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Its overall focus is to promote excellence in legal academic teaching and research with particular emphasis on supporting early career academics, throughout Australasia, in the areas of:

- (a) Legal research and scholarship;
- (b) Curriculum refinements and pedagogical improvements in view of national and international developments, including law reform;
- (c) Government policies and practices that relate to legal education and research;
- (d) Professional development opportunities for legal academics;
- (e) Professional legal education and practices programs.

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**LEGAL EDUCATION TODAY: TEACHING TO ACTIVELY
ENGAGE LAW STUDENTS – NEW APPROACHES TO
THE USE OF DECIDED CASES**

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I INTRODUCTION

The widely accepted method of teaching to law students requires those students to read appellate judicial decisions from a designated casebook or a reported case digest and attempt to identify the legal principle arising from the decision (case method). The teacher then questions students about the case as reported to elicit the facts, the reasoning and the ratio. In this context the dialogue between teacher and student is designed as a question and answer session. This method would normally be designed to elicit answers to questions that the teacher has prepared with known expected responses. This is sometimes referred to as Socratic although it has been pointed out that in a “pure Socratic dialogue, the questioner seeks, with the other participants, to find an answer that is unknown to all of them.”¹ Generally speaking then the method used in a law school does not fall within the purest context of what is meant to be Socratic.² This method of legal education has an emphasis on teaching legal rules from the cases.³ The cases are usually located in a case book that has been packaged and tailored for students.

In the law school context the method described as Socratic can also be combined with the use of lectures, which is content driven, to form the traditional basis for law school instruction.⁴ One of the obvious problems with lectures is that it is driven by

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¹ Marlene Le Brun and Richard Johnstone, *The Quiet Revolution – Improving Student Learning in Law* (1994) 282.

² John O Cole, ‘The Socratic Method in Legal Education: Moral Discourse and Accommodation’ [1983-1984] 35 *Mercer Law Review* 867-890, 868.

³ Mary Keyes and Richard Johnstone, ‘Changing Legal Education: Rhetoric, Reality, and Prospects for the Future’ (2004) 26 *Sydney Law Review* 537, 540.

⁴ James K Eckmann, ‘Law School Teaching: Linking Learning with Law Practice’ (2004) 14 (2) *Legal Educ Review* 257, 260-261.

the lecturer and that there is at best passive learning by the student and there is very little, if any, engagement with students. This is particularly the case where there are large numbers in the lecture room.

The lecture model does not appear to sit well with current educational learning theory that students need to be actively engaged in the learning process rather than through passive learning.⁵ In addition the lecture model does not accommodate, encourage or reward collaborative work by students.⁶

This traditional model of legal education focuses on the teacher providing information to students via lectures and having students identify legal principles from the decided cases and applying them to hypothetical problems. However this teaching model can be looked at differently if we examine it from a wider learning perspective.

For instance we could consider the lecture from the stand point of a performance whereby the teacher articulates and performs to the students through the use of rhetoric and humour. The content of the lecture can be enhanced through the use of stories about the law, particularly where the teacher has had experience as a solicitor or barrister.⁷ In this way students receive information but do so in the context of an engaging presentation style from an expert in their particular field. In this way the lecture is not seen as a lecture in the traditional sense, but rather can be viewed as a narrative played out by the teacher to the student audience.

From the perspective of the cases that students are required to read it may be better to view such reported cases as a collection of authentic stories that are literary in nature.⁸ In the beginning there is normally a disagreement between two or more persons concerning a real fact situation. That disagreement may not be capable of resolution between them so it may end up needing to be resolved by one or more learned persons. Within that framework there is a sub plot in which arguments are made by

⁵ See in general comments by Peter Spiller, 'The Journey of a Law Teacher' *Legal Educ Review* 239, 251.

⁶ Keyes and Johnstone above n 3, 547.

⁷ Fiona Cownie, *Legal Academics: Cultures and Identities*, (2004), 128-129.

⁸ William Twining, *Blackstone's Tower: The English Law School*, (1994), 102-104.

the various persons advancing for a particular ending.⁹ Along the way there are also numerous stories told by the various participants that may reveal particular and interesting moral and social issues.

The reported case is an example of a storytelling approach that can relate to literature and the law. There is a beginning, middle and an end to the stories presented by the parties to the court. There is also the decision by the court which involves the language of storytelling. There are characters, a conflict, a theme, a resolution, a point of view and an audience.¹⁰ Students should be able to engage in that process because “storytelling is something everyone can relate to.”¹¹

The reported case also provides insights as to the manner in which the legal judgment or formal legal story was reached. For instance the report indicates which facts were accepted (which story from the parties was accepted), which authorities were followed or distinguished (which previous legal stories were accepted). Furthermore the reported case can provide signposts to direct the reader, to historical and other non legal materials in various locations, which could include the internet, to assist the reader with understanding the story told.

