

Marketing legal education

The sound of one hand clapping

Jean Shannon

Introduction

With the Attorney-General emphatic about his desire for uniform law degrees and the Priestly Committee's control of core subjects – you might be wondering what it is you have left to 'sell' in order to compete for student numbers. A lot of faculties are being hounded into contributing to their institution's marketing activities but at the same time, a lot of the 'noise' is generated on the assumption that we all know what we're talking about. In this paper, I'm going to talk about marketing fundamentals and look at how they apply to education. It's not rocket science but it is based on a body of knowledge that is generally assumed — but not discussed.

Marketing is not a mystery. It is certainly not smoke and mirrors.

It is a combination of a series of very logical steps using skills you already have:

- Research & listening
- Negotiation & Structuring argument (framing)
- Listening some more

Marketing is growing in importance to educators because funding changes and structural reform have completely changed the game. Education is a consumer product now and we can no longer assume a steady flow of customers. Uncertain funding and elastic student numbers have made planning almost impossible. As a result, many institutions have turned to marketing in some form or another. They may even be killing you with buzz phrases. The assumption is that by using marketing tools to construct an active and consistent marketing program, we can predict numbers with increased certainty and take back some control over our futures.

This paper goes through a marketing planning process. It will explore the application of each of the tools and show how following the sequence can help identify your market niche and exploit your programs' unique value.

But before I talk about how to develop a marketing plan, I want to briefly cover what marketing is **not** and what marketing **cannot** do.

The difference between marketing and sales

The term 'marketing' is often confused with 'sales'. Marketing is the methodology which looks at impediments to sales and undertakes strategies to overcome them.

'Sales' is basically the transaction period. It is the point of signing up.

Marketing is about getting all the points of the product about as right as they can be before sales take place. It is a relatively 'new' idea and certainly was not always the

case. When there is high demand and low supply, the market takes whatever it gets. You could have a Model T Ford in any colour you wanted as long as it was black. Once upon a time, you could get into any law school you wanted – as long as you were in the top 3% and had a bit of money.

But when supply outstrips demand – competition gets fierce. Pressure selling increases and part of the sales persons' job is to actually create demand. Has anybody noticed recent news stories and television ads for a new pap smear technology? (overhead 1) Who do you think puts out these media releases? Creating demand can be lucrative but is very short term – for example, anyone remember cabbage patch dolls?

All the sales promotion and advertising fails the moment a potential 'customer' has an impediment to their desire to purchase the 'product'. An impediment could be as simple as a 1-800 number that is never answered or has an answering machine instead of a person. You can create a 'desire' but it is a temporary state like fashion trends. It passes very quickly because it does not satisfy a 'deeper' driving force.

Marketing identifies customer needs and wants and like cooperative-based negotiating—looks for ways to satisfy as much of each as possible.

Marketing cannot 'sell' a bad product. This is another area that causes confusion. Often mass promotion is mistaken for marketing but it is simple 'sales' – very expensive and very temporary. If it was that easy, we would all have slicers and dicers and barking doorbells.

Marketing cannot **make** a customer accept the unacceptable. In other words, it cannot overcome product short-comings but it can find alternative markets where these might actually be useful. An example in marketing mythology is how the 3M company figured out what to do with a glue that didn't stick – they invented post-it notes.

A marketing view is perception – is the glass ½ full or ½ empty? It makes you think more creatively. Did 3M force a product on a market that didn't work? Or did they identify a need and fulfil that need with a product? Is too expensive elite or just not value for money?

The relevance to higher education

We are in a very competitive environment. There is an oversupply in the market place— that is, there's lots of institutions and a diminishing number of students. Internet assisted globalisation means it doesn't matter where the university is as long as it's highly regarded.

Full fee paying programs encourage potential students to shop for the right degree. Further, as fashions wax and wane, law faculties are not just competing with other universities, we are competing with other programs within their universities. (overhead 2) You need a higher score to get into marketing than to get into science. It is a buyers' market.

Full fee paying also means a lot of other changes have taken place. For a start – student demographics have changed considerably. Students who can afford post graduate or even undergraduate education are increasingly mature, working students. They are older, more discerning and as a result, have a clearer idea of what they want from their degree. They bring a lot of ‘attitudes’ and special needs towards purchasing their degree.

