

Chapter 2

Simulation and the Learning of the Law: Constructing and Using an Online Transactional Assessment in Employment Law

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Introduction

The objectives of this chapter are twofold. First, the chapter examines the general value of embedding simulation into the student experience. Second, it provides a reflection upon our construction and use of an online transactional assessment in the area of employment law. We will seek to demonstrate how this assessment connected with a number of the benefits of simulation that we identify below.

By simulation we mean any activity, be it assessed or non-assessed, which requires students to engage in tasks and challenges that replicate real life, whether or not it relates to legal practice. Such simulation may, but need not, include a virtual or online element. In the words of Priddle et al.: 'The use of simulations does not sit at the core of learning and teaching in most areas of HE and FE, although they can be highly effective where they are used. Their benefits include learning through practice rather than through acquiring factual knowledge, and gaining additional skills and often professional experience.'¹

In agreeing with this perspective, we will discuss the underlying pedagogy, including the promotion of deeper learning and the engagement of students through game theory and use of affect.² We will seek to demonstrate how the use of simulation can enable students to gain insights into what will be required of them in their professional lives through facilitating a 'messy' problem-based approach to learning, and we will discuss how this can be incorporated into clinical legal education (CLE). We will suggest that it is not simulation per se that is valuable, but the opportunity to become actively involved in the application of principle to

¹ J Priddle, P Maharg, P McKellar and P Lysaght, *Simshare Final Report* (UKCLE 2010) 27.

² For some suggested definitions of 'affect', see P Maharg and C Maughan (eds), *Affect and Legal Education: Emotion on Learning and Teaching the Law* (Ashgate Publishing 2011) 2.

practice and then take that experience and deconstruct it in a reflective process, as illustrated in the seminal work of Schön (and others). Moreover, simulation can also provide innovative opportunities for critical analysis of legal processes and rules, and of skills and values, as well as the opportunity to engage with and learn from affect.

Overall, this chapter will seek to substantiate why and how the use of simulation is a pedagogically valuable and practical tool in delivering the modern law curriculum and might (and we suggest should) increasingly become a core feature of undergraduate law programmes, and, by extension, of other degree programmes that, in part, are designed to prepare students for professional careers.

Promoting Deeper Learning

One of our central contentions is that simulation can promote deeper learning by requiring students to demonstrate systemic understanding of the law by applying it to realistic situations.³ Typically, students consolidate their knowledge and understanding of a legal subject in order to pass an examination and/or produce written coursework in the form of an essay or to answer a standard legal problem – such problems are often in the form of mini-scenarios that may be based on real or realistic case facts and situations or that may be entirely hypothetical or even far-fetched.

It is useful to clarify what we mean by deep learning by reference to previous pedagogic research. Brown et al.⁴ conducted a series of interviews in which students were invited to explain what they understood by 'learning'. A range of definitions emerged from this work: eg, learning as an increase in knowledge – students saw themselves as acquiring this 'commodity' from their tutors; learning as memorizing – students saw their task as storage of a 'commodity' for a temporary period; learning as acquiring facts or procedures to be used – skills, algorithms and formulae; learning as understanding 'reality' – involving transformation in perceptions of the world before and after learning. Simulation connects with this last approach when it requires students to take ownership of their learning processes and engage in reflection upon their activities.

The possibility of multiple orders of learning should also be considered. Argyris and Schön⁵ describe two distinct orders as single- or double-loop learning. When an individual needs to solve an immediate problem, ie, close a perceived gap between expected and actual experience, she uses her sense-making processes

3 For discussion on how students learn, see J Biggs, 'What the Student Does' (1999) 18(1) *Higher Education Research & Development* 57; J Biggs, *Teaching for Quality Learning at University* (OUP 1999) 165-203.

4 G Brown, J Bull and M Pendlebury, *Assessing Student Learning in Higher Education* (Routledge 1997).

5 C Argyris and D Schön, *Organizational Learning* (Addison-Wesley 1978).

within a context of existing goals, values, plans and rules, without questioning their appropriateness. However, if she goes beyond this to challenge and to critically appraise previously applied assumptions, this may be considered as double-loop learning. She has not just learned to solve the problem, she has also learned something about the art of problem solving itself. In the context of 'organizational learning, Argyris and Schön describe this process as follows:

When the error detected and corrected permits the organization to carry on its present policies or achieve its present objectives, then that error-and-correction process is single-loop learning. Single-loop learning is like a thermostat that learns when it is too hot or too cold and turns the heat on or off. The thermostat can perform this task because it can receive information (the temperature of the room) and take corrective action. Double-loop learning occurs when error is detected and corrected in ways that involve the modification of an organization's underlying norms, policies and objectives.⁶

Kolb⁷ discusses a similar phenomenon as 'surface learning' as opposed to 'deep learning'. The distinction between these forms of learning can be explained as follows:

In the deep approach, the intention to extract meaning produces active learning processes that involve relating ideas and looking for patterns and principles on the one hand ... and using evidence and examining the logic of the argument on the other...The approach also involves monitoring the development of one's own understanding ... In the surface approach, in contrast, the intention is just to cope with the task, which sees the course as unrelated bits of information which leads to much more restricted learning processes, in particular to routine memorisation.⁸

Based on the above theoretical concepts, because simulation can incorporate a 'messy' problem-solving approach, it is our view that it can encourage deep and double-loop learning. Simulation can require students to be more than a metaphorical thermostat. Rather than just identifying the 'correct' answer, simulation can involve the student in evaluating and reflecting on different ways in which the law (and other means) can be used to achieve the optimum result for a 'client', and this may result in refinement of initial approaches to a problem, which the student subsequently recognizes were instinctive and superficial. The academic law degree, by and large, has a curriculum that sets up boundaries

6 *ibid* 2-3.

7 D Kolb, 'Management and the Learning Process' in K Starkey (ed), *How Organizations Learn* (Thomson Business Press 1996).

8 N Entwistle, 'Promoting Deep Learning through Teaching and Assessment: Conceptual Frameworks and Educational contexts', paper presented at the TLRP Conference, Leicester, November 2000.

between subject areas.⁹ In reality, no client presents a problem that can be analysed and addressed without a holistic approach in considering the financial, personal, commercial and political implications. The need to develop judgement in students, as discussed by Rapoport,¹⁰ requires 'the very best learning opportunity: advising a live client'.¹¹ As Rapoport comments, 'I wouldn't want a lawyer to give me advice if the lawyer has only read cases and statutes'.¹² We shall return to this issue of developing judgement in preparation for professional practice, whether or not this is in legal practice, later in the chapter when reflecting on our experience of using the online transactional assessment.¹³ There is also a positive inter-relationship between simulation in the form of a transactional assessment¹⁴ and reflective learning and game theory.