From the perspective of the reader being a law student there is an opportunity to read the reported case not from the point of view of legal principle, as demanded by the case method, but from a point of view of the case being a story of various parts and various players. Viewed in this light, the student can be stimulated into reading the case but from a literacy point of view. However the reader in this instance is a law student and trained in using their researching and analytical skills. By directing them to the signposts in the reported case there is a further opportunity to dig deeper and enhance their appreciation of the story that is being told.

⁹ Ibid 102.

¹⁰ Katerina Lewinbuk, ‘Can Successful Lawyers Think in Different Languages’ (2007) 41(3) *The Law Teacher*, 275, 281.

¹¹ Ibid.

The above discussion indicates that there are different ways to view the lecture and casebook method of legal teaching. It is also a reflection of the move towards a variety of teaching methods which also coincides with the slow acceptance of the teaching of law as a “holistic and educative process” with an “integration of skills development, skills theory and practice.”¹² On this basis the need to examine a variety of learning strategies is critical to effective law teaching.¹³ It is also provides a basis to examine and explore various other methods to engage law students.¹⁴ This has also been realised through the adoption of methods such as role playing, group presentations and mooting in the classroom context and practical legal placement programs and pro bono programs outside the classroom context.¹⁵ It is within this overall teaching and learning environment that the concept of storytelling as a teaching methodology can be explored.

II STORYTELLING AS A TEACHING METHODOLOGY

Storytelling is used as a teaching technique in a number of disciplines including nursing, medical, and teacher education. In the context of storytelling in nursing the literature suggests that such approaches can assist with developing skills in clinical settings. Stories also assist with providing insights into the client’s background and experience that may be associated with the illness.¹⁶ The same rationale could be applied to a medical school where a need to understand the story or the history of the patient can be a critical aspect of determining a correct diagnosis. In the context of teacher education studies have shown that storytelling assists pre service teachers to make necessary connections between lives of children and how this impacts on day to

¹² Sally Kift, ‘Lawyering Skills: Finding their Place in Legal Education’ (1997) 8 *Legal Educ Review* 43, 44.

¹³ *Ibid* 63.

¹⁴ Jill Howieson and William Ford, (2007). Teaching and Learning Skills: Increasing a Sense of Law School Belongingness. In *Student Engagement*. Proceedings of the 16th Annual Teaching Learning Forum, 30-31 January 2007, Perth: The University of Western Australia.
<<http://lsn.curtin.edu.au/tlf/tlf2007/refereed/howieson.html>>

¹⁵ Steven I Friedland, ‘How we Teach: A Survey of Teaching Techniques in American Law Schools’ [1996-1997] 20 (1) *Seattle U L Rev*1, 30-31.

¹⁶ Ruth Davidhizar and Giny Lonser, ‘Storytelling as a Teaching Tool’ (2003) 28 (5) *Nurse Educator* 217.

day learning in the classroom.¹⁷ The process could involve oral (such as retelling a personal experience) or written means (such as a journal to record reflections and to add other stories) to both the teacher and other members of the class. The benefits of storytelling include teaching communication, teaching ethics, to provide role modelling and to develop critical thinking.¹⁸

The use of stories has also been proposed to assist with the education of students in professions that will deal with complex workplace situations.¹⁹ The essential concept behind this approach would appear to be to compile a series of stories or case files from practitioners and then make the database available to learners as a form of instruction.²⁰ By utilising this database problems can be constructed and used to stimulate responses and reflection by students in solving such problems.²¹ The stories or cases that comprise this data base relate to the experiences of practitioners working in that professional field. This type of storytelling is directed at professionals, whom are well experienced. This will add another dimension to the learning process for students in the classroom and can be utilised for critical thinking and problem solving skill development.

There have been increasing attempts to use problem based approaches within law schools to facilitate student learning. Such problem based approaches have in many respects drawn upon other professional disciplines that utilise stories or case files and use these to construct scenarios for students to respond to. In the context of a law school the approach would be to take a case or a group of decided cases and construct a problem adapted to those cases rather than constructing a problem that fits the legal principle from a case.²² The underlining concept is to create a storyline or tale that

¹⁷ Cathy Coulter, Charles Michael and Leslie Poyner, 'Storytelling as Pedagogy: An Unexpected Outcome of Narrative Inquiry' (2007) 37 (2) *Curriculum Inquiry* 103-122, 105.

¹⁸ Davidhizar and Lonser, above n 16, 219-220.

¹⁹ David Jonassen and Julian Hernandez-Serrano, 'Case-Based Reasoning and Instructional Design: Using Stories to Support Problem Solving' (2002) 50 (2) *Educational Technology Research and Development* 65-77, 68.

²⁰ *Ibid.*

²¹ Jonassen and Hernandez-Serrano cite the work by D A Schon *The Reflective Practitioner- How professionals think in action* (1993).

