

Teaching collaborative problem solving skills to law students

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Abstract

This article describes and critically evaluates a collaborative dispute resolution activity conducted in a mid-degree law subject at an Australian university. Australian law degrees are required to be vocational. Teaching problem solving to law students is an effective way to impart key professional skills. However, it requires planning and preparation. It is therefore important to reflect on whether the aims of the activity have been achieved. In particular, three ideas about what constitutes good teaching are explored. The first is that good teachers do not simply deliver content - they give their students problems to solve. The second is the expectation employers have that law graduates will readily collaborate with their colleagues. Finally, by giving students an opportunity to reflect on what they have learned, students will transfer what they have understood and articulated to legal practice. By delineating each of these three teaching aims, it is possible to assess the value and effectiveness of the problem solving activity. This paper also reflects on the positive impact that is achieved when authentic and ethical legal processes are embedded into student-centered learning.

April 2015

Reviewer #1: I have made comments on the article itself

Response: Author has accepted and made changes in relation to all suggestions.

Reviewer #2: There is much to like about this article: the topic is current, the dispute resolution exercise is innovative, and the prose is fluid. For most, this would make for a winning combination and, to a certain extent, the author has achieved just that. Regrettably, I do not believe it is quite ready for publication.

The shortcomings are of two types: substantive and structural.

To the first, I should say that I found the author's engagement of the literature on problem-solving practically invisible. Sure, there are references to various articles / textbooks but the author does not go to the trouble of situating their work within this rich debate. Instead, the text mostly describes the dispute resolution exercise almost in an 'instruction manual' format. While this can be useful - the Journal of Legal Education has a section ('at the lectern') dedicated specifically to this type of composition - the author fails to provide even the detailed instruction necessary to replicate the exercise. For example, much is said about the importance of the tutor but little information is provided as to what the tutor actually did other than administer the exercise and answer the students' questions.

Response: Author has added some text about the role of the teacher in collaborative learning.

I also note that the article is littered with conclusionary statements, praising the work that was done and the value of the exercise. While this is fine, some evidence would help bolster the author's claims.

Response: Author has deleted some text and added new text to address this short-coming.

For example, what skills were targeted and how did the author determine that these had been achieved / acquired?

Response: Author has added new text to address this short-coming.

Were there noticeable improvements in their learning?

Response: Author has added new text to address this short-coming.

What kind?

Response: Author has added new text to address this short-coming.

How was this measured?

Author has added new text to address this short-coming.

This final point leads into a structural flaw in the article. Throughout, I kept asking myself 'what went wrong'. Based upon the description provided, everything seemed to fall into place. The author experienced no challenges, the students voiced no criticisms, and there are no ways to improve on what has been done. While I can appreciate the desire to maintain a confident tone, the absence of any critical introspection makes me wonder whether the author has subjected the exercise to the rigorous analysis it merits. Even if this was peaches and cream, I would expect at least some recommendations to those who wish to give it a go.

In order to keep the article accurate and authentic, the tone remains positive and energetic. I was inspired by the way the students responded to the activity.

Again, there is much to like about this article. With a few adjustments, admittedly quite substantial ones, I expect this would make an excellent contribution to readers of the Law Teacher.

All of the reviewer's comments are really appreciated.

Some minor remarks:

a. The tables should be moved to the end of the article. I found them disruptive.

Response: Done

b. Many of the footnotes are superfluous / filler.

Response: Changes made accordingly.

c. The discussion of 'myths' does not seem relevant to the article (nor for that matter are the paragraphs on civil procedure).

Response: Most of the material on myths and civil procedure deleted.

d. Cherry-picking quotes from evaluations can appear disingenuous. Presumably at least one student expressed misgivings. Recognising / citing these would hardly undermine the claim. Quite the opposite in fact: it would help readers reflect on possible improvements to the exercise.

Response: To be honest, there were no negative comments from any of the students about this activity. Quite the contrary. One of the reasons I wanted to write about it was the overwhelmingly positive response from students. The only negative comment was that it was too short. I have spoken to this comment in the article. Had there been any negative comments, I would have included them in the article. The author receives a rich mix of positive and negative comments from students each semester, but this particular activity is received very well every time.

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Abstract

This article describes and critically evaluates a collaborative dispute resolution activity conducted in a mid-degree law subject at an Australian university. Australian law degrees are required to be vocational. Teaching problem solving to law students is an effective way to impart key professional skills. However, it requires planning and preparation. It is therefore important to reflect on whether the aims of the activity have been achieved. In particular, three ideas about what constitutes good teaching are explored. The first is that good teachers do not simply deliver content - they give their students problems to solve. The second is the expectation employers have that law graduates will readily collaborate with their colleagues. Finally, by giving students an opportunity to reflect on what they have learned, students will transfer what they have understood and articulated to legal practice. By delineating each of these three teaching aims, it is possible to assess the value and effectiveness of the problem solving activity. This paper also reflects on the positive impact that is achieved when authentic and ethical legal processes are embedded into student-centered learning.

Introduction

Collaborative problem solving is at the heart of legal practice.¹ Embedding problem solving activities into tutorials enables law students to apply their new knowledge and skills to realistic scenarios. Researchers generally agree that across all disciplines, good teachers are concerned with developing students' problem solving skills.² At a time when technology continues to pose new opportunities for online learning,³ it is important for law schools to revisit the traditional classroom tutorial and explore fresh ideas for engaging with and empowering students. By embedding authentic legal processes into assessable tasks, law teachers can equip their students with key skills for legal practice.⁴

This article will describe a problem solving activity undertaken by the author's students in an assessable tutorial activity. The methodology will be explained with sufficient detail so that other law teachers may incorporate the exercise into their own units of study. The problem solving exercise required the students to find a way to resolve a civil dispute without resorting to fully contested litigation. The factual scenario upon which the dispute was based closely followed the facts and chronology of a real case. The value of presenting students with authentic problems and then giving them the skills and time to solve those problems will be explored. Finally, this article will reflect upon feedback received from some students who undertook the exercise.

In an attempt to bridge the gap between law school and practice, it is important ~~for to dispel the myths that~~ law students ~~to appreciate that bring to their studies. One misconception is that litigators are superheroes.~~⁵ ~~Another is that lawyers spend their days reading appeal cases. The reality is that~~ lawyers are primarily problem-solvers.⁶ In many cases (particularly in their

¹ S Nathanson, *What Lawyers Do: A Problem solving Approach to Legal Practice 4* (Sweet & Maxwell, 1997) at 2-12.

² P Ramsden, D Margetson, E Martin, & S Clarke, 'Recognising and rewarding good teaching' (1995) Canberra: AGPS at 24, <http://online.anu.edu.au/caut/commproject/rrgt/Chapter2.html#2.6>.

³ S Colbran and A Gilding, 'Exploring legal ethics using student generated storyboards' (2014) 48:3 *The Law Teacher* 296-320 at 296.

⁴ R Mitchell and M Nakhleh, 'Concept Learning Versus Problem Solving: There is A Difference' (1993) 70(3) *Journal of Chemical Education* 190.

⁵ ~~See For for example, in *What Your Lawyer May Not Want You to Know*, Brown posits (at 211), BF Brown, *What Your Lawyer May Not Want You to Know* (Abbott Press, 2013) at 214.~~

⁶ S Nathanson, *What Lawyers Do: A Problem solving Approach to Legal Practice 4* (Sweet & Maxwell, 1997) at x (preface).

early years of practice) lawyers work in teams. A willingness and ability to work cooperatively with others in the profession is essential.

Teaching collaborative problem solving skills to law students is directly relevant to the practice of law. This constructive alignment between what is learned and tested at university with what is needed in legal practice is the key to ensuring that students are work-ready.⁷ Work-readiness should be an intended outcome for all law schools. This can only be achieved if the units of study are designed to model the practice of law in a realistic and ethical way. More specifically and of particular interest to designers of civil procedure units, lawyers who practice in civil courts across all jurisdictions in Australia are required to explore alternatives to fully-contested litigation.⁸

The interplay of the rules and regulations of practice means that students must approach civil litigation wearing a non-adversarial hat. However, some students come to the study of law (in particular, civil practice) with preconceived notions of what a lawyer does. They imagine that litigators are rewarded for winning cases run in court before a judge.⁹ For most Australian practitioners, this is not the case. Civil disputes can be settled by an agreement between the

⁷ Adopting the language of Biggs, 'constructive alignment' is a teaching methodology, which supports the intended learning outcomes. See J Biggs, 'Teaching Through Constructive Alignment' (1996) 32.3 *Higher Education* 347 at 350; see also, J Biggs, *Teaching for Quality Learning at University* (Open University Press, 1999).

