

W A L T R

THE WESTERN AUSTRALIAN LAW TEACHERS' REVIEW



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Western Australian Law Teachers' Review
Volume One

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Welcome to WALTR

The Western Australian
Law Teachers' Review



Editors' Introduction

We are delighted to introduce you to the first volume of WALTR – *The Western Australian Law Teachers' Review*.

WALTR is the new annual publication of the Western Australian Teachers of Law (WAToL) Forum. WALTR has been created to provide opportunities to publish research which has been presented at the WAToL Forum. In this volume we invited submissions based on any presentation made at a WAToL Forum to date. In future years, WALTR will invite submissions based on presentations from the corresponding year's WAToL Forum.

WALTR aims to publish short, engaging articles on topics relating to legal education. Authors were welcome to submit either completely new research which has not yet been published, or new writing which summarises, distills, or applies research which the authors have published or will publish elsewhere.

Ultimately seven articles from 18 authors are published in this first volume. All articles were reviewed and subjected to editorial discretion. We extend our thanks to everybody who has contributed to this volume for its successful publication.

We hope that WALTR continues to develop the collegiality and sharing of ideas that WAToL has fostered since 2017.

Aidan Ricciardo
Editor in Chief

Christina Do
Kate Offer
Dr Anna Bunn
Ken Yin
Editorial Team

Foreword

I am both honoured and proud to write the foreword to this inaugural volume of the *Western Australian Law Teachers' Review*, reflecting a collegiate and collaborative association of teachers of law in Western Australia.

When I was at law school many years ago, lectures were the primary form of teaching and were endured rather than enjoyed. Indeed, as law students, we simply endeavoured to write down everything the lecturer said and would then attempt to understand it later! Tutorials were scarce, and seminars and workshops were non-existent. Assessments were uninspired, with the usual format being an essay due mid-way through semester, followed by an end of semester exam (or worse still, a 100% final exam).

This first volume of WALTR is a testament to how law teaching has evolved and changed for the better. The contributors to this volume explore important themes and contemporary issues facing law teachers. The topics include diversity and inclusivity, the teaching of soft skills, enhancing the experience of international students, innovation in assessment, online teaching, and the building of an online community of practice. When exploring these topics, the contributors show their commitment to teaching innovation and excellence and clearly demonstrate creative thinking outside of traditional law school teaching practices. Importantly, they show a conscious desire to create a more positive and well-rounded student experience and to enhance student engagement and learning.

I commend this publication and look forward to reading the next volume!

Dr Michelle Evans-Bonner FAAL
Senior Member, Administrative Appeals Tribunal



A Brief History of the Western Australian Teachers of Law Forum

The Western Australian Teachers of Law (WAToL) Forum, which brings together all teachers of law, including law librarians, from all five Western Australian universities, first took place at the University of Western Australia in July 2017. The aim of the conference was to create a forum for the discussion and sharing of ideas about teaching law, as well as establishing and promoting collegial networks and collaborations for teachers of law in Western Australia. WAToL has been an overwhelming success, having run every year since 2017, but for a brief hiatus in 2020 as a result of the COVID-19 pandemic.

The idea for a local teaching conference for law teachers was first suggested by Professor Natalie Skead at the University of Western Australia, and was seized upon by myself and some key collaborators – namely Professor Joan Squelch (from The University of Notre Dame Australia) and Dr Anna Bunn (of Curtin University). We had noticed that we generally only met our Western Australian colleagues whilst interstate when attending national conferences, and we knew that having a local version would give us the opportunity to meet our local colleagues in an enjoyable and relaxed forum. Of course, the immense value of a local organisation was made even more clear to us in Western Australia as our borders were closed from April 2020 to March 2022.

It is so gratifying to see the success of WAToL, and now to welcome the development of our very own journal, WALTR, shepherded especially by colleagues Aidan Ricciardo and Christina Do.

Kate Offer

**Senior Lecturer and Deputy Head of School (Learning & Teaching)
at the UWA Law School, The University of Western Australia**

2016 **2017** 2018 2019 2020 2021 2022...

Western Australian Teachers of Law

Bringing together teachers of law and law librarians from the five Western Australian universities to connect, share ideas about teaching law and provide opportunities for collaboration.



WATOL

The inaugural WATOL forum

Host:
University of Western Australia

Date:
Friday 27 July 2017

Keynote:
Associate Professor Kate Galloway
(Griffith University)

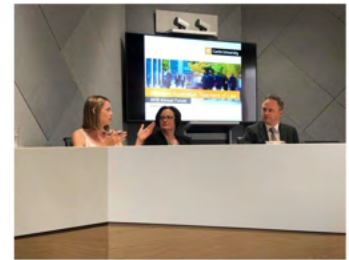
2017



Host:
Edith Cowan University

Date:
Tuesday 25 September 2018

2018



Host:
Curtin University

Date:
Friday 6 December 2019

Keynote:
Dr Michelle Evans-Bonner
(Administrative Appeals Tribunal)
Shane Murphy
(DLA Piper)
Felicity McLeish
(Wright Prospecting Pty Ltd)

2019

2020

Due to the COVID-19 pandemic, the WAToL forum did not run in 2020.

2021

Host:
University of Western Australia

Date:
Friday 10 September 2021



2022

Host:
Curtin University

Date:
Friday 9 September 2022

Invited guest:
LexisNexis







ARTICLES



SUPPORTING LGBTQI+ DIVERSITY AND INCLUSION IN LEGAL EDUCATION

A ‘HOW-TO’ GUIDE FOR LAW SCHOOLS & LAW TEACHERS

AIDAN RICCIARDO, NATALIE SKEAD, SHANE ROGERS,
STEPHEN PUTTICK, STELLA TARRANT & MELVILLE THOMAS*

I INTRODUCTION

The law has a history of oppressing and excluding LGBTQI+ identities.¹ For many LGBTQI+ people, this remains an ongoing reality. Similarly, law schools have not always been welcoming environments for LGBTQI+ people. This is demonstrated by our research into LGBTQI+ diversity in Western Australian law schools, which we conducted with funding from the Law Society of Western Australia’s Public Purposes Trust.²

As we have reported in earlier publications, our ethics-approved empirical study found that only 54% of LGBTQI+ law students felt that their law school provided an accepting environment for LGBTQI+ people.³ We also found that, compared to their non-LGBTQI+ peers, LGBTQI+ law students self-censor more often, witness more bullying and harassment, and feel more stress when interacting with law school staff.⁴

There is much that we can do as law teachers to improve the experiences of LGBTQI+ people in our law school communities. This article provides law schools and law teachers with some introductory guidance as to how we can best:

- demonstrate respect for our LGBTQI+ students, staff, and wider community;
- be inclusive (so as to avoid excluding LGBTQI+ people from participating in education and the law); and
- create safe, accepting, affirming environments in which LGBTQI+ people can feel free to be themselves.

II RECOMMENDATIONS FOR LAW SCHOOLS

Universities and law schools can support LGBTQI+ students by visibly accepting, genuinely including, and tangibly supporting LGBTQI+ people.

Visible Acceptance

Visible signs that the law school environment is accepting of LGBTQI+ people can help LGBTQI+ students feel more safe and able to learn.⁵ Law schools should visibly celebrate and acknowledge LGBTQI+ identities (for example, by celebrating IDAHOBIT – the International Day Against Homophobia, Biphobia, Intersexism and Transphobia) and encouraging staff to take part in Ally or inclusion training.⁶ Findings from the qualitative limb of our study indicated that Ally paraphernalia (eg, supportive rainbow signs on office doors and logos in email signatures) made LGBTQI+ students feel that their law school ‘promotes and encourages’ LGBTQI+ people.⁷

Genuine Inclusivity

Whilst sending visible messages of acceptance is important, it needs to be backed-up by real and genuine action to promote inclusivity. An important part of this is fostering a ‘zero tolerance’ environment for harassment and bullying, including in relation to LGBTQI+ people. In particular, law schools should educate their students about microaggressions and their cumulative impact, as the qualitative limb of our study indicated that these were not uncommon occurrences in our law schools.⁸ Law schools can also promote genuine inclusivity by ensuring there is adequate representation of LGBTQI+ people on staff and in the student cohort. Adequate representation of LGBTQI+ students can be fostered by including adversity experienced in relation to a person’s LGBTQI+ status as a ground for admission through equity and diversity pathways. Finally, genuine inclusivity also requires work to develop a curriculum which is meaningfully diverse and inclusive of LGBTQI+ people and the issues relevant to them.⁹

Tangible Support

Law schools must work with their institutions to ensure that practical support tailored to the needs of LGBTQI+ students is available (eg, counselling services which are safe for LGBTQI+ people). At a local level, law schools should consider introducing LGBTQI+ advisory roles to provide formal support to staff and students. LGBTQI+ staff should occupy these roles, which must attract a formal workload allocation and provide opportunities for recognition in performance and promotion processes.

III RECOMMENDATIONS FOR LAW TEACHERS

Law teachers can support LGBTQI+ diversity and inclusion by getting involved with implementing the school-based recommendations set out above (eg, by undergoing Ally or inclusion training). Law teachers should also follow inclusive teaching practices at all times.

It is not the case that a teacher only needs to consider inclusive teaching practice when teaching topics which directly and obviously concern the relevant community. Of course, we need to think about LGBTQI+ people when, eg, teaching cases about same sex marriage and gender recognition – but this alone is not enough. In fact, we need to consider LGBTQI+ people no matter what we are teaching. There are many matters which particularly affect LGBTQI+ people, and which might negatively impact LGBTQI+ people if not taught in an inclusive way. For example, discussions

about gender, sex, and reproduction often exclude people who are not cisgender. Similarly, discussions on relationships and family frequently exclude those who are not heterosexual. This is, in part, because these discussions often assume that people are cisgender and heterosexual. Some guiding principles and examples are set out below.

Guiding Principles

1. Do not assume that everybody is cisgender/heterosexual, and do not treat being cisgender/heterosexual as the norm;
2. Be aware that there are almost certainly many LGBTQI+ people in your law school community, and that there are likely to be a number of LGBTQI+ people in each class we teach (even if we don't know those people are LGBTQI+);
3. Before teaching anything, ask: How might this content affect LGBTQI+ people? How can I teach this in a way which respects and includes LGBTQI+ people? What sort of class discussion might this content spark, and how can I ensure that such discussion will respect and include LGBTQI+ people?

Examples

- Unless it is clearly appropriate in the particular context, avoid using language such as 'wife and husband' that assumes all relationships are heterosexual, as this excludes non-heterosexual people and devalues their relationships. Words and phrases like 'partner', 'spouse', 'parents', and 'in a romantic relationship' are examples of inclusive language.¹⁰
- Unless it is clearly appropriate in the particular context, avoid using gendered terms like 'ladies and gentlemen' or 'men and women' or 'guys' to refer to groups of people. Instead you can just say 'people', 'everyone', or 'adults' (if you need a term which explicitly excludes children). Not everybody fits within the binary – for example, intersex people have natural variations of their bodily sex characteristics, and non-binary people do not identify exclusively as male or female.
- Do not assume a person's gender based on the way they look, the way they sound, or by their name. Unless you know how a person identifies, it's good practice to just use the person's name instead of gendered terms like 'her', 'his', 'she', or 'him'. For example, if in a tutorial you are referring to a previous comment that Sam made, instead of saying 'As she just said, she doesn't think there's a duty of care because...', just say 'As was just said, Sam doesn't think there's a duty of care because...'
- Always avoid making generalisations on the basis of gender, and take particular care not to do so when talking about topics like human bodies and reproduction.
- If a source uses outdated or offensive language, only include it if you have to, and consider explicitly noting the impact of the offensive language and why the terminology is inappropriate.

As can be seen from the examples above, using appropriate language when talking to and about LGBTQI+ people is an important part of demonstrating respect for LGBTQI+ people. It can help to foster an environment in which LGBTQI+ people feel accepted, comfortable to be themselves, and able to participate and contribute without fear of discrimination. On the other hand, using inappropriate language can be alienating and deeply hurtful for LGBTQI+ people. It is important

to understand that this can be so even if done with good intentions and without meaning to cause exclusion, offence, or hurt. Some examples of acceptable and unacceptable language are set out in the table below.