Simulation and Reflective Learning

If we return to our definition of simulation as an activity that replicates real life, we would also suggest that simulation can provoke an affective response when a student becomes engaged fully in that activity. This has been our experience, as explained later in this chapter. That response is, in our submission, a very useful consequence and an important part of successful reflection. We favour Moon's simple definition of reflection:¹⁵

Reflection is a form of mental processing – like a form of thinking – that we can use to fulfil a purpose or to achieve some anticipated outcome. It is applied to relatively complicated or unstructured ideas for which there is not an obvious solution and is largely based on the further processing of knowledge and understanding and possibly emotions that we already possess.¹⁶

9 There are examples where this curricula compartmentalization has been addressed by innovative design such as in the York Law School (see Chapter 8 of this book).

10 N Rapopmi, 'Rethinking U.S. Legal Education: No More "Same Old, Same Old"' (2013) 45(4) Connecticut Law Review 1409.

11 *ibid* 1426.

12 *ibid* 1427.

13 See below, 57 onwards.

14 See A Apapiou, P Maharg and E Nichol, 'Construction and Constructivism: Learning Contract Management and Administration via Simulated Transaction' (2010) 7(2) CEBE Transaction 37 at 39 for a seven-point description of transactional learning through the SIMPLE project.

15 J Moon, 'Guide for Busy Academics No. 4 Learning through Reflection' (2005) www.heacademy.ac.uk/resources/detail/resource_database/id69_guide_for_busy_academics_no4_moon accessed 10 April 2014.

16 *ibid* 1.

We do not reflect on everything. What is it that makes us turn over an event in our minds again and again? We suggest that engaging with the affective domain plays an important role in promoting deeper learning and reflection through students reflecting upon the emotional responses they experience in undertaking an activity such as an authentic simulation. This is in contrast with how students learn through answering a question attached to a traditional hypothetical legal problem, where they are largely restricted to using cognitive skills.

Moon and Baud, Keogh and Walker¹⁷ all have views on the role that affect plays in the reflective process. The latter authors believe that reflection is 'controlled by the learner and not the teacher' and is 'pursued with intent'.¹⁸ They comment that both feeling and cognition are used since negative feelings can impede learning and motivation, distort memory and lead to false interpretations,¹⁹ whilst positive feelings can enhance the learning process by supporting motivation.

Moon²⁰ has also recognized the relevance of affect in the reflective process, but has acknowledged that there is uncertainty about the extent of that role. She has suggested three possibilities: that emotion is part of the process, that emotion could be the content or outcome of the process, and that its role impinges on the process (as described above). She comments that:

We would seem to be able to reflect on a number of ideas without emotional content to the reflection. Then – are emotional effects the subject matter of the input and output of reflection (like other ideas on which reflection occurs), or do they steer the process of reflection (acting as a kind of milieu in which reflection takes place). Could they be part of the process of reflection?

We suggest that affect plays a role in all three ways mentioned by Moon. It is part of the process in that it initiates reflection. It impinges or colours the quality of the reflective process, as described by Baud, Keogh and Walker, and this is why it is important to encourage students to use the positive and remove the negative affect within their reflection. Affect is also a stage in the reflective process which leads to further reflection. Cowan (1998)²¹ described Kalb's learning cycle as a spiral and we suggest that reflection and the affective response follow the same path. Thus, we would argue that a potential benefit of simulation is that it supports an affective response which in turn supports deeper reflection. Indeed, as

17 D Boud and D. Walker, 'Promoting Reflection in Professional Courses: The Challenges of Context' (1998) 23(2) *Studies in Higher Education* 191.

18 D Boud, R Keogh and D Walker (eds), *Reflection: Turning Experience into Learning*, (Kogan Page 1985).

19 *ibid* 11.

20 J Moon, 'PDP Working Paper 4 – Reflection in Higher Education Learning' (LTSN Generic Centre 2001)

www.tcd.ie/Nursing_Midwifery/assets/docs/Teach%20Learn/PDP%20Working%20Paper%204%20Moon.pdf accessed 6 April 2010, at 4.

21 J Cowan, *On Becoming an Innovative University Teacher* (OUP 1998).

is discussed further below, this was one of the most positive outcomes from our use of the transactional assessment.

There is a growing body of scholarship coming from Australia and from America that acknowledges elevated levels of psychological distress in law students and discusses possible responses.²² This scholarship embraces the notion that reflective practices 'can engage students and work to promote students mental well-being by supporting students to controlling feelings of helplessness, uncertainty, anxiety and stress'.²³ Thus, as is discussed further below in the context of CLE, simulation may also have other benefits in terms of promoting student well-being.

Student Engagement and Game Theory

The term 'simulation' comes from the latin *simulat*, meaning copied or represented, and the word brings to mind a variety of concepts from something that is an imitation or a pretence, and thus second-best, through to the idea of a computer animation or game. The term 'simulation' is often paired with games theory²⁴ and there is a growing body of literature²⁵ discussing the benefits of immersive environments:

These immersive environments use authentic contexts, activities and, possibly, assessment; they also involve mentoring and apprenticeships in communities of practice. The result is a powerful pedagogy that allows for immersion and intense, extended experiences with problems and contexts similar to the real world.²⁶

22 For a discussion of this scholarship, see R Field and J Duffy, 'Better to Light a Single Candle than to Curse the Darkness: Promoting Law Student Well-Being through a First Year Law Subject'(2012) 12(1) QUT Law & Justice Journal 133.

23 SC Segerstom, 'Perceptions of Stress and Control in the First Semester of Law School' (1996) 32 Willamette Law Review 593.

24 Not in the sense of game theory used in economics, political science and psychology to predict decision making, but rather as used in pedagogy as a tool to develop learning.

25 Richard Van Eck, 'Digital Game-Based Learning: It's Not Just the Digital Natives Who Are Restless' (2006) 41(2) EDUCAUSE Review 16 www.educause.edu/ero/article/digital-game-based-learning-its-not-just-digital-natives-who-are-restless accessed 10 April 2014. Rafe Kottler defines fun as 'the act of mastering a problem mentally' in *A Theory of Fun for Game Design*; see www.theoryoffun.com accessed 10 April 2014. See also the literature review at note 5.

