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**GOING TO THE MOVIES: LEGAL EDUCATION, PROBLEM BASED
LEARNING AND PUBLIC POLICY.**

KATHY DOUGLAS AND MICHELE RUYTERS*

Problem Based Learning (PBL) is a learning and teaching strategy particularly well suited to legal education. It is a learner centred approach that assists law and legal studies students in undergraduate, post graduate and practical training programs to identify problems and collaboratively and creatively provide solutions. In this paper the authors explore the use of popular culture movies to begin the PBL experience for students. The authors reflect upon teaching at RMIT University in Evidence and Civil Procedure where we have utilised films to provide scenarios for problem solving. Two films, *The Interview* and *A Civil Action*, have provided scenarios for students to solve and provided the opportunity for students to understand and have empathy with the characters through the experience of storytelling. In particular, in this paper the authors explore the way that the two films have provided a focus for holistic problem solving for students and importantly raised public policy issues. For example, the film *The Interview* raises concerns regarding criminal justice policy and the rights of the accused. Students can engage with public policy dilemmas such as the competing rights of the accused and the protection of society. This policy tension is particularly relevant given recent initiatives in Australia and globally to deal with the perceived threats of terrorism. In the civil jurisdiction, the film *A Civil Action* raises concerns regarding the preservation of the environment and legal regulation. Students can engage with the need to deal with community concerns through such means as public policy mediation.

I INTRODUCTION

* Kathy Douglas and Michele Ruyters lecture at RMIT University. The authors would like to thank the two reviewers for their helpful comments.

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The adoption of student centred approaches¹ to learning and teaching in university courses is arguably growing in Australia. The introduction of the Carrick Institute² and the resulting dissemination of funding to research learning and teaching initiatives is an important part of present Federal Government policy. However, achieving change in learning and teaching is difficult in a climate of diminishing real funding and increases in class sizes and administration.³ In legal education in particular, there is a history of a teacher centred approach to learning. Although there are undoubtedly many student centred initiatives in Australian law schools and in the teaching of legal studies and commercial law courses in non-law programs, there has traditionally been a focus upon content delivery in the teaching of law. This may be due to a perceived imperative to cover relevant material in any given area of law. However, a focus upon content may not facilitate learning as students may not engage with the material in a manner that promotes 'deep' learning. They may be passive recipients of information and research has shown that this kind of learning diminishes the potential for student understanding.⁴ In particular, in the various law schools in Australia links with the profession and the requirements of admission may curtail the strategies used to teach law.⁵ Legal education may promote teaching practices that assist students to start 'thinking like a lawyer' and this approach may replicate present professional norms⁶ but may not promote student

1 Student centered approaches move away from a focus upon the lecturer and provide learning and teaching designs that focus upon student engagement see for example John Biggs, *Teaching for Quality Learning at University* (2003).

2 See *The Carrick Institute for Learning and Teaching in Higher Education Ltd* <http://www.carrickinstitute.edu.au/carrick/go> at 27 August 2007.

3 Mary Keyes and Richard Johnstone, "Changing Legal Education: Rhetoric, Reality, and Prospects for the Future" (2004) 26 (4) *Sydney Law Review* 537.

4 See Richard Johnstone and Sumitra Vignaendra, *Learning Outcomes and Curriculum Development in Law: A Report Commissioned by Australian Universities Teaching Committee* (AUTC) (2003).

5 See for a history of legal education, links with the profession and various reports into this area, Vivienne Brand 'Decline in the Reform of Law Teaching? The Impact of Policy Reforms in Tertiary Education' (1999) 10(2) *Legal Education Review* 109 and for a discussion upon the constraints and tensions in legal and Keyes and Johnstone above n 3, 542.

6 Australian Law Reform Commission, *Review of the Adversarial System of Litigation: Rethinking Legal Education and Training*, (1997) [5.7]. A recent report in the United States investigates the notion of 'thinking like a lawyer' and advocates for the apprenticeship model of learning for the profession see William Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond and Lee S Shulman, *Educating Lawyers: Preparation for the Profession of Law* (2007). Arguably, these professional norms would not normally include the engagement with public policy, however it may be a question of how the lawyers role in society is constructed. Public

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understanding. Additionally, a focus upon the teaching of appellate decisions and the use of the Socratic, or similar, teaching methods may promote an adversarial approach in students' orientation to conflict.⁷ New understandings⁸ and teaching strategies⁹ involving alternative dispute resolution (ADR) may have an impact upon this orientation.

