2020

Teaching Soft Skills Including Online: A Review and Framework

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TEACHING SOFT SKILLS INCLUDING ONLINE: A REVIEW AND FRAMEWORK

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I   INTRODUCTION

There is growing awareness in the academy and profession of the critical importance of soft skills and the need for lawyers to be better trained in them.[1] As is discussed below, how exactly these 'soft skills' are defined and categorised in the literature varies. Essentially, soft skills comprise a 'combination of competencies that contribute to how people know and manage themselves as well as their relationships with others'.[2] Lawyers have always needed soft skills competence to productively and ethically perform their role, and, as a more recently recognised, second outcome, to maintain work satisfaction and wellbeing. With Artificial Intelligence steadily advancing, emblematic of change broadly, many argue that soft skills will be the central determinants of a lawyer's success; representing for clients the distinct attribute of lawyers when deciding to use their services or automation.[3] Where the law degree emphasises analytical/research skills over soft skills, the 'new' professional context might in fact require the converse

[1]   The arguments presented in this article largely apply to non-legal careers too. Indeed, that law is typically also taught and pursued as a generalist degree further supports the need for soft skills. As detailed in the paper, examples in law include Sparrow's examination of the 2016-7 *Whole Lawyer* findings, highlighting how soft skills were deemed 'foundation skills' by legal employers: Sophie Sparrow, 'Teaching and Assessing Soft Skills' (2018) 67(2) *Journal of Legal Education* 553. A number of other works are discussed at length below. On the increasing relevance of lawyers' soft skills, see generally Susan Swaim Daicoff, 'Expanding the Lawyer's Toolkit of Skills and Competencies: Synthesizing Leadership, Professionalism, Emotional Intelligence, Conflict Resolution, and Comprehensive Law' (2012) 52 *Santa Clara Law Review* 795 ('Expanding the Lawyer's Toolkit').

[2]   Déirdre O'Byrne and Elena Dell'Aquila, 'Defining Soft Skills and Their Added Value to Social Enterprises' quoted in Déirdre O'Byrne and Jonathan Moizer (eds), *S-Cube Project (S³): Training Soft Skills in Social Enterprises Using Virtual Environments for Role Play* (University of Plymouth Press, 2014) 28, 28.

[3]   Hamilton, Monson and Organ describe how firms, driven by technological advances to provide 'enhanced value' for clients, might explicitly require their lawyers to have soft skills: Neil W Hamilton, Verna Monson and Jerome M Organ, 'Encouraging Each Student's Personal Responsibility for Core Competencies Including Professionalism' (2012) 21(3) *The Professional Lawyer* 1, 1.

to be true.[4] There is agreement about the significance of soft skills, however, there is still little scholarship on how to teach them at law school.[5]

Meanwhile, universities are changing their models in favour of digitisation, or online or blended learning; a development recently accelerated by COVID-19. Blended learning is any format where some learning occurs online and some in person;[6] where online material (ideally) 'blends' or is 'congruent' with the in-class work.[7] Digital learning allows universities to maximise student numbers and reduce costs, but it also has the potential drive and support several positive learning outcomes. Online resources are flexible (i.e., can be completed at any time, at any pace, without relying on memory) and afford students a degree of self-driven control over their learning.[8] When done well, blended learning allows for expanded, deeper learning and more effective outcomes.[9] Moreover, empirical research has shown the effectiveness of digital approaches for analytical and research-based law student learning.[10] Blended learning, in particular, has received

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[4]   Further back from the technological frontier this mismatch is evident. See, eg, Krannich, Holbrook and McAdams, who discuss how, at the law school level, the traditional case method of legal education (discussed further below) and its emphasis on legal analysis with no or limited attention to 'non-traditional' or soft skills training has a 'proven negative impact on students' psyches'. It fails to prepare them for practice, and, in some cases, causes disillusionment in students who came to law school to pursue precisely the personal, relational and ethical ideals and goals that the case method typically ignores: Jess Krannich, James Holbrook and Julie McAdams, 'Beyond 'Thinking Like a Lawyer' and the Traditional Legal Paradigm: Toward a Comprehensive View of Legal Education' (2009) 82(2) *Denver University Law Review* 382, 393–4.

[5]   The small growing scholarship includes: Sparrow (n 1); Daicoff, 'Expanding the Lawyer's Toolkit' (n 1); R Michael Cassidy, 'Beyond Practical Skills: Nine Steps for Improving Legal Education Now' (2012) 53(4) *Boston College Law Review* 1515 ('Beyond Practical Skills'); Deborah Rhode, 'Leadership in Law' (2017) 69 *Stanford Law Review* 1603 ('Leadership in Law'); Steven C. Bennett, 'When Will Law School Change?' (2010) 89(1) *Nebraska Law Review* 87.

[6]   Jan Welker and Lisa Berardino, 'Blended Learning: Understanding the Middle Ground Between Traditional Classroom and Fully Online Instruction' (2005) 34(1) *Journal of Educational Technology Systems* 33, 33.

[7]   D Randy Garrison and Norman D Vaughan, *Blended Learning in Higher Education: Framework, Principles and Guidelines* (Wiley & Sons, 2011), 5. Unlike in 'traditional' classes, instruction is delivered online and viewed at home, and 'homework', discussion and activities are done in-class: see, eg, William R. Slomanson, 'Blended Learning: A Flipped Classroom Experiment' (2014) 64(1) *Journal of Legal Education* 93.

[8]   Anne Hewitt and Matthew Stubbs, 'Supporting Law Students' Skills Development Online – A Strategy to Improve Skills and Reduce Student Stress?' (2017) 25 *Research   in   Learning   Technology*   1,   4 <https://files.eric.ed.gov/fulltext/EJ1163239.pdf>. See also Garrison and Vaughan (n 7) 21–3; Gerald F Hess, 'Blended Courses in Law School: The Best of Online and Face-to-Face learning?' (2013) 45(1) *McGeorge Law Review* 51, 58–9.

[9]   D Randy Garrison and Norman D Vaughan, *Blended Learning in Higher Education: Framework, Principles, and Guidelines* (Jossey-Bass, 2008), x.

[10]   Hewitt and Stubbs (n 8) 8–9 describe a 2014 survey of 277 University of Adelaide law students who completed online modules in 'Professional Legal Skills' training. Students across the degree, especially first-years, found the modules 'useful' for developing their skills in academic honesty, seminar preparation, case analysis and research, interpreting legislation, legal citation, and secondary source research. This paper synthesises, among others, the successful practices reported in the following:

growing attention in legal education literature as a means of efficient, engaging instruction, offering potentially greater learning outcomes than either purely online or purely in-class modes.[11]

However, there is very little research on what an online context can do to support soft skills learning. Indeed, online learning is typically associated with learner isolation, frustration, disengagement,[12] and thus low satisfaction[13] and retention,[14] all of which are at odds with socio-emotional skills development, or any learning. Starting from a slim margin in legal education, it seems the likelihood of and scope for soft skills teaching are further diminished by the advance of digital learning. Legal academics are in the position, then, where they must teach, or at least ought to consider teaching, things that have typically not been taught or tested for – for example, how someone manages the emotions of receiving feedback – and others that have proven difficult and whose pedagogies are only just emerging – for example, how to work well in a group. And further, this teaching must now occur, at least in part, in an online environment that would seem to reduce such efforts.

Given these convoluted demands, further research into teaching legal soft skills, especially in a digital learning context is vitally needed. New approaches need work within the current system[15] and ideally run alongside any clinical offering, for example, to help law students develop 'broad and transferable professional skills…that will allow them to flourish in this new global age of more for less.'[16] This article provides a critical analysis of the meanings and importance of soft skills, and the structural factors against their prominence in legal education. It also provides a framework and set of strategies for teaching them to law students in a digital format. In offering certain interventions, the aim is 'not simply to add more to the teaching burdens at law schools or to teach students everything they could possibly need to know to practise law. Rather, the goal must be to provide an introduction to, and experience with, essential professionalism skills

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Melissa Castan and Ross Hyams, 'Blended Learning in the Law Classroom: Design, Implementation and Evaluation of an Intervention in the First Year Curriculum Design' (2017) 27(1) *Legal Education Review* 1, 6–16; Ekaterina Pechenkina, Amanda Scarmaglia and Janet Gregory, 'It's the combination that works: evaluating student experiences with a multi-element blended design in first-year law' (2018) 9(4) *Contemporary Educational Technology* 405, 413; and Robert J Beck, 'Teaching International Law as a Partially Online Course: The Hybrid/Blended Approach to Pedagogy' (2010) 11 *International Studies Perspectives* 273.

[11] Slomanson (n 7) 94–5.

[12] Rena Palloff and Keith Pratt, *Collaborating Online: Learning Together in Community* (Jossey-Bass, 2005) 7.

[13] See, eg, Gayle E Mullen and Mary K Tallent-Runnels, 'Student outcomes and perceptions of instructors' demands and support in online and traditional classrooms' (2006) 9(4) *Internet and Higher Education* 257, 261.

[14] Mark R Lepper and Diana I Cordova, 'A desire to be taught: Instructional consequences of intrinsic motivation' 16(3) *Motivation and Emotion* 187.

[15] Bennett (n 5) 128.

[16] Scott A Westfahl and David B Wilkins, 'The Leadership Imperative: A Collaborative Approach to Professional Development in the Global Age of More for Less' (2017) 69 *Stanford Law Review* 1667, 1696.

and habits that will permit graduates to make the transition into practice with relative ease'.[17]

The paper is structured as follows. Part II further defines 'soft skills' and establishes their importance. It identifies four fundamental categories of 'core' soft skills critical to successful legal practice (self-awareness, self-management and self-development, social proficiency, and leadership), and a fifth category (professionalism and ethics) that can be seen both as a culmination and a target of the four fundamental categories. These skills are incorporated into later discussion of teaching them in law schools. This Part then considers the case *against* soft skills teaching, outlining objections to the term and its connotations, to provide an important set of cautions in deciding whether and how to pursue it. Section III provides important practical background: the impediments to teaching soft skills in law schools via a brief survey of legal education and of students' attitudes toward soft skills education. It also considers the additional challenges posed by the digital learning environment. This Part focuses on the Australian example and draws on the United States (U.S.) and United Kingdom (U.K.) cases. Part IV offers a model for teaching core soft skills in a digital format, focusing on a blended learning environment. It synthesises current practices inside and outside law and then details the author's own approaches designed for the core legal ethics course at UNSW Law and Justice. Its blended soft skills offerings are analysed according to three essential lawyer relationships: with their clients, and with their colleagues, both peer and senior. Part V concludes by identifying what needs to change in order for soft skills teaching to become established within the law degree, and within the new digital climate.

II   DECIDING ON SOFT SKILLS

A   *What are Soft Skills?*

At a general level, soft skills are 'skills, abilities, and traits that pertain to personality, attitude, and behaviour rather than formal or technical knowledge'.[18] They contrast, at least in theory, with 'hard skills' like, in the case of law, legal analysis, written and advocacy skills, and negotiation and litigation.[19] Whether or not there is a clear line between 'hard' and 'soft' skills,[20] it is clear that neither alone are sufficient for a successful and satisfying professional, and personal, life. For lawyers, analytical skills and knowledge cannot be exercised in a vacuum separated from the relationships and contexts that pervade legal work.

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[17]   Bennett (n 5) 129.
[18]   Philip Moss and Chris Tilly, '"Soft"Skills and Race: An Investigation of Black Men's Employment Problems' (1996) 23 *Work and Occupations* 252, 253.
[19]   Randall Kiser, *Soft Skills for the Effective Lawyer* (Cambridge University Press, 2017), 4.
[20]   Note: this discussion is taken up below – see n 90 and accompanying text.

This paper addresses teaching lawyering soft skills by reference to set of defined categories; 'core skills' categories essential to lawyers' effectiveness and wellbeing in their careers. The 'core skills' referred to have been synthesized from the literature, incorporating analysis and the weighted findings of empirical research that takes account of the perceptions of lawyers, students, legal experts, and clients. Two leading works focusing on lawyers and law students offered particularly useful background and illustration: Daicoff's review, which identified a number of soft skills she then grouped in four categories,[21] and Kiser's book, grouping its discussion and analysis of empirically-derived soft skills into six core categories.[22]

Below, this paper defines five 'core skills' categories, which will guide the later discussion of teaching approaches. The first four categories are fundamental skills with generalisable content, here discussed with particular adaptions to the practice and teaching of law. These are: self-awareness; self-management and self-development; social proficiency; and leadership. The fifth category, professionalism and ethics, can be seen as both a standalone skill (requiring particular, situational ethical and behavioural considerations as determined by the professional context), and as a culmination or 'goal' of the attainment of the four fundamental skills. With other materials,[23] this list and the rationales can themselves be used as a resource for students, including for their necessary orientation into soft skills learning.[24]

1. *Self-awareness skills*: Self-awareness, the 'ability to recognize and understand [one's own] moods, emotions, and drives as well as

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[21] Intrapersonal awareness; intrapersonal management; interpersonal awareness; and interpersonal management skills: Daicoff, 'Expanding the Lawyer's Toolkit' (n 1) 826–8. Among skills within these categories, some appeared more often in the studies assessed, 'suggesting that they may be more important or universally valued'; most common included both intrapersonal skills: 'drive, honesty, integrity' and interpersonal skills: 'understanding others, obtaining and keeping clients, counselling clients, negotiation, problem solving, and strategic planning': Ibid 828.

[22] Self-awareness; self-development; social proficiency; wisdom; leadership; and professionalism: Kiser (n 19).

[23] See, e.g., the 'Whole Lawyer' surveys and reports, produced as part of a project launched in 2014 by the Institute for the Advancement of the American Legal System, an independent research centre at the University of Denver, which aimed to identify the foundational skills needed for new lawyers' successful legal careers, develop models of legal education to promote learning those foundations, and to respond to legal hiring practices in order to promote improvements in legal education: Alli Gerkman and Logan Cornett, *Foundations for Practice: The Whole Lawyer and the Character Quotient* (Report, 2016) <https://iaals.du.edu/publications/foundations-practice-whole-lawyer-and-character-quotient>, 1; Alli Gerkman and Logan Cornett, *Hiring The Whole Lawyer: Experience Matters* (Report, 2017) <https://iaals.du.edu/publications/foundations-practice-hiring-whole-lawyer-experience-matters>.

[24] For the educational value of providing learning rationales to students, see: Anna Huggins, 'Autonomy supportive curriculum design: A salient factor in promoting law students' wellbeing' (2012) 35 *UNSW Law Journal* 683; Leah Wortham, Catherine Klein and Beryl Blaustone, 'Autonomy-Mastery-Purpose: Structuring Clinical Courses To Enhance These Critical Educational Goals' (2012) 18 *International Law Journal of Clinical Legal Education* 105.

their effect on others',[25] is a 'threshold requirement' for lawyers.[26] These skills include maturity, integrity, honesty, and motivation,[27] and the ability to overcome perceptive biases and the negative personal conditions (stress and anxiety, aggressiveness, imposter syndrome, and procrastination) that they can cause.[28] Without self-awareness skills, lawyers may struggle to correctly interpret situations and relationships and behave appropriately.[29]

2. *Self-management and self-development skills*: Self-management skills put self-awareness into practice. They include the 'ability to control or redirect disruptive impulses and moods' and, crucially for lawyers in client-facing and adversarial roles, 'to suspend judgment – to think before acting'.[30] Self-development skills, at a general level, include 'resilience, grit, perseverance, motivation and willpower',[31] and on a practical level include the ability to receive and implement feedback, to learn from mistakes, and to manage stress.[32] High-stress occupations, like law,[33] are particularly reliant on self-management and self-development skills.[34]

3. *Social proficiency skills*: Social proficiency skills include collaboration and teamwork;[35] understanding others' views and empathy; communication, persuasion and listening; ethical[36] and cultural competence;[37] and the ability to 'read' others and to see the world through their eyes.[38] Lawyers also require particular

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[25] Daniel Goleman, 'What Makes a Leader?' (1998) 76(6) *Harvard Business Review* 93, 95.

[26] Kiser (n 19) 87.

[27] Daicoff, 'Expanding the Lawyer's Toolkit' (n 1) 826.

[28] Kiser (n 19) 87. In his chapter on self-awareness, pages 42–87, Kiser discusses 12 conditions (and their management strategies) that risk 'subverting [lawyers'] careers and relationships: emotional numbing; high moral identity; static self-illusion; omniscience; stress/anxiety; aggressiveness; extrinsic motivation; procrastination; impostor syndrome; alcohol and drug impairment; narcissism; and status, affluence and power': Ibid 87.

[29] Ronald E Wheeler, 'Soft Skills: The Importance of Cultivating Emotional Intelligence' (January/February 2016) *American Association of Law Libraries Spectrum* 28, 29. 'Good self-management is not possible without self-awareness' and 'self-management informed by self-awareness provides the tools to deal with various situations': 30–1.

[30] Goleman (n 25) 95.

[31] Kiser (n 19) 135.

[32] Susan Swaim Daicoff, 'Lawyer, Form Thyself' (2015) 27 *Regent University Law Review* 205, 208, fn 17. ('Lawyer, Form Thyself')

[33] See, eg, Marjorie Silver, *The Affective Assistance of Counsel* (Carolina Academic Press, 2007) 5–52.

