

The University Teaching of Family Law

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Abstract:

The authors have co-taught a family law property subject over the last two years. The experience has led them to reflect upon the content, structure and teaching methodology of family law courses. Reflecting upon our teaching has cemented our views that some knowledge of family law should be core knowledge for all law graduates. In particular, we believe that competencies required for good family law practice (understanding family violence; child-abuse; trauma-informed practice; and cultural awareness) are essential requirements for all legal graduates. The remainder of the article is a conversation outlining our thoughts and experiences in relation to the teaching of Family law which we hope will contribute to and inform broader debates about the role of the legal academy, legal education and the place of vocational qualifications within them. Such a conversation is particularly important in the age of the neoliberal university and the recasting of law as a purely vocational skill. It is hoped that the article starts a conversation about the future purpose and meaning of the university study of family law.

Introduction

Family law is commonly called a 'core elective' but, at most Australian law schools, it is not a pre-requisite for any core subjects and is completely optional for students. In 1992 the Australian Uniform Admission Rules ('Priestley 11'¹) adopted certain prescribed areas of knowledge as the minimum academic core study requirements for legal practice. Family Law has never been in the 'Priestley 11' list of subjects that every Australian law degree is expected to include; the Victorian Council of Legal Education (the rules for which became the model for the Priestley 11) rejected family law in favour of company law.² Their

¹ After Justice Priestley who chaired the Law Admissions Consultative Committee of State and Territory Law Admitting Authorities in 1992. <https://www.legalservicescouncil.org.au/Pages/about-us/law-admissions-consultative-committee.aspx>

² Council of Legal Education Victoria, *Report of Academic Course Appraisal Committee on Legal Knowledge Required for Admission to Practise* (Council of Legal Education Victoria, 1990).

reasoning was that ‘the building block components of family law were covered by ‘contract, property and trusts’, and so, issues of ‘gender, affectivity and family relations were deemed dispensable’.³

As Archana Parashar notes, the upside of this decision is ‘that the individual [family law] teacher can decide what to teach and how to teach it’.⁴ However, this freedom can also cause tension if more than one person teaches the subject. We have co-taught a family law subject over the last two years. It is fair to say the initial reason we co-taught had more to do with fulfilling teaching hours, research-teaching buyouts and timetabling issues than pedagogical discussions of the best ways to teach family law. However, co-teaching strategies including team-teaching certain classes, taking turns to teach classes and also sitting in (actively observing) some of each other’s classes has proved fun, rewarding, and forced us both to reflect on our own teaching style.⁵ It has also led to us debating the extent to which university teaching of family law should focus on skills and /or doctrine as opposed to an interdisciplinary study of family law.

Miranda (MK) has always agreed with Archana Parashar that ‘the distinction between professional training versus liberal education is misleading’ and that vocational/ work and academic education are ‘integrally connected’.⁶ However, a theory/ practice dichotomy has been made very visible in our subject: Jackie (JJ) is a skills teacher and current family law practitioner: it made sense that the classes for which she was responsible focussed on negotiation, dispute resolution knowledge, skills, methods and approaches, ethical challenges in family law, drafting, and interviewing clients. Meanwhile the classes taught by MK, in contrast, looked more theoretical, research-based and doctrinal than they might otherwise. Arguably we have literally embodied a theory-practice dichotomy.⁷ Our experiences have highlighted the question, raised by Mary Pat Treuthart, ‘Should the course emphasize learning the so-called doctrine of family law, or should the focus be on how to practice family law?’.⁸ We would add to that question, should the course be a theoretical analysis of family law and/ or forum for learning how laws regulate families and how legal

³ Margaret Thornton, ‘Dreaming of Diversity in Legal Education’ in Ron Levy et al (eds), *New Directions for Law in Australia* (ANU Press, 2017), 551.

⁴ Archana Parashar, ‘Teaching Family Law as Feminist Critique of Law’ (2000) 23(2) *University of New South Wales Law Journal* 58, 66.

⁵ It is common for co-teaching to lead to such reflection according to Nancy Bacharach and Teresa Washut Heck, ‘Co-Teaching in Higher Education’ (2007) 4(10) *Journal of College Teaching & Learning* 19, 21–24.

⁶ Parashar (n 4) 60.

⁷ Michael Vitiello, ‘The False Dichotomy Between Theory and Skills Training: Why Good Lawyers Need to Pay Attention to Theory’ (2017) 48 *The University of the Pacific Law Review* 915.

⁸ Mary Pat Treuthart, ‘A Perspective on Teaching and Learning Family Law Symposium: Ethics of Family Representation’ (2006) 75(4) *UMKC Law Review* 1047, 1057.

knowledge about the family is constructed?⁹ Or, should the course attempt to satisfy all these aims, albeit, perhaps, in a limited way given the demands for space in the subject?

Family law is not special for teachers in confronting the dilemma and tensions 'between the claims of what is proper for training for a profession, and the education or training of scholars in the academy.'¹⁰ There are long-standing disagreements over the aims of legal education.¹¹ However, the practice of family law is seen to require particular competencies and/or 'skills which are not strictly technical or legal'¹² and which may not be seen as essential for other lawyers.¹³ Submissions to the Australian Law Reform Commission suggested that all family lawyers, should have key competencies in understanding family violence,¹⁴ including its impact on children; child-abuse; trauma-informed practice; and cultural awareness.¹⁵ This raises the questions whether skills and competencies are more central in family law than in other law subjects and what is the obligation for university family law teachers to teach those competencies?

This article provides our perspectives on the place and purpose of family law subjects in an Australian law degree and how best to teach these subjects. The article starts with a framework of 'family law' in our faculty and an insight into who we are and how we 'fit' into teaching. We then discuss common misconceptions of the lack of complexity and unimportance of this area of law. Reflecting upon our teaching has cemented our views that some knowledge of family law should be core knowledge for all law graduates. In particular, we believe that competencies required for good family law practice (understanding family violence; child-abuse; trauma-informed practice; and cultural awareness)¹⁶ are essential requirements for all legal graduates. The remainder of the article is a conversation outlining our thoughts and experiences in relation to the teaching of Family law. We hope this will contribute to, and inform broader debates about, the role of the legal academy, legal education and the place of vocational qualifications within them for, whilst this conversation is focused on family law, it is relevant across legal education.¹⁷

⁹ Parashar (n 4) 65.

¹⁰ Ibid 59.

¹¹ William Twining, 'Bureaucratic Rationalism and the Quiet (R)Evolution' (1996) 7 *Legal Education Review* 291.

¹² Felicity Bell, 'Family Law, Access to Justice, and Automation' (2019) 19 *Macquarie Law Journal* 103, 109.

¹³ Christine Piper, 'How Do You Define a Family Lawyer?' (1999) 19(1) *Legal Studies* 93.

¹⁴ There are a range of terms used to describe violence in intimate relationships (See Helen MacDonald, *What's in a Name? Definitions and Domestic Violence*, Discussion Paper 1 (DVIRC, 1998). In this article we use the term "family violence" as this is the language used in the Australian family law system (s4AB(1) *FLA*).

¹⁵ Australian Law Reform Commission, *Review of the Family Law System: Discussion Paper* (No 86, 2018) 238–244.

¹⁶ Ibid.

¹⁷ Cynthia Epstein, 'Knowledge for What?' (1999) 49 *Journal of Legal Education* 41; Geoff Monahan and Brownwyn Olliffe, 'Competency-Based Education and Training for Law Students in Australia' (2001) 3 *UTS Law Review* 181; Penny Crofts, 'Crossing the Theory/Practice Divide: Community-Based Problem Solving' (2001) 3 *UTS Law Review* 40; Roger Burrridge and Julian Webb, 'On Liberal Neutrality, the Value of Experience and the

About Family Law at UTS and About Us

Family law is taught separately in Juris Doctor (JD) and undergraduate (UG) courses at University of Technology Sydney (UTS). UTS elective law classes are usually capped at 40 students and so all family law subjects are taught as seminar discussion classes.¹⁸ The lower number of teaching hours available for JD as opposed to UG elective subjects prompted the split of JD *Family Law* into two subjects from 2020: *Family Law: Children & Parenting* and *Family Law: Property & Financial Matters*.¹⁹ We have co-taught the *Property and Financial matters* subject over the last two years. The extra teaching hours available by teaching JD family law across two units have enabled topics to be considered in more depth. In particular, there has been more time for discussion and group work;²⁰ students want to talk about their reactions, experiences and attitudes.²¹ Family law 'is loaded with emotional land mines throughout the semester'²² and can be 'controversial in a variety of ways'.²³ There are gendered and sometimes trauma-informed reactions to many family law issues. Families are messy,²⁴ family law is messy²⁵ and the extra time has allowed class discussion to

Loneliness of the Long-distance Academic: Further Reflections on the Values of a Common Law Legal Education' (2008) 42(3) *The Law Teacher* 339.