⁸ This requirement applies to barristers and solicitors. For example, Rule 38 of the *New South Wales Barristers' Rules 2014* provides that 'A barrister must inform the client or the instructing solicitor about the alternatives to fully contested adjudication of the case which are reasonably available to the client'. The corresponding requirement under Rule 7.2 the *New South Wales Solicitors' Rules*, is framed in almost identical terms. Under section 498(1) of the *Legal Profession Act 2004* (NSW), a contravention of the solicitors' or barristers' rules may amount to unprofessional conduct or professional misconduct. ~~In addition to these professional requirements, Civil Practice students are taught that practitioners in New South Wales must comply with section 27 of the *Civil Procedure Act 2005* (NSW), which requires that any attempt to mediate a civil dispute must be conducted in good faith. By introducing these concepts to law students, they will be better equipped in practice to discharge this obligation.~~

⁹ This thinking is not entirely without justification. Contingency fees are common in some American jurisdictions, particularly in personal injury cases. ~~The contingent fee has been described as the 'poor man's key to the courthouse' (NL Micklich, 'Providing Keys to the Courthouse Without Giving Up Full Recovery' (2006) 2.15 *Construct!*). Whereas corporations or wealthy individuals can afford to hire attorneys to pursue their legal interests, the contingency fee affords any injury victim the opportunity, regardless of ability to pay, to hire the best attorney in his or her field. This scenario has been the subject of many successful film and television courtroom dramas and has found its way into popular mythology as a common basis on which lawyers are retained. However, it is not common in Australia and other common law jurisdictions. Indeed, most jurisdictions in the United States prohibit working for a contingent fee in family law or criminal cases.~~

parties involved.¹⁰ Indeed, more than 90% of all civil cases in New South Wales settle before trial.¹¹ If the parties can reach a settlement there is no need for a court hearing. ~~The fact that most disputes do not run to fully contested adjudication does not prevent lawyers from invoicing the clients for the work they have done. The more common basis for charging clients is by the hour (time charging) or for an agreed fixed fee. Students are taught these fundamentals early in the Civil Practice unit.~~ It impressed upon them that it is in the best interests of their client to regard litigation as a last resort, when all attempts to resolve the matter have failed.

It is a key requirement in all civil procedure courses that law students appreciate the obligations imposed on all legal practitioners to solve their clients' problems at a minimum cost to all parties and the courts. For some students, this proposition is novel (and perhaps a little disappointing). The cognitive shift that law students must undergo (in this and other subjects) is best achieved by providing them with the tools to test their old and new knowledge in a practical and meaningful way. Cognitive shift is a key feature of learning.¹² Problem solving is an essential vehicle for students to explore different approaches to achieve a range of positive outcomes. Students who are provided with a learning goal (for example, a problem to solve) demonstrate higher comprehension monitoring and more constructive collaborative engagement.¹³ As well as knowledge of the law, it is expected that practitioners in civil cases will be armed with negotiation theory and fundamental mediation skills. It is therefore important for law schools to ensure that their students graduate with these attributes.

¹⁰ ~~Civil disputes can be settled by an agreement between the parties involved.~~ Where parties agree on a settlement, they should put their agreement in writing and each party should sign the agreement. This type of agreement is called 'terms of settlement' or 'consent orders' (Source: Settling a civil case retrieved on 7 April 2015 from http://www.courts.justice.nsw.gov.au/cats/courtguide/during_court/civil_settlement.html).

¹¹ In 2013, more than 50% of civil cases in the Supreme Court settled at the court-referred mediation. Many more settled before trial. The registry does not collect settlement data for mediations conducted by private mediators. Source: Supreme Court of New South Wales provisional statistics as at 24 January 2014, retrieved on 7 April 2015, from [http://www.lawlink.nsw.gov.au/practice_notes/nswsc_pc.nsf/e154dd079de60d044a2565fa0012aa89/192ee598ebf29c6cca257c6e0010f070/\\$FILE/AR_2013_prov_stats.pdf](http://www.lawlink.nsw.gov.au/practice_notes/nswsc_pc.nsf/e154dd079de60d044a2565fa0012aa89/192ee598ebf29c6cca257c6e0010f070/$FILE/AR_2013_prov_stats.pdf).

¹² Deep reasoning and learning that is stimulated by problems that create cognitive disequilibrium, such as obstacles to goals, contradictions, conflict, and anomalies. Cognitive disequilibrium is a key heuristic for promoting learning. See generally, PH Winne and JC Nesbit, 'The Psychology of Academic Achievement' (2010) 61 *Annu Rev Psych* 653-678 at 656.

¹³ AJ Gabriele, 'The influence of achievement goals on the constructive activity of low achievers during collaborative problem solving' (2007) 77 *Br J Educ Psychol* 121-41.

This article explores the learning outcomes achieved in a compulsory problem solving activity that was introduced to a second year law tutorial program. The exercise took the form of an authentic dispute resolution process, based on a real set of facts, in which the author acted for the Defendant.

The problem solving activity

The particular problem presented to the students involved a civil dispute that was listed for hearing and ready to be heard in the Supreme Court of New South Wales.

By working through the facts and applying their newly-acquired negotiation skills, students were asked to find a way to resolve the dispute between the parties so as to achieve their clients' desired outcomes, while also preserving the parties' business relationship.¹⁴

In the real case, the author (who was then practising at the New South Wales Bar) was briefed on short notice to appear for the Defendant in a suit for possession. The Plaintiffs were the owners of a supermarket and they wanted to ~~evict~~ ~~take possession of their premises~~ ~~from~~ the Defendants (who continued to occupy the supermarket long after the lease had expired). Using the key elements of that case,¹⁵ the students were divided into teams of junior barristers acting either for the Plaintiffs or the Defendants. They were given a page of 'agreed facts' and some initial instructions a week before the tutorial (via an online teaching portal). On the day of the tutorial, they received further instructions. This last-minute provision of further instructions to junior counsel is realistic and reflects the urgency and pressure of practice at the Bar. The facts and timeline imposed on the students matched the pace of the real events upon which this scenario was based.

The students arrived at the tutorial armed with newly acquired knowledge of civil procedure rules and some negotiation theory. This content had been delivered in lectures the week before the problem solving activity. The tutorial was structured to mirror the way that a typical morning in court would unfold.

¹⁴ About 900 hundred students undertook the activity over the period of two years, but this article will reflect on the experience of just the 280 students who undertook the activity in tutorials facilitated by the author.

¹⁵ Places, names and dates were changed so as to conceal the identity of the players and thereby preserve the confidence of the parties to the real dispute.

Methodology

In classes of 35, more than 280 students undertook the problem solving activity in a one-hour tutorial.¹⁶ Table 1 sets out in detail the timing and content of each step in the activity. In summary, the tutorial started with each class divided into two 'teams' – imposing an adversarial format aligning the students' interests to 'their client'. During an extended buzz session, the teams readily identified their client's strict legal rights. Half way through the tutorial, new facts were introduced to each team. The new facts were the type of information that is often regarded as irrelevant in litigation, but would be revealed and regarded as important during negotiation. As the teams considered and then revealed the secret facts, students suggested terms upon which the parties could resolve the dispute and most found a way for the commercial arrangement to be preserved for the benefit of both sides.

Interests Exploration Forms

A useful device in the resolution of the dispute was the identification by both teams of the parties' interests (both legal and non-legal). Early in the exercise, students were provided with an 'Interests Exploration Form'. On a single page, students were asked to confer in small groups and list what they thought were the financial and commercial or non-financial and emotional interests of the parties. Table 2 is a sample Interests Exploration Form.

Identifying parties' interests, facilitating parties' negotiations and helping them generate proposals for settlement are fundamental steps in resolving conflict.¹⁷ In order to discharge their obligation to advise their clients in relation to settlement prospects, lawyers focus on a variety of interests - substantive interests and issues, needs and positions, procedural

¹⁶ The students were enrolled in a core second year law subject at an Australian university. Civil Practice is taught in all Australian law schools (sometimes under the banner 'Civil Procedure'). Civil Procedure is a so-called "Priestley 11" subject, named after Justice Priestley who headed up the Law Council of Australia's consultative committee responsible for designing a uniform set of qualifications and criteria for admission as a legal practitioner in Australia. Among other requirements, there are the eleven law compulsory subjects that must be completed successfully for admission into practice as a legal practitioner in Australia – see Schedule 1 to the Law Admissions Consultative Committee Uniform Admission Rules (2008) at 9 (retrieved on 11 February 2015 from http://www1.lawcouncil.asn.au/LACC/images/pdfs/212390818_1_LACCUiniformAdmissionRules2008.pdf).

¹⁷ C Moore, *The Mediation Process: Practical Strategies for Resolving Conflict*, 2nd edn (Jossey-Bass Publishers, 1996) at 161.

concerns, or more rarely on their client's psychological conditions.¹⁸ Golann argues that interest-based negotiation remains one of the most valuable concepts in dispute resolution. A key technique to facilitate interest-based bargaining is to depart from discussion of money and legal interests from time to time during the process of negotiation and invite the parties to disclose their other hidden or underlying interests.¹⁹

It is also important for students to appreciate that for their clients to resort to litigation is often viewed as an irreparable breach of the relationship between the parties.²⁰ This negative by-product of the dispute could be more expensive than the subject matter of the dispute, rendering Pyrrhic any victory. Moore notes that identifying a joint problem and reducing it to writing for the parties "enables negotiators to commit to work on a common problem because they believe that their needs will be respected, if not met by, the solutions that will be developed."²¹

During the problem-solving exercise, students were provided with guidance from their tutors as to what is meant by each of the different types of interests. For example, financial interests may be purely monetary, while commercial interests can include goodwill and reputation. Non-financial interests may overlap with commercial interests, but tend to be more personal. Most students recognised that both parties would have an emotional interest in avoiding the unwelcome stress that accompanies litigation.

Disclosing and then clarifying hidden or underlying interests requires that lawyers engender in their clients a positive attitude towards the resolution process. Teaching these concepts and related skills to students is best achieved through authentic modelling.

Authenticity

This activity featured many of the elements characterised as authentic. ~~by~~ Herrington et al define authentic activities as tasks that have real-world relevance and utility and provide

¹⁸ C Moore, *The Mediation Process: Practical Strategies for Resolving Conflict*, 2nd edn (Jossey-Bass Publishers, 1996) at 209.

¹⁹ D Golann, 'Beyond Brainstorming: The Special Barriers to Interest-Based Mediation, and Techniques to Overcome Them' (2011) 18.1 *Dispute Resolution Magazine* 22-26.