Different disciplines and universities have always been subject to fashionable phases but now the trends are moving much more quickly. This has played havoc with our planning processes. Student numbers yo-yo every year. We need to plan 18 months in advance to attract and maintain good staff but at the same time, we don’t seem to have the means to predict that far. Stability is a dream. However, we can make some decisions that help flatten out the yo-yo effect and help us wisely spend resources on those most likely to be attracted to our programs.

In short, some of us have been engaged in a ‘sales’ program instead of a more strategic marketing exercise. We’re selling platform shoes when we should be developing a Mercedes market base. Law, by nature is a very focussed profession so sometimes it’s hard to look above the parapet. By concentrating what we **do not** have control over (such as core units), I think sometimes we forget, in marketing, we’re really selling the sizzle – not the sausage.

While it may be debatable whether students are getting smarter, there is no doubt they are becoming wilier, so perhaps now is the time to look at how and why marketing processes can help your program.

Listening and research

Or step 1 – find out everything there is to know about your current situation and your capacity

To state the obvious, your current students are your existing market. Before negotiation, you would work out your BATNA – best alternative to a negotiated outcome. This is a good time to take a good look around. You need to do some scenario planning. What will happen if:

- Student numbers increase?
- Student numbers decrease?
- Student numbers stay the same?
- Student composition changes?

Look beyond the horizon – what’s changing? What’s going to change? How will this program be running in 5 years time? How has technology impacted on your institution – or has it?

Before you begin to think about a marketing program, it is important to have worked out who your current students are. What do you know about them? Can you profile your students? Do they need more child care? Study skills? Computing skills? Etc. You will need to consider whether you accommodate these issues in your planning. Are they working? Where do they live?

Most importantly, you need to ask them why they choose your institution? What keeps them there? This would be a good time to think about what kind of outcomes you are expecting from your marketing activities. Then we can look at the impact on your resources.

As you know, your colleagues (both academic and non academic) are your resources. That makes internal consultation an equally important part of the process. The greatest product in the world will fail if it is not delivered by people who want to deliver; who understand the product; who understand customer needs; and, are committed to servicing those customers. Consultation is an opportunity to identify staff concerns and therefore design a program to address those concerns **before** the product is ready for market.

Consultation plays a two-way communication role. This process helps iron out potential disasters... like the 1-800 number that is never answered. If you do not include the whole department in your planning, you will never know that the number is unattended during lunch hour. What will happen if you increase student numbers by 10%? Can your systems cope? Can your people cope? Marketing textbooks are full of successful campaigns that ultimately failed because the company and distributors were not geared up for increased demand.

There is no point being coy – there can be real industrial issues that need to be discussed. Old university work practices (both academic and non-academic) are over. For example, easy access to all staff is essential for success. No one can market with the same credibility as the course deliverers. Responsiveness – not just in the recruitment stages but throughout the course will be a key factor in whether ex-students recommend your institution or return for further studies.

Now that you have looked at your current customers/students and your current resources/staff – you should begin asking, ‘who’s missing?’. The missing students are your potential market. Missing staff and the subsequent skills and services they would have provided, could be the impediment that has prevented your program from expanding. After that, the question, of course, is ‘why are they missing?’

A final word on consultation is that market research is best left to a professional company. If you design a mail-out questionnaire without serious consideration of market research methodologies, you run the risk of assessing people’s motivation in filling out questionnaires.

Focus on the people – study your potential market

Needs and wants

You **know** what these students need. You’re practitioners but what you **know** they need is not necessarily what they **want**. Let’s take a random sample of some possible distinctions:

Known academic needs	Students wants
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Practical legal application	Job
Know procedures	Money
Understand ethics	Prestige

Already – there seems to be some divergence of why the student is there and what they hope to gain and why you are there and what you hope to impart. In fact, while we agonise over the content, each student will decide on their own terms. Assuming they've actually heard of your program, they will consider the balance between price, prestige and presentation style – that is, fulltime, part time, with or without exams, on-campus or off, electronic access or not etc. etc. And that's before they think about jobs, housing, travel, childcare and entertainment.

