILOs) for degrees that reflect and comply with the Australian Qualification Framework (AQF) levels. CILOs are a statement of what students will be able to do as a result of successfully completing the course requirements of their degree. The AQF determines learning outcome descriptors for different qualification types. For example, a bachelor’s degree is at AQF level 7 and a master’s degree is at level 9.[[50]](#footnote-50) The levels are contrasted in several indicia including knowledge, skills and application. At UTS, the CILOs are based on a combination of graduate attributes and TLOs as illustrated in Table 2.

Table 2. Ethics CILO 2013 curriculum review

|  |  |
| --- | --- |
| **CILO** | **LLB – corresponding to AQF level 7** |
| Ethics and Professional Responsibility | A capacity to value and promote honesty, integrity, accountability, public service and ethical standards including:  An understanding of approaches to ethical decision-making and professional responsibility; and  An ability to recognise, reflect upon and respond to ethical issues likely to arise in professional contexts in ways that evidence professional judgment, promote justice and serve the community. |

The CILO encompasses what has been described as the “whole student” model because it engages the cognitive (intellectual), affective (emotions, values, attitudes and beliefs) and skill domains of legal ethics.[[51]](#footnote-51) The CILO therefore involves a broad conception of legal ethics. For example, an “understanding of approaches to ethical decision-making and professional responsibility” requires consideration of the roles and responsibilities of lawyers and their obligations to society as well as developing values about justice.[[52]](#footnote-52) It also requiresthe ability to understand one’s own approach to ethical decision-making. The “capacity to value and promote honesty…” requires awareness of personal values and the development of a sense of integrity.[[53]](#footnote-53) A Good Practice Guide was prepared as a resource to assist legal educators to facilitate student learning and the development of skills as set out in TLO 2 and this is also applicable to the CILO.[[54]](#footnote-54) The Guide states that students should be encouraged “to learn that lawyers need constantly to make judgment calls that often involve personal choices” and that the role of personal values need to be emphasised.[[55]](#footnote-55) This statement recognises that ethical knowledge and the ability to engage in ethical judgment involves a wide conception of legal ethics education that promotes justice, resilience and reflective practice.

The overall purpose of embedding ethics pervasively is the incremental development of knowledge and understanding across the degree. The intended outcome of this process is that students attain the graduate attribute via the CILO. In order for students to attain the CILO, subject learning objectives need to be formulated to increase in complexity, from subject to subject, so that students can learn incrementally.

Table 3. Pervasive and incremental subject learning objectives in core subjects (LLB) embedding the ethics graduate attribute and CILO

|  |  |
| --- | --- |
| **Subject** | **Learning Objectives** -On successful completion of the subject students should be able to: |
| Ethics, Law & Justice  (year 1) | Develop an ethical framework for the practice of law together with the ability to recognise ethical questions.  Recognise the relationship between personal and professional attitudes and values and approaches to ethical decision-making.  Consider the impact of personal values, emotions and morals in ethical decision-making. |
| Torts (year 1) | Recognise the perspectives of various stakeholders and to satisfactorily reconcile these differing perspectives. |
| Civil Practice (year 2) | Evaluate the components and processes of ethical decision-making in a context of alternative modes of problem-solving. |
| Evidence (year 2) | Evaluate and reflect on the roles of lawyers in the administration of justice. |
| Corporate Law (year 3) | Reflect on the professional responsibilities of lawyers and demonstrate the capacity to exercise ethical judgment. |

Levels of understanding are communicated in subject learning objectives by verbs that indicate what students need to do in order to demonstrate the level of understanding.[[56]](#footnote-56) The subject learning objectives in Table 3 above contain verbs that denote the increase in complexity from subject to subject and therefore the ascension of levels of understanding. The learning standards in the subject “Ethics Law and Justice” are consistent with it being a foundation subject, as denoted in the verbs used to indicate what students need to do in order to demonstrate the level of understanding.[[57]](#footnote-57) The statement of subject learning objectives in the foundational subject “Ethics, Law and Justice” include:

Upon successful completion of the subject students should be able to:

* Develop an ethical framework for the practice of law together with the ability to recognise ethical questions.
* Recognise the relationship between personal and professional attitudes and values and approaches to ethical decision-making.
* Consider the impact of personal values, emotions and morals in ethical decision-making.
* Reflect on, manage or monitor their emotions and responsibilities in collaborative encounters.
* Demonstrate a developing capacity to reflect on, and assess, their capabilities, wellbeing and performance.
* Identify, access and utilise appropriate resources and assistance to develop resilience.

As well as being consistent with the statement of learning outcomes in the CILO, the content of these learning objectives encompasses the whole student approach. The cognitive domain is arguably engaged in all of the objectives but the traditional idea of cognition (intellect) is most apparent in objectives one and two. Developing an ethical framework and the ability to recognise ethical questions requires a knowledge base in ethical theories, law and human experience. The affective domain is engaged in objectives three, four, five and six where emotions, attitudes, values and beliefs are expressly stated. The skill domain is engaged in all of the objectives, as the ability to attain these objectives constitutes a skill set that students will develop during their degrees and their careers.

A broad conception of legal ethics was adopted in the first year subject to accord with the CILO, thus it was also essential to include the other and often ignored aspects of legal ethics. It is emphasised in the first year subject that legal ethics are not contingent on professional rules alone, but also require reference to the person’s subjectivity, and the term “ethics” also denotes the formally and informally adopted norms of the profession.[[58]](#footnote-58) In addition to this, developing the skills of resilience and reflective practice highlights the importance of personal well-being, growth and development of an ethical character. Further, the understanding that legal ethics is a fundamental component of justice provides a context for ethical practice. Therefore, it was considered important to have a first year ethics subject that introduces knowledge about ethics, justice, decision-making, reflective practice and resilience because it provides the foundation for ongoing learning in subjects that embed the ethics graduate attribute.

1. **Parallel factors to the curriculum review**

Our argument, that a first year ethics subject complemented by a pervasive approach to embedding ethics throughout the degree is supported by consistent, albeit informal, student feedback. At UTS, this feedback was the catalyst for the repositioning of Ethics as a subject from end to beginning of the law degree. In this part, the faculty’s objectives, encouraged by consistent feedback and the university-wide first year program, leading to change are discussed.