26 Chris Dede, 'Planning for Neomillennial Learning Styles: Implications for Investment in Technology and Faculty' in Diana Oblinger and James Oblinger (eds), *Educating the Net Generation* (EDUCAUSE 2005) ch 15.

Despite the strong debate on how games can improve education and how useful they can be for teaching complex concepts and skills, relatively little research has been carried out on the relationship between games and academic performance.²⁷

Ke found that 'games seemed to foster higher-order thinking skills such as planning and reasoning more than specific content knowledge'.²⁸ The author of this wide-ranging literature reviews of gaming in education called for research into how games promoted learning rather than whether they do.²⁹ Furthermore, the 2011 *Horizon Report* suggested that augmented reality and game-based learning would be in widespread use in two to three years.³⁰ This has not proved accurate since the 2014 Horizon report continues to predict gamification will emerge in two to three years time.³¹

Oblinger argues if we are to engage our students in learning, then it is the multiplayer, skills-based, virtual world environment that matters more than the 'game'. According to Oblinger, game playing can be fertile ground for learning about a profession and what it means to be a professional.

Rather than their simpler predecessors, today's games are coming to represent 'distributed authentic professionalism', meaning that players are learning how to be a professional - a soldier, an astronaut, an entrepreneur, and so on. Knowledge and skills are built into the virtual characters, objects, and environments; the players must master the skills they don't have as well as integrate their skills with those of the virtual characters and other players. These types of games distribute expertise among the virtual characters and the real-world players. More than just a game, they are networked communication systems with interactive chat, internal e-mail, and messaging. They also require the player to adopt a certain set of values and a particular world view which is connected to performing activities within a specific domain of knowledge. By the end of the game, the player has essentially experienced a profession.³²

We would argue for such 'games' to be included in law schools and, in our view, simulated real-life activities can be undertaken by students in ways that connect

27 P Adachi and T Willoughby, 'More Than Just Fun and Games: The Longitudinal Relationships between Strategic Video Games, Self-Reported Problem Solving Skills, and Academic Grades' (2013) 42(7) *Journal of Youth and Adolescence* 1041.

28 TM Connolly, E Boyle, E MacArthur, T Rainy and J Boyle, 'A Systematic Literature Review of Empirical Evidence on Computer Games and Serious Games' (2012) 59(2) *Computers & Education* 661.

29 *ibid* 23.

30 L Johnson, R Smith, H Willis, A Levine and K Haywood, *The 2011 Horizon Report* (The New Media Consortium 2011) <http://net.educause.edu/ir/library/pdf/HR2011.pdf> accessed 10 April 2014.

31 <http://cdn.nmc.org/media/2014-nmc-horizon-repmt-he-EN-SC.pdf> page 42 accessed 31/7/14.

32 *ibid*.

with game theory. An example of one such 'game' is provided by our negotiation activity, which is discussed later in this chapter.³³

Simulation and Preparation for Practice

We share the perspective with other contributors to this text that simulation, as a form of experiential and problem-based learning, enables students to integrate the 'classroom' experience with the real-world experiences they will encounter in their professional lives. Simulation requires students to think and behave as lawyers do in acting on behalf of their clients and generally conducting their business. This, in turn should, in addition to supporting their learning of knowledge, skills and values, also enhance their potential employability through meeting the needs of contemporary legal services providers - be they law firms, Alternative Business Structures (ABSs) established under the provisions of the Legal Services Act 2007 or in-house practices.

The *raison d'être* of a law school is the topic for rich debate. There are three possibilities according to Michael Coper:

inducting students into the discipline of law (the educational role); pushing back the frontiers of legal knowledge (the research role); and sharing that knowledge with our relevant communities (the outreach role).³⁴

Coper states that 'the growth of commerce and communications, fueled by the march of new technologies, has broken down the boundaries of local jurisdictions'. We suggest that this march of globalization places constant questions in the minds of those who are educating graduates of the future. Coper suggests that 'our shared task as law schools around the world somehow goes beyond the mere production of lawyers with technical legal competence, and that the key to identifying and articulating just what is that 'something more' lies in the notion of public service'.

In breaking down the barriers between the classroom experience and the real world, simulation provides an innovative mechanism for preparing students for legal practice (and other career destinations) and the role that lawyers can play in a variety of communities in the public and private spheres of society. Moreover, it is important to emphasize that the advantages of simulation are not restricted to preparing students for practice. In requiring students to act on behalf of (fictional) clients in realistic situations, simulation can also interact with critical and socio-

33 There is much pedagogy that supports the notion students learn best from tasks including assessment that mirror 'real life'. Thus, students respond best to something that is 'genuine'. See the work of K Grout, 'Improving Student Performance through Contextualisation' in C Rust (ed), *Improving Student Learning* (Oxford Centre for Staff and Learning Development 2002) 314-24.

34 M Coper, 'Educating Lawyers for What? Reshaping the Idea of Law School' (2010) 29(1) *Penn State International Law Review* 25.

legal thinking by requiring them to reflect upon the relationship between law and power relations in society. For example, in using the law in litigation scenarios (both pre-court and in simulated judicial proceedings), students can develop an analysis and understanding of the benefits and limits of the legal process. They can begin to appreciate the relevance of available remedies and the value of promoting the interests of clients – both individuals and groups – especially the vulnerable and disadvantaged (see below for further discussion).

Although simulation does not need to involve technology, there are many advantages of it so doing if simulation is accurately to reflect contemporary developments. It is still important to ask the question 'are we using technology for technology's sake?'³⁵ The world is, of course, increasingly a networked electronic and digitally enhanced place in which we work and socialize. It has been argued that: 'The next generation of jobs will be characterized by increased technology use, extensive problem-solving, and complex communication.'³⁶

Information Technology (IT) is driving changes through the legal services market both in terms of the types of organization offering legal services and the way in which individual lawyers interact with their clients and others. Garon³⁷ discusses some of the implications of technology, including: 'the threat (to lawyers) of self-help'; 'the disintermediation triggered by ever improving software';³⁸ the virtual law firm;³⁹ the law firm networks such as Rocket Lawyer;⁴⁰ claims management companies (or settlement mills as they are known in the USA); and 'the rise of the networked lawyer' who is specialized, highly connected and efficient. As Garon says:

For law students to survive in the globalized, technologically mediated environment in which they will find themselves, they need to be able to operate effectively using the tools available to them.⁴¹

Garon also advocates that legal educators should follow where legal practice is leading. There is already criticism that law schools in the USA do not prepare

35 For a variety of resources discussing the efficacy of blended learning, see www.educause.edu/library/blended-learning accessed 5 April 2014.