We are experiencing a changing employer market. While mentoring is a great buzz phrase, the truth is, people get less guidance in the workplace than ever before. Employers say they recognise that new recruits cannot begin at full speed but at the same time, they want a fully functioning unit from day one. Employers are putting a lot of pressure on universities to make sure that courses are practical. They want value from their recruits. There is a whole discourse on the related ethical and professional dilemmas encompassing training versus education... but that is best left for another time.

Preparing for negotiation – setting your targets and bottom lines

But before you think about spending research money – think about your organisations' capacity, wants and needs.

In a way, you get what you ask for. If just increasing numbers is your goal, you may have a few nasty surprises. For example, costs increase with numbers – are you liquid enough to cope? Overseas students might pay more but they also need support services that are relatively expensive. Is your university equipped to share these expenses? Has anyone calculated your marginal return for each additional student?

You need to consider all the facilities to be used by the students – not just in the university but also in the greater community. For example, if you are pulling full time or residential students from a greater geographic area, do you have enough accommodation available? What transport options and entertainment facilities would students expect? For example, if you are not in a capital city, they may need transport to and from the university. Given all of the above considerations, you need to decide exactly **which** additional students you want to attract.

The programs you offer are 'the product'. Now is the time to put your product and facilities under the microscope in order to think about what student markets you might consider. The best way to do that is to do a SWOT analysis but first we need to examine some marketing principles.

'P' is for pigs can't fly

Before you begin to develop a value position – in other words, the frame you'll choose to attract students – we should examine some marketing strategies. There are 3 main approaches with variations on the theme:

1. Get more users – Simply increase numbers
2. Get existing users to use more – extend their exposure
3. Find more uses and therefore create new markets

We've already discussed the first option. Simply identify who is not using your facilities and figure out what you can do to entice them. And as mentioned before, just increasing numbers can in fact, be quite costly if you do not have the staff and facilities to service them. It means increased capital investment and you need to see whether the margin of return is worth it. It also reduces the amenities of the existing students which can damage your reputation. Think of it like a very expensive gym that has no membership limits. Once you have to wait in line for equipment or showers, you'll go to another gym.

There are plenty of marketing examples for the 2nd option . For example, Shampoo bottles always tell you to wash your hair twice. Of course, hair dressers don't recommend this because it strips the hair but it does mean that consumers will use twice as much in ½ the time and therefore doubling consumption in a given year. Let me explain why this is quite an attractive option in an educational sphere.

It is always cheaper to maintain an existing client base than go out and find a new one. On the other side of the equation, people like to stick with what they know if it satisfies their needs. Consumers actually don't like to change. Loyalty is easy to engender and pays dividends long into the future.

Practical education marketing means that my undergrad university should have been tracking me down. It wouldn't be hard after all because I am a member of the Alumni Association. They **should** have been bringing to my attention the wonderful post graduate courses available. They did not. When I completed post-graduate studies, they did nothing to entice me into further qualifications. What a wasted opportunity – they didn't even put ads into the Alumni newsletter.

To conclude discussion on the 2nd approach, it would be a lot cheaper to harangue graduate and associate diploma graduates into upgrading their qualifications then enter into an advertising campaign to attract students who know nothing about your location or teaching facility. But (and there's always a 'but') it will only work if you first build their loyalty while you have them there the first time.

This is a fortunate place to discuss the 3rd option which is, 'find more uses and therefore a wider market'. A non educational example is the Arm and Hammer baking soda campaign a few years ago. We already knew that baking soda is used in biscuits but the aim of the ads was to show how useful the product was in stain removal, cleaning irons and kettles, and controlling refrigerator odours. The aim was simply to get non-bakers to buy the product.

It is not hard to see in an educational context that we're describing disaggregating programs and selling the parts. That means units (courses) stand on their own and can be 'sold' to either those going for a higher degree or CLD or just people who need that particular skill or information. With very little investment, you could create a series of short courses that would be attractive to a much wider audience.

When marketing outside your existing client base, you could sell them as seminars or training courses. There are 2 attractions with this option. On one hand, you could be including people wildly outside your existing client base. This could cover anything from 'legal issues for non-profit organisers' to 'teaching law to teachers'. You could also be marketing to your existing client base which includes those who may not want another degree but would like to maintain currency and contact.

