

BRIDGING THE LANGUAGE DIVIDE: AN INNOVATIVE TEACHING PROJECT TO HELP INTERNATIONAL STUDENTS FROM CHINA IN LEARNING BUSINESS LAW SUBJECTS

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This paper describes and evaluates a teaching and learning project at the University of Technology Sydney that involved providing bi-lingual notes for corporate law in English and Chinese. The project can be seen as a novel response by educational institutions in Australia to problems associated with the internationalisation of education. Although educational institutions concentrate efforts on helping international students overcome 'culture shock', the authors argue that another level of assistance is needed, and one that more directly targets learning difficulties stemming from language issues. It is the writers' hypothesis that language barriers and the lack of learning materials in the student's first language represent a gap in teaching and learning mechanisms that are not adequately covered by focusing on learning difficulties as part of 'culture' alone. The argument is put forward that educational institutions can enhance the learning experience of international students by providing basic learning materials in the student's first language.

I INTRODUCTION

The purpose of this paper is to share our experiences with respect to a project involving the provision of bi-lingual notes in English and Chinese for students studying corporate law. The project had its genesis in the writers' experiences as teachers of corporate law in a business law subject that traditionally attracts large numbers of international students.¹ In the course of our teaching, many international students regularly commented on the difficulty and complexity of the subject, which they felt was exacerbated by language barriers. The writers considered whether the lack of learning materials in the student's first language represented a gap in teaching and learning mechanisms.

At present, educational institutions largely concentrate efforts on overcoming 'culture shock' by helping international students adjust to life abroad, and adapt to western study patterns.² These efforts represent a mix of intra-curricular and extra-curricular mechanisms. However, by focusing on cultural matters these mechanisms largely shift the onus of adaptation (both in and out of the classroom) to the student. Consequently, international students are expected to immerse themselves in western culture, and absorb vocabulary and language skills sufficient to study complex material at the tertiary level in one semester. In one sense, this 'sink or swim' approach

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forces students to adapt, and to adapt as quickly as they can. Admittedly, students are also not left without assistance, for, as will be discussed later in this paper, teachers have adopted a variety of useful strategies to help international students.

Yet, it is our hypothesis that language barriers and the lack of learning materials in the student's first language represents a gap in teaching and learning mechanisms that are not adequately covered by focusing on learning difficulties as part of 'culture'. The argument is put forward that another level of assistance is needed, and one that is provided 'intra-curricular', that more directly targets learning difficulties faced by international students. We assert that educational institutions can enhance the learning experience of international students by providing basic learning materials in the student's first language. This approach can be seen as a novel response by educational institutions to problems associated with the internationalisation of education.³

The paper commences with a discussion of the project which, as already indicated, involved the preparation of basic bi-lingual learning materials. As such, the project did not furnish full translations of materials, but only sufficient translations to provide fundamental information and support to the students. The project ran, and was evaluated, over a period of two semesters. We then analysed our findings in the context of two areas of research: the literature on the learning habits of international students;⁴ and the literature on how to enhance the learning experience of international students abroad.⁵ The former is relevant to highlight the importance of written materials in the learning pattern of international students; while the latter examines methods traditionally used to address language issues and provides a point of comparison for our methods and research.

While the project concentrated on international students from China, many of the more general comments and findings would be relevant to students from other countries. In addition, while the project centred on corporate law, the methodology used could be adapted for other subjects.

In undertaking this project and reaching conclusions, we are not to be taken as suggesting that providing translated materials is a 'solution' to the language problems of international students. Instead, we hope that this project will stimulate research and discussion on alternative ways of assisting these students at Australian universities.

II THE BILINGUAL/TRANSLATION PROJECT

The translation project, which was supported by a Teaching and Learning Grant from the University of Technology Sydney (UTS), was carried out and fine-tuned over two semesters: during spring 2007 and autumn 2008. The project was highly supported by the Faculty of Law at UTS, as well as the University; and focussed on the teaching of corporate law to international students studying business degrees at UTS in a subject known as 'Applied Company Law (ACL)'. The subject traditionally has a significant number of students from China.

A Aims, Objectives and Methodology

The methodology of the project was straightforward — it involved the preparation of bi-lingual materials in English and Chinese. The aims and objectives focussed on improving the learning experience of international students from China. We hoped that the provision of bi-lingual materials would lead to an improved learning experience and greater self-confidence in the target group of students. Additionally, we anticipated that this positive learning experience would foster a more self-directed attitude to the student's learning that would also encourage

them to engage more deeply with their learning materials. We chose Chinese to roll out our project on the understanding that there is a greater need for translations into Chinese compared with other languages spoken by international students. The Australian Bureau of Statistics (ABS), for example, indicates that Australia attracts six per cent of all higher education students who study abroad⁶ and 17 per cent of these students come from China.

At the start of the project the authors planned to prepare translations of three sets of materials: a glossary containing a set of legal terminologies in corporate law; a study guide setting out how to answer a problem question in law; and a compilation of translated key phrases and other material from the prescribed text book. The translated materials were to be made available by way of UTSONline⁷ and students were encouraged to comment on the translations and to indicate whether there were other terms, phrases and material that should be included. The project was carried out in two stages: the first being a trial stage and the second, a fine-tuning stage. Each stage was evaluated by anonymous student surveys.