***Student feedback – catalyst for change***

When it was a final stage subject, the context and content of “Ethics and Professional Conduct” closely followed the requirements of the Priestly 11 descriptor, in particular, lawyers’ duties to the various stakeholders and in relation to the trust account[[59]](#footnote-59) with a practical focus on preparation for legal practice. The name of the subject “Ethics and Professional Conduct” represented the emphasis of the subject on the principles and rules for practice-ready graduates. Interestingly, as referred to earlier in the paper, the Priestly 11 descriptor in the *Legal Profession Admission Rules 2005* (NSW) refers to the subject as “Professional Conduct” and not as “Ethics”, thereby possibly restricting the scope of content and topics that could be included in a subject about legal ethics.

From 2009, ethics was separated into the academic and practical phases of the law degree. In “Ethics and Professional Conduct”, which at the time was the main ethics subject and was at the end of the degree, student feedback repeatedly questioned why ethics was not taught in the early stage of the degree. The feedback suggested that ethics would have greater relevance throughout the degree if it was a first year subject. Feedback was predominantly informal, either ancillary comments in tutorial discussions or from pre and post class conversations with students. The subject content included significant authentic case scenarios that consistently promoted discussion about the relationship between ethics and different legal contexts, such as criminal, commercial, civil and international law and the role of specific groups of legal practitioner, including in-house, government and private lawyers.

This feedback was not formally recorded, nor were student and tutor views on the placement of ethics in the course directly sought. However, the student feedback was discussed between the subject co-ordinator and tutors, many of whom had taught in the subject for several semesters, and this resulted in a catalyst for changing ethics into a first year subject. The University’s formal end of semester student feedback surveys are intended to be a platform for amendments to subjects, such as assessment, delivery and resources, rather than for extensive curriculum change. Accordingly the survey questions do not illicit responses about curriculum structure. Although student feedback was not formally directed at a curriculum change, the informal feedback was directed at such a change.

This informal feedback also raised a challenge as to how we teach and how students learn. The suggestion from students in “Ethics and Professional Conduct” to introduce ethics as a first year subject, overlooked the fact that ethical theories and lawyers’ obligations had been included in introductory law subjects, such as “Foundations of Law”. We assume the reasons for this oversight include that introductory knowledge had been forgotten by students by the end stage of their course, or that students did not gain a deep understanding of ethics because it was a small component of an introductory subject. If these suppositions are correct, this signifies a significant gap in student knowledge. Many students appear to have not experienced a deep approach to learning ethics because they were not recognising and making the links between their learning of ethics in first year and their understanding of its relevance to their future subjects.

The response to this feedback and the conclusions drawn from it was to expand the ethics component of the law degree. Applying one of the principles practised by Ramsden, that of “learning from students”,[[60]](#footnote-60) the consistent feedback calling for a repositioning of ethics from end to beginning of the law degree was given significant consideration. As Ramsden observes:

Good teaching is open to change; it involves constantly trying to find out what the effects of instruction are on learning, and modifying that instruction in the light of the evidence collected.[[61]](#footnote-61)

It was within this context that informal student feedback influenced academics to advocate for introducing ethics as a first year subject during the 2013 curriculum review. A process of analysis, discussion and reflection on the subject by the subject coordinator (one of the authors), the teaching team and academics in the faculty with an interest in ethics was a part of the review. The recurring theme that ensued from student and tutor discussions was that the learning outcomes in “Ethics and Professional Conduct” would have helped students’ understanding of the connection of ethics to the subjects they had studied prior to “Ethics and Professional Conduct”.[[62]](#footnote-62) The conclusion drawn from this was that an understanding of ethical theory and the practical application of ethics to legal knowledge, together with student development of an ethical framework in order to exercise professional judgment, would enable students to have a deep approach to their learning about the nexus between ethics and the law.

As a result of the curriculum review, two major changes to the teaching of ethics were introduced. The first was the placing of ethics as a core first year subject. The second, based on consideration of informal student feedback, was a designing the subject to include the three broad learning outcomes. The learning outcomes below are intended to promote deep approaches to learning, not only in the first year subject, but also as competencies to be developed in subsequent subjects where ethics is embedded via the graduate attribute.

Students should be able to:

* reflect on ethical principles and develop and ethical framework;
* recognise ethical questions and challenges; and
* to consider legal issues from different ethical perspectives.

The primary aim of the curriculum review was to ensure that undergraduate and postgraduate law courses remained rigorous, current and authentic to maximise student learning. Knowing that most law students or graduates complete PLT teaching staff were confident that the outcomes-focus of the PLT course, referred to as “Competencies”, would enable students to learn the ethics and conduct requirements for practice in the PLT program.[[63]](#footnote-63) In relation to the academic component teaching staff aware of research, discussions and initiatives in legal education, including graduate attributes and the TLOs, and the profession’s awareness of mental health issues and the retention and attrition of graduates, believed that it was opportune for a new conception of ethics.

At the macro higher education level, changes were also happening to academic education theory and practice. These changes built on earlier research on the principles of teaching and learning and on the student experience, particularly the transition for undergraduate students from school to university. The Threshold Learning Outcomes for Law in 2010 and the University’s First Year Experience (FYE) program in 2012 were changes that resulted from the aforementioned factors. Both the TLOs for law and the FYE movement closely aligned with the relocation and expansion of the ethics subject. Ethics as a fundamental component of law student learning also aligns with the university-wide FYE program, particularly for undergraduate students, with its focus on resourcing commencing students to successfully transition to university and to enjoy a positive tertiary experience.