¹⁸ Due to COVID all our co-teaching to date has been online. MK: I have not relied on lectures in family law in the past, preferring to run classes as seminar discussions. However, before semester started, I realised that, the already too-long, 3-hour UG classes had to be shortened if run online. Therefore, I recorded short lectures and podcasts which were uploaded to the UTS learning management system, Canvas. I discovered that students greatly valued lecture recordings and the flexibility provided by the ability to replay and pause lectures: Natalie Skead et al, 'If You Record, They Will Not Come – but Does It Really Matter? Student Attendance and Lecture Recording at an Australian Law School' (2020) 54(3) *The Law Teacher* 349. This meant that the shorter classes were wholly focussed on discussion and problem solving as I no longer tried to also 'provide content': Kylie Burns and others, 'Active Learning in Law by Flipping the Classroom: An Enquiry into Effectiveness and Engagement' (2017) 27(1) *Legal Education Review* 1. I will continue to use short recordings when we return to face to face teaching.

¹⁹ Undergraduate (UG) or LLB *Family Law* is taught over 36 hours (12, three-hour classes). However, the Juris Doctor (JD)¹⁹ elective subjects are taught over 24 hours (12, two-hour classes).

²⁰ UTS uses the course management system, Canvas which allows student groups to be formed for collaborative learning. We assigned discussion questions to groups in advance of class time so that students could share and challenge their ideas. During class we used Zoom breakout rooms for groupwork.

²¹ Margaret F Brinig, 'The Role of Socioeconomics in Teaching Family Law Symposium: Teaching Law & Socioeconomics' (2004) 41(1) *San Diego Law Review* 177, 179.

²² Comment by Stacy Caplow about criminal law in Kristin Bebelaar et al, 'Symposium: Domestic Violence in Legal Education and Legal Education and Legal Practice: A Dialogue between Professors and Practitioners - Panel' (2002) 11(2) *Journal of Law and Policy* 409, 425 ('Symposium').

²³ Beth Burkstrand-Reid, June Carbone and Jennifer S Hendricks, 'Teaching Controversial Topics' (2011) 49(4) *Family Court Review* 678, 678 .

²⁴ Alison Diduck, 'Ancillary Relief: Complicating the Search for Principle' (2011) 38(2) *Journal of Law & Society* 272, 21; Jonathan Herring, *Relational Autonomy and Family Law* (Springer International Publishing, 2014) 37.

²⁵ Alison Diduck, 'What Is Family Law For?' (2011) 64(1) *Current Legal Problems* 287; John Dewar, 'The Normal Chaos of Family Law' (1998) 61 *Modern Law Review* 467.

embrace some of that messiness whilst attempting to stick to the 'educational point'.²⁶ However, due to financial constraints, the JD subject will revert to one *Family Law* subject in 2023 bringing back time and content pressures.²⁷ It is partly the return of these pressures on the JD subject that have led to us reflecting upon what is important in teaching family law.

Our approach to teaching family law is inevitably influenced by how we are 'in the world', in the academy and our different journeys in law.²⁸ We are both employed in the Law Faculty at UTS. We are both 'feminist, liberal, middle-age, white, married [in heterosexual relationships], female' teachers.²⁹ After working in the Family Law team at the Law Commission, Miranda (MK) qualified as a solicitor in England and practiced family law there for a short time whilst also casually teaching. She moved to Australia where she became an academic, teaching a wide range of subjects. MK is a conventional fractional integrated academic.³⁰ Since being at UTS, MK has only taught and co-ordinated family law related subjects and so establishing a teaching-research nexus has been at least theoretically possible.³¹ Jackie (JJ) is a 'pracademic', 'having [the] dual identity of an experienced practitioner, continuing to remain active in practice³² while simultaneously developing an academic career'.³³ JJ is employed in a teaching-focused role with more than double the teaching hours of integrated academics in the Faculty. She teaches in the UTS Practical Legal Training (PLT) programme including the family law module³⁴ and first year core subject,

²⁶ Class participation is assessed for this subject. Assessment schemes obviously play a crucial role in achieving learning goals, but we have decided not to address assessment schemes in this particular conversation. For a discussion of class participation assessment in family law, see Parashar (n4) at 85-86.

²⁷ For a discussion of the financial motivations for many law schools for introducing a JD, see: Gabrielle Appleby, Peter Burdon and Alexander Reilly, 'Critical Thinking in Legal Education: Our Journey Special Issue: The Past, Present and Future of Critical Legal Education in Australia' (2013) 23(2) *Legal Education Review* 345, 356-357.

²⁸ Treuthart (n 8) 1055.

²⁹ *Ibid.*

³⁰ At UTS, 'Integrated Academic' refers to the conventional combined teaching, research and engagement academic role and career profile as opposed to 'education focused appointments' whose principal role is to contribute to teaching.

³¹ Alex McKenzie et al, 'The Myth of the Teaching-Research Nexus' (2018) 28(1) *Legal Education Review* 1; Helen Carr and Nick Dearden, 'Research-Led Teaching, Vehicular Ideas and the Feminist Judgments Project' (2012) 46(3) *The Law Teacher* 268.

³² JJ has been a Legal Practitioner since 1983 and a Family Law Accredited Specialist (NSW) since 1993.

³³ Pam Myers, 'From Creative Practitioner to Academic' (2009) 3(1) *University of West London New Vistas* 40, 41; Paul L Posner, 'The Pracademic: An Agenda for Re-Engaging Practitioners and Academics' (2009) 29(1) *Public Budgeting & Finance* 12.

³⁴ In the UTS PLT program, students have the choice of undertaking either a Family Law Practice module or Criminal Law Practice module. (See further *Legal Profession Uniform Admission Rules 2015*, Sch. 2 for other possible Optional Practice areas and prescribed competencies for entry-level lawyers). The numbers are usually evenly divided. Students in the criminal law practice module students have a pre-existing knowledge of the area of law in learning about the practical application. Many students choosing the family law module have not undertaken a family law elective and so develop an understanding of the family law framework while learning about practical application.

Ethics Law and Justice. JJ has a Graduate Certificate in Higher Education Teaching and Learning.

About the complexity and importance of Family Law

There is a common belief that family law is an 'easy subject'.³⁵ It may be the accessibility of the subject matter that leads to this perception.³⁶ After all, we all have a family of some kind and so we are all experts on families.³⁷ However, Australian family law is not technically simple.³⁸ Even when teaching conventional doctrinal analysis of family law cases and legislation, in our experience, some students find family law peculiarly difficult. Law students are seeking 'a body of rules that, when applied to unambiguous facts, will dictate an outcome.'³⁹ They want to be able to provide a clear answer to problems. But family law outcomes are not certain, and facts are never unambiguous. Indeterminate tests such as the 'best interests of the child' and/or 'just and equitable' requirements,⁴⁰ litigants and children with wide-ranging, ever-changing needs, the complexity of the *FLA*⁴¹ combined with high levels of judicial discretion,⁴² leave many family law students troubled. Dispassionate analysis and adversarial critique of family conflicts to provide a satisfying resolution, is both impossible and often unhelpful.⁴³ Family law teachers can spend a lot of time, reassuring students 'that there are no neat answers.'⁴⁴

³⁵ Treuthart (n 8) 1048.

³⁶ Ben Livings, 'Context and Connection' in Kris Gledhill and Ben Livings (eds), *The Teaching of Criminal Law: The Pedagogical Imperatives* (Taylor & Francis Group, 2016).

³⁷ Reg Graycar, 'Law Reform by Frozen Chook: Family Law Reform for the New Millennium?' (2000) 24(3) *Melbourne University Law Review* 737. Thank you to the anonymous reviewer for pointing out the colonial assumptions that might underlie these 'truths'; the legacies of the Stolen Generations continue to impact Aboriginal and Torres Strait Islander families leading to disconnection from family, community and culture. See Kyllie Cripps and Julian Laurens, 'The Protection of Cultural Identity in Aboriginal and Torres Strait Islander Children Exiting From Statutory Out of Home Care Via Permanent Care Orders: Further Observations on the Risk Of Cultural Disconnection to Inform a Policy and Legislative Reform Framework' (2015/2016) 19(1) *Australian Indigenous Law Review* 70.

³⁸ Felicity Bell, 'A Tale of Two Courts' (2020) 29 *Journal of Judicial Administration* 118, 127.

³⁹ Richard Abel, 'Legal Pedagogy and Its Discontents' (2020) 16(1) *International Journal of Law in Context* 77, 78.

⁴⁰ Robert H Mnookin, 'Child-Custody Adjudication: Judicial Functions in the Face of Indeterminacy' (1975) 39 *Law and Contemporary Problems* 226; Elizabeth S Scott and Robert E Emery, 'Gender Politics and Child Custody: The Puzzling Persistence of the Best-Interest Standard' (2014) 77 *Law & Contemp. Probs.* 69.