The downside to all 3 options is that if you don't have the right 'product' or it doesn't do what it is supposed to 'do' – then you cannot achieve any of these options. That's where the pigs come in. If you are marketing seminars – make sure they are the topics that are wanted or needed. If you are expanding numbers, make sure you don't destroy the current value of your institution by stretching its resources too far. If you are exploring getting students back for further courses, make sure their 1st experience was a happy one. As you can see, there is potential for each strategy to backfire.

Discover the 4 'P's'

There is one more area to investigate before you design a campaign. Marketing people talk about the four P's which stand for:

- Product
- Price
- Place &
- Promotion

This is called the marketing mix and it represents the variables that place your product within an established market. In a manufacturing sense, producers make decisions about all of these factors before they put the product out for sales. We don't have as much latitude in education as a manufacturer of a new product. But we have more control than we might think.

Some examples of control decisions include:

- Choosing to promote your program in such a way as it only targets a specific market – you might only recruit locally,
- Offering a selection of programs long and short that meet untapped market needs – like opportunities for working lawyers to update computing skills
- Choosing a pricing policy for short programs that are based on target return pricing or perceived value pricing. What % return do you want to make on your investment? Or Where do you want to be in the market? How much do you think they will pay?

Again, it's important to look at what currently exists in your institution under the 4 'P' headings. Don't be discouraged. This is always going to be a lively staff debate and is rarely painless but it does supply a very important market analysis – that is:

- Competitive position – where you stand amongst other educational facilities in terms of facilities & reputation

- Competitive pricing inspection – where you stand amongst other educational institutions in terms of cost (include accommodation, travel, fees, union charges etc)
- What is unique about your program(s) – how are you different? This covers everything from program content to staff and student profiles. This is probably the most important point as you have already recognised your institution's drive to become 'a centre of excellence' on one topic or another.

Out of all this, you should be able to develop what marketer's call a 'value proposition'. That is a list of what is good and special about your program(s). It is basically your draft 'sales points'. In the next section, 'leverage', we briefly look at how to frame these points.

Finally you pull all the research together. You know what your current students want, you know what the market is and you know which sectors of the market you are interested in attracting. The, no doubt, you will re-examine your product according to the marketing 4 'P's'. How will you price it? Where will you offer it? What formats are available? Where and how will you promote it to reach your particular audience?

Creating Leverage

Now here's the hard part – while we're all very rational creatures, we tend to take it personally when the feedback isn't all good. Remember, we are not dealing with 'truths', we are dealing with perceptions. But in marketing, a perception acted on is as real and damaging as a truth. So you need to address these things in your value propositions. For example, many people think Bathurst is a very long way away from Sydney yet they think Newcastle is near – they are the same distance. If students appear to be rejecting Bathurst because of distance, then your value proposals need to address the concern.

Think about salespeople you have dealt with that had an answer for every reason you your found to politely say 'no'. This is not an accident. Someone did their homework and found out that many customers do not buy the product because.... And they worked out a 'solution' for each problem.

- Cost too much? – offer special discounts
- Price too high for spontaneous purchase? – offer 12 months free finance
- Item too big for the car? – free delivery, free trailer

I know that this all seems a little tacky. I understand the distaste academics, and in particular legal professionals, have for marketing – but the real difference is whether we take control and write a script for the future or we just leave our institutions in the lap of the gods.

Your team has to look at every criticism that came out of your research and see

- a) whether there is another way to do or explain the issue to avoid the criticism (reframe or re-work)
- b) whether there is a way to overcome the problem
- c) whether it really **is** a problem – some problems can be pluses

Some examples:

There is always a lot of criticism for poor communications. Mainly this is because people take in information in different ways. As standard practice, make all program change information very clear. Make sure all other staff have it and make it available in print form, on the web, addressed in class and nailed to the bulletin boards.

It's possible several potential and current students said the cost of your program was too high. Is this a problem? It depends on which market you are aiming for. If you raise the price, you increase the number of employed, mature age students who are probably being funded by their companies. This is likely to alter your bell curve and also your reputation. It can be a positive or negative depending on how you frame it.