36 F Levy and RJ Murnane, *The New Division of Labor: How Computers are Creating the Next Job Market* (Princeton University Press 2004), cited in KL McClarty et al, 'A Literature Review of Gaming and Education' (2012) http://education.pearsonassessments.com/hai/Images/tmrs/Lit_Review_of_Gaming_in_Education.pdf accessed 10 April 2014.

37 J Garon, 'Legal Education in Disruption: The Headwinds and Tailwinds of Technology' (2006) NKU Chase Law & Informatics Institute Working Paper Series, 15 April 2012 http://papers.ssm.com/sol3/papers.cfm?abstract_id=2040560

38 Professor R Susskind *The End of Lawyers?* (OUP 2010) has discussed the notion of disruptive technologies and the work of Christensen. See further Strevens www.bailii.org/uk/other/journals/WebJCLI/2011/issue1/strevens1.html.

39 Delia Venables continues to maintain a site detailing legal resources in UK and Ireland to support online legal practice. See <http://www.venables.co.uk/index.htm> accessed 31/7/14.

40 See www.rocketlawyer.com.

41 Garon (n 36) 54.

lawyers for practice⁴² and, as discussed by Furlong,⁴³ some American firms are establishing apprenticeships to train their own junior lawyers, a trend that is already being debated in the England and Wales in the wake of the Legal Education Training Review.⁴⁴

The use of technology provides new and effective ways of preparing law students for the profession or other employment for those who are creative. Stickley⁴⁵ describes the use of a virtual law placement as an innovative use of technology where the 'real deal' is in short supply. Musgrove and Thirlaway⁴⁶ commend IT in supporting effective groupwork. Simulation may support the development of professionalism in law students specifically through the development of 'communities of practice'.⁴⁷ Baron and Corbin⁴⁸ advocate this Approach to developing professionalism in law students:

Opening our law schools to communities of practice may help student recognise what is important – what matters to the members of the legal community – and therefore provide them with an identity and sense of belonging.⁴⁹

Our own empirical research has established that one issue of particular importance to the legal community is that trainees have commercial awareness. This research was conducted in 2011 by Strevens, Welch and Welch through the conducting of interviews with a small number of provincial law firms in the Portsmouth and South Hampshire area.⁵⁰ One objective of these interviews was to identify whether

42 See CD Cunningham, 'Should American Law Schools Continue to Graduate Lawyers Whom Clients Consider Worthless?' (2011) 70 *Maryland Law Review* 499, available at <http://ssrn.com/abstract=1805936> accessed 10 April 2014.

43 J Furlong, 'The Return of the Apprentice. New Lawyer Training Models for the 21st Century' (2010) www.law.georgetown.edu/LegalProfession/documents/Furlong.pdf accessed 10 April 2014.

44 See <http://letr.org.uk/the-report/index.html> accessed 10 April 2014.

45 A Stickley, 'Providing a Law Degree for the "Real World": Perspectives of an Australian Law School' (2011) 45(1) *The Law Teacher* 63.

46 A Musgrove and V Thirlaway, 'Are We Using Technology for Technology's Sake? An Evaluation of a Simulated Employment Exercise at Undergraduate Level' (2012) 46(1) *The Law Teacher* 65.

47 The term 'community of practice' is the idea of Lave and Wenger; see www.ewenger.com/theory, referred to in P Baron and L Corbin, 'Thinking Like a Lawyer/Acting Like a Professional: Communities of Practice as a Means of Challenging Orthodox Legal Education' (2012) 46(2) *The Law Teacher* 100.

48 *ibid.*

49 *ibid.* 118; and referring to the work of Etienne Wenger, 'Communities of Practice: Learning as a Social System' (1998) 9(5) *The Systems Thinker* 5.

50 For full discussion of this research, see C Strevens, C Welch and R Welch, 'Online Legal Services and the Changing Legal Market: Preparing Law Undergraduates for the Future' (2011) 45 *The Law Teacher* 328.

there were any particular skills that such law firms would value in their graduate trainees. A consistent message that emerged from the interviews was that firms would like trainees to have a greater 'commercial awareness'. This was variously described as: being outcome-focused, possessing business acumen, understanding that law is a business or being able to relate to the needs of clients. Comments from interviewees included the following:

Useful if trainees understood the implications of setting up in business. They need to know about law in a business context, not an academic one.

Trainees need to develop an awareness of commerciality. They don't realize that clients have objectives to be served which is different from an academic view of the law (or the right answer). They need general personal skills, e.g. listening to clients/colleagues before making assumptions.

Undergraduates should start to develop marketing skills and an understanding that law is a business.

Client care skills are needed at an earlier stage,

Most of the interviewees thought that 'commercial awareness' had to be learned by 'being in the real world' and by implication could not be taught at university. However, it is our contention that simulation can, when carefully structured and realistically delivered, replicate real-life experiences and, in so doing, enhance student learning and employability by beginning to develop 'commercial awareness' in them as a graduate outcome.

Our research findings con-elate with recent Final Report of the Legal Education and Training Review, which has highlighted that few law schools address the development of commercial awareness at the academic stage. Furthermore: 'The importance of developing business and management skills is widely acknowledged as important but is not well embedded across the sector.'⁵¹ Simulation and game playing have the potential to address the development of these professional attributes and capabilities.

It is also the case that the creation of ABSs may increase the demand for graduates, some of whom may not have undertaken the professional stage of legal education, who work as paralegals. Through requiring students to undertake practical activities, simulation can enable such students to begin to develop the skills they will need in their professional lives. Moreover, given that practical activity will typically involve a range of transferable skills, such as effective communication, time management and teamwork, simulation should similarly contribute to the skilling and, consequently, employability of law graduates,

51 See <http://letr.org.uk/the-report/index.html> accessed 10 April 2014, at 4.

whether they enter the law profession or use their knowledge and skills in the business world or public sector organizations.⁵²

Indeed, it may well be the case that traditional lines of demarcation between the legal professional and other professionals will not be so clear-cut in the future. Richard Susskind predicts a reduction in the need for 'black letter' lawyers due to systems that allow for the standardization, systemization and commoditization of the law.⁵³ In its place will emerge a demand for 'legal hybrids': 'individuals of multi-disciplinary backgrounds, whose training in law will have evolved and dovetailed with a formal education in one or more other disciplines'. He believes that law schools need to recognize the possible changes that IT and the Legal Services Act 2007 will have on the profession and prepare their students for a new future accordingly.

