

The development of the virtual educational space: how transactional online teaching can prepare today's law graduates for today's virtual age

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ABSTRACT

Professional legal education, like many aspects of our lives, is now under increased pressure to move into the virtual spaces afforded by digital technologies. The rising popularity of social media platforms such as Instagram, service-type apps such as Passport, dating and social networking apps such as Tinder and the growth in and ease of access to online education through platforms such as Massive Open Online Courses (MOOCs) all highlight the increasingly pervasive nature of the Internet in many aspects of our lives. The ascent of the Internet is also reflected in the changing characteristics and demographics of our student cohorts and the changing legal environment – for example the prevalence of offshore outsourcing, more sophisticated clients, increasingly egalitarian access to legal information and virtual law firms

Such spaces, when used for teaching and professional development, have profound implications for the nature and character of that teaching and development. In this article we argue that specific factors in Australia, such as geography (which limits physical access to professional legal education), the history and cultures of legal education programmes, and recent changes in the regulatory frameworks for legal education, require law graduates to be equipped with more than the legal knowledge and skills that are currently required for admission to practice. With reference to digital educational theory, we analyse one instance of a program where transactional learning deepens and enhances students' professionalism. We then investigate the consequences of programs such as this for the design of regulatory regimes in legal education.

Keywords: Professional legal education; technology; digital education; regulation; experiential learning

INTRODUCTION

The space used for teaching and professional development has profound implications on the nature and character of that teaching and development.

Professional legal education, like many aspects of our lives, is now under increased pressure to move into the 'virtual space'¹. The rising popularity of social media platforms² such as Instagram, service-type apps such as Passport, dating and social networking apps such as Tinder and the growth in and ease of access to online education through platforms such as Massive Open Online Courses (MOOCs) all highlight the increasingly pervasive nature of the Internet in all aspects of our lives. The ascent of the Internet is also reflected in the changing characteristics and demographics of our student cohorts and the changing legal environment – i.e. the prevalence of offshore outsourcing, more sophisticated clients, increasingly egalitarian access to legal information and 'virtual law firms'³.

In the educational context, factors such as the nature of Australia's wide landscape (which limits physical access to professional legal education) and changes in the regulatory framework⁴ require, we argue, law graduates to be equipped with more than the legal knowledge and skills that are currently required for admission to practice.

In 2010, The Australian National University (ANU) Legal Workshop responded to these emerging challenges by introducing the "Professional Practice Core" (PPC) course. Taught wholly online, the PPC is a simulated integrated transactional learning environment that meets the requirements of the compulsory part of the Graduate Diploma in Legal Practice (GDLP)⁵ qualification which allows admission to practice in Australia. However, further innovation is arguably being hampered by the regulatory environment we continue to operate in.

This paper discusses the journey legal education has taken from first, the 'on-the-job workplace' space (through Articles), second, to the 'on campus' space (with formalised teaching of law through universities) and third, to today's 'virtual' space and the concepts of distance and intimacy in this third space. We explore the opportunities of teaching a professional legal course wholly online (in the new virtual space) and in doing so we will explore the argument that our work in the transactional online teaching in this third space supports the need for the regulation of legal practice to acknowledge and embrace this third space in preparing today's law graduates for the practice of law in this new era.

¹ A survey of the Winter 2013 cohort of professional legal training students at ANU Legal Workshop (approx. 590 students of which there was a 66% response rate) indicated that 87.4% of enrolled students were in full-time paid employment, making it virtually impossible to attend traditional classes. Discussed further below.

² "Social media usage up 800% for US online adults in just 8 years", S. Olenski, 7 September 2013, Forbes website: <http://www.forbes.com/sites/steveolenski/2013/09/06/social-media-usage-up-800-for-us-online-adults-in-just-8-years/>

³ "Outsourcing surges on demand for price cuts", C. Merritt, 14 March 2014, The Australian: <http://www.theaustralian.com.au/business/legal-affairs/outourcing-surges-on-demand-for-price-cuts/story-e6frg97x-1226854189776> and "Morning briefing: the future of virtual law firms", J. Maguire, 15 April 2015, Australasian Lawyer: <http://www.australasianlawyer.com.au/news/morning-briefing-the-future-of-virtual-law-firms-199208.aspx>

⁴ Discussed further below.

⁵ From January 2015, the ANU Legal Workshop introduced the Master of Legal Practice (MLP) featuring the GDLP which allows students to complete the competencies set by APLEC (discussed later in the paper) and exit the program with an Award of GDLP or to get admitted and continue study to obtain an MLP

PROFESSIONAL LEGAL EDUCATION IN AUSTRALIA

Professional legal education, traditionally seen as the vocational cousin to the law degree, is not new to reviews and developments in the way it is taught. Every jurisdiction in the common law world is different with regard to its arrangements. If we take the example of Australia, we can see traits that are common across a number of jurisdictions.

In its infancy, legal education was undertaken by way of an apprenticeship model (based on English practice). Taking its roots from an old French word, *aprentis*, meaning “learn”, an apprentice refers to “a person who is learning a trade from a skilled employer, having agreed to work for a fixed period at low wages” (Oxford Dictionaries). As an extension of this in the legal context, ‘Articles’ is “a period of training with a firm as a solicitor...” (Oxford Dictionaries).

‘Articles’ – the very word (and its meaning) objectifying learning as an office-based contract – were signed and the work specified in them was undertaken within law offices, which was the focus of legal work for solicitors and lawyers who were not court lawyers. The office was the focus for law conversations, collections of law books, bundles of law documents, the focus of telephone conversations, latterly the recipient and transmitter of faxes. The practise of law was seen as a practical vocation and Articles was seen as a means by way in which lawyers were ‘educated’ to enter that vocation. Even with the establishment of the first law schools and the movement of legal education into the classroom space at universities in Sydney (1855) and Melbourne (1857), the law was still taught by practitioners in the evenings, to students who were undertaking Articles during the day (Collins and Webbey, 2014 and James, 2000).

By moving legal education to the universities, the place of learning was no longer predominantly the office – it became the tutorial room, the law school library, the lecture theatre (and perhaps less commonly, a lecturer’s office and the common meeting areas around the law school). Education could become more standardised in these spaces, but less authentic, too, in that *real* law clearly was not enacted in this architecture.

In the mid-20th century, with the introduction of the law school curriculum and the “casebook” created by Christopher Columbus Langdell from the United States, modern Australian law schools, its curricula and pedagogy took on much of their current characteristics (Collins and Webbey, 2014 and Rubin, 2012). Given the lack of reforms in teaching methodology in law schools (at least up until only recently), it would seem that Australian law schools took Langdell’s views seriously:

“[L]aw is a science, and...all the available materials of that science are contained in printed books. If law be not a science, a university will consult its own dignity in declining to teach it. We have...inculcated the idea that the library is the proper workshop of professors and students alike; and that it is to us all that the laboratories of the university are to the chemists and physicists...” (Twining 1994 as quoted in Collins and Webbey, 2014)

The acceptance and support of the study of law as an academic discipline and the “professionalisation of legal scholarship” was evident in the post-World War II era by, for example, the appointment of Professor Geoffrey Sawyer to the Research School of Social Sciences at The Australian National University in 1951. Whereas, prior to this time, pure research in law was not common or supported in universities, (Bartie, 2014) the introduction of this model contributed to the creation of the two-tiered model of legal education that we see in Australia today – i.e. the divide of legal education into two distinctly separate components: the academic

part featuring the Bachelor of Laws or Juris Doctor; and the professional part featuring the Graduate Diploma of Legal Practice.

These two-tiers of legal education are reflected in and maintained by the two-tiers of competency requirements specified by the regulators of legal educators in relation to each of these components. Legal practitioners who wish to be admitted on the roll of practitioners in the Supreme Court of their Australian jurisdiction need to satisfy competency requirements in both components of legal education to become admitted lawyers.

THE ACADEMIC COMPETENCY REQUIREMENTS

In Australia, the academic competency requirements are governed by what is colloquially referred to as the “Priestley 11”, named after Lancelot John Priestley, who, in 1992, chaired the Law Admissions Consultative Committee (LACC) of the Law Council of Australia (LCA) and established the 11 prescribed areas of knowledge for successful completion of an Australian law degree.

The Priestley 11 (Australian Law Council Uniform Admission Rules, 1993) prescribed areas of knowledge are:

- administrative law;
- civil procedure;
- company law;
- contracts;
- torts;
- criminal law and procedure;
- equity (including trusts);
- evidence;
- property;
- constitutional law; and
- ethics and professional responsibility.

These academic requirements are currently undergoing a review and we will look at the current review in more detail later.

THE PROFESSIONAL COMPETENCY REQUIREMENTS

Having undergone a (minor) review⁶, from January 2015, the competency standards for entry-level lawyers are:

Skills

- Lawyer’s skills
- Problem solving
- Work management and business skills
- Trust and office accounting

Compulsory practice areas

⁶ Discussed further below

- Civil litigation
- Commercial and corporate
- Property law

Optional practice areas (at least two chosen)

- Administrative law
- Banking and finance
- Criminal law
- Consumer law
- Employment and industrial relations
- Family law
- Planning and environmental law
- Wills and estate

Values

- Ethics and professional responsibility (LACC, 2015)

Like undergraduate legal education itself, professional legal education (or practical legal training) also shifted from an 'on the job' training through Articles to a tertiary education, classroom-based course to now, more and more course providers offering online and distance options due to demand for more flexible study arrangements (Ferguson and Lee, 2012). This is not unlike the shift in England, Wales and Scotland.

