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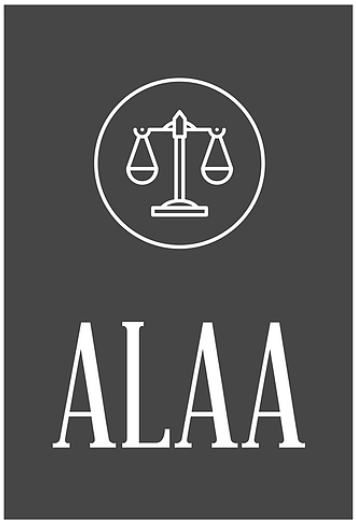

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FOREWORD

Jonathan Barrett, Editor

The articles in this volume were developed from papers presented at the 2024 ALAA Conference, hosted by Flinders University in Adelaide. I wish to acknowledge the Traditional Owners and Custodians of the lands on which Flinders University's campuses are located. These are the Traditional Lands of the Arrernte, Dagoman, First Nations of the South East, First Peoples of the River Murray and Mallee region, Jawoyn, Kaurna, Larrakia, Ngadjuri, Ngarrindjeri, Ramindjeri, Warumungu, Wardaman and Yolngu people.

Due to unanticipated delays, we have decided to spread volume 17 over two issues. We aim to publish issue (2) in the first quarter of 2025. That issue will include more thought-provoking articles on legal education and law in general.

Reflections on legal education feature strongly in this edition. In reviewing the critical developments in legal education since 2017, David Barker's article (single blind reviewed) provides the context for the other articles. Carmella De Maio and Kenneth Yin challenge legal educators and their students to go deeper than the traditional IRAC method of problem solving to practise a specific legal syllogism. They draw on empirical evidence to demonstrate that, even under the conditions of online learning, students can rise to the challenge. Mark Ferraretto reflects on how he has been able to bring his information technology knowledge into the law classroom. He argues that, particularly with the emergence of rapidly developing AI technology, it is imperative that law students and lawyers develop essential IT skills and knowledge. Charissa Tarzia argues for a different set of skills – empathy, emotional intelligence and constructive communication. She also draws on empirical evidence to show the effectiveness of collaboration. Each of these articles provides ample reasons for legal academics to reflect on what and how they teach and why.

As always, I wish to thank the authors for choosing to submit their work for publication with *JALAA*. I am especially grateful to the reviewers for their time, thoughts and constructive feedback. ALAA is a particular community of scholars and a sense of common purpose is invariably reflected in the review process. As Editor, I have greatly benefited from the support of the Editorial Board, and four ALAA Chairs – Nick James, Natalie Skead, Kate Galloway and now Judith Marychurch. Finally, I would like to thank Tash Terbeeke for her administraive support.

A VOYAGE AROUND JOHN MERRYMAN AND THE DEVELOPMENT OF MODERN LEGAL EDUCATION

David Barker AM*

ABSTRACT

This article reviews the changes which have taken place within the Australian legal education community since the publication of my book *A History of Australian Legal Education* (2017). It traces the critical role which legal education had played in shaping the culture of law as at 2017 and the changes which have taken place since then. It focuses on the increased demands which the Covid-19 pandemic has made on the teaching of law and how Australian law schools and law associations have responded to these challenges. The article questions whether a tension still exists between the demands of 'training' and 'educating' which has previously caused conflict in Australian legal education.

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Through legal education the legal culture is transferred from generation to generation.[1]

I THE SIX MOST SIGNIFICANT DEVELOPMENTS IN LEGAL EDUCATION SINCE 2017

I chose 2017 as a starting point for this article, not just because it was the publication year of my book *A History of Australian Legal Education*,[2] which was based on my PhD thesis,[3] but because it also marked the 10th anniversary of the establishment of the Australian Academy of Law, the 90th anniversary of the launch of the *Australian Law Journal* and the 30th anniversary of the publication of the Pearce Report on Australian law schools.[4] It also marked a conference titled *The Future of Australian Legal Education*, which was held at the Federal Court of Australia in Sydney from 11-13 August 2017.The Australian Academy of Law and Thomson Reuters, the publisher of the *Australian Law Journal*, sponsored the conference. The outcome was a book entitled *The Future of Australian Legal Education*,[5] which contained a collection of conference papers, including the keynote address delivered by Martha Nussbaum.[6]

2017 was an appropriate point in time to consider the state of modern legal education. Revisiting John Merryman's statement quoted above has provided both a challenge and an impetus for this article. In *A History of Australian Legal Education,* it was possible to place in context his statement as the intention was, as it is now, to assess the effect of legal education by considering its influence on the development of the legal profession, together with the paradox created by the dichotomy between teaching law as an intellectual pursuit and as training for professional practice.[7]

This article incorporates a link to what I consider to be the six most significant developments in legal education since 2017. A selection had to be made, and while I note other changes in legal education, these key developments are:

- The foundation of the Australian Academy of Law.
- The emergence of new forms of technology.
- The increased influence of the Australasian Information Institute.
- The developing role of law associations in legal education.
- The effect of Covid 19 on teaching legal education.
- The leading role played by the Law Schools, as recorded in the *Australian Law Journal.*

A focus on the innovations, which have stood out in the last eight years, must include the Australian Academy of Law, which represents a confluence of disparate parts of the legal community. Before the advent of the Australian Academy of Law, law had previously been

[1] John Merryman, 'Legal Education There and Here: A Comparison' (1975) 27(3) *Stanford Law Review* 859.
[2] David Barker, *A History of Australian Legal Education* (Federation Press, 2017).
[3] David Barker, 'A History of Australian Legal Education' (PhD thesis, Macquarie University, 2016).
[4] DC Pearce, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (Australian Government Publishing Service, 1987).
[5] Kevin Lindgren, François Kunc and Michael Coper (eds), *The Future of Australian Legal Education: A Collection* (Lawbook, 2018).
[6] Ibid v.
[7] Barker (n 2) 239.

seen as having a minor crossover interest in the Australian Academy of Social Sciences or the Australian Academy of the Humanities combining an interest in law and jurisprudence.

This was a time when the Australian Academy of Law was beginning to influence the development of legal education as it celebrated 10 years of existence. The great advantage of its foundation, which the Australian Law Reform Commission had urged, was '[w]ithout positive action the single "legal profession" could become a "multiplicity of legal occupations", none of which see itself as part of the larger whole'.[8]

The Commission therefore called for the creation of:

> An institution which can draw together the various strands of the legal community to facilitate effective intellectual interchange of discussion and research of issues of concern, and nurture coalitions of interest.[9]

In the view of the Commission '[s]uch an institution should have special focus on issues of professionalism including ethics and professional identity, and on education and training'.[10]

II THE FUTURE OF AUSTRALIAN LEGAL EDUCATION AS AT 2017

The Future of Australian Legal Education set the scene for considering Australian legal education at an important point in time of its development. In *History of Australian Legal Education*, I considered the identification of a final Group of New Law Schools under the title 'An Avalanche of Law Schools: Third Wave Law Schools – 1989 to 2015.'[11] As will be recalled, 16 new law schools were established between 1989 and 1997, with a further 10 in the first 15 years of the 21st century. I questioned whether a rational explanation existed for this significant increase and observed it was ironic, given that the Pearce Report (1987) recommended against a further expansion of law schools in Australia: 'We do not think that there will be a need for a new law school except perhaps in Queensland.'[12] An explanation for this expansion lay with the Dawkins reforms, whereby the binary divide between the former universities and colleges of advanced education (CAEs) had been abolished, which allowed more flexible programs for potential students.[13]

These reforms heralded an unprecedented growth in the number of higher education students, including many students who were the first members of their families to attend university. Inevitably, some of these were law students who might have previously been unable to enter one of the more traditional law schools but could now enrol in the newly established law schools because of their more egalitarian approach. The former CAE background of the new

[8] David Barker, *A Sense of Common Purpose – A History of the Australian Academy of Law* (Federation Press, 2022) 14.
[9] Ibid.
[10] Ibid 15.
[11] Ibid 99.
[12] Ibid 100.
[13] Ibid.

law schools enabled them to offer more diverse courses which allowed greater flexibility in subsequent career opportunities after graduation.[14]

By the time *The Future of Australian Legal Education* had been published, even the last of the new law schools had settled into a regular pattern of teaching and learning within the revised university system. Nevertheless, the context of this book is helpful in drawing attention to some of the more salient features of the text which have a particular relevance to the topics now under consideration. Early in the reading matter of the book under the title 'The Past Is a Different Country' Dennis Pearce reflects on the process of change, making it clear that the past was no golden age. One point which he makes, and which is of even greater relevance today relates to the relationship between the legal profession and the law schools. He is concerned that:

> the law schools have tended to look at it from one viewpoint: Do the law schools perform their role in training persons for the profession appropriately? This is of course important. However, there is another take on the relationship: Does the profession contribute as it should to the law schools? It is often overlooked that the legal profession is dependent upon the law schools for its lifeblood – new Lawyers. In the past the profession recognised that it had a role in contributing to legal education at the undergraduate level (as well as postgraduate) by teaching students – perhaps not well but it was a contribution to legal education. With the professionalisation of law teaching and the advent of many new law schools, this contribution has largely been confined to a regulatory role.[15]

This observation highlights a disquieting trend within legal education of the widening gap between the involvement of the legal profession and academia. While the intensive workload of both barristers and solicitors often prevents them from being involved with the work of law schools as were previously, law schools should ensure that students are exposed to what is happening in the wider legal community. Efforts should be made to close the widening gap between law schools and the legal profession.

III RESPONDING TO TECHNOLOGY

Technological development affects the practice of law and legal education. Of particular relevance to this article were papers compiled in Part VI of *The Future of Australian Legal Education* under the heading **'**Responding to Technology',[16] which highlighted innovations in legal education in 2017. Three chapters from Part VI illustrate the forward-thinking of law academics at that time. Michael Legg wrote the first of these chapters – 'New Skills for New Lawyers: Responding to Technology and Practice Developments'.[17] Legg is both a legal academic and a member of the NSW Law Society which produced the 'FLIP' Report (Future of Law and Innovation in the Profession).[18] In this chapter he identifies important requisite skills, beyond the traditional practice skills of research, analysis, reasoning and

[14] Ibid.
[15] Lindgren, Kunc and Coper (n 5) 55.
[16] Ibid 353.
[17] Ibid 373
[18] 'The Future of Law and Innovation in the Profession (FLIP)' (Report, Law Society of New South Wales Commission of Inquiry, 2017).

communication, such as business and management skills, but also emotional intelligence, teamwork, collaboration and resilience. He explains the significance of emotional intelligence, teamwork and collaboration as deriving directly:

> from the changes wrought by technology. It is the lawyer's human characteristics that differentiate them from a technological solution. Understanding and responding to a client's concerns and goals is the value-add. Unbundling of legal services requires lawyers to collaborate not only with other lawyers but also with technologists, project managers and the other professionals. Globalisation means the "lawyers will also collaborate across geographies, cultures, and in different political and regulatory environments'.[19]

The second selected chapter is 'Keep Calm and Carry On: Why the Increasing Automation of Legal Services should Deepen and Not Diminish Legal Education'.[20] The authors Gabrielle Appleby, Sean Brennan and Andrew Lynch support change by technological revolution as a catalyst for refocusing on opportunities for achieving deep learning through close analysis and critical engagement with legal argument and judicial reasoning. They set out the results of a case study based on their elective course on Contemporary Constitution Law. Because of the available resources, it was possible for the course to be taught by multiple teachers in the classroom at the same time. This meant that students were able to benefit from the existence of alternative views and the contingency of legal outcomes.

The third of this trio was 'Teaching Skills for Future Legal Professionals',[21] in which Penny Crofts writes more generally and compares how law engages with technology, explaining that while technology is about what can be done – capacity, innovation, and efficiency – law is about what should be done – in effect norms, ethics and justice. Crofts outlines 'Legal Futures and Technology', a University of Technology (UTS) Law School course, which illustrates the effectiveness of this comparison. This course includes special elective subjects such as ''Disruptive Technologies' and capstone subjects that emphasise the need for critical thinking, informed by ethical foundations and notions of justice if law is to engage effectively with technology and provide the necessary normative constraints.

These three examples of the changing nature of law and legal education illustrate the development of legal teaching beyond the previous narrow approach of developing the law student in the constrained image of a professional lawyer. An expectation now exists that legal academics should stretch their students to not only develop broad legal skills, but to question the very foundations of what constitutes the beliefs and aims of the legal community. This means that the law teacher must also question the aims of legal education and how they might be developed in the future. In this regard, Marlene Le Brun and Richard Johnstone argue in 'The Shifting Paradigm of Legal Education' '[t]he message that legal education must be both

[19] Michael Legg, 'New Skills for New Lawyers: Responding to Technology and Practice Developments' in *The Future of Australian Legal Education* [2018] UNSWLRS 51, 6 (footnotes omitted).
[20] Ibid 389.
[21] Ibid 479.

more theoretical and more practical'[22] creating the realisation of the need to rethink the study of law.'[23] This is one of the more positive developments in recent legal education.