Terminology

GENDER AND SEX		
INSTEAD OF...	SAY...	BECAUSE...
Transsexual	Trans / Transgender	Being trans is about gender, not sexuality.
FtM (female to male)	Trans man / Man*	We focus on the person's identity, not their transition.
MtF (male to female)	Trans woman / Woman*	
Sex change, sex reassignment, gender reassignment	Gender affirmation / Gender confirmation	Therapies (which might or might not include surgery) may affirm a person's gender, but not all trans people wish to or can access them. Whether or not a person has accessed affirmation therapies is irrelevant to the authenticity of their gender identity.
Pre-operative or post-operative	<i>Nothing</i> (it is not acceptable to refer to a trans person in this way)	
Gender dysphoria, gender identity disorder	Gender incongruence	The World Health Organisation endorsed this new term because distress (dysphoria) is not synonymous with being trans and being trans is not a psychiatric disorder.
Biological sex	Sex assigned at birth	'Biological sex' ignores the diversity of human bodies.
Hermaphrodite, disorders of sex development	Intersex	Previous terms are stigmatising and misleading.
SEXUALITY		
INSTEAD OF...	SAY...	BECAUSE...
Homosexual	Gay / Lesbian	Previous term has a clinical history and is still used by extremists who represent same -sex attraction as 'unnatural'.
Gay marriage	Same-sex marriage / Marriage equality / marriage*	Not everybody who enters a same-sex marriage is gay – eg, the person may be bisexual.
NOTES		
<p>* It is often most appropriate to simply use the basic term without any qualifier.</p> <ul style="list-style-type: none"> ○ Eg, if Katrina and Sophie (who are both women) get married, it's best to refer to their relationship simply as a 'marriage' instead of othering them by calling it a 'same-sex marriage'. ○ Similarly, a trans woman is a woman and a trans man is a man – whilst it may be appropriate to include the word trans when describing the person in some contexts, this is not always the case. 		

IV CONCLUSION

The published results from our empirical study reveal that much of the law school experience is similar for both LGBTQI+ and non-LGBTQI+ students, but that LGBTQI+ law students experience more adversity in certain law school contexts.¹¹ The strategies and guidance in this article provide practical first steps to help law schools and law teachers promote and support LGBTQI+ inclusion in legal education.



ENDNOTES

- 1: See, eg, Liam J Casey et al, 'Coping with the Australian Marriage Law Postal Survey and its Legacy' (2022) *Journal of Gay & Lesbian Social Services* (published online ahead of print).
- 2: Our study involved 253 law students: 102 from Murdoch University; 86 from the University of Western Australia; 33 from Edith Cowan University; and 32 from Curtin University. The study obtained ethics approval from the University of Western Australia's Human Research Ethics Office: research protocol RA/4/20/5525.
- 3: Aidan Ricciardo et al, 'Understanding, Promoting, and Supporting LGBTQI+ Diversity in Legal Education' (2022) 56(3) *The Law Teacher* 307.
- 4: Ibid.
- 5: Ibid 316–17.
- 6: For an example of Ally training, see University of Western Australia, *Ally Training* <<https://www.web.uwa.edu.au/inclusion-diversity/sexualities/ally/training>, UWA ALLY>. For an example of inclusion training, see SBS Inclusion, LGBTQI+ Course <<https://inclusion-program.com.au/lgbtiq>>.
- 7: Ricciardo et al (n 3) 316–17.
- 8: Ibid 320.
- 9: See, eg, Paula Gerber and Claerwen O'Hara, 'Teaching Law Students about Sexual Orientation, Gender Identity and Intersex Status within Human Rights Law: Seven Principles for Curriculum Design and Pedagogy' (2019) 68 *Journal of Legal Education* 416, 418.
- 10: Victorian Government, LGBTQI Inclusive Language Guide <<https://www.vic.gov.au/sites/default/files/2019-06/LBGTIQ-Inclusive-Language-Guide.pdf>>.
- 11: Ricciardo et al (n 3) 334.

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TEACHING LAW STUDENTS SOFT SKILLS ONLINE

KATRINA WILLIAMS AND CHRISTINA DO*

I INTRODUCTION

During the height of the COVID-19 pandemic lockdowns, universities globally had no choice but to move all their teaching online. Traditional theory-based units, eg, prescribed areas of substantive blackletter law subjects ('Priestley 11'), and practical clinical units, eg, law clinics, were required to be taught and conducted virtually through online learning management systems, and conferencing, communication, and collaboration applications. As pandemic restrictions lessen, students are returning to university campuses. However, the pandemic has substantially altered how students learn, the way academics teach, and course availabilities and offerings by universities. It is not surprising that a 'pedagogy of the pandemic' body of scholarship of learning and teaching literature has emerged.

This article discusses soft skills within the discipline of law and provides practical suggestions as to how the teaching of soft skills can be taught online in conjunction with substantive law units. In particular, the discussion will focus on the soft skills required for effective collaborative work. These practical suggestions are informed by literature and the teaching experiences of the authors, who taught during the COVID-19 pandemic lockdowns in Western Australia. This article does not consider whether the teaching of soft skills online is the optimal method of imparting these skills, however the authors contend that there is a benefit to law students learning soft skills in an online context given that many law graduates will ultimately work in online teams at least some of the time.

II SOFT SKILLS IN THE LAW DISCIPLINE

There is no universally accepted definition of soft skills. There are various descriptions that are used interchangeably to define non-technical skills that share similar characteristics to soft skills – for example, transferable skills, employability skills, enterprise skills, capabilities, personal attributes and competencies.¹ For the purposes of this article, drawing on the works of Kiser, soft skills within the law discipline include:

intrapersonal and interpersonal competencies such as practical problem solving, stress management, self-confidence, initiative, optimism, interpersonal communication, the ability to convey empathy to another, the ability to see a situation from another's perspective, teamwork, collaboration, client relations, business development and the like.²

Although there is a strong doctrinal focus at the forefront of legal education in Australia, with emphasis on coverage of substantive blackletter law and technical legal skills,³ there has been growing recognition of the importance of soft skills within the legal academy. For example, the 'Bachelor of Laws Learning and Teaching Academic Standards Statement' specify that upon completing a Bachelor of Laws, graduates must have learnt, acquired, and demonstrated the following soft skill related Threshold Learning Outcomes (TLO):

TLO 5: Communication and collaboration

Graduates of the Bachelor of Laws will be able to:

- a) communicate in ways that are effective, appropriate and persuasive for legal and non-legal audiences, &
- b) collaborate effectively.

TLO 6: Self-management

Graduates of the Bachelor of Laws will be able to:

- a) learn and work independently, &
- b) reflect on and assess their own capabilities and performance, and make use of feedback as appropriate, to support personal and professional development.⁴

Similar soft skills are also acknowledged in the Council of Australian Law Deans (CALD) Australian Law School Standards.⁵

III TEACHING PEDAGOGY OF SOFT SKILLS IN LAW SCHOOLS

There is relatively little that has been written about the pedagogy of teaching soft skills to law students and lawyers, particularly in Australia. One notable exception is an article by Rogers which discusses how clinical legal education is an ideal forum for teaching soft skills.⁶ While the authors do concur with Rogers that clinical legal education is an ideal environment for soft skills to be taught, there is merit in the teaching of soft skills also being embedded throughout the law curriculum and taught in conjunction with the prescribed areas of substantive law.

A summary of the literature on teaching soft skills suggests that the key elements to successfully teaching these skills include:

- connection and team cohesion within the class;
- shaping teaching and assessments to include particular elements;
- providing appropriate feedback; and
- including elements of reflection in the learning exercises.

Each element will be discussed in turn and some suggestions regarding appropriate teaching and assessment exercises in an online context will be shared.

Connection and Team Cohesion

Studies have shown that online study tends to create and nurture an individual-centric model of learning, which can in turn cause student isolation.⁷ As a result, online learning tends to decrease student participation in group activities. When teaching online, to directly minimise the adverse impact of student isolation, academics can deliberately encourage inclusivity and team cohesion by being actively involved in group discussions and facilitating collaboration among peers. Encouraging team cohesion within classes has numerous benefits, including assisting with student wellness, and enhancing the environment to allow for exercises that can lead to soft skill development.

Numerous studies have highlighted the importance of law teachers building meaningful connections and rapport between students, and between the teacher and the group.⁸ Tsaoussi suggests that building rapport encourages discussion, which in turn allows for soft skills to be developed more easily.⁹ Strategies to assist an academic to build rapport between themselves and the students teaching online can be as simple as learning student names, making regular eye contact, and using exaggerated body language to show interest in the course and the students from behind the camera.

Stone has suggested that a strong teacher-presence provides online students with a sense of belonging, helping them to feel connected to a community of learning and increasing their likelihood of persisting.¹⁰ It is important that the academic's presence also extends beyond what occurs in the virtual classrooms. Stone highlights the importance of academics being responsive to emails, making themselves available online for consultation, posting notices regularly, and being active in online chats and reflections.¹¹

The importance of being visible should not be underestimated. In online classes, students should make themselves visible wherever possible to their peers and the academic as seeing each other enhances the possibility of building rapport in the group and assists in establishing trust.¹² It was evident through teaching in various pandemic lockdown periods, that students have a disposition to not turn on their camera during virtual classes. To address this problem, the authors asked students to turn on their cameras by simply explaining at the beginning of the teaching period that in a professional context it is considered rude not to have a camera on in a virtual meeting or forum. By first explaining the business etiquette of virtual meetings, students appeared more willing to have their camera on, be visible and present.

Curriculum, Teaching and Assessment Design

For already curriculum-heavy law schools, the teaching of soft skills will need to be incorporated into existing units. This can most easily be done by adopting teaching methods and/or assessment methods that will allow skills teaching alongside substantive law.

Myers et al have undertaken a study to assess which traditional teaching practices are most effective in teaching 'interpersonal skills' and 'desired graduate traits' when adapted for online teaching, in the context of information technology students.¹³ Myers et al found that group assessments were as effective for teaching soft skills online as they are in person, if the groups are: properly formed and managed, the nature of the assignment promotes both learning and team development, and students receive individual, frequent and timely feedback.¹⁴ Anecdotally, this scaffolding rarely occurs as many law academics choose not to use group assignments due to their perceptions of students' dislike for group work.

A necessary component for successfully teaching soft skills through group work is to make the soft skills element a part of the formal learning outcomes and/or assessment criteria. This ensures that the skills aspect of the work is considered by the student, and additionally provides them with an explanation for why a group assignment is being used. The academic should also provide guidance to students on how to satisfy the soft skills elements. For example, giving some ground rules for acceptable course participation and how to be courteous and respectful to other members of the group in virtual communication and collaboration applications.¹⁵ Another example is that many law schools provide students with etiquette rules for the internet, otherwise known as 'netiquette', and make it clear that they are being monitored.¹⁶

Michaelsen and Sweet suggest that the most important aspect of designing written group assessments is to ensure that the assessment allows for maximum group interaction.¹⁷ This can be achieved by requiring groups to use substantive law and principles to make decisions that involve a complex set of issues but allow the group to report their decisions in a relatively simple form. When a group assessment focuses on decision making, students are more likely to engage in a 'give-and-take content-related discussion'.¹⁸ Conversely, tasks that involve complex outputs, eg long essays, tend to limit discussion and group interaction.¹⁹ This is presumably because students focus on dividing the work to achieve the complex output in time.

Mock mediations are a less commonly used assessment format that is ideal for soft skills teaching. In addition to the collaboration skills potentially learned, the mediation can also teach the substantive law of the course, persuasive speaking and creative problem solving. This reinforces to students that soft skills are fundamental skills for lawyers.²⁰

Teaching of soft skills could also be incorporated into simulated client interview exercises. Just as interviewing real clients in a legal clinic environment is an ideal platform to teach soft skills, a number of projects have shown that many of the learning benefits of interviewing real clients can be replicated by using simulated clients.²¹ One theory as to why role plays are better vehicles for teaching soft skills than readings or lectures is that they are more likely to lead to reflection on the learning.²²



Providing Effective Feedback

The main consideration here, is that the lecturer should give feedback on the skills aspect of the task specifically. Anecdotally, law academics tend to focus on providing feedback with respect to the student's understanding and grasp of the substantive law, or (in some cases) advocacy skills. Law academics tend to shy away from providing feedback on students' soft skills on the mistaken assumption that it is not their role to teach or comment on such skills.²³ This can be partly addressed by including a specific soft skills criterion into the required learning outcomes and assessment rubric.