Student centred approaches to learning and teaching are more effective in achieving 'deep',¹⁰ learning for students and provide the opportunity for students to develop not only content specific legal knowledge, but arguably to move away from a focus upon litigation and develop understandings of the wider dimensions of conflict, both in the civil and criminal jurisdictions. Deep learning can assist in the development of critical thinking¹¹ that may foster an understanding and need for engaging in public policy¹² dilemmas and law reform. Students may not generally focus upon the public policy dimensions of disputes as 'black letter law' and teacher centred approaches to teaching law may

policy initiatives often lead to changes in the law and it is a dimension of legal practice that needs to be explored. The role of the law in implementing public policy is recognized. Generally public policy can be seen as the debate about social policy in the public arena and the competing claims made to shape policy; see Judith Bessant, Rob Watts, Tony Dalton and Paul Smyth, *Talking Policy* (2006). Public policy could be said to have grown into a discipline area in its own right.

⁷ Law school education can mean that students develop a 'Lawyers' Standard Philosophical Map'. Lawyers can approach disputes as adversaries and with the view that disputes are to be decided by a third party through the operation of legal principles, see Leonard Riskin and John Westbrook, 'Integrating Dispute Resolution into Standard First Year Courses: The Missouri Plan,' (1989) 39 *Journal of Legal Education* 509. This approach might now be modified somewhat by the rise and acceptance of some forms of ADR.

⁸ For a discussion of the effect of ADR on the profession see Archie Zariski, 'Disputing Culture: Lawyers and ADR' (2000) 7(2) *E Law- Murdoch University Electronic Journal of Law*, http://www.murdoch.edu.au/elaw/issues/v7n2/zariski72_text.html at 22 May 2007. For a discussion of the teaching of ADR in law school and the effect upon students' approach to conflict see Judy Gutman, Tom Fisher and Erika Martens, 'Why Teach Alternative Dispute Resolution to Law Students Part 1: Past and Current Practices and Some Unanswered Questions' (2006) 16(1-2) *Legal Education Review* 125.

⁹ See for example Kathy Mack, 'Integrating Procedure, ADR and Skills: New Teaching and Learning for New Dispute Resolution Processes' (1998) 9 *Legal Education Review* 83.

¹⁰ See Paul Ramsden, *Learning To Teach in Higher Education* (2nd ed, 2003) for a discussion of the promotion of 'deep' learning.

¹¹ Anne Macduff, 'Deep Learning, Critical Thinking and Teaching for Law Reform' (2005) 15 *Legal Education Review* 125.

¹² Engagement with public policy by lawyers to bring about law reform might be said to be part of the "moral activist" approach to lawyering as articulated by Parker and Evans. This approach also includes participation in public interest lawyering and client counseling see Christine Parker and Adrian Evans, *Inside Lawyer' Ethics* (2007) 23.

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sometimes neglect these concerns.¹³ Student centred approaches may encourage students to be more active in their learning. These learning approaches may encourage students to look beyond a 'litigation' focus and deal more holistically with legal problems, including considering public policy issues relating to a dispute. If public policy concerns are included in the curriculum of a law course, the learning and teaching strategies utilised will be an important choice to ensure that students deeply engage with policy concerns and do not skim over these issues due to the perception that policy is peripheral to learning about the law.¹⁴

The approach of Problem Based Learning (PBL) is one option to consider when planning for the teaching of law courses that include public policy concerns. It is well suited to legal education as it can be used to mirror legal practice.¹⁵ It is a student centred approach that can be used in undergraduate, post graduate and practical training programs.¹⁶ This approach allows students to identify issues or problems from a given scenario and working in groups gives the students the opportunity to collaboratively and creatively provide options or solutions to the issue or problem.¹⁷ PBL (sometimes known as issue or inquiry based learning)¹⁸ can use a 'springboard' scenario to launch student

13 This approach may be taken due to the suspicion that courts have in general expressed regarding the role of public policy in the litigation of disputes; see for example The Hon. Robert French 'Dolores Umbridge and the Concept of Policy as Legal Magic' (Paper presented at the *Law and Public Policy; Taming the Unruly Horse?* 62nd Australasian Law Teachers Association Conference, Perth 23-26 September 2007).

14 Another approach that has been identified is an "achieving" approach. Students assess what time and effort is required to achieve in a task and whether understanding or merely rote learning is required, see John Biggs, 'Approaches to the Enhancement of Tertiary Teaching,' (1989) 8 *Higher Education Research and Development* 7. Law students may take this approach if the learning design does not emphasis the need to engage in public policy concerns.

15 See generally Anthony Herrington and Jan Herrington, *Authentic Learning Environments in Higher Education* (2006).

16 PBL has been identified as appropriate for practical training courses in Victoria and Canada; see Susan Campbell, *Review of Legal Education Report: Pre-Admission and Continuing Legal Education* (2006) and Julie Macfarlane and John Manwaring, 'Reconciling Professional Legal Education with the Evolving (Trial-less) Reality of Legal Practice' (2006) 1 *Journal of Dispute Resolution* 253.

17 See for a discussion of the use of PBL together with a range of examples, David Boud and Grahame Feletti (eds), *The Challenge of Problem-Based Learning* (2nd ed., 1997).