[34] Daicoff, 'Expanding the Lawyer's Toolkit' (n 1) 827.

[35] Kiser (n 19) 186.

[36] Justine Rogers, 'Since Lawyers Work in Teams, We Must Focus on Team Ethics' in Ron Levy et al (eds) *New Directions for Law in Australia: Essays in Contemporary Law Reform* (ANU Press, 2017) 483.

[37] Kiser (n 19) 186. In his chapter on social proficiency, pages 137–85, Kiser discusses the following skills and means of their development: 'understanding others' perceptions, perspectives, and beliefs; knowing how to communicate, persuade, listen, share stories, empathize, build trust, apologize, and work within teams; and developing and displaying cultural competence': Ibid 186.

[38] Daicoff, 'Expanding the Lawyer's Toolkit' (n 1) 826.

skills in questioning and interviewing; negotiating; maintaining client and other relationships within the profession; and problem-solving and strategic planning.[39] This category extends to cover skills in organisational awareness – the ability to identify and 'read' social currents, decision networks, and organisational politics.[40] These skills are needed for lawyers to form positive work relationships, including with colleagues, opponents, clients, and judges.[41]

4. *Leadership skills*: Lawyers can take on a variety of leadership roles,[42] and the leadership skills required will depend on the organisation and context.[43] In general, self-awareness and social proficiency skills are considered necessary for effective leadership,[44] as are other leadership-specific skills, like vision, passion and integrity;[45] the ability to 'inspire, and influence'[46] and the resilience needed to receive and process feedback.[47] Crisis management skills (including independence, stamina, and compassion) are important.[48] However, scholars say that increasingly leaders need to be connective and adaptive; to continually 'scan the environment' to see what change is needed and then build the teams to design change interventions and navigate people through.[49]

5. *Professionalism and ethics skills*: These skills allow lawyers to apply the above 'fundamental' skills to support their professional obligations and ideals. Professionalism allows lawyers to act in the interests of clients (especially in light of fiduciary duties)[50] and the profession as a whole.[51] It requires the ability to recast knowledge and practice in terms of accountability and responsibility to other actors and institutions.[52] Ethics skills may be seen as interpersonal skills;[53] a combination of awareness, reflectiveness, moral

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[39] Ibid 827–8.
[40] Daniel Goleman et al., *Organizational Awareness: A Primer (Building Blocks of Emotional Intelligence Book 7)* (More Than Sound, 2017).
[41] Kiser (n 19) 185.
[42] Rhode, 'Leadership in Law' (n 5) 1606.
[43] Ibid 1608.
[44] Ibid 1611.
[45] Esther Cameron and Mike Green, *Making Sense of Change Management: A Complete Guide to the Models Tools and Techniques of Organizational Change* (KoganPage, 3rd ed, 2012), 157, citing W Bennis, *On Becoming a Leader* (Addison-Wesley, 1994).
[46] Rhode, 'Leadership in Law' (n 5) 1610; see also Kiser (n 19) 259–60.
[47] For e.g., in other fields, Patricia L. Harms and Deborah Britt Roebuck (2010) 'Teaching the art and craft of giving and receiving feedback' 73(4) *Business Communication Quarterly* 413-431; Ali H. Algiraigri (2014) 'Ten tips for receiving feedback effectively in clinical practice' 19(1) *Medical education online* 25141.
[48] Kiser (n 19) 254–5.
[49] Cameron and Green (n 46) 163–4.
[50] Kiser (n 19) 274–5.
[51] Ibid 286–7.
[52] Ibid 288.
[53] Hugh Breakey, 'Building ethics regimes: Capabilities, obstacles and supports for professional ethical decision-making' (2017) 40 *UNSW Law Journal* 322.

motivation and moral capability.[54] Skills in 'wisdom', including 'perceptiveness, foresight, creativity, fairness, judgment, self-renewal, and courage',[55] are also important for ethical practice.[56]

B   Why are 'soft skills' important in lawyering?

Westfahl, a specialist in lawyers' professional development, suggests that soft skills training and evaluation are crucial to the 'twin goals' of legal education: 'fostering a better profession, and developing more productive, successful and self-fulfilled lawyers'.[57] The following subsections outline research that establishes the importance of soft skills for these two reasons or 'goals': for professional reasons – that is, for lawyers' success and effectiveness; and for personal reasons, including lawyers' 'self-fulfilment' and wellbeing.

1   Professional reasons

As mentioned, the lawyer's role has always demanded soft skills – or 'intra- and inter-personal (socio-emotional)' work.[58] Like other professionals, lawyers deal with people and their problems in situations of uncertainty, conflict, hostility, and/or stress, through client interviewing and counselling, advocacy and dispute resolution, and negotiating with other practitioners.[59] The skills required by lawyers in any given situation will be dictated by these contexts and the relationships involved, whether with clients, peers, senior colleagues, opponents, judges, or other officials.

Daicoff, a law and psychology scholar,[60] conducted a review in 2012 of North American survey research that sought to derive the 'traits' of successful lawyers. Her review found that top lawyers are marked out by higher emotional intelligence and self-management (stress tolerance abilities).[61] Top young lawyers and top women lawyers shared the same four strengths: independence, stress tolerance, assertiveness and optimism.[62] A lack of these strengths can, it follows, contribute to 'bad' practice; Daicoff summarises complaints data that

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[54]   These four elements make up moral psychologist, James Rest's Four Component Model or four psychological processes of ethical action. For its application in the legal context, see Breakey (n 53) and Justine Rogers and Felicity Bell, 'The Ethical AI Lawyer: What is Required of Lawyers When They Use Automated Systems?' (2019) 1 *Law, Technology and Humans* 80.

[55]   Kiser (n 19) 224.

[56]   Kiser (n 19) 187, 223-4.

[57]   Scott Westfahl, 'Response: Time to Collaborate on Lawyer Development' (2010) 59 *Journal of Legal Education* 645, 649.

[58]   See, eg, K Kechiagas (ed) *Teaching and Assessing Soft Skills – Measuring and Assessing Soft Skills Project* (1st Second Chance School of Thessaloniki, 2011).

[59]   Howard R Sacks, 'Human-Relations Training for Law Students and Lawyers' (1959) 11(3) *Journal of Legal Education* 316, 319.

[60]   See, eg, Susan Daicoff, *Lawyer, Know Thyself: A Psychological Analysis of Personality Strengths and Weaknesses* (American Psychological Association Books, 2004); full bibliography at 'Curriculum Vitae', *Susan Daicoff* (Web Page) <https://susandaicoff.webs.com/>.

[61]   Daicoff, 'Expanding the Lawyer's Toolkit' (n 1) 819–20.

[62]   Ibid 820.

establishes the relationship between lawyers' poor soft skills and client dissatisfaction.[63] In literature where practising lawyers and other 'legal personnel' (including judges, professors and students)[64] were asked what skills they considered important in legal practice, many respondents listed 'hard' skills (like legal analysis, research, and drafting),[65] however a 'surprising number of non-traditional skills', including intra- and inter-personal skills, were also seen as important in these studies.[66]

Despite Daicoff's surprise at the acknowledgement by legal personnel of the importance of 'non-traditional' skills, researchers have found that soft skills are not only positive but necessary to lawyers' practices and career prospects. They should be taught then at law schools alongside and within substantive law subjects. In the United States context, Sparrow examined the findings of the 2016-7 *Whole Lawyer* surveys and reports,[67] highlighting how '[client] confidentiality, timeliness, commitment, integrity, respect, listening, responsiveness, diligence, strong work ethic, and attention to detail' were deemed by employers to be 'the top ten foundation skills'.[68] Sparrow argues that teaching has not kept pace with these findings, and that if these skills are 'important for new lawyers, law schools should be educating students about all of them, and explicitly teaching and assessing at least some of these skills to help students develop them.'[69]

In his book explicitly addressing 'soft skills' in lawyering, Kiser, a researcher in law and social sciences,[70] synthesized research assessing clients' and lawyers' perceptions of the 'most important attorney traits, qualities, characteristics and habits'.[71] In the studies Kiser reviewed, *clients* valued, in descending order of importance, the following skills: communication with clients: keeping them informed and responding to their queries and questions; attentive listening skills; responsiveness to – and anticipation of – clients' needs, interests, and goals; explanations of practical issues – fees and costs; strategic problem solving, legal advice, and case/project management; understanding clients' needs, expectations and priorities; empathy and compassion; respectfulness; legal expertise/knowledge of the law; and trust.[72] *Lawyers* ranked the following skills in order of importance: legal expertise and competence; maintenance of client confidentiality; punctuality; skills in risk mitigation; honouring commitments; delegation and management skills; integrity and trustworthiness; objectivity in assessing solutions and outcomes; courtesy and respect for others; and trial-preparation

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63   Ibid 804.
64   Ibid 822.
65   Ibid 821.
66   Ibid 822; 824–5.
67   See n 23.
68   Sparrow (n 1) 554.
69   Ibid 556.
70   'Analyst   Profile: Randall   Kiser',   *DecisionSet*   (Web   Page) <https://www.decisionset.com/randall-kiser.html>.
71   Kiser (n 19) 32.
72   Ibid 32-3.

skills.[73] After a weighting of the study results to reflect their sample sizes, Kiser concludes that while clients and lawyers may define 'attorney effectiveness' differently, 'both attorneys and clients indicate that soft skills are more important than hard skills'.[74]

Having said that lawyers have always used, or needed, soft skills, the relevance of soft skills 'may be increasing due to current challenges facing the legal profession'. [75] Hamilton et al discuss increasing pressures from clients for 'enhanced value' in their legal services, including unbundling of work and global outsourcing (especially in 'commodity work like e-discovery, document review, and due diligence work'). The internet increasingly enables clients to become more educated about – and so more demanding in seeking – legal services.[76] Powerful clients then expect lawyers to use new disciplines, like legal design or legal project management, which typically require high soft skill proficiency, including in teamwork, ongoing client communication, feedback and review. These pressures become the 'new normal market', and lawyers must master soft skills like responsiveness and collaboration (with clients and with colleagues) to maintain their relevance and efficacy.[77] Firms now explicitly require these competencies in their lawyers. [78] To succeed in their careers, students must be taught these skills (and their importance), and that it is a student's 'personal responsibility to engage in activities inside and outside the classroom that develop self-directedness'.[79] Furthermore and as flagged in the introduction, as technology improves, enabling, to give one recently realized example, artificial intelligence to conduct research and produce and present legal solutions,[80] it may be that only the 'soft' aspects of law are left to lawyers. These increased client expectations, their related budgetary and performance review measures, and technology-driven role changes are added challenges for lawyer achievement - and wellbeing.

2   *Personal reasons*

Professional contexts can also give rise to challenges sometimes more 'personal' than 'professional' in nature. For example, as Kiser explains, the lawyer-client relationship often sees clients sharing sensitive, intimate details with lawyers; interactions with clients can often be 'profoundly personal', and 'not a mere cognitive exercise'.[81] Daicoff argues what without soft skills training, students and new lawyers may in practice 'fill in the blanks' with negative or less-than-optimal behaviour that they consider professionally effective –

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[73]   Ibid 33.
[74]   Ibid.
[75]   Daicoff, 'Expanding the Lawyer's Toolkit' (n 1) 873.
[76]   Hamilton, Monson and Organ (n 3) 1.
[77]   Ibid 1.
[78]   Ibid.
[79]   Ibid 10.
[80]   Kate Galloway, Kate Offer and Natalie Skead, 'Disrupting legal education' (2017) 44(10) *Brief* 10, 11.
[81]   Kiser (n 19) 23.

behaviour that can then generate personal problems by 'unnecessarily exacerbat[ing] conflict and tension'.[82] Research also indicates that soft skills are important for lawyers' long-term wellbeing, because they enable lawyers to focus on their 'intrinsic values' and connect their day-to-day work with their 'passions and interests'.[83] Students and lawyers motivated by 'extrinsic rewards' like grades, rankings, and pay are at risk of ignoring 'interpersonal and emotional concerns',[84] setting up the potential for psychological distress in the long term. Krannich et al also discuss how, at the law school level, the traditional case method of legal education (discussed further below)[85] and its emphasis on legal analysis with no or limited attention to 'non-traditional' or soft skills training has a 'proven negative impact on students' psyches'. It fails to prepare them for practice, and, in some cases, causes disillusionment in students who came to law school to pursue precisely the personal, relational and ethical ideals and goals that the case method typically ignores.[86]

Today's lawyers need soft skills more than ever to manage the affective impact of legal practice (e.g. handling stressful interpersonal situations), and to maintain their own relevance and the satisfaction of meaningful work. Soft skills are therefore not only 'marketable' competencies, but also align with the classic view of professionalism that emphasises moral values and a new one that emphasises self-care.[87]

C   *Why* Not *Soft Skills?*

Having advanced the case for 'soft skills', in deciding whether to incorporate it (further) into legal education, it is important to confront its many criticisms.

Some critiques raise questions about the validity of the term itself, including its drawing a perhaps misleading distinction between 'hard' and 'soft' skills; the connotations of 'soft' as being either 'easy', or, alternatively, 'feminine'; and discrimination issues arising from the term's lack of formalisation or accepted meaning. To elaborate, firstly, the term could act to enforce a misleading distinction between skillsets, when, in practice, 'hard', esoteric knowledge informs and is connected to interpersonal skills and non-legal knowledge. Professor Anna Cody, then Director of the Kingsford Legal Centre, a community legal centre at UNSW, explained how these intermesh: 'when interviewing a client, [for example] who has experienced domestic violence, to interview well, you need to have some theoretical understanding of what causes

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[82] Daicoff, 'Expanding the Lawyer's Toolkit' (n 1) 807, 829–30, 834.
[83] Ibid 803 (n 20); 837; 872.
[84] Ibid 808–9.
[85] See nn 111–74 and accompanying text.
[86] Krannich, Holbrook, and McAdams (n 4) 393–4. Kiser also makes an additional personality-based observation, inferring from the literature that people in typically 'intellectual' occupations ('smart people' like lawyers) may be most in need of soft skills, to 'offset the occasionally perverse effects of high intelligence' like susceptibilities to inaccurate self-perceptions (concepts like 'once smart, always smart'; and 'to be smart is to be good'): Kiser (n 19) 16–7.
[87] See Kate Galloway and Peter Jones, 'Guarding Our Identities: The Dilemma of Transformation in the Legal Academy' (2014) 14 *QUT Law Review* 1, 14, 19.

domestic violence: the gendered nature of it, the common responses of victims, that is to minimise any feelings of shame, as well as knowledge of the law itself.' 'Soft skills' might also enforce a hierarchy: the adjective 'soft' suggests those skills are easier or less important than hard skills which require high knowledge and technical competence. In practice, 'soft' skills, while thought to be conceptually simple and acquirable through experience, are difficult to execute appropriately in context.[88]

An additional critique of soft skills teaching is that it might in effect mean the formalisation and reinforcement of standards for speaking, presenting, and emoting set by the most powerful within the profession. [89] Soft skills can engender the general assumption that singular, shared cultural knowledge leads to more effective outcomes. Their incorporation might disregard that people of different cultures and backgrounds tend to have different communication styles and attitudinal outlooks.[90] Because they are less formalised, technical or quantified, 'soft skills business parlance'[91] can disguise other (personal and discriminatory) standards for recruitment, networking, mentoring, feedback, and performance review. For instance, the notion of 'soft skills' capabilities may allow employers to use ambiguous criteria to hire certain groups based on their vulnerability and exploitability, particularly in low-skilled industries.[92] In high skilled industries, like law, employers might use them to engage in affinity-matching – where 'soft skills' constitute the amorphous 'X-factor'.[93] The 'you either have it or you don't' view of soft skills disadvantages students or aspiring lawyers who do not 'do' soft skills in the culturally dominant way and cannot access soft skills training and socialisation.[94] Some writers have argued that it reinforces one-size-fits-all education too, which creates a

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[88]   Daicoff, 'Lawyer, Form Thyself' (n 32) 207-10; Elizabeth Chell and Rosemary Athayde 'Planning for Uncertainty: Soft Skills, Hard Skills and Innovation' (2011) 12 *Reflective Practice* 615, 616.

[89]   Large corporate firms may have an outsized influence (whether explicit or implicit in universities' 'graduate outcomes' attached to alumni employment rates) on law school curricula: Justine Rogers, Dimity Kingsford-Smith and John Chellew, 'The Large Professional Service Firm: a new force in the regulative bargain' (2017) 40 *UNSW Law Journal*, 218, 234. These firms' own soft skills requirements (see Hamilton, Monson and Organ (n 3) 1) may well filter into the law school.

[90]   Lucille A Jewel, 'Merit and Mobility: A Progressive View of Class, Culture, and the Law' (2012) 43(2) *University of Memphis Law Review* 239, 283–4. See also Tristin K Green, 'Work Culture and Discrimination' (2005) 93(3) *California Law Review* 623, 678; Philip Moss and Chris Tilly, 'Raised Hurdles for Black Men: Evidence from Interviews with Employers' (Working Paper No 81, Russell Sage Foundation, November 1995).

[91]   Ibid, 287.

[92]   Margaret M Zamudio and Michael I Lichter, 'Bad Attitudes and Good Soldiers: Soft Skills as a Code for Tractability in the Hiring of Immigrant Latina/os over Native Blacks in the Hotel Industry' (2008) 55(4) *Social Problems* 573, 577.