From the beginning it was clear that the choice of translator would be crucial to the success of the program. The Australian legal system is based on a common law system, whereas the international students targeted by the project were from a civil law jurisdiction⁸. Consequently, it was not sufficient for the translator merely to be fluent in English and Chinese. The translator also needed to have mastered a working knowledge of the legal systems of both of China and Australia.⁹ It was fortuitous that Grace Li, one of the authors of this paper, had taught Australian legal subjects in both English and Chinese and she undertook the complex job of providing the translations.

B Conduct of the Trial Stage

The trial stage was carried out in the spring semester of 2007, from July 2007 to November 2007.

The preparation of the glossary and the study guide proceeded swiftly and the materials were made available as planned. The glossary contained translations of the most common words, phrases and concepts that students would need in their study of corporate law; while the study guide took students through a problem question step by step, teaching them how to identify issues and apply the law. The study guide also emphasised how to structure an answer by dealing with each issue separately, encouraging the students to reach sub-conclusions before reaching an overall final conclusion.

In comparison, the preparation of the translated study materials did not proceed as smoothly. At the beginning of the project the authors envisaged that they would be able to translate headings, key phrases and sections directly from the student's text book. The translations were expected to represent less than 10 per cent of the prescribed textbook, and as such would not have breached formal copyright guidelines. Nevertheless, the authors were mindful of copyright issues and decided against providing direct translations from texts. Instead, the authors decided to provide translations of notes, linked to readings and specific sections of the student's prescribed textbook. Although this proved to be more time-consuming than selecting portions of the text for translation, it would ensure that there were no untoward issues with respect to copyright.

When the project commenced, the authors sent an email to all students enrolled in the subject advising them that the translations would become available on UTSONline. Emails were sent to students as new material was prepared and posted. In addition to the glossary and the study guide, the translations covered notes and materials on six topics:

- The company as a separate legal entity;
- The corporate constitution;
- The distribution of power in a company;
- An introduction to shareholder remedies;
- An overview of directors' duties; and
- A more detailed treatment of the duty to act in good faith for a proper purpose.

During the course of the project the authors received a number of unsolicited student emails of thanks for the translations. This indicated that the target group of students found the translations useful and the outcome of the project seemed promising.

At the conclusion of the project in November 2007, an anonymous online survey was set up to gauge whether the translations had improved the students' learning experience. The survey was made available online to some 350 students who were enrolled in the subject, and approximately 25 per cent came from Mandarin-speaking backgrounds. The response to the survey was in the order of 10–15 per cent of the total student cohort enrolled in the subject. The following part of this paper explains the survey in more detail.

C Trial Stage — Survey and Review

The survey comprised a series of questions on a Likert scale with additional space where the students could write comments. Given international students' reliance on written materials, the questions were primarily designed to determine whether the translations were helpful; and also whether English–Chinese dictionaries could substitute for the translated materials. Of the total students surveyed:

- 19 per cent considered that legal terms used in Applied Company Law were not sufficiently explained in standard English–Mandarin dictionaries;
- 66 per cent of the students found the translations helpful to their studies;
- 59 per cent of the students thought that more translations would be helpful to their studies; and
- 14 per cent did not find the translations helpful at all.

The written comments provided further and somewhat surprising information. There were four (4) comments that revealed an undercurrent of tension towards international students: 'If your English isn't good enough — go back to Insearch¹⁰ and study again'; while other comments centred on the fact that the translations should not be limited to Chinese students. The positive comments included a number of 'thank you' notes and a request for more translations.

From the written comments, it became clear that the survey had been completed by students who had only used the English version of the materials rather than the translated version. Whilst all students were welcome to use the materials, our aim had been to target Chinese-speaking students. Yet, the positive comments we received, and the fact that 66 per cent of those who answered the survey found the materials useful would seem to be an encouraging outcome.

D Trial Stage – Evaluation

The project was run as a pilot and the authors planned to fine-tune and re-run the project in the first semester of 2008. One seemingly contradictory finding was that a low percentage (19%) of students found English-Mandarin dictionaries inadequate, but a higher percentage (59%) wanted more translations.

The authors considered three possible explanations for this finding: first, that dictionaries explain individual words adequately, but are not able to capture the context of the words in a legal sense;¹¹ second, that students wanted more translations because the translations also provided summaries of the material and cut through large volumes of reading; and third, that the results were skewed because some students had not used the translated version of the materials. The authors considered that each of these was a possibility. Hence, in the next phase of the project, the fine-tuning stage, we made some modifications to address these points.

E *Fine-Tuning the Project*

In the fine-tuning stage the authors decided on three modifications: first, making the material available online in two formats, one solely in English and the other with the Chinese translations; second, adjusting the survey so that separate responses would be elicited from each group; and third, encouraging more input from the students to give information about what was helpful about the project and what was not. The fine-tuning stage was carried out in the autumn semester 2008 (during March 2008 to June 2008).

F *Conduct and Evaluation of the Fine-Tuning Stage*

Apart from the release of a separate English version, the conduct of the project followed the same procedure as the trial stage and the same materials were used. As with the trial phase, students were notified of the materials by email and messages posted on UTSONline. The students were also notified of the availability of the separate English version of the materials.

The survey was re-designed to separate the responses of the Chinese bi-lingual students from other students. In the new design, the first question asked whether the student had used the translated materials. If the answer to this question was negative, then the survey directed students to a set of questions related solely to the use of the English version of the materials. If the answer was affirmative, it could be inferred that this student was an international, Chinese-speaking student for whom the translated materials were intended. The survey then directed these students to a series of questions designed to elicit responses about the effectiveness of the translated materials. These students were asked a series of questions on a Likert scale and were also provided with space to write comments. In similarity to the first survey, there were questions on the effectiveness of English–Chinese dictionaries and the usefulness of the translated material.

