

*Extended Reflection: Teaching and Learning in Clinic*

## **Clinic is the Basis for a Complete Legal Education: Quality Assurance, Learning Outcomes and the Clinical Method**

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### INTRODUCTION

Clinic is the basis for a complete legal education.<sup>2</sup> The time has come to stop treating clinic as a marginal, alternative approach to learning some but not all things requisite for a sound legal education aimed at producing capable practitioners. It is a powerfully effective, experiential and varied, comprehensive approach to the structure and contents of a legal education. I will argue that given a full interpretation of the term “Clinical Legal Education” (CLE), CLE in its many forms can serve as the model for a legal education. Also, in this paper I will examine the relationship between the learning outcomes we have for a legal education and the learning methods characteristic of a

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<sup>2</sup> There is a discussion of the meaning of the term Clinical Legal Education, as I use it, in Section 6. Some readers may wish to come back to the beginning after reading the section entitled “What is clinical legal education?”.

variety of forms of clinical legal education. At another time it will be useful to show how assessment of learning through clinic suits the full range of outcomes as well.

## 1. LEARNING OUTCOMES

In Australia, Canada, Europe, New Zealand, UK, and in many regions of the USA, outcomes oriented programme planning, delivering, assessing and evaluating govern tertiary<sup>3</sup> education quality assurance. While no two jurisdictions are the same, those conforming to recognized quality assurance models require institutions to demonstrate that graduates have achieved, or are likely to have achieved, a specified range of learning outcomes organized within an acceptable taxonomy or classification system.<sup>4</sup> Tertiary

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<sup>3</sup> In some places, “post-secondary” education.

<sup>4</sup> 1. Quality Assurance Authority for Higher Education, *UK Quality Code for Higher Education, Part A: Setting and maintaining threshold academic standards; Chapter A1: The national level*. (December 2011)(See p. 9 ff. for outcomes)

<http://www.qaa.ac.uk/Publications/InformationAndGuidance/Pages/quality-code-A1.aspx>

2. Australian Qualification Framework Council, *Australian Qualifications Framework*, First Edition. (July 2011) (See pp. 11-18 for learning outcomes)

[http://www.aqf.edu.au/Portals/0/Documents/Handbook/Greyscale%20-%20AQF\\_HndBkJul2011\\_LOCKED\\_PrintableVersion.pdf](http://www.aqf.edu.au/Portals/0/Documents/Handbook/Greyscale%20-%20AQF_HndBkJul2011_LOCKED_PrintableVersion.pdf)

3. Council of Ministers of Education, Canada, *Ministerial Statement on Quality Assurance of Degree Education in Canada*. (2007)

<http://www.cmec.ca/Publications/Lists/Publications/Attachments/95/QA-Statement-2007.en.pdf>

4. Campus Alberta Quality Council, *HANDBOOK: Quality Assessment and Quality Assurance*, First Edition. (February 2009, with revisions to December 2011)

(Council adopts Ministerial Statement on QA –above)

[http://www.caqc.gov.ab.ca/media/1102/handbook\\_december\\_2011\\_revised\\_2012\\_04.pdf](http://www.caqc.gov.ab.ca/media/1102/handbook_december_2011_revised_2012_04.pdf)

5. New Zealand Qualification Authority, *The New Zealand Register of Quality Assured Qualifications*. (October 2007) (See pp. 8/11 re need to establish outcomes for programs)

<http://www.nzqa.govt.nz/assets/Studying-in-NZ/New-Zealand-Qualification-Framework/theregister-booklet.pdf>

systems tend to apply the same schema to all baccalaureate programs, preferring professional programs to add anything that they believe the general set of expectations for university graduates may be lacking.

Many professions have long recognized outcomes orientations that aim for professional competence. Competencies and abilities, profession-agreed learning outcomes, are at the heart of accounting, business, nursing, social work, medical, engineering and many other professional education and accreditation models in numerous jurisdictions.<sup>5</sup> Outcomes, or competency-based approaches, to university legal education and the professional preparation of lawyers exist in some places but are less prevalent than in other professions. Discussion in much of the recent legal education literature moves or aims to

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6. Middle States Commission on Higher Education, *Characteristics of Excellence in Higher Education: Requirements of Affiliation and Standards for Accreditation*. 2006

(See pp. 40-44 - Standard 11: Educational Offerings re need to establish learning outcomes)

<http://www.msche.org/publications/CHX-2011-WEB.pdf>

7. WASC (Western Association of Schools and Colleges) Accrediting Commission for Senior Colleges and Universities, *Handbook of Accreditation* (2008 , with Revision to Commission's Decisions, 2012)

(See pp. 14-15 – Achieving Educational Objectives Through Core Functions: Teaching and Learning- discusses use of learning objectives)

[http://www.wascenior.org/findit/files/forms/Handbook\\_of\\_Accreditation.pdf](http://www.wascenior.org/findit/files/forms/Handbook_of_Accreditation.pdf)

8. Lumina Foundation, *The Degree Qualifications Profile* (2011)

(See pp. 11-20) [http://www.luminafoundation.org/wp-content/uploads/2011/02/The\\_Degree\\_Qualifications\\_Profile.pdf](http://www.luminafoundation.org/wp-content/uploads/2011/02/The_Degree_Qualifications_Profile.pdf)

<sup>5</sup> Stuckey, R. and others, *Best Practices for Legal Education*, CLEA (2007) (Stuckey) The full volume is available on line as a pdf at [http://law.sc.edu/faculty/stuckey/best\\_practices/best\\_practices-cover.pdf](http://law.sc.edu/faculty/stuckey/best_practices/best_practices-cover.pdf)

move legal education closer to the mainstream of professional, competency-based<sup>6</sup> education, generally.<sup>7</sup>

Applying a Canadian (Ontario) model of learning outcomes, as well as specific legal professional views of desired law learning outcomes, this paper will seek to demonstrate that clinical legal education's aspirations are traditional and mainstream: properly deployed conventional learning outcomes can be achieved through clinic<sup>8</sup>. As well, clinic learning outcomes are for the most part coterminous with current learning expectations of professional, legal and tertiary education.<sup>9</sup> Given its role in facilitating the achievement and assessment of key learning outcomes, clinic's methods and outcomes play a major role in aiding law schools to demonstrate academic quality to regulators, to establish

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<sup>6</sup> Distinctions are often made between "competency-based" and "outcomes-based" on the theory that a competency is a narrow ability that is a part of an outcome. By using the term "competency-based" I mean to focus on professional abilities, and of course these are outcomes.

<sup>7</sup> See Stuckey *op. cit.* There is an interesting discussion on competence-based approaches to professional preparation in the current Legal Education and Training Review in England and Wales <http://letr.org.uk/publications/briefing-and-discussion-papers/>

<sup>8</sup> There may be arguments about the feasibility of using clinic as a central, overarching, teaching approach or strategy. Some would doubt CLE's financial viability; others would question whether there are sufficient clinicians to carry the curriculum; still others would argue that for many subjects conventional teaching approaches work just fine; and others may claim in cannot meet the demand of learning outcomes and subject matter coverage. No doubt there will be other issues and answers. IF CLE is given the wide definition I suggest in this paper I believe all of the negative arguments can be met, except perhaps finances, depending on the model employed. Innovative approaches may overcome financial challenges: How might senior and post-graduate students contribute to the learning and teaching agenda? To what extent can able and interested practitioners be drawn into effective clinical teaching roles? Can online learning, as it has at the University of Windsor, supplement experiential learning? See for example the use of online learning to support CLE at the University of Windsor's city centre live-client clinic:

<http://www.uwindsor.ca/law/2014-08-24/online-learning-launched> and [www.clinicallaw.ca](http://www.clinicallaw.ca) Not every learning opportunity will be a live client instance, but it will meet the definition others and I offer for CLE at page 13 and elsewhere in this paper. As an example, England's University of York employs a mix of clinic methodologies. <http://www.york.ac.uk/law/current-students/learning-teaching/> January 15, 2015.

<sup>9</sup> The Council of Ministers of Education of Canada, *op. cit.* draws heavily on the Ontario scheme and has been formally adopted by Alberta, see *op. cit.*

graduate competence to professional bodies, and to assure graduates' readiness for multiple law and non-law career opportunities.

## 2. WHY LEARNING OUTCOMES?

The inevitable move towards outcomes oriented higher education in Canada has been in process for some time. In some jurisdictions it is still an idea worth considering. In at least two, Ontario and Alberta, it is the way ahead. It is astonishing, though explicable, that it has taken so long for this approach to win a place in tertiary Canadian education.<sup>10</sup>

Quality assurance systems and professional/vocational preparation models insist on an outcomes-based approach for several reasons.<sup>11</sup> They seek to accomplish a number of co-existing or sometimes overlapping ends.<sup>12</sup> This paper focuses on the contention that

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<sup>10</sup> The irony will not go unmissed. Most higher education leaders and instructors are not trained or educated as educators. Until relatively recently there was little interest in the work of post-secondary education researchers among university practitioners, such as presidents, provosts/deputy vice-chancellors, deans, etc. The accountability movement has thrust higher education in Canada into the midst of the research outputs of educationists, chiefly for the better. Quality assurance schemes are at various stages of development around the developed world, with Canada among the last to subscribe. American regional accreditation schemes were largely input oriented until recently; now outputs, particularly student learning outputs, both intended and realized, have come under scrutiny.

<sup>11</sup> The following list of purposes provides examples from both the literature and my own experience of the use of learning outcomes in higher education:

to provide students with clear statements of what is expected of them and therefore what they will be tested on. This enhances clarity for those who are uncertain about

1. their abilities and knowledge and provides a more comprehensible set of expectations from arrival at university to graduation;
2. to provide quality assessors with clear, coherent and complete statements of the capabilities of graduates, in terms of the minimum criteria and standards of knowledge, skills and attitudes required for the level of the award (degree, diploma or certificate) offered;

clinic, a methodology for the promotion of learning, can serve to support student achievement of all learning outcomes, though some more readily.

While there are many reasons for outcomes-oriented education (at least 13)<sup>13</sup>, our discussion is limited to the following:

1. to provide quality assessors with clear, coherent and complete statements of the capabilities of graduates, in terms of the minimum criteria and standards of knowledge, skills and attitudes required for the level of the award (degree, diploma or certificate) offered;
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3. to provide those evaluating and reviewing institutional performance with clear statements by which to assure institutional accountability for learning and teaching both internally and externally;
  4. to assure stakeholders that programs and institutions meet pertinent standards and that student performance according to the standards will be assessed by suitable means;
  5. to provide public information that demonstrates how credentials compare by level and standard to those in other jurisdictions;
  6. to support the continuous improvement of practices in higher education both intra- and inter-institutionally;
  7. to demonstrate the comparability of one jurisdiction's (and institution's) credentials to those of other jurisdictions (and institutions);
  8. to improve student access to further study (post-graduate and professional) by providing post-graduate and professional institutions with a transparent, discernible and comparable set of degree level outcomes;
  9. to clarify to post-graduate and professional education providers the entry-level expectations they may apply to graduates;
  10. to state for the benefit of professional regulators the capabilities of graduates in terms of the minimum standards of knowledge, skills and attitudes to assure them that the institution/jurisdiction has prescribed and graduates have achieved a clear, coherent and complete set of requirements for the level of the award (degree) and/or professional qualification offered;
  11. to provide a means for developing a program evaluation model based in part on student success in achieving specified outcomes;
  12. to identify the learning experiences that are most likely to assist in the achievement of the learning outcomes specified;
  13. to identify the means of assessment most likely to determine whether these outcomes have been achieved.