Underpinning the shift in educational practices is a concomitant shift in educational theory and values, particularly as they relate to the relationship between space and educational outcomes. Thus the traditional Articles approach assumed that offices were the best spaces in which to learn professionalism, and practising lawyers provided the only models. The disadvantages of this approach were: the wide diversity of quality across offices, the lack of training in public law offices, the problematic position of ethics learning, issues of diversity and social mobility across the sector. More recently, the fluctuating legal jobs market (especially for graduates) and the rise of a legal business rather than legal profession model of practice left many law graduates without an office to complete their apprenticeship. In response, a shift of 'space' to a more tertiary based learning model was posited and accepted gratefully by many graduates of law from the 1970s onwards as the link between academia and the profession (Ferguson and Lee, 2012).

Regulators in Australia accommodated this shift from Articles to tertiary based learning by stipulating top-down objectives that mimicked the development of professional education as a form of technical education in vocational knowledge components and in stand-alone skills. This technicist approach extended to the providers and was focused on the inputs of legal education such as the specific spaces – i.e. lecture theatres adequate for the required numbers, tutorial rooms, library seats, number of books held by the library, etc. Education itself, in terms of its *output* was not described: instead the environment – i.e. the educational space – was highly specified. In doing so, many of the less tangible and more inherent qualities and attitudes required to succeed in practice and often evident in the "Articles" space– such as professionalism and work management practices – became decontextualised and, in many cases, lost.

Gradually the learning outcomes movement began to shape professional legal education, and regulators became more interested in the way that education was conducted and particularly in the outcome of educational interventions, rather than the spaces in which the education was occurring. The processes by which this came about in all jurisdictions are fascinating, though not the subject of this paper. However, what is relevant, is that at the same time that outcomes began to be specified as a desirable approach to legal education, the gradual evolution of the internet as an educational tool (Nardi & O'Day, 1999) began to offer a third space for the development of professional identity – neither the law office nor the tutorial room, but namely, the virtual space.

It is this third space – the virtual space – and the use made of this space by ANU Legal Workshop's largest online course the Professional Practice Core (PPC), in the Masters of Legal Practice, that will be explored in this paper.

THE CONTEXT OF ANU LEGAL WORKSHOP IN THE 'MARKET'

Professional legal education in Australia, as in all jurisdictions, is a competitive market, and its marketisation has an effect on its culture and modes of education.

ANU Legal Workshop is the largest university-based provider of professional legal education (ANU Legal Workshop website). There are numerous other providers in the Australian market. The largest provider is the College of Law, a private institution established by the NSW Law Society (the body that represents lawyers that practice in the State of New South Wales – the largest cohort of lawyers in Australia) in 1973 and which takes in approximately 3,000 students per year (College of Law website).

In addition to the College of Law and ANU Legal Workshop, there is the Leo Cussen Institute⁷, the Tasmanian Legal Practice Course⁸, Law Society of South Australia (jointly with the University of Adelaide) and numerous other university-based professional legal education providers⁹.

Graduates with a law degree have freedom of choice in where they undertake their professional legal education and providers must actively seek recruitment of students in a market where law schools are constantly being blamed for taking on too many law students, with limited legal jobs¹⁰, in a world which is changing the way in which legal services is consumed (Westwood 2014, Hilton and Migdal 2005, Susskind 1996, 2000, 2008).

WHY ONLINE?

Distance education is not a modern phenomenon. Teaching and learning outside the traditional classroom, in some shape or form, has been a part of education across the world and in Australia for well over a century. It is thought the first distance education was a short hand course taught

⁷ Established in 1972 by an Act of Parliament, it is now an independent, not-for-profit organisation providing practical legal training (Leo Cussen Institute website)

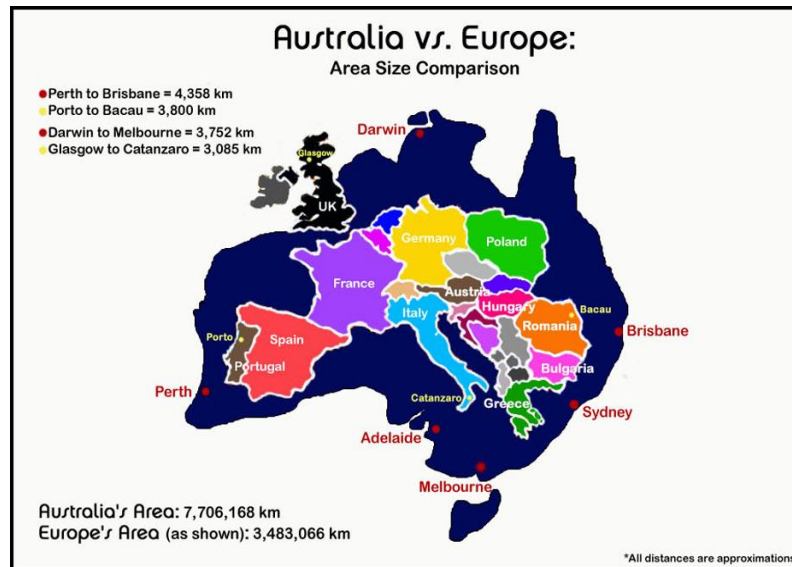
⁸ Established in 1970 and conducted by the University of Tasmania Centre for Legal Studies

⁹ For example, University of Technology Sydney, University of Western Sydney, Queensland University of Technology, Griffith University, Bond University

¹⁰ "Law graduate unemployment hits record high" Lawyers Weekly, 9 January 2015 which reported a quarter of law graduates were unable to find jobs within four months of graduating

by Isaac Pittman in 1844 by correspondence using what was then, the new postal system (Tait, 2003). The University College London established its International Programme in 1858 becoming the “world’s oldest provider of distance and flexible learning”¹¹. International Correspondence Schools (ICS) of Scranton, Pennsylvania, United States, was established in 1891¹². In Australia, ICS first opened an office in 1910, although they were not formally recognised until 1921. After a series of changes in structure, it has been known, since 2011, as “Open Colleges”¹³.

Australia’s ongoing need for distance education is most pragmatically made by looking at geography. Australia is a large country. Below is a graphic comparison of Australia to Europe:



(Picture from: <http://matadornetwork.com/trips/just-how-big-is-australia-anyway/>)

Australia’s population is 23,711,474 (Australian Bureau of Statistics, March 2015). Australia has 36 law schools (Council of Australian Law Deans) and approximately 12,000 law graduates each year (Sydney Morning Herald, 14 February 2014).

ANU College of Law (of which ANU Legal Workshop is a significant part) is “the national law school” (ANU College of Law website). Being the national law school of a nation that is as large as Australia, ANU faces a number of challenges (and opportunities) in providing access to legal education to all Australians.

In ANU Legal Workshop in particular, student in-take for the Professional Practice Core (PPC) within the MLP is not limited to Canberra (where ANU is located) but is open to students from all 36 law schools across Australia, and beyond. Intriguingly, in a move that harks back to some of the earlier days of Articles, many students are already working in or have worked in a legal environment when they begin our course. This means that they are testing their professional identity in our course not just against their undergraduate experiences, but also their experiences in a real legal environment. Students that are working are also working very full working weeks at the same time as completing their studies. For example, when we conducted an examination

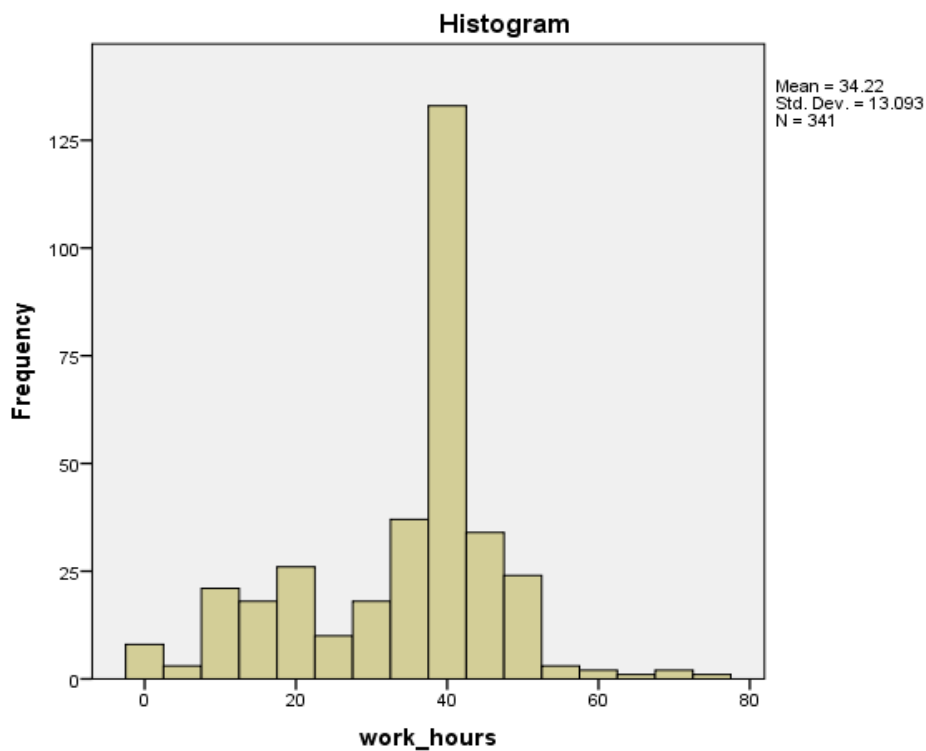
¹¹ University of London International Programme website: <http://www.londoninternational.ac.uk>

¹² University of Scranton International Correspondence Schools website: <https://www.scranton.edu/academics/wml/bk-manuscripts/ics-aid.shtml>

¹³ Open Colleges website: <http://www.opencolleges.edu.au/about-us/our-history>

of the employment status (amongst other things) of our Winter 2013 cohort (approximately 590 students, at that time, with a response rate of 66%) we found that:

- 81.5% say they have some law related experience (whether employed/pro bono) and most (about half) has occurred in the past 3 years
- 87.4% are working in paid employment
- 60.3% of all respondents working in a law related areas
 - 47.9% in full time law
 - 10.3% in part time law
 - 3.8% in casual law
- 25.6% of all respondents working in non-law related areas
 - 15.6% full time
 - 10% casual
- 15% are looking for work
- Hours in employment:
 - Median 38 hours per week (range from 0-75 hours)
 - Peaks at 35,40, 45 and 50 hours per week
 - 63.3% work more than 35 hours per week



These demographics of our student population mean that our students require a flexible study environment that allows them to continue this work exploration, whilst recognising that they are not the legal 'greenhorns' they are usually presumed to be. At the same time, a course must be constructed that meets the needs of those students who have yet to have legal work experience and may decide to seek it whilst continuing with their studies. Moving online is one way of meeting this need of providing accessibility. However, moving online in a way that was relevant and innovative required a larger shift in pedagogy than simply transporting the classroom to the digital space. Whilst initial movements into the digital space only involved the storage of resources and submissions of assessments online, it is now possible to have interactive online platforms that allow real-time simulations, transactions, communication and collaboration. But how has this impacted on the ability to conceive of and encourage professional identity and professionalism? Are there opportunities to teach these skills in the online space?