⁴¹ Australian Law Reform Commission, *Review of the Family Law System: Issues Paper* (Issues Paper No IP48, March 2018) 115.

⁴² Patrick Parkinson, 'Why Are Decisions on Family Property so Inconsistent?' (2016) 90 *Australian Law Journal* 498.

⁴³ Kath Hall, Molly Townes O'Brien and Stephen Tang 'Developing a Professional Identity in Law School: A View from Australia', *Phoenix Law Review*, (2010) 4(1) 21-52, 43.

⁴⁴ Richard Ingleby, 'Translation and the Divorce Lawyer: Simulating the Law and Society Interface Note' (1989) 1(2) *Legal Education Review* 237, 248.

Family law is not a silo in our legal system. The breakdown of a relationship impacts on parties (emotionally, physically and financially), children, extended family, third parties (creditors, business associates) as well as the broader community: school teachers, health professionals, not for profit organisations, community justice centres and essential services. A very basic knowledge of family law provides context when inevitably confronted with a broken relationship and its consequences, or when family law is again the 'subject of the latest television current affairs program, newspaper editorial, [or] opinion piece.'⁴⁵ However, the elective nature of family law means that 82% of UTS students⁴⁶ will graduate with a law degree from UTS Law School with no knowledge of family law (unless they complete the PLT Family Law Practice option at UTS) and no way of questioning the veracity of the dominant myths surrounding family law.

We have found from discussions in our introductory classes that students currently enter our final year family law subject holding amongst other myths and/ or beliefs that: Family Law is an easy subject option and a 'last and poor career choice';⁴⁷ de facto couples either don't have any rights to claim under the *Family Law Act 1975* (Cth) (*FLA*), or, that *FLA* de facto property rights arise as soon as a couple move in together; spouses automatically, by virtue of their relationship, enjoy joint ownership of all assets; relationship property is divided 50:50 after two years of cohabitation; there is a presumption of 'shared custody' in Australia; prenuptial agreements are either not available at all in Australia, or, are simple, common and can be set up without legal advice. Anecdotally, some students enter the subject believing that the Australian family law system is biased against men; that 'family law is one of the few areas where women are doing *too well* financially';⁴⁸ that men often pay crippling spousal maintenance or 'alimony' in Australia; that women receive very high levels of child support; that courts never make orders for children to reside with their fathers after separation) or, that allegations of violence are routinely, and successfully, made to deny contact or to gain a larger share of the property pool.⁵⁰ Perhaps of most concern, as Renata Alexander reports, we 'still regularly encounter law students,who do not understand the varied forms of family violence and who underestimate the impact of family violence on families.'⁵¹ When questioned, students do not know the very basics of

⁴⁵ Rosemary Hunter, 'Decades of Panic' (2006) 10 *Griffith Review* 53, 53.

⁴⁶ Thank you to Monica Reade, Manager, Academic Services UTS Law Faculty for calculating these figures. 18% is the average percentage of graduating JD and UG students who studied a family law course over the last 10 years.

⁴⁷ Forrest S Mosten, 'The Potential of the Family Law Education Reform Project for Family Lawyers1' (2007) 45(1) *Family Court Review* 5, 6; Bell (n 37) 124; Martha Minow, 'Forming Underneath Everything That Grows: Toward a History of Family Law' (1985) 1985(4) *Wisconsin Law Review* 819, 819 ('Forming Underneath Everything That Grows').

⁴⁸ Lisa Young, 'Rich Women and Divorce: Looking for a "Common Sense" Approach.' (2004) 22(1) *Australian-Canadian Studies* 95, 95.

⁵⁰ Such beliefs about false claims about family violence are commonly held in the community: <https://www.safesteps.org.au/understanding-family-violence/family-violence-myths-facts/>

⁵¹ Renata Alexander, 'Refresher on Family Violence' (2021) 34(2) *Australian Journal of Family Law* 91, 91.

what a protection order is, how and where to apply for such an order, or the consequences of a protection order. Many of the students understand the elements of physical violence assault charges,⁵² but know very little about the dynamics of family violence and/ or coercive control⁵³ and are often ‘amazed’ at the levels of family violence allegations in family law matters⁵⁴ as reflected in this comment in a recent student feedback survey.

Surprised and impressed by how focused the subject was on the issue of gender violence and its intersection with family law. This is not a particularly comfortable topic to focus on, but [by the end of the subject I] really understood how fundamental it is to family law. (2021 Spring feedback comment)

Reflecting upon our teaching has strengthened our belief that some knowledge of family law should be core knowledge for all law graduates; it is, after all, of relevance to everybody’s lives. We agree with Martha Minow that family law is foundational to other subjects as its rules about roles, duties and responsibilities underlie all ‘other rules about employment and commerce, education and welfare, and perhaps the governance of the state’.⁵⁵ In Australia, the legal regulation of family relationships and notions of support and care for family members are ‘deeply implicated’ in our tax laws, social security system and labour laws.⁵⁶ We fundamentally disagree that the ‘building blocks of family law’ are covered by ‘contract, property and trusts’.⁵⁷ Even if this were true in relation to property division, which it is not, it certainly is not the case in relation to parenting disputes.⁵⁸ Despite an increasing emphasis in family law on autonomy and private ordering,⁵⁹ the regulation of care cannot be left to private contracts, property or trusts.⁶⁰ Arguably whilst doctrines such as contracts or trusts law may apply to those seeking to achieve a particular end or to ‘undertake some family activity’, they are not usually relevant at the end of a

⁵² Colin James and Nicola Ross, ‘Did He Ever Hit You? Exploring the Attitudes of Lawyers in the Assessment of the Seriousness of Threats and Violent Histories in Domestic Violence Cases’ (2016) 30(3) *Australian Journal of Family Law* 205.

⁵³ Glenda Lux and Sandy Gill, ‘Identifying Coercive Control in Canadian Family Law: A Required Analysis in Determining the Best Interests of the Child’ (2021) 59(4) *Family Court Review* 810.

⁵⁴ Federal Circuit and Family Court of Australia, ‘Media Release: New Court Initiatives Help Uncover Higher Prevalence of Family Violence and Other Risks’ (10 November 2021) <<https://www.fcftoa.gov.au/news-and-media-centre/media-releases/mr101121>>.

⁵⁵ Minow (n 46) 819.

⁵⁶ Reg Graycar, ‘Law Reform by Frozen Chook: Family Law Reform for the New Millennium?’ (2000) 24(3) *Melbourne University Law Review* 737, 740.

⁵⁷ Above n2.

⁵⁸ We do not believe that the Council of Legal Education was foreshadowing Martha Fineman’s recommendation of a social contract to govern care, as opposed to family law: Martha Albertson Fineman, ‘Contract and Care’ (2001) 76 *Chicago-Kent Law Review* 1403.

⁵⁹ Alison Diduck, ‘Autonomy and family justice’ (2016) 28(2) *Child and Family Law Quarterly* 133.

⁶⁰ Jonathan Herring, ‘Making Family Law Less Sexy . . . and More Careful’ in Robert Leckey (ed), *After Legal Equality: Family, Sex, Kinship* (Routledge, 2014) 17, 26.

relationship when family law is invoked by people who ‘feel they have lost control of what is happening to them’.⁶¹

This ‘old story about family lawyering not being “real” lawyering and family law not being real law’⁶² but rather, a minor subset of other more ‘pure’ and important legal doctrines, in our view, has led to the belief that the teaching of family law is not as important as other doctrinal areas. After all, ‘Isn’t family law “just” social work?’.⁶³ It has also arguably enabled views such as specialist judges are not required for family law matters and neither is a specialist family court.⁶⁴ Without undertaking a critical analysis of family law, or its role or purpose,⁶⁵ family law has many important goals (even if not always successful) which do not rely upon the doctrines of contract, property or trusts, including the support and promotion of forms of intimate life; protecting and empowering the vulnerable; determining the financial and care responsibilities of individuals to each other and the responsibilities of the state and families to each other; giving children a voice in disputes; and attempting to remedy the disadvantages and advantages caused by a relationship.⁶⁶

At our law school, and maybe at others, family law is currently doing much of the ‘heavy lifting’ in relation to teaching family violence issues. As a high percentage of graduates are not exposed to family law during their degrees, this means that, until domestic or family violence is incorporated into the law curriculum,⁶⁷ the majority of students are leaving our law school ‘without an understanding of how domestic violence impacts the lives and legal claims of [any future] clients’.⁶⁸ Given its elective nature, many lawyers will practice family law without having studied university family law and, currently with little law school exposure to the dynamics and reality of family violence. This is unacceptable given that it is now well-recognised that all family law professionals require a strong understanding of family violence.⁶⁹ However, a lack of understanding of family violence will also hamper effective practice in other branches of law. Family violence impacts upon many areas of law

⁶¹ Stephen Gilmore, Jonathan Herring and Rebecca Probert, ‘Introduction: A Journey Through the Landmark Cases of Family Law’ in *Landmark Cases in Family Law* (Bloomsbury Publishing, 2016) 10.