<sup>13</sup> *Ibid.*

2. to improve student access to further study (post-graduate and professional) by providing post-graduate and professional institutions with a transparent, discernible and comparable set of degree level outcomes;
3. to state for the benefit of professional regulators the capabilities of graduates in terms of the minimum standards of knowledge, skills and attitudes to assure them that the institution/jurisdiction has prescribed and graduates have achieved a clear, coherent and complete set of requirements for the level of the award (degree) and/or professional qualification offered;
4. to identify the learning experiences that are most likely to assist in the achievement of the learning outcomes specified;
5. to identify the means of assessment most likely to determine whether the outcomes have been achieved.

### 3. ONTARIO UNIVERSITIES' UNDERGRADUATE DEGREE LEVEL EXPECTATIONS

Ontario and some other provinces of Canada offer both a three-year "general" baccalaureate degree and a four-year "honours" baccalaureate degree.<sup>14</sup> In Ontario, law is a second entry bachelor's degree, as are medicine, dentistry and pharmacy (despite the

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<sup>14</sup> Other designations are also possible including 'major' four year degrees and specializations within the honours four year framework

degree nomenclature, suggesting doctoral level studies). Normally, entrants to law study are expected to have an undergraduate degree, though students may occasionally be admitted after only two years of university. The law degree designation is now almost uniformly *Juris Doctor* (JD, just as in Canada medicine offers an MD, dentistry a DDS and Pharmacy often a DPharm). There are no honours-designated law degrees in Canada such as the LLB Hons in England.

The Ontario law schools are in the process of complying with the requirement that they describe the learning outcomes of their graduates in light of the University Undergraduate Degree Level Expectations (UUDLEs). For the sake of this discussion I will assume that the Ontario second-entry law degree is equivalent to an honours level degree (at least) for the purposes of compliance with the UUDLEs. After all, law school, unlike other Canadian undergraduate degree programs, offers a menu of virtually 100% law courses.

A committee of university academic vice-presidents (deputy vice-chancellors; provosts) developed the Ontario UUDLEs based on a model/schema that focuses on six levels of performance expectations.<sup>15</sup> The degree levels are:

1. Breadth and Depth of Knowledge
2. Knowledge of Methodologies

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<sup>15</sup> See Schedule 1. for the undergraduate honours degree UUDLEs in full. The complete set of the UUDLES for both undergraduate and post graduate programs can be found at: Ontario Universities Council on Quality Assurance <http://www.cou.on.ca/quality>

3. Application of Knowledge
4. Communication Skills
5. Awareness of Limits of Knowledge
6. Autonomy and Professional Capacity

On the one hand, this is not a taxonomy: there is neither a consistent set of element types nor a classification system among the general categories. These “levels” are really different aspects or elements of the kinds and nature of knowledge, skills and attitudes expected of university graduates. Except perhaps for UUDLE 1. to some degree, the levels are not internally ordered by complexity or some other rationale of a consistently applied, developmental or hierarchical kind. They tend to be compound-complex, made up of knowledge, skills and sometimes attitudes and values. On the other hand, each, or at least some levels, or parts of levels, might have their own taxonomic sub-classification. Level 1., Breadth and Depth of Knowledge, might in part be explicated by reference to Bloom’s Taxonomy in the Cognitive domain (revised).<sup>16</sup> Degree level 6., Autonomy and Professional Capacity, might be understandable by application or extension, at least in part, of Krathwohl’s Taxonomy in the Affective Domain.<sup>17</sup> Each of these taxonomies is

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<sup>16</sup> Bloom, B.S., Engelhart, M. D., Furst, E. J., Hill, W. H., & Krathwohl, D.R., *Taxonomy of educational objectives: the classification of educational goals; Handbook I: Cognitive Domain* New York, Longmans, Green, (1956) and revised and updated L. W. Anderson, D. R. Krathwohl, Peter W. Airasian, Kathleen A. Cruikshank, Richard E. Mayer, Paul R. Pintrich, James Rath, and Merlin C. Wittrock (eds) *A Taxonomy for Learning, Teaching, and Assessing: A Revision of Bloom’s Taxonomy of Educational Objectives* Allyn and Bacon (2000)

<sup>17</sup> Krathwohl, D. R., Bloom, B. S., & Masia, B. B. *Taxonomy of Educational Objectives; the Classification of Educational Goals. Handbook II: The Affective Domain*. New York: Longman, Green (1964).

organized by an internal system: either increasing complexity, in the case of Bloom's Taxonomy in the Cognitive Domain, with the lower level's mastery being a prerequisite to the mastery of the next higher level from level 1 to taxonomy level 6, or in the case of Krathwohl's Taxonomy in the Affective Domain, to taxonomy level 5, on a hierarchy of degrees of internalization.<sup>18</sup>

As noted above, there are counterpart schemes in many places that rely on outcomes for quality assurance. Some systems appear to require outcomes statements without prescribing a system of degree level expectations.<sup>19</sup> Others stipulate a set of outcomes, while leaving room for institution-aligned variations, usually additions. The Lumina Foundation in the USA has created a degree profile that is to be tailored to institutional mission, mandate and characteristics.<sup>20</sup>

University law schools in Canada, given the existence of apprenticeships or articles, frequently take the view that their primary, and sometimes only, responsibility is to prepare persons to meet the academic requirements for the conferral of a degree, but not necessarily to meet the legal profession or governing body's expectations for those intending to qualify for legal practice. Although that would be many Canadian law schools' preference, the reality is that they will all conform to the requirements of their

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<sup>18</sup> For an application of both Bloom and Krathwohl's taxonomies in the cognitive and affective domain respectively to legal education, see Petter, A. "A Closet Within the House: Learning Objectives and the Law School Curriculum" in Gold, N., ed., Ch. 5 *Essays on Legal Education*. Toronto: Butterworths (1981)

<sup>19</sup> See for example New Zealand *op. cit.*; Western [USA] Association of Schools and Colleges *op. cit.* where only general categories are provided.

<sup>20</sup> Lumina, *op. cit.*

local governing body, including the prescription of the Federation of Law Societies of Canada<sup>21</sup>. Given the scope of this paper I have decided not to address this debate in detail. However, nothing in this paper would require a law school or legal educators to diverge from a commitment to a strong, deep and wide academic preparation in the law; the education promoted in this paper not only serves as a firm basis for professional practice but also for post-graduate study, career scholarship, and a host of legal and non-legal careers.

#### 4. UUDLES AND LEGAL EDUCATION

How do these learning expectations mesh with our goals for legal education? In looking for a place that comprehensively describes what law schools should aim to produce, one is led initially to the various legal practice courses and legal professions mostly in Commonwealth countries that have sought to describe their goals. England and Wales has contributed to the discussion in identifying its intended outcomes.<sup>22</sup> Australia, urged along by its goal of a national profession and the presence of a highly competitive post-

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<sup>21</sup> <http://www.flsc.ca/en/national-requirement-for-approving-canadian-common-law-degree-programs/>

<sup>22</sup> Solicitors Regulation Authority, Legal Practice Course: Outcomes 2011, Version 2. (September, 2011) [www.sra.org.uk/documents/students/lpc/Outcomes-Sept2011.pdf](http://www.sra.org.uk/documents/students/lpc/Outcomes-Sept2011.pdf)

We can expect much more work on learning outcomes in England and Wales as a result of the LETR . Please see <http://letr.org.uk/>

graduate professional legal education sector, has played a part.<sup>23</sup> Canada has contributed in seeking to explicate what it means to be a lawyer.<sup>24</sup> New Zealand has produced work with statements of learning outcomes focused on the top up role of the professional legal education providers.<sup>25</sup> Then there is the ample American literature produced by clinicians who seek to demonstrate the role clinic has in legal education. Along the way the work of Roger Cramton<sup>26</sup> and Robert MacCrate<sup>27</sup> helps identify the needs and anticipated goals in American legal education. Finally, and most currently and comprehensively, we are benefited by the thoughtful and deep analyses provided by the *Carnegie Report* (Carnegie)<sup>28</sup> and the *Best Practices Report* by Roy Stuckey and others (Stuckey).<sup>29</sup>

The organizing principles, classifications or schemas used by authors and professions in describing professional capability or competence are often dissimilar to one another. The analytical framework employed or developed does not necessarily emerge from any conventional systematic analytical or synthetic approach. I am aware of one exception:

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<sup>23</sup> Legal Profession Admission Board – New South Wales, *Practical Legal Training, Statement of Reconciliation against Competency Standards for Entry-Level Lawyers*.

<sup>24</sup> Federation of Law Societies of Canada, *Task Force on the Canadian Common Law Degree, Final Report* (October, 2009) <http://www.flsc.ca/documents/Common-Law-Degree-Report-C.pdf> and <http://www.flsc.ca/en/national-admission-standards/>

<sup>25</sup> Institute of Professional Legal Studies, New Zealand, *Graduate Competencies*, <http://www.ipls.org.nz/for-employers>

<sup>26</sup> (American Bar Association, *Task Force on Lawyer Competency: The Role of the Law Schools*. (“Cramton Report”) Chicago: American Bar Association (1979) (The chair of the Task Force was Dean Roger Cramton).

<sup>27</sup> McCrate, Robert. *Report of the Task Force on Law Schools and the Professions: Narrowing the Gap* (“The McCrate Report”). Chicago: American Bar Association, Section of Legal Education and Admissions to the Bar (1992)

<sup>28</sup> Carnegie, *op. cit*

<sup>29</sup> Stuckey, *op. cit*.

in 1990 and 1991 in British Columbia (BC), Canada, a group of intrepid course planners carried out a systematic instructional design process for the postgraduate pre-admission mandatory program for intending BC lawyers that entailed job, task and skills analyses. That produced a highly specific “master skills hierarchy” with plentiful sub-skills, but no definition of the knowledge and a limited statement of values and attitudes required. This limits the value of the work for those designing the undergraduate law curriculum.<sup>30</sup> The most instructive and insightful work on what lawyers need to know and be able to do to be fully proficient practitioners is found in Stuckey and Carnegie. I have developed a rough concordance at “Schedule 1” that links the Ontario UUDLEs, employed formally for course and program preparation and evaluation, to both the Carnegie apprenticeships and tasks, and Stuckey’s principles<sup>31</sup> that are each aimed at the design of legal education programs intended to produce legal professionals. In so doing I will demonstrate that the UUDLEs, substantially, but incompletely in important ways, serve the interests of lawyer education and that through their explication one would see a range of outcomes for the ideal law school curriculum and as well as for the even less-than-ideal current commonplace curriculum. Then I will seek to show how clinical legal education as a methodology of teaching and learning serves to facilitate the accomplishment of the UUDLEs as extended and interpreted through the Carnegie and Stuckey lenses. If I am

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<sup>30</sup> Gold, N. “The British Columbia Professional Training Program: Towards Training for Competence”, 1 *Journal of Professional Legal Education* 1 (1983)

<sup>31</sup> Stuckey, *op. cit.*, chapter 2

successful, or at least to the extent to which the reader concludes that I am successful, I will have shown how clinical legal education serves the goals of all legal education, including a conventional legal education.