18 See for a discussion of the similar learning and teaching approaches in this area, Paul Kirschner, John Sweller and Richard Clark, 'Why Minimal Guidance During Instruction Does Not Work: An Analysis of the Failure of Constructivist, Discovery, Problem-Based, Experiential, and Inquiry-Based Teaching,' (2006) 41(2) *Educational Psychologist* 75.

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investigation into an area and could include students exploring the public policy dimensions of legal problems. The PBL approach has been adopted in many health educational contexts, particularly in medical schools and has also been utilised in some legal education contexts.¹⁹

In this paper the authors reflect upon efforts to utilise PBL in the teaching²⁰ of legal subjects and in particular focus upon the use of popular culture films to begin the PBL experience. One aim was to design a course that encourages consideration of public policy concerns through a focus upon law reform and a consideration of holistic problem solving. Films can be a powerful learning and teaching tool in law.²¹ Film can be combined with PBL in order to provide students with a compelling scenario to begin their inquiry and also to highlight public policy issues that arise in law. This paper provides reflections regarding the use of two films, *The Interview*²² and *A Civil Action*²³, in the legal discipline areas of Evidence and Civil Procedure. Both these films highlight important public policy issues²⁴ providing students with a wider dimension for legal problem solving. PBL combined with the use of film can provide an authentic learning

¹⁹ See for a detailed example Boud and Feletti (eds), above n 17.

²⁰ For a detailed guide in the use of PBL in universities see Margaret Kiley, Gerry Mullins, Ray Peterson and Tim Rogers, *Leap into Problem Based Learning*, Centre for Learning and Professional Development, University of Adelaide, <http://www.adelaide.edu.au/clpd/materia/leap/leapinto/ProblemBasedLearning.pdf> at 30 August 2007.

²¹ See for example Kathy Laster with Krista Breckweg and John King, *The Drama of the Courtroom* (2000). There is a considerable history of the use of film and popular media in legal education see for a recent discussion Rachel Spencer, 'From Atticus Finch to Dennis Denuto: Using Popular Media to Teach Legal Skills and Ethics' (Paper presented at the *Legal Knowledge, Learning, Communicating, Doing*, 61st Australasian Law Teachers Association Conference, Melbourne 4-7 July 2006).

²² For *The Interview* details see <http://www.imdb.com/title/tt0120714/> at 27 August 2007.

²³ For *A Civil Action* details see <http://www.imdb.com/title/tt0120633/> at 27 August 2007.

²⁴ Tensions in criminal law and criminal justice relating to rights of the accused and the need for legislation to provide law enforcement options in the investigation of crime is raised by the film *The Interview*. This approach can be applied to current debate relating to legislation to deal with the perceived threat of terrorism: see generally Andrew Goldsmith 'Transnational Law Enforcement and Counter-Terrorism' in Andrew Goldsmith, Mark Israel and Kathleen Daly, *Crime and Justice: A Guide to Criminology* (2nd ed, 2006) 451-429. In *A Civil Action* the issue of the appropriate degree of regulation for industry in regards to the pollution of a river is raised. Debates regarding the environment and the public policy concern of the health of the community are movingly represented in the film.

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experience based in legal practice and may assist students to develop holistic problem solving skills.²⁵

Firstly in this paper the authors will discuss legal education and PBL and the use of the two films to begin the PBL experience, highlighting public policy issues. The authors will then focus upon the learning and teaching strategies and evaluation for the use of the film *A Civil Action* and PBL in the course Civil Procedure²⁶ in first semester 2007 at RMIT University and will provide plans for future iterations of this learning and teaching design.

II LEGAL EDUCATION AND PROBLEM BASED LEARNING

Problem solving capability is a key skill in the professional competency of legal practitioners²⁷ and is included in national competency standards for admission to practice.²⁸ There is considerable literature relating to problem solving²⁹ and there are textbooks³⁰ that provide advice for students regarding mastering this skill. While the majority of law units incorporate problem solving, PBL is a different learning and

²⁵ The UK Centre for Legal Education when defining problem-based learning notes that ‘The advantage is that real problems do not have simple solutions, and require comparison and analysis of resources, strategies and costs. As such the learner develops skills of retrieval, selection and discrimination and applies these in a holistic way’; see *UK Centre for Legal education Defining Problem-Based Learning*, <http://www.ukcle.ac.uk/resources/pbl/what.html> at 25 August 2007. For a detailed discussion of holistic practice see Liz Curran, ‘Making Connections: The Benefits of Working Holistically to Resolve People’s Legal Problems’ (2005) 12 (1 & 2) *Murdoch University Electronic Journal of Law*. The philosophy of therapeutic jurisprudence is also relevant to holistic practice see generally B Winick and D Wexler (eds) *Judging in a Therapeutic Key: Therapeutic Jurisprudence and the Courts* (2003).