⁶² Bell (n 37) 124.

⁶³ Jane Aiken and Stephen Wizner, ‘Law as Social Work’ (2003) 11 *Washington University Journal of Law & Policy* 63.

⁶⁴ Bell (n 37).

⁶⁵ Stephen Parker, ‘Rights and Utility in Anglo-Australian Family Law’ (1992) 55 *Modern Law Review* 311.

⁶⁶ Herring, ‘Making Family Law Less Sexy . . . and More Careful’ (n 57) 28; Diduck (n 24).

⁶⁷ John F Mahon and Daniel K Wright, ‘The Missing Ingredient: Incorporating Domestic Violence Issues into the Law School Curriculum’ (2004) 48(4) *Saint Louis University law journal* 1351; Comment by Elizabeth Schneider in Bebelaar et al (n 21) 416.

⁶⁸ Comment by Candace Sady in Bebelaar et al (n 21) 414; Women’s Safety and Justice Taskforce, *Hear Her Voice: Volume 3*. (2021) 602.

⁶⁹ House of Representatives Standing Committee on Social Policy and Legal Affairs, *A Better Family Law System to Support and Protect Those Affected by Family Violence Recommendations for an Accessible, Equitable and Responsive Family Law System Which Better Prioritises Safety of Those Affected by Family Violence* (Parliament of the Commonwealth of Australia, 2017) 8.1 .

including, but not limited to, family law, criminal law and civil law problems related to employment, financial, government payment, health, housing, personal injury and rights issues.⁷⁰ Lawyers who work with both victims and perpetrators of family violence require education about the nature and impact of family violence. The recent Queensland Women's Safety and Justice Taskforce addressing coercive control found that:

coercive control and domestic violence have the potential to impact every client-based area of legal practice. Some lawyers also do not understand the patterned nature of domestic and family violence. Lawyers are also not consistently using trauma-informed practice when providing services to victims and perpetrators. Lawyers representing perpetrators of violence are likely to encounter ethical issues and should be encouraged to seek assistance. Some lawyers are not using the current law effectively when they lead evidence of abuse and make submissions, and may inadvertently perpetuate the abuse.⁷¹

If this is the case, why should the competencies suggested as requirements for good family law practice (understanding family violence; child-abuse; trauma-informed practice; and cultural awareness)⁷² be restricted to family lawyers? Given the broad-ranging impacts that these issues have across so many areas of legal practice, we believe these topics should either be embedded in law programs⁷³ or should become independent prescribed areas of knowledge or 'Priestley 11s'. In this way, regardless of whether our graduates enter legal practice, law school would at the very least dispel the most common myths surrounding family law and family violence with basic facts and principles. Law graduates should be social citizens able to think broadly about social issues and not just legal technicalities.⁷⁴ In the meantime, it is essential that family law continues to raise these competencies at least at a theoretical level and the core subject of criminal law, should incorporate the dynamics of family violence together with the elements of criminal offences and a basic understanding of protection orders.⁷⁵ Further improving the family violence capability of

⁷⁰ Christine Coumarelos, *Quantifying the Legal and Broader Life Impacts of Domestic and Family Violence* (Justice Issues No Paper 32, Law and Justice Foundation of New South Wales, June 2019) 1; Rosemary Hunter, 'Doing Violence to Family Law' (2011) 33(4) *Journal of Social Welfare and Family Law* 343, 354.

⁷¹ Women's Safety and Justice Taskforce, *Hear Her Voice: Volume 1* (2021) xx.

⁷² Australian Law Reform Commission (n 14) 238–244.

⁷³ Together with the impact of laws on Aboriginal and Torres Strait Islander peoples, Indigenous perspectives and cultural competency: Women's Safety and Justice Taskforce, *Hear Her Voice: Volume 3*. (2021) 601; Wanda M Temm, 'A Better Beginning: Family Law in the First Year of Law School' (2011) 49(4) *Family Court Review* 711.

⁷⁴ Martha Nussbaum, 'Why Lawyers Need a Broad Social Education', (Conference Paper, The Future of Australian Legal Education, 11 August 2017).

⁷⁵ Law Council of Australia, Submission to Council of Attorneys-General Family Violence Working Group, *Options for improving the family violence competency of legal practitioners: Consultation Paper* (September 2019), 8-12.

family law practitioners could be incorporated on a more practical level in PLT,⁷⁶ and also learnt whilst in practice on the job or in continuing professional development courses.⁷⁷

Teaching family law ‘in context’

We would be surprised if any family law courses in Australia today take a ‘grinding’ doctrinal approach to teaching family law.⁷⁸ After all, family law is peculiarly rich in perspectives that contextualise the ‘law’ in family law. Family law lends itself so well to a practical as well as theoretical, sociological, and/ or historical analysis.⁷⁹ It is, perhaps, ‘easier to see a continuity between [family] law and its context’ than in other areas of law.⁸⁰ Teaching the context of family law has recently been made easier by the fact that there are now a number of Australian textbooks and casebooks from which to choose which include at least some sociological information on families and draw on empirical, interdisciplinary and theoretical perspectives.⁸¹

However, lawyers ‘need to know the substantive law in order to practise effectively’⁸² and there is of course a reasonable expectation of the students, the faculty and the legal profession that at the end of a teaching session, students will be familiar with the legal doctrine relating to key areas of family law including the formation and recognition of adult relationships, divorce, parenthood, parenting and property division after separation including child support.⁸³ There are only 12 classes in which to teach all of these relatively limited key areas and undertake skill- based exercises and assessment revision.⁸⁴ How best to familiarise students with the doctrines of family law without inculcating an overly narrow understanding of family law among law students?⁸⁵

⁷⁶ Ibid 15-17.

⁷⁷ Australian Law Reform Commission, *Family Law for the Future — An Inquiry into the Family Law System* (Final Report No ALRC Report 135, Australian Law Reform Commission, 2019) 405–409.

⁷⁸ Ben Livings, ‘Context and Connection’ in Kris Gledhill and Ben Livings (eds), *The Teaching of Criminal Law: The Pedagogical Imperatives* (Taylor & Francis Group, 2016) 159 .

⁷⁹ Parashar (n 4) 65.

⁸⁰ Dewar (n 24) 468.

⁸¹ See for example: ; Belinda Fehlberg et al, *Australian Family Law: The Contemporary Context* (Oxford University Press, 2015); Patrick Parkinson, *Australian Family Law in Context: Commentary and Materials* (Thomson Reuters, 7th ed, 2019); Archana Parashar and Francesca Dominello, *The Family in Law* (Cambridge University Press, 2017); Adiva Sifris et al, *Family Law in Australia* (LexisNexis, 10th ed., 2021).

⁸² Patricia Easteal, ‘Teaching about the Nexus between Law and Society: From Pedagogy to Andragogy Practice Article’ (2008) 18(1 and 2) *Legal Education Review* 163, 163.

⁸³ Parashar (n 4) 79.

⁸⁴ Current UTS family law subjects do not cover adoption, the regulation of assisted reproductive technologies as opposed to the status of children born through such technologies, abortion or child protection cf: Archana Parashar and Francesca Dominello, *The Family in Law*, 2017, Cambridge University Press, 3.

⁸⁵ Arlie Loughnan, ‘Teaching and Learning Criminal Law “in Context”’: Taking “Context” Seriously’ in Kris Gledhill and Ben Livings (eds), *The Teaching of Criminal Law: The Pedagogical Imperatives* (Taylor & Francis Group, 2016) 176.