Part of this preparation must involve exposing students to different methods of communication and interaction which involve contemporary and developing technologies. If Susskind is correct, law graduates will be advantaged if they have some familiarity with using technology for professional purposes – not just in terms of accessing the law but also in acting on behalf of their employing organization and/or its clients. Simulation can be constructed in a way that requires students to do this.

Simulation and CLE

Incorporating CLE into the curriculum of a law degree is, of course, another way in which undergraduates can develop the knowledge, skills and values implicit in the practice of law. However, there can be logistical problems with CLE, especially where clinics offer individual client advice and representation. The number of students who can participate in a clinic may be limited and resource implications in terms of training, supervision, assessment and case management may be significant. One form of clinic – if it is delivered in a way that requires the student to undertake specified roles and then reflect, in a structured way, on that experience – is simulation. The exercises can be constructed so as to enable large numbers of students simultaneously to participate in practical activities, given that there is no real client to safeguard and manage. There is a further potential efficiency gain if student numbers are high as simulation generates resources

⁵² For an analysis of research into the value of creating a simulated work environment in a business context, see E Ehiyazaryan and B Barraclough, 'Enhancing Employability: Integrating Real World Experience in the Curriculum' (2009) 51(4) *Education and Training* 292.

⁵³ See Susskind (n 37). For further discussion on legal education and employability, see C Strevens, 'The Changing Nature of the Legal Services Market and the Implications for the Qualifying Law Degree' (2011) 1 *Web Journal of Current Legal Issues* 1.

that are reusable. As will be detailed below, this is particularly so where a virtual learning environment (VLE) is used as a vehicle to carry out a simulation.

Simulation can be used to prepare students for real-client work and to develop the interpersonal skills required for the effective interviewing of clients and witnesses. The opposite side of this particular coin is that the real-client clinic can generate learning and teaching materials for use in simulation (provided that client confidentiality is respected).

One of the many attractions of simulation is that particular tasks and exercises can be run and re-run, adopted or adapted and made to fit required outcomes and purposes. Simulation can expose students to unplanned variables and require more decision making of them than can be achieved through paper-based exercises. The degree of planned and unplanned variables can be controlled to promote or restrict the extent of the 'messy' learning conditions of Schön's professional practitioner,⁵⁴ as well as enabling academics to introduce difficult, controversial or sensitive issues. Students can be exposed to conflicts, pressure and decision-making processes in a safe environment and with reference to consistent parameters. Bryant and Milstein advocate the benefits of just-in-time learning using 'rounds' in the context of clinical legal education, borrowing from the medical arena. This technique, they suggest, encourages students to question and debate issues around the presenting problem and digress freely in order to make unplanned connections, and has greater benefit than just-in-case learning.⁵⁵ The open-ended nature of simulation is valuable in this context since it encourages learning that crosses traditional boundaries of subjects and the achievement of these objectives of self-directed learning. This is explored further in the context of problem-based learning.⁵⁶

In addition, simulation provides an innovative method that 'fits' well with the design and delivery of particular modules, for example, evidence and legal ethics. It is not always easy to inspire student enthusiasm for such rule-based subjects. Traditionally, the law of evidence can be perceived by undergraduates of consisting of 'dry' legal rules which they learn in a way that is abstracted from reality. The use of realistic case study simulation can require students to engage in fact-finding to assess the available evidence and relate it to issues of admissibility and proof. In this way the rules are brought to life and simulations may provide both a more stimulating and more effective method of learning this area of the law.

54 See D Schön, *The Reflective Practitioner* (Basic Books 1983).

55 See Susan Bryant and Elliott S Milstein, 'Rounds: A "Signature Pedagogy" for Clinical Education?' (2007) 14 *Clinical Law Review* 195, which explores the learning goals and theory of rounds, identifies the kinds of learning that is possible during rounds and discusses the choices that professors can make to increase learning opportunities at 207-08.

56 See Chapter 8.

In the future, ethics may be incorporated into the foundations of legal knowledge and thus become a compulsory part of qualifying law degrees.⁵⁷ The likelihood of this change has increased with the publication of the final report of the Legal Education and Training Review.⁵⁸ Recommendation 6 provides that 'LSET (Legal Services Education and Training) schemes should include appropriate learning outcomes in respect of professional ethics, legal research, and the demonstration of a range of written and oral communication skills'.⁵⁹ In addition, Recommendation 7 provides that: 'The learning outcomes at initial stages of LSET should include reference (as appropriate to the individual practitioner's role) to an understanding of the relationship between morality and law, the values underpinning the legal system, and the role of lawyers in relation to those values.'⁶⁰ The report itself is the beginning of a period of further debate and consultation concerning the future of legal education. Even if a change to the foundation subjects does not prove to be the case, ethical issues may well arise in the course of undertaking CLE, and simulation can be used both to promote an awareness of the importance of legal ethics and to further a particular ethical stance.

There is currently much debate about whether and how we might teach ethics, and here, with reference to the above discussion of game theory, one could argue that constructing a simulation in which the rules of the game are the most important aspect, not the winning or attaining of a 'prize', would be a powerful way to teach ethics. A scripted written role play might signal to the student the message that a moral issue is about to arise. Perhaps a fast-moving multi-player environment in which the players are striving to 'win' might be a more effective way to spring moral dilemmas upon students. The conflict between personal interest (winning), the rules of the game and the positions of the other players could facilitate replication of real-life ethical situations. We are able to form a virtuous circle.

Carefully constructed role-play exercises can also provide students with ethical dilemmas. This can allow the affective engagement that comes from personal participation and identification with one's client, and, as we shall argue, can promote critical analysis of all the implications of their decision making. Furthermore, role plays, whether used in the context of ethical issues or more generally, can be recorded to provide the basis for group debate reflecting both on what went well and how certain things might be done differently and why. This would be designed to support the improvement of performance of the group if similar activities were to be undertaken in the future.

57 See K Economidies and J Roger, 'Preparatory Ethics Training for Future Solicitors' (2009) <http://eric.exeter.ac.uk/exeler/bitstream/10036/64973/1/TLS%20Ethics%20Report.pdf> accessed 1 April 2014.

58 See <http://letr.org.uk/the-report/index.html> accessed 10 April 2014.

59 *ibid* 287.

60 *ibid*.

