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Abstract
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Keywords
transnational subject, internationalisation, law curriculum, legal education

A TRANSNATIONAL LAW SUBJECT IN THE AUSTRALIAN LAW CURRICULUM

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ABSTRACT

To internationalise the Australian law curriculum, law schools may adopt a particular approach or a combination of approaches. Regardless of what approaches law schools have adopted or will adopt, this article argues that a foundation subject introducing the basic elements of international and comparative law and enhancing students' capability to function in an increasingly globalised legal market should be offered as a compulsory unit. Toward this end, this article first explains why it is judicious to offer a transnational law subject and then explores how such a subject can be effectively delivered in terms of substantive topics, graduate attributes, learning activities and assessment.

I INTRODUCTION

With the advent of globalisation, the ambit of legal markets has gone beyond national borders.[1] To train prospective lawyers and judges who are professionally competent and culturally sensitive to function in an increasingly globalised legal market, law schools in various parts of the world have adopted strategic measures to internationalise their curricula.[2] Notwithstanding its nebulous meaning, 'internationalisation' here refers to a strategic move in which a law school takes steps to incorporate international and comparative dimensions into its curriculum. In Australia, the internationalisation of legal education has been relatively slow for a

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1 Globalisation has a significant impact on the provision of legal services. Nowadays, most legal practitioners, in one way or another, have to deal with some aspects of international law or the laws of foreign jurisdictions. For example, a dispute may arise out of a sale of goods contract between parties having their places of business in different countries, or a dispute over the validity of a will may arise where the deceased has made wills at different times in different countries. In a purely commercial context, an exporter of consumer goods must be familiar with the importing country's packaging and labelling requirements.

2 See Vai Io Lo, 'The Internationalisation of Legal Education: A Road Increasingly Travelled' in Mary Hiscock and William van Caenegem (eds), *The Internationalisation of Law: Legislating, Decision-Making, Practice and Education* (Edward Elgar, 2010) 117.

number of reasons, and the prospects of internationalising the law curriculum hinge on three levels of planning and implementation.[3] Regardless of which approaches law schools have adopted, or will adopt, to internationalise their law curricula, this article argues that a foundation subject introducing the basic elements of international and comparative law and enhancing students' capability to function in an increasingly globalised legal market, whether having the word 'transnational' or 'global' in its title, should be offered as a compulsory subject. Accordingly, this article first offers an argument as to why it is prudent to offer a transnational law subject and then explores how such a subject can be effectively delivered.

II THE NEED FOR A TRANSNATIONAL LAW SUBJECT

Irrespective of classification or nomenclature, the internationalisation of legal education has been undertaken largely by adopting one of, or a combination of, four major approaches — inclusive, integrative, experiential, and preferential.[4] In 2004, the

[3] In 2011–2012, the author conducted 32 online audits of Australian law schools based on a set of 20 questions to ascertain the then-current situation of the internationalisation of the law curriculum. The findings were that progress in the internationalisation of legal education in Australia had been slow due to a combination of factors, including the following: tokenism; the 'Priestley 11' requirements; competing demands on, but limited resources of, Australian law schools; mounting pressure on law academics and the concomitant shortage of teaching staff conversant with international, comparative, or foreign law; and complacency. The author also concluded that the internationalisation of legal education must be tackled at the national level (law deans to hold dialogues), faculty level (a comprehensive review of subject offerings and a constructive re-examination of pedagogical methodologies), and instructor level (how to incorporate international and comparative dimensions into the contents, learning activities, and assessment of a domestic law subject). See Vai Io Lo, 'Before Competition and Beyond Complacency – The Internationalisation of Legal Education in Australia' (2012) 22 *Legal Education Review* 3.

[4] In a nutshell, an inclusive approach refers to the offering of international, comparative, or foreign law subjects or study programs in addition to the core curriculum, including features such as the following: compulsory or elective international, comparative, or foreign law subjects; concentration, stream, or specialisation; and a Master's degree, diploma, or certificate in a specific area of international, comparative, or foreign law. An integrative approach refers to the incorporation of international, comparative, or foreign law into domestic law subjects. Under the experiential approach, the major avenues to learn foreign or international law and acquire overseas experience are the summer program, exchange program, and dual-degree program. Under the preferential approach, law schools allow students to conduct independent research under the supervision of law academics, to participate in international moot court competitions, to run student-edited

International Legal Education and Training ('ILET') Committee of the International Legal Services Advisory Council recommended that the internationalisation of legal education in Australia adopt an integrative approach.[5]