We both believe the doctrine of family law can only be properly understood if studied in context. And, we both pride ourselves on teaching family law 'in context'. However, it is important to acknowledge that the 'in context' tag conveniently is able to capture a range of pedagogical dispositions including both a practical and critical emphasis.⁸⁶ JJ has received the faculty teaching award and a UTS Learning and Teaching citation for 'Using a real-world collaborative practice approach to learning ... so law graduates become work ready lawyers'. She has carried this emphasis on 'real world' applications of teaching into the teaching of family law. Her teaching practice embraces the view that 'the comprehension and retention of legal concepts is far better when the teaching/learning method is set in a social and realistic context.'⁸⁷ As such, practical skill exercises and simulations form a regular component of her teaching. She strongly believes that such teaching practices result in more effective and satisfying teaching and improve 'future lawyers' and practising lawyers' comprehension and retention of the substantive law they are learning or relearning.'⁸⁸ Meanwhile, MK's 'in-context' teaching jumps between various stereotypical categories of family law teacher: 'the traditional legal scholar, the practitioner-scholar, the clinical law teacher, the interdisciplinary scholar and the activist'.⁸⁹ Whilst admitting to a lack of consistency in her teaching pedagogy, MK strongly believes that too strong an emphasis on learning through skills may result in students believing it is possible to take a 'neutral stance' to the subject.⁹⁰ For example, the very subject '*Family law: property and financial matters*' immediately raises for MK at least two questions which cannot be taken for granted. One 'what is the 'family of law'⁹¹ or the 'family in law'⁹²? and second 'why have property distribution at separation at all?'⁹³ In MK's view, the students must at least attempt to theoretically interrogate these questions before we can even begin to consider the 'real world' of family law property division. Such interrogations inevitably include historical, and sociological material to inform critical thinking about families and the socio-economic context in which the law operates.⁹⁴ In MK's view a contextualised account of family law

⁸⁶ Arlie Loughnan, 'Teaching and Learning Criminal Law 'in Context': Taking 'Context' Seriously' in Kris Gledhill and Ben Livings (eds), *The Teaching of Criminal Law: The Pedagogical Imperatives* (Taylor & Francis Group, 2016).

⁸⁷ Ross Hyams and Adrian Evans, *Practical Legal Skills* (Oxford University Press, 5th ed, 2021) 3.

⁸⁸ Ibid 1; Paul Ramsden, *Learning to Teach in Higher Education* (Routledge Falmer, 2nd ed, 2003) 50.

⁸⁹ John H Wade, 'The Behaviour of Family Lawyers and the Implications for Legal Education' (1989) 1(2) *Legal Education Review* 165, 177.

⁹⁰ Jonathan Herring, 'Why Financial Orders on Divorce Should Be Unfair' (2005) 19(2) *International Journal of Law, Policy and the Family* 218, 227.

⁹¹ Keryn Ruska and Zoe Rathus, 'The Place of Culture in Family Law Proceedings: Moving Beyond the Dominant Paradigm of the Nuclear Family' (2010) 7(20) *Indigenous Law Bulletin* 8; Frederik Swennen, 'Un-Coupling Family Law: The Legal Recognition and Protection of Adult Unions Outside of Conjugal Coupledness' (2020) 28 *Feminist Legal Studies* 39; Alan Brown, *What Is the Family of Law? The Influence of the Nuclear Family* (Hart Publishing, 2019).

⁹² Archana Parashar and Francesca Dominello, *The Family in Law* (Cambridge University Press, 2017).

⁹³ Joan M Krauskopf, 'Theories of Property Division/Spousal Support: Searching for Solutions to the Mystery Special Issue on Property Division at Divorce' (1989) 23(2) *Family Law Quarterly* 253.

⁹⁴ Belinda Fehlberg and Lisa Sarmas, 'Australian Family Property Law: "Just and Equitable" Outcomes?' (2018) 32(1) *Australian Journal of Family Law* 81, 83–84.

students requires at least a 'snapshot' of the social science research and the theoretical literature underpinning these studies on matters such as family structures, Indigenous perspectives on family law and access to justice, the gendered division of labour, the impacts of separation and parental conflict on children, the 'best interests of the child', shared parenting outcomes, and the dynamics and impacts of domestic and family violence, to name just a few 'essential' matters.⁹⁵ Social science research and theoretical literature have generally not framed JJ's view of law teaching, but the experience of 'co-teaching' has led to her more frequently using social science research to illustrate the social realities of families.

This short background to our different approaches provides the context to the following conversation reflecting upon our approaches to teaching 'family law'.

Co-teaching Family Law: A Conversation between two teachers

MK: It had been some time since I co-taught. I admit to being apprehensive about 'losing control' of my subject. I wondered how your role as co-ordinator of the family law PLT module might change the focus of the subject which could very loosely be described as embedding critical material throughout a course organised around traditional doctrinal categories.⁹⁶ In particular, I wanted to ensure that skills were incorporated as a method for enhancing the learning of family law as opposed to simply for the purpose of learning practical legal skills preparatory to family law practice.⁹⁷ However, the co-teaching experience has been positive for me - I have enjoyed not being wholly responsible for the 'success' of the subject and I believe that students have benefited from being exposed to teachers with different expertise.

JJ: I was also apprehensive about co-teaching with you because of our different professional backgrounds and focus.⁹⁸ I was worried that my practice-oriented teaching approach would not be accepted and valued by a research academic. It is a recognised conundrum for a legal practitioner when, 'in role hierarchy, research is valued or perceived to be valued, higher

⁹⁵ Zoe Rathus, 'The Research Says: Perceptions on the Use of Social Science Research in the Family Law System' (2018) 46 *Federal Law Review* 85, 86 ('The Research Says'); Timothy J Berard, 'The Relevance of the Social Sciences for Legal Education' (2009) 19(1) *Legal Education Review* 189.

⁹⁶ Julia Tolmie, 'Introducing Feminist Legal Jurisprudence through the Teaching of Criminal Law' in Kris Gledhill and Ben Livings (eds), *The Teaching of Criminal Law: The Pedagogical Imperatives* (Routledge, 1st ed, 2016) 195.

⁹⁷ Margaret Castles, Maureen Goldfinch and Anne Hewitt, 'Using Simulated Practice to Teach Legal Theory. How and Why Skills and Group Work Can Be Incorporated in an Academic Law Curriculum' (2007) 26(2) *University of Tasmania Law Review* 120, 121.

⁹⁸ Adelle Dora Montebianco, 'Power Dynamics, Common Pitfalls, and Successful Strategies Associated with Co-Teaching' (2021) 69(2) *College Teaching* 63.

than teaching and service.’⁹⁹ However, our co-teaching validated my desired approach to teaching. Whilst my years of experience as a family law practitioner meant I could provide examples with ease, teaching is more than providing practitioners’ ‘war stories’. Students must have context to appreciate the complexity of family law. Your knowledge of published research provided this base and a synergy occurred between that research and my real-world application of legal principles. On a personal level, co-teaching recreated an atmosphere of comradery that I experienced in legal practice but had missed in academia.

MK: I agree that some of the benefits of co-teaching for me have also been outside the classroom; sharing ‘tricky’ student questions both in relation to family law content, but more often and more importantly in relation to the very real psychological distress encountered by some students during the last two years. Co-teaching gave us the ability to debrief about student wellbeing concerns and significantly reduced my stress during this time.¹⁰⁰

Teaching with you has also made me realise that I have previously rather neglected closely examining my teaching style and methodology, perhaps focusing more on the substantive content of my subjects. After all, there is so much to cover!¹⁰¹ I did not take to heart Archana Parashar’s warning that ‘what we teach’ and ‘how we teach’ cannot be separated.¹⁰² It is so easy to become wedded to content without reflection. For example, the ‘special contributions or special skills’ doctrine was an area that I delighted in seeing rejected by the courts ‘as a terrible mistake’.¹⁰³ However, personally I was really sad to no longer teach classes which focussed on the ‘irony’ of the Sissinghurst analogy in *Ferraro*¹⁰⁴ using the brilliant article by Lisa Young.¹⁰⁵ I reluctantly and probably, if I’m honest, belatedly, binned my slides showing the photos of those beautiful gardens provided by our colleague Jenni Millbank and also the slides of Brett Whiteley’s most iconic works when I dropped from my ‘repertoire’ the telling of the story, again relying heavily on Young’s article, of the amazing life of Wendy Whiteley.¹⁰⁶ I loved the enthusiasm of the students’

⁹⁹ Dawn Bennett et al, ‘What Is Required to Develop Career Pathways for Teaching Academics?’ (2018) 75(2) Higher Education 271, 285; Nantiya Ruan, ‘Papercuts: Hierarchical Microaggressions in Law Schools’ (2020) 31(1) Hastings Women’s Law Journal 3.

¹⁰⁰ James, C., Strevens, C., Field, R. M., & Wilson, C. (2020). Fit your own oxygen mask first: The Contemporary Neoliberal University and the Well-Being of Legal Academics. In J. Marychurch, & A. Sifris (Eds.), *Wellness for Law: Making Wellness Core Business* (pp. 57-64). LexisNexis Butterworths; James, C., Strevens, C., Field, R., & Wilson, C. Student Wellbeing Through Teacher Wellbeing: A Study with Law Teachers in the UK and Australia. (2019) 10(3) *Student Success* 76-83.

¹⁰¹ Mahon and Wright (n 67) 1360.

¹⁰² Parashar (n 4) 59.

¹⁰³ O’Ryan J in *D & D* [2005] FamCA 1462 at [271]

¹⁰⁴ *In the Marriage of Ferraro* (1992) 16 Fam LR 1 at 48; (1993) FLC 92–335 at 79,580.