²⁶ This course is a core offering in a legal studies program at RMIT. Recently, RMIT has introduced a *Juris Doctor* program, see <http://www.rmit.edu.au/browse;ID=nl2pppng7qsz;STATUS=A?QRY=JD&STYPE=ENTIRE> at 30 August 2007.

²⁷ See Campbell, above n 16, 34-35.

²⁸ *Ibid*, 38.

²⁹ See for example Celia Hammond, ‘Teaching Practical Legal Problem Solving Skills: Preparing Law Students for the Realities of Legal Life’ (1999) 10(2) *Legal Education Review* 191.

³⁰ See for example Mark Findlay *Criminal Law: Problems in Context* (2nd ed, 2006) and Michael Brogan and David Spencer, *Surviving Law School* (2004).

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teaching strategy.³¹ This approach places a problem as the focus of, and the impetus for, student learning in a more open-ended fashion than traditional legal problem solving. The roles of teacher and student shift so that students assume responsibility for their learning while teachers act as facilitators, resource providers and evaluators.³² The approach of PBL is therefore student centred. There are a number of steps in a PBL learning strategy: firstly it is important to determine existing understanding of the students in relation to the problem and the context of the problem. The problem then becomes the stimulus for acquiring knowledge and understanding and the platform for expanding the existing knowledge base by requiring the students to define the problem, determine what issues are raised by the problem, ascertain what needs to be known about the problem and generate hypotheses. In the last stage, students research the issues raised by the problem and apply the knowledge to test the viability of the hypotheses. Essentially, the student is motivated to acquire skills and knowledge in order to address the problem or test the viability of the hypothesis. These changes may be repeated as new hypotheses may be developed that require investigation and testing.³³

As indicated typically, in legal studies or law subjects, learning is teacher-centred³⁴ and while problems are features of the learning framework, they lack the open-ended approach associated with PBL. The PBL approach encourages students to become independent active learners, who are able to build knowledge from existing knowledge.³⁵ PBL may also allow students to better develop generic graduate capabilities such as

31 For resources regarding PBL in the legal context see *UK Centre for Legal Education*, above n 25 <http://www.ukcle.ac.uk/resources/pbl/resources.html> at 25 August 2007.

32 Kiley et al, above n 20.

33 John Savery and Thomas Duffy, 'Problem Based Learning: An Instructional Model and its Constructivist Framework' (1995) 35 *Educational Technology* 31. http://crlt.indiana.edu/publications/duffy_pub16.pdf at 25 August 2007.

34 Keyes and Johnstone, above n 3.

35 There are many variations in this area of learning and teaching, see for example, Fiona Martin, 'Teaching Legal Problem-Solving: A Problem-based Learning Approach Combined with a Computerised Generic Problem', (2003-4) 14 (1) *Legal Education Review* 77;

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communication skills, team-work and creative problem solving³⁶ because of the nature of activities they are engaged in and the requirements of the assessment.³⁷

Savery and Duffy³⁸ examine the link between the philosophical perspective of constructivism and teaching practice. They identify three central propositions in relation to a constructivist perspective. The first states that understanding is unique to the individual and is dependent on experiences with the content, context, activity and goals of the learner; understanding is not shared but may be tested for compatibility. The 'puzzlement' of the learner is the stimulant for learning and determines what the learner will focus on, what experiences are brought to the construction of understanding and the eventual constructed understanding. The third proposition stresses the role of the social environment. The social environment, through social negotiation and testing the viability of understanding and interpretation, for example through the alternative views of others, is a significant factor in constructing knowledge.

PBL is open to a variety of approaches; for example pure, hybrid, course focused, topic focused. Law courses generally must incorporate required areas of knowledge set by regulatory bodies and accordingly tend to cover a wide range of topic areas in order to provide the student with sufficient breadth of knowledge. Structuring an all-encompassing problem or one that motivates students to explore and acquire knowledge about these discrete topic areas may be difficult. A hybrid model may be adopted to provide students with support to master specific content areas. Alternatively, multiple problems may be set to drive the 'puzzlement' of the learner.³⁹

³⁶ Traditional legal education does not usually give express consideration to generic skills, although some law teachers may do so; see Keyes and Johnstone above n 3, 541.

³⁷ Kiley et al, above n 20, 10

³⁸ Savery and Duffy, above n 33, 31.

³⁹ Ibid.

