

# International Journal of Clinical Legal Education

Editorial – James Marson

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# Editorial

Welcome to the first Special Edition of 2023 on entrepreneurial law clinics in clinical legal education.

This special edition of the International Journal of Clinical Legal Education allows for a focus on the current work that is taking place in entrepreneurial law clinics. Such clinics have taken various forms including those focusing on business and the impact of human rights protections; business advice for members of the refugee community; start-ups, business structures and incorporation; dispute resolution in commercial settings; the application and use of force majeure certificates and contracts; international collaborations on approaches to the development of business-focused law clinics; the development and operation of community led businesses and cooperatives; and a clinical setting as a forum to learn about the entrepreneurial mind-set. Students learn about business formation, development and growth, while assisting entrepreneurs with complex legal issues. The clinics allow students to gain hands-on experience in a range of legal areas, such as corporate law, intellectual property rights, contracts, and employment law.

Clinics of this type are essential. They allow universities and their students to provide affordable legal services to small and start-up businesses, ensure businesses have

access, often, to experts and information across 'just in time' and 'just in case' scenarios, and the commercial settings in particular lend themselves to mutual education exchange and for the legal and business communities to build strong relationships.

These clinics operate on real, live, and simulated client work to achieve the learning outcomes designed in the clinical programme. Each form an important element of higher education. In the case of live client work, the full range of problems, emotions, technical issues and regulatory and compliance concerns may be present. Clinics with simulated clients provide a different learning experience, facilitating structured learning where challenges and opportunities can be scaffolded to allow the students to develop key skills and gain confidence across a range of attributes which help them to be the graduate lawyers a modern legal sector demands.

As well as providing many practical benefits for students such as enhanced employability, networking opportunities, advancing their reputations and providing a competitive advantage in the employment market and workplace, entrepreneurial law clinics offer numerous pedagogic benefits to the students themselves. Students in entrepreneurial clinics often develop a deeper understanding of the law given the nature of the needs and issues faced by businesses and their personnel, they can apply their academic knowledge to real-world situations, enhancing their understanding of legal concepts and procedures. They also develop essential skills

such as problem-solving, critical thinking, and effective communication. Further, the business-related nature of these clinics necessitates interdisciplinary learning and a perspective shift away from seeing problems just in their legal context to a much more nuanced series of issues where traditional adversarial conflict resolution techniques are antithetic to maintaining business relationships. Whichever live-client or simulated-client model is used, the development of the students to become modern law graduates with the skills and techniques to thrive in an entrepreneurial setting is paramount. Through our clinical programmes we shape our students to become the next generation of lawyers.

Given this brief outline of some of the work taking place in university law clinics, and the educational narratives driving their direction, I am delighted to share with you the papers we have in this edition. Beginning on page 7, Elaine Gregersen, 'State of the Nation: 10 Years of Entrepreneurial Law Clinic Supervision in the United Kingdom' is the perfect start to this edition as Elaine speaks of her experience as an entrepreneurial law clinic supervisor for 11 years where, using a narrative approach, Elaine examines her journey to supervision. Elaine explores the extent of these clinics across the UK, whilst reflecting on the US and its clinical suite, considering their strategic plans and pedagogic research. A particularly interesting aspect of the article is in the transition of university law clinics, challenging the traditional conceptualisation of social justice in the context of clinical legal education. Students

are increasingly being provided with the opportunity to advise business clients and this can have positive impacts for their career prospects.

We continue with Jacqueline Weinberg and Ross Hyams' work on 'The Law Tech Clinic: Leading the Way in Entrepreneurial Law Clinics' where the authors, using the backdrop of the global, economic and technical advancements in the practise of law, discuss their pioneering clinical programme. In the article, Jacqueline and Ross outline the ways in which the clinic enables students to develop professional and practical legal skills that will help them become successful entrepreneurial lawyers. Specifically, is explored the development of the students' skills to integrate the use of technology with innovative legal services, working with live clients, and through end-to-end industry input to develop client-ready applications, equipping them with frameworks for the knowledge, skills and attributes to be technologically proficient future legal practitioners.

In our third article, 'Thinking like Entrepreneurs: Qlegal's Experience of Teaching an Entrepreneurial Mindset' the theme of developing the students' entrepreneurial outlook is presented by Eliza Platts-Mills and Emily Wapples. Eliza and Emily examine how qLegal, the pro bono commercial law clinic within the Centre for Commercial Law Studies at Queen Mary, University of London, teaches students to develop an entrepreneurial mindset. The mindset of an entrepreneur is distinguished from that typically needed in commercial awareness given the need for skills including the

ability to capitalize on opportunities, to be flexible and change course when needed, and view mistakes as an opportunity to learn. The authors continue by remarking how entrepreneurs are distinguished by their growth mindset, resilience, appetite for innovation, their comfort with taking risks and in doing things themselves. The conclusions drawn is for law schools to teach law students to think like their entrepreneur clients.

This theme is continued in a Practice Report by James Marson and Katy Ferris. In this piece, Katy and I explore the notion of the 'model' of the modern, entrepreneurial lawyer. This refers to the range of skills and attitudes necessary for the law graduate to possess to thrive in an increasingly interdisciplinary legal setting. We explain how, through the operation of two clinical modules and using a simulated corporate client model, the model of the T shaped lawyer can be achieved through a structured and scaffolded learning programme. Interestingly from our experience, the same skills-set can be developed in both law and non-law students studying these modules. The modules and the learning programme developed also facilitate the interdisciplinary approach, so valuable in the modern, entrepreneurial, T shaped lawyer.

The final contribution in this edition is made by Stephanie Jones who in 'Frustrating Times: Notes from the Field' offers a fascinating insight into a clinic coming to prominence in the aftermath of the Covid 19 pandemic. Stephanie examines the impact of the pandemic on the concept of force majeure and contractual remedies

for Small and Medium-sized Enterprises in the UK and the role of law clinics in advising the businesses on the use of terms and conditions in business-to-business contracts. Indeed, in introducing the first of our articles, Stephanie's commentary becomes even more apt. '... these tough times have brought the potential impact of entrepreneurial law clinics to the fore, cementing their significance for industry and commerce.'

Dr James Marson

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# State of the Nation: 10 Years of Entrepreneurial Law Clinic Supervision in the United Kingdom

Elaine Gregersen, Northumbria University, UK\*

## Abstract

In July 2012, I delivered my first conference paper at the International Journal of Clinical Legal Education Conference: '*Taking care of business: a new clinician's experience of supervising and developing commercial case work.*'<sup>1</sup> The audience was sparse. When the chair asked for questions, the room echoed in silence. A few years later, I was called a 'danger'<sup>2</sup> to clinical legal education because my students provided free advice to entrepreneurs. The service was criticised as being at odds with the social justice mission of clinical legal education. I remember it being a lonely time. Only a handful of UK entrepreneurial law clinics existed, and we received little attention in research literature.

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<sup>1</sup> Elaine Campbell, 'Taking Care of Business: a new clinician's experience of supervising and developing commercial case work' (International Journal of Clinical Legal Education, Durham, UK, 11 July 2012).

<sup>2</sup> Elaine Campbell, 'A dangerous method? Defending the rise of business law clinics in the UK' (2015) 49 The Law Teacher 165.



A decade on, I am still taking care of the Business and Commercial Law Clinic at Northumbria Law School. Much has changed. We have seen the rapid development of commercially focused law clinics across the UK, with a diverse range of approaches.

In this article I will make a major contribution to our understanding of the state of the nation for entrepreneurial law clinics in the United Kingdom today. Using elements of narrative inquiry and autobiographical writing, I will (a) reflect on my journey as one of the first UK entrepreneurial law clinic supervisors, (b) report on the increasing number and models of law clinics offering advice to businesses, and (c) argue for the further development of research in this distinctive and flourishing area of clinical practice.

## 1. Introduction

Joan Didion once wrote, 'we tell ourselves stories in order to live.'<sup>3</sup> Narratives can help us make sense of the world. They throw light on human experience and understanding. Unsurprisingly, storytelling has become a fundamental foundation of contemporary qualitative methodologies, such as (auto)ethnography, phenomenology, and narrative inquiry.<sup>4</sup>

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<sup>3</sup> Joan Didion, *The White Album* (Macmillan 1990).

<sup>4</sup> A detailed exploration of auto(ethnography), phenomenology, and narrative enquiry is beyond the scope of this paper. However, if you are interested in the use of storytelling in research, see, Arthur P. Bochner, 'It's About Time: Narrative and the Divided Self' (1997) 3 *Qualitative Inquiry* 418; Arthur W. Frank, *The Wounded Storyteller: Body, Illness, and Ethics* (The University of Chicago Press 1997); D.

I have been telling stories about entrepreneurial law clinic supervision for 11 years.<sup>5</sup>

These tales allow me to reflect on what has gone before and consider the changes to my personal practice as well as the wider cultural framework of clinical legal education. They have also afforded me the opportunity to see humour in situations that, in the moment, were stress-inducing and/or frustrating.

In this article, after more than a decade as a clinical supervisor, I weave narrative and literature review, story and research,<sup>6</sup> as I examine my journey to supervision, the

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Jean. Clandinin and F. Michael. Connelly, *Narrative Inquiry: Experience and Story in Qualitative Research* (Jossey-Bass, Inc 2000); Arthur W. Frank, 'Experiencing illness through storytelling', *Handbook of Phenomenology and Medicine* (Springer 2001); Carolyn Ellis, *The Ethnographic I: A Methodological Novel about Autoethnography* (AltaMira Press 2004); Susan H McFadden, Vanessa Frank and Alyssa Dysert, 'Creativity in the "now" of advanced dementia: Glimpses of the lifeworld through storytelling and painting' (2008) 2 *Journal of Aging, Humanities, and the Arts* 135; Arthur P. Bochner, 'On first-person narrative scholarship: Autoethnography as acts of meaning' (2012) 22 *Narrative inquiry* 155; Janelle F. Palacios and others, 'Storytelling: A Qualitative Tool to Promote Health Among Vulnerable Populations' (2015) 26 *Journal of Transcultural Nursing* 346; Arthur P. Bochner and Carolyn Ellis, *Evocative Autoethnography: Writing Lives and Telling Stories* (Routledge 2016); Stacy Holman Jones, Tony Adams and Carolyn Ellis, 'Introduction: Coming to know autoethnography as more than a method', *Handbook of autoethnography* (Routledge 2016); Kate P Nurser and others, 'Personal storytelling in mental health recovery' (2018) 23 *Mental Health Review Journal* 25; Joyce Chung and others, 'Storytelling in Female Veterans Survivors of Traumatic Brain Injury: A Phenomenological Analysis' (2021) 102 *Archives of Physical Medicine and Rehabilitation* e34.

<sup>5</sup> Campbell (n 2); Elaine Campbell, 'Taking Care of Business: Challenging the Traditional Conceptualisation of Social Justice in Clinical Legal Education' in Chris Ashford and Paul McKeown (eds), *Social Justice and Legal Education* (Cambridge Scholars Publishing 2016); Victoria Roper and others, 'Understanding the Scope of Business Law Clinics: Perspectives from the United Kingdom, Israel and the United States' (2018) 5 *Journal of International and Comparative Law* 217; Elaine Gregersen, 'The lived experience of a university law clinic supervisor: an autoethnographic inquiry', Northumbria 2019); Elaine Gregersen, 'Telling stories about the law school: autoethnography and legal education' (2022) 56 *The Law Teacher* 241.

<sup>6</sup> This paper utilises autoethnographic and autobiographic techniques, but it should not be labelled as an autoethnography. For more on autoethnography, see Elaine Gregersen, 'Telling stories about the law school: autoethnography and legal education' (2022) 56 *The Law Teacher* 241.

development of entrepreneurial law clinics in the UK during my time in the field, and the state of the nation today.

## 2. My Journey to Entrepreneurial Law Clinic<sup>7</sup> Supervision

My history with Northumbria University goes back to the late 1990s when, as a teenager, I worked evenings and weekends as a 'shelver' in the university library. My role, as the title might suggest, was to place recently returned books back on the library shelves. The Dewey Decimal System was my best friend as I wheeled my metal trolley purposefully through the dimly lit rows of knowledge, ensuring every book was in its rightful place. Even now, some 22 years on, when I spot a misplaced textbook I feel compelled to put it back where it belongs. In 1999, when I left to study law at another university in another city, the library staff presented me with a giant cardboard box generously filled with everything a young person might need in their first home away from home.

Three years later, on graduation day, I received a telephone call. My application to become a Graduate Tutor at Northumbria Law School had been successful. The role was fixed term for two years. I taught Company Law and Law of Business Associations - and I loved it. Towards the end of my second year in post, I wanted to

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<sup>7</sup> There are many ways of describing law clinics that provide advice to businesses. Some examples include: business law clinic, entrepreneurial law clinic, commercial law clinic, start-up clinics, legal advice for enterprise, business law café, commercial café, business and enterprise service. In this paper I use the phrase 'entrepreneurial law clinic' to complement the language used in the title of this special issue.

become a permanent member of the lecturing staff, but I had also been offered a training contract with national corporate law firm. I was torn. My colleagues gave me excellent guidance. 'Go out into the world,' they said. 'Learn about the legal profession. Get that experience. And then, when you're ready, you can come back to academia and tell your students all about it.'<sup>8</sup>

I followed the advice. In March 2011, after nine years of legal practice specialising in corporate, commercial and intellectual property law, I re-joined Northumbria Law School. This time I was employed as a Solicitor Tutor, teaching exclusively in the Law School's pro bono law clinic, the Student Law Office.

The Student Law Office was (and still is) one of the longest running clinical programmes in the UK.<sup>9</sup> In 1981, when Northumbria University was still known as Newcastle Polytechnic, a small number of students taking a Legal Methods and Institutions course were offered the opportunity to advise their fellow students.<sup>10</sup> At the time, due to professional practice rules and 'a general concern about a possible threat to local solicitors'<sup>11</sup> the clinic and its students could not act for members of the wider community, go on record at court, or apply for legal aid for eligible clients. By

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<sup>8</sup> Gregersen (n 5).

<sup>9</sup> Cath Sylvester, Jonny Hall and Elaine Hall, 'Problem-Based Learning and Clinical Legal Education: What can Clinical Educators Learn from PBL' (2004) 4 *International Journal of Clinical Legal Education* 39.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid* 40.

the 1990s, however, bolstered by the growing UK clinical movement and relaxation of practice rules,<sup>12</sup> the office was run for credit and offered legal advice to the general public.<sup>13</sup>

When I became part of the team, Northumbria Law School had just won the Attorney General's Award for the Pro Bono School of the Year 2010, and also the National Training Award 2010, where the judging panel called the programme 'outstanding, exemplary and truly inspirational.'<sup>14</sup> There were 165 students providing advice to real clients during that year, covering general civil litigation, crime and criminal appeals, employment law, housing law, welfare benefits, family law, and small business.<sup>15</sup> Students were divided into firms, typically comprising six students and a supervisor, with each firm dealing with a different area of law according to the supervisor's expertise.<sup>16</sup>

The small business part of the clinic had existed since 2007. My assignment was to develop that work. At the time, there were a small number of students undertaking

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<sup>12</sup> Ibid. Also see G. James and M. Woodley, 'The Relationship Between Academic Legal Education and the Legal Profession: The Review of Legal Education in England and Wales and the Teaching Hospital Model' (2005) *European Journal of Legal Education* 1.

<sup>13</sup> Sylvester (n 9); Jonny Hall, 'Professor Philip Kenny - A Leader in the UK and International Clinical Legal Education Movement - A Personal Tribute' (2016) *International Journal of Clinical Legal Education* 4.

<sup>14</sup> Northumbria University, 'Awards and Prizes' (Northumbria Law School, 2018) <<https://www.northumbria.ac.uk/about-us/academic-departments/northumbria-law-school/study/student-law-office/and-the-winner-is/>> accessed 1 October 2022.

<sup>15</sup> Northumbria University, 'Student Law Office Annual Report 2010-2011' (Northumbria Law School, 2011) (2011) (on file with author, copy available upon request).

<sup>16</sup> Ibid.

this work, which tended to focus on charities and low-income businesses. I changed the title to the Business and Commercial Law clinic because I wanted the name to reflect the fact that, moving forward, we would look to serve more than 'small' entities. Using social media and other marketing tools,<sup>17</sup> I encouraged businesses of all sizes and means to come to the clinic. I supervised three firms.

### **3. Research on Entrepreneurial Law Clinics in the Early 2010s**

When I came into post, I searched the literature for people like me. I wanted to understand what my fellow clinicians did in their entrepreneurial law clinics and learn about their strategic plans and pedagogic research.

I found a wealth of research in the US journals, especially *Clinical Law Review*, *Journal of Affordable Housing & Community Development Law*, and *Journal of Legal Education*. Entrepreneurial law clinics had existed in the United States since the 1970s. There were 'a handful'<sup>18</sup> of small business clinics in the United States in the late 1990s, but growth was still far greater than in the UK.<sup>19</sup> In 2016, there were at least 140 law clinics available across American Bar Association-approved law

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<sup>17</sup> Including our student-led blog <<https://www.wetakecareofbusiness.wordpress.com>>.

<sup>18</sup> Susan R. Jones and Jacqueline Lainez, 'Enriching the Law School Curriculum: The Rise of Transactional Legal Clinics in U.S. Law Schools' (2013) 43 *Washington University Journal of Law & Policy* 85, 92.

<sup>19</sup> This could be attributed to the fact that legal education in the United States is graduate education. Law in England and Wales is taught at undergraduate level.

schools.<sup>20</sup> The clinics covered vast array of legal issues, including intellectual property, economic development, bio-tech, and entertainment law.<sup>21</sup>

Clinical faculty contributed a significant number of publications on socio-economic justice,<sup>22</sup> cross-disciplinary opportunities<sup>23</sup> and cross-cultural issues<sup>24</sup> - in the context of entrepreneurial law clinics. I was particularly drawn to Professor Susan R. Jones' work. Her seminal article of 2013<sup>25</sup> (written with Jacqueline Lainez) discussed in detail the evolution of US entrepreneurial law clinics over the decades. The article also explored pedagogic training, ethical and practice issues, looked at developments in available legal structures, and covered curriculum design and assessment. This extensive piece acted as a follow up to another article written by Jones,<sup>26</sup> published 15 years earlier, calling for law school clinics to adapt to demands and opportunities, and expand entrepreneurial assistance.

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<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> Susan R. Jones, 'Promoting Social and Economic Justice Through Interdisciplinary Work in Transactional Law' (2004) 14 *Washington University Journal of Law & Policy* 249; Susan R. Jones, 'Transactional Law, Equitable Development, and Clinical Legal Education' (2005) 14 *Journal of Affordable Housing & Community Development Law* 213.

<sup>23</sup> S. R. Jones, 'Transactional Lawyers Supporting Economic Development in the Nation's Capitol' (1999) 9 *Journal of Affordable Housing & Community Development Law* 18; Dina Schlossberg, 'An Examination of Transactional Law Clinics and Interdisciplinary Education' (2003) 11 *Journal of Law and Policy* 195; Jones 2004 (n 22), Jones 2005 (n22); Susan R. Jones, 'Supporting Urban Entrepreneurs: Law, Policy, and the Role of Lawyers in Small Business Development' (2007) 30 *Western New England Law Review* 71.

<sup>24</sup> Paulette J. Williams, 'Cross-cultural Teaching in the Business Law Clinic' (2008) 76 *Tennessee Law Review* 437.

<sup>25</sup> Jones and Lainez (n 18).

<sup>26</sup> Susan R. Jones, 'Small business and community economic development: transactional lawyering for social change and economic justice' (1997) 4 *Clinical Law Review* 195.

Then, in 2014, Professor Jones published a companion article<sup>27</sup> designed to spark a robust conversation in the legal community about transactional clinic design trends and opportunities. The research was brimming with details of innovative clinics in the United States. This included the University of Michigan Zell Entrepreneurship and Law Program (ZEAL) which had launched in 2012 following a \$5 million donation from alumnus and entrepreneur Sam Zell and was dedicated solely to representing student entrepreneurs.<sup>28</sup> Another model, Colorado Law School's Entrepreneurship Legal Clinic, assisted in the commercialisation of university-developed technology.<sup>29</sup>

Jones' own clinic, the George Washington Law Small Business & Community Economic Development Clinic (GW Law SBCED), worked with Washington Area Lawyers for the Arts (WALA) in several ways. The clinic provided direct legal services in a lawyer/client relationship.<sup>30</sup> It also acted as a community partner and sought case referrals from WALA.<sup>31</sup> GW Law SBCED joined clinic students from American University Intellectual Property Clinic to partner with WALA's Live Clinic and held a 2-hour walk in legal clinic for registered participants.<sup>32</sup> In addition, GW Law SBCED engaged in action research projects including the production of a white paper on the creative economy for WALA.<sup>33</sup>

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<sup>27</sup> Susan R. Jones, Jacqueline Lainez and Debbie Lovinsky, 'Viewing value creation by business lawyers through the lens of transactional legal clinics' (2014) 15 UC Davis Business Law Journal 49.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid* 76.

<sup>33</sup> *Ibid* 73.



The article went on to identify and describe the clients and communities served by the law clinics: Arts and Entertainment, Sustainable Agriculture, Corporate Laboratory, International Clients Student Entrepreneurs, Microbusiness and Microfinance Organizations and Immigrant Entrepreneurs. I remember marvelling at the breadth and diversity of the models on offer, and the detail included. The article ran to 106 pages with 296 footnotes.

Elsewhere, other US researchers were re-framing the role of business lawyers as 'enterprise architects',<sup>34</sup> promoting the advantages of inter-disciplinary clinics,<sup>35</sup> and incorporating critical legal theory into entrepreneurial law clinic pedagogy.<sup>36</sup> There were articles on economic justice<sup>37</sup> and articles on complex projects.<sup>38</sup> Then there were articles on engaging outside counsel to work with students as supervisors<sup>39</sup> and articles on the construction of entrepreneurial law clinics as a response to the financial crisis.<sup>40</sup> As I write, I am reminded of the note Jones placed in her 2013 article. She said it could not possibly 'capture the richness and variation of all

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<sup>34</sup> George W Dent Jr, 'Business Lawyers as Enterprise Architects' (2009) 64 *The Business Lawyer* 279.

<sup>35</sup> Schlossberg (n 23); Eric J. Gouvin and others, 'Interdisciplinary Transactional Courses' (2010) 12 *Transactions: Tennessee Journal of Business Law* 101.

<sup>36</sup> Alina S. Ball, 'Disruptive pedagogy: Incorporating critical theory in business law clinics' (2015) 22 *Clinical Law Review* 1.

<sup>37</sup> Lynnise E. Phillips Pantin, 'The Economic Justice Imperative for Transactional Law Clinics' (2017) 62 *Villanova Law Review* 175.

<sup>38</sup> Laurie Hauber, 'Complex Projects in a Transactional Law Clinic' (2008) 18 *Journal of Affordable Housing & Community Development Law* 247.

<sup>39</sup> Alicia E. Plerhoples and Amanda M. Spratley, 'Engaging Outside Counsel In Transactional Law Clinics' (2014) 20 *Clinical Law Review* 379.

<sup>40</sup> Judith Fox, 'Consumer Law Clinics: Community-Based Lawyering - A Social Justice Response to the Financial Crisis' (2013) 10 *Georgetown Journal on Poverty Law & Policy* 517 .

transactional clinics.<sup>41</sup> I find myself feeling the same way in relation to the research I read back then. I cannot possibly capture the depth and variety of the research into entrepreneurial law clinics in the US at that time.

In sharp contrast, those of us involved in UK entrepreneurial law clinics were not regularly publishing research about our clinics. 10 years ago, the International Journal of Clinical Legal Education contained zero articles relating to entrepreneurial law clinics. Another leading journal, The Law Teacher, was well known for publishing work on experiential learning and clinical teaching but I failed to locate any research relating to business law advice. I knew there were people like me out there, but - aside from our US clinic colleagues - I was unable to find anyone who was writing about their work in the UK.

#### **4. The Development of UK Entrepreneurial Law Clinics in the Last 10 Years**

In July 2012, I delivered my first conference paper at the International Journal of Clinical Legal Education Conference: '*Taking care of business: a new clinician's experience of supervising and developing commercial case work.*'<sup>42</sup> In the paper I concentrated on the development of my entrepreneurial work and reviewed what did (and did not) work during my first academic year as a clinician. I structured my 20 minutes into what I termed the "three 'C's: Connectivism (designing experiences

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<sup>41</sup> Jones and Lainez (n 18).

<sup>42</sup> Campbell (n 1).

where students could engage in networking), Commercial Awareness (training students to think like a commercial lawyer) and Creating a Product (document drafting and presentation). The audience was sparse. When the chair asked for questions, the room echoed in silence. I recall my line manager, in attendance for moral support, filling the gap by asking an amiable and uncontroversial question. I did not meet any other UK entrepreneurial law clinicians that day.

Over the next few years, I delivered several papers arguing that business law clinics offered positive opportunities for students, clients, and institutions. I spoke at funded workshops,<sup>43</sup> internal research conferences,<sup>44</sup> and the Commonwealth Legal Education Conference.<sup>45</sup>

In 2013, I became aware of qLegal - a scheme where postgraduate law students at Queen Mary University of London were providing free support to start-ups and entrepreneurs with supervision from private practice lawyers and academic staff.<sup>46</sup> At the time, qLegal was under the direction of Patrick Cahill, a clinician buzzing with ideas, enthusiasm, and knowledge. We set up a referral scheme between our two programmes, and my clinic students assisted Patrick and his students in registering

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<sup>43</sup> Elaine Campbell, 'Business clinics: opportunity knocks?' (Running a legal clinic: facing the challenges and sharing good practice, Northumbria Law School, UK, 12 February 2014).

<sup>44</sup> Elaine Campbell and Siobhan McConnell, 'Commercial Awareness: what is it and can we teach it?' (Northumbria Research Conference, Northumbria University, UK, 21 May 2014).

<sup>45</sup> Elaine Campbell and Victoria Gleason, 'Creativity and Commerce: The rise of the experiential business law clinic in the UK' (Commonwealth Legal Education Conference, Glasgow, UK, 9 April 2015).

<sup>46</sup> Queen Mary University of London, 'qLegal' <<https://www.qmul.ac.uk/qlegal/>> accessed 1 October 2022.

their qLegal trade mark.<sup>47</sup> Patrick told me about other entrepreneurial law clinics he knew such as Own-It,<sup>48</sup> an intellectual property advice service for London-based creatives at University of the Arts London, and Start-Ed,<sup>49</sup> a free service staffed by City, University of London law school students with supervision from local professionals. In 2015, we gave a paper together at the GAJE/IJCLE Conference in Turkey: '*Seeing Both Sides: Reflections on a Transactional Clinic Collaboration.*'<sup>50</sup> This was the first time two UK-based entrepreneurial law clinicians had delivered a co-written paper at a major clinical conference.

Around the same time as Patrick and I were collaborating on projects and papers, I received an email from a student at another UK-based law school clinic requesting assistance with their new small business unit. The email was a surprise, because the law school in question was explicit in its focus on social justice (in its traditional sense), building on the vision of clinical legal education as a provider of alms to those who could not access legal help elsewhere. The clinic had clear restrictions on who could access assistance and people coming to the clinic for help might be asked

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<sup>47</sup> Elaine Campbell and Patrick Cahill, 'Seeing Both Sides: Reflections on a Transactional Clinic Collaboration' (GAJE/IJCLE Conference, Turkey, 22 July 2015).

