

The Place And Efficacy Of Simulations In Legal Education: A Preliminary Examination^{*}

Dr Yvonne Marie Daly[†]

Dr Noelle Higgins[†]

[†]Dublin City University

Abstract

The American jurist Oliver Wendell Holmes once famously said that “[t]he life of law has not been logic; it has been experience”. This paper examines the experiential learning technique of simulation, particularly the use of moot courts and mock trials, in the context of legal education. It provides an overview of extant literature along with an outline of the current place of simulation activities in Irish legal education and the results of a project carried out to examine the efficacy of simulation activities as a teaching and learning tool.

The development of formal legal education and the place of mooting within both academic and vocational training are considered within this paper. The combination of the literature review and the findings of the study carried out in the authors’ institution lead to the suggestion that experiential learning techniques, such as moot courts and mock trials, ought to form an integral part of modern law curricula, both in this jurisdiction and in others, both at undergraduate level and beyond.

Keywords: Legal Education, Simulation, Moot Court, Mock Trial, Problem-Based Learning

* Research Article. URL: <http://ojs.aishe.org/index.php/aishe-j/article/view/00058>

1. Introduction

Third level legal curricula around the world include simulations of court proceedings, such as moot courts and mock trials (Knerr et al. 2001). Such activities are ostensibly undertaken to develop legal reasoning and advocacy skills and to prepare students for a prospective career as a legal professional. Despite some critics (e.g. Kozinski 1997), it is generally held in legal education literature that such activities are positive and beneficial to students (Hernandez 1998). Indeed, Feinman, discussing the situation in the United States, comments that “it seems a fair generalization that virtually all law teachers would agree that simulations are valuable for some purposes, at least in some settings in the law school curriculum” (Feinman 1995, p.469). The case for the inclusion of simulation activities in law curricula has however, not been adequately proven. There is a lack of empirical research on the benefits and advantages of such experiential learning techniques for students (Knerr et al. 2001). A review of the extant legal educational literature reveals that most discussion on the use of moot courts and mock trials relies heavily on evidence from law lecturers on their perceptions of how simulation activities worked for them and is generally anecdotal in nature (Knerr et al. 2001; Maranville 2001). Hardly any empirical studies exist which effectively question the efficacy of such activities (Knerr et al. 2001)¹. To address this deficit in the literature and in an attempt to identify the effectiveness and role of simulation activities as pedagogical tools in the law curriculum a project was carried out in the School of Law and Government² at Dublin City University (DCU³) in the academic year 2008–2009. (The simulation project was funded by monies received from the Learning Innovation Unit at DCU⁴.) Simulation activities were undertaken with both undergraduate and postgraduate students, a questionnaire, focusing on learning outcomes, was distributed to the students and the feedback was analysed. Section 1 of this article traces the history of the use of simulations as a teaching and learning technique in legal education. Section 2 discusses the theoretical justification provided for the inclusion of simulation activities and problem based learning activities, including moot courts, in the curriculum. Section 3 describes how moot court activities have been incorporated into law programmes in Ireland. Section 4 then sets out the empirical research and findings of the project undertaken at DCU and the final section makes conclusions and recommendations in relation to the role and place of simulations in the modern law curriculum.

1 One notable exception is the empirical study on the use of moots in the Australian legal education system undertaken by Lynch (1996).

2 http://www.dcu.ie/law_and_government/index.shtml

3 <http://www.dcu.ie/>

4 <http://www.dcu.ie/ovpli/liu/index.shtml>

2. A Brief History of Mooting

2.1 The Beginnings

Moot courts can be defined as "... the argument of the legal issues raised by a hypothetical case which takes place in the imaginary setting of a court of law" (Snape & Watt 2005, p.1). Students assume the roles of lawyers, arguing the merits of a case, before a 'judge'. In order to 'win', a student must not only understand and discuss legal doctrine and precedent, and apply it to the hypothetical case, but must also be able to convince the judge of his / her argument. Knowledge of the law is not enough; the ability to argue one's case effectively and convincingly is also necessary. The importance of "the need for an understanding of the role of character and emotion when arguing the law before judge or jury" (Hill 2005) in judicial rhetoric was noted as far back as the 3rd century BC by Aristotle. In his opus *On Rhetoric*, Aristotle defines rhetoric as the "ability in each particular case to see the available means of persuasion" (Hill 2005). This ability is central to the success of an advocate and is developed and enhanced by the use of experiential learning activities such as moot courts. As Oliver Wendell Holmes comments, "[t]he life of law has not been logic; it has been experience" (Holmes Jr. 1881, p.1).