In 2012, the project team of a grant given by the Australian Government Office for Learning and Teaching ('AGOLT') expressed the view that a multi-faceted approach should be the preferred choice, but acknowledged that the approach ultimately adopted by individual law schools will vary, depending on the level of internationalisation that each school aims to achieve, taking into account the possibility of progression from one approach to another.[6] Hence, regardless of which approach or approaches are pursued, Australian law schools are encouraged, if not urged, to internationalise the Australian law curriculum. To this end, this article argues that a transnational law subject comprising both international and comparative law components should be taught, not as an add-on elective, but as an integral part of the Australian law curriculum.[7] There are three major reasons for offering and requiring such a subject.

international and comparative law journals, and to undertake internships or externships with international organisations or international law firms. These four approaches are not mutually exclusive, and a law school may adopt more than one approach and appositely revise its overall approach, depending on its financial and human resources. Lo, above n 2, 120–6.

5 International Legal Education and Training (ILAT) Committee, International Legal Services Advisory Council (ILSAC), Commonwealth Attorney-General's Department, *Internationalisation of the Australian Law Degree* (2004) 5.

6 The project team performed a literature review, interviewed law firms, conducted roundtable discussions, and held a symposium on the internationalisation of the Australian law curriculum. The team classified the internationalisation approaches taken by law schools into aggregation (equivalent of the inclusive approach), segregation (having a separate administrative area that serves as an institutional base to deliver international programs, such as a research institute or centre on international, comparative, or foreign law), integration (equivalent of the integrative approach), and immersion (similar to the experiential approach). Of these four approaches, the team believed that the most effective means of implementing an internationalised law curriculum would be the adoption of an integrative approach. See Australian Government Office for Learning and Teaching, *Internationalising the Australian Law Curriculum for Enhanced Global Legal Practice* (2012), 5, 33–7, 85–6 <http://www.olt.gov.au/project-internationalising-australian-law-curriculum-enhanced-global-legal-education-and-practice-20>. The gist of the report was that Australian law schools should adopt measures to internationalise their curricula.

7 A general report discussing the internationalisation of legal education in 38 jurisdictions states that, although there is general agreement among most jurisdictions regarding some

First and foremost, whatever configuration of approaches a law school has adopted or is planning to adopt, a foundation subject teaching the basics of international and comparative law — properly designed and implemented — would provide students with a frame of reference for understanding the international and comparative dimensions incorporated in domestic law subjects, just as the subject Australian Legal System (or subjects with similar titles), which is conventionally taught to all new entrants to LLB and JD programs, provides a frame of reference for understanding the Australian legal system. In other words, a foundational transnational law subject would enable law students to see first the 'forest' of international and comparative law and then the 'trees' of specific legal systems or particular areas of international or foreign law. Not only would such a subject enable law students to understand where Australia is situated in the legal world, but it would also provide a springboard for students, especially those interested in taking international, comparative, or foreign law subjects, from which to design study programs catering to their career needs and interests. Of course, since international and comparative law dimensions would be incorporated into core subjects under the integrative approach, and as some domestic electives, such as Intellectual Property and Human Rights, already have a heavy international component, it may be argued that it is not necessary to offer a separate transnational law subject. However, since a well-designed introductory transnational law subject would provide an overview of the international legal landscape, while individual core or elective subjects focus only on specific areas of law, the requirement of a transnational law subject even under the integrative approach would not be superfluous. For these reasons, a transnational law subject is beneficial under any approach, whether it is inclusive, integrative, experiential or preferential, or any combination thereof.

Additionally, since internationalising the Australian law curriculum entails the acquisition or reallocation of financial and human resources, a truly integrated program can be achieved only incrementally and over a number of years.[8] Indeed,

minimum level of exposure to the global legal system, there is considerable diversity about what should be offered and required. For example, most jurisdictions require Public International Law, some jurisdictions require Comparative Law or Introduction to Legal Systems, and the EU countries require European Law. See Christophe Jamin and William van Caenegem, *General Report for the Vienna Congress of the International Academy of Comparative Law: The Internationalisation of Legal Education*, 20-26 July 2014, 22–3.

[8] See also AGOLT, above n 6, 72: 'incorporating international dimensions into the law curriculum involves an incremental internationalising of learning objectives and outcomes, content, learning activities and assessment in a systematic and integrated manner'.

given the shortage of instructors who are qualified or prepared to teach international or comparative law, the scarcity of readily available teaching materials,[9] and the requirements of the 'Priestley 11', it is likely to take a decade or so to incorporate international and comparative dimensions fully into current Australian law curricula. During the transition, law students entering LLB and JD programs will not be able to receive the benefits of an internationalised legal education,[10] which may render them less competitive vis-à-vis law graduates who have pursued internationalised law degrees abroad. A transnational law subject has the potential to narrow the gap between the upcoming generation of Australian law students and their counterparts who have benefitted from an internationalised legal education. Without any exposure to transnational law, Australian law graduates would have to resort to on-the-job, case-by-case training in order to become competitive in an increasingly globalised legal market.

