In its major review of the Federal Civil Justice System (ALRC DP 62, August 1999) the Australian Law Reform Commission concluded that legal education should be more concerned with "what lawyers need to be able to do" as distinct from the traditional Australian approach which has been centred around "what lawyers need to know". In response to that recommendation and a number of other recent reports echoing the same theme, the QUT Faculty of Law has integrated professional attributes within the content of all substantive undergraduate law units to ensure incremental capability development throughout the degree.

This has been achieved through a successful university large teaching and learning grant in 2000 which has enabled the integration of professional and generic capabilities within the content of all substantive undergraduate law units to ensure incremental development throughout the degree. And through a further university large grant in 2002, which is now addressing the challenges faced in the re-formulation of assessment and feedback practices to assure their validity and reliability in the new teaching and learning environment.

This paper will outline the process employed in the integration of generic skills into the LLB at QUT through a case study of the unit Equity and Trusts and will examine:

- The identification of appropriate skills;
- The balancing of substantive content and skills development;
- Optimal utilisation of student contact time for interactive sessions; and
- Assessment guidelines, staff development and resources.

The Identification of Appropriate Skills

From the available research, the QUT project team firstly identified the following six desirable abilities for all law graduates, which it described as attributes:

1. Discipline knowledge;
2. Ethical Attitude;
3. Communication;
4. Problem Solving and Reasoning;
5. Information Literacy; and
6. Interpersonal Focus.

From that list of attributes, four broad categories of generic and discipline specific skills were identified, being: attitudinal skills; cognitive skills; communication skills; and relational skills.
Those four categories were then broken down into specific skills, which the project team considered should be developed across the range of undergraduate core subjects within the LLB degree:

<table>
<thead>
<tr>
<th>Attitudinal Skills</th>
<th>Cognitive Skills</th>
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<tbody>
<tr>
<td>• Ethical Values</td>
<td>• Problem Solving</td>
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<tr>
<td>• Creative Outlook</td>
<td>• Legal Analysis</td>
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<tr>
<td>• Reflective Practice</td>
<td>• IT Literacy</td>
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<tr>
<td>• Inclusive Perspective</td>
<td>• Legal Research</td>
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<tr>
<td>• Social Justice Orientation</td>
<td>• Document Management</td>
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<tr>
<td>• Adaptive Behaviour</td>
<td>• Discipline &amp; Ethical Knowledge</td>
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<tr>
<td>• Pro-active behaviour</td>
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<table>
<thead>
<tr>
<th>Communication Skills</th>
<th>Relational Skills</th>
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</thead>
<tbody>
<tr>
<td>• Oral Communication</td>
<td>• Work Independently</td>
</tr>
<tr>
<td>• Oral Presentations</td>
<td>• Teamwork</td>
</tr>
<tr>
<td>• Advocacy</td>
<td>• Appreciation of race, gender, culture &amp; socio-economic differences specifically and diversity generally</td>
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<tr>
<td>• Legal Interviewing</td>
<td>• Time Management</td>
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<tr>
<td>• Mooting</td>
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<tr>
<td>• Negotiation</td>
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<td>• Written Communication</td>
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<td>• Drafting</td>
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To ensure incremental development, each specific skill was then broken down into three levels to represent gradual attainment. The first level requires scoping of the component parts of the skill, the second level provides an opportunity to practise the
component parts of the skill and the third level offers an understanding of the skill in the context of practice. Broadly speaking, it was envisaged that those three levels would be developed through core units in the first, second and third years of the LLB respectively.

Essential to the project was the pedagogical aim to embed skills training within the content of learning and to specifically assess competency levels within each of the skills through a reflective process that would lead to the development of a "student capability profile". To be effective, such a learning approach requires each skill to be developed through a cycle of instruction, practice, feedback and assessment both horizontally and vertically through the LLB degree.

For all unit coordinators, the first step was to attempt to identify those skills that would be most appropriately developed within the content of their unit. For Equity and Trusts there were a number of synergies identified between the skills matrix and the course content.

Ethical Knowledge

Whilst ethical knowledge is raised to some extent in almost all undergraduate law subjects, the areas of Fiduciary Obligations and Trustees Duties are specific examples of large bodies of ethical obligations being reflected in equitable principles. The sources of those equitable obligations and the way in which they are also reflected in legislation governing the legal profession, sit well within the content of a traditional course. In Equity and Trusts it was considered that the skill of ethical knowledge could be developed to the second level relatively simply, by the inclusion of ethical issues in lectures, tutorials and the ultimate examinations in each semester of the course.

Negotiation

An understanding of the variety of types of conflict within our society and the advantages of non-litigious dispute resolution were also considered to be complimentary to a study of trusts although the best way to incorporate the skill into the existing program was not immediately obvious. It was decided to try to incorporate assessment of this skill into a written assignment based on an estate dispute in the unit on trusts.