In order to improve the response rate, rather than just making the survey available online, the authors distributed the survey in those classes where the teachers agreed to allow the class to participate. Once again, as with the first survey, the students' responses were anonymous. Sixty-four students were surveyed. Of these, 46 were non-Chinese-speaking students and 18 students were Chinese-speaking. At approximately 28 per cent of the total, this figure represents a little over one quarter of the cohort. The results of the survey were as follows:

- Of the 46 non-Chinese-speaking students, 36 students used the English version of the notes and 35 students found the notes useful to their study. Therefore, only one student who read the notes did not find them helpful.
- With respect to the 18 Chinese-speaking students who used the translated materials, 16 students found the translations useful to their study. One did not find the translations useful and one was neutral. This meant that 88 per cent (16 out of 18) of the students found the translations helpful to their studies.

- Of the 16 students who used the materials, 43 per cent (7/16) considered that terms used in Applied Company Law were not sufficiently explained in standard English-Chinese dictionaries and 87% thought that more translations would be helpful. This indicates that while just over half the international students considered that terms were explained sufficiently in English-Chinese dictionaries, the fact that more translations were requested arguably suggested that dictionaries may not be the most effective medium for conveying legal meaning in context to students from non-English-speaking backgrounds.

The written comments were positive. A number of students commented that the translated Chinese notes helped them to understand legal terminology and made the subject easier to study. In addition, many students requested more notes on other topics, or notes in more detail, especially on directors' duties. Finally, non-Chinese-speaking international students indicated that they would benefit from notes in other languages, such as Indonesian or Finish. It is clear that, at least by the second stage, the positive feedback given by both English-speaking and Chinese bi-lingual students indicated that the project was successful.

By the end of the fine-tuning phase in July 2008, LexisNexis Butterworths became aware of the translation project. They considered the project to be commercially viable and commissioned the authors to write a bi-lingual textbook. The starting point for writing the manuscript became the notes that had formed the translation project which were updated and expanded into a book titled 'Applied Company Law: A Bilingual Approach'.¹² Two pages from the book are set out below.

The book was published in May 2009 and the publishers believe that this is the first book of its kind in Australia. When undertaking both the writing of the book and the previous translation project, the authors considered the needs of international students in the context of the literature on international students. The next part of this paper explores the literature on international students and outlines how that influenced the development and implementation of the translation project and the bi-lingual textbook.

III HELPING INTERNATIONAL STUDENTS TO LEARN

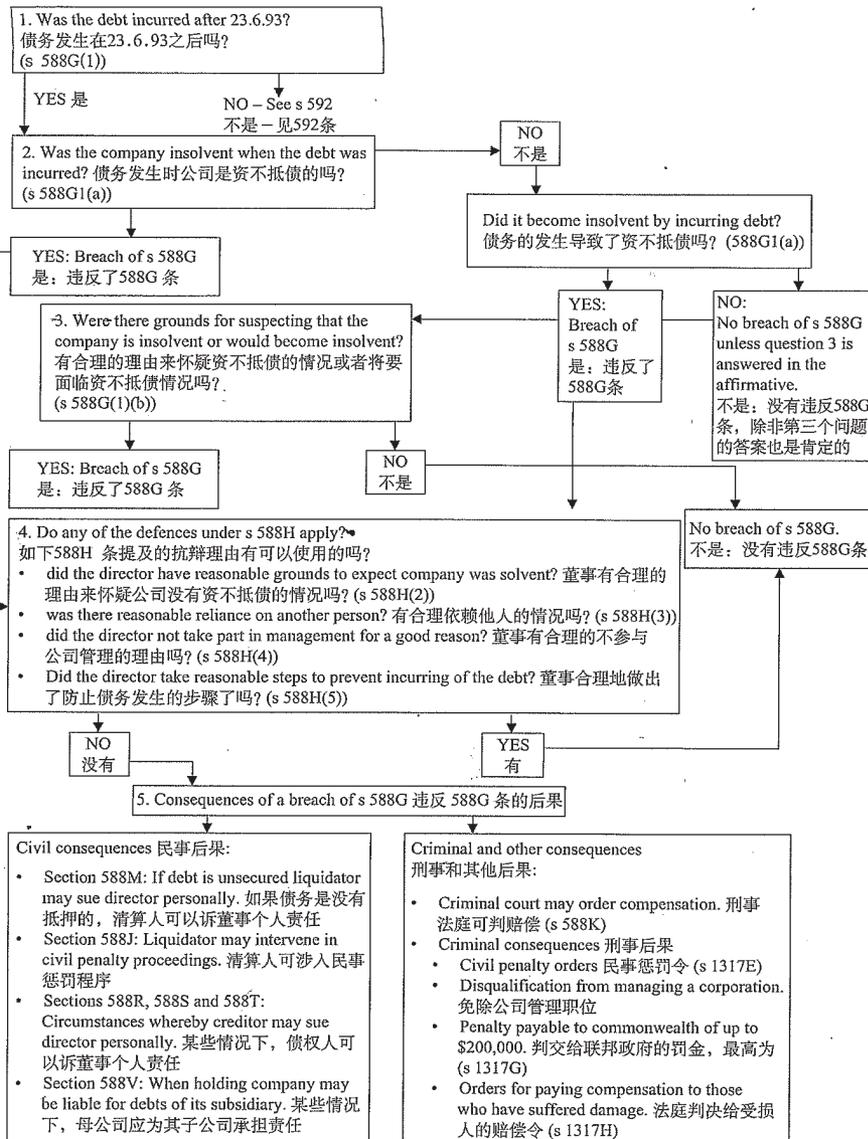
A The Learning Experiences of International Students

For the purposes of this paper, an international student is a student who ordinarily resides in one country where they have undertaken most of their basic schooling, but who has embarked on studies in another country. The term especially refers to students who study in languages other than their native tongues.¹³

As already indicated, it is the writers' hypothesis that language barriers and the lack of learning materials in the student's first language represent a gap in teaching and learning mechanisms. The starting point, we contend, lies in understanding how the prior learning experiences of international students link to their reliance on written learning materials.