Foley, Holmes, Tang and Rowe wrote in 2012 that:

"Professionalism means different things to different lawyers. For some, being professional denotes more than just being technically proficient in their practice of law. Rather, professionalism implies independent work to high standards of ethics and public service. But for other lawyers, the 'traditional' ideals of professionalism (autonomy, collegiality, public service) have all but disappeared. Many scholars report that a narrower, more technical view of professionalism, which focuses on the mastery of highly specialised knowledge, predominates in the new, technology based, global economy."

Daicoff has extended the concept of legal professionalism as related to professional identity by suggesting that:

"Professional identity here [means]...one's values, preferences, passions, intrinsic satisfactions, emotional intelligence, as well as one's preferred professional best practices. Emotional intelligence here is used to refer to five areas: intrapersonal (self) awareness, self-management competencies, awareness of others (empathy), interpersonal relational skills, and drive or motivation. Many of these "professional identity" concepts have been empirically demonstrated to be important to one's effectiveness as a lawyer and to one's wellbeing and satisfaction as a lawyer."

Francis (2011) extends this further by suggesting that legal professionalism is "fragmented, heterogeneous and fluid" and that it is not appropriate to assume that lawyers have one approach to legal practice at any one point during their careers. As with all human conditions, many factors including personality, life approach or external influences can impact on this identity. Yet, Holmes et al (2012) convincingly suggest that the construction of a law graduates professional identity will "depend partly on the models of 'professionalism' that new lawyers encounter in their first workplace..."

As such, if an appropriate authentic representation of legal practice is provided in the professional legal education virtual space, it may be possible to either provide an alternative professional paradigm to examine and consider for those students already in practice or, for those students without current professional experience, provide the "first workplace" experience of professionalism for them to consider and reflect in their own development of their identity.

The need to include online learning is not just dictated by our student population. The legal industry itself is changing and much of this change can be related to the internet (for one, it is now often referred to as an industry rather than a profession). Some examples of these changes

include that law firms can now easily source legal skill sets cheaply off shore through legal “call centres” that deal with discrete issues such as discovery, standard advices, contract creation etc; and that many large corporate clients are becoming increasingly savvy about the use of legal services and put increased pressure on corporate law firms to do more for less by putting in place tendering process for law firms to bid for the right to be on one of the firms on the client’s legal ‘panel’ and by entering into fixed matter fee arrangements (Susskind, 2008). In addition, many Australian courts now have electronic registry’s and file management systems – i.e. Federal Court of Australia; and have even put in place self represented litigant support services to improve access to the legal service and in recognition of the numbers of individual clients who are becoming wary of the value of the legal services they need and receive due to the growing body of information available through the internet to support them to deal with the law themselves (Deputy Chief Justice Faulks, Family Court of Australia, 2013).

Beyond this, even the form of professional communication has been shaped by the internet. Whereas, legal practice was once done quite physically in the first space – i.e. the office, the court or, at worst, via telephone – now legal practice communications are very often completed in the third space via email or even web conferencing. This change creates a need for the profession to develop and maintain new practices that extend the traditional professional courtesies to these digital environments. For example, with the immediacy of the ‘send’ button on all email communications, how do you ensure that your emails are not riddled with unfortunate communication errors or sentences that don’t translate well to the typed form; and how do you craft these communications to ensure that the mood of the receiver of the email does not impact on its interpretation (Byron, 2008)? Similarly, how do you ensure that your non-professional digital footprint doesn’t have an impact on your professional reputation and identity? For example, examine the impact of Justine Sacco’s ill-considered tweet referencing AIDS just prior to getting on a plane headed for South Africa. Whereas once, the thoughtless words may have been considered unwise if uttered in the office to one or a few colleagues, the virility of the internet meant that it cost Ms. Sacco her job whilst she was in the air (Hill, 2014). To take this further, should you mention you had a bad day in office on your social media account? Is it good professional practice to keep your pictures of your well attended and raucous 21st birthday party up for the professional world to see? As apparently obvious as it seems, the rise of these issues in the internet requires a suitable response from legal education in order to equip our graduates with all of the skills they need to adapt to and thrive in this rapidly changing environment (Rowe and Murray 2014).

To this end, in 2009-10, ANU Legal Workshop considered the innovations that were occurring in legal education to support simulated transactional learning (Maharg 2007), the efficacy of sustainable assessment practices (Boud and Falchikov, 2006), the results of preliminary research into the needs of lawyers starting out in the profession (Holmes, Rowe, Foley and Tang, 2011) and embarked on a project (the Integrated Learning Environment (ILE) Project) to provide professional legal education that was not just in the online space, but made the best use of the features of digital space to prepare the graduates for the realities of practice.

HOW AND WHAT WE TEACH ONLINE

In 2010, ANU Legal Workshop introduced the Professional Practice Core (PPC) as an 18-week simulated transactional learning course to be taught exclusively online. Adapted from the course developed at the University of Strathclyde (Maharg 2007), the PPC was designed to require groups of four students (‘firms’) using a ‘virtual office space’ (VOS) to undertake simulated transactions in the compulsory competency skills areas of civil litigation, commercial and corporate and property practice. Trust and office accounting, ethics and professional responsibility and practice management (also compulsory competency skills areas) were also

integrated into the simulated transactions of the PPC to provide the context for learning about these areas rather than teaching them in decontextualised 'silos'.

The PPC is preceded by a compulsory, 5-day face-to-face intensive course, 'Becoming a Practitioner' (BAP) which focused on setting the foundation of skills in advocacy, interviewing, negotiating, legal writing and drafting, team work and problem-solving. The BAP is an important course not only for setting the foundation of legal skills but for the "accelerated development of trust and mutual obligation" between members of the student firms (Rowe and Murray, 2012). Setting this foundation was important due to the nature of group worked involved in the PPC.

Being a course taught wholly online, we were conscious of the importance of using relevant, accessible, user-friendly and flexible online platforms.

Whilst there are many reasons why this is so important, for the purposes of this paper, we will focus on two, namely:

- authenticity of the simulation; and
- bridging the space created by distance.

Authenticity of the simulation is important in being able to facilitate "deeper, self-reflective and collaborative learning" and our desire to help students "develop a professional identity, equipping them to deal with the uncertainties of practice" (Barton, McKellar and Maharg 2007; Rowe and Murray 2012, Foley and Tang 2014).

Despite the growing demand for more flexible options of access to education (particularly in a country as vast as Australia), the negative connotation of "distance learning" is still very real (Bayne, Gallagher and Lamb, 2013).

In the context of the PPC, where the large cohort of our enrolled students have obtained their law degree from a different institution, physically attending classes over a period of 4-5 years¹⁴ will, no doubt, create a sense of belonging to that institution that our 5-day face-to-face BAP course (the majority of which takes place in hired commercial venues around Australia and not on the ANU campus) together with the online courses, could not hope to replicate.

We are not arguing that our online platforms (no matter how sophisticated they are) can bridge that gap in "educational space" (Bayne, Gallagher and Lamb, 2013), particularly in the context of *when* the PPC is taught in the legal education framework.

We do, however, argue that the space created by distance challenges the preconceptions of territorial and sedentary aspects of what it means to be "at" university (Bayne, Gallagher and Lamb, 2013); and, by doing so, throws up the opportunity to use technology to create innovative ways in which to bridge this gap to build a learning community where our online students are "at" ANU, no matter where they physically are. We shall come back to this point. First, however, it would be useful to describe the environment of the PPC.

OUR ONLINE ENVIRONMENT

The PPC is taught using two online platforms:

¹⁴ In Australia, the majority of law students undertake their undergraduate law degree as a double degree and this is the average time it takes for a law student to reach the stage of professional legal education.

- the Web Access to Teaching and Learning Environment (Wattle) site; and
- the Virtual Office Space (VOS).

Essentially, the Wattle site is the teaching and learning site. This is the site where:

- conveners put up any course-related announcements, resources and instructions for assessments;
- there is access to various forums and online chat facilities to enable discussions and web-conferences (to communicate with the teaching staff or fellow students);
- online individual assessments (e.g. online quizzes) take place; and
- majority of the course-related administrative work is done (e.g. booking times for oral assessments).