There are further potential benefits for role play and clinical legal education identified by Watson and Field,⁶¹ citing the work of Sally Kift and others in the context of addressing elevated levels of law student distress. They advocate curriculum interventions aimed at promoting well-being: 'Curriculum renewal to promote resilience and well-being in law students must address the competitive, isolating and adversarial learning environment of law school and in its place create, a [learning environment that is motivating, engaging and supportive. '⁶² Field and Duffy have criticized the apparent way in which 'thinking like a lawyer ' has become more needlessly adversarial'.⁶³ They advocate the use of experiential learning techniques, including negotiation and role play, as a counterpoint.⁶⁴

By articulating and valuing the intuitive, the emotive and the personal reactions to law we aim to alleviate the psychological distress that non-discriminate adversarial/thinking like a lawyer approaches are said to induce.⁶⁵

Simulation that incorporates role play and experiential learning has much potential in terms of law student well-being and is likely to provide fertile ground for future research.

Constructing an Online Transactional Assessment

As we have demonstrated, there are a number of contexts in which simulation can be used as an innovative pedagogic method with concomitant benefits to students that traditional forms of legal study arguably do not provide. The remainder of this chapter will seek to draw these contexts together by reflecting upon our experiences in constructing and using an online transactional assessment to deliver a module concerned with employment law.

This assessment can be regarded as part of a burgeoning use of VLEs and blended learning on law programmes which goes beyond using the Internet to enable students to read and/or download standard course materials.⁶⁶ The

61 Penelope Watson and Rachael Field, 'Promoting Student Well-being and Resilience at Law School', in Sally Kift, Jill Cowley, Michelle Sanson and Penelope Watson (eds), *Excellence and Innovation in Legal Education* (LexisNexis 2011).

62 *ibid.* 402.

63 *ibid.* 154.

64 *ibid.* 155.

65 *ibid.*

66 See, as examples, WH Chui, 'The Use of a Virtual Learning Environment: The I-Jong Kong Experience' (2006) 40 *International Journal of Legal Education* 59; J Hanlon, J. 'Time to Throw Away the Chalk? Law on Blackboard' (2004), 8 *International Journal of Legal Education* 41; R Deazley and K Boardman, 'Biting the Bulletin: Using Discussion Boards' www.ukcle.ac.uk/resources/enhancing-learning-through-technology/durham accessed 1 May 2014; E Phillips, S Clarke, S Crofts and A Laycock, 'Exceeding the Boundaries of

development of this assessment was particularly inspired and influenced by Paul Maharg and his colleagues at the University of Strathclyde, where students were divided into law firms, operating in the fictional town of Ardcalloch that in reality only existed on the University's web server, to undertake and complete transactions on behalf of their firm's clients.⁶⁷ Maharg explains the purposes of a simulated transaction as requiring students 'to bring to bear their knowledge of the law and communicational skills in real-time tasks which closely mimicked those they will be involved in as trainees and assistants ... the transactional purpose of the virtual firm is valuable as a bridge between undergraduate learning and postgraduate professional education'.⁶⁸ Our assessment, while rather less ambitious in its scope, adopted this methodology of requiring students to act as lawyers advising and representing clients.

It also connected to our own experiences of the value to students in using VLEs to create resources for a blended learning approach to studying law, given that independent learning was an important feature of undertaking the simulation. Students were required to spend a significant period of time working on their own, or in their 'firms', to ascertain the legal position of their clients. The provision of videoed lectures and other materials, such as a glossary and multiple choice self-test questions, provided them with permanently accessible mechanisms to consolidate and confirm their understanding of the law. Moreover, they were able to access these materials on whatever mobile devices they chose to use at the law school, at home or elsewhere.

Undertaking the Transactional Assessment

The primary objectives of the exercise were to simulate real life by requiring students to advise and represent clients, and to engage in open-ended problem solving rather than tackling mini-problems of the sort typically used in law assessments. Such problems provide the basis to assess the ability of the student to apply the law, but do so in a way that is abstracted from reality. The student is

Formulaic Assessment: Innovation in the Law School' (2010) 44(3) *The Law Teacher* 334; S Field and L Jones, 'Innovations in Assessment: An Investigation into the Role of Blended Learning as a Support Mechanism for Assessment' (2010) 44(3) *The Law Teacher* 378; and A Stickley, 'Providing a Law Degree for the "Real World": Perspective of an Australian Law School' (2011) 45(1) *The Law Teacher* 63.

⁶⁷ P McKeller and P Maharg, 'Virtual Learning Environments: The Alternative to the Box under the Bed' (2005) 39(1) *The Law Teacher* 43; P Maharg, 'Virtual Firms: Transactional Learning on the Web' (2004) *Journal of the Law Society of Scotland* www.academia.edu/1960627/Virtual_firms_transactional_learning_on_the_web accessed 1 May 2014.

⁶⁸ *ibid* 3.

being directed to finding the 'correct' solution(s) to the problem when in real life there is seldom, if ever, such a thing.

Adapting the Strathclyde model, the students were divided into small groups to work in 'law firms' to advise and represent employers or employees involved in unfair dismissal or wrongful dismissal claims.⁶⁹ Putting the students into groups enabled them to experience working as a team of lawyers to act on behalf of a client and was an important part of obtaining their engagement with the exercise. They communicated with each other and with tutors via closed discussion boards on Victory,⁷⁰ which could only be accessed by students in the same group. Other than a very brief synopsis, they were not provided with the facts of the problem, but were able to access (online) the types of materials which lawyers would require in real life, such as the employee's written statement of terms (or employment contract) and prior correspondence between the parties. They therefore had to use the information provided by this documentation to piece together for themselves the nature and some of the details of the problem. Thus, we used the 'messy' problem-based approach to learning that we have identified as one of the benefits of using simulation.

We used video-streaming technology to produce videoed witness statements – some of which were available to both parties, whereas the remaining videos were exclusive to the appropriate firm. These videoed witness statements contained some but not all of the essential facts. Thus, the students were required to engage in fact analysis by asking appropriate questions to secure the divulgence of further essential evidence. This incorporated aspects of game playing as a mechanism for learning as students could only progress to the next level of evidence by first identifying the question that needed to be asked in order to secure the relevant information.

Once the firms had obtained all the available evidence, the student groups downloaded tribunal claim forms and, once they were completed, exchanged them online with the 'opposing firm'. This replicated an important feature of using employment law in the real world, as the proper completion of a tribunal form is an important part of presenting or responding to a tribunal claim. Claimants who are not professionally represented are often at a disadvantage where they have to complete the form for themselves, as failure to complete it in an appropriate way can have the effect of weakening the strength of a claim or the response to it.