## 5. A CLOSER EXAMINATION OF THE UUDLES

First then let's take a closer look at some of the Ontario UUDLEs. Here then are the six levels of the UUDLE 1., "breadth and depth of knowledge": a developed knowledge and critical understanding of the key concepts, methodologies, current advances, theoretical approaches and assumptions in a discipline overall, as well as in a specialized area of a discipline

1. a developed understanding of many of the major fields in a discipline, including, where appropriate, from an interdisciplinary perspective, and how the fields may intersect with fields in related disciplines
2. a developed ability to:
  - i) gather, review, evaluate and interpret information; and
  - ii) compare the merits of alternate hypotheses or creative options, relevant to one or more of the major fields in a discipline
3. a developed, detailed knowledge of and experience in research in an area of the discipline

4. developed critical thinking and analytical skills inside and outside the discipline
5. the ability to apply learning from one or more areas outside the discipline

The first element, a), of UUDLE 1. is compound complex. It seeks “a developed knowledge and critical understanding” and thus aspires to the higher levels of Bloom’s Taxonomy in respect of “key concepts, methodologies, current advances, theoretical approaches...” “Remembering” is level 1. of Bloom’s Taxonomy. A reasonable surrogate descriptor of the lowest level of remembering information or facts would be represented by the ability of a person to recall (a sub-level) or restate verbatim (a higher sub-level) a piece of information, what might be called a “fact”. In law this level might be evidenced by the rote restatement of a rule. However, this degree level expectation 1. a) uses the words “developed knowledge” suggesting higher levels of the taxonomy such as at least Understanding (level 2. of Bloom) and perhaps Applying (level 3.). As a rule, legal education would want even early students to be at least analyzing, level 4. of Bloom. However, the degree level expectation goes on to use the words “critical understanding” suggesting the fifth level of Bloom, Evaluating. According to the schema it is necessary to be able to understand, apply and analyze before one can evaluate. And so legal education would pursue all these levels and take, or seek to take, students to the highest level, often but not always, to level (6.), Creating. Certain aspects of legal problem solving

no doubt take the student to Creating, depending on how fresh the problem is or how close it is to problems previously solved.<sup>32</sup>

No doubt we would expect law students to be able to achieve higher levels of the taxonomy in first year, though strategic teaching will take students through the levels of remembering, understanding, applying, analyzing, evaluating and creating, not merely to the higher levels without some practice in the middle levels. Not until third year will students be developing their own schemas for critical evaluation thus combining creating with evaluating. In addition students who provide novel, efficient and effective ways forward for clients, public policy development, legislative reform, risk management or project design will be operating at the highest levels of Bloom as well as doing what the UUDLEs, Stuckey and Carnegie would be aiming for.

Carrying on with the UUDLE, the item “key concepts” recalls the underlying bases and central ideas of and within the divisions of legal knowledge that are undertaken. “[M]ethodologies” suggest *not* the ability to do, *i.e.*, carry out a methodology, in this UUDLE, but rather an understanding of the steps in the operations, procedures, and sequences and perhaps even protocols. The UUDLE refers to “theoretical approaches” which might be coterminous with knowledge of theories, here legal theories, or describable ways of thinking about material presented. The UUDLE insightfully declares

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<sup>32</sup> See Petter, A. *op.cit.* Andrew Petter examined both the cognitive and affective domain taxonomies and wrote learning objectives for each level and sub-level of both taxonomies. Petter’s painstaking, careful and insightful work has to my knowledge never been advanced. Contrarily, this paper’s current review of these learning hierarchies is cursory and meant to be illustrative.

that disciplines are in effect sub-cultures with “assumptions” of various sorts that at least initially should be made explicit and learned, lest they be passed on as unexplained habits.

This examination of UUDLE 1. a) begins to demonstrate a reasonably sophisticated understanding of the cognitive skill learning requirements of university (law) graduates. The generic UUDLEs do not select content, rather leaving that to the disciplines. Also, the UUDLEs are not structured by level of study (year 1, 2 or 3); rather they are statements of the terminal capabilities of a university graduate. As we progress from level 1. a) to level 1. b) we move from a “developed knowledge” to a “developed understanding” of fields, interdisciplinarity, and field intersection. Perhaps in law this would include subjects and cognate subjects from other disciplines. At 1. c) i) the UUDLE calls for “a developed ability” to collect and assess information, to make sense of it and then in 1. c) ii) students are required to evaluate by comparing the qualities of alternate approaches or options in “one or more” or conceivably all fields or subjects in the discipline. Moving from c) to d) to e) and f) the student’s expected depth and breadth of knowledge increases along with her analytical and critical thinking leading ultimately to being able to apply learning from outside the discipline to the discipline or fields within it. This somewhat detailed review of UUDLE 1 illustrates some aspects of its relevance to law study and its relatively traditional cognitive skill and substantive knowledge elements.

As one progresses to level 2, Application of Knowledge, of the UUDLEs one moves through problem solving, argument as a means of problem solving, and the ability to deal with advanced scholarship and current knowledge development (research) in the field development.

In level 3, Knowledge of Methodologies, the UUDLE takes us to more sophisticated problem solving and the critical assessment of arguments. This is an area rich in aspects relevant to a legal education.

UUDLE 4 is a very brief statement about communications skills, both oral and written. Here the UUDLEs are clearly insufficient for the legal educator leaving practically barren the field of most operational lawyering skills<sup>33</sup> and related subject matters.<sup>34</sup>

UUDLE 5 is perhaps the most practically important outcome for professionals: “an understanding of the limits to their own knowledge and ability, and an appreciation of the uncertainty, ambiguity and limits to knowledge and how this might influence analyses and interpretations.” Clearly professionals who do not know their limits pose dangers to their clients. They must know how to deal with their limitations both in action and in preparation for their work. Sometimes circumstances leave no option and

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<sup>33</sup> E.g., interviewing, counseling, negotiation, mediation, writing, drafting, advocacy, and so on.

<sup>34</sup> There is an ample and deep literature on legal skills and lawyering generally. I have taken the core of this literature as read, or at least understood in outline, for the purposes of this paper. The richness of the literature was abetted by the seminal and signal work of Gary Bellow and Bea Moulton in *The Lawyering Process: Materials for Clinical Instruction in Advocacy*. Mineola, N.Y.: Foundation Press (1978). This is a book on the role of the lawyer in the context of advocating a client’s interests. It is not narrowly a book on “advocacy”, as courtroom representation.

professionals must work with what they know and can do; most times they are bound to obtain the knowledge required and to have or somehow acquire the know-how.

UUDLE 6. is Autonomy and Professional Capacity. This UUDLE is concerned with the ability to learn to learn. It is also the UUDLE occupied with integrity and social responsibility. Here again the UUDLEs sorely but explicably understate the requirement for professional learning and practice. There is nothing to stop legal education from expanding the contents of this UUDLE in order to meet the requirements of a (professional) legal education.

Clearly, the UUDLEs do not prescribe the fullest desirable statement for learning outcomes for law students. They miss at least four critical components for legal education. First, professional skills such as interviewing, negotiation, advocacy *etc.* are not treated at all, though oral and written communication could be expanded to fill this need. These operational capabilities are at the heart of carrying out legal work. Secondly, professionalism is only averted to and is really a different subject from UUDLE 6.'s reference to "academic integrity and social responsibility", though professionalism partakes of these two elements. Thirdly, the UUDLEs do not seek to integrate the professional profile elements that, when combined, make up the discipline of lawyering that both Carnegie and Stuckey illuminate. Professional legal practice is complex and artfully coordinates, orchestrates and integrates the full range of learnings from the variety of outcomes described. Fourthly, the understanding of the role that context and

circumstances play in finding approaches to meeting clients' needs is not treated at all in the UUDLEs: the UUDLEs are not organized so as to nuance and texture learning according to context (personal, social, economic, political *etc.*), a major contributor to the implicit perplexity and indeterminacy of legal problem solving on behalf of clients. The Ontario Universities Council on Quality Assurance that oversees the UUDLEs scheme would expect a law school to supplement the UUDLEs with degree level expectations for law graduates of this kind.

I have developed a concordance of the outcomes statements contained in the UUDLEs, Carnegie and Stuckey at "Schedule 1" that shows the equivalence or comparison of the components of one system to the components of another. Given the gaps in the UUDLEs relating to the aims of a legal education, the components of both Carnegie and Stuckey do not line up perfectly with the UUDLEs' levels. However their placement suggests where the UUDLEs might be supplemented for law study, were a law school seeking to comply with the Ontario degree level expectations.

One of the reasons we specify learning outcomes is so we can devise learning activities and assessment techniques that will help us support the achievement of the outcomes on the one hand and tell us to what extent they have been achieved on the other. Can clinical legal education support the achievement of the UUDLEs and of the Carnegie and Stuckey outcomes?

## 6. WHAT IS CLINICAL LEGAL EDUCATION?

Clinical legal education is frequently described as a methodology for learning and teaching. It is usually defined as a method<sup>35</sup> that entails a student undertaking a recognizable and active role within the legal system, under supervision, usually as a lawyer, though other roles such as decider or investigator or law reformer would also be appropriate.

Classically, and some might say necessarily, this involves live client representation or its equivalent in other legal roles.<sup>36</sup> The supervisor, as guide and role model, should seek to be: thoughtful; insightful; measured-to-person, need and context; learned; holistic; and above all, constructively helpful. The importance of the role of the clinic supervisor in explicating and supporting student learning cannot be understated.<sup>37</sup> This interpretive and reflective modeling and methodology can contribute to students' lifelong habits of learning and problem solving. In engaging the whole student, her thoughts, feelings,

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<sup>35</sup> Bellow, G. "On Teaching the Teachers: Some Preliminary Reflections on Clinical Legal Education as Methodology, in *Clinical Legal Education for the Law Student*, working papers prepared for CLEPR National Conference, June 6-9, 1973, New York: Meilen Press Inc. (1973)

<sup>36</sup> "For the purposes of this Article, the term clinical legal education-including variations such as "clinical programs" and "the clinical method" refers to any law school course or program in which law students participate in the representation of actual clients under the supervision of a lawyer-teacher. Courses limited to simulation and unsupervised placements, therefore, are not included in the definition." Frank S. Bloch, "The Andragogical Basis of Clinical Legal Education", 35 *Vand. L. Rev.* 321 at p. 326. (1982)

<sup>37</sup> For an extensive treatment of student supervision in externships (a clinical model employing a placement into a setting not directly controlled by the law school, though the supervisor and student have agreed learning related responsibilities) Ogilvy, Wortham and Lerman, *Learning From Practice: A Professional Development Text for Legal Interns*. 2nd. edition. West Law School, 2007

hopes and fears, the supervisor simultaneously engages the already stimulated affect and intellect of the student in her quest to deliver signal service. In this model, the student's experiences as primary actor and her thinking and feeling about them before action, in action and upon reflection<sup>38</sup> are the focal point for guided debriefings and interpretations by the supervisor and often by the student herself once she has been trained to reflect in and on action.