¹⁰⁵ Lisa Young, ‘Sissinghurst, Sackville-West and ‘Special Skill’’ (1997) 11 *Australian Journal of Family Law* 1.

¹⁰⁶ *Ibid.* *In the Marriage of Whiteley* [1992] FLC 92-304.

debating whether a highly paid athlete¹⁰⁷ might be able to make a claim for his genius but then slowly realising that a brilliant female homemaker or parent or [insert almost any occupation] would be unable to make such an argument for, as noted in all the Full Court decisions, an identifying characteristic of those making 'special contributions' was that they were male.¹⁰⁸ My classes still apply feminist theory to consider the devaluation of the private sphere, sexual division of labour and consequent devaluing of women's activities. We still discuss the 'intuitive attraction of a special skills approach'¹⁰⁹ and whether substantive gender equality is even close to being achieved in property division cases after the rejection of the doctrine,¹¹⁰ but I admit some of the fire has gone from my belly in this area. Luckily for me, but perhaps not for family law litigants, there are new and old areas which provoke rich debates in particular where neoliberal norms of autonomy fail to capture the realities of family life.¹¹¹

JJ: Actually, the example of the rise and fall of special skills is a reminder that although we must discuss statutory provisions and current cases, it should not be our sole focus. As Susan Boyd has written, 'by the time many of the students to whom we teach these technical issues graduate into the 'real world' to practise, these legal questions will be already resolved, or students will have forgotten the minutiae of legal debates.'¹¹² When I started at UTS I reflected on my own learning as a law student. I viewed effective teachers as ones who 'help students to make sense of their subject matter through enabling them to see its relevance'¹¹³ so encouraging students to adopt a 'deep approach'¹¹⁴ to learning. This was a stark contrast to subjects where legal principles were merely learnt for an assessment task with the result that you survived the exam, but you almost certainly forgot everything you memorised for it after a few days.¹¹⁵ As such, it is the practical application of such knowledge that is important in my approach to teaching of bringing 'real world' examples to

¹⁰⁷ Rupert Neate, 'Ryan Giggs Divorce: Ex-Footballer to Argue His Genius before High Court', *The Guardian* (online, 15 April 2017) <<https://www.theguardian.com/lifeandstyle/2017/apr/15/ryan-giggs-to-argue-his-genius-before-high-court-divorce-law>>.

¹⁰⁸ *Hoffman v Hoffman* (2014) 51 Fam LR 568, 580

¹⁰⁹ Lisa Young and Liz Wreck, 'Smith v Fields: The future of 'special skill'' (2014) 41 (1) *Brief*, 39-41, 39; Rebecca Bailey-Harris, 'Special contribution – Another barbarous relic in Blighty?' (2018) 35 *Australian Journal of Family Law* 141.

¹¹⁰ Richard Ingleby, 'The Soul Goes Marching on: Contribution, Commodification and the Great Leap Forward' (2018) 32 *Australian Journal of Family Law* 150; Belinda Fehlberg and Lisa Sarmas, 'Australian Family Property Law: 'Just and Equitable' Outcomes?' (2018) 32(1) *Australian Journal of Family Law* 81; Belinda Fehlberg, Lisa Sarmas and Jenny Morgan, 'The Perils and Pitfalls of Formal Equality in Australian Family Law Reform', (2018) 46 *Federal Law Review* 367, 390–392.

¹¹¹ Anna Heenan, 'Neoliberalism, Family Law, and the Devaluation of Care' (2021) 48(3) *Journal of Law and Society* 386, 386.

¹¹² Susan Boyd, 'Teaching Policy Issues in Family Law' (1989) 8(1) *Canadian Journal of Family Law* 11, 13.

¹¹³ D. Marris, *The Experience of Higher Education* (Routledge & Kegan Paul, 1963) 53 as cited in Ramsden (n88) 74.

¹¹⁴ Ramsden (n88), 43.

¹¹⁵ Ramsden (n88), 46.

bring the curriculum to life for students.¹¹⁶ I concede my approach is framed by the varied experiences of my journey in the law,¹¹⁷ as well as teaching in the PLT program where students ‘begin to understand how to practice family law effectively.’¹¹⁸ Research identifies numerous advantages to learning law through skills-based activities including enhanced employability, professionalism and communication skills.¹¹⁹

MK: I agree, skill-based activities can be an important part of learning and I have always included small simulation-based learning components in my family law subjects.¹²⁰ The students have to prepare for a first client interview and also undertake a negotiation exercise.¹²¹ The interview introduces, very much in outline, trauma-informed lawyering. I ask students to consider how they might approach such an interview when the client has experienced family violence and is likely to be ‘highly vulnerable and emotional’.¹²² The interview debrief covers best practice principles,¹²³ raises the issues of empathy, communication skills, vicarious trauma and how family law can be, for many reasons, a difficult area of practice. We introduce ideas of self-care to prevent vicarious trauma, and/or burnout.¹²⁴ The negotiation exercise is designed for students to represent the couples mostly not present in the reported property cases – those of average, or below average

¹¹⁶ Earl Simendinger, George M Puia, Ken Kraft and Michael Jaspersen, ‘The career transition from practitioner to academic’ (2000) 5(2) *Career Development International* 106 – 111, 106.

¹¹⁷ Law student; Student assistant at the legal clinic operated at Macquarie University Legal and Disciplinary Assistance Committee (LADAC); observer at the then Australian Legal Aid Office (ALAO); summer clerk at a tier one law firm; legal practitioner, student in Graduate Certificate in Higher Education Teaching and Learning.

¹¹⁸ Susan B Apel, ‘No More Casebooks: Using Simulation-Based Learning to Educate Future Family Law Practitioners’ (2011) 49(4) *Family Court Review* 700, 705.

¹¹⁹ Juliet Turner, Alison Bone and Jeanette Ashton, ‘Reasons Why Law Students Should Have Access to Learning Law through a Skills-Based Approach’ (2018) 52(1) *The Law Teacher* 1.

¹²⁰ Apel (n 73); Richard Ingleby, ‘Translation and the Divorce Lawyer: Simulating the Law and Society Interface Note’ (1989) 1(2) *Legal Education Review* 237.

¹²¹ Based on a negotiation exercise in the 6th edition of Patrick Parkinson, *Australian Family Law in Context: Commentary and Materials*, (Thomson Reuters, 6th ed, 2015). Thanks to Patrick for providing me with a soft copy of the scenario so that I can update it each year.

¹²² Sarah Katz and Deeya Haldar, ‘The Pedagogy of Trauma-Informed Lawyering’ (2015) 22(2) *Clinical Law Review* 359, 359.

¹²³ Family Court of Australia and Federal Circuit Court of Australia, *Family Violence Best Practice Principles* (No Edition 4, December 2016); Family Law Council and Family Law Section of the Law Council of Australia, *Best Practice Guidelines for Lawyers Doing Family Law Work* (2010); Queensland Law Society, *Domestic and Family Violence Best Practice Guidelines* (Queensland Law Society, 2016); Women’s Legal Service NSW, *A Practitioner’s Guide to Domestic Violence Law in NSW* (2018) ch.2.

¹²⁴ Lisa Morgillo, ‘Do Not Make Their Trauma Your Trauma: Coping with Burnout as a Family Law Attorney’ (2015) 53(3) *Family Court Review* 456; Joan Meier, ‘Teaching Lawyering With Heart in the George Washington University Law School Domestic Violence Project’ (2016) 22(12) *Violence Against Women* 1484; Richard Collier, ‘Wellbeing in the Legal Profession: Reflections on Recent Developments (or, What Do We Talk about, When We Talk about Wellbeing?)’ (2016) 23(1) *International Journal of the Legal Profession* 41; Caroline Strevens, Rachael M Field and Nigel Duncan, ‘Self-Care as a Professional Virtue for Lawyers’ in Rachael Field and Caroline Strevens (eds), *Educating for Well-Being in Law* (Routledge, 2019) 14.

income.¹²⁵ It also contains ‘a little bit of violence’ so that students reflect upon how violence is unlikely to be a factor in negotiations for a property settlement even if the ‘vague’¹²⁶ and ‘relatively strict’¹²⁷ judicial *Kennon*¹²⁸ test, was satisfied.¹²⁹ We have guest lecturers who practice in various family law related professions who discuss their practice and encourage students to ask the question, what, if anything, do you enjoy about your job and what do you find difficult? Is that ‘real world’ enough?