The second stage of the assessment consisted of the 'law firms' conducting a face-to-face negotiation in accordance with their clients' instructions with a view to securing a compromise agreement, thus avoiding an employment

⁶⁹ Anyone who wishes to examine our and other simulations that have already been made publicly available, and to find out more about the use of simulations as a form of pedagogy, can do so by accessing the Simshare website <http://simshare.org.uk> accessed 10 April 2014. See also Priddle et al (n 1). Our Sims are entitled 'John v Wessex CC', which simulates presenting and negotiating an unfair dismissal claim, and 'Jane v Barchester CC', which simulates presenting and negotiating a claim of constructive wrongful dismissal.

⁷⁰ Our local name for the Blackboard platform.

tribunal hearing. Prior to the negotiation, 'firms' were issued with confidential client instructions setting out the optimum outcome from the client's perspectives along with the client's fallback position where the optimum position could not be secured. Students were encouraged to act autonomously by continuing to use online facilities to a significant extent. In this context the use of closed discussion groups proved indispensable. Students were required to use their discussion groups to communicate with other members of their firm and to exchange documents with the opposing firm. Overall, the use of an online approach encouraged the students to work in an independent manner by organizing themselves and developing their own group dynamic.

As well as requiring students to manipulate the law in a coherent and accurate way to the potential advantage of their clients, the negotiation enabled us to assess and provide feedback on the interpersonal skills of the students, both in contributing to the cohesiveness of their own group and in promoting a positive negotiating environment by understanding the need to avoid being aggressive in their exchanges with the opposing group. As we discuss below, students became emotionally engaged with the negotiation, which indeed resulted in a number of students talking and using body language in an unduly aggressive manner. The negotiation also enabled us to assess the ability of the student groups to think on their feet and to be flexible in their tactics if presented with an unanticipated position by the opposing group.

Our experience of using this blend of online and face-to-face communication was that it has distinct advantages over requiring students to have all their group meetings in scheduled teaching hours. Substantial use of the discussion board on Victory enabled individual students to contribute to the group at times of their own choosing and provided a permanent record of the value of their individual contributions. This was particularly useful for students who could not make group meetings because they had work and/or family commitments. It also enabled individuals who might have been shy or diffident about contributing in group meetings to do so by posting contributions on the discussion board. Students were able to ask questions at times of their choosing rather than during a scheduled seminar hour, and had the time to think about the question they wished to ask rather than having to formulate a question by a deadline and in front of their peers. They had complete freedom to ask any question they wished where again, in contrast to a traditional seminar, where questions may be restricted to the context of a set question or problem. They were permitted to use informal language in typing the question -the only requirement being that the use of, for example, 'text speech' did not render the question incomprehensible to the tutor.

This approach did not disadvantage the more confident student, who is not inhibited from asking questions verbally in front of other students, but it certainly encouraged many students who tend not to contribute to seminar discussions to ask intelligent and pertinent questions to the advantage of both themselves and their group as a whole. The discussion boards facilitated and increased the level of individual student participation. Moreover, it connected with many students

who are very familiar with using social media such as Facebook for discursive purposes to engage in their social (and potentially professional) relationships.

Having individual contributions recorded on the discussion board also enabled tutors to monitor groups much more closely than would have been the case if the student groups had met at the same time in scheduled seminar hours. Tutors were able to check that individual students were actively contributing to the work of their firm and the group as a whole was working in a cohesive manner. Moreover, in a simulation such as ours, it is always possible that group members are working well together, but are in danger of going way off-course. Through being able to monitor group discussions, tutors are able to intervene, if they feel this is appropriate, by giving such assistance as is deemed necessary to endeavour to steer the group back to proceeding along the right lines. Needing tutor intervention may impact on a group's mark, but it is self-defeating as a formative learning process if students, who have not grasped what they are required to do, are left to flounder helplessly in what could be described as a state of limbo.⁷¹ This would also impact on the 'opposing firm', as its strategies, even if seemingly sound, would not be put to a proper test.

Reflecting upon the Assessment

Problems in real life that may result in litigation are often 'messy', in that, for example, all the relevant information may not be readily available and/or conveniently located in a single place. Moreover, there will not be a 'correct' solution to the problem until and if a tribunal or court makes a definitive decision. Consequently, the students were required to piece together the relevant documentation and identify the pieces of evidence that they needed in order both to complete the tribunal forms and to prepare a negotiating strategy on their client's behalf. In constructing this evidence, we ensured that, were a tribunal hearing to take place, it was by no means certain which party would win. This is therefore a very good example of how simulation can be manipulated and controlled to meet desired learning outcomes.

Students who performed best in the negotiation realized this and went further than just stating the law and arguing, incorrectly, that their clients would definitely win in an employment tribunal. The better students identified different negotiating strategies to be deployed as necessary, and combined effective negotiating techniques with a flexible and sophisticated use of the law to secure the best outcome for their clients. In doing this, the students were acting as lawyers do in real life and were demonstrating that, whilst they understood the substantive law, they also recognized the element of unpredictability in terms of what a tribunal

⁷¹ It should be noted that our assessment philosophy was to award a group mark and only impose mark deductions on individual students for failing to participate effectively. It is, of course, very possible to use discussion board monitoring to award individual marks to students reflecting their individual contributions to their 'firm'.

might ultimately decide. In our view, students who fully appreciated the open-ended nature of the simulation were experiencing what Argyris and Schön term 'double-loop learning' and Kolb terms 'deep learning'.⁷² The negotiation also connected with Oblinger's perspectives on game playing as a mechanism for professional learning (see above, p 49), as the students were engaged both in role play and the formulation of a strategy, and the deployment of tactical flexibility in order to seek to achieve the central objective of 'winning' the negotiation to the advantage of their client.

The development of an effective negotiating strategy involved the 'firms' in assessing their clients' prospects of success were a tribunal hearing to take place. In part, this required assessment of the financial consequences of withdrawing from or proceeding with a tribunal claim. This connects with the type of commercial awareness that our interviews with local law firms, referred to above, revealed – a quality that they would like graduate trainees to possess – and is one example of how simulation may enhance the preparation of undergraduates for employment in the professional world.

What was particularly exciting was the way that the simulation captured the imagination and emotions of a large number of the students. Many of them really did start to behave as though they were representing real clients and this was most vividly demonstrated by the approach they took to the negotiations. The value to law students of engaging with the affective domain has been narrated and analysed in a series of essays edited by Maharg and Maughan.⁷³ In discussing reflection as a student learning tool, Russell argues that:

law is not a discipline that normally permits an emotive writing style the reflection provided an opportunity for students to express themselves freely, unhindered by 'academic' or 'legal' writing restrictions. The use of emotive language was indicative that the students were engaged with the process.⁷⁴

The perspectives of these writers correspond with our experiences of how our students related to each other, both in their 'own firms' and members of the 'opposing firms' during the course of the negotiations.