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There are significant critiques of PBL and criticism of this approach can inform the design of learning and teaching strategies in law courses.⁴⁰ Minimal guided approaches run the risk of achieving limited learning for students in that students do not necessarily store learning results from problem solving in their long term memory. Memory structure research suggests that PBL draws more upon working memory and thus has limitations in regard to novel information.⁴¹ This suggests that in some circumstances guidance in learning is required. Law students with skills in legal problem solving and research are likely therefore to be better able to deal with PBL. This is due to their understandings of the law and their ability to apply this knowledge to new subject areas of the law. It may be advisable to limit PBL approaches in first year courses and place this learning and teaching approach, in its purer forms, in later years of a program. This may explain the popularity of the use of PBL in practical training programs. In practical legal programs students entering the courses have already mastered substantial legal content through the completion of a Bachelor of Laws or Juris Doctor. Knowledge of substantive law and procedure assists them in approaching PBL scenarios. However, arguably PBL can still be utilized successfully in undergraduate or Juris Doctor programs with the right support available to students and in this paper the authors explore a design that does provide such support.

III FILMS AND PUBLIC POLICY

Films can be used a number of ways to assist in devising learning and teaching strategies for legal education. Legal problem solving can be augmented by visual stimulus. Laster refers to the 'simulated environment of the film courtroom',⁴² which can enhance the learning experience of the student when used appropriately by the teacher. The ready availability of law based and law related film and television programs mean that many students are already familiar with some forms of legal terminology, legal concepts and

⁴⁰ For a summary of the major critiques see Kirschner et al, above n 18.

⁴¹ Ibid 77.

⁴² Laster, above n 21, 7.

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legal rules.⁴³ While many of these may be flawed or creatively misinterpreted for the particular artistic purposes of the film or television program, identification of the mistake, for example, can be incorporated into the learning exercise or perhaps used to illustrate jurisdictional differences.⁴⁴ Further, particularly within a pure PBL paradigm, this means that students may have a preliminary knowledge base that can be shared within the group and tested against the problem when it is first presented. Every subsequent encounter with other simulated environments in film then also provides further opportunities to extend learning beyond the issues raised by the problem.

The theatre of the simulated court or legal environment is necessarily concentrated. The legal 'story' must be told creatively, in order to stimulate the interest and puzzlement of the audience, clearly, in order to equip the audience with a sufficient knowledge base to understand the story, and succinctly as the story must be told within a limited time frame. As a result of convenient framing through careful editing, direction and artistic licence, students may be able to immediately engage with, for example, issues such as tensions between institutional justice and social and cultural realities,⁴⁵ which are often teased out in courtroom confrontations by legal protagonists.

Film can provide a visual and aural stimulus for existing or future learning or even a sensory mind map that can be transferred other situations of learning such as visits to real courts. In the design under discussion films have been chosen that raise legal issues and public policy concerns in their storylines, providing a scenario to begin the PBL experience. The choice of a PBL scenario or question will assist with student learning, but can be a difficult undertaking.⁴⁶ PBL teachers have utilised a range of inspirations to begin the experience of problem solving for students. These include newspaper articles,

⁴³ Ibid, 10-11.

⁴⁴ Ibid, 6.

⁴⁵ Ibid, 12.

⁴⁶ For a discussion relating to developing a problem and objectives, see Kiley et al, above n 20, 15.

radio reports, legal cases, journal articles, policy debates and film plots.⁴⁷ As stated films have been used in this design to begin the PBL experience so that students can engage with issues in legal practice and include public policy concerns. This approach allows students to engage with an authentic situated learning environment and provides open-ended questions for them to explore in a collaborative manner. The authors will now outline the storylines of these two films and the legal and public policy concerns that they raise.

A The Interview

The Interview deals with the interrogation of a suspect, Eddie Fleming, over several hours. The film begins with the initial apprehension of the suspect, ostensibly concerned in the theft of a motor vehicle and ends with his unexpected release at a crucial point in the interrogation. As the film progresses, it is slowly revealed that the police suspect Fleming is a serial killer, however the interrogation methods adopted by the investigating police are being monitored by an internal ethics unit and although Fleming makes an apparently voluntary confession, the impropriety of the methods used result in his eventual release.

The film raises several procedural issues for students beginning with the entry into Eddie's apartment by police with a warrant to arrest, the consequent search of the premises and seizure of material and later, issues relating to compliance with statutory investigative regimes. Evidentiary issues are deliberately raised in the film by the circumstances of Eddie's confession to police about his involvement in a series of apparently unrelated murders as it is never clear whether the confession was induced by the oppressive conduct of interrogating police or was given voluntarily.

A skilfully crafted screenplay slowly reveals complexities in the behaviour of the main protagonists that frame core issues in criminal justice policy: is the wider public interest

⁴⁷ Peggy Ertmer and Krista Simons, 'Scaffolding Teachers' Efforts to Implement Problem-Based Learning,' (2005-06) 12(4) *The International Journal of Learning* 319.