Below is a screen shot of the homepage of the PPC wattle site for our Summer 2015 course:

The screenshot shows the Wattle homepage for the Professional Practice Core (PPC) course (LEGW8142) at Australian National University. The page is titled "Professional Practice Core - LEGW8142 Convenor Roberta McRae". It features a navigation menu with links to "PPC Calendar", "PPC Course Outline", "Academic Integrity Policies", "Extension Policy", and "Requirements for Legal Writing". Below the navigation menu, there are sections for "Announcements" and "Allocated PPC Firms". The main content area displays a list of sections with their respective week ranges and expand/collapse icons:

Section Number	Section Name	Weeks	Expand/Collapse Icon
1	Professionalism in Practice	Weeks 1 - 18	⊖
2	Legal Ethics and Giving Voice to Values	Weeks 2 -18	⊖
3	Civil Litigation Practice	Weeks 2- 18	⊖
4	Property Law and Legal Accounting Practice	Weeks 2 - 9	⊖

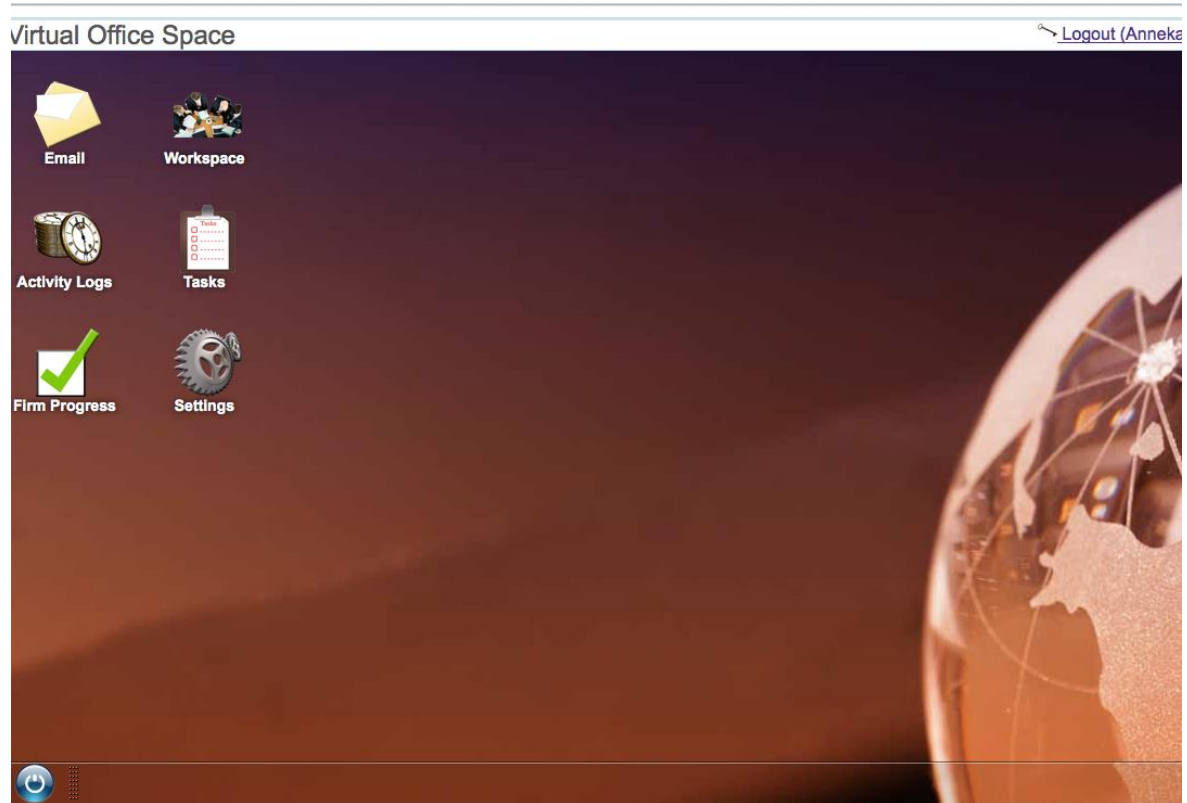
What we have on this homepage is an overview of the PPC including the calendar of assessments, the course outline and other educational guidelines such as the academic integrity and extension policies.

The "Announcements" forum provides a platform for one-way communication from the teaching staff to the students; general messages about the course - e.g. release of certain tasks and relevant deadlines.

The VOS is where all the in-role collaborative simulation takes place. The VOS is created to simulate a workplace desktop with:

- access to an 'email' function which the firm members communicate with their 'Associate' or 'Senior Partner' or 'Client';
- tools to enable collaborative work to take place; and
- logs to record their tasks (activity logs) and reflections (personal logs).

Below is a screen shot of the VOS for our Summer 2015 course:



We have attempted to replicate the workplace desktop with icons that will be familiar to students who are work in legal offices.

Whilst we provide these online platforms as the building blocks for student collaboration and engagement, we do not limit students initiating and using other, external forms of virtual collaboration within their own firm. Examples include: cloud storage services, Google Docs, or Dropbox for collaborating online; or using messaging services contained in Facebook or Google for immediate contact; or web conferencing facilities provided through Skype or FaceTime; or team project sites such as Asana; or team scheduling such as Whatsapp or Outlook to stay organised. Indeed, students who formed groups based on their physical proximity to each other report they meet face-to-face on a regular basis throughout the entire course and of course, the usual contact methods via telephone, email and text messaging, are also used for discussions amongst firm members and, to a lesser extent, with the academic staff¹⁵.

¹⁵ Pragmatically, in a fast evolving, changing and well resourced world of online innovation it is not prudent to attempt to compete with and/or replicate the common online open sourced products with a (comparatively) small scale information technology budget in an educational institution. If you do try, you will always be at least one step out of date and thus be criticised by students for the irrelevance of the online platform you are using, as opposed to the quality of educational experience contained therein.

By providing these opportunities for students to determine their own needs and find solutions to those needs we are encouraging the kinds of business solution thinking skills that go beyond the academic skills and knowledge developed and employed in students during the undergraduate or Juris Doctor Law subjects.

Furthermore, shifting the responsibility of providing the complete virtual space from the educational provider to the students serves valuable psychological and pragmatic purposes. Psychologically, student wellbeing, professionalism and engagement can be enhanced by encouraging the basic psychological needs suggested by self-determination theory – namely autonomy, competence and relatedness (Ryan and Deci, 2000; Sheldon and Krieger, 2007). Providing the educational environment to encourage students to take responsibility and control their own workload and work methods is just one fundamental way in which we use our educational design to contribute to the fulfillment of these needs.

UNIQUE OPPORTUNITIES OF TEACHING PROFESSIONAL SKILLS AND IDENTITY ONLINE

Influenced by Dewey's argument that "education arises from the interaction of a person's internal life and external conditions" and that interaction is "the educative process", Maharg's development of the Graduate Diploma in Legal Practice course at the Glasgow Graduate School of Law (GGSL) for the virtual world sees transactional learning as having certain key features, examples of how we do this in the PPC as outlined below:

- *Transactional learning is active learning*: i.e. learning *from* legal actions, not learning *about* legal actions (Maharg 2007 and Gredler 1996). In the PPC, students, working in their firms are required to *draft* a letter of advice to the client; *appear* (through online chat platforms such as Wimba or Adobe Connect or, to a lesser extent, Skype and telephone) at an interlocutory application hearing; *draft* a claim to commence an action. While all these tasks are not unique to the online environment, if we take, for example, the requirement to appear at an interlocutory application hearing in an online format, with the rise in appearances by video link-up in Australian courts and tribunals, learning to communicate with judicial officers when you are not physically appearing before them is a real and relevant skill for today's aspiring litigation lawyers.
- *Learning to do legal transactions*: the PPC is an 18-week online course. For example, throughout the course, students conduct a property transaction from start to completion – taking of initial instructions from the client all the way through to settlement and registration of title. Being able to *actively participate* in this transaction means they see the whole of the transaction, in context. Being online means that it enables students the freedom and flexibility to engage in the entirety of the transaction as and when ideas, thoughts and challenges hit them due to easy access, from anywhere, no matter where they are, as long as they have access to reliable internet.
- *Transaction + reflection*: by incorporating a process of "feed-forward" (Maharg 2007 and Rowe and Murray 2014) where students receive feedback on draft pieces of work, being required to work collaboratively in their firms with its natural in-built system of peer review and by requiring students to complete reflective written pieces by way of personal logs, students are able to "rise above detail, and 'helicopter' above a transaction" to reflect on the transaction (Maharg 2007).

- *Collaborative learning*: throughout the entire course, students work with “practitioner teachers” – current legal practitioners employed as casual academic staff to mentor students in context as “Associate”, “Senior Partner” (in-role) or as Practice Mentors. This allows students to collaborate with teachers in a real-life meaningful sense in that they see them as mentors in practice, not as teachers in a classroom. Our practitioner teachers are trained to “promote and demonstrate professionalism in all their interactions with the firm [of students]” (Rowe and Murray 2014) and thus students have a foundation of good examples that they can scaffold off. Students also work in ‘firms’ and approximately 70% of their work is firm work (i.e. each firm will submit one letter, having all contributed to its drafting). Collaboration and peer learning is embedded early on. During the BAP course, students are asked to give feedback to each other as they undertake role plays in client interviewing, negotiating and advocacy. This opportunity for collaboration is essential in the PPC because the majority of the work they submit is firm work. Collaborating (with their mentors as well as with their peers) in an online environment reminds students of the necessity to remain professional while using platforms they would normally have considered to be a less formal setting (e.g. communicating on chat forums or by email compared to the formal language usually reserved by “lawyers” in legal letters).
- *Ethical and professional learning*: the integrated environment of the PPC allows us to teach ethics and professional responsibility (a compulsory competency standard) in context. In July 2012, many aspects of the ‘Giving Voice to Values’ (GVV) curriculum (Gentile 2010) were introduced into the ethics component of the PPC. The simulated transactional learning environment of the PPC lends itself beautifully to incorporating the GVV curriculum because it teaches students to “recognise, clarify, speak and act on their values when they encounter values conflicts in their careers and workplaces” (Rowe and Murray 2014) by simulating situations where values conflicts may arise and require students to voice their values within that simulation. In the informal online environment, it is all too easy for students to forget their professional voice. The prevalence of acronyms such as LOL (laugh out loud) and TTYL (talk to you later) and emoticons and emojis are almost a given in electronic communication and having to conduct transactions and communicate with their mentors, peers, “Associate”, “Senior Partner” or “Client” on these platforms reminds students of the need to not fall into the informality of these types of communications so much so that it impacts upon their professional image.