The potentially awkward nature of providing feedback with respect to students' soft skills can also be partly addressed by limiting comments to what the student has control over, and by being specific in providing suggestions for improvement that are descriptive not evaluative. For example, a law academic should not say:

You should be more polite when you engage in mediation – you came off as rude and abrasive on some occasions.

Instead, the law academic could say:

I noticed that on one occasion you cut off the other party when they were talking about being depressed. Although it may not seem relevant, negotiations will often be more successful if parties do not feel cut off. If you need to move things along, perhaps a comment like “I am so sorry to interrupt you, but I am really concerned that we will not be able to cover everything today. Would you mind if we returned to this later?”

Reflective Elements

As conscious reflection has proven to enhance learning, including in the development of soft skills,²⁴ law academics should ideally create exercises and assessments to ensure that they incorporate active reflection into teaching. This may be by way of guided group discussion after an exercise or adding a self-reflection component to a task – for example, by imposing a self-reflective component within the assessment rubric. For the reflection exercises to be most successful, it is important to teach law students the reason for the reflection, and how to go about reflecting on an experience to optimise the learning experience.

Self-reflection is a valuable tool to aid student learning, as it not only requires students to evaluate their performance, but to also consider how they can learn more effectively. An additional benefit of self-reflection for law students is that they may develop reflection skills that will be useful later in practice.²⁵

IV CONCLUSION

While the future teaching modes and deliveries of universities are uncertain, it is unlikely that universities will revert to complete on-campus face-to-face delivery. Moving forward there will undoubtedly be, at the very least, a hybrid approach of face-to-face and online delivery. Legal academics need to be comfortable with teaching substantive law subjects and legal skills, both technical skills and soft skills, virtually.

The COVID-19 pandemic has particularly highlighted the importance of human connection and

empathy. Given that the practice of law predominantly involves people, soft skills are fundamental to the successful practice of law. Research suggests that law academics tend to be resistant to teaching soft skills. The main reasons cited are that it is beyond the scope of their role as a law academic, and that it is not possible to add those skills to the already crowded curriculum.²⁶ On that basis, the practical suggestions made in this article sought to address the problem of the crowded curriculum by looking at how to adapt existing teaching methods and assessments, so as to incorporate soft skill teaching without adding to the workload of law students or academics.

ENDNOTES

- 1: For a comprehensive discussion regarding the terminology used to describe non-technical skills, see Deloitte Access Economics, 'Soft Skills for Business Success', Deloitte (Report, May 2017) <<https://www2.deloitte.com/au/en/pages/economics/articles/soft-skills-business-success.html>> 4-5.
- 2: Randall Kiser, *Soft Skills for the Effective Lawyer* (Cambridge University Press, 2017) 4.
- 3: See, eg, Colin James, 'Lawyers' Wellbeing and Professional Legal Education' (2008) 41(1) *The Law Teacher* 85, 91-2.
- 4: Sally Kift, Mark Israel and Rachael Field, 'Bachelor of Laws Learning and Teaching Academic Standards Statement' (Standards, December 2010) <https://researchrepository.murdoch.edu.au/id/eprint/54827/1/altc_standards.pdf> 10.
- 5: 'Australian Law School Standards with Guidance Notes', Council of Australian Law Deans (Standards, 30 July 2020) <<https://cald.asn.au/wp-content/uploads/2020/07/Australian-Law-School-Standards-v1.3-30-Jul-2020.pdf>>.
- 6: Justine Rogers, 'Teaching Soft Skills Including Online: A Review and Framework' (2020) 30(1) *Legal Education Review* 1.
- 7: Caroline Haythornthwaite et al, 'Community Development among Distance Learners: Temporal and Technological Dimensions' (2000) 6(1) *Journal of Computer-Mediated Communication* 35, cited in Trina Myers et al, 'Cultivating ICT Students' Interpersonal Soft Skills in Online Learning Environments Using Traditional Active Learning Techniques' (2014) 7(3) *Journal of Learning Design* 38, 39.
- 8: See, eg, Aspasia Tsaooussi, 'Using Soft Skills Courses to Inspire Law Teachers: A New Methodology for a More Humanistic Legal Education' (2020) 54(1) *The Law Teacher* 1; Christina Do and Aidan Ricciardo, 'Meaningful Connectedness: A Foundation for Effective Legal Teaching' (2019) *V Curtin Law and Taxation Review* 3.
- 9: Tsaooussi (n 8).
- 10: Cathy Stone, 'Opportunity through online learning: Improving student access, participation and success in higher education', National Centre for Student Equity in Higher Education (Report, March 2016) <https://www.ncsehe.edu.au/wp-content/uploads/2022/06/CathyStone_EQUITY-FELLOWSHIP-FINAL-REPORT-1.pdf> 72.
- 11: Ibid.
- 12: Ibid 25.
- 13: Myers et al (n 7) 38.
- 14: Ibid 40.
- 15: See, eg, Kimberley Moore and Brian Pearson, 'Soft Skills in an Online Class' (2017) 27(5) *HortTechnology* 583, 583.
- 16: See, eg, 'Teaching & Learning: Guide to online discussion boards, Learning Design & Netiquette', University of Tasmania (Guidelines, 3 May 2018) <<https://www.teaching-learning.utas.edu.au/communication/online-discussions/design-netiquette>>; 'Online Classroom Netiquette', Loyola Marymount University (Guidelines, 2022) <<https://tech.lls.edu/netiquette/online-classroom-netiquette/>>.
- 17: Larry Michaelsen and Michael Sweet, 'The Essential Elements of Team-Based Learning' (2008) 116 *New Directions for Teaching and Learning* 7, 12.
- 18: Ibid.
- 19: Ibid.
- 20: Kathleen Marcel and Patrick Wiseman, 'Why We Teach Law Students to Mediate' [1987] *Missouri Journal of Dispute Resolution* 77, 84-5.
- 21: See, eg, Wilson Chow and Michael Ng, 'Legal Education Without the Law - Lay Clients as Teachers and Assessors in Communication Skills, (2015) 22(1) *International Journal of the Legal Profession* 103.
- 22: Soile Pohjonen and Sari Lindblom-Ylänne, 'Challenges for Teaching Interaction Skills for Law Students' (2002) 36(3) *The Law Teacher* 296.
- 23: See generally, Sophie Sparrow, 'Teaching and Assessing Soft Skills' (2018) 67(2) *Journal of Legal Education* 553, 556.
- 24: Pohjonen and Lindblom-Ylänne (n 22) 296.
- 25: See generally, Colin James, 'Lawyers' Wellbeing and Professional Legal Education' (2008) 42(1) *The Law Teacher* 85.
- 26: Sparrow (n 23) 556.

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BEING AN INTERNATIONAL STUDENT WHO STUDIES LAW

SAGI PEARI *



I INTRODUCTION

In a post-pandemic environment the market for international students' academic education has become highly competitive. The return of international students to Australia is now one of the stated priorities of the federal government.¹ This is also essential for the financial recovery of the university sector which suffered a dramatic drop in foreign student enrolment as the pandemic erupted.² However, this is not just about the finances. International students contribute a critical value in advancing Australian education beyond national borders, serving as an important means for fostering the notions of global citizenship, transformation and change.³

II WHAT IS IT LIKE TO BE AN INTERNATIONAL STUDENT?

Perhaps, it is not easy to be an international student. Is there anything universities can do to improve the experience of international students in Western Australia? Are there any specific educational strategies that could enhance their experience as students, specifically as students who are studying law in such programs as the Juris Doctor or Bachelor of Laws? The ensuing paragraphs offer some answers to these questions.

International students face challenges. Arriving to a new continent, country, area and university could be difficult. Some students come from a different legal background that requires a quick adaptation to a new tradition – the common law tradition. This is not trivial, as it involves a different way of thinking about the essentials of the legal order, the role of judges, and the complex interplay between the various areas of law. Students that are new to the country encounter a different culture, face new administrative expectations and need to quickly adapt to a new social environment.

Students who come from non-English speaking countries may encounter serious language barriers despite good formal IELTS (International English Language Testing System) scores. Significantly, the legal doctrine, terms, concepts, principles and rules amplify the linguistic challenge. Anecdotally, international students can feel overwhelmed by the amount of required readings of cases, legislative provisions and secondary literature. They may not understand the nature and logistics of procedural requirements, which leads some international students to slip through the cracks.⁴ Put simply, international students in many instances have different expectations of the university, the lecturers and of their own role as students. These all contribute to the challenges faced by international students, and interfere with productive learning.

III WHAT CAN BE DONE TO IMPROVE THE EXPERIENCE OF INTERNATIONAL STUDENTS?

What can be done to improve the experience of international students? Awareness from the local lecturers and educators – the teachers – must be key and a focal point to address the challenge. This includes awareness as to the significance of being culturally patient and tolerant teachers who understand that through interaction with ‘others’ one may better understand the ‘self’.⁵ This vision perceives international students not as a burden, but rather as a unique opportunity for educators to enrich themselves and learn about foreign systems and cultures. The foreign perspective is also a valuable opportunity to critically inquire into the domestic legal system itself. Domestic educators may need to acquire the background of a foreign culture, understand that a different learning curve might be applicable to foreign students and acknowledge the significance of working closely with the university’s international student office.

There are specific learning and teaching strategies which the extant research has found to be effective with respect to international students. These strategies include the use of multiple examples, as well as some extra repetition of the legal doctrine, concepts and principles, legal points, arguments and debates. Provision of ongoing and detailed feedback has also been found to be effective.⁶

These strategies also encourage group work that integrates domestic and international students together. They support the implementation of a variety of assessment methods and tasks, and the provision of model answers to tutorial questions for better understanding of the dynamics and operation of the legal doctrine.⁷ Maintaining interaction and engagement could be incredibly valuable for some international students' motivation and transformation from being potentially passive learners towards their role as assertive leaders. Their knowledge of foreign law may frequently contribute to the comparative perspective of the learning experience.

IV CONCLUSION

Bringing international students back to Western Australian universities is not an easy task. The post-pandemic global drive towards international student recruitment posits not only challenges, but also opportunities. Enrolment growth is important due to governmental priorities and the imminent need to increase universities' revenue. Furthermore, international students play a key role in transformative global change, global citizenship and intercultural learning. The awareness of Western Australian university educators of the difficulties faced by these students and application of the relevant learning strategies could assist in bringing international student enrolment numbers back to (and beyond) pre-COVID-19 levels. After all, the positive experiences of international students here in Western Australian universities, and their feedback, is the best marketing agent to promote our law programs overseas.

ENDNOTES

1: See, eg, Australian Government Department of Education, 'Australian Strategy for International Education 2021–2030' (Web Page) <<https://www.education.gov.au/australian-strategy-international-education-2021-2030#:~:text=The%20Australian%20Strategy%20for%20International,the%20centre%20and%20global%20competitiveness>>.

2: See, eg, Nancy Arthur, 'COVID Halved International Student Numbers in Australia. The Risk Now is we Lose Future Skilled Workers and Citizens', *The Conversation* (Web Page, 1 February 2022) <<https://theconversation.com/covid-halved-international-student-numbers-in-australia-the-risk-now-is-we-lose-future-skilled-workers-and-citizens-175510>>; ICEF Monitor, Australia: International Enrolments Down 17% in 2021; But Visa Applications Now Trending Up (Web Page, 9 May 2022) <<https://monitor.icef.com/2022/03/australia-international-enrolments-down-17-in-2021-but-visa-applications-now-trending-up/>>.

3: Jude Carroll and Janette Ryan, *Teaching International Students: Improving Learning for All* (Routledge, 2005).

4: Mona Chung and Richard Ingleby, 'Overcoming the Cultural Challenges in Supervising Chinese Research Students in Australia' in Janette Ryan (ed), *China's Higher Education Reform and Internationalisation* (Routledge, 2011) 173.

5: Edilson Arenas, 'How Teachers' Attitudes Affect Their Approaches to Teaching International Students' (2009) 28 (6) *Higher Education Research and Development* 615; Cristine Asmar, 'Internationalising Students' (2005) 30(3) *Studies in Higher Education* 291.

6: Laura Dove and Natalie Bryant, 'Law in Translation: Challenges and Opportunities in Teaching International Students in Business and Legal Environment Courses' (2016) 33 (2) *Journal of Legal Studies Education* 263.

7: *Ibid.*

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WHAT SHOULD AN 'ENTRY-LEVEL LAWYER' LOOK LIKE IN A POST-COVID WORLD?

