

# Re-inventing the Pyramid:

## A Process for Teaching and Learning in Mediation and Negotiation Courses<sup>1</sup>

“For what purposes should what be taught in what sequence to whom by whom using what methods in what milieux with what resources and with what feedback?”

(Twining expanded)

### Introduction

It is trite to observe that the factors which influence effective learning are complex, and are not subject to neat formulae. The learning environment has been described as an eco-system.<sup>2</sup> Learning is influenced by many factors in the eco-system including the students’ previous experience of learning, motivation, prior knowledge, teacher motivation, clarity, ability to relate to present experience, humour, curriculum overload, assessment, relevance, supply or shortage of resources, varied methods of learning and teaching, to name a few.

We all have stories about how particular factors in the eco-system apparently led to blossoms or weeds in our learning and lives.

This paper will describe just one method or ripple in the education pond (or swamp) and its anecdotally observed beneficial effects. This is the “pyramid”, one method of teaching and learning which has proved anecdotally to be versatile and effective in mediation, negotiation (and any) training.<sup>3</sup>

### Description of the Pyramid

This process has four stages (and many possible variations).

#### Stage 1 – Individuals write (4 minutes)

During any course, questions emerge either from the students, or from the teacher. Often these are recorded “in reserve” on large sheets of paper or on whiteboards scattered around the room. At an appropriate time, the teacher refers to one of these written questions, and asks the students as

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<sup>2</sup> See J Biggs *Teaching for Better Learning* (1990-91) 2 *Legal Educ Rev* 133. *Teaching for Quality Learning at University* (SRHE, 1999).

For flow chart learners, see Appendix A for a diagram of Bigg’s eco-system of learning. See also P Ramsden, *Learning to Teach in Higher Education* London: Routledge, 1992; M. Le Brun & R Johnstone *The Quiet Revolution: Improving Student Learning in Law* (Sydney: Law Book, 1994).

<sup>3</sup> See S Habershaw, T Habershaw & G Gibbs, *53 Interesting Things to Do in Your Seminars and Tutorials* (Avon: 1992) pp 53-54; *53 Interesting Things to Do in Your Lectures* (Avon: 1988) p 111-114. There are now a range of process articles and books specifically designed for teachers in mediation courses. For example, see D Cruickshank, “Training Mediators: Moving Towards Competency-Based Training” in K Mackie (ed) *A Handbook of Dispute Resolution* (1991); ABA, *Presenting Dispute Resolution to Judges: A Guide for Developing Judicial Training on Alternative Dispute Resolution* (1996); Mennonite Conciliation Service, *Mediation and Facilitation Training Manual* (Akron, 1996); Lynn R Anders *Instructor’s Guide to C.W Moore, The Mediation Process* (San Francisco: Jossey-Bass, 1996); R Mock, *The Role Play Book* (Akron, PA: Mennonite Conciliation Service, 1988).

individuals for say four minutes to write out an array of (or “at least four”) possible answers to the question. These are possible answers, not necessarily the “best” options.

For example, among the questions at mediation and negotiation courses often are:

- How to respond to inequality of bargaining power?
- Which disputes are probably unsuitable for “problem-solving” mediation or negotiation?
- How to deal with a disruptive negotiator?

### **Stage 2 – Interviews in Triplets or Pairs (10 minutes)**

Students are instructed to divide into groups of three, and interview one another about the answers and options generated individually to the question. Each group is asked to appoint one person as a reporter.

### **Stage 3 – Plenary (10 minutes)**

The teacher asks the reporter from each group to give two responses to the question and lists those responses in point form on a whiteboard or large sheets of paper. Clarifying comments go to and fro during this process. If one group repeats responses already suggested by another group, this repetition can be reflected by checks (or ticks) next to existing points on the board. The teacher interrupts if students ridicule or criticise particular options and emphasises that the exercise is to brainstorm options first, before any evaluation takes place.

### **Stage 4 – Overview by Teacher (4 minutes)**

This last stage is optional and can be omitted. The teacher confirms to the class that from their own life experiences they have created a list of orthodox (and perhaps not-so-orthodox) answers or options to a recurrent question. The teacher then gives input by either:

1. Telling stories from mediations or negotiations in which the teacher was involved which illustrate in a concrete way one or more of the categories. (This will often trigger critical questions – “Why did you do that?”; “that illustration worries me because---”). It is important for the teacher to illustrate with failures as well as with successes in order to avoid artificial triumphalism, help students who are anxious amidst the avalanche of new learning to relax, and to model the necessary acts of faith attached to problem solving.
2. Writing on the board two or three additional options to add to the repertoire developed by the class.
3. Putting up on a screen a pre-prepared list of responses in point form. Any “new” responses not generated by the class can be quickly pointed out on the screen. It is essential to hand out simultaneously a copy of the pre-prepared list in order to avoid a frenzy of anxious writing. This also enables students to write clarifying notes on the list.<sup>4</sup> Additionally, the handout may assist students from certain cultural backgrounds who are comfortable with authoritative wisdom emanating from the “professor” and not from mere mortal self and peers.<sup>5</sup>
4. Writing on the board (not just orally describing) an authoritative book, article or pages in the printed notes which elaborate upon the options just developed by the group by the pyramid process.<sup>6</sup>