Furthermore, under the current Australian law curriculum, law students learn how to conduct research largely on domestic law. Except for participation in international moot court competitions, taking electives on international, comparative, or foreign law, or engaging in editorial work for international and comparative law journals, law students are not required to conduct research on international law or the laws of foreign jurisdictions. As a result, many law students graduate without receiving any

[9] Lo, above n 2, 126–7.

[10] The expected outcomes of completing an internationalised law degree are increased professional competency and cultural sensitivity. Moreover, the potential benefits of taking international, comparative, or foreign law are manifold, and include the following: law students may obtain a better understanding of domestic law if they can learn how different jurisdictions have dealt with the same or similar legal problems (James Maxeiner, 'Learning from Others: Sustaining the Internationalisation and Globalisation of US Law School Curriculum' (2008) 32 *Fordham International Law Journal* 32, 48, 54); if legal problems are viewed through a different lens, students may learn to challenge entrenched institutionalised concepts and fundamental assumptions in their own legal system (Vivian Curran, 'Dealing in Difference: Comparative Law's Potential for Broadening Legal Perspectives' (1998) 46 *American Journal of Comparative Law* 657, 658, 663); learning the laws of multiple jurisdictions may enable law students to see the bigger picture of law and society and understand the role of law in social ordering (Lo, above n 2, 119); law students' thinking and learning may be enriched by a curriculum that requires them to learn from difference but be alert for universals, to strive for best practice, to make a contribution to advancing the common good, etc (AGOLT, above n 6, 6); and practitioners apparently think that students can acquire fundamental knowledge and skills through the comparative method (AGOLT, above n 6, 52).

exposure to international or comparative law. However, in the present legal market there is evidence to suggest that law firms are interested in recruiting law graduates who understand fundamental legal principles, appreciate the diversity of legal systems, display cultural sensitivity, are good problem-solvers, have mastered the necessary research skills, can communicate effectively, and are adaptable to take up new challenges.[11] Moreover, the ability to conduct research on international and comparative law is considered highly desirable.[12] As such, it is judicious for law schools to introduce law students to research on international and comparative law and to instil in them confidence to undertake research on complex, transnational issues in their future practice. For these reasons, and regardless of which pedagogical and andragogical approach a law school adopts to internationalise its curriculum,[13] law students should be given the opportunity to develop research skills in international and comparative law.

Although offering a transnational law subject as a compulsory unit entails the redeployment and/or reduction of the 'Priestley 11' and other elective courses, if students are to gain the professional competency and cultural sensitivity demanded by the market place, it is imperative that they have some exposure to international and comparative law, and that they begin to develop cultural sensitivity and build relationships with international peers during law school. To an extent, the trend of limiting compulsory subjects and expanding elective subjects may be conducive to the internationalisation of legal education.[14] However, law students may still prefer domestic law electives to international or comparative law electives. Indeed, a

[11] Case studies have concluded that young lawyers should, ideally, possess the following key attributes: 'a sound understanding of legal principles that can apply across jurisdictions; a robust ethical framework; an appreciation of the diversity of legal systems even within the common law family; the ability to develop client relationships; the ability to work in teams; cultural awareness; adaptability; and strong skills in research, communication and presentation, critical analysis and problem solving'. AGOLT, above n 6, 66. Although it has also been noted that only top-end law firms are interested in recruiting the so-called global lawyers because smaller law firms still tend to focus on domestic practice, the global law firm sector has also grown substantially. See Jamin and van Caenegem, above n 7, 6, 17.

[12] The roundtable participants in the AGOLT project indicated that the research skills of law graduates needed to encompass the ability to conduct research into international law and the law and legal issues in different jurisdictions. See AGOLT, above n 6, 59.

[13] Simply stated, pedagogy refers to the art and science of teaching children, which is generally teacher-centred, whereas andragogy refers to the art and science of teaching adults, which is more learner-focused.

[14] Jamin and van Caenegem, above n 7, 24.

compulsory transnational law subject may be especially beneficial for students who have not yet appreciated the utility of taking any international or comparative law subject due to their focus on the requirements for admission to practice, because such a unit would enable them to have some exposure to international and comparative perspectives and to become more informed about domestic law. For law graduates who decide to pursue alternative career paths, such as government service or business consultancy, a basic understanding of international and comparative law might also increase their professional competency. Of course, these benefits will only be realised if a transnational law subject is appropriately designed and implemented. As such, it is crucial to ascertain what should be taught in a transnational law subject and how it can be effectively delivered.