2.2 Formal Legal Education

Aristotle's theories on rhetoric were put into practice once a system of formal legal education was set up in the United Kingdom. The practice of arguing aspects of legal scenarios in formal legal education originated in the 14th century where it was employed as an educational tool by the Inns of Court (Dickerson 2000). Robert Pearce's *Guide to the Inns of Court and Chancery* (Pearce 1855) details the customs and practices of the Inns and notes that moots were common practice. Further details of mooting as an essential part of legal education are to be found in a report prepared by Nicholas Bacon for King Henry VIII in 1540 and in Lord Justice Atkin's 1824 *Moot Book of Gray's Inns*, where he notes that mooting was an essential prerequisite of being called to the Bar (Rachid & Knerr 2000). An interesting description of the role of mooting in the 1800s is given by Crabb, who states:

Another sort of exercise in the Inns of Court were called moots, which from the Latin *moveo*, to move, agitate, or debate, signified arguing of cases. These moots were usually performed by students of a certain standing, preparatory to them commencing practice. (Rachid & Knerr 2000, p.2)

2.3 Later Developments

In time, moots began to degenerate into a mere form of 'entertainment' or 'edutainment' rather than a valuable educational technique in the Inns. Indeed, Holdsworth notes that in some cases moots became an "excuse for extravagant entertainment of the bar by the students" (Rachid & Knerr 2000), and mooting exercises lost their central role in legal education. Very little revision of legal education was undertaken in the United Kingdom in the 18th century

(Rachid & Knerr 2000). However, when revision began in the 19th century, mooted exercises were once again given a prominent place in legal education in the Inns. Indeed when legal education began to be formalised in the United States in the late 18th and early 19th century, simulation exercises were also employed in the curriculum, with formal lectures being followed by hypothetical questions and mini-moot court activities (Rachid & Knerr 2000). Moot court exercises have been undertaken in Harvard University since 1820 and other leading American universities followed this trend (Dickerson 2000). However, gradually the importance of moot court and other simulation activities began to wane, as law faculties began to value legal professionals as opposed to legal academics as teachers and lecturers. This created a change in the educational environment and long lectures and passive student learning became the norm. Moskowitz calls this method of learning the 'lecture/textbook' method. He comments:

"Students listened to lectures (some by professors, but many by judges and practicing lawyers) and read textbooks that distilled the rules from the cases. Both activities were essentially passive: the student absorbed information but did not interact much with the teacher". (Moskovitz 1992, p.242)

Mooting and other simulation activities were eventually side-lined in 1870 in the United States when the 'case method', focusing on analysing legal cases and precedents rather than on theoretical lectures or simulations, was adopted in Harvard University. As before, other universities soon followed suit, leading to a standardisation of legal education in the United States. At this time law schools did not have a high status or reputation in academic circles. Indeed, Moskowitz notes that "[a]s a vocational school with few full-time professors, the law school had a second-class status in the university community" (Moskovitz 1992, p.242). Other disciplines looked down on legal education because it was considered to be vocational rather than scientific in nature. Harvard Professor Christopher Columbus Langdell and others wanted to change this perception of legal education, and thus the 'case method' was promoted in an attempt to put law on an equal footing with other university subjects, with the case method enabling "teacher and students to examine a case as the raw material of a new science, the science of law" (Moskovitz 1992, p.241). With the adoption of the case method, the nature of legal education changed dramatically. Generally, simulation activities have been gaining more attention over the last number of years and have been promoted by legal academics and in legal education literature as an alternative, or at least an addition, to the case method and the traditional lecture method in an attempt to foster more active learning (McAninch 1986; Moskowitz 1992; Maranville 2001). Knerr et al. (2001) highlight the extent to which mooted activities form a part of the law curriculum in more recent times.

While the case method was formulated in the United States, it has also been employed in other common law jurisdictions such as the United Kingdom and Ireland to a certain extent, along with the traditional approach of long lectures on substantive law and passive learning on the part of students. In the United Kingdom and Ireland mooted and other simulation activities have traditionally held a more prominent place in the vocational institutions, usually attended

after the completion of an undergraduate law degree,⁵ e.g., in the case of Ireland, the Honorable Society of King's Inns⁶ (where one trains to be a barrister) and the Law Society⁷ (where one trains to be a solicitor). The development of advocacy skills becomes more important at this later vocational training stage than it is in the earlier undergraduate stage. In the case of the United States, by comparison, there is no additional 'vocational training' stage between law school, undertaking the Bar exam and practising as a lawyer. This may explain why moot court appears to hold a more central place within law degrees in the United States as compared with the United Kingdom or Ireland.

It is clear that moot courts have waned and gained in support from educators and popularity as a pedagogic tool over the years. However, in more recent years, as additional research has been undertaken into teaching and learning by educationalists, and indeed legal academics (e.g. Lynch 1996; Maranville 2001), the merits of simulation activities and problem based learning activities, such as moot courts, have been highlighted and are analysed below.