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<sup>4</sup> See appendix B for several illustrations of such lists. The writer has reproduced several of these lists on bubblegum cards. These are credit card size point form summaries which some students delight in extracting from their wallets at strategic moments.

<sup>5</sup> Eg B Ballard & J Clanchy, *Teaching Students from Overseas* (Melbourne: Longman Cheshire, 1991).

<sup>6</sup> See Appendix B for illustrations of point-form answers to predictable “hard questions”.

To summarise:

## **STAGE 1 – Individuals**

**Write write**

## **STAGE 2 – Triplets**

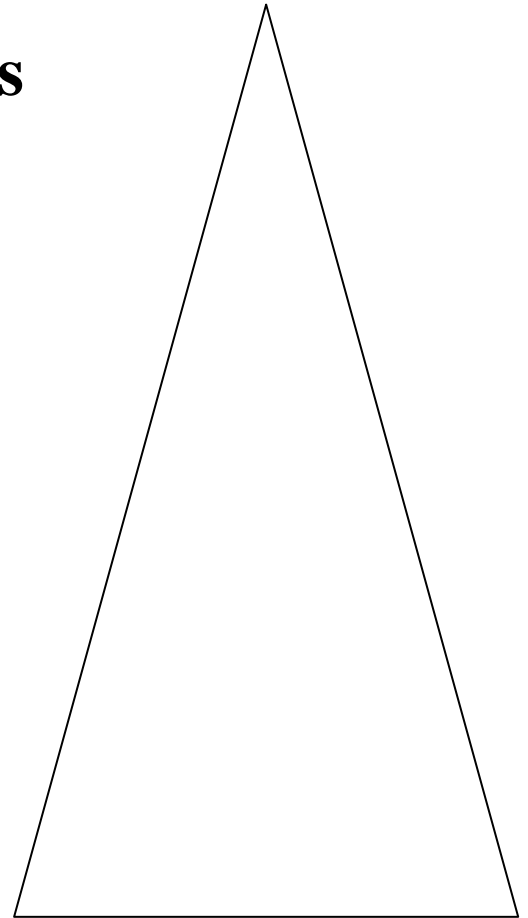
**Interview**

## **STAGE 3 – Plenary**

**Report**

## **STAGE 4 – Teacher**

**Overview**



### **Variations on the Basic Process**

Like any process, the basic pyramid procedure has many possible variables, all of which have potential advantages and disadvantages. For example:

- An extra interviewing stage can be added after the first reflective writing step. The class can interview in pairs, before moving to interviews in groups of four or five. This enables individuals to test their ideas with a colleague before entering a riskier and perhaps more dominated larger group.
- To reduce any risk of boredom, the task can be changed slightly at each stage. For example:
  - Stage 1** “Write out a list of reasons why disputants may experience the post settlement blues after a negotiation or mediation.”
  - Stage 2** “Brainstorm a list of options whereby a mediator can reduce the post-settlement blues.”
  - Stage 3** “Pick from your list, the two most versatile ways for a mediator to reduce the post-settlement blues.”
- As the tasks become more varied, so the instructions from the teacher need to become more explicit and visual.
- At the interviewing stage 2, the teacher and any coaches wander from group to group and sit at the edge of each group listening to the ideas and watching the dynamics.

- At the beginning of the interviewing stage, each group is instructed to take a large sheet of paper, marking pen and tape in order to record their list of ideas. These sheets are then stuck up by the reporter from each group who points out visually to the class his/her group's ideas during the plenary session. This assist groups to focus and practise mediator writing skills, but will definitely extend the time of both stages 2 and 3.

Trainers accustomed to using a version of the pyramid process will have a number of other possible variations.

### **Logistical Hints**

In order to ensure that the pyramid process works at an optimum level, here are some logistical hints (learned in the hard school of experience).