Appreciation Of Race, Gender, Culture & Socio-Economic Differences Specifically And Diversity Generally

The difficulties of teaching and assessing this skill were obvious from the beginning. Whilst diversity issues had been implicit in the traditional course in the areas of unconscionability and undue influence, the adoption of this skill as part of the faculty project required both the explicit teaching and assessment of the skill in a way that had never been attempted before. It was ultimately adopted by the equity and trusts teaching team on the basis that it could be incorporated into the conflict analysis exercise for negotiation.

The balancing of substantive content and skills development

In conjunction with the introduction of skills, QUT teaching and learning policy required the 24-credit point subject of Equity & Trusts to be "semesterised" by 2002. As a result, careful thought had to be directed to the appropriate balance between the
new segments of skills development and the significant amount of substantive content in the traditional course.

A comparative study of other Equity and Trusts courses across Australia revealed that the majority of institutions divided the traditional QUT course content between subjects concerned with property, equitable doctrine and the study of trusts. If semesterisation and skills were to be achieved within the same time frame as the traditional course, the content needed to be rationalised to ensure that no unnecessary overlap of substance occurred. It was ultimately necessary to negotiate with the property law, contract and professional responsibility teaching teams to reallocate the teaching of relevant equitable principles in a way that would meet the professional requirements for admission, provide an appropriate context for effective teaching and learning and create room for the incorporation of the new material into the equity and trusts course.

As equity and trusts has always been regarded as one of the more conceptually difficult law subjects, the introduction of skills assessment provided an opportunity for students to raise their overall grade provided their ability to effectively learn those concepts was not detrimentally affected by the change in teaching practice. Therefore another challenge in this balancing process was to ensure that the formative development of skills was achieved in a way that did not significantly diminish the time devoted to small group discussions of the course content.

Optimal utilisation of student contact time for interactive sessions

The first semester unit was revised to focus upon equitable doctrine, covering:

- The nature and history of equity and its relationship with the common law;
- Fiduciary relationships and the ethical and equitable obligations arising therefrom;
- Other equitable doctrines including the obligation of confidence, equitable estoppel, undue influence, unconscionable transactions and relief against forfeiture of proprietary interests;
- The liability of third parties for breach of equitable obligations; and
- Equitable remedies including specific performance, account, injunctions, declarations, compensation, equitable damages and the constructive trust.

Upon completion of the unit students are also expected to be able to demonstrate a range of skills relevant to ongoing learning and professional practice, including:

- Effective written and oral communication skills;
- The ability to manage time effectively;
- The ability to work with others in a productive manner;
- The ability to reflect on personal performance: and
- The ability to identify ethical issues.

The second semester unit was revised to focus on trusts and covers:

- The fundamental features of a trust;
- The nature of equitable property and its relationship with the common law;
- The transfer of property in equity and priorities in the context of transferring property to a trustee;
- Express trusts;
• Resulting trusts and void and voidable trusts;
• Discretionary trusts;
• Purpose trusts and charitable trusts; and
• Trusteeship, including ethical and equitable obligations of trustees, rights of beneficiaries and remedies for breach of trust.

Upon completion of the second semester unit students are expected to be able to demonstrate the additional skills of:

• Negotiation; and
• Ethical knowledge.

**Teaching and Learning Approach**

Skills theory and practice is incorporated at various stages in the lecture program. Where the content permits, lectures adopt a Socratic format and small group exercises are conducted within the allocated time frame. This approach requires students to have completed the prescribed reading before attending the lecture.

In weekly tutorials students also participate in specific skills development exercises which are assessed as part of their seminar participation mark. To accommodate that assessment process it has been necessary to specify that tutorial attendance in certain weeks of the semester is compulsory. Similarly, attendance at the external student's attendance school has become mandatory for students studying the unit externally.

Compulsory tutorial attendance raises a number of ancillary issues such as: alternative assessment for students who are unable to attend compulsory classes; the imposition of penalties for students who choose not to attend and the issue of whether passing or at least attempting the skills development component of the course should be a pre-requisite for passing the subject. In the revised units alternative assessment is offered for students who are granted an exemption from attendance at an assessed session and there is no penalty for non-completion of skills assessment other than an award of nil for that section of the assessment.

Formative assessment and feedback on content is provided through tutor's comments and group discussions in tutorials. Tutors and lecturers are also available at specified times or via email to answer questions from students throughout the semester.

Formative feedback on skills development is also provided for in the teaching program with students having the opportunity to see the skills modelled and to practice before completing an item of assessment.

The negotiation module is assessed through a "Life Problem" which requires students to identify the types of conflict involved in a particular dispute, advise on the most appropriate dispute resolution process and prepare a negotiation plan. Students are then given an opportunity to participate in a role-play exercise which enacts the life problem and allows them to put their negotiation plan and communication skills into practice.
Assessment Guidelines

As legal educators we were faced with the challenge that existing assessment practices, like those of other legal education institutions, had content as their focus, the result being that only a limited range of skills had been developed and that students' ability to transfer skills from one context to another had not been very well developed. The Law Discipline Network concluded from its surveys that "assessment of skills within law was primarily done indirectly through the traditional methods of assessment: for example problem solving and intellectual skills are demonstrated through exams and/or dissertations; research skills are part of the assessment through the dissertations".