III THE 'WHAT' AND 'HOW' OF A TRANSNATIONAL LAW SUBJECT

In designing any university subject, an essential preliminary question is what the subject aims to achieve. Since the main purpose of a transnational law subject is to introduce students to international and comparative law,[15] it is submitted that three learning objectives — imparting basic knowledge, promoting cultural sensitivity, and developing research skills — should dictate its contents and mode of delivery. Even so, the expected learning outcomes and graduate attributes may affect the final decisions on course contents, mode of delivery, and assessment criteria. In this section, suggestions are made as to the following: the substantive topics that a transnational law subject should cover; the graduate attributes that should be developed; the learning activities that can be conducted; and how class performance can be assessed. Because this article is not intended to be a case study, these suggestions serve only as platforms for generating innovative pedagogical and andragogical methods for internationalising the Australian law curriculum.

IV SUBSTANTIVE TOPICS

A transnational law subject should enable students to acquire a basic understanding of international and comparative law. In the study funded by AGOLT, roundtable participants concluded that graduates did not need a detailed understanding of international law or the laws of different jurisdictions, but rather a broad

[15] In the national symposium held under the AGOLT project, legal practitioners stressed the importance of law graduates entering their firms with 'an established global worldview', which gave them a frame of reference to continue the development of legal knowledge and skills of the graduates for working across jurisdictions. AGOLT, above n 6, 66.

understanding that domestic law must interact across jurisdictions and that there is a context to that interaction.[16] Aiming at breadth rather than depth, it is suggested that an introductory transnational law subject should introduce students to the following:

(1) international organisations and public international law;[17]

(2) comparative law and private international law;[18]

(3) the interface between international law and domestic law and the nexus between comparative law and international law;

(4) the basic tools necessary to conduct research on international and comparative law; and

(5) the cultural, economic, and political contexts in which the law operates.

There are several major reasons for advocating the inclusion of these five components.

First of all, although international law is a familiar term, many students do not know what it entails, especially the differences between public international law and private international law.[19] Thus, the syllabus should provide an overview of international law. In particular, it should highlight international inter-governmental or non-profit organisations because they provide forums for the negotiation and conclusion of multilateral conventions or draft model laws for the purposes of harmonisation and unification. Moreover, it is important for students to know that the sources of international obligations also include bilateral agreements, regional treaties, international court cases, international arbitration awards, and international customary law. In addition to the ingredients and sources of international law, an introductory transnational law subject should enable students to develop an understanding of the 'softness' of public international law, in the sense that its enforcement primarily depends on the voluntary compliance of signatory countries, and that diplomacy often plays a significant role in resolving international disputes.

[16] AGOLT, above n 6, 54.

[17] Public international law here refers to rules regulating the relationships between states or economies.

[18] Simply stated, private international law (or conflict of laws) refers to rules applicable in the case of international transactions or transnational conduct between private parties.

[19] Although it can be argued that the boundaries between public international law and private international law are not as clear as they used to be, these two areas of law regulate the relationships between two distinctive types of parties.

Aside from understanding how the global community is being run, students should also be aware that the Australian legal system is only one of many legal systems existing in the world. In this respect, it is submitted, students should be introduced to the study of comparative law and major legal traditions other than the common law tradition, such as civil law, socialist law (and laws of transition economies), and Islamic law, and be informed that there are variations within the respective legal traditions, as exemplified by a variety of legal systems under the civil law tradition. The basic purpose of introducing students to these traditions is not to instil a detailed knowledge of the particulars of foreign legal systems, but rather to enable students to obtain a basic understanding of the general features, sources of law, and ways of thinking — such as ideologies, legal norms, legal reasoning, the court system, the legal profession, and the role of law in society — of the jurisdictions selected for illustration. Since different legal systems have different substantive and procedural rules, it is crucial for the subject to highlight the issue of conflict of laws and, to this end, to introduce the basic principles of private international law.[20] That is, students should understand that unless the dispute at issue is covered by an international agreement or convention to which the relevant states are signatories, the issues of jurisdiction, governing rules, and enforcement of judgments arising from international business transactions or disputes between parties from different countries will be resolved by the conflict-of-laws rules of the forum concerned.

After obtaining a glimpse of international and comparative law, students should be directed to appreciate the interface between international law and domestic law and the nexus between comparative law and international law. That is, students should understand the fact that international law does have an impact on domestic law, and that comparative law can shed light on why certain legal requirements are, or are not, contained in the final version of an international treaty. For example, Australia's *Carriage of Goods by Sea Act 1991* (Cth) has incorporated some of the Hague-Visby Rules, and the requirement of 'consideration' for the formation of a simple contract under the common law tradition is not explicitly called for in the *United Nations Convention on Contracts for the International Sale of Goods*,[21] because most of the drafting nations are in the non-common law traditions. The underlying objective is to exemplify how national law and international law have reciprocal effect. Moreover, in discussing international law, it is important to highlight how domestic courts may

[20] Prospective employers think that private international law is an important subject, and they recommend that it be a mandatory unit. See AGOLT, above n 6, 62.