IV AUSTRALASIAN LEGAL INFORMATION INSTITUTE (AUSTLII) – OVERLOOKED INPUT FOR AUSTRALIAN LEGAL EDUCATION

An often-overlooked effect on Australian legal education has been the input of AustLII. Established in 1995 under the co-direction of Graham Greenleaf and Andrew Mowbray, it was originally created to provide access to Australasian legal material to anyone who had connection to the internet. While the Institute was and remains physically located at UTS, it was developed as a joint facility of UTS and the University of New South Wales (UNSW) Faculties of Law. Compared to previous initiatives, AustLII has been successful because Mowbray developed an exceptional text retrieval search engine known as SINO ('size is no object').[24] In addition, the relevant government departments made available all their information relating to legislation and court judgments. Apart from these primary materials, other institutions provided secondary materials such law reform commission reports, bilateral and multilateral treaties and human rights materials. Realising the advantage of an electronic delivery service to meet the needs of New South Wales legal practitioners, the Law Foundation of that State awarded AustLII a substantial grant which, as it continued on an annual basis for some years, ensured the Institution's financial stability in the early years.[25]

Apart from its online library of legal information to the community, AustLII also has a research centre, again a collaboration between the Law Faculties of UTS and UNSW, which conducts leading edge international research in technologies for developing legal information systems.[26] This means that the revenue that accrues to the academic sector from research grants and contract research feeds back into and opens opportunities for the foundation. The relevance of the key role of the development of free access to law in Australia and the part played by AustLII in introducing digital court decisions is another significant development in legal education. Another unrecognised advantage for many newly established law schools was AustLII overcame the problem of the law school needing to have an adequately resourced law library as the Pearce Report emphasised.[27] Coupled with the resources of the internet, it meant that this created a major change as to how law schools conducted their research into case law and legislation. Not only was this more efficient, but it was also more cost-effective and enabled law schools to match their aspirations in providing a relatively cheap and productive range of legal materials for their undergraduate and postgraduate programs.

[22] Marlene Le Brun and Richard Johnstone, *The Quiet Revolution* (Law Book Company, 1994) 26.
[23] Ibid 27.
[24] Barker (n 2) 180.
[25] Ibid.
[26] '2022 Year in Review and AustLII Foundation Limited Annual Report' *AustLII* (Report, 2022) 27 <https://www.austlii.edu.au/austlii/reports/2022/AustLII_YiR_2022.pdf>.
[27] Barker (n 2) 125.

V EFFECT OF COVID-19 ON LEGAL EDUCATION

I do not wish to discuss how Covid-19 affected Australia, other than to note that its presence was first recorded in Australia 25 January 2020 and major action was provided to alleviate its effects by closing borders both nationally and between some states from 20 March 2020.The reopening of Australia's borders began in November 2021, with a full reopening in early 2022.

However, it is appropriate to note that, under the auspices of the Tertiary Education Quality and Standards Agency (TEQSA), the Australian Government commissioned Wells Advisory to undertake an analysis to consider the impact of the Covid-19 pandemic had on the Australian higher education system.[28] The TEQSA Report focused on the effect of the pandemic on recruiting and teaching international students within the Australian higher education sector, but it is also informative on how the sector as a whole reacted to the pandemic and its effects.

The Report provided 'TEQSA with a contemporary snapshot and additional contextual information to complement TEQSA's own information sources and existing work, including the extensive data collection analysed through TEQSA's risk assessment activity.'[29] The Report states:

> The analysis confirms our understanding of the role that the pandemic has played in accelerating many of the trends and changes that were already occurring in Australia's higher education system, in particular the shift to blended and online delivery of programs. These have combined with other structural impacts of COVID, including moves to diversify student delivery away from the dominance of inbound (and substantially on-campus and face-to-face learning) to hybrid models that will increasingly incorporate delivery of Australian higher education awards online … TEQSA considers that the report provides useful insights into trends and developments in the Australian higher education sector because of the COVID-19 pandemic, setting these in the context of higher education reforms that have recently taken place or been announced.[30]

The Covid-19 pandemic placed enormous strains on Australian tertiary education, including legal education, in maintaining teaching levels, particularly as most teaching and a great deal of assessment had to take place online. As the TEQSA Report explains, many of the outcomes from these forced changes still need to be reviewed and there will be a considerable delay before any real conclusion can be reached as to their long-term effect.

VI MOVING FORWARD – LAW ASSOCIATIONS SUPPORTING LEGAL EDUCATION

A feature of legal education has been the buoyancy of the sector, both within its academic and administration areas, most likely arising from its connection with the legal profession and the ability to adapt to the ongoing demands of the legal community. This characteristic of the ability to conform can be measured by the changes which have taken place in the supporting legal membership organisations.

[28] Tertiary Education Quality and Standards Agency (TEQSA), 'Forward impact of COVID-19 on Australian higher education' (Media Release, 3 November 2021).
[29] Ibid.
[30] Ibid.

The organisational structure of what was the Australasian Law Teachers Association (ALTA), renamed the Australian Law Academics Association (ALAA), has changed radically. During the time when he was the Chairperson of ALTA, Nick James, reorganised ALTA, simplifying its membership so that individual membership became free and institutional membership by member law schools was based on an annual $2,000 fee. The outcome has been an enhanced membership and a more vibrant organisation. The relaunch of ALTA as ALAA took place on 1 January 2019.[31] ALAA stated, '[t]he name change reflects the Association's renewed commitment to presenting and supporting all law academics in Australia, New Zealand and the South Pacific.'[32]

Introducing the changes, James observed:

> ALAA is now better positioned as the institution that unites all Australian law academics, and provides ways for them to network, collaborate and support each other. Both the higher education sector and the legal services sector are experiencing significant transformation and disruption at the moment and ALAA is here to ensure law academic can access the assistance and experience they need.[33]

At the same time the Association's objectives were recorded as:

- facilitating best practice in law teaching, research and scholarship by Australasian law academics;
- promoting collaboration and cooperation by law academics with one another and with other legal organisations and institutions;
- providing support to law academics in planning and managing their academic careers; and
- representing the interests of law academics in discussions and debates about law teaching, research and scholarship.[34]

This new approach can be illustrated by an Early Career Academic Law Forum project which was initiated at the ALAA Conference at Monash University in 2022. The Convenor was Liam Elphick, a Monash Law School academic. The fact that the Session occupied a whole day prior to the ALAA Conference that year emphasised the importance given to the topic by the Association and the Conference organisers. This support was rewarded by a 'sell-out' attendance by early career attendees.

Monash Law School also hosted the 2nd Early Career Academic Law Forum in November 2023. The forum program indicates the thought which had gone into the issue of how to make the forum helpful to attendees. The description of the opening session and its presenter is illustrative of this approach. 'Be Visible or Vanish? How to Create Research Impact in Seven (Not So Easy) Steps – Inger Mewburn (aka 'The Thesis Whisperer'). Other topics included sessions described as: 'Spread the Good Word: How to Network and Build Your Profile'; 'It

[31] ALAA, 'Australasian Law Teachers Association – Welcome to ALAA – Australasian Law Academics Association' (Media Release, January 2019).
[32] Ibid.
[33] Ibid.
[34] Ibid.

Turns Out We Need Real Skills: How to Manage Academic Projects and Time'; 'The Ivory Tower Isn't Real: How to Work with Other Humans'; 'Academic Speed Dating: How to Find Your Research Narrative'.

In addition to an expert Panel Session 'What I Wish I Knew as an Early Career Academic', even the closing drinks and canapes session attempted to be meaningful with the title 'How to Make Friends and Avoid Enemies'.

This approach adopted by ALAA in encouraging and recognising the challenges faced by early career academics can be summed up by the introduction given to another 'Early Career Journeys in Legal Academics' Forum conducted by ALAA which stated: 'Navigating the early phase of a legal academic career can be a difficult process, especially in a pandemic.'[35]

This new approach by ALAA office bearers, especially two recent Chairpersons of the Executive, Natalie Skead and Kate Galloway is also mirrored in the current policy changes being undertaken by the Council of Australian Law Deans (CALD). The Council which now has joint Chairpersons, currently Tania Sourdin and Nick James, and has adopted a more egalitarian approach to its administration, in particular seeking greater co-operation with ALAA. Consequently, when the Covid-19 pandemic caused the cancellation of the ALAA Conference in 2020, Bond University was able to conduct an alternative online conference through the auspices of its Centre for Professional Legal Education.[36] The establishment of the Australian Academy of Law in 2007 has now meant that there is an Association drawing its membership from all three branches of the Australian legal community – the judiciary, legal professions and law academics.

VII A NEW PHASE FOR AUSTRALIAN LEGAL EDUCATION

2022 marked a new phase for Australian law schools as they moved on from the restrictions of Covid-19, online teaching and restrictions on students' personal attendance at university campuses.

A major CALD initiative for 2022 was the engagement of Sally Kift.[37] Her remit was to examine the current structure of the regulation of legal education in Australia and provide advice as to how it compared with regulatory structure elsewhere, the extent to which it met the need of law students, law schools and the legal profession, and the alternative structures available.[38] The outcome was that Kift completed Stage 1 of the project, the 'desk research' stage,[39] which was followed by Stage 2 which involved formal engagement with stakeholders such as the Legal Service Commission (LSC) and Law Admissions Consultative Committee (LACC).

[35] Ibid.
[36] Centre for Professional Legal Education, 'Harmonizing Legal Education – Aligning he Stages in Lifelong Learning for Lawyers' (Bond University, 1 October 2020).
[37] David Barker, 'From the Law Schools – Introducing a New Phase for Australian Legal Education' (2022) 96 *Australian Law Journal* 235.
[38] Ibid.
[39] Ibid.

On its completion, Kift, together with her co-author, Kana Nakano,[40] finalised the report which was then considered by a small working group established by CALD. In late 2023 CALD released a report 'Reimagining the Professional Regulation of Australian Legal Education'.[41] The media release stated '[t]he report offers a detailed analysis of the regulation of legal education in Australia and in a global context, and of the various drivers for regulatory reform.'[42]

Another outcome of the Report was:

> 2023 saw the beginning of a national conversation about the future of Australian legal education, with representatives from key stakeholders including CALD, the Law Admissions Consultative Committee (LACC), the Australasian Professional Legal Education Community (APLEC), the Legal Services Council, the Law Council of Australia and the Australasian Law Students Association (ALSA) coming together to examine the current state of legal education in Australia and identify opportunities for reform.[43]

The major part played by the AALA in conjunction with the CALD is reflective of the part now played by law academics in both the direction of legal education and its influence on all parts of the legal community.

VIII 'FROM THE LAW SCHOOLS' – CASE STUDIES

The publication of this report and the consequential outcomes marks an appropriate time to consider the approaches adopted by Australian Law Schools in reconfiguring changes which could be made to their teaching on the conclusion of the pandemic. Further additions to my column 'From the Law Schools' in the *Australian Law Journal* in 2022 and 2023 incorporate examples of new initiatives by law academics to enhance their teaching in meeting the challenges offered by a new phase in Australian legal education.

In my first extract I refer to the challenges faced by the resumption of face-to-face teaching at the University of Tasmania Law School:

> The problems posed by the Covid pandemic have been of major concern at the University of Tasmania Law School where Professor Gino Dal Pont, was appointed as Law Dean in May 2022, at short notice … The outcome in remedying the problems at the Law School was also needed to engender greater flexibility in the University's uniform teaching model, to reflect not only the importance of satisfying the Priestley requirements, but in maximising student experience by reference to various teaching styles attaching to academics and subjects. This meant the resumption of face-to-face lectures, workshops, tutorials and seminars chiefly in the Law School Building itself. Professor Dal Pont also emphasises that one of the objectives of resuming full face-to-fact instruction was the need to improve student learning and equally the fostering of student engagement, the latter having declined during Covid. He was also of the view that to

[40] Ibid.
[41] Ibid.
[42] Ibid.
[43] Nickolas James, 'Legal Education 2030 and Beyond: Wellness in Context' (Conference Paper, National Wellness for Law Forum 2024, 15-16 February 2024).

> improve student expectations it was necessary for the Law School to build and maintain closer links with the student body. Whilst confronting the dictates of academic integrity there was also a justifiable push to return to invigilated assessments, whilst engaging in the ongoing debate concerning avenues to detect and deter the use of Artificial Intelligence in student work.[44]

In the same column I referred to the experience of the University of New England Law School that was the outcome of a major curriculum review launched in 2020 which incorporated a capstone unit that covered Law and Technology. 'This unit was co-ordinated by Michael Adams, the Head of the Law School. It reflects as to how lawyers use technology in practice as well as the many emerging areas of technology (such as Artificial Intelligence, drones, big data and social media).' It was emphasised by the UNE Law School that the use of this capstone unit – 'placed it in a very strong position during the Covid pandemic, with its expertise with distance (online) education.'[45]

In another extract 'From the Law Schools' I quote a statement by Matthew Harding, who became interim Dean of the Melbourne University Law School in April 2022. Harding acknowledged:

> 2023 has been an interesting and challenging moment for his law school, with the key priority being the rebuilding of a strong academic community encompassing staff and students after the rigours of the Covid lockdown and their aftermath. This work of re-building extending to the wider Melbourne Law School community, with the future aim to nurture connections across the profession and among alumni and friends that are stronger than ever before.[46]

Harding further stated:

> As the School recovers its balance after some trying years, now is a time for reflection on some fundamental questions about academic mission. What makes the Melbourne Law School a distinctive and exceptional community of legal researchers? What role does the school play within the legal system and culture of our country, and what aspirations should it have in our Asia-Pacific region and beyond? What sort of graduates should the school aspire to send out into the legal profession, and what does this mean for the teaching program on offer?[47]

After emphasising the importance of Melbourne's teaching programs reflecting the moral and political imperatives surrounding indigenous recognition and justice, he ends with the statement 'the good lawyer is one who has a sense of the true history of our country, the role in shaping and giving effect to the history, and the potential for law to be an instrument of recognition of justice today.'[48]

In the same extract this approach of Harding was contrasted with that of Reid Mortenson, the Dean of Southern Queensland's School of Law and Justice, where the emphasis on teaching the traditional range of law degrees, was on a prudential philosophy which lies behind the law schools central professional law degrees the LLB and JD, the aim being to guide students with

[44] David Barker, 'From the Law Schools – Developments' (2023) 97 *Australian Law Journal* 316.
[45] Ibid.
[46] Ibid.
[47] Ibid.
[48] Ibid.

a capability of exercising practical judgments with the law. The law degrees are accredited as qualifications for admission in Queensland and mandate the development of skills in letter and advice writing, research, negotiation, mediation, advocacy and trust account management.[49] The fact that the Australian Law Journal is willing to illustrate the part played by the law schools themselves in the development of legal education is an illustration of the changes which have taken place within the Australian legal culture since the end of World War II.