There was a need to re-evaluate our assessment methods, keeping in mind the purposes of assessment and best assessment practices. This re-evaluation process is taking place under the second Teaching and Learning Development Grant referred to above.

The purposes of assessment are various with its main objectives being to enable certification or classification of students' achievements and to promote and enhance students' learning. These main objectives were also those of the Faculty when determining that skills development was to be specifically assessed in each core unit. Certification or classification was of particular relevance to the desired outcome of a "capability profile" for each student.

In relation to best assessment practices, it is generally recognised that good assessment is valid, reliable, and fit for its purpose. A valid assessment method is one which assesses what it purports to assess. The question can be posed "Does the assessed task actually assess what you want it to?" Reliability requires an assessment method which is reproducible. If an assessment task were totally reliable, independent assessors using the same criteria and marking scheme would come to the same result about a given piece of work. The Oxford Centre for Staff and Learning Development conclude that "the connoisseur' approach to assessment (like a wine-taster or tea-blender of many years experience, not able to describe exactly what they are looking for but 'knowing when they find it') is no longer acceptable. Consequently explicitness of assessment criteria is vital for both the students and the marker.

Fitness for purpose is a multifaceted concept that would include the task's authenticity and its manageability for class size. Authenticity relates to the extent to which the assessment uses tasks as close as possible to those which are the goal of the program.

The project team has set itself the task of developing an assessment framework that will provide the theoretical basis for models of best assessment practice for certain of the graduate capabilities including oral communication. The hypothesis is that it should be possible to assure the quality of assessment methods for capability development by evaluating the efficacy of those tasks as against the framework developed. At this stage of the project, the team has developed a draft framework which incorporates, amongst others, the above criteria for best assessment practice. The project team intends to filter a range of assessment tasks through the framework in order to identify the best practice for the targeted skill areas. As a result of these trials and evaluations the framework may itself be modified for future use. It may also be that individual assessment tasks may require modification.

The assessment framework in its draft form consists of structured questions that will assist the trial and evaluation process:
1. Is it valid?
2. Is it reliable?
3. Does it help students to develop in the area being assessed?
4. Is it manageable, in the sense that it is efficient and effective for both students and academics?
5. Is the assessment as authentic as possible?

The framework then provides further details and questions under each of these criteria which assist in applying the framework to particular assessment tasks.

Staff Development and Resources

In the revised units of Equity and Trusts we have found that staff development needed to address teacher's concerns that they themselves did not possess the skills expected from our graduates. Staff development has been provided in the form of workshops by other academics who are expert in the particular skill being taught. They have addressed both the theory and application of the skill and provided clear guidelines on the appropriate assessment criteria for development of the skill within the unit. The emphasis to date has been on collaboration between staff members, with particular units choosing skill development that is consistent with team members' particular areas of interest. Difficulties have arisen however with skills development for part-time staff members who teach a significant portion of the tutorial program and tend to move in and out of the teaching program.

To further support the teaching staff in the unit trusts, two members of the teaching team have successfully applied for a further small teaching and learning grant. This further grant is funding the development of a practical conflict resolution toolkit to assist teaching team members to avoid and manage conflicts which may arise in the administration of the unit. The theory and skills contained in the toolkit will serve to supplement the teaching team's expertise in conflict resolution skills in a way that will support their teaching of the skill within the unit as well.

A central resource bank has also been established by the skills project team which is intended for use across the faculty. Examples of assessment criteria and skills development exercises have been compiled in relation to each skill being taught in the LLB program. In addition both electronic and hard copy resources which have been used to support the different levels of skill development are available online. In this way it is hoped that students who do not follow the normal course progression will be able to use the resource bank to supplement their skills development should they enrol in a unit that presumes skill development has already been undertaken to a certain level.

Conclusion

This paper has sought to detail the process utilised to integrate generic capabilities into the subject Equity and Trusts and the subsequent challenges faced in then assuring quality in the assessment of those capabilities.

Along with semesterisation, the process has led to a wholesale revision of the traditional course, with teaching and learning approaches as well as assessment practices now under constant revision. The challenge remains to ensure that our students are motivated and engaged in these new courses in a way that will enable
them to become confident and competent in both the skills and knowledge that make them valuable in the ever-changing global workplace.

List of References:

1. * BA, LLB (Hons), Grad Dip Leg Prac, LLM (Bond) Lecturer In Law, QUT

** LLB (Hons), LLM (QUT), Lecturer in Law, QUT


above n 8, 9.


7. Ibid.

8. Ibid.


10. Ibid.

11. AUTC Project, above n 6.