ROB LILLEY AND CHRISTINA DO*

I INTRODUCTION

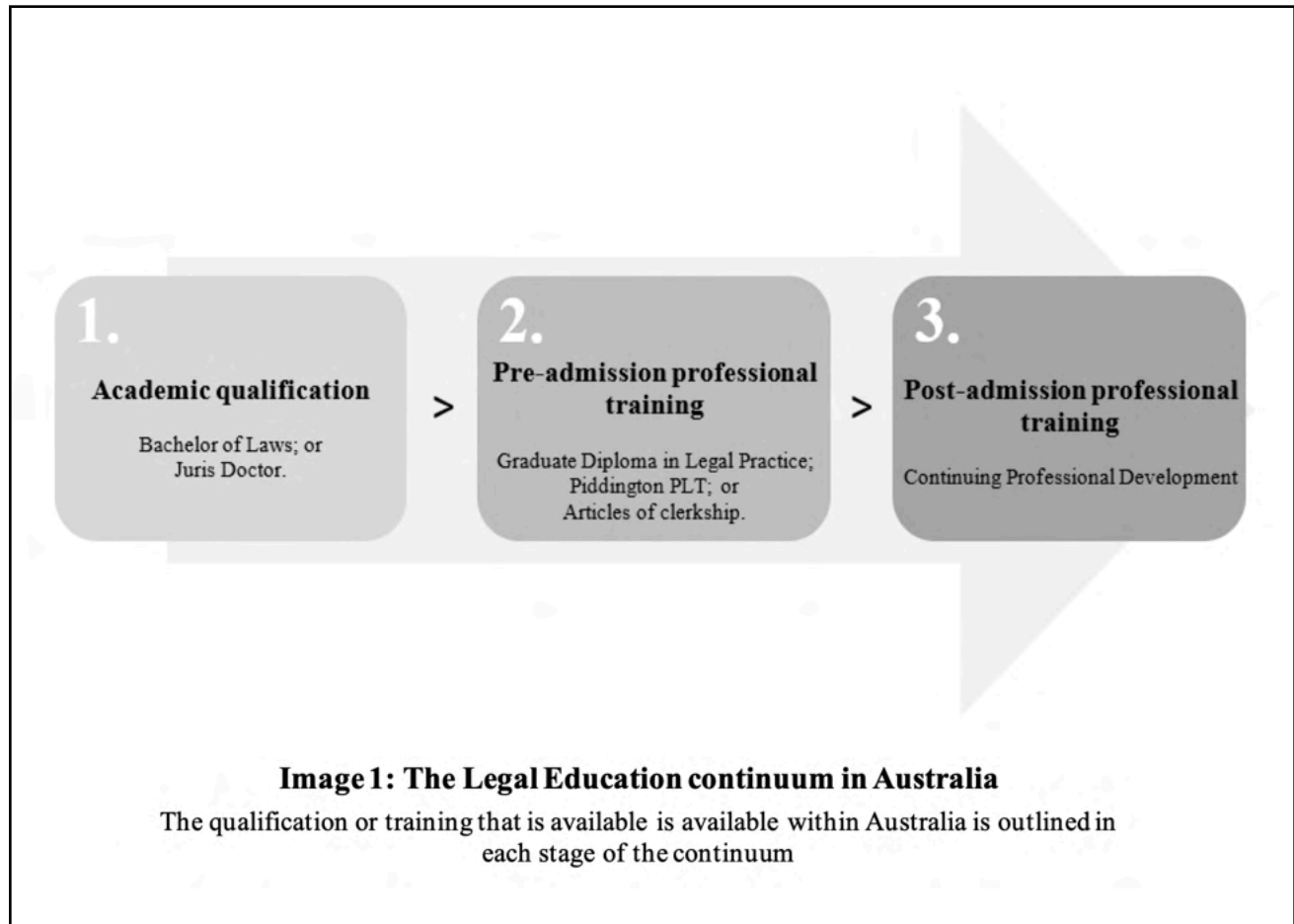
Practical Legal Training, colloquially referred to as 'PLT', is the final requirement that law graduates must satisfy in order to be admitted into the legal profession within various Australian jurisdictions.¹ While in some Australian jurisdictions there are alternative avenues to gain admission into legal practice, such as articles of clerkship, PLT has become the predominant option.² PLT is commonly offered by Australian universities and higher education providers.³

In 2002, all Australian Admitting Authorities endorsed the national 'PLT Competency Standards for Entry-level Lawyers' ('PLT Competency Standards') standardising the PLT courses and programs across Australia.⁴ The PLT Competency Standards were jointly developed by the Australasian Practical Legal Education Council ('APLEC') and Law Admissions Consultative Committee ('LACC') and are the yardstick used by Admitting Authorities for accrediting and monitoring Australian PLT courses.⁵ The PLT Competency Standards are intended to reflect the skills, practice areas and values essential for an 'entry-level lawyer' being admitted to the Australian legal profession.⁶

As the legal profession adapts to new challenges and technologies, there is a need to regularly revisit the PLT Competency Standards to ensure that they remain fit for purpose.⁷ This paper considers the relevance of the current PLT Competency Standards to the contemporary practice of law in Australia, and into the future. The PLT Competency Standards will first be considered in the context of the prevailing continuum of legal education,⁸ and then assessed against the needs of entry-level lawyers considering recent global trends affecting legal practice. Given the rapid changes that are disrupting the legal profession,⁹ it is contended that the PLT Competency Standards need to be revised in order to ensure that entry-level lawyers are equipped with practical skills, practice areas and values for legal practice today. Finally, this paper briefly proposes directions for further research to ensure that legal education keeps pace with legal practice, and that the perceived gap between what is taught during academic education and PLT and the realities of legal practice is closed.

III LEGAL EDUCATION CONTINUUM

The 1971 Report of the Committee on Legal Education (Ormrod Report) first proposed that legal education spans across a continuum that can be divided into three distinct stages: academic qualification, pre-admission professional training, and post-admission professional training.¹⁰ In Australia, each phase of the continuum is heavily legislated, resulting in very prescriptive requirements as to what must be covered in the qualification or training curriculum offered in each stage.



To be admitted to the Australian legal profession, a person must have:

1. completed a law degree, either a Bachelor of Laws or Juris Doctor, with an approved tertiary institution (Stage 1);
2. completed the PLT requirements (Stage 2); and
3. demonstrated they are a fit and proper person to be admitted.¹¹

If an Australian lawyer who is admitted into the profession chooses to engage in practice, they must have an Australian practising certificate,¹² professional indemnity insurance,¹³ and complete the requirements for continuing professional development ('CPD') (Stage 3).¹⁴

Academic Qualification (Stage 1)

In Australia, law degrees tend to have a strong doctrinal focus, with the coverage of legal knowledge and technical skills at the forefront. This is evidenced by the various regulatory instruments that currently govern legal education,¹⁵ in particular the strong emphasis that is placed on the teaching of the 11 prescribed areas of knowledge (colloquially referred to as the ‘Priestley 11’).¹⁶ The prescribed areas of knowledge are:

- Criminal law and procedure;
- Torts;
- Contracts;
- Property;
- Equity;
- Company Law;
- Administrative Law;
- Federal and State Constitutional Law;
- Civil Dispute Resolution;
- Evidence; and
- Ethics and Professional Responsibility.¹⁷

While the ‘Bachelor of Laws Learning and Teaching Academic Standards Statement’ reiterates the importance of knowledge of the prescribed areas of substantive law,¹⁸ the standards also emphasise coverage of the following threshold learning outcomes: ethics and professional responsibility; thinking skills; research skills; communication and collaboration; and self-management.¹⁹

Pre-Admission Professional Training (Stage 2)

Prior to the existence of PLT, pre-admission professional training was predominantly conducted by way of ‘articles of clerkship’.²⁰ Although the adoption of PLT commenced as early as the 1970s in New South Wales,²¹ PLT was only introduced in Western Australia as recently as the early 2000s.²² The introduction of the PLT within NSW was largely driven by the decision to replace the articles of clerkship with an institutionalised pre-admission professional training program.²³

The intention of PLT is to provide law graduates with practical training to ‘bridge the gap between university studies and the real world of legal practice’.²⁴ The PLT Competency Standards reflect this objective as when they were developed APLEC and LACC ‘sought to describe the observable performance in several key areas relating to legal practice, required of entry-level lawyers at the point of admission to the legal profession’.²⁵ The PLT Competency Standards prescribe that each form of PLT must comprise two components: coursework, and workplace experience (ie, supervised legal placement in a law or law-related workplace).²⁶

The PLT coursework component must cover the prescribed competencies that every applicant is to achieve. The required competencies are:

Skills

- Lawyer’s Skills
- Problem Solving
- Work Management and Business Skills
- Trust and Office Accounting

Compulsory Practice Areas

- Civil Litigation Practice
- Commercial and Corporate Practice
- Property Law Practice

Optional Practice Areas

... [A]ny two of:

Administrative Law Practice
 Banking and Finance
 Criminal Law Practice
 Consumer Law Practice
 Employment and Industrial Relations Practice
 Family Law Practice
 Planning and Environmental Law Practice
 Wills and Estate Practice.

Values

Ethics and Professional Responsibility.²⁷

One of the prominent criticisms of PLT is that the components of the coursework 'feel like an extension of university but with a practical twist'.²⁸ An examination of the law academic qualification curriculum as against PLT coursework confirms that there is undoubtedly overlap. Taking civil litigation as an example, students can expect to cover issues such as the jurisdiction of courts, commencement of proceedings, pleadings, disclosure, costs, and enforcement in the core subjects of both their law degree and PLT. By reducing the overlap in the curricula of these two stages, it is contended that the PLT coursework 'could be more well-rounded with an increased focus on the specific skills that graduate solicitors need to know'.²⁹

Post-Admission Professional Training (Stage 3)

Once admitted into the Australian legal profession, legal practitioners who choose to engage in legal practice must meet the prescribed CPD requirements annually.³⁰ For example, solicitors must acquire 10 CPD points annually, with at least 1 CPD point in each of the following categories:

Ethics and professional responsibility;
 Practice management and business skills;
 Professional skills; and
 Substantive law.³¹

Given that the purpose of the CPD scheme is to ensure that legal practitioners are engaged in ongoing professional development and keeping abreast of current legal knowledge and practice skills, it is neither surprising nor concerning that there is some overlap between the PLT coursework components and the CPD categories.

III GLOBAL TRENDS AFFECTING LEGAL PRACTICE

In his recent (and, hopefully, premature) eulogy to the legal profession, Hunter identifies five major trends that he considers will shape the future of the legal industry. These include technology, commoditisation, and globalisation.³² For present purposes, technology and commoditisation are bundled together as technology seems to be the enabling step in the commoditisation of legal services.³³ In this part we consider these trends and their impact on the work traditionally done by entry-level lawyers, as well as important aspects of their careers (eg, mandatory periods of supervised legal practice, and mentoring by senior colleagues).

Technology and Commoditisation

All one need do is read a book by Richard Susskind to see that the effect of advances in technology on legal practice is not a new phenomenon. Susskind's book, 'The Future of Law',³⁴ was published

over 25 years ago and accurately predicted many of the paradigm shifts in the intervening years.³⁵ Some examples of recent technological advances in the practice of law include mandatory electronic document filing in most civil jurisdictions, technology assisted review of documents (whether contract review or ‘e-discovery’), virtual court rooms, and electronic conveyancing. Susskind is recently quoted as saying that ‘[w]e’re going to move away from a ... human bespoke service, to legal services in a cart.’³⁶ This trend is already observable with legal services providers such as ‘Legal Vision’ and ‘Law Path’, among others, offering legal documents for sale online, with or without legal advice, depending on the user’s preferences.³⁷

The adoption of technology in legal practice was accelerated by the COVID-19 pandemic, which saw many lawyers forced to switch to remote online work because of widespread lockdown and isolation requirements. In some jurisdictions, courts were forced to switch to predominantly online hearings, which came with their own unique issues.³⁸

Having spent much of the past few years working in a predominantly remote or ‘hybrid’ (ie, splitting time between home and the office) work environment, there is reluctance among lawyers, especially mid-level lawyers, to return to the office full time.³⁹ This preference for remote or hybrid work post-pandemic will have flow on effects for law graduates as the face-to-face supervision and mentoring opportunities that once existed may not be available, or as easily available, in a post-pandemic law firm.