As with all students, the prior learning experiences of international students exert a strong influence on how they learn.¹⁴ Asian students, who are the focus of this paper, are no different and their learning experience is shaped by the 'culture' and linguistic traditions of their home countries.¹⁵ The concept of culture is broad and comprises:

Figure 6: Insolvent trading
图表6: 破产交易



- where reasonable grounds exist for a director to suspect that the company is insolvent, or would become insolvent by incurring that debt.

Section 95A of the Corporations Act specifies that a person is solvent if they can pay their debts as and when they fall due. A person is therefore insolvent if they are unable to do this. Although the concept of cash-flow is the main test, the courts will also consider whether a person can sell assets or borrow money to pay their debts. The court may also look at what happens in a particular industry: for example, in the building industry it may be usual for payments to be made late, and therefore a series of late payments may not necessarily indicate insolvency (*Manpac Industries Pty Ltd v Ceccattini* (2002) 20 ACLC 1,304).

For a person to have reasonable grounds to suspect that the company is or would become insolvent, that person must have a 'positive feeling of actual apprehension' (*Queensland Bacon Pty Ltd v Rees* (1966) 115 CLR 266). If a director actually knew that the company was insolvent, this requirement is fulfilled.

However, the requirement will also be fulfilled where the director should have known that the company was insolvent. The court will look at what a person in that director's position would have known. This means that directors of companies should be able to understand basic accounting and financial information, and they should also take an active part in management of the company to keep up to date with the operations and economic status.

6.3.3 Defences

Section 588H provides a number of defences to directors charged with insolvent trading:

- that when the debt was incurred, the director had reasonable grounds to expect and did expect that the company would remain solvent (s 588H(2))
- that the director had reasonable grounds to believe and did believe that a competent and reliable person was providing information regarding the solvency of the company (s 588H(3))

- 董事对公司已发生的资不抵债或者因此债务导致公司资不抵债有合理的怀疑原因

公司法95A条规定一个人在债务到期时可以偿付，此人就没有资不抵债。如果此人无法偿付时就出现资不抵债的状况了。虽然现金是主要的测试，法院还会考虑此人是否有能力通过变卖其资产或者借钱来还债。法院还会特别考虑不同商业环境，比如，在建筑业就有很多逾期不还的债务，因此晚还不一定代表资不抵债 (*Manpac Industries Pty Ltd v Ceccattini* (2002) 20 ACLC 1,304 案件)。

对资不抵债进行合理怀疑的个人应该有‘积极的对真正理解的感觉 (positive feeling of actual apprehension)’ (*Queensland Bacon Pty Ltd v Rees* (1966) 115 CLR 266 案件)。如果在董事事实上是知道公司资不抵债的情况的时候，就不需要此要求了。法院会考虑其他人在董事的职位上可以知道或者体会到的情况，这就意味着公司董事应该对会计和财政信息有基本的了解，应该积极参与公司管理以及对公司运作和经济状况有及时的了解。

6.3.3 抗辩理由

588H条列出了破产交易的抗辩理由：

- 在债务发生时，公司董事有合理的原因认为并且确实认为公司不会资不抵债 (s 588H(2))
- 公司董事有合理的原因认为并且确实认为向其提供有关公司是否资不抵债信息的来源是有能力的并可靠的 (s 588H(3))

Taken from Grace Li and Sophie Riley, *Applied Company Law: A Bilingual Approach* (2009).
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the sum total ways of living, including values, beliefs, aesthetic standards, linguistic expressions, patterns of thinking behavioural norms and styles of communication which a group of people has developed....¹⁶

In an educational context, 'culture' not only includes the way students interact with their learning environment, but also includes language issues. For Asian students, cultural influences are often said to derive from an education system based on 'didactic teaching and passive learning'¹⁷ with 'little interaction' between students and teachers.¹⁸ These systems are culturally different from systems operating in western countries such as Australia,¹⁹ where students are regularly encouraged to participate, question and even disagree with the teacher.²⁰ Yet, in order to participate, question and disagree, the student needs to be confident both in their language skills, and also with their knowledge of the subject matter.

In acquiring knowledge and undertaking learning, Asian students as a general observation, work intently with written material, such as textbooks.²¹ Written assessments, for example, are often 'accomplished by transposing material from textbooks'.²² This means that written language proficiency goes to the heart of how these students learn. Although language proficiency is important for any student, the stakes are much higher where so much of a student's learning hinges on the written material. Therefore, in order to assist international students, teachers need to consider at least two matters: first, the differences in teaching and learning approaches between the student's home country and western educational institutions, that is, cultural issues; and second, the difficulties students face when learning in a foreign language.