In addition to the above factors as stated by Maharg, based on our experiences of teaching the PPC, we would add another feature:

- *“Just in time” learning*: the transactional environment also removes the emphasis from pre-reading and rote knowledge learning, to just in time research and adaption in order to address the specific needs of the clients and the matter. This form of learning is more akin to the skills required to be successful in a legal environment where the knowledge base is constantly adapting and developing. It also simulates much of the uncertainty present in the practice of law, where you have to gain the skills and comfort to know how to research to meet the clients’ needs in the most efficient manner possible when you can never be certain of the boundaries of this research or the peculiar nature of the clients problems that may not always be resolved *only* through the law.

Ultimately, by taking these this transactional learning environment online, it enables the opportunity of providing asynchronous, yet personal, engaging and enriching learning opportunities on a large scale. Unlike the classroom environment where the logistics of coordinating significant numbers of practitioners and lay persons to play the roles of ‘Associate’,

'Senior Partner' and 'Client' in real time would be costly and most likely prohibitive, the integrated online environment provides the opportunity to simulate a legal practice on a large scale (i.e. we currently have 850 students in the Summer 2015 course) by enabling both students and the practitioner teachers to engage with the work and provision of feedback and mentoring at times that are convenient to them. It also enables ANU Legal Workshop to employ currently practicing legal practitioners to work with more than one group of students at a time (without the students knowing that they are one of many) and provide contact with the 'real' profession in an individualised fashion at all times during the course.

AUTHENTIC LEARNING

Legal education commenced its life as an apprenticeship. The concept of "learning by doing" is not a new one. John Dewey was a keen advocate of experiential learning and if we apply Dewey's theory that: "if knowledge comes from the impressions made upon us by natural objects, it is impossible to procure knowledge without the use of objects which impress the mind" (Dewey 1916) to law graduates, the 'objects' are the law office, the documents, the case files, the courtroom.

In 1991, Lave and Wenger theorised the legitimacy of situated learning – where novices become part of an established group by learning through "legitimate peripheral participation"; namely, that apprentices (unqualified people are all legitimately potential members of a "community of practice") observe, take on minor and simple, peripheral tasks, and through collaboration, engagement and more pointedly, participation, undertake more and more harder, risky tasks until they become part of the established group. We can see this theory play out in the life of a typical private practice lawyer - going from an unqualified member of society, to becoming a qualified and admitted junior lawyer observing and undertaking simple tasks to growth into an Associate where the tasks become more complex and responsibilities are greater (e.g. mentoring junior lawyers) and to Partner, with ultimate responsibility not only for managing a legal practice but a law firm (i.e. a business).

In the office (i.e. the first space) where legal education started its life, law graduates experience a certain intimacy with respect their chosen vocation. This "closeness of observation or knowledge"¹⁶ in the office provides an intimate dimension in legal learning.

Whilst this presence in their chosen workplace is physical and immediate, physically being at work is no guarantee of intimacy. Imagine a situation where a law student undertakes a clerkship and spends most of their day working on a big process of discovery for one large-scale litigation matter. This process can take days, even weeks. Each day, the student's job is to review page after page of discovered materials to confirm integrity of each document (e.g. a reference to another document which must be cross-referenced across the volumes of discovered material to make sure the referenced document is there or making sure the documents are photocopied properly and are legible). Undertaking this task, day in day out, the student has no context about the subject matter of the legal dispute, no concept of *why* integrity of the disclosure process is important and perhaps essential to the legal dispute. In this circumstance, despite being physically "at" work, can we say that there is intimacy – i.e. "closeness in observation or knowledge of a subject"? We would argue not.

¹⁶ Definition of intimacy (Oxford Dictionaries)

With the shift of legal education from the office to the university, the vast majority of legal training occurred away from the office and in the second space, on campus.

In this second space, the shift of the learning environment moves from the office to the traditional physical set up of the university; lecture theatres, tutorial rooms, the law library. The closeness to the real-life experience of what it is to work in a law office is no longer present, however, we see a shift of intimacy to the learning environment.

The professionalisation of and the rise of the law degree as an academic discipline post World War II “de-emphasised the connections with legal practice” (James 2000).

In this space of the university, we very much see students in their role as just that; a student. And learning as a student has a different culture to learning as a professional (i.e. a lawyer) (Collins and Webbey 2014).

Learning in the classroom is seen as “[t]he pursuit of independent and original thought...[and] is a product of individual achievement...[and] [c]ollaborative approaches to learning are felt to be suspect” because the “primary purpose is not the development of ‘good lawyers’” (Burridge and Webb 2007) but rather to develop “a mind which is open intellectually, flexible and innovative...[and] [a] ‘professional’ approach to legal education cannot aspire to those goals” (Boehringer 1985, 1988-1989).

Let us take, then, an example of how, in this second space, the process of discovery is taught in the civil procedure course (which is taught, as per the Priestley 11 requirement) in a decontextualised silo of prescribed academic requirement: one or two two-hour lectures where the student is a mere spectator, perhaps if sufficiently interested and engaged, taking notes. There will also be one or two tutorials to engage in some discussions with a small group of fellow students. At the end of the semester, there would be an exam perhaps containing a problem-style question on the topic whereby the student will (having access to the prescribed text in an open-book exam circumstance) be afforded an opportunity to recall and articulate, in writing, what they know about the discovery process.

In this way of learning discovery, the student may have all the intimacy of the educational space, but they are removed from the intimacy of the law office - of actually seeing a discovered document, of seeing in context what is relevant based on extraneous information and facts (e.g. the pleadings, instructions from clients, discussions with lawyers on the opposing side, etc).

The recent research into the wellbeing of law students indicate that law students are not finding the study of law as fulfilling as they either anticipated or were hoping for (O'Brien, Tang and Hall 2011, Larcombe et al 2013 etc). Student experiences through law school are important and can have profound impacts on students. As the Carnegie Report explained:

“law school experiences, if they are powerfully engaging, have the potential to influence the place of moral values such as integrity and social contribution in students’ sense of self. This is especially likely to take place in relation to the students’ sense of professional identity, which is, of course, an important part of the individual’s identity more broadly” (Carnegie Report at 132).

This explanation is consistent with the Law School Survey of Student Engagement (LSSSE) finding that students who engaged in volunteer pro bono work and interacted more with faculty and peers perceived greater professional gains during their time at law school (Silver et al 2013).

Silver et al also reported that “experiential learning is significant with regard to development of values, ethics and self awareness”.

Our shift to the virtual space allows us to take experiential learning to a new landscape; the environment in which, as discussed above, we have unique opportunities to teach our students skills to prepare them for legal practice in this dynamic and internet-reliant world.

There are challenges to allowing untrained law students to learn in the real-world (Car-Chellman, Dyer and Breman 2000, Ferry, Kervin, Puglisi, Cambourne, Turbill, Jonassen and Hedberg 2006); in light of the sheer number of law graduates in Australia today, places for students to undertake real-life work experience is limited and there is always a risk that students who have yet to complete their legal education pose to real-life clients.

Authentic learning focuses on “real-world, complex problems and their solutions, using role-play exercises, problem-based activities, case studies, and participation in virtual communities of practice” (Lombardi 2007).

And whilst “[s]imulation of any type is only an approximation of reality”, there are:

“many factors, including fidelity, equipment, psychology of the participants (“performing for the camera,” the ability to suspend disbelief, etc), and the environment itself, all play crucial roles in the realism displayed and experienced” (Hotchkiss, Biddle and Fallacaro, 2002)¹⁷.

Maharg states that in a simulated environment:

“...the move from spectator to participant is crucial. It involves not just a closer proximity to action for the actors, but paradoxically the need to remove oneself from action and to reflect on it, both in advance of action and after it. The parallel with drama is instructive” (Maharg 2007).

For many PPC students, making the shift from a passive learner, sitting in a lecture theatre observing as the teacher at the front of the lecture theatre takes centre stage, engaging in a monologue, usually to several hundred students. In this situation, the student is a “spectator”; a spectator that has no control of the content, the process or the direction in which they wish to take control of their own learning.

In the PPC, students take an active part in their learning by assuming the role of a junior lawyer, working to and with other participants who also have a stake in the process. In this situation, the student is an active participant; a participant who can respond, drive and challenge what faces them. Let’s take, for example, the civil litigation practice area in the PPC. A firm receives a memo from a Senior Partner in their inbox, containing instructions (with an attached file note of a client meeting) to draft a claim to commence proceedings arising out of circumstances as detailed in the file note. Driven by the requirement to meet the educational threshold requirements, the factual scenario (as created by the teacher) directs the claim to one or two possible causes of action. Support is provided by way of the safe space of the simulation and an “Associate” who is available to provide feed-forward or advice on possible ways forward. However, the student firm takes charge; the members are responsible for accurately reading and interpreting the instructions and facts, initiating the appropriate research, identifying the correct

¹⁷ This was a paper discussing the authenticity of simulation in anaesthesiology, however, we would argue that their comments about simulation generally apply across different professions and sectors.

cause(s) of action (during this process, acknowledging that there may be alternative courses of legal action available) and coming up with the words as they will appear on the correct court form of a good, solid Statement of Claim.

As Maharg points out:

“In this sense, while there are effective ways to educate as proven by the research, in practice there are likely to be various ways to achieve such effective education, since students, institutions and communities need alternatives” (Maharg 2007).