IX A FURTHER INITIATIVE BY AUSTRALIAN LAW ACADEMICS

Narelle Bedford, Wendy Bonython and Alice Taylor advocate for law reform to be included in legal education.[50] Michael Coper, who previously considered this idea '[a]rgued that a better way was to teach students the critical skills necessary to locate, contextualise, critique and explicate law'.[51] Bedford et al argue:

> The changing nature of the legal profession and legal education means that the time has come to embed law reform participation as both a pedagogical tool and a form of authentic assessment throughout a student's law degree including in compulsory modules or subjects.[52]

As further evidence of this need to promote law reform as a teaching module, the authors observe '[l]egal education occurs against a backdrop of governing ideologies, including vocationalism – education for the profession and intellectualism – law as an educational discipline.' [53] They emphasise the need for inclusion in the legal education curriculum, stating '[m]aking law reform a mainstream pedagogical tool, we contend that students are given the opportunity to build their vocational "black letter" legal knowledge, as well as develop skills in advocacy, research and critique.'[54]

It is interesting to view the various approaches chosen by Australian Law Schools to answer the challenge offered to them at the end of the Covid-19 pandemic to revisit and maybe revise the ways by which they enhance their teaching towards their law students.

X CONCLUSION

In assessing the six most significant developments in legal education since 2017 the author is reminded of the pessimism which previously punctuated attempts to revive legal education and the time when 'Law Schools see themselves as straddling the academy and the profession and had little support from either'.[55] I hope this article recognises that the changes which have come about recently, even post-Covid and the recognition of the significance of legal education.

[49] Ibid.
[50] Narelle Bedford, Wendy Bonython and Alice Taylor, 'Law as it is, and how it could be: law reform participation as authentic assessment and a pedagogical tool' (2024) 58(1) *The Law Teacher* 58.
[51] Ibid 59.
[52] Ibid.
[53] Ibid 58.
[54] Ibid.
[55] Charles Sampford and Sophie Blencowie, 'Context and Challenges of Australian Legal Education' in John Goldring, Charles Sampford and Ralph Simmonds (eds), *New Foundations in Legal Education* (Cavendish Publishing, 1988) 1.

This is surely a time for optimism for the future of the teaching profession and broad improvement in legal education.

It is appropriate to recall the advice of Margaret Thornton, who urges

> improving the various ways in which many law school [have been able to] strive to equip their students not merely with the technical legal skills that underpin the lawyers' craft, but also with a strong sense of professional responsibility, altruism and a desire to make the legal system and through that, the world a better place.[56]

The program of the ALAA Law Conference 2024 is another illustration of the ingenuity of Australian law academics to encourage their students in their efforts to both improve their training as legal practitioners and at the same time enhance their general education.

I can do no better than to conclude with an extract from the final chapter of my book:

> Law teaching has been described as 'a great and noble occupation' and there is no evidence of legal academics relaxing their effort to maintain this perception. It is also symbolic that while there are often complaints of too many law students, this does not seem to have deterred an increasing number of well-qualified students from undertaking tertiary legal studies. This is further evidence that legal education cannot only provide training to become a legal practitioner, it also supplies a liberal education incorporating the development of intellectual knowledge and transferable skills.[57]

[56] Margaret Thornton, *Privatising the Public University: The Case of Law* (Routledge, 2012) x-xi.
[57] Barker (n 2) 242.

LAW STUDENTS' PERCEPTIONS OF MODELS USED TO TEACH LEGAL REASONING SKILLS IN AN ONLINE ENVIRONMENT AT AN AUSTRALIAN UNIVERSITY: FINDINGS FROM A CASE STUDY

Carmela De Maio[*] *and Kenneth Yin*[†]

ABSTRACT

In law school, students are challenged to think and reason like lawyers; however, this can be particularly challenging for those who are completing their degree online. This article presents the results from a case study on the perceptions of first and fourth-year law students in an online learning environment, of two models (IRAC and legal syllogism) used to teach legal reasoning at an Australian university. Findings suggest that most students perceived the use of both models to be helpful, that they were confident in using both models and that both would be effective in helping them to solve legal problems in the real world.

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I INTRODUCTION

Students completing their law degree in institutions of higher education are instructed to 'think and reason' like a lawyer; however, the meaning of this phrase remains unclear. Commentators agree that it involves the use of several skills, including the ability to solve a legal problem with logic and reasoning,[1] and the application of law to a set of facts to reach a logical and reasonable conclusion.[2]

Legal reasoning is viewed by many academics as a key component of the concept of thinking like a lawyer and a necessary skill required for students to develop their professional legal identities.[3] It is a higher order skill and a learning outcome that must be attained before students can successfully graduate from law school.[4]

Further, developing legal reasoning skills is becoming increasingly important considering the impact of disruptive technologies such as generative artificial intelligence on thinking and writing in higher education institutions and in the legal profession.[5]

Although some research has been done on how to teach legal reasoning skills to law students in on campus settings,[6] there appears to be limited literature available on how to teach such skills to those completing their degree online. Studies suggest about online learning is that content and teaching methods do not transfer easily to the online learning environment, nor are they necessarily as effective.[7] In addition, teaching law online requires extra thought into the design of materials and methodologies to ensure that accreditation of the law degree is maintained and accepted by legal practice boards.

Anne Hewitt posits that online learning can contribute to the acquisition of professional skills, including legal problem solving; however, she does not refer to any models of legal reasoning but rather problem based learning (PBL) as a tool for developing legal problem-solving skills.[8]

Both the formalistic model of IRAC and a more nuanced variation of IRAC based on the formal

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[1] Kurt Saunders and Linda Levine, 'Learning to Think Like a Lawyer' (1994) 29(1) *University of San Francisco Law Review* 121.
[2] Sally Kift, Mark Israel and Rachael Field, 'Learning and Teaching Academic Standards Project: Bachelor of Laws Learning and Teaching Academic Standards Statement' (Report, December 201) *Council of Australian Law Deans* 17, 18 <https://cald.asn.au>.
[3] Rachael Field, James Duffy and Anna Huggins, *Lawyering and Positive Professional Identities* (LexisNexis Butterworths, 1st ed, 2014) 198; Sally Kift, '21st Century Climate for Change: Curriculum Design for Quality Learning Engagement in Law' (2008) 18(1-2) *Legal Education Review* 1.
[4] Field, Duffy and Huggins (n 3) 200.
[5] Sally Kift and Kana Nakano, *Reimagining the Professional Regulation of Australian Legal Education* (Council of Australian Law Deans, 1 December 2021) 46.
[6] Kate Galloway et al, 'Working the nexus: Teaching students to think, read and problem-solve like a lawyer' (2016) 25(1) *Legal Education Review* 95, 99.
[7] Lillian Corbin and Lisa Bugden, 'Online Teaching: The Importance of Pedagogy, Place and Presence in Legal Education' (2018) 28 *Legal Education Review* 1, 16.
[8] Anne Hewitt, 'Can you learn to lawyer online? A blended learning environment case study' (2015) 49(1) *The Law Teacher* 92, 102.

underpinnings of syllogistic logic (legal syllogism) are used to teach legal reasoning in our law school; however, it is unclear whether these models are viewed by students as being effective so that they are enabled to think and reason like a lawyer. This article presents the findings from a case study on the perceptions of first- and fourth-year students, completing their law degree online, of the two models of legal reasoning taught to them in our law school. The significance of this small-scale study is that it will add to the limited literature on the effectiveness of models used to teach legal reasoning in the online learning environment and enable educators to feel confident that they are assisting their students in acquiring the requisite skills to enable them to succeed in the legal profession.

This article is divided into five parts. Following on from Part I Introduction, Part II discusses the concept of 'legal reasoning' as found in the literature and presents the two models of legal reasoning used to teach students at our law school. Part III outlines the aims, methods, design, ethics, and limitations of this case study, while Part IV discusses the findings. We conclude with a call for further research to explore what models could be best used to teach legal reasoning to law students studying in the online learning environment so that they successfully graduate into the legal profession having attained this essential skill.

II TEACHING LEGAL REASONING SKILLS IN LAW SCHOOL

There are varied understandings of what is meant by legal reasoning. A few writers propose wide definition of the term as the process that introduces law students to a mode of reasoning which allows them to 'think like a lawyer'.[9] However, most Australian researchers concede that the term 'legal reasoning' should be given a narrower to that of the process of applying legal rules to a particular set of facts or circumstances to reach a specific conclusion which is legally correct and supported by those particular facts or circumstances.[10]

In the LTAS Project, 'legal reasoning' is one of a series of 'threshold outcomes' for law graduates prescribed in Tertiary Learning Outcome 3 (TLO3).[11] It is defined as:

> the practice of identifying the legal rules and processes of relevance to a particular legal issue and applying those rules and processes in order to reach a reasonable conclusion about, or to generate an appropriate response to, the issue.[12]

Further, Gerlese Akerlind, Jo McKenzie and Mandy Lupton define legal reasoning as the processes of applying legal principle to specific circumstances,[13] while Jan Meyer and Ray

[9] Cheryl Preston, Penee Wood Stewart and Louise Moulding, 'Teaching "Thinking Like a Lawyer": Metacognition and Law Students' (2014) *Brigham Young University Law Review* 1053, 1054.
[10] Nickolas James, Rachael Field and Jackson Walkden-Brown, *The New Lawyer – Foundations of law* (Wiley, 2019) 11.
[11] Kift, Israel and Field (n 2) 18.
[12] Ibid.
[13] Gerlese Akerlind, Jo McKenzie and Mandy Lupton, 'Final Report: A Threshold Concepts Focus to Curriculum Reform: Supporting Student Learning Through Application of Variation Theory' Australian Learning and Teaching Council' (Report, 2011) 1, 9 <http://www.thresholdvariation.edu.au>.

Land argue that, as a threshold concept, students must master it to enable them to attain the necessary skills for their profession.[14]

Legal reasoning skills are usually taught in Australian law schools using a formalistic model known as IRAC [Issues, Rules, Application, Conclusion], or similarly names with acronyms such as FILAC [Facts, Issues, Law, Application, Conclusion], FIRAC [Facts, Issues, Rules, Application, Conclusion], HIRAC [Heading, Issue, Rule, Application, Conclusion], MIRAC [Material Facts, Issues, Rules, Application, Conclusion] or CREAC [Conclusion, Rule, Explanation of Rule, Analysis, Conclusion]'.[15] The Learning and Teaching Academic Standards for Law (the LTAS Project) noted that legal reasoning skills are usually taught in Australian law schools using a formalistic model known as IRAC (Issues, Rules, Application, Conclusion) or similarly named acronyms.[16]

The use of formalistic models of legal reasoning, such as IRAC, are said to be useful for those who are new to studying law; however, Laura Graham suggests that they are too simplistic a tool which does not adequately reflect the 'complex, interrelated steps that students need to learn to analyse … legal problems'.[17] The LTAS Project itself concedes that this model of legal reasoning would recede into the background as the student progresses through their degree,[18] yet does not allude to an alternative model.

An alternative model of IRAC, taught at the university where the authors are lecturers, draws upon the formal precepts that underpin syllogism, as a teaching model. The proposition that IRAC is the legal variant of syllogism has frequently been expressed.[19] An arguable corollary of the argument that the simplistic, 'series of steps' variant of IRAC is deficient, is that a more sophisticated variant of IRAC, which harnesses its underpinnings in formal legal logic as a teaching methodology, is more appropriate. While IRAC *is*, essentially, a syllogism, purely for the purposes of terminology the expression 'legal syllogism*'* has been adopted to describe this, more sophisticated, model of IRAC which is underpinned by formal legal logic. This article tests this hypothesis by exploring the experiences of students in the first and fourth year of their law degree.