***First Year Experience***

In 2012, UTS established a university-wide FYE platform, incorporating faculties and specialist units, including the Institute for Interactive Media and Learning (IML), Equity and Diversity (EDU) and Student Services (SS). The FYE education platform is based on Kift’s Transition Pedagogy, through which the curriculum principles of Transition, Diversity, Engagement, Assessment and Evaluation and Monitoring are employed.[[64]](#footnote-64) Building from the platform, the University designed the FYE Framework (figure 1 below).[[65]](#footnote-65) The Framwork consists of principles to promote student learning and engagement that are embedded within three of the fundamental areas that constitute a university, that of curiculum, infrastruture and staff (academic and professional). The Framework also recognises the necessity to synthesise the major areas of influence in order to support and resource students as the core of the FYE, in particular their identity as adult learners and future professionals and as members of a global and local community of scholars, practitioners and ethical citizens.

Figure 1.



The Framework is designed to be embedded in the teaching and learning culture and curriculum (top-down) and embraced by academics, including a large casual contribution, and professional staff, in their teaching at the tutor/student level of interaction (grass-roots). This approach is student-centred and draws on the fundamental areas of curriculum design, academic and professional staff training and university infrastructure. These three areas are sustained by the FYE Program’s specific objectives to:

* support and encourage the University’s work in promoting alternative pathways to first year study;[[66]](#footnote-66)
* grow a partnership between curriculum design and co-curriculum opportunities, including volunteer placements, social justice programs and the development of skills;
* adhere to a transition pedagogy that incorporates a comprehensive approach from all relevant stakeholders within the University’s infrastructure;[[67]](#footnote-67) and
* develop and sustain a support grid that aims to foster student learning and the student experience, including additional academic assistance, library programs, sporting and interest groups and counselling services.

Within the FYE Framework, there are two themes that are of particular relevance to law. These themes of “student identity and sense of belonging” and “engagement and learning in the discipline/profession” were identified as ways of improving the reportedly high occurrences of poor mental health within the law student population. Although the causes of poor mental health are not universally agreed upon, there is a general acceptance by researchers, academics and the legal profession that law students and lawyers would benefit from greater resilience and stress management strategies, whether it is to manage the workload required of law students and lawyers or to give some priority to health and wellbeing.[[68]](#footnote-68) The concept of resilience also encapsulates the ability to critically evaluate the environments in which law students and lawyers work. The increasing call for resilience training for lawyers and law students is in response to a gap in legal education, training and professional development. Practitioners and law students are familiar with the succession of duties that lawyers owe – to court, client, colleagues, third parties and the public. The forgotten duty is that of duty to self.

***Ethical duty to self: Resilience***

In 2009, Professor Ian Hickie and colleagues at Sydney University’s Brain and Mind Institute produced the “Courting the Blues” Report, looking at the prevalence of psychological distress experienced by solicitors, barristers and law students.[[69]](#footnote-69) In response to their findings that law students experienced higher rates of psychological distress and an increased risk of depression than medical students and the general population, the authors concluded that universities have a responsibility to assist students understand the nature of a competitive study and work environment and the need to separate academic competition from personal growth and enjoyment. As the Report concludes under “Proposals for change”:

Students must develop differing skills which can be used in the professional and personal aspects of their lives.[[70]](#footnote-70)

As noted in the Report, 75% of general mental health problems arise before the age of 25,[[71]](#footnote-71) therefore, addressing this challenge at an early stage is crucial. The first year of law study has been identified as a significant time for students to develop psychological distress, such as anxiety and depression, largely attributed to two factors, the competitive environment within law school and the characteristics of law students.[[72]](#footnote-72) When these two factors come together they impact on students’ experience of, and response to, their study and future practice of law. In response to this finding, more recent research confirms the need to engage students as reflective, self-aware and independent life-long learners, to facilitate student awareness and management of their professional identity and their future role as legal professionals in order to build resilience.[[73]](#footnote-73) These objectives are aligned with a wide-ranging definition of ethics and, therefore, have enabled the faculty to embed them through two approaches, students’ first year of law study and in the ethics subject. Moving ethics to the first year of the law course provided the environment for a wide-ranging understanding of the subject as well as the base for future incremental learning in core subjects, thereby enabling students to develop and sustain a broader and deeper understanding and awareness of the nexus between law and ethics.

Introducing knowledge and information to develop skills in resilience for first year law students is within the scope of the Threshold Learning Outcomes for Ethics (TLO 2) as a subject and Self-management (TLO 6) as a graduate attribute. Both the subject context of lawyers’ duties, including duty to self, and professional and personal conduct and the graduate attribute description of self-management are closely aligned with the objectives of the FYE Program. The objectives for embedding self-management as a graduate attribute at an introductory (first year) level are:

At the completion of “Ethics, Law and Justice” students should be able to:

* demonstrate a developing capacity to reflect on and assess their capabilities, wellbeing and performance;
* demonstrate a developing capacity to make use of feedback as appropriate; and
* identify, access and utilise appropriate resources and assistance to develop resilience.

The capacity to build and sustain resilience including self-management, and confidence and energy resulting from a feeling belonging, is enhanced by volunteerism, community service and an awareness of values, including a sense of justice.[[74]](#footnote-74) Justice, in its many forms and meanings, is an overarching principle in the study and practice of law. It is relevant to the ideal of pro bono work, equitable access to the law and the Rule of Law.[[75]](#footnote-75) With ethics as one of the two commencing subjects for law students, the faculty, building on the TLO descriptor of the promotion of justice and service, believed it was timely to introduce the principle of justice in the new subject, its significance highlighted by the new name for the subject of “Ethics Law and Justice”.

***Ethics and Justice***

“Ethics Law and Justice” was introduced as a foundation subject in the first semester of 2014. The subject was facilitated by a subject coordinator with a teaching team of six colleagues in one three hour seminar per week. The foundation stage of a law course provides an authentic opportunity to embed the theory and practice of justice. Students, when asked why they chose to study law, often respond with answers littered with references to justice, such as facilitating change and protecting the rights of others. Lawyers as change agents, as leaders in law reform and as minsters of justice are key concepts for law students in developing their professional identity as a lawyer and as a member of a profession.

The addition of justice within the Ethics subject is reinforced by its inclusion as an element of Ethics and Professional Responsibility TLO 2:

An ability to recognise and reflect upon the professional responsibilities of lawyers in promoting justice and in service to the community.[[76]](#footnote-76)

In accordance with the promotion of justice included in TLO 2, the objective for student learning in “Ethics Law and Justice” is to introduce theories of justice, with case studies of practical applications of justice to the law. The learning outcome is a collaboration and class presentation on a justice project by students in small groups. The principle of the social responsibly of lawyers taught in “Ethics Law and Justice” is part of the continuum of the obligation on the profession and law schools to promote justice.