The teacher's role will require her to intervene at strategic moments where learning may be maximized. The special relationship of student and teacher will differ markedly from the traditional one. ... The teacher should be a sensitive and caring individual who is able to empathize with the students' feelings... Also I think it should be noted that clinical work is not *ad hoc*. It depends upon a structured program of seminars and workshops, as well as upon didactic sessions. The clinic class must be given opportunity to organize and structure their experiences and to discuss them in a meaningful way.<sup>39</sup>

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<sup>38</sup> The work of Donald Schon is best known for its contribution to learning about the process of reflection with and without supervision and before, after and during the provision of professional service. See Schon, Donald A., *The Reflective Practitioner: How Professionals Think in Action*. London: Temple Smith (1983) and Schon, Donald A., *Educating the Reflective Practitioner*. San Francisco: Jossey-Bass (1987). More recently see Leering, Michele. *Conceptualizing Reflective Practice for Legal Professionals*, 23 J. Law and Social Policy 83 (2014) and Casey, Timothy. *Reflective Practice in Legal Education: The Stages of Reflection*, 20 (2) Clinical Law Rev. 317 (2014).

<sup>39</sup> Gold, N. "Legal Education, Law and Justice, the Clinical Experience", 44 *Sask. Law Review* (1978-1979), 98 at p. 99

Richard Grimes takes the following view of what clinic means as methodology: “a learning environment where students identify, research and apply knowledge in a setting which replicates, at least in part, the world where it is practised. ... It almost inevitably means that the student takes on some aspect of a case and conducts this as it would ... be conducted in the real world.”<sup>40</sup> This would seem to allow for simulation and other methodologies to be included within the working definition of clinic as a methodology of learning and teaching.

Frank Bloch adopted “live client under supervision” as his definition for the purposes of his article on andragogy and clinical legal education.<sup>41</sup> However, on a careful reading of the footnote supporting his adoption of the definition he notes the preference and desirability among some experienced clinicians for the live client under supervision approach: Meltsner and Schrag say that simulation **alone** is not satisfactory. However, even they might agree that a varied clinical model employing several clinical instructional strategies might be satisfactory. Also, Bloch rules out unsupervised

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<sup>40</sup> Grimes, R. “The Theory And Practice Of Clinical Legal Education” in J. Webb and C. Maugham (eds.) *Teaching Lawyers’ Skills* (London:1996) at p. 138

<sup>41</sup> Bloch *op. cit.* at p. 326 footnote 15 “Most clinicians use simulations to some extent as a part of their method of instruction. Indeed, clinical teachers who write on simulation as a teaching technique often include actual client representation as an element in their program. Thus, the authors of a widely circulated text on simulation concluded after experimentation that simulation alone was not a satisfactory clinical experience. See Meltsner, M and Schrag, P. *Toward Simulation In Legal Education: an experimental course in pretrial litigation* (2nd ed.). Foundation Press. (1979) In its recent report the Committee on Guidelines for Clinical Legal Education of the Association of American Law Schools and the American Bar Association concluded “the clinical legal studies curriculum should, if at all possible, include some experience working on live cases or problems.” *Id.* at 65. Cf. *id.* at 20 (The actual guideline for the use of clinical teaching methods states: “Where resources, cases, and law permit, law student work on live cases or problems is a valuable but not an exclusive [clinical] method. ...”)

experience. Clearly without supervision there is no instruction; and while there may be learning there is no “teaching”.

In the view I adopt the clinical method requires students to work **as if** representing a client or undertaking some other legal role very broadly defined, at minimum, and not necessarily, though whenever feasible, in conjunction with or in live-client work. I also accept Bloch’s statement, and Stuckey’s as well, that it is not only preferable but also ultimately necessary that students engage actively in live client under supervision activities. Therefore a phased and varied approach including observation, role-playing, problem-based learning, simulation, and practice in numerous contexts and roles is most useful. Simulation activities would be modeled along the lines of common medical, nursing and dental education that makes good use of simulated or standardized clients.<sup>42</sup>

In these professions students may: encounter problems, actors and others trained and prepared to be patients; be provided with opportunities for observation; engage in structured and less structured case discussion (various forms of “rounds”); and progress through a progression from simpler to more complex tasks and on to full-time, onsite service and learning under supervision known as clerking or simply placements in other cases. Later in the learning program graduates serve as paid and supervised residents.<sup>43</sup>

These progressive stages structure learning in a more systematic way. Also the model

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<sup>42</sup> See <http://paulmaharg.com>, an interesting blog by Paul Maharg covering a range of legal education topics. The following <http://paulmaharg.com/2011/09/16/standardized-clients-northumbria-university-law-school/> provides insight into his work with standardized patients. A book is expected in a year or two.

<sup>43</sup> In Great Britain and Australia the term or a version of the term “registrar” may be employed.

tends to protect clients from overly fresh novices and provides a baseline for supervisor's assessment of the qualities, characteristics and personalities of students for later, on-the-job supervisory interventions. Importantly, a phased approach builds knowledge, skills and confidence, as well as helping to develop the self-concept of the proficient practitioner. Conventionally "clinical" means the direct observation of patients and so a "clinician" is a provider of services to client or patient. In my usage as well as Grimes' it means approximating as closely as possible the clinical incident or problem.

Clinical legal education is learning-centred and sometimes student-centred, depending on the degree of freedom with which the student is provided in the construction of the learning program and its experiences.<sup>44</sup> It focuses on the learning interests and needs of the student and provides the student with significant control over the learning process. It depends on the student's input developed through investigation, research and problem analysis, among other skills and procedures. Learning centred approaches shift the focus from the teacher to the student and to her needs and interests. Learning centred

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<sup>44</sup> "First, it is important to draw a distinction between student/learner-centred and learning-centred education. (LCE) Unlike student/learner-centred education, a learning-centred approach does not necessarily imply individual learner control over issues such as content coverage, learning strategies and assessment methods. Rather, LCE requires a community of students/learners to make choices within a responsive, carefully structured, and guided learning environment. LCE does focus, however, on what students are expected to know and are able to do (*e.g.*, demonstrate critical thinking, apply ethical principles and problem-solving skills) in the context of a field of study. LCE includes both individual and collaborative learning experiences and places emphasis on the investigation and resolution of authentic problems through interactive and experiential engagement. Thus, by calling the programme "responsive," we mean that it responds to the diverse needs of the learners (in this case, the faculty cohort), critical teaching and learning issues in university settings, and available resources." Harry Hubball and Gary Poole, "Learning-centred Education to Meet the Diverse Needs and Circumstances of University Faculty Through an Eight-month Programme on Teaching and Learning in Higher Education", *International Journal for Academic Development*, Vol 8, No. 1-2, p. 12. (May/November 2003)

approaches tend to produce deeper and more meaningful learning.<sup>45</sup> By and large they are constructivist, building on previous learning and scaffolding it upon earlier understandings and capabilities, making new and personally unique understandings of the things they have experienced.<sup>46</sup>

This paper contends then that the clinical methodology can and should be both pervasive and the dominant methodology within legal education and that it can, with careful structuring and management, achieve the full range of desired outcomes for the law graduate. There is no room here to elaborate on the diverse clinical methodologies.

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<sup>45</sup> Biggs, J. "What do inventories of students' learning process really measure? A theoretical review and clarification" 83 *Brit. J. Ed. Psych.* pp 3-19 (1993) and Biggs J. and Tang C., *Teaching for Quality Learning at University* (3rd edn) Buckingham: SRHE and Open University Press (2007)

<sup>46</sup> "The theory of constructivism rests on the notion that there is an innate human drive to make sense of the world. Instead of absorbing or passively receiving objective knowledge that is "out there", learners actively construct knowledge by integrating new information and experiences into what they have previously come to understand, revising and reinterpreting old knowledge in order to reconcile it with the new (Billett 1996). The cognitive structures that learners build include "procedural" knowledge ("how"--techniques, skills, and abilities) and "propositional" knowledge ("that"--facts, concepts, propositions). Often neglected are dispositions--attitudes, values, and interests that help learners decide: Is it worth doing? Knowing "how" and "that" is not sufficient without the disposition to 'do'. ... Using a constructivist approach, teachers facilitate learning by encouraging active inquiry, guiding learners to question their tacit assumptions, and coaching them in the construction process. This contrasts with the behaviorist approach that has dominated education, in which the teacher disseminates selected knowledge, measures learners' passive reception of facts, and focuses on behavior control and task completion. A constructivist teacher is more interested in uncovering meanings than in covering prescribed material." Kerka, Sandra, *Constructivism, Workplace Learning, and Vocational Education*, ERIC Digest, No. 181, 1997 ERIC Identifier: ED407573; ERIC Clearinghouse on Adult Career and Vocational Education Columbus OH (footnotes omitted)

## 7. PROBLEM BASED LEARNING AND CLINICAL LEGAL EDUCATION

One vibrant and very successful methodology of professional education used extensively in medicine and now to some extent in law<sup>47</sup> and elsewhere is student-centred, problem-based learning (SPBL). In my view it meets the requirements for consideration as a clinical method. Following is a description of SPBL:<sup>48</sup>

As Barrows and others suggest, SPBL is the learning that results from working toward understanding or resolving a problem. The problem is encountered first in the learning process - before any reading in the area - and, in the purer applications of the method, before, or often instead of, lectures or other formal course work. The only "preparation" students need is their prior knowledge and experience.

The primary objective of SPBL is to accumulate the basic concepts of a discipline in

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<sup>47</sup> see Carrie Menkel-Meadow, Taking Law and \_\_\_\_\_ Really Seriously: Before, During and after "The Law" 60 *Vanderbilt Law Review* 555, (2007) section on CIDE and PBL pp. 591-595 where Menkel-Meadow discusses a Mexican revolution in the use of interdisciplinary PBL. This is for the most part an article about the merits of a truly interdisciplinary legal education in which traditional legal subjects keep company with sociology, anthropology, psychology, philosophy and so on.