²² Myron Moskowitz, 'From Case Method to Problem Method: The Evolution of a Teacher' (2003-2004) 48 *St Louis U. L. J* 1205, 1208.

raises issues in a way that challenges students to organise and analyse the issues like a lawyer. The story or tale is structured so that students are able to utilise a decided case or group of cases to support their arguments relating to the issues that arise from the problem.²³ In many respects this approach sits well with the approach of using a data base of case files so that students can access, peruse and apply to a problem situation.

III STORYTELLING IN THE CLASSROOM

The use of storytelling in a legal classroom could come from the experiences of the teacher providing insight to law students as to the practical implications of acting like a lawyer.²⁴ This type of storytelling is useful in exploring current practical issues rather than focussing on case law that has been drawn out to the appellate level. However this approach is again teacher focussed and provides for the teacher to determine what aspects will be raised with the class. Furthermore the teacher determines which stories that should be told and which aspects to emphasise.

Storytelling could take the form of students retelling their experiences of how they have been affected by the legal process and more specifically to the content of the unit of law being studied. This type of storytelling has the advantage of allowing students to provide direction to the discussion. It would allow for students to “help students become responsible for their own meanings”²⁵ rather than relying on the teacher. It has also been suggested that this storytelling provides an opportunity for law students to “understand the perspectives of minority groups and for initiating racial reform.”²⁶

As the discussion takes place within the classroom setting the teacher is also able to provide comments and insights to the stories being told. An experienced teacher may also be able to draw parallels with the stories and the content of the particular topic

²³ Ibid 1209-1211.

²⁴ Coulter, Michael and Poynor, above n 17.

²⁵ Mark Weisberg, ‘Learning to Trust Your Own Mind and Other stories about (Legal) Education’ (1992) 17 *Queens Law Journal* 304-327, 322.

²⁶ Shauna Van Praagh, ‘Stories in Law School: An Essay on Language, Participation and the Power of Legal Education’ 2 *Colum J Gender and Law* 111-144.

being studied at that time. In this manner students see that the discussion has direction and the involvement by the teacher at the appropriate time can give the students comfort that the discussion is valuable for their learning and passing of the unit of study. Furthermore it has been argued by Van Praagh that “allowing students to connect stories to their learning of law, teachers share with students the mantle of leadership and encourage co-operation rather than competition.”²⁷

Another approach that could be utilised is to require students to write a story covering some basic principles covered in the unit of study. The context of this approach is to stimulate student involvement and interest in the content of the unit. In the case of taxation law it is critical for students to see past the perception that it is only about numbers and money. Instead there is a need for students to see the nature and form of the underlying principles of taxation law.

IV STORIES AND THE CASE METHOD

These storytelling approaches can enrich the learning experience for students. However, as discussed in the introduction, a re-examination of the case method and the reported law report may itself provide a platform for which a different form of storytelling may evolve.

There have been suggestions in the literature that there should be *fewer cases* selected for students to read.²⁸ In this regard Clermont suggests that there should be an enriched case method²⁹ whereby only the key cases are studied in line with the general notion of critical analysis. The suggestion is then made that there are other benefits from a closer examination of the relevant and central features of these key cases. There is an opportunity for students to look more closely at the roles played by the lawyers, to evaluate some of the policy aspects behind how the case led to being

²⁷ Ibid. See also Toni Pickard, ‘Experience as Teacher: Discovering the Politics of Law Teaching’ (1983) 33 *U Toronto L.J.* 279.

²⁸ Kevin M Clermont, ‘Teaching Civil Procedure through its Top Ten Cases, Plus or Minus Two’ (2003) 47 *St Louis U.L.J.* 112.

²⁹ Ibid 116.

litigated. More specifically there is “a thorough reading of the facts and proceedings helps students to understand the legal process, as to both dispute-processing and law-making.”³⁰ This leads to an appreciation of the story behind the case.

The notion suggested here is that there is a need to *enrich* the case method approach. Suggestions have been made by Hillman that there needs to be an examination and appreciation of the supporting materials surrounding these selected cases.³¹ In this regard documentation such as legal briefs, letters from lawyers and drafted documentation can be utilised to aid in the learning process of litigation for students. Threedy suggests examining the historical reconstruction of seminal cases.³² The underlying thread of this approach is that cases are being taught without appreciating the context behind the litigation. For instance the facts as reported in the judicial decision are “extremely truncated”³³ and are portrayed in a manner suggesting that the facts are not really in dispute. The suggestion is then made that legal archaeology processes “enables a rich comprehension about law, and how cases are decided in an adversary system. Besides making possible a deeper understanding of precedent and its possible flaws, this process also helps develop lawyering skills that are necessary to represent clients competently, with an adequate inquiry into facts.”³⁴ Furthermore in the situation of older cases this process enables students to investigate the factual circumstances surrounding the litigation which may be assisted by modern technology.³⁵

The concept of utilising the reported litigated case as a story has been taken up by Caron in the taxation law arena.³⁶ Caron selected 10 key United States tax cases and then requested a number of tax law specialists to prepare a story concerning the factual and historical basis behind the litigated case. Caron suggests that as “the

³⁰ Ibid.