Rather than the formalistic, step-by-step variant of IRAC, which demands primarily that the student 'consider each issue carefully and apply the relevant legal rules to the facts to reach a rational and convincing conclusion',[20] legal syllogism requires the learner to perform the far

[14] Jan Meyer and Ray Land, 'Threshold Concepts and Troublesome Knowledge: An Introduction' in Jan Meyer and Ray Land (eds), *Overcoming Barriers to Student Understanding: Threshold Concepts and Troublesome Knowledge* (Routledge, 2006) 3.
[15] Nickolas James, 'Good Practice Guide (Bachelor of Laws) Thinking Skills (Threshold Learning Outcome 3)' *Australian Learning & Teaching Council* (Report, 2014) 11 <http://disciplinestandards.pbworks.com/w/file/fetch/52818079/GPG%203%20Thinking%20Skills.pdf>.
[16] Kift, Israel and Field (n 2) 18.
[17] Laura Graham, 'Why-Rac? Revisiting the Traditional Paradigm for Writing About Legal Analysis' (2015) 63 *Kansas Law Review* 681, 682.
[18] James (n 15) 12.
[19] This observation has been made countless times, particularly by American commentators. See eg, Bradley Clary and Pamela Lysaght, *Successful Legal Analysis and Writing:The Fundamentals* (Thomson/West, 3rd ed, 2010).
[20] Anita Schnee, 'Legal Reasoning Obviously' (1997) 3 *Legal Writing: The Journal Of The Legal Writing Institute* 105, 117.

more sophisticated steps involved in formal legal reasoning. These include the processes of 'synthesizing a number of cases to form a rule based on the issue presented'[21] including the facts which underpin the reasoning, so that those facts are then 'developed into the analogical thinking that underlies the application portion of common law legal reasoning [the minor premise]'.[22]

The following is a simple example, based on the principles in *Donoghue v Stevenson*,[23] the famous tort case, and drawn on a sample case study in the text used in the university where the authors teach:[24]

> **Issue:** Did Chuggloh owe a duty of care to Greta?
>
> **Rule:** Lord Atkin in *Donoghue* said that a person owes a duty of care to take reasonable care to avoid acts or omissions likely to injure his 'neighbours', namely persons 'so closely and directly affected' by that person's conduct such that they ought reasonably to be in that person's contemplation. such duty did not require there to be a contract between them. Both Lords Atkin and Macmillan said that a manufacturer of sealed food or drink products would owe a duty of care to consumers of its products, notwithstanding that there was no contract between them, where the manufacturer knows that its failure to take reasonable care in the product's preparation may result in injury to consumers, and where there was no reasonable opportunity of intermediate examination. There was no reasonable opportunity of intermediate inspection of the product, which was a sealed, opaque container of ginger beer containing the remnants of a dead snail. Crucially, it was held that the manufacturer should have intended and contemplated that they be consumed, for such duty to exist.
>
> **Application:** In the present case, as in *Donoghue*, Chuggloh is a manufacturer of products intended for human consumption, which were consumed by someone (here, Greta) who was not in any contractual relationship with the manufacturer.
>
> The question of whether this would give rise to a duty of care depends materially on whether there was an opportunity for intermediate inspection. The containers were not identical — in *Donoghue*, the bottle was opaque, whilst Chuggloh's container was semi-transparent.
>
> It might be argued that Greta had a reasonable opportunity to inspect the container's contents prior to consumption. Its contents were discolored and resembling congealed bile, and the facts suggest that these should have been apparent through a semi-transparent container, whereas this fact would not have been apparent had the container been opaque, as was the case in *Donoghue.*
>
> Against this, in Greta's favour is the fact that there was no warning of the fact of the yogurt's adulteration, whereupon she consumed the entire container ignorant of its adulterated state. The absence of any indication of its contamination, combined with some difficulty in noticing the fact of its adulteration other than in daylight, would likely combine in Greta's favour to lead to the acceptance of the view that there was no opportunity for intermediate inspection on her part.

[21] James Boland, 'Legal Writing Programs and Professionalism: Legal Writing Professors Can Join the Academic Club' (2006) 18(3) *St Thomas Law Review* 711, 723.
[22] Nadia Nedzel, *Legal Reasoning, Research and Writing for International Graduate Students* (Wolters Kluwer, 3rd ed, 2012) 72.
[23] *Donoghue v Stevenson* [1932]AC 562.
[24] Kenneth Yin and Anibeth Desierto, *Legal Problem Solving and Syllogistic Analysis: A Guide for Foundation Law Students* (LexisNexis Butterworths, 2016) 76-77, 112.

Conclusion: Chuggloh owes Greta a duty of care.

The reader's attention is drawn to the way in which the rule is synthesized, recognizing the facts and rationalizations which underpinned the reasoning in *Donoghue*, then, following the contours of the rule, how it is applied within the minor premise.

We argue that, as a pedagogy, legal syllogism is a more complex, nuanced model for legal argument involving the identification of a major premise, a minor premise, and a conclusion. IRAC can be placed within this model as it has a syllogistic core[25] with the major premise being the 'Rule', the minor premise being the 'Application' of the rule to the specific facts of a case, and the 'Conclusion' being the same for both models.[26]

James Boland suggests that if a student understands legal syllogism, 'all possible forms of IRAC can be placed within that context so that the syllogism becomes a roadmap to guide the students through the analytical process'.[27]

Elaborating on the legal syllogism model, Anita Schnee shows how induction and deduction work together in common law reasoning with induction needed when there is 'no rule or where there is a choice between rules'[28] and deduction when 'a given rule should apply to a new set of facts and circumstances'.[29] A model of legal reasoning based on legal syllogism thus allows law students to understand more clearly the deductive process on which IRAC is based and lets them move between the processes of induction and deduction.[30]

Writers call for legal reasoning skills to be introduced early into the legal studies curriculum so that students have the time to develop these skills throughout their years of study.[31] Field and Meyer note that the acquisition of legal reasoning skills is a 'critical first step in the pathway'[32], taking several years to master.

At the law school where the authors teach, the law degree is undertaken by students taking it as an initial degree, as well as those who have prior tertiary studies. The term 'juris doctor' is not used in this law school to identify the latter. IRAC and legal syllogism are the two models taught, utilising the textbook written by one of the authors.[33] IRAC is introduced to students in their first year of studies in Legal Writing and Research, a foundational unit which is usually undertaken at the start of their law degree and is commonly used throughout the years of their studies. The legal syllogism model is also used extensively in Legal Process, another

[25] Ibid 6.
[26] Nedzel (n 22) 69.
[27] Boland (n 21) 719.
[28] Schnee (n 20) 117.
[29] Ibid.
[30] Schnee (n 20) 121.
[31] Chris Turner, Jo Boylan-Kemp and Jacqueline Martin, *Unlocking Legal Learning* (Taylor & Francis, 3rd ed, 2012) 133.
[32] Rachael Field and Jan Meyer, 'Threshold Concepts in Law: Intentional Curriculum Reform to Support Law Student Learning Success and Wellbeing' in Emma Jones and Fiona Cownie (eds), *Key Directions in Legal Education: National and International Perspectives* (Routledge, 2020) 142, 149.
[33] Yin and Desierto (n 24).

foundational core unit, where case studies found in the textbook serve as examples.[34] Thus, our law students are taught from an early stage in their studies to apply both models to allow them to reach a reasonable, 'rational and convincing conclusion'[35] to satisfy the tertiary learning outcome (TLO3).[36] However, what remains unclear is whether these models used to teach legal reasoning are effective, especially in the online learning environment.

In contrast to formalistic models such as IRAC, the Socratic method is a model of where the teacher questions a student on that student's knowledge. Alex Evans points out that the effectiveness of teaching the Socratic method of legal problem solving in the online learning environment remains untested.[37] The reason for this may be because, anecdotally, teachers of law view this traditional model of legal reasoning negatively (causing unnecessary stress and angst to students).[38] Additionally, the Socratic method of teaching legal reasoning is not often utilised by teachers in Australian law schools because they are not familiar or comfortable with it.[39]

In truth, and with deepest respect to Evans, we suggest that the Socratic method is a teaching methodology, whilst IRAC is a model for teaching legal reasoning. They are both pedagogies but do not lend themselves to a side-by-side comparison. Predicated on the idea that the Socratic method is a dialogue between teacher and students, it might be more accurate to say that the 'formalistic' step-by-step variant of IRAC does not lend itself to Socratic dialogue, due to its simplicity. It does not lend itself to questions concerning, for example, the underpinning facts and circumstances of the principles in the rule, nor the reasons why those facts and circumstances may or may not apply. On the other hand, at least for a teacher sufficiently familiar with Socratic dialogue, legal syllogism very much lends itself to the Socratic method. Taking the simplistic *Greta* exemplar set out above, the teacher might well ask questions like:

> What are the principles in *Donoghue* that you are seeking to apply? What are the relevant facts in *Donoghue* that you think underpinned the reasoning, which you think align with the facts of *Greta?* Does the fact that it was yoghurt in Greta's case rather than ginger beer make any difference? Why/why not?

In summary, this part of the article has sought to define legal reasoning as the application of rules and laws to a specific set of circumstances to reach a viable conclusion. At law school, this skill is usually taught using formulaic models such as IRAC and the more nuanced complex derivative of IRAC-legal syllogism. Despite their use, there are few studies which have examined the efficacy of such models in the online learning environment in higher education institutions.

[34] Ibid.
[35] James (n 15) 18.
[36] Ibid 12.
[37] Alex Evans, 'A Learning and Teaching Method for the Online Environment that Delivers: Coupling a Soft Socratic Method with a Humanistic, Nurturing Approach' (2022) 32(1) *Legal Education Review* 33, 34.
[38] Ibid 37.
[39] Lee Stuesser, 'A Reflection on the Bond Model of Teaching' (2009) 21(3) *Bond Law Review* 164, 167.

III THE STUDY

The key objective of this study was to explore the perceptions of first- and fourth-year law students who completing their degree online of the two models of legal reasoning used in our law school' namely IRAC and legal syllogism. To date, it appears that little research has been done in this area and we were interested in exploring if students were able to acquire the essential skill of legal reasoning in the online learning environment using these two models.

Additional objectives included whether students were confident in using the models and whether there were any differences between first- and fourth-year students' usage of both models.

The three research questions that we sought to address in our study were:

(1) Do student studying for their law degree online perceive IRAC and legal syllogism as being effective in developing their legal reasoning skills?

(2) Do these students perceive the teaching of legal reasoning using IRAC and legal syllogism to be effective?

(3) Do these students feel equipped to solve legal problems in the real world using IRAC and legal syllogism?

We obtained ethics approval for this study from our institution. The method used to collect the data to help answer the research questions was a survey administered online via the Learning Management System (LMS) of the university. The first few questions in the online survey sought demographic information', while the main question used to address our objectives was a Likert-style question consisting of statements to which the respondents were asked to indicate their level of agreement or disagreement. The final question was open-ended, allowing respondents to make any further comments if they so wished.

This survey was administered towards to the end of Semester 2, 2021 to students who had completed their first and fourth years of a law degree respectively, and who were studying for their degree online. The respondents were chosen because the research suggests that legal reasoning skills take time to acquire,[40] and that methods used to teach students in the face-to-face classroom may not transfer easily to the online learning environment.[41]

The units chosen-Legal Research and Writing (a first-year unit) and Statutory Interpretation (a fourth-year unit)-were done so to reduce bias and increase objectivity as these units involve the application of legal reasoning skills and are not taught by us. Whilst the Statutory Interpretation unit does impart doctrinal knowledge, it is also a skill-based unit where legal reasoning forms a significant part.

[40] Field and Meyer (n 32) 149.
[41] Evans (n 37) 37.

At the outset we acknowledge that as with most case studies, ours has limitations in terms of reliability, replicability, and validity.[42] The sample size is small so the results cannot be generalised.[43] Also, as the data is self-reported, there may be some bias as respondents tend to be agreeable to the questions posed by the researchers. We belief that some of this bias was reduced through asking neutrally worded questions[44] and having other educators administer the survey through units not taught by us. Furthermore, the online survey was administered only to law students in one institution at a specific point in time, and only students who were studying for their degree online, so the findings may not be generalisable to other law schools or other cohorts.

IV FINDINGS

At the time of administration of the survey, 51 students were studying Legal Research and Writing and 29 studying Statutory Interpretation online. Eighteen students responded to the survey – a 23% response rate.

The 18 respondents consisted of 10 first year and eight fourth-year students of which 11 were females and eight were males. All the respondents were studying for their law degree online. Half the respondents were aged between 20-29 with the remainder aged 30 and above, indicating that they were mature aged students. This is consistent with the demographics of students who study at our institution. The variables of gender, age and mode of study were not analysed further, but rather the comparison of results was made based the year level of the respondents (that is, whether they were in their first or fourth year of their law degree) because we wanted to explore if students had gained the necessary legal reasoning skills at the conclusion of their studies.

The responses of the first- and fourth-year students to the statements found in Likert-style question in the survey are presented in Tables 1 and 2, respectively.

[42] Alan Bryman, *Social Research Methods* (Oxford University Press, 3rd ed, 2008) 55.
[43] Ibid 57.
[44] Philip Cleave, 'How to Reduce Bias in Surveys' (Blog Post, 7 October 2022) <https://www.smartsurvey.co.uk/blog/how-to-reduce-bias-in-surveys>.

Table 1: First-year students' responses to statements (n=10)

Statement	Strongly Agree (%)	Agree (%)	Neither agree nor disagree (%)	Disagree (%)	Strongly Disagree (%)	TOTAL %
I find using IRAC (issue, rule, application, conclusion) helpful to solve legal problems	64	36	0	0	0	100
I find using legal syllogism (major premise, minor premise, conclusion) helpful to solve legal problems	36	36	18	10	0	100
I feel confident in using IRAC to solve legal problems	36	45	9	0	10	100
I feel confident in using legal syllogism to solve legal problems	18	45	18	9	10	100
I tend to use IRAC in most of my subjects in law school	40	40	20	0	0	100
I tend to use legal syllogism in most of my subjects in law school	20	40	30	10	0	100
I feel equipped to solve legal problems in the real world	0	90	0	10	0	100

Table 2: Fourth-year students' responses to statements (n=8)

Statement	Strongly Agree (%)	Agree (%)	Neither agree nor disagree (%)	Disagree (%)	Strongly Disagree (%)	TOTAL %
I find using IRAC (issue, rule, application, conclusion) helpful to solve legal problems	75	25	0	0	0	100
I find legal syllogism (major premise, minor premise, conclusion) helpful to solve legal problems	12.5	50	25	12.5	0	100
I feel confident in using IRAC to solve legal problems	50	50	0	0	0	100
I feel confident in using legal syllogism to solve legal problems	0	62.5	25	12.5	0	100
I tend to use IRAC in most of my subjects in law school	37.5	62.5	0	0	0	100
I tend to use legal syllogism in most of my subjects in law school	0	50	37.5	12.5	0	100
I feel equipped to solve legal problems in the real world	50	50	0	0	0	100

The findings in Tables 1 and 2 suggest that all first- and fourth-year students (100%) perceived the use of IRAC as a helpful model in solving legal problems, while 72% of first-year students and 63% of fourth-year students viewed legal syllogism model as being helpful. A minority of students were unsure (43%) or disagreed (22%) that legal syllogism model was helpful to them. This is supported by another finding in Tables 1 and 2 which suggests that 19% of first-year students and 12.5% of fourth-year students were not confident about using legal syllogism. This may be because the latter is a more nuanced and complex model to grasp. In contrast, 81% of first-year students and all the fourth-year students agreed and strongly agreed that they felt confident in using the IRAC model.