[93]   To see how the X-factor can operate in the context of the English barristers' profession, see Fernanda Pirie and Justine Rogers. 'Pupillage: The shaping of a professional elite' in Jon Abbink, Jon and Tijo Salverda (eds) *The Anthropology of Elites* (Palgrave Macmillan, 2013) 139-161.

[94]   Jewel (n 92) 283–4.

gap between professional behaviour, and cultural and familial practices, that can be too large and burdensome for some groups.[95]

The term might also act to conceal coercive dimensions once entry has been achieved. 'Soft' sounds fluid and open-minded, which obscures that 'codes of emotional task fulfilment may be as rigid' as hard skills,[96] as suggested above in the connection between soft skills, client demands and performance review. As indicated by the research, in some areas, it may be short-hand for finding workers who are more vulnerable, tractable, deferential, and willing to do more labour for less reward.[97] The concept could serve to legitimise discriminatory gendered practices: 'soft' reinforces that soft skills and emotional work are disproportionately delegated to, and expected of, women in the workplace while other traits such as intellectual effort and rational reasoning are thought to be better undertaken by men.[98] It might contribute to a system in which women are penalised when they do not conform to stereotypically feminine traits and interpersonal and motivational signals.[99] Some of these arguments suggest that an alternative terminology, perhaps one amenable to clearer definition, would be preferable. However, other terms that are used in the literature also have their limitations.[100] This paper uses 'soft skills' for the discussion, but the use of 'core skills' or 'professional competencies'[101] is a better approach when teaching and in naming any learning outcomes and qualifications.

Meanwhile, we have just seen how soft skills competence includes self-management, personal development and resilience. This aligns with the legal profession's growing wellbeing movement, driven by empirical studies finding high rates of lawyer and law student

[95]   Alankrita Mahendra, 'Soft Skills Training in the Indian Context: Need to Prevent Cultural Hegemony' (2013) 7(3) *IUP Journal of Soft Skills* 46.

[96]   Orly Lobel, 'Agency and Coercion in Labor and Employment Relations: Four Dimensions of Power in Shifting Patterns of Work' (2001) 4(1) *University of Pennsylvania Journal of Labour and Employment Law* 121, 166–7; Philip Moss and Chris Tilly, '"Soft" Skills and Race: An Investigation of Black Men's Employment Problems' (1996) 23(3) *Work and Occupations* 252, 256–8.

[97]   Zamudio and Lichter (n 92) 588.

[98]   Lobel (n 96) 167, citing Arlie Russell Hochschild, *The Managed Heart: Commercialization of Human Feeling* (University of California Press, 1983) 163.

[99]   *Price Waterhouse v Hopkins* (1989) 490 US 228, 231–5 (female denied partnership on the basis she was too aggressive, unduly harsh, difficult to work with and impatient with staff, but praised for being forthright, independent and creative). Coding of feminine traits as part of work requirements has been held as disparate treatment by American discrimination laws: Orly Lobel, 'Reflections on Equality, Adjudication, and the Regulation of Sexuality at Work: A Response to Kim Yuracko' (2006) 43 *San Diego Law Review* 899, 910.

[100]   These terms include, eg, 'professional skills' and 'practical skills': see, eg, Westfahl (n 57) 650 fn 8. Others may refer to 'employability', 'essential' 'generic', 'transferable' and 'emotional quotient' skills, or 'key competencies': see, eg, Carol Blaszcynski and Diana J Green, 'Effective Strategies and Activities for Developing Soft Skills, Part 1' (2012) 10(1) *Journal of Applied Research for Business Instruction* 1.

[101]   Sparrow calls them 'professional competencies and behaviors': Sparrow (n 1) 556.

depression, anxiety and stress. 102 As a final caution though, emphasizing acquisition of such skills in emotional and psychological self-management might be one way that organisational and professional (or collective) problems – and their solutions, then – become individualised or made solely the responsibility of the individual law student or lawyer. As Baron argues, an 'individualist discourse' that emphasizes the steps individuals can take to improve (or manage) their own wellbeing can 'mask systemic issues and pathologize certain behaviours that may, in fact, not be signs of illness at all'. 103 Parker similarly cautions that the wellbeing discourse is at risk of being 'co-opted by powerful interests that seek to confine change to the individual and not the collective social, economic and political levels'. 104 Soft skills training, which can suggest to students that self-improvement is necessary (or even an 'ethical responsibility') in professional work, 105 may ignore workplace pressures (like increasing time and emotional strains, declining job security, and profit emphases) 106 and cast them as individual problems; students and lawyers are 'treat[ed], manage[d] and palliate[d] … so that they can cope with getting back to work in a system that is itself broken.' 107 A curious problem is created: changing educational and practice contexts seem to be asking for new skills, including soft skills, that could allow the lawyer to bring themselves more fully to their law studies and practice, but some of these new skills might also disguise the effects of the increasing managerialism and competitiveness of professional work.

With these caveats in mind, this paper proceeds carefully from here, on the basis that we live and work in social worlds and giving students the chance to consciously develop interpersonal skills (and foundational intra-personal skills) before entering practice, is worthwhile. As Rhode argues: whether or not teachers are intentionally teaching leadership and relevant soft skills, they 'model ethical values, interpersonal qualities, techniques of communication and influence, and treatment of subordinate' to students in every course. 108 The academic setting and its 'priorities, policies, and reward structures' also indicate to students the types of behaviour that are highly valued. 109 Whether intentional or otherwise, soft skills are being communicated, or 'taught' – and an informed approach, incorporating 'exposure to [leadership] research, case studies, examples, exercises, and guided reflection' would be preferable to this incidental training. 110 Building on this qualified conclusion, the following Part sets out the historical context that both

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102   See, eg, the studies described in Christine Parker, 'The Moral Panic over Psychological Wellbeing in the Legal Profession: A Personal or Political Ethical Response' 37(3) *UNSW Law Journal* 1103, 1104.

103   Paula Baron, 'The Elephant in the Room? Lawyer Wellbeing and the impact of Unethical Behaviours' (2015) 41(1) *Australian Feminist Law Journal* 87, 90.

104   Parker (n 102) 1105.

105   Ibid 1127.

106   Ibid 1122–3, 1126.

107   Ibid 1136.

108   Rhode, 'Leadership in Law' (n 5) 1638.

109   Ibid.

110   Ibid 1638–9.

explains soft skills' present, second-tier status and continues to colour the ongoing pedagogical challenges discussed later on.

III   CHALLENGES IN TEACHING SOFT SKILLS AT LAW SCHOOL

The law school context reflects its historical emphasis on student acquisition of – and proof of competence in – substantive knowledge. This context can make any significant curricular reform difficult. Incorporation of soft skills training is made especially difficult by additional factors including opposition from the profession (real and perceived) and university resource shortages. Although real progress towards acknowledgement of the importance of soft skills has been made, some obstacles remain. At the same time, law students themselves may make teaching soft skills difficult: the students might have been attracted to law school for its focus on substantive knowledge, or by other motivations attached to the attainment of that knowledge, and may see soft skills as uninteresting, too challenging, and/or irrelevant. These two sources of difficulty are discussed below.

A   Law schools and 'hard skills': contextual background

1   Formal legal education in the 19th and early 20th centuries

As Rosenberg puts it, 'We all strive to teach students to "think like a lawyer",[111] which means disciplined logic,[112] primarily through the case method. Krannich et al describe how U.S. law schools' enduring 'case method' derives from the 19th century pursuit to transform legal education into 'scientific analysis'.[113] The method in which students study the decisions of (typically higher) courts, spawned both the organisation of topics into 'core courses' common across law schools, and their reliance on the Socratic method.[114] The method aims to teach students how to recognize the patterns and policies underlying rules and decisions, and how to apply those insights to new and comparable situations – that is, to teach legal analysis and reasoning.[115] It requires students to look beyond the 'social and interpersonal dynamics' and narratives behind cases, and to largely ignore the relationships and emotions involved: 'students are conditioned to disregard the emotional, interpersonal, moral and social consequences of disputes as extraneous concerns that will only confuse the legal analysis to be performed'.[116] Despite its successes in teaching legal analysis, the case method alone leaves students to fill in other essential skills (like social

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[111] Joshua D Rosenberg, 'Interpersonal Dynamics: Helping Lawyers Learn the Skills, and the Importance, of Human Relationships in the Practice of Law' (2004) 58 *University of Miami Law Review* 1225, 1226.

[112] Ibid.

[113] Krannich, Holbrook and McAdams (n 4), 383–4.

[114] Ibid 384.

[115] Ibid 385.

[116] Ibid 386.

and ethical skills,[117] problem solving,[118] and leadership)[119] themselves, perhaps waiting until they graduate to finally learn the realities and requirements of practice.[120]

From the mid-20th century, scholars began to express dissatisfaction with the dominant case method approach to legal education because it was ill-adapted to training lawyers for relationships with others in which the primary working mode is conflict prevention or resolution, not litigation or combat. It resulted in, some argued, the 'development of technicians' and neglect of ethics and professional responsibility.[121] In the U.S. context, proposals for and attempts to provide 'humanistic' training date back to 1940s.[122] An 'experimental, human-relations course … called Professional Relations' was first offered by Northwestern University in 1957.[123] However, educational innovators seeking to incorporate soft skills faced the criticism that soft skills training is 'impossible', that soft skills are inherited qualities, common-sense or unteachable.[124] Nonetheless, these educators provided examples from non-legal fields (like psychology, management etc.) that showed that it was possible for students to be taught how to be more effective in interpersonal dynamics, and that these skills were better learned and tested at university than on the job with clients and seniors.[125] Australia's legal education beginnings are not identical to the U.S. experience, though the case method was at least 'partially' adopted by Australian law schools[126] and Australian legal education did draw from British and American models of apprenticeship-based training.[127]

2   *Questioning early paradigms: Australian legal education reviews in the 1980s and 1990s*

In 1987, the Commonwealth Government published the 'Pearce Report',[128] a review of Australian legal education by legal educators, focusing on individual institutions' standards and efficacy rather than broader, systemic goals.[129] Despite focusing on individual law schools,

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[117]   Ibid 390.
[118]   Ibid 391.
[119]   Ibid 392.
[120]   Ibid 389.
[121]   Erwin N Griswold 'Law Schools and Human Relations' (1955) *Washington University Law Quarterly* 220–3.
[122]   Daicoff, 'Expanding the Lawyer's Toolkit' (n 1) 873 fn 383, 810 fn 54; Sacks (n 59) 316.
[123]   Sacks (n 59) 316–7.
[124]   See, eg, Sacks (n 59) 321.
[125]   Ibid.
[126]   Michael Coper, 'Law Reform and Legal Education: Uniting Separate Worlds' (2008) 39(2) *University of Toledo Law Review* 233, 235.
[127]   Ibid 234.
[128]   Dennis Pearce, Enid Campbell and Don Harding*, Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission: A Summary and Volumes I-IV* (Report, Australian Government Publishing Service, 1987).
[129]   Richard Johnstone and Sumitra Vignaendra, *Learning Outcomes and Curriculum Development in Law: A report commissioned by the Australian Universities*

the report 'concluded that legal education was both insufficiently practical and insufficiently theoretical',[130] and recommended that law schools 'examine the adequacy of their attention to theoretical and critical perspectives, including the study of law in operation and the study of relations between law and other social forces'.[131] Although the report suggested that skills teaching – in particular of oral expression, drafting, negotiation and interpersonal skills – required attention, it 'failed to provide a blueprint as to how this might be done'.[132] Before this time, since the 1970s, externship and in-house clinical legal education programs had been developing in new law schools but they were few in number, started as an informal and then irregular part of the degree until the 1980s when they became more structured and pedagogically-driven.[133] By the 1990s, some of the 'newer law schools' had begun to incorporate practical legal training (which had been introduced as standalone, post-university courses in the 1970s to respond to 'dissatisfaction with the standards of training' through apprenticeship alone) into their undergraduate LLB programs.[134] Clinical programs in all their forms, from in-house to external partnerships, seemed to become a means for law schools to differentiate themselves in a competitive market.[135]

In 1992, Australian law schools adopted the 'Priestley 11', a 'nationally unified set of requirements for admission to the legal profession' that had been devised by the Consultative Committee of State and Territory Law Admitting Authorities.[136] In order to gain admission to legal practice in Australia, the 'Priestley 11' requires that students have been taught (and succeeded) in 11 substantive areas, including courses in professional conduct and civil and criminal procedure,[137] areas relevant to soft skills teaching. However, there are no prescribed 'graduate attributes or skills requirements' that address specific competencies, let alone in any relevant soft skills.[138]

In 1994, a follow-up to the Pearce Report found that law schools had to some extent taken heed of the Report's suggestions to improve their incorporation of social issues, and were 'paying more attention to skills teaching'.[139] However, the substantive law-emphasis of the 'Priestley 11' may have stultified these efforts. In 2000, the Australian

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Teaching Committee (Report, Commonwealth of Australia Department of Education, Science and Training, Higher Education Group, 2003), 14.

[130] Sally Kift, 'Lawyering Skills: Finding Their Place in Legal Education' (1997) 8(1) *Legal Education Review* 2, 43, citing Pearce, Campbell and Harding (n 128).

[131] Johnstone and Vignaendra (n 129) 14, citing Pearce, Campbell and Harding (n 128) 149.

[132] Johnstone and Vignaendra (n 129), 117, citing Pearce, Campbell and Harding (n 128), 25, 113, and Kift (n 130) 44.

[133] Jeff Giddings, 'Clinical legal education in Australia: A historical perspective' (2003) 3 *International Journal of Clinical Legal Education* 7, 8.

[134] Johnstone and Vignaendra (n 129) 5.

[135] Giddings (n 133) 16, 18.

[136] Johnstone and Vignaendra (n 129) 4–5.

[137] Ibid.

[138] Ibid.

[139] Ibid 14–5, citing Craig McInnes and Simon Marginson, *Australian Law Schools after the 1987 Pearce Report* (Australian Government Publishing Service, 1994), 155.

Law Reform Commission ('ALRC') in its *Managing Justice* report[140] 'criticised, and advocated a shift away from' the Priestley 11 and its emphasis on substantive law, 'noting the increasing relevance of internationalisation, processes and teamwork' – all soft skill-heavy areas – in legal practice.[141] Despite these changes to legal practice and the additional demands placed on lawyers, the ALRC's report viewed legal education as 'frozen in time'.[142]

3   *Continued stasis: Australian legal education's substantive emphasis*

In 2010, the Australian Learning and Teaching Council's project on Learning and Teaching Academic Standards produced six Threshold Learning Outcomes ('TLOs') recommended for undergraduate law students [143] – knowledge; ethics and professional responsibility; thinking skills; research skills; communication and collaboration; and self-management. [144] Field and Roy, in their article advocating for improved attention to dispute resolution education, argue that though each TLO category of skills is 'vitally important' to legal education, 'it is in fact possible that all of the Priestley 11 subjects could fall under the banner of TLO 1 [knowledge]'.[145] The TLOs were not adopted as admissions requirements by the Law Admissions Consultative Committee, which continues to require Priestley 11 competences for admission to legal practice.[146] The New South Wales Legal Profession Admission Board also voiced 'strident opposition' to the adoption of the TLOs as standards for admission to the legal profession, appearing essentially to object to the fact of the change rather than its content or wisdom: the Board 'claimed that the TLOs would require new skills, which have hitherto not been expected of law graduates, to be admission requirements' [147] which could also mean that existing practitioners 'would probably fail to satisfy aspects of the TLO requirements, such as the ability to 'collaborate effectively' under TLO

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[140]   Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System* (Report No 89, 2000)

[141]   Ibid 46. See also Anna Huggins, 'Incremental and Inevitable: Contextualising the Threshold Learning Outcomes for Law' (2015) 38(1) *UNSW Law Journal* 264, 270.

[142]   Sally Kift, '21st Century Climate for Change: Curriculum Design for Quality Learning Engagement in Law' (2008) 18 *Legal Education Review* 1, 9.

[143]   A modified version was subsequently adopted for graduate Juris Doctor students: Huggins (n 141) 264, citing JD TLO Sub-Committee of the Law Associate Deans' Network, 'Juris Doctor Threshold Learning Outcomes' (2012).

[144]   Huggins (n 141) 264, citing Sally Kift, Mark Israel and Rachael Field, *Learning and Teaching Academic Standards Project: Bachelor of Laws Learning and Teaching Academic Standards Statement December 2010* (Report, Australian Learning and Teaching Council, 11 February 2011), 10.

[145]   Rachael Field and Alpana Roy, 'A Compulsory Dispute Resolution Capstone Subject: An Important Inclusion in a 21st Century Australian Law Curriculum' (2017) 27(1) *Legal Education Review* 1, 5–6.

[146]   Huggins (n 141) 265, citing Law Admissions Consultative Committee, *Reconciling Academic Requirements and Threshold Learning Outcomes* (Discussion Paper, June 2011).

[147]   Huggins (n 141) 271, citing Law Admissions Consultative Committee (n 146) 2–3.