B Culture and Language in the Classroom

Language and cultural issues are closely connected²³ and there is no doubt that the challenges faced by international students stem from both these concerns.²⁴ Yet, there is little consensus on how best to help international students deal with these issues. Western educational institutions have traditionally sought to help international students by ensuring that international students have proficiency in English; and also by encouraging students to adapt to Western-style teaching methods.²⁵ Some commentators consider that the most challenging adjustments relate to 'culture shock':

many of the difficulties overseas students experience in their study derive not from 'poor English' ... but from a clash of educational cultures. ... When students come from overseas to study in Australia, they must therefore also undergo an intellectual and cultural sea-change if they are to succeed.²⁶

Indeed, other studies further conclude that 'students with low language competency can survive and thrive if the environment is supportive and inclusive'.²⁷ In these cases, the accepted premise is that teachers should help students to study in English as the quicker the students adapt to the English language, the earlier they will cope with 'culture shock'. This then allows the students to understand and construe the learning materials in an enhanced way.²⁸

In addressing 'culture shock' the teacher has an important role to play. For example, the teacher can encourage class participation by creating a low-stress environment using the following techniques: giving a few minutes notice before asking for student's views;²⁹ allowing students to talk to the person sitting next to them before expressing an opinion;³⁰ or simply by being friendly and approachable.³¹ With respect to language issues, teachers can hand out materials, such as glossaries and notes in English, and also avoid using jargon and metaphors.³² These last

recommendations help to deflect the focus of students away from note taking that is so intense that they do not engage with learning at a deep level.³³

These recommendations are helpful and important to the student's learning; however, we consider that further assistance is warranted that directly targets language difficulties. For many international students, language issues still remain *the* major challenge,³⁴ leading to problems in keeping up with classes.³⁵ One analysis undertaken in the United States of America, found that international students refrained from participating in class if the discussion involved the use of language other than basic English.³⁶ In these cases, the students tended to rely on written materials, such as books, to obtain information they had missed.³⁷ The same study also found parallels in everyday life where students had trouble understanding newsreaders or professional people, such as doctors.³⁸ The student's solution was to read newspapers and check dictionaries prior to medical appointments to help improve understanding.³⁹

Part of the difficulties with language stem from the fact that students do not anticipate how different written and spoken English will be from the English learnt in their own countries.⁴⁰ This situation is often exacerbated by the use of jargon that frequently accompanies specific disciplines, such as law. Although current pedagogical thinking is to steer clear of the use of jargon, sometimes it cannot be avoided. Jargon is traditionally an accepted shorthand way of describing ideas and principles within a particular discipline. As such, it provides vocabulary with set meanings that is understood by those working in a particular field. However, the use of jargon also means that international students have an additional level of language difficulty to overcome. This has the potential to impact detrimentally upon learning and pedagogical expectations and challenges.

C Pedagogical Expectations and Challenges

When examining pedagogical expectations and challenges, language issues potentially impact on all facets of the learning process. These impacts range from the experience of international students in the classroom to strategies that these students adopt to comprehend learning materials. In some cases, these strategies can lead to surface approaches to learning – the very opposite of their teachers' expectations. Teachers anticipate that students will develop a deep approach to their learning. This includes 'analysing, understanding, appreciating the significance [of, and] interpreting'.⁴¹ Approaches to learning, are of course, not static and students may oscillate between adopting deep and surface approaches to different parts of their learning.

However, where students choose to adopt a deep approach to their learning, they require the development of higher cognitive skills, such as information processing, reasoning and problem solving.⁴² For students to develop these higher cognitive skills they need to understand and construe their learning materials.⁴³ Language proficiency is, therefore, a significant element of cognitive development that can help lead to a deep approach to learning.⁴⁴ To help ensure that students have acquired proficient language skills, universities require applicants to pass an English language test.⁴⁵ Most Australian universities use the International English Language Testing System (IELTS).⁴⁶

Yet, the IELTS is not necessarily an accurate gauge of a student's working language skills for tertiary education.⁴⁷ In particular, surveys indicate that students who have passed this test still have a 'weak command' of English.⁴⁸ Part of the problem stems from inherent ambiguities in the testing mechanisms. Although the tests provide guidance on a student's general language

skills, the tests rarely accurately gauge a student's preparedness for studying individual subjects,⁴⁹ particularly in the space of a 12-13 week semester.

Another part of the same problem stems from the way English is taught in some overseas jurisdictions. One study on Chinese international students noted that English language courses in China prepared the students 'for reading and writing [rather] than listening and speaking in authentic situations'.⁵⁰ Therefore, while students might understand the rules of grammar and have reasonable vocabulary skills, the students are nevertheless 'deaf and mute in English'.⁵¹ Consequently, even where foreign students pass the IELTS, it is difficult to estimate to what extent these students are learning during lectures and tutorials. Indeed, commentators have noted that in some cases, more than half of the international students who passed the IELTS still had problems keeping up with lectures and tutorials.⁵²

The difficulties presented by language issues are also likely to be more evident in the study of subjects that are traditionally language-dependent, such as law.⁵³ The fundamental problem is that even the most supportive environment does not necessarily overcome the lack of English language skills.⁵⁴ Difficulties with language can make 'textbooks difficult to comprehend [forcing students] to translate many keywords into their own language'.⁵⁵ Given the fact that the learning of some international students, such as those from Asia, centres precisely on written materials, this experience represents a breakdown of learning mechanisms. For these students, language difficulties can lead to longer reading time, interrupted understanding, as well as frustration in reading.⁵⁶ This also means that students may lack the confidence to engage with the learning materials, to participate in class and to develop those cognitive skills that lead to deep learning.⁵⁷

