

WAYS TO MAKE THE TEACHING OF PROPERTY/LAND LAW MORE INTERESTING[†]

MICHAEL WEIR*

THE CHALLENGE OF TEACHING PROPERTY LAW

For many students the study of property law can be problematic. That means it is sometimes a problem for the lecturer. Property lawyers revel in the medieval; the arcane, the convoluted but fundamental concepts that abound in property law. We simply look around us and see property law manifested in the chair we sit on, the building we sit in, the airspace we occupy and the tender security that Torrens title registration usually provides to us, not to mention the fascination that awaits the next High Court case on native title or the latest pronouncement on the mortgagee's duty on sale. A student may not share our enthusiasm. Each class contains a few converts who are in the awe of the beauty of the historical sweep of the feudal origins of the doctrine of tenure or the practical value of learning about easements and leases. Many students struggle with property law. This might be the result of issues like these:

- Property involves concepts such as equitable title, doctrine of estates, indefeasibility, and even what is a lease, that are foreign from a student's everyday life.
- Some students may not have studied equity when they attempt property/land law which means they may have a limited understanding of equitable concepts that are so important to the understanding of many property law concepts.
- Students understand what a layperson may think is property, but we ask them to understand that you don't own the property itself but that you have an interest or an estate in property such as a fee simple or possessory interest. Even the concept of interests in personal property is in terms of relativity of title, or who has the best right to possession?
- Property law relies upon medieval concepts and devices such as the doctrine of estates and the doctrine of tenure that is still fundamental today.¹
- The concept of fragmentation of proprietary interests (that more than one interest in same property can be held at same time) is a concept that is often difficult to grasp.

[†] Based on a paper delivered to the Australasian Property Law Teachers' Conference, Vanuatu, 9-11 December 2005.

* Professor, Faculty of Law, Bond University.

¹ For example, in Queensland a fee simple is technically held 'in free and common socage without incident of tenure' (s 20 *Property Law Act 1974* (Qld)).

- The topic of native title is difficult to place within western concepts of property though it provides a wealth of opportunity for interesting comparisons and contrasts.
- Many students have never signed, seen or properly understood an easement, lease, mortgage or fee simple interest. As a result they lack a context for learning. This is less of a problem for mature age students who at least may have taken out a lease or signed a mortgage.

EDUCATING GENERATION X AND Y

Increasingly as teachers we need to be aware of the changing perspectives of the students we teach. Of course this applies to all teachers. Soon students will primarily be those born in the 1990's; generation Y children of generation X. This will impact on how they view the world and how they want to be educated.² For example it should be understood:

- They will have been involved with computers, the internet, mobile phones and modern technology all their life.
- They will see the source of wisdom is not books but the internet.
- They may be impacted by post modernism through their parents, which means there may be a discernable break down in prestige of authority (the property law teacher).

If education does not provide a multi media connection with students will they be interested and encouraged to learn?

LEARNING STYLES

These issues require property law teachers to carefully consider how best to educate the next generation of law students. Students will of course learn in different ways depending on their particular learning style. There are a number of different theories³ but one categorisation proffered by Kolb describes four stages of learning:⁴

- Concrete experience; learner reliance on personal insight and feelings.
- Reflective observation; learning by watching, listening and considering different perspectives.
- Abstract conceptualisation; development of ideas and use of logic.

² Read generally Peter Sheahan, *Generation Y* (2005).

³ Le Brun and Johnstone, *The Quiet Revolution* (1994) 77-78.

⁴ *Ibid* 78.

- Active experimentation; a practical and active approach to learning. Learning by doing.