[21] *United Nations Convention on Contracts for the International Sale of Goods*, opened for signature 11 April 1980, 1489 UNTS 58 (entered into force I January 1988).

take different approaches to interpret international law. An excellent example is what constitutes the 'peril of the sea', which has been subject to different interpretations by domestic courts.[22]

Since one reason for offering a transnational law subject is to provide students with opportunities to undertake international and comparative law research, it would be useful for students to know which library and online resources are available to conduct research into issues other than those on domestic law. The objective, however, is not for students to be conversant with the research tools after taking the class, but to obtain a basic understanding of the research tools that are available. Once students have been exposed to the basic research tools for international and comparative law, they are likely to feel more confident in undertaking complicated research on legal problems that cross national borders in their future practice.

Moreover, teaching the laws of foreign jurisdictions without discussing the relevant cultural, economic, and political contexts in which the law operates is analogous to visiting historical buildings without bothering to learn the stories behind them. Hence, it is important to highlight the relevant cultural, economic, and political contexts when particular issues under foreign laws are discussed, in order to exemplify the diversity in legal thinking, the rationale for policy preferences, and the consequential regulatory schemes. For instance, students should be aware that non-judicial or non-legal means, such as administrative intervention, mediation, arbitration, or a hybrid dispute resolution model, are often used in some jurisdictions to resolve disputes instead of litigation. This kind of instruction, which goes beyond doctrinal analysis, is also in line with the increasing advocacy for multidisciplinary training in legal education,[23] and some exposure to foreign cultures, phases of economic developments, and non-Australian politics has the potential to enhance students' receptivity to diversity and adaptability to unfamiliar circumstances.

V GRADUATE ATTRIBUTES

The particular lawyering skills required of legal practitioners in an increasingly globalised legal market must still be ascertained, and the formulation of any definite list of attributes or skills must be supported by empirical research. In contrast, the attributes or skills required of law practitioners in the domestic setting is

[22] See the discussions in *Great China Metal Industries Co Ltd v Malaysian International Shipping Corporation Berhad* (1999) 196 CLR 161.

[23] See Fracesco Parisi, 'Multidisciplinary Perspectives in Legal Education' (2009) 6(2) *University of St. Thomas Law Journal* 347.

uncontroversial; most law academics and legal practitioners would agree that law graduates must possess analytical skills (having interpretive and problem-solving abilities), research skills (knowing how to locate primary and secondary legal materials), and communication skills (such as oral advocacy, effective writing, and client counselling). In fact, these skills and attributes are required of all lawyers, whether practising within or across jurisdictions. Thus, the more appropriate question is what additional attributes are required of lawyers engaging in international or transnational practice.

Given the variety of challenges arising from international or transnational practice, it would be very difficult, if not impossible, to predict many of the situation-specific attributes required of Australian law graduates. Bilingual or multilingual ability is clearly desirable, but the specific foreign language (or languages) in which students should acquire fluency depends on their respective career goals. For these reasons, the most sensible approach in a transnational law subject would be to cultivate general aptitudes that can help law graduates to deal with the challenges arising from practice across jurisdictions. It has been suggested that one essential attribute for lawyers in an increasingly globalised legal market is adaptability.[24] To inculcate the attribute of adaptability, a transnational law subject should prepare students to become open-minded and flexible, embrace diversity, tackle recurrent uncertainty, and discern cultural nuances. Thus, in a transnational law class, students should be exposed to the diverse approaches adopted to solve a particular legal problem, experience what it is like to work with people from different cultures, and learn the importance of being prepared to deal with unexpected changes.

Although it may be argued that the preceding attributes can be acquired on-the-job, early exposure to international and comparative law in an academic context would better prepare Australian law graduates vis-à-vis their international counterparts in an increasingly globalised legal market. However, the attributes of open-mindedness, flexibility, cultural sensitivity and so forth cannot be effectively developed merely through attending lectures and digesting primary and secondary legal materials. Hence, learning activities should also be adopted to facilitate the acquisition of these attributes in a transnational law subject.

[24] AGOLT, above n 6, 86.