²⁰ M Galanter, 'Reading the Landscape of Disputes: What We Know and Don't Know (And Think We Know) About Our Allegedly Contentious And Litigious Society' (1983) 31 *UCLA L Rev* 4 at 25.

²¹ C Moore, *The Mediation Process: Practical Strategies for Resolving Conflict*, 2nd edn (Jossey-Bass Publishers, 1996) at 243.

appropriate levels of complexity so that students can select their level of involvement.²² Bransford, Vye et al suggest that by giving students problems that are open to multiple interpretations allows them to investigate different solutions.²³ These characteristics were used to create a case for investigation that would develop meaningful and practical skills. Students were told that the scenario was based closely on a real case.²⁴ This gave the activity ~~what~~ Herringtons calls 'real-world relevance'. Some aspects of the tasks were consciously ill-defined, so that students had to work out their own unique sub-tasks in order to complete the activity. -Sub-tasks included making lists of questions lawyers should ask their client in order to disclose their hidden or underlying interests and to provide more comprehensive and commercial advice.

Collaborative discussion

The collaborative discussion time gave students the opportunity to examine the task from different perspectives. The Interests Exploration Form (Table 2) specifically required the students to list all of their opponents' interests and rights. By splitting the class into two halves and allocating to one side the role of Plaintiff and to the other the Defendant's position, the students were physically positioned as if at the Bar table in a courtroom, appearing for their clients. This activity encouraged students to devise creative solutions and a diversity of outcomes. Students were not confined to finding just one right answer or a simple truth.

Some aspects of the process were complex and required that the students investigate alternative approaches to resolving the dispute. The students' investigations were helpfully informed by their completed Interests Exploration Forms; forms that had been completed in teams and so included ideas that reflected a collaborative effort. For example, students had regard to the commercial, non-economic and personal cost of not only the litigation but the loss of the business relationship, rather than simply balancing the parties' strict legal rights.

²² J Herrington, T Reeves and R Oliver, 'Authentic Tasks Online: A Synergy among Learner, Task, and Technology' (August 2006) 27(2) *Distance Education* 233-247 at 236-237.

²³ JD Bransford, N Vye, C Kinzer and V Risko, 'Teaching thinking and content knowledge: Toward an integrated approach' in BF Jones & L Idol (Eds) *Dimensions of thinking and cognitive instruction* (Lawrence Erlbaum Assocs, 1990) at 381-413.

²⁴ In their anonymous Student Feedback Surveys, students expressed appreciation for the 'real life' scenario upon which the problem was based. Comments included: *We used real life examples to illustrate concepts*; and *Bringing the tutor's own experience to the tutorial was of great help*.

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By withholding from each 'party' certain facts that were known only to the other, the students had to use their common sense and think commercially about the challenges facing their client and their opponent's client.²⁵ Tutors explained to the students that the delayed disclosure of important and useful information is realistic and often happens in litigation. Sometimes, it is only when one of the parties or their witness is under cross-examination that key facts emerge, often when it is too late to save the relationship between the parties.

The important shift in dynamic that gave rise to empathy during the activity occurred organically and was the most transformative aspect of the exercise. Cain argues that if law schools are to produce good lawyers, they must train students to effectively and intelligently interact with people on an emotional basis.²⁶ This transformation – from thinking critically to also responding empathetically – not only informs the value of asking questions and having regard to key ethical considerations, but also empowers students with practical problem solving skills that will be useful for their future as legal practitioners.

Observable achievements and outcomes

At the end of the activity, three questions were put to the students in order to assess what they had achieved and learned in the tutorial.

- What questions could the lawyers have asked their clients in their first meeting in order to resolve the dispute more quickly? Most students were able to think of at least six questions that would have directed to the parties towards a negotiated settlement.
- What ethical and professional challenges did the lawyers face during the negotiation process? In addition to simply identifying a failure to attempt negotiation, nearly all students were able to identify the paradox that sometimes the rules by which lawyers practice are inconsistent with their duty to their client.
- How did this activity change your perception of how civil disputes can be resolved? Most students responded that for the first time, they could see how acting in their client's best interest will involve problem-solving, as well as advocacy.

²⁵ For example, if the Plaintiff succeeded in an application for possession, at what cost would the current tenant be evicted and replaced with a new tenant?

²⁶ PJ Cain, 'A First Step toward Introducing Emotional Intelligence into the Law School Curriculum: The Emotional Intelligence and the Clinic Student Class' (2003) 14(1) *Legal Education Review* 1.

Student reflection and feedback

At the end of the exercise, the students spent some time reflecting on its outcome and possible consequences for the practitioners had the matter not settled. Students identified that the Plaintiff's lawyer was in breach of some fundamental ethical obligations to the client and the court, which could give rise to costs orders against him/her personally. A number of students gave unsolicited spontaneous feedback at the end of the tutorial that was very positive, particularly in relation to the experience of applying their new skills and the value of alternative dispute resolution.

Throughout the unit of study, students were invited to present reflective statements in their tutorials. The reflective statements were assessable and worth 5% of the final mark in the subject. The reflective statement is based on any subject-related content or activity. A number of students speak to the problem-solving tutorial activity. For some students, presenting reflective statements was a novel activity. The concept of reflection as part of their learning is imposed on students, so as to make them aware of the importance of reflection as a means of enhancing and consolidating their learning.²⁷ Their reflections gave them the opportunity to articulate and share with the class what skills they acquired and processes they understood as a result of undertaking the dispute resolution activity. This reflection also assists students in their subsequent transition to legal practice and legal-specific problem solving situations.²⁸ Most of the students who presented reflective statements identified the specific elements of the dispute resolution process, including clear statements of negotiation theory. All students reflected on the new skills they had acquired and their conception of how they will apply those skills in their practice as lawyers. Lucu and Marin argue self-assessment is an important element in any problem-solving exercise. By reflecting on the process and outcomes, students identify the real-world challenge as its own criterion for success. Students can then hold themselves accountable for achieving a milestone that practitioners would have to meet under genuine working conditions.²⁹

Finally, at the end of the semester, some students commented on the problem-solving activity in their anonymous student feedback surveys. The comments from students were wholly

²⁷ See generally, F Martin, 'Teaching Legal Problem Solving: A Problem-based Learning Approach Combined with a Computerised Generic Problem' (2003) 14(1) *Legal Education Review* 77.

²⁸ F Martin, 'Teaching Legal Problem Solving: A Problem-based Learning Approach Combined with a Computerised Generic Problem' (2003) 14(1) *Legal Education Review* 77 at 80.

²⁹ RB Iucu and E Marin, 'Authentic Learning in Adult Education' (2014) 142 *Procedia - Social and Behavioral Sciences* (2014) 410 -415 at 411.

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positive and all students articulated that they had experienced a cognitive shift in their understanding of what lawyers do, specifically in relation to advising their clients and discharging their obligation to explore non-litigious paths to resolving their clients' disputes. Some of those comments are extracted here:

The negotiation activity was a great problem solving exercise for us to do. It created a highly engaging class dynamic, as well as addressing the curriculum and targeting oral communication skills.

The negotiation activity taught me a great deal about approaching practice generally.

The best tutorial we had was the dispute resolution exercise. [It provided an] excellent balance between theory and practical application of subject content.

The tutorials were amazing. Negotiation exercise is a must keep, it was so helpful in my understanding as to how a contention among parties can be settled.

Rather than talking about the lecture material we did tasks that built on the theory or made things practical, e.g. the dispute resolution exercise. I found this exercise really interesting and valuable in allowing me to develop insight as to how to negotiate and approach a dispute.

The negotiation activity was very interesting and it made the material more relevant.

A few students suggested that the activity would be improved if the time allocated for the tutorial has been increased to 90 minutes or even 2 hours.³⁰ In response to this suggestion, the course has been redesigned so that instead of twelve one-hour tutorials, students now undertake eight two-hour tutorials. While some tutorials now cover two activities, the problem-solving exercise is allocated a full two hours.

Challenges

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³⁰ For example, two of the comments: *A longer tutorial e.g. 1.5/2 hours would be preferable to a 2 hour lecture ... there was very little time left to engage with content as much as could have been done ... it would be less rushed and better if we were able to have more time overall in tutorial format; and I only wish that our tutorials had been longer!*

Conducting this problem-solving activity presents two main challenges.

Firstly, it is important to ensure that all students actively participate and are given an equal opportunity to be heard. There are a number of reasons why some students may be reluctant to participate in a group activity, including lack of preparation; lack of confidence; or an expectation of dependence on the tutor.³¹ In a class of 35 students divided into two 'teams', levels of participation can be difficult to monitor. A possible solution is to divide the teams into smaller pairs or threes for initial 'buzz sessions'³² and then ask the groups to pool their ideas with each other. However, finding additional time for preliminary discussion comes at the cost of precious time needed elsewhere in the activity.

The second challenge lies in determining how much material to provide to the students. The problem must be ill-defined enough to allow students room to explore possible solutions, but not so ill-defined that the problem seems or is unsolvable. There is a balance to be struck here. If the problem is too clearly explained, the scope for exploring sub-tasks will contract, detracting from the authenticity of the exercise. Teachers are not just information providers. They must also guide, scaffold and facilitate student learning.³³ The challenge is not just to create an environment that encourages learning, but to pose questions that generate analysis. According to Wagner, students are motivated to learn when their "learning is hands-on and more personalised with the result that students perform real-world tasks and produce public products that reflect who they are and what they believe and care about".³⁴

Empowering elements of the dispute resolution activity

As well as encouraging learning for understanding (which includes developing students' problem solving skills), Ramsden et al argue that other indicia of good teaching include enthusiasm, recognising the importance of context, transforming and extending students'

³¹ SW Fraser, 'Coping with complexity: educating for capability' (2001) 232(7316) *BMJ* 799-803 at 801.