<sup>48</sup> University of the Arts London (2004) <<http://www.own-it.org/aboutus/>> accessed 1 October 2022. I note the website has not been updated for some time, with broken links and some features not loading at all.

<sup>49</sup> City, University of London, 'Start-Ed Pro Bono Legal Clinic' <<https://experience.city.ac.uk/activity/start-ed-pro-bono-legal-clinic#:~:text=City%2C%20University%20of%20London's%20Start,professional%20advisors%20and%200experienced%20entrepreneurs>> accessed 1 October 2022.

<sup>50</sup> Elaine Campbell and Patrick Cahill, 'Seeing Both Sides: Reflections on a Transactional Clinic Collaboration' (GAJE/IJCLE Conference, Turkey, 22 July 2015).

to disclose information about their income and savings. This was substantially different to my clinic at Northumbria. Our service was free to anyone, no matter their economic means.

The clinic student visited the Student Law Office and attended one of my firm meetings, sharing their experience and discussing the differences between our two establishments. It was an eye-opening conversation for my students, who were perhaps naively under the impression that our clinic adhered to a universal model.

Following the visit, when I later caught up with the student, they said that they were at pilot stage and running their first event in partnership with a national law firm.

After this, they were taking on their first three clients and were employing a student to work on the project during the summer months. Full launch was anticipated in 2016/2017.

I mention this project because, for me, it represented a shift in the development of entrepreneurial law clinics in the UK. The other clinic was not moving away from its guiding principles in any way - the advice would still be offered to those who did not have the financial means to seek support from private practice. However, the fact that the clinic was even entertaining the possibility of advising businesses in conjunction with a corporate firm felt rather radical at the time.

I had encountered regular criticism of my approach to clinical legal education in the preceding years. At the end of my papers and presentations, the same question would crop up: 'where's the social justice?' My fellow clinicians could not understand how I could offer free legal advice to businesses that could afford to pay private lawyers and still be part of a movement founded on social justice principles. This culminated in one audience member calling me a 'danger'<sup>51</sup> to clinical legal education. My argument was (and still is) that the traditional conceptualisation of social justice in the context of clinical legal education needed to be challenged.<sup>52</sup> I saw the value in providing my students, who on the whole did not come from privileged backgrounds, the opportunity to advise a business client in the hope that this would improve their career prospects.<sup>53</sup> I could see the knock-on effect of giving legal advice to an established local company for free – more money to pay wages, to expand, to provide services to the community, and to promote economic growth in our local area.<sup>54</sup> These benefits seemed 'socially just' to me. So when I spoke to the clinic student who was wanting to set up a small business unit at his Law School and – without changing anything about the way his clinic was run or its founding principles - we were able to talk openly and harmoniously about a wider definition of social justice, this seemed like a seminal moment.

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<sup>51</sup> Campbell (n 2).

<sup>52</sup> Ibid., Elaine Campbell, 'Recognizing the Social and Economic Value of Transactional Law Clinics: A View from the United Kingdom' (2016) 65 *Journal of Legal Education* 580.

<sup>53</sup> Campbell (n 52); Roper (n 5).

<sup>54</sup> Ibid.

The challenges I faced when explaining the entrepreneurship clinic at conferences may have also been attributable to enduring questions about the nature of legal education itself. An in-depth review of the legal education literature at large is beyond the scope of this article<sup>55</sup>, but it is important to note long-standing tensions between 'academic' and 'vocational' aspects of law teaching. Traditionally, legal education in England and Wales have involved 'rigid distinctions'<sup>56</sup> between the academic, vocational, and continuing stages of training. When I embarked upon the development of the entrepreneurship law clinic the typical route for a law student comprised a 3-year academic degree, then (if they wished) postgraduate vocational training. This was not always the case, however. Northumbria University was one of the first institutions to offer an integrated academic and vocational package, in the 4-year Masters in Law degree, where vocational training and assessment sat alongside academic subjects. That said, this example of blended academic and vocational legal education was the exception rather than the norm.<sup>57</sup> I can only speculate, but the imposition of what might have been viewed as training suitable out with the

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<sup>55</sup> I recommend A Boon and J Webb, 'Legal Education and Training in England and Wales: Back to the Future?' (2008) 58 *Journal of Legal Education* 79 – an excellent and detailed commentary on historical development of English legal education going back to the Statute of Henry III in 1234. In addition, if you are looking for recent conversations in this arena I particularly recommend Rachel Dunn, Paul Maharg, and Victoria Roper (eds) *What is Legal Education for? Reassessing the Purposes of Early Twenty-First Century Learning and Law Schools* (Routledge 2023).

<sup>56</sup> Boon and Webb (n55) 80.

<sup>57</sup> In addition, universities (in England and Wales) still had to contend with the requirement to produce a Qualifying Law Degree made up of various elements.

academic law degree may have troubled some colleagues - even those who were inclined toward experiential education as part of the degree programme.<sup>58</sup>

Several years later, in 2017, I experienced another example of the changing landscape for business advice clinics - I was invited to give the keynote speech<sup>59</sup> at the inaugural Commercial Law Clinics Roundtable in London delivered by qLegal. At the roundtable we discussed the current models of entrepreneurial law clinics, best practice in developing these clinics, the skills students develop when advising clients on commercial matters, and legal and non-legal career paths for students.<sup>60</sup> There were 46 people on the attendee list,<sup>61</sup> with representatives from law schools, organisations, and businesses.<sup>62</sup> I remember looking out at the audience as I stood behind the lectern, thinking back to my 2012 conference paper, which garnered little interest, and how alone I had felt only five years earlier.

Research into entrepreneurial law clinics in the UK also took tentative steps forward.

The first piece of research specifically focusing on a UK-based entrepreneurial law

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<sup>58</sup> I have to say I have not had a critical response to my clinical work for a significant number of years now - this may reflect the changing nature of legal education generally and the prevalence of law clinics in university law schools today.

<sup>59</sup> Elaine Campbell, 'The Dark Knight Rises: What Next for Business & Commercial Law Clinics?' (1st Commercial Law Clinic Roundtable, London, 3 March 2017). Full transcript available at <<https://www.elainegregersen.com/academia>>.

<sup>60</sup> Queen Mary University of London, 'Commercial Law Clinics Roundtable' (3 March 2017) <<https://www.qmul.ac.uk/ccls/events/items/commercial-law-clinics-roundtable.html>> accessed 1 October 2022.

<sup>61</sup> The Participant List is available at: <<https://docs.google.com/spreadsheets/d/1nWIW34fTa3Hm6PxNLbAaKs10TwwM4NSqWoRPCP42uZs/edit#gid=0>>.

<sup>62</sup> Ibid.



clinic was published here in the International Journal of Clinical Legal Education.<sup>63</sup>

The clinic was Start-Ed, a pro bono advice service for start-ups based at City University of London which Patrick had told me about a few years earlier.

Since its inception in 2012, Start-Ed had served more than 500 start-ups by offering weekly sessions where volunteer students would work with a commercial lawyer and offer high-level signposting of key legal issues.<sup>64</sup> The individuals involved in the start-ups were not offered representation and there was no ongoing relationship with the clinic or the lawyer. However, the start-ups were able to return to subsequent sessions for additional assistance and signposting. The research highlighted pedagogic issues, such as problems with attendance (relating to students, lawyers, and start-ups), alongside interesting data around the legal issues start-ups sought assistance. For example, 53% of start-ups attending the clinic sessions had difficulty determining the appropriate corporate vehicle.<sup>65</sup> This resonated with my own experience, where much of my supervisory time was spent unpacking exactly what type of business structure our clients had (or thought they had) as this had a fundamental impact on the advice my students were providing. I wrote about this, around the same time, in the first article on entrepreneurial law clinics from the UK to be published in the Journal of Legal Education.<sup>66</sup>

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<sup>63</sup> David Collins, Eric Klotz and Ben Robinson, 'Start-Ed: A Model for Commercial Clinical Legal Education' (2016) 23 International Journal of Clinical Legal Education 80.

<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

<sup>66</sup> Campbell (n 51).

The second Commercial Law Clinics Roundtable took place at the University of Sheffield in 2017. A detailed account of the event appeared in the *From the Field* section of the IJCLE.<sup>67</sup> Alongside this, the new ground was broken when three entrepreneurial law clinics – from the US, Israel, and the UK – produced comparative analysis of their respective schemes, arguing that entrepreneurial law clinics should be valued for their rich educational experience, the important assistance they provided, and the wider benefits they bestowed on teaching institutions.<sup>68</sup>

## 5. Entrepreneurial Law Clinics in the UK Today

Research into entrepreneurial law clinics has continued to flourish. I was particularly excited to see the recent publication of a multi-authored practice report on a prison-based Business Law and Tax Clinic.<sup>69</sup> When the authors wrote the report, the clinic was still in the midst of developing its 'shape, structure, and delivery method',<sup>70</sup> not least due to the challenges of the global pandemic. However, the ability to read about the design, the key learnings, and the potential future direction of this innovative clinic will be a buoy to many of us in the entrepreneurial law clinic world. When I started out as a clinician, we might have learned about the clinic via a

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<sup>67</sup> Victoria Roper, 'Round up of the 2nd Commercial Law Clinics Round Table - 9th March 2018' (2018) 25 *International Journal of Clinical Legal Education* 248.

<sup>68</sup> Roper (n 5).

<sup>69</sup> Helen Codd and others, 'The Best of Times and the Worst of Times': Reflections on Developing a Prison-Based Business Law and Tax Clinic in the Midst of a Global Pandemic' (2020) 27 *International Journal of Clinical Legal Education* 39.

<sup>70</sup> *Ibid* 59.

conference paper, or in general discussions. To see it represented in published works and part of the literature denotes another shift in the development of entrepreneurial law clinic research.

Alongside case study research into specific entrepreneurial law clinics, we have also seen an influx of philosophical takes on the role of entrepreneurial law clinics, primarily led by Omar Madhloom.<sup>71</sup> Madhloom's work explores the theoretical foundations for a social justice–centric global law clinic movement with a particular focus on Kantian moral philosophy.<sup>72</sup> This has led to emerging fields of play with a focus on theory.<sup>73</sup>

Frustratingly, however, information about entrepreneurial law clinics in the UK today is mainly discoverable via Google searches and law school websites. Whilst I have obtained a reasonable amount of data using those search strategies, I acknowledge I have been unable to capture all the clinics in existence today. How do I know this?

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<sup>71</sup> Omar Madhloom, 'A normative approach to developing reflective legal practitioners: Kant and clinical legal education' (2019) 53 *The Law Teacher* 416; Omar Madhloom, 'A Kantian Moral Cosmopolitan Approach to Teaching Professional Legal Ethics' (2022) 23 *German Law Journal* 1139; Omar Madhloom, 'Philosophy in action through clinical legal pedagogy', Northumbria University (2022); Omar Madhloom and Irene Antonopoulos, 'Clinical Legal Education and Human Rights Values: A Universal Pro Forma for Law Clinics' (2022) 9 *Asian Journal of Legal Education* 23.

<sup>72</sup> *Ibid.*

<sup>73</sup> This includes a multi-disciplinary online workshop, hosted by the University of Bristol and in association with the Clinical Legal Education Organisation, in January 2022 which brought together a panel of academics and practitioners to discuss business law clinics from educational and employability perspectives. The workshop framed an interdisciplinary and multidisciplinary approach to business law clinics in the context of clinical legal education and pro bono/corporate social responsibility. I was member of the panel. Questions raised and debated included: Is there a moral obligation to engage in pro bono? Do law clinics have a moral obligation to advise business entities? What are the pedagogic benefits of business clinics?

Because my own clinic did not appear in the Google searches I conducted. I only know my clinic exists because I've been running it for 11 years. This is where the problem lies – most of our knowledge is anecdotal. We lack detailed long-standing and up to date published research.<sup>74</sup> With this disclaimer in mind, however, I will attempt to provide a general update on the scope and nature of a range of entrepreneurial law clinics presently running in the UK.

qLegal is a particular success story. High-calibre postgraduates still provide free support to start-ups and entrepreneurs on a voluntary basis as they did when my students partnered with the project in 2015.<sup>75</sup> However, there is now also an option for students to provide advice to clients as part of a credit-bearing module, the Entrepreneurship Law Clinic.<sup>76</sup> In addition, qLegal runs an externship work placement programme with start-ups and scale-ups.<sup>77</sup> Students spend time in start-ups gaining first-hand experience in legal and technological services whilst receiving training on law and business from the qLegal team.<sup>78</sup> Small groups of students also work on discrete projects for businesses and offer one-to-one coaching sessions to secondary school pupils from UK state schools.<sup>79</sup>

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<sup>74</sup> I am conscious that we are missing data from Wales, Scotland and Northern Ireland especially.

<sup>75</sup> Queen Mary University of London (n 46).

<sup>76</sup> Queen Mary University of London, 'QLegal – About Us' <<https://www.qmul.ac.uk/qlegal/about/>> accessed 1 October 2022.

<sup>77</sup> Lawtech, AI, and compliance and regulatory sectors.

<sup>78</sup> Queen Mary University of London (n 76).

<sup>79</sup> Ibid.

According to their website, Start-Ed at City, University of London also continues to provide free one-to-one advice from professional advisors and experienced entrepreneurs. Student volunteers sit in the advice sessions.<sup>80</sup> Several entrepreneurial law clinics operate in this way, with law students being supported by qualified lawyers. At the BPP Legal Advice Centre for Enterprise (BLAC Enterprise) students conduct a fact-finding interview and a detailed letter of advice is created under supervision.<sup>81</sup> The Small Business Legal Clinic at the University of York is staffed voluntarily by Masters students, supported by supervising solicitors at the university and law firm Ward Hadaway.<sup>82</sup> Student advisors at King's College London's Intellectual Property Law Clinic are supervised by specialist lawyers from law firms Briffa and Bird & Bird as well as the clinic's own staff.<sup>83</sup> Manchester Metropolitan University's Business Law Café offers free support to social enterprises, start-ups, charities, entrepreneurs and small businesses delivered by law students under the supervision of lawyers giving their time pro bono.<sup>84</sup>

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<sup>80</sup> City, University of London (n 49).

<sup>81</sup> BPP University Law School, 'I have a legal query about my business' <<https://probono.bppuniversity.ac.uk/blog/projects/business-legal-advice/>> accessed 1 October 2022.

<sup>82</sup> University of York, 'Small Business Clinic' <<https://www.york.ac.uk/law/the-baroness-hale-legal-clinic/small-business-clinic/>> accessed 1 October 2022.

<sup>83</sup> King's College London, 'Intellectual Property Clinic' <<https://www.kcl.ac.uk/legal-clinic/how-we-can-help/intellectual-property>> accessed 1 October 2022. Enquirers receive an appointment with the clinic and a one-off letter of advice.

<sup>84</sup> Manchester Metropolitan University, 'Pro Bono' <<https://www.mmu.ac.uk/law/study/school-life/pro-bono/>> accessed 1 October 2022. There is one clinic per term.

Typically, entrepreneurial law clinics in the UK offer legal advice on issues such as incorporation, checking company and trade mark registers, copyright advice, and practical support around running a business generally.<sup>85</sup> However, some clinics do undertake a diverse (and complex) range of business issues. For example, the Legal Advice Clinic at University of Law, London, offers legal advice on 'contract terms, privacy, shareholder entitlement, data protection, setting up a company, restructuring, general intellectual property issues, trade mark and registered designs, general patent queries, partnership agreements and general partnership matters, shareholder agreements and minority shareholder matters, copyright, directors' duties, termination or disqualification'.<sup>86</sup> Supervised student advisors at CommLaw at the University of Sheffield are also able to offer advice on underrepresented areas such as product labelling regulations, disclaimers, and employment, contractor, and partnership issues.<sup>87</sup>

Interestingly, some clinics have adopted payment-based models. At University of Central Lancashire Business Law Clinic, graduate legal advisers work under the close supervision of qualified solicitors.<sup>88</sup> There is an administration fee of £50 plus VAT

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<sup>85</sup> BPP University Law School (n 81).

<sup>86</sup> The University of Law, 'Legal Advice' <<https://www.law.ac.uk/landing/ullac-london-enquiry-form/>> accessed 1 October 2022. In this case, a group of students observe and assist a volunteer lawyer. Verbal advice is provided.

<sup>87</sup> University of Sheffield, 'CommLaw legal clinic' <<https://www.sheffield.ac.uk/law/undergraduate/probono/commlaw-legal-clinic>> accessed 1 October 2022.

<sup>88</sup> University of Central Lancashire, 'Business Law Clinic' <<https://onlineshop.uclan.ac.uk/product-catalogue/law-school-and-social-sciences/business-law-clinic>> accessed 1 October 2022. The online store where clients pay their first appointment fee notes that The Business Law Clinic is operated by

which must be paid via a webpage before the initial meeting.<sup>89</sup> There is no charge for the advice offered, however.

The Business and Enterprise Law Service provided by NLS Legal at Nottingham Trent University does charge.<sup>90</sup> It offers low-cost legal assistance on a range of business issues across the life cycle of a business from inception to post-insolvency, with particular focus on dispute resolution and litigation.<sup>91</sup> All work is undertaken by a team of law student volunteers, legal assistants and paralegals under the supervision of a Business and Enterprise Law Service solicitor.<sup>92</sup> Perhaps this is the best example we have as to how far the entrepreneurial law clinic landscape has travelled in the past decade.

Our clinic at Northumbria Law School has experienced change too. The Student Law Office module moved into the third year of the degree programme in 2020. The clinic

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graduate legal advisors who have completed a law or other qualifying law degree and are now in the first stage of training to qualify as a solicitor.

<sup>89</sup> Ibid.

<sup>90</sup> Nottingham Trent University, 'Our Services' < <https://www.ntu.ac.uk/study-and-courses/academic-schools/nottingham-law-school/nls-legal/our-services> > accessed 18 April 2023.

<sup>91</sup> NLS Legal's fee information can be found here:

<[https://www.ntu.ac.uk/\\_data/assets/pdf\\_file/0024/1480380/Fees-information.pdf](https://www.ntu.ac.uk/_data/assets/pdf_file/0024/1480380/Fees-information.pdf)> accessed 1 October 2022.

<sup>92</sup> Nottingham Trent University (n 90).

has grown in size,<sup>93</sup> diversity of legal cases<sup>94</sup>, and type of advice provided.<sup>95</sup> In the 2022/2023 academic year, we have two live client Business and Commercial firms. Each firm consists of one supervisor (who is an academic with practice experience) and eight students. Our numbers are currently smaller this year due to a mix of personal and professional changes.<sup>96</sup>

As the years have passed, I have adjusted my Student Law Office teaching. When I started, I took on a higher volume of cases. I would split the cases between pairs of students, even if the case had multiple components. I soon discovered this was unsustainable for me and for the students. Today, I still ask the students to work in pairs initially, but I am more inclined to extend this to a trio or a quad especially if a case involves several elements. I divide the issues between several students rather than leaving the entire case to two. I also act with caution when looking at new enquiries, thinking carefully about the extent to which we can provide advice. Experience has given me greater confidence in my decisions. In the early days, I

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<sup>93</sup> In the 2022-2023 academic year, the clinic has 24 supervisors. Supervisors have 1 or 2 firms, which typically comprise 8 students. There are 267 students. In 2021-2022, there were 297 students working in the Student Law Office.

<sup>94</sup> Legal areas include housing, civil litigation, family, wills, employment, crime, welfare benefits, and business.

<sup>95</sup> The Student Law Office has a flourishing policy clinic: see Rachel Dunn, Lyndsey Bengtsson, and Siobhan McConnell, 'The policy Clinic at Northumbria University: influencing policy/law reform as an effective educational tool for students' (2020) 27 *International Journal of Clinical Legal Education* 68.

<sup>96</sup> For example, in January 2022 I become Programme Leader for the Professional Doctorate in Law programme and in September 2022 I moved to part-time hours. Back in 2011, I was working full-time and exclusively in the Student Law Office – allowing for three firms. This year, the reduction in my working hours and increase in my other responsibilities only allows for one firm.



would feel (self-imposed) pressure to answer every enquiry and/or provide the students with considerable legal experience during their year-long module.

Today I find it easier to take pause and consider the long-term implications of my supervisory choices. For example, I used to supervise the drafting of complex terms and conditions. Over time, I realised that this was far too complicated for the students. The client would often be waiting several months for a first draft, and I would find myself drafting the terms late into the evening in order to maintain good client care. The students did not have the opportunity to engage meaningfully in the advice and I become overloaded. Now, I make it clear in our marketing materials that my students can only advise on or draft simpler contracts such as a website terms of use. I have found that this has led to a greater level of interaction between my students and the client, and a better work-life balance for me and my students. I emphasise quality of the work produced over the quantity of cases taken on, whilst still ensuring I provide a pedagogically rich clinical environment and an appropriate and reasonable amount of legal experience for my student.

## **6. The Future**

As UK entrepreneurial law clinics expand in number and approach, we must take inspiration from our US clinical colleagues and continue to develop our growing body of research. There is an opportunity to explore trends, analyse pedagogical

innovations, and provide a comprehensive assessment of UK entrepreneurial law clinics.

I make this plea to myself as well as to our wider network. I am conscious that this article has only scratched the surface of the models of entrepreneurial law clinic in existence in the UK today. There is scope for a long-term substantive piece of research mapping UK law schools' approaches to business advice. This special edition is an important part of this work. Let's look back in another 10 years' time and see how far we have come.

# The Law Tech Clinic: Leading the way in Entrepreneurial Law Clinics

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## Abstract

Globalisation, economic forces and technological advancements are changing the way law is practised. Clients are seeking innovative solutions to an increasingly broad range of legal challenges. They want greater connectivity and streamlined delivery of legal services. The rate of change has accelerated in response to remote working, with the digital maturity of legal firms advancing more rapidly than ever before, utilising technology such as electronic billing practices, digital mailrooms, e-discovery, digital document signing and workflow automation.

Newly developed and deployed legal technology within the sector has increased demand for lawyers with the skills to adapt and thrive in a technological environment. Law firms favour graduates with a 'technology mindset' and aptitude to think beyond the traditional professional services model. The Monash University

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Faculty of Law, one of the leading law schools in Australia with a pioneering clinical program, has established a Law Tech Clinic (LTC). The LTC provides a unique opportunity for students to work on real client matters and receive end-to-end industry input to develop client-ready applications.<sup>1</sup>

This paper describes the LTC's structure and how the clinic is designed to educate students on the changing demands of the legal industry, providing practical knowledge on legal technology usage to advance legal services. This paper outlines how the LTC enables students to develop professional and practical legal skills that will help them become successful entrepreneurial lawyers, adept at integrating technology with innovative legal services. Further, this paper demonstrates how the Monash Clinical Program, with a strong focus on best practice in clinical legal education, provides a perfect forum to run such a clinic. We demonstrate how students work with technological systems to assist industry partners, law firms and other organisations and provide accessible legal services to their clients.<sup>2</sup> Finally, this paper highlights how the LTC educates students on technological advances in legal practice, equipping them with frameworks for the knowledge, skills and attributes to be technologically proficient future legal practitioners. Although this discussion is in

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<sup>1</sup> As will be described later in this paper, the Law Tech Clinic was developed as a collaboration between the Monash Clinical Program, industry partners and current law students from BotL, a student-led start-up (<https://www.botltech.com.au/>)

<sup>2</sup> To date Monash Clinical Program has run the Law Tech Clinic in collaboration with Lander and Rogers (<<https://www.landerson.com.au/>>) and see (<<https://www.youtube.com/watch?v=GZM-GKn7G3A>>), Maddocks (<<https://www.maddocks.com.au/>>) and KPMG (<<https://home.kpmg/au/en/home/services/tax/legal-services.html>>)

the Australian context, it can also apply to other jurisdictions as the associated issues with legal technology and its effects on legal practice are occurring globally.

## 1. Legal Technology and Legal Practice

To optimise client service, the legal profession has realised the need to engage in technology.<sup>3</sup> Many legal service providers in the private and community sectors utilise remote computing access, law practice management systems, document storage and collaboration tools, email, messaging apps and videoconferencing.<sup>4</sup> Additionally, document automation converts template documents such as leases, trusts, wills and business contracts into personalised legal instruments at a low cost.<sup>5</sup>

In *The End of Lawyers? Rethinking the Nature of Legal Services*, Richard Susskind posited that technology enhancements leading to improved, sustained and advanced methods of legal services delivery are inevitable and that lawyers must change how they operate.<sup>6</sup>

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<sup>3</sup> Sarah R. Boonin and Luz E. Herrera, 'From Pandemic to Pedagogy: Teaching the Technology of Lawyering in Law Clinics' 2022 (1) 68, *Washington University Journal of Law and Policy* 109 at 2.

<sup>4</sup> Ibid. See also Jacqueline Weinberg and Jeffrey Giddings, 'Innovative opportunities in technology and the law: The virtual legal clinic' in Ann Thanaraj and Kris Gledhill (Eds), *Teaching Legal Education in the Digital Age*. (Routledge 2022), Richard Susskind, *Online Courts and the Future of Justice* (Oxford University Press, 2019) 186, Sam Stebin and Ashley Pearson, 'Community Legal Centres in the Digital Era: The Use of Digital Technologies in Queensland Community Legal Centres' (2019) (1) 1 *Law, Technology and Humans* 64.

<sup>5</sup> Ibid. See also Lisa Toohey et al, 'Meeting the Access to Civil Justice Challenge: Digital Inclusion, Algorithmic Justice, and Human-Centred Design' (2019) 19 *Macquarie Law Journal* 133.

<sup>6</sup> Richard Susskind, *The End of Lawyers? Rethinking the Nature of Legal Services* (Oxford, Oxford University Press, 2010). See also Richard Susskind and David Susskind, *The Future of the Professions: How Technology Will Transform the Work of Human Experts* (Oxford University Press 2015), Richard Susskind, *Tomorrow's Lawyers* (Oxford University Press, 2<sup>nd</sup> ed, 2015).

Susskind further argued that the focus of preparing for a career in law or for using a law degree for a variety of careers does not only lie in legal competencies. It also lies in upskilling and becoming able to learn entirely new skills and competencies that reflect the new reality of how law is used in the legal profession and more broadly in a multidisciplinary setting.<sup>7</sup>

At the time of his writing (2010), Susskind's prophecy was slowly coming to fruition, with lawyering technology steadily gaining prominence among a segment of lawyers.<sup>8</sup> COVID-19 substantially pushed this reality along, with technology being used in every facet of the legal profession.<sup>9</sup> Lawyers who never considered themselves technologically savvy were forced to rely on a broad range of technologies to maintain operations.<sup>10</sup>

COVID-19 forced lawyers, judges and other legal service providers to become proficient in technology in order to more efficiently serve clients and to improve law practice management and accessibility of legal services.<sup>11</sup> Law firms, courts,

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<sup>7</sup> Richard Susskind, *The End of Lawyers? Rethinking the Nature of Legal Services* (Oxford University Press, 2010).

<sup>8</sup> Karolina Mania, 'Legal Technology: Assessment of the Legal Industry's Potential' (2022) *Journal of Knowledge*, John Zeleznikow, 'Can Artificial Intelligence and Online Dispute Resolution Enhance Efficiency and Effectiveness in Courts' (2017) (2) 8 *International Journal for Court Administration* 30–45.

<sup>9</sup> Emma Jones, Francine Ryan, Ann Thanaraj and Terry Wong, 'Defining Digital Lawyering' in *Digital Lawyering Technology and Legal Practice in the 21<sup>st</sup> Century* (2021).