Whilst, from an educational and competency requirement perspective, we (as educators) guide and direct the firms to a specific outcome, the students have freedom to explore possible alternative directions: is the advice to not proceed with litigation but to commence negotiations or other types of dispute resolution procedures? Are there any other appropriate options available? Because of the nature of their role as active participant and not mere spectator, the firms have the ability to question, to challenge and to put forward alternate views. This part of the transactional process creates the opportunity for “deliberate absences of information or knowledge [from the teacher], where student construct for themselves the knowledge, skills, values that no one but they can learn” (Maharg 2011).

To keep authenticity with the simulation whilst balancing the requirement to teach competency standards, we may respond to the effect that the client acknowledges the advice but instructs you to proceed to commencing an action, thus equipping students with information and structure, guidance and instruction, in context, to progress the transaction.

Once the firm determines the appropriate cause of action and drafts their claim, it has the option to submit their work as a draft to their “Associate” and seek guidance, advice and feed-forward. This step is clearly important for educational purposes in putting drafting skills into context: to focus on the process of writing rather than just the piece of work itself; acknowledging that legal drafting rarely happens in isolation but rather, by reference to and after exchanges with other documents or resources; encouraging drafting to be undertaken in an “informational environment” where documents need to not only be drafted but identified, appropriately stored and retrieved (Maharg 2007)¹⁸.

Another, and for the purposes of this paper, a more relevant reason why the feed-forward step is important is that it creates an environment of authenticity to the transaction. Traditional methods of teaching drafting skills at the undergraduate level is to remove it from the context in which legal drafting occurs. Students are not permitted to collaborate or seek advice and guidance from their teachers (save for seeking clarification on the instructions for the task). By incorporating a feed-forward element into the drafting process, it simulates, within the limited confines of a course and the teacher-student relationship, *real* legal drafting whereby a junior lawyer (or apprentice) will receive instructions from their senior partner, have *permission* to collaborate, engage with and seek guidance from their peers, their mentors and their senior partner, embark on independent research and undertake the task. The post-submission process is also important. In the traditional university setting of the undergraduate law degree, once a

¹⁸ In chapter 7, *Transactional learning in action* in “Transforming Legal Education” (2007) Maharg cites these reasons as to why open-book assessment is not the best approach to teaching drafting skills. In this paper, using the same example of teaching drafting skills, we argue that these reasons also apply in the context of the benefits of “feed-forward” which is an integral part of the way in which we teach the PPC through simulated transactional learning.

task is submitted, it is returned to the student with a numerical grade and (hopefully) commentary on where it may be improved. In the event the task is not up to scratch, the student receives a poor mark and that's the end of the process. In the context of the PPC simulated transaction, there is no assessment of the task by a numerical grade¹⁹ and the feedback allows the student to feel 'closure' because the senior partner will confirm that it was of a sufficient standard to be signed and sent out on the firm letterhead or it will be returned, with feedback explaining why it may not be up to scratch and *asked for it to be re-submitted*.

Importantly, the move into the third space is not linear and not lacking in potential to create recursive arrangements with the first two spaces in order to create a more complex, yet integrated and relevant learning space to even better meet the needs of both the legal students and the legal profession. More plainly, the nature of the virtual space is such that students can have legal experience jobs whilst completing their studies – as many of our students already do – and this creates the ultimate opportunity for legal education in the third space to become more supportive of the students' lived experiences in practice. For example, if you are learning skills about how to act in accordance with your ethics/values in practice, the importance of such a skill is likely to be more explicit if you have an experience of legal practice to benchmark your professional development experiences against. Similarly, the reflective potential created by providing students with the opportunity in the digital educational space to compare, reflect and understand their current legal practice environment may form the basis for the more efficient creation of reflective practitioners (Leering 2014) and to counteract the potential impacts of a graduate's first place on negative ethical professional identity creation (Holmes, Foley, Tang and Rowe 2012).

If we see our role as educating law students to produce lawyers that are "fit to practice" (Westwood 2014), it is essential to expose our students to these types of challenging situations, to ensure they are "skilled in making complex decisions in the circumstances of particular situations" (Westwood 2014 referring to Maister 1997, Rhode 2000, Empson 2007, Galanter 2011), in the scope of the simulation because:

"Experience is the result, the sign, and the reward of that interaction of organism and environment which, when it is carried to the full, is a transformation of interaction into participation and communication" (Dewey 1969-91 "Later Works").

BRIDGING THE DISTANCE

One common criticism that ANU Legal Workshop faces about the PPC, from proponents of the traditional face-to-face method of teaching, is that online teaching lacks the relevant connection between teacher and student.

At the Australasian Professional Legal Education Council (APLEC) conference in 2012, during a presentation on how we teach professional legal skills online, a comment was made (drawing an example from likening professional legal skills to learning tennis) that it is all very well to see someone hit a tennis ball, but it's not the same as hitting the tennis ball yourself. This comment demonstrated the lack of understanding of the simulated transactional nature of the way the

¹⁹ In the PPC, the grading rubric is based on a "Not Yet Competent" (NYC) for students who do not achieve the required level of competency; "Competent" (C) for students who achieve the required level of competency; and "Higher Level Performance" (HLP) for students who exceed the required level of competency, all according to an assessment criteria threshold.

PPC is taught. The commenter misunderstood our teaching of professional legal skills online to the way in which undergraduate silo subjects are usually taught - namely through face-to-face lectures and tutorials with lecture recordings and slides being made available on an educational website such as Blackboard or Moodle. Unfortunately, such misunderstandings are often based on a very rose-coloured version of what undergraduate legal education actually looks like in today's environment, but whilst they prevail, there will be restrictions on providers' abilities to innovate in the online environment.

As argued by Bayne, Gallagher and Lamb, physically being "at" university is no guarantee of bridging distance. At a recent BAP course (January 2015 Sydney course), one student commented that because they had undertaken their entire undergraduate law degree by distance, the five days of face-to-face teaching was valuable because they felt a "real connection". This was so even though the course was conducted at a commercial premises in Sydney, almost 300km from the physical campus of the ANU. We also see this connection in students electing to get student cards (despite the fact that practically, there is no real use for a student card off campus as it is primarily used for after-hours access to computer labs or to physically borrow books from the library) or electing to attend their graduation ceremony at ANU to receive their award of the GDLP as the "'single present centre' around which the multiple 'absences' of the distance student could be anchored in a single moment of rite through graduation" (Bayne, Gallagher and Lamb 2014) or by electing to become admitted as a lawyer in the ACT Supreme Court and travelling with their family to Canberra (where the ANU campus is situated) for the admission ceremony, a lot of these students also asking ANU academic staff to move their admission²⁰. We would argue that these efforts by students (many of whom have never physically ever been on the ANU campus) show they "strongly locate themselves in term of 'course' and its community, rather than 'institution'" (Bayne, Gallagher and Lamb 2014) and that:

"a network topology might be read as being enacted for the university, in which proximity is not measurable in terms of geographical distance, or authenticity indicated by the immanence of the campus, but university space is rather to do with 'the network elements and the way they hang together'" (Bayne, Gallagher and Lamb 2014 referring to Mol and Law 1994).

We do not pretend that these anecdotes provide irrefutable proof for the romantic notion that all MLP students find a connection to ANU. Given the nature of the MLP (namely that it is a professional legal education course which takes place over a period of, usually, 6-9 months after 4-5 years of an undergraduate law or Juris Doctor degree most likely at another institution), and that the majority of our students juggling the course with other commitments, we acknowledge that a vast proportion of our students may feel no physical connection with ANU. What we are, however, arguing, is that, as Bayne, Gallagher and Lamb found in their study of distance students at Edinburgh, it is not unusual for students to feel connected to the ANU community notwithstanding their lack of physical contact with the campus.

Another common criticism that ANU Legal Workshop faces about the PPC is its focus on group or teamwork. Holzweiss and ors (2014) quote Rovai (2004) in stating that "online courses should

²⁰ In Australia, due to mutual recognition laws, once a law graduate is admitted as a lawyer in one State or Territory, that admission will be recognised in all other States and Territories. Potential lawyers must be "moved" by an admitted solicitor who essentially vouches for the potential lawyer's credibility to be a fit and proper person to be admitted as a solicitor.

contain a blend of peer interactions and individual assignments to help balance the independent and collaborative creation of knowledge". As outlined above, the PPC course work is undertaken by students in firm teams or groups (of usually 4 but sometimes 3 or 5 students) who pool their experiences and knowledge and support for each other in order to complete the simulated transactions online. In doing so, they also are able to practise the skills that are often more difficult to simulate in a classroom/individualistic-only environment – i.e. time, file and risk management as well as project management of a legal team in a courteous and professional manner to meet the needs of a client. Yet, the balance between firm and individual is maintained, as the students still need to complete individual assessments that tie into their simulated transactions to ensure that they can be individually warranted for practice, and their individual contributions to the success of the team are recognised through an individual grade for their developed and demonstrated professionalism in practice.

It is arguable that the balance achieved between group and individual work and the PPC is effective. For example, in our previous referenced survey of our Winter 2013 cohort we asked the students both at the beginning and end of the PPC what their attitudes and expectations of group work were. From the beginning to the end of the PPC we found a statistically significant:

- increase in agreement with the statements that 'I'm looking forward to working in a team in the PPC/I enjoyed working in my team'; and
- decrease in agreement with the statements that "I'll encounter/I encountered problems when working with my team"

Bayne et al's argument that distance students align and focus themselves in the context of the 'course' and its community is demonstrated through the group learning in the PPC. The majority of the student firms are located in the same city and some choose to meet face-to-face on a regular basis. In this way, none of them may have any physical connection to ANU (and their teachers), but they find a physical connection to each other and despite challenges of working together over an 18-week period, they are supported and encouraged to adapt, be flexible, resilient and learn professional ways in which to collaborate and give and receive feedback from their peers. As Collins and Webbey stated, "[s]tudents of a 'perfectionist' disposition had to adapt and make the shift from 'being right' towards 'exercising judgment'" within the "constraints of time and resources". Collins and Webbey further argue that the PPC supports an "elevated dynamic of learning, with shifting expectations of students moving from dependence towards independence, and from simplicity toward complexity".