³² SW Fraser, 'Coping with complexity: educating for capability' (2001) 232(7316) *BMJ* 799-803 at 802.

³³ RB Iucu and E Marin, 'Authentic Learning in Adult Education' (2014) 142 *Procedia - Social and Behavioral Sciences* (2014) 410 -415 at 411.

³⁴ T Wagner, *The Global Achievement Gap* (Basic Books 2008).

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knowledge, and setting clear goals for students.³⁵ As Martin observes, there are four key learning outcomes achieved when law students undertake problem-solving activities.³⁶

1. The development of decision-making skills

Law students need to become familiar with the complex skills used in making and implementing decisions.³⁷ This is an essential aspect of professional practice if practitioners are to meet their clients' goals.³⁸ By undertaking a dispute resolution activity, students are required to make decisions, including what questions to ask their clients, how best to advise them and the terms upon which the dispute might be resolved.

2. Problem solving contextualises learning

Real-life problems become tools for learning through which students are exposed to the various stages of problem solving and given an opportunity to practise their problem solving skills, while they acquire substantive contextualised knowledge. This context includes discharging the ethical and professional obligations that lawyers owe to their clients and to the courts. Where those duties seem to conflict, the students must decide which obligations prevail. The dispute resolution activity is conducted in the second half of the course to ensure that all students have been taught all relevant content, including statutory and professional obligations in the conduct of practice, advice and advocacy.

3. The development of student autonomy

The ability to direct and evaluate one's own learning allows students to become aware of their personal learning needs and strategies; and to locate and effectively utilise appropriate information sources.³⁹ Problem solving activities such as this ensure that

³⁵ P Ramsden, D Margetson, E Martin, & S Clarke, 'Recognising and rewarding good teaching' (Canberra: AGPS, 1995) at 24..

³⁶ The following four indicia of key learning outcomes achieved when law students engage with dispute resolution are taken from F Martin, 'Teaching Legal Problem Solving: A Problem-based Learning Approach Combined with a Computerised Generic Problem' (2003) 14(1) *Legal Education Review* 77.

³⁷ For example, DW Johnson and FP Johnson, *Joining Together Group Theory and Group Skills* (Allyn and Bacon, 1984).

³⁸ P Ramsden, *Learning to Teach in Higher Education* (Routledge, 1992) at 50.

³⁹ HS Barrows, 'A Taxonomy of Problem-based Learning Methods' (1986) *Medical Education* 20.

rather than overwhelming students with seemingly disparate elements of content, they learn to compartmentalise each step in the process of dispute resolution. The Interests Exploration Form is a valuable tool for breaking down the whole problem into meaningful components or steps.

4. Development of collaborative learning skills

As well as being able to learn independently, there is an increasing demand for professionals, ~~indeed all employees~~, to be ~~team players~~ able to communicate and work effectively with and learn from others.⁴⁰ Sizer explains the value to law students of acquiring collaborative problem solving skills in terms of real world demands.⁴¹ The workplace expects employees to collaborate and engage in collective solving of problems. Learning to get along, to function effectively in a group, is essential. Sizer notes that,

*Evidence and experience also strongly suggest that an individual's personal learning is enhanced by collaborative effort. The act of sharing ideas, of having to put one's own views clearly, of finding defensible compromises and conclusions, is in itself educative.*⁴²

By encouraging the students to collaborate and by providing an authentic basis for resolving the dispute, key elements of good teaching practice were targeted in the activity. Giving students a forum to reflect on their learning in this exercise, students were able to articulate their understanding of how these new skills would be applied in their practice as lawyers.

Conclusion

It is important for law students to appreciate that the intended outcomes of their study of all law subjects are not limited to passing exams and getting jobs. Those outcomes must include the acquisition of problem solving skills and an appreciation of their professional and ethical obligations to their clients and the courts.

⁴⁰ M McLaughlin, *Employability Skills Profile: What Are Employers Looking For?* (The Conference Board of Canada, 1992).

⁴¹ T Sizer, *Horace's School: Redesigning the American High School* (Houghton Mifflin, 1992) at 89.

⁴² T Sizer, *Horace's School: Redesigning the American High School* (Houghton Mifflin, 1992) at 89.

If law schools aim to produce graduates who are ready to practise law, then they need to ensure that the curriculum supports this intended outcome. The experience of resolving a legal dispute will increase students' confidence by highlighting their newly acquired legal knowledge and problem solving skills. Requiring that the students collaborate in the process of exploring their client's interests and sharing possible solutions to their client's problem, teaches the students the value of working in teams.

Designing law units that enable students to use their new knowledge and skills to solve authentic legal problems makes a substantial contribution to their preparation for legal practice. By giving students a chance to reflect on how they applied their new skills and articulate their understanding, ensures that students will readily transfer these skills to practice.

In the context of modern civil practice and in light of the ethical and professional obligations imposed on legal practitioners, having the skills to solve a client's problems without resorting to fully contested adjudication is particularly valuable.

Table 1

Timing	Tutorial step	Key elements
First six weeks of semester	<p>Conceptual knowledge</p> <p>Students attended lectures and tutorials on:</p> <ul style="list-style-type: none"> • the rules for the conduct of litigation; • professional obligations imposed on lawyers to advise their clients of alternatives to fully contested adjudication; • negotiation theory, in particular different approaches to bargaining. 	<p>Professional obligations</p> <p>As well as acting in the best interests of their clients, lawyers briefed in civil disputes must advise their clients of alternatives to fully contested litigation.</p> <p>Negotiation theory</p> <ul style="list-style-type: none"> • Positional bargaining focuses on the strict legal rights of the client. • Principled bargaining considers non-legal interests of the parties including the preservation of the relationship, where possible.
Week before tutorial	<p>Briefing junior counsel</p> <p>Students were sent an email via online teaching portal informing them they were briefed to in a mock civil dispute.</p> <p>They were given:</p> <ul style="list-style-type: none"> • List of players • Plaintiff's summons • Chronology of agreed facts 	<p>Players</p> <ul style="list-style-type: none"> • Plaintiff – lessors – owners of supermarket • Defendant – lessees - operators of supermarket <p>Summons</p> <p>Seeks repossession of the supermarket</p> <p>Chronology</p> <ul style="list-style-type: none"> • Lease expired two years ago, but Defendant has been paying rent. • Parties agreed the Defendant had not missed a rental payment. • Defendant closed the supermarket for six weeks during the past year, but it had since reopened.

Timing	Tutorial step	Key elements
First 5 minutes	<p>Setting up</p> <p>Students were divided into two teams: Plaintiffs vs Defendants</p> <p>The two 'parties' were then divided into smaller groups of three or four students.</p> <p>Each group was given an 'Interests Exploration Form'.</p>	<ul style="list-style-type: none"> • By dividing the class down the middle into two teams, an adversarial format was imposed. • Allocating roles in this way encouraged students to align their legal advice to the interests of 'their client'. • The smaller groups enabled discussion and collaboration as the students tested their ideas with each other.
5 – 15 mins	<p>Interests Exploration Form</p> <p>Students were instructed to discuss and complete the Interests Exploration Form.</p> <p>Instead of focusing on their clients' strict legal rights, students were asked to consider their interests.</p>	<p>Types of interests</p> <ul style="list-style-type: none"> • Economic and non-economic interests/concerns of each party. • Economic and non-economic interests/concerns common to both
15 - 20 mins	<p>A student from each group stood and read out one or two interests their group had identified.</p>	<ul style="list-style-type: none"> • The students worked with the same set of agreed facts, but tended to prefer the interests of 'their client'.
20 - 30 mins	<p>Secret facts</p> <p>Students (in their role as counsel for their party) were provided with secret facts known only to their client.</p> <p>Tutors explained to students that often in civil disputes legally irrelevant but otherwise important information is often omitted from pleadings and affidavits.</p> <p>Based on this new information, students are asked to add any new interests to their Interests Exploration Form.</p>	<p>Plaintiff's secret facts</p> <ul style="list-style-type: none"> • While the supermarket was closed, the other shops in the centre were entitled to rental abatement under the terms of their leases. • While the supermarket was closed, the Plaintiff's income from the adjacent car park fell significantly. • It was a term of the lease that after the lease expired, the rent would be subject to market review and the Defendant would have first option to renew.

Timing	Tutorial step	Key elements
		<ul style="list-style-type: none"> • During the ‘expired’ period of the lease, the Defendant has been paying rent at a much higher than market rate. • During the time that the Defendant had been running the supermarket, the car park usage and income was higher than at any other time. <p>Defendant’s secret facts</p> <ul style="list-style-type: none"> • The supermarket closed because the Defendant’s 9 year old daughter had been very sick, but since recovered. • The Defendant was willing to compensate the Plaintiff for any loss to the Plaintiff caused by the closure of the supermarket.
30 - 35 mins	Students from each team take turns reading out their secret facts and any new interests they had identified.	<ul style="list-style-type: none"> • A marked shift occurred in both teams of students in all tutorial classes. • For the first time, empathy featured on both sides of the dispute. The Defendant’s team learned for the first time about and were sorry for the Plaintiff’s lost income. The Plaintiff’s team learned for the first time about and were sorry for the Defendant’s daughter’s illness. • Students soon realised that this matter did not need to run to trial.
35 - 50 mins	<p>Problem solving</p> <p>Starting with the Plaintiff’s team, students are asked to suggest terms upon which the parties could resolve the dispute.</p> <p>During this process and without prompting, the students now have regard to both parties’ interests.</p>	<ul style="list-style-type: none"> • Some students astutely noted that if the car park had benefited from the Defendant’s occupation of the supermarket, then it is likely the other shops in the shopping centre were also benefitting. It was therefore in the Plaintiff’s best interests to renew the Defendant’s lease.