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served by enabling a potentially guilty person to go free in order to protect the rights of individuals and the concomitant responsibilities of investigators or is the public interest best served by circumscribing rights which traditionally citizens have enjoyed to protect them from the operation of the state. In this way, students are assisted to grapple with complex competing public policy issues that are especially relevant today in the context of the perceived threat of terrorism and the introduction of legislation to deal with this threat.⁴⁸

B A Civil Action

The scenario for *A Civil Action* is rich in opportunities for students to pursue self directed learning. *A Civil Action* centres upon the story of a group of families tragically affected by their children's deaths. The drama comes from the tension of the litigation team, on a 'no win no fee basis',⁴⁹ attempting to prove the causal link between the alleged negligent conduct of two companies in polluting the river with carcinogenic chemicals. The hero, Jan Schlichtmann, principal of the firm, initially sees the families only as potential income, but as he gets to know them and their plight, he comes to see the human dimensions of their suffering.

This storyline assists students to understand that litigation is not only about relevant procedures and substantive law, but is also about understanding the story of the client, or clients, and dealing with their needs holistically. In the scenario of the film the parents do not wish for financial compensation, they wish for an apology including some recognition of the wrong done, and for the environmental disaster of the river to be addressed and "cleaned up". As the film progresses it becomes apparent that the small firm funding the parents litigation will be bankrupted by the litigious tactics of the large firms representing the factories that have created the environmental hazard. Ultimately,

⁴⁸ See Goldsmith, above n 24.

⁴⁹ For an Australian example see Slater and Gordon, *No Win No Fee* http://www.slatergordon.com.au/pages/no_win_no_fee.aspx at 9 October 2007.

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due to cost concerns, an unsatisfactory financial settlement is reached. In a poignant scene in the film the parents protest that money wasn't the primary outcome that they wished to achieve through litigation. The film raises the public policy concerns of environmental regulation and the need for communities to advocate for change amongst a range of stake-holders. The film ends with the hero uncovering new evidence that the environmental protection agency can pursue in order to achieve a 'clean up'.

This film provides the opportunity for students to think beyond traditional remedies in civil procedure, although these are also canvassed in the work that the students do to provide "solutions" to the problem. Additionally, students consider the way ADR and mediation might assist clients. The issue of an apology⁵⁰, the possibility of an agreement being confidential⁵¹ or not according to the terms of the settlement (and the consequent limiting of the precedent value of the settlement), the need to involve the environmental protection agency and the strategy of utilising public policy mediation⁵² to involve the community in advocacy for the environmental "clean up", are all inherent options in the film to deal with the issues raised by the scenario. In particular, the film highlights the potential ruinous costs of litigation⁵³ and the need to look further than traditional

50 See for a discussion of the benefits of an apology Deanna Foong, 'A Discussion of Apology and its Use in Alternative Dispute Resolution' (2007) 18(2) *Australasian Dispute Resolution Journal* 73.

51 See for a discussion of issues relating to confidentiality and mediation, Rachel Field and Neal Wood, 'Confidentiality: An Ethical Dilemma for Marketing Mediation' (2006) 17(2) *Australasian Dispute Resolution Journal* 79. The issue of large companies potentially demonstrating good corporate citizenship can be explored by students. This may be a reason for companies to engage in ADR and make the settlement public.

52 For a history of the use of mediation in public policy disputes see Lawrence Susskind and Carri Hulet, 'The Practice of Public Dispute Resolution: Measuring the Dollar Value of the Field' (2007) 23 *Negotiation Journal* 355; see for an example of the use of public policy mediation to deal with an environmental issue Michael Buxton, Jennifer Martin and Max Kelly, 'Conflict Resolution and Policy Making Mediation in the Mekong River Basin' (2006) 41 *Just Policy* 26.

53 See The Hon. Geoffrey Davies, 'Civil Justice Reform: Some Common Problems, Some Possible Solutions' (2006) 16 *Journal of Judicial Administration* 5. See also the recent inquiry into civil procedure in Victoria which will deal with the cost issue, Victorian Law Reform Commission, *Civil Justice Review: Consultation Paper*, (2007)

2http://www.lawreform.vic.gov.au/CA256902000FE154/Lookup/Civil_Justice/\$file/Civil%20Justice%20Consultation%20Paper%20final.pdf at 8 June 2007; Peter Cashman, 'The Cost of Access to Courts' (Paper presented at the *Confidence in the Courts Conference*, Canberra

http://www.lawreform.vic.gov.au/CA256902000FE154/Lookup/Speeches_and_presentations/\$file/Cost_of_Access_to_Courts.pdf. at

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remedies to deal holistically with disputes.⁵⁴ The public policy issue of the degree of regulation necessary in order to preserve the environment, and the limitations of civil suits to achieve this regulation, are central concerns raised by the film.

In order to reflect upon our use of film, public policy and PBL the authors will now outline the learning and teaching strategies utilised in Civil Procedure in first semester 2007 and provide some detail of the student evaluations of this course. The focus of the discussion will be upon the use of the film *A Civil Action* in combination with PBL. Similar strategies have also been adopted using the film *The Interview* as the method of launching the PBL experience, but due to constraints of space the authors will only discuss *A Civil Action*.