3. Theoretical Framework

In moot court activities, students simulate the work of a lawyer and learn, not only about legal principles and application of the law, but also how to argue a case. Simulation activities have been used for training purposes in many fields, such as the military and sports, for many years. Tansey and Unwin comment that "[i]t is in order to bridge the gap between theory and practice, the unnatural dichotomy of the colleges of education, that simulation was introduced into training" (Tansey & Unwin 1969, p.31). In the education context, simulation activities came to the fore in the late 1950s when they were first used in a university setting. They were originally employed in universities in the training of school administrators (Wynn 1964), where the students were provided with materials, such as letters from parents. The students had to respond to these life-like documents, and thus were learning through doing. It was felt that practice with such materials and 'problems' would provide better training for the administrators than focusing solely on sterile theories and guidelines. The same is true for law students who can engage in active and more effective learning, through moot court activities. It is suggested that a mix of both approaches – lectures combined with simulations - would provide for an enhanced all round legal education and legal graduates would be better prepared for a career as a legal professional.

Moot court activities also constitute a form of problem based learning (Landman 1953). In such activities, students are provided with a problem question and learn by working out the solution to the problem, with the lecturer acting as a facilitator. In the context of moot courts, students are provided with a hypothetical legal case and then they must find a solution to the case by applying legal principles. Moot courts require students to undertake both a written and oral 'answer' to a 'problem', and thus encourage and develop both problem solving and

5 An undergraduate law degree is not a pre-requisite in all cases and admission to the vocational training courses may be granted to persons with a degree in a different discipline.

6 <http://www.kingsinns.ie/>

7 <http://www.lawsociety.ie/>

advocacy skills, skills which are vital to a practising lawyer (Whinery 1955; MacLeod 1963; D'Amato 1987). Problem based learning was pioneered in McMaster University⁸ in Ontario, Canada in the 1960s. The shift towards problem-based learning in Europe began in the Netherlands with the foundation of the University of Limburg in Maastricht⁹ in the 1970s. Prior to the foundation of this university, complaints were commonly made that there was a growing distance between the learning and theory provided by third level institutions and the basic needs of professional practice. It was claimed that there was a "... clear gap between what students knew about a subject and their capacity to apply their knowledge to problems relevant to their subject area" (Moust & Nuy 1987, p.18). The Faculty of Medicine began to use problem based learning from the beginning and the 'Maastricht approach' to teaching and learning was born. The Law Faculty also adopted the innovative pedagogic approach of 'learning through problems' in 1982. Instead of being provided with theoretical knowledge in a traditional lecture structure, law students were provided with problems as the "starting point for self-directed learning activities" (Moust & Nuy 1987, p.19). The problem-based learning approach was entrenched in the institutional structures of the University of Limburg, from the type of instruction to the changing role of lecturers from "transmitters of knowledge to facilitators of the learning process" (Moust & Nuy 1987, p.24).

While the Maastricht approach is completely problem-based, in general, law curricula include some type of problem-based learning and simulation activities, combined with other forms of learning, including lectures and cases. It should also be noted that in legal education, there are different ways of viewing 'problems'. Many law lecturers employ scenarios as part of lectures, tutorials and indeed as exam questions. Generally, in these situations, students are expected to apply the knowledge that has already been discussed in lectures to the problem, rather than using the problem as a starting point for their learning. Moskovitz also highlights other distinctions between 'problems' and hypothetical questions / 'hypos'. He comments:

All very useful, but a hypo is not a problem. A hypo usually raises only one or two issues. A problem raises several issues, which must be organized before each can be separately analyzed. A hypo has to be short: it is sprung on the students during class. There's not enough class time to think about and analyze a long set of facts – i.e., a problem. (Moskovitz 1992, p.246)

While the differences between 'hypos' and moot court activities are clear, working out short hypothetical problems in class, helps students in developing the skills necessary for undertaking the longer, more complex and intricate moot court problems, and also encourages more active learning on the part of the students.

It is clear from the literature on simulations and problem based learning that the gap between theory and practice can be narrowed by moot courts. It is also important to analyse what type of learning students engage in by undertaking a moot court when considering what role such activities should take in the law curriculum. Bloom's Taxonomy, formulated in 1956 (Bloom

8 <http://www.mcmaster.ca/>

9 <http://www.maastrichtuniversity.nl/>

1956), categorises and analyses types of learning. The Taxonomy is structured in an ascending order of difficulty and importance regarding types of learning: 1. knowledge, 2. comprehension, 3. application, 4. analysis, 5. synthesis, 6. evaluation. Moot court activities require students to know and comprehend legal principles and to apply them to the facts of the problem question. They also require students to analyse case law and principles and to synthesise all of this information in the context of the problem question. Finally, moot courts require students to evaluate their case in presenting a convincing argument to a judge. In the context of moot courts, Moskowitz comments that “[p]roblem-solving helps students move up this ladder. While lectures teach items 1 and 2, the problem method enables students to learn 3 and 4, and sometimes to go further” (Moskovitz 1992, p.247). The taxonomy was revised by Anderson and Krathwohl in 2001. The revisions were not major but some modifications were made, including changing the categories of learning from nouns to verbs. Some of the categories were modified and the new category of ‘creativity’ was included. The new taxonomy categorises the types of learning as: 1. remember, 2. understand, 3. apply, 4. analyse, 5. evaluate, 6. create, and perceives analysis, evaluation and creativity to be on the same level rather than being in ascending order in a hierarchy (Anderson et al. 2000). The most distinctive modification to the taxonomy is the idea that students can learn to be creative. Lawyers have to be creative in their work. They cannot foresee absolutely everything that may happen during the course of their day’s work and they must often think on their feet, e.g. when faced with rebutting an opposing side’s argument in a court case. It is clear that such creativity can be learned as part of a moot court exercise, and that all categories of learning can be addressed in such exercises. It is also clear that the inclusion of moot court activities in the curriculum facilitates students to learn in different ways, practise both written and oral presentation skills, and gain a more rounded and enhanced educational experience, with graduates being better prepared for life in the legal profession. However, the inclusion of such activities has not always been a priority in Irish law programmes.