The findings in Tables 1 and 2 also show that most students tend to use IRAC in most of their law subjects with 80% of first-year students and all the fourth-year students stating that they do so. The legal syllogism model appears to be used by 60% of first-year students and 50% of fourth-year students. The reasons behind the reduction in the use of legal syllogism by students at the conclusion of their law degree are unclear.

Another statement in the Likert style questions in the survey asked students if they felt equipped to solve legal problems in the real world through using the models of legal reasoning taught to them. The results found in Tables 1 and 2 suggest that 90% of first-year students and all fourth-

year students stated they felt equipped to solve real world problems. Although we did not distinguish between IRAC and legal syllogism for this statement, the results in the previous paragraph (where 81% of first-year students and 100% of fourth-years students are confident in using IRAC) suggest that students would more likely use IRAC to legal problems in the real world. This is an interesting finding as we had thought that because students in their first year of studies had only been introduced to the two models of legal reasoning, they would have difficulty understanding how they could use them to solve legal problems in the real world. On the contrary, this positive finding supports what other writers[45] have stated; namely, that either model could be introduced early in the legal studies curriculum and that both models could be equally as effective in the development of legal reasoning skills.

In summary, the findings from our small-scale case study suggest that most first and fourth year students completing their law degree online perceive IRAC and legal syllogism as being effective in helping them acquire legal reasoning skills. Also, most students feel confident in their use of both models; however, it seems they prefer using IRAC over legal syllogism. Finally, the findings also suggest that students feel equipped to solve legal problems in the real world through utilising the models of legal reasoning taught to them in our law school.

V CONCLUSION

Legal reasoning is a critical skill for students studying law in institutions of higher learning. It has been defined by commentators as the application of law to the facts of a case to reach a reasonable conclusion.[46] Legal reasoning is necessary for students to achieve so they can successfully move through each stage of their law degree into the legal profession.[47] At the law school where we teach both IRAC and a more nuanced, complex model of legal reasoning based on the formal logic of legal syllogism is used.

This article has presented a small-scale case study on the perceptions of first- and fourth-year law students studying for their degree online in an Australian university. A survey was administered to first- and fourth-year students to explore their perceptions of the effectiveness of models used to teach legal reasoning.

The responses of 18 first- and fourth-year students suggest that the majority perceive IRAC and legal syllogism models to be effective in enabling them to develop their legal reasoning skills; and that most feel confident and well equipped to solve real world problems using these models.

As an aside, the findings appear to suggest that the pedagogy used to teach these models could transfer to the online learning environment without any adaptation or adjustments to teaching methods or pedagogies, since there were no adjustments made for teaching both models online. However, further research is required to support this notion.

[45] Turner, Boylan-Kemp and Martin (n 31) 133; Field and Meyer (n 32) 149.
[46] Kift, Israel and Field (n 2) 18; Field, Duffy and Huggins (n 3) 200; James, Field and Walkden-Brown (n 10) 11.
[47] Field, Duffy and Huggins (n 3) 200.

Although the findings from this study are limited and not generalisable, they may assist legal educators to feel more confident in using the two modes (IRAC and legal syllogism) to teach legal reasoning skills to students completing their degree online.

Future studies could explore other models which might also be effective to teach legal reasoning to diverse cohorts of law students, either online or in the face-to-face classroom, to ensure that such students can successfully enter the legal profession having attained this crucial skill.

Disclosure statement

No potential conflict of interest was reported by the authors.

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‘I DON’T KNOW WHY I’M DOING THIS’: TEACHING TECHNOLOGY SKILLS TO LAW STUDENTS

Mark Ferraretto[*]

ABSTRACT

Technology has had an outsize impact on the legal profession, transforming legal practice. We are now on the cusp of another fundamental paradigm shift as generative AI systems continue to mature. Consequently, it is crucial that law students understand legal technology, its potential and its challenges.

At Flinders University we have developed a legal technology curriculum that exposes students to legal technology, in part by learning how to code. Despite the overwhelmingly positive response by industry and the profession, challenges remain in engaging students with the benefit of learning legal technology skills.

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I INTRODUCTION

In 2020, Flinders University's College of Business, Government and Law (CBGL) introduced a legal technology topic as a core part of its undergraduate law degree offerings. Although incorporating legal technology into law degrees was not new at the time, entrenching technology as a core part of the curriculum was novel and innovative. This approach was a key element of CBGL's strategy to offer future-focused and innovative undergraduate law degrees, aiming to differentiate the University and attract students.

From 2020 to 2023, the core legal technology topic offered was *LLAW3301 Law in a Digital Age* (*Digital Age*). In this topic students learnt basic coding skills and wrote legal software applications primarily for not-for-profit (NFP) Industry Partners. The decision to teach coding was motivated by a desire to equip students with a fundamental understanding of the workings of technology. By involving Industry Partners students were able to see the direct and disruptive impact their legal technology skills could have on enabling access to justice.

This strategy was received extremely positively by the NFP community and the profession generally. More importantly, Industry Partners returned to work with *Digital Age* students many times. Perhaps surprisingly, reception by students was less positive. While many students who completed the topic gave very positive feedback, *Digital Age* consistently suffered from high student withdrawal rates, low Student Evaluation of Teaching (SET) scores and generally acquired a negative reputation through the student cohort. The dichotomy between student perception and industry reception has been quite stark.

In 2024 *Digital Age* was replaced by two new topics, one core and one elective, to address student feedback. In their first iteration, the new topics have had little impact on student engagement.

This article discusses the implementation of the CBGL legal technology curriculum, starting with *Digital Age*, its structure and its outcomes. The article covers the underlying motivation for the structure of *Digital Age* and learnings from the 10 iterations of the topic from 2020-2023. The article then examines the restructure of the legal technology curriculum in 2024 as a response to these learnings, and the challenges that persist. Finally, the article explores plans to address the underlying issues with the curriculum and proposals for subsequent iterations in 2025 and beyond.

II LLAW3301 LAW IN A DIGITAL AGE

A *Background*

In 2017 CBGL looked to re-focus its undergraduate law degree offerings to offer a curriculum focused on the needs of legal practice in the modern age. New core topics, including legal technology, legal innovation and a compulsory clinical placement, were proposed. *Digital Age* would be the core legal technology topic in the new offerings. The new degree offerings were approved for teaching in 2019 and were taught to students for the first time in 2020.

In 2019, and ahead of the introduction of the new degree offerings, CBGL conducted a pilot of Digital Age, offering the topic as an elective to students in both semesters.

The *Digital Age* pilot established the mode of engaging with NFP Industry Partners and assigning them as 'clients' to student project groups. Clients were asked to provide a real-world scenario to students, who would deliver a legal software application to address that scenario. This mode was proposed as a

way to engage students in the topic; however, it quickly became apparent that the applications students produced in the topic were of real value to their clients, with some clients asking for access to the application code for use in their organisations.

In its Semester 1 iteration, the pilot trialled the use of a proprietary 'no-code' platform from Neota Logic. The Semester 2 iteration trialled the use of the open source Docassemble platform. At the conclusion of the pilot, it was decided to continue teaching Digital Age using the open source model. This decision was based primarily on the equal ability for students to produce software applications regardless of platform, the reduced cost of teaching using open source software, and the increased flexibility the use of open source software provided to Industry Partners. These benefits will be discussed later in this article.

The topic was offered as core for the first time in Semester 1 2020 and was run every semester until the end of 2023. In all, 10 iterations of *Digital Age* were delivered.

B *Topic Structure*

The overarching aims of *Digital Age* were, firstly, to provide students with a fundamental and portable understanding of technology and its use in provision of legal services and, secondly, to expose students to the disruptive nature of legal technology, particularly in an access to justice context.[1]

These aims were achieved by teaching fundamental coding skills and working with Industry Partners on a technology project related to access to justice.[1]

The teaching methodology of the topic was designed with the aim of promoting a 'deep approach', that is, to foster a mode of learning that encouraged students to focus on the underlying reason behind their learning, as opposed to ingestion and recitation of knowledge.[2]

The topic was broadly divided into two parts: 'learning to code', and software development. In the first part students were taught the basic coding skills they would require to complete the topic. Students learnt by way of scaffolded coding exercises and bespoke learning materials. Students were set three coding assessments, each increasing in complexity, to assist with the development of coding skills.

The software development part was carried out as a project, with students assigned to project groups. The project nature of this part was supported by assessments aligned with project milestones. The assessment structure aimed to reflect a real-world scenario and to foster inquisitive learning.[3] Assessment tasks included preparation of a legal analysis of the client issue, a project scope document, and production of prototype and final software applications.

C *Class Structure*

Teaching delivery was originally planned to combine asynchronous coding exercises and assessments with weekly three-hour in-person workshops. The workshop component was quickly thwarted by the Covid-19 shutdowns in early 2020. The class mode subsequently shifted to weekly, short, small group project meetings with each student group. At these meetings students gave updates on the progress of

[1] 'LLAW3301 Law in a Digital Age' *Flinders University* (2024) <https://handbook.flinders.edu.autopics/2024/LLAW3301>.
[1] Ibid.
[2] Paul Ramsden, *Learning to Teach in Higher Education* (RoutledgeFalmer, 2nd ed, 2003) 43-45.
[3] Ibid 181.

their projects and were assessed on their work (depending on which assessment was due at the time). Assessment feedback was given immediately at the meetings. Students received this small group mode of teaching very well, forming a good rapport with their peers and with teaching staff despite the online-only nature of delivery. Consequently, this format was retained after the lifting of Covid restrictions.

In-person 'coding workshop' classes were introduced in the 2022 and 2023 iterations of the topic, also in response to student feedback requesting in-person coding instruction. Three such classes were held fortnightly in the first six weeks of the 2022 and 2023 iterations. Students responded to the coding workshops positively, appreciating the opportunity to learn coding skills with the support of teaching staff in an in-person environment.

D *Assessments*

1 *Coding Assessments*

Students completed three individual coding assessments in the first six weeks of the topic. These assessments were designed to build student coding skills, each assessment more complex than the one that preceded it. In 2022, optional coding quizzes were introduced as an alternative to the coding assessments in response to student feedback requesting quizzes and also as an alternative pathway for students struggling with learning coding. Students were able to choose between the coding exercises or a quiz for each as an alternative. This approach did not prove effective. It was difficult to encapsulate the same learning outcomes in the quiz assessments as the coding assessments. This difficulty resulted in quizzes that were easier to complete. As a result, the students who opted for the quizzes did not develop the requisite level of coding required for the topic. The quizzes were removed from the 2024 curriculum.

2 *Group Assessments*

Students were presented with a portfolio of Industry Partner projects and asked to indicate their preferred projects. Students were assigned to project groups, where possible according to their preferences, and worked with an Industry Partner to develop a legal software solution. The project nature of this part of the topic lent itself to alignment of assessments with project milestones. Students were assessed on: a written legal analysis of their client's issue; preparation of a project scope document, which outlined the proposed solution and the project management methodology; delivery of a functional software prototype; delivery of a final 'production' version of their application; and a presentation of the software to the clients at a formal Presentation Evening.

Group assessments were scheduled fortnightly and presented a structure for students to ensure that project activities were completed in a timely manner and guarded against students 'smashing it out' at the last minute. Assessments were conducted by way of project group meeting with teaching staff, conducted online. The online meeting was recorded and feedback delivered during the meeting. Recordings were made available to students.

Students were encouraged to 'play to their strengths', and a division of roles usually took place in groups, with some students taking on the bulk of coding, while others did legal analysis and others still liaised with clients, refined requirements and managed the project overall. In short, group members were expected to, and largely did, work as a project team. This combination of division of roles, teamwork, and working and communicating with clients not only met the topic's learning outcomes but also provided an authentic learning and assessment experience for students.

The final student assessment was an in-person 'Presentation Evening'. This was held as an event to which students' Industry Partners were invited as well as members of the legal profession, academic staff, family and friends. Students were assessed on a 10-minute presentation of their application to their clients. The use of a formal evening lent a deal of gravitas to the topic. Students consistently gave feedback as to the sense of reward and satisfaction they received from formally presenting a tangible, complete software product to a real client.

E *Collaboration with Computer Science and Engineering*

Three *Digital Age* iterations, Semesters 1 and 2 in 2021 and Semester 2 in 2023, were taught in collaboration with Bachelor of Computer Science students from the College of Science and Engineering (CSE). CSE students were engaged, firstly, to expose law students to working with IT professionals and vice-versa, and secondly, to allow for the development of more sophisticated applications.

The teaching and assessment structure of the topic was retained, with project groups now including one or two CSE students. CSE and Law students were equally required to complete the individual coding assessments and CSE teaching staff adapted their topic's assessment structure to broadly conform with the group assessment structure of *Digital Age*.

