

Using Technology and the Media to Cultivate Authentic Problem-solving Skills in Undergraduate Law Students

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I should begin by apologizing for not being able to attend yesterday or for the dinner. I came from the Kingdom of Bhutan last night, where I was conducting a couple of weeks of teacher training workshops at the Law Faculty that was recently established there. So I hope you will accept my apologies. Also, in the meantime, in the course of travel, my USB Drive was somehow misplaced, and I was not able to retrieve the slides that I had prepared for this presentation. Instead I've got my slides from the trip. I hope you don't mind. The first slide is the famous Tiger's Nest Monastery, as I'm sure many of you will recognize. The next slide, a photo of me with Tiger's Nest in the background, demonstrates that I was really there, that I climbed up. The third slide is actually the site of the new law school at Paro, which is the town where the airport is located. The law school is in its third year of operation, and is currently working out of a temporary site in the capital city of Thimpu. From the photo you can see the Paro campus is quite an extraordinary site and I had a chance to visit there. The fourth slide is the Paro Airport, one of the scariest airports in the world for arriving passengers. The runway is just long enough to accommodate a certain kind of aircraft which is the only aircraft that's allowed to touch down there. I could continue with these slides but don't worry, I won't.

I am grateful to the organizers for the invitation to present at this conference because it's kind of slightly out of my area of expertise and interest, having to do with technology and having to do with clinical legal education. The presentations that I've heard this morning have been fascinating and very illuminating for me. But I want to just remind everyone that, actually for me and for most law teachers, legal education involves delivery of learning content to large groups of students. We need to teach theory, as well as the doctrine of the law. And as much as I support

and actually would argue that clinical legal education and experiential learning and education are probably the most effective kinds of education you can deliver, there is a downside. Some problems with it of course are that it is often resource-intensive. So for instance, in a legal clinic, you might have 30 students with four or five teachers, and a limited enrollment means that most students will not be able to participate in it. But also we need to be sure that we don't sacrifice theory for pure practical education. And so I speak here to some degree representing this other body of law teachers who must also find ways to make learning meaningful, and by that I mean practical without sacrificing the theoretical.

So I would begin (if I haven't already begun) with two quotes which should be on the slides but are not because of the misplaced slide. The first is from George Bernard Shaw: "at an early age, my education was interrupted when I had to go to school." You might have heard that one before. And this is from Albert Einstein: "the only thing that interfered with my learning was my education." These ironic observations remind us of how formal education can be disruptive of real learning. This happens because of the formalities, the strictures that we must follow, the degree requirements and the resources constraints. Bearing in mind the resource issue, when teaching a course or courses that involve hundreds of students in a room, how can we make learning meaningful? How can we meet the deficit in learning that's created when you have students sitting in dozens of rows trying to learn? It's not the best way to learn, but those are the conditions which many of us are presented with. So with that in mind, a decade or more ago, when I started to think about these problems I developed a number of responses to those some of those problems. And I've presented my responses worldwide. Some of these have taken up elsewhere. But today I'm just going to share with you one such response to the problem of students sitting in large lecture theatres, sitting in rows, far removed from their teacher. Students don't necessarily learn that well in that kind of environment.

Bear in mind that what I am going to share is just one response. I have labelled this learning activity - Reflective Media Diary (RMD). It's a way that I sort of worked out to require students to connect their doctrinal learning with the world around them, and to do so at no additional strain on resources. I teach Tort Law and Labour Law, and I conduct the RMD exercise in both courses. We will use Tort Law as the example. From the very beginning of the course in