4. Simulation Activities in Irish Law Schools

4.1 Simulations in Irish Legal Education

Simulation activities did not have a prominent place in legal education in Ireland, apart from in the vocational institutions, until relatively recently. Those undertaking an undergraduate programme in law could obtain a degree without having ever mooted or engaged in any simulation activities. In the past number of years, there has been increased emphasis on the use of simulations in Irish law schools as educators seek to fill the gap between theory and practice,¹⁰ and the importance of Clinical Legal Education is on the rise (Donnelly 2008). A brief look at the various law schools in universities in Ireland shows, however, that there are significant differences in the manner in which simulations, in particular moot courts, are employed. Only two of the seven state universities currently operate stand-alone compulsory moot court modules within their undergraduate law degrees. One of these modules is assessed on a pass/fail basis while the other is specifically marked. One of these universities

10 Notably, an annual legal education symposium has taken place in Ireland since 2006.

holds an annual Gala Moot Court involving those students who have excelled in the compulsory module. The Gala Moot Court is held in the city's courthouse and presided over by sitting High Court judges.

Another Irish university law school has a compulsory module in legal procedure/legal research within which there is a moot court element. A fourth university assesses a specific percentage of the Contract Law module by way of moot court, while two universities carry out moot courts within tutorials for substantive law modules (with the possibility of video feedback for students). In the remaining universities, moot court activities are either informally employed within substantive law modules, or organised on an extra-curricular basis by student-run societies, with some assistance from faculty.

Simulations are employed to a greater extent in the vocational institutions where emphasis is placed on advocacy, negotiation and arbitration skills. Part of the Law Society of Ireland training to become a solicitor, for example, includes skills-based workshops and assessments in civil and criminal advocacy, interviewing and advising clients, legal presentation skills, and negotiation. Within the barrister-at-law degree programme in the Honorable Society of King's Inns, students also engage in a large amount of small-group simulations which both develop and assess practical skills performance. The various simulation activities include client consultations, negotiations and advocacy, in both civil law and criminal law hypothetical scenarios.

In relation to the use of simulations in the United States, Gaubatz stated in 1981:

While most schools have some moot court in their research and writing programme, few faculty members seem very enthusiastic about its presence or its promise. Reactions tend to vary from the positive 'It can't hurt', to the negative 'It steals time from our courses'. (Gaubatz 1981, p.87)

Such concerns continue to form a part of the simulation landscape, but the use of simulations in Irish legal education seems to have increased in recent years and there is a growing number of Irish-based academics with an interest in such practical learning techniques.¹¹ A most positive reflection of the current interest in simulations as a legal learning technique is the fact that proposals exist within a number of the universities in Ireland to offer academic credit for participation in extra-curricular mooting competitions, and to increase simulation-type learning by requiring students to carry out other practical tasks, such as conveyancing transactions. Furthermore, a number of the third-level law schools have plans to fit out classrooms as specifically dedicated moot courtrooms in the near future and in one university, the 'courtroom' is up and running successfully since the academic year 2009/2010.

¹¹ A Legal Education Symposium was established to meet the needs and interests of legal academics with a focus on legal education a number of years ago and has become a very popular forum for the exchange of views and presentation of research by Irish legal academics on aspects of Irish legal education.

4.2 Mooting Competitions

In addition to simulations being utilised as an educational technique within the formal legal curriculum, mooting competitions, as an extra-curricular activity, are popular among law students. Interscholastic competitions, such as the National Moot Court Competition¹² in the United States which was established in 1950, have been very successful. In the United Kingdom, the English Speaking Union¹³ and the Essex Court Chambers¹⁴ organise an annual mooting competition. On an international level, the Philip C. Jessup International Moot Court Competition¹⁵ was established in 1959 with teams from around the world, representing their home states, mooting on an international law issue (Almond Jr. 1998). Knerr et al. (2001) detail mooting competitions in national jurisdictions, in both common law and civil law countries.

In Ireland, a number of intervarsity mooting competitions are organised annually by student law societies and many law students enter international competitions such as the Philip C. Jessup International Moot Court Competition or the European Law Students' Association (ELSA) Moot Court Competition¹⁶. In previous years, a national mooting competition, open to all law students including those in vocational training at the Honorable Society of King's Inns or the Law Society of Ireland, was organised by the Bar Council of Ireland¹⁷ and usually sponsored by a legal publishing house. This competition no longer runs, although in-house mooting competitions and a competition between the two vocational institutions continue.