³¹ Robert Hillman, ‘Approaches to Teaching Contracts’ (2000) 44 *St Louis U.L.J* 1197.

³² Debora Threedy, ‘A Fish Story: *Alaska Packers’ Association v Domenico*’ (2000) *Utah L. Rev* 185-221. See also Ann Shalleck, ‘Constructions of the Client within Legal Education’ (1992-1993) 45 *Stan L. Rev* 1731, 1733-1735.

³³ Ibid 185.

³⁴ Ibid 224.

³⁵ Ibid 230.

³⁶ Paul L Caron, ‘Back to the Future: Teaching Law through Stories’ (2002-2003) 71 *U. Cin. L. Rev* 405.

archaeological approach to storytelling is based on the available objective historical record of litigated cases, it avoids a recurrent criticism of narrative scholarship – that is based on subjective stories by individual authors and, this, cannot be tested and replicated by others.”³⁷

In essence the emphasis of this style of storytelling is on retelling the historical context of the facts that led to the litigation between the parties. On the basis of what Caron has undertaken the stories told are told from a tax law specialist perspective. It provides a resource for students. In this regard it responds to the criticism of Schultz that law teachers need to “do more than read and extract rules from the published opinions of appellate cases.”³⁸ However the process does not allow for students themselves to be actively involved with the re telling of the stories behind these key cases. The question that arises is whether it may be more appropriate for students to be assigned to re tell the story behind the litigated key case to other students in the classroom context. Such an approach may enable students to appreciate an enriched case method, be engaged in the learning process and be part of leading the class discussion.

V STORYTELLING, ENRICHED CASE METHOD AND STUDENT ENGAGEMENT

A more interactive and engaging style of teaching may be more appropriate if students are given the opportunity to read the appellate judgment of these fundamental cases and recite the historical facts, the relationship of the parties, the underlying policy considerations to the rest of the class as part of a student led discussion.³⁹ Such an approach not only enriches the classroom learning environment but also provides an opportunity for “students to develop social and interpersonal skills which are desirable for legal practice as well as other work environments.”⁴⁰

³⁷ Ibid 409.

³⁸ Nancy L Schultz, ‘How do Lawyers Really Think’ (1992) 44 *J. Legal Educ* 57-73, 64.

³⁹ Judith Maute, ‘Response: The Values of Legal Archaeology’ (2000) *Utah L. Rev* 223-247.

⁴⁰ Alison Greig, ‘Student-led Classes and Group Work’, (2000) 11 *Legal Educ Review* 81.

The unit of study that I teach is Revenue Law. It is not a Priestley 11 requirement⁴¹ so it is not a mandatory requirement for a Law Degree. It is normally offered as an elective unit, although one or two law schools do require it as a compulsory unit of study for the completion of the Law Degree (such as at the University of Western Sydney).

Oberst takes the view that students in an introductory revenue law unit should focus on the legislative framework rather than analysing case law.⁴² On the other hand there have been suggestions that an introductory revenue law unit of study should focus on providing students with a grounding in legal skills rather than concentrating on content.⁴³ This is particularly the case when it is considered that the content and tax landscape change constantly. In that regard Caron is of the view that “the basic tax course needs to convey the underlying tax architecture to empower students to understand the tax law du jour.”⁴⁴ If one accepts that Revenue Law should provide students with essential skills to respond to the ever changing tax environment then it makes sense to utilise the fundamental cases to teach and engage students.

In the context of focusing on fundamental cases there is generally a need to examine those cases which were decided by superior courts and sometimes are quite old. It is usually the situation that those cases have been instrumental in providing a distinct line of reasoning that has been utilised by subsequent judicial decision making through the notion of precedent. In such a situation these older cases immediately provide a rich source of history that can be used to stimulate student interest and enable them to question current thinking. This approach has also been identified by Avi-Yonah who suggests that history has a dual purpose to play. It can teach us as to the reasons why we are where we are today. It also allows us to provide some rationale for accepting or rejecting current doctrine.⁴⁵ It also allows for a more

⁴¹ For NSW purposes, the Priestley 11 refers to those compulsory units of study that need to be completed by a law student to be eligible for admission as a legal practitioner.

⁴² Michael Oberst, ‘Teaching Tax Law: Developing Analytical Skills’ (1996) 46 *J. Legal Educ* 79.

⁴³ Michael Livingston, ‘Reinventing Tax Scholarship: Lawyers, Economists, and the Role of the Legal Academy’ (1998) 83 *Cornell L. Rev* 365.

⁴⁴ Caron above n 36, 411.