5.'[148] In her analysis of the changes leading to the production of the TLOs and their relevance in contemporary legal education, Huggins points out that the fact that practitioners would be unable to meet minimum TLO standards 'arguably strengthens the case for explicitly addressing the development of such skills and competencies in legal education.'[149]

Although the TLOs were endorsed by the Council of Australian Law Deans as 'appropriate statements' of learning outcomes required of law graduates, [150] and have been incorporated into many law schools' curricula,[151] reforms to implement TLOs have 'been sidelined by some law schools and law academics'.[152] Huggins identifies a number of factors that continue to pose challenges to curricular reform and law schools' implementation of the TLOs. These include the 'highly prescriptive research imperatives' placed on academic staff (requiring that they dedicate energy to publishing rather than to curricular reform),[153] and 'ongoing funding shortages … [since] 1990',[154] leading to 'chronically under-resourced' law schools, that may struggle to make the arrangements needed for successful TLO implementation, like small class sizes, adequate teaching time and resources, and full-time, rather than sessional, teaching staff.[155]

Finally, building on the ALRC's comments from over a decade earlier, in 2014 a Productivity Commission Report recommended reviewing the Priestley 11's prescribed areas of knowledge to keep pace with technological advancements. These are changes (like the internet's ease of accessing information and communicating) that have meant that soft skills are increasingly determinative of lawyers' efficacy and that the 'art of the professional' lies in accessing, analysing and contextualising information, rather than memorising it.'[156] Field and Roy, calling for greater emphasis (and a compulsory subject) on dispute resolution and its related soft skills, argue that 'the doctrinal focus of the Priestley 11 means that insufficient attention is paid in many current Australian law degrees to some of the most important legal knowledge, skills and values relevant to the practice of law'.[157]

Despite these numerous and increasingly urgent attempts at reform and the arguments raised in academic debates cited throughout this paper, Australian law schools still operate within the Priestley bounds, and teaching beyond the 11 required areas must fit around them. Nevertheless, there have been, as mentioned, an increase in clinical programs, internships and externships, in the later part of the degree. Moreover, courses such as professional ethics, dispute resolution, and

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[148]   Ibid.
[149]   Huggins (n 141) 271.
[150]   Ibid 265, citing Kift, Israel and Field (n 144) 7 and JD TLO Sub-Committee (n 143).
[151]   Field and Roy (n 145) 2.
[152]   Huggins (n 141) 274.
[153]   Ibid 273–4.
[154]   Ibid 272.
[155]   Ibid 273.
[156]   Ibid 270, citing Australian Productivity Commission, *Access to Justice Arrangements* (Report No 72, 5 September 2014) 249–50.
[157]   Field and Roy (n 145) 4.

mediation, include more deliberate discussion of aspects of soft skills. However, rather than evidence of 'pervasiveness', this fitful approach, as Rosenberg puts it in the U.S. case, risks being superficial, repetitive and therefore insufficient.[158] For Rosenberg, soft skills need to be learnt in an intense, deliberate way, which then allows for those skills to then be applied in numerous contexts, in the degree and practice.[159]

4   *The present day*

At the faculty level, there may be a disconnect generated by academic hiring, promotion and retention policies, whereby, with the emphasis typically on research, faculty with practice experience, let alone soft skills expertise are comparatively rare (or else perhaps practised so long ago as to be 'stale' on the necessary contextual background).[160] Either way, there may not be sufficient incentives for academic teachers to put the time in to developing and advocating for soft skills curricula. There may also be the competitive effects generated by law school rankings and student expectations; law school 'prestige' remains highly influential in enrolling (and later, hiring) decisions, and for schools with that prestige there would seem little reason to stray from what has 'worked' in the past.[161] Further, where top schools and top students record and report high rates of employability post-graduation, these data continue to inspire confidence, but 'most law schools have little systematic information about how their graduates are doing five, ten, or fifteen years after graduation—particularly about those who may be struggling. As a result, it is easy to assume that the traditional model continues to work.' [162] For the law school, then, a 'wholesale [curriculum] overhaul'[163] in favour of a greater soft skills emphasis may, given the intellectual and financial resources required, [164] continue to be discounted as not only unnecessary but indeed a risky deviation from the status quo.

Notwithstanding, formalised experiential learning has slowly come to be seen (again) as the most effective – or even only – means of providing students the 'context and experience' to 'transfer knowledge to practice',[165] and 'producing more fully developed lawyers'.[166] (It is

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[158] Rosenberg (n 111) 1233.

[159] Ibid.

[160] R Michael Cassidy, 'Reforming the Law School Curriculum from the Top Down' (2015) 64(3) *Journal of Legal Education* 428, 436 ('Reforming the Law School Curriculum'). See also, with particular reference to the teaching of transactional law, Jay Gary Finkelstein, 'Practice in the Academy: Creating "Practice Aware" Law Graduates' (2015) 64(4) *Journal of Legal Education* 622, 626–7.

[161] Bennett (n 5) 104, 107.

[162] Westfahl and Wilkins (n 16) 1690.

[163] Ibid 1692.

[164] Cassidy, 'Beyond Practical Skills' (n 5) 1517.

[165] Daniel M Schaffzin, 'So why not an experiential law school … starting with reflection in the first year?' (2015) 7 *Elon Law Review* 383, 383. (Schaffzin describes the picture of doctrine-focused law as remaining broadly accurate: ibid, 390).

[166] Ibid 386.

also something law students are looking for in choosing their degree.)[167] Clinical courses can 'offer a more complete package than other pedagogies', [168] for instance, in developing students' ethical and practical competencies, [169] as well as their sense of purpose and resilience. [170] These support the students' soft skills, their professionalism and their self-management skills, including their grit and determination to finish the law degree.[171] Nevertheless, clinical courses for skills development can also be prohibitively resource-intensive,[172] requiring supervision, coordination, physical space, time, and funding that are often, and certainly in Australian law schools, lacking. [173] Further, even the most thoughtfully designed clinical programs may not deliberately focus on soft skills.[174] The gold standard is a well-integrated clinical-doctrinal program with intentional and complementary soft skills components. As elaborated upon after the section that follows, this is made more difficult by the rapid embrace of digital formats.

B   Law students' perceptions of and possible resistance to soft skills teaching

Aside from the above institutional challenges, teaching soft skills to law students may also be complicated by the students themselves. Daicoff's review included empirical findings that (U.S.) law students may find teaching of skills involving 'interpersonal dynamics or emotional concerns … challenging or uninteresting'.[175] She also notes potential arguments that soft skills are the sort of things properly learned via family or the 'school of hard knocks', rather than at university, and raises the concern that graduate students (in Australia, this would mean those enrolled in Juris Doctor rather than

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[167] Jeff Giddings, 'Clinics and Australian law schools approaching 2020' in Adrian Evans et al (eds) *Australian Clinical Legal Education: Designing and Operating a Best Practice Clinical Program in an Australian Law School* (ANU Press, 2017), 18, 21, 28.

[168] Ibid 13.

[169] Ibid 22; Anna Cody, 'Developing Students' Sense of Autonomy, Competence and Purpose Through a Clinical Component in Ethics Teaching' (2019) 29(1) *Legal Education Review* 1, 16.

[170] Ibid.

[171] Ibid 19.

[172] Hewitt and Stubbs (n 8) 2.

[173] Ibid 16. See also Jeff Giddings, 'Contemplating the Future of Clinical Legal Education' (2008) 17(1) *Griffith Law Review* 1, 5. Giddings explains that Australia's federal university grant model awards law (alongside economics, accounting and other humanities courses) the lowest level of government funding. 'Cheap ways of teaching remain the default position for Australian law schools', limiting the scope for clinical education: Ibid.

[174] 'In terms of pedagogy, the most common reaction to the legal education crisis has been to expand clinical offerings and add externship opportunities, while leaving the rest of the traditional law school curriculum essentially in place. This can hardly be called innovation—it is piecemeal reform at best, and at worst the equivalent of rearranging the deck chairs on the Titanic': Cassidy, 'Reforming the Law School Curriculum' (n 160) 430.

[175] Daicoff, 'Expanding the Lawyer's Toolkit' (n 1) 829.

undergraduate law degrees) might 'arrive at law school with these skills firmly mastered' and in fact not need further training.[176] Underlying all of these concerns are empirical findings, as Daicoff summarises, that suggest that lawyer (and law student) personalities are resistant to soft skills teaching: they are 'competitive, dominant, achievement-oriented, focused on the economic bottom line, and analytical', they become 'aggressive and ambitious' rather than 'affiliative' in times of stress, they prefer logic and rationality to emotions and relationships when solving problems, and they 'prefer to be perceived as socially ascendant, confident and dominant' even when their true social capabilities do not align with that image.[177] There are other U.S. studies that have found lawyers to be sceptical, cautious and pessimistic, critical, and resistant to leadership and to teamwork.[178] These traits tend to work against lawyers' soft skills proficiency.[179] Finnish Law students themselves have been shown to be, among all faculties, 'the most achievement oriented' and the most attached to surface learning (rote learning for the exam).[180] Maranville has observed that (U.S.) law schools seem 'implicitly to rely on competition and fear as the motivators' for student learning,[181] which, to link it to soft skills learning, reinforces their typical motivations and learning styles and might make new types of learning more anxiety-producing.

Similar findings have been made locally. Tani and Vines surveyed, in 2005, 5000 UNSW students across all faculties of the university, to 'investigate students' attitudes to their experience and expectations of their university education'.[182] The researchers found a number of 'unexpected differences between law students and other students',[183] each of which might make teaching of certain or all soft skills particularly difficult at law schools. Law students had different motivations than others; they were more likely than all other students, including medical students, to have enrolled in their degree 'for a reason external to themselves' (such as parental pressure) and were 'less likely to find their studies intrinsically interesting'.[184] Their extrinsic

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[176]   Ibid.

[177]   Ibid 830.

[178]   Jeff Foster et al, *Understanding Lawyers: Why We Do the Things We Do: Results from the Hogan Assessment Project of Lawyer Personality* (White Paper, Hogan Assessment Systems and Hildebrandt Baker Robbins, 2010) <https://www.advancedpeoplestrategies.co.uk/media/1169/whitepaper-understanding-lawyers.pdf>; Larry Richard, 'Herding Cats: The Lawyer Personality Revealed' (2002) 29(11) *Report to Legal Management* 2; Marc Salomon, *Lawyer Personality and Resistance to Change* (Master's Thesis, INSEAD, 2014).

[179]   Daicoff, 'Expanding the Lawyer's Toolkit' (n 1) 830.

[180]   Jarkko Makinen, Erkki Olkinuora and Kirsti Lonka, 'Students at Risk: Students' General Study Orientations and Abandoning/Prolonging the Course of Studies' (2004) 48 *Higher Education* 173, 180, 186.

[181]   Deborah Maranville, 'Infusing Passion and Context into the Traditional Law Curriculum Through Experiential Learning' (2001) 51(1) *Journal of Legal Education* 51, 53.

[182]   Massimiliano Tani and Prue Vines, 'Law Students' Attitudes to Education: Pointers to Depression in the Legal Academy and the Profession' (2009) 19(1) *Legal Education Review* 1, 3.

[183]   Ibid.

[184]   Ibid 24.

motivations may make students resistant to teaching seeking to improve their self-awareness, self-management and self-development skills, as these students may have either already suppressed aspirations to self-motivated education and career choices, or may consider self-improvement (other than knowledge acquisition) irrelevant to their 'success'. The authors also found that law students were more likely than others to believe that employers cared most about their grades, as opposed to any social characteristics like a 'personal code of ethics or their social and leadership abilities, or ability to understand diversity'.[185] These findings could mean that students undervalue social proficiency and leadership soft skills and would resent time being 'wasted' away from activities that they perceived as directly improving their grades. (Although, a meaningfully assessed soft skills course, as this paper aims to help develop, would enable students to improve their grades and 'social characteristics' simultaneously, obviating at least that aspect of this challenge). Law students were also 'more likely to see their friendships in terms of networks which will advance their career', [186] suggesting a 'careerist' mindset that overrides other relational motives. The surveys further found that, to a greater extent than other students, law students disliked 'group work as a learning and grading method',[187] which again raises an explicit challenge to teaching social proficiency and leadership in group-work settings. Finally, law students were 'less likely to state that they are at university to learn', were 'more likely to value the reputation of their university',[188] and saw marks as ends in themselves, rather than as evidence of learning, to a far greater extent than other students.[189]

While these findings raise many potential problems for teaching soft skills to law students, they also hint at possible solutions. Law students appear to see no need for 'learning' that does not contribute to employability, which they link to grades rather than to personal motivations, values or social skills. In that case, soft skills might need to be made 'gradable' to warrant students' attention. However, to be meaningful, these grades must attach to actual attainment of skills rather than rewarding rote or superficial performances of them – and assessment strategies that aim toward this are discussed in Part IV of this paper. Of course, altering law students' motivations could also make meaningful teaching and assessment of soft skills easier, but a proxy for this might be altering law students' concepts of 'employability'. This would mean not only converting soft skills into 'grades', but an academy- and profession-wide initiative to change perceptions of the importance of soft skills in themselves. This idea is reflected in a number of criticisms of the 'Priestley 11' curricular and

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185 Ibid.
186 Ibid.
187 Ibid. See also Alex Steel, Anna Huggins and Julian Laurens 'Valuable learning, unwelcome assessment: what LLB and JD students really think about group work' (2014) 36(2) *Sydney Law Review* 291, 297–8.
188 Ibid.
189 Ibid 24, 30.

admissions requirements discussed above, and is elaborated upon in Part V, the conclusion.

C   Difficulties in teaching in digital formats

As mentioned, of the digital learning options, blended learning is seen as especially desirable. This is because blended courses 'can build on the strengths of both face-to-face and online teaching and learning'. [190]   They provide students with easy access to course information, a different (online) way to participate in class discussions, and increased opportunities to receive feedback.[191] Blended learning can also maximize the value of face-to-face time: 'When students use online instruction to gain understanding of content, teachers can use classroom time to address student misconceptions about a topic, build community, debate issues, engage in hands-on activities, and perform higher-level thinking (including analysis, synthesis, and evaluation)'.[192]

But teaching in a digital format is difficult. Drop-out rates are high and results, mixed.[193] To be successful, all types of learning require knowledge-sharing, dialogue and reflection. But online learning often creates isolated and disengaged learners. [194] Furthermore, it risks 'techno-hype', in which technology is simply bolted-on and not customised to the learning goals. Online learning is often conducted poorly, where students are not given the contexts for meaningful and well-supported inquiry. Without careful planning and institutional support, soft skills learning, as learning that requires higher levels of thinking (application, analysis, reflection, creativity etc), is usually not achievable online. [195] Compliance learning (recall, explanation) is typically more successful in such contexts, where the teachers 'control or mediate the content students can access'[196] and a one-size-fits all approach is followed. [197] Adams, whose soft skills online teaching framework is outlined in the next Part, argues that online platforms are

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[190]   Hess (n 8) 59.

[191]   Ibid 59.

[192]   Ibid, citing Francine S Glazer (ed) *Blended Learning: Across the Disciplines, Across the Academy* (Stylus, 2012) 7–8.

[193]   Jean Adams, 'The Soft-skills Learning Triangle: A Learning Model for Supporting Online Management & Leadership Development' (2010) 21(4) *Journal of Interactive Learning Research* 437, 450.

[194]   These feelings of isolation can persist even in explicitly teamwork-oriented online courses or activities: Hung-Wei Tseng and Hsin-Te Yeh 'Team members' perceptions of online teamwork learning experiences and building teamwork trust: A qualitative study' (2013) 63 *Computers & Education* 4, 7.

[195]   Swift applies Bloom's taxonomy of learning to show how the online format can support all levels of learning, including the higher ones: Kenneth Swift, 'The Seven Principles for Good Practice in [Asynchronous Online] Legal Education' (2018) 44(1) *Mitchell Hamline Law Review* 105, 120–30.

[196]   Adams (n 193) 438, citing Alan Peacock and Ailie Cleghorn (eds) *Missing the meaning: the development and use of print and nonprint text materials in diverse school settings* (Palgrave Macmillan, 2004) and Wolff-Michael Roth, 'A phenomenological anthropology of texts and literacy' in Peacock and Cleghorn, ibid, 253.

[197]   Adams (n 193) 450.

typically very well suited to the delivery of content,[198] where students' knowledge is simply 'proven' by, for example, taking short-answer quizzes.[199]

To counter or nuance this broad picture – and some aspects of the student profile above, Part IV shows that online teaching in law is taking place and with some success – where students are responding to online learning in negative ways (as predicted) but positively too. Indeed, as Hess points out, students today expect 'active, hands-on, and collaborative' learning where information is presented in 'nonlinear, interactive ways in multiple formats' (text, video, graphics etc.); kinds of learning made more feasible online.[200] For students, online learning is regarded, or should be regarded, as normal and helpful.[201] But Hess's comments are in relation to online learning generally and not soft skills online learning. Bearing in mind the particular difficulties in teaching soft skills to law students noted above, findings showing the success of online teaching for certain hard skills [202] can't be assumed to be transferrable to the soft skills case. Indeed, as flagged in the introduction, online learning appears at cross-purposes with soft skills development especially.