<sup>48</sup> Suzanne Kurtz, Michael Wylie, Neil Gold, "Problem-Based Learning: An Alternative Approach to Legal Education" 13 *Dalhousie L.J.* 800 p. 800-801 (footnotes omitted). (1990)

Also see Jos C. Moust & Herman J. Nuy "Preparing Teachers For A Problem-Based, Student-Centered Law Course", 5 *J. Prof. Legal Educ.* 17, pp. 19-23" (1987) ...[S]tudents are given problems ... as the starting point for self-directed learning activities. The students' learning process is, as far as possible, initiated by these carefully described concrete practical or theoretical problems ... By learning this way students discover from the outset that working on problems requires an integration of different subject areas, and extensive co-operation with peers . ... While discussing a problem, students become aware of uncertainties, questions, and activate ideas they have about mechanisms, processes or procedures which could be responsible for the solution or explanation of this problem. Students are asked to formulate their own learning goals, based on the questions unresolved during their discussion..."

the context of problems or issues encountered by practising professionals. Instead of learning self-contained and quickly forgotten bodies of knowledge, such as information covered in lectures, information is gradually assembled in a more "helter-skelter" way as students reflect on issues or gaps in knowledge which they identify as they work through problems. An assumption of SPBL is that the way information is acquired assists the student in remembering and applying that information in practice.

SPBL offers other important benefits as well. It develops self-directed, life-long learners, better able to cope with changes in the law. It encourages student independence and responsibility in the learning process. Students are more motivated, since the learning seems more relevant. Problem-solving skills can be better examined and developed. Misconceptions and ineffective reasoning can be identified and confronted. Communications skills can be taught using the method. Skills useful in group practice can be developed. Prior knowledge and experience is reactivated and built upon."

In an excellent discussion of PBL in the context of clinical legal education three authors raise the question:<sup>49</sup>

There is clearly a debate that continues about the efficacy of using the PBL method exclusively to impart knowledge to students. The writers themselves have

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<sup>49</sup> Cath Sylvester, Jonny Hall, Elaine Hall, "Problem based learning and clinical legal education: What can clinical educators learn from PBL?", 6 *Int'l J. Clinical Legal Educ.* 38, p. 44. (2004)

concerns about whether the use of a PBL approach can adequately provide the students with the fundamental doctrinal knowledge necessary for the foundation subjects of an English Law degree. We wonder whether it is time effective to always require students to begin with the problem and learn the detail of the discipline by forming their own learning objectives and then meeting to synthesise findings. We have concerns that there can be full coverage of the discipline within the time frame available using this method. On the other hand, if some traditional methods of teaching are inserted at the start of the course will that not defeat the object of the students defining their own learning objectives and taking responsibility for their own learning?

The authors' challenges to the efficacy of PBL have nothing to do with its appropriateness to learning "the fundamental doctrinal knowledge necessary for the foundation subjects of an English Law degree". And the authors refer to using it "exclusively" to acquire knowledge. While PBL is useful for learning legal knowledge it does that -- and much more. They go on to raise doubts about it as an efficient method for acquiring foundational knowledge and question whether it can or should be supported by traditional, information delivery methods. The PBL approach has worked well in medicine where the amount of knowledge required to be learned is very likely well in excess of what legal education requires of its learners.

Most importantly, they question whether timely and sufficient coverage can be accomplished. I believe that legal educators will need to invest the time into learning how to make the method efficient and effective. When that occurs the learning will expand. In addition, PBL teaches students to know their limits and fill the gaps as needed.

The bugaboo of coverage has been used to criticize many a reform with reflective, learning and teaching intensive, components. In my experience the plaint of “coverage” is a form of fear mongering that focuses not on the students’ learning needs but on the teacher’s reluctance to change and acquire the way to manage learning efficiently and effectively employing different models of instruction. Those who have complained that not all time spent is valuable may not appreciate the need for students to learn, through experience and supervised discussion, to become clearer about the “issues” to pursue and the means to inquire, investigate and research in order to begin to posit ways forward. The bugaboos of time, coverage and efficiency<sup>50</sup> are, I suspect, consequences of our failure to deploy resources adequately, innovatively and efficiently; I fear that the real barrier to the success of PBL and indeed of clinical legal education generally is not the failing of the methodology but the systemic discrimination by university legal education against putting students and their learning first.<sup>51</sup> To repeat, as educators

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<sup>50</sup> see Hall, J and Kerrigan, K in “Clinic and the wider law curriculum”, 16 *Int’l J. Clinical Legal Education* 25 (2011)

<sup>51</sup> It is very difficult to make deep structural change to curriculum and its delivery. The delivery paradigm -- one course, one professor; all courses x hours per week, with no variation; sat written examinations etc. -- runs deep, with commensurate expectations of professional freedom to choose how time is spent.

become better at the deployment of a method they will become more efficient and effective.

The scope of this paper limits the extent to which this discussion ought to be pursued at present. I am convinced that trained preceptors (instructors) and experienced students can learn the method and make it more and more efficient and effective over time. This is part of the learning process and is one of its significant outcomes.

A further question arises on the issue of coverage. How much substantive and adjectival law must a student “know”? Each jurisdiction answers this question differently. In England and Wales some intending lawyers need only complete a one year Common Professional Examination.<sup>52</sup> Casual conversations I have had with English lawyers, especially barristers, have often reflected their great pride in never having “read” law at university. In most parts of the common law world only some subjects are required, though three years of subjects, without a prescription beyond the initial set of courses, are normally required. There are many lawyers who practise law in fields unknown to their law schools and some practically unknown to their professional colleagues. In the 1960s in Canada labour law was a new subject. More recently, computer gaming law has found its way into the curriculum. We have somewhat lazily not tried very hard to clarify and specify the minimum body of knowledge to make a graduate a law graduate, except for

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<sup>52</sup> In order to qualify for the CPE course of study, an applicant must either have “a suitable academic or vocational qualification or be a mature student.” See: <http://www.lawsociety.org.uk/careers/becoming-a-solicitor/routes-to-qualifying/>

the various prescriptions of minimum specified subjects students must take around the globe which have not been developed from any systematic process I have ever heard of and while maintaining a nearly common first year core, thereafter differ from place to place. Good clinical teaching and learning not only provides clear markers for students on the limitations of their knowledge but it also engenders the ability to learn to learn, the most important macro skill any professional should acquire.

I will now focus on whether clinic, beyond PBL, could meet the learning outcomes specified in the UUDLEs and in both Carnegie and Stuckey.

## 8. THE DESIRABLE STRUCTURAL COMPLEXITY OF CLINIC

However, PBL is not nearly enough. It is a useful methodology for the introduction of the variety of aspects of substantive and procedural law that we are interested in assuring students know and can work with usefully. It is an active and sure surrogate for didactic and case method/Socratic approaches that are so notoriously limited.<sup>53</sup> However, even in the early days of a student's law study PBL should be joined with live-client

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<sup>53</sup> I need not rehearse the classical challenge against C.C. Langdell's legacy: the heartless, dispassionate, objectifying, reifying lawyer. Were we to accept that the Langdellian library case titration model should be jettisoned in favour of active, experiential, clinical learning we would forever assure ourselves that students learn about clients' needs and wants, their struggles and mistakes, their pursuits of the unjustified and the merited, and their hopeless entanglement in the nasty realities of life and the wonders of hopefulness.

representation with “real consequences on the line.”<sup>54</sup> The benefits of live client representation are many and varied. First, truth is stranger than fiction and the real world is complex and unpredictable. It is unusual for clients to present problems that are resolved with reference to any single legal notion, field or representational approach. This context is rich and its stimuli are engaging and perplexing. It awakens an interest in managing the complex and tackling the ineffable. Second, student motivation to learn is enhanced through the desire to perform proficiently. Third, in poverty law clinics, a law reform office, *pro bono* projects and others where those without resources or resourcefulness are found, students are often motivated to do for clients what clients are unable to do for themselves.<sup>55</sup> Finally, the presence of peers and a supervisor provides a supportive environment in which to practise with a failsafe protective net -- most of the time. Besides students usually wish to provide the best possible service to their clients and welcome support in so doing.

First and foremost clinic, including PBL, is not a unitary method of learning and teaching. The central feature of clinic is that it demands that students undertake learning in the context of a lawyer’s (or other legal agent’s) role with oversight, supervision and feedback and that there is always a rich context of facts and factors to take into account in

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<sup>54</sup> Stuckey, R. “Teaching with Purpose: Defining and Achieving Desired Outcomes in Clinical Law Courses” 13 *Clinical Law Review* 807 (2006-2007) “Students need to observe and experience the demands, constraints, and methods of analyzing and dealing with unstructured situations in which the issues have not been identified in advance. Otherwise their problem-solving skills and judgment cannot mature.”

<sup>55</sup> Hall and Kerrigan *op. cit.* p.34

working through the problem towards its resolution. In the enriched and varied clinic model there will be a mixture of observation, PBL, simulation and live-client or equivalent models. In the “equivalent” models I am referring to legislative clinics, law reform, community development, community education and advocacy clinics. It has been feasible in some places to structure judicial internships. Though the student does not take on the role of judge, she does assume the role of judge’s clerk. Certain externships that are carefully supervised may also qualify if there is structured and reliable supervision and there are clear learning outcomes specified and achieved.<sup>56</sup>

Problem development for PBL and simulation is itself a complex process and requires instructors’ skill in developing and sequencing problems in increasing complexity both legally and in terms of the contextual and professionalism factors that are in play. Fortunately there is significant experience with this in medical education and from some law schools, many international, that have learned how to structure, sequence, manage and support problems.

Live client problems of course defy being ordered neatly. That is life – it is rarely neat. Life is always complex and presents many conundrums, so the sooner and more often one can engage with it the better. Sequencing of learning according to a prescribed

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<sup>56</sup> Blanco, Barbara A. and Buhai, Sande L. Externship Field Supervision: Effective Techniques For Training Supervisors and Students, *10 Clinical Law Review* 611. (2003-2004) See especially: B. Proposed Externship “Teaching Curriculum”: Developing the Skills of Communication, Reflection and Self Assessment, pp. 635 ff. The article features the models of Peter Hoffman, Liz Ryan Cole and Mary Jo Eyster. In this article Blanco and Buhai devise their own approach. See also footnote 31 above.

pattern may be marginally manageable with good intake management and case assignment techniques. That cases arrive randomly does not mean that the watchful instructor cannot manage them so as to maximize opportunities for learning.<sup>57</sup> Following is a suggestion of how that might be accomplished:

1. Provide statements of clear learning outcomes for the intended learning using the UUDLEs, Carnegie and Stuckey (or whatever schema is in place);
2. Create a matrix of the learning outcomes for each student (this might be done by the students);
3. Project from the case intake record the likely outcomes that will be achieved in the handling of the case at hand and note these outcomes in the student outcomes matrix for follow up;
4. Adjust the outcomes as the case progresses;
5. Recap the learning at a strategic point in the semester/term of study;
6. Look out for cases that will fill the gaps<sup>58</sup>

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<sup>57</sup> I recall a student who aimed to be a criminal defence lawyer. He came to clinic to learn how to handle such cases. He traded his civil cases with students who were less interested in criminal defence work. At that time I required students to have a mix of matter types including a variety of forms of representation and subject areas. My vigilance was no match for the student's resourcefulness and drive to take on criminal cases. However, I did insist and he succumbed. He is his city's preeminent criminal defence lawyer today.