What can be done to help international students with language difficulties? One possible avenue is to improve the standard of English taught overseas. Part and parcel of this approach is for tertiary institutions in Australia to set up special language and orientation programs for students before they travel to Australia. The orientation program could contain information on specific disciplines, as well as more general information relating to life in Australia. However, these approaches require dedicated resources to make them operational, something which universities may not readily have at their disposal. Another possibility is to tighten the language tests used by Australian universities. However, given the variety of courses, subjects, majors and sub-majors that students can undertake it must necessarily be difficult, if not unmanageable, to develop language curricula and tests for discipline-specific courses and subjects. Yet another approach is the one currently promoted — to immerse students in English language and culture. This works up to a point. Teachers can provide glossaries, notes, power point slides in easy-to-understand English. The problem, however, is that true immersion in the English language will most commonly occur outside the classroom in social and other activities, which are extra-curricular. This method of exposure to the more subtle nuances of the English language may not adequately prepare the student for the demands of study in discipline-specific areas.

A different approach, with which we experimented, is to intervene in an 'intra-curricular manner', providing additional assistance within the classroom. In essence, our study was an attempt to help students with language difficulties by providing another level of assistance going beyond 'culture shock'.

IV SIGNIFICANCE OF THE PROJECT

The rationale for the translations project is underpinned by the belief that western educational institutions target international students for study abroad and therefore owe moral if not legal

obligations to deal with language issues as effectively as they can. In addition, the trend towards globalisation,⁵⁸ which has strongly influenced the internationalisation of education,⁵⁹ is set to continue. This is exemplified by the steady increase in international student numbers from 1975, when 600,000 students were studying abroad, to 2006, when this figure reached 2.9 million.⁶⁰

While this trend has partly been fuelled by the high demand from employers for graduates with overseas tertiary qualifications,⁶¹ it has also been fuelled by the enthusiasm with which western academic institutions have embraced the supply of education services to international students.⁶² Many countries, including Australia, Japan and South Africa actively target international students by aiming advertising and marketing campaigns at them.⁶³ From an economic perspective this is not surprising, as the fees paid by international students are substantial.⁶⁴ In 2004–5 in Australia, for example, the education of international students generated over \$9 billion in export income.⁶⁵

Yet the fact that studying abroad is increasing in popularity does not necessarily mean that it is an easy learning path. One of the greatest challenges and indeed, the most prevalent problem that international students face is the understanding — at a deep level — of the English language. This challenge is complicated by the English language tests used by western educational institutions that do not give a clear indication of a student's ability to study in English at the tertiary level. At the same time, by nominating specific English language tests and accepting international students into courses on the basis of those results, educational institutions are signalling that students possess sufficient English language skills to undertake study — something that is often not the case.

While some of these concerns with respect to language have started to be addressed in the form of English learning centres,⁶⁶ there is still room for improvement. The writers' own experience is that students who are referred to the centres do not always attend. Indeed, those students who perhaps need the most help are the least likely to attend. Moreover, the learning centres are not equipped to deal with the type of language issues that stem from lack of understanding of discipline-specific knowledge. In particular, issues with respect to the clarity and intelligibility of texts can create a learning gap that may prove impossible to bridge without further specialised assistance. The translation project conducted by the authors is an attempt to bridge this gap.

In designing the project, the authors took on board recommendations in the literature that international students need to study in English in order to improve their proficiency and language skills in English. However, the authors also considered the following points, drawn from the discussion in part three of this paper, to be equally important:

- the fact that Asian international students rely heavily on written texts;
- the fact that international students regularly consider text books difficult to understand and spend time on translating words and phrases; and
- the fact that for many international students mastering English and especially subject-specific English is a formidable task which needs to be accomplished within the space of one semester.

The project did this by providing basic translations to help the students to kickstart their studies and overcome comprehension obstacles. As such, the project did not provide translations of all the materials. Nevertheless, the authors hoped that the translations that were made available would allow students to cover reading material more effectively. In addition, the English and Chinese versions appeared side by side to encourage English literacy.

At the time that the translation project was designed we considered the idea innovative in the Australian tertiary education sector. It involved developing teaching material in a way that had not been done before. Since then, Thomson publishers have published a book *The International Students Guide to Business Law*.⁶⁷ That book, however, is written wholly in Chinese and provides a short overview of many aspects of business law. The translation project that we undertook is different because it focuses on corporate law and the learning materials are presented in a bi-lingual format. This helps students to study in English and as already indicated helps develop their English literacy and vocabulary.

In overseas jurisdictions, such as China, the concept of bi-lingual education has started gaining strong support.⁶⁸ Commencing in 2001, the Chinese Ministry of Education began promoting bi-lingual education in English and Chinese.⁶⁹ A variety of bi-lingual learning models is used in China, ranging from classes held totally in English to classes that involve the use of learning materials in English and instruction in Chinese.⁷⁰ One study that evaluated these teaching and learning methods emphasised the importance of producing effective written materials:

Because the quality of teaching materials directly affects the teaching outcomes, it is urgent to develop good bilingual teaching materials to guarantee positive outcomes from bilingual teaching.⁷¹

The authors assert that their project developed quality learning materials that contributed to a positive education experience for the students. The fact that 88 per cent of the students found the materials useful and 87 per cent wanted more translations means that the target group found the translated materials helpful. Consequently, the authors conclude that the project has enhanced the students' learning experience. This conclusion is not based on quantitative analysis, such as might occur with respect to review of assessment or exam results. Indeed, the purpose of the project was not to increase marks that students achieved. Rather, the project was designed to assist students by smoothing their learning path. Consequently, the authors base their conclusion that the project enhanced the learning experience of international students, on the fact that students who are better able to comprehend the learning materials will be encouraged to complete their readings, will be better prepared for class, more likely to engage in learning at a deep level and more likely to develop a self-directed approach towards their studies.