The responsibility of the profession to promote justice is encapsulated by the NSW Bar Associations’ philosophy of “servants of all yet of none”[[77]](#footnote-77) and the NSW Law Society’s Statement of Ethics, commencing with “We primarily serve the interests of justice”.[[78]](#footnote-78) Prior to entering legal practice, law students learn about the role of lawyers in society, including what it means to be a member of the legal profession. Dal Pont identifies three characteristics of the legal profession:

* Special skill and knowledge,
* Autonomy, and
* Public service.[[79]](#footnote-79)

The component of public service includes the role of lawyers in facilitating access to justice for those who cannot afford, or for various reasons are unable, to participate in the legal system. For several decades there has been an ongoing and unresolved debate as to whether pro bono work should be mandatory for lawyers and for law students. This discussion frequents ethics textbooks, scholarly articles and tutorial questions within an ethics subject.

The responsibility of law schools to promote justice is encapsulated in the Good Practice Guide, which accompanies the Ethics and Professional Responsibility TLO, with an emphasis on the obligation of law schools to inculcate justice in the law school, both in the curricular and co-curricular environments.[[80]](#footnote-80) The Guide explains the basis for establishing justice as a key component of the study (and practice) of law:

Law’s connection with justice, its role in distributing power and rights and calling the exercise of each to account, means that its practice is more firmly impressed with the claims of the public interest and service than most other callings.[[81]](#footnote-81)

UTS adopted this co-curricular model of promoting justice through its Brennan Justice and Leadership Program.[[82]](#footnote-82) The Program’s focus on service, reflection and leadership has a close synergy with notions of ethics and justice. The design of the Program as a partnership between the UTS Law Students Society and the faculty (professional and academic staff) maximises student decision-making concerning the content and direction of the program. The program is open to all law students with a focus on inviting first year students to join, thus reinforcing the FYE Framework’s core objective of fostering student identity and sense of belonging.

Within this expanded context of the first year experience and a broader interpretation of what ethics means, the new subject in the law course, “Ethics Law and Justice”, was designed. The content of the subject includes the following topics:

* Ethics, theory and the law
* Lawyers’ roles
* Lawyers’ duties
* Integrity and the law
* Justice, theory and the law
* Access to Justice – economic, social and cultural issues

These topics form the framework for curriculum content which is designed to cover knowledge of the different approaches, and their philosophical foundations, to ethical decision-making, the various roles of lawyers in the community, the legal profession and the judiciary, lawyers’ duties, including the Conduct Rules and theories of justice from an economic, social and cultural perspective. Topics and assessments are aligned with the subject’s targeted skills of self-management, including resilience, reflective writing and collaboration. Assessments consisted of a self-management plan, a reflective journal, a collaborative justice project and an exam. The assessment tasks focused on the subject’s three graduate attributes of ethics and professional responsibility, collaboration and self-management.

In order to evaluate the effectiveness of “Ethics Law and Justice”, three forms of feedback were used, the University’s formal student feedback, subject specific feedback and informal feedback. Formal feedback is managed through the University’s Student Feedback Survey (SFS).[[83]](#footnote-83) The SFS consisted of 12 questions, the first seven questions related to the subject and covered its delivery, assessment and resources, the following three questions focused on the teacher’s ability to facilitate learning and the final two open-ended questions asked students to expand on what they liked about the subject and suggestions for improvements. The first ten questions were based on the Likert scale from Strongly Agree to Strongly Disagree. The SFS was optional and anonymous. Of the 275 student enrolled in ELJ, 114 students completed the survey, a response rate of 41%.

Formal student feedback at the end of the first semester in which the subject was taught was very positive.[[84]](#footnote-84) The first two questions on the SFS, discussed below, focus on the general delivery of the subject and on the overall learning experience of the student.

In response to the question: *The subject was delivered in a way which was consistent with its stated objectives*:

23% of students strongly agreed with the statement and 58% of students agreed with the statement.

In response to the question: *My learning experiences in this subject were interesting and thought provoking*:

44% of students strongly agreed with the statement and 41% of students agreed with the statement.

It was also important to identify whether the three broad learning outcomes developed in the curriculum review had been achieved. This was addressed by some students in the open-ended question in the SFS.[[85]](#footnote-85) Examples of student comments, demonstrating that the learning outcomes were achieved, are aligned with the three broad learning outcomes in Table 4 below:

Table 4. Student feedback in “Ethics, Law and Justice”

|  |  |
| --- | --- |
| **Areas of knowledge**  **Students should know and be able to:** | **“Ethics Law and Justice” student comments** |
| Reflect on ethical principles | It caused me to question myself and challenge my thinking, encouraging me to examine ethical concepts which I had not previously considered. |
|  | I liked its focus on learning for reality rather than learning for an exam. I appreciated the encouragement it provided to have ideas and act upon them. |
| The course requires you to express your own reflections including your feelings. It also tells a lot about real life of legal practitioners. I found the course unique and practical. |
| Recognise ethical questions and challenges | Very thought provoking. A good subject for getting an appreciation for how law works in a broader sense. Helps to define what life as a lawyer actually looks like beyond study of the law itself, and dispels romanticised ideas about working as a lawyer. A good reality check. |
|  | It’s a great first year subject, details what is to be expected for future lawyers and continuing law students – heavy topics some weeks, however it prepares students for future studies and I think this is great. |
| I feel this subject is necessary for people just starting law. It helps people have a framework to go by when learning about different areas of law and thinking about what areas of law they would like to work in. |
| Consider legal issues from different perspectives | The content was very interesting and class discussion allowed me to consider things with a new perspective. |
|  | Highlights what is to be expected after completing this law degree (that is, what life would be like as a practicing lawyer and the different 'paths'/perspectives one can choose) - Reading materials give judgements from various sources and perspectives. |
| It was a great experience. I have never thought of law as a kind of three-dimensional concept with a lot of aspects of justice and ethical considerations. |