In 2009/2010 and again in 2010/2011, one of the major solicitor firms in Ireland, McCann Fitzgerald¹⁸, organised a moot-like competition entitled "The Advocate" for all third-level students. In the first round of this competition students were required to upload a video of their submissions to youtube.com¹⁹ and a selection was made on this basis for those who would progress to the next rounds, where the competition became more like a traditional moot court.

An Irish language mooting competition, *Bréagchúirt Uí Dhálaigh*, organised by *Gael Linn*²⁰, runs annually. While the main mission of *Gael Linn* is to promote the use of the Irish language, this competition attracts a lot of interest, with the final held in the Supreme Court and presided over by sitting judges and practising barristers.

12 <http://www.abcny.org/law-students/national-moot-court>

13 <http://www.esu.org/>

14 <http://www.essexcourt.net/>

15 <http://www.ilsa.org/jessup/>

16 <http://www.elsa.org/>

17 <http://www.lawlibrary.ie/viewdoc.asp?DocID=4>

18 <http://www.mccannfitzgerald.ie/>

19 <http://www.youtube.com/>

20 <http://www.gael-linn.ie/>

In the academic year 2010/2011 a Faculty-run Moot Court competition open to all non-vocational third-level law students in Ireland was organised for the first time by the Socio-Legal Research Centre²¹ and the School of Law and Government at DCU. It was held in the Criminal Courts of Justice Complex, Dublin and the final was judged by a High Court judge, a senior barrister and an academic lawyer. Trinity College Dublin²² won the competition, beating a Dublin City University team in the final. This event will run again in 2011/2012, with sponsorship from the Irish Association of Law Teachers²³ and the prestigious firm of solicitors, Matheson, Ormsby, Prentice²⁴.

5. Mooting in Practice

5.1 The DCU Experience

To obtain empirical evidence as to advantages and disadvantages to students of the use of simulation activities in the learning of law, a project was undertaken in the School of Law and Government at Dublin City University (DCU) in the academic year 2008/2009. A moot court activity was carried out in a postgraduate module on the MA in International Conflict and Security Studies programme. The students simulated an International Court of Justice case, playing the roles of lawyers, representing states. The main issue was based on the conflict in South Ossetia in the summer of 2008 and the students represented Russia and Georgia, with the lecturer playing the role of judge. In an undergraduate Criminal Law module a mock trial was undertaken. This centred on a murder charge and the issue of self-defence, based, to a large extent, on a recent controversial Irish case.²⁵ In this mock trial simulation, students played all roles from witnesses and jurors to counsel and judge. 16 (out of 18) postgraduate and 36 (out of 36) undergraduate students provided feedback on the simulation activities via the questionnaires. The postgraduate students came from a variety of academic backgrounds, but had not studied law and had not been exposed to court room settings. The undergraduate students had studied some, but not many law modules. Both the simulation activities were well received by the students and in general the standard of preparation and oral delivery was very high.

5.2 The Questionnaire and Feedback

After the simulation activities, a questionnaire was distributed to the students. The questionnaire focused on the learning experiences and the learning outcomes of these activities and the design and execution of the simulation exercise. The questions were generally closed questions but asked the students to explain some of their answers. A general

21 <http://dcu.ie/socio-legal/>

22 <http://www.tcd.ie/>

23 <http://www.ialt.ie/>

24 <http://www.mop.ie/>

25 *D.P.P. v Pádraig Nally* [2007] 4 I.R. 145; [2006] IECCA 128.

content analysis approach was utilised to analyse the feedback. Copies of the questionnaires distributed to students appear in the appendix to this article.

In general, feedback from the learners ('L' below) suggests that these exercises were a success at both undergraduate and postgraduate levels. In particular, the feedback underlines the general issues set out below.

- Following participation in the simulation students had a better understanding of the practical application of the law:
 - L1: the simulation activity *"provides a practical application of how law works"*
 - L3: *"considering the legal implication from both sides of an argument was enlightening"*
 - L5: *"Practical application of the study material always keeps in getting a fuller grasp of the subject."*
 - L19: *"Hands-on learning makes learning about the law more exciting and interesting."*
 - L4: *"[T]he interaction between lecturer and students provides a unique setting for learning..."*
- Students gained legal skills, especially advocacy and legal reasoning skills, which they would not have acquired from other learning processes such as listening to lectures, reading textbooks or undertaking a stand-alone written assignment:
 - L7: The simulation *"provided practical insights...that would be harder to experience from pure essay / presentation work."*
 - L17: *"A lot can be learned from books but it is important to experience it in its proper setting."*
- Students believed that they engaged with the course material more through the simulation experience than they would have in other learning activities such as essay writing:
 - L4: *"The simulation is better as it forces the student to come to grips with ... law."*
 - L7: The *"simulation exercise makes it more fun and meaningful."*
 - L35: *"Working out the problem was much easier in this environment."*
- Students learned more about the legal profession and practice by participating in the practical simulation exercises:
 - L22: *"It gives a more realistic idea of everything as opposed to relying on Ally McBeal as career guidance!"*
 - L7: It was *"great to be able to explore the area of law in this practical manner to see if we would be interested in a career in law."*

All students also stated that they would like to have more opportunities to participate in such real-life scenarios and simulations in their study of the law.

