

Exploring the Use of Technology in the Law School Classroom.

Workshop 4A

Real Property for the Real World: How to use technology for genuine student understanding

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Dr. Cathy Sherry is a leading Australian expert on strata and community title. She provides advice to government and the private sector on the complexities of collectively-owned property, both nationally and internationally. Cathy's research focuses on the social implications of private communities, as well as optimal planning for children. Cathy has a special interest in urban farming and the challenges of providing growing space in high density cities. Her book *Strata Title Property Rights: Private governance of multi-owned properties* was published by Routledge UK in 2017, and was recently cited by the Privy Council.

With consistent mean ratings of 5.5 and above on student surveys, (on a scale of 1-6), Cathy is the recipient of a Vice Chancellor's Award for Teaching Excellence and a NSW Department of Training and Education and Australian College of Educators' Award. She was also a winner in the individual category of the Legal Innovation Index 2015, for her online Moodle site for Land Law. Cathy was named Academic of the Year at the Lawyers Weekly Women in Law Awards in 2017. Cathy is an inaugural UNSW Scientia Education Academy Fellow.

Real Property for the Real World: How to use technology for genuine student understanding

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Gonzaga University School of Law, Spokane, WA

18-20 June, 2018

For this workshop, participants will obtain access to a Moodle site containing substantial material and examples of online teaching. The workshop will explore that material, but participants will be free to access the material back in their home institutions when they need ideas for their own courses. Participants need to log on to the Moodle site with a unique guest student number, which includes a Moodle registration process. This will take a few minutes.

Why and how to use technology in our courses

1. Using technology to replace case books to teach the course you want to teach.

People teach best if they teach from a position of understanding and conviction. We have all probably taught other people's courses or with other people's material and it can be challenging. It may not be clear why people have set particular material, and as you become increasingly experienced, you may not agree with the choices that people have made. This is particularly so in traditional doctrinal courses where certain material has been taught for decades, sometimes with insufficient consideration of whether it is necessary and/or is being taught at the expense of more contemporary material that arguably is necessary eg condominium law in property courses.

The difficulty is that many of us have needed to set casebooks and textbooks written by others and in effect, those people are determining the content of our courses. There are a range of reasons people do not write their own case or textbooks, in particular lack of time, but in Australia it is often because case and textbooks are not considered 'research' by the Federal government, which funds our universities. This is because the government is using science as the benchmark. As the laws of nature don't change from year to year, writing science textbooks is not considered research. However, the laws of man do change from year to year, and as we know, writing text and case books in law involves considerable research and academic skill. But, we all have to work within the framework of our own institutions and we cut our coats according to our cloth.

However, technology provides a radical solution to this dilemma: we can now all effectively write our own case books using platforms like Moodle, Blackboard and TWEN. There are

¹ <http://www.law.unsw.edu.au/profile/cathy-sherry>

many advantages to writing our own online text or casebooks, in addition to being able to set material we genuinely believe should be taught.

1. Simplicity. Because these sites are not formally published, we can write more quickly and informally than we would if writing a published text. This not only improves professor efficiency but greatly aids student comprehension. There is something deeply irrational about teaching students via dense, complex material that was never written for the purposes of teaching ie cases. Rational teaching methods would start by giving students simple, foundational material and building up to complex material as their understanding grows. But with the case book method, on every new topic, class after class, we present students with the same kind of difficult readings. As a result, we spend most of our class time
 - a) filling in the basic blanks that cases never explain because all of the actors (lawyers and judges) are familiar with them and
 - b) explaining complex writing and concepts that most students had little hope of understanding on their own.

Using bespoke, online material that is written for the sole purpose of teaching students, and not with an eye to the informed and possibly critical opinion of fellow academics and lawyers who may read published books, we can teach *rationally* by starting with basic explanations that students can understand reading on their own, freeing up class time for more complex and informed discussions or for practising the tasks that students will be expected to do on graduation. Some academics might argue that this is ‘spoon feeding’ students, but I see it more as simply doing what I am paid to do. I have a deep and broad understanding of complex land law and it is part of my job (in contrast to a judge’s job) to communicate that understanding to students in comprehensible ways. Of course, students also need to be challenged by reading complex cases on their own, but not as the sole method of imparting information.

Examples:

Fundamental Concepts in Land Law: Possession Ch 1.1

Basic sale of land video (GoAnimate!)

Exercise:

Write a couple of plain language paragraphs explaining an area of law or a case that you find you always have to explain verbally in class because the students are unlikely to understand the point from the current readings.