Additional subject specific feedback was designed by the teaching team to address the learning objectives in “Ethics Law and Justice” which dealt with specific aspects of the subject and which were not included in the formal SFS. In the final seminar students were asked to provide written comments on the graduate attributes and reflective writing skill addressed in the subject.[[86]](#footnote-86) A total of 199 anonymous written comments[[87]](#footnote-87) were received. Comments from some students confirmed that they had developed an understanding of the relevance of, and the ability to apply, the graduate attributes of ethics and professional responsibility, self-management and collaboration, to the subject content and to their learning experience as a law student.[[88]](#footnote-88) The majority of students agreed that there were appropriate activities and resources to develop students’ reflective writing skills.[[89]](#footnote-89)

From the additional formal written and informal oral feedback received in the first semester of teaching “Ethics Law and Justice”, the following core knowledge and skills were identified by the subject co-ordinator as those which students considered they were developing on completion of the subject:

* An understanding of what a professional identity means, including duties of lawyers, ethical considerations, membership of a profession and the connection between personal values and ethics.
* Becoming reflective learners through tutorial discussions, based on a diverse range of readings, and through a reflective journal.
* Skills in self-management, ethical problem-solving and collaboration.
* Awareness of the applicability of justice principles in a legal context and in relation to their role as legal practitioners.

Evaluation of student and tutor feedback continues with a particular focus on the ongoing development of the above core knowledge and skills throughout the law degree. Longitudinal research is needed to track student understanding (knowledge) and application (skills) of ethics from the foundation subject through to PLT.

**Conclusion**

In 2012 and 2013, several factors synthesised at UTS to provide a pedagogical framework from which a comprehensive approach to learning and teaching of ethics in the law degree was developed. The first factor was the 2013 curriculum review in which the change to the ethics program at UTS was informed by pedagogical literature on legal ethics and curriculum design. This led to both a broad conception of legal ethics being adopted and the implementation of a first year foundation subject, the ethics graduate attribute being pervasively taught through the degree and the retention of a capstone subject covering professional responsibility for those students undertaking PLT. The second factor was student feedback requesting that ethics be taught earlier in the degree so that subsequent learning would have more relevance. The third factor was the First Year Experience Program which fosters a sense of student identity and engagement in learning and ties into the fourth factor, of the ethical duty to self and developing resilience. The final factor was the relationship between ethics and justice which is a component of legal ethics in a broad sense. Additionally, the capacity to develop as reflective and lifelong learners has been facilitated by the graduate attributes of ethics and professional responsibility, self-management and collaboration, and the First Year Experience and Brennan Justice and Leadership programs. These factors converged and facilitated the primary objective in the design of the ethics curriculum at UTS; to promote deeper and broader approaches to learning.

The learning objectives in the foundation subject “Ethics, Law and Justice” accord to the broad conception of legal ethics as stated in the Threshold Learning Outcome, the graduate attribute and the Course Intended Learning Outcome which encompass the cognitive, affective and skill domains of the whole student approach. Accordingly, this subject provides students with the opportunity to explore and reflect on ethical theories, ethical issues, the professional responsibility of lawyers to promote justice, to develop decision-making skills and resilience, and to understand the role of emotions, values and beliefs in making ethical judgments. Importantly this subject provides the basis from which students can develop their professional identity as law students and future legal professionals who value integrity, life-long learning and public service.

Following the foundation subject are core law subjects dispersed throughout the degree which embed the ethics and professional responsibility graduate attribute. This pervasive approach coincides with the incremental approach, both of which support deeper learning. We have argued that these approaches are necessary in legal ethics pedagogies because they allow students to develop knowledge and skills incrementally in different legal contexts. 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.

Students at UTS also identified the need for additional exposure to legal ethics believing that this would enhance their understandings of and ability to reflect on ethical issues. The student feedback from PLT students identified the need to understand the connection between ethics and law which would also facilitate the development of an ethical framework and professional judgment. The feedback from students in the foundation subject demonstrates that the subject is imparting more than a traditional knowledge and skill set and has embraced a broader conception of legal ethics. However, research into the effectiveness of this comprehensive and nuanced model is needed as students move through their degree. Effectiveness must be measured by student understanding of what it means, and the ability, to be ethically competent professionals. Our experience in the curriculum design of this integrated model, including the pedagogical reasons for this approach, has taught us that embedding ethics across the law degree is core to working with students to develop as ethical and reflective practitioners who have a strong sense of personal integrity. This professional and personal outcome for students and graduate lawyers is a strong argument for maintaining ethics as a compulsory component of the study of law.