In summary, the main benefits the students gained from the simulation exercise were:

- It honed legal reasoning and argument skills;
- It improved critical analysis skills;
- It helped oral presentation skills;
- It aided in confidence building;
- It promoted teamwork;
- It allowed the students to become more comfortable with legal terms;
- The students saw the practical application of the law and were able to understand court procedure;
- The students interacted with each other in a different way;
- The students understood the substantive principles of law better; and,
- Students thought that the simulations activities were fun!

The students believed that the main skills they practised and improved in the simulation activities were:

- Oral presentation and advocacy –
 - L5: *“It was good to be put in a formal situation where we had to defend our case. It’s always good to learn strategies on how to present and sell yourself.”*
- Legal Reasoning –
 - L6 & L7: The simulation activity *“gave me an understanding of how to build a legal argument”* and created *“the ability to make a cohesive legal argument.”*

The questionnaire also asked the students what they found difficult in the simulation activities. The main difficulties included:

- A fear of the Judges!
- Time management – especially in the oral presentation aspects of the simulations.
- Teamwork – many students found it difficult to work in teams and some students wondered if individual simulation activities were possible. Some students thought that team members did not pull their weight.
- Some students wanted a more formal setting for the simulation activity – it had been carried out in an ordinary classroom. One student (L40) stated *“We didn’t get to dress up in wigs and gowns”*.

Some of the difficulties highlighted by the students actually reflect the reality of law and legal practice, e.g., some of the undergraduate students found it difficult to get all of the information from the witness. This can be seen as a benefit of the simulation activities as the students gained an insight into the practical aspects of law, rather than just focusing on legal principles.

5.3 The Lecturer Perspective

The lecturers were very happy with the simulation activities and the positive student feedback. It was most encouraging to see the students' interest in the simulations and their engagement with the substantive law principles, which can be lacking at times in other forms of learning.

However, a number of difficulties are associated with undertaking such simulations. Firstly, the simulation activities were very time-consuming for the lecturers. Suitable problems had to be identified and the materials had to be prepared, in addition to the regular lecture materials and hypothetical questions usually used in class.²⁶ Once a simulation is designed, it can be used and/or modified in future years, however, the initial time requirements for a successful simulation activity are very demanding and additional staff resources and finances, e.g., the employment of a barrister to prepare materials and judge the simulations, were required in DCU. Staff were also faced with organisational difficulties in timetabling and finding appropriate rooms and co-operation was needed from administrative and secretarial staff.

Gaubatz has also highlighted the difficulties associated with choosing an appropriate scenario for problem-based learning. He states that “[a]ll too commonly, the problems lack reality” and “[t]hose running the programs seem to delight in the hypothetical – ignoring the real cases occurring daily in nearby lawyers’ offices” (Gaubatz 1981, pp.87–88). In the DCU project, both of the simulations were based on real-life cases. However, this brought its own set of problems as there was some difficulty in accessing up-to-date resources.

The feedback highlighted that the students wanted a more realistic setting for the simulation activities, rather than an ordinary classroom. While the wearing of wigs and gowns may not necessarily lead to better learning outcomes for the students, it can be argued that the more ‘realistic’ a simulation is, e.g., using proper courtroom etiquette and dress, the better. Dedicated courtrooms are available in some universities internationally, which would no doubt, add to the mooting experience. Obviously, such dedicated court rooms are expensive and out of reach for many universities, though, as noted above, some of the Irish universities are currently working on establishing such dedicated moot courtrooms and one is already in place.

Some students, in the DCU study, highlighted the difficulties they faced in working in teams for the simulation activities. However, this difficulty relates to teamwork in general and is not specific to simulation activities. Indeed, difficulties with teamwork reflect the reality of working in a legal environment.

26 In relation to the time issues of simulation activities, see (Gaubatz 1981; Dickerson 2000).

6. Conclusions and Recommendations

This study is a small scale study, involving only two class groups at DCU, and a total of 52 students. However, the student feedback on the learning outcomes of the simulation activities was positive throughout and there was very little divergence in the answers provided by the students regarding advantages and disadvantages of simulations over other types of learning activities. The consensus which can be observed in the feedback is important as it gives support to the inclusion of simulation activities in the law curriculum.