- The process can be used with groups between about 10 and 500.
- Instructions for the three stages should be given orally **and** in point form on the board. Many students will miss the former.
- Do not mention stage 4 as this may encourage a few students to sit back and wait for the teacher "to give us the answers."
- Be rigid with designated time allocations, otherwise the process will quickly run overtime. "I know some of you have more to write on stage 1, but please move immediately to stage 2" etc.
- At stage 2, use triplets rather than pairs as this:
  - (a) reduces the chances of one disinterested or dominant person undermining the interviewing dynamics;
  - (b) makes allowance for odd numbers in the group; and
  - (c) avoids the isolation of loners.
- Some nervous or disinterested students may decide to sit and stare at the ceiling. Accordingly, before stage 1, announce "Make sure you write your ideas clearly as you will be interviewed about your list";
- And before stage 2, announce "Please look around and make sure that no-one has been left sitting alone."
- In large groups, the noise levels during stage 2 interviews will be between high and deafening. Be prepared to yell, blow a whistle or have a loud microphone to move them back to the plenary session.
- For stage 2 interviews, encourage triplets to move chairs into groups, but discourage moving to another room. Intense and distant discussion will inevitably lead to missing the call to the plenary stage 3.

### **Logistics for large groups:**

1. The question to be addressed, the pyramid process and the standard list of responses should be in huge letters on pre-prepared transparencies or power points (or perhaps large sheets of paper).

2. The teacher can only take (loudly spoken) responses from a few groups which (s)he chooses, otherwise time will disappear and murmuring will begin.
3. The teacher needs a helper or two to hand out copies of the pre-prepared “answer” list so that (s)he can make a few comments at stage 4 from the list on the screen while the copies are being circulated.

## **Advantages of the Pyramid Process**

The potential advantages of the pyramid process (like many other teaching /learning procedures)<sup>7</sup> are extensive, and are set out as follows:

### **1. Provides Diversity of Methods**

At the most basic level, a pyramid exercise provides a change from what has been occurring in the classroom. These changes in method of learning are essential to sustain energy and interest. Importantly, the teaching “voices” change. The ubiquitous diversions of daydreams and the internet momentarily cease.

### **2. Movement of bodies and furniture**

Stage 2 of the exercise (triplets interview) requires physical movement to find partners and a setting triangle. This wakes people up – at least momentarily – and places them in an intimate setting where it is more difficult to be a sleepy non-participant.

### **3. Pressure, without public humiliation**

Each stage of the pyramid process exerts gentle pressure on participants to produce a result for which they will be accountable. Anonymous hiding in a corner is difficult. However, this accountability is gradual – first to self, then to two colleagues, and then to the whole gathering – and thus the risk of public humiliation is reduced (eg “**One** of my ideas is ...”; “**My group** came up with the following two possibilities ...”).<sup>8</sup>

### **4. Reduces Initial Inertia of Group Work**

Following from the previous advantage, the pyramid avoids one of the disadvantages of buzz, work or syndicate groups. That is, as it takes most people time to develop ideas and what to say in a larger group – silence may be the safest option. By way of comparison, stage 1 of the pyramid gives both time and obligation to participate immediately in the subsequent groups.

### **5. Accommodates Multiple Learning Styles**

One of the challenges for any teacher is to develop activities which accommodate the predominant learning styles present in a diverse group.<sup>9</sup>

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<sup>7</sup> See Gibbs et al *Supra* note 2

<sup>8</sup> Gibbs et al, *supra* note 2 at 112.

<sup>9</sup> Eg R Hyman and B Rosoff, “Matching Learning and Teaching Styles: The Jug and What’s in It” in H Clarizio et al, *Contemporary Issues in Educational Psychology* (New York: Random House, 1987); McBer and Company, *Learning-Style Inventory* (Boston: McBer and Company, 1985); D Smith & D.A. Kolb *User Guide for the Learning Style Inventory* (Boston: McBer and Company, 1985).

It should be emphasised that learning style theory does not provide a magic wand to learning at least because (a) learning is affected by so many variables; (b) no-one fits neatly into only one learning style; (c) it is sometimes desirable that learning styles adapt – eg adapt to reading detailed text-books; (d) how should predominant learning-style be determined and by whom?

The pyramid process, in shotgun fashion, provides learning by reflective writing; chatting and interview; watching an expert model tolerance of diversity of ideas; public reframing of conflicted ideas; listening to story telling; and listening to an authoritative systematic speaker. A wide range of learning styles are targeted in one exercise.