1. For the context and questions posed in the review, see Law Admissions Consultative Committee, “Review of Academic Requirements for Admission to the Legal Profession” <http://www1.lawcouncil.asn.au/LACC/images/pdfs/01.12.14_Review_of_Academic_Requirements_for_Admission.pdf> (accessed 16 April 2015). [↑](#footnote-ref-1)
2. The Priestly 11 knowledge areas were named after Justice Priestly, former New South Wales Court of Appeal judge and chair of the Committee, who determined the compulsory subjects for an Australian law degree. Ibid., pp. 25-33. [↑](#footnote-ref-2)
3. *Legal Profession Admission Rules* *2005* (NSW), Schedule 5. The 11 areas of knowledge are: Criminal Law and Procedure; Torts; Contracts; Property; Equity; Company Law; Administrative Law; Federal and State Constitutional Law; Civil Procedure; Evidence; and Professional Conduct (including basic Trust Accounting). [↑](#footnote-ref-3)
4. For example, subjects that comply with the “Professional Conduct” area of knowledge may be referred to as “Ethics and Professional Conduct” or “Ethics and Professional Responsibility”. More recently, such subjects include a reference to lawyers and justice, as discussed in Part A of the paper. The LACC Review refers to “Ethics and Professional Responsibility”. [↑](#footnote-ref-4)
5. Legal Education and Training Review (LETR). Recommendation 6 in the report, “Setting Standards: The future of legal services education and training regulation in England and Wales”, June 2013, 287 <http://www.letr.org.uk/wp-content/uploads/LETR-Report.pdf> (accessed 27 April 2015). The Report was jointly undertaken by the Solicitors Regulation Authority, the Bar Standards Board and the Institute of Legal Executives Professional Standards. [↑](#footnote-ref-5)
6. LACC, *supra* n. 1, p. 7. [↑](#footnote-ref-6)
7. Ibid. The Review notes that “Ethics and Professionalism” is a compulsory subject in a Canadian law degree. See table 4.4 of the LETR report, *supra* n 5, p. 142. [↑](#footnote-ref-7)
8. Ibid. [↑](#footnote-ref-8)
9. Professional responsibility refers to “the law of lawyering, the published rules and regulations that apply to lawyers and the legal profession” in Christine Parker and Adrian Evans, *Inside Lawyers Ethics* (Melbourne, Cambridge University Press, 2nd ed, 2013), p. 3. [↑](#footnote-ref-9)
10. LETR, *supra* n. 5. [↑](#footnote-ref-10)
11. Ibid., pp. [133, 274.](http://www.letr.org.uk/the-report/chapter-4/the-ingredients-of-legal-competence/index.html) [↑](#footnote-ref-11)
12. Ibid., p. 287. [↑](#footnote-ref-12)
13. Ibid. [↑](#footnote-ref-13)
14. Ibid. [↑](#footnote-ref-14)
15. Ibid. [↑](#footnote-ref-15)
16. American Bar Association, “ABA Standards and Rules of Procedure for Approval of Law Schools 2014-2015” <http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2014_2015_aba_standards_and_rules_of_procedure_for_approval_of_law_schools_bookmarked.authcheckdam.pdf> (accessed 27 April 2015). [↑](#footnote-ref-16)
17. Ibid., p. 16. [↑](#footnote-ref-17)
18. Ibid., p. 15. [↑](#footnote-ref-18)
19. Ibid., p. 16. [↑](#footnote-ref-19)
20. Canadian Bar Association, Futures: Transforming the Delivery of Legal Services in Canada, August 2014, 3 <http://www.cbafutures.org/CBA/media/mediafiles/PDF/Reports/Futures-Final-eng.pdf?ext=.pdf> (accessed 27 April 2015). [↑](#footnote-ref-20)
21. Australian Council of Law Deans, “A Catalogue of the Teaching of Legal Ethics, Professional Responsibility, etc. in Australian Law Courses”, November 2008, 3 <http://www.cald.asn.au/docs/4.1Ethics.pdf> (accessed 27 April 2015). [↑](#footnote-ref-21)
22. Ibid., p. 1. [↑](#footnote-ref-22)
23. PLT programs are offered by some universities, including UTS, as well as private providers. [↑](#footnote-ref-23)
24. For a summary of the empirical and theoretical justifications see Deborah L. Rhode, “Ethics by the Pervasive Method” (1992) 42 *Journal of Legal Education* 31; see also Deborah L. Rhode, “Into the Valley Of Ethics: Professional Responsibility and Educational Reform” (1995) 58 *Law & Contemporary Problems* 139; Deborah L. Rhode, *Professional Responsibility: Ethics by the Pervasive Method* (Aspen Publishers, 2nd ed, 1998); Steven Hartwell, “Promoting Moral Development Through Experiential Learning” (1994-1995) 1 *Clinical Law Review* 505; Russell G. Pearce, “Teaching Ethics Seriously: Legal Ethics as the Most Important Subject in Law School” (1998) 29 (4) *Loyola University Chicago Law Journal* 71; Carrie Menkel-Meadow and Richard H. Sander, “The Infusion Method at UCLA: Teaching Ethics Pervasively” (1995) 58 (3-4) *Law and Contemporary Problems* 129; Douglas N. Frenkel, “On Trying to Teach Judgment” (2001) 12 *Legal Education Review* 19; Gonzalo Villalta Puig, “Legal Ethics in Australian Law Schools” (2008) *The Law Teacher* 29. [↑](#footnote-ref-24)
25. Rhode, “Ethics by the Pervasive Method”, *supra* n. 24, p. 32. [↑](#footnote-ref-25)
26. Maxine Evers, Leanne Houston and Paul Redmond, “Good Practice Guide (Bachelor of Laws): Ethics and Professional Responsibility (Threshold Learning Outcome 2)” 2011. Support for the original work was provided by the Australian Learning and Teaching Council Ltd, an initiative of the Australian Government Department of Education, Employment and Workplace Relations, p. 3. [↑](#footnote-ref-26)
27. Ibid. [↑](#footnote-ref-27)
28. Michael Robertson, “Renewing a Focus on Ethics in Legal Education” (2004), 3-4, <http://anulaw.anu.edu.au/sites/all/files/users/u4081600/Conference_docs/mikerobertson.pdf> (accessed 27 April 2015). [↑](#footnote-ref-28)
29. For example Queensland University of Technology, Griffith University, University of Western Australia, Australian Catholic University, University of South Australia, University of Melbourne, University of Adelaide, University of Tasmania, Bond University, University of New South Wales, Newcastle University, University of Western Sydney, Australian National University. [↑](#footnote-ref-29)
30. Sharon Christensen and Sally Kift, “Graduate Attributes and Legal Skills: Integration of Disintegration?” (2000) 11 *Legal Education Review* 207, p. 207. [↑](#footnote-ref-30)
31. Ibid., p. 220. [↑](#footnote-ref-31)