<sup>58</sup> This may be somewhat challenging at first as one learns to identify and record outcomes. Students may be charged with responsibility to seek opportunities to meet the requirements of the course outcomes so as not to burden administration and more importantly to improve student focus on learning needs and requirements as well as their achievement. This will also enhance the student's personal catalogue of learnings and learning gaps.

There are many forms and formats that would support such student learning. Just as law firms or government departments or panels of judges/tribunal members might meet as a group to discuss cases in progress, so too may clinic students gather with their instructor(s), one-on-one or in small groups. These sessions may take many forms structured for example around formats for PBL learning. PBL may be supported by student requests for information or even brief discussions or lectures from experts arranged by the students where it is difficult to find the relevant material. The support to PBL may become less formal over time but at the same time more intensive in-group and with members. Or, there may be special skills development sessions focused on preparing for the upcoming activities (*e.g.*, a hearing, an interview, an advising session, a negotiation or mediation, *etc.*) in which the students take on the professional role. The session may take the form of “rounds” to provide the student in charge with insights from the class and instructors to aid in the management and progression of a specific case. There may be a group debriefing of a completed or partially completed case to track its progress and the work required to complete it successfully. Expert practitioners, judges, government lawyers and staff, in house counsel, social workers and other health care professionals, financial advisers, policy experts, professional regulators, applied ethicists and so on may join sessions at strategic moments or be trained to lead sessions. In my model I am assuming large numbers of clinical experiences in the context of live clients under supervision. I am also assuming a phased process leading to high

frequency live client work through other methods employed in medical education such as observation, simulation and PBL. In addition, I am also assuming that within live client work there will be seminars, workshops, case debriefs, rounds and one-on-one supervision or mentoring. The enriched clinical method will be supported by a range of learning and teaching interventions that are either whole group, subgroup or occasionally one-student focused. The interventions chosen will be a function of what outcomes they are capable of supporting. And each method is not itself monolithic nor will it be used completely or exclusively. In different hands with differing elements at different times in varying contexts it may be suited to accomplish different things. There are various models of supervision, of reflection and of debriefing. A lecture is not always purely a lecture and sometimes when a supervisor's comments on a student's performance go on for a few minutes she is really delivering a lecturette. PBL has a number of specified traditional or orthodox methods but no single instructor conducts it the same way as another, not only because of personal approach, personality or mode of reasoning *etc.*, style but because of choice related to context, situation or student needs, qualities, or characteristics.

Within PBL, simulation and live-client representation there will be myriad opportunities to focus on key elements of learning. The instructor may be called upon to search within her instructional repertoire to find the best opportunity and teaching tool to facilitate learning at that time. So for example, the clinic instructor may choose to generalize from

many similar student experiences to practice tendencies that are ineffective or inappropriate. To deal with this she may choose to debrief the cases and demonstrate the generalized case-handling problems. Perhaps the problem will be in students' weaknesses in their ability to carry out an effective interview and gather all the necessary facts. This might call for a simulation or demonstration, followed by either or both debrief and student practice. It may also call for a review of the pertinent interviewing literature. Perhaps the problems were procedural and related to poor question sequencing; perhaps students were unable to use skills well, through a failure of active listening. The teaching method selected to deal with the issues would be matched to the learning sought, all within the larger PBL or clinical method.

## 9. MATCHING TEACHING METHODS TO LEARNING OUTCOMES<sup>59</sup>

So, within the broad frameworks of live-client under supervision clinics, PBL, and full-blown simulation<sup>60</sup> (neither role play nor vignette exercises) the clinical instructor has a full range of teaching strategies at her disposal. Selections can be made from among them

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<sup>59</sup> See *e.g.*, Bok, Derek, C., *Our Underachieving Colleges: A Candid Look at How Much Students Learn and Why They Should Be Learning More: The Neglect of Pedagogy*. New Jersey: Princeton University Press p. 49. (2006)

<sup>60</sup> "A simulation is a form of experiential learning. Simulations are instructional scenarios where the learner is placed in a "world" defined by the teacher. They represent a reality within which students interact. The teacher controls the parameters of this "world" and uses it to achieve the desired instructional results. Simulations are in way, a lab experiment where the students themselves are the test subjects. They experience the reality of the scenario and gather meaning from it. It is a strategy that fits well with the principles of constructivism." <http://olc.spsd.sk.ca/de/pd/instr/strats/simul/index.html>

of the teaching tools most likely to help produce the learning sought or required.<sup>61</sup> However, as broad frameworks for teaching and learning each of these methodologies, used alone or in combination, whether phased or contemporaneously, have dominant characteristics and ways of being deployed. All three share the following common characteristics:

1. Students must devise their own learning plan within the method.
2. Instructors can facilitate the learning of prescribed outcomes by focusing student performance on them and by directing feedback upon them.
3. They are high engagement activities.
4. They develop the analytical and critical faculties of students.
5. They promote the use of research methods, investigative and planning skills.
6. They build teamwork skills.
7. They raise professional issues in context and pose dilemmas requiring students to act in concert with their values, beliefs and professional requirements or expectations.
8. They illustrate the complexity of real life and virtual problems.
9. They require students to use their full range of resources.
10. They are constructivist in orientation.

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<sup>61</sup> Nilson, Linda B., *Teaching at its Best: A Research Based Resource for College Instructors*. 3<sup>rd</sup> edition. San Francisco: John Wiley & Sons. (2010) See in particular: "Matching Teaching Methods with Learning Outcomes" at p. 103.

Earlier I responded to a critique that neither clinic nor PBL nor the two combined, could deal with the acquisition of whole bodies of relevant, foundational knowledge. There I said I thought that PBL could be a successful way forward and that it had succeeded elsewhere in medicine, and in law, albeit to a limited context. Given constraints of space and scope I cannot progress this argument further here; however, I recognize it warrants further attention. This is a work in progress: a review of the medical and wider PBL research literature is indicated to provide better answers.

If there is a systematic body of knowledge we believe all students must acquire we must describe and specify it. Once it is known and mapped into learning outcomes we can then select the likeliest approach to successfully acquire the knowledge.<sup>62</sup> The case/Socratic method that structures the learning of the body of knowledge around a series of reported cases, law review articles and other materials, and questions, is both limited and limiting educationally. However, if desirable because it promotes the achievement of specified outcomes, there might be Socratic moments or experiences within PBL or live client clinic to develop and test analytical skill development and the ability to synthesize knowledge for problem solving.

Within the broader framework of live-client under supervision clinics, PBL, and full-blown simulation a careful instructor proceeds more or less as follows. To begin with the instructor focuses on the achievement of clearly stated, pre-mapped learning outcomes

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<sup>62</sup> Biggs, J., "Aligning Teaching and Assessing to Course Objectives", Conference Paper, *Teaching and Learning in Higher Education: New Trends and Innovations*, University of Aveiro, 13-17 April, 2003

for the course. Next she identifies the learning components of each outcome to be learned as it may be a compound or complex learning outcome. Third, the instructor will reflect upon the learning preferences and learning styles of the learners.<sup>63</sup> Then she will select interventions, modes of supervision, individual and group activities including, methods, techniques, aids and devices suited to the achievement of the outcome(s). Fifth, the instructor will devise and carry out assessments of student performance for both formative (teaching and learning) and summative (certification; final examination) that are likely to promote the acquisition of the learning outcomes.

This approach will help instructors assure the achievement of the full range of law school learning outcomes through the development of teaching interventions either in advance of or as required in the context of live client, PBL and simulation clinics. Active learning with a focus on reality and live client experience in all phases will remain the watchword. However, to assure the learning of all requisite knowledge, skills and values some of the learning will need to be constructed through PBL, simulation or adjunct activities within live client clinics.

There are many reasons why we have developed a preference for active learning. To begin with, it tends to be engaging: the student is attentive and task focused (on task).

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<sup>63</sup> Kolb, D. A., *Experiential Learning*, Englewood Cliffs, NJ: Prentice Hall (1984) Kolb's "cycle of learning" focuses attention on learner's preferences for different kinds of learning experiences. He suggests that no matter the beginning point of a learner the learning cycle inevitably goes through the four quadrants of the cycle: active experimentations (doing); concrete experience (feeling); reflective observation, (watching); abstract conceptualization, (thinking).

Second, it centres students on activities that will help them do something they want or will need to be able to do in their practice. Then, it permits them to test their knowledge, skills and abilities and obtain constructive feedback. All of these opportunities are offered in a safe environment in which students venture their approach. This active process tends to promote deep, long lasting and aligned learning.<sup>64</sup> It also offers observing instructors an opportunity to check the progress of learning to enable them to make any adjustments they consider useful.

So, finally can clinic achieve the UUDLEs as supplemented by Carnegie and Stuckey? My answer is yes, provided that there is a mix of clinical approaches including, among others, both PBL and live-client under supervision models. PBL can meet all of the requirements of the UUDLEs 1. to 4. inclusive. These are “knowledge” and “communication”; each would be addressed both directly and indirectly through PBL’s rich variety of activities, readings, research, exercises, discussions, presentations, constructive feedback sessions and supplementary activities either programmed for or requested by students. As for UUDLEs 5. and 6.<sup>65</sup>, students should, as 5. requires, achieve “an understanding of the limits to their own knowledge and ability, and an appreciation of the uncertainty, ambiguity and limits to knowledge and how this might

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<sup>64</sup> Biggs, J. "What do inventories of students' learning process really measure? A theoretical review and clarification" 83 *Brit. J. Ed. Psych.* pp 3-19 (1993) and Biggs J. and Tang C., *Teaching for Quality Learning at University* (3rd ed.) Buckingham: SRHE and Open University Press (2007)

<sup>65</sup> See footnote 8. above. Readers particularly interested in a careful reading of the UUDLEs or who are keen to have them at hand while reading this text will be able to extract them from their source at footnote 8.

influence analyses and interpretations” having been through many problems and attempts at their “resolution”. UUDLE 6. is less clear. It is very likely that the variety of activities once again will achieve: “a) qualities and transferable skills necessary for further study, employment, community involvement and other activities requiring:

1. the exercise of initiative, personal responsibility and accountability in both personal and group contexts;
2. working effectively with others;
3. decision-making in complex contexts.”

However, “b) the ability to manage their own learning in changing circumstances, both within and outside the discipline and to select an appropriate program of further study” will likely require live client under supervision experience. Finally, “c) behaviour consistent with academic integrity and social responsibility”<sup>66</sup> should proceed from PBL.

However higher-level professionalism is not fully achievable without live client work.