## 6. Connects New Learning to Old

Acquiring mediation, negotiation or life knowledge and skills is often daunting and sometimes learners feel unduly inadequate. In response, the pyramid process requires the class and teacher to answer new conflict management questions by drawing from their own (often unsystematised) storehouse of “old” knowledge and life skills.<sup>10</sup>

Most students (particularly parents) already have a sophisticated range of responses from their own life experiences to “standard” mediation questions such as:

- How to deal with a very emotional person?
- How to respond to clear inequality of bargaining power?
- How to handle cross cultural communication?<sup>11</sup>

## 7. Models Problem-Solving Mediation

Following from the previous comment, the pyramid process can successfully model the philosophy, process and skills of problem-solving mediation and negotiation. For example:

- the teacher / mediator reframes the perplexing concerns into a standard “how” or “what” question version of that problem.<sup>12</sup>
- the teacher / mediator gives assurance that this question is legitimate and “normal”
- the teacher / mediator encourages the participants / disputants to find **their own** range of answers and maintain **control** of their own lives and learning.
- the range of possible answers is clarified, reframed and visualised.
- the learners / disputants experience the surprise and tensions of hearing many other (sometimes unacceptable) ways of addressing the problem.
- the teacher mediator creates a process whereby all learners / disputants must contribute both in writing and orally.
- the teacher / mediator models how there can be a helpful role for a substantive expert to **add** options and information at the “right” time during a problem solving process.<sup>13</sup>
- the teacher / mediator demonstrates how to set up and manage negotiations in a large and conflicted group.<sup>14</sup>

<sup>10</sup> P Ramsden, *Learning to Teach in Higher Education* (London: Routledge, 1992). One of the clear elements of good teaching is “[a] facility for engaging with students at their level of understanding” (p 89).

<sup>11</sup> See Appendix C for a list of other “standard” questions to which problem-solving mediators / negotiators / lawyers / doctors / engineers / need a range of answers.

<sup>12</sup> See Appendix C for a standard list of questions; also J H Wade “Tools from a Mediators Toolbox: Reflections on Matrimonial Property Disputes” (1996) 7 *Aust Dispute Res J* 93 (all complex family conflicts can be “reduced to 21 standardised problem-solving questions”).

<sup>13</sup> There are particular tensions about the advice, opinion and information-giving roles of mediators who use the facilitative or problem-solving model of mediation: see J H Wade, “Forever Bargaining in the Shadow of the Law – Who Sells Solid Shadows? (Who advises What, How and When?)” (1998) 12 *Aust J of Fam L* 256. These tensions apply to all skilled helpers who give advice – see G Egan, *The Skilled Helper – A Problem-Management Approach to Helping* 8<sup>th</sup> ed (California: Brooke / Cole, 2007).

## 8. Protects the New Kid on the Block

In the writer's experience, there is a common tendency at mediation training courses for participants to ask hard questions about the **new** product – namely mediation – and fail to ask the same hard questions about their **traditional** roles as lawyer, negotiator, therapist, accountant or doctor. The new kid on the block is asked to jump higher than the old kids. Anecdotally, young lawyers are particularly prone to such judgments rather than to self reflection.

Accordingly, the pyramid uses a traditional humility-inducing strategy of “you go first”. “You answer my question first, then I will answer yours.” “Just as your lists (as lawyers, accountants, therapists) have answered me, so do I as a mediator and negotiator answer you.”

This has often proved to be a more effective learning (and hostile classroom management) strategy, than a direct and complex answer from the teacher's mouth. An aggressive questioner must then also deal with the diverse and complex answers which emerge from his / her classroom colleagues. These answers indicate that hard questions have no easy solutions in traditional or new configurations of “skilled helpers.”

## 9. Feedback to the Teacher

Each stage of the pyramid process has the potential to inform the teacher about the levels of maturity, skill and understanding of particular individuals in the class. Stage 1 will indicate disinterest or “engagement” by busy writing. Wandering, listening and watching at Stage 2 will indicate individual abilities in the class to include loners, listen, tolerate differences, reflect on life experience and communicate generally. Questions asked and comments made at stage 3 while point summaries are being recorded during the plenary will suggest similar abilities.

From these tentative insights, the teacher is able to use skilled people in the classroom to give illustrations or to become a devil's advocate; to trouble-shoot with the conflicted or disengaged over lunch; to amend the proposal curriculum on the run and build upon absent or demonstrated skills and knowledge.

This is an analogous process as to that used by mediators and diplomatic negotiators. Conflict managers constantly use intake sessions, opening statements and prior patterns of negotiation as feedback to assist with adjusting tentative diagnoses and proposed interventions in any mediation or subsequent round of negotiations.

## 10. Developing Friendships

The layers of mandatory and structured interaction lead to some quick friendships being established within the larger group – especially across career or racial differences.<sup>15</sup> These friendships usually lead to more discussion outside formal class time, and to collegial support during classroom exercises.

If the pyramid process is used several times during a training course, it has proved helpful to insist on new groups at the interviewing stage in order to minimise cliques, spread “difficult” people around, and widen the circle of potential friendships. “Please ensure at stage 2 that you work with people you have not interviewed before.”

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<sup>14</sup> See the number of skills, goals and processes in multiparty negotiations which overlap with the pyramid process in R J Lewicki et al, *Negotiation* (Illinois: Irwin, 2006) Ch 13 “Multiple Parties and Teams”.