32. Sally Kift, “21st Century Climate for Change: Curriculum Design for Quality Learning Engagement in Law” (2008) 18 *Legal Education Review* 1, p. 16. [↑](#footnote-ref-32)
33. Michael Robertson, “Challenges in the Design of Legal Ethics Learning Systems: An Educational Perspective” (2005) 8 *Legal Ethics* 222. [↑](#footnote-ref-33)
34. Ibid., p. 237. [↑](#footnote-ref-34)
35. Ibid., p. 238. The vertical subject is also acknowledged in the Good Practice Guide as a viable alternative to traditional law school education of legal ethics. The Guide does not provide assistance on the implementation of such an approach and, at this point, there is no evaluation on the vertical subjects offered at Griffith University. Evers *et al*, *supra* n. 28, p. 4. [↑](#footnote-ref-35)
36. Robert Granfield and Thomas Koenig, “’It’s Hard to be a Human Being and a Lawyer’: Young Attorneys and the Confrontation with Ethical Ambiguity in Legal Practice” (2002-2003) 105 *West Virginia Law Review* 495, p. 520. [↑](#footnote-ref-36)
37. Ibid., p. 522. [↑](#footnote-ref-37)
38. Menkel-Meadow and Sander, *supra* n. 24, p. 135. Focus groups were conducted with students who volunteered. The authors acknowledge the limitations of this methodology. [↑](#footnote-ref-38)
39. Ibid. [↑](#footnote-ref-39)
40. Ibid. [↑](#footnote-ref-40)
41. Ibid. [↑](#footnote-ref-41)
42. Roger C. Cramton and Susan P. Koniac, “Rule, Story, and Commitment in the Teaching of Legal Ethics” (1996-1997) 38 *William & Mary Law Review* 145, p. 149. [↑](#footnote-ref-42)
43. The Priestly 11 are the 11 law subjects required to be successfully completed for admission as a legal practitioner in Australia. Ethics and Professional Conduct is one of those subjects. [↑](#footnote-ref-43)
44. Sally Kift, ‘21st Century Climate for Change: Curriculum Design for Quality Learning Engagement in Law’ (2008) 18 *Legal Education Review* 1, p. 18. [↑](#footnote-ref-44)
45. Students undertaking the Bachelor of Laws (LLB) may complete the PLT program within the degree. Students undertaking the Juris Doctor (JD) or combined undergraduate degree complete the PLT program as a Graduate Certificate of Professional Legal Practice. On completion of the academic requirements of the law degree and the PLT program, students are able to apply for admission to practise law. [↑](#footnote-ref-45)
46. Sally Kift, Mark Israel and Rachael Field, “Learning and Teaching Academic Standards Project: Bachelor of Laws Learning and Teaching Academic Standards Statement”,December 2010. <http://www.utas.edu.au/__data/assets/pdf_file/0007/456829/altc_standards_LAW.pdf/> (accessed 27 April 2015). The Standards were developed as part of a project funded by the Australian Learning and Teaching Council (ALTC). [↑](#footnote-ref-46)
47. Council of Australian Law Deans, “The CALD Standards for Australian Law Schools”, adopted March 2009 and amended 2013 (to include a reference to the TLOs). <http://www.cald.asn.au/assets/lists/ALSSC%20Resources/CALD%20Standards%20As%20adopted%2017%20November%202009%20and%20Amended%20to%20March%202013.pdf> (accessed 27 April 2015). [↑](#footnote-ref-47)
48. 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. [↑](#footnote-ref-48)
49. The Juris Doctor standard for the TLO requires “an advanced and integrated understanding of approaches to ethical decision-making.” The differences in standard reflect the AQF levels for different degrees. [↑](#footnote-ref-49)
50. The differences between outcome levels 7 and 9 can be broadly summarised in the following way: Level 7 knowledge is broad and coherent, level 9 knowledge is advanced and integrated including recent developments; level 7 skills are well developed and level 9 skills are expert, specialised; the indicia for level 7 application of knowledge are autonomy, well developed judgment, responsibility and self-direction within the broad parameters in a work context or as a learner, level 9 indicia are autonomy, expert judgment, adaptability, responsibility and self-direction as a practitioner or learner. [↑](#footnote-ref-50)
51. Diana Henriss-Anderssen, “Teaching Legal Ethics to First Year Law Students” (2002) 13 *Legal Education Review* 45, p. 49. See also Puig, *supra* n. 24, p. 52. [↑](#footnote-ref-51)
52. Henriss-Anderssen, *supra* n. 51, p. 50. [↑](#footnote-ref-52)
53. Ibid. [↑](#footnote-ref-53)
54. Evers *et al*, *supra* n. 26. [↑](#footnote-ref-54)
55. Ibid., p. 3. [↑](#footnote-ref-55)
56. John Biggs and Catherine Tang, *Teaching for Quality Learning at University* (Berkshire, Open University Press, 4th ed, 2011), p. 90. [↑](#footnote-ref-56)
57. Ibid. [↑](#footnote-ref-57)
58. Donald Nicholson and Julian Webb, *Professional Legal Ethics: Critical Interrogations* (Oxford, Oxford University Press, 1999), p. 5. [↑](#footnote-ref-58)
59. For the complete description of the Priestly 11 requirement for Professional Conduct, see *Legal Profession Admission Rules 2005* (NSW), Schedule 5. [↑](#footnote-ref-59)
60. Paul Ramsden, *Learning to Teach in Higher Education* (London, Routledge Falmer, 2nd ed, 2003), p. 98. [↑](#footnote-ref-60)
61. Ibid. [↑](#footnote-ref-61)
62. Student responses have not been specifically referred to because ethics approval was not applied for as this was not necessary for the curriculum review. [↑](#footnote-ref-62)
63. For details as to the PLT Competency for “Ethics and Professional Responsibility” see *Legal* *Profession Admission Rules 2005* (NSW), Schedule 6. [↑](#footnote-ref-63)
64. Sally Kift, “Articulating a transition pedagogy to scaffold and to enhance the first year learning experience in Australian Higher Education”, Final report for ALTC Senior Fellowship Program, August 2009, p. 2 <http://fyhe.com.au/wp-content/uploads/2012/10/Kift-Sally-ALTC-Senior-Fellowship-Report-Sep-092.pdf> (accessed 27 April 2015). [↑](#footnote-ref-64)
65. Kathy Egea, “Engaging transition a whole of UTS approach to support undergraduate students in their first year of university learning”, (Presentation given at the UTS Teaching and Learning Forum, 14 November 2012) <http://www.iml.uts.edu.au/scholarship-research/forum/forum12/KathyEgeaEngagingTransition.pdf> (accessed 27 April 2015). [↑](#footnote-ref-65)