September students are required to keep a diary, a media diary, in which they identify current news reports that have relevance to the issues we study in the course, in this case tort law. I suggest the same could be done in criminal law, or constitutional law, human rights law, indeed it could be done in architecture or engineering actually. This is why I think I'm here today - because there's a technology dimension to this that is transferrable across courses. Students are required to upload the news report and their analysis of it to a common portal, staying within a limit of 120 words. They are to do so within 48 hours of the publication so that they conduct their analysis synchronously, not waiting to the night before the submission to do a Google search. They repeat this activity throughout the course. They can do so as often as they like but ultimately they must submit a list of ten news items and accompanying analysis. Submission of this part takes place at the end of January, five months after the start of the project. So as you can see, by virtue of this self-directed project students are required to pay attention to the news, something they wouldn't otherwise do. And they are required to identify what they think are tort related news stories in - and this is important - in unflagged, unmarked settings. Because when you read a news report, the report doesn't mention legal concepts such as occupier's liability or negligence or remoteness of damage or any tort law dimension. It's just a story about something unfortunate or tragic that happened, and is published to inform a broad public readership. So students carry on with the diary, they do the work, unsupervised, so they are really just teaching themselves. Of course some of the students have said to me over the years, even teachers have asked, how can students start this work at the very beginning of the course in September when they haven't yet studied any Tort law. But of course these are intelligent people. Most students are usually satisfied with my answer (or at least they accept it) when I say "don't worry, you'll be able to do this work, you've got a textbook and you can look ahead in the book for tort law concepts that may be relevant to the news story. And you have the internet." And also in the assignment instructions, students are encouraged to be adventurous, to identify a wide range of news reports, for instance not just motor vehicle accidents, or construction or medical accidents over and over again. One of the criteria for a first class RMD is a wide range of tort law coverage. And student anxiety is allayed specifically in the instructions - "don't worry, the first month or so, the first number of submissions, will be graded with great flexibility, great generosity, bearing in mind that you're only learning this on your own, you're new to it, and you need to explore."

You may have questions of the mechanics, but I won't go into that just yet. This project has been in place now for about ten or twelve years. In the first few years there were a few glitches, but it works quite well now, almost seamlessly and without the need for teacher intervention. Notice that there is no need for further resources because all that is needed are computers and Moodle. Among the learning outcomes, the most important for me is the ability to identify and characterize legal issues in unflagged settings. This is important because as in the legal clinic or in a real practice, when the client comes to you, he or she doesn't come speaking the kind of legal language lawyers are familiar with, for instance telling you the legal concerns, that there is a privity of contract problem, or there is a possible contributory negligence issue. Clients are not legally trained, and are more likely to just recite what they know to be the bare facts of the case, the tragic circumstances, for instance of the death of the family breadwinner, or whatever it might be, and that's all. The news reports work really well this way, because news reports are neutral, they don't provide any legal analysis, they don't use any legal terminology, so the student is there to work it out for themselves to see if there's something going on that is relevant to tort law. And since the students are doing this repeatedly, they develop the *habit* of doing so. A failing of a lot of higher education is that students are asked to do something once and then they never again, in which case they don't build on their learning, and they may not take feedback seriously since it is one-off. They don't even read the feedback provided by teachers on written work because they know they won't do that subject matter or that kind of writing again, unless of course the work that they are assessed on is aligned with later work to come that they can build upon. But much of the time the work that we ask students to do is one-off. With RMD they develop the habit of reading and identifying and legally characterizing events and they learn how to do it on their own in an unsupervised setting. Some report that they continue to do this after the course is completed. Others report applying the same technique to other courses. This meets a major deficit in legal education, historically and now - how to train students to identify legal issues in an unmarked setting. To illustrate the point - when students come to a contract law class, the students are pretty sure that what's going to happen is going to concern contract law issues. Similarly with criminal law or tort law or equity or company law. We don't have a course that trains students to identify subject-specific legal issues in a random setting - other than perhaps clinical legal education. So RMD has a lot of advantages. I see this as an example of authentic learning, although it could be characterized in other ways. Students have to read the course text