<sup>10</sup> Sarah R. Boonin and Luz E. Herrera (n 3).

<sup>11</sup> *Ibid.*

administrative agencies and other adjudication sites were required to maintain aspects of remote operations and services through technology platforms, including artificial intelligence (AI) bots, Zoom and MS Teams.<sup>12</sup>

Technology is impacting practice more than ever by incorporating AI technology to conduct document reviews, analyse contracts, conduct legal research and undertake other tasks.<sup>13</sup> Legal services also use chatbots and guided interviews to assist self-represented litigants in finding resources.<sup>14</sup> Litigators employ several tools in pre-litigation, such as e-discovery, and rely on complex visual and audio technologies in litigation to present evidence in an interactive format.<sup>15</sup> The continuing development of virtual delivery of legal services requires practitioners to become adept with a variety of new skills and competencies. In particular, lawyers need to learn to communicate differently, gain mastery of the data in their disciplines, establish new working relationships with technology, and to diversify the services they offer.<sup>16</sup> As Boonin et al posit, 'Now as the world haltingly returns to face-to-face interactions, the legal profession is unlikely to completely walk away from these adaptations. The

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<sup>12</sup> Sarah R. Boonin and Luz E. Herrera (n 3). See also Tania Sourdin and John Zeleznikow, 'Courts, Mediation and COVID-19' (2020) (2) 48 *Australian Business Law Review* 138–158, Tania Sourdin, 'Justice and technological innovation' (2015) (2) 25, *Journal of Judicial Administration*, 96–105.

<sup>13</sup> See Friedman and Guy, 'Litigation Post-Pandemic: The View from Corporate Legal Departments, (2021) 94, *The Advocate* 17.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> Richard Susskind and Daniel Susskind, *The Future of the Professions: How technology will transform the work of human experts* (Oxford University Press, 2015) 114.

technology of lawyering has gained a larger, permanent foothold in a far broader range of legal settings.<sup>17</sup>

Smith and Spencer take this further, suggesting that the lawyer of the future 'will exist as a "polytechnic" or "many-skilled" professional, applying their legal expertise to a client's changing world in an increasingly agile way and within a range of organisational settings'.<sup>18</sup> The legal profession is undergoing a technological transformation that is reshaping how lawyers practise and how the nature of legal services is delivered.<sup>19</sup> Consequently, it is becoming essential for lawyers to develop a necessary understanding of core technologies, their features and functionalities, how they are being utilised and the impact of these technologies on the role of legal professionals.<sup>20</sup>

## 2. Legal Technology and Legal Education

As lawyering roles change and new technologies emerge, law firms are challenged to rethink how legal services are delivered.<sup>21</sup> Jones et al refer to the 'digital

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<sup>17</sup> Sarah Boonin and Luz Herrera (above 3). See also Lyle Moran, 'Legal Tech CEOs Urge Lawyers to Keep Innovating Beyond the COVID-19 Pandemic' (2021) ABA Journal <<https://www.abajournal.com/news/article/legal-tech-ceos-urge-lawyers-to-keep-innovating-beyond-the-covid-19-pandemic>> [<<https://perma.cc/KN5M-N9ZZ>>], A Johri, 'Engineering knowledge in the digital workplace: Aligning materiality and sociality through action in T. Fenwick and M. Nerland (Eds.), *Reconceptualising professional learning: Sociomaterial knowledge, practices and responsibilities* (Routledge 2014).

<sup>18</sup> Alexander Smith and Nigel Spencer, 'Do Lawyers Need to Code? A Practitioner Perspective on the 'Polytechnic' Future of Legal Education' in *Modernising Legal Education* (2020) 18-37.

<sup>19</sup> See Richard Susskind and David Susskind. *The Future of the Professions: How Technology will Transform the Work of Human Experts* (Oxford University Press, 2015).

<sup>20</sup> E. Jones, et al (n 9).

<sup>21</sup> Ibid.



transformation' of the legal profession and the delivery of legal services, and how it is creating innovative opportunities for lawyers and law students to explore new areas of practice.<sup>22</sup> As Jones et al state, 'lawyers not only need to be aware of emerging technologies but also have an understanding of how technology works to appreciate the impact that technology has on the practice of law'.<sup>23</sup> Lawyers must be knowledgeable in understanding where law and technology intersect, being aware of the implications of technology and becoming digitally literate to leverage the benefits of technology in legal work.<sup>24</sup> In other words, the legal profession must be knowledgeable in how lawyers can appropriately, safely and effectively use online technological innovations and techniques within the delivery of legal services, often through secure and authentic online law platforms.<sup>25</sup>

Law graduates need access to resources to fulfil this need, to think about the future of legal practice and how technology can be harnessed to support innovation.<sup>26</sup> Law students are entering legal practices where online communications, paperless offices, cloud services and technology serving to facilitate law practice are all integral

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<sup>22</sup> Ibid 8.

<sup>23</sup> Ibid 8. See also Susskind, Richard and Daniel Susskind, *The Future of the Professions: How Technology Will Transform the Work of Human Experts* (Oxford University Press 2015).

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid. See also Thanaraj, Ann, 'The Proficient Lawyer: Identifying Students' Perspectives on Learning Gained from Working in a Virtual Law Clinic' (2017) 14(3) *US-China Law Review*, 137–167.

features of digital lawyering.<sup>27</sup> The repercussions of the COVID-19 pandemic will resonate in the legal profession for many years to come.<sup>28</sup>

Technological advancements in legal practice challenge law schools and legal educators to educate students on adapting to change.<sup>29</sup> Law schools face increased pressure to prepare students for the realities of modern law practices and to equip students with the skills, knowledge and abilities necessary to meet demands of a global and digital workplace.<sup>30</sup> The future marketplace will require lawyers who can translate between business, technology and the law.<sup>31</sup> Technological skill is becoming a seminal element of law student marketability and relevance.<sup>32</sup>

Cantatore et al posit that the significant leap from 'student' to 'early career lawyer' or 'graduate lawyer' reflects a disconnect between the expectations of employers and graduate preparedness, requiring law schools to be more proactive in incorporating

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<sup>27</sup> Ibid. See also Sourdin, Tania, 'Justice and Technological Innovation' (2015) 25 (2), *Journal of Judicial Administration*, 96–105.

<sup>28</sup> See Francina Cantatore et al, 'A Comparative Study into Legal Education and Graduate Employability Skills in Law Students through Pro Bono Law Clinics' (2021) 55 (3) *Law Teacher* 322.

<sup>29</sup> Ibid.

<sup>30</sup> See S Boonin and L Herrera (n 3), Ann Thanraj, Paul Durston, and Sam Elkington, 'A Blueprint for Designing Creativity into Learning Design' in Ann Thanraj and Kris Gledhill (Eds), *Teaching Legal Education in the Digital Age* (Routledge 2022), R.S Granat and S.L Kimbro, 'The Teaching of Law Practice Management and Technology in Law Schools: A New Paradigm' (2013) 88 (3), *Chicago-Kent Law Review*, 757, Anthony Volini, 'A Perspective on Technology Education for Law Students', (2020) 36 (2) *Santa Clara High Technology Law Journal* 165.

<sup>31</sup> See Michele Pistone, 'Law Schools and Technology: Where We Are and Where We Are Heading', (2015) *Journal of Legal Education* 586.

<sup>32</sup> See Simon Canick, 'Infusing Technology Skills into the Law School Curriculum', (2014) 42 (3) *Capital University Law Review* 663.

practice-based legal skills.<sup>33</sup> Whether the experience is gained through clinical education, external work placements or pro bono programs, practical work experience aims to increase students' self-confidence, practice knowledge and employability.<sup>34</sup>

Law students have an increased expectation of graduate employability skills, including information and communications technology skills, problem-solving skills and resilience.<sup>35</sup> Thus, there is a need for legal educators to consider how education can best prepare future lawyers for this reality and the educational inputs that will best support those forging their careers in the legal sector.<sup>36</sup> According to Smith and Spencer, educators' focus should be on 'building students' core skills in legal, design and logic principles rather than learning specific technologies that may be rapidly superseded'.<sup>37</sup> Still Smith and Spencer emphasise that with technology becoming a key enabler of greater service efficiency, students need more than 'technology knowledge'.<sup>38</sup> Instead, students should be provided with 'the skills and knowledge that professional practice will demand from lawyers within the next ten years; and the form of educational and professional experience that best facilitates the acquisition

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<sup>33</sup> Francina Cantatore et al, 'A Comparative Study into Legal Education and Graduate Employability Skills in Law Students through Pro Bono Law Clinics' (2021) *Law Teacher* 55(3) 315.

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.* See also Long, L.K. and P.A Meglich, 'Preparing Students to Collaborate in the Virtual Work World' (2013) 3(1), *Higher Education, Skills and Work-based Learning*, 6–16.

<sup>36</sup> See Smith, Alexander and Nigel Spencer, 'Do Lawyers Need to Code? A Practitioner Perspective on the 'Polytechnic' Future of Legal Education' in *Modernising Legal Education* (2020) 18-37.

<sup>37</sup> *Ibid* 18.

<sup>38</sup> *Ibid.*

of these skills and this knowledge'.<sup>39</sup> Accordingly, educators should focus more on enhancing the broader skill sets of students through experiential learning in client-facing settings where students are exposed to a wide and diverse range of learning opportunities.<sup>40</sup>

Murray et al take this further, emphasising the need for students to fully comprehend 'why' legal tech is being used in legal practice.<sup>41</sup> They speculate that if students do not understand 'why', teaching and assessing digital skills 'simply becomes one more hoop, through which a student must jump to gain their qualifications.'<sup>42</sup>

These authors call for legal educators to enable students to explore how the use of practical legal tech could be adopted to enhance not only the digital skills of students but at the same time enable them to develop an understanding as to 'why' legal tech is used by lawyers and, accordingly, what skills need to be developed.<sup>43</sup> As Murray et al state, 'the aim must be for a student to understand the commercial realities of legal tech; a means of achieving efficiencies or compliance, solving legal problems, and of limiting the possibility of mistakes.'<sup>44</sup>

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<sup>39</sup> Ibid 18.

<sup>40</sup> Ibid.

<sup>41</sup> Ryan Murray and Helen Edwards, 'Legal Tech and Sustainability' in Ann Thanaraj and Kris Gledhill (Eds), *Teaching Legal Education in the Digital Age*. (Routledge 2022) 108.

<sup>42</sup> Ibid 108.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid 108.

Generally, most law schools and universities are confident that their students can gain employment after graduation, so they will try to equip their students with skills they feel are necessary or desirable within the workplace.<sup>45</sup> This has already led to an increased number of law schools offering modules, courses or programs focusing on digital lawyering.<sup>46</sup> According to Jones et al, “digital lawyering” is multifaceted, encompassing knowledge, skills, attributes and professional rules into a mindset and professional way of being’.<sup>47</sup> As such, it asks students to consider and develop their impressions on how they can contribute to the challenges of digital transformation of the workplace and the role law plays in innovations and in regulating the digital world.<sup>48</sup>

### 3. Legal Technology and Clinical Legal Education

The merger of education and practice at the heart of clinical legal education has sparked the development of a rich, varied and constantly evolving clinical pedagogy.<sup>49</sup> An important strand in this movement links teaching technological competence and experiential education.<sup>50</sup> Within an experiential learning

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<sup>45</sup> See Jones et al (n 9). See also Cantacore, Francina, ‘New Frontiers in Clinical Legal Education: Harnessing Technology to Prepare Students for Practice and Facilitate Access to Justice’ (2019) 5 (1) Australian Journal for Clinical Education 1.

<sup>46</sup> Jones et al (n 9).

<sup>47</sup> Ibid 10.

<sup>48</sup> Ibid.

<sup>49</sup> See Jeff Giddings and Jacqueline Weinberg, ‘Experiential Legal Education: Stepping Back to See the Future’ in Catrina Denvir (ed), *Modernising Legal Education* (Cambridge University Press, 2020) 38, Adrian Evans et al, *Australian Clinical Legal Education: Designing and Operating a Best Practice Clinical Program in an Australian Law School* (Australian National University Press, 2017).

<sup>50</sup> See Francina Cantacore, ‘New Frontiers in Clinical Legal Education: Harnessing Technology to Prepare Students for Practice and Facilitate Access to Justice’ (2019) 5(1) Australian Journal for Clinical

environment, students can learn about law technology and utilise technology beneficial to law practice.<sup>51</sup> The most effective way to teach the technology of law is to experience it firsthand.<sup>52</sup> Boonin et al add, 'the very project of clinical education lends itself to the task of teaching technology'.<sup>53</sup>

Clinical programs are premised on the notion that the professional development of lawyers is incomplete without the opportunity for law students to inhabit the lawyer's role prior to graduation and legal practice.<sup>54</sup> The experiential curriculum aims to expose students to the realities of law practice while teaching them to reflect on their work, their clients' experience, the communities they serve and their roles in legal systems.<sup>55</sup> By design, clinical pedagogy evolves in response to the changing needs of communities, clients and the legal profession.<sup>56</sup>

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Education 1, James E. Cabral et al, 'Using Technology to Enhance Access to Justice' (2012) (1) 26 Harvard Journal of Law & Technology 241–324.

<sup>51</sup> See Jacqueline Weinberg and Jeffrey Giddings, 'Innovative Opportunities in Technology and the Law: The Virtual Legal Clinic' in Ann Thanaraj and Kris Gledhill (Eds), *Teaching Legal Education in the Digital Age*. (Routledge 2022), F Ryan, 'A Virtual Law Clinic: A Realist Evaluation Of What Works For Whom, Why, How and in What Circumstances?' (2019) 54(2), *The Law Teacher*, 237–248, Ann Thanaraj, 'The Proficient Lawyer: Identifying students' perspectives on learning gained from working in a virtual law clinic' (2017) 14(3) *US-China Law Review*, 137–167.

<sup>52</sup> S Boonin and L Herrera (n 3).

<sup>53</sup> *Ibid* 13.

<sup>54</sup> See A Stickley, *Providing a law degree for the 'real world': Perspective of an Australian law school'* (2011) 45(1) *The Law Teacher*, 63–86, Ross Hyams, 'On teaching students to 'act like a lawyer': What sort of lawyer?' (2008) 13 *Journal of Clinical Legal Education*, 21–32, Ross Hyams et al, *Practical Legal Skills* (Oxford University Press 5<sup>th</sup> ed, 2022), Steven Wizner, 'The Law School Clinic: Legal education in the interests of justice' (2002) 70(5), *Fordham Law Review*, 1929–1937.

<sup>55</sup> See Frank S Bloch, (Ed.). *The Global Clinical Movement: Educating Lawyers for Social Justice*. (Oxford University Press 2011), A. Cody and B Schatz, 'Community law clinics: Teaching students, working with disadvantaged communities' in F. S. Bloch (Ed.), *The Global Clinical Movement: Educating Lawyers for Social Justice* (pp. 167–182) (Oxford University Press, 2011).

<sup>56</sup> See W.M. Sullivan et al, *Educating Lawyers: Preparation for the Profession of Law*. (Jossey-Bass 2007), Richard Susskind, *Tomorrow's Lawyers* (Oxford University Press 2013).

Clinical legal education also provides opportunities for students to develop new modes of 'thinking like a lawyer'.<sup>57</sup> Legal technology offers abundant opportunities for clinical students to engage in innovative and creative thinking, reflecting on technology's impact on those processes.<sup>58</sup> By encouraging students to assess and thoughtfully apply new law practice technologies critically, clinical programs enable students to develop a deeper insight into the benefits of learning in a professional setting.<sup>59</sup> A primary goal of clinics is to help students integrate their personal and professional identities.<sup>60</sup> Thoughtful deployment of technology in clinical settings can spark boundary exploration of professional relationships, particularly the lawyer–client relationship, as mediated by technology.<sup>61</sup>

It is imperative that students master a range of new technologies and communications methods for the dynamics of modern professional life and legal

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<sup>57</sup> Jeff Giddings, 'Clinics and Australian Law Schools Approaching 2020' in A. Evans, A. Cody, A. Copeland, J. Giddings, P. Joy, M. A. Noone & S. Rice (Eds.), *Australian clinical legal education: Designing and operating a best practice clinical program in an Australian law school* (pp. 11–39) (ANU Press 2017), Marson, J., Wilson, A. & Van Hoorebeek, M. 'The Necessity of Clinical Legal Education in University Law Schools: A UK Perspective'(2005) 7 *Journal of Legal Education*, 29–43, Ross Hyams, 'The Teaching of Skills: Rebuilding, Not Just Tinkering around the Edges' (1995) 13(1) *Journal of Professional Legal Education*, 63–80

<sup>58</sup> S Boonin and L Herrera (n 3) 28.

<sup>59</sup> *Ibid.*

<sup>60</sup> See Jeff Giddings and Jacqueline Weinberg 'Experiential Legal Education: Stepping Back to see the Future' In C. Denvir (Ed.), *Modernising Legal Education* (pp. 38–56) (Cambridge University Press 2020), Neil Gold, 'Clinic Is the Basis For a Complete Legal Education: Quality Assurance, Learning Outcomes and the Clinical Method'(2015) 22(1), *International Journal of Clinical Legal Education*, 84–141, Margaret Barry, 'Clinical Legal Education in the Law University: Goals and Challenges' (2007) *Journal of Clinical Legal Education*, 27–50.

<sup>61</sup> See C Goodman, 'Impacts of Artificial Intelligence in Lawyer-Client Relationships' (2019) 72(1) *Oklahoma Law Review*, 149–184.

practice.<sup>62</sup> Clients wish to be more involved in the legal provision process, which necessitates changes in the lawyers' approaches and attitudes towards their clients, their management of client matters and their relationships with courts and other professionals.<sup>63</sup> Lawyers need to take a client-focused approach to communication and relationship-building to develop and convey the best possible options to clients. The idea behind this is to offer effective legal services in new, less costly and more client-friendly ways. This may involve using virtually delivered legal services better suited to the client's needs.<sup>64</sup>

#### **4. The Law Tech Clinic Within the Monash Clinical Program**

A major review of higher education in 2008 in Australia, along with the government's response to this review, acknowledged the need for universities to prepare graduates for the world of work.<sup>65</sup> While experiential education in Australia has traditionally involved students engaging in live-client clinics maintaining a poverty law focus, more recently, there has been a growth in offerings such as externship clinical

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<sup>62</sup> Jacqueline Weinberg and Jeff Giddings 'Innovative opportunities in technology and the law: The Virtual Legal Clinic' in A. Thanaraj & K. Gledhill (Eds), *Teaching Legal Education in the Digital Age* (Routledge 2022)

<sup>63</sup> Jeff Giddings and Jacqueline Weinberg 'Experiential legal education: Stepping Back to see the Future. In C. Denvir (Ed.), *Modernising legal education* (pp. 38–56) (Cambridge University Press 2020).

<sup>64</sup> Weinberg and Giddings (n 62).

<sup>65</sup> See Denise Bradley et al, *Review of Australian Higher Education: Final Report* (Canberra, 2008).



placement programs,<sup>66</sup> work-integrated learning (WIL)<sup>67</sup> and industry-based experiences, mostly in the private sector. In externship placements and WIL, students work in host organisations to gain knowledge, understanding and skills essential to workplace practices.<sup>68</sup> This includes providing opportunities for building skills that law students need to prepare them to be competent lawyers in a technology-led environment.

Within the Monash Clinical Program, the LTC was established to provide a unique opportunity for students to develop a technology mindset and aptitude to think beyond the traditional professional services model and receive end-to-end industry input to develop client-ready applications. The LTC adheres to the educational aims of continuing legal education (CLE): providing students with legal education that enhances 21st-century legal practice and assists the broader community by utilising technology to extend legal services delivery to people whose needs would not otherwise be met.

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<sup>66</sup> See Evans et al, *Australian Clinical Legal Education: Designing and Operating a Best Practice Clinical Program in an Australian Law School* (Australian National University Press, 2017) Evans et al refer to the term 'externships' to describe 'the form of clinical legal education where individual students are placed in an independent legal practice, community legal centre, government agency or not-for-profit organisation' at 56, Adrian Evans and Ross Hyams, 'Specialist Legal Clinics: Their Pedagogy, Risks and Payoffs as Externships' (2015) 22(2), *International Journal of Clinical Legal Education*, 147–180.

<sup>67</sup> Evans et al (n 66) refer to 'work-integrated learning' as 'a curriculum design, which combines formal learning with student exposure to real professional, work or other practice settings': at 43. For a broader discussion on the program risks of WIL, refer to Craig Cameron et al, 'The Program Risks of Work-Integrated Learning: A Study of Australian University Lawyers' (2018) 40(1) *Journal of Higher Education Policy and Management* 67. See also Janice Orrell, *Good Practice Report: Work-integrated Learning* (Australian Learning and Teaching Council, 2011); Stephen Billett, *Integrating Practice-based Experiences into Higher Education* (Springer, 2015).

<sup>68</sup> Refer to Evans et al (n 66).

## 5. Structure of the Law Tech Clinic

The LTC was developed as a collaboration between the Monash Clinical Program, industry partners and current law students from BotL,<sup>69</sup> a student-led start-up. As digital natives and current law students, BotL approached the Monash Clinical Program to collaborate on establishing an LTC. BotL aims to alter how Australian law schools prepare students for practice.<sup>70</sup> It realises that technology is integral to their professional and academic careers. As newly graduated law students who are viewed as the 'new lawyers' or '21st-century lawyers', they will be required to forge a pathway enabling this change and implementing innovative technological solutions at firms. Graduate law students require opportunities to upskill themselves to become changemakers in the industry and meet the digital disruption in markets, the public sector and society.<sup>71</sup>

To achieve this, the LTC focuses on educating law students on the intersectionality of technology and legal services. The students work within the clinic's legal tech framework to design and build transformative legal technology which will enhance

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<sup>69</sup> BotL Co-Founder: Andrea Ko, Co-Founder: Henry Wu, Co-Founder: Sam Chen, Co-Founder and Director: Christine Zhong, Co-Founder and Director: Khoi Cao, Legal Experience Designer: Carl Azar, Operations Manager: Jade Smith (<<https://www.botltech.com.au/>>)

<sup>70</sup> <https://www.botltech.com.au/>>

<sup>71</sup> Margaret Hagan, Law by Design (Web Page) <<https://lawbydesign.co/>>. See also Interaction Design Foundation, 'What is Design Thinking' (Web Page) <<https://www.interaction-design.org/literature/topics/design-thinking>> Margaret Hagan, 'Design Comes to the Law School' in Catrina Denvir (ed), *Modernising Legal Education* (Cambridge University Press, 2020) 109.

legal services. The LTC equips law students with the skills to facilitate and participate in technological disruption in the legal industry as a result. It is designed to provide students with an understanding of the technologies available to legal practitioners and to educate students with practical design thinking and no-code app-building skills.

The LTC ensures that students have practical tools to assist them throughout their careers. To achieve this objective, the LTC is structured over two phases: Phase One, where students are taught theory about the intersection of technology and the law; and Phase Two, where students build their legal technology solutions to address real legal problems. Students collaborate with their peers to ideate and design a client-facing legal app. Students use a no-code app-building platform to build and refine their solution. They then present the deliverable to the industry partner in the final week of the unit.

By participating in this clinic, students not only develop the confidence to use legal technology to create innovative solutions but also an ability to adapt to the changing demands of legal practice and an appreciation of the diverse careers available in law. The LTC provides an opportunity for students, as 'future lawyers', to enter legal practice and use unfamiliar technological applications to ensure they develop skills and gain confidence in their use.

## 6. Design Thinking

The clinic's structure is consistent with Margaret Hagan's legal design process.<sup>72</sup>

According to Hagan, legal design thinking refers to the 'application of human-centred design to law'.<sup>73</sup> Its fundamental objective is to create legal systems that are 'human-centred, usable and satisfying'.<sup>74</sup> Consideration of the target users' compelling needs is the crucial starting point when developing technological solutions.<sup>75</sup> In the legal context, the target users are generally lawyers, clients and other business professionals.<sup>76</sup> Once the developer comprehensively understands the users' circumstances, feelings, motivations and concerns, the developer creates legal tech solutions that aim to improve the user's experiences.<sup>77</sup>

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<sup>72</sup> Ibid. See also Eva Köppen and Chirstoph Meisel, 'Empathy via Design Thinking: Creation of Sense and Knowledge' in Hasso Plattner, Christoph Meisel and Larry Leifer (eds), *Design Thinking Research: Building Innovators* (Springer, 2015) 15, Andrea Alessandro Gasparini, 'Perspective and Use of Empathy in Design Thinking' (Conference Paper, International Conference on Advances in Computer-Human Interactions, 22–7 February 2015) 50.

<sup>73</sup> Ibid. See also Carina Campese et al, 'Benefits of the Empathy Map Method and the Satisfaction of a Company with Its Application in the Development of Concepts for a White Glue Tube' (2018) 16(2) *Product: Development and Management* 104, Natasha Hampshire, Glaudia Califano and David Spinks, *Mastering Collaboration in a Product Team: 70 Techniques to Help Teams Build Better Products* (Apress, 2022) 37.

<sup>74</sup> See Astrid Kohlmeier and Meera Klemola, *The Legal Design Book: Doing Law in the 21st Century* (Ground M, 2021) 20; Natasha Iskander, 'Design Thinking is Fundamentally Conservative and Preserves the Status Quo' (5 September 2018) *Harvard Business Review* <<https://hbr.org/2018/09/design-thinking-is-fundamentally-conservative-and-preserves-the-status-quo>>.

<sup>75</sup> Ibid. See also Patrick Cairns et al, 'Empathy Maps in Communication Skills Training' (2021) 18(2) *Clinical Teacher* 142, Rachel Hews et al, 'Law and Design Thinking: Preparing Graduates for the Future of Legal Work' (2022) 47(2) *Alternative Law Journal* 118.

<sup>76</sup> Ibid. See also Margaret Hagan, 'Legal Design as a Thing: A Theory of Change and a Set of Methods to Craft a Human-Centered Legal System' (2020) 36(3) *Design Issues* 3.

<sup>77</sup> Ibid. See also Connie Chang, 'Improving Access to Free Online Legal Information Through Universal Design: User Personas, User Journeys, a Proposal, and a Prototype' (2021) 40(4) *Legal Reference Services Quarterly* 199, Lene Nielsen, *Personas: User Focused Design* (Springer, 2nd ed, 2019) 4.

Hagan's steps to effective legal design are designing, synthesising, building, testing and evolving (see Figure 1).<sup>78</sup> Following this structure, the LTC separates the app-building process into the discovery process (with user interviews being a primary mode of research), design process, build process and test process so that the students can learn the different nuances between the stages.

**Figure 1** *Hagan's Design Thinking Process for Lawyers*<sup>79</sup>



## 6.1 Phase One

Phase One of the LTC is run over four weeks. During this phase, there is a focus on theoretical teaching about the legal technology landscape. The knowledge acquired during this period provides students with the foundations of how to approach and

<sup>78</sup> Ibid.