It is also significant that by the fine-tuning stage of the project it became clear that almost half the students surveyed found bi-lingual dictionaries inadequate. This potentially impacts in a detrimental way on the students' understanding of learning materials.⁷² It highlights the need for more material that is delivered 'in context' to supplement terminology found in standard language dictionaries. The authors suspect that this need is higher for those international students who study legal subjects as part of business degrees, because these students do not have the benefit of a consistent pattern of study in law that would reinforce key doctrines and principles. However, to draw a convincing conclusion, more research is required on this point.

The importance of the project is that it has been successfully implemented and taken up by the students for whom it was intended. Moreover, the project also provides a formula that can be used in other subjects. It is worth emphasising that we translated only basic material for two reasons: first, so that the translations would not need to be changed each year; and second, basic translations provide more scope for the students themselves to add and adapt the translations.

V CONCLUSION

Teaching law to students from non-English-speaking backgrounds has always been a challenging task. It demands innovative thinking, cross-cultural awareness and the sensitivity to deal with uncertainties and gaps in the student's understanding of complex material. Given the steady increase of students studying abroad, these challenges are not set to decline.

It is the authors' contention that Western educational institutions have a responsibility to ensure that the learning experience of international students takes into account language concerns. The literature largely suggests that the best way of taking language concerns into account is to treat them as part of 'culture'. Hence, teachers concentrate on helping students overcome culture shock by providing learning materials in English and by helping international students to become accustomed to western learning methods. The authors agree that these are useful and necessary interventions. However, teachers also need to bear in mind that students are expected to learn complex subjects within the space of a 12–13 week semester.

Rather than anticipating and expecting that international students will adapt to a different culture and way of teaching, the authors have argued that teachers should be more proactive in adding an additional level of help that more directly targets language issues and moreover, one that targets that help 'intra curricular' within the subject. Providing essential learning materials in the student's first language, to help them overcome stumbling blocks, is therefore an effective step towards helping the cohort of international students and enhancing their learning experience. Ultimately, we undertook a project which, to paraphrase Robert Frost, would allow the students to 'hang on until they get on'.⁷³

Keywords: bi-lingual; business law; international students; language barriers; legal education; teaching and learning project.

ENDNOTES

- 1 For a discussion on the meaning of the term an 'international student' see discussion in part 3 of this paper.
- 2 Brigid Ballard and John Clanchy, *Teaching Students from Overseas* (1991); Jude Carroll, "'Lightening the Load": Teaching in English, Learning in English', in Jude Carroll and Janette Ryan (eds), *Teaching International Students* (2005) 35; Teresa Kissane Brostoff, 'Using Culture in the Classroom: Enhancing Learning for International Law Students' (2007) 15 *Michigan State Journal of International Law* 557.
- 3 'Internationalisation' is used in the sense described by the Organisation for Economic Co-operation and Development (OECD), to mean processes whereby governments and private sectors look 'to higher education to play a role in broadening students' horizons and allowing them to develop a deeper understanding of the world's languages, cultures and business methods'. Organisation for Economic Co-operation and Development, *Education at a Glance: OECD Indicators 2008* (2008) OECD 350 <<http://www.oecd.org/dataoecd/23/46/41284038.pdf>> at April 2009. The OECD was established by the *Convention on the Organisation for Economic Co-Operation and Development*, opened for signature 14 December, 1960 [1971] ATS 11 (entered into force on 30 September 1962). As of March 2009, the Convention had 30 parties.
- 4 Sally Chan, 'The Chinese Learner — A Question of Style' (1999) 41(6/7) *Education and Training* 294, 298; J Biggs, 'Asian Learners Through Western Eyes: an Astigmatic Paradox' (1994) 2(2) *Australian and New Zealand Journal of Vocational Educational Research* 40.
- 5 Ballard and Clanchy, above n 2; Carroll, above n 2; Brostoff, above n 2.
- 6 Australian Bureau of Statistics (ABS), 'International Students in Australia', Release number 4102.0 – Australian Social Trends (2001) ABS <<http://www.abs.gov.au/ausstats/abs@.nsf/latestproducts/E0FE4>