⁴⁵ Reuven S Avi-Yonah, ‘Tax Stories and Tax Histories: Is there a Role for History in Shaping Tax Law’ (2003) 101 *Michigan Law Review* 2227, 2237.

informed approach to examining and evaluating more recent court decisions. Seen in this context it could be argued that this re telling of the litigated story in the classroom is a form of teaching pedagogy.

VI APPLICATION TO LEADING TAX CASES

It is in this framework that I experimented with storytelling and the teaching of major cases in the introductory Revenue Law unit in Semester One 2007 - for instance exploring the nature of what is an income receipt is the 1966 High Court decision of *Scott v FCT*.⁴⁶ The story is simple. It deals with a gift received by a solicitor from a client. The case examines the fine line between a gift given in a personal and from a friendship point of view (not assessable) and a gift given as part of, or in connection with the provision of professional services (assessable). All students were asked to read the case for the following class as would normally be the situation while the assigned students were requested to prepare particular responses to set questions for the benefit of their classmates. The questions were set by me as the lecturer and were designed to introduce the storytelling notion to the students in a gradual manner. An important aspect of this exercise was to request that all students of the class read the *full* judgment of the High Court and not just the extracts from the judgment that were provided in the prescribed tax casebook. The prescribed tax casebook only provided those factual circumstances of the litigated case as was considered important by the author of that book.

A small group of students were requested to “retell the story to the class.” In doing so the students were requested to explore the factual issues, the relationships of the parties, how the conflict arose and how it was subsequently resolved. This group also had the opportunity to focus on the stories that the taxpayer and the Tax Commissioner presented to the court. This group was not required to examine or outline the legal principle arising from the actual judgment by the High Court. The emphasis by this group was to examine the background and explore some of the underlying reasons why this particular matter was litigated. They were then required

⁴⁶ (1966) 117 CLR 514.

to recount what they had discovered from the full report of the case and any other associated information. From the perspective of storytelling it was important to emphasise to this group that there was associated information apart from the reported judgment. Additional elements that the judge drew out as he was retelling the factual story included the personal traits of the donor of the gift, including her generous nature involving other payments of money to others. In addition there was an emphasis on her contribution to the community in relation to the completion of a memorial to a submarine which sank, with numerous losses of life, during the First World War. This memorial was the idea of the donor's husband but he died before implementing the plan. Mrs Freestone (the donor) took up that dream and finished the project.

Particular information that would be gathered by these students is reproduced in **Appendix 1** to this paper. It will be seen that the information is not legal based but is rich in historical value. It also provides students with an appreciation of the human interest story surrounding the factual circumstances of the case and not just the factual circumstances as described in the litigated case.

This aspect provided students with a lead into being able to research the background associated with this memorial and develop an appreciation of the generous nature of the donor. In this way students were able to see a rationale behind the gift to the solicitor. It also allowed for students to appreciate that it was this gift that attracted the attention of the taxation authorities and not any other gifts made to persons not associated professionally with the donor or gifts to the community at large. So by examining the factual circumstances of the case and the associated actions by the parties a clearer story can be told.

In this regard the reported judgment by Windeyer J provided a resource of information for students. In particular his Honour recounted the evidence given by Mrs Freestone in cross examination, which is reproduced in **Appendix 2**.

Aspects that were raised by the students included the fact that there were two relationships in existence, each as important as the other. The first relationship was the professional one whereby the solicitor had acted for many years for an elderly woman. The second relationship was the personal and long time friendship that had developed between the solicitor and the elderly woman. The reason why the Tax Office became interested was because the elderly woman gave the solicitor £10,000 , which in the early 1960's was a very large sum of money and represented at the time over 10 times average yearly earnings . The Tax Office argued that the amount was income of the solicitor and this led to the matter eventually being litigated and ending up in the courts. Other background information to the story included the fact that the solicitor had always been fully paid for his services. Furthermore the cheque written by the elderly woman was done while in a car travelling around and not at the solicitor's office and the elderly woman instigated the writing of the cheque. Finally the evidence indicated that Mrs Freestone also made out cheques for a number of persons overseas.

This group of students explored these facts and background issues, which were not necessarily legal issues. It was up to the students to think about the relationships of the two individuals involved and to look to the history of these relationships. In this way there is a parallel to the approach taken by Caron in *Tax Stories* but in this situation it is the students who are discovering the real facts behind the story and not the tax authors. It also allowed for the remainder of the class to appreciate the human aspects to a legal case and motivate them to engage in the discussion.

The second group of students were asked to determine the legal principle of the decision. This group of students were then required to apply that principle or proposition to a question in the tutorial discussion questions and provide a workable solution. This approach allowed for most students to appreciate that the decision could be applied to a number of other situations to determine tax liability. From the perspective of showing the importance of the decision it was necessary to illustrate or portray a proposition from the case. In essence the court determined that the

unsolicited gift was not income as the connection between the gift and the provision of services by the solicitor was too remote.