<sup>79</sup> Margaret Hagan, Law by Design (Web Page) <<https://lawbydesign.co/>>. Eduard Albay and Delia Eisma, 'Performance Task Assessment Supported by the Design Thinking Process: Results from a True Experimental Research' (2021) 3(1) Social Sciences and Humanities Open 1, Rikke Dam and Teo Yu Siang, 'Stage 2 in the Design Thinking Process: Define the Problem and Interpret the Results', Interaction Design (Web Page, 2020) <<https://www.interaction-design.org/literature/article/stage-2-in-the-design-thinking-process-define-the-problem-and-interpret-the-results>>.

design a solution to the legal problem. Both the BotL team and the Monash clinical supervisor actively engage with clinical students throughout phase one. Students attend interactive workshops delivered by distinguished industry professionals, including technology and cybersecurity lawyers, legal application designers and developers, legal technology consultants and start-up founders. These workshops introduce students to various aspects of the legal technology industry and encourage them to think broadly about alternative career pathways. Additionally, the workshops provide students with a foundational understanding of legal technology solutions to assist them with the app building in Phase Two.

The weekly workshops centre around various topics relevant to understanding the legal, technological and client-centred aspects of legal technology. These topics include:

- An Introduction to Legal Technology—to develop an understanding of technology and legal practice’s interrelationship.<sup>80</sup>
- Lawyers’ Digital Tools—focusing on transforming how legal processes and services are delivered by leveraging the power of no-code automation and developing digital solutions to solve business problems.
- Legal Design Thinking—to understand design thinking principles and learn to ideate, prototype and execute legal apps.

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<sup>80</sup> See L.K. Long and P.A Meglich, ‘Preparing Students to Collaborate in the Virtual Work World. (2013) 3(1), Higher Education, Skills and Work-based Learning, 6–16.

- Setting up a Legal Technology Start-up and Other Legal Service Companies—strategies to offer tailored solutions to law firms and organisations.
- Ethics and Legal Tech—focuses students on ethical issues they may encounter when implementing legal tech.<sup>81</sup>
- Legal Research Seminar—focusing on techniques for effective legal research.
- The Intersection of Artificial Intelligence and Public Law—focusing on automated legislative decision-making and the impact of technology on the rule of law.
- Each week, students are expected to complete the relevant reading materials accompanying the workshops. After each workshop, the BotL team and Monash Clinical supervisor arrange group reflections to encourage students to think more deeply about the workshop activities and what they learnt from the guest speakers.

## **6.2 Phase Two**

Over eight weeks, with the support of BotL team and the Monash clinical supervisor, students engage in practical app building by applying the theoretical knowledge

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<sup>81</sup> See Mary-Anne Noone and Judith Dickson, 'Teaching Towards a New Professionalism: Challenging Law Students To Become Ethical Lawyers' (2004) 4(2), *Legal Ethics*, 127–145, Liz Curran, Judith Dickson and Mary-Anne Noone, 'Pushing the Boundaries or Preserving the Status Quo? Designing Clinical Programs to Teach Law Students a Deep Understanding of Ethical Practice' (2005) 8 *International Journal of Clinical Legal Education* 104, Kevin Kerrigan, 'How Do You Feel About This Client?' A Commentary on the Clinical Model as a Vehicle for Teaching Ethics to Law Students' (2007) *International Journal of Clinical Legal Education* 37, Anna Cody, 'What Does Legal Ethics Teaching Gain, if Anything, from Including a Clinical Component?' (2015) 22(1) *International Journal of Clinical Legal Education* 1.

they acquired in the first phase. This involves designing, building and refining the legal application.

The industry partner provides a project brief for students, typically outlining a particular issue or 'pain point' that a practice group is experiencing. Throughout the eight weeks of Phase Two, students work in teams to develop a legal tool addressing the project brief. To assist with this, students are allocated an industry partner supervising lawyer, who meets with them weekly to provide legal expertise and feedback on the build. The allocated lawyer also acts as a legal project manager who ensures that the end product meets client specifications. The student-lawyer mentorship is an important aspect of the clinic, as students learn to collaborate with industry professionals to develop a legal tool.

During Phase Two, in line with design thinking principles, students conduct user interviews with lawyers and firm clients to better understand existing processes, pain points and paths to improvement. Students research the relevant areas of law and design a framework of their tool on a mind map platform such as LucidSpark<sup>82</sup> or Miro.<sup>83</sup> This process involves continuous feedback and iteration, with students sharing their progress with supervising lawyers, the BotL team and the Monash

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<sup>82</sup> See <<https://lucidspark.com/>>.

<sup>83</sup> See <<https://miro.com/weblinks>>.



clinical supervisor. The students build the tools on an app-building platform such as Josef<sup>84</sup> or Checkbox.<sup>85</sup>

Since the legal industry is undergoing significant disruption, firms are increasingly searching for graduate lawyers who are forward-thinking, collaborative and have the practical skills to develop legal tech solutions. The LTC enables students to develop skills and practical experiences that are in high demand, including using technological solutions for efficiency in delivery and helping students to experience digital learning to prepare them for the tech-focused world of work.<sup>86</sup> Thanraj et al advocate for learning and teaching practices to cultivate creativity and encourage students to engage with 'digital fluency' developing their professional skills through the use of various tools.<sup>87</sup> According to these authors, creativity is the foundation for future-ready, digitally-empowered law students.<sup>88</sup> It affords opportunities for students 'to think differently, and innovate, drawing on the experiences of technology and classroom-based practices.'<sup>89</sup>

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<sup>84</sup> See <<https://joseflegal.com/>>.

<sup>85</sup> See <<https://www.checkbox.ai/>>.

<sup>86</sup> Thomson Reuters' Tech & the Law 2022 report (<<https://www.thomsonreuters.com.au/content/dam/ewp-m/documents/australia/en/pdf/other/tech-and-the-law-2022-report.pdf>>). The Thomson Reuters' Tech & The Law 2022 report covers the attitudes, perceptions and priorities that legal professionals have towards legal technologies.

<sup>87</sup> Ann Thanraj, Paul Durston, and Sam Elkington, 'A Blueprint for Designing Creativity into Learning Design' in Ann Thanaraj and Kris Gledhill (Eds), *Teaching Legal Education in the Digital Age* (Routledge 2022).

<sup>88</sup> *Ibid.*

<sup>89</sup> *Ibid.*

From an industry perspective, the clinic encourages law firms and legal professionals to get involved in developing legal tech solutions that add value to clients. These student-developed solutions in the LTC streamline processes and eliminate pain points for lawyers, clients and other stakeholders.

At the conclusion of the clinic, students are provided with additional seminars by leading legal tech innovators that focus on how to pitch and market their innovations to assist them with preparing for their final presentation. Students then present their final tool to the industry partner and university representatives. During this presentation, students demonstrate the key features of the tool and explain how it solves the given project brief and describe their design choices.

After the final presentation, students provide a 'handover brief' to the industry partner. This document summarises the user scope of the tool, relevant research in the area and further steps to be taken in the future to enable the launch of the platform. The industry partner retains the tool and either deploys it or continues refining it.

## **7. Assessments and Learning Outcomes**

The LTC is designed to develop teamwork, project management, stakeholder management and app marketing skills for students. Students have significant autonomy in the project management process, independently organising and

running meetings with the industry partners. For student assessment, the LTC falls within the Monash clinical placement unit framework with specific learning as detailed below.

On successful completion of this unit, students should be able to:

1. Independently undertake complex legal research and:
  - a. Assess and articulate options for clients/beneficiaries, including the strengths and limitations of available legal options.
  - b. Proactively develop solutions to complex legal problems.
  - c. Synthesise large volumes of material, identifying key information relevant to developing legal material supporting casework and/or policy advocacy material.
  - d. Recognise and appropriately respond to the strategic and ethical implications of different legal approaches.
  - e. Critically analyse legal principles and the legal system from a variety of perspectives, including theoretical perspectives and identifying gaps and inadequacies in providing legal support to clients/beneficiaries.
2. Effectively communicate (orally and written) legal information, principles, arguments, strategies and theories of justice with a wide range of audiences involved in the justice system, be it in terms of individual casework or wider policy advocacy.

3. Reflect on their own and/or peer performance, and assess capabilities as flexible, adaptable, and independent future legal practitioners by having developed self-reflection and self-management skills, independently synthesising this information.
4. Demonstrate practical legal skills as appropriate to the clinical placement undertaken.<sup>90</sup>

Student performance is assessed according to detailed rubrics.<sup>91</sup> Students are required to complete two reflective tasks and a video case report. The host organisation provides feedback on the student's performance, which is converted to an assessed mark by the Law Faculty clinical team.

## **8. Reflective Tasks**

The reflective assessment tasks introduce students to critical reflection on their clinical placement in the LTC, providing students with an opportunity to review and build upon their experience. Students are required to submit two reflections on their participation, interactions, knowledge and experience while undertaking the LTC. Students are expected to approach the documentation process formally and thoughtfully, clearly conveying their experience to others.<sup>92</sup>

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<sup>90</sup> See <<https://www.monash.edu/law/home/cle>>.

<sup>91</sup> See <<https://www.monash.edu/law/home/cle>>.

<sup>92</sup> See Rachel Spencer 'Holding up the mirror: A theoretical and practical analysis of the role of reflection in clinical legal education' (2012) 18 International Journal of Clinical Legal Education, 181–216.

Students are provided with online seminars on reflective practice and reflective writing, focusing on the reflection process and models to assist with framing their reflection. For example:

Rolfe's reflective model—'What? So what? Now what?' is used as a communication structure and a presentation format in writing, management and business.<sup>93</sup>

'The 4 Rs'—The 4 Rs process is based on 'reflection-on-action', where actions are analysed and reframed. Possible solutions are then developed. The process is designed to encourage students to address their ongoing learning from a practical, cognitive and emotional perspective while taking into consideration their values, ethics and beliefs.<sup>94</sup>

Whatever model students choose, they are encouraged to reflect on the experience and think deeply and purposefully about their work in the clinic, what (besides

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<sup>93</sup> See Rolfe, Gary, 'Reflective Practice: Where Now?' (2) 1 (2001) *Nurse Education in Practice* 21-29 and Rolfe, Gary, Freshwater, D. and Jasper, M. *Critical Reflection in Nursing and The Helping Professions: A User's Guide* (Basingstoke: Palgrave Macmillan 2001). Rolfe's reflective model is based upon three simple questions: What? So What? Now What? Once something has been experienced, the student will start to reflect on what happened. This will enable students to think through their experience, examine feelings about what happened and decide on the next steps. This leads to the final element of the cycle - taking an action.

<sup>94</sup> Ibid.

technical and legal content) is being learned and how that learning can be applied to future practice.<sup>95</sup>

CLE relies on structured reflection to enable students to analyse the learning and insights they gain from their experience.<sup>96</sup> The Best Practices Report, compiled by leading clinical educators in Australia to guide clinical teachers on best practice protocols for teaching in clinical settings, portrays reflection as a learning outcome that can be utilised for 'critical analyses of legal concepts'.<sup>97</sup> Reflection is considered not only essential for effective legal practice but a critical component of clinical pedagogy.<sup>98</sup> As Evans notes, clinical legal pedagogy involves 'a system of reflection, self-critique and supervisory feedback by which law students learn how to learn from their experiences and observation and, at its most effective level, how to take

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<sup>95</sup> See Michele Leering, 'Enhancing the Legal Profession's Capacity for Innovation: The Promise of Reflective Practice and Action Research for Increasing Access to Justice' (2017) *The Windsor Yearbook of Access to Justice*, 34(1) 189.

<sup>96</sup> Adrian Evans et al, *Best Practices: Australian Clinical Legal Education* (Report for Office of Teaching and Learning, 2013) See also Margaret Barry, Jon C Dubin and Peter Joy, 'Clinical Education for This Millennium: The Third Wave' (2000) 7 *Clinical Law Review* 1; Rachel Spencer and Susan L Brooks, 'Reflecting on Reflection: A Dialogue Across the Hemispheres on Teaching and Assessing Reflective Practice in Clinical Legal Education' (2019) 53(4) *The Law Teacher* 1, Susan Brooks, 'Fostering Wholehearted Lawyers: Practical Guidance For Supporting Law Students' Professional Identity Formation' (2018) 14(2) *University of St. Thomas Law Journal* 412.

<sup>97</sup> Adrian Evans et al, *Best Practices: Australian Clinical Legal Education* (Report for Office of Teaching and Learning, 2013).

<sup>98</sup> See Evans, Adrian et al, *Australian Clinical Legal Education: Designing and Operating a Best Practice Clinical Program in an Australian Law School* (Australian National University Press, 2017) ch 7; Michele Leering, 'Encouraging Reflective Practice: Conceptualising Reflective Practice for Legal Professionals' (2014) 23 *Journal of Law and Social Policy* 83, Rachel Spencer, 'Holding up the Mirror: A Theoretical and Practical Analysis of the Role of Reflection in Clinical Legal Education' (2012) 17 *International Journal of Clinical Legal Education* 181, Ross Hyams, 'Assessing Insight: Grading Reflective Journals in Clinical Legal Education' (2007) 17 *James Cook University Law Review* 25, C Maughan and J Webb, 'Taking Reflection Seriously: How Was It For Us?' in C Maughan and J Webb (eds), *Teaching Lawyers' Skills* (Butterworths, 1996)

personal responsibility for clients and their legal problems'.<sup>99</sup> It relies on structured reflection, enabling students to gain insight into their clinical experience.<sup>100</sup> Clinical educators emphasise clarity on what reflection is and the role it should play in the education or development of professionals.<sup>101</sup> Clinicians recognise that utilising reflection broadens education from merely teaching legal skills to including interpersonal skills, effective communication, self-knowledge and self-identity. This learning is deeper and more meaningful for the students when they participate as lawyers and later reflect on their experiences.<sup>102</sup> As students become reflective practitioners, they develop self-awareness in their roles as legal practitioners.

## **9. Video Case Report**

Assessment Task Two is a video podcast presentation of 5–7 minutes prepared by students and uploaded for assessment. Students are expected to create a video providing a description and detailed analysis of the legal/ethical issues on a current matter they are involved in during their placement. Creativity in presentation is encouraged, so students may submit a case report with flowcharts, infographics, PowerPoints or Prezi presentations. The assessment task is intended to develop a

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<sup>99</sup> Evans et al (n 97) 41.

<sup>100</sup> Ibid.

<sup>101</sup> Ibid.

<sup>102</sup> Evans et al (n 97) 42. See also Roy Stuckey et al, *Best Practices for Legal Education: A Vision and a Road Map* (US Best Practices (Clinical Legal Education Association, 2007) 190.

student's skills in research, analysis and fact presentation, arguments and conclusions in law-related areas.

Students are encouraged to choose a topic for the video related to substantive law, the application of a law, or the operation of legal processes and/or professional ethics—provided that the issue has arisen in the day-to-day work at the placement.

The video should inform an intelligent but uninformed audience about the topic they have chosen. The video is assessed according to:

- understanding of the topic and the legal/procedural/policy/ethical issues it raises
- clarity of structure and accuracy of content
- originality
- effective use of time
- presentation (ability to persuade/inform the audience within a short period).

## **10. Host Organisation Assessment of Work Performance**

Students are required to have full attendance at the host organisation during the placement. The host organisation provides a report on each student's performance, considering the student's ability to demonstrate practical, legal and professional skills.



## 11. Evaluation

Based on collated student feedback, students report that the LTC expands their understanding of how legal technology can enhance legal services, builds their interest in the legal technology industry and increases their practical no-code app-building skills. Some feedback comments include:

The development of a project which has a real end-user. It was an amazing experience to define a problem, and implement stages of the project to create a final product that achieves a key need. On one side the project required a close look into the law and our ability to comprehend it and put it into simple language but on the other side, it also required us to be creative and organised in our approach. (Student A)

The opportunities that are available for enhancing process, access to justice and efficiency. (Student B)

Predominantly, the main take away I think I have learned is the broad array of career options available to law students, other than traditional corporate pathways. Listening to all of the incredible speakers in stage 1, not all practising lawyers, or lawyers practising in alternative ways, was eye-opening. I am grateful for that exposure. (Student C)

## 12. Connecting Law Tech Education to Future Legal Practice

Teaching students about how technology impacts lawyering has steadily become a critical focus within clinical education.<sup>103</sup> In many clinical programs, legal technology and/or innovation have become a focus or primary method of clinical work.<sup>104</sup> Legal technology, access to justice clinics and law school experiential units that focus on technology have increased.<sup>105</sup> In Australia, several law schools have launched clinics where students develop apps and online materials, host hackathons and engage with other technology solutions for clients, pro se litigants, public interest organisations and the courts.<sup>106</sup> In many of these programs, legal technology and/or innovation are the focus or primary method of the clinical work.<sup>107</sup>

Boonin et al posit that the clinics and externships focusing on legal education and legal practice's intersectionality are 'uniquely situated—and indeed compelled—to take on this role more broadly'.<sup>108</sup> These researchers further emphasise that clinicians are 'positioned to be leaders in teaching this technology to students, regardless of the substantive area of law in which their clinics specialize'.<sup>109</sup> Teaching lawyering technology enriches clinical pedagogy and identifies for students the essential

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<sup>103</sup> See S Boonin and L Herrera (n 3) and E Jones, E et al, (n 9)

<sup>104</sup> Ibid. See also Cynthia L. Dahl & Victoria F. Phillips, *Innovation and Tradition: A Survey of Intellectual Property and Technology Legal Clinics*, (2018) *Clinical Law Review*, 25 (95) 137.

<sup>105</sup> See <<https://www.landars.com.au/media-centre/lander-and-rogers-law-tech-clinic-launches-in-sydney>, <https://www.maddocks.com.au/insights/maddocks-sponsors-law-tech-pop-up-course>>.

<sup>106</sup> <<https://globallegalhackathon.com/>>.

<<https://www.monash.edu/entrepreneurship/events/2019/global-legal-hackathon>>.

<sup>107</sup> See S Boonin and L Herrera (n 3).

<sup>108</sup> Ibid 25.

<sup>109</sup> Ibid 25.

elements of an infrastructure that can support the incorporation of technology into clinical practice.<sup>110</sup> Clinical programs continue to recognise their role in preparing students for digitised legal workplaces. As such, it follows that these programs can and should embrace technology integration into their teaching and practices.<sup>111</sup> Clinical programs can equip law students with grounding practice habits, ethical frameworks and values necessary to apply technologies thoughtfully, creatively and responsibly in practice.<sup>112</sup>

Lawyering technology affects the lawyer's role in many ways: as an advisor, guide and advocate.<sup>113</sup> Clinical students are invited to explore the effects of technology on their developing professional identities, broadening their scope of best practice to include virtual service delivery.<sup>114</sup> Educating students to provide legal services to clients via technology means preparing them for how their personal and professional identities

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<sup>110</sup> Ibid.

<sup>111</sup> Ibid.

<sup>112</sup> Ibid. See Gary E, Marchant, Allenby, R Braden, Joseph R Herkert, (eds), *The Growing Gap Between Emerging Technologies and Legal-Ethical Oversight: The Pacing Problem*, (Dordrecht: Springer Netherlands 2011). Marchant et al examine the growing gap between the pace of science and technology and the lagging response of legal and ethical oversight that society relies on to govern emerging technologies. The authors offer potential paths to more responsive regulation and governance.

<sup>113</sup> S Boonin and L Herrera (n 3).

<sup>114</sup> See Jacqueline Weinberg and Jeffrey Giddings, 'Innovative Opportunities in Technology and the Law: The Virtual Legal Clinic' in Ann Thanaraj and Kris Gledhill (Eds), *Teaching Legal Education in the Digital Age*. (Routledge 2022), Jeff Giddings, Jennifer Lindstrom and Jacqueline Weinberg, 'Risk, Reward and Technology – Responding Effectively to COVID19' (2021) International Legal Aid Group Conference, Sydney, Conference Papers, Booklet 2, 146-152, Jacqueline Weinberg (2020, September). 'The Virtual Legal Clinic at Monash Law – providing online access to justice since 2017'. <<https://acjiblog.wordpress.com/2020/09/23/the-virtual-legal-clinic-at-monash-law-providing-online-access-to-justice-since-2017/>>.

will be redefined in the digital age.<sup>115</sup> Technology has transformed not only legal practice but specifically the clients' relationship to the law and legal institutions.<sup>116</sup> A focus on the intersection of legal technology and legal service with an emphasis on access to justice and legal design, consolidates key future-ready skills for law students to address diverse client needs by breaking down legal solutions into a set of simple rules brought to life by technological solutions.<sup>117</sup>

Clinical students are encouraged to tailor their communication and advice to the situation and context of each client as part of a client-centred approach, including the reasons clients cannot access onsite legal services.<sup>118</sup> These insights provide students with opportunities to analyse and reflect on the relationship between law and access to justice and the contributions that lawyers make.<sup>119</sup> Students are encouraged to explore issues of unequal access to technology and focus on developing skills that will enhance digital communication and client-centredness, such as self-awareness and responsibility.<sup>120</sup>

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<sup>115</sup> S Boonin and L Herrera (n 3)

<sup>116</sup> Ibid. See also Jeff Giddings, 'It's More Than a Site: Supporting Social Justice Through Student Supervision Practices' in Chris Ashford and Paul Mckeown (eds), *Social Justice and Legal Education* (Cambridge Scholars, 2018).

<sup>117</sup> Ann Thanaraj, Paul Durston, and Sam Elkington, 'A Blueprint for Designing Creativity into Learning Design' in Ann Thanaraj and Kris Gledhill (Eds), *Teaching Legal Education in the Digital Age* (Routledge 2022).

<sup>118</sup> See Jacqueline Weinberg and Jeff Giddings, 'Innovative Opportunities in Technology and the Law: The Virtual Legal Clinic' in Ann Thanaraj and Kris Gledhill (Eds), *Teaching Legal Education in the Digital Age*. (Routledge 2022).

<sup>119</sup> Ibid.

<sup>120</sup> Ibid.

By using technology in practice, students reflect on how and why technology has the ability to facilitate or hamper client relationships, offering new insights into client-centeredness and cultural competency.<sup>121</sup> Clinical Legal Education has long been aligned with a social justice mission with clinics prioritising the delivery of services to groups who have limited opportunities to advocate effectively for themselves.<sup>122</sup> As students become aware of the reality of their clients' circumstances and how important legal representation is to resolving their clients' problems, they become more aware of their responsibility.<sup>123</sup> They realise that, in all likelihood, their clients would not have access to legal advice if not for their assistance, and thus their social consciousness is raised.<sup>124</sup>

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<sup>121</sup> Ibid.

<sup>122</sup> Most Australian law school clinical programs are established within, or closely connected to community legal centres (CLCs). CLCs are independent, non-profit, community-based organisations that provide free and accessible legal and related services to everyday people, including people experiencing discrimination and disadvantage. CLCs mostly provide legal assistance with tenancy, credit and debt, administrative law, social security, criminal law matters and family/domestic violence. These are all areas of work that have an affinity with issues of social justice. (Clinical Legal Education Guide (Kingsford Legal Centre, 13<sup>th</sup> ed, 2019).

<sup>123</sup> Jacqueline Weinberg, 'Preparing Students for 21st-Century Practice: Enhancing Social Justice Teaching in Clinical Legal Education' (2021) *International Journal of Clinical Legal Education*; Stephen Wizner, 'Is Social Justice Still Relevant' (2012) 32(2) *Boston College Journal of Law & Social Justice* 345, Stephen Wizner and Jane Aiken, 'Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice' (2004–2005) 73 *Fordham Law Review* 997.

<sup>124</sup> Stephen Wizner, 'The Law School Clinic: Legal Education in the Interests of Justice' (2001–2002) 70(5) *Fordham Law Review* 1931. See also Jacqueline Weinberg, 'Preparing students for 21st-century practice: Enhancing Social Justice Teaching in Clinical Legal Education' (2021) *International Journal of Clinical Legal Education*, Jeff Giddings, 'It's More than a Site: Supporting Social Justice Through Student Supervision Practices' in Chris Ashford and Paul McKeown (eds), *Social Justice and Legal Education* (2018) Cambridge Scholars Publishing, 43-64, Stephen Wizner and Jane Aiken, 'Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice' (2004) 73 *Fordham Law Review* 997.

Clinical pedagogy has long focused on improving students' capacity to manage uncertainty, exercise judgment and enhance client services under challenging conditions.<sup>125</sup> Clinicians can leverage lawyering technology to teach problem-solving, flexibility and adaptation in real-life applications.<sup>126</sup> Clinicians can assist students in embracing technological uncertainty and equip them to provide direction to clients who experience technical failures or face barriers to accessing technology.<sup>127</sup> By helping students centre the perspectives and experiences of clients within technology, clinicians can help students recognise their own biases, assumptions and privileges.<sup>128</sup>

Integrating technology within clinical programs cuts across many facets of clinical legal education, including client interviewing, core skills development and reflective practice.<sup>129</sup> Clinical pedagogy views skills teaching as truly complementary to a clinic's social justice mission, enabling students to suspend judgment, communicate and listen across differences and explore solutions creatively.<sup>130</sup> The aims and outcomes of CLE build on students' problem-solving skills, reflective thinking about legal culture and lawyering goals, learning how to both behave and think like a

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<sup>125</sup> Evans et al, *Australian Clinical Legal Education: Designing and Operating a Best Practice Clinical Program in an Australian Law School* (Australian National University Press, 2017).

<sup>126</sup> Sarah Boonin and Herrera, LE (n 3).

<sup>127</sup> Ibid 27.

<sup>128</sup> Ibid 28.

<sup>129</sup> See Jacqueline Weinberg and Jeff Giddings 'Innovative Opportunities in Technology and the Law: The Virtual Legal Clinic' in A. Thanaraj & K. Gledhill (Eds), *Teaching Legal Education in the Digital Age* (Routledge 2022).

<sup>130</sup> Evans et al, *Australian Clinical Legal Education: Designing and Operating a Best Practice Clinical Program in an Australian Law School* (Australian National University Press, 2017).

lawyer, and understand the issues of access to justice and social justice.<sup>131</sup> Students learn to identify how various technologies affect the execution of different lawyering skills and offer feedback to students that specifically addresses their deployment of technology.<sup>132</sup> In this way, students are ready to transfer and apply their lawyering skills in the technology-infused legal settings and will emerge as new lawyers.<sup>133</sup>

### 13. Conclusion

Clinical programs play a central role in preparing lawyers for practice. This includes preparing them to be technologically competent lawyers, regardless of their law clinic's specialty.<sup>134</sup> As clinical educators, we need to instill in our students an understanding of how technology impacts legal practice and provide them with the opportunity to reflect on this new reality.<sup>135</sup>

There are many challenges faced by law graduates emerging in the workplace.<sup>136</sup>

Increased expectations in the legal profession require students to seize experiential education opportunities to be competitive for sought-after graduate positions.<sup>137</sup>

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<sup>131</sup> Ibid.

<sup>132</sup> S. Boonin and L. Herrera (n 3 29).

<sup>133</sup> Jones, E, et al (n 9).

<sup>134</sup> Ibid.

<sup>135</sup> Ibid.

<sup>136</sup> See Cantatore, Francina et al, 'A Comparative Study into Legal Education and Graduate Employability Skills in Law Students through Pro Bono Law Clinics' (2021) *Law Teacher* 55 (3) 334, M Pistone, (2015) 64(4) 'Law Schools and Technology: Where We Are and Where We Are Heading' *Journal of Legal Education*, 586–604.

<sup>137</sup> See Cantatore, Francina et al, 'A Comparative Study into Legal Education and Graduate Employability Skills in Law Students through Pro Bono Law Clinics' (2021) *Law Teacher* 55 (3) 334.

Advances in legal tech, automation and AI will alter a lawyer's work substantially in the future.<sup>138</sup> Accordingly, it is more important than ever for law graduates to hone the skills required for the profession and be well rounded to meet future challenges.