Another way in which we attempt to bridge the distance in the PPC is by use of reflective journals within the "Professionalism in Practice" (PiP) component of the course. Online reflections incorporate many different dimensions in the learning environment. The majority of our students are considered "Generation Y" (or younger) and social media and web preference is a natural part of their lives and accordingly:

"[o]nline reflective writing in education, whether publicly visible, limited to small groups of learners, or restricted to just a student and their teacher, is profoundly influenced by wider cultural understandings of blogging and personal disclosure and risk online" (Joss 2010).

In the simulated transactional platform of the VOS where students are "Junior Lawyers" who work to and with "Associates" and "Senior Partners", they take on that persona and act accordingly - i.e. in a professional and cordial manner. In the realm of the PiP course, they are themselves and they work with a dedicated Practice Mentor. There are no roles being adopted

and both the teacher (the Practice Mentor) and the student are vulnerable in that they are interacting as themselves, they are discussing and questioning issues of professionally (and perhaps personal) sensitivity but outside of the environment of social media, an environment which a lot of students may feel more comfortable.

Ross states:

“We can see in current blogging practices a convergence of the rise of the concept of personal branding (Peters 1997, Lair et al 2005), and what Scott describes as the “cultural tendency to seek out confessional narratives of self-disclosure” (2004, 92). This convergence exposes a number of tensions between moral panics around privacy and safety and a growing sense that online invisibility equates to personal and professional negligence, and that the more presence the better” (Ross 2010).”

When students are being asked to complete reflective journals which are, in essence, being graded, it is not surprising that there would be a tension between authenticity and an unnatural effort to come across like they are truly “reflecting” (i.e. demonstrating, through words, that they have “learnt” something), because “in contrast to the notion of authenticity and the associated riskiness of online disclosure, the web is a medium which facilitates deception” although the “*appearance* of authenticity remains extremely important” (emphasis added) (Ross 2010).

The differentiation in the teacher/student relationship and the Senior Partner/Junior Lawyer relationship is also evident. In an incident during one 2010 course, one firm member commented on Facebook that their opposing firm were “retards”, without realising that a member of the opposing firm was one of their “friends” on Facebook. Having seen the disparaging comment, the opposing firm retaliated by bringing it to the attention of their Practice Mentor. Whilst any attempts to address this issue with the firm member which posted the remark were met with resistance (to the effect that what happens on social media is outside of the relevance for the teacher/student relationship), when the comment was referred to in role by the “Senior Partner” for unprofessional conduct, the “Junior Lawyer’s response was much more apologetic and reflective. This incident was a stark reminder of the different persona that students take on in the simulated transactional learning environment, because whilst they may be more confident in challenging a teacher’s observations about the unprofessional nature of their conduct, the “Senior Partner’s negative observations about their conduct had much more impact. This willingness to engage with the simulation and to treat it as authentic, whilst not an attempt to be reality (Collins and Webbey 2014 and Maharg 2011), is further demonstrated when we receive requests to pass on messages to the fictional characters, “Senior Partner” or “Associate” because ‘we haven’t supplied telephone numbers for them.’

Unfortunately, whilst a majority of our students appear to be gaining benefits from this model of simulated legal practice for the development of professional skills in the “third space”, some of what we are able to achieve is still somewhat restricted by the regulatory environment.

THE CURRENT REGULATORY ENVIRONMENT AND THE NEW VIRTUAL SPACE

Despite the challenges faced by today’s law graduates in learning to navigate legal practice in the virtual era, the regulation of legal education is (still) governed by the requirement to master stand-alone skills and prescriptive areas of knowledge.

The result is a challenge faced by providers of professional legal education in attempting to balance competing pressures – on the one hand, teaching the required competencies using platforms that are accessible and competitive in a fierce marketplace, and on the other, a real necessity to equip today’s law graduates with the skills, knowledge and understanding of developing their professional identity - that is, to produce lawyers that are “ready to practice” (Westwood 2014) and committed to “lifelong learning” (Westwood 2014 and Schein 1972).

In Australia, there are admitting authorities in each State and Territory²¹.

AUSTRALIAN PLT COMPETENCY STANDARDS REVIEW

The PLT Competency Standards were reviewed between 2010 and 2013 as a result of jurisdictional differences across Australia in the way law graduates were able to get admitted²².

When we compare the Competency Standards before and after, it is difficult to see how much has been reformed:

- addition of a new elective area of knowledge, Banking and Finance;
- removal of the two columns of elective subjects²³;
- addition of ‘self management’ under the Work Management and Business Skills²⁴;
- minor changes to specific task-based requirements within the areas of knowledge (e.g. the need to learn double-entry bookkeeping has now been removed from the Trust and Office Accounting compulsory area of knowledge).

Prior to this review (and commencement of its changes in January 2015), these standards were basically unchanged since their introduction in 1999, arising out of Proposed Uniform Practical Legal Training Requirements which was published in 1993.

AUSTRALIAN ACADEMIC REQUIREMENTS “LIMITED REVIEW”

The Priestley 11 academic requirements are currently undergoing a (in its own description a “limited”) review. The Discussion Paper “reviewed...developments [in both theory and practice] in the USA, England and Scotland prior to February 2010” in the context of the LACC Competency Standards for Entry Level Lawyers and also as a result of the development of Threshold Learning Outcomes (TLOs) for the Bachelor of Laws²⁵ which aspire that a law student should:

“not only acquire a substantive body of knowledge during a law course (to which the Academic Requirements have so far been primarily directed) but should also acquire the

²¹ List of admitting authorities available here: <http://www1.lawcouncil.asn.au/LACC/index.php/ct-menu-item-1>

²² Law Admissions Consultative Committee Practical Legal Training Competency Standards for Entry Level Lawyers (1 January 2015) available at: <http://www1.lawcouncil.asn.au/LACC/images/pdfs/LACCCompetencyStandardsforEntryLevelLawyers-Jan2015.pdf>

²³ meaning that students can choose a minimum of two elective subjects across the entire selection. Prior to the review, electives fell into Group A and Group B and students were required to choose at least one elective from each Group

²⁴ “Demonstrated an ability to manage work and personal issues consistent with principles of resilience and well-being.” (LACC Competency Standards 1 January 2015)

²⁵ TLOs developed through the Learning and Teaching Academic Standards Project of the Australian Learning and Teaching Council

intellectual skills and personal attribute that are necessary to process and deploy that knowledge. For this reason, in addition to specifying particular expectations for Knowledge, the TLOs also set expectations relating to Ethics and Professional Responsibility, Thinking Skills, Research Skills, Communication and Collaboration, and Self-Management.”

LACC specifically notes that it considered the Legal Education and Training Review (LETR) Report and we will come to the recommendations arising out of the LETR Report later. The shift “from a focus on prescribed courses to the outcomes of educational and training” was not without criticism in England (which we will discuss later).

LACC does not seek any debate with respect to the following academic requirements of knowledge:

- Administrative Law
- Contract
- Criminal Law
- Equity
- Federal and State Constitutional Law
- Property
- Torts.

It does, however, seek consultations on whether or not the following academic requirements of knowledge should be compulsory:

- Civil Procedure
- Company Law
- Evidence
- Ethics and Professional Responsibility.

LACC again, specifically refers to the English model in support of why it is raising the question mark over the above four (currently compulsory) knowledge areas. The other question that it asks is whether statutory interpretation should be included as a prescribed academic requirement.

Submissions were sought (to be submitted by 31 March). As at the time of writing this paper, there were four submissions made to LACC:

- The Honourable Brian Sully QC who emphatically disagrees that the above four knowledge areas should be omitted from the compulsory academic requirements;
- Hwee Cheng Goh who submits that Ethics and Professional Responsibility (including basic trust accounting) should remain a compulsory academic requirement;
- The Honourable J C Campbell QC who submits that company law and statutory interpretation should be made compulsory but that certain aspects of civil procedure, evidence and ethics and professional responsibility should be made compulsory but as a whole subject does not need to be compulsory academic requirements; and

- The Council of Australian Law Deans (CALD), which does not support any aspects of the limited review.

What we see in both the discussion paper and the submissions made to LACC, to date, is an absence of competency standards outside of the silos of knowledge and skills to be mastered. The discussion paper's main issue is with respect to whether four of the current compulsory required knowledge areas should be removed as a compulsory requirement. The submissions (in a large part because they are in direct response to the discussion paper) also make judgment calls about whether the knowledge areas should stay or go.

If we look at how England and the US (given that LACC itself acknowledges it considered developments in these countries in its own review), do they tell us anything different? We explore these below.

LETR REPORT

A joint project of the Solicitors Regulation Authority (SRA), the Bar Standards Board (BSB) and ILEX Professional Standards (IPS), the Legal Education and Training Review (LETR) "constitutes a fundamental, evidence-based review of education and training requirements across regulated and non-regulated legal services in England and Wales" (LETR website).

As raised above, the shift "from a focus on prescribed courses to the outcomes of educational and training" in England was met with concerns of "loosening of the vocational stage requirements and the possible marginalisation of the year long Legal Practice Course...[which] threatened the professional standards of solicitors" (Boon, Flood and Webb 2005). Although we do not believe that some of the factors which drove the LETR in England exist in Australia²⁶, factors such as growing specialisation of legal practice, internationalisation, commodification of legal education (Boon, Flood and Webb 2005 and Thornton 2011) are very real and relevant to the Australian context.