Kolb suggests that persons learn most effectively when they move through the four stages of the cycle though there is a tendency for many learners to favour particular stages. This allows Kolb to describe four learning styles as follows:⁵

- *Accommodators* are learners who enjoy concrete experience and active experimentation. They revel in challenges and hands-on experience.
- *Assimilators* are ideas people who learn effectively using ideas and abstract thought conceptualisation and reflective observation.
- *Convergers* enjoy active experimentation; problem solving and decision-making. For convergers technical tasks are more attractive than interpersonal and social matters.
- *Divergers* learn by joining concrete experience and reflective observation. Contemplations, generating ideas and gathering information are important.

You may recognise some of these styles of learning in yourself or your students. It is incumbent upon us as professional educators to understand the different learning styles of our students and to fashion our educational style to assist those in the various learning styles to achieve good outcomes. Below are some suggestions of how this might be done in the context of teaching property law.

A Discovery Scenario

In this approach students are asked in the context of a lecture to discover the answer to a scenario and thereby the legal principles at the basis of that discovery. This approach requires the lecturer to:

- Stop at various places in lecture and deal with issues raised by a scenario provided to the students in a handout at each stage when the material in the lecture covers the area mentioned in the scenario.
- Ask the students to discuss between themselves what might be a response to the fact pattern before the provision of a solution.
- Stop at various places in the lecture to deal with issues raised by a scenario provided to the students when the material in the lecture covers a relevant area of law.

⁵ Ibid.

This will create active student engagement in the lecture and the learning process. This is useful for all styles of learning as it involves concrete examples, contemplation and social involvement that will suit accommodators, problem solving to suit convergers, gathering of information will stimulate divergers, and an opportunity for reflective observation to suit assimilators.

The example I have used involves simple factual scenarios involving licences:

LICENCES

Scenario: I hit a ball into my neighbour's yard.

1. I retrieve the ball without permission
Any remedies that my neighbour may have? WHY?
2. I retrieve the ball with consent of the owner
Any remedies my neighbour may have? WHY?
3. What if my neighbour tells me after I enter his property he has changed his mind and you can't retrieve the ball.
Can he do that?
What if I refuse to leave?

Scenario: Going to the football stadium.

4. I go to the Football Stadium mid week when no games are being played, climb the fence and seat myself in the stand?
Result ? WHY?
5. I pay my admission price at the gate on the day the local football team is playing.
If result is different from (4) why?
6. What if they remove me because I am barracking for opposition?
Can this legally be done?
Remedies?
Assault?
Damages?
Injunction?

Scenario: Removing timber from my neighbour's land.

7. I enter my neighbour's land to fell and remove timber to build a new extension to my house?
Result?
8. What if I agree in writing with my neighbour to pay \$500 to do that?
9. Can the owner subsequently stop me taking timber off his land after felling?

Use of Web Based Materials

Current and future generations of students will continue to resonate to the use of web based material in everyday life. It is obvious that use of these resources in the classroom will spark interest.

For instance, by using “Google Maps” in a properly resourced classroom it is possible to zero in on particular site by satellite.⁶ An example of how this might be used is sighting the Murray Islands when dealing with the *Mabo*⁷ decision, or when dealing with boundaries looking at Lake George (the subject of the seminal case of *Southern Centre of Theosophy Incorporated v South Australia*⁸). This form of concrete experience and active experimentation will engage accommodators. It is suggested the use of this technology may spark student interest to actually read the relevant case law.

Current Events

Lecturers should take heed of what is happening in the newspapers as there is often reference to issues relating to property law such as: compulsory acquisition; motor vehicles stolen and then sold (which gives rise to the question of who owns the motor vehicle); native title (public statements can be dissected to determine if they are correct in law); compensation; leasehold termination; trashed houses; and finders keepers.

Reference to relevant articles or television stories confirms to students that what they are learning is relevant to the media filled world in which they exist. Students could also be asked to review topics dealt with in the media.⁹

Demonstrations

Demonstrating a legal issue or principle can involve the visual, oral, aural and emotional by demonstrating some significant act. This could include:

- Feoffment with livery of seisin. In or outside class you could literally pass the twig and sod of earth as a demonstration of medieval conveyancing.
- Students could be asked to demonstrate exclusive possession with role play.
- It would be possible to demonstrate the significance of the lodgement date and registration dates for Torrens title registration (the need to refer back to lodgement

⁶ Refer to <http://maps.google.com/map>.