From an examination of both the extant legal education literature and an analysis of the feedback on the DCU project, it is clear that exercises such as moot courts and mock trials should have a prominent place in the modern law curriculum. The learning outcomes of such activities are vital in the education of law students. They provide them with enhanced advocacy and legal reasoning skills, among others, which are vital to a practising lawyer. Especially important in this regard is that all students surveyed said that they would not have learned the same things and honed the same skills if other learning techniques were used to teach the same subject area. This must be taken into consideration when designing law programmes and in writing module and learning outcomes, in the light of the Bologna²⁷ process.

In addition, students do not want to wait until their vocational training programmes to become involved in such activities and should not have to. The simulations give students an idea of the profession, not just the principles of law, which has an impact on future career choices.

This type of problem-based learning lessened the gap between theory and practice and the students appreciated the practical application of law. They were active learners and more engaged with the legal principles. More importantly, from a student perspective, all participants agreed that the simulations were enjoyable and fun, and students were eager to undertake similar simulation activities in other modules. As highlighted by D.H. Lawrence, 'fun' is also an important argument for the conferring of a prominent place on simulations in the law curriculum:

*"There is no point in work
Unless it absorbs you,
Like an absorbing game.
If it doesn't absorb you,
If it's never any fun,
Don't do it".²⁸*

The case for an expansion of emphasis on, and interest in, moot courts and other simulation activities in the legal education curriculum in Ireland, and elsewhere, appears to be clear.

²⁷ <http://www.ond.vlaanderen.be/hogeronderwijs/Bologna/>

²⁸ 'Work' by D.H. Lawrence, 1929. See Taylor and Walford 1978, p. 1.

7. References

- Almond Jr., H.H., 1998. Strengthening the Philip C. Jessup International Moot Court Competition. *ILSA Journal of International and Comparative Law*, 4, pp. 635-667.
- Anderson, L.W., Krathwohl, D.R., Airasian, P.W., Cruikshank, K.A., et al., 2000. *A Taxonomy for Learning, Teaching, and Assessing: A Revision of Bloom's Taxonomy of Educational Objectives*, Boston, MA: Allyn & Bacon.
- Bloom, B., 1956. *Taxonomy of Educational Objectives: Handbook I: Cognitive Domain*, New York: Longman.
- D'Amato, A., 1987. The Decline and Fall of Law Teaching in the Age of Student Consumerism. *Journal of Legal Education*, 37, pp. 461-494.
- Dickerson, D., 2000. In Re Moot Court. *Stetson Law Review*, XXIX, pp. 1217-1227.
URL: <http://justice.law.stetson.edu/lawrev/abstracts/PDF/29-4Dicker.pdf>
- Donnelly, L., 2008. Irish Clinical Legal Education Ab Initio: Challenges and Opportunities. *International Journal of Clinical Legal Education*, 13.
URL:
http://www.northumbria.ac.uk/sd/academic/law/entunit/norlawpress/jour/IJCLE_2/ijcle2008/ijcle2008e
- Feinman, J.M., 1995. Simulations: An Introduction. *Journal of Legal Education*, 45, pp. 469-479.
URL: <http://lawteaching.org/articles/fulltext/200912-simulations.pdf>
- Gaubatz, J.T., 1981. Moot Court in the Modern Law School. *Journal of Legal Education*, 31, pp. 87-107.
- Hernandez, M.V., 1998. In Defense of Moot Court: A Response to "In Praise of Moot Court - Not!" *The Review of Litigation*, 17, pp. 70-89.
- Hill, D., 2005. Practice Makes Perfect: Use of Practitioner Led Mooting to Develop and Enhanced Student Centred Learning Experience. *Presentation at Vocational Teachers Forum IV, 8th January 2005*.
URL: <http://www.ukcle.ac.uk/resources/teaching-and-learning-strategies/hill/>
- Holmes Jr., O.W., 1881. *The Common Law*, Boston: Little Brown and Company.
- Knerr, C.R., Sommerman, A.S. & Rogers, S.K., 2001. Undergraduate Appellate Simulation in American Colleges. *The Journal of Legal Studies Education*, 19, pp. 27-62.
- Kozinski, A., 1997. In Praise of Moot Court – Not! *Columbia Law Review*, 97(1), pp. 178-197.
- Landman, J.H., 1953. The Problem Method of Studying Law. *Journal of Legal Education*, 5, pp. 500-507.
- Lynch, A., 1996. Why Do We Moot? Exploring the Role of Mooting in Legal Education. *Legal Education Review*, 7, pp. 67-96.
- MacLeod, G.A., 1963. Creative Problem-Solving – For Lawyers?! *Journal of Legal Education*, 16, pp. 198-202.