IV LEARNING AND TEACHING STRATEGIES

The learning and teaching strategy adopted in Civil Procedure was not a pure PBL model but could be categorized as a hybrid model of PBL. In terms of the assessment in the course the PBL task was worth 50% of the overall assessment and comprised of a jointly authored written assignment (40%) and an individual journal (10%) reflecting upon the PBL experience. A further 50% was allocated to a take home examination. The students attended seminars for thirteen weeks of the course comprising two hours of an allocated three hours. The final third hour was used as meeting time for the PBL part of the assessment. The retention of an examination was to ensure that students had the opportunity to individually demonstrate understandings in the area of civil procedure and to cover topics not likely to arise in the PBL scenario. Students were all third years in the

8 June 2007 ; Victorian Law Reform Commission, *Civil Justice Enquiry, Summary of Draft Civil Justice Reform Proposals as at 28 June 2007: Exposure Draft for Comment* (2007)

[http://www.lawreform.vic.gov.au/CA256902000FE154/Lookup/Civil_Justice/\\$file/Exposure%20Draft%20Proposals.pdf](http://www.lawreform.vic.gov.au/CA256902000FE154/Lookup/Civil_Justice/$file/Exposure%20Draft%20Proposals.pdf) at 9 October 2007. Notably, the issue of costs is of concern for the smaller firm , but works in favour of the larger and better funded firms and their clients.

54 In the context of criminal justice there has been a recent call to consider legal education that promotes less adversarial practice see Arie Freiberg, 'Non-adversarial Approaches to Criminal Justice' (2007) 16 *Journal of Judicial Administration* 205.

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final year of their program and had experience with forms of PBL in both first and second years. There were twenty-three students involved in the PBL design. The following are the course description and learning objectives:⁵⁵

Course Description

The course is a study of court-related and procedural matters that affect the law in Australia. Participants will be encouraged to consider the balance between the management of the litigation process and fairness to parties at a hearing. The practice of litigation will be discussed in detail and students will achieve a level of problem-solving skills in the areas of evidence and civil procedure. Alternative dispute resolution options and the law relating to ADR will be discussed in detail. Students will be involved in considering creative solutions to problems in the legal system and will consider a range of possible reform options. The course will include a consideration of socio-economic issues and ethical concerns in the law.

Objectives/Learning Outcomes

At the completion of this course students will be expected to: have an understanding of selected areas of law relating to the law of evidence and civil procedure, including an understanding of the law relating to alternative dispute resolution and courts and tribunals; have an ability to ascertain the relevant law at both the state and Commonwealth level and exhibit problem-solving skills; be able to critique, from a number of perspectives, the law; understand issues relating to socio-economic issues relating to the litigation process; be able to evaluate a range of possible reform options and identify and reflect upon ethical dilemmas that may present in practice, and be able to demonstrate creative initiative in

⁵⁵ The course differs in content somewhat from courses dealing with civil procedure in law programs. But the overall learning and teaching design may be of assistance to those teaching in this area.

formulating solutions to legal problems.

The choice of PBL as a learning and teaching design was decided upon because of the potential of PBL to contribute to the achievement of the objectives/learning outcomes. By utilizing this approach substantive areas of civil procedure can be mastered such as the law relating to interrogatories and discovery. In particular, ADR processes can be explored as part of the litigation process. Students can engage with issues relating to access to justice and explore public policy issues that require law reform options. Additionally, generic creative problem solving and team skills can be developed.

In PBL a first meeting introduces students to the problem. In the course *Civil Procedure* the film *A Civil Action* was shown to students in the first class of the semester. Kiley et al recommend the use of a practice or induction problem to prepare students for the experience of PBL.⁵⁶ However, in this design a practice problem or induction problem was not provided to students as they had experienced forms of PBL previously in other courses in the program. Explanation of the role of the teacher as facilitator was provided to remind the students of the student-centered approach of PBL. Organization of each group occurred in this first class. Brainstorming was used in each group to attempt to broadly identify the problem and key issues. The students were asked to place the scenario in the Victorian jurisdiction and act as the legal firm for the plaintiffs. The polluted river was designated the Murray River, with the plaintiff families and factories on the Victorian side. Learning objectives were generated with the students. These included dealing with the law of civil procedure, exploring ADR, dealing with public policy concerns and possible law reform options. At this time some resources were jointly identified including legal data-bases, resources on the internet and relevant journal articles. Each group allocated initial tasks for group members.⁵⁷ It is important to brief

⁵⁶ Kiley et al, above n 20, 37-43.