As Thanraj et al emphasise:

The future- readiness of a law student working towards becoming a digitally proficient professional is less about the tech itself and more about understanding what technology works best in a given situation and how to optimise and work in ways which are augmented by technology and legal expertise.<sup>139</sup>

Within the context of the legal industry, this means that the legal practitioner who is a 'digitally proficient professional' will be able to appreciate the multi-dimensional aspects of their client's problem across the physical and digital worlds, and be resourced with innovative ideas about how to attempt to resolve it through the medium of technological tools and solutions where appropriate.<sup>140</sup>

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<sup>138</sup> See Amy Simpson, 'Coronavirus, Remote Working and the Virtual Law Firm' (2020), <[www.lexisnexis.co.uk/blog/future-of-law/coronavirus-remote-working-and-the-virtual-law-firm](http://www.lexisnexis.co.uk/blog/future-of-law/coronavirus-remote-working-and-the-virtual-law-firm)> (accessed 24 September 2020).

<sup>139</sup> Ann Thanraj, Paul Durston, and Sam Elkington, 'A Blueprint for Designing Creativity into Learning Design' in Ann Thanaraj and Kris Gledhill (Eds), *Teaching Legal Education in the Digital Age* (Routledge 2022) 86.

<sup>140</sup> *Ibid.*



Law clinics like the LTC provide students with the opportunity to prepare for the real challenges faced in practice by enhancing their communication skills, teamwork, empathy and resilience.<sup>141</sup> The LTC provides students with real-world insights into the intersection between legal services and technology. It enables them to reflect on the skill sets that represent critical competencies for them as future lawyers.

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<sup>141</sup> Cantore et al, 'A Comparative Study into Legal Education and Graduate Employability Skills in Law Students through Pro Bono Law Clinics' (2021) *Law Teacher* 55 (3) 315.

# Thinking Like Entrepreneurs: Qlegal's Experience of Teaching Law Students to have an Entrepreneurial Mindset

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## Abstract

To advise a client you need to understand what they *do*. To provide truly innovative, client-centred advice, you also need to understand how they *think*. These observations are especially true when working with entrepreneurs who may be otherwise inclined to move forward with their business with or without legal guidance.

Entrepreneurs are distinguished by their growth mindset and resilience, appetite for innovation and comfort with taking risks and doing things themselves. As the legal marketplace in the UK becomes increasingly competitive (due to legal technology and the growing number of alternative legal service providers), law students need to adopt an entrepreneurial mindset themselves, both to navigate the legal marketplace

for their own careers and to provide commercially aware legal services to their clients. Law schools need to teach law students to think like entrepreneurs, and commercial law clinics provide the natural setting.

This paper adopts a qualitative case study approach to examine how qLegal, the pro bono commercial law clinic within the Centre for Commercial Law Studies ("CCLS") at Queen Mary, University of London ("QMUL") teaches students to develop an entrepreneurial mindset. We reflect on the importance of students learning about and developing this mindset, for their own professional development and to service the unmet legal needs of the start-up community. This paper will also highlight the challenges faced by qLegal staff, including our own legal training and experience, our obligations to real clients and our students' expectations. We conclude by sharing examples of how we are currently teaching our students to have an entrepreneurial mindset and our ideas for overcoming our institutional challenges and improving our offering even more.

## 1. Thinking like Entrepreneurs: qLegal's Experience of Teaching Law Students to Have an Entrepreneurial Mindset

Entrepreneurs are distinguished by their growth mindset<sup>1</sup> and resilience, appetite for innovation and comfort with taking risks and doing things themselves.<sup>2</sup> As the legal marketplace in the UK becomes increasingly competitive, due to legal technology and the growing number of alternative legal service providers, law students need to adopt an entrepreneurial mindset themselves, both to navigate the legal marketplace for their own careers and to provide commercially aware legal services to their clients. Law schools need to teach law students to think like entrepreneurs, and commercial law clinics provide the natural setting.

This paper adopts a qualitative case study approach to examine how qLegal, the pro bono commercial law clinic within the Centre for Commercial Law Studies ("CCLS") at Queen Mary, University of London ("QMUL") teaches students to develop an entrepreneurial mindset. We reflect on the importance of students learning about and developing this mindset, for their own professional development and to service the unmet legal needs of the start-up community. This paper will also highlight the challenges faced by qLegal staff, including our own legal training and experience, our obligations to real clients and our students' expectations. We conclude by sharing

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<sup>1</sup> Dweck, C., Who will the 21st-century learners be? *Knowledge Quest*, vol. 38, no. 2, Nov.-Dec. 2009, pp. 8+.

<sup>2</sup> See generally Robinson, P.B., and Gough, V., The Right Stuff: Defining and Influencing the Entrepreneurial Mindset, in *Journal of Entrepreneurship Education*, Vol. 23, Issue 2, 2020.

examples of how we are currently teaching our students to have an entrepreneurial mindset and our ideas for overcoming our institutional challenges and improving our offering even more.

## 2. An Entrepreneurial Mindset

To be clear, when we refer to an entrepreneurial mindset, we are not talking about the equally important lawyering skill of commercial awareness. Lawyers who are commercially aware understand the practical realities and wider business context of their clients' businesses and prepare advice and solutions that reflect these realities. While commercial awareness is another skill sought by legal employers and taught and practised in commercial law clinics, including at qLegal, it is distinct from the skill of having an entrepreneurial mindset or thinking like an entrepreneur.

A person with an entrepreneurial mindset is generally accepted to have the ability to "capitalize on opportunities, change course when needed, and view mistakes as an opportunity to learn and improve."<sup>3</sup> Similarly, someone who think likes an entrepreneur, "recognizes an otherwise overlooked opportunity, develops the confidence to take a risk, communicates their ideas clearly, and is able to adjust to and learn from setbacks."<sup>4</sup>

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<sup>3</sup> Gillett A. and Kelterborn, K, How to Inspire Entrepreneurial Thinking in Your Students: Whether or Not They're Actually Studying Entrepreneurship, Harvard Business Publishing Education, Feb. 2022.

<sup>4</sup> NFTE 2020 whitepaper, Entrepreneurial Mindset on Ramp to Opportunity, available at <<https://www.nfte.com/wp-content/uploads/2020/04/NFTE-Whitepaper-Entrepreneurial-Mindset-On-Ramp-to-Opportunity-December-2017.pdf>>.\_See also, Robinson, P.B., and Gough, V., The Rights Stuff:

Pedagogy scholars have identified seven teachable attributes of entrepreneurial thinking:

(1) problem solving, (2) tolerance for ambiguity, (3) failing forward, (4) empathy, (5) creativity with limited resources, (6) responding to critical feedback, and (7) teamwork approach.<sup>5</sup>

We will return to these seven attributes when we discuss the ways that qLegal teaches students to think like entrepreneurs and the challenges that we face.

### 3. Advising Entrepreneurial Clients

qLegal offers postgraduate law students studying for their one-year law Masters (“LLM”) or PhD, experiential learning opportunities working with start-ups and entrepreneurs across four main extra-curricular programmes:

- **Legal advisory programme:** the traditional 1:1 legal advice clinic;

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Defining and Influencing the Entrepreneurial Mindset, *Journal of Entrepreneurship Education*, Robinson (Vol. 23, Issue 2) (2020) (explaining that mindset is a set of attitudes that causes a person to “perceive and behave, act and react” in a certain way; referring to the Entrepreneurial Attitude Orientation defined by Robinson in 1987 to measure the way that entrepreneurs think versus non-entrepreneurs using these four scales: (1) concrete results associated with the start-up and growth of a business, (2) perceiving and acting upon business activities in new and unique ways, (3) a perception of control and influence over one’s business and (4) self-confidence and perceived competency regarding one’s business affairs.)

<sup>5</sup> Peschl, H., Deng, C., and Larson, N., Entrepreneurial thinking: A signature pedagogy for an uncertain 21<sup>st</sup> century, *International Journal of Management Education*, 2020 100427, at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7539060/>.

- **Public legal education programme:** preparing resources and delivering workshops to budding entrepreneurs and start-ups;
- **Externship programme:** a placement one day a week for six months within a start-up to help spot legal issues and conduct research; and
- **Innovation projects programme:** producing innovative solutions to meet a client's brief using Design Thinking.

We also offer 24 students a place on our credit-bearing, Entrepreneurship Law Clinic Module.

When we opened our doors as a commercial law clinic in 2013, the focus was on providing legal and regulatory advisory services to early-stage, start-up companies, primarily in the Information and Communication Technologies ("ICTs") sector, specialising in addressing a range of challenging intellectual property ("IP") management issues.<sup>6</sup> In the intervening nine years, qLegal's client base has expanded to meet changing market needs, and now includes entrepreneurs across a wide variety of industries, including education, sustainable fashion, financial services and the arts, although the vast majority of our clients utilise, and depend upon, ICTs in the provision of their products and services.

While the areas of legal support provided to our clients have also expanded to cover a wider range of legal topics relevant to the start-up ecosystem, there are three main

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<sup>6</sup> <<https://www.qmul.ac.uk/law/research/funded/qlegal/>>.

areas where advice is generally requested. First, concerning the nature of the business, i.e. what are we?, helping clients move from an unincorporated form, such as a sole trader, to an incorporated form, such as a limited company or a community interest company. Second, IP issues, ensuring that clients are able to protect the intangible assets that generally comprise the majority of the business. IP advice will range from non-disclosure agreements (“NDAs”), to protect the disclosure of ideas when working with others, to the registration of trade marks and patents. Third, for many online businesses the collection and processing of personal data as a revenue source means compliance with data protection laws can be a critical area of concern.

The nature of and need for legal advice sought by entrepreneurs varies based on a range of factors, but four key issues are particularly relevant to the nature of entrepreneurship. First, as noted above, entrepreneurs are prepared to take risks to succeed. Such risk taking often extends to their view of legal matters. To be engaged, they will need to be convinced that the advice is necessary for the business to progress and that the risks from not addressing the issue are greater than the costs, especially when existential. Second, it is also important to understand how the type of legal support varies on the entrepreneurial journey from start-up to scale-up, such as the shift from borrowing money from family and friends to seeking investment from venture capitalists. Typically, the legal advice given to a start-up needs to cover their current legal needs *and* anticipate their future legal needs. Third, an awareness of what the entrepreneur is hoping to achieve is also critical, i.e. what success would



look like. For some, the creativity of building is the main driver; for some, it is about bringing about change; while for others, it is all about the money! Does the client want to be the next Google or are they looking to be bought by Google? Finally, notwithstanding the long-term value of legal advice, convincing start-ups to invest resource in obtaining legal advice can be challenging. While pro bono advice clinics remove the financial barrier to accessing legal advice, entrepreneurs can still struggle to find the time to capitalise on the opportunities offered.

As of 1 January 2021, there were 5.3 million private sector micro-businesses in the UK, accounting for 95% of all UK businesses.<sup>7</sup> Over one third of UK businesses are in London and the South East of England.<sup>8</sup> This is unsurprising given London's recent ranking (alongside New York) as the world's number two start-up hub, second only to Silicon Valley.<sup>9</sup> qLegal's physical proximity to the Silicon Roundabout and the King's Cross tech hub<sup>10</sup> means it is well placed to support these local entrepreneurs.

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<sup>7</sup> "Micro-businesses" have 0-9 employees and "businesses" includes all legal forms, including self-employed, sole traders and multinationals". See Companies House Official Statistics – Companies register activities: 2022 to 2021, published 24 June 2021, page 12 and page 5 respectively, available at: <<https://www.gov.uk/government/statistics/companies-register-activities-statistical-release-2020-to-2021/companies-register-activities-2020-to-2021>>.

<sup>8</sup> See Companies House Official Statistics – Companies register activities: 2022 to 2021, published 24 June 2021, page 14.

<sup>9</sup> The Global Startup Ecosystem Report – GSER 2022, Global Entrepreneurship Network, undated 2022, available at <<https://startupgenome.com/report/gser2022>>.

<sup>10</sup> "Silicon Roundabout" is the widely adopted nickname for the East London Tech City, a cluster of high-tech companies in East London. In recent years, the area around King's Cross and St Pancras train stations have become a hub for tech giants such as Google UK and Facebook, along with innovative start-ups such as BenevolentAI (with whom qLegal regularly partner on the externship programme).

In the 2021-22 academic year, qLegal students provided legal advice, support and education to over 150 start-ups and entrepreneurs,<sup>11</sup> of which 69 received tailored individual advice. Of the clinic enquiries received, 55% were from start-ups in the development stage and/or with no turnover, and 64% had not received any funding. The vast majority worked alone. With limited financial and human resources, it is unsurprising that 69.8% reported that they do not usually obtain legal advice for their business.<sup>12</sup>

This last figure also reflects the position at a national level. The Legal Services Board concluded in April 2022 that “only a quarter of small businesses used professional help in response to legal issues”, with the legal system viewed by small businesses as “unaffordable and tilted against those lacking financial resources”. Where small businesses do seek professional help, free sources of advice, such as business law clinics like qLegal, “play an important role [representing] 25% of the main provider used”.<sup>13</sup> However, the availability of such free advice services is limited and

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<sup>11</sup> This level of output was impressive given the post-pandemic climate and limited resources. However, our legal advice clinic was only able to support around 35% of the entrepreneurs who contacted qLegal for advice. This was primarily due to the limitations of the practice areas we cover and the number of appointments available.

<sup>12</sup> At qLegal, we often hear of clients seeking free legal advice/support from within their network, or entrepreneurs conducting their own research. Where start-ups can afford to pay for some legal support, this is often in the form of a legal subscription service (for example, SeedLegals) or from their accountants. Law firms are increasingly aware of the demand from start-ups that legal advice is proportionate in cost and value, with many offering legal membership, fixed-fee legal services and/or flexible legal packages options.

<sup>13</sup> Legal Services Board, Small business legal needs - Wave four survey 2021, April 2022 <<https://legalservicesboard.org.uk/wp-content/uploads/2022/05/20220406-Small-business-legal-needs-FINAL.pdf>> page (7).

consequently, in the “vast majority of cases where small businesses have a legal need requiring professional support, this need is not met.”<sup>14</sup>

These commercial constraints and lack of affordable legal support mean that entrepreneurs at the beginning of their start-up journey are often forced to be agile, self-sufficient, jack-of-all-trades characters, who take risks to ensure that their business idea succeeds.

#### **4. Thinking like an Entrepreneur**

There are many reasons why clinic students should be taught to think like their entrepreneur clients. We focus on what we consider to be the top three reasons, viewed from the perspective of balancing the demands of clients and the expectations of students, within an evolving legal environment: quality of service delivery, student employability and changes in the legal services market.

##### **4.1 Service Delivery**

Entrepreneurs are busy people, juggling multiple priorities. They are often impatient and do not want to wait for advice before launching their business or adopting a new business practice. They want legal advice quickly and clearly, communicated in non-legalese language.

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<sup>14</sup> Legal Services Board, Small business legal needs - Wave four survey 2021, April 2022 <<https://legalservicesboard.org.uk/wp-content/uploads/2022/05/20220406-Small-business-legal-needs-FINAL.pdf>> page (i).

Understanding the level of support the client wants is a vital first step for students when preparing their advice letter, workshop materials or project prototype. Whether an entrepreneur is still formalising their business idea or has developed a minimum viable product, they are often hampered by similar business issues. What differentiates them is the outcome they expect from their lawyers: from passenger along for the ride, to driver, to full-on map maker.

To enable students to provide client-centred services, it should be made clear from the students' brief what level of support their client is expecting and the role the students should play. For example:

- Some clients are simply looking for approval of their decisions. Here, students need to ensure clients understand the practical and legal consequences of adopting their chosen course of action. (Lawyer as passenger along for the ride).
- A second category of client will have a rough idea of what they need to do, as a result of their own research, but need support implementing their plan in compliance with the law. (Lawyer as driver).
- Other entrepreneurs want support to help them shape their business at the start of the journey. They want help building the legal infrastructure that will allow them to grow. (Lawyer as map maker).

At all times, students must communicate with their clients in a clear, empathetic and timely manner: “[e]ffective lawyer-client communication is not only an essential component of client representation but also the most important thing many clients want from their lawyers.”<sup>15</sup> Law students advising live clients must respect the client’s desire for good communication. To help students deliver the level of service clients expect, students will need to have good soft skills, including active listening, stakeholder management and professional, non-legalese communication.

Students can raise awareness of particular legal issues affecting entrepreneurs by delivering targeted legal education information sessions at venues servicing start-up communities. Interest and engagement is then channelled into 1:1 advice clinics, where clients can receive tailored written advice, or directed to self-serve publicly available resources. The hope is that start-ups using these services will subsequently thrive to such an extent that they will benefit from regular legal support.

By understanding the various levels of support entrepreneurs expect on their journey from start-up to scale-up, students will be better placed to spot new opportunities to serve their future clients. We must teach students the importance of recognising these new opportunities and having the conviction to act upon them: to disrupt the

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<sup>15</sup> What do Clients Want from their Lawyers? 2013 J. Disp. Resol. 143 (2013).

legal market for the purposes of delivering better client care, and to be entrepreneurial in the way they approach their professional responsibilities.

## 4.2 Student Employability

Keeping abreast of what recruiters are looking for from graduates is an essential part of enhancing student employability. By doing so, we can ensure that the skills we teach our students are relevant to the legal market and students are set up to succeed in it. The “entrepreneurial instinct” is something that legal recruiters are increasingly looking for from candidates.<sup>16</sup>

In the 2020-21 academic year, 40% of students participating in qLegal on an extra-curricular basis wanted to practise law in the UK following graduation. Traditionally, graduates wanting to practise law in England needed to complete a legal practice course exam, followed by a two-year training contract (work placement) within a law firm.<sup>17</sup> The limited number of training contracts available mean that securing one is an extremely competitive process, with as few as 2% of applicants being successful.<sup>18</sup>

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<sup>16</sup> <<https://targetjobs.co.uk/careers-advice/law/what-skills-do-law-firms-look-when-recruiting-graduates-trainee-solicitor-jobs>>.

<sup>17</sup> For foreign students without a qualifying law degree, the GDL or QLTS will need to be taken first.

<sup>18</sup> The 82 firms listed in Chambers Student Guide’s 2020 edition, received a total of more than 70,000 applications for 1,357 training contracts. See How competitive is the law? Chambers: Students, available at <<https://www.chambersstudent.co.uk/where-to-start/commercial-awareness-info/our-newsletter/how-competitive-is-the-law>>.

In September 2021, the Solicitors Regulation Authority of England and Wales introduced an alternative route to qualify as a solicitor: the Solicitors Qualifying Examination (“SQE”). This allows law graduates to complete two exams testing legal knowledge and skills, in addition to two years’ qualifying work experience (“QWE”). The aim of the SQE was to “open up new and diverse routes to qualification” while providing “assurance that all aspiring solicitors meet consistent, high standards.”<sup>19</sup> Subject to meeting certain criteria, the client-facing work students undertake within a clinical setting can count towards their QWE for the purposes of SQE.<sup>20</sup> This new regime blurs the traditional boundaries of the academic, vocational and practical stages of the qualification process for solicitors.

The competitive, evolving legal market can be difficult for graduates to navigate and especially for international students, who may be used to an entirely different qualification process in their home country. A large part of qLegal’s student body comprises international students. They have a year, while studying for their LLM, to familiarise themselves with the London legal market, and what recruiters will be

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<sup>19</sup> Green light for new solicitor exam, Solicitors Regulation Authority, 28 October 2020: <<https://www.sra.org.uk/sra/news/press/2020-press-release-archive/sqe-approved-lsb/>>. The cost of the SQE1 exam is £1,622 and SQE2 exam is £2,493. Whereas, the cost of the LPC at BPP is upwards of £13,038. See <<https://www.lawsociety.org.uk/career-advice/becoming-a-solicitor/solicitors-qualifying-examination-sqe/requirements-and-cost>> and <<https://www.bpp.com/courses/law/postgraduate/lpc-legal-practice-course>>.

<sup>20</sup> QWE must involve providing legal services to real life clients: simulated legal services do not count. See Qualifying work experience for candidates, Solicitors Regulation Authority, 5 April 2022: <<https://www.sra.org.uk/become-solicitor/sqe/qualifying-work-experience-candidates/>>.

looking for in successful candidates, as well as the time offered by the post-study work visa.

When they join qLegal, many students have an outdated view of what it takes to succeed as a lawyer, adopting the traditional view that they should be specialists in a single area and possess deep technical legal knowledge. However, “modern day legal professionals need to learn, practice and embed different skillsets so they can partner with their clients and help them solve [their] problems”<sup>21</sup>: they need to be ‘O-shaped’<sup>22</sup>

O-shaped lawyers are encouraged to be openminded, optimistic, opportunistic, original and take ownership of their work. There is much overlap between these characteristics and possessing an entrepreneurial mindset. A vital part of our role when preparing students for future practice, is encouraging students to recognise the importance of developing these soft skills and to shift their perception of what it takes to succeed as a lawyer.

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<sup>21</sup> <<https://www.oshapedlawyer.com/>>.

<sup>22</sup> The “O Shaped Lawyer” programme is a “cross-industry movement whose aim is to drive positive change” and encourage “a fundamental re-think on the delivery of legal training and development for future lawyers and those already within the profession”. See The O Shaped Lawyer: Putting people at the heart of Legal Services, The O Shaped Lawyer, 2020, available at: <<https://www.briefing.co.uk/wp-content/uploads/2020/11/Briefing-5P-Clara-Garfield-updated-slides.pdf>> and Transforming the Training & Development of Lawyers, O Shaped Lawyer, Aspirant, February 2020, page 2 available at: <<https://static1.squarespace.com/static/5e73266f0be3ab3148757f25/t/5e736114824c026bd67da1e1/1584619820423/O+Shaped+Lawyer+-+In-House+Report+%28February+2020%29.pdf>>.



We are not alone in thinking that creating an entrepreneurial mindset is a critical employability skill:

- “Today’s law students do not just want to represent entrepreneurs. They need to be entrepreneurs, regardless of whether they pursue solo, small firm, Big Law, or other legal services careers.”<sup>23</sup>
- “The law students who are best able to capitalize on our fast-moving economy are those who have intellectual curiosity, embrace technology, think broadly about ethics, stakeholders and the rule of law.”<sup>24</sup>

Teaching students to understand and embrace the opportunities generated by legal technologies is another important part of preparing our students for an entrepreneurial mindset. As well as qLegal using technologies to deliver its advice services, such as the Clio online case management system,<sup>25</sup> CCLS also offers an LLM module in Legal Tech, which has proved hugely popular.<sup>26</sup> Tech-enabled lawyers are not simply lawyers who can use technology, they also need to be agile, collaborative, innovative, resilient and possess a growth mindset, i.e. they need to possess an

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<sup>23</sup> Dangel S. and Madison M., *Innovators Esq.: Training the Next Generation of Lawyer Social Entrepreneurs*, Dangel S. and Madison M. 83 UMKC L. Rev. 967 at 971-72 (2015).

<sup>24</sup> Professor Erika Buell, Director of the Law and Entrepreneurship Program at Duke Law, in *Why Every LL.M. Student Needs Entrepreneurial Thinking*, LLM Guide, Masters of Laws Programs Worldwide, at: <<https://llm-guide.com/articles/why-every-llm-student-needs-entrepreneurial-thinking>>.

<sup>25</sup> Clio is a cloud-based case management system that is available free of charge to university law clinics. See <[www.clio.com](http://www.clio.com)>.

<sup>26</sup> <<https://www.qmul.ac.uk/law/postgraduate/courses/llm/modules/llm/items/solm273-legal-tech-c21.html>>.

entrepreneurial mindset.<sup>27</sup> Students who understand (and can demonstrate) that thinking like an entrepreneur is at the heart of being O-shaped and tech-enabled lawyers will be well placed to deliver client-centred lawyering, making them attractive candidates to legal recruiters.

### **4.3 Changes in the Legal Services Market**

Just as there are now alternative routes to qualifying as a lawyer in England and Wales, there are also multiple different types of career opportunities available within the legal profession. While traditionally, lawyers either worked in private practice, or in-house, the spectrum of legal roles available is increasingly diverse, as a result of the changing legal landscape in response to client demands.

Law is a business, like any other commercial enterprise. It is subject to the pressures placed on it by demanding clients and must constantly innovate to remain competitive and, ultimately, survive. Law firms have recognised that clients are looking for cost-effective legal solutions and are willing to perform an element of self-service to achieve a corresponding cost reduction.

To deliver this hybrid service that clients expect, law firms need to better align their resources with the peaks and troughs of the workload: scaling up or down when

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<sup>27</sup> The Tech-Enabled Lawyer: the evolution of the legal function, LexisNexis, 2021, page 14, available at: <<https://www.lexisnexis.co.uk/research-and-reports/in-house/the-tech-enabled-lawyer.html>>.

required and ensuring the costs ultimately borne by the client are proportionate.<sup>28</sup>

They can achieve this, for example, by:

- Leveraging legal technology, such as electronic disclosure systems, automated document review processes and client portals offering real-time project management and costs updates.
- Using flexible (or project-based) lawyers “to tap into new markets and deliver bespoke services by matching required specialist expertise with lawyers outside the firm.”<sup>29</sup>
- Building multi-disciplinary legal teams that have a mix of specialist, operational and technical expertise to improve their overall effectiveness.<sup>30</sup> Law firms and in-house teams consider legal project managers “crucial if lawyers are to add value by controlling budgets...and manage time.”<sup>31</sup> Further, Gartner predicts that 33% of legal departments will have a dedicated legal technology expert in-use by 2023.<sup>32</sup>
- Adopting alternative business models. 10% of UK law firms now operate under an “alternative business structure (“ABS”) licence”, where the law firm is owned

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<sup>28</sup> <<https://www.lexisnexis.co.uk/blog/future-of-law/how-has-the-rise-of-flexible-lawyers-benefitted-pinsent-masons-llp>>.

<sup>29</sup> <<https://www.lexisnexis.co.uk/blog/future-of-law/how-has-the-rise-of-flexible-lawyers-benefitted-pinsent-masons-llp>>.

<sup>30</sup> The Tech-Enabled Lawyer: the evolution of the legal function, LexisNexis, 2021, page 2, available at: <<https://www.lexisnexis.co.uk/research-and-reports/in-house/the-tech-enabled-lawyer.html>>.

<sup>31</sup> <<https://www.brownejacobson.com/about-us/news-and-media/published-articles/2022/08/role-of-legal-project-management-in-public-sector-projects>>.

<sup>32</sup> The Tech-Enabled Lawyer: the evolution of the legal function, LexisNexis, 2021, page 11, available at: <https://www.lexisnexis.co.uk/research-and-reports/in-house/the-tech-enabled-lawyer.html>

and/or managed by non-lawyers. There are a “broad range of ABSs now operating in England and Wales. These include listed companies (for example Gateley, DWF) ... online platforms (Legal Zoom) ... alternative providers (Farewill) ... and multidisciplinary practices mixing law and other professions.”<sup>33</sup>

Against this backdrop, where law firms must innovate or risk being left behind, agile lawyers with the ability to think creatively and be opportunistic are in demand.

“The growing influence of disruptive technology and the emergence of customer-centric law companies suggests that the next generation of lawyers will be entering a profession that looks very different to the current one.”<sup>34</sup> As clinicians training the next generation, we must teach students the importance of possessing an entrepreneurial mindset, and being agile, creative thinkers, who take advantage of opportunities presented to them. Possessing these skills, graduates will be well placed to thrive in the modern legal profession.