66. For example, at UTS, there are alternate pathways to university including InpUTS (educational access scheme for students who have experienced long-term disadvantage), refugee access and SRS (Schools’ Recommendation Students for students who are financially-disadvantaged) managed by the University’s Equity and Diversity Unit (EDU) and Aboriginal and Torres Strait Islander students managed by Jumbunna, the University’s Indigenous House of Learning. [↑](#footnote-ref-66)
67. Stakeholders include Student Services (careers, counselling, medical and financial assistance), HELPS (Higher Education Learning and Presentation Skills), the university library, IML (Interactive Media and Learning) and Equity and Diversity (EDU). [↑](#footnote-ref-67)
68. Adele J. Bergin and Nerina L. Jimmieson, “Australian Lawyer Well-being: Workplace Demands, Resources and the Impact of Time-billing Targets” (2014) 21 (3) *Psychiatry, Psychology and Law* 427; Massimiliano Tani and Prue Vines, “’Law Students’ to Education: Pointers to Depression in the Legal Academy and the Profession?” (2009) 19 (1) *Legal Education Review* 3. [↑](#footnote-ref-68)
69. Norm Kelk *et al*, Courting the Blues: Attitudes Towards Depression in Australian Law Students and Lawyers, (2009) Brain & Mind Research Institute Monograph, p. 46. <http://www.cald.asn.au/docs/Law%20Report%20Website%20version%204%20May%2009.pdf> (accessed 27 April 2015). [↑](#footnote-ref-69)
70. Ibid. [↑](#footnote-ref-70)
71. Ibid., p. *v*. [↑](#footnote-ref-71)
72. Paula Baron and Lillian Corbin, “Thinking like a lawyer/acting like a professional: communities of practice as a means of challenging orthodox legal education” (2012) 46 (2) *The Law Teacher* 100-119, p. 117 citing Kath Hall, “Do We Really Want to Know? Recognising the Importance of Student Psychological Well-being in Australian law Schools” (2009) 9 (1) *Queensland University of Technology Law and Justice Journal* 1. See also Susan Armstrong and Michelle Sanson, “From Confusion to Confidence: Transitioning to Law School” (2012) 12 (1) *Queensland University of Technology Law and Justice Journal* 21; Rachael Field and James Duffy, “Better to light a single candle than to curse the darkness: promoting law student well-being through a first year law subject” (2012) 12 (1) *Queensland University of Technology Law and Justice Journal* 133. [↑](#footnote-ref-72)
73. Anna Huggins, Sally Kift and Rachael Field, “Implementing The Self” (2011) 21 (2) *Legal Education Review* 183; Colin James, “Law Student Wellbeing: Benefits of Psychological Literacy and Self-Awareness Using Mindfulness, Strengths Theory and Emotional Intelligence (2011) 21 *Legal Education Review* 217; Gabrielle Appleby, Peter Burdon and Alexander Reilly, “Critical thinking in legal education: our journey” (2013) 23 (2) *Legal Education Review* 345. [↑](#footnote-ref-73)
74. Adele Bergin and Kenneth Pakenham, “Law Student Stress: Relationships Between Academic Demands, Social Isolation, Career Pressure, Study/Life Imbalance and Adjustment Outcomes in Law Students” (2014) *Psychiatry, Psychology and Law* 15. [↑](#footnote-ref-74)
75. For an explanation of the Rule of Law, including justice, see the Law Council of Australia’s Policy Statement of “Rule of Law Principles”, March 2011, <http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/a-z-docs/PolicyStatementRuleofLaw.pdf> (accessed 27 April 2015). [↑](#footnote-ref-75)
76. Kift *et al*, *supra* n. 46, p. 10. [↑](#footnote-ref-76)
77. Bar Association of New South Wales, <http://www.nswbar.asn.au/> (accessed 27 April 2015). [↑](#footnote-ref-77)
78. Law Society of New South Wales, <https://www.lawsociety.com.au/ForSolictors/professionalstandards/Ethics/statement_of_ethics/026278> (accessed 27 April 2015). [↑](#footnote-ref-78)
79. Gino Dal Pont, *Lawyers Professional Responsibility* (Sydney, Thomson Reuters, 5th ed, 2012), pp. 6-7. [↑](#footnote-ref-79)
80. Evers *et al*, *supra* n. 26, p. 8. [↑](#footnote-ref-80)
81. Ibid., p. 7. [↑](#footnote-ref-81)
82. The Program is named after Sir Gerard Brennan, former Chief Justice of the High Court and Chancellor of UTS who is well known for his excellence in leadership, his life-long career in the service of others and his commitment to justice. [↑](#footnote-ref-82)
83. The SFS is managed by the University’s Planning and Quality Unit. [↑](#footnote-ref-83)
84. The subject was introduced in the Autumn semester (February to March), 2014. [↑](#footnote-ref-84)
85. Students were asked to respond to the open-ended question is *What did you like particularly in this subject?* [↑](#footnote-ref-85)
86. Students were asked to comment on the following 4 questions. 1. The self-management plan has helped me to become more realistic about studying. Please give a reason for your answer. 2. There were appropriate activities and resources to develop my reflective writing skills. If relevant, please give an example of an activity or resource. 3. The collaborative justice project was a helpful learning experience in this subject. Please give a reason for your answer. 4. My learning experience has helped me understand my developing professional identity in the following ways…. [↑](#footnote-ref-86)
87. This is a response rate of 72%. [↑](#footnote-ref-87)
88. The responses to questions 1, 3 and 4 in footnote 86 were analysed on the basis of the reasons and examples provided by students that aligned with the learning objectives/outcomes of the graduate attributes. [↑](#footnote-ref-88)
89. The responses to question 2 was analysed on the basis of the reasons and examples provided by students that aligned with the teaching objective to equip students with activities and resources to develop reflective writing skills. Of the 199 students who responded to the in-class feedback, 12% said that, to an extent, there were appropriate activities and resources, 8.5 % said there were not appropriate activities and resources and 5.5% did not answer the question (total 26%). Of the students who responded with “to an extent” and “no”, suggestions for further activities and resources included more feedback, examples of reflective writing and in-class practise. [↑](#footnote-ref-89)