Generally, the collaboration was a success. Law students could draw on the CSE classmates' coding experience to assist them with coding concepts and the CSE students acted as peer supports for the law students. CSE students took great satisfaction from both working with a 'real-world' environment with non-technical 'clients', and the access to justice focus of the topic.

The nature of the collaboration was somewhat informal, arranged directly between one of the CSE Topic Coordinators and me. The informal nature of the collaboration, which bypassed the University's teaching resource allocation processes, made it challenging to continue on an ongoing basis. Given the positive experience for Law and CSE students alike, this collaboration should be formalised to ensure it continues into the future.

II RATIONALE

Digital Age set out to achieve two primary aims. One was to teach legal technology skills and to do so in a fundamental and portable way. Second was to demonstrate the outsize impact technology could have on access to justice.

A *Technology Skills*

Legal technology topics are taught in many different ways. I chose to teach law students rudimentary coding skills. The rationale for this approach is to expose students to base technology concepts that are portable to any technology. Concepts such as data storage, decision-making, data processing and presentation are expressed in the most fundamental way as code. By learning coding fundamentals students would be equipped with skills they could apply to any technology context.

The decision to teach coding skills was reinforced by the two 2019 *Digital Age* pilot iterations. The proprietary no-code platform used in the Semester 1 2019 was initially simple to use. However, as students required more sophistication in their applications, the software proved to be more and more difficult to understand. The supplied training materials did not cover advanced concepts and vendor support did not extend to student queries. This resulted in time lost and frustration for students and as we tried to navigate that software's idiosyncrasies. In comparison, while students in the second pilot

iteration found learning Docassemble challenging, once the concepts were mastered, students were able to progress with less support from teaching staff.

I concluded that the effort put into learning skills for each option was similar. Students' initial learning experience with the proprietary platform was easier, but advanced concepts were difficult to implement. Students' initial learning experience with Docassemble was more challenging, but advanced concepts came more easily. This outcome, along with the potential for Docassemble to make the topic more sustainable and more flexible from a licensing perspective, led to the decision to use Docassemble as the sole technology platform for *Digital Age*.

B *Access to Justice*

It became apparent very quickly from the *Digital Age* pilot that small, simple legal software applications could have a disruptive impact on access to justice. These applications fill a niche in the legal technology/access to justice space that is currently not served for a number of reasons. These include a lack of:

- budget on the NFP side;
- understanding of legal and technical requirements;
- know-how to construct requirements into specifications understood by a developer; and
- commercial incentive for professional developers to engage with projects of this small size.

In contrast to these challenges stands consistently high demand from Industry Partners to take student-written applications into their organisations. A small number of Partners have done so, with two provisioning IT systems and commissioning three student projects, one SA Government Partner taking the student code and porting it to an internally approved software platform, and another engaging a third party to host their student project. This small number does not reflect the consistent demand from Partners, semester after semester, to commission student-written applications. This demand, to date, has been thwarted by a lack of resources and Partner know-how. These constraints will be addressed by the Lab, which is discussed further in this article.

Over the 10 iterations of the topic, students have collaborated with approximately 40 Industry Partners and have written over 70 legal software applications. Although a majority of Industry Partners are located in South Australia, students have also engaged with Industry Partners in New South Wales, the Northern Territory, and the United Kingdom.

III KEY LEARNINGS AND CHALLENGES

A number of significant successes have come from *Digital Age*, as well as a number of equally significant challenges. These are discussed in turn.

A *Engagement with Industry*

Digital Age has had spectacular success as a means of engagement with industry. The potential in the legal software applications developed by students is apparent and well recognised by Industry Partners. This led to international engagement and ongoing demand from the NFP

sector to engage with the topic. The topic has resulted in a strong and diverse network of NFP organisations, government agencies, and private sector firms engaging with the University on a repeated basis. The topic has a sufficient reputation so that teaching staff are now frequently approached by existing and potential Industry Partners looking to collaborate with the topic.

Reception of the topic by the legal profession was also positive, with many practitioners requesting a similar topic be made available to them. In response to practitioner feedback, CBGL delivered a modified version of *Digital Age* targeted at the profession. Called *Coding the Law*, the topic was made available as an online self-paced course to industry. *Coding the Law* was first offered in 2021 to a positive reception. Approximately 15 practitioners enrolled in the topic, from around Australia, the UK and Pakistan.

Some *Digital Age* students have also experienced rapid career progression or increased demand as a result of their *Digital Age* studies. Students report that a link to their software application in their CV piques interest during interviews. Some students have received rapid promotion based on their ability to leverage skills learnt in *Digital Age* in their employment. I have received feedback of promotion of a graduate solicitor into a practice management role, and promotion of a clerk into management of a technology transformation project. CBGL has also been approached by employers looking to employ graduates that have completed *Digital Age*.

B *Student Engagement*

Student engagement has been both positive and challenging. Anecdotal and SET feedback indicates that, from a positive perspective, students reported a sense of achievement at learning a new skill, a sense of satisfaction at producing a tangible product for a real client, and even being inspired by the disruptive nature of legal technology. However, students also reported significant challenges, primarily around learning to code. Students expressed frustration at the time and effort required to learn coding skills, failed to see the relevance of doing so on their careers, did not enjoy group work, and sometimes simply found the coding too difficult.

Anonymous surveys conducted in 2020 and 2024 yielded similar feedback. The 2020 survey of withdrawing students asked the question: 'What do you think about Digital Age?' and presented a set of positive and negative responses. The highest response selected was: 'I don't think that law students need to learn coding skills'. The second and third highest responses were the choices 'I don't see the value in learning this topic' and 'I don't see how this topic relates to law'.[4] The 2024 survey was also directed to withdrawn students. Of the approximately 30 surveys distributed only three responses were received. Two of the three respondents choose 'I don't think this topic is relevant to my degree' as an answer to the question 'Why did you withdraw from this topic?'.[5]

Retention rates for the topic have also been problematic. Retention rates for each iteration of the core topic have been 70% or less, a consistently low number in comparison to average University and

[4] Mark Ferraretto, 'LLAW3301: Withdrawn Students Survey' (9 September 2020) <https://forms.office.com/r/teDekBhSG4> [closed].
[5] Mark Ferraretto, 'LLAW3337: The Digital Lawyer - Withdrawing Students Survey' (26 April 2024) <https://forms.office.com/r/WLU7JsaSic> [closed].

College rates. In addition, the '%broad agreement' SET metric, which measures overall satisfaction with a topic and teaching staff, consistently scores around 70% - 75%,[6] which is below the 80% benchmark for undergraduate topics set by the University.

In short, SET, anecdotal and survey feedback, as well as retention issues, lead me to conclude that the *Digital Age* topic faces two primary challenges: first, a general apprehension towards learning coding skills exists; and second, students do not see the relevance of doing so.

This sentiment stands in stark contrast to the overwhelmingly positive reception of the *Digital Age* topic, and its aims, by Industry.

C *Advances in Technology*

This final learning does not arise from the teaching of the *Digital Age* topic but is relevant nonetheless.

The release of ChatGPT by OpenAI in 2022 was a step change for artificial intelligence, bringing it well and truly into the mainstream. Since 2022 there has been a rapid progression in the use of AI, particularly by embedding it into software and devices used day to day, such as phones[7] and computers. Importantly, Microsoft's Word, Excel and PowerPoint products also have embedded Generative AI features,[8] currently for a fee.[9]

The rapid development of AI has the potential to fundamentally change how people interact with their devices. In my view, AI has the potential to make outcomes that previously required coding knowledge, such as the development of simple legal software applications, available to the general public by way of natural language instructions provided to an AI system.

This development has an impact on the current structure of *Digital Age* as it stands, given the topic is heavily focussed on learning coding skills. These skills have, up to now, been highly relevant in understanding technology. However, the advent and development of AI tools stands to make coding skills less relevant.

It will be important for a future-focussed legal technology topic to ensure that AI tools are covered in its curriculum.

D *Is Learning to Code Necessary?*

Student feedback makes it clear that it is apprehension about coding that drives the issues related to the topic. The coding is seen as an end in itself, as opposed to a means of learning about technology and its impact on access to justice. This explains feedback as to the relevance of learning coding skills.

This begs the question: should students learn to code at all? This question should be addressed, at least for now, in the absence of AI, as that technology is yet to mature.

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[6] See eg, 'SET LLAW3301 Topic Semester 2 2021'; 'SET LLAW3301 Topic Semester 1 2023'.
[7] '14 New Things You Can Do with Pixel Thanks to AI' Google (Blog Post, 13 August 2024) <https://blog.google/products/pixel/google-pixel-9-new-ai-features/>.
[8] 'Microsoft Copilot for Microsoft 365—Features and Plans | Microsoft 365' *Microsoft* (Web Page) <https://www.microsoft.com/en-au/microsoft-365/microsoft-copilot>.
[9] See eg, 'Copilot for Microsoft 365 - Business Plans | Microsoft 365' *Microsoft* (Web Page) <https://www.microsoft.com/en-au/microsoft-365/business/copilot-for-microsoft-365>.

I entered legal academia from a long career, firstly in Information Technology and then, for a shorter time, as a legal practitioner. My experience as a technology-literate lawyer showed the benefits of understanding technology as a practitioner. Doing so allowed me to accurately instruct my firm's technology providers, adopt advanced software systems, such as electronic discovery systems, and increase my own productivity as a solicitor. It was this personal perspective that I brought into academia and that formed the basis of the design of *Digital Age*. This approach, teaching coding, was positively reinforced by my interactions with members of the profession who, as discussed, saw the topic as a positive step forward. In addition, I received feedback from the University's legal clinic director that students who had completed *Digital Age* demonstrated significantly better problem-solving skills at their clinical legal placement than students who had not yet taken the topic.

Teaching coding to law students has received some attention, most of which appears positive. For example, Alfredo Contreras and McGrath write that '[t]echnology can empower the vulnerable and disenfranchised, especially when lawyers are clever enough to exploit it for them',[10] a statement that is very closely mirrored by the disruptive impact demonstrated by *Digital Age*. Alexander Smith and Nigel Spencer also relate coding skills to the ability to better understand problems 'digital in nature' and how digitally literate lawyers can provide more effective services to their clients.[11]

In short, there seems to be some agreement, experiential and in published works with my view. However, more investigation is required to conclude the utility of teaching coding skills to law students, particularly in the context of ever-maturing AI tools.

IV RESPONSE TO LEARNINGS AND CHALLENGES

Substantial revisions were made to the 2024 curriculum to address student issues. Unfortunately, these resulted in a reduction in industry engagement and did not achieve their intended outcomes. More revisions are planned for 2025 and beyond, as well as introducing a legal technology lab.

A *The 2024 Curriculum*

In 2024, *Digital Age* was replaced as the core topic by *LLAW3337 The Digital Lawyer* (Digital Lawyer) and a new elective topic, *LLAW3338 Technology in Access to Justice* (*TAJ*), was introduced. These changes were made to reduce pressure on students with respect to coding. Coding in *Digital Lawyer* was spread across the entire semester and with more support and resources. *TAJ* retained the industry engagement but became optional, allowing students uncomfortable with advanced coding to avoid it.

[10] Alfredo Contreras and Joe McGrath, 'Law, Technology, and Pedagogy: Teaching Coding to Build a "Future-Proof" Lawyer' (2021) 21(2) *Minnesota Journal of Law, Science and Technology* 297, 307.
[11] Alexander Smith and Nigel Spencer, 'Do Lawyers Need to Learn to Code? A Practitioner Perspective on the "Polytechnic" Future of Legal Education' in in Catrina Denver (ed), *Modernising Legal Educations* (Cambridge University Press, 2020) 18, 31.

These changes did not achieve their desired outcomes. Students still resisted the coding aspect despite the additional time and support given to them. Retention rates and SET scores did not improve. No students enrolled in *TAJ* for 2024 and the topic was not taught in that year.

B *The 2025 Curriculum*

For 2025, the *Digital Lawyer* topic will be retained but the coding aspect will be de-emphasised, comprising approximately 25% of teaching time and 20% of the topic's assessment (down from 40% in 2024). The 2025 iteration of *Digital Lawyer* will focus on practical legal technology skills, such as using office software, and on the use of AI in legal practice, its benefits and issues. The reduced coding component will be presented towards the end of the teaching period, to enable students to be better prepared to encounter it.

The 2025 iteration of *TAJ* will be renamed to *LLAW3338 Justice in a Digital Age* (*JDA*). *JDA* is essentially a reprisal of *Digital Age* but as an elective topic. It will include *Digital Age's* how-to-code component and retain industry engagement. *JDA* will be de-coupled from *Digital Lawyer* and will be open to any student who has completed their first-year law topics. *JDA* will also be available to CSE students.

These changes have been made in response to ongoing low retention rates but also to anecdotal and surveyed student feedback. I anticipate an improvement in student perception of the topics, but this remains to be seen.

C *The Digital Law Lab*

The Digital Law Lab (the Lab) is a legal technology lab which, at the date of writing, is in its establishment phase. The aim of the Lab is to provide an avenue for Industry Partners to commission and run student-written software applications. This will be achieved by way of offering a subscription, or software as a service (SaaS) to industry partners. The Lab will commission, host and maintain software applications for Industry Partners.

The establishment of the Lab addresses the major obstacle preventing commissioning of student applications. Removing this obstacle will increase industry engagement with the *JDA* topic. This in turn should make the topic more appealing to students. The Lab itself will serve as a demonstrator of a 'real' legal technology business and will employ both law and CSE interns. These internships can be integrated with *JDA*, either as part of teaching or by making *JDA* a pre-requisite to an internship.