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<sup>33</sup> “Alternative business structures (ABS) were introduced as part of the Legal Services Act 2007 reforms aimed at creating a liberalised legal market while still protecting customers of legal services”. There are a “broad range of ABSs now operating in England and Wales. These include listed companies (for example Gateley, DWF)...online platforms (Legal Zoom)...alternative providers (Farewill)...and multidisciplinary practices mixing law and other professions”.

<<https://www.lawgazette.co.uk/features/flexing-the-abs/5112032.article>>.

<sup>34</sup> Transforming the Training & Development of Lawyers, O Shaped Lawyer, Aspirant, February 2020, page 3 available at:

<<https://static1.squarespace.com/static/5e73266f0be3ab3148757f25/t/5e736114824c026bd67da1e1/1584619820423/O+Shaped+Lawyer+-+In-House+Report+%28February+2020%29.pdf>>.

However, we recognise that not all qLegal students want, or indeed will, go on to be lawyers after they graduate. Some may go on to be entrepreneurs, or even Legal Tech entrepreneurs themselves: using their understanding of the law to create legal products that help entrepreneurs. Indeed, two students who participated in qLegal's first Legal Design project were so inspired by their qLegal experience, that they went on to establish Legal Design consultancies in their home countries.

## 5. How does qLegal Teach Law Students to Think like Entrepreneurs?

As mentioned earlier, scholars have identified seven attributes of entrepreneurial thinking:

(1) problem solving, (2) tolerance for ambiguity, (3) failing forward (or the ability to learn from failure), (4) empathy, (5) creativity with limited resources, (6) responding to critical feedback, and (7) teamwork approach.<sup>35</sup>

How do we give our postgraduate law students the opportunity to learn these competencies? Teaching students the attributes of problem solving, empathy for clients, responding to critical feedback and engaging in a teamwork approach lies at the heart of all clinical legal education offerings. qLegal stresses the importance of each of these four skills in our up-front training, where we engage in problem-

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<sup>35</sup> Entrepreneurial thinking: A signature pedagogy for an uncertain 21<sup>st</sup> century, Peschl, H., Deng, C., and Larson, N., International Journal of Management Education, 2020 100427, at: <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7539060/>>.

solving exercises and role play client-centred lawyering, active listening, commercial awareness, having a growth mindset and working well as a team.

Students across our four programmes also practise and develop each of these four skills in their client work and reflect on the challenges related to these skills in case rounds. We emphasise that our advice letters, public legal education resources, externship research and innovation projects work product must be written directly to the client, must focus on the issues and business needs named by the client and must include practical details and links that will most help the client. We will not spend additional time here describing the ways that we teach our students problem solving, empathy, responding to critical feedback and engaging in teamwork as we do not think our teaching in these areas is unique.

Perhaps the more interesting challenge and the question that we will focus on below is how can we design our programmes to help our students develop the remaining, three teachable attributes of an entrepreneurial mindset: tolerance for ambiguity, failing forward and creativity with limited resources? We start by describing the ways we are developing these three skills at present and then shift to a discussion of the obstacles we face and our ideas for how to overcome these obstacles.

## 5.1 Teaching Students to Tolerate Ambiguity

Few of us lawyers enjoy uncertainty and ambiguity. That is not why we went to law school. And yet an ability to navigate uncertainty and ambiguity are traits that clients and employers look for and are also attributes that will serve our graduates well as they navigate our constantly changing world.<sup>36</sup> How do we create situations for our students that are uncertain and ambiguous? How do we let them practise and develop a tolerance for ambiguity?

Perhaps one of the best ways to teach students about the entrepreneurial mindset and specifically the ability to handle uncertainty and ambiguity is to place them into regular, meaningful contact with entrepreneurs. qLegal does this through our externship programme which places students into start-ups one day a week for six months. The externship programme staff at qLegal have regular check-ins with both externship hosts and externs, facilitate fortnightly reflections for extern students and provide extern students with additional business and legal skills training based on common questions that arise within the start-ups. But students are primarily left to themselves to navigate the requests made of them by their start-up host. Students can feel the fast-paced, exhilarating and sometimes even chaotic nature of trying to get a new venture off the ground with limited support. This experience is likely a

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<sup>36</sup> The law training report: what skills do firms expect new entrants to possess in the post SQE era? BPP University Law Schools (2018) at page 17 (firms want to know 'how new entrants cope emotionally with pressure, the fast pace of legal work, or unexpected or difficult situations in the workplace', and 'how quickly they adapt to different supervisors or cope with unexpected changes to instructions').

world away from the students' structured legal studies and past legal work experience and arguably the closest we at qLegal get to putting our students in situations where they must develop a tolerance for ambiguity.

Here is a reflection from one of our recent externship programme students: "I have learned that, instead of being ashamed about something that I don't know and feel that I am not capable enough, I can shift my energy to learn and understand it. I have also overcome my deep fear of public speaking that I have had since I was a kid, which is something that will be very useful for me in the future." Anissa Bianca Latu, 2022 Externship programme student.

Another example comes from the interactive elements of our public legal education workshops. Commercially aware, client-centred lawyering means recognising that the audience for the workshop has a lot to contribute and arrives with relevant, prior knowledge and perhaps even knowledge that we as lawyers do not have. Rather than preparing a lengthy set of slides for a one-way lecture on corporate structures, students need to get comfortable with open engagement with the audience, hearing what the audience already knows about the topic and learning where the audience's remaining questions and confusion lie. This shift from teacher-student to co-participants and co-learners is most likely new for students, especially for postgraduate law students who have spent many years being passive learners in



lectures. It also might be uncomfortable because of the uncertainty and lack of control that it introduces.

Our public legal education students dive into researching new areas of law, but they find it hard to let go of the lecturer role. Moving them from lecturer to facilitator, listener and discussant is not easy. Perhaps the most important way to teach this competency is to remind students how they themselves enjoy learning about the law. Do they prefer sitting in a classroom and taking notes, or do they prefer participating in qLegal? If the latter, why is that? If it is because they are actively engaged in their own learning, then they need to realise that the same is true of their workshop audiences. Once we do get our students to let go of all the control and open the workshop up to discussion with the audience, students can practise handling and tolerating uncertainty.

## 5.2 Teaching Students to Fail Forward

The ability to fail forward, also referred to as resilience, is a skill that law firms have noted is lacking in junior lawyers.<sup>37</sup> Students who can evidence experience developing a growth mindset and learning from failure will be attractive to

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<sup>37</sup> The law training report: what skills do firms expect new entrants to possess in the post SQE era? BPP University Law Schools (2018) at page 17 (firms want to know about applicants, 'how good they are at receiving, or giving, constructive criticism', and 'how quickly they adapt to different supervisors or cope with unexpected changes to instructions'.)

employers and will have an easier time navigating today's difficult, competitive legal jobs market.

We spend considerable time in our initial training discussing the importance of having a growth mindset, learning from mistakes and being resilient. We train our students on receiving and giving constructive feedback and engaging in honest self-reflection. We have a pre-recorded video entitled "Nobody Gives You Stars" and a written "Student Journey Guide" that emphasise the need to keep track of your own successes and skills development, to market yourself as you navigate your career and to be an entrepreneur when it comes to finding jobs, succeeding at jobs, branding yourself and designing a rewarding career. We conduct weekly and fortnightly case rounds within each programme where students are asked to share what is going well and what is not going well. We stress that case rounds are a safe space within which to discuss failure and struggles with others. We also require students to attend and give feedback at each other's workshop dress rehearsals.

While we discuss and name the skill of failing forward and ask students to share their experiences with us in case rounds, dress rehearsal and reflection sessions, it is hard in a live client clinic to give students practical experience with failing because of our ethical and moral obligations to our clients and our other stakeholders, including our practising UK solicitor partners. That said, students may feel that they have failed if their first draft receives lots of feedback, their workshop audience is non-responsive

or asks questions the students can't answer, their innovation projects client doesn't like their prototype or their externship host doesn't take up their research ideas or doesn't like a first draft they have prepared.

In situations where students feel they have failed, it is important to give them an opportunity to discuss how they feel and encourage them to learn from those feelings and from the experience. Part of that discussion must be a reminder of the importance of developing a thick skin and valuing constructive feedback and the opportunity to fail forward. Take for example the externship student whose host provides lots of direct, specific, at times harsh feedback on a draft NDA. The student who can lean into and through this feedback will not only grow as a lawyer and professional but will also have specific evidence of failing forward to share with recruiters when asked for instances of resilience.

Another way to help our students to fail forward is to discuss what success looks like with our client work. Is success delivering a "perfect" legal advice letter, public legal education workshop, innovation projects deliverable or externship host presentation? Or is success getting your audience to engage with what you are saying, to start connecting dots and to realise that they may need to engage the services of a lawyer to help them with some parts of their business? Broadening our shared definition of success may help move our high-achieving students away from the elusive search for

“perfect” and thereby open them up to taking risks, including the risk of failing forward.

### **5.3 Teaching Students to Practise Creativity with Limited Resources**

Here again, it is our externship programme that offers students the chance to practise creativity with limited resources. The start-up hosts are short on all kinds of resources and certainly short on legal resources. They don't have inside counsel or counsel at an outside law firm to whom they can turn with their legal questions. They often turn to our qLegal externs, even though we make clear at the start that the students are not yet UK lawyers and are not allowed to give legal advice. But the qLegal students can and do help spot legal issues, brainstorm legal solutions, conduct legal research, review documents and even do some initial drafting, all while making clear that proper legal advice from a practising UK solicitor is advised.

The other programme that offers students the opportunity to practise creativity with limited resources is our innovation projects programme. Students get trained in and serve their clients using Design Thinking methodology, which involves empathising with the client, defining the problem, ideating, coming up with a prototype and testing the prototype with the client. Now in its third year, the programme sees teams of students use Design Thinking to produce innovative solutions to meet a client's brief. The client may itself be a start-up; or its own clients, or 'end-users' in Design Thinking terms, may be entrepreneurs. Either way, students are given tools to

help them empathise with the entrepreneurs, so the students understand pain points and motivations.

Projects have included the design of a child-friendly privacy notice for a social enterprise; exploring a user-friendly way for creative entrepreneurs to engage with the law; and improving a platform that links start-ups with legal advisers. Students on this programme now work in interdisciplinary teams to better reflect life outside law school. The process of Design Thinking requires practitioners to spend time and resources going deep with a project to fully understand the problem that the client faces, before tackling the solutions. As a result, the students are left with limited time to craft a solution, especially given the time constraints of the academic schedule.

## **6. Challenges in Teaching Students to Develop an Entrepreneurial Mindset**

### **6.1 We Think like Lawyers**

Arguably the biggest challenge is that those of us trained and practised in law think first and foremost like lawyers! As mentioned above, we want our work product to be excellent, for ourselves, our clients and our various stakeholders. We spend considerable time designing our programmes so that our students are set up for success. We pre-screen clients, prepare briefs, provide templates and deliver practical training. We, and our partner law firms, provide lots of detailed feedback, with an eye to making the content more accurate and the communication style more user-friendly and consistent.

Are we being too prescriptive? It may be better to let the students interview the clients and workshop hosts without an initial case summary or brief and determine from the interview both what the challenge is and how to best support the client. Are we wrong to provide template letters and template scripts? We emphasise the importance of being commercially aware, practical and client-centred, so we could let the students decide for themselves what that looks like. Would introducing such uncertainty, inconsistency and ambiguity harm the relationship between qLegal and its law firm partners? Embracing a creative work product from students, rather than the more traditional and familiar legal advice letter, may better reflect the needs of entrepreneurial clients, which arguably benefits all stakeholders.

### ***6.1.1 What are we doing to overcome this obstacle?***

Fortunately, we believe that an entrepreneurial mindset can be taught and learned, but we must start by admitting where we are ourselves as programme designers and educators. From there, we can intentionally develop ourselves and our offering.

The qLegal staff meets daily to share what we are working on in our respective programmes including the challenges we are each facing. Two of our recurring questions as a staff are: “are we being innovative enough with our services?” and “how can we teach our students to think less like lawyers?” To answer these questions, we conduct market research to learn what other people are providing in

terms of legal services, follow newsletters and blogs put out by incubators that support start-ups, attend and speak at relevant events including London Tech Week, clinical legal education conferences, and the Legal Geek Conference and write papers like this one.

It might be helpful to share our internal qLegal strategy and processes with our students to demonstrate how qLegal as an innovative legal services provider seeks regular feedback from our stakeholders, alters its programmes accordingly and tries to stay current and nimble.

In our public legal education programme, we will try being more hands-off with some of the work done by our students, asking them to identify the unmet legal needs of start-ups and entrepreneurs themselves and design resources to help meet those needs. The only guidance will be a requirement that every student participate, that the work be done in teams of at least two students, that the areas of law be restricted to the areas of commercial law that we are insured to cover (corporate, commercial, data protection, employment and IP) and that the work be finished by the end of classes, prior to exams. Given that our public legal education student cohort includes at least two students who are themselves entrepreneurs and one very talented graphic artist, maybe we will be surprised by what the students produce when we give them the freedom to take control.

It is important to note that two of our staff are entrepreneurs. Clemence Tanzi, who leads on our externship programme, graduated from CCLS and then joined qLegal as a staff member back when it was truly a start-up. Clemence also has her own coaching business which she runs in addition to her position with qLegal. One of the authors, Emily, who leads on our legal advice clinic programme, was a solicitor in private practice for ten years before leaving to start her own business.

## **6.2 Reconciling Teaching Substantive Law Versus Entrepreneurial Thinking**

One of the initial reasons for setting up clinical legal education and one of its key selling points is that it gives students the chance to reinforce their legal knowledge. Writing a practical, commercially aware advice letter for a start-up is an excellent way to test whether you really understand IP law or corporate law. Similarly, standing in front of an audience for an hour and a half speaking with them about IP law or data privacy and how it applies to their start-ups, or sixth-form college class assignment, is a great way to see whether you really understand these areas of law yourself.

We don't want to take away this important part of how students benefit from clinical legal education. Instead, we want to teach our students to think like a lawyer *and* to think like an entrepreneur. After all, both qualities are sought by clients and by the legal marketplace. But fitting in time for both competencies is easier said than done, and the goal of teaching law students to think like a lawyer can come into direct conflict with the goal of teaching law students to think like entrepreneurs.



For example, while we want students to get comfortable with failing forward in order to think more like an entrepreneur, we do not want to withhold our feedback and support for their letter or their workshop, and we have a professional and ethical obligation to our clients and our other stakeholders (including workshop hosts and law firms) to produce high quality work. How do we stop ourselves from teaching and explaining and aiming for “perfection”, in order to let a student learn by failing? And is it ethical for a law clinic to allow mistakes to go forward in a legal advice letter or a legal education workshop?

### ***6.2.1 What are we doing to overcome this obstacle?***

One way that we can and do allow our public legal education students to “fail forward” is the interactive, question and answer part of their workshops, during which the audience is likely to ask questions that stump our students. We train our students to prepare for these questions and to get comfortable with saying “That’s a great question. I don’t know the answer to that question. I would be happy to do some additional research and add some more information to the slides before I share them with you.” Or “That’s a great question. I suggest you apply for qLegal’s legal advice clinic.” We also spend time in dress rehearsal mooting potential questions. However, no matter how much we prepare, the audience in the actual workshop, whether sixth form college students or start-ups, almost always asks questions that make the students realise that they don’t yet fully understand every aspect of the

legal material they are teaching. We deliberately design our workshops so that the law students manage the presentation and question and answer session by themselves, with qLegal staff in the background only and the supervising UK solicitors not in attendance. Students faced with questions they cannot answer and in possession of growth mindsets leave the workshop determined to learn the subject matter better next time and learn from their mistakes.

### **6.3 Meetings with Entrepreneurial Clients**

One of the authors, Eliza, looks back on her 15 years of clinical teaching and reflects that the client work that most developed her own entrepreneurial mindset, and that of her students, involved substantial face-to-face contact with clients with different lived experiences, in unfamiliar settings, where it became clear that the client had a much larger appetite for risk than the legal team.

For example, meeting a small business owner client in his place of business (a small trailer located in a parking lot in an industrial part of town) to advise him on employment law and hearing through his questions that he was not interested in bringing on new staff as employees (versus contractors) as that involved too many taxes and too much paperwork. It became clear that our next counselling session needed to cover the risks were our client to proceed in hiring his staff as contractors, specifically the risk of being audited and the associated fines. Settings like that one

provided an excellent opportunity to develop a tolerance for ambiguity, learn to fail forward and practise creativity with limited resources.

However, entrepreneurs are busy people, often juggling day jobs while they start their business or simply busy running a start-up with many unknowns. How do we design our programmes so that those same individuals spend more face-to-face time with our students? It's not easy. For example, one of our public legal education projects this semester is to design corporate law and IP law legal education videos for a London charity that supports small business owners. While it is helpful to meet with and hear from the head of the charity and staff members, it would be hugely valuable for the law students to take the brief directly from small business owners and receive feedback from small business owners prior to final production. Similarly, our workshop hosts (staff of incubators, university professors and sixth-form college teachers) meet with qLegal staff and with qLegal students explaining their expectations for the workshops and providing feedback after the workshop is delivered. But it would be even better if we could take the initial brief from the actual audience members and get feedback directly from our audience.

Arguably the best way to develop excellent public legal education resources and simultaneously to teach students to have an entrepreneurial mindset is to engage in Design Thinking with our public legal education audiences, as we do with our

innovation projects clients. But this model would require a much larger time commitment from our audiences than we currently demand.

### ***6.3.1 What are we doing to overcome this obstacle?***

Perhaps we simply need to demand more contact time with our clients in exchange for our excellent, free services. In the US, the live client clinic model is quite different from the UK: the commercial law clinics typically represent start-ups and entrepreneurs and work with them for an extended period (a full semester or even multiple semesters) to set up their corporate structures, register their IP, prepare their policies and commercial contracts, etc. Students in those clinics get to meet with and counsel their clients in person multiple times over the course of the semester and get a sense for what does and doesn't work with their clients in terms of communication and counselling styles, including the challenge of turning around legal advice for fast-moving clients. Entrepreneurs in the US are equally busy to entrepreneurs in the UK. The solution for many clinics in the US is to make it clear in the engagement letter that clients are required to meet with the clinic multiple times and must stay in frequent, timely contact with the clinic.

## **7. Conclusion**

Teaching law students to have an entrepreneurial mindset, as well as general commercial awareness, is a worthwhile goal for all the reasons discussed above: it improves the work product delivered to entrepreneur clients, it gives students

valuable skills for the workplace making them more employable and it teaches students how to navigate the changing legal services marketplace.

In many ways, teaching students to have an entrepreneurial mindset is a natural fit with commercial law clinics where our clients are themselves start-ups and entrepreneurs and can model their mindsets for us. Our interactions with our clients teach us that they are comfortable with ambiguity and risk, that they are not afraid to fail forward and that they are creative with limited resources. However, at the same time, the do-it-themselves, busy, action-oriented nature of entrepreneurs might make them less available than other clients to meet with us and our students and, ironically, might make us more inclined to think like lawyers to counterbalance their impulsive, risk-comfortable behaviours. Thinking through the obstacles and opportunities for teaching the entrepreneurial mindset in commercial law clinics is a worthwhile exercise to improve the opportunities we provide our students.

# The Shape of You, or in Other Words, why Teach Entrepreneurial Awareness as a Clinical Attribute?

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Katy Ferris,\* The University of Nottingham, UK

## Abstract

Commercial law clinics are not a new phenomenon, and indeed in this very journal reports and academic commentary have been presented which identify and explore the nature, formation and operation of such clinics.<sup>1</sup> However, these contributions focus on how clinics and their student volunteers can help commercial enterprises and start-up ventures with various legal issues they may encounter. Clearly, the need for such clinics and the value they provide to the students and community are immense. Where the clinical offer outlined in this report differs, and on which we hope a meaningful contribution to the body of scholarly knowledge is made, is in using a clinic setting with a simulated corporate client to operate two (elective)

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\* The authors would like to thank the reviewers for very helpful comments and advice in a previous draft of this report. Errors and omissions remain our own.

<sup>1</sup> See Collins, D., Klotz, E., & Robinson, B. (2016). Start-Ed: A Model for Commercial Clinical Legal Education. *International Journal of Clinical Legal Education*, 23(5) <https://doi.org/10.19164/ijcle.v23i5.566>.

modules that enable the students to gain a thorough appreciation of those issues which underpin the formation and operation of a corporate structure. A simulated law firm is the setting through which the modules operate, albeit most of the tasks and issues raised in the modules would equally apply to other professions. By using the simulated client approach we are able to guide the students in helping navigate the client through every aspect of the journey of the business – its inception, the legal sector in which it will operate, its mode of incorporation, its clients and the generation of business, legal policies and issues likely to be faced in respect of running a business, its marketing and advertisement, professional body regulation and compliance, the financing of the business, and an appreciation of the stakeholders (and underlying philosophies) with whom the business and its personnel will engage. This clinical perspective allows the students to proactively develop strategies to navigate the owner through myriad complexities, whilst gaining valuable feedback regarding the efficacy of their decision-making and being empowered to adopt revisions to accommodate numerous changes in the professional, legal and financial environments. The main aim of this clinical experience (which we describe in Section 3) is to develop in the students a commercial awareness and understanding of what is required to be an entrepreneur in a modern legal service setting. This requires moulding their ‘shape’ as a legal graduate.

## 1. Introduction

Law students in the UK have largely been freed from the constraints of the qualifying law degree and associated issues during the 'academic stage' of their education, at least with regards to their choice of subject/module learned and work-based learning opportunities in the curriculum. This has had, albeit recent, implications for both the students and educators. Education institutions have been provided with the scope to be considerably more creative about their offer to students,<sup>2</sup> resulting in modules which focus on the potential 'shape' of graduates.<sup>3</sup> The 'shape of lawyers' as graduates generally refers to their skills, and in particular their understanding of commercial and entrepreneurial matters, along with an appreciation of law firms as businesses. Obviously, commercial awareness underpins all business operations; knowledge of the environment and of the clients, competitors and social, economic and technological dimensions are all factors which impact upon a business and its decision-making. Yet it has not always been clear that law students and those who graduate and proceed (at least until recently) to the 'practice' component of their education through the Legal Practice Course, were particularly well versed of this aspect of law firms to whom they sought training contracts and/or employment.<sup>4</sup>

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<sup>2</sup> See Bowyer, R. (2019). Regulatory Threats to the Law Degree: The Solicitors Qualifying Examination and the Purpose of Law Schools. *Law and Critique*, 30(2), 117.

<sup>3</sup> Madison, M. (2020). The Shapes and Letters of the Modern Lawyer. *Future Law Works*. <https://madisonian.net/2020/08/03/the-shapes-and-letters-of-the-modern-lawyer/>.

<sup>4</sup> Baird, N., & Caldwell, J. (2016). How 'Work-Ready' are Today's Law Graduates? The Views of 15 City Employers. *New Zealand Law Journal*, 10, 390.



Despite the significance of commercial awareness as a desirable quality from the perspective of both employers and graduates,<sup>5</sup> it has often been omitted as a discrete module or an aspect of compulsory training in undergraduate law courses.

This is not to say that universities have excluded such courses from the reach of students,<sup>6</sup> rather many universities direct students to dedicated employability directorates<sup>7</sup> or identify the significance of an understanding of commercial awareness following formal study of a law degree and/or following graduation.

Leaving this important skill to a student when applying for employment or preparing for a job interview is wrong. It leaves the student/graduate with a gap in their performance which great knowledge of their discipline or a fundamental understanding of legal principles, theory and doctrine may not remedy.

It is necessary at this point to acknowledge that universities will often teach commercial law as a discrete topic through an elective module. However, this is based on the legal issues affecting businesses and does not, of itself, intend for the personal development of commercial awareness of those students studying this topic. Law clinics in the university sector in the UK will ensure their students have access to the fundamental lawyering skills including advocacy, interviewing, mooting

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<sup>5</sup> And certainly beyond graduates who intend to practise law given the majority of law graduates gain employment outside of this job-type.

<sup>6</sup> A commercial awareness module has been delivered at the University of Birmingham as part of its Personal Skills Award.

<sup>7</sup> University College London and University of Bristol have dedicated career resources portals to which students are directed.

and negotiation, leaving wider skills' development available through experience in pro bono law clinics.<sup>8</sup> Here, any commercial awareness the students derive would depend on the nature of the clinic itself,<sup>9</sup> the direction afforded to the programme through the supervisors, and the serendipity of particular aspects of commercial awareness inherent in the clinical provision transferring to the student through some form of legal osmosis. But these skills, whilst of course being of the upmost value to students in their development, are not the same as commercial awareness. Knowing how to interact with clients, to gain relevant information and being able to tease out the relevant information whilst maintaining the trust and confidence of the client<sup>10</sup> is not the same as a sectoral appreciation of the law firm and its geographic and intellectual purview. What is being discussed in this practice report is how we have taught and delivered law modules for students studying a law degree which is fundamentally concerned with developing knowledge and appreciation of the commercial dimension to law firms as a business.

## **2. What's in a shape?**

The title of this practice report is largely based on the work that has been undertaken previously by lawyers such as Peter Connor, who, since 2015, has embarked on a campaign of educating future lawyers and educationalists to prepare future lawyers

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<sup>8</sup> Wizner, S. (2000). Beyond Skills Training. *Clinical Law Review*, 7, 327.

<sup>9</sup> Pozios, J. (2013). Clinical Business Law Programs at Robson Hall. *Manitoba Law Journal*, 37, 497.

<sup>10</sup> Kiser, R. (2017). *Soft Skills for the Effective Lawyer*. Cambridge University Press, Cambridge UK.

for their careers. In a blog contribution written in 2020,<sup>11</sup> Connor identifies aspects to his career, which aided his success, yet were a consequence of opportunity, and had been amassed through experience. In a quite unstructured manner, the key elements of acting as a lawyer requires legal knowledge and legal skills; these are the primary requirements of any successful lawyer. Yet lawyers must be so much more rounded to be successful, whether in practice, or indeed in particular where they intend to establish their own business and deal directly with numerous stakeholders. This will entail many non-legal skills such as understanding business, partnerships, change management processes, and continuous improvement cycles. These have regularly been referred to as 'soft skills.' It is possible that such a term was not meant in the derogatory sense, yet its very nature tends to suggest that these are of lesser importance or they are skills which are not as necessary as the 'proper training' of a lawyer.<sup>12</sup> That being said, it is also true that several of the hard and soft skills of a lawyer overlap – negotiation, conciliation, the ability to effectively and actively interview and take and receive instruction are all aspects of the legal profession, which we would expect graduate lawyers to possess. Further, and as part of the graduates' continuing professional development are requirements to re-skill, up-skill, to develop new competencies and to ensure that these take place not only for career

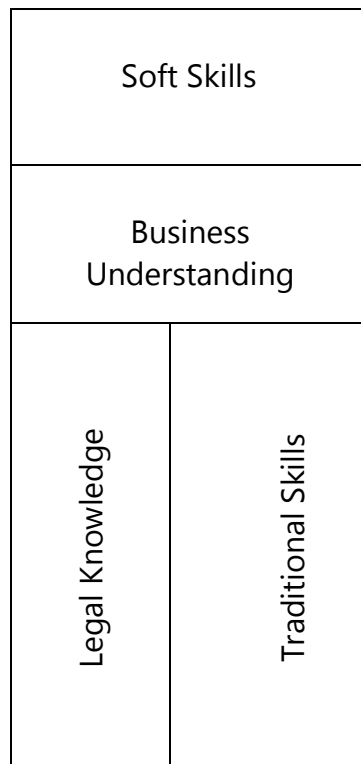
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<sup>11</sup> <<https://www.legalbusinessworld.com/post/the-shape-of-lawyers-in-the-future-t-o-or-delta>>.