book and attend classes, they have to read journal articles and they have to know the discipline, the doctrine of the law very well, and the theory. They need to be able to critically argue cases and interpret legislation, and the RMD project I think provides them with an opportunity to develop a lot of those skills without having to sacrifice the theoretical or the doctrinal because we do that anyway. RMD carries 30 percent of the course weight. Students still have to write an examination, and the examination by the way, as with RMD consists only of news reports. I don't use any hypothetical questions so in that sense learning is aligned with assessment. For those of you who are familiar with Biggs' concept of constructive alignment, you will know why it's important that we do that. The material in a news report is factually incomplete, the reporter wrote the story on the basis of what the readership might like to know. The student has to ask the pertinent legal questions in providing the legal analysis. This diarizing carries on for five months but the project is not complete. Students have another six weeks to attend to Part B of RMD. In Part B the students must select their two three most legally rich news items and write a full-blown legal memorandum for each. This is where students demonstrate the full range of their learning achievements, their command of legal doctrine and their skills of legal argumentation. In completing the Part B memoranda the project falls just short of being a legal clinic (we do not actually provide the advice to the real persons who are the subject of the news report). I see I am running out of time. You might like to see what a Reflective Media Diary looks like. On the slide you can see an example of Part A. As I said this is conducted during the first five months of the course. On this slide is the title page, with sufficient material for the examiner as required by the instructions. In this example you can see the newspapers being used, two English language newspapers, as well as a range of Chinese language newspapers. Reading from the left-you can see the title of the article, the date of publication, date of analysis/entry, and the date of submission and the word count. We can see the variety of legally relevant news items that the student has managed to identify over the course of the five months. And here we can see the brief legal analyses, effectively their first response to news item (according to the diary instructions it must be written within 48 hours of the news report). In this example you'll see some sophisticated level of learning that is happening as early as September. The student is already learning on her own. In the news report "Family slams hospital over errors", you see the case law being cited as well as the use of technical Latin legal terminology (*res ipsa loquitur*, *novus actus interveniens*). So that's Part A. Here is an example of a Part B submission. This

student chose two items (students can choose either two or three items). It involves an elevator mechanic killed at work. Part B is essentially a legal memorandum addressing the multiple claims thought to be available: a negligence case against a co-worker, another for employers liability, and a discussion of the defenses available in the context of that case. The next document on the slide is a compendium of screenshots of all of the news reports diarized. Students are required to upload this as part of the submission so that the teacher can eventually read what the student read in the newspaper, and can then more effectively evaluate and grade the student's legal analysis. The instructions, accessible on the tort course website, are very carefully worded to eliminate ambiguity and reduce the need for students to raise queries with the teacher. On the next slide is the mark sheet. You can see that each of Part A and B carries 50 percent of this project. The Part A marksheet contains a range of criteria. An Important criterion is a diversity of legal subject matter in the selected news items. That criterion carries 20 percent. These percentages are not fixed, they are flexible. The point is to emphasize to students the sorts of things they should pay attention to. Other criterial include organization, overall presentation, adherence to the assignment instructions, legal relevance of the selected news item etc. For Part B, 20% of the assessment weight requires a demonstration of a broad understanding of tort law, as well literacy in presentation. For the remaining 80 %, the focus is on legal analysis. Providing detailed grading criteria ensures students know what qualities make for an excellent RMD paper.

The second to last slide is a student comment taken from a book written by Professor David Carless of this university. David conducted a study on my teaching methods a few years ago. A student interviewed by David wrote: "for RMD, it makes you really think because most of the facts in the news are not the study of law, they're just common situations, there's no guide and answer. So many issues are unclear, we have to produce our own analysis". That comment neatly sums up the aims of the RMD project. David's study has borne out that students are learning in different ways, in ways that were not possible under conventional law teaching. You can also see a survey of our students that was conducted by the HKU Centre for the Enhancement of Teaching and Learning. There were 149 replies. The survey data overwhelmingly suggests that students find RMD to be a positive learning experience, one that takes them out of the classroom, and requires them to learn independently in identifying legal phenomena in unflagged settings.

Finally, on the last slide there are some references that you can look at, some things that I have written and some things that others have written. Thank you so much for your attention.

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