For those students that dug a little deeper there was an opportunity to investigate the manner in which this case is seen to be a landmark case. For instance a search of relevant legal data bases would have established the number of times that *Scott's* case had been referred to and accepted as being authority for the particular proposition.

A search of such legal data bases indicates that the decision in *Scott's* case has been referred to in 7 High Court judgments, 23 Federal Court judgments and 2 Supreme Court judgments. Widening the search indicates that the decision has been referred to in another 14 High Court transcripts and 57 Federal Court of Australia transcripts.

Students would have also discovered the comments made by Hill J in *Brown v FCT*⁴⁷. His Honour briefly discussed *Scott's* case⁴⁸ and then stated⁴⁹

Scott's case has been followed in many cases since. While some may think that Mr Scott was fortunate to succeed, there is no case which suggests other than the question whether a gift is income in ordinary concepts must depend upon a consideration of all the circumstances in which the so called gift is made. Should the so called gift be but a payment or transfer for no consideration in satisfaction of a right to commission, then without more the payment or transfer would be income in ordinary concepts.

These comments by Hill J make it clear that *Scott's* case is the leading case in the area but His Honour also notes that the question whether a gift is income must depend upon a consideration of all the circumstances. In the context of the storytelling exercise "all the circumstances" includes all the relevant stories concerning the parties involved.

⁴⁷ [1999] FCA 563; 99 ATC 4516.

⁴⁸ Ibid 4520.

⁴⁹ Ibid 4521.

The third group of students were asked to apply the principle or proposition to a situation today and how an individual client may need to structure an arrangement if they wished to give a gift to their legal professional. This exercise demonstrates the continuing importance of *Scott's* case as there have been no legislative responses to the giving of unsolicited gifts. Students were asked to indicate to the class how the assessability or otherwise of such gifts would be dependent on the relationships underlying the basis for the gift and whether the legal professional or other professional for that matter may have already been fully remunerated for their services.

The class was led by these groups of students and there was no direct involvement by me as the teacher. This may have suited some students, particularly those students who are vocal in their views and can easily engage in class discussion. It may not have suited other students, who look to the teacher as providing clear and coherent discussion in a classroom.⁵⁰ There is a fine line in providing an opportunity for students to discover their way through the historical basis of these stories and for a teacher to emphasise what is important for students as part of the learning experience.⁵¹

VII REFLECTION ON THE CASE METHOD AS A STORY

The above storytelling approach was utilised in three other classes during the semester. Each time there were three groups and each group had a specific task, as set out above, in retelling the story of the case. Each time the case selected was viewed by me as a fundamental case that needed to be addressed in depth for the topic being studied in the introductory revenue law course. See **Appendix 3** for an example of the information that could be obtained for the story in *FCT v Whitfords Beach Pty Ltd*.⁵² I

⁵⁰ Greig above n 40, 86.

⁵¹ Van Praagh above n 26, 129-135.

⁵² [1982] HCA 8; 150 CLR 355.

It is important to obtain feedback from students as to whether they found the storytelling approach helpful for their learning. Accordingly I issued a student feedback questionnaire after the first storytelling exercise. Student responses ranged from being very supportive of the approach through to those students that would have preferred a structured lecture on these important cases or required further guidance by the teacher on the critical legal issues.

Comments that were made included:

“Yes, more thorough than traditional explanation”

“Yes, as part of an adversarial system, it is easier to relate to a client when fighting for them”

“I would agree with this approach as it shows us why the facts are so fundamental, and gives a general framework in how to approach case”

“A more structured lecture would be even more helpful in the last hour of each class”

“Yes, but sometimes some students needed more guidance”

“Not really. I prefer a straight forward case analysis with lecture notes spelling out the ratio”

The feedback from students indicates that there is scope for the storytelling exercise but that students also consider it necessary for the teacher to be actively involved, either through a lecture or directing the discussion.

Accordingly I introduced an additional section at the end of the student led group presentations that enabled a summation of the relevant legal issues and principles to be explored and explained for the benefit of the whole class. A second student feedback questionnaire confirmed that this did assist with student learning.

From the perspective of student involvement in the storytelling exercise there were always willing participants. This was particularly interesting as there were no assessment marks attached to the exercise. In contrast when set problems were to be

discussed in class there were only a number of students that had prepared. One possible explanation for the interest in the storytelling approach was that it was a new and fresh initiative that had not been utilised elsewhere in their law course. Indeed when one considers that the student cohort undertaking this unit of study were mainly final year students it becomes clear that students may have become tired of the usual lecture/case method/problem based solving approaches. This was confirmed with responses from the questionnaire that students enjoyed the learning experience associated with this style of storytelling.

The benefits of this style of teaching could be viewed as follows: it is a shift from teacher led to student led learning, it provides an opportunity to improve oral communication skills, it provides an opportunity to see the background of the factual dispute between the parties and not just the facts as presented in the case judgment, it provides a more detailed analysis or enrichment of the case method, it provides an opportunity for students to discover for themselves the legal principles arising from the judgment. In short it is one useful teaching methodology that can be utilised across a number of units in the law degree to assist in engaging students.