It is argued at several points in this book that the emotional engagement that clinical legal education and experiential learning provides can result in a high level of student engagement. The 'affective component' in learning is receiving greater recognition than in the past, when only intellectual and cognitive issues

⁷² Argyris and Schön (n 5); Kolb (n 7). See also Entwistle (n 8).

⁷³ P Maharg and P Maughan, *Affect and Legal Education: Emotion in Learning and Teaching the Law* (Ashgate 2011).

⁷⁴ M Russell, 'Reflections on Learning: Students' Insights on their Learning in a Legal Research Skills Course in the Core Curriculum' (2011) 45(1) *The Law Teacher* 45, 58. See also J Moon, *A Handbook of Reflective and Experiential Learning: Theory and Practice* (Routledge Palmer 2004) 44--57.

dominated,⁷⁵ including in particular the work of Kneebone. The transactional assessment demonstrated that students identified with their fictional client in the face-to-face negotiation. Such affective responses provide a catalyst both for reflection and assessment based on reflective thinking.

Reflection and Critical Analysis

Some within the academic community may object that an LLB, as the academic stage of legal education,⁷⁶ should not so much be concerned with preparing students for professional practice as with requiring students to build up their knowledge and understanding of the law, and to think critically about it. Therefore, a problem with our simulation is that it may require students to think and act as lawyers, but fails to require them to engage in critical analysis of the relevant law and the relevant legal processes.

However, in our view, there is no reason why law degrees cannot have both a vocational dimension and develop the ability of the student to engage in critical and contextual analysis of the nature and functions of legal rules, the systems through which law is created and the structures and processes that law generates. Indeed, in giving students insights into how law operates in the real world, simulation can contribute to their understanding of its real-life consequences and thereby the political, social and economic contexts within which law operates. Take, for example, the typical trade union official who possesses knowledge of employment law. That official will have no difficulty in appreciating the dialectic in play through the locus of power in the employment relationship residing with the employer and the use by the official of legal argument to advance the individual and collective interests of the union's members. Similarly, in undertaking a negotiation and formulating a strategy prior to doing so, the students, in their law firms, should have taken the respective power relations of their clients into account as well as the substantive legal rules in determining the relative strengths of their respective clients' positions.

Critical analysis can be incorporated formally as individual written work into an assessment such as ours by requiring students to reflect on the outcomes of their specific negotiation. Students can be asked to reflect not only on their individual performances and that of the group as a whole, but also upon what undertaking the negotiation has taught them about the fairness or otherwise of the rules of

⁷⁵ See, in particular, comments on the affective component of learning made by Hazim Sadideen and Roger Kneebone in 'Practical Skills Teaching in Contemporary Surgical Education: How Can Educational Theory Be Applied to Promote Effective Learning?' (2012) 3 *American Journal of Surgery* 396.

⁷⁶ For a critical discussion of different perspectives on the purposes of a law degree, see A Boon, J Flood and J Webb, 'Post-modern Professions? The Fragmentation of Legal Education and the Legal Profession' (2005) 32(3) *Journal of Law and Society* 473.

employment law and employment tribunal processes. The affective domain is also important here as such reflection requires the student to engage in critical analysis in a more personal and experiential way than is the case when a student is required to write an essay.

Written work containing critical reflection also avoids the contemporary logistical problem of using the Internet for the purposes of plagiarism. There are only so many ways in which an essay question can be framed and, as is well known, ready-made answers to such questions – be they well or poorly written – are available for online purchase. At the very least, the danger of such plagiarism is reduced when students are required to subject systems and processes to critical analysis in a context which is derived from their own individual experiences. This of course is an experience which has already been observed and monitored by tutors assessing the case progress and the interim reflective work carried out during the management of that case.

Another advantage to such reflection is that it may require the student to explain and assess the impact of recent legal change. For example, since the above assessment was first constructed and undertaken, the coalition government has introduced very significant changes to tribunal processes and the compensation available for a successful unfair dismissal claim. Compulsory pre-hearing conciliation has been introduced and the amount of costs that can be awarded has been increased. For the first time ever, claimants must now pay a fee if they decide to present a tribunal claim and a further fee if they decide to progress the claim to full hearing. Bringing a claim of unfair dismissal can now cost up to £1,200. On the other hand, the compensation that a tribunal can award to a successful claimant has been substantially reduced. Whilst the absolute statutory cap remains, most claimants will now find that the actual cap on their compensatory award has been reduced to one year's salary.

Arguably, the cumulative consequences of these changes is to shift the balance of power in the direction of employers, as many employees may be deterred from bringing a claim because of the costs involved if they lose. Even if they win, the benefits of so doing have been reduced. If student law firms were to undertake the negotiation today, they would have to take these changes into account in formulating their negotiating strategies. Such cost-benefit analysis should also be incorporated into their reflective piece by way of critical analysis of the consequences of legislative change. In short, a simulation may be used as the basis for requiring students critically to assess the consequences of legal change or the desirability of it.

Conclusions

Our particular exercise is just one example of how the more general pedagogic benefits of using simulation can be achieved. On the basis of our experiences, we contend that simulation enhances student-centered learning and engages the

affective domain in students and therefore interest in what they are doing. In our view, this results in a deeper learning than takes place when students learn the law by rote in order to pass examinations or are subjected to relatively passive means of learning, as evidenced by more traditional pedagogic methods. Drawing on game theory, simulation enables students to experience law as something more than just a set of rules and becomes something that is used and manipulated for the benefit of the client that the 'firm' is instructed to advise and represent.

We are not proposing that the traditional ways of delivering and assessing legal subjects should be totally replaced. However, it is our contention that simulation provides an innovative and constructive way for students to draw links in a critical fashion between their knowledge and understanding of legal rules and the real-life contexts in which these rules are used. By making these links, as we have seen, their well-being may also be promoted.

Simulation enables students to develop a practical approach to the law, and may foster the development of higher-level capabilities, including "professionalism", critical thinking skills and capacities for self-evaluation and reflection',⁷⁷ which have been highlighted in the Legal Education and Training Review's Final Report aimed at ensuring quality and competence in the practitioners of the future.

Overall, we believe that simulation has a beneficial role to play in legal education and therefore embracing the use of simulation should very much be part of the modern law degree in terms of both curriculum development and modular content.

⁷⁷ See section 7.2 <http://letr.org.uk/the-report/chapter-7/quality/index.html> accessed 10 April 2014.