- Maranville, D., 2001. Infusing Passion and Context into the Traditional Law Curriculum Through Experiential Learning. *Journal of Legal Education*, 51, pp. 51-74.
- McAninch, W.S., 1986. Experiential Learning in a Traditional Classroom. *Journal of Legal Education*, 36, pp. 420-426.
- Moskovitz, M., 1992. Beyond the Case Method: It's Time to Teach with Problems. *Journal of Legal Education*, 42, pp. 241-270.
- Moust, J.C. & Nuy, H.J., 1987. Preparing Teachers for a Problem-Based, Student-Centred Law Course. *Journal of Professional Legal Education*, 5, pp. 16-30.
- Pearce, R.R., 1855. *A Guide to the Inns of Court and Chancery*, London: Butterworths.
- Rachid, M. & Knerr, C.R., 2000. *Brief History of Moot Court: Britain and US, Presentation at the Annual Conference of the Southwestern Political Science Association*, Texas: Galveston.
- Snape, J. & Watt, G., 2005. *How to Moot: A Student Guide to Mooting*, Oxford: Oxford University Press.
- Tansey, P.J. & Unwin, D., 1969. *Simulation and Gaming in Education*, London: Methuen Educational Ltd.
- Whinery, L.H., 1955. The Problem Method in Legal Education. *West Virginia Law Review*, 58, pp. 144-168.
- Wynn, R., 1964. Simulation: Terrible Reality in the Preparation of School Administrators. *The Phi Delta Kappan*, 46, pp. 170-173.
URL: <http://www.jstor.org/stable/20343295>

8. Appendix: Questionnaires

8.1 Student Survey on Simulation: Postgraduate Students

1. How much preparation time did you put into the Simulation exercise, including the research, writing of memorial and preparation for oral presentation?
1-12 hours _____
13-24 hours _____
24-36 hours _____
More than 36 hours _____
2. Do you think that the work you did for the Simulation exercise will be of benefit to you in relation to undertaking your second LG566 assignment? Explain.
3. Do you think that undertaking the Simulation exercise was of benefit to you in the study of International Law generally? Explain.
4. Do you think that undertaking the Simulation exercise was of benefit to you in the understanding of International Security and Conflict Studies? Explain.
5. Do you think that the Simulation exercise prepared you in any way for your potential future career? If yes, in what way? If no, why not?
6. Were the prepared materials of help to you?
7. Do you think there was too little / too much information in the prepared materials? Explain.
8. Would you recommend that changes be made to the prepared materials if the Simulation exercise was to run in the futures? If yes, what kind of changes?
9. Was the information session helpful? If yes, in what way was it helpful? If no, why was it not helpful?
10. Would you like to have more Simulation exercises in your other modules?
11. Do you prefer the Simulation exercise or the essay writing exercise as a means of assessment for LG566? Why?
12. What type of skills do you believe increased most from undertaking the Simulation exercise? Oral / written presentation, Critical Analysis, Team Work, Legal Reasoning, Other?
13. Was this a different type of learning experience from usual assignments on your programme? In what way?
14. What would you consider to be the three main benefits of this exercise?

15. What would you consider to be the three main difficulties / challenges in this exercise?
16. What, in your opinion, could be done to improve the Simulation exercise for future year groups?
17. What was the main learning outcome for you from undertaking this exercise?
18. Do you think that you would have learned the same things / practised the same skills by undertaking a different type of assessment for LG566, e.g. written exam, oral presentation etc.? Explain.

8.2 Student Survey on Simulation: Undergraduate Students

1. Which programme are you registered on?
2. What role did you play in this Mock Trial?
3. How much preparation time did you put into the Mock Trial (not including time spent on the related Criminal Law assignment)?
 - 0 hours _____
 - 1-3 hours _____
 - 3-5 hours _____
 - More than 5 hours _____
4. If you were to do the Mock Trial again would you spend more time preparing? Explain.
5. Do you think that taking part in the Mock Trial was of benefit to you in relation to undertaking your Criminal Law assignment? Explain.
6. Do you think that taking part in the Mock Trial was of benefit to you in the study of Criminal Law generally? Explain.
7. Do you think that taking part in the Mock Trial was of benefit to you in the study of Law generally? Explain.
8. Are you considering a future career in law? If so, do you consider this exercise to have been of benefit to you for the future?
9. Were the prepared materials of help to you?
10. Do you think there was too little/too much information in the prepared materials? Explain.
11. Was the information session helpful? Explain.
12. Would you like to have more simulation-like exercises in your other modules?
13. Do you think that the Mock Trial could/should be used as a formal method of assessment in the Criminal Law module?
14. Do you think that having the experience of the Moot Court in EPL1 was of help to you in relation to the Mock Trial?
15. Have you learned more about the court process from taking part in the Mock Trial?
16. What type of skills do you believe benefited most from your participation in the Mock Trial? Oral presentation, Analytical, Other?
17. Was this a different type of learning experience from usual assignments in law for you? In what way?

18. What would you consider to be the three main benefits of this exercise?

(i)

(ii)

(iii)

19. What would you consider to be the three main difficulties in this exercise?

(i)

(ii)

(iii)

20. What, in your opinion, could be done to improve the Mock Trial for future year groups?

(i)

(ii)

(iii)

21. What was the main learning outcome for you from taking part in the Mock Trial? i.e. what was the biggest thing that you learned from participating in this exercise?

22. Do you think that you would have learned this in some other manner without the exercise? How or when?