APPENDIX 1

K13 SUBMARINE MEMORIAL – CARLINGFORD



LEUT Chris Forward from HMAS Stirling had an inquiry from a relative - what is the link between the British K class submarines and Australia (and therefore the K-13 memorial in NSW). A quick note to our National Secretary, Peter Smith, soon had the information on its way. For those that endured the Sunday Divisions at Carlingford a quick reminder.

In 1915 the British Admiralty secretly planned a class of submarines of revolutionary design. These submersible destroyers, as they were called, were to be the largest, heaviest and fastest submarines built anywhere in the world at that time. Driven on the surface by steam engine, with a conning tower and retractable funnels, they proved to be so fast that no British submarines of the 1939-45 War could outstrip them. Between August 1916 and May 1918 the Royal Navy commissioned 17 of these vessels, designating them the "K" class this design had been evolved out of fear that the German Navy were building U-boats capable of 20 knots on the surface. The main engines, two turbines fed by two oil-fired boilers producing 10,500 horsepower and these were backed by four electric motors for underwater propulsion, plus a 1,800 hp diesel unit for use on the surface while the boilers were building pressure.

On the morning of 29 January 1917 at 0800 hours, with 80 men on board, LCDR Godfrey HERBERT RN gave out the order to cast off and tugs towed the giant submarine **K13** out of the basin of Fairfield's yard to move slowly down the Clyde. There was a crew of fifty three, plus fourteen directors and employees of Fairfield's, five representatives of subcontractors, five Admiralty officials, a Clyde pilot, with two passengers being the Commanding and Engineer officers of Submarine **K14**, which was being built at the same yard.

K13 looked impressive, she was 339 feet long and displaced on the surface 1,800 tons, figures greater than those of the largest destroyers at that time. Her submerged displacement was 2,600 tons. While the day before she had dived and remained satisfactorily submerged in Gareloch for an hour. On the final test drive a careful check of the dials and instruments showed everything functioning correctly. One indicator was seen to be flickering, but this was thought to faulty wiring and a bad contact. The indicator was vitally important however. It showed whether the boiler room ventilators were fully shut before diving.

There were in all nine watertight doors and apart from the torpedo hatches, twelve hatches and innumerable valves, manholes and other openings in the hull: "Too many damned holes", as more than one submariner observed. For an incredible fifty-seven hours the 47 survivors were trapped in the submarine after it sank. They were finally able to climb out through a hole cut in the plating of the forward deck of the submarine. Against all odds they survived in this tomb of death while what was described as bad salvage was carried out above them with one botch after the next occurring. The final tally of survivors was officially forty-eight with a loss of thirty-two. **K13** was raised to the surface six weeks after her fatal plunge and in mid March was towed into Fairfield's for refitting.

Some months later, with minimal ceremony, she was re-commissioned into the Royal Navy as **K22**. In the 16 years between 1917 and 1932 over 300 men lost their lives in the K-class and all died as the result of accidents".

Why therefore is a monument of *K13* in Australia? Here the facts become hazy and take time to piece together, but this is a fascinating story. During 1961, Mrs. M Freestone the widow of Charles, survivor of *HMS K13*, paid for the building of a memorial in commemoration of those who have lost their lives in *K13* and other submarines. Born in Chelmsford, Essex in 1896, he volunteered for Submarine service in the Royal Navy during the First World War and was a Leading Telegraphist on *K13*. Subsequently he was transferred at his own request to *HMA Submarines J3* and, later, *J4* and at the end of his service in the RAN he remained in Australia. He was greatly attached to the Parramatta district where he achieved outstanding success as a manufacturer, employer and investor. This district reminded him of Chelmsford; both located on a river with large industrial zones and pleasant rural areas surrounding them.

He set aside part of his subdivision in Pennant Hills Road, Carlingford in 1956 to be named the "**K13** Memorial Park". Without seeing the Memorial commenced Charles died in May 1958. His health was impaired by pneumonia and by long drawn out and exhausting battle with the authorities to have his "Greenacres" property released from the Green Belt and recognised as residential area. His wife then courageously took up her husband's dream. An architect was employed and while keeping in mind Charles' idea of using "good solid Australian stone as used by the pioneers" to embody a seascape motif with the letters "**K13**" prominently displayed, a plan was finally submitted to the council which was adopted in March 1961.

Rear Admiral H.A. SHOWERS CBE RAN (Rtd) conducted the service commemorating the unveiling and dedication of the K13 Memorial to all Commonwealth submariners on Sunday, 10 September 1961, in the presence of Mrs. M.F. FREESTONE. Subsequently the Fourth Submarine Squadron of the Royal Navy and later RAN held Squadron Divisions at the Memorial each year, which included presentations of awards and wreath laying ceremony.