Higher education generally has been loath to enter into values education fearing that it would be tantamount to indoctrination.<sup>67</sup> Just as we do not tell people what to think we may shy away from telling them what to believe.<sup>68</sup> We have no difficulty in suggesting rational arguments for doing good deeds. Yet we still often take the view that another is

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<sup>66</sup> *Ibid*

<sup>67</sup> See Petter *op. cit.*

<sup>68</sup> Carnegie *op. cit.* p. 132 ff. and see also Shepard, K. “Higher education for sustainability: seeking affective learning outcomes” 9 *International Journal of Sustainability in Higher Education* 87. (2008)

entitled to her own beliefs, values, attitudes and feelings.<sup>69</sup> We are willing to teach them how to think and maybe we can do the same for learning how to value, feel and believe. Similarly we are uneasy about trying to shape others' feelings. In many professions the concern for commitment to professional norms has resulted in attempts to "teach" in the affective domain. In many law schools we are told professional conduct is taught just like any other law subject that includes a body of rules and underlying principles and required behaviours. In the legal profession, but perhaps less so for law schools, there is little doubt that we require lawyers to abide by ethical prescriptions and rules of conduct.<sup>70</sup> However, do *we* want to inculcate the qualities of: caring for others; compassion, a commitment to justice, equity and fairness; civility and respectfulness of others and the justice system; honesty and integrity and so on?<sup>71</sup> The answer in Carnegie and Stuckey is yes. Clearly experiential learning models including role-plays, simulation, PBL, and live client under supervision clinic are among the methods to succeed in order of increasing likelihood.<sup>72</sup>

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<sup>69</sup> See Krathwohl, *Learning Objectives in the Affective Domain op. cit.*; also includes motivation, willingness to participate, openness to new ideas.

<sup>70</sup> See: *e.g.*, The Law Society of England and Wales' Legal Education and Training Review <http://letr.org.uk/> and the work of the Chief Justice of Ontario's Advisory Committee on Professionalism <http://www.lsuc.on.ca/with.aspx?id=610>; Carnegie and Stuckey *op.cit.*

<sup>71</sup> "The University of Sydney (2006), for example, suggests that: Graduates of the Faculty of Veterinary Science will hold personal values and beliefs consistent with their role as responsible members of local, national, international and professional communities. (E.g. protect the natural environment, maintain biodiversity and conserve endangered species)." *Shepard op. cit.* at p. 92

<sup>72</sup> The field of legal ethics is developing quickly and has evolved as a highly intellectual and demanding discipline. We do need to be able to think systematically and deeply about such matters. In the end, if we do not internalize the beliefs we are unlikely to commit to the behaviours with enthusiasm.

As noted earlier, learning outcomes relating to:

1. lawyering skills education,
2. professionalism learning,
3. the ability to integrate the multiple spheres of learning, and
4. appreciation of the centrality of the influence and indeterminacy of context on the provision of legal services

will only progress completely through the live client under supervision model. However, these goals can to some significant extent be achieved through the enhanced PBL model, especially if it is supplemented by simulation. I do not propose this for reasons expressed earlier.<sup>73</sup> Rather the live client model coupled with PBL, both supplemented by strategically chosen and aligned learning and teaching methods, has the greatest chance to achieve these outcomes.

The greatest challenge for live-client learning is organizing student learning so that it is sufficiently comprehensive when the time for programme completion has arrived. In the absence of supplementation by PBL, live client is very unlikely ever to cover the basic subject matter grounding even a minimalist is likely to describe as basic to a legal education.

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<sup>73</sup> see discussion *infra*

## CONCLUSION

A modern legal education seeks to be a very sophisticated multi-dimensional, interdisciplinary venture that prepares graduates for a wide variety of career opportunities. Curiously, many examples of it do not prepare graduates to be lawyers, just to be learner-lawyers.<sup>74</sup>

The ironies of the historical developments in clinical legal education ought not be allowed to slip by unmentioned.<sup>75</sup> The “clinical” method was of course the original method for legal education and training. Lawyers learned from seniors. In the United States apprenticeship was abandoned in favour of law school.<sup>76</sup> Apprenticeship of course had to go: it created barriers to equal access to the profession<sup>77</sup> and was vastly uneven in quality. It was also about to be supplanted by technology: the copyist work of articulated clerks would no longer be required.<sup>78</sup> Oddly, there was little effort to save apprenticeship by improving it.<sup>79</sup> Langdell had already kindled the academic revolution and the access

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<sup>74</sup> see Hall and Kerrigan, *op cit.* at p. 28 quoting Aaronson, M. “Teaching Problem Solving Lawyering: An Exchange of Ideas”, 11 *Clinical Law Review* (2004-2005) at p. 485

<sup>75</sup> See Gold N., and Plowden P., “Clinical Scholarship and the Development of the Global Clinical Movement”, in Bloch, F. S., *The Global Clinical Movement*, New York: Oxford University Press. (2011)

<sup>76</sup> Stevens R., *Law School: Legal Education in American from the 1850s to the 1980s*, Chapel Hill: University of North Carolina Press. (1983)

<sup>77</sup> Delos Rogest Davis, only the second black lawyer in Ontario, was unable to enter the profession for want of being able to find a principal to supervise his articles of clerkship. It took two acts of the legislature of the Province of Ontario to permit his entry to the profession, first as a solicitor in 1884 and later as a barrister in 1886. He was later appointed the British Empire’s first black QC in 1910.

<sup>78</sup> Rowe W. V., “Legal Clinics and Better Trained Lawyers – a Necessity”, 11 *Ill. L. Rev.* 515 (1917)

<sup>79</sup> In the early 1980s I served as Director of British Columbia’s Bar Admission Program. One of its components was articling, or apprenticeship. I was able to persuade the members of the Legal Education Committee to require the structured and detailed supervision of four skills activities followed by feedback. There was to be a written record of the student-lawyer interactions. I was summoned to visit one of the

seekers in the US founded evening and open entry law schools at egalitarian sites such as YMCAs and private law offices.<sup>80</sup> Apprenticeship has survived in Canada, some of Australia, in the United Kingdom, and in many Commonwealth countries. For all the reasons articles were originally abandoned, they remain under fire in Australia and Ontario has approved a pilot scheme that introduces an alternative to articles: a professional preparation programme of 16 weeks accompanied by a placement of equal duration.<sup>81</sup>

The rise of the clinical movement in the late 1960s and 1970s owed its momentum to many things including the famous clarion call of legal realist Jerome Frank, “Why Not a Clinical Lawyer School?” and all of the arguments about the failings of university legal education in developing professional capability.<sup>82</sup> More so, the movement owed its progress to the social movements in the United States as the struggles against racism and poverty took deep hold in the south and around the country in the form of the civil rights movement and President Johnson’s “War on Poverty”. Richard Nixon was indirectly to have his impact on the reform of legal education as the recognition that it was lawyers who facilitated the Watergate debacle sunk in. The Council on Legal Education for

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city’s largest law firms. The training partner and three others met me. I was seated at the doorway to the office with the lawyers arrayed in a semi-circle beside and in front of me. I was told that the firm was considering abandoning its training role if the governing body were to insist on structured practice activities with feedback. No doubt this was a blustery bluff; after all the articling students were the major source of new lawyer recruitment. The point of their disinterest in working to help students achieve specified learning goals did not escape the governing body’s leadership or me.

<sup>80</sup> See Stevens, *op. cit.*

<sup>81</sup> <http://www.lsuc.on.ca/Pathways/>, <http://www.ryerson.ca/lawcentre/lawpracticeprogram.html>

<sup>82</sup> Frank J., “Why Not a Clinical Lawyer School?”, 81 *U. Pa. L. Rev.* 385 (1933)

Professional Responsibility (CLEPR) funded legal clinics with human rights, civil liberties, poverty law and professionalism agendas. Law schools became part of the social action of the day and clinics were the way to engage actively in them. Over the ensuing fifty years we have seen a shift to a wide variety of clinics, concerns for corporate as well as governmental and citizen social responsibility. It was important to show that this public-spirited and important community activism had educational merits; and it had plenty!

The legacy of CLEPR is rich and varied and, beyond clinical legal education, likely includes the vast work in professionalism, the legal profession and legal ethics.<sup>83</sup>

Finally, somewhere along the way the work of clinics and clinicians became more theoretical and conceptual. Unsurprisingly clinicians were seeking a place of respect and importance within the academy and undertook to do important research in the wide range of realms that clinic touches. Legal practice became the subject of study and it too was academicized. Through this academicization scholars have emerged.<sup>84</sup> A part of that scholarship includes the educationists' contribution, with Carnegie and Stuckey serving as the primary synthesizers of clinical education.

That short tour complete, we can summarize as follows: legal education reform has begun to focus firmly on the centrality of lawyering education founded on both academic

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<sup>83</sup> see *e.g.*, *Legal Ethics*, Hart Publishing, Oxford; *The Journal of the Legal Profession*, University of Alabama School of Law, Tuscaloosa; *International Journal of the Legal Profession*, Routledge, Taylor and Francis Online, England and many books and scores of articles.

<sup>84</sup> see Gold and Plowden *op. cit.*

and professional, practical bedrock. In part because we know more clearly what the desirable outcomes of a legal education are, clinic's formerly marginal role in legal education is moving ineluctably to the central and guiding role. We are seeing a joining of the clinicalization and academicization of legal education! Our current analyses of desired university and professional preparation outcomes, our greater clarity of purpose, is founded on a determined commitment to producing desirable professional results with the wherewithal of conceptual, theoretical, professional and methodological learning becoming much more firmly within our grasp.

The discussion in this paper provides some insights into frameworks for understanding law school learning outcomes and devising ways towards their achievement. The academy, especially in the United States, but also elsewhere, has not been idle; indeed, there are signs that it is restive.<sup>85</sup> The work of the Global Alliance for Justice Education,

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<sup>85</sup> Following is a summary of recent developments in selected American JD programs. Interested readers are encouraged to get the full information at the URLs below:

**Case Western Reserve University School of Law,**

<http://law.case.edu/Academics/ExperientialLearning.aspx>

The CaseArc four-semester series of courses in Year 1 and 2 introduce students to lawyering skills – legal research and writing, client counseling, transactional drafting and negotiation, settlement negotiation, court presentations. In the 4<sup>th</sup> semester, simulated legal problem are used to approximate the lawyer's role and explore issues of professionalism and judgment. Clinics, externships and research labs (providing research for real clients) are also available but not required.

**CUNY Law School,** <http://www.law.cuny.edu/academics/curriculum.html>

The law school requires (each semester of Year 1 and in second semester of Year 2) experiential lawyering seminars, integrating areas of legal doctrine with lawyering skills through use of simulations, role-plays, mock jury trials, mediations, arbitrations, *etc.* Six competencies are assessed: professional responsibility, theoretic perspective, clinical judgment, communication (oral and written), legal reasoning, and management of effort. Year 3 includes a required one or two semester (12-16 credits) faculty supervised, live client lawyering course (at an in-house clinic or in a field placement).

the International Journal of Clinical Education, the Commonwealth Association for Legal Education, the European Network for Clinical Legal Education and many regional bodies<sup>86</sup> have spread the learning and influenced the movement. Recently there has been a flurry of curricular innovation that seeks to build on Carnegie and Stuckey. Innovations include phasing learning and practice opportunities into the law student learning experience and include the use of multiple experiential (and other) methods.<sup>87</sup>

Higher education accountability and quality assurance (QA) schemes such as Ontario's UUDLEs, when mated with the results of studies such as Carnegie and Stuckey, among many other valuable sources, provide a series of learning targets that can be aimed at.