To conclude this Part, the key challenge in *online learning* is to provide students contexts for knowledge-sharing interaction in various forms[203]– in principle easier when combined with classroom time. Then the key challenge for *soft skills online (fully or blended) learning* is to provide contexts for students to also reflect upon and improve the social skills learnt and/or involved. As argued above, there remains something of a gap in research explicitly addressing soft skills teaching via online systems, including in law. A framework and set of approaches for teaching soft skills in a digital environment is needed. The Part that follows is a synthesis of existing soft skills and online strategies in the law and business scholarship, and then a discussion of the author's own approaches, which applies and extends previous work, in a legal ethics context.

IV   SOFT SKILLS TEACHING INCLUDING ONLINE

A   A synthesis of existing practices

1   How to approach soft skills, especially online?

Adams's 'Soft-Skills Learning Triangle' ('SLT') provides a framework for thinking about the fundamental teaching issues in the online domain especially, and a basis upon which specific course design

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[198]   Ibid 441.
[199]   Ibid.
[200]   Hess (n 8) 58.
[201]   Ibid 58–9.
[202]   These works are discussed above and below. Aside from Hess (n 8), see also Swift (n 195), and the works discussed in n 8 above.
[203]   Will WK Ma and Allan HK Yuen, 'Understanding online knowledge sharing: An interpersonal relationship perspective' (2011) 56(1) *Computers & Education* 210.

decisions can be made. Adams's research focuses on online and blended soft skills education in management and leadership development.[204] She argues that if online resources aim to develop learners' soft skills, more attention is needed to their connection to real-world application and impact.[205] Teaching must emphasize 'performance learning', where students can put skills - those they wish to develop - into practice and where their efforts are evaluated in their own contexts.[206]

Figure 1
Adams's Soft-Skills Learning Triangle[207]

Content ⟷ Context
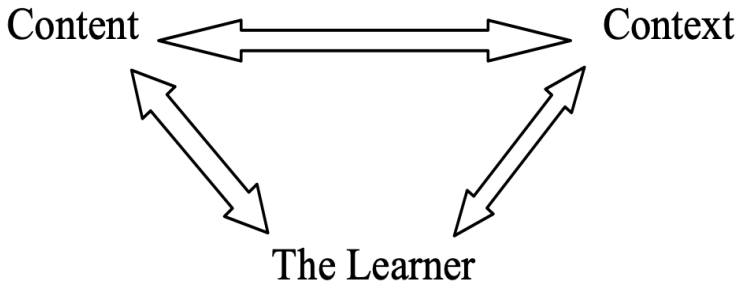
The Learner

The SLT's premise is that 'truly valuable' learning is a product of attention to the 'interactivity between *content*, *context*, and *the learner*':[208] in blended environments, learners will take instruction from online content (and, as 'blended' suggests, also in class, though the research emphasizes the online component) to understand a particular skill or gain certain knowledge (termed 'learner-content interactivity'). They will then consider particular contexts (whether in their own lives or imagined practice situations) in which the skill or knowledge might apply ('learner-context interactivity'), before applying the skills and knowledge learned to the specific context to produce a valuable solution ('content-context interactivity').[209] The aim of SLT-informed programs is to 'design interactivity that engages the learner in content' and also 'include interactivity that provokes each learner to seriously consider and reflect on the content lesson to make sense of it in terms of his [sic] own context'.[210] In the SLT model, assessment methods that 'make learning, not learners, visible' are important.[211] Because of the importance of context to meaningful soft skills learning, assessment must 'focus on how the learning gets applied' (performance), rather than mere knowledge of content

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[204] Adams is an Associate Co-Director at the Schulich School of Business' Institute for Research on Digital Learning, conducts research that has a primary focus on soft skills teaching in blended environments: 'Faculty: Jean Adams', *Schulich School of Business* (Web Page) <http://schulich.yorku.ca/faculty/jean-adams/>.

[205] Adams (n 193) 438.

[206] Ibid 438, 456.

[207] Ibid 440.

[208] Ibid 440.

[209] Ibid 443.

[210] Ibid 444.

[211] Ibid 456.

(compliance).[212] Creating direct links between learning outcomes and concrete benefits that students value, enhances students' motivation[213] and avoids the trap of rewarding hard skills when soft skill competence is priority. [214]

Rhode's article, discussing teaching leadership skills at law schools, builds on Adams's discussion of the importance of context and meaningful course assessments. Rhode argues that in order to design successful leadership courses (and her comments could reasonably be extended to training in other soft skills), instruction must focus on 'actual workplace challenges', 'provide adequate evaluation and follow-up', should identify 'clear goals and competencies', and incorporate 'reinforcement, mentoring, and accountability for improvement'.[215] A 'combination of coaching, classroom instruction, multisource feedback, and experiential training' will be most likely to provide the context needed for successful learning.[216] Finally, feedback should be 'honest, specific, [and] straightforward' [217] and, echoing Adams's calls for a focus on 'making learning, not learners, visible',[218] feedback should be 'problem-oriented', not 'person-oriented', targeting 'behaviour rather than personal characteristics'.[219]

As a final broad scheme here, Sparrow's recent article that builds on her discussion of the *Whole Lawyer* research (as described above)[220] sets out key steps in how to design soft skills teaching and assessment. These cover the identification and formalisation of (specific and measurable) learning outcomes, outcomes that might contain a degree of flexibility such that they can be co-designed with students.[221] The last steps are deciding upon summative and formative assessments, those with clear rubrics and which might include a combination of direct, teacher observation and student self-reporting.[222] In Sparrow's view, assessment of soft skills should be done on a mastery or competence scale, not on a curve, and she herself sets it up as points for students to lose if they *don't* show effort and mastery in certain areas rather than points to be gained.[223] Students, she says, should be given some feedback mid-way through the course[224] and at the end when their final mark is explained.[225]

This paper now discusses a number of trialled and evolving approaches to soft skills teaching in law in a blended or online format, including the author's own. The section that follows is structured by

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[212] Ibid.
[213] Maggie Hartnett, *Motivation in Online Education* (Springer, 2016) 80.
[214] Jean Adams, 'Practical Advice for Developing, Designing and Delivering Effective Soft Skills Programs' (2014) 8 *IUP Journal of Soft Skills* 7, 12.
[215] Rhode, 'Leadership in Law' (n 5) 1642.
[216] Ibid.
[217] Ibid 1643.
[218] See n 215.
[219] Rhode, 'Leadership in Law' (n 5) 1644.
[220] See nn 23 and 68 and accompanying text.
[221] Sparrow (n 1) 559.
[222] Ibid 566.
[223] Ibid 566–7.
[224] Ibid 571.
[225] Ibid 573.

looking at soft skills teaching generally and in law; and then online and blended teaching generally and then in law, drawing out any soft skills focus.

2   *What to teach?*

(a) *Soft skills at university and in law*

Adams's article describes a course she was involved in designing, to show how the elements of learner-content, learner-context, and content-context work together in practice. The course was an SLT-redesigned, undergraduate, introductory business course which aimed to develop students' soft skills and give them a sense of 'ownership of their learning and personal development' early in their education.[226] In this course, students were required to complete an online self-assessment questionnaire prior to the first class, followed by in-class self-evaluations of one soft skills strength and one weakness to work on throughout the term.[227] The most common skills students felt required improvement were communication, teamwork, leadership and emotional intelligence,[228] spanning elements of the core skills for lawyers detailed in Part II. The course delivery and assessment structure were designed with these self-improvement aims in mind. A range of online content, from which students could self-select materials relevant to their two skills, was curated, customised and provided to assist their self-improvement efforts. Students were then asked 'to apply the ideas in a context of their choice' (e.g. work, other organisations, or home).[229] For assessment, students wrote a 5-page essay accompanied by up to 25 pages of 'evidence' to prove that they had achieved their stated goals (e.g. letters from bosses, photos of events), in many cases showing students' significant improvements in their 'weakness' areas.[230] A repeat self-evaluation after the course's completion also saw many students commenting that they had significantly improved.[231]

Turning to law, Rosenberg describes his teaching (over many years) in a course called 'Interpersonal Dynamics for Attorneys', 'devoted to actually teaching the relationship skills that are (or at least ought to be) used by attorneys daily', that make them better at their jobs and that 'enable them to have more effective and more meaningful relationships with those with whom they work'.[232] The course, Rosenberg says, is 'very different from most law school classes. There are few ideas or theories to learn. Instead, students spend approximately 100 hours during the semester "practicing" a very small number of basic concepts...Almost all of the students who have taken the course have found it to be the "single most useful course" they have ever taken'.[233] The skills are split into three categories, coming under the core skills of

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[226]   Adams (n 193) 450.
[227]   Ibid.
[228]   Ibid.
[229]   Ibid 451.
[230]   Ibid.
[231]   Ibid.
[232]   Rosenberg (n 111) 1234.
[233]   Ibid.

self-awareness, self-management and social proficiency: '(1) the ability to communicate (listen as well as speak) more clearly and completely; (2) self-awareness; and (3) an openness and receptivity to other people.'.[234] Rosenberg's course is designed to *show* students (rather than just have them read and try to grasp) how feeling affects thinking and behaviour, how thinking affects feeling and behaviour, and how behaviour affects thinking and feeling.[235]

Giving an example of how he shows students that behaviour affects thinking and feeling, Rosenberg describes a coin-tossing game where one group of students tosses coins (to see how close they can get them to the wall) in front of another group that ignores the coin-tossing and gives no support. The second group receives enthusiastic support from the others.[236] The group receiving positive feedback always keeps tossing for much longer than the group that is ignored – however, they don't realize (or acknowledge) that the observer group affected their behaviour.[237] This example (and the phenomenon it highlights) is then transferable to law practice:

> '[W]hile lawyers may not toss pennies at work, they do engage in many behaviors which impact their thoughts, feelings, and future behaviors. They may begin to engage in logical argument and continue to do so long after it has become useless, they may begin to agree with another and tend to keep doing so, or to keep talking about topics that have outlived their utility, and they often adopt physical positions and attitudes that impact not only their emotions and thinking, but also the reactions of others.'[238]

The most important element of Rosenberg's course is 'how to give and receive effective feedback', and he discusses how giving and receiving feedback requires and improves self-awareness and other-awareness – and how this 'feedback loop … also leads directly to learning communication skills and to developing an attitude toward people and toward communication that will serve people well throughout their lives.'[239]

> 'Since effective feedback … relies on self-disclosure, it should not be surprising that focusing on giving such feedback both requires and

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[234] Ibid.

[235] Importantly, this includes understanding how *others'* feelings, thoughts, and behaviours are connected. These are 'relational' skills, developed in the course through activities requiring not only that students perform some basic substantive task (for example, drawing up a 'confidentiality agreement' between themselves) but that they then reflect on – together and at length – the relational components of the task, including their own behaviour, thoughts, and feelings and their perceptions of each other's: Ibid 1263–9.

[236] Ibid 1238.

[237] 'None in the second group responds that she continued because she was getting cheered on by others, and none in the first group suggests or believes that she stopped because her "observers" were silent. Each group thought differently about the tossing they had done, and each individual had very reasonable and logical thoughts about why she did what she did. In each case, however, these thoughts were the result of their behavior, rather than its cause… They may have been acting according to known principles of behavioral psychology, but they thought they were acting for other reasons entirely': Ibid 1239.

[238] Ibid 1240.

[239] Ibid 1244.

inevitably increases self-awareness. Initially, even an unsuccessful attempt to appropriately express one's reaction to a person or event can be enlightening… it requires, at a minimum, that people pay attention to the difference between (1) behaviors of others that are external to us, and (2) the way we react to those behaviors (the internal "meaning" we make of those behaviors). The simple act of attending to this difference requires an almost complete reversal of the normal process.'[240]

Rosenberg's overriding aim then is a '*relationally* oriented' approach; developing 'understanding by the people in a relationship of what happens *in that relationship*.'[241] Developing relational skills, he argues, will help lawyers 'avoid the most problematic aspects of law practice'[242] (for example, receiving rushed or ambiguous instructions from a superior, being reluctant to ask for clarification, and then anxiously working on what might end up being the wrong task – all to the detriment of the ongoing work relationship).[243] These skills will also help lawyers 'have the kinds of interactions that can make lawyering most rewarding.'[244]

Finally, Daicoff discusses the implementation of a pilot and then one-week intersession 'leadership' and other 'non-traditional lawyering skills' course, including emotional intelligence training. These were aspects of an existing 'comprehensive law practice' course that addressed communication and conflict resolution skills, and 'a corporate management-style strategic decision-making model for group decision-making'.[245] The course was designed partly in response to studies finding lawyers to have low social skills (aiming to be, as mentioned, competitive and dominant).[246] The first few days were devoted to skills teaching, and the remainder to a 'simulation' (where students and professors 'role-played the officers and in-house and outside advisors of a major oil company dealing with an oil spill crisis'), and a written essay examination – both of which were graded.[247] The pilot course and one-week course were taught around a circular conference table, by a team of professors with diverse skills (one in criminal defense, one as the CEO of a large public corporation, and one a psychology-trained law professor with corporate legal practice experience).[248]

Daicoff comments that the diversity of these teachers and their skills may have contributed to the success of the course for three reasons: the breadth of knowledge available; the teachers' 'modelling' of teamwork and collaboration; and through their expertise lending 'credibility' to the content taught.[249] Daicoff believes that the course would have been even more effective had it covered a broader range of soft skills and ran

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[240]   Ibid 1247.
[241]   Ibid 1249. (emphasis in original)
[242]   Ibid 1228.
[243]   Ibid 1228–9.
[244]   Ibid 1228.
[245]   Daicoff, 'Expanding the Lawyer's Toolkit' (n 1) 870.
[246]   Ibid.
[247]   Ibid.
[248]   Ibid 871.
[249]   Ibid.

for a longer period, however felt that the non-traditional evaluation was an important component of its success.[250] In further comments, Daicoff suggests a number of strategies for teaching soft or 'non-traditional' skills, including: 'teaching in a circle (using "circle process," a group process borrowed from restorative justice, to support dialogue and community), working in pairs in class on simulated exercises (e.g., role plays for one to five minutes), and role-plays arranged in class in a "fishbowl" style, where the nonplaying students sit in a circle around those simulating the role play'[251] and take notes on the playing students' dynamics and effectiveness (or whatever is being taught).

3   *How to teach?*

(a) *How to approach digital learning?*

Figure 2
Garrison and Vaughan's Community of Inquiry
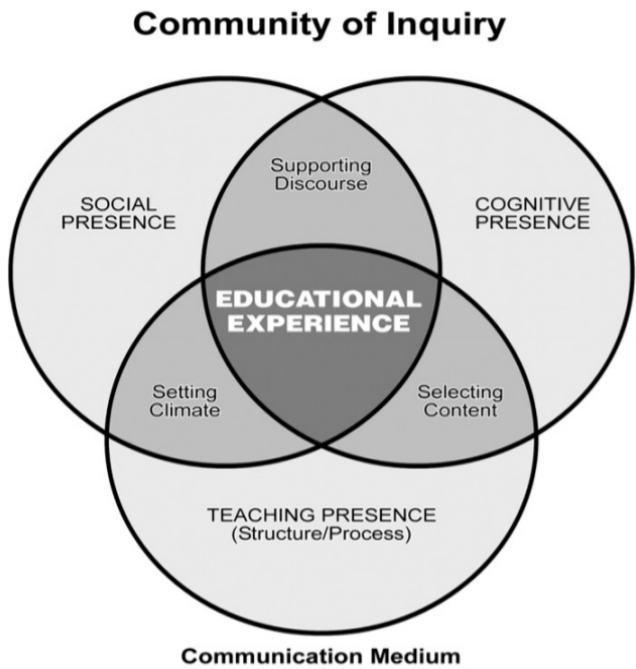
Garrison and Vaughan's 'Community of Inquiry' (CoI) framework provides an excellent resource for understanding and designing digital learning.[252] CoIs are marked out, they, say, by being purposeful, open (encouraging freedom for learners to 'explore ideas, question and construct meaning'), and disciplined (self-directed and respectful of

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[250] Ibid.
[251] Ibid 870.
[252] Diagram from: D Randy Garrison, Terry Anderson and Walter Archer, 'The First Decade of the Community of Inquiry Framework: A Retrospective' (2010) 13 *Internet and Higher Education* 5, 6.

others).[253] All these elements link well to the 'core skills' of self-awareness and self-management, required of students as they learn. There are three elements of the CoI model that the teacher should use to design, test and improve their approach: social presence, cognitive presence and teaching presence. 'Social presence' is the degree to which and how students can freely express themselves and develop relationships, to pursue the learning goals and gain a sense of belonging.[254] 'Cognitive presence' is where learning moves from a 'triggering event through to resolution' and 'constructs meaning from experience'.[255] For a 'triggering event', 'an issue or problem is identified and defined'; then students explore the problem, gathering and refining information; then they reconcile and make sense of information – hypothesizing and debating solutions; finally, they apply and test those solutions. The cycle may start over if needed.[256] The exact pattern will vary depending on the problem,[257] the authors add, but it is at core a rational process.[258] Finally, a CoI must have high 'teaching presence', possibly the hardest to 'create and sustain'[259] online, 'where students are not in direct contact' with the teacher.[260] Students learning online have been shown to 'expect strong teaching presence', and continue to value the face-to-face interactions they get.[261] Teaching presence involves both the selection, organisation and presentation of the course content and the design of learning activities; and the facilitation of learning, aspects of which may be shared with other participants or students.[262] Teaching presence has been found to be 'a strong predictor of perceived learning and satisfaction with the delivery medium' and has been 'linked to student success'[263]: 'Students clearly attribute a successful learning experience with teaching presence'.[264] As a related finding, online students' satisfaction also correlates highly with 'affective support' or the teacher's 'care' as demonstrated though 'listening, encouraging students to share ideas, using personal examples, and providing humor.'[265]

(b) Online or blended formats in law[266]

Based on his online teaching experiences of over a decade, Swift has formulated guidance for creating engaging and effective digital

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[253] Garrison and Vaughan (n 7) 14–17.