⁷ *Mabo v Queensland (No 2)* (1992) 175 CLR 1.

⁸ *Southern Centre of Theosophy Inc v South Australia* (1981) 38 ALR 587.

⁹ In Australia some key access sites for the media on the internet are as follows: newspapers: <http://www.couriermail.news.com.au/>; <http://www.smh.com.au/>; <http://www.theage.com.au/>. television stations: <http://ninemsn.com.au/>; <http://seven.com.au/>.

for priority). This could be done by using students to represent date of lodgement and date of registration.

The use of concrete experience is especially important for accommodators.

Documentation

One advantage of teaching property law is the fact that this area relies on interesting and often rather old documentation and certificates of title. This provides a valuable resource by which the student can situate their learning and be provided with some perspective on the relevant area of law. For example students should be exposed to:

- Old deeds and documents. This provides an insight into old system conveyances and modern titles office practice.
- Current certificates of title. This provides confirmation of the areas covered in Torrens title such as the date of lodgement, registration and other dealings and crown grant details.
- Current standard forms of mortgages, transfers, and easements. It assists students to understand, for example, the significance of an assignment of a lease if they are provided with a standard assignment clause. Additionally the harshness of the common law may be reflected in the terms contained in some of the standard lease clauses.

Transaction Exercises

Convergers enjoy technical tasks that combine abstract concepts and active experimentation. This type of task might be found in a transaction exercise that demonstrates in a practical context how an interest in land is negotiated, finalised and ultimately registered. This exercise might occur over a number of weeks in lectures or in tutorials and involve:

- The process of negotiation, finalisation, drafting and registration of a lease, easement or mortgage or sale of land.
- Discussion of important clauses such as rent, renewal, repayment, repair, or the permitted use of an easement. Students can then be asked to draft some clauses to deal with significant legislative and common law principles whether relying on standard clauses or not.

Drafting Exercise

A task that will find favour with all styles of learning is to present a drafting exercise that follows after a tutorial, seminar or lecture on the substantive law topic. Students could be asked to draft a rental clause in a lease or covenant for quiet enjoyment or students could

be asked to comment on a lease or mortgage clause. This may be a good examination question also!

Negotiation

Negotiation is a skill that is necessary for a lawyer to employ in practice. It also requires as a background a mastery of the legal principles at the basis of the negotiation. Thus it is possible to create a scenario on an issue such as native title, commercial leasing or strata title which provides the basic facts for a negotiation amongst, say, four parties. The lecturer then provides confidential facts relevant to each party. Students are given the opportunity to negotiate a solution to the scenario. Some training in negotiation skills is necessary.

This allows students to practice negotiation skills while requiring an understanding of legal principles. It promotes group cooperation and the development of teamwork skills. One example of a basic fact scenario that could be used is included in the appendix.

Pop Quizzes

Every now and then ask students to review their work through a pop quiz. I don't know why they like them but they do. Maybe it triggers the fun factor and therefore the emotional factor? Try to add in some trick and hopefully funny questions.

Physical Models

Provide a model of a strata title block showing the building and use a sheet of cardboard to demonstrate the common property i.e. tennis court, pool, driveways and space around the building. This allows the teacher to physically describe how a strata title property is organised. Similar things can be done with models in relation to trespass to land by overhanging cranes or trees, encroachment or statutorily imposed easements. Use of models adds interest.

CONCLUSION

The suggestions above provide a few ideas about how a property law lecturer can maintain the interest of the students (and for that matter the lecturer) through the long weeks of teaching. By touching on a broader range of the learning spectrum than that dealt with in a didactic lecture better connection to students is achieved. By dealing with the place where students are coming from a lecturer will be able to stimulate interest in property law without prejudicing unduly the coverage of doctrine and concepts that will remain fundamental to the understanding of property. It is understood that these procedures do involve substantial time, effort and imagination but the results may be happier and better informed students.