It is anticipated that the combination of the Lab as a demonstrator, as a potential employment opportunity and as a driver of industry engagement, should in turn drive student engagement into the *JDA* topic and, indirectly, demonstrate a benefit to engagement with the *Digital Lawyer* topic.

D *2026 and Beyond*

Feedback on the 2025 topic structure as well as research outcomes regarding teaching coding skills will greatly influence the 2026 topic curricula. It is anticipated that that *JDA* will be

retained in its 2025 form, continuing industry engagement and interacting with the Digital Law Lab. It is also expected that by 2026 a formal engagement process with CSE will enable CSE students to enrol in the topic. Options to expand *JDA* past law and into non-law areas of access to justice are also being considered.

While *Digital Lawyer* will be retained, its curriculum will depend on the results of the 2025 modifications and on research outcomes with respect to teaching coding to lawyers. One option may be to remove coding from *Digital Lawyer* and retain it only in JDA. Another may be to revise how coding is taught and also emphasise that the skill is a means to what are very positive and disruptive ends. Feedback will be sought from students, both informally in class and by way of surveys. Surveys will include withdrawing and withdrawn students, as took place in 2020, 2021 and 2024. In short, the aim is to gain an accurate picture of student sentiment and balance this against best practice regarding teaching and learning of coding skills.

V CONCLUSION

The legal profession has some way to go to fully exploit technology in legal practice and deliver legal services in a more efficient and cost-effective way, and so enable access to justice. When designing *Digital Age*, I set out to teach technology skills to law students in such a way that would engage them and demonstrate its impact. Students were to leave the topic with a set of enduring and portable skills that would ultimately make them more valuable and more employable as graduates, particularly in a profession that lags in technology adoption. The outcome has been an unfortunate dichotomy that sees industry accepting this initiative with eagerness and open arms and students, just as eagerly, attempting to avoid or resist learning these skills.

In addition to the above challenges, there is also the spectre of a very rapidly developing AI industry which has the potential to be a significant technology disruptor, fundamentally altering how we interact with technology.

Fundamentally, an answer to the coding question must be sought. Is coding still a relevant skill? How can it be taught effectively? Ultimately, students should know ‘why am I doing this’. They should see, or be shown, the disruptive nature that technology can bring to bear, both in access to justice, and to the practice of law generally.

EMBEDDING COLLABORATIVE PRACTICE SKILLS INTO THE TEACHING OF FUTURE LAWYERS

Charissa Tarzia[*]

ABSTRACT

The bias towards traditional models of what lawyers do and how client problems are resolved will perpetuate if law schools continue to focus on developing adversarial skills and refer to other skills as alternatives. Future lawyers need to graduate law school with a toolkit that extends beyond traditional adversarial skills if they are to forge a career that can co-exist and benefit from emerging legal technologies. A lawyer who has empathy, emotional intelligence and can communicate constructively and with the purpose of advancing a matter to resolution while advocating for their client has powerful skills; the *human* skills which are most likely to complement effective use of legal technology and safeguard the lawyer's relevance.

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I INTRODUCTION

'Law is the business to which my life is devoted, and I should show less than devotion if I did not do what in me lies to improve it, and, when I perceive what seems to me the ideal of its future, if I hesitated to point it out and to press toward it with all my heart.'[1] Oliver Wendell Holmes' words are from 1897 but they capture my passion for practical skills training in legal education. The world of legal practice into which our current and future students will enter requires them to have adversarial legal skills while also being adaptable and adept at advising on and participating in legal problem solving in negotiation contexts that do not involve the courtroom. A strong, cost-effective legal system is essential to upholding society values and producing timely outcomes. Long delays and excessive costs are two key features of the civil justice system that have left clients stressed, financially stretched and often in receipt of outcomes that leave them feeling short-changed. Although only a small percentage of litigated matters progress to a final hearing (trial) the legal process often excludes the emotional and otherwise non-legal issues associated with conflict, the resolution of which is often more important for a party's ability to move beyond the conflict and safeguard against reoccurrence of the conflict in the long term. Legal technologies should be harnessed to make some processes more efficient,[2] but they do cannot replace the lawyer's role in connecting with their client, the strategic decision making and upskilling of clients to empower them to, where possible, create through negotiation a resolution that all parties accept and will comply with because they have taken ownership of it. The knowledge and skills necessary for success in Collaborative Practice have relevance to any negotiation context, irrespective of whether students choose to practise law or not.

This article explores Collaborative Practice as part of the professional capability of lawyering in Australia in the future. At the core of this inquiry is the question of how law schools can incorporate the principles of Collaborative Practice to best prepare students to become lawyers who can advocate in multi-disciplinary settings, be outcome focussed and are equipped with the *human* skills to harness the rise and impact of technology on legal practice. To address this question, this article considers what Collaborative Practice is and why it was developed, the synergies between Collaborative Practice skills and the skills identified as being important for lawyers of the future and therefore why the teaching of Collaborative Practice skills is a relevant consideration for the development of legal education curriculum. I used a mixed methodology (empirical and doctrinal) with supporting evidence derived from interviews.

II WHAT IS COLLABORATIVE PRACTICE?

In 1990, Stuart Webb founded collaborative law or Collaborative Practice – defined as 'a process in which the lawyers for the parties to a dispute agree to work together in resolving their conflict using cooperative rather than adversarial strategies and litigation.'[3] The transition from the term collaborative law to Collaborative Practice results from the broadening of its use

[1] Oliver Wendell Holmes, 'The Path of the Law' (1897) 10 *Harvard Law Review* 457.
[2] Richard Susskind, *Tomorrow's Lawyers: An Introduction to Your Future* (Oxford University Press, 2013) 3.
[3] Richard Shields, 'On Becoming a Collaborative Professional: From Paradigm Shifting to Transformative Learning Through Critical Reflection and Dialogue' (2008) *Journal of Dispute Resolution* 427.

beyond family dispute resolution and the 'focus on a multidisciplinary approach'[4] that involves 'disputing parties, lawyers, mental health experts, financial experts, business planners, conflict coaches and any other team member that can usefully support the process.'[5] In essence, it is a consensual, interest-based and client-centred negotiation process that occurs through a series of round-table discussions between clients/lawyers and relevant neutrals and all advice given in these sessions.

The collaborative agreement signed reflects the parties' and lawyers' commitment to find a mutually satisfactory settlement, to act in good faith in negotiations, engage in interest-based negotiation and that the lawyers and experts will withdraw if the matter is to be litigated.[6] This is arguably the most remarkable feature of the Collaborative Practice method of dispute resolution – as it requires a lawyer's intention and commitment to integrate facilitative, client-centred conflict resolution practices,[7] and that commitment is reinforced by motivating the lawyers to stay in the process and preventing them from falling back on litigation threats (as they must withdraw if either party wishes to resort to litigation). Tesler suggests further that another defining feature of Collaborative Practice is that traditional lawyering techniques such as positional bargaining are not acceptable.[8]

III APPLICATION OF COLLABORATIVE PRACTICE

The growth of Collaborative Practice has occurred mainly in family law matters, stemming from concern about the impact of high conflict divorce on children, continuing parental relationships between parties, a desire to control the outcome and to avoid the stress of adversarial conflict.[9] However, as the underlying principles of Collaborative Practice are about seeking respectful negotiations to preserve client integrity and support the parties' desire that their relationship would survive beyond the immediate dispute, this approach to negotiation applies to a far broader range of civil law contexts and relationships, including succession, employment law, property law and commercial contractual disputes where there is mutual benefit and desire for preservation of the relationships that subsist between the parties. Great potential exists for the Collaborative Practice approach to offer a cost-efficient and multi-disciplinary method of resolving disputes related to commercial and corporate dealings that avoids protracted legal proceedings, unwanted negative media or reputational damage and preserves fairness, dignity and respect for all parties seeking to resolve problems in a way that does not harm their capacity to continue to do business.

When significant power imbalances exist between the parties or no ongoing relationship after conclusion of the legal dispute is likely, engagement in a full Collaborative Practice process

[4] Tania Sourdin, *Alternative Dispute Resolution* (Thomson Reuters, 4th ed, 2012) 103.
[5] Ibid.
[6] Robert Cochran, 'Collaborative Practice's Radical Possibilities for the Legal Profession: "[Two Lawyers and Two Clients] for the Situation"' (2011) 11 *Pepperdine Dispute Resolution Law Journal* 229.
[7] Mark Soboslai, 'Teaching Law Students About Collaborative Practice in an ADR Course', Mark R Soboslai, Collaborative Divorce and Mediation (Blog Post, 20 June 2022) <https://marksoboslai.com/teaching-law-students-about-collaborative-practice-in-an-adr-course/>.
[8] Pauline Tesler, *Collaborative Law: Achieving Effective Resolution in Divorce Without Litigation* (American Bar Association, 2001).
[9] Cochran (n 6).

might not be beneficial. However, the approach to negotiations that underpins the Collaborative Practice philosophy of understanding a client's best and worst outcomes, as well as the best and worst outcomes for the other party would be generally beneficial for lawyers as it assists with strategic management of the matter. If there is consideration of what might be driving the conflict from the other party's perspective. Sometimes this perspective can help a lawyer to objectively challenge a client's instructions and provide a 'reality check' on their expectations of how a matter is likely to progress.

How can we teach this approach of negotiation and strategic planning? Short hypothetical scenarios in legal areas, such as a challenge to division of an estate, a family law matter, a neighbourhood fencing dispute, or a breach of contract between contractor and subcontractor could be used as a basis for students to identify what would be the best and worst outcomes for a particular party and how those best and worst outcomes inform the priorities for settlement offers and where there is room for compromise. This sort of strategic planning could also apply for migration or criminal matters which have an uneven balance of power and bargaining, where considering the broader context for other party has relevance to the way in which settlement offers might be framed to make them more likely to be accepted.

IV EMPIRICAL RESEARCH PROJECT

I wanted to learn more about how Collaborative Practice was operating in practice in South Australia: why were so few legal practitioners accredited as collaborative practitioners and why did the use of Collaborative Practice remain limited to family law? As a Master of Laws student at the University of Sydney, I obtained ethics approval to conduct semi-structured, in-depth interviews with eight South Australian family law legal practitioners who were also accredited as Collaborative Practice practitioners to conduct a research project on the topic: Collaborative Practice: the future of lawyering? How can law schools best prepare students to become advocates and/or collaborative practitioners?

A *Structure of the Interviews and Topics Discussed*

The interviews were semi-structured as I had prepared a set of questions to ask each participant, on topics including: knowledge of the history of Collaborative Practice in the South Australian legal profession; the Collaborative Practice training available for legal practitioners; date of accreditation in Collaborative Practice; the number of Collaborative Practice matters they had conducted; w the role of the Collaborative Practitioner lawyer; differences between giving legal advice in a Collaborative Practice matter; effects of Collaborative Practice training on advice or processes when engaged in an adversarial matter; the role of neutral experts; the importance of communication between the parties in Collaborative Practice; the impact of Collaborative Practice process on settlement offers or outcomes; the costs of Collaborative Practice family law matters compared to the adversarial alternative; ethical issues that may arise in conducting both Collaborative Practice and adversarial matters; and the role of feedback and mentoring in contributing to improved Collaborative Practice in South Australia. I chose these topics to explore the advantages/disadvantages of Collaborative Practice and whether law schools should be teaching skills needed to be an effective Collaborative Practice practitioner but

allowed time and the opportunity to ask follow-up questions dependant on the answers given by participants to gain an in-depth understanding of their Collaborative Practice experience.

B *Choosing the Interview Participants*

I chose South Australia as the focus for the study because I lived and worked there at the time as a family lawyer (and accredited in Collaborative Practice) and because of the active community of practitioners offering Collaborative Practice in family law. The time frame and the scope of this research did not allow me to interview practitioners in other jurisdictions to compare their experiences. However, some of the lessons learned from this research may be applicable to other jurisdictions.

I selected participants for the research mainly from the Collaborative Practice SA website, which included a list of the names and contact details of collaborative lawyers and financial or mental health experts who were members of the Adelaide Practice Group and the International Academy of Collaborative Professionals. At the time the research was conducted in 2016, eighteen legal practitioners were listed on the Collaborative Practice SA website, all of whom I contacted and invited to participate in an interview. In addition, I contacted three additional family law legal practitioners from my then-employer in Adelaide, who were accredited collaborative practitioners (but not part of the Adelaide Practice Group and therefore not listed on the Collaborative Practice website) and invited them to participate in an interview. Of the 21 practitioners contacted, 11 did not respond. A further three practitioners, who initially agreed to be interviewed, were unable to proceed with the interview process due to work and family commitments. Therefore, seven of the initial 21 targeted practitioners were available for an interview. An additional practitioner was identified during the interviewing process who agreed to be interviewed which brought the total number of interviews to eight. All interviews were audio recorded with interviewee consent and were of one and a half to two hour's duration. I transcribed seven of the interviews. One of the audio recordings did not save correctly and was lost but I recorded notes immediately following that interview.

Although the number of practitioners interviewed is small, it represented roughly a third of the active professionals engaging in Collaborative Practice work in the South Australian legal profession at the time. The number of active and accredited Collaborative Practice legal practitioners in South Australia as listed on the Australian Association of Collaborative Professionals (www.collaborativeaustralia.com.au) has increased, with twenty-nine lawyers currently listed.

C *Analysis of the Interviews*

I analysed the transcripts thematically, applying grounded theory analysis, to identify points of similarity and difference in the interviewees' experiences and training, why they chose to be a Collaborative Practice practitioner and how law schools might incorporate skills training to prepare students for future legal practice.