Globalisation

According to Hunter, globalisation means the labour arbitrage from what he refers to as ‘high-cost centres’ (countries such as Australia) to ‘low-cost centres’ (countries such as India or the Philippines). The kind of work that is being ‘offshored’ is the work that used to be the bread and butter of newly admitted lawyers, especially in large firms – jobs like document review, due diligence, and discovery.⁴⁰ What this likely means is that newly minted lawyers, especially at large firms, may find themselves in roles where they are managing, or assisting in the management of, teams of foreign lawyers who are engaged in the actual task. However, these recently admitted Australian lawyers are likely to have little to no training or practical skills in project or team management to equip them for this task.

In addition to labour arbitrage, there is an increase in lawyers acting as independent contractors, as well as firms offering flexible legal workforces for hire.⁴¹ This ‘gig work’ (work performed by freelancers or independent contractors) is not a new phenomenon, at least not within the United States.⁴² While ‘gig-work’ may have certain attractions, such as flexibility and a degree of autonomy, junior lawyers are not likely to be in a position to take advantage of this because they lack the expertise and/or network to make independent work sustainable. This creates a potential paradox for graduates because, according to Thornton, ‘gig-work’ would be ideal for law graduates who cannot find a permanent graduate position; however, those graduates will almost certainly be constrained by requirements of supervised legal practice, lack of experience, and lack of a referral network.⁴³

However, despite the disruptive effect of advances in technology and different ways of working, the authors are not aware of any law schools or PLT providers that specifically address these changes in their curricula. This is likely because these issues do not currently fall within the ambit of either of the Priestley 11 or the PLT standards.

IV CONCLUSION

The PLT Competency Standards must be frequently reviewed to ensure they remain aligned with the skills and knowledge expected of entry-level lawyers. Perhaps when first formulated the PLT Competency Standards did reflect the practical day-to-day abilities that entry-level lawyers needed. However, with the advancement of legal technology and artificial intelligence more generally, it cannot be assumed that all lawyers will be involved in legal practice as we currently understand it, or like it was in 2002 when the PLT Competency Standards were first nationally endorsed. For instance, speaking from her perspective as a recent graduate, Gab Royle suggests that the use of legal technology ought to be introduced as a core competency in the PLT program.⁴⁴ Hunter further observes that:

[Law] Schools will need to teach students how to network, engage in flexible work arrangements, develop an entrepreneurial mindset and have a personal brand. In time, these skills may be as important as mastery of the Priestley 11. If schools do not teach their students these skills they will not survive.⁴⁵

Given that there is overlap between the law academic qualification curriculum and PLT coursework component, there is certainly scope for reform and improvement. However, any proposal for reform must be measured and reflect the needs of relevant stakeholders. Therefore, further research in the area could be conducted to better understand the experiences of newly admitted legal practitioners. For example, a survey of current entry-level lawyers querying their PLT experience and how well PLT prepared them for the realities of legal practice would be appropriate. Such research could inform decisions about whether the PLT Competency Standards need reform, and if so, what contemporary practice areas and skills should be covered.



ENDNOTES

- 1: See, eg, *Legal Profession Uniform Law Application Act 2014* (Vic) sch 1 s 17(1)(b) ('Legal Profession Uniform Law').
- 2: See generally, Law Admissions Consultative Committee, *Practical Legal Training Competency Standards For Entry-Level Lawyers* (Standards, October 2017) <<https://legalservicescouncil.org.au/documents/PLT-competency-standards-for-entry-level-lawyers-Oct-2017.pdf>>.
- 3: See, eg, Curtin University, *Graduate Diploma in Legal Practice* (Web Page, 16 August 2022) <<https://www.curtin.edu.au/study/offering/course-pg-graduate-diploma-in-legal-practice-gd-lawlp/>>; Flinders University, *Flinders Law – Preparing lawyers for tomorrow* (Web Page, 25 August 2020) <<https://www.flinders.edu.au/study/law/practical-legal-training/>>; UTS, *Practical Legal Training (PLT)* (Web Page, 10 November 2021) <<https://www.uts.edu.au/current-students/current-students-information-faculty-law/practical-legal-training-plt/>>; College of Law, *Practical Legal Training* (Web Page, 2022) <<https://www.collaw.edu.au/learn-with-us/our-programs/practical-legal-training-programs/>>; Leo Cussen, *Practical Legal Training* (Web Page, 2022) <<https://www.leocussen.edu.au/practical-legal-training/>>. But note, the PLT course offered by the Piddington Society Inc (an incorporated association of lawyers in Western Australia) has received approval from the Legal Practice Board of Western Australia: Piddington Society, *Advancing Access to Justice and Collegiality* (Web Page, 2022) <<https://www.piddingtonsociety.org/>>.
- 4: *Ibid.* The PLT Competency Standards have since been reviewed and revised in 2013 and 2017.
- 5: *Ibid.* In the late 1990s, the Australasian Practical Legal Education Council ('APLEC') drafted the first PLT Competency Standards which were subsequently endorsed by the Law Admissions Consultative Committee ('LACC') – this first version formed the basis of the current PLT Competency Standards. See 'About APLEC', APLEC The Australasian Professional Legal Education Council (Web Page, 2021) <<https://aplec.asn.au/about/>>.
- 6: Law Admissions Consultative Committee (n 2).
- 7: Maureen Fitzgerald, 'Determining the Content of Professional Legal Training' (1998) 16(1) *Journal of Professional Legal Education* 69, 80.
- 8: 'Report of the Committee on Legal Education', Committee on Legal Education (Report, 1971) 100, 185.
- 9: 'FLIP Report: The future of law and innovation in the profession', The Law Society of NSW (Report, 2017) <<http://lawsociety.com.au/ForSolicitors/Education/ThoughtLeadership/flip/Onlinereport/index.htm>>.

- 10: 'Report of the Committee on Legal Education' (n 8).
- 11: See, eg, Legal Profession Uniform Law (n 1) s 17.
- 12: See, eg, *ibid* pt 3.3 div 2.
- 13: See, eg, *ibid* pt 4.4.
- 14: See, eg, *Legal Profession Uniform Continuing Professional Development (Barristers) Rules; Legal Profession Uniform Continuing Professional Development (Solicitors) Rules*.
- 15: *Tertiary Education Quality and Standards Agency Act 2011 (Cth); Higher Education Standards Framework (Threshold Standards) 2015 (Cth)*; 'Australian Qualifications Framework', Australian Qualification Framework Council (National Policy, January 2013) <<https://www.aqf.edu.au/sites/aqf/files/aqf-2nd-edition-january-2013.pdf>>; Law Admissions Consultative Committee, 'Model Admission Rules 2015', Law Council of Australia (Rules, December 2016) <https://www.lawcouncil.asn.au/files/web-pdf/LACC%20docs/212390818_8_LACC_Model_Admission_Rules_2015.pdf>; Sally Kift, Mark Israel and Rachael Field, 'Bachelor of Laws Learning and Teaching Academic Standards Statement' (Standards, December 2010) <https://researchrepository.murdoch.edu.au/id/eprint/54827/1/altc_standards.pdf>; 'Australian Law School Standards with Guidance Notes', Council of Australian Law Deans (Standards, 30 July 2020) <<https://cald.asn.au/wp-content/uploads/2020/07/Australian-Law-School-Standards-v1.3-30-Jul-2020.pdf>> ('Council of Australian Law Deans Australian Law School Standards'); and the regulations and rules set by the local regulatory authorities.
- 16: See Law Admissions Consultative Committee, 'Model Admission Rules 2015' (n 15). The Model Admission Rules have generally been adopted by all local regulatory authorities within their respective admission rules.
- 17: *Ibid*, sch 1.
- 18: Kift, Israel and Field (n 15) 12–13.
- 19: *Ibid* 10. The coverage of the identified threshold learning outcomes is also prescribed in the Council of Australian Law Deans Australian Law School Standards (n 15).
- 20: Paul K Cooper, 'Training Solicitors: The Expectations of the Profession' (1985) 3(1) *Journal of Professional Legal Education* 57. Before the proliferation of university law schools in the second half of the 20th Century, aspiring lawyers were able to combine Stages 1 and 2 in a professional apprenticeship known as 'five-year articles', see, eg, K E Lindgren, 'Reflections on Legal Education' (2005) 9(1) *Newcastle Law Review* 67.
- 21: See Ainslie Lamb, 'Changes in Attitude, Changes in Latitude: The Changing Climate in Pre-Admission Practical Legal Training in New South Wales' (1995) 13(2) *Journal of Professional Legal Education* 173 for a comprehensive discussion of the introduction of PLT in New South Wales.
- 22: 'Annual Report: 1 July 2005 – 30 June 2006', Legal Practice Board of Western Australia (Annual Report, 1 December 2006) <https://www.lpbwa.org.au/Documents/For-The-Public/Annual-Reports/LPB-Annual-Report-2005_06.aspx> 17.
- 23: Lamb (n 21) 173.
- 24: Michael Cole, 'Practical Legal Training' (2007) 34(8) *Brief* 19.
- 25: Law Admissions Consultative Committee (n 2) 1.
- 26: *Ibid* 4. The duration of the workplace experience requirements varies across the States and Territories. While the PLT Competency Standards specifies a 'minimum requirement', local regulatory authorities are permitted to set an 'additional requirement'.
- 27: *Ibid*.
- 28: See, eg, Gab Royle, 'How Practical is PLT?' (2020) 160 *Precedent* 41.
- 29: *Ibid*.
- 30: See, eg, *Legal Profession Uniform Continuing Professional Development (Barristers) Rules; Legal Profession Uniform Continuing Professional Development (Solicitors) Rules*.
- 31: See, eg, *Legal Profession Uniform Continuing Professional Development (Solicitors) Rules*, rule 6. Barristers have similar CPD requirements, but their categories are slightly different, eg, 'Substantive Law, Practice and Procedure, and Evidence' and 'Barristers' Skills'. See, eg, *Legal Profession Uniform Continuing Professional Development (Barristers) Rules*, rules 8–9.
- 32: Dan Hunter, 'The Death of the Legal Profession and the Future of Law' (2020) 43(4) *University of New South Wales Law Journal* 1199. The other two trends identified by Hunter both fall under the banner of 'technology' so are not specifically mentioned.
- 33: *Ibid* 1201–4.
- 34: Richard E Susskind, *The Future of Law: Facing the Challenges of Information Technology* (Clarendon Press, 1996) ('The Future of Law').
- 35: Richard E Susskind, *Tomorrow's Lawyers: An Introduction to Your Future* (Oxford University Press, Second edition, 2017) ch 12.
- 36: Virginia Ginnane, 'The Future for Lawyers: Legal Service in a Cart?', Thomson Reuters | Business Insight (Blog Post, 22 March 2021) <<https://insight.thomsonreuters.com.au/business/posts/the-future-for-lawyers>>.
- 37: Legal Vision (Web Page) <<https://legalvision.com.au/>>; Law Path (Web Page) <<https://lawpath.com.au/>>.
- 38: See, eg, Peter Devlin, 'Novak Djokovic Visa Battle: Porn and Techno Music Livestreamed during Court Hearing | PerthNow' (News Article, 10 January 2022) <<https://www.perthnow.com.au/sport/novak-djokovic/novak-djokovic-visa-battle-porn-and-techno-music-livestreamed-during-court-hearing--c-5251442>>.
- 39: Unispace, 'The Reluctant Returner' (Report, 2022) <<https://www.unispace.com/reluctant-returner/download-legal>> 13; see also, Unispace, 'COVID-19 and the Future of the Legal Workplace' (Web Page, 18 August 2020) <<https://www.unispace.com/insights/future-ways-of-working-legal-sector>>.
- 40: Hunter (n 32) 1205.
- 41: *Ibid* 1211.
- 42: Carolyn M Corcoran, 'Gig Lawyers in the U.S. Economy: Realizing the Potential of Platform Markets and Bolstering Ethical Duties to Affect Change and Innovation' (2021) 34 *Georgetown Journal of Legal Ethics* 883, 892.
- 43: Margaret Thornton, 'Towards the Uberisation of Legal Practice' (2019) *Law, Technology and Humans* 46, 59.
- 44: Royle (n 28).
- 45: Hunter (n 32) 1212.