VI LEARNING ACTIVITIES

How a subject should be structured depends on its objectives. In a transnational law subject, lectures and discussions of reading materials are indispensable as they provide a foundation for incremental learning. Guest speakers, such as leading academics and practitioners of international or comparative law, can also be invited to enhance the contents of the subject or to provide insights from a practical perspective. Nevertheless, the objectives of a transnational law subject cannot be fully realised in the absence of interactive learning activities. Since a wide range of innovative learning activities can be created for a transnational law subject, this article does not endeavour to provide a list of specific learning activities. Rather, it aims to recommend that scaffolding,[25] heuristic teaching,[26] and 'blended learning'[27] be employed to design suitable learning activities.[28]

[25] Simply stated, instructional scaffolding is a teaching method in which the instructor first puts scaffolding into place and then gradually removes the scaffolding (fading) to help a student solve a problem or complete a task on his or her own. For a historical account of instructional scaffolding, see Open Colleges, *Instructional Scaffolding* (2014) <http://www.opencolleges.edu.au/informed/teacher-resources/scaffolding-in-education-a-definitive-guide/>. For a theoretical discussion of scaffolding, see Irina Verenikina, 'Understanding Scaffolding and the ZPD in Educational Research', Conference Paper of AARE/NZARE, Auckland, December 2003 <http://ro.uow.edu.au/cgi/viewcontent.cgi?article=1695&context=edupapers>.

[26] In contrast with the traditional method of having the instructor impart information and knowledge to the students, heuristic teaching enables students to acquire knowledge through problem-solving and self-discovery. For a discussion on how the heuristic problem-solving in mathematics can be applied to the teaching of law, see Robert J. Rhee, 'The Socratic Method and the Mathematical Heuristic of George Pólya' (2007) 81 *St. John's Law Review* 881. For a brief discussion on how the Community Land Use Game was used as a heuristic tool to teach land use planning, see Judith T. Younger, 'A Heuristic Approach to Teaching the Seminar in Land Use Planning' (1969) 21 *Journal of Legal Education* 461.

[27] The term 'blended learning' has a broad definition, depending on what ingredients or delivery modes are mixed to enhance the learning experience. In most cases, blended learning refers to the interdependent or complementary use of traditional classroom teaching and online learning. For a useful discussion on blended learning, including the components in blended learning, criteria for blended learning, categories of blended learning, and potential pitfalls, see Donald Clark, *An Epic White Paper: Blended Learning* (2003). With respect to the theories and practical guidelines of blended learning in higher education, see D Randy Garrison and Norman D Vaughan, *Blended Learning in Higher Education: Framework, Principles, and Guidelines* (John Wiley & Sons, 2008). For a detailed discussion of blended learning in law school, including the reasons for offering blended

First of all, since almost all students lack prior exposure to international, comparative or foreign law, the instructor should employ scaffolding — giving students a lot of guidance at the beginning of the course, and then gradually letting students acquire the legal knowledge and skills to accomplish the required tasks on their own as the course progresses. Heuristic teaching can be beneficial for both young and mature learners, albeit in slightly different ways, because young learners typically prefer well-structured lessons, but also desire opportunities to exercise autonomy and creativity, whereas mature learners typically prefer self-directed learning by acquiring knowledge through experience and at their own pace. It would be more effective for students to learn through self-discovery rather than being spoon-fed. In most cases, heuristic learning results in better acquisition, retention, and application of knowledge and skills.

Moreover, the learning environment no longer consists only of the bricks-and-mortar classroom. Owing to the increasing use of multimedia,[29] the traditional classroom has been extended to cyberspace.

For example, the 'flipped classroom'[30] has been experimented with in a civil procedure class, in which the students watched videos about the core concepts, outlined the videos before class, surfed the Web during class to access rules, problems, hypotheticals and cases, and engaged in collaborative in-class learning.[31] In a similar vein, podcasts consisting of 'lecture-style' content and supported by online learning guides have been blended with face-to-face, interactive seminars in an

courses and the guiding principles for designing blended courses, see Gerald F. Hess, 'Blended Courses in Law School: The Best of Online and Face-to-Face Learning?' (2013) 45 *McGeorge Law Review* 51.

28 For a useful discussion on the framework for cognitive apprenticeship, including contents (such as heuristic strategies), methods (such as scaffolding, articulation and reflection), sequencing (such as increasing complexity and increasing diversity), and sociology (such as situated learning and community of practice), see Allan Collins, 'Cognitive Apprenticeship' in R Keith Sawyer (ed), *The Cambridge Handbook of the Learning Sciences* (Cambridge University Press, 2006) 47–60.

29 Examples of multimedia tools for teaching and learning are videos, podcasts, online forums, blogs, and narrated slideshows.

30 Generally, the instructor first delivers a lecture in class, and then students do assignments at home. The term 'flipped classroom' refers to the reverse of lecture and homework in these two settings; that is to say, students first watch lecture videos at home and then attend classes to participate in guided, interactive, and problem-solving discussions.