Timing	Tutorial step	Key elements
	<p>At the end of the problem solving exercise, students are told that by noon on the first day of what was set down to be a two-day hearing, the real matter settled on the same terms suggested by most of the students – that is:</p> <ol style="list-style-type: none"> 1. the original lease be renewed and rent set at the market rate; 2. extra rent paid by the Defendant (above the market rate) was retained by the Plaintiff to off-set the claims made by the other shops and the losses incurred to the car park. 	<ul style="list-style-type: none"> • Students suggested that had the Plaintiff sent to the Defendant a letter of demand for money to cover its losses, rather than a summons for possession, the matter would have been resolved much earlier and without the added burden and expense of briefing counsel. • Many students suggested that the lease could be formalised and continue. The extra rent that had been paid by the Defendant could be applied to compensate the Plaintiff for the losses caused by the closure of the supermarket.
35 - 50 mins	<p>Problem solving</p> <p>Starting with the Plaintiff’s team, students are asked to suggest terms upon which the parties could resolve the dispute.</p> <p>During this process and without prompting, the students now have regard to both parties’ interests.</p> <p>At the end of the problem solving exercise, students are told that by noon on the first day of what was set down to be a two-day hearing, the real matter settled on the same terms suggested by most of the students – that is:</p> <ol style="list-style-type: none"> 1. the original lease be renewed and rent set at the market rate; 2. extra rent paid by the Defendant (above the market rate) was retained by the Plaintiff to off-set the claims made by the other shops and the losses incurred to the car park. 	<ul style="list-style-type: none"> • Some students astutely noted that if the car park had benefited from the Defendant’s occupation of the supermarket, then it is likely the other shops in the shopping centre were also benefitting. It was therefore in the Plaintiff’s best interests to renew the Defendant’s lease. • Students suggested that had the Plaintiff sent to the Defendant a letter of demand for money to cover its losses, rather than a summons for possession, the matter would have been resolved much earlier and without the added burden and expense of briefing counsel. • Many students suggested that the lease could be formalised and continue. The extra rent that had been paid by the Defendant could be applied to compensate the Plaintiff for the losses caused by the closure of the supermarket.

Timing	Tutorial step	Key elements
50 – 60 mins	<p>Reflection and discussion</p> <p>Students were asked to consider the professional and ethical ramifications of the conduct of the lawyers on both sides.</p> <p>Tutors contributed here that unless parties attempt mediation, secret facts such as these rarely surface.</p> <p>Students were invited to reflect on how the exercise had changed their understanding of what lawyers do.</p>	<ul style="list-style-type: none"> • Some students looked back to the chronology of facts and criticised the Plaintiff's lawyer for filing the summons just one day after the expiry of the notice to quit. • Most students suggested that the Plaintiff's solicitor had likely failed to advise the Plaintiff of alternatives to litigation. • Most students spoke to the ethical shortcomings of the lawyers and the waste of time and money to their clients and the courts.

Table 2

Plaintiff's interests	Interests common to both	Defendant's interests
Financial or Commercial	Financial or Commercial	Financial or Commercial
Non-financial or Emotional	Non-financial or Emotional	Non-financial or Emotional

Teaching collaborative problem solving skills to law students

Abstract

This article describes and critically evaluates a collaborative dispute resolution activity conducted in a mid-degree law subject at an Australian university. Australian law degrees are required to be vocational. Teaching problem solving to law students is an effective way to impart key professional skills. However, it requires planning and preparation. It is therefore important to reflect on whether the aims of the activity have been achieved. In particular, three ideas about what constitutes good teaching are explored. The first is that good teachers do not simply deliver content - they give their students problems to solve. The second is the expectation employers have that law graduates will readily collaborate with their colleagues. Finally, by giving students an opportunity to reflect on what they have learned, students will transfer what they have understood and articulated to legal practice. By delineating each of these three teaching aims, it is possible to assess the value and effectiveness of the problem solving activity. This paper also reflects on the positive impact that is achieved when authentic and ethical legal processes are embedded into student-centered learning.

Introduction

Collaborative problem solving is at the heart of legal practice.¹ Embedding problem solving activities into tutorials enables law students to apply their new knowledge and skills to realistic scenarios. Researchers generally agree that across all disciplines, good teachers are concerned with developing students' problem solving skills.² At a time when technology continues to pose new opportunities for online learning,³ it is important for law schools to revisit the traditional classroom tutorial and explore fresh ideas for engaging with and empowering students. By embedding authentic legal processes into assessable tasks, law teachers can equip their students with key skills for legal practice.⁴

This article will describe a problem solving activity undertaken by the author's students in an assessable tutorial activity. The methodology will be explained with sufficient detail so that other law teachers may incorporate the exercise into their own units of study. The problem solving exercise required the students to find a way to resolve a civil dispute without resorting to fully contested litigation. The factual scenario upon which the dispute was based closely followed the facts and chronology of a real case. The value of presenting students with authentic problems and then giving them the skills and time to solve those problems will be explored. Finally, this article will reflect upon feedback received from some students who undertook the exercise.

In an attempt to bridge the gap between law school and practice, it is important for law students to appreciate that lawyers are primarily problem-solvers.⁵ In many cases (particularly in their early years of practice) lawyers work in teams. A willingness and ability to work cooperatively with others in the profession is essential.

Teaching collaborative problem solving skills to law students is directly relevant to the practice of law. This constructive alignment between what is learned and tested at university

¹ S Nathanson, *What Lawyers Do: A Problem solving Approach to Legal Practice 4* (Sweet & Maxwell, 1997) at 2-12.

² P Ramsden, D Margetson, E Martin, & S Clarke, 'Recognising and rewarding good teaching' (1995) Canberra: AGPS at 24, <http://online.anu.edu.au/caut/commproject/rrgt/Chapter2.html#2.6>.

³ S Colbran and A Gilding, 'Exploring legal ethics using student generated storyboards' (2014) 48:3 *The Law Teacher* 296-320 at 296.

⁴ R Mitchell and M Nakhleh, 'Concept Learning Versus Problem Solving: There is A Difference' (1993) 70(3) *Journal of Chemical Education* 190.

⁵ S Nathanson, *What Lawyers Do: A Problem solving Approach to Legal Practice 4* (Sweet & Maxwell, 1997) at x (preface).

with what is needed in legal practice is the key to ensuring that students are work-ready.⁶ Work-readiness should be an intended outcome for all law schools. This can only be achieved if the units of study are designed to model the practice of law in a realistic and ethical way. More specifically and of particular interest to designers of civil procedure units, lawyers who practice in civil courts across all jurisdictions in Australia are required to explore alternatives to fully-contested litigation.⁷

The interplay of the rules and regulations of practice means that students must approach civil litigation wearing a non-adversarial hat. However, some students come to the study of law (in particular, civil practice) with preconceived notions of what a lawyer does. They imagine that litigators are rewarded for winning cases run in court before a judge.⁸ For most Australian practitioners, this is not the case. Civil disputes can be settled by agreement between the parties involved.⁹ Indeed, more than 90% of all civil cases in New South Wales settle before trial.¹⁰ If the parties can reach a settlement there is no need for a court hearing. It impressed upon them that it is in the best interests of their client to regard litigation as a last resort, when all attempts to resolve the matter have failed.

⁶ Adopting the language of Biggs, 'constructive alignment' is a teaching methodology, which supports the intended learning outcomes. See J Biggs, 'Teaching Through Constructive Alignment' (1996) 32.3 *Higher Education* 347 at 350; see also, J Biggs, *Teaching for Quality Learning at University* (Open University Press, 1999).

⁷ This requirement applies to barristers and solicitors. For example, Rule 38 of the *New South Wales Barristers' Rules 2014* provides that 'A barrister must inform the client or the instructing solicitor about the alternatives to fully contested adjudication of the case which are reasonably available to the client'. The corresponding requirement under Rule 7.2 the *New South Wales Solicitors' Rules*, is framed in almost identical terms. Under section 498(1) of the *Legal Profession Act 2004* (NSW), a contravention of the solicitors' or barristers' rules may amount to unprofessional conduct or professional misconduct.

⁸ This thinking is not entirely without justification. Contingency fees are common in some American jurisdictions, particularly in personal injury cases.

⁹ Where parties agree on a settlement, they should put their agreement in writing and each party should sign the agreement. This type of agreement is called 'terms of settlement' or 'consent orders' (Source: Settling a civil case retrieved on 7 April 2015 from http://www.courts.justice.nsw.gov.au/cats/courtguide/during_court/civil_settlement.html).

¹⁰ In 2013, more than 50% of civil cases in the Supreme Court settled at the court-referred mediation. Many more settled before trial. The registry does not collect settlement data for mediations conducted by private mediators. Source: Supreme Court of New South Wales provisional statistics as at 24 January 2014, retrieved on 7 April 2015, from [http://www.lawlink.nsw.gov.au/practice_notes/nswsc_pc.nsf/e154dd079de60d044a2565fa0012aa89/192ee598ebf29c6cca257c6e0010f070/\\$FILE/AR_2013_prov_stats.pdf](http://www.lawlink.nsw.gov.au/practice_notes/nswsc_pc.nsf/e154dd079de60d044a2565fa0012aa89/192ee598ebf29c6cca257c6e0010f070/$FILE/AR_2013_prov_stats.pdf).