D *Summary of Findings*

A trend was evident in relation to when practitioners sought Collaborative Practice training and accreditation, which was once they had reached 10 years post-admission practice, disillusionment with the adversarial system had set in and unsatisfying outcomes for clients prompted them to broaden their skills. Running of a matter using Collaborative Practice is a team approach with everyone focussed on problem solving, but it is distinguished by much more, including a commitment to complete transparency, genuine communication between the lawyers and modelling respectful communication for the parties, natural conversation and positively finding solutions.

1 Advantages of Collaborative Practice

Key advantages of Collaborative Practice revealed include:

- the Collaborative Practice approach, including improved client management and effective use of neutral experts (creating a multi-disciplinary team tailored to client needs),
- more practical and lasting outcomes for clients,
- the scope for practitioner mentoring and skill development and
- the overall change in how collaboratively trained lawyers approach lawyering.

Robert Cochran identifies the benefits of Collaborative Practice as increasing the creativity of the parties and lawyers in developing options/solutions, reducing the gamesmanship of traditional lawyer negotiations, and creating an atmosphere of openness, cooperation, and commitment to resolving the matter, all of which can produce fair and more satisfactory outcomes than traditional legal negotiations.[10] Unlike a similar interest-based dispute resolution process – mediation – Cochran warns that mandating participation in a collaborative process prior to litigation is likely to reduce its effectiveness and may cause it to become misused as a means of gathering information to be later used as an advantage in litigation.[11] As with any dispute resolution process, it will not be appropriate for every client and every matter, as the parties need to commit to preserving the relationships involved and have the mutual trust and goodwill to be respectful and civil.

2 Challenges of Collaborative Practice

The challenges of Collaborative Practice identified included:

- difficulty convincing clients to opt for this process when there is a limited pool of legal practitioners to choose from and both parties have to engage a Collaborative Practice legal practitioner;

- costs – particularly management of what can be higher upfront costs because of the involvement of more professionals at earlier stages of the matter and reassuring clients that

[10] Ibid.
[11] Ibid.

the matter is likely to be resolve more quickly, so the overall cost and investment remains far lower than the adversarial alternative;

- management of positional clients or lawyers; and
- finding the balance for the pace at which a matter progresses and managing the differing levels of client readiness to work through issues and resolve them.

The issue of costs is a general misconception about Collaborative Practice, derived from a presumption that a multidisciplinary team is cost prohibitive. However, interviewees believed the collaborative method typically leads to early resolution and therefore cost efficiency. Shelby Timmins, principal of Divorce Done Differently and current President of Collaborative Professionals (NSW) argues that a collaborative divorce typically costs between $20,000 and $60,000.[12] Comparatively, she indicates that an equivalent fully litigated matter can cost between $50,000 and $150,000 and take roughly 18-30 months to reach Court, with more complex cases costing up to $500,000.[13] This comparison indicates that, although Collaborative Practice involves more professionals, early intervention and a multi-disciplinary team capacity to support and empower the parties significantly reduces the overall cost. Rather than being prohibitively costly, Collaborative Practice appears to deliver cost-effective outcomes that meet client needs.

V WHY SHOULD COLLABORATIVE PRACTICE SKILLS BE UTILISED IN LEGAL EDUCATION?

A *Shaping a Lawyer's Role in Advice and Dispute Resolution*

Richard Shields argues that becoming a collaborative practitioner is a 'retooling process' whereby adversarial behaviours are unlearned, and collaborative behaviours are learned.[14] Collaborative Practice requires the process and the outcome to be driven by the client. This approach is counterintuitive for those with adversarial training and requires a shift in a lawyer's underlying assumptions about their role.[15] The propensity for lawyers to be driven by ego, the desire to control the situation and to perform for their client can be barriers to effective Collaborative Practice.[16] Becoming a Collaborative Practitioner requires lawyers – whether a law student or experienced practitioner – to learn that the process is not about them; it is about providing a service to the client that puts the client at the centre of that process. With greater ownership of the process, comes the increased potential for an outcome that all parties will adhere to, making resolution more lasting and meaningful. It creates space for both the opportunity and responsibility to contribute meaningfully to your client's ability to make informed decisions. 'Compared with adjudicative processes which focus backward upon proof

[12] Duncan Hughes, 'This increasingly popular divorce strategy can save money and tears', *The Australian Financial Review* (online, 10 April 2024) <https://www.afr.com/wealth/personal-finance/this-increasingly-popular-divorce-strategy-can-save-money-and-tears-20240404-p5fhc4>.
[13] Ibid.
[14] Richard Shields, 'On Becoming a Collaborative Professional: From Paradigm Shifting to Transformative Learning Through Critical Reflection and Dialogue' (2008) *Journal of Dispute Resolution* 427, 437.
[15] Ibid 463.
[16] Jim Hilbert, 'Collaborative Lawyering: a Process for Interest Based Negotiation' (2010) 38(4) *Hofstra Law Review* 1083, 1089-1090.

of historic facts and persuasion of the decision-maker, consensual processes [such as Collaborative Practice] focus forward on constructive conflict resolution.'[17]

I submit that legal education can better equip law students for their future law careers if the adversarial skills are complemented by intentional teaching of client-centred dispute resolution methods that challenge lawyers to see their role as peacemakers, facilitating their clients' self-determination and ownership of the process and the outcome.

B *Addressing Client Needs*

Collaborative Practice was developed to address client demand for a process that enabled them to have better control over the resolution of their family law matter, with the flexibility to create a more complete solution. Most importantly, it is a distinctive process because it forces the parties, lawyers and experts to recognise and prioritise the effective relationship that the parties wish to maintain beyond the dispute resolution process. Although the parties who seek out Collaborative Practice still have legal issues and need assistance to work through them, they wish to opt out of the legal battle. The challenge for lawyers, who participate in the collaborative process, is not just in understanding their clients' underlying needs and goals, and management of often high levels of emotion at meetings, they also need to model for their clients empathy and respectful communication with the other lawyer and experts so that it is reflected in their client's communication, leading to constructive discussion that brings the parties closer to a solution they can both accept. This approach creates an authentic opportunity to hone future lawyers' negotiation skills whereby they develop the skills to understand their clients' needs, goals and best/worst possible outcomes. Ultimately, an ability to listen and navigate the emotional dynamics of a negotiation process, together with the communication skills to advocate for their client, while remaining respectful and without resorting to powerplay negotiation techniques that can be polarising and ineffective, will benefit their clients.

C *A Place for Collaborative Practice in Legal Education*

Although Collaborative Practice has its roots in family law, the underpinning principles are more broadly applicable to developing holistic, outcome-driven lawyers who can overcome the long delays and excessive costs of the adversarial system,[18] and achieve greater equity and social justice outcomes in the civil legal system.[19] This applies in particular to areas where the ongoing relationship between the parties either will (in the case of parenting or family relationships) or could beneficially (in the case of employment or neighbours or commercial business relationships) survive the conflict, so the management of the dispute has the capacity

[17] Mark Soboslai, 'Teaching Law Students About Collaborative Practice in an ADR Course', *Mark R Soboslai Collaborative Divorce and Mediation* (Blog Post, 20 June 2022) <https://marksoboslai.com/teaching-law-students-about-collaborative-practice-in-an-adr-course/>.
[18] Cochran (n 6).
[19] Judy Gutman, 'The Reality of Non-Adversarial Justice: Principles and Practice' (2009) 14(1*) Deakin Law Review,* 29, 44.

to create space for healing rather than emotionally, financially and reputationally ruining the parties in the pursuit of a win in Court. As Sir Anthony Mason observed:

> To treat the law as a discrete set of principles in a vacuum and without a context is to misconceive its dynamic and ubiquitous nature and, more importantly, to undervalue or even to overlook the manner in which it contributes to the fundamental fabric of modern society.[20]

It may be beneficial from students' perspectives to consider incorporating the education and practice of Collaborative Practice philosophy and skills in topics such as Civil Procedure and Remedies as it has a foundation of interest-based negotiation that is already a recognised element of the legal curriculum. The essential skills developed from participating in a Collaborative Practice model are the interest-based assessment of both parties, the respectful communication to be modelled, the capacity to recognise and manage the emotional dynamics that exist when a negotiation is taking place including when to limit discussion that is becoming unhelpful and derailing progress of the parties' commitment to finding a mutually acceptable resolution and the ability to support a client in taking accountability and ownership of the issues at hand and the available outcomes. The best way to practise these skills and see their importance in shaping better ways to support clients through their legal issues is to role play simulated negotiations, where students are allocated to different roles in the Collaborative Practice process, whether as lawyer or client.

Since unaccredited lawyers will not offer Collaborative Practice to their clients, it is incumbent on potential litigants to seek it as an option for themselves. The cognitive bias of 'Maslow's hammer' applies here: '[i]f the only tool you have is a hammer, it is tempting to treat everything as if it were a nail.'[21] If a lawyer's toolkit focuses on adversarial skills, inevitably they will guide a client through an adversarial process and are less likely to recommend other options to the client that may better fit their goals and budget. Client needs are not one-size fits all, so why would we not seek to expand the lawyer's toolkit for the skills and services they can provide to clients? The principles and skills that develop an effective collaborative practitioner can also develop effective future lawyers who have skills that are complementary to the rise of legal technologies. The principles of Collaborative Practice have relevance and benefit to all law students, and this is why this article posits for their incorporation within existing law curriculum rather than focusing only on Collaborative Practice for accreditation or as an add-on elective.[22]

VI THE FUTURE OF LAW AND INNOVATION IN THE LEGAL PROFESSION (FLIP) REPORT

The FLIP Report summarises an in-depth inquiry into changes in the legal profession and recommendations for lawyers to adapt to those changes.[23] These recommendations identify key skills for future lawyers. If we consider the synergies between these and the skills of a

[20] Sir Anthony Mason (Speech, Law Faculty, University of Woolongong, 19 February 1991) quoted in Simon Bottomley and Simon Bronitt, *Law in Context* (Federation Press, 3rd ed, 2006) 2.
[21] Abraham H Maslow, *The Psychology of Science: A Reconnaissance* (Harper & Row, 1966) 15.
[22] Christine Parker and Adrian Evans, *Inside Lawyers' Ethics* (Cambridge University Press, 2007).
[23] 'The Future of Law and Innovation in the Profession (FLIP)' (Report, Law Society of New South Wales Commission of Inquiry, 2017) (FLIP Report).

Collaborative Practice lawyer, we can see why Collaborative Practice is a valuable mechanism for teaching law students the skills that will help them to adapt to a changing legal landscape. Two important chapters of the FLIP Report are chapter 1 (drivers of change: client needs and expectations) and chapter 6 (legal education).

Chapter 1 notes '[a]s budgets shrink and competition grows, clients value timeless qualities in their lawyer: clarity, practicality, an understanding of their motives and objectives, a preparedness to work collaboratively.'[24] How do these identified skills connect to Collaborative Practice? Collaborative Practice requires lawyers to understand their client's needs, motivations and desired outcomes to facilitate constructive discussion. This method encourages practitioners to become comfortable operating within multi-disciplinary teams with the aim of supporting the parties to reach a practical resolution. Being effective in the collaborative context is not about doing all the talking; it is as much about active listening as about what is said. Collaborative Practice encourages interest-based negotiation so that client interests are being represented and that the client drives the process.[25] Understanding this negotiation process and the skills involved enables lawyers to represent their clients in that process and would require law students to develop and grow in ways most consistent with client needs and expectations.

In chapter 6 'the skills and areas of knowledge likely to be of increasing importance for the graduate of the future include… practice-related skills…interdisciplinary experience [and] resilience, flexibility and ability to adapt to change' are noted.[26] Another important finding was the 'expectation that graduates would have not just an understanding, but an ability to employ in practice, the basics of … presenting and negotiating.'[27] This finding reinforces the need to find innovative ways to teach and expand negotiation skills for law students that could include Collaborative Practice. 'The frequency and degree of change that the legal profession has started to be exposed to and which is expected to continue suggests that law students and practitioners could benefit from education dealing with managing change and developing resilience.'[28]

Further investigation is needed to determine how change management and resilience might be taught to law students. Although Collaborative Practice does not fully address this issue, the need for Collaborative Practice practitioners to refine their emotional intelligence and actively work with clients so that they can progress through the conflict process and take ownership of an out of court resolution of the matter (that may later be court approved),[29] speaks to some of the relevant change management skills and resilience that future lawyers will need to develop.

[24] Ibid 5.
[25] Cochran (n 6).
[26] FLIP Report (n 23) 6.
[27] Ibid 77.
[28] Ibid 79.
[29] Susan Daicoff, 'The Future of the Legal Profession' (2011) 37(1) *Monash University Law Review* 7, 24-26.

VII CONCLUSION

Synergies between the skills identified as important for future lawyers and the those necessary to meaningfully engage as a lawyer within the Collaborative Practice process are clear. The interviews I conducted highlighted some advantages of the Collaborative Practice approach, including improved client management, effective use of neutral experts, more practical and lasting outcomes for clients, the scope for practitioner mentoring and skill development and the overall change in how collaboratively trained lawyers approach the adversarial process. Barriers included costs, management of positional clients or lawyers, and finding the balance to ensure the collaborative process proceeds at a pace that satisfies both clients. Rather than being seen as an *alternative* dispute resolution process or an elective that only some students may choose, teaching the skills required of the Collaborative Practice lawyer could be utilised within the law curriculum to enhance the development of the *human* skills needed for effective legal practice and to safeguard the value of the lawyer's role in the face of technological developments.[30]

[30] Parker and Evans (n 22).