<sup>15</sup> See also repeated research results suggesting enhanced friendships, self-esteem, and support of colleagues arising from small group exercises – RE Slavin, “Small Group Methods” in M J Dunkin (ed) *The International Encyclopedia of Teaching and Teacher Education* (Oxford: Permagon, 1987) at 237-242.

## Disadvantages of the Pyramid Learning Process

There are a number of logistical traps when using the pyramid procedure which have already been set out.<sup>16</sup> Apart from these, the following are some potential disadvantages when teachers use this method:

### 1. Timing Within Legal Culture

The writer's anecdotal experience from teaching many who are preparing for or practising as "lawyers", is that education of lawyers should **begin** with a presentation – a lecture, a paper, a story, a video, or a role-play. We as lawyers appear to have been conditioned to this style of learning. A teacher may lose credibility if (s)he begins to teach by a process too far outside the cultural norm. Thereafter, once credibility is established, lawyers appear to be delighted to engage in learning exercises, particularly which enable them to reflect upon, and systematise their own life experiences, and which enable them to hear the views of non-lawyers (who bring startling insights into the values and practices of potential clients). Thus beware a pyramid too early.

### 2. International Cross-cultural Offence

Following from the first potential disadvantage, using certain group learning exercises with some students from other cultures, may lead initially to inertia, passivity and apparent non-cooperation.<sup>17</sup> These responses are rarely because of laziness, lack of intelligence, motivation or even language difficulties. Rather some cultures have deeply ingrained traditions and beliefs that:

- "the teacher knows best – what do I, a mere student, know?"
- "the teacher must have made a mistake if (s)he asked me to criticise publicly a respected author, judge or tradition."
- "I will wait until the teacher tells me the answers, and will memorise those answers precisely."
- "I am too embarrassed to show my clumsy second or third language skills."

The pyramid process offends each one of these deeply ingrained traditions. Certain students will require some convincing and modelling to be sure that the teacher really wants them to behave in such an offensive manner.

Conversely, the writer has had great success in using the pyramid method overseas with groups of Chinese students by encouraging them:

- to work at stage 2 in groups of 4-6
- to use their first language both to define the question, and assemble the possible answers
- to write on large sheets of paper in their own language with an English translation underneath
- to appoint 3 reporters per group to explain their list, and the cultural and linguistic nuances of each point (obviously, the teacher-learner distinction merges completely during these exercises). This process invariably has led to profound and humorous debates between the students about different local cultural practices and stereotyping.

### 3. Local cross-cultural offence

<sup>16</sup> See *supra* at p 3, "Logistical Hints".

<sup>17</sup> See B Ballard & J Clanchy, *Teaching Students from Overseas* (Melbourne: Longman Cheshire 1991); D.J Phillips, "University Academics Responding and Adjusting to the Increasing Numbers of Cross Cultural and Overseas Students" (1992) 3 *Legal Educ Rev* 123

The eco-system of learning in many organisations is structured to discourage learning. This is particularly so at many university law schools where the majority of final year students are jaded, disinterested, often absent in body and / or spirit, and only focussed on how to pass the assessment or obtain employment.<sup>18</sup>

Likewise, at legal conventions held at exotic places, a number of participants enrol in order to partake in a tax deductible holiday.

In both these cultures, university and convention, there may be moans and groans when the pyramid exercise is announced as it involves effort, brain-space and is non-assessable. The students have many subtle strategies to condition the teacher how to teach painlessly and in conformity with the dominant culture.

Teachers also need to learn many strategies to avoid being crushed by the overwhelming cumulative pressures of dysfunctional learning eco-systems.<sup>19</sup>

One clearly successful way to combat law school students who have been neutered into "shallow learning", is to include in the mediation, negotiation or any other class, at least one quarter of the participants who are judges, highly experienced lawyers and other professionals who are not lawyers. Their energy, stories, understanding of "relevant" knowledge and skills, and joy at being out of the office with time to reflect and talk sends shock waves through the jaded juniors.<sup>20</sup>

#### **4. Encouraging teacher laziness**

Like the so-called "Socratic" method of teaching / learning, (which is not remotely similar to Socrates' style of teaching), the pyramid method can encourage laziness and lack of preparation.

The unprepared teacher can simply reframe questions repetitively and send the students off to be busy, and seek answers from themselves and their colleagues. Then the teacher avoids stage 4 which requires him/her to summarise, prioritise and add insightful options in the problem-solving exercise. Instead (s)he asks more questions, pronounces that "life is complex"; "there are no simple answers"; "what would you do?"; "what if I changed the facts to ---."

Of course, perceptive students quickly learn this routine, realise the teacher is relatively unprepared (apart from last year's notes), and learn how to play the game, minimise engagement and achieve the shallow appearance of learning (yet again).