Paragraph 3.59 of the LETR Report acknowledges that "activity-based" and "outcomes-focused" regulation will shake things up in the current regulatory environment and that regulators will need to ensure that consistent and necessary competency standards are met whilst maintaining the balance of the risks of allowing competition around those standards.

An interesting aspect of the LETR Report is the discussion around regulation by title, activity and entity.

In Australia, like in England, regulation by title is the most common (e.g. solicitors are regulated by the various State and Territory-based law societies, barristers are regulated by the various State and Territory-based bar associations, etc) and, as the LETR Report states, can be "double-edged" in that titles can "provide value by offering some assurance of quality" on the one hand, however, on the other hand, "by definition they restrict access to a field of work and thus potentially restrict competition". We see this in Australia in a variety of different ways, one of the most common being the limited access to work for barristers in the absence of an instructing solicitor.

²⁶ Boon, Flood and Webb refer to research indicating indirect discrimination by the large law firms against ethnic minority students by selecting students who graduate from higher level law schools (and thereby discriminating against students of a particular social background)

Whilst regulation by activity can provide potential benefits as outlined in paragraph 5.7 of the LETR Report²⁷, the key question will boil down to how the “nature and range of activities” are defined and that the proper way of looking at this type of regulation is to consider it in the context of a “field of competence”. The example of the activity of will writing²⁸ as outlined in paragraph 5.10 is illustrative of the potential risks of activity-based regulation.

Entity regulation is a relatively new dimension and whilst it “fits well in the current environment”, it is “relatively untested”. This kind of regulation seems to have come about in England as a result of the rise of lawyers practising in Alternative Business Structures (ABSs) and acknowledges that “organisational infrastructures, processes and cultures are significant in influencing the competent and ethical behaviour of employees or members”²⁹.

The shift of professional legal education in Australia to this virtual space is a result of a number of different factors:

- the physical distance and remoteness of Australia resulting in a demand for more access to professional legal education;
- the growing normality of communicating and undertaking regular business (including access to high-level education) online;
- the changing demographic of our students who are juggling full-time work, personal commitments and study demanding more flexible options for professional legal education;
- the globalisation of legal education and legal services requiring more technological savvy ways in which to conduct professional business (including providing professional legal education) online; and
- technological innovations resulting in more sophisticated ways to provide high quality education online.

With this change in the way we conduct ourselves in the professional legal market (from legal education to conducting legal transactions), and notwithstanding stating that it has reviewed the review undertaken by LETR in England and Wales, the review of the Entry Level Lawyers Competency Standards undertaken by LACC do not seem to have taken into consideration the three different types of regulation that LETR have discussed.

What we see in the LACC review, including its current review of the academic requirements, is an ongoing acceptance of the decontextualised silo method of requiring competence in specific

²⁷ Paragraph 5.7 of the LETR Report sets out the benefits of activity-based regulation including: “ensuring authorisation is linked more closely to demonstrable competence in a field of practice; aligning authorisation decisions more closely with an evidence-based analysis of risks to consumers, and with the regulatory objectives; aligning training more closely to the needs of employers and consumers; better ensuring that training or work supervision is conducted by a competent person (assuming the supervisor is also required to have a qualification or ‘endorsement’ in respect of the activity); providing practitioners with a demonstrable basis for claiming specialisation in an activity; and providing a way for regulators to group and target risks that require similar regulatory oversight or intervention.

²⁸ Paragraph 5.10 provides this useful example: “This is evident with will writing, for example. A simple will may require quite limited knowledge and skills, but for those with sophisticated financial arrangements, or complex family ties and responsibilities, competent will writing becomes a far more sophisticated task, requiring a good understanding of quite specialised elements of land law, trusts, tax and family law.”

²⁹ Paragraph 5.27 LETR Report

areas of knowledge and skills in a regulatory environment in the context of title. The current graduate job market for Australian law graduates³⁰ indicates that we will see law graduates pushing the boundaries of what their traditional career path will take. What we foreshadow is a push for employers seeking law graduates that stand out; that have something in addition to a qualification to be a solicitor; that extra something. A competency standard taking into consideration the three different types of regulation as discussed in the LETR Report is, we would argue, a good start. Being admitted as a solicitor (i.e. title regulation) is, in the current Australian law graduate job market, a given. Being competent in certain and specific areas of law (knowledge and skills) is essential and with the inclusion of the new requirement for “self-management” as per the January 2015 Entry Level Lawyer Competency Standards is an example of how the recent research in Australia on law student wellbeing and the need to ensure law graduates are equipped with skills to manage themselves to be professional, ethical professionals, is a good start to incorporating activity based competencies. We would also argue that entity regulation is one-way regulators can place some responsibility on employers for the professionalising of young lawyers.

The concept of flexibilisation as discussed by Boon, Flood and Webb is very relevant to the PPC and the MLP course in general. The move from “traditional ‘just-in-case’ general intellectual development to more flexible ‘just-in-time’ ...and ultimately ‘just-for-you’ learning” describes one of the fundamental factors of why the PPC was developed as a purely online course. In marketing the course, a big draw card for potential students is the flexible nature of the course which means that the course can be tailored “just-for-you” (i.e. students can work from anywhere in the world as long as they have a reliable internet connection; time is no barrier as teachers are available in the mornings, evenings and weekends, outside of the traditional work hours).

Boon, Flood and Webb argue that “moving to technical, flexible education would permit [the Law Society] control over the occupation’s members by virtue of the regulatory capture” (Boon, Flood and Webb, 2005). In a global market where traditional legal services are provided by more than lawyers, it raises the question as to the proper role of the regulators of lawyers.

THE REGULATORY APPROACH IN AMERICA

In the United States of America there is increasing pressure on the regulatory authorities – primarily the American Bar Association – and the Law Schools to address the inequities of legal education in American law schools, including the rapidly declining job prospects, the cost of access to the education, the lack of access to justice by the community, the lack of acknowledgement of impact of the changes in technology on legal services and the failure of the many aspects of legal education to produce practice ready and psychologically well professionals for practice (Stuckey, et al, 2007; Sullivan et al, 2007; Krieger, 2011; Sheldon and Krieger, 2007; Krieger and Sheldon, 2015; Henderson, 2013). Most profoundly this pressure is seen in the reductions of applications for law school positions and court cases relating to misrepresentation of law school graduate job prospects.

In response, the ABA’s Taskforce into the Future of Legal Education (January 2014) commented that the ‘system of legal education would be better with more room for different models. Variety and a culture of encouraging variety would facilitate innovation in programs and services;

³⁰ Namely the “over-supply” of law graduates for the lack of traditional private practice graduate lawyer jobs

increase educational choices for students; lessen status competition; and aid the adaptation of schools to changing market and other external conditions.' As part of the Taskforce recommendations there is an increasing emphasis on the need to provide the space for law schools to respond to the market needs creatively – for example:

- “There Should be Greater Heterogeneity in Programs that Deliver Legal Education;
- There Should be clear recognition that Law Schools Exist to Develop Competencies Relating to the Delivery of Legal and Related Services;
- There Should be Greater Innovation in Law Schools and in Programs that Deliver Legal Education;
- Specifically, the taskforce highlights a number of Standards and Interpretations set by the ABA as relating to distance education (i.e. Standard 306) and faculty requirements (i.e. Standard 403) and minuted attended requirements (i.e. Standard 304(b) and recommended that the ABA ‘Eliminate or Substantially Moderate the Restrictiveness of Standards, Interpretations and Rules that Directly or Indirectly [Raise the Cost or] Impede Law School Innovation in Delivering a J D Education without Commensurately Contributing to the Goal of Ensuring that Law Schools Deliver a Quality Education.”

One of the seemingly obvious ways in which the issues of access and creativity could be addressed would be to provide the environment for law schools to explore the “third space” to respond to the needs of the students for experiential, accessible and cheaper legal education models. Despite this, at present (as represented by the Taskforce’s recommendations) the ABA’s approach to the question of allowing Juris Doctor courses to enter the third space is to create a requirement of the limited numbers of hours that can be done online (at a distance) and to require Colleges to put in exemption requests in order to exceed these limited hours. The exemption process in these terms shifts the focus of an application from the learning outcomes and innovations that can be achieved in a particular learning space to simply whether the learning space will be allowed. Thus, this process has the potential of shifting the emphasis away from creatively meeting the learning needs of both the students and the profession to simply describing the inputs of the education model – i.e. like the old form of regulation according to the size of the lecture room and lecturer/student.

CONCLUSION

In this paper, we have discussed the shift in professional legal education from an on-the-job space (the first space) through Articles, to the tertiary education space of the classroom (the second space) to the virtual space (the third space). The regulators responded to the shift from the first space to the second space, by developing competency standards that require the teaching of knowledge and skills in decontextualised silos. Whilst the introduction of the second space may have found this type of top-down linear requirement of learning useful (and perhaps even required it given the space of the lecture theatre, tutorial rooms and the law library), the changes in the nature of our law student cohorts and the legal services industry require a more creative imagining of the possibilities of the virtual third space to achieve relevant legal education outcomes.

However, despite both the practical legal skills and academic competency requirements undergoing reviews relatively recently in Australia, England and Wales and the United States of America, the regulators do not seem to have responded by creating opportunities to creatively consider the teaching of professional legal skills in the third space. In examining the way in

which ANU Legal Workshop has innovated in order to provide an authentic, integrated and collaborative simulated legal practice environment online for the PPC in this paper, we table just one successful possibility for online simulated, transactional learning to meet the needs of the future legal profession should some of the recommended regulatory changes be made. Furthermore, we raise the possibility that a more complete move into the virtual space provides unique opportunities to teach our law graduates skills that go beyond the minimum competency standards as they currently stand.

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