[254] Ibid 19.

[255] Ibid 22.

[256] Ibid.

[257] Ibid 22–3.

[258] Ibid 23.

[259] Ibid 24.

[260] Ibid 25.

[261] Ibid 25.

[262] D Randy Garrison, Terry Anderson and Walter Archer, 'Critical Inquiry in a Text-Based Environment: Computer Conferencing in Higher Education' 2(2–3) *The Internet and Higher Education* 87, 89–90.

[263] Garrison and Vaughan (n 7) 25.

[264] Ibid 25.

[265] Mullen and Tallent-Runnels (n 13) 263.

[266] For further resources on blended teaching in law schools see also Kristen B Gerdy et al., 'Expanding Our Classroom Walls: Enhancing Teaching and Learning Through Technology' (2005) 11 *Legal Writing: Journal of the Legal Writing Institute* 263;

learning in law. His suggested strategies include using online questions to scaffold, for example, case analysis for students, and ensuring 'teacher presence' (to use CoI language) [267] is maintained through regular emails, giving them personalised feedback. [268] Feedback can also be given more immediately online than face-to-face, though a variety of forms, [269] such as trap states, followed by blocks or pop-up answers, or else longer, model answers.

Slomanson discusses his experience with 'flipping' some classes and content in a civil procedure course, after 36 years of teaching 'traditionally'.[270] In his course, Slomanson produced short, to-the-point videos for pre-class viewing, and required that students write outlines of each video before class to reinforce retention and improve preparation. [271] Videos were combined with other online content – including, for example, pauses to direct students to read (on a connected webpage) the 'indescribably dry' procedural rules required by the curriculum – to allow students to take 'more control of their own education' and to make 'digesting' otherwise boring material 'a more tasteful experience'.[272] In-class activities then centred on group work, where knowledge from the online content was applied by student teams (or 'law firms') in a series of activities, such as case debates or hypothetical discussions.[273] During this time, because no lecturing was required, Slomanson would 'roam the room', answering questions. This encouraged otherwise reticent students to ask questions they may have been shy to bring up in front of the whole class, and also offered opportunities to engage with 'lone wolf' students who might otherwise 'reject' in-class discussion and typically be 'ignored'. [274] Overall, students surveyed after participating in the course found the in-class experience less overwhelming than 'traditional' courses, appreciated the additional in-class personal communication with the lecturer, and found the online content 'helped them to better organize the puzzle pieces' in the course.[275]

Although Slomanson's general findings are encouraging, other research suggests that particular attention to format and assessment is needed to ensure that law students (with their 'unique', albeit generalized, motivations and learning requirements, discussed above)[276] obtain measurable learning benefits from blended delivery methods. Castan and Hyams discuss teaching an introductory

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Joseph A Rosenberg, 'Confronting Clichés in Online Instruction: Using a Hybrid Model to Teach Lawyering Skills' (2008) 12(1) *SMU Science and Technology Law Review* 19; Michael L Perlin, '"Ain't No Goin' Back": Teaching Mental Disability Law Courses Online' (2007) 51 *New York Law School Law Review* 991.

[267] See, eg, Garrison, Anderson and Archer (n 262).
[268] Swift (n 195) 147–9.
[269] Ibid 146.
[270] Slomanson (n 7) 93.
[271] Ibid 98.
[272] Ibid 100.
[273] Ibid.
[274] Ibid 100–1.
[275] Ibid 101–2.
[276] See nn 175-98 and accompanying text.

compulsory unit to first-year law students that incorporated blended learning. The aims of the blended model were to improve upon 'the established "read before class approach"' instead making the learning content 'more engaging and interactive' via 'use of videos, podcasts, animations and the like'.[277] In their study, the authors assessed the efficacy of ten short video lectures (consisting of a presenter 'speaking from notes, with some graphics, diagrams and pictures', in a style aiming to be 'modern, personal and engaging' but not 'amusing or 'cute'').[278] The videos were embedded in the learning management system (LMS) (in this case, Moodle), and were followed by short, ungraded multiple-choice quizzes to promote 'learning and retention of the information'.[279] The videos covered materials from the first four weeks of class. In class, students were prompted to raise questions or problems they had with the material, and directed to work – whether alone, in groups, or as a class – on aspects of the material. Group-learning activities included students choosing a topic from the material covered and then 'teaching' another class member on that topic (for example, 'the common law'), and flash-card activities where students were required to match dates with significant legal events. Finally, a mid-semester multiple-choice test, worth 20% of the overall mark, was completed online (through the LMS) in class.

In week five, after completing the online content and related activities, students were surveyed for their opinions on the videos, quizzes and activities.[280] Students reported finding the videos 'very useful for essential skills such as note taking and understanding basic information', which supported their study,[281] however students did not generally perceive or appreciate the connection between the video content and the in-class activities.[282] The videos were valued for their playback flexibility (pausing, rewinding, and replaying),[283] however many commented that videos should be kept under 10 minutes to maintain engagement.[284] Students also valued the videos for their self-paced delivery, allowing students to avoid feeling 'that they were lagging behind others'.[285] Teachers in the unit felt that the students appeared to learn concepts more quickly than in previous years,[286] however when compared to the mid-semester quiz administered in the previous year at the same juncture (without blended learning materials), students' average quiz results were the same.[287]

In light of these results and other student comments, the authors suggest several modifications to their blended model and online materials, covering the content and presentation of the materials,

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[277]   Castan and Hyams (n 10) 6.
[278]   Ibid 9.
[279]   Ibid.
[280]   Ibid 10–11.
[281]   Ibid 11–2.
[282]   Ibid 13.
[283]   Ibid 12.
[284]   Ibid 13.
[285]   Ibid 12.
[286]   Ibid 12.
[287]   Ibid 16.

ensuring that students understand its relevance, and motivating students to participate. First, the authors would create more videos, covering topics spread throughout the semester. Second, they would make the videos less than 10 minutes, and would increase visuals (diagrams, charts and pictures) to improve engagement. Third, they could make the quizzes assessable – even if only worth 0.5% of the total mark each – to motivate students' attempts, which makes sense given the wider learning environment and the profile of law students. Finally, they would require lecturers to explain the links between online and in-class content in greater depth (and would also alter the video content to make this clearer), potentially splitting classes into one 'doctrine' class (covering materials learnt in videos and reinforcing knowledge) and one 'application' class (a tutorial format, emphasizing problem-solving, group work, and interaction) per week.[288]

Pechenkina, Scardamaglia and Gregory trialled a blended program for first year law students, that included videos, discussion boards, and small assessment items, including self-test quizzes attached to the videos.[289] Videos were used to 'spark interest in each new topic introduced throughout the unit'[290] and others were summaries (even 'short snippets')[291] for students to 'review and revise lecture material'.[292] The authors found that first-year law students in their study preferred to talk face-to-face with peers and teachers than to ask questions or otherwise further their knowledge of the content via the LMS.[293] Though students thought the discussion board was useful, they didn't actually use it. Some also made comments that suggested that scrolling through all the other students' comments was a 'challenge to collaboration' or group discussion.[294] 'The consensus on digital versus face-to-face collaboration skewed in favour of the latter where both peer-to-peer and peer-to-instructor collaboration were concerned. Overall, the LMS was considered to be difficult to navigate and not conducive to effective collaboration.'[295] Mature-age students (with jobs) preferred the online discussion more than school leaver students – but most, other than mature-age students, preferred face-to-face.[296] Nevertheless, the authors also found that students appreciated targeted, clearly assessment-oriented online content and content that had been custom-made for the course (not for e.g. YouTube clips).[297] The students felt positive about blended learning where it helped them to

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[288] Ibid 17–8.

[289] Ekaterina Pechenkina, Amanda Scardamaglia and Janet Gregory, 'It's the combination that works: evaluating student experiences with a multi-element blended design in first-year law' (2018) 9(4) *Contemporary Educational Technology* 405.

[290] Ibid 413.

[291] Ibid.

[292] Ibid 410.

[293] Ibid 416.

[294] Ibid 414.

[295] Ibid.

[296] One said: 'the online sections were individual; it didn't have an impact; the online mode didn't really encourage any kind of peer collaboration': Ibid 415.

[297] Ibid 413.

rote memorise content and prepare for assessments,[298] fitting into the typical law student motivations and learning style outlined above.[299] Most found the video and self-test quizzes as a combination good for recall – though some students complained that the quizzes were simply a memory test and did not test application,[300] supporting Adams's view of online's typically limited potential.

With more positive results, in his 'principles for online legal education', Swift refers to a range of successful online and blended courses he has run, from Legal Research and Writing to Employment Law. The online format is, he argues, equipped for sound pedagogical practice. In group work or co-operative learning (and thus social proficiency and leadership),[301] he (and many students) believe better results are achieved:

> 'Most of the online group sessions, and certainly the more successful group sessions, begin with one student setting forth numerous ideas and issues, sometimes a dozen or more. There is no way, in a brick-and-mortar group setting, that one student would be allowed to dominate for that period of time. In the online format, however, each student gets the chance to respond equally by building on and critiquing those ideas and by suggesting additional issues and steps.'[302]

He found that group brainstorming online often lead to better class preparation, for, say, a role-play, than when students were allocated a certain amount of time to prepare in class. In the former context, students are more likely to research issues, go deeper into it, and fully flesh out their ideas and arguments.[303] Swift's piece also provides practical pointers on setting up group work as a core soft skill,[304] including limiting the size of the group (ideal size is 3–4); setting deadlines for initial participation; requiring responses in blog or wiki format (keeping students on a course website); reducing or eliminating grading on group work (this reduces student anxiety); instead, allocating 'participation and effort' marks; and if using graded group-work, assigning it early in semester when students have more time.[305] 'Through this process [of online co-operative learning], beyond simply mastering a technique, students develop the socialization and group consensus skills that are so important to the practice of law. They also receive a formative assessment from classmates as to the student's understanding of the material at that point in the course'.[306]

Beck's international law course, taught in a blended format, focuses on substantive law themes, with a second objective to improve students' soft skills in oral presentation.[307] Beck uses podcast, 'mini-lectures' via

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[298]   Ibid.
[299]   See in particular nn 175-89 and accompanying text.
[300]   Pechenkina, Scardamaglia and Gregory (n 292) 413.
[301]   Swift (n 195) 130.
[302]   Ibid 136–7.
[303]   Ibid 136.
[304]   Ibid 139–140.
[305]   Ibid 140.
[306]   Ibid 137.
[307]   Beck (n 10) 275.

narrated slides, sometimes a compulsory online discussion requirement, and a raft of 'low-stakes' assessment to encourage regular online participation.[308] Reflecting on his teaching, the online format, he says, forced him to improve his own understanding of the topic and to enliven old lecture 'content' with visual evidence, like 'photographs, diagrams and maps'.[309] Beck's multiple evaluative studies revealed that his students found the 'mini-lectures' especially 'helpful' and 'easily accessible'.[310] Beck interprets the negative feedback– expressing a preference for classroom learning – as being more likely where courses are not formally blended courses, and communicated to students as such, and/or where the teacher has failed to properly account for the amount of time it takes for students to engage in the online materials and hasn't then reduced other forms of homework or even the amount of class time itself.[311] Online content being 'too time-consuming' is, his research shows, a common complaint.[312]

A method Beck uses to help integrate the online and face-to-face is a weekly submission requirement of a 'muddiest point'; a question that students regard as getting to the most difficult, intriguing or important part of the topic or mini-lecture content. Together their questions then form the basis of the class discussion.[313] Beck concludes that teachers need to have developed a 'strategy for supporting students with the challenges of blended learning and with the course technologies chosen'.[314] He himself communicates elements of this strategy to students, in formalised expectations for students engaging in blended learning and tips for success.[315] Finally, teachers should devise and communicate to students a rationale for teaching in an online format, including the benefits for students, such as allowing self-paced reviews of the material and schedule flexibility.[316]

Finally, Sparrow's discussion of appropriate teaching methods for legal soft skills contains some modes that are online-amenable, like showing 'video clips of attorneys and ask[ing] students to identify and evaluate how well the attorneys do in executing specified foundation [soft] skills', combined with group discussions and reflection tasks

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[308] 'Low-stakes' assessment items included legal case briefs, significant participation in online discussions, and 'muddiest point' exercises: Ibid 283. These assessments were designed 'to provide an incentive for regular student engagement and also to mitigate the potentially negative final grade impact' of exams: Ibid 283. On 'low stakes' assessment generally Beck cites Deborah L Winking and Linda A Bond, *What You and Your School Should Know about Alternative Assessment* (North Central Regional Educational Laboratory, 1995) and Peter E Knight, Nola Aitken, and Robert J Rogerson, *Forever Better: Continuous Quality Improvement in Higher Education* (New Forums Press, 2000).

[309] Beck (n 10) 283.

[310] Ibid 178.

[311] Ibid.

[312] Ibid 278, 282.

[313] Ibid 280, citing Frederick Mosteller, 'The 'Muddiest Point in the Lecture' as a Feedback Device' (1989) 3 *On Teaching and Learning: The Journal of the Harvard-Danforth Center* 10; Thomas A Angelo and K Patricia Cross, *Classroom Assessment Techniques: A Handbook for College Teachers* (2nd ed, Jossey-Bass, 1993).

[314] Beck (n 10) 279.

[315] Ibid 280.

[316] Ibid 279–80.

addressing soft skills encountered in cases and readings, and, given sufficient 'time and energy', creating 'complex real-world problem-solving simulations' using case studies akin to medical or business school methods.[317] At La Verne University's College of Law, students are asked to post clips from movies or series on to a 'padlet' (a collaborative webpage) then provide a short analysis of the breaches of conduct and practice rules. This approach could be used to ask students to analyse a wider set of soft skills, for instance also the lawyers' emotional awareness and regulation, their sensitivity to the client, and their communication styles. To do so, the students might need at least some introduction to the literature on the importance of client 'voice' from, for example, the procedural justice literature, and some of the psychological literature on the professional-client relationship (eg transference and counter-transference), and the habits of cross-cultural competence. Finally, recognising the anxieties students have about group work, and the core soft skills involved, adapting Weinstein et al's idea, [318] the LMS could host videos of students in previous cohorts talking about group work, for example, how they felt about it before and what they learnt and got out of it.

B   The author's soft skills practices in a blended learning context

The following discussion outlines the soft skills strategies introduced by the author with the support of teaching peers in the UNSW Law and Justice legal ethics course, *Lawyers, Ethics and Justice* (LEJ). The course focuses on developing the five core soft skills detailed in Part II, for three main lawyer relationships and their contexts: lawyer-client, lawyer-peer, and lawyer-senior.[319] As detailed, clinical legal education represents something of a panacea for soft skills learning. To use the SLT, it supports the learner-context interaction and, when done well, the learner-content too. *Lawyers, Ethics and Justice* is a blended legal ethics course with a clinical component at the Kingsford Legal Centre. The subsections that follow describe how the course teaches specific soft skills for each of the three relationships identified (with both in-class and online resources); how these approaches relate to the five core soft skills detailed above; and how they follow and add to the guidance embodied in other practices and previous research, including as synthesised above. The course itself has several more online elements than those described. The weekly course structure is one-hour online module for all students, then 2 x 2 hours of face-to-

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[317]   Sparrow (n 1) 563.

[318]   Janet Weinstein et al, 'Teaching Teamwork to Law Students' (2013) 63(1) *Journal of Legal Education* 36, 61. They suggest having the students from previous cohorts come in to talk to the class.

[319]   In the course, but not detailed here, we also focus on another lawyer-colleague relationship, the lawyer-opponent through negotiation and mediation exercises. These exercises are designed for students to learn the differences between positional and interest-based negotiations. In the first, students must also decide and then reflect on whether to lie to an opponent during a negotiation and how to detect and respond to a lying opponent.

face, 'blended' instruction. Those students who elect to learn fully online have, on top of their one-hour module, two hours of asynchronous online learning as preparation for their two hours of synchronous online tutorials. There are also additional, optional modules that have been designed to cater for the students' diverse learning needs and interests. These modules use video, podcast, multiple choice quizzes, drag-and-drop functions, pre- and post- course hypotheticals, polls, surveys, longer questions with pop-up answers, and reflective exercises. As a professional ethics course, all the online (and class) content and activity support the 'fifth' core skill, professionalism and ethics. However, what's described in this last section are the online materials and blended arrangements that deliberately support soft skills development and performance learning.

1   *Lawyer-Client Relationship*

In this course, students participate in an 'advice night' at the Kingsford Legal Centre in which they interview real clients, take notes, liaise with the volunteer or clinical solicitor, and then sit in and watch the solicitor advise the client. The aim of the clinical component is to give students confidence to conduct a client interview, and start to be proficient in the advice stage, and the blended learning (online and classroom) seeks to support this.