It is a key requirement in all civil procedure courses that law students appreciate the obligations imposed on all legal practitioners to solve their clients' problems at a minimum cost to all parties and the courts. For some students, this proposition is novel (and perhaps a little disappointing). The cognitive shift that law students must undergo (in this and other subjects) is best achieved by providing them with the tools to test their old and new knowledge in a practical and meaningful way. Cognitive shift is a key feature of learning.¹¹ Problem solving is an essential vehicle for students to explore different approaches to achieve a range of positive outcomes. Students who are provided with a learning goal (for example, a problem to solve) demonstrate higher comprehension monitoring and more constructive collaborative engagement.¹² As well as knowledge of the law, it is expected that practitioners in civil cases will be armed with negotiation theory and fundamental mediation skills. It is therefore important for law schools to ensure that their students graduate with these attributes.

This article explores the learning outcomes achieved in a compulsory problem solving activity that was introduced to a second year law tutorial program. The exercise took the form of an authentic dispute resolution process, based on a real set of facts, in which the author acted for the Defendant.

The problem solving activity

The particular problem presented to the students involved a civil dispute that was listed for hearing and ready to be heard in the Supreme Court of New South Wales.

By working through the facts and applying their newly-acquired negotiation skills, students were asked to find a way to resolve the dispute between the parties so as to achieve their clients' desired outcomes, while also preserving the parties' business relationship.¹³

In the real case, the author (who was then practising at the New South Wales Bar) was briefed on short notice to appear for the Defendant in a suit for possession. The Plaintiffs

¹¹ Deep reasoning and learning that is stimulated by problems that create cognitive disequilibrium, such as obstacles to goals, contradictions, conflict, and anomalies. Cognitive disequilibrium is a key heuristic for promoting learning. See generally, PH Winne and JC Nesbit, 'The Psychology of Academic Achievement' (2010) 61 *Annu Rev Psych* 653-678 at 656.

¹² AJ Gabriele, 'The influence of achievement goals on the constructive activity of low achievers during collaborative problem solving' (2007) 77 *Br J Educ Psychol* 121-41.

¹³ About 900 hundred students undertook the activity over the period of two years, but this article will reflect on the experience of just the 280 students who undertook the activity in tutorials facilitated by the author.

were the owners of a supermarket and they wanted to evict the Defendants (who continued to occupy the supermarket long after the lease had expired). Using the key elements of that case,¹⁴ the students were divided into teams of junior barristers acting either for the Plaintiffs or the Defendants. They were given a page of ‘agreed facts’ and some initial instructions a week before the tutorial (via an online teaching portal). On the day of the tutorial, they received further instructions. This last-minute provision of further instructions to junior counsel is realistic and reflects the urgency and pressure of practice at the Bar. The facts and timeline imposed on the students matched the pace of the real events upon which this scenario was based.

The students arrived at the tutorial armed with newly acquired knowledge of civil procedure rules and some negotiation theory. This content had been delivered in lectures the week before the problem solving activity. The tutorial was structured to mirror the way that a typical morning in court would unfold.

Methodology

In classes of 35, more than 280 students undertook the problem solving activity in a one-hour tutorial.¹⁵ Table 1 sets out in detail the timing and content of each step in the activity. In summary, the tutorial started with each class divided into two ‘teams’ – imposing an adversarial format aligning the students’ interests to ‘their client’. During an extended buzz session, the teams readily identified their client’s strict legal rights. Half way through the tutorial, new facts were introduced to each team. The new facts were the type of information that is often regarded as irrelevant in litigation, but would be revealed and regarded as important during negotiation. As the teams considered and then revealed the secret facts, students suggested terms upon which the parties could resolve the dispute and most found a way for the commercial arrangement to be preserved for the benefit of both sides.

Interests Exploration Forms

A useful device in the resolution of the dispute was the identification by both teams of the parties’ interests (both legal and non-legal). Early in the exercise, students were provided

¹⁴ Places, names and dates were changed so as to conceal the identity of the players and thereby preserve the confidence of the parties to the real dispute.

¹⁵ The students were enrolled in a core second year law subject at an Australian university. Civil Practice is taught in all Australian law schools (sometimes under the banner ‘Civil Procedure’).

with an 'Interests Exploration Form'. On a single page, students were asked to confer in small groups and list what they thought were the financial and commercial or non-financial and emotional interests of the parties. Table 2 is a sample Interests Exploration Form.

Identifying parties' interests, facilitating parties' negotiations and helping them generate proposals for settlement are fundamental steps in resolving conflict.¹⁶ In order to discharge their obligation to advise their clients in relation to settlement prospects, lawyers focus on a variety of interests - substantive interests and issues, needs and positions, procedural concerns, or more rarely on their client's psychological conditions.¹⁷ Golann argues that interest-based negotiation remains one of the most valuable concepts in dispute resolution. A key technique to facilitate interest-based bargaining is to depart from discussion of money and legal interests from time to time during the process of negotiation and invite the parties to disclose their other hidden or underlying interests.¹⁸

It is also important for students to appreciate that for their clients to resort to litigation is often viewed as an irreparable breach of the relationship between the parties.¹⁹ This negative by-product of the dispute could be more expensive than the subject matter of the dispute, rendering Pyrrhic any victory. Moore notes that identifying a joint problem and reducing it to writing for the parties "enables negotiators to commit to work on a common problem because they believe that their needs will be respected, if not met by, the solutions that will be developed."²⁰

During the problem-solving exercise, students were provided with guidance from their tutors as to what is meant by each of the different types of interests. For example, financial interests may be purely monetary, while commercial interests can include goodwill and reputation. Non-financial interests may overlap with commercial interests, but tend to be more personal.

¹⁶ C Moore, *The Mediation Process: Practical Strategies for Resolving Conflict*, 2nd edn (Jossey-Bass Publishers, 1996) at 161.

¹⁷ C Moore, *The Mediation Process: Practical Strategies for Resolving Conflict*, 2nd edn (Jossey-Bass Publishers, 1996) at 209.

¹⁸ D Golann, 'Beyond Brainstorming: The Special Barriers to Interest-Based Mediation, and Techniques to Overcome Them' (2011) 18.1 *Dispute Resolution Magazine* 22-26.

¹⁹ M Galanter, 'Reading the Landscape of Disputes: What We Know and Don't Know (And Think We Know) About Our Allegedly Contentious And Litigious Society' (1983) 31 *UCLA L Rev* 4 at 25.

²⁰ C Moore, *The Mediation Process: Practical Strategies for Resolving Conflict*, 2nd edn (Jossey-Bass Publishers, 1996) at 243.

Most students recognised that both parties would have an emotional interest in avoiding the unwelcome stress that accompanies litigation.

Disclosing and then clarifying hidden or underlying interests requires that lawyers engender in their clients a positive attitude towards the resolution process. Teaching these concepts and related skills to students is best achieved through authentic modelling.

Authenticity

This activity featured many of the elements characterised as authentic. Herrington et al define authentic activities as tasks that have real-world relevance and utility and provide appropriate levels of complexity so that students can select their level of involvement.²¹ Bransford, Vye et al suggest that by giving students problems that are open to multiple interpretations allows them to investigate different solutions.²² These characteristics were used to create a case for investigation that would develop meaningful and practical skills. Students were told that the scenario was based closely on a real case.²³ This gave the activity Herringtons 'real-world relevance'. Some aspects of the tasks were consciously ill-defined, so that students had to work out their own unique sub-tasks in order to complete the activity. Sub-tasks included making lists of questions lawyers should ask their client in order to disclose their hidden or underlying interests and to provide more comprehensive and commercial advice.

Collaborative discussion

The collaborative discussion time gave students the opportunity to examine the task from different perspectives. The Interests Exploration Form (Table 2) specifically required the students to list all of their opponents' interests and rights. By splitting the class into two halves and allocating to one side the role of Plaintiff and to the other the Defendant's position, the students were physically positioned as if at the Bar table in a courtroom, appearing for their clients. This activity encouraged students to devise creative solutions and

²¹ J Herrington, T Reeves and R Oliver, 'Authentic Tasks Online: A Synergy among Learner, Task, and Technology' (August 2006) 27(2) *Distance Education* 233–247 at 236-237.

²² JD Bransford, N Vye, C Kinzer and V Risko, 'Teaching thinking and content knowledge: Toward an integrated approach' in BF Jones & L Idol (Eds) *Dimensions of thinking and cognitive instruction* (Lawrence Erlbaum Assocs, 1990) at 381-413.

²³ In their anonymous Student Feedback Surveys, students expressed appreciation for the 'real life' scenario upon which the problem was based. Comments included: *We used real life examples to illustrate concepts*; and *Bringing the tutor's own experience to the tutorial was of great help*.

a diversity of outcomes. Students were not confined to finding just one right answer or a simple truth.

Some aspects of the process were complex and required that the students investigate alternative approaches to resolving the dispute. The students' investigations were helpfully informed by their completed Interests Exploration Forms; forms that had been completed in teams and so included ideas that reflected a collaborative effort. For example, students had regard to the commercial, non-economic and personal cost of not only the litigation but the loss of the business relationship, rather than simply balancing the parties' strict legal rights.

By withholding from each 'party' certain facts that were known only to the other, the students had to use their common sense and think commercially about the challenges facing their client and their opponent's client.²⁴ Tutors explained to the students that the delayed disclosure of important and useful information is realistic and often happens in litigation. Sometimes, it is only when one of the parties or their witness is under cross-examination that key facts emerge, often when it is too late to save the relationship between the parties.

The important shift in dynamic that gave rise to empathy during the activity occurred organically and was the most transformative aspect of the exercise. Cain argues that if law schools are to produce good lawyers, they must train students to effectively and intelligently interact with people on an emotional basis.²⁵ This transformation – from thinking critically to also responding empathetically - not only informs the value of asking questions and having regard to key ethical considerations, but also empowers students with practical problem solving skills that will be useful for their future as legal practitioners.