2. Legislation. In addition to complex, sometimes incomprehensible material, one of the key drawbacks of the case book method of teaching is that cases do not accurately represent the totality of modern law. In a subject like property, cases constitute 1/3 of the material at best. The other two thirds are made up of legislation and the private documents that lawyers draft to protect their clients’ rights. While a seminal case might provide the entire answer in a particular litigated matter, day to day, practising

property lawyers may never deal with cases. They are applying legislation, and drafting documents for their clients. As far back as 2003, the Honourable Justice Kirby noted that the High Court (Australia's Supreme Court) was frustrated by the unwillingness of lawyers to grapple with statutory text, instead 'returning to the much loved words of judges, written long ago and far away' and that while 'this tribute to the judiciary is touching, it does not represent the law'.²

It is obviously easy to provide students with legislation online, and importantly, this can be done in the authoritative forms they will use in practice. In Australia, this will be via Austlii³ or Parliamentary data bases. It is far better for a student to read a legislative provision in its original context than simply reading an extract in a text or casebook; it will familiarise students with the layout of legislation, how to navigate around it, and it increases their appreciation of the fact that the material we are learning is not simply fodder for exam questions, but real law that is regulating people's lives as we read it.

3. Real documents. The most significant advantage of technology is that for the first time we can provide large numbers of students with real documents, the second most important source of modern law, at least in private law, and the most glaring omission from case book teaching. For decades, students learned land law without ever reading a lease, an easement, a covenant, seeing a transfer form, a contract or deposited plan (plat map). I must stress that was no fault of academics: it is literally impossible to provide 300 students with a hard-copy of a 50-page commercial lease; the copying or publication costs are prohibitive. However, now with technology, a 50-page commercial lease can be given to all students with the touch of a button.

In Australia, land law has the advantage that the real documents drafted by parties are all publicly accessible for a small fee. This is because we have a Torrens system of registration which does not register existing titles, but rather *creates title by registration*. As a result, the register is an almost complete, reliable picture of land ownership. The register is publicly accessible and computerised, so obtaining dealings that regulate any parcel of land in Australia is as easy as placing an order and waiting for the tif or pdf file to arrive. Sharing it with students only requires us to hit 'upload' on Moodle.⁴ There is no comparison between students reading a real lease and having the covenants in leases described to them or reading a few disembodied covenants extracted in a case. Reading a real lease, students can see the standard Torrens forms that are essential for any interest in land to be registered. Once you have seen a Torrens form, there is no mystery to them, but if you have not, confusion abounds and unnecessarily so. Reading a real lease, students can see the wide variety of matters that are important to clients when they are going to give their land to someone else for

² Michael Kirby, 'Towards a Grand Theory of Interpretation: The Case of Statutes and Contracts (2003) 24(2) *Statute Law Review*, 95-96, cited by P Carruthers, N Skead and K Galloway, 'Teaching, Skills and Outcomes in Australian Property Law Units: A survey of current approaches', (2012) 12(2) *QUT Law and Justice Journal* 66.

³ <http://www.austlii.edu.au/>

⁴ The use of legal documents for the purposes of teaching comes within the exception of 'fair dealing for the purposes of research or study' in the *Copyright Act 1968* (Cth), s40.

five, ten or fifty years. Reading a real lease, students can see that the cases they have read operate in the real world. For example, when the High Court decided in *Shevill v Builders Licensing Board* [1982] HCA 47; (1982) 149 CLR 620 that the lessee's actions were not sufficiently serious to constitute repudiation or breach of an essential term, but that it was open to parties to predefine covenants as essential, that was not the end of the matter. The case had a flow-on effect in the commercial lease market because lawyers began to draft leases which defined particular covenants as essential, breach of which entitled the landlord to sue for loss of bargain damages. If we only make students read the case, but do not show them the commercial leases that it affected, we are only teaching them half of the law. There is no point students quoting phrases from cases about loss of bargain damages if they do not realise that those phrases will determine the leases they will draft and enforce for clients in practice. Real documents can also be used for assessment, simulating practice by requiring students to read *and apply* by-laws, leases, covenants, easements etc from beginning to end.

Examples:

Deposited plans (plat maps) Torrens system Ch 3
Leases Ch 4 Sample leases

4. Pictures and websites. The cliché 'a picture is worth a thousand words' is profoundly true in land law. Land law regulates real, physical sites and often has a clear visual effect on those sites; in fact that is often the fundamental point of some land law like freehold covenants. So, showing students pictures is the most powerful way to communicate the function of the law. For example, a picture of the uniform housing in a homeowner association will communicate the function of covenants, conditions and restrictions not only more quickly but more effectively than any written text.

Examples:

Restrictive covenants: pictures, actual covenants
Suburbanism: Ch 3 Compulsory picture viewing
Instagram: <https://www.instagram.com/cathysherryunsw/>

5. In-class activities

Online sites can be used to quickly and efficiently set up class activities which can be done in the time that is freed up by using plain, clear explanations of the law online. You can think of activities as you move through the semester, adapting them from year to year.

In-class quizzes can be a great way for students and teachers to see how students are tracking. Often students think they understand the material, but then they score 3/10 in a quiz and realise that they have not really bedded down their understanding, particularly when required to apply law to a set of facts, as they will do in practice. Multiple choice questions are also particularly helpful in getting students to

understand that often there are clear, black and white answers in law. The case book and Socratic methods of teaching lead students to erroneously believe that everything in law is arguable, when it is not. When practising as a lawyer, much of what you do is straightforward. In relation to land, at least in Australia, transfers must be registered. They can only be registered in approved forms. Contracts in relation to land have to be in writing (unless you want the client to spend thousands of dollars running a part performance or estoppel case that they are likely to lose). If you haven't managed to turn a contractual right into a property right the rule of privity means that it is not enforceable against a successor in title. These are clear rules that it is difficult, if not impossible to get around. No matter how well you argue, a judge is not going to renegotiate the rule of privity with you. Students need to understand that this is how law works in the real world, and that it is not a process of continual intellectual sparring about ambiguous points of law.