31 See William R. Slomanson, 'Blended Learning: A Flipped Classroom Experiment' (2014) 64 *Journal of Legal Education* 93.

intellectual property class to enable students to better prepare for class and to free up class time for application and in-depth discussion.[32] Both of these trials received positive feedback from the students, who observed that early exposure to the core concepts resulted in the production of better class notes and the formulation of better questions in class, that they had flexibility in time, place and pace to listen to the core content of the subject, that they were able to review and revise the material, and that the classes were more interactive.[33]

To effectively implement scaffolding and heuristic teaching, blended learning can be employed because blended learning allows the instructor to use a wide range of innovative methods and tools, such as 'flipping' the classroom, audio or video conferencing, synchronous chat rooms, asynchronous discussion boards, and electronic tutoring or mentoring, to cater to the different aptitudes and learning styles of students. Moreover, blended learning can free up class time to discuss the economic, political, and social contexts in which the law operates and allow students to learn these non-legal elements via the internet or social media. Furthermore, the use of multimedia allows students to interact outside the traditional classroom, thereby paving the way for a professional network. The following course structure may exemplify how scaffolding, heuristic teaching, and blended learning can be jointly used in a transnational law class to assist students in developing research skills, to expose them to the diverse approaches adopted to solve a particular legal problem, to allow them to experience working with people from different cultures, and to prepare them to deal with uncertainty.

At the outset, to help students acquire the necessary research skills in international and comparative law, the instructor can invite a law librarian to do an in-class or video presentation, or arrange for the whole class to attend a separate seminar given by a law librarian. In accordance with the principles of scaffolding, this kind of presentation could provide students with much needed guidance as they sail into uncharted waters. Thereafter, the instructor could ask students to complete a library exercise by distributing questionnaires with different contents so that they can learn the major primary and secondary sources of international law, comparative law, and the law of a foreign jurisdiction, including such materials as codes, digests, case reports, journals, and online databases. For instance, the instructor could ask the students to conduct research on money laundering in certain jurisdictions and to find

[32] See Jennifer Ireland, 'Blended Learning in Intellectual Property: The Best of Both Worlds' (2008) 18 *Legal Education Review* 139.

[33] Slomanson, above n 31, 101–2; ibid 152–5.

out whether there are any international cooperative efforts on this matter. This library exercise can be done either individually or in groups. If the exercise is to be completed by groups of students, membership of the group should draw from diverse backgrounds, especially having international students in each group, and the group should appoint one member to take notes about group dynamics, in addition to the submission of the group's findings or conclusions. In this manner, students will have the opportunity to become 'team players', to interact with peers from various cultures, and to lay the foundation for a future professional network.

After the library exercise, the instructor can ask students to do a problem-solving project in which they have to conduct more advanced research to find the solutions to, or to make recommendations for, a particular legal problem. For example, the instructor could distribute an anecdote of a married couple who are going to get a divorce and need to distribute a list of real and personal property, and then ask students to conduct research to find out how that list of property will likely be divided in accordance with the relevant legal rules and judicial decisions of the jurisdiction in question. This research project can be done either individually or in groups, and students could conduct research into any foreign jurisdiction of their choice. Applying heuristic teaching, the instructor should raise general questions to guide students to 'understand the problem',[34] such as what kind of property a particular piece of property is and who has paid to acquire it. Once students have identified the relevant issues, including the type of property, the type of ownership and how the property has been acquired, the instructor could ask them to 'devise a plan' to conduct research (building on the knowledge and skills acquired in the library exercise),[35] and to 'carry out the plan[s]' to find solutions to the legal problem.

To help students obtain a better understanding of the relevant regulatory framework, the instructor could also encourage students to consult non-legal materials pertaining to the economic, social, and political contexts in which the law operates.[36]

[34] Pólya's four-step process of heuristic solving-problem is composed of understanding the problem, devising a plan, carrying out the plan, and looking back. Rhee, above n 26, 891.

[35] In the library exercise, students should be able to obtain a basic understanding of the major sources of law of a particular jurisdiction. Moreover, in conducting research on money laundering, students may come across statutory provisions on, or cases about, money laundering through spousal transfers. This knowledge should give students some indication as to the legal materials that they should consult.

[36] For example, the policy considerations behind a regulatory framework may include the employability and social status of women and the custody and protection of children.

Midway through the project, the instructor could amend the anecdote so that students have to revise their research based on additional facts or new legal issues. In this way, students will experience the need to be prepared for unexpected developments in their future practice. At the end of the project, the instructor could direct students to post their findings on an online subject site so that they can compare regulatory frameworks, hold discussions over questions prepared by the instructor in a chat room, and/or create a blog to share their research experiences and exchange views with their classmates or overseas students regarding the approaches taken by different jurisdictions. In this fashion, blended learning can extend the learning environment beyond a physical classroom and would enable students to learn from one another and begin building professional contacts for future practice.