Observable achievements and outcomes

At the end of the activity, three questions were put to the students in order to assess what they had achieved and learned in the tutorial.

- What questions could the lawyers have asked their clients in their first meeting in order to resolve the dispute more quickly? Most students were able to think of at least six questions that would have directed to the parties towards a negotiated settlement.

²⁴ For example, if the Plaintiff succeeded in an application for possession, at what cost would the current tenant be evicted and replaced with a new tenant?

²⁵ PJ Cain, 'A First Step toward Introducing Emotional Intelligence into the Law School Curriculum: The Emotional Intelligence and the Clinic Student Class' (2003) 14(1) *Legal Education Review* 1.

- What ethical and professional challenges did the lawyers face during the negotiation process? In addition to simply identifying a failure to attempt negotiation, nearly all students were able to identify the paradox that sometimes the rules by which lawyers practice are inconsistent with their duty to their client.
- How did this activity change your perception of how civil disputes can be resolved? Most students responded that for the first time, they could see how acting in their client's best interest will involve problem-solving, as well as advocacy.

Student reflection and feedback

At the end of the exercise, the students spent some time reflecting on its outcome and possible consequences for the practitioners had the matter not settled. Students identified that the Plaintiff's lawyer was in breach of some fundamental ethical obligations to the client and the court, which could give rise to costs orders against him/her personally. A number of students gave unsolicited spontaneous feedback at the end of the tutorial that was very positive, particularly in relation to the experience of applying their new skills and the value of alternative dispute resolution.

Throughout the unit of study, students were invited to present reflective statements in their tutorials. The reflective statements were assessable and worth 5% of the final mark in the subject. The reflective statement is based on any subject-related content or activity. A number of students speak to the problem-solving tutorial activity. For some students, presenting reflective statements was a novel activity. The concept of reflection as part of their learning is imposed on students, so as to make them aware of the importance of reflection as a means of enhancing and consolidating their learning.²⁶ Their reflections gave them the opportunity to articulate and share with the class what skills they acquired and processes they understood as a result of undertaking the dispute resolution activity. This reflection also assists students in their subsequent transition to legal practice and legal-specific problem solving situations.²⁷ Most of the students who presented reflective statements identified the specific elements of the dispute resolution process, including clear statements of negotiation theory. All students reflected on the new skills they had acquired and their conception of how they will apply

²⁶ See generally, F Martin, 'Teaching Legal Problem Solving: A Problem-based Learning Approach Combined with a Computerised Generic Problem' (2003) 14(1) *Legal Education Review* 77.

²⁷ F Martin, 'Teaching Legal Problem Solving: A Problem-based Learning Approach Combined with a Computerised Generic Problem' (2003) 14(1) *Legal Education Review* 77 at 80.

those skills in their practice as lawyers. Iucu and Marin argue self-assessment is an important element in any problem-solving exercise. By reflecting on the process and outcomes, students identify the real-world challenge as its own criterion for success. Students can then hold themselves accountable for achieving a milestone that practitioners would have to meet under genuine working conditions.²⁸

Finally, at the end of the semester, some students commented on the problem-solving activity in their anonymous student feedback surveys. The comments from students were wholly positive and all students articulated that they had experienced a cognitive shift in their understanding of what lawyers do, specifically in relation to advising their clients and discharging their obligation to explore non-litigious paths to resolving their clients' disputes. Some of those comments are extracted here:

The negotiation activity was a great problem solving exercise for us to do. It created a highly engaging class dynamic, as well as addressing the curriculum and targeting oral communication skills.

The negotiation activity taught me a great deal about approaching practice generally.

The best tutorial we had was the dispute resolution exercise. [It provided an] excellent balance between theory and practical application of subject content.

The tutorials were amazing. Negotiation exercise is a must keep, it was so helpful in my understanding as to how a contention among parties can be settled.

Rather than talking about the lecture material we did tasks that built on the theory or made things practical, e.g. the dispute resolution exercise. I found this exercise really interesting and valuable in allowing me to develop insight as to how to negotiate and approach a dispute.

The negotiation activity was very interesting and it made the material more relevant.

²⁸ RB Iucu and E Marin, 'Authentic Learning in Adult Education' (2014) 142 *Procedia - Social and Behavioral Sciences* (2014) 410 -415 at 411.

A few students suggested that the activity would be improved if the time allocated for the tutorial has been increased to 90 minutes or even 2 hours.²⁹ In response to this suggestion, the course has been redesigned so that instead of twelve one-hour tutorials, students now undertake eight two-hour tutorials. While some tutorials now cover two activities, the problem-solving exercise is allocated a full two hours.

Challenges

Conducting this problem-solving activity presents two main challenges.

Firstly, it is important to ensure that all students actively participate and are given an equal opportunity to be heard. There are a number of reasons why some students may be reluctant to participate in a group activity, including lack of preparation; lack of confidence; or an expectation of dependence on the tutor.³⁰ In a class of 35 students divided into two 'teams', levels of participation can be difficult to monitor. A possible solution is to divide the teams into smaller pairs or threes for initial 'buzz sessions'³¹ and then ask the groups to pool their ideas with each other. However, finding additional time for preliminary discussion comes at the cost of precious time needed elsewhere in the activity.

The second challenge lies in determining how much material to provide to the students. The problem must be ill-defined enough to allow students room to explore possible solutions, but not so ill-defined that the problem seems or is unsolvable. There is a balance to be struck here. If the problem is too clearly explained, the scope for exploring sub-tasks will contract, detracting from the authenticity of the exercise. Teachers are not just information providers. They must also guide, scaffold and facilitate student learning.³² The challenge is not just to create an environment that encourages learning, but also to pose questions that generate analysis. According to Wagner, students are motivated to learn when their "learning is hands-on and more personalised with the result that students perform real-world tasks and produce public products that reflect who they are and what they believe and care about".³³

²⁹ For example, two of the comments: *A longer tutorial e.g. 1.5/2 hours would be preferable to a 2 hour lecture ... there was very little time left to engage with content as much as could have been done ... it would be less rushed and better if we were able to have more time overall in tutorial format; and I only wish that our tutorials had been longer!*

³⁰ SW Fraser, 'Coping with complexity: educating for capability' (2001) 232(7316) *BMJ* 799-803 at 801.

³¹ SW Fraser, 'Coping with complexity: educating for capability' (2001) 232(7316) *BMJ* 799-803 at 802.

³² RB Iucu and E Marin, 'Authentic Learning in Adult Education' (2014) 142 *Procedia - Social and Behavioral Sciences* (2014) 410 -415 at 411.

³³ T Wagner, *The Global Achievement Gap* (Basic Books 2008).

Empowering elements of the dispute resolution activity

As well as encouraging learning for understanding (which includes developing students' problem solving skills), Ramsden et al argue that other indicia of good teaching include enthusiasm, recognising the importance of context, transforming and extending students' knowledge, and setting clear goals for students.³⁴ As Martin observes, there are four key learning outcomes achieved when law students undertake problem-solving activities.³⁵

1. The development of decision-making skills

Law students need to become familiar with the complex skills used in making and implementing decisions.³⁶ This is an essential aspect of professional practice if practitioners are to meet their clients' goals.³⁷ By undertaking a dispute resolution activity, students are required to make decisions, including what questions to ask their clients, how best to advise them and the terms upon which the dispute might be resolved.

2. Problem solving contextualises learning

Real-life problems become tools for learning through which students are exposed to the various stages of problem solving and given an opportunity to practise their problem solving skills, while they acquire substantive contextualised knowledge. This context includes discharging the ethical and professional obligations that lawyers owe to their clients and to the courts. Where those duties seem to conflict, the students must decide which obligations prevail. The dispute resolution activity is conducted in the second half of the course to ensure that all students have been taught all relevant content, including statutory and professional obligations in the conduct of practice, advice and advocacy.

3. The development of student autonomy

³⁴ P Ramsden, D Margetson, E Martin, & S Clarke, 'Recognising and rewarding good teaching' (Canberra: AGPS, 1995) at 24..

³⁵ The following four indicia of key learning outcomes achieved when law students engage with dispute resolution are taken from F Martin, 'Teaching Legal Problem Solving: A Problem-based Learning Approach Combined with a Computerised Generic Problem' (2003) 14(1) *Legal Education Review* 77.

³⁶ For example, DW Johnson and FP Johnson, *Joining Together Group Theory and Group Skills* (Allyn and Bacon, 1984).

³⁷ P Ramsden, *Learning to Teach in Higher Education* (Routledge, 1992) at 50.

The ability to direct and evaluate one's own learning allows students to become aware of their personal learning needs and strategies; and to locate and effectively utilise appropriate information sources.³⁸ Problem solving activities such as this ensure that rather than overwhelming students with seemingly disparate elements of content, they learn to compartmentalise each step in the process of dispute resolution. The Interests Exploration Form is a valuable tool for breaking down the whole problem into meaningful components or steps.

4. Development of collaborative learning skills

As well as being able to learn independently, there is an increasing demand for professionals to be able to communicate and work effectively with and learn from others.³⁹ Sizer explains the value to law students of acquiring collaborative problem solving skills in terms of real world demands.⁴⁰ The workplace expects employees to collaborate and engage in collective solving of problems. Learning to get along, to function effectively in a group, is essential. Sizer notes that,

*Evidence and experience also strongly suggest that an individual's personal learning is enhanced by collaborative effort. The act of sharing ideas, of having to put one's own views clearly, of finding defensible compromises and conclusions, is in itself educative.*⁴¹

By encouraging the students to collaborate and by providing an authentic basis for resolving the dispute, key elements of good teaching practice were targeted in the activity. Giving students a forum to reflect on their learning in this exercise, students were able to articulate their understanding of how these new skills would be applied in their practice as lawyers.