<sup>12</sup> A matter discussed broadly in Lloyd, R. M. (2004). Hard Law Firms and Soft Law Schools. North Carolina Law Review, 83, 667.

survival, but also for career progression.<sup>13</sup> These factors bring us to the issue of how best to prepare lawyers for practice in the future. Training is available for lawyers for many of the skills which would come under the remit of soft skills, and some universities have begun to offer formalised unstructured training through module and credit bearing course assessments. However, it is worth identifying in the first instance, the recognised alphabet of shapes that have emerged over the recent past regarding our non-legal skills and how best to incorporate these in the lawyer of the future. The first is the 'I' shaped lawyer.

Figure 1: The 'I' Shaped Lawyer



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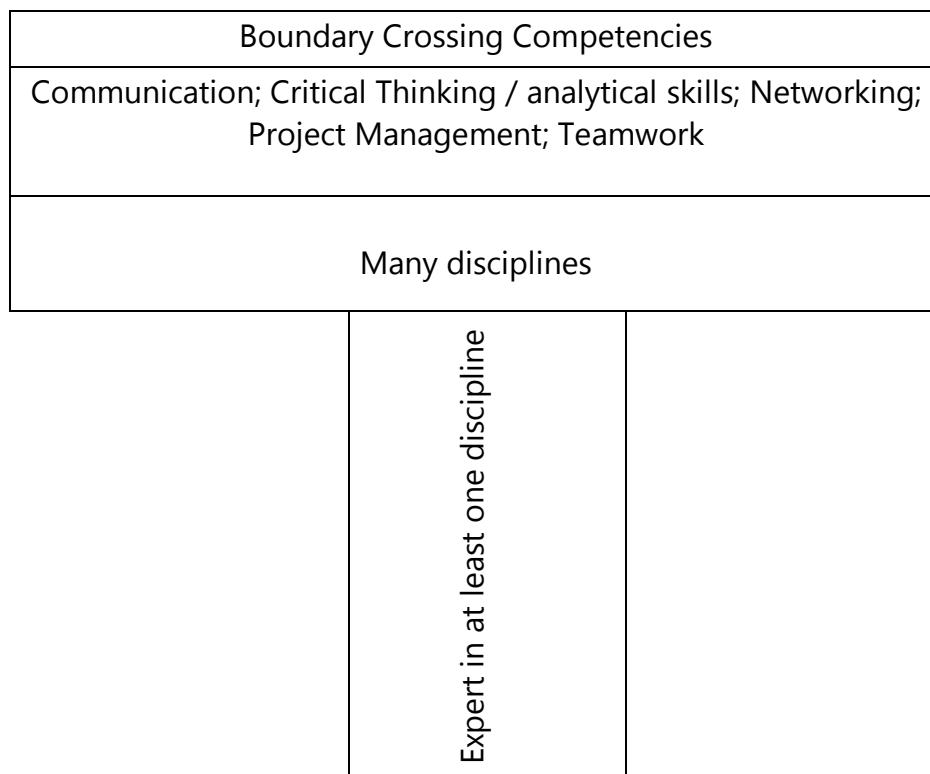
<sup>13</sup> Legg, M. (2021, November). Legal Regulation in a Changing World. In Opening Keynote, 2021 Conference of Regulatory Officers (Vol. 8, pp. 21-68) <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3961101](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3961101)>.

This model has been widely identified as encompassing the majority of professional lawyers, and indeed other professionals, where the lawyer in our case, has a specialism, an established expertise in a specific area, but little knowledge, experience, or indeed skills outside of this specialism. This is not uncommon with lawyers, and indeed for academic lawyers it has often been touted as a means of establishing oneself in a particular field to gain notoriety or acceptance as the leading expert in a particular area or jurisdiction of law. Many barristers, and academics with desires to hold chairs in universities, have spent careers developing a niche area to which they are an established expert, and these dominate the type of lawyer they are. The legal knowledge and skills as a lawyer establish the majority of their professional make-up, with soft skills and business knowledge accounting for a considerably smaller proportion of their professional 'self.' Where this has become a problem for businesses is in the skills and knowledge possessed by a team, and of the individuals within such teams, to be able to work collaboratively, to innovate, and to solve problems faced by their organisation, and, naturally, the clients. Such broader thinking, and the ability to problem-solve and to be intellectually and organisationally agile may be lost if too many key personnel are 'I' shaped.

Thus was born, the 'T' shaped lawyer, who, as Figure 2 demonstrates, possesses a deep expertise in one particular area, but also a broad range of skills and competencies. The soft skills of teamwork and communication, critical thinking and

project management are exhibited. Further, an awareness is present, not as deep as their subject expertise but sufficiently broad to appreciate the nuance and linkages between these different areas, to produce a more holistic lawyer, who is adaptable, resilient, and able to acclimatise to changes in a fast, developing economy and industry.

Figure 2: The 'T' Shaped Lawyer



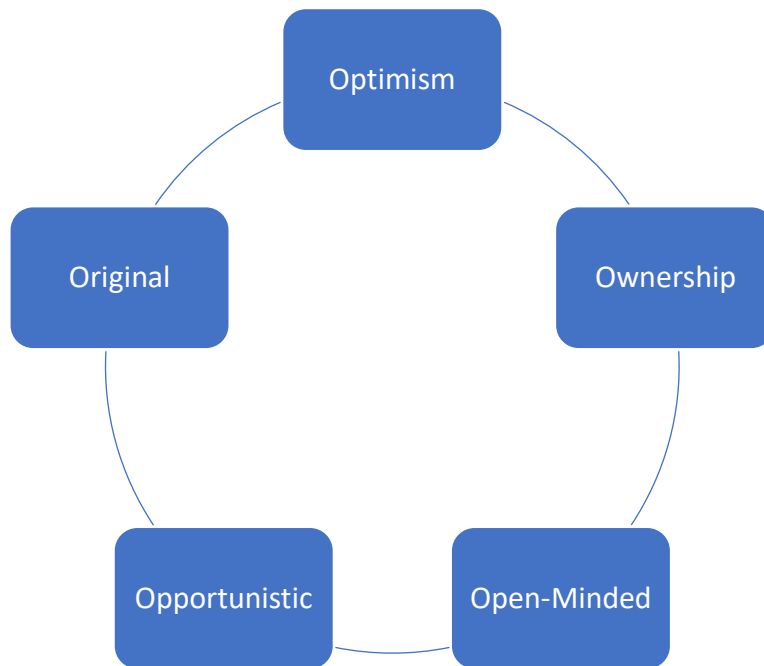
Perhaps what is interesting about this development is the natural metamorphosis from the 'I' shaped lawyer to the 'T' shaped professional where the broadening of key skills is quite evident and easy to conceptualise. The use of the term 'T' shaped

lawyer is also adopted quite broadly simply because it is used in many other professions (and hence is valuable to law graduates who consequently work in other professions), and this has the significant advantage of demonstrating how lawyers can work with professionals in other fields who will recognise the range of skills possessed. The interchangeability of each makes integration into those teams and across disciplines so much more fluid and effective, particularly when we think of the next phase of lawyer and legal service across England and Wales with the development of the Solicitors Qualifying Examination (SQE), the Legal Services Act 2007 and the advent of Alternative Business Structures. Moving forwards, law firms as legal businesses are much more than simply law firms, rather they may offer a range of professional services which would have been much more difficult to envisage as a reality, perhaps even as recently as 20-years ago.

Ultimately, Connor identified a framework through which lawyers could be trained for the key skills that are necessary between legal teams, firms and individual lawyers. This framework is interesting, and whilst the training we have provided in our modules is not specifically based upon this framework – indeed, we have only come to identify this framework specifically after running modules for the previous three years – it does resonate with much of the work that we have done to establish commercially-minded lawyers and entrepreneurial legal professionals upon graduation.

More recently, a further shaped lawyer has emerged.

Figure 3: The 'O' Shaped Lawyer



The 'O' shaped lawyer is an idea of developing a well-rounded lawyer, a person who is trained beyond the technical legal skills, but one through which the legal profession 'will provide its customers with a better service in a more diverse, inclusive, and healthier environment'.<sup>14</sup> This too has led to the formation of a framework (see Figure 3) which has found its identity in the training for the SQE. The framework will enable lawyers to develop 'O' behaviours by having a proactive mindset with legal, business and customer knowledge and skills. To this end the

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<sup>14</sup> <<https://www.oshapedlawyer.com/overview>>.



programme operates around five mindsets. The first is optimism, where, it is explained, historically lawyers have been trained in a traditional manner to find faults and problems – essentially they are programmed to critically analyse scenarios, but in so doing are not necessarily trained with a positive mindset.<sup>15</sup> The optimism 'O' is designed to relocate a lawyer's mindset instead of as a 'blocker' to more of a business partner.<sup>16</sup> The second 'O' is ownership where lawyers will be trained to take accountability for the outcomes of decisions rather than being seen as a distant provider of advice. The third element is to be open-minded, where the lawyer will adopt a growth-mindset, rather than the typical defensive and fixed mindset in respect of practising law. Opportunistic is the fourth element, and here traditional risk avoidance is removed and the lawyer will identify and focus on business opportunities rather than the avoidance of the risks associated with new ventures. They thereby adopt an entrepreneurial spirit.<sup>17</sup> The fifth 'O' is for the lawyer to be original, meaning changing the traditional perspective instilled in students' training, exemplified in the study of judicial precedent, which has had the effect of establishing lawyers as backwards-looking professionals. This final element of the O-shaped lawyer again seeks to establish lawyers as creative, innovative and problem-solving members of a team.<sup>18</sup>

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<sup>15</sup> Stout, R. L. (1910). Where the Law Fails. *Law & Banker & Bench & Bar Review*, 3, 102.

<sup>16</sup> Markfort, R. (2017). Legal Advisor–Service Provider–Business Partner: Shifting the Mindset of Corporate Lawyers. In *Liquid legal* (pp. 47-58). Springer, Cham, Switzerland.

<sup>17</sup> Jones, S. R. (2007). Supporting Urban Entrepreneurs: Law, Policy, and the Role of Lawyers in Small Business Development. *Western New England Law Review*, 30, 71.

<sup>18</sup> Menkel-Meadow, C. (1999). The Lawyer as Problem Solver and Third-Party Neutral: Creativity and Nonpartisanship in Lawyering. *Temple Law Review*, 72, 785.

The framework is supplemented by the establishing of various skills at the training stage for lawyers. Lawyers should be adaptable and they need to have the skills to thrive in emerging and developing environments throughout their legal career.<sup>19</sup>

Hence the lawyer of the future should have courage and the skills to take action in the face of uncertainty; resilience in respect of setbacks and disappointment, with the ability to recover quickly and to learn lessons in a positive manner; to be able to receive feedback and to use this with a constructive mindset for improvements to future practice; and have an ability to seek to develop new skills and techniques through a process of continuous learning. Lawyers should also be trained to build relationships and these long-term connections need to be made with a wide range of people.<sup>20</sup> Of course, networking and relationship building is not a particularly new facet of developing a legal career. Indeed, many universities devote significant resources to enable undergraduate and postgraduate law students to network with a range of professional contacts within the legal community. Where this training scheme differs slightly is in the range of professionals with whom the future lawyer should have an ability to network. This requires empathy training, where the lawyer can understand the perspectives and agendas of others – not restricted to other

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<sup>19</sup> Menkel-Meadow, C. J. (2012). Too Many Lawyers? Or Should Lawyers be Doing Other Things? *International Journal of the Legal Profession*, 19(2-3), 147.

<sup>20</sup> Freeman, A. (2015). Teaching for Change: How the Legal Academy Can Prepare the Next Generation of Social Justice Movement Lawyers. *Howard Law Journal*, 59, 99.

lawyers.<sup>21</sup> They should be able to influence the actions and mindsets of others and to communicate their message to a variety of audiences and to collaborate effectively with people from various teams and on the basis of short, medium and long-term goals. Finally, the future lawyer will be required to create value through their skills as a lawyer and through legal initiatives.<sup>22</sup> Legal challenges will always be present in business opportunities, yet the lawyer should have the capacity to see the opportunity in respect of the challenges, to identify problems and to be able to provide a legal solution.<sup>23</sup> Hence, they combine their business and entrepreneurial acumen with their understanding and knowledge of the law and legal processes. Through synthesising these challenges and their place within processes, the lawyer will be able to simplify complexities and understand and communicate these most critical of elements into an understandable form, depending upon the audience.

The most recent model that has emerged and been applied to lawyers is that of 'Delta' which, based on a series of empirical studies, and across a range of professions<sup>24</sup> – not simply lawyers – will produce a competency model that can be used by anyone in the law firm, regardless of the stage of their career and whether they act in a legal or non-legal capacity.

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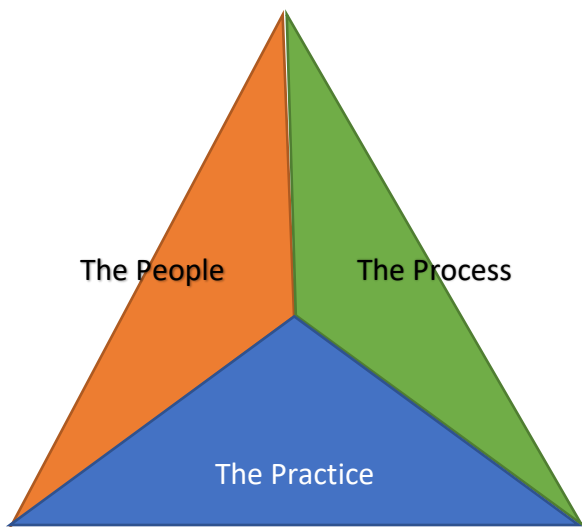
<sup>21</sup> Fletcher, L. E., & Weinstein, H. M. (2002). When Students Lose Perspective: Clinical Supervision and the Management of Empathy. *Clinical Law Review*, 9, 135.

<sup>22</sup> Gilson, R. J., & Mnookin, R. H. (1995). Foreword: Business Lawyers and Value Creation for Clients. *Oregon Law Review*, 74, 1.

<sup>23</sup> Brest, P., & Krieger, L. H. (1999). Lawyers as Problems Solvers. *Temple Law Review*, 72, 811.

<sup>24</sup> Hax, A. C., & Wilde II, D. L. (1999). The Delta Model: Adaptive Management for a Changing World. *MIT Sloan Management Review*, 40(2), 11.

Figure 4: The Delta Model



The Delta model was created in response to the 'T' shaped lawyer model, which it was felt lacked the people dimension/personal effective dimension. It is arguable whether this was actually a feature lacking in the previous model development, and indeed Connor refers to such a dimension being present in his 'boundary crossing competencies' aspect of his 'T' shaped lawyer framework.

A simplified understanding of the Delta model identifies people competencies as being the first aspect of skills development. Here the lawyer (in our case) will develop an understanding of business, collaboration, communication, emotional intelligence and creative problem-solving.

They will develop an entrepreneurial mindset, adopt a human centred design, and understand their role in leadership and relationship management. Hence, the lawyer of the future will possess accountability, common sense, integrity and

professionalism, they will be possessed of active listening and conflict resolution skills. They will be able to undertake change management and persuasive communication, they will have self-awareness and self-regulation, and they will be adaptable and proactive in their problem-solving. Further, they will take initiative in strategic planning, they will possess curiosity and be able to provide and to receive feedback along with their role in developing others through coaching. Secondly, the Delta model identifies process competences such as business development, data analytics, process design, improvement and delivery, and project management along with an understanding and use of the technology underpinning these. Finally, there are practice competences whereby the lawyer will revert to the skills that underpin legal training – case analysis, issue identification, critical legal analysis, sound legal judgement, research, legal writing and a subject-matter expertise.<sup>25</sup>

Having identified the various models it is perhaps relevant at this stage to identify which model might fit best to a lawyer with the intention to proceed to a commercial and/or entrepreneurial career. It is first only reasonable to identify that the T shape lawyer is the most established and developed of the models explained in this piece. The O shape and the Delta frameworks are still being developed by various parties, and this requires refinement and empirical assessment following the development and rollout to identify successes and areas where further work is needed. Indeed, the

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<sup>25</sup> Carrel, A. (2018). Legal Intelligence Through Artificial Intelligence Requires Emotional Intelligence: A New Competency Model for the 21st Century Legal Professional. *Georgia State University Law Review*, 35, 1153.

skills and competencies identified in the Delta model are very wide-ranging and it may be quite conceivable that developing such skills to a sufficiently high standard may require several years of experience and be beyond the ability of the most committed training phase at undergraduate and postgraduate levels. Perhaps the most compelling aspect of Conner's own assessment of his T-shaped lawyer framework is the movement away from digital transformation which appears to be so in vogue with current understanding of legal training and the future of legal work.<sup>26</sup>

The development of the lawyer as a person, their human transformation in establishing a comprehensive idea of skills, competencies, capabilities, knowledge, mindset, and vision is what is so remarkable about this transformation in legal education. Again, this is not to say that some of these features were not present in traditional legal training, nor could it possibly be argued successfully that educators did not already identify many of these traits as being worthy of discussion, reproduction and indeed assessment within the various modules and courses offered to law students these past several decades. Why this is so important as a framework currently, is because of the formal and explicit recognition of the need to develop a framework around which legal training and instruction will take place. These are not competencies and skills which will be developed in an ad hoc manner or as part of some specific module to be passed and then resigned to a folder in the student's portfolio. Rather the entire course, the entire training and instruction of the students

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<sup>26</sup> Janoski-Haehlen, E. (2019). Robots, Blockchain, ESI, Oh My!: Why Law Schools Are (or Should Be) Teaching Legal Technology, *Legal Reference Services Quarterly*, 38:3, 77, DOI: [10.1080/0270319X.2019.1656456](https://doi.org/10.1080/0270319X.2019.1656456).

should be based around the skills and they should be central to the lawyer as being part of a business, not merely that aspect of a business which provides details and understanding and guidance as to the legal parameters in which a particular course of action may or may not be taken. They are central figures who work cooperatively with the entrepreneurs, technicians, managers and employees to bring to life the business opportunities available in the new century, which has been marked thus far by uncertainty, crises and a fundamental need for agility and creativity – along with a positive and forward-looking mindset.

### **3. Teaching Law as a Business through Elective Modules**

In considering how we can shape the future education of law students and prepare them better for careers in commercial and entrepreneurial enterprises, we began with a consideration of the key factors that future graduates should possess. For law firms, commercial awareness is a much sought-after skill<sup>27</sup> and an area which can often be neglected by students who have, for the previous three/four years of academic study, concentrated on the minutiae of legal texts, judgments and solving practical problems of fictional scenarios in seminars. It might only be after this period of study that they truly begin to focus on employment and what skills and graduate attributes the employer may want. Even in a traditional law clinic setting, many of the

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<sup>27</sup> McConnell, S. (2022). A Systematic Review of Commercial Awareness in the Context of the Employability of Law Students in England and Wales. *European Journal of Legal Education*, 3(1, June) 127.

discrete areas of legal advice provided surround issues of social justice and access to justice. Consequently, most do not focus on providing commercial advice or in helping to create entrepreneurial businesses – accepting of course that such dedicated and specific clinics, as we acknowledged at the start of this report, do exist and provide this very experience.

In order to provide the students with an appreciation of not only law firms and the legal sector as a business and profit-orientated enterprise, but also providing them with sufficient information so they can make an informed choice as to whether, with the broadening of access to legal services, they wished to establish a business in the legal sector, it had been contemplated at one of the authors' universities how this might be achieved. At the outset, modules were developed (broadly referred to here as 'Law as a Business') aimed at providing this very educational experience. These were rolled out, not only to law students studying for a traditional LLB award, but also to students studying in the business schools where such entrepreneurial endeavours had been well established – albeit perhaps not in such a clinical setting. The modules also would act as pilot data as to the efficacy of educating students in an (albeit simulated) entrepreneurial setting, pending conversations surrounding its inclusion at a more strategic and fundamental level in subsequent course programmes.



This led to the establishment of modules specialising in introducing the students to the most significant aspects of running a law firm as a business. The modules were delivered over two semesters to undergraduate law students in one module, and non-law students in the other module. In each, the students were tasked over the course of the semesters and in the formative assessment with assisting a simulated client from a small, high street law firm. The client required advice on a number of issues as outlined in the abstract of this report. A simulated client was used in this clinical programme given the advantages it gave to the teaching staff and the students in their pedagogic development. For example, using a simulated corporate client provides a controlled environment where legal and non-legal issues, designed to present students with specific challenges that align with the curriculum and learning objectives, are raised. Through this method, the teaching staff can ensure that the development of the T-shaped skills are identified, considered and tested. We did not have to wait until clients presented individual issues which aligned to these pedagogic criteria, thereby we avoided the unpredictability and complexities that come with real clients. Further, we were able to monitor the progress of the students whilst ensuring that each student received the same opportunities to learn and practice essential skills.

An important aspect of the entrepreneurial nature of the modules was in the innovation in the creation, expansion and the exploitation of the resources of the simulated law firm. This method allowed us to focus on the interdisciplinary

dimension to the T shaped lawyer in the students' learning. We were able to incorporate elements from fields including finance, management, corporate governance, advertising and marketing. With real clients, such instances must be cautiously exercised based on the instructions of the client. Here we did not have to fear damaging the client's interests or breaching confidentiality. Students were allowed to exercise their freedom of creativity and to learn from their mistakes without any real-world consequences. For the students, this interdisciplinary approach helps stimulate a more comprehensive understanding of the legal and business landscape.

The modules go beyond seeking to produce the typical lawyer who would be expected to graduate with excellent legal knowledge, appropriate practical legal skills, and the ability to demonstrate transferable skills across a range of assessments and activities. Our students are exposed to the understanding of the legal profession in its business and entrepreneurial contexts – how law firms make money, how its personnel deal with internal and external factors that affect the firm and the people/organisations with whom they engage, how firms control their finances, how they advertise and promote their services, how they maintain their standing in the communities in which they are situated, what role law firms play (and can play) across entrepreneurial endeavours and across industries, and what can clients and the regulators reasonably expect from such a business. Thus were married together practical legal skills and commercial awareness, based on a series of in-class

workshops, independent research and wider reading, and access to experts who provide a real-world perspective on these factors.

Perhaps one of the greatest challenges to the students studying Law as a Business is the movement away from the typical academic, legal research focus that underpins much of the work to which they are exposed. Similarly, in other clinical modules to which the students had already been exposed, they would provide advisory services, and typically in the form of a letter of advice, to clients who present themselves seeking help. This in many ways limited the strategic development exercises regarding the students' individual learning – they helped clients who walked through the doors of the clinic. Where our Law as a Business modules are different is in the scaffolding of client issues including a board of directors and/or partners to whom the students were to offer advice and guidance. Hence, not only were there differences in the type of advice our clients required, but also the outputs of the students' work were focused at board and strategic levels, ensuring a more entrepreneurial mindset was used to creatively resolve issues between businesses, between the business and regulators, and in ensuring client satisfaction. Further, the students were also tasked with using these skills in one aspect of their summative assessment to pitch their own idea for a commercially-focused business. Here the students used their knowledge and the skills gained following interactions with colleagues, external experts, legal and non-legal research activities and the legal

sector to demonstrate the very T shaped lawyer skills necessary for a modern legal business concept.

#### 4. Embedding Legal Skills

Given that both the Solicitors Regulation Authority<sup>28</sup> and the Bar Standards Board<sup>29</sup> require lawyers to demonstrate a range of skills, these are incorporated into the modules to ensure the students can identify how they complement the T shaped lawyer being developed. Legal research is a central component in the modules, underpinning the students' appreciation of the broader range of contemporary and traditional academic skills needed for a modern entrepreneur/lawyer. The research is focused on issues affecting the legal sector, businesses and their operation, and how effective research and its critical analysis can not only lead to the correct identification of trends, issues and problems, but also the planning (such as through creating mind maps) which can provide a structure to help direct this research in the most appropriate way. We spend time with the students developing their research skills, especially the planning phase. Here the students learn the process of identifying and preparing research trails, noting the issue being researched, the reason and its importance, maintaining records of what has been found, where, the full sources, and assessing their reliability. This last stage is particularly important for

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<sup>28</sup> SQE 2 Assessment Specification, Solicitors Regulation Authority,  
<<https://www.sra.org.uk/sra/policy/sqe/sqe2-assessment-specification/>>.

<sup>29</sup> BPTC Syllabus and Curriculum, Bar Standards Board  
<<https://www.barstandardsboard.org.uk/uploads/assets/ae901caa-5529-45b4-9631e3ab9e8fad00/2019-20-BPTC-Syllabus-FULL-SYLLABUS-January-2020.pdf>>.

legal research where business/entrepreneurial matters are being assessed. This necessitates a much broader range of research sources than the typical legal databases and law reports materials the students are typically asked to use. When webpages, news reports, on-line commentary, and even information from law firm websites are accessed, the need to develop a keen eye to identify sources of potential bias and to ensure these are countered through wider reading and critical analysis are paramount. This skill has the ability to impact on the students' entire study of the law and something to which we have previously argued is missing in law-specific modules.<sup>30</sup> Students must be trained not to accept opinions, be they business-based or expressed by those interested in the legal professions, and this approach applies especially to legal opinions which should be assessed and critiqued to ensure full consideration to all sources is provided.<sup>31</sup> By avoiding the approach of replicating and simply reciting the opinions of others, the entrepreneur lawyer can add significant value as a business partner by being aware of legal opinions and laws, but by avoiding becoming entrenched in acceptance of the status quo. Encouraging

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<sup>30</sup> Marson, J., & Ferris, K. (2016). Delaney and the Motor Vehicle Insurance Directives: Lessons for the Teaching of EU law. *Law Teacher*, 51(4), 411.

<sup>31</sup> This is an approach we have adopted in our publishing. See for example Marson, J., & Ferris, K. (2022). When is an Insured Vehicle an Uninsured Vehicle? In *Colley v MIB the Court of Appeal Continues its Struggle with EU Motor Vehicle Insurance Law*. *Modern Law Review* <<https://doi.org/10.1111/1468-2230.12762>>; Marson, J., & Ferris, K. (2022). From Insurer of Last Resort to an Insurer of Convenience: The Court of Appeal and the Recanted Policy. *Law Quarterly Review*, 138, 546.

disruptive and challenging behaviours is a skill to be developed and nurtured, something we respectfully advance is not always evident in university courses.<sup>32</sup>

When analysing cases and wider business issues, the students are taught to use analytical tools to assess the impact both internal to the law-firm business and with its external environment. This instils in the students a need for careful and thoughtful consideration of the ways in which their decision-making can impact the business, understanding investigating matters from several angles and in respect of the various stakeholders to the business can ensure full consideration of the impact of decision-making has for a business. In this regard we ask the students to use analytical frameworks such as SWOT,<sup>33</sup> and PESTLE to ensure they have thoroughly assessed issues. SWOT is an analytical method which is adopted in the evaluation of the strengths, weaknesses, opportunities and threats within an organisation, an activity taking place within the business, and it can also be adopted for use in reference to plans, projects and even an individual. It has been used in the examination of resources, trends and patterns, and is extended to business strategies and organisational policies, albeit that the success and efficacy of a SWOT analysis rests with the quality and detail of the information and data used in the generation of

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<sup>32</sup> Ehtiyar, R., & Baser, G. (2019). University Education and Creativity: An Assessment from Students' Perspective. *Eurasian Journal of Educational Research*, 19(80), 113. Retrieved from <<https://dergipark.org.tr/en/pub/ejer/issue/43338/548913>>.