APPENDIX

General Fact Scenario Negotiation - Shady Pines Development

The Shady Pines Community Titles Scheme no 1057 was registered on the 25 February 2005. The scheme involves residential units comprising lots 1 - 50. The development uses a basic scheme arrangement. The community management statement does not specify any by-laws applicable to the development. The community management statement states that the standard regulation module applies to the development. The development involves five attached two storey buildings with each unit being in effect a townhouse giving direct access to the ground level.

The lots have been developed and marketed by the developer, Developer Pty Ltd. To date 25 lots have been sold primarily to unit owners living in Sydney and Melbourne who have purchased the units as investment units.

A management company, Manager Pty Ltd, has been granted a one year delegation of body corporate management rights in relation to the development with the option of a renewal for a 4 year term. The initial term expires on the 15 March 2006. The option to renew is subject to the body corporate being satisfied that Manager Pty Ltd has complied with the terms of the agreement. This agreement requires Manager Pty Ltd: to ensure the common area is maintained (including the swimming pool); to ensure that the by-laws are enforced; and to generally run the development. Manager Pty Ltd also has a separate letting agency agreement also allows it to let out units on instructions from owners. To date all purchasers have chosen to appoint Manager Pty Ltd as letting agent.

Many of the units have been rented to permanent residents by Manager Pty Ltd while some units have holiday rentals. The problems indicated below have resulted in a number of tenants forming the Tenants Action group to voice their concerns.

The various concerns of tenants and owners are so great that the marketing of the project is threatened, there is a possibility of mass vacancies by the tenants and the owners are contemplating legal action. Unless the matter is resolved the owners are contemplating an action in the Supreme Court to ascertain the validity of the appointment of Manager Pty Ltd and the activities of Developer Pty Ltd in regard to the development. A number of parties are considering making an application for an order to the Commissioner for Body Corporate and Community Management. This negotiation is an attempt to avoid that necessity.

The issues that have arisen are:

- There is a disparity between the contribution schedule lot entitlement of units 1 - 5 which are the units to be retained by the developer. The contribution schedule lot entitlement of these units (which are triple sized lots) is 3 while units 6 - 50 have a contribution schedule lot entitlement of 2 each. This means that the levies payable by the owners of lot 6-50 will be out of proportion to the size of the units. The interest

schedule lot entitlement of lots 1 - 5 is 3 while the interest schedule lot entitlement of lots 6 - 50 is 1.

- The CEO of the manager is a cousin of the managing director of the developer. This is fuelling concerns about whose interests the manager is looking after.
- There are complaints about the quality of the manager from the tenants and owners. They say the manager has an abrasive personality and will often not properly consider their interests. The owners and tenants want a new manager, some say in the new manager or more control over his performance.
- The owners are concerned about the management fee level of \$2,200 per unit per annum which is payable whether the units are rented or not, which they state is too high. Additionally the manager receives 8% of any rental paid as letting agent.
- The owners are concerned about wayward tenants who are not being properly controlled. There are accusations that tenants are running wild and are having noisy late night parties and leaving rubbish on the common property. The developer and the manager think the owners do not have sufficient interest and ignore advice from the manager to allow more long term rentals to attract a better class of tenant. The approach of the tenants is affected by the fact that they have no respect for the manager as he does not listen to their concerns. They have little contact with the owners.
- The tenants want better late night access and more commercial development in the complex, i.e. restaurant, bar etc. The owners think this might create more problems while the developer is interested if it makes the complex more saleable. Indications from the local authority suggest consent may be possible.
- The tenants want to have longer term leases in excess of 6 months but the owners have been reluctant to grant these terms because of negative reports from the manager.