What we learn from all the research and consultation is that the results have to be incorporated into the design. Think of it as a preventative program – if you have the right product designed for a specific market with the right form of promotion and delivery – there is nothing in the way of success....Except money.

Market research can cost \$35,000-\$45,000 and upwards. I won't say there isn't a place for the quick and dirty – some information is better than none... **but** the more your product is called to refund itself through cost recovery – the more important market research becomes. It will not surprise you to hear that in the manufacturing world, the sales budget is 1/3rd of the total marketing figure. That is, 2/3rds is spent in research, consultation and training **before** the product reaches the market. Only 1/3rd is spent on promotion and advertising.

When you negotiate, you anticipate the opposition's targets and prepare. They say 2/3^{ds} of the work is done before you reach the bargaining table. Marketing is essentially the same.

Move into the negotiation

Fewer students with enough money to pursue higher education creates a buyers' market. How do we compete with each other, deliver a quality product that employers support and that also meets consumer aspirations? At the same time, we will maintain academic standards and promote an ethical environment – is it possible?

You could say that we are competing for the same students – but are we? Some students will want your program because you're local, others' will pay anything for prestige. Some will choose your school because of the lecturers' reputation, others because it's down to earth. If you specialise in a specific areas, you not only excel – you also save money on library resources because you're not trying to be all things to all people.

Product differentiation is the key in producing your new value proposal. This list of special assets directly responds to student wants and concerns and your unique attributes. The more you focus on a specific groups' needs and concerns, the more success you will have in attracting your 'natural' market.

Now it's time for your marketing plan. This is as simple as a matrix. You know who you want to reach, you just decide how you're going to reach them; how often and when; who's going to do which jobs and what training & resources are necessary to do it very well.

Then budget:

- Time
- Money
- Staff
- And don't forget to undertake on-going research. This is both your evaluation and your market change indicator.

Time for a reality check. Will this budget be sufficient to reach this audience? Are these the right vehicles or avenues to get to the specific group? Especially, double check that you have the right people doing the right jobs and they have the skills and the attitudes. There is no point in sending a bearded blue-jeaned advocate to Asia to recruit female students. Are your advocates good public speakers? If not, factor in some training. Every staff member has to be an example of the program quality you are offering.

Conclusion – timing and settlement

Now your team has identified your specific market. You know what kind of students you want and from where. You have closely examined their interests and have tailored both your program and your information delivery to meet their concerns and wants. You have identified the activities that will get your information to the potential students and at the same time, you've implanted a number of strategies to develop program loyalty. You have value tested your program against employers to make sure it is meeting market needs. You have set up a reporting system that makes sure that activities are planned annually and are a regular part of faculty/staff meetings.

Finally, you have an on-going evaluation system that allows you to make subtle adjustments to accommodate changing demographics and professional environments.

One of the unique marketing values of education is that your successful students are an advertisement for your institution for 25 years or more. If their time with you was unpleasant, then the inverse is true.

Marketing is like negotiation with only one side engaged – perhaps it is the sound of one hand clapping. Following a great deal of activity and some anxiety, something subtly changes. Two years later, student numbers increase and satisfaction ratings go up. The Vice Chancellor is happy and inevitably, someone else gets the credit.

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Whither the future of the Australian university in the age of the market?

By CLIVE HAMILTON

UAI scores required for entry into various courses, 2001

Course	Required UAI
Australian National University	
BA	73
BSc	73
University of New South Wales	
BA	70
University of Sydney	
BA	70
La Trobe University	
BA	50.5
Charles Sturt University	
B Physiotherapy	97.4
Associate Degree in Jewellery	69.3
University of Technology Sydney	
BA in Leisure Management	92.6
BA in Communication	95.4
University of Canberra	
B Communication (Advertising/marketing & Communication)	85.4
B Applied Science in Sports Media	78.1
University of Wollongong	
B Nutrition & Dietetics	94
Macquarie University	
B Business Administration	98.3

Clive Hamilton: the pressures on our universities are taking their toll.

supply of places. Increasing the number of places would, of course, see the entrance mark fall in many courses.