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ACADEMIC EXPERIENCES OF GRADELESS LEARNING

A COMPARATIVE REFLECTION

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I INTRODUCTION AND BACKGROUND

Assessment plays an important role in higher education: it is essential to ensure that students are learning what is being taught, it provides opportunities for teachers to give feedback, and it facilitates independence in learning.¹ Higher education institutions typically fully grade student work by assigning a percentage mark and/or an achievement band (eg, credit, distinction, high distinction) for each piece of assessment with a final mark recorded on the student's transcript. However, scholarship of learning and teaching has found that this style of grading can negatively affect student wellbeing and may prevent effective learning from taking place.² Researchers from various disciplines have proposed 'gradeless learning' as an alternative to traditional grading practice.³ One form of gradeless learning involves assessing student work only on a pass/fail basis (ie, every student who achieves a passing mark has an 'ungraded pass' recorded on their academic transcript).⁴

The authors of this article have all experienced teaching and assessing in a gradeless learning context. The first two authors coordinate and co-teach Foundations of Law and Lawyering (FoLL), the foundational unit in the Juris Doctor at the University of Western Australia (UWA). FoLL moved to an ungraded pass/fail (UP/F) assessment method in 2021. The third author teaches into and is the course coordinator of the Diploma of Musical Theatre (DipMT) at the Western Australian Academy of Performing Arts at Edith Cowan University (ECU). The DipMT is a Vocational Education and Training course, and thus the entire course uses a competency-based assessment mechanism whereby learners are graded as either 'competent' (which results in the student meeting that requirement of the course) or 'not yet competent' (which requires the student to revise or reattempt the assessment until they obtain a 'competent' grade).⁵

In this article we reflect on our experiences as teachers and assessors in our respective gradeless learning courses. In Part II, the first two authors discuss their experiences in FoLL. In Part III,

the third author discusses his experience in the DipMT. Part IV then concludes by considering whether qualifying academic law degrees – namely the Bachelor of Laws (LLB) and Juris Doctor (JD) – could feasibly adopt gradeless learning throughout the entire degree (eg, as in the DipMT). Ultimately, we contend that gradeless learning has been overwhelmingly positive in our respective courses, but that there are significant hurdles to overcome before Australian academic law degrees might reasonably move to fully gradeless learning.

A key limitation of this article is that it primarily discusses our subjective observations, perceptions and experiences as teachers. Obviously, these subjective reflections may not always align with objective realities. However, the discussion in this article is presented in the context of the relevant literature, and research has established that ‘properly contextualised reflective practice can produce knowledge of the mechanisms at work in the contemporary academy.’⁶

II GRADELESS LEARNING IN A SINGLE UNIT

The first and second authors reflect on UP/F assessment in FoLL

FoLL is the first unit in the UWA JD, which sits at level 9 on the Australian Qualifications Framework. FoLL runs on an intensive basis in the two weeks prior to Semester 1. As the JD is a postgraduate degree, the FoLL cohort is diverse – students come with a range of academic, demographic, and professional backgrounds. FoLL aims to prepare all incoming students to fully engage with their legal studies, irrespective of their background. In 2021, we moved to UP/F assessment in FoLL. We hoped that UP/F assessment would improve the first-year experience by fostering a learning environment in which students could feel safe to learn, develop new skills, and connect with one another.⁷ Although FoLL has adopted the UP/F assessment structure, all student work is marked and given a grade with thorough feedback. In order to obtain an ungraded pass, students must receive a passing mark for each assessment item in the unit. However, students know that so long as they pass each assessment item, the grade awarded for each task is for their own information and is not recorded on their transcript (as only ‘ungraded pass’ is recorded). To understand how our students perceived and experienced the UP/F aspect of FoLL, we obtained ethics approval to conduct an empirical study using an anonymous and voluntary online survey (n= 214).⁸ The results from that study, which are reported in full elsewhere, show that our students overwhelmingly approved of the UP/F assessment structure. The vast majority of respondents thought being assessed UP/F was fair, that it ‘levelled the playing field’, that it created a friendly atmosphere, and helped them to focus on developing skills.

Those student perceptions align with our perceptions as teachers of FoLL. We had both previously taught FoLL a number of times before 2021, and whilst we were always pleased with each cohort’s performance across all assessment items, we felt that each year the students exhibited high levels of stress, competitiveness, and self-consciousness. We also observed that students tended to unduly focus on their grades for each assessed task rather than prioritising and engaging fully with the essential skills and knowledge taught in the unit. This observation is consistent with the literature on learning and assessing.⁹ Reflecting on the changes since moving to UP/F assessment, we have noticed that all of these undesirable tendencies have become far less prevalent. Our impression is that the cohorts which have been assessed as UP/F have been more connected with each other and have demonstrated more holistic engagement with the unit.

These student participant quotes (which are representative of key themes which emerged from our empirical study) confirm that students feel similarly:

[It] was a clever strategy to introduce students to law and each other before the inevitable competitiveness begins – this unit has enabled us to see each other as fellow students rather than potential competition in the long run.

[I]t really lessened my anxiety and allowed me to focus on learning ... I retained so much more because the pressure was off. I feel very well placed to tackle my other units this semester because I was given this solid foundation in a low-pressure environment.¹⁰

Our observations and the empirical study suggest that moving to UP/F has been beneficial for students. We also feel that the shift has been immensely beneficial for us as teachers and assessors in the unit. Naturally, teaching friendlier, happier, more engaged student cohorts has been a positive experience. We have had more fun teaching FoLL since it moved to UP/F, and we have experienced a significant decrease in the amount of emotional labour we are required to do in teaching the unit –¹¹ ie, we have spent far less time comforting anxious students, reassuring those who doubt their own abilities or fear failure, and dealing with disappointment when a student's grade does not match their own expectations.¹²

We have also felt like more authentic teachers since FoLL became UP/F. This is primarily because we now feel as though we are assessing FoLL in a manner which aligns with our own values and perceptions of fairness. We had previously felt uneasy about fully grading students in FoLL and believed that it was unfair when having regard to the unit's key objective: to teach incoming students 'how to be law students'. To us, it felt unfair and antithetical to the unit's aims for us to say, on the one hand, that we were teaching students how to 'do' law school and that FoLL was a safe space to learn how to do that, yet on the other hand, for us to grade incoming students on how well they performed whilst learning how to be law students. We have also felt more authentic because we have been able to be more honest with the feedback we provide and the indicative marks we assign. We are now able to give students honest, helpful feedback and indicative marks without worrying about the emotional or academic impact this might have on students if FoLL were fully graded.

Feeling more authentic in our teaching of FoLL has helped us to feel greater satisfaction with our work. Indeed, scholarship of learning and teaching strongly supports teaching with authenticity.¹³ Speaking specifically about teaching law, Melissa J Marlow writes that '[i]t is difficult to do our best as teachers if we are not coming from a place of integrity and transparency... As law teachers, we have to be "real" and genuine in our dealing with students... we deserve to experience passionate, related, and authentic teaching.'¹⁴

Overall, we believe the transition to UP/F assessment in FoLL has been remarkably positive for students and teaching staff alike. We have reached this conclusion by engaging in continual reflective practice both before and after the transition. This conclusion is also consistent with the relevant literature, as well as the overwhelmingly positive findings from our empirical study.

III GRADELESS LEARNING IN AN ENTIRE COURSE

The third author reflects on competency-based assessment in the DipMT

The DipMT is a full-time, one-year intensive course which sits at level 5 on the Australian Qualifications Framework. The course focusses on skill-building and creativity, providing 'technical training in acting, dance, voice and music theory, combined with devising, entrepreneurial and theatre-making skills geared towards the multidisciplinary demands of today's [musical theatre] industry.'¹⁵ As a Vocational Education and Training course, the entire DipMT uses a competency-based assessment mechanism whereby learners are graded as either 'competent' or 'not yet competent'.¹⁶ Other achievement bands and numeric grades are not assigned – competency is the only grading mechanism used, making the course essentially UP/F in nature.

I have coordinated and taught into the DipMT since 2021. I had previously taught musical theatre in fully graded contexts, including at bachelor's degree level, for several years. Coming from this background, I was initially anxious about gradeless learning. I feared that the UP/F model would encourage students to do the bare minimum and contribute only enough effort to be deemed competent. However, after leading assessment design, curriculum design and delivery in the DipMT, I have found the opposite to be true. Compared to other cohorts I have taught, I have found DipMT students exhibit more creativity, feel safe to take more risks, and feel comfortable to be more authentically themselves in their performance. These observations align with those of Jane Barnette, who argues that in performing arts education 'ungraded pedagogy empowers students to take control over how (much) they learn and establishes a foundation of trust for the professor that enables everyone's creativity to flourish.'¹⁷

Many assessment tasks in the DipMT involve the students creating original material or preparing recorded performance. These tasks are designed to enable students to use that material after completing the DipMT. UP/F assessment has been particularly integral to these tasks, as students feel free to produce work which genuinely aligns with their artistic viewpoint and which they will thus be able to use in the 'real world'. If this student work were fully graded, students might not prioritise these objectives in the same way – instead they may focus on whatever they perceive is necessary to get a 'good grade'.¹⁸ In my experience, and in the experience of other performing arts educators, 'grading students interferes with cultivating their curiosity'.¹⁹ Similarly, I have found that when students are able to free themselves from understanding their achievements as a numeric value, they instead prioritise finding their own sense of personal pride and satisfaction in their work.

Gradeless learning also encourages DipMT students to take risks and make bold choices. The UP/F model abates the temptation to 'play it safe' and emulate previously successful work (eg, exemplars from previous years), which is common in conservatoires when choosing performance repertoire.

After completing a task, students are encouraged to reflect on their work and consider the feedback provided. In the fully-graded learning environments I have previously taught in, I found that students tended to reduce their work to a grade and that this inhibited them from engaging in genuine meaningful reflection. By not reducing their work to a percentage or a score, DipMT students are able to reflect on the substance of the feedback provided (not a number), and are thus better-placed to improve in a more nuanced manner.²⁰ Reflecting on my own practice as an assessor, I feel that the gradeless learning environment has also helped me to focus on providing quality individualised feedback, rather than just a number and a perfunctory comment.

Anecdotally, students have repeatedly told me that the UP/F model is a strength of the course. In particular, they have expressed – and I have observed – that it facilitates a friendly, non-competitive cohort experience. This culture is vital to the success of the various group performance tasks in the DipMT, as well as the general wellbeing of the cohort.

Reflecting on gradeless learning in the DipMT, I have found that the UP/F model is well-suited to the course and favoured by the students. My experience of it has been entirely positive – not only does it work well for the students; it also works well for teachers and assessors in the course. UP/F assessment encourages more specific and focussed assessment design (to ensure that standards and competencies are set correctly in the absence of full grading); it discourages students from disputing feedback and assessment results; and it removes the need to make comparative judgments between students who have approached a task in different, but equally valid, ways. These outcomes are most welcome in the performing arts context, where it is often acknowledged that assessing can be particularly difficult and inequitable.²¹

IV CONCLUDING REFLECTIONS: GRADELESS LAW DEGREES?

Reflecting on our experiences teaching in gradeless learning contexts, we think there is merit in assessing entire qualifying academic law degrees on a UP/F basis. Although there are obvious differences between the discipline areas and levels of study, adopting a whole-of-course approach to gradeless learning in qualifying academic law degrees could bring many of the same benefits experienced in the DipMT (as discussed in Part III). Indeed, many recent studies have identified the significant negative impact that law school might have on student wellbeing.²² Both our experience and empirical research suggest that moving to UP/F assessment can help address several of the challenges law students face, including those which affect their overall wellbeing.²³

If law schools existed in a vacuum, we could confidently propose making all LLB and JD units UP/F. However, as law schools exist in the real world, we acknowledge that transitioning to UP/F assessment across an entire degree is (at present) not likely to be feasible. Student and employer expectations, institutional and accreditation requirements, and general perceptions of ‘how things are done’ would all need to be adjusted to implement such a fundamental change in assessment.²⁴

Nevertheless, it is worth considering whether UP/F assessment might be appropriately deployed in other law units (beyond foundational units). For example, the results of our empirical study suggest that UP/F assessment might be particularly suitable in other primarily skills-based units (eg, units which teach negotiation and mediation, professional and commercial practice, and advocacy skills).²⁵ It is worth noting in this regard that competency-based assessment is used in practical legal training (PLT) courses,²⁶ and that some PLT providers use UP/F assessment for some modules/tasks.

Though there are countless hurdles to overcome before gradeless learning might be adopted on a broader scale in LLB and JD courses, law teachers and law schools should reflect on the advantages of UP/F assessment and consider implementing it where it is appropriate. The obstacles which exist in the legal education context may be significant, but they are not unique to law. Indeed, similar obstacles might be said to exist in other professional disciplines like medicine, but those obstacles have not prevented the total or partial adoption of UP/F assessment in some medical schools.²⁷ Nor should those obstacles prevent the adoption of gradeless learning (where appropriate) in legal education.