<sup>33</sup> See Leigh, D. (2009). SWOT Analysis. *Handbook of Improving Performance in the Workplace: Volumes 1-3*, 115.

results.<sup>34</sup> As such, its main deficiency is in the complexity of the problem, organisation or business structure itself, and that it is essentially inward focused and is prone to be implemented incorrectly resulting in poor, and potentially misleading, results.<sup>35</sup> Ultimately our students are exposed to the critical application of SWOT methods of analysis, they are provided with a simulated organisation through which they can assess a proposed strategy, they are tasked with exploring an inter-operability framework and then explaining how the conclusions drawn from this model can be used pragmatically to influence internal policies, strategies, and procedures.

From there we proceed with exposure to the PESTLE mode where students identify businesses as open systems, with subsystems and interrelationships between decisions and effects. Appreciating that law firms are businesses and their aim is to maximise profits, whilst also appreciating the value of the model for pro bono operations where the measurements will be focused on relevance, effectiveness and efficiencies. The value of PESTLE lies in its external focus and ensuring the students have an appreciation of the political, economic, social, technological, legal and environmental dimensions to the territories in which they exist and operate. This might also be applied to the macro environment, as well as the micro environment.

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<sup>34</sup> Gurel, E. (2017). SWOT Analysis: A Theoretical Review. *Journal of International Social Research*, 10(51), 994.

<sup>35</sup> Valentin, E. K. (2001). SWOT Analysis from a Resource-Based View. *Journal of Marketing Theory and Practice*, 9(2), 54.

Whilst political and legal elements should be quite familiar to students studying law and applying their practice in a legal clinic, it would not be uncommon for these same students to not fully appreciate the economic, social, technological and environmental factors which affect all businesses. Even the political and legal factors are considered from a different viewpoint when applied in a business or entrepreneurial perspective.

For example, through the most basic of modules where the English legal system is studied, students will appreciate the law-making system including Parliament, international treaties and the separation of powers. Yet through PESTLE, the political factors considered by the students include government policies and policy making, the impact of political leadership and change and the effect this can have for business planning and regional, national and international collaborations. There will certainly be foreign trade policies which can affect the application of goods and services, and there are policies, regulations and deregulation in areas including immigration, human rights, privacy, tax and safety which will affect businesses and through which they have, largely, little control.

In respect of legal factors, the students are exposed to laws and to providing advice in problem-based scenarios or in the critical assessment of the particular law in question through, for example, essay-based assessment, yet for businesses, Equality, Diversity and Inclusion, advertising standards, consumer rights, advertising, labelling



and consumer safety, health and safety and so on are all aspects of the business which need to be assessed before embarking on a course of action.

The four remaining elements of PESTLE require the students to think much more strategically about the business and environment in which they will be operating. Economically, current and projected growth, inflation, interest rates, employment and unemployment, labour costs, consumers and businesses as clients, changes in demographics, even the impact of globalisation are each assessed in respect of the business. This continues through the social factors which focus on demographics, client and consumer attitudes and opinions, buying patterns, living standards, population growth rates, and employment trends. The environmental factors not only include the environmental impact of the business and aligning the interests of clients and customers with those of the values of the business itself, but also access to materials, sustainability and carbon footprint targets and emissions all form part of the students' assessments. Technological factors for law firms are of saliency given the distribution of services which is the fundamental aspect of law firms as businesses, and it provides new ways of communicating with target markets and even the production of the particular service that is available. This has certainly come to the fore following the pandemic, forced lockdowns, and the new ways of working in the previously archaic legal service in the UK.

Having completed the research and analysis of the business matters, the students are instructed on the presentation of the results. Law students are typically taught how to advise on legal issues and apply the law to problem-based scenarios. In a clinical setting, students advise clients, and most commonly these are based on a social-justice issue (debt, employment, immigration and so on). In entrepreneurial clinics, the client for the students is markedly different and with different needs. Typically these are businesses, corporations and the contact is either a lawyer representing the business or a senior member of the organisation. Consequently, the communication and advocacy elements of the students' learning is different and, almost, bespoke for the module. The students will undertake standard clinical tasks including drafting letters to clients, opponents, experts, and the court, they also experience writing memos to senior staff within a law firm, preparing and maintaining files and producing reports based on the SWOT and PESTLE analyses previously completed.

Finally, an important part of this module is requiring the students to complete a record of reflection, using established models. This exposes the students to the philosophical underpinnings of reflection and understanding the purpose it serves. They appreciate that identifying what has happened during their studies, identifying new experiences and where they have challenged themselves; where they went beyond their comfort zone; and in exploring the lessons they learned from this experience, before commenting on what they plan to do in the future to address these issues all help to shape themselves as lawyers of the future. Of course,

reflection is an important aspect of any professional role and is specifically required of solicitors by the SRA.<sup>36</sup> With these modules, the students are assessed on their reflection and the emphasis is on how their commercial awareness and understanding of the various aspects of being part of an entrepreneurial enterprise in a legal setting have changed following completion of the module. Indeed, the annual reviews of student experiences collected by the universities where the authors are employed has demonstrated this value to the students. They note improvements to their understanding and appreciation of law beyond the identification of legal problems and the dissemination of legal information. They expressed their increased understanding of the commercial world where businesses are located, and identified their own development in areas including communication to differing audiences; critical thinking and the experience of applying this to specific projects and across the teams in which they worked; and the networking opportunities where they met lawyers who could talk about their business, the new demands faced in a post-covid business world, and what traits an entrepreneurial lawyer needs, to be competitive, in this emerging marketplace.

## 5. Conclusions

It has been our aim in this practice report to explain the nature of how commercial awareness can not only be a part of the training and education of modern law

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<sup>36</sup> <<https://www.sra.org.uk/solicitors/resources/cpd/tool-kit/identify-learning-development/>>.

graduates, it is increasingly a necessity for those with intentions of entering the legal profession or engaging in entrepreneurial activities. We began by outlining the current awareness of commercial lawyers and the skills and competencies they possess depending upon their 'shape.' We have explained how we have advanced the commercial awareness and entrepreneurial training of our students, instilling in them an appreciation of those factors to which law firms and their key personnel must have an understanding. By adopting these provisions through the lens of a simulated client at a law firm, it has allowed us to explore essential factors of the inception of a business and business idea, the legal sector and the community in which it operates, a business's clients, the generation of business, the effects of legal policies including professional body regulation and compliance, marketing and advertisement, and stakeholder theory. We have incorporated in these tasks the development of the students' own skills, aligned with the T shaped lawyer framework, and are beginning to produce strong evidence that compulsory commercial awareness is a key factor to be incorporated in university programmes. Not only is such training interesting and stimulating for the students, it adds authenticity to their assessments, increases employability skills upon graduation, ensures universities meet their targets of producing professional graduates who progress to graduate employment, and at this stage of its roll-out, can offer a strategic advantage to universities in their recruitment of students. Embracing commercial / entrepreneurial clinical education into law school programmes leads to

positive results across communities and encourages a skills-set which all future lawyers should possess.

# Frustrating Times: Notes from the Field

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## Abstract

Business Law Clinics' involvement in advising Small and Medium Sized Enterprises (SMEs) reached an interesting crescendo during the pandemic as businesses were often left high and dry by business customers and suppliers who could or would not fulfil their contractual obligations. SMEs, often sole traders or limited companies with no business premises, found themselves unable to access government support and facing insolvency. Many had no contracts in place, or they sought to rely on their terms and conditions of business only to find them lacking due to reasons grounded in law (there is no freestanding concept of force majeure under English law and if a contract is silent on it, English law will not imply it) or process (lack of incorporation of terms through their own fault). In this note I seek to examine the impact of the pandemic on the concept of force majeure and contractual remedies for SMEs in the UK and to contemplate the role of business law clinics in advising SMEs on the use of terms and conditions in business-to-business (B2B) contracts as part of successful operations in the post-Covid world. Drafting sets of terms and conditions for SME

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clients is a perfect vehicle for meeting the goals of a university business law clinic – community engagement with local SMEs providing them with fast, tailored advice with a bespoke tangible document to take away plus student experience of real-world learning in commercial law (experience which is not always readily available for students outside the big cities).

### **Frustrating Times**

The doctrine of frustration of contract has always held a special place in my heart – it was a neatly contained topic on my degree program that did not need me to update my notes before final examinations because all the important cases were historic: set against back-drops of a cancelled coronation or war-time trading. Fast-forward to the twenty-first century and one notable legal impact of the global pandemic is likely to be a raft of new cases on frustration of contract. Until those cases are ruled in any great numbers however, those of us attempting to advise struggling Small and Medium sized Enterprises (SMEs) based upon century old common law rules have found it challenging. England and Wales are different to other (typically civil law) legal systems: in France for example, force majeure is a legally defined concept and as early as summer 2020, the courts declared that COVID-19 was a force majeure event.<sup>1</sup> This meant that, in France, performance of contracts could be suspended or

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<sup>1</sup> French Law defines force majeure in Article 1218 of the French Civil Code: “force majeure occurs in contractual matters when an event beyond the control of the debtor, which could not reasonably be expected at the time of the conclusion of the contract and the effects of which cannot be avoided using appropriate means, prevents the performance of the debtor’s obligation”. The French government *declared COVID-19 a force majeure event in respect of public procurement and*

terminated without any party being deemed in breach. There is no freestanding concept of force majeure under English law – it is just a contractual issue, adjudicated by the courts on a case-by-case basis with the appropriate remedy thereafter. In this note I therefore consider the position of SMEs in England and Wales as they face life after the pandemic - situations of uncertainty, of legal wrangling and of reluctant negotiated settlements caused by contractual breaches – and the role that lawyers, but more importantly for the purposes of this note and potentially for the SMEs themselves, law clinics can play in helping them face the future with a level of confidence that otherwise can elude them in challenging times.

During the pandemic, many businesses became concerned that they were losing money due to events or orders being cancelled, often, but not always, as a result of the restrictions imposed by the Health Protection (Coronavirus) Regulations 2020.<sup>2</sup> In England and Wales, the terms of their commercial (“B2B”) contracts dictated their rights to cancel. If there happened to be a suitable cancellation clause or they could agree to cancel or suspend the contract, there should not have been a dispute. If, on the other hand, one party wanted to cancel and the other did not and money in some form has changed hands, then the situation became more complicated. SMEs

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announced solidarity measures for all companies, suggesting a possible extension of the qualification. A decision by the Court of Appeal of Colmar on March 12, 2020 ruled that COVID-19 as a force majeure event (no. 20/01098). This was confirmed when the Paris Court of Appeal intervened in the interpretation of the Framework Agreement (an agreement entitling electricity suppliers to purchase electricity from Electricité de France (“EDF”) at a regulated price), it considered that the force majeure stems both from the Covid-19 pandemic and the governmental measures taken to stop the spread of the virus.

<sup>2</sup> SI 2020/129.



in England needing a remedy due to COVID-19 needed to overcome a series of contractual hurdles:

1. Is there a set of terms and conditions?
2. Are those terms and conditions incorporated into an enforceable contract?
3. Is there a force majeure clause included in that contract?
4. Does that force majeure clause include reference to "disease" or "pandemic"?

The reality of doing business as an SME in England and Wales is that business owners tend to be wholly focussed on time and money on making a success of the business rather than asking for help to put appropriate, or indeed any, terms and conditions in place. Of course, help may be available from solicitors, chambers of commerce, law clinics or even simply by "borrowing" a set of terms and conditions from the internet. Many SMEs have no formal contracts in place – relying on an email, a text or a phone call here or there. Those that have had the foresight to acquire or create a set of terms and conditions must then overcome hurdle number two.

The second hurdle is that of incorporation into a valid contract. Those with a legal background may recall the general rules of incorporation from contract law sessions and may even recall the specifics of Lord Denning's "last shot doctrine" from *Butler Machine Tool Co Ltd v Ex-Cell-O Corp (England) Ltd*.<sup>3</sup> Simply put, legal practitioners

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<sup>3</sup> [1977] EWCA Civ 9.

tell clients not to rely on printing their terms and conditions solely on their invoice but to bring them to the attention of their customers earlier in the transaction – for example, by making explicit reference to them in their quotation or other document which is communicated before the contract is concluded.

Assuming then that there are terms which are incorporated into the contractual relationship between the parties, the third hurdle for SMEs is whether there is a force majeure clause and how it is constructed. The title of the clause may give a hint that this is not a concept originating in English law (it means 'superior force' in French) and, in fact, the term has no recognised meaning in English law at all. On that basis, if it is used in commercial contracts, it must be expressly defined: a clause stating that the "usual 'force majeure' clauses shall apply" has been held void for uncertainty.<sup>4</sup> The makings of an effective clause therefore could include "In this Agreement, Force Majeure shall mean any cause preventing either party from performing any or all of its obligations which arises from or is attributable to strikes, lock-outs or other industrial disputes, nuclear accident or acts of God, war or terrorist activity, riot, civil commotion, malicious damage (excluding malicious damage involving the employees of the affected party or its sub-contractors), outbreak of disease or pandemic, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors and, where they are beyond the reasonable

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<sup>4</sup> *British Electrical and Associated Industries (Cardiff) Ltd v Patley Pressings Ltd* [1953] 1 W.L.R. 280.

control of the party so prevented, any other acts, events, omissions or accidents....”

(NB. Capitalisation denotes defined terms that would be used in the entirety of an agreement).

The eagle-eyed amongst you will have noticed that the long list of meanings attributed to force majeure includes ‘outbreak of disease or pandemic’. The reality is however, that before March 2020, many force majeure clauses that were included in commercial contracts, even bespoke ones, did not include such a provision. Even the ‘long list’ in the clause above may not be long enough – practitioners have now spent many hours looking at how to define ‘pandemic’ in a global market and in a similar vein, is the invasion of Ukraine covered by ‘war’ or would it need to include ‘act of government, embargo, blockade, imposition of sanctions, breaking off of diplomatic relations or supply chain disruption’. The ‘safe’ list is seemingly endless. Even once identified, there has to be a sufficient causal link between the force majeure event and the corresponding impediment to performance and it is likely that the party seeking to rely on the force majeure clause will have to demonstrate that ‘but for’ the force majeure event, they would have performed under the contract.

As a result, for SMEs that had overcome the first three hurdles and the ‘proofs associated with it’, they still needed a clause where that event could bring the contract to an end without penalty: the fourth hurdle. An effective clause within an effective contract also needs to consider the consequences of any of these force

majeure events (for example whether the contract will be delayed or will be terminated) and additionally set out what happens to payments made and services delivered prior to the force majeure event. These potential options for inclusion in a contract are expositions of remedies grounded in the principles of contract law but should be considered to form contractual terms that are capable of negotiation, tailoring and explicit inclusion and are more suitable for the parties, and certainly less of a blunt instrument, than simply discharging the contract.

So many hurdles! Therefore, we can see that the situation would be the same for businesses with a contract that did not contain an appropriate or adequate force majeure clause or for businesses where there was no contract at all. It is worth repeating that force majeure cannot be implied under English law. Without such implicit inclusion or usable contractual terms, SMEs were scrambling around for alternative solutions. The fallout from the pandemic has meant that SMEs have been forced to consider the business relationships that were potentially at stake. For one-off events, where there was effectively 'no relationship' they often chose to take a more rigid line. For example, the owner of an events venue could charge full fees for cancellations and hope that those fees were unquestioningly paid by an equally struggling business at the other end of the contract. Where there was a long-standing, often important, business relationship (e.g. an event hosted annually at the same venue), then a more commercial, pragmatic approach may have been preferred, agreeing a course of action outside of the contract to try and share the

exposure more fairly. If a negotiated settlement could not be reached, parties could look to rely upon the common law doctrine of frustration. That said, lawyers always warn that a misplaced assertion of frustration may render these SMEs in anticipatory breach of contract. The doctrine of frustration applies where performance of a contract has become legally or physically impossible through no fault of the parties. For frustration principles to apply, performance of the contract must be adjudged by a court to be impossible, illegal or radically different to what was contemplated at the outset of the contract rather than just difficult, more expensive or likely to be delayed, even if that delay is significant. The frustrating event must, in the words of Bingham LJ in the 'Super Servant Two' case,<sup>5</sup> 'bring the contract to an end forthwith, without more ado automatically.' Even a hint of foreseeability about the supervening event and its consequences would mean that the doctrine of frustration could not be relied upon. The burden of proof lies with the party asserting that the contract has been frustrated to establish there has been a frustrating event and that its effect on the agreement is termination without penalty. The other party could then seek to prove that the doctrine should not apply, for example, on the basis that the frustration was self-induced or there was a break in the chain of causation.

The law of frustration aims to guard against so-called 'unjust enrichment' where the loss falls unreasonably or too much on one party by comparison with the other. Seeking to achieve a fair apportionment of incurred costs by relying on frustration,

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<sup>5</sup> *Lauritzen A/A v Wijsmuller B.V. (The Super Servant Two)* [1990] 1 Lloyd's Rep 1.

cannot simply be negotiated between the parties. yet seeking a remedy in court is, as we all know, not the easy option. Even using the Small Claims Court track in an attempt to pursue lost revenue and a fair apportionment of costs takes a considerable amount of time and organisation, not to mention an average of £1000. I have stated that establishing that performance was actually impossible is a high bar to overcome. If that bar can be overcome, where money was paid prior to the frustration of the contract, under the Law Reform (Frustrated Contracts) Act 1943, the court will usually find that that sum may be recovered by the payer and where money was due to be paid at the time of the frustration, it would no longer be payable. Neither party would be in line for any huge compensation pay out – just an allocation of costs and losses already incurred. Setting aside the time and / or money to go to court however is simply not an option, nor is it likely to become an option within the 6-year limitation period, for most SMEs that are already cash-strapped as a result of the pandemic and a looming cost-of-living crisis.

There has been talk that the English courts could begin to recognise the use of a Force Majeure Certificate as in other countries around the world. The English courts certainly have not yet tested the effect of a Force Majeure Certificate and given the fundamental principles the Courts apply when considering a force majeure claim and the cautious (some may say slow) route to progress, the position may be that, whilst a Force Majeure Certificate is useful evidence of the fact that a force majeure event has taken place, the fact of the certificate itself will not lead the Court to hold that

the party invoking the force majeure provision is entitled to relief. Perhaps if the force majeure clause within the contract expressly refers to the issuance of Force Majeure Certificates as an event which can be relied on, the circumstances could be assessed to be different, in the contemplation of the parties and the contractual remedy will be available.

In fact however, the reality is that neither reliance on force majeure clauses or on the doctrine of frustration have proved effective remedies for businesses trying to recoup losses incurred through failed contracts during COVID-19. It has been suggested<sup>6</sup> that courts' and legal practitioners' reluctance to find, or even advise, that the pandemic may be an event of force majeure or a frustrating event was due to the wording of the UK Government's May 2020 guidance note<sup>7</sup> which stated that

Responsible and fair behaviour is strongly encouraged in performing and enforcing contracts where there has been a material impact from Covid-19.

This includes being reasonable and proportionate in responding to performance issues and enforcing contracts (including dealing with any disputes), acting in a spirit of cooperation and aiming to achieve practical, just and equitable contractual outcomes having regard to the impact on the other

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<sup>6</sup> LexisNexis "Frustration event analysis – a practical guide".

<sup>7</sup> Guidance on responsible contractual behaviour in the performance and enforcement of contracts impacted by the Covid-19 emergency

<[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/883737/Covid-19\\_and\\_Responsible\\_Contractual\\_Behaviour\\_web\\_final\\_7\\_May.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/883737/Covid-19_and_Responsible_Contractual_Behaviour_web_final_7_May.pdf)>.

party (or parties), the availability of financial resources, the protection of public health and the national interest.

As DLA Piper stated in a recent article,<sup>8</sup> “legal practitioners consistently poured cold water over attempts by commercial parties to rely on force majeure clauses (and the doctrine of frustration)” during the pandemic. What started with BREXIT and continued with the pandemic is now exacerbated by the global economic impact of the war in Ukraine and the looming energy crisis: the agony for businesses with even more of their contracts becoming untenable for a variety of reasons is prolonged. DLA Piper state their belief that ‘now, as the hot water really does begin to turn off in Europe, it is looking increasingly likely that commercial parties may finally be in a position to invoke force majeure.’ So, what has changed and is 2022 the time when new frustration cases become like buses: you wait so long and then they all come at once? The High Court in *European Professional Club Rugby v RDA Television LLP*<sup>9</sup> found that a TV company wishing to terminate a contract on the grounds of force majeure when it could not televise rugby games that were cancelled due to the pandemic was permitted to do so. The reason that court found that this termination was valid was due to the rather specific wording of the clause (as I have already indicated, the more specific the better seems to work): the non-defaulting party had

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<sup>8</sup> Force Majeure revisited – the gas crisis of 2022 (5/9/22)  
<<https://www.dlapiper.com/en/france/insights/publications/2022/09/force-majeure-revisited-the-gas-crisis-of-2022/>>.

<sup>9</sup> [2022] EWHC 50 (Comm).



the right in the contract to terminate the agreement if the force majeure event delayed the other party's performance *by more than 60 days* (author's emphasis). Whether this is the dawn of a new era in frustration and force majeure is doubtful however as the decision in this case contrasts with another decided by the High Court only days earlier. In *Football Association Premier League v PPL Sports International*,<sup>10</sup> the court held that the postponement of matches and the fact that the matches were held without spectators were not fundamental changes to the format and accordingly the licensee was not entitled to terminate the contract. The clause here was broader and thus performance within the contract was still possible, just different. The Court of Appeal in *Bank of New York Mellon (International) Ltd v Cine-UK Ltd*<sup>11</sup> decided in similar terms – that COVID-19 was not a defence against a claim for non-payment of rent.

An additional word of warning though about including force majeure clauses in standard terms and conditions – they must still abide by the rule requiring a clause to be reasonable. Where the effect of a force majeure clause, as drafted, is to entitle one party to render no contractual performance at all or a performance substantially different from that reasonably expected of them, the clause must be reasonable to avoid a challenge under section 3 of the Unfair Contract Terms Act 1977.

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<sup>10</sup> [2022] EWHC 38 (Comm).

<sup>11</sup> [2022] EWCA Civ 1021.

Arguably, these tough times have brought the potential impact of business / entrepreneurial law clinics to the fore, further cementing their significance for industry and commerce. Whilst the provision of pro-bono legal advice has become an integral part of the UK's legal infrastructure and higher education institutions participate effectively, the advice letter model is not a model that works for fledgling, cash-poor businesses who need assistance with a huge range of documentation from sets of terms and conditions (as already mentioned) to contracts of employment. In 2018, a report of the Legal Services Board<sup>12</sup> based on research over five years concluded: 'we estimate the annual cost of small businesses' legal problems to the UK economy to be roughly £40 bn. Furthermore, 20% of businesses reported health impacts on personnel, which extrapolates to a minimum of 1.1m individuals, with possible knock-on effect for health services.' Over 50% of small businesses try to solve their legal problems completely alone. The legal and regulatory needs of small businesses, start-ups and charities are often overlooked because these organisations are presumed to have money in their budgets that can be used to pay for legal advice, but this becomes unlikely, particularly in an era of difficult trading conditions and rising legal fees.<sup>13</sup>

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<sup>12</sup> <<https://research.legalservicesboard.org.uk/wp-content/media/FINAL-Small-Business-Report-FEB-2018.pdf>>.

<sup>13</sup> Previously cited in IJCLE, Helen Codd, Lucy Blackburn, David Massey, Deborah Wood and Stephanie Jones 'The Best of Times and the Worst of Times': Reflections on Developing a Prison-Based Business Law and Tax Clinic in the Midst of a Global Pandemic' International Journal of Clinical Legal Education (2020) 27(4) 39-61.

Helping SMEs in this way is a method of promoting social justice – pro-bono work has always had this at its core. Helping small businesses casts a less-traditional lens on social justice, but it is certainly a valid one. It is worth noting therefore that many such clinics can also promote social justice in another way – by providing unapologetic attempts to level the playing field for graduates and students whose A level results or social background may prohibit them from acquiring essential work experience in commercial law firms, who commonly recruit solely from Russell Group universities. Clinics that provide internships and / or graduate employment allow graduates and students to gain confidence, essential skills and legal experience. For graduates and students who get involved, this real-world experience enables them to develop often elusive essential professional attitudes and attributes. Over 88% of trainee solicitors in commercial law firms are recruited from Russell Group universities<sup>14</sup> with most of those trainees coming from middle class backgrounds.<sup>15</sup> Some of the elite universities recruit under 3% of their students from low social classes<sup>16</sup> and under 13% from BME backgrounds. Over 64% of Russell Group students take part in a formal internship / work-experience programme that is relevant to their chosen career<sup>17</sup> and most commercial law firms take over half of their trainee solicitor recruits from those formal internship / work-experience

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<sup>14</sup> <<http://www.chambersstudent.co.uk/where-to-start/newsletter/law-firms-preferred-universities>>.

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<[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/434791/A\\_qualitative\\_evaluation\\_of\\_non-educational\\_barriers\\_to\\_the\\_elite\\_professions.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/434791/A_qualitative_evaluation_of_non-educational_barriers_to_the_elite_professions.pdf)>.

<sup>16</sup> <<http://www.hefce.ac.uk/analysis/yp/POLAR/>>.

<sup>17</sup> <<https://universumglobal.com/>>.

programmes. A majority of law graduates from provincial post-1992 universities have traditionally gained employment in high street private client small firms of solicitors in which the pay is lower and opportunities for progression fewer than in commercial firms. For a variety of reasons, they have very limited access to commercial law experience – they often come from low social classes, BME backgrounds, have lower pre-university achievements and so on. Furthermore, almost 70% of graduate employers see relevant work-experience as an essential part of a graduate job application.<sup>18</sup> Commercial law experience and the jobs that can flow from it are evading many students in provincial post 1992-universities. Clinics are therefore often focussed on attempting to give these students and graduates access to opportunities that others take for granted. In the future, with correct resourcing, such clinics are excellently placed to provide placements that contribute to graduates' Qualifying Work Experience under the Solicitors' Regulation Authority's new route to qualification (Solicitors Qualifying Exam). Once again potentially contributing to the levelling-up agenda for such students.

Our legal and commercial systems could certainly become more receptive to the use of, and reliance upon, force majeure clauses and legal practitioners can begin to work out a possible route through the minefield that at least creates a workable backdrop for all parties engaged in commercial activity. Clinics are well placed to overhaul the terms and conditions of SMEs to include reasonable clauses that are

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<sup>18</sup> <<https://www.ucas.com/connect/blogs/work-experience-important>>.

bespoke to the SME's business and as specific as possible on what could count as a force majeure event. These clauses may not be a water-tight solution for SMEs simultaneously dealing with global and national crises but it is certainly worth a try. Many SMEs are rather cash-strapped and, in any event, would rarely seek bespoke contracts for every deal that they do. They may welcome the prospect of a well-drafted set of standard terms and conditions that could protect them rather than having nothing in their corner. Clinics can certainly provide this without forcing these cost-conscious SMEs into expensive legal appointments – thus promoting the levelling up agenda at every turn and steering businesses away from frustrating times into encouraging ones.