Conclusion

It is important for law students to appreciate that the intended outcomes of their study of all law subjects are not limited to passing exams and getting jobs. Those outcomes must include

³⁸ HS Barrows, 'A Taxonomy of Problem-based Learning Methods' (1986) *Medical Education* 20.

³⁹ M McLaughlin, *Employability Skills Profile: What Are Employers Looking For?* (The Conference Board of Canada, 1992).

⁴⁰ T Sizer, *Horace's School: Redesigning the American High School* (Houghton Mifflin, 1992) at 89.

⁴¹ T Sizer, *Horace's School: Redesigning the American High School* (Houghton Mifflin, 1992) at 89.

the acquisition of problem solving skills and an appreciation of their professional and ethical obligations to their clients and the courts.

If law schools aim to produce graduates who are ready to practise law, then they need to ensure that the curriculum supports this intended outcome. The experience of resolving a legal dispute will increase students' confidence by highlighting their newly acquired legal knowledge and problem solving skills. Requiring that the students collaborate in the process of exploring their client's interests and sharing possible solutions to their client's problem, teaches the students the value of working in teams.

Designing law units that enable students to use their new knowledge and skills to solve authentic legal problems makes a substantial contribution to their preparation for legal practice. By giving students a chance to reflect on how they applied their new skills and articulate their understanding, ensures that students will readily transfer these skills to practice.

In the context of modern civil practice and in light of the ethical and professional obligations imposed on legal practitioners, having the skills to solve a client's problems without resorting to fully contested adjudication is particularly valuable.

Table 1

Timing	Tutorial step	Key elements
<p>First six weeks of semester</p>	<p>Conceptual knowledge</p> <p>Students attended lectures and tutorials on:</p> <ul style="list-style-type: none"> • the rules for the conduct of litigation; • professional obligations imposed on lawyers to advise their clients of alternatives to fully contested adjudication; • negotiation theory, in particular different approaches to bargaining. 	<p>Professional obligations</p> <p>As well as acting in the best interests of their clients, lawyers briefed in civil disputes must advise their clients of alternatives to fully contested litigation.</p> <p>Negotiation theory</p> <ul style="list-style-type: none"> • Positional bargaining focuses on the strict legal rights of the client. • Principled bargaining considers non-legal interests of the parties including the preservation of the relationship, where possible.
<p>Week before tutorial</p>	<p>Briefing junior counsel</p> <p>Students were sent an email via online teaching portal informing them they were briefed to in a mock civil dispute.</p> <p>They were given:</p> <ul style="list-style-type: none"> • List of players • Plaintiff's summons • Chronology of agreed facts 	<p>Players</p> <ul style="list-style-type: none"> • Plaintiff – lessors – owners of supermarket • Defendant – lessees - operators of supermarket <p>Summons</p> <p>Seeks repossession of the supermarket</p> <p>Chronology</p> <ul style="list-style-type: none"> • Lease expired two years ago, but Defendant has been paying rent. • Parties agreed the Defendant had not missed a rental payment. • Defendant closed the supermarket for six weeks during the past year, but it had since reopened.

Timing	Tutorial step	Key elements
First 5 minutes	<p>Setting up</p> <p>Students were divided into two teams: Plaintiffs vs Defendants</p> <p>The two ‘parties’ were then divided into smaller groups of three or four students.</p> <p>Each group was given an ‘Interests Exploration Form’.</p>	<ul style="list-style-type: none"> • By dividing the class down the middle into two teams, an adversarial format was imposed. • Allocating roles in this way encouraged students to align their legal advice to the interests of ‘their client’. • The smaller groups enabled discussion and collaboration as the students tested their ideas with each other.
5 – 15 mins	<p>Interests Exploration Form</p> <p>Students were instructed to discuss and complete the Interests Exploration Form.</p> <p>Instead of focusing on their clients’ strict legal rights, students were asked to consider their interests.</p>	<p>Types of interests</p> <ul style="list-style-type: none"> • Economic and non-economic interests/concerns of each party. • Economic and non-economic interests/concerns common to both
15 - 20 mins	<p>A student from each group stood and read out one or two interests their group had identified.</p>	<ul style="list-style-type: none"> • The students worked with the same set of agreed facts, but tended to prefer the interests of ‘their client’.
20 - 30 mins	<p>Secret facts</p> <p>Students (in their role as counsel for their party) were provided with secret facts known only to their client.</p> <p>Tutors explained to students that often in civil disputes legally irrelevant but otherwise important information is often omitted from pleadings and affidavits.</p> <p>Based on this new information, students are asked to add any new interests to their Interests Exploration Form.</p>	<p>Plaintiff’s secret facts</p> <ul style="list-style-type: none"> • While the supermarket was closed, the other shops in the centre were entitled to rental abatement under the terms of their leases. • While the supermarket was closed, the Plaintiff’s income from the adjacent car park fell significantly. • It was a term of the lease that after the lease expired, the rent would be subject to market review and the Defendant would have first option to renew.

Timing	Tutorial step	Key elements
		<ul style="list-style-type: none"> • During the ‘expired’ period of the lease, the Defendant has been paying rent at a much higher than market rate. • During the time that the Defendant had been running the supermarket, the car park usage and income was higher than at any other time. <p>Defendant’s secret facts</p> <ul style="list-style-type: none"> • The supermarket closed because the Defendant’s 9 year old daughter had been very sick, but since recovered. • The Defendant was willing to compensate the Plaintiff for any loss to the Plaintiff caused by the closure of the supermarket.
30 - 35 mins	Students from each team take turns reading out their secret facts and any new interests they had identified.	<ul style="list-style-type: none"> • A marked shift occurred in both teams of students in all tutorial classes. • For the first time, empathy featured on both sides of the dispute. The Defendant’s team learned for the first time about and were sorry for the Plaintiff’s lost income. The Plaintiff’s team learned for the first time about and were sorry for the Defendant’s daughter’s illness. • Students soon realised that this matter did not need to run to trial.
35 - 50 mins	<p>Problem solving</p> <p>Starting with the Plaintiff’s team, students are asked to suggest terms upon which the parties could resolve the dispute.</p> <p>During this process and without prompting, the students now have regard to both parties’ interests.</p>	<ul style="list-style-type: none"> • Some students astutely noted that if the car park had benefited from the Defendant’s occupation of the supermarket, then it is likely the other shops in the shopping centre were also benefitting. It was therefore in the Plaintiff’s best interests to renew the Defendant’s lease.

Timing	Tutorial step	Key elements
	<p>At the end of the problem solving exercise, students are told that by noon on the first day of what was set down to be a two-day hearing, the real matter settled on the same terms suggested by most of the students – that is:</p> <ol style="list-style-type: none"> 1. the original lease be renewed and rent set at the market rate; 2. extra rent paid by the Defendant (above the market rate) was retained by the Plaintiff to off-set the claims made by the other shops and the losses incurred to the car park. 	<ul style="list-style-type: none"> • Students suggested that had the Plaintiff sent to the Defendant a letter of demand for money to cover its losses, rather than a summons for possession, the matter would have been resolved much earlier and without the added burden and expense of briefing counsel. • Many students suggested that the lease could be formalised and continue. The extra rent that had been paid by the Defendant could be applied to compensate the Plaintiff for the losses caused by the closure of the supermarket.
35 - 50 mins	<p>Problem solving</p> <p>Starting with the Plaintiff’s team, students are asked to suggest terms upon which the parties could resolve the dispute.</p> <p>During this process and without prompting, the students now have regard to both parties’ interests.</p> <p>At the end of the problem solving exercise, students are told that by noon on the first day of what was set down to be a two-day hearing, the real matter settled on the same terms suggested by most of the students – that is:</p> <ol style="list-style-type: none"> 1. the original lease be renewed and rent set at the market rate; 2. extra rent paid by the Defendant (above the market rate) was retained by the Plaintiff to off-set the claims made by the other shops and the losses incurred to the car park. 	<ul style="list-style-type: none"> • Some students astutely noted that if the car park had benefited from the Defendant’s occupation of the supermarket, then it is likely the other shops in the shopping centre were also benefitting. It was therefore in the Plaintiff’s best interests to renew the Defendant’s lease. • Students suggested that had the Plaintiff sent to the Defendant a letter of demand for money to cover its losses, rather than a summons for possession, the matter would have been resolved much earlier and without the added burden and expense of briefing counsel. • Many students suggested that the lease could be formalised and continue. The extra rent that had been paid by the Defendant could be applied to compensate the Plaintiff for the losses caused by the closure of the supermarket.

Timing	Tutorial step	Key elements
50 – 60 mins	<p>Reflection and discussion</p> <p>Students were asked to consider the professional and ethical ramifications of the conduct of the lawyers on both sides.</p> <p>Tutors contributed here that unless parties attempt mediation, secret facts such as these rarely surface.</p> <p>Students were invited to reflect on how the exercise had changed their understanding of what lawyers do.</p>	<ul style="list-style-type: none"> • Some students looked back to the chronology of facts and criticised the Plaintiff’s lawyer for filing the summons just one day after the expiry of the notice to quit. • Most students suggested that the Plaintiff’s solicitor had likely failed to advise the Plaintiff of alternatives to litigation. • Most students spoke to the ethical shortcomings of the lawyers and the waste of time and money to their clients and the courts.

Table 2

Plaintiff’s interests	Interests common to both	Defendant’s interests
Financial or Commercial	Financial or Commercial	Financial or Commercial
Non-financial or Emotional	Non-financial or Emotional	Non-financial or Emotional