JJ: This is great, but I wonder if more skills- based exercises could be introduced in the subject? For example, some ethical scenarios made into role-play simulations for small group discussion. ‘Family law presents unique and particularly challenging ethical dilemmas’; students could learn how to recognise these challenges and think about navigating them.¹³⁰ An expanded focus on family dispute resolution (FDR) in all the UTS family law offerings would be useful. I realise you do cover FDR as a topic and introduce much of the relevant, particularly the feminist, research on FDR.¹³¹ I am concerned that your family law teaching focuses too much on the pitfalls and challenges, rather than the advantages of non-adversarial FDR. As such FDR is not central enough; relationship breakdown has long been seen as more than a ‘legal problem’.¹³² The *FLA* recognised the non-legal effects of broken relationships by establishing counselling sections within the

¹²⁵ Helen Rhoades, ‘Equality, Needs, and Bad Behaviour: The “Other” Decision-Making Approaches in Australian Matrimonial Property Cases’ (2005) 19(2) *International Journal of Law, Policy and the Family* 194 (‘Equality, Needs, and Bad Behaviour’).

¹²⁶ Patricia Easteal, Lisa Young and Anna Carline, ‘Domestic Violence, Property and Family Law in Australia’ (2018) 32(2) *International Journal of Law, Policy and the Family* 204, 213.

¹²⁷ Australian Law Reform Commission, ‘Review of the Family Law System: Discussion Paper’ (n 14) 3.112.

¹²⁸ *In the Marriage of Kennon* (1997) 22 Fam LR 1

¹²⁹ Women’s Legal Service Victoria, *Small Claims, Large Battles: Achieving Economic Equality in the Family Law System* (March 2018) 6.

¹³⁰ Timothy Hedeon and Peter Salem, ‘What Should Family Lawyers Know? Results of a Survey of Practitioners and Students’ (2006) 44(4) *Family Court Review* 601, 610.

¹³¹ Just some of the relevant Australian research includes: Renata Alexander, ‘Family Mediation under the Microscope’ (1999) 10 *Australasian Dispute Resolution Journal* 18; Hilary Astor and Christine Chinkin, *Dispute Resolution in Australia* (Sydney: LexisNexis: Butterworths, 2nd ed, 2002) 344–355; Helen Cleak et al, ‘Screening for Partner Violence Among Family Mediation Clients: Differentiating Types of Abuse’ (2018) 33(7) *Journal of Interpersonal Violence* 1118-1146; Sarah Dobinson and Rebecca Gray, ‘A Review of the Literature on Family Dispute Resolution and Family Violence: Identifying Best Practice and Research Objectives for the next 10 Years’ (2017) 30 *Australian Journal of Family Law* 180-204; Rachael Field, ‘A Call for a Safe Model of Family Mediation’ (2016) 28 *Bond Law Review* 83-88; Rachael Field, ‘Using the Feminist Critique of Mediation to Explore “the Good, the Bad and the Ugly” Implications for Women of the Introduction of Mandatory Family Dispute Resolution in Australia’ (2006) 20 *Australian Journal of Family Law* 45-78; Rachael Field and Angela Lynch, ‘Hearing Parties’ Voices in Coordinated Family Dispute Resolution (CFDR): An Australian Pilot of a Family Mediation Model Designed for Matters Involving a History of Domestic Violence’ (2014) 36(4) *Journal of Social Welfare and Family Law* 392-402; Sian Green, ‘Effectively Managing the Impact of Family Violence on Mediation in the Family Law Context’ (2017) 28(3) *Australasian Dispute Resolution Journal* 155-161; Kathy Mack, ‘Alternative Dispute Resolution and Access to Justice for Women’ (1995) 17 *Adelaide Law Review* 123-146; Rae Kaspiew et al, ‘Evaluation of a Pilot of Legally Assisted and Supported Family Dispute Resolution in Family Violence Cases’ (AIFS, 2012); Becky Batagol, ‘Fomenters of Strife, Gladiatorial Champions or Something Else Entirely? Lawyers and Family Dispute Resolution’ (2008) 8(1) *QUT Law Review* 24-45.

¹³² Garfield Barwick, ‘Some Aspects of the New Matrimonial Causes Act’ (1961) 3(3) *Sydney Law Review* 409, 414.

Family Court of Australia. Significant amendments to the *FLA* in 2006¹³³ included effectively requiring parents to attend FDR before filing parenting proceedings,¹³⁴ and the creation of Family Relationship Centres, the domain of social scientists not family lawyers. As non-adversarial dispute resolution is a cornerstone of the family law system and now a core principle¹³⁶ FDR should be central in teaching family law. It is incumbent for any family law subject to teach dispute resolution in a comprehensive manner, rather than to focus on questioning its centrality in the family law system. The workshop that we introduced in 2020 on dispute resolution is a good start. We scaffolded student learning with different learning tools, including theoretical and social science research and video resources, to introduce students to the variety of FDR processes. An experienced family law arbitrator spoke to the class and answered questions. The students then applied their learning in collaborative problem-solving tasks. Importantly, we introduced a research assessment task that ensured students focussed on both the positive and negative issues around family dispute resolution.¹³⁷

MK: As you talk, I am nodding and agreeing with you. Indeed, I note that some of our students are asking for more skills training in our subject:

I would appreciate it more of the course has content related to skills in divorce negotiation. Divorce negotiation seems to be quite different from business negotiation because of the emotions that are often involved. I found the current content very useful, [but] it would be great if there are more content or readings related to this topic. (2021 Spring feedback comment)

However, the subject cannot and should not try do everything. I already feel the pressure to train students for the ‘real world’ of legal practice.¹³⁸ Succumbing completely to such pressures could lead to a very narrow view of legal education; ‘to teach students to think and behave like lawyers’.¹³⁹ I am concerned that legal education does not become purely vocationalist. Less than 50% of law graduates embark on a career in private law firms¹⁴⁰ and very few of those will become family lawyers. As legal educators we have an obligation to ‘remind [students] of the social and political implications of the law ..., and of the limits as

¹³³ *Family Law Amendment (Parental Responsibility) Act 2006* (Cth).

¹³⁴ *S60I FLA 1975* (Cth).

¹³⁶ The Central Practice Direction – Family Law Case Management sets out 10 core principles applicable to family law proceedings. The ‘Importance of Dispute Resolution’ is the fifth core principle:
<https://www.fcftoa.gov.au/fl/pd/fam-cpd>

¹³⁷ Rachael Field and Mieke Brandon, ‘A Conversation about the Introduction of Compulsory Family Dispute Resolution in Australia: Some Positive and Negative Issues for Women’ 18(1) *Australasian Dispute Resolution Journal* 27.

¹³⁸ Boyd (n 108) 12.

¹³⁹ Wade (n 85) 166.

¹⁴⁰ Margaret Thornton, ‘The Challenge for Law Schools of Satisfying Multiple Masters’ (2020) 62(2) *Australian Universities’ Review* 5, 11.

well as the possibilities of legal change.’¹⁴¹ In my opinion, the subject should not primarily focus on practical skills training in a narrow sense because to do so takes the content and impact of family laws as a given when they should be rigorously questioned. While students ‘are here’ we should not be increasing their focus on narrow ‘instrumental goals’ but rather exercising their imagination.¹⁴² As Tony Pickard pointed out, university is a part of the ‘real world’¹⁴³ and it is the time for ‘discussing with students the larger questions around the impact of law [and] the role of law in social change’.¹⁴⁴ University family law study is surely the time for students to recognise that ‘the impact of the law on family decision-making extends well beyond statutory provisions and judicial decisions’.¹⁴⁵ If not now, then when?

JJ: I accept many students do not enter legal practice. However, a law degree or, equivalent, such as, in NSW, a Diploma in law awarded by the Legal Profession Admission Board,¹⁴⁶ is still the only basis upon which a person can be admitted as an ‘Australian lawyer’ to then be eligible to practice law as an ‘Australian legal practitioner’.¹⁴⁷ Admission involves joining a profession with ethical obligations as officers of the court. As such law should ‘never be allowed to become merely a generalist degree’.¹⁴⁸ The Chief Justice of the Supreme Court of NSW identifies three central goals of university legal education: to teach substantive content; to teach students how to think and learn effectively and professional skill building.¹⁴⁹ We have to fulfil all of those goals. Even though many students are undertaking a law degree with no interest or intent to practice, that fact cannot determine the basis for content of subjects. We should teach family law as though teaching to future family lawyers. PLT and supervision on admission cannot be expected to be the primary educators for future lawyers. If one purpose of a law degree is ‘employability enhancement’ then we should be equipping graduates with the skills that are essential for modern legal practice and to obtain the pre-requisite for admission, but also transferrable to most other graduate career choices.

¹⁴¹ Boyd (n 108) 12.

¹⁴² Martha C Nussbaum, ‘Cultivating Humanity in Legal Education’ (2003) 70(1) *University of Chicago Law Review* 265.

¹⁴³ Toni Pickard, ‘Is Real Life Finally Happening?’ (1986) 2(1) *Canadian Journal of Women & the Law* 150.

¹⁴⁴ Boyd (n 108) 13.