ENDNOTES

- 1: Alison Bone and Paul Maharg, *Critical Perspectives on the Scholarship of Assessment and Learning in Law* (ANU Press, 2019) 15.
- 2: Nathan A Preuss, 'Applying Motivation Theory to Improve 1Ls' Motivation, Self-Efficacy, and Skill Mastery' (2022) 114(1) *Law Library Journal* 59, 59; Olympia Duhart, 'It's Not for a Grade: The Rewards and Risks of Low-Risk Assessment in the High-Stakes Law School Classroom' (2015) 7(2) *Elon Law Review* 491, 492; Annemette Kjærgaard, Elisabeth N Mikkelsen and Julie Buhl-Wiggers, 'The Gradeless Paradox: Emancipatory Promises but Ambivalent Effects of Gradeless Learning in Business and Management Education' [2022] *Management Learning* 1, 2.
- 3: See, eg, Kjærgaard, Mikkelsen and Buhl-Wiggers (n 2); Preuss (n 2); Stuart Tannock, 'No Grades in Higher Education Now! Revisiting the Place of Graded Assessment in the Reimagining of the Public University' (2017) 42(8) *Studies in Higher Education* 1345; Muireann O'Keeffe, Clare Gormley and Pip Bruce Ferguson, 'Moving the Focus from Grades to Feedback: A Case Study of Pass/Fail Marking' (2018) 11(1) *Practitioner Research in Higher Education* 70; Robert A Bloodgood et al, 'A Change to Pass/Fail Grading in the First Two Years at One Medical School Results in Improved Psychological Well-Being' (2009) 84(5) *Academic Medicine* 655; Chris McMorran and Kiruthika Ragupathi, 'The Promise and Pitfalls of Gradeless Learning: Responses to an Alternative Approach to Grading' (2020) 44(7) *Journal of Further and Higher Education* 925.
- 4: O'Keeffe, Gormley and Ferguson (n 3) 71.
- 5: Government of Western Australia Department of Training and Workforce Development, 'Assessment in the VET Sector' (2016) <<https://www.dtdwd.wa.gov.au/sites/default/files/uploads/Assessment%20in%20the%20VET%20Sector%20-%202016%20-%20Final.pdf>>.
- 6: Sue Clegg, 'Knowing through Reflective Practice in Higher Education' (2000) 8(3) *Educational Action Research* 451, 451, 466.
- 7: See, generally, Kate Galloway et al, 'Approaches to Student Support in the First Year of Law School' (2011) 21(2) *Legal Education Review* 235, 235.
- 8: 'Exploring Student Perceptions of Ungraded Pass/Fail Assessment in a Foundational Law Subject', RA 2021/ET000188, UWA Human Research Ethics Office.
- 9: Aidan Ricciardo and Julie Falck, 'Letting them Learn how to be Law Students: Student Perceptions of 'Ungraded Pass/Fail' Assessment in the Foundational Subject of a Qualifying Law Degree' (2022) 15(1) *Journal of the Australasian Law Academics Association* 77.
- 10: Ibid.
- 11: O'Keeffe, Gormley and Ferguson (n 3) 71.
- 12: Ricciardo and Falck (n 9) 98.
- 13: See, generally, Mary Heath et al, 'Learning to Feel Like a Lawyer: Law Teachers, Sessional Teaching and Emotional Labour in Legal Education' (2017) 26(3) *Griffith Law Review* 430.
- 14: Note that a mismatch between expected and actual marks is very common in the first year of law school: Susan Armstrong and Michelle Sanson, 'From Confusion to Confidence: Transitioning to Law School' (2012) 12(1) *QUT Law & Justice Journal* 21, 31, 39. As we provide students with indicative grades in FoLL we still do a considerable amount of emotional labour in this respect, but it is significantly less than we experienced prior to FoLL being assessed UP/F.
- 15: See, eg, Christina Do and Aidan Ricciardo, 'Meaningful Connectedness: A Foundation for Effective Legal Teaching' (2019) V *Curtin Law and Taxation Review* 3; Carolin Kreber, 'Academics' Teacher Identities, Authenticity and Pedagogy' (2010) 35(2) *Studies in Higher Education* 171; Angus Brook, 'The Potentiality of Authenticity in Becoming a Teacher' (2009) 41(1) *Educational Philosophy and Theory* 46; Arthur W Chickering, Jon C Dalton, and Liesa Stamm, *Encouraging Authenticity and Spirituality in Higher Education* (Jossey-Bass, 2006); Patricia Cranton, *Becoming an Authentic Teacher in Higher Education* (Krieger, 2001).
- 16: Melissa J Marlow, 'Does Kingsfield Live? Teaching with Authenticity in Today's Law Schools' (2015) 65(1) *Journal of Legal Education* 229, 241.
- 17: Edith Cowan University – Western Australian Academy of Performing Arts, 'Music Theatre' <<https://www.waapa.ecu.edu.au/courses-and-admissions/our-courses/music-theatre>>.
- 18: Government of Western Australia Department of Training and Workforce Development (n 5).
- 19: Jane Barnette, 'Reevaluating Rigor with 2020 Hindsight – A Manifesto for the Ungraded Classroom' in Jeanmarie Higgins and Elisha Clark Halpin (eds), *Teaching Performance Practices in Remote and Hybrid Spaces* (Routledge, 2022) 11, 12
- 20: Kjærgaard, Mikkelsen and Buhl-Wiggers (n 2) 2.
- 21: Barnette (n 19) 13.
- 22: See generally Tony Harland and Navé Wald, 'The Assessment Arms Race and the Evolution of a University's Assessment Practices' (2021) 46(1) *Assessment & Evaluation in Higher Education* 105, 112.
- 23: Linda Darling-Hammond, 'Performance-Based Assessment and Educational Equity' (1994) 64(1) *Harvard Educational Review* 5, cited in Barry A Oreck, Steven V Owen and Susan M Baum, 'Validity, Reliability, and Equity Issues in an Observational Talent Assessment Process in the Performing Arts' (2003) 27(1) *Journal for the Education of the Gifted* 62.
- 24: See, eg, Natalie Skead and Shane L Rogers, 'Stress, Anxiety and Depression in Law Students: How Student Behaviours Affect Student Wellbeing' (2014) 40(2) *Monash University Law Review* 1; Norm Kelk et al, 'Courting the Blues: Attitudes Towards Depression in Australian Law Students and Legal Practitioners' (Report, Brain and Mind Research Institute, January 2009) 42; Molly Townes-O'Brien, Stephen Tang and Kath Hall, 'Changing our Thinking: Empirical Research on Law Student Wellbeing, Thinking Styles and the Law Curriculum' (2011) 21 *Legal Education Review* 14; Natalie Skead and Shane Rogers, 'Do Law Students Stand Apart from other University Students in their Quest for Mental Health: A Comparative Study on Wellbeing and Associated Behaviours in Law and Psychology Students' (2015) 42-3 *International Journal of Law and Psychiatry* 81.
- 25: Ricciardo and Falck (n 9) 98-9; Laura Spring et al, 'Impact of Pass/Fail Grading on Medical Students' Well-Being and Academic Outcomes' (2011) 45(9) *Medical Education* 867; Robert Bloomgood et al, 'A Change to Pass/Fail Grading in the First Two Years at One Medical School Results in Improved Psychological Well-Being' (2009) 84(5) *Academic Medicine* 655.
- 26: Kaci Bishop, 'Framing Failure in the Legal Classroom: Techniques for Encouraging Growth and Resilience' (2018) 70(4) *Arkansas Law Review* 4:959.
- 27: Ricciardo and Falck (n 9) 98.
- 28: Geoff Monahan and Bronwyn Olliffe, 'Competency-Based Education and Training For Law Students' (2001) 3 *UTS Law Review* 181.
- 29: See, eg, Spring et al (n 25); Bloomgood et al (n 25); Chris McMorran and Kiruthika Ragupathi, 'Assessment & Learning Without Grades? Motivations & Concerns With Implementing Gradeless Learning in Higher Education' (2017) 42(3) *Assessment & Evaluation in Higher Education* 361, 363.

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REFLECTING ON TEACHING LAW ONLINE AT TWO WESTERN AUSTRALIAN UNIVERSITIES DURING THE COVID-19 PANDEMIC

CHALLENGES AND RECOMMENDATIONS FOR A POSITIVE LEARNING EXPERIENCE

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I INTRODUCTION AND BACKGROUND

Research on learning and teaching online in higher education suggests that successful learning takes place where there is a student-centred approach, where the teacher facilitates rather than lectures, and where a community of practice is created in which students feel supported and connected with their peers and their teachers.¹

The sudden, unexpected move to online teaching and learning during COVID-19 at most Australian institutions of higher learning meant that teachers had to quickly shift their mindsets and adjust teaching practices to suit the new environment to ensure effective learning could take place.²

Further, the move to online teaching at the start of the pandemic was said to 'not truly [be] an online experience but a "pedagogical triage"',³ done in haste with little thought as to what would constitute an effective and positive online learning environment for students.

Little research has been done on how to teach legal content and skills to university students online, due probably to the fact that this mode of teaching is not particularly prevalent in law schools.⁴ This adds to the complexity of the move from more traditional ways of knowing and doing to the use of new technologies where materials used in the face-to-face classroom may not transfer easily to the online learning environment.⁵

This article outlines my experience with teaching law online at two Western Australian universities at the beginning of the pandemic in March 2020. It is not my intention to compare institutions or students, but to share some of the initial challenges faced, even as an experienced educator, in keeping students engaged in their learning during the first few months of the pandemic. This article also proposes recommendations, based on the literature and my own experience, for ensuring that law students have a positive and effective online learning experience should we be forced to deliver units fully online in the future.

II CHALLENGES

The key challenges faced were keeping students engaged in their legal studies and ensuring they were fully 'present' while online. Cognisant of the research that suggests that face-to-face teaching practices cannot be transferred directly to the online environment,⁶ I made an effort to adapt learning materials to suit the online learning environment. As both the lecturer and tutor for students from University A, I was able to change lectures to short 20–30-minute asynchronous recordings which were placed on the Learning Management (LMS) site (Collaborate) at the start of each week. As the tutor, I was unable to make any changes to the learning materials for students from University B, so although lectures became pre-recorded, asynchronous versions, they remained two hours in length.

For students from both universities, the previously on-campus classes became one hour online, synchronous tutorials where the week's content was discussed, and time was spent checking in with students' wellbeing. After the online tutorials, answers to any questions were posted on the LMS for students to refer to at any time. During the online tutorials for both universities, the breakout rooms, chat and polling functions in Collaborate were utilised to encourage discussions in smaller groups and to check that students were engaged. All synchronous tutorials were recorded.

Through utilising attendance data found on the LMS, and by recording attendance to the online tutorials, I noticed that very few students from both universities would access the lecture or tutorial recordings and that not all students would attend the synchronous tutorial sessions. If students did attend the synchronous tutorial sessions, almost all of them (from both institutions) would not turn on their cameras, although I always had my camera on. Not 'seeing' my students online reduced the student presence and thus their engagement in their learning.⁷

III REFLECTIONS AND RECOMMENDATIONS

Considering the literature and my own experience of teaching online during the pandemic, the following recommendations for a positive online learning experience may prove useful:

1. Deliver materials synchronously and asynchronously, to allow for a variety of ways to engage students;⁸
2. Unpack content into smaller, digestible pieces (eg, 20–30 minutes of pre-recorded lectures);⁹
3. Make use of the technology to encourage engagement (eg, make use of breakout rooms, chats, and polling);
4. Give and receive feedback continuously to ensure students understand the content and feel supported;
5. Be present online by showing your face and encouraging students to do likewise as this may help students feel a greater level of connectedness in the online learning environment;¹⁰
6. Be organised – upload materials in advance;
7. Be flexible – if technology or the internet fails, find another means or day to communicate;
8. Be kind to yourself and your students.

IV CONCLUSION

The sudden move to online learning during the COVID-19 pandemic forced many of us to re-think how our teaching practices could be applied to the online environment to ensure a positive online learning experience for students. This article outlines the challenges I faced with engaging students online. The recommendations above are based on the literature and my personal experience. Although most Australian law schools have returned to a predominantly on-campus mode of teaching, applying the lessons learnt during the pandemic may prove useful should we be forced to move to an online learning environment in the future.