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**New York University Law School,**

<http://www.law.nyu.edu/academics/lawyringprogram/curriculum/index.htm>

Year 1 includes a two-semester lawyering program that uses "a series of increasingly complex simulated exercises" aimed at developing lawyering skills and professionalism. Students are introduced to legal interpretation, written advocacy and analysis, fact development, client counseling, a transactional negotiation for a client, an oral argument of a motion before a "judge".

**Northeastern University School of Law,**

<http://www.northeastern.edu/law/academics/curriculum/lssc/index.html>

The Year 1 program, Legal Skills in Social Context,, introduces students to "legal research, objective and persuasive legal writing, client representation, crucial analysis and oral skills." Course is organized around small "law offices" in which students work through simulated problems to acquire skills. The "law office" also plans and executes a legal research project for a real "community-based or public service organization." The law school also has a co-op JD program.

**Washington and Lee University School of Law,** <http://law.wlu.edu/admissions/page.asp?pageid=311>

Year 3 is "entirely based on learning through engagement – combining practicum courses, practice simulations, client interactions, the formation of professional identity and the cultivation of practical skills." It is designed to transition students to the practice of law and integrates "legal theory, legal doctrine, and the development of professional judgment ethical sensibilities..." It is based on the Carnegie apprenticeships.

<sup>86</sup> The United States based Clinical Legal Education Association, the Association for Canadian Clinical Legal Education, and the Irish Clinical Legal Education Association are three examples.

<sup>87</sup> PBL, for example is cited by the Legal Education and Training Review (LETR) in England Wales as having a potentially large role to play. For the LETR more generally and the array of very informative papers see <http://letr.org.uk/>

Similarly, both Carnegie and Stuckey, and other contributors that I have mentioned along the way, suggest some ways of accomplishing the desired results. The strategic selection of clinic as the overarching method is the likeliest choice to assure that the various rings of the target that encompass competent and professional practice as well as sound and sophisticated learning are all hit.

**Schedule 1: A concordance of the UUDLEs, Carnegie and Stuckey**

UUDLES	Carnegie Apprenticeships/Tasks	Stuckey Principles
<p><b>1. Depth and Breadth of Knowledge</b></p>	<p><b>1. Cognitive Apprenticeship</b></p>	<p><b>Adequate core knowledge/ understanding of the law.</b></p>
<p>a) a developed knowledge and critical understanding of the key concepts, methodologies, current advances, theoretical approaches and assumptions in a discipline overall, as well as in a specialized area of a discipline</p> <p>b) a developed understanding of many of the major fields in a discipline, including, where appropriate, from an interdisciplinary perspective, and how the fields may intersect with fields in related disciplines</p> <p>c) a developed ability to: 1) gather, review, evaluate and interpret information; and 2) compare the merits of alternate hypotheses or creative options, relevant to one or more of the major fields in a discipline</p> <p>d) a developed, detailed knowledge of and experience in research in an area of the discipline</p> <p>e) developed critical thinking and analytical skills inside and outside the discipline</p> <p>f) the ability to apply learning from one or more areas outside the discipline</p>	<p>a) learn the academic knowledge base</p> <p>b) habits of mind that are considered most important to the profession</p> <p>c) mastery of legal rules taught in Year 1</p> <p>d) research</p> <p>e) how to gather knowledge and bolster comprehension – skills – reading case like lawyer would – meta-lesson – peculiar nature of legal language at once ambiguous and precise (p. 64)</p> <p>f) moving back and forth between detached analysis and empathetic engagement</p>	<p>a) Jurisdiction, authority, procedures that initiate, develop, interpret, and apply the law, constitutional law and judicial review;</p> <p>b) Regulatory and fiscal framework for business transactions and financial services:</p> <p>c) Contract, tort, obligations, rights, and remedies,</p> <p>d) Criminal law;</p> <p>e) Legal concept of property; the protection, disposal, transmission of proprietary interests,</p> <p>f) Equitable rights, titles and interests</p>

<b>2. Knowledge of Methodologies</b>	<b>2. and 3. Cognitive/Practice Apprenticeships</b>	<b>The intellectual and analytical skills required to:</b>
<p>an understanding of methods of enquiry or creative activity, or both, in their primary area of study that enable students to:</p> <p><b>a)</b> Evaluate the appropriateness of different approaches to solving problems using well-established ideas and techniques;</p> <p><b>b)</b> Devise and sustain arguments or solve problems using these methods; and</p> <p><b>c)</b> Describe and comment upon particular aspects of current research or equivalent advanced scholarship.</p>	<p>a) Methodologies relate to the use of cognitive theory to develop theory of practice</p> <p>b) nature of expertise and how it is required</p> <p>c) able to articulate the conceptual models involved in important lawyering skills (interviewing, counseling, conducting research etc.) (p. 100/2, 116/18)</p>	<p>a) Apply methods and techniques to review, consolidate, extend and apply knowledge and understanding and to initiate and carry out projects; and</p> <p>b) Critically evaluate arguments, assumptions, abstract concepts and data to make judgments and to frame appropriate questions to achieve a solution or identify a range of solutions to a problem.</p>

<b>3. Application of Knowledge</b>	<b>3. Practice Apprenticeship</b>	<b>Practical judgment and adequate professional skills</b>
<p>a) the ability to review, present, and interpret quantitative and qualitative information to:</p> <ul style="list-style-type: none"> <li>i. Develop lines of argument;</li> <li>ii. Make sound judgments in accordance with major theories, concepts and methods of the subject(s) of study;</li> <li>iii. Apply underlying concepts, principles, and techniques of analysis, both within and outside the discipline;</li> <li>iv. Where appropriate use this knowledge in the creative process; and</li> </ul> <p>b) the ability to use a basic range of established techniques to:</p> <ul style="list-style-type: none"> <li>i. Initiate and undertake critical evaluation of arguments, assumptions, abstract concepts and information;</li> <li>ii. Propose solutions;</li> <li>iii. Frame appropriate questions for the purpose of solving a problem;</li> <li>iv. Solve a problem or create a new work;</li> </ul> <p>c) the ability to make critical use of scholarly reviews and primary sources</p>	<p>a) analyze cases in role by looking at cases from perspectives of their clients/lawyers (p.56/7)</p> <p>b) capacity to engage in complex practice.</p> <p>c) enabling students to learn to learn.</p> <p>d) learn from experience.</p> <p>e) integrate analytical knowledge within ongoing practical contexts which are organized by narrative modes of thinking and often convey meaning through exemplary acts and cases. (p. 96/7)</p> <p>f) iterative mode of improving skills can be applied to wide variety of capacities, blending intellectual and practical – making feature of expert performance explicit for learners ... (p. 99).</p>	<p>a) The ability to advocate a case on behalf of others, and to participate in trials to the extent allowed upon admission to practice,</p> <p>b) Effective use of current technologies and strategies to store, retrieve, and analyze information and to undertake factual and legal research,</p> <p>c) Effective skills for client relationship management and knowledge of how to act if a client is dissatisfied with the advice or service provided.</p>

<b>4. Communication Skills</b>	<b>3. Practice Apprenticeship</b>	<b>Adequate professional skills</b>
... the ability to communicate information, arguments, and analyses accurately and reliably, orally and in writing, to a range of audiences	<p>a) lawyering skills: legal research and writing, interviewing, counseling, and negotiation.</p> <p>b) expert performance</p>	<p>a) The application of techniques to communicate effectively with clients, colleagues, and members of other professions.</p> <p>b) The capacity to deal sensitively and effectively with clients, colleagues, and others from a range of social, economic, and ethnic backgrounds, identifying and responding positively and appropriately to issues of culture and disability that might affect communication techniques and influence a client's objectives.</p>
<b>5. Awareness of Limits of Knowledge</b>	<b>3. Practice Apprenticeship</b>	<b>Self-efficacy and adequate professional skills</b>
... an understanding of the limits to their own knowledge and ability and an appreciation of the uncertainty, ambiguity and limits to knowledge and how this might influence their analyses and interpretations.	<p>a) conceptual models involved in the important skills that define effective lawyering.</p>	<p>a) The ability to manage personal workload and to manage efficiently, effectively, and concurrently a number of client matters,</p> <p>b) The ability to work effectively as a member of a team.</p> <p>c) Capacity to recognize personal and professional strengths and weaknesses etc. (p. 77)</p>

6. Autonomy and Professional Capacity	3. Professional Identity/Purpose Apprenticeship and Ethical/social apprenticeship	Professionalism
<p>a) qualities and transferable skills necessary for further study, employment, community involvement and other activities requiring:</p> <p>i. The exercise of initiative, personal responsibility and accountability in both personal and group contexts;</p> <p>ii. Working effectively with others;</p> <p>iii. Decision-making in complex contexts;</p> <p>b) the ability to manage their own learning in changing circumstances, both within and outside the discipline and to select an appropriate program of further study; and</p> <p>c) behaviour consistent with academic integrity and social responsibility</p>	<p>a) purposes/attitudes guided by values for which the professional community is responsible</p> <p>b) public dimension professional life</p> <p>c) wide, ethically sensitive perspective on the technical knowledge and skill that law practice requires.</p> <p>d) skills, inclination, ethical standards, social roles, and responsibilities that mark the professional</p> <p>e) creating and participating in a responsible and effective professional community.</p> <p>f) able and willing to join an enterprise of public service.</p> <p>g) rules of conduct, “law of lawyering” and wider matters of morality and character</p> <p>h) individual and social justice</p> <p>i) integrity, consideration, civility and other aspects of professionalism.</p> <p>j)keep the analytical and the moral, the procedural and substantive in dialogue throughout learning process</p> <p>k) integrate not only knowledge and skill but the cognitive, practical and ethical-social facets of lawyering</p>	<p>Appropriate behaviors and integrity in a range of situations.</p> <p>a) The ability to recognize clients’ financial, professionals constraints and priorities</p> <p>b) An appreciations of the commercial environment of legal practice, including the market for legal service</p> <p>c) Employment of risk management skills</p> <p>The ability to work effectively as a member of a team.</p> <p><b>Graduates strive to seek justice.</b></p> <p><b>Graduates foster respect for the rule of law.</b></p> <p><b>Graduates embody honor, integrity, and fair play and are truthful and candid.</b></p> <p><b>Graduates deal sensitively and effectively with diverse clients and colleagues.</b></p> <p><b>Graduates nurture quality of life.</b></p> <p><b>Graduates demonstrate self-reflection and lifelong learning skills.</b></p> <p><b>Graduates demonstrate self-efficacy</b></p>