Beware of the quick educational fix through a new "method."

## **Conclusion**

Anecdotally, the pyramid has proved to be one versatile and effective method for teaching and learning at university and other training courses (in mediation, negotiation, conflict management and other "law" courses). As with any learning method, it should be supplemented by the multiple elements of any effective learning eco-system.<sup>21</sup> Alone, it will be an empty and nuisance of an exercise. At its best, the pyramid process models many of the elements of problem-solving

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<sup>18</sup> Eg See ABA *Law Schools and Professional Education* (1980) (the Cramton Report) p 34 commenting on escalating absences in body and spirit of law students in later years of "study".

<sup>19</sup> The writer became interested in law school eco-systems as a young teacher. Later, in a more systematic way, as a teacher of a post-graduate course on legal education - see Appendix D for an outline of such a course.

<sup>20</sup> The writer has seen this energising "outsider" presence of senior professionals in a number of mediation and dispute resolution classes at law schools in the USA, Australia and Hong Kong since 1990. As outsiders, they are not immediately influenced by any dysfunctional eco-system.

<sup>21</sup> See Appendix A.

mediation,<sup>22</sup> negotiation and lawyering<sup>23</sup> – namely, catering for several learning styles, an obsession with procedure, careful wording of questions, the use of visuals, a place for substantive authority, input from all participants, structured listening, reframing and a high tolerance for ambiguity.

It is a worthwhile addition to the trainer's, mediator's and negotiator's tool box.

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<sup>22</sup> For a useful four-fold categorisation of mediation process – settlement, problem solving, therapeutic and evaluation – see L Boule, *Mediation, Principles, Process, Practice* (North Ryde: Butterworths, 2005), pp 43-47.

For an abacus model of multiple possible variations in any mediation process. See J. H. Wade, "Current Trends and Models in Dispute Resolution and Possible Implications for Residential Tenancies" Part I (1998) 9 *Aust Dispute Res J* 59 at 63-64.

<sup>23</sup> "Problem-solving" is arguably one of the helpful core functions of professions like lawyers who are struggling to identify themselves in changing times. See C Menkel-Meadow, "Toward Another View of Negotiation: The Structure of Problem Solving" (1983-84) 31 *U of Cal. L.A. L Rev* 754; S Nathanson, "The Role of Problem-Solving in Legal Education" (1989) 2 *J of Leg Ed* 167; A Tidwell, "Problem Solving for One" (1997) 14 *Mediation Q.* 309; D.A. Cruickshank, "Problem-Based Learning in Legal Education", ch 7 in J Webb & C Maughan (eds) *Teaching Lawyers Skills* (London: Butterworths, 1996); ABA, *Legal Education and Professional Development – An Educational Continuum* (MacCrate Report, 1992) pp 141-151; W M Sullivan et al, *Educating Lawyers* (San Francisco: Jossey-Bass, 2007); R Stuckey et al, *Best Practices for Legal Education* (CLEA; 2007).

For a critique of the search for core models and functions of lawyers, see W Twining *Law in Context* (Oxford: Clarendon, 1997) pp 330-338.