ENDNOTES

- 1: D Randy Garrison, *E-Learning in the 21st Century: A Community of Inquiry Framework for Research and Practice* (Routledge, 3rd ed, 2016); Dorit Maor and Archie Zariski, 'Is There a Fit Between Pedagogy and Technology in Online Learning?' (Conference Paper, 12th Annual Teaching & Learning Forum, Edith Cowan University, 11–12 February 2003) <<http://lsn.curtin.edu.au/tlf/tlf2003/abstracts/maor-abs.html>>.
- 2: John Hattie, 'The Applicability of Visible Learning to High Education' in John Hattie, Ded Masters and Kate Birch, *Visible Learning in Action* (Routledge, 2015).
- 3: Lee Skallerup Bessette, Nancy Chick and Jennifer Friberg, '5 Myths about Remote Teaching in the COVID-19 Crisis, The Chronicle of Higher Education (Web Page, 1 May 2021 <<https://www.chronicle.com/article/5-myths-about-remote-teaching-in-the-covid-19-crisis>>.
- 4: Feler Bose, 'Developments and Challenges of Teaching Law and Economics Online' (2021) 55(4) *The Law Teacher* 528.
- 5: Meredith Blake et al, 'Student and Staff Experiences of Online Learning: Lessons from COVID-19 in an Australian Law School' (2022) 32(1) *Legal Education Review* 129; Amanda Müller, 'Supporting Students in an Online Environment (Web Page) <<https://www.teqsa.gov.au/sites/default/files/supporting-students-online-environment.pdf?v=1588049294>>.
- 6: Müller (n 5).
- 7: Garrison (n 1).
- 8: Müller (n 5).
- 9: Ibid.
- 10: Jason MacLeod, Harrison Hao Yang and Yinghui Shi, 'Student-to-Student Connectedness in Higher Education: A Systematic Literature Review' (2019) 31(2) *Journal of Computing in Higher Education* 426, 428.

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BUILDING A COMMUNITY OF PRACTICE IN A POST- PANDEMIC WORLD

A WORK IN PROGRESS

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I INTRODUCTION

The impact of the COVID-19 pandemic on the mental and physical health and wellbeing of people globally has been significant.¹ The higher education sector has not been immune. In the height of the pandemic, abrupt disruption was experienced within the sector as staff and students had to physically disconnect from campuses and many universities had to swiftly adopt new remote teaching methods in order to overcome the restrictions imposed by government. Many academics worked overtime remotely to ensure that their students' academic progress was not adversely impacted or significantly delayed due to the pandemic.

As we begin to slowly emerge into a post-pandemic world, it is evident that the psychological needs of belonging and agency are critical for learning and teaching in higher education, for both students and academics.² Communities of practice provide an opportunity for members to connect, share knowledge and develop practices to enrich their discipline. Being a part of a community of practice builds staff-to-staff relationships (belonging) and improves teaching practice (agency).

The approaches to establishing communities of practice vary between higher education institutions.³ This paper outlines the pilot project undertaken by a Curtin University innovation and scholarship of learning and teaching (iSOLT) project team, comprised of multidisciplinary academics (from the disciplines of Law, Economics, Nursing and Marketing) who are working towards establishing an international community of best practice for assessment rubrics with a focus on building strong staff-to-staff relationships through mentoring, peer-to-peer learning, and interdisciplinary engagement.⁴

II COMMUNITY OF PRACTICE

Although the core concepts of community of practice have existed for a long time, the term and practice has gained popularity in the higher education sector and literature thanks to the extensive works of Wenger and colleagues.⁵ Wenger defines communities of practice as 'groups of people who share a concern or a passion for something they do and learn how to do it better as they interact regularly'.⁶ Wenger identifies three key characteristics that are unique to communities of practice:

- **Domain** – participants collectively share an interest and competence with respect to a common 'domain of interest';
- **Community** – through building relationships with each other, participants engage, share and work together in pursuit of furthering the 'domain of interest'; and
- **Practice** – participants are practitioners in the area of shared practice to which the 'domain of interest' relates.⁷

Research indicates that communities of practice improve organisational performance as they 'drive strategy, generate new lines of business, solve problems, promote the spread of best practice, develop people's professional skills, and help companies recruit and retain talent'.⁸ Beyond the tangible benefits, communities of practice also provide a 'mode of belonging' for participants.⁹ Involvement in communities of practice is voluntary and participants tend to join based on interest and commitment to a common cause or goal. Participants see the inherent benefits of being associated with the community and seek to build and exchange ideas, knowledge, and solutions.

In the higher education sector, communities of practice can operate at many levels – for example, they can be fostered at a school, faculty, university, or cross-institutional level either locally, nationally, or internationally. The advancement of technology and the expansion of the internet has meant that communities of practice may reach beyond traditional geographical limitations.¹⁰ Today engagement within these communities can occur face-to-face, virtually or through a hybrid of both.

III COMMUNITY OF BEST PRACTICE FOR ASSESSMENT RUBRICS

A key aim of the pilot project undertaken by the Curtin University iSOLT project team is to establish an international interdisciplinary community of best practice with respect to the development and adoption of assessment rubrics. The team members share a common understanding of the value of assessment rubrics in learning and teaching and the benefit to the student experience, and the need to drive excellence and innovation in assessment rubric design within their respective disciplines and teaching areas. More specifically, the team members see assessment rubrics as a critical instrument for ensuring assessments align with discipline and profession norms,¹¹ and that there is proper scaffolding of unit learning outcomes, course learning outcomes and graduate capabilities to a standard that complies with the Tertiary Education Quality and Standards Agency (TEQSA) and professional

accreditation requirements.¹² Team members also recognise, perhaps most critically, that assessment feedback through the use of rubrics enables students to reflect on their learning and to identify their level of competency for relevant discipline skills and knowledge.¹³

To evaluate how students and academics understand and interact with assessment rubrics, the project team have conducted focus groups with academic staff and students from the disciplines of Law, Economics and Nursing. This research is on-going and will soon extend to Marketing. From the focus groups conducted to date, it is evident that the use of assessment rubrics is prevalent within the Law, Economics and Nursing disciplines at Curtin University, where the policy is that an assessment rubric must be used by markers.¹⁴

As a part of the pilot, the project team seeks to develop generic assessment rubric models for each of the four disciplines informed by research, best practice and qualitative data gathered from the focus groups. Furthermore, it is intended for the assessment rubric models to be developed to align with and satisfy the legal obligations of universities with respect to assuring assessment and student attainment of learning outcomes and the graduate capabilities pursuant to the *Higher Education Standards Framework (Threshold Standards) 2015* (Cth). True to the essence of communities of practice, the project team will share the generic assessment rubric models with members of the broader discipline community for the purpose of information sharing and promoting best practice, but also for feedback and improvement.

In the pursuit of best practice, the project team also seeks to facilitate research and explore additional pedagogical support that academics and students can use with assessment rubrics to fully utilise the direct and indirect benefits associated with the use of rubrics. For example, the team promotes facilitating law students' use of additional support such as assessment exemplars, self-reflection exercises, guided peer-review activities, group discussions, targeted assessment feedback, etc, *in conjunction with* assessment rubrics to provide students with further opportunities to develop their evaluative judgement and reasoning.¹⁵ Drawing on the knowledge and expertise sharing that is characteristic of communities of practice, the project team believes that building on and exploring further additional pedagogical supports within the community of best practice will yield the best results as participants will undoubtedly have varying teaching expertise, experiences and approaches.

The project team intend to expand this community of best practice beyond Curtin University (Perth and Dubai campuses) and to welcome academics from other institutions and disciplines. Participation in this community of best practice will continue virtually, to accommodate international participants from the Curtin campuses in Singapore and Malaysia, as well as other academics around the world.

IV CONCLUSION

The full effects of the pandemic are still unfolding, particularly in the Australian higher education sector. Many academics are having to contend with budgetary restraints and increasing workloads, on the back of a few hard years of working overtime through the height of the pandemic. In these trying times, the psychological needs of belonging and

agency are critical for academics. Engagement in a community of practice is a viable solution to assist academics to feel a sense of belonging and agency, to stay grounded, feel supported and reduce stress, all the while facilitating knowledge sharing and capacity building.

The community of best practice for assessment rubrics was created with the focus of building strong staff-to-staff relationships to facilitate a sense of belonging and camaraderie between colleagues at school, faculty, university and cross-institutional levels. If you are interested in being a part of this virtual international interdisciplinary community of best practice for assessment rubrics, please reach out to one of the authors for further information.

ENDNOTES

- 1: 'The Impact of COVID-19 on Mental Health Cannot be Made Light of', World Health Organization (Article, 16 June 2022) <<https://www.who.int/news-room/feature-stories/detail/the-impact-of-covid-19-on-mental-health-cannot-be-made-light-of>>.
- 2: Lydia Woodyatt, 'Five Meaningful Minutes: Small Changes to Support Psychological Needs, Wellbeing & Motivation Online in 2020' (National Centre for Student Equity in Higher Education Webinar, 7 May 2020) <<https://www.ncsehe.edu.au/event/webinar-five-meaningful-minutes-lydia-woodyatt/>>; Lydia Woodyatt, 'Mental Wellbeing for Equity Practitioners and University Staff' (National Centre for Student Equity in Higher Education Webinar, 9 July 2021) <<https://www.ncsehe.edu.au/lydia-woodyatt-mental-wellbeing-university-staff/>>.
- 3: While some higher education institutions have taken an informal approach to the establishment of communities of practice, others have formalised the process by establishing guidelines. See, eg, 'Guidelines for Establishing Communities of Practice', The University of Notre Dame Australia (Guidelines, 2022) <https://www.notredame.edu.au/_data/assets/pdf_file/0020/4295/Guidelines-for-Establishing-COP.pdf>.
- 4: This project is funded by the Curtin Academy iSOLT Grants Scheme. The Curtin Academy is an active, honorary network of Curtin University staff who, as nominated Curtin Academy Fellows, participate in promoting excellence in learning and teaching at the university. See 'Curtin Academy About Us', Curtin Academy (Web Page, 2022) <<https://www.curtinacademy.com/home>>. Curtin University Human Research Ethics Committee (HREC) has approved this research project (HREC number: HRE2021-0649).
- 5: See, eg, Etienne Wenger, 'How We Learn - Communities of Practice - The Social Fabric of a Learning Organization' (1996) 39(4) *Health Forum Journal* 20; Etienne Wenger, *Communities of Practice: Learning, Meaning, and Identity* (Cambridge University Press, 1998); Etienne Wenger, Richard Arnold McDermott and William Snyder, *Cultivating Communities of Practice: A Guide to Managing Knowledge* (Harvard Business Press, 2002).
- 6: Etienne Wenger, 'Communities of Practice: A Brief Introduction', *Semantic Scholar* (Article, January–February 2000) <<https://www.semanticscholar.org/paper/Communities-of-practice%3A-A-brief-introduction-Wenger/a93df1e3ae4a54850b1c0ec0a2455059457e31f>> 1.
- 7: Ibid 1–2.
- 8: Etienne Wenger and William Snyder, 'Communities of Practice: The Organizational Frontier', *Harvard Business Review* (Article, January–February 2000) <<https://hbr.org/2000/01/communities-of-practice-the-organizational-frontier>>.
- 9: Etienne Wenger, 'Communities of Practice and Social Learning Systems' (2000) 7(2) *Organization Articles* 225, 227.
- 10: Wenger (n 6) 6.
- 11: See, eg, Sally Kift, Mark Israel and Rachael Field, 'Bachelor of Laws Learning and Teaching Academic Standards Statement' (Standards, December 2010) <https://researchrepository.murdoch.edu.au/id/eprint/54827/1/altc_standards.pdf>; 'Australian Law School Standards with Guidance Notes', Council of Australian Law Deans (Standards, 30 July 2020) <<https://cald.asn.au/wp-content/uploads/2020/07/Australian-Law-School-Standards-v1.3-30-Jul-2020.pdf>>.
- 12: *Higher Education Standards Framework (Threshold Standards) 2015* (Cth).
- 13: See Hugh Finn et al, 'Developing the Evaluative Judgement of Law Students through Assessment Rubrics' (2022) 15 *Journal of the Australasian Law Academics Association* 13.
- 14: Curtin University, 'Assessment and Student Progression Manual' (Policy, 2021).
- 15: Ibid.

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