¹⁴⁵ June Carbone, ‘A Consumer Guide to Empirical Family Law’ (2020) 95 *Notre Dame Law Review* 1593, 1620 citing, inter alia; Robert H Mnookin and Lewis Kornhauser, ‘Bargaining in the Shadow of the Law: The Case of Divorce’ (1979) 88 *Yale Law Journal* 950.

¹⁴⁶ <https://www.lpab.justice.nsw.gov.au/Pages/diploma-law-course/diploma-law-course.aspx>

¹⁴⁷ *Legal Profession Uniform Law 2014* (NSW) s 6.

¹⁴⁸ Honourable T.F. Bathurst Chief Justice of New South Wales, ‘Legal Education – Does it make good lawyers?’ (Speech delivered at the 40th anniversary of the Foundation of Macquarie Law School, Macquarie University, 15 November 2012).

¹⁴⁹ *Ibid.*

MK: The purpose of a law degree is well beyond the ambit of this conversation.¹⁵⁰ However, I do agree that we should provide the ability to acquire skills not only for modern family law practice but for citizenship generally. My use of the word ‘skills’ here is not to be seen in a very narrow sense, but rather to include the skills to access current family law knowledge in the form of provisions and cases, how to critically read, analyse and apply that knowledge together with the skills of general ‘problem solving’ with a sensitivity to the effective and safe resolution of disputes.¹⁵¹ The acquisition of such skills inevitably requires a learning of theory, principles as well as more practical skills. I hope that our joint class on spousal maintenance which discussed historical and theoretical rationales, if any, for maintenance,¹⁵² the ‘feminisation of poverty’ within a reading of the case of *Mitchell*,¹⁵³ the empirical research which clearly illustrate the economic consequences of separation,¹⁵⁴ together with the practical issues and difficulties of enforcing orders, particularly for the high numbers of self-represented litigants in the family law system¹⁵⁵ might have more lasting resonances for students than simply presenting students with a list of cases to read on spousal maintenance. In particular, students are introduced to how, even in circumstances of seemingly clear gender inequality, there is both a lack of clear policy rationale for payments, generally low levels of payments and difficulties in obtaining payments.

JJ: We certainly both agree that a law degree is more than learning the law and skills, it must prepare students for their role as social citizens. But what else do we take away from our experience? I believe it is that two legal educators from what might be regarded as opposing ‘factions’ in the law school, united in both our passion for our subject matter and the goal of ‘doing our best’, have combined our strengths to inspire our students to become critically engaged in family law.¹⁵⁶ Whilst acknowledging the problems with over-reliance by universities on student evaluations,¹⁵⁷ it is nevertheless personally pleasing to report that student evaluations of the subject have been overwhelmingly positive. To be honest, to have been better than ‘good enough’ in the context of a global pandemic feels like an

¹⁵⁰ Sally Kift, ‘21st Century Climate for Change: Curriculum Design for Quality Learning Engagement in Law’ (2008) 18 *Legal Education Review* 1, 12; Stephen Wizner, ‘What is a Law School?’ (1989) 38 *Emory Law Journal* 701.

¹⁵¹ Alex Nicholson, ‘The Value of a Law Degree – Part 4: A Perspective from Employers’ (2021) 0(0) *The Law Teacher* 1; Menkel-Meadow (n 15) 137.

¹⁵² See discussions in: Fehlberg et al (n 77) 607–611; Belinda Fehlberg, ‘Spousal Maintenance in Australia’ (2004) 18 *International Journal of Law, Policy and the Family* 1, 3–7; Parashar and Dominello (n 88) 191–199.

¹⁵³ [1995] FamCA 32.

¹⁵⁴ Fehlberg and Sarmas (n 90) 83–84.

¹⁵⁵ Jane Wangmann, Tracey Booth and Miranda Kaye, ‘No Straight Lines’: *Self-Represented Litigants in Family Law Proceedings Involving Allegations about Family Violence* (Research Report, ANROWS, 2020) 153–4.

¹⁵⁶ Thornton (n140) 12.

¹⁵⁷ Warwick Fisher et al, ‘Student Evaluations: Pedagogical Tools, or Weapons of Choice?’ (2020) 30 *Legal Education Review* 1; Thornton (n140). Student evaluation surveys are mandatory for all units at UTS for every session and used to identify underperforming units and those that meet the required standards. Subjects are ‘rated’ in the University’s Course and Subject Performance Report.

achievement.¹⁵⁸ In particular, relevant qualitative comments from students appear to show that the combination of our teaching approaches was welcomed by some students:

The work was relevant yet also theoretical, so helped to have a theoretical understanding as well as practically how it applies. (2020 Spring feedback comment)

A wealth of real practical Family Law experience paired with an almost encyclopaedic knowledge of the Act makes the two lecturers able to give you a comprehensive understanding of Family Law. (2021 Spring feedback comment)

Final Reflections

In the era of the neoliberal university¹⁵⁹ and in the context of teaching by Zoom¹⁶⁰ it would be easy to feel despondent about teaching. And at times we both do. There is a certain irony in an article on the importance of family law teaching arising from the buying out of a portion of teaching from research funding. There is a further irony that the skills teacher feels (and almost certainly is) undervalued in the academy at a time that the integrated academic feels pressured by the belief that the neoliberal university and the student- as-consumer have ‘accentuated the desirability of practical skills over theoretical and critical knowledge’.¹⁶¹ However, this co-teaching experience has been rewarding for us and hopefully for our students.

Our employment of quite different teaching styles and methodologies has re-energised both of us whilst causing us both to reflect upon the content and methodology of teaching family law. Opportunities for such reflections are becoming more of a luxury when juggling the demands of academia in an age of disinvestment in by the state in higher education.¹⁶² The less we are able to deliberate, perhaps due to teaching in isolation via Zoom or due to having to satisfy ‘multiple masters in the contemporary law school’¹⁶³ the less enriched we all are, teachers and students. Our reflections have reminded us that we are both passionate about family law and renewed our certainty in the importance of its education. Family law deals in the legal consequences of relationships and those consequences touch

¹⁵⁸ Brent J Steele, “When Good Enough is Good Enough: Department Chairing during Covid-19” (2021) 54(1) *PS, political science & politics* 187.

¹⁵⁹ Margaret Thornton, 2011, *Privatising the Public University: The Case of Law*, Routledge, London.

¹⁶⁰ Kathleen Raponi et al, ‘Academics Embrace Disruption: Lessons Learned Teaching First Year Law During a Pandemic’ (2021) 31(1) *Legal Education Review* 27.

¹⁶¹ Margaret Thornton and Lucinda Shannon, “Selling the Dream’: Law School Branding and the Illusion of Choice’ (2013) 23(2) *Legal Education Review* <<https://ler.scholasticahq.com/article/6277-selling-the-dream-law-school-branding-and-the-illusion-of-choice>>. Paula Collins notes that the cost of a law degree means that training for ‘gainful employment’ ‘has never been more important’: ‘Australian Legal Education at a Cross Roads’ (2016) *Australian Universities Review* 30, 30.

¹⁶² Thornton (n 140).

¹⁶³ *Ibid* 12.

on so many other areas of law. Family law is the area of law that all students will come into contact in some way in the future in beginning, defining and ending relationships. We have concluded that knowledge of family law should be core knowledge for all law graduates, not just those that become family lawyers. It is wrong and trite to say family law is a 'soft area of law'. To reason that the building block components of the consequences of family relationships are covered by contract, property and trusts is a complete misunderstanding of the complexity and reality of this area of law. Such reasoning is part of a long history of the devaluing of family law and the old story of 'family law not being real law'.¹⁶⁴

We still have different perspectives on where the line between theory and lawyering skills should lie in teaching family law. However, we both have greater respect for the value the other brings to a student's learning. Together, perhaps more by luck than design, we believe that we have provided opportunities for family law students to be family 'law graduates who are not only 'work ready', but also theoretically informed, broadly educated, and concerned about social justice'.¹⁶⁵

As family law teachers, the building blocks and/ or big picture view are perhaps what we can best provide; the ability to know where to find the relevant law, but also to understand its broad implications and, importantly its limitations.¹⁶⁶ If family law graduates leave us with the ability to critically consider family laws, both statutory and case-based, in their social and ethical and institutional context, then maybe we have done our job? Due to financial constraints, increased pressure to focus on research and questions of economic viability we may have to 'juggle' our subject as best we can to still provide these opportunities. How to do so remains to be decided. We welcome a conversation with other teachers of family law and also family law practitioners about the purpose and future development of family law teaching at university.

¹⁶⁴ Bell (n 37) 124.

¹⁶⁵ Nickolas J James, 'More Than Merely Work-Ready: Vocationalism Versus Professionalism in Legal Education' (2017) 40(1) *University of New South Wales Law Journal* 186, 199.

¹⁶⁶ Alison Bone, 'The Twenty-First Century Law Student' (2009) 43(3) *The Law Teacher* 222; Boyd (n 108) 12.