The inscription on the memorial reads: "This memorial has been created in memory of those officers and men of the Commonwealth who gave their lives in submarines

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while serving the cause of freedom. It is called the "K13" memorial in particular memory of those lost in *HM Submarine K13*."

Written by *Pauline Garland, the Librarian of the Submarine School Library, HMAS PLATYPUS*

APPENDIX 2

Evidence given by Mrs Freestone (donor of the gift) in her Cross-Examination.

7. Her evidence may be summed up by quoting some passages from her cross-examination.

"Mrs. Freestone, coming back to this conversation, you say he was speechless. Did he say anything else ? - Yes. A little while afterwards he said, 'Mrs. Freestone, no one has ever given me anything before except my mother'.

"Did he say, did he protest any say 'You have no need to do that' ? - Yes, he did very much.

"What did you say ? - I said I still wanted to do it.

"Did you tell him, did you say any more about why you wanted to do it ? - I told him what I have already said, that

I wanted to do things while I am well, while I am alive to do them, not wait until I am dead and leave them in a will.

"So you explained why you wanted to give him 10,000 pounds? - It was nothing to do with what he had done.

"That is not what I asked. Did you explain to him, or tell him why you wanted to give him the 10,000 pounds? - You explain to a person you regard as your very best friend, and I do regard Mr. Scott as my very best friend

"Because he has helped you over the years ? - No, not because of that. That comes into it I suppose, but you get to know a person when you work with them very much.

"You are not suggesting the fact he was your solicitor for this long period had nothing to do with it ? - No, it was not an honorarium or anything like that. I gave it to him because I wanted to give it to him not because he did anything for me. I just gave it to him because I wanted to.

"Would you not agree with this, partly because he had been your solicitor over the years ? - Not necessarily because he has been my solicitor. He has been my friend.

"That friendship grew in part out of the attention he gave you as a solicitor ? - No, because he was my husband's friend. That is how I got to know him in the first place.

"But he had also been your husband's business associate ? - Yes.

"And he had helped your husband in business ventures ? - I suppose I would not have known him if he had not been my husband's friend. He helped me, I suppose. My husband was a

capable person.

"He had given you capable help in relation to the administration of the estate ? - I regard Mr. Scott as an excellent solicitor, that is why I want him to do everything for me always.

"At that stage in August 1960 one of the factors that was operating in your mind was that he had been a good solicitor as well as being a good friend ? - No, I was not thinking about that at all. I made out these cheques to these people in England as well at the same time. All these people got the gifts at the one time." (at p520)

APPENDIX 3

Note the reference to Craigie and to the "Whitfords" and the fact of State Government rezoning and development.

GOVERNMENT OF WESTERN AUSTRALIA

Department of Land Information

Government of Western Australia

Attention: News/Travel Editors

Media Statement

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DLI REVEALS THE ORIGIN OF LOCAL SUBURBS

Ever wondered how suburbs such as Burns Beach, Joondalup and Hillarys got their names? The Department of Land Information's (DLI) website has information about the history of all local suburbs.

Hillarys was named after Bertram John Hillary, a Gallipoli war veteran. He set up the first beach shack on a lonely stretch of beach in 1930. The Army had use of the land during World War II. That stretch of beach unofficially became known as "Hillary's". The Shire of Wanneroo suggested Hillarys as a suburb name and it was approved in 1971.

The suburb **Marmion** was named after Peter Marmion. He operated a whaling station in the area in 1849. In the 1930s, Marmion Beach was a popular spot with fisherman especially as numerous shacks and boatsheds were built

there. In 1970, a plaque was placed in Padbury Circle in Sorrento to commemorate Peter Marmion.

Currambine was approved as a suburb name in 1980. It is an Aboriginal word from an eastern states dialect, meaning "heap of rocks". Similarly, **Iluka**, takes its name from an Aboriginal word (eastern states dialect) which means "near the sea". It was approved in 1980.

Joondalup was named after Lake Joondalup. The name is an Aboriginal word that was first recorded in 1837. It is believed to mean "place of whiteness or glistening".

Craigie was one of the four "Whitfords" suburbs that were developed as a result of the State Government rezoning a large area of coastal land in 1969. Craigie was named after a long-serving Wanneroo councillor. His name was chosen because he had been instrumental in developing the city. The name was approved in 1970.

The suburb of Wanneroo is located on land originally owned by the Midland Railway Company. In 1908, a request from residents prompted the Wanneroo Road Board to apply for a 50 acres reserve to allow for camping and a health resort at the beach. The request was approved in the late 1920s and the area was well used by locals. They referred to it as **Burns Beach**, after a local farmer.

DLI's website has lots of interesting information about the origin of Perth suburbs and country areas at <http://www.dli.wa.gov.au/corporate.nsf/web/WA+Place+Names>.

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