⁵⁷ See for a discussion of some of the challenges of using group work in the teaching of civil procedure: Kate Lewins, 'The Groupwork Experience in Civil Procedure' (2006) 13(1) *Murdoch University Electronic Journal of Law* 225

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students upon the issues relating to group work. In this example the class collaboratively constructed a list of issues that might arise in groups. Strategies to deal with group issues were then canvassed and the students themselves provided most of the approaches to dealing with conflict in a group. Each group was comprised of three to four members and students self selected into their group. As indicated previously, students were allocated time in class in the final hour of weekly seminars to meet and to conduct research. This was a popular strategy as many students find it hard to meet outside of class hours due to work commitments. Although the numbers in total in the class was small, only twenty-three, similar strategies can be undertaken for larger classes.

The second meeting of PBL allows students to develop further understandings from the first meeting and share newly acquired information. They can revisit earlier conjectures and refine as appropriate.⁵⁸ In this example the teacher met with each student group at staggered times during the semester to discuss progress and hear of resources accessed. Open-ended questions were used to help students think through the task. Students were asked to give more detail regarding task organization so that the teacher could gain an impression as to whether tasks were being spread throughout the group. Support was provided to those groups that needed assistance, but the emphasis was upon students discovering and answering their own questions to address the concerns raised in the film. At this time public policy issues, such as the use of public policy mediation, as a way to engage members of the community who had also suffered loss but had not chosen to litigate were discussed. The use of class actions was also suggested by the students as a way to set a precedent to deal with the concerns of the community and provide the opportunity for compensation for a wider group of community members.⁵⁹ Students researched environmental regulation issues and explored the Victorian context for regulating pollution.

https://elaw.murdoch.edu.au/issues/2006/1/eLaw_Lewins_13_2006_13.pdf at 9 October 2007.

⁵⁸ Kiley et al, above n 20, 44.

⁵⁹ For a discussion of the potential uses of class actions see Bernard Murphy and Camille Cameron, 'Access to Justice and the Evolution of Class Action Litigation in Australia' (2006) 30 *Melbourne University Law Review* 399.

The third meeting in PBL allows students to consolidate the key issues and consider changes from the original hypotheses. Students can reflect upon their learning (which can be utilized in the journal part of the assessment) as well as the substantive issues in the task. Additionally, a final evaluation meeting can be held to give students the opportunity to reflect upon and evaluate their learning. They can generalize what they have learned to other problems, provide feedback to the teacher and evaluate the PBL experience.⁶⁰

V EVALUATION

For this example evaluation was through the RMIT course experience survey. This survey is used throughout the university. The questions mirror the national Course Experience Questionnaire (CEQ).⁶¹ Sixteen students responded to the questionnaire out of a class of twenty-three. The survey has two sections. There are twenty-four questions in the first section of the survey and these questions deal with an assessment by the students of the learning in the course. Students are able to shade in a circle showing a response from 1 to 5. A series of statements are provided and the student indicates the degree that they agree with the statement. In the survey shading in the number 1 indicated a response of strongly disagree and 5 indicated a response of strongly agree.

Those parts of the evaluation that seem to be responses in regard to the PBL aspect of the course are now canvassed. Of the students enrolled 69% participated in the survey. The overall satisfaction with the course was 94%. Significantly, 100% of the students surveyed said that the assessment tasks in the course required them to demonstrate what they had learned. In the sample 94% indicated that the class was well organized and

⁶⁰ Kiley et al, above n 20, 45.

⁶¹ See for a discussion of *Course Experience Questionnaire* (CEQ) <http://www.itl.usyd.edu.au/CEQ/> at 30 August 2007.

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100% said that they could actively participate in class. The evaluation results for this course showed a good teaching scale of 87.4%.

Students are able to make open-ended comments at the end of the survey. Some student comments in answer to the question 'What are the best aspects of this course?' included:

...problem based learning- tackling unfamiliar problems.

Apply[ing] knowledge to case scenarios- problem based learning.

The assignment and discussion is practical.

Getting a real first hand experience of civil procedure.

VI CONCLUSION AND REFLECTIONS FOR THE FUTURE

The data from the survey indicates that the course was successful in that the students' feedback was positive. The data and the student comments supports the view that the student centred approach of PBL, coupled with the film, provides them with an authentic learning experience mirroring legal practice. However, to be sure of the benefits of PBL the authors believe more detailed evaluation, focused upon the PBL task, is necessary. Kiley et al⁶² suggest gaining evaluation from two-way feedback, through focus groups, and this approach will be adopted in further iterations of the learning and teaching design. Additionally, the design could be expanded to include 100% of the assessment to maximize the benefits of this approach to learning. PBL is a learning experience for students and teachers and provides the opportunity for student-centered learning that promotes a range of skills and understandings. The authors hope that reporting of this

⁶² Kiley above n 20, 46.

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learning and teaching design will be of benefit for those considering utilizing this learning and teaching approach.