- ACEF9C8A65ACA25732C00207596?opendocument> at April 2009. The percentage figure of 6% has remained steady for the years 2005 and 2006. OECD, above n 3, 354.
- 7 UTSONline 'is a web-based teaching and learning tool used at UTS to provide online resources to students' <<http://online.uts.edu.au>> at May 2010.
- 8 Although it may be arguable whether the Chinese legal system is indeed a true Civil law system, the major characteristics of the Chinese legal system indicate that it is closer to a Civil law system than the Common Law system adopted by Australia.
- 9 Sam Blay, Angus Young and Grace Li, 'Adventures in Pedagogy: The Trials and Tribulations of Teaching Common Law in China' (2005) 15 *Legal Education Review* 137, 148.
- 10 Insearch is a education provider that focuses on pathway programs and English language courses. See <<http://www.insearch.edu.au/About-Insearch/Who-we-are/default.aspx>> at June 2009.
- 11 For discussion on the significance of context, see Brostoff, above n 2, 563.
- 12 Grace Li and Sophie Riley, *Applied Company Law: A Bilingual Approach*, Butterworths (LexisNexis) (2009).
- 13 Guofang Wan, 'The Learning Experience of Chinese Students in American Universities: A Cross-Cultural Perspective' archived in ERIC (Education Resources Information Center) (1999) 7 <http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/16/23/85.pdf> at April 2009.
- 14 Paul Ramsden, *Learning to Teach in Higher Education* (2003) 19; See generally, Chan, above n 4, 298; Biggs, above n 4.
- 15 See generally, Sally Chan, above n 4, 298; J Biggs, above n 4.
- 16 Wan, above n 13, 2.
- 17 See generally David Kember, 'Misconceptions About the Learning Approaches, Motivation and Study Practices of Asian Students' (2000) 40 *Higher Education* 99; Wei Huang, 'Do You Really Need a Degree From Overseas?' (2008) 45 *Legal Education of PRC* 54 (Chinese language, translated by Grace Li).
- 18 Wan, above n 13, 18.
- 19 Steven Freeland, Grace Li and Angus Young, 'Crossing the Language and Cultural Divide — The Challenges of Educating Asian Law Students in a Globalising World' (2004) 14(2) *Legal Education Review* 219, 224; Chan, above n 4, 298.
- 20 Chan, above n 4, 298, 301–3.
- 21 Wan, above n 13, 18.
- 22 See generally Kember, above n 17, 111; Chan, above n 4, 300.
- 23 Wan, above n 13, 4; see also Chris Barker and Dariusz Galasinski, *Cultural Studies and Discourse Analysis: A Dialogue on Language and Identity* (2001); Brostoff, above n 2, 566–7.
- 24 See, eg, Ballard and Clanchy, above n 2, preface ix; Chan, above n 2; Kember, above n 17, 111; Biggs, above n 4; Carroll, above n 2.
- 25 Wan, above n 13, 20.
- 26 Ballard and Clanchy, above n 2, preface ix.
- 27 Carroll, above n 2, 36.
- 28 Ibid 39.
- 29 Ibid 42.
- 30 Ibid.
- 31 Ibid.
- 32 Ibid 40.
- 33 Ibid 41.
- 34 Wan, above n 13, 12–13.
- 35 Carroll, above n 2, 38.
- 36 Wan, above n 13, 12.
- 37 Ibid.
- 38 Ibid 12–13.
- 39 Ibid.
- 40 Carroll, above n 2, 38.

- 41 Ramsden, above n 14, 24.
- 42 Li-Fang Zhang and David Watkins, 'Cognitive Development and Student Approaches to Learning: An Investigation of Perry's Theory with Chinese and U.S. University Students' (2001) 41 *Higher Education* 239, 255. The theory is that higher cognitive development levels are directly linked to a deep approach to learning while lower cognitive development levels are linked to a surface approach to learning.
- 43 Blay, Young and Li, above n 10, 150.
- 44 Zhang and Watkins, above n 42, 255; see also Biggs, above n 4.
- 45 R Burns, 'Study and Stress Among First Year Overseas Students in an Australia University' (1991) 10 *Higher Education Research and Development* 61.
- 46 The International English Language Testing System (IELTS) is an internationally recognised system that 'measures ability to communicate in English across all four language skills — listening, reading, writing and speaking — for people who intend to study or work where English is the language of communication'. (<<http://www.ielts.org>> at October 2008). For a discussion on the development of this test see Nick Charge and Lynda B Taylor, 'Recent Developments in IELTS' (1997) 51 (4) *ELT Journal* 374.
- 47 Burns, above n 45, 61–76.
- 48 Ibid.
- 49 Carroll, above n 2, 36–37.
- 50 Wan, above n 13, 9.
- 51 Ibid, 17.
- 52 Burns, above n 45, 61–76; Wan, above n 13, 9.
- 53 Blay, Young and Li, above n 9, 150.
- 54 Ibid 229.
- 55 Ibid.
- 56 Huang, above n 17.
- 57 Carroll, above n 2, 36; Chan, above n 4, 298, 301–3.
- 58 In this paper the term 'globalisation' means 'the broadening and strengthening of world links (accompanied by)...an acceleration of the internationalization of many dimensions of life, including economic relations, technology, ideology and culture': Frances Stewart, 'Globalisation and Education' (1996) 16(4) *International Journal of Educational Development*, 327, 327.
- 59 OECD, above n 3, 352.
- 60 Ibid.
- 61 Huang, above n 17.
- 62 Ibid.
- 63 OECD, above n 3, 354.
- 64 Ibid 350.
- 65 ABS, 'International Students in Australia' Release number 4102.0 — Australian Social Trends (2007) ABS <<http://www.abs.gov.au/ausstats/abs@.nsf/latestproducts/E0FE4ACEF9C8A65ACA25732C00207596?opendocument>> at April 2009.
- 66 For example, to help students with their English Language skills many universities have English learning centres, such as the English Language Study Skills Assistance (ELSSA) centre at UTS. See <<http://www.elssa.uts.edu.au/>> at June 2009.
- 67 Kui Hua Wang, *The International Students Guide to Business Law* (2007).
- 68 Liming Yu, 'English-Chinese Bi-lingual Education in China' (2008) 5 *Bilingual Education, Encyclopedia of Language and Education* 175, 177.
- 69 Ibid.
- 70 Ibid 181.
- 71 Ibid 185.
- 72 Susan Knight, 'Dictionary Use While Reading: The Effects on Comprehension and Vocabulary Acquisition for Students of Different Verbal Abilities' (1994) 78 *The Modern Language Journal* 285, 295.
- 73 Robert Frost was an American poet who lived from 1874-1963.