The components covered and formally assessed for (in a written critical reflection) derive from and extend Hyams, Campbell and Evans's interviewing chapters,[320] which provide a structured approach to the client interview and advice. These are:

- The introduction
- Handling of costs and other elements of client (expectation) management
- The listening stage - the client's story and priorities
- Effective use of questions and note-taking
- The investigation of the facts – and summarising
- The advice stage (assessing options and giving advice)
- The interpersonal skills required for distinct types of clients – awareness of setting, power dynamics, sensitivity to gender, cultural or disability issues, use of and interpreting body language, use of empathetic gestures
- Dealing with lying or 'boundary-busting' clients
- Duties to the client: client voice and empowerment, capacity issues, reasonable adjustments, interpreters, referrals
- The impacts of the emotional states and any perceptual biases of the lawyer and client on their respective behaviour, and how managed
- The role of context in supporting (or not) the lawyer's interpersonal skills

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[320]   Ross Hyams, Susan Campbell and Adrian Evans, *Practical Legal Skills* (4th ed, Oxford University Press, 2014), chs 1–2.

- Identifying and handling these and other ethics issues

These stages (and therefore the clinical components of the course) indicate clear areas for soft skill development. For example, social proficiency will be needed throughout the interaction, and self-management during and afterward (for example, the ability to suspend judgment, and the ability to manage stressful emotions). Professionalism and ethics aptitude are required by the very nature of client interviews, especially in a community legal setting where there may also be power imbalances and/or capacity issues. These skills are further developed in the blended learning format.

(a) 'First Encounters' Video

The first innovation to bring soft skills online and then into the classroom is a video produced by the author, called 'First Encounters'. The video, performed by paid actors, depicts Rachel, a young, busy lawyer, meeting Ulrich, an elderly client, whose first language is not English. Video is used instead of a written scenario because video captures 'in a textured way the atmospherics and personalities, the economics of practices, and nuances of communication that conspire to create classic ethical dilemmas' and portrays them in 'real time'.[321] As it enables students to see course content – here, the client interview and advice content combined with professional ethics content – applied (poorly) in practice, video here satisfies Adams's SLT's requirement of attention to content-context and learner-context interactions, and in general can provide 'the optimal classroom medium for contextualising ethical dilemmas'.[322]

In the scenario, Rachel demonstrates low awareness of herself and her client. For instance, she does not learn how to pronounce the client's name; she talks over him; and she answers the phone mid-conversation to have an inappropriate chat with a colleague-friend. On the few occasions she does attempt to 'display' empathy, she does so in a forced, patronising manner that creates further tension. In the process, she fails to let the client tell his story and, giving an early diagnosis, misses his objectives for seeking legal assistance from her.[323]

Through the LMS, the students are asked to watch the video at home as pre-class activity, and, drawing on their readings and an earlier behavioural (legal) ethics module,[324] to answer online questions. The questions cover the components in the list above, with a special, additional focus on emotional intelligence (self-awareness and self-management). In the following class, the students watch the video again. However, before any structured discussion begins, students are

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[321]   Douglas N Frenkel, 'On Trying to Teach Judgment' (2001) 12(1–2) *Legal Education Review* 19, 36.

[322]   Ibid 35.

[323]   The client has been in a car accident and the experiences makes prompts him to finally get around to writing a will, she 'diagnoses' right away and assumes it is a motor damages claim). Many of the lawyer's mistakes are based on Hyams, Campbell and Evans (n 320). See, eg, an 'early diagnosis' example: Ibid 21–2.

[324]   To see how behavioural ethics can be incorporated into legal education: Vivien Holmes, '"Giving Voice to Values": enhancing students' capacity to cope with ethical challenges in legal practice' (2015) 18(2) *Legal Ethics* 115.

asked for their immediate impressions of the lawyer, some of which have already been indicated by their grunts and scoffs while watching her. Students have strong, often visceral reactions to Rachel; for example, some say they see her as 'bitchy' or 'mean'. Using the soft skills framework, this provides another chance to discuss gender stereotypes, use of reactive language, and whether rather than judging Rachel as malicious and spiteful, they could make a more subtle, contextual and thoughtful assessment. She does in fact attempt to display empathy on several occasions, but her social proficiency is low. It also seems that she is copying how she thinks a lawyer should talk – dictatorially and overly confidently, indicating a lack of self-awareness. Her work environment is pressurised as well, perhaps indicating a need for improved self-management and self-development (for example, wellbeing and resilience), if not other organisational changes. [325] In other words, the students' evaluation of Rachel's soft skills becomes an evaluation of their own as well.

(b)   'Ethics of Legal Practice' Videos

The second main innovation captures currently-practising, large firm and community legal centre lawyers, of different levels of experience and authority, dealing with complex ethics issues in practice. The videos portray, first, the lawyers (or a lawyer) describing the scenario (written by the lawyers, based on real cases); second, lawyers as colleagues discussing and analysing the ethics issues; and then lawyers (or a lawyer) explaining and reflecting upon how the ethics issues were resolved (with the client, colleagues or opponent). As above, video makes the scenario seem open and unresolved, and the inclusion of practising lawyers and the scenarios being their own, enhances the contextual dimension of learning. [326] The videos are produced as sets of three or more, where each set of videos features one workplace. This was designed to fit into the author's adaptation of White and Gunstone's 'Predict, Observe and Explain' ('POE') framework.[327] POE is a constructivist teaching approach from science, where students are asked to predict what is going to happen in an experiment; observe what happens; and then explain any differences between their prediction and what they observed.[328] This process has

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[325]   That's not to say there is no such thing as poor character or intent or to justify her poor behaviour, just that there is no evidence of more than immaturity and irritability as a junior lawyer in a busy practice.

[326]   To note, it can decrease the content value where those practitioners are not aware of the learning objectives.

[327]   Richard White and Richard Gunstone, 'Prediction-observation-explanation' in Richard White and Richard Gunstone (eds) *Probing Understanding* (The Falmer Press, 1992) 44.

[328]   Sevilay Karamustafaoğlu and Rachel Mamlok-Naaman, 'Understanding electrochemistry concepts using the predict-observe-explain strategy' (2015) 11(5) *Eurasia Journal of Mathematics, Science and Technology Education* 923; Saowapak Teerasong et al, 'Development of a Predict-observe-explain Strategy for Teaching Flow Injection at Undergraduate Chemistry' (2010) 17(8) *International Journal of Learning* 137. For POE in a digital learning context see Matthew Kearney et al, 'Student and teacher perceptions of the use of multimedia supported predict–observe–explain tasks to probe understanding' (2001) 31(4) *Research in Science Education* 589.

been shown to help students articulate, reflect upon and revise their thinking by negotiating new and shared meanings with others (real and virtual).[329] The video sets are embedded in the weekly online module most relevant to the themes raised in them, though, because they are realistic, they each involve multiple topics.

Using the community legal centre example to show how they work, in the first video, a junior lawyer, Tess, approaches senior colleagues off-camera to get their advice about a client with potential capacity issues. Tess identifies the client as an employment law client, someone who was fired from her job due to, as the client reports it, illness caused by changing her mental health medication. Tess describes the difficulties of the appointments with the very distressed client, and mentions her (Tess's) concern about the presence of the client's neighbour, who 'did most of the talking'. The video asks students to use their readings to identify the ethical, professional, self-management and social proficiency issues; assess what Tess has done well and less well so far in handling them; explain why she is seeking assistance from senior colleagues and if that is permitted according to the conduct rules; and predict what will come up in the discussion: the sorts of questions they might ask the Tess and the likely advice.

The repeated activities aim to normalise for students as future lawyers the process of seeking ethics advice from colleagues. As such, the second video is of Tess and two of her senior colleagues discussing the case, including the possibility of seeking medical assessment of capacity; competent client instruction; client dignity and voice; the ethos of community legal centres; and the relevant sources of guidance and regulation. The video ends by asking students to reflect on anything that came up in the conversation that was different to what they predicted, and then again predict what action points Tess will now take regarding the client, or what they would do after the conversation with their senior peers.

The third, final video is Tess herself reflecting on her action points and how the issues were eventually resolved. Students are then asked to compare their predictions with what Tess did (anything she missed?) and reflect on what they learnt about the principles of client capacity and how to include the client in their decision-making and the legal system; and finally, what stereotypes Tess could have made about a client with a psychiatric disability. These videos and discussions clearly emphasise and promote reflection on professionalism and ethics skills, and are closely connected to guidance (formal, as well as from senior colleagues) and professional regulations. The potential biases and interpersonal issues facing Tess also prompt students to see how self-awareness and several social proficiency skills are needed in practice situations. These soft skills activities meet Cassidy's call for 'greater emphasis on practical judgment',[330] and also give students the chance

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[329]   Matthew Kearney, 'Classroom use of multimedia-supported predict–observe–explain tasks in a social constructivist learning environment' (2004) 34(4) *Research in science education* 427, 429, 449.

[330]   Cassidy, 'Beyond Practical Skills' (n 5) 1523.

to have good behaviour modelled to them by experienced lawyers.[331] To this end, Cassidy suggests visiting speakers and panels,[332] but in an online or blended format, these videos are ideal alternatives or supplements. Moreover, the POE structure allows for the possibility of students being, at least in some areas, more ethically sensitive and socially intelligent than the practitioners they are watching, thus constructing their own knowledge from pre-existing practices.[333]

2   *Lawyer-Peer Relationship*

The second important relationship we focus on in the course is the lawyer-peer relationship, enacted as between student and fellow team-members. The team relationship is central to LEJ,[334] with students in groups of 4-5 throughout the term, geared towards a group assessment piece (known as the 'collaborative project') but with group activities in most classes. Teams are used for students to practise communication and collaboration (a Threshold Learning Outcome of the law degree, as outlined above),[335] and, in soft skills terms, to foster social proficiency in teamwork. When properly supported, teams encourage self-disclosure and feedback, social and cultural sensitivity, and are especially suited to 'contextual', 'performance learning' and problem-based projects[336] in ways that are less possible when students learn as individuals in a full class setting or alone, online. Because assessment drives the learning, the students also formally evaluate their own and their peers' group contributions and social proficiency skills via self and peer assessment submissions which then inform their final grade (guided by rubrics, all online). By contrast, Weinstein et al ask their students to bring in written evaluations to class and to discuss them with their team.[337] In what follows, the focus is on the first stages, the team formation process, to highlight several ways in which students' soft skills are cultivated through teamwork. Since 2019, much of the group formation stage takes place as pre-course online activity.

The LEJ groups are purposefully designed as diverse groups based on balanced mixes of certain demographic qualities: gender, ethnicity and, where possible, social background.[338] While it is not possible to

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[331]   Ibid.

[332]   Ibid 1524. An approach our courses uses as well, but in a blended learning context, classroom or synchronous learning time is at a premium.

[333]   Kearney et al (n 328) 589.

[334]   For a comprehensive discussion of our teamwork approach, see Justine Rogers and Marina Nehme (2019) 'Motivated to collaborate: A self-determination framework to improve group-based learning' 29(1) *Legal Education Review* 1.

[335]   See nn 143-9 and accompanying text.

[336]   Michelle Mclean et al, 'The Smaller Group in Problem-Based Learning: More than a Cognitive 'Learning' Experience for First-Year Medical Students in a Diverse Population' (2006) 28(4) *Medical Teacher* e94, e99.

[337]   Weinstein et al say their rubric is 'reaching full potential' rather than blame or criticism: Weinstein et al (n 318) 49.

[338]   Maryellen Weimer, 'Better Group Work Experiences Begin with How the Groups are Formed', *The Teaching Professor Blog* (Blog Post, 31 July 2013) <https://www.teachingprofessor.com/topics/for-those-who-teach/better-group-work-experiences-begin-with-how-the-groups-are-formed/>. For a further discussion on the importance of group diversity, see Sue V Rosser, 'Group Work in

predict how students will work together since their success represents a convergence of needs and behaviours, [339] as a general rule, diverse groups correlate to high interaction and high achievement. [340] Group formation is first generated in TeamBuilder, a Moodle (LMS) tool that automatically creates groups based on criteria set by the lecturer, based on a set of questions that the students must answer. [341] This allows for a speedier and fairer assortment of students than occurred previously. With the ascriptive characteristics above, it has also been set up to distribute students based on self-assessed strengths relevant to the main collaborative project. Mixed strengths teams are more likely to be, then, positively interdependent[342] and more evenly balanced for an assessed item.

The online module then steps through in a more manageable way than could be achieved in class, some of the literatures on the reasons for group learning and successful group functioning[343] (adapted to the law context and given law students' typical resistance). [344] They are shown a range of studies that highlights the ways in which diversity of thinking and capacities can enhance the group's problem-solving skills and overall success. [345] They are shown the main interpersonal threats

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Science, Engineering, and Mathematics: Consequences of Ignoring Gender and Race' (1998) 46(3) *College Teaching* 82, 84; Dai-Yi Wang, Sunny Lin and Chuen-Tsai Sun, 'DIANA: A Computer-Supported Heterogeneous Grouping System for Teachers to Conduct Successful Small Learning Groups' (2007) 23(4) *Computers in Human Behavior* 1997.

[339]   David Jaques and Gilly Salmon, *Learning in Groups: A Handbook for Face-to-Face and Online Environment* (Routledge, 4th ed, 2007), 26.

[340]   Ibid.

[341]   There are other team-building tools, such as Grouper and Drupal: 'Grouper Groups Management   Toolkit',   *Unicorn*   (Web   Page) <https://www.unicon.net/opensource/grouper>; 'Guidelines for Forming New Drupal Groups', *Drupal* (Web Page) <https://www.drupal.org/node/1949700>.

[342]   Swift (n 195) 130 fn 115, citing Richard M Felder and Rebecca Brent, *Cooperative Learning in Technical Courses: Procedures, Pitfalls and Payoffs* (ERIC Document Reproduction   Service,   1994)   2   <https://www.engr.ncsu.edu/wp-content/uploads/drive/1y4er1UbysUyLR2ZHitJLsVgCrIasp4Rj/1994-Coopreport.pdf> and David Johnson, Roger Johnson and Karl Smith, *Active Learning: Cooperation in the College Classroom* (2nd ed, Interaction Book Company, 1991) 3, 16.

[343]   Students are likely to assign roles based on the assessment task, in 'big' terms, like 'leader', 'researcher', 'coder', 'writer', and these may overlap with those that were tested by the team-building tool. However, to widen the students' appreciation of their own and others' contributions and what constitutes successful group work, it might be useful to show students the research on group roles, even as a simple list. There are more nuanced 'group task roles', such as, initiating ideas and activities; information-seeking, information-giving; opinion-giving; clarifying; elaborating; coordinating; orientating; summarising. Further, there are 'group-maintenance' roles that are often less visible, such as encouraging, mediating, gate-keeping (to ensure everyone speaks), standard-setting or enforcing; listening; joking or making things fun. Jaques and Salmon (n 339) 33 citing Malcolm Knowles and Hulda Knowles, *Introduction to Group Dynamics* (Association Press, 1972) 54.

[344]   Steel, Huggins and Laurens (n 187) 292.

[345]   Margaret Lohman and Michael Finkelstein, 'Designing Groups in Problem-Based Learning to Promote Problem-Solving Skill and Self Directedness' (2000) 28 *Instructional Science* 291, 303; Scott Page, *Diversity and Complexity* (Princeton University Press, 2011); Lu Hong and Scott Page, 'Groups of Diverse Problem

to successful groups,[346] including free-riders, poor-drivers, those who go missing in action (MIA) and discriminatory or exclusionary behaviour, and examples of strategies that can be adopted to counteract these.[347] The online module also explains the collaborative project and provides its marking rubric. Finally, following Adams,[348] the module asks students to identify an interpersonal strength and weakness from a list of suggested items that the student would like to work on over the term through teamwork. The final module, at the end of the course, asks them to reflect on whether and how these capacities have improved and the value of group learning more broadly. Eventually, following Adams, we could ask students to explain how they were further developed in other contexts relevant to them.[349]

To assist the group 'forming' (or bonding) process, an ethics reflection, *A Tale of Two Stories* is used, a business ethics exercise from Mary Gentile's Giving Voice to Values program.[350] This activity, set up in an online module as individual pre-class activity, asks students to reflect on past experiences when they did and did not act on their values. They are then asked to discuss what they wrote in the module[351] within their wider group. Its primary aim is to instil ethical awareness and competence (as detailed in the next section), but its secondary purpose is to develop their social skills, many of which they need for their client relationships, discussed above. These components include active listening, empathy, hearing the entire story before early diagnosis, and emphasising similar values.

The teams are asked to establish a 'code of conduct', flowing on from the literature above. Adapting the approach of Dana, a legal educator, students are asked online to come to class with three values and three rules that they would like to see in their group's code.[352] These codes, sometimes called a team mandate or team charter,[353] govern both in class and online activity.[354] The groups are given time

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[346] Solvers Can Outperform Groups of High-Ability Problem Solvers' (2004) 101(46) *Proceedings of National Academy of Sciences of the United States of America* 16385.

[346] Susan Bryant, 'Collaboration in Law Practice: A Satisfying and Productive Process for a Diverse Profession' (1993) 17 *Vermont Law Review* 459, 486.