## APPENDIX A

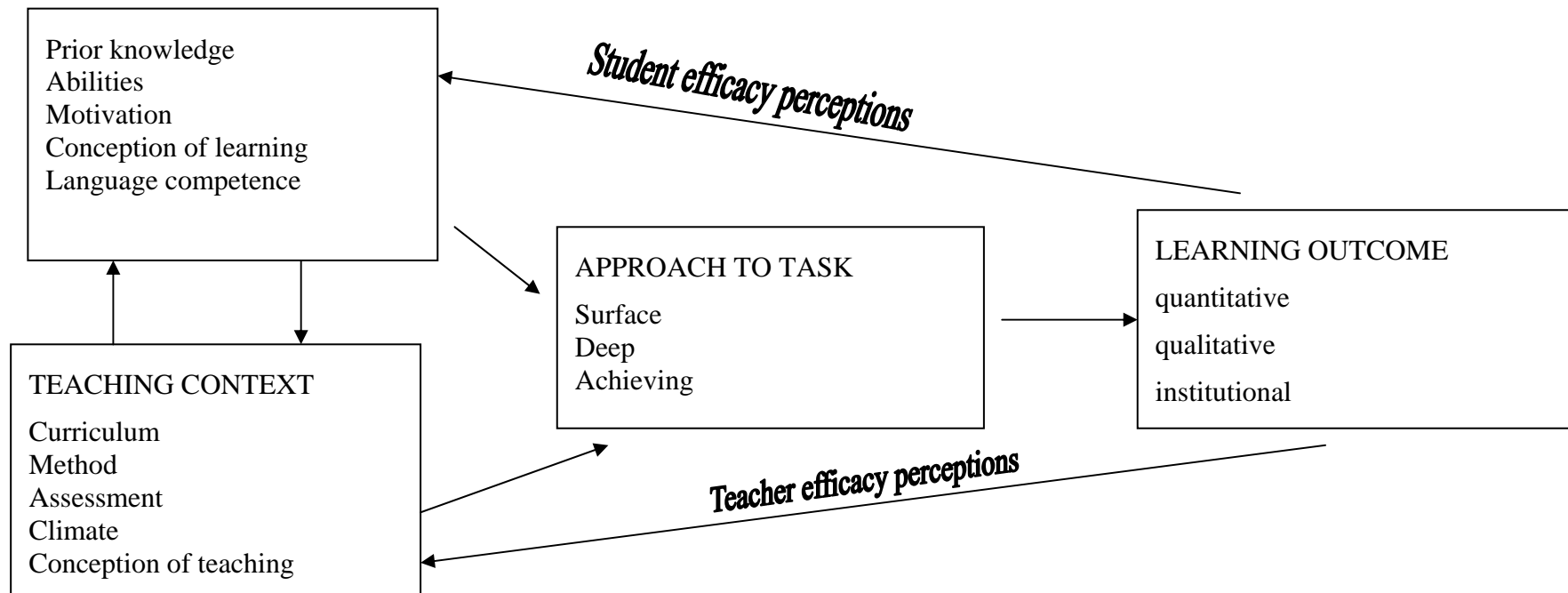
# The Eco System of Learning (Biggs)

## PRESAGE

(ie PRECONDITIONS)

## PROCESS

## PRODUCT



# APPENDIX B

## Examples of Lists of Possible Responses to Common Questions During a Mediation or Conflict Management Course

### Question 1

How can a mediator or negotiator respond to an “emotional” client?

Possible Responses:

1. Listen & empathise
2. Educate & normalise
3. Long adjournment
4. Short adjournment - tissues and tea
5. Refer to counselling / therapy (with letter)
6. Repression and denial of emotion
7. Ignore emotional cues
8. Persistent return to “practical” matters
9. Professional as knight in shining armour
10. Revert to smaller, interim issues
11. Identify and isolate emotional issues
12. Written report; plus time to reflect
13. Presence of trusted friend
14. Begin “therapy”
15. Counsellor / therapist present at the initial session
16. Ram through an agreement
17. Shuttle diplomacy immediately
18. Start together; then shuttle
19. Cathartic outpouring in one room
20. Confide in other party about emotional agenda
21. Refer to an authoritative decision maker
22. Scold; “Pull yourself together!”
23. Others?

## **(Appendix B continued)**

### **Question 2**

**By what criteria can “success” in a mediation or negotiation be measured?**

- 1. Signed terms of agreement**
- 2. Short term compliance**
- 3. Mid term compliance**
- 4. Long term compliance**
- 5. Facts were clarified**
- 6. Issues or questions were clarified**
- 7. Interests were clarified**
- 8. Options were clarified**
- 9. Some seeds of doubt were sown in entrenched positions**
- 10. Stereotypes and images of others changed (de-reification)**
- 11. Procedures agreed upon**
- 12. Partial agreement**
- 13. Short term agreement**
- 14. Would recommend this process to friends**
- 15. I was listened to**
- 16. I had a sense of control**
- 17. Emotions were acknowledged**
- 18. Procedure was fair**
- 19. Laid foundations of politeness and communication for a later agreement**
- 20. Every “failed” meeting is a step towards agreement**
- 21. Process was cheaper than .....**
- 22. Substantive result fell within a market range of “fairness”**
- 23. Process was faster than .....**
- 24. Process had few side-effects than .....**

## **(Appendix B continued)**

### **Question 3**

**How can a mediator or negotiator respond to competing views of “experts”?**

- 1. Experts jointly explain differences to disputants**
- 2. Require a short written joint explanation signed by both**
- 3. Create doubt for one or both by new facts (“Would your opinion be any different in the light of ...”)**
- 4. Third expert present to clarify**
- 5. Third expert gives non-binding opinion**
- 6. Third expert gives binding ruling**
- 7. Split difference**
- 8. Trade chips (“what if I accepted your expert, would you be prepared ...?”)**
- 9. Leave to a judge/umpire to choose one or the other**

# Appendix C

**Examples of Standard Important Questions Which Arise During a Mediation, Negotiation or Conflict Management Course (and for which Lists of Optional Responses can be prepared)**