Simulations can be set up easily using online sites. For example, students can be given a lease precedent, a set of facts and then asked to divide into groups of landlord and tenant lawyers who need to redraft and negotiate a finalised lease. A few classes later, students can be given a changed set of facts, and they have to determine whether their finalised lease protects their clients. Students will be able to see that their clients' rights are entirely dependent on what they have drafted; if a provision they need is not in the lease, their client has no right to sue.

Example:

Leases Chapters

Exercise

In a group, discuss a topic or topics that are currently taught through cases which could be pushed further by a) assuming the students have read the cases and b) can be required to simply apply those cases and legislation in a lawyering activity.

6. Smart Sparrow <https://www.smartsparrow.com/>

This is an adaptive e-Learning platform that came out of a research group at UNSW. It is a way of providing students with content and testing it through activities. It is very professional looking, however it takes considerable time to build. From experience, I wonder whether it is easier and equally effective to use simpler technology.

Example: Lease game

7. Lightboards

If your institution has a lightboard, it is well worth using. A lightboard takes advantage of what is arguably the most powerful technology we have as teachers – a

board (light, white or black) and a writing implement (a pen or chalk). However, the advantage of a lightboard is that it is filmed so that

- students can watch the presentation in their own time;
- they can re-watch it;
- staff can record lessons that relate to their own expertise and all students, not just their own, can watch them;
- pictures and text can be inserted in the video; and
- it just looks impressive!

This is an explanation of ‘stratum title’ or volumetric subdivision. It is the form of subdivision used for mixed-use developments, including those over railway stations. There is little written about it in academic literature and it is hard to explain in writing, without pictures.

<https://www.youtube.com/watch?v=zv82V-bFnrU>

The video is embedded in the Moodle site in the Torrens book at the end of the Deposited Plans chapter.

Conclusion

If you are interested in building new material using a site like Moodle, I would encourage all academics to do so. You do not need any knowledge of technology. In the same way that we do not need to know how a computer or a TV works to use or watch one, we do not need to know how educational technology works to use it with our students. Platforms like Moodle are very intuitive. The best way to work out their potential is to just start working; build material one topic at a time, over a number of semesters. Ask students about their experience of the material as you go; their feedback is invaluable. The key to using technology for successful teaching is exactly the same as any other form of successful teaching, that is, we just need to use our imagination and put ourselves in our students’ shoes.

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Workshop 4B

How I Flipped The Switch: A Case Study About Online Course Development, Student Learning Outcomes, and ABA Standard 306 in a Skills-Based Law Course

Jennifer L. Laws
University of New Mexico School of Law

Jennifer Laws is a Senior Lecturer and Law Librarian at the University of New Mexico School of Law. Jennifer teaches in the legal research instruction program at UNM Law and serves as the Law Library's coordinator of electronic resources and scholarly communication. In 2017, she developed and taught a pilot all-online section of the School's required two credit hour Legal Research course. Her research interests include the design of hybrid and online legal research courses and the implementation of competencies-based legal research instruction to support law student success. Currently she is collaborating with a colleague to expand the legal research instruction requirement at UNM Law to include elements in both the first and second year.

Institute for Law Teaching and Learning – Summer 2018 Conference

How I Flipped The Switch

Jennifer L. Laws, UNM School of Law

Use this page to record responses to the prompts and your ideas from “thinking while

List all crazy ideas that occurred to you while thinking and moving. Save and cherish crazy ideas for future adaptation and use.

#1: Briefly describe your ideal classroom or instruction

#2: Record at least one aspect of a recent course that did not align with your ideal described in #1 OR that you would like to change.

#3: Record at least one online instruction tool or strategy that intrigues you. It might or might not apply to your response to #2.

#4: Record the obstacles that prevent you from using the tool or strategy in #3.

#5: Record at least one work-around for an obstacle above.
“Sheer force of will” is an acceptable answer!!!

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Workshop 4C

TECH SAVVY SOLUTIONS TO TIME CONSTRAINED LEGAL CLASSROOMS: How to Provide Valuable Legal Instruction to Your Law Students Using Easy -to- Navigate Technological Solutions

Patrick Gould
The Appalachian School of Law

Patrick Gould is an Associate Professor Law, the Director of the Academic Excellence Program, and the Director of Bar Preparation Services at Appalachian School of Law. He holds a Master of Science Degree in the Learning Sciences from Northwestern University, in Evanston, IL. He is an expert at blending scores of learning theories, into easy-to-navigate learning solutions for the legal classroom. He also works as a Consultant to those in the broader Legal Academy.

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