[347] Dana Crowley Jack and Rand Jack, 'Women Lawyers: Archetype and Alternatives' in Carol Gilligan (ed), *Mapping in the Moral Domain* (Harvard University Press, 1985) 287.

[348] Adams (n 193) 450.

[349] Ibid 451.

[350] 'A Tale of Two Stories' asks students to reflect on occasions when they did and did not act on their values and is found in the 'Giving Voice to Values Curriculum': 'Giving Voice to Values Curriculum', *Darden Business Publishing* (Web Page) <http://store.darden.virginia.edu/giving-voice-to-values>.

[351] To ensure student privacy, students are instructed to input details in very general, de-identified terms, to ensure they have done the reflection and prepared for class, but we don't have records of what can be sensitive material.

[352] Susan Dana, 'Implementing Team-Based Learning in an Introduction to Law Course' (2007) 24(1) *Journal of Legal Studies Education* 59, 68–9.

[353] Pamela L Cox and Paula E Bobrowski, 'The Team Charter Assignment: Improving the Effectiveness of Classroom Teams' (2000) 1(2) *Journal of Behavioral and Applied Management* 93. This article contains a set of questions for groups to build a team charter at 98–101.

[354] Jaques and Salmon (n 339) 21, 29.

in class to discuss and formalise their code. As part of this exercise, students are encouraged to explicitly discuss examples of prohibited conduct, topics that are open for discussion, preferred modes of communication, and the assistance and feedback that each member might provide to the others. [355] Another element that the students formally consider is how to deal with conflict when and if it arises, including acceptable dispute resolution processes. As mentioned, a typical source of conflict is a group member going MIA. In LEJ, we remind students not to assume the worst motivations of someone who is MIA, and we link it explicitly to how they might address the situation of a non-responsive client or colleague in a professional setting.[356] Each group is asked to agree on five values and five rules from among those discussed as their code. They must post their code online for other groups to learn from and so the group can easily refer to it during the term. As a result of these processes, each student reflects on their driving values, such as responsibility, courtesy, and tolerance,[357] which get at the core skills of leadership and professionalism.

A good strategy to integrate these elements, and connect the learner, content and context, would be an 'anticipatory case study', a hypothetical scenario requiring students to use the literature above to anticipate problems the group might encounter[358] and how to respond. This could be done individually online first and then discussed together as a group.

3   *Lawyer-Senior Relationship*

Finally, this course allows students to anticipate and prepare for healthy relationships and ethical interactions with senior lawyers in their workplaces. This aspect of the course is especially focused on being able to manage situations where seniors expect – or seem to expect – the student as a junior lawyer to act against their core professional or personal values. This clearly involves ethical and professionalism skills, but also leadership and social proficiency capabilities; to seek help, ask for clarification, articulate and defend values, come up with solutions and still maintain working relationships, though where the lawyer's integrity is supported. While learning these, law students are also exercising peer-peer interpersonal, mentoring skills. Following the same structure as above, this section outlines two strategies to foster soft skills in these relationships that also support high interactivity between learner, content and context.

(a) *Feedback, Dialogue and Reflection*

In LEJ, we use *A Tale of Stories*, which, as described, asks students to revisit past behaviour, specifically, a time when they acted on their

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[355]   Ibid 29.

[356]   Parish offers a set of 'MIA' rules and guidelines for students to use in his chapter on blended learning: Ken Parish, 'Flexible, Blended and Intensive Learning in Law' in Sally Kift et al (eds) *Excellence and Innovation in Legal Education* (2011, LexisNexis) 452–3, 456.

[357]   Jaques and Salmon (n 339) 29.

[358]   See, eg, the sample tasks in Jacques and Salmon (n 339) 316.

values and a time when they did not, first inputted online and then shared with group members in class. Students are stepped through questions to give proper attention to the situation they were in, to trace the psychological and situational factors that supported or did not support them, their own motivations and soft skills abilities, and what they would do differently this time (even when they have acted on their values). Linking to the core skill of leadership, the exercise and reflection involves students identifying positive or negative (or absent) role models, whether the situation involved authority and chains of command, and whether any leadership helped or hindered them. One of the aims of the activity (and the course) is to 'normalize' the experience of discussing moral issues with each other. [359] Following medical education too, it helps students develop the habit of seeking Feedback from others on ethics issues, engaging in Dialogue, and Reflecting (FDR).[360] The exercise is a basic precursor to a more elaborate ethics action framework students must practise continually throughout the course: online, in class and in their assessments, in which soft skills are central; where they must consider in relation to specific professional (and sometimes personal) contexts, the psychological and interpersonal components that are required to be ethically successful and the environmental factors that make ethical action more or less straightforward.[361]

(b) Ethics Implementation Videos: giving upward ethics feedback

The activity in which students practise soft skills for the lawyer-senior lawyer relationship most deliberately is in an 'ethics implementation' class. Students in their groups are assigned online as pre-class activity one of eight videos to watch, of a senior practitioner from a specific practice area (a paid actor) asking them, in the place of a junior lawyer, to do something unethical, or against their professional - and probably personal - values. Students must respond by designing, testing out/ seeking feedback on, and improving their implementation strategy to resolve the dilemma they face.

To draw on the SLT, the videos are highly contextual: All eight were made from accounts by practising lawyers from a range of areas, of their own, unresolved professional ethics dilemmas. There are enough videos for each group in the class, but for the purposes of strengthening the students' soft skills, the same video is assigned to at least two groups. This also accords with Problem-Based Learning philosophy in which, to maximise learning, groups are given the same task, asked to make

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[359] The notion of 'normalising' ethics (ethical problems, ethical conflict and ethical discussion) is central to the Giving Voice to Values curriculum devised by Professor Mary Gentile: see, eg, IBIS Initiatives, 'Giving Voice to Values', *University of Virginia Darden School of Business* (Web Page) <https://www.darden.virginia.edu/ibis/initiatives/gvv>.

[360] See, eg, Neil Hamilton and Verna Monson, 'Legal Education's Ethical Challenge: Empirical Research on How Most Effectively to Foster Each Student's Professional Formation (Professionalism)' (2012) 9(2) *University of St. Thomas Law Journal* 325, 375.

[361] See, eg, Holmes (n 324), Breakey (n 53) and Rogers and Bell (n 54).

the same, specific decisions, and to share or report back at the same time.[362]

Students first come up with a strategy as individuals, conducted online. Then in class, within their groups, students deliberate upon and develop a 'mega strategy', written up on a white board, butcher's paper, or computer. With the teacher roaming around to listen to and where appropriate chime in, each group shares their strategy with the group who responded to that same video, and receives feedback; feedback is scaffolded for them so they improve in this critical area.[363] The groups then swap roles. This strategising and mentoring activity involves processes of active listening, giving and receiving feedback, defending decisions, articulating values, and coaching and empowering themselves and others.

To close the learning cycle, there is a final online reflective element in which students write about the learning experience itself, what they learnt about: the nature of ethics, how to give 'upward' ethics feedback (or feedback to a senior), the important roles of the right type of dialogue and coaching, and what else they anticipate they will need or would prefer (personally, interpersonally and organisationally) to act on their values as a busy practitioner. Students often post photographs of their strategies as well, for feedback from me and other groups to learn from.

These innovations teach intrapersonal and interpersonal skills that can be transferred across contexts. For instance, the paper has already mentioned one overlap: how the *Tale of Two Stories* assists with active listening between team members but also, by extension, with clients. Through the 'ethics implementation' activity, while the emphasis is on 'upward' feedback, this is achieved through team or peer skills, in which they practise mentoring each other. Moreover, there are other activities that help them practise soft skills for multiple types of relationships at once, such as the full-class role play also in the course; of a 'business acceptance' (or client selection) meeting at a large law firm, freed up because preparation is now formally conducted online.

V   CONCLUSION

Soft skills are essential to healthy and effective legal practice and are increasingly being acknowledged as critical to legal education. Yet law schools have privileged 'hard skill' attainment, whereby student success is largely secured by the acquisition of 'objective' knowledge. Research indicates that law students themselves are particularly likely

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[362]   For further explanation and examples of the PBL method, see Barbara J Duch, Susan E Groh and Deborah E Allen, *The Power of Problem-Based Learning: A Practical "How To" for Teaching Undergraduate Courses in Any Discipline* (Stylus Publishing, 2001). See also the contents of the Interdisciplinary Journal of Problem-Based Learning: 'Interdisciplinary Journal of Problem-Based Learning', *Purdue University* (Web Page) <https://docs.lib.purdue.edu/ijpbl/>; 'Interdisciplinary Journal of Problem-Based Learning', *Indiana University* (Web Page) <https://scholarworks.iu.edu/journals/index.php/ijpbl>.

[363]   See nn 243–4 and accompanying text.

to be driven by extrinsic than by intrinsic motivations, and therefore toward learning that can be best controlled, quantified and numerically ranked, and the law school environment and traditional legal education only exacerbate this. Meanwhile, teaching for context-oriented skills has typically been seen to require placing students in at least a facsimile of the relevant contexts, often in clinical courses – but time, resource, and financial constraints limit these offerings. Further, even where they exist, they don't always support and maximise an explicit soft skills focus across the rest of the degree. Moreover, even where soft skills development is prioritised, students are increasingly required to learn in online formats, formats generally inhospitable to soft skills training and performance learning generally. There is thus the need for an expanded learning context to include soft skills at the same time as a contracting force posed by digital learning, on an immature soft skills environment. These complicated demands on legal educators and the potential difficulties they represent for students spurred this paper. The paper reviewed the meanings and practices of soft skills, with special relevance for online learning. It defined skills as comprising five core sets, before positioning soft skills learning within a challenging legal (and wider) educational context. The paper then synthesised current frameworks and practices in the key learning areas of soft skills, online, and online soft skills, before sharing the author's strategies used to teach five core skills needed for three significant legal relationships. In this way, the paper provided significant contributions to this new, critical area in legal education.

The paper concludes here by singling out from the literature, and considering the author's experiences, some of the things that may need to change in the wider learning environment to support soft skills teaching, one in which the move toward online is probably unavoidable and needs to be thoughtfully adapted to. Even with the efforts of individual legal educators, soft skills in a digital context might be very difficult to sustain without certain wider reforms. First, law faculties need to continue to shift away from process-based curriculum (specific content for a specific period) to a competency-based, performance curriculum.[364] Where they are not formalised learning outcomes, law schools need to make these core skills a required component,[365] supporting acquisition of soft skills, hard skills and subject matter knowledge together.[366] They need to take a holistic approach to teaching soft skills, not only by expanding clinical opportunities in later years, but changing the traditional law school curriculum, integrating and diffusing teaching of soft skills into early year courses.[367] This will

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[364] See summary of steps in Neil Hamilton and Sarah Schaefer, 'What Legal Education Can Learn from Medical Education about Competency-Based Learning Outcomings Including Those Related to Professional Formation and Professionalism' (2016) 29 *Georgetown Journal of Legal Ethics* 399, 405–6.

[365] Daicoff, 'Expanding the Lawyer's Toolkit' (n 1) 874.

[366] Bernd Schultz, 'The Importance of Soft Skills: Education Beyond Academic Knowledge' (2008) 2 *Nawa: Journal of Language and Communication* 146.

[367] Cassidy, 'Reforming the Law School Curriculum' (n 160) 430; Deborah L Rhode, 'Ethics by the Pervasive Method' (1992) 42 *Journal of Legal Education* 31, 41.

involve integrating critical thinking within the curriculum, both abstract and intellectual with a practical, emotional and personal.[368] It might mean hiring more faculty with practice experience (including public service) and/or specialised soft skills teaching expertise, and 'providing more training and rewards for teaching excellence' more broadly.[369] Greater emphasis on soft skills could entail utilising the skills of adjunct faculty members strategically for curricular experimentation,[370] including using team-teaching;[371] and forging partnerships between faculty members and legal practitioners[372] and/or business schools.[373] A difficult change might be in limiting enrolment in dedicated soft skills courses to smaller numbers.[374] Other steps might be increasing the number of collaborative and oral assessments, and greater experimentation with problem-based learning whereby students are presented with a complex problem to work on throughout the course.[375]

Teachers, then, need to be equipped themselves, including in how to present an (necessary) in-depth orientation to students before they begin any soft skills-oriented course. Beck's study detailed above highlighted that students need to be properly oriented into online learning (and this could be extended to soft skills and soft skills online learning) because of their general attachment to face-to-face learning (and hard skills knowledge).[376] To do so, teachers might draw on this article, outlining the various soft skills needed for maximal lawyer effectiveness and long-term wellbeing, all based on empirical research.[377] Teachers will need to take a stage-appropriate approach, recognising that students are at different developmental stages of growth and engaging them appropriately at each level.[378] Further, they will likely need to structure repeated opportunities for students to engage in soft skills learning through multiple, staged assessments.[379] When it comes to their achievement, students need to be taught and assisted with their development of a growth rather than a fixed mindset,[380] both to successfully learn soft skills and as a key soft skill in itself. Teachers will need to be made aware of their own professional identity and whether it too requires personal transformation from the traditional 'thinking like a lawyer' mode.[381] They might leverage the social connectedness of millennial students to enhance their

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[368]   Galloway and Jones (n 87) 14, 19.

[369]   Kennon M Sheldon and Lawrence S Krieger, 'Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory' (2007) 33 *Personality and Social Psychology Bulletin* 883, 894–5.

[370]   Cassidy, 'Reforming the Law School Curriculum' (n 160) 432.

[371]   Daicoff, 'Expanding the Lawyer's Toolkit' (n 1) 868.

[372]   Ibid 436.

[373]   Ibid 651.

[374]   Sacks (n 59) 342.

[375]   Cassidy, 'Beyond Practical Skills' (n 5), 1518–9, 1522.

[376]   Beck (n 10) 282. See also Huggins (n 25) and Wortham, Klein and Blaustone (n 25).

[377]   See nn 23-87 and accompanying text.

[378]   Hamilton, Monson and Organ (n 3) 11, 16 fn 28.

[379]   Hamilton and Schaefer (n 364).

[380]   Debra S. Austin, 'Positive Legal Education: Flourishing Law Students and Thriving Law Schools' (2018) 77 *Maryland Law Review* 649, 685.

[381]   Galloway and Jones (n 87) 14, 21.

technological and cultural awareness, and service orientation.[382] When it comes to online learning, one of its benefits, mentioned in the paper, is the enhancement of class time. For instance, with more time in class, freed up by online preparation,[383] students can spend more time on role-play. But teachers need to give that classroom time needs proper attention too. To focus on role play, it only works when students are taught how to do it, when any negative feelings towards it are recognised, when students are given the chance to set a specific goal, here a soft skills development goal,[384] and where there is proper debriefing. The 'ethics implementation' class I outlined in the paper works because the mentoring and feedback are scaffolded for students, and there is an online debriefing afterwards. Taken together, faculties need to provide teachers with the time, resources, and incentives to design and assess their soft skills interventions, for which they might use the SLT and/or COI frameworks provided in this paper. Meanwhile, one of the hurdles in teaching soft skills online is that the LMSs used in the tertiary sector are typically not as sophisticated as in industry. Soft skills cannot be supported by compliance-style platforms. Universities need to scan the educational technology market for the products that best allow for interpersonal development.

Finally, the legal profession could do more to help support these changes, first by reframing or reinforcing accreditation standards for legal education and admissions to focus more heavily on outcome measures that concentrate on whether law schools have fulfilled its goals to impart knowledge and develop competencies of soft skills.[385] Employers could provide law schools with better information on market needs [386] and then align this information with hiring practices to prioritise sort skills and therefore incentivise soft skills education.[387] Practitioners might offer mentoring opportunities and training modules to law schools via course convenors. In jurisdictions where such or similar research does not already exist, the professional bodies might support scholarly research to identify and measure which abilities and

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[382] Austin (n 380) 695.

[383] See discussion of Slomanson's class, nn 270-5 and accompanying text.

[384] Vicki A Jackson and Anthony L Back, 'Teaching communication skills using role-play: an experience-based guide for educators' (2011) 14(6) *Journal of Palliative Medicine* 775, 778. The students might perform role plays within pairs and then or as an alternative, given limited time, one or two groups (on rotation) can be asked to perform for the class for feedback. Another possibility is for students in pairs to film another pair performing a role play, for posting to the learning platform, and then to give each other cross-group feedback. This approach also means that the lecturers can watch the videos, provide further feedback on the specific goal that was negotiated. They may ask follow-up, debrief questions about the emotions that arose during the interaction and how they managed them.

[385] Daicoff, 'Expanding the Lawyer's Toolkit' (n 1) 874. See also American Bar Association: Section of Legal Education and Admissions to the Bar, *Interim Report of the Outcome Measures Committee 1* (Report, 12 May 2008).

[386] Westfahl (n 57) 648; Duncan Bentley, 'Employer Perspectives on Essential Knowledge, Skills and Attributes for Law Graduates to Work in a Global Context' (2014) 24 *Legal Education Review* 95.

[387] Kimberly Stamatelos, 'Lawyers of the Future: Is Legal Education Doing Its Part' (2016–17) 66 *Drake Law Review Discourse* 101, 106.

traits most highly correlate with graduates having significant influence in their varied, chosen legal paths.[388]

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[388] Cf. Westfahl and Wilkins (n 16) 1696–7.