- What *variations* are available in the mediation process?
- What conflicts probably need an *umpire*?
- How to deal with “*emotional*” clients?
- How to deal with background “*tribes*”?
- How to deal with “*duelling experts*”?
- What are the pressures upon and interests of *brokers* to mediation services?
- What *post-settlement* hiccups are predictable?
- How to respond to *post-settlement* hiccups?
- What strategies are available when people become *jammed*?
- How to deal with *data chaos*?
- How to respond to “*inequality of bargaining power*”?
- What should a mediator do if a settlement appears to be *unfair*, or out of “the range”?
- What *cultural adaptations* may be necessary to skills and process for cross cultural mediations and negotiations?
- How can mediation and negotiation services be *marketed* effectively?
- What *measures of “success”* can and should be used to compare mediation to other conflict management services?
- What *micro-skills* do successful mediators or negotiators use?
- How to *diagnose* which process for which conflicts?

# Appendix D

## Example Curriculum for Teaching Law Teachers About Teaching and Learning



### **Bond University** **School of Law**

#### *Legal Education*

#### *LLM and SJD (Laws 778 – Postgraduate)*

This is an experimental course. It had a basic framework. However, the class members are free to suggest aims and content.

*Instructor:* John Wade

#### **Warning:**

We are attempting to reflect on what we do as Law teachers. This is a dangerous course. Such a study may unsettle the image we have of ourselves. You may never be the same again. You may quit your job. You may return to your work as disturbed, different (and unpopular) person.

**Aims of the course:**

- To read and discuss some classic literature on (legal) education.
- To learn by rote, some of the recurrent themes in (legal) education and some of the recurrent solutions to problems therein.
- To practise experimentally, some skills of teaching and course design.
- To develop friendships with others.
- To write a major paper addressing a topic of your choice on (legal) education (with possible incidental purposes of presentation at a seminar and publication).
- To leave the course with a number of new skills and resources which can immediately be tried in your courses.

Varied methods of learning / teaching will be reflected in the way the course is conducted.

**Topics**

1. How people learn
2. Repetitive issues in Legal Education
3. Historical movements in Legal Education
4. Matching teaching and learning styles
5. Course objectives and aims
6. Methods of teaching / learning
7. Assessment
8. Assessment of teaching
9. The divide between “practice” and “theory”
10. Learning across cultures
11. Ethical issues as an educator
12. “Skills” and the McCrate Report
13. Career paths as a legal academic

**Methods**

- Each week there will be an assigned reading
- A “theory” topic will normally be discussed in the first hour of class
- A “practice” exercise will normally be undertaken in the second hour.

**Prescribed Materials**

- Paul Ramsden, *Learning to Teach in High Education*, (London: Routledge, 1992)
- B Ballard and John Clanchy, *Teaching Students from Overseas*, (Melbourne: Longman Cheshire, 1991)

- J Biggs, *Teaching for Quality Learning at University* (SRHE, 1999)
- Prepared material on legal education (available at the third floor secretarial office)
- A ring binder to develop your own teaching portfolio

### **Additional Recommended Reading**

- R Johnstone and M Le Brun, *The Quiet Revolution in Improving Student Learning in Law* (Sydney: Law Book, 1994)
- W Twining, *Law in Context* (Oxford: Clarendon, 1997)

### **Additional Resources**

- Class members and their life experiences
- Wine, cheese and biscuits (roster)

### **Assessment**

1. Class attendance on Mondays 4-6pm beginning 12 September till 5 December inclusive (ie 12 classes) - 10%
2. One 6,000 word essay due 23 December and worth 70%. (Some class members may wish to present, then refine this essay and seek to have it published).
3. Minor presentations in at least at two classes to an audience with defined goals, methods, inputs, feedback, overheads, handouts.
4. Presentation at staff seminar day on Legal Education on Friday 9 December (end of week 13) at a venue to be decided – 20%
5. Preparation of a “Teaching Portfolio” for personal use and promotion purposes.

Note: 1, 3 and 5 are not “marked”, but participation is a prerequisite to the marking of your major paper.

### **Access to Instructor**

I am available at the Law School (telephone 55952004) each day except Thursday when I am in Brisbane. If/when I am absent please leave messages and I will telephone back day or night.

Please advise ahead of time if you are unable to make a class.

### **Teaching Portfolio**

As part of this course, each student must develop a confidential “teaching portfolio.” This is, a ring binder divided by marked tabs to which you can add items over your teaching career. Please bring suggestions for portfolios to class, including new inserts. To begin with, mark your dividers with topics such as:

1. CV

2. Comments (by peers and students and self) on:
  - \* Success
  - \* Things you would do differently
3. Educational literature
4. Handouts (eg. Marking scales, plagiarism, first lecture comments)
5. Class exercises
6. Yearly survey results
7. Goals (revised yearly) for you, your family, the institution on a yearly and five yearly basis
8. Research – possible research / writing topics