In summary, it is submitted that teaching materials in a transnational law subject should be comprised not only of primary and secondary materials, but also of contextualized materials and situated learning activities. Contextualized materials, such as a video about a civil trial in a foreign jurisdiction, will provide students with concrete examples of notions or practices to which they cannot readily relate. Situated learning activities, such as resolving a contractual dispute between parties from two jurisdictions based on different sets of instructions, will enable students to learn legal principles, lawyering skills, and cultural nuances through self-discovery, as opposed to lectures and reading assignments. To teach heuristically, the instructor should integrate videos or podcasts consisting of black-letter content with well-planned, interactive learning activities. Because lecturing in a large theatre limits the interactivity of a class, in-class tutorials and seminars are more suitable in the case of 'flipped classroom'. In a transnational law class, the successful implementation of scaffolding, heuristic teaching, and blended learning will enable students to learn the basic concepts of international and comparative law, develop a set of analytical or problem-solving skills that can be built upon in future legal training or practice, gain an increased awareness of alternative solutions and different policy considerations, engage in intercultural exchanges, and strengthen their adaptability.

VII ASSESSMENT

The assessment criteria appropriate to a transnational law subject depends on a number of factors, such as the intended learning outcomes, the number of students enrolled in the class, the amount of time required to mark examinations or assignments, the availability of human and financial resources, and access to information technologies. However, it is important to include both formative and

summative assessments,[37] as student performance will improve if students are provided with ongoing feedback, and overall student performance should be assessed with reference to the stated learning outcomes.

In a transnational law class, formative assessment can be given in various ways, such as audio feedback, online written feedback, face-to-face consultation, and ungraded, computer-generated quizzes. For summative assessment, examinations and tests can still be used. Considering the introductory nature of the subject, a knowledge-based examination, rather than an analysis-based examination, may be more suitable. Alternatively, the instructor may require students to submit short individual or group research papers building upon the research that they have conducted in the problem-solving project. However, since students have diverse aptitudes and learning styles, an individualised, flexible assessment scheme should be explored. Under an individualised assessment scheme, students will be allowed to propose how much weight they would like to give to each component of the overall assessment scheme. Of course, given that compulsory subjects typically have large enrolments, an individualised assessment scheme may be difficult to manage, unless a computerised grading system can be set up to customise assessment.

Where an individualised assessment scheme is not feasible, a composite system consisting of both traditional and innovative assessment methods should be adopted. A composite system is particularly appropriate for blended learning. For example, to motivate students to conscientiously participate in all learning activities, such as the library exercise, the problem-solving project, online and in-class discussions, and interactive assignments, active engagement should be part of the summative assessment. Similarly, to reinforce heuristic teaching, reflective write-ups should be required, thereby giving students opportunities to self-evaluate and synthesise their learning. Furthermore, applying the principles of scaffolding, earlier assignments should carry lesser weight, while later assignments should be given more weight. In other words, assessment should align with scaffolding, heuristic teaching, and blended learning.

[37] Simply stated, formative assessment is used to let both the teacher and students know how the students are progressing during the course, while summative assessment measures the respective achievements of students in the subject.

VIII CONCLUSIONS

Economic globalisation will continue unless protectionist policies and measures re-emerge as a result of massive warfare. As such, the legal market will become increasingly globalised. To meet the resulting challenges, law schools in various parts of the world have adopted, or will adopt, strategic measures to internationalise their law curricula. The way in which a law school chooses to internationalise its curriculum depends on its underlying objectives and the availability of resources, but in all cases, it is vital to conduct systematic, coordinated and holistic planning, including such tasks as performing a comprehensive curriculum review, exploring innovative pedagogical and andragogical methods, training qualified teaching staff, and creating a repository of teaching materials. In this way, each law school may chart its own course of internationalisation in the light of changing circumstances.

To internationalise the Australian law curriculum, law schools should consider the requirement of a foundation subject that covers the basic elements of international and comparative law. If a law school adopts the inclusive, experiential or preferential approach, or a combination of these approaches, a transnational law subject may equip students with the requisite knowledge to make informed decisions on subject selection or educational activities relating to international and comparative law.

If a law school endorses the integrative approach — that is, if international and comparative dimensions are incorporated in most, if not all, law subjects taught in LLB and JD programs — a transnational law subject may provide students with building blocks for further acquisition of knowledge and lawyering skills in international and comparative law. In any case, a compulsory transnational law subject has the potential to play a significant role in cementing all of the components of an internationalised legal education.