Nevertheless, what does it say about our society when we channel many of our very brightest young people into advertising, dietetics and leisure management? What signal are we sending to our cleverest youth when the entry requirements for studying philosophy, history and literature are the same as those needed to study jewellery and sports media? Who will be our next generation of historians, linguists and literary critics? What will it mean when there is no-one left to translate the mottoes of our great universities because the classics departments have disappeared under the withering force of the market?

WE SHOULD not imagine that some exceptionally bright students, inspired by a passion for pure learning, will get through despite the signals from the market. Recent high-school graduates can often be heard to say, "Why waste a UAI of 95 on arts or science when you could get into vet science or communications?" There is no more depressing comment on the state of learning in Australia.

The pressures on Australian universities are taking their toll, with many of the best teachers and researchers packing their bags. In a devastating one-page submission to the current Senate inquiry into higher education, Professors Phillip Pettit and Michael Smith, of the Australian National University, list 13 senior philosophers who have left positions in Australia for overseas since 1999, and contrast this exodus with the two senior philosophers who have gone the other way. Australia is renowned internationally for the quality of its philosophers, yet Pettit and Smith conclude that we have lost "almost two full generations of academic leaders in Australian philosophy". Their submission is but one more indication of the deep crisis engulfing universities in Australia.

Dr Clive Hamilton is executive director of the Australia Institute. The conference, *The Idea of a University: enterprise or academy*, is at University House, ANU, on Thursday.

CHANGES to the university system are eroding Australia's already fragile culture of intellectual achievement. With the emphasis on career training and market outcomes over intellectual development, are we in danger of producing a generation of highly educated fools?

This question and others will be scrutinised next week when contending parties in the debate over the controversial direction of our universities come together at a conference in Canberra, organised by Manning Clark House and the Australia Institute, called, "The idea of a university: enterprise or academy?"

The commercialisation of universities, initiated by the Dawkins reforms in the late 1980s, has changed higher education in Australia beyond recognition. Driven both by the government-imposed need to seek much of their funding from outside sources, and a shift in the culture of universities to conform to the demands of the marketplace, academics find themselves in a new world of moral ambiguity. A series of scandals involving soft marketing, plagiarism, and academic freedoms show how far universities have drifted from the moral certainties of the past. The clumsy and, at times, vindictive treatment of academic whistleblowers by the new class of university administrators indicates how power has shifted away from those who have the knowledge to those who hold the purse strings.

Nowhere have the contradictions of commercialisation been more apparent than in the introduction of full fee-paying courses. Allegations earlier this year of soft marking were reported prominently in the Asian press. The pressures to reduce standards in order to keep the "customer" happy threaten to undermine the reputations of all Australian universities. Both full fee-paying students and HECS students are victims of the erosion of standards, as all Australian degrees become suspect in foreign eyes.

HECS students are becoming increasingly resentful at real or perceived special treatment being given to full fee-paying students. Already there is a widespread belief not only that full fee-paying students are accepted into courses before others who are better qualified, but that they receive better treatment when they do, including more attention from teachers and better access to resources.

Such a situation, while consistent with the logic of commercialisation in which the paying customer comes first, is fraught with dangers for higher education. One emerging consequence is that full fee-paying students are becoming stigmatised. At one well-known law school, if a student makes a dumb comment in a tutorial, other students start muttering about "fee payers".

Even using the economic framework, we know that the market will "efficiently" allocate educational resources among competing uses only if a number of conditions are met. One of those is that consumers are well-informed about the na-

ture of the products on sale. But the education market has the peculiar feature that the consumers of the product are ignorant of its qualities; 18-year-old education consumers make choices on the basis of all sorts of distorted perceptions about what is in their own and society's interests.

Indeed, the commodification of university education has meant that the interests of society are increasingly being subsumed. Consider the NSW University Admission Indexes for this year for the courses shown in the table. These are the required admission scores for HECS students; those required for full fee-paying students are generally five marks lower.

It is apparent that it is more difficult to qualify to study advertising, sports media and leisure management at some of the new universities than it is to qualify to study philosophy, literature and chemistry at our most prestigious universities.

The UAI scores for particular courses reflect not only student demand to enter those courses, but restrictions on the