# *Developing electronic discussion-based learning in clinical legal education*

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## Abstract

The teaching of Law, like the teaching of many other professional disciplines, requires particular teaching strategies. Such strategies must effectively assist students not only in their mastery of the process of inquiry but also the acquisition of requisite attitudes of mind. The need for such mastery is particularly important in clinical legal education where the aim is to prepare students for legal practice. One much lauded strategy for achieving these twin aims is discussion-based teaching.

But such teaching needs to respond to the changes to university teaching practice brought about by factors as diverse as increased class sizes and the increased use of new communication technologies to replace or supplement face-to-face contact as students increasingly find themselves unable or unwilling to attend conventional classes. This paper seeks to examine the circumstances under which there are learning benefits using online discussion in clinical legal education. The focus of the paper is upon both the effectiveness of online discussion as a learning strategy and as the thread to align the learning aims, activities and assessments.

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# 1. Reviewing learning strategies

## Background

The ANU Legal Workshop has provided practical legal training to entry-level law graduates as a prerequisite for admission as legal practitioners since 1972. The mode of instruction has traditionally been small group face-to-face instruction in practical legal skills with students attending on campus for a 22-week bloc. Over recent years this method of delivery has adapted to cater for an increasing number of students who wish to study the program off campus. This has been addressed by providing such students with the familiar distance education packages consisting of written course materials, self-directed instructional material, audio and video tape instruction and email contact with staff. Students have been required to attend an on-campus intensive skills development module for two weeks at the commencement of the course. For such students (a steadily growing majority) all other components of the course are delivered flexibly over varying extended periods.

The traditional mode of instruction had as its core an educational philosophy based on the notion of the reflective practitioner.[1] Schon saw a capacity for reflection as the distinctive characteristic of a professional. Consistent with this notion, the legal workshop program seeks to instil in students a lifelong habit of reflecting on their development as legal problem solvers. Instilling this emphasis on "competence in action" in students is most effective in the small group environment.[2] Structured problem-solving exercises can be 'workshopped' with experienced staff and a range of visiting practitioners who participate in instruction, assessment and mentoring. This approach has resonance with the "reflective model" of education advocated by Lipman.[3] Lipman emphasises a "community of inquiry" involving participation in 'activities' with the activity used as an object for discussion, inquiry, judgment and critical and creative thinking. He likened this process to a "conversational apprenticeship".

The move to flexible delivery has necessitated a review of this reflective approach. A core issue has been whether a flexibly delivered course can create an online community. In response to this review the Legal Workshop has sought to redevelop its model of reflective learning in a flexibly delivered mode. This paper reports on one micro aspect of this development: the method used to make online discussion a successful learning strategy for students. It focuses upon a single compulsory course in the program called Commercial Practice.

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1 D Schon, *The Reflective Practitioner: How Professionals Think in Action*, Basic Books, New York: 1993.

2 S Nathanson, *What Lawyers Do: A Problem-solving Approach to Legal Practice* (1997), Sweet & Maxwell, London: 1997.

3 M Lipman, *Thinking in Education*, Cambridge University Press, Cambridge: 1991.

## 2. Current Learning Strategy

The aim of the Commercial Practice unit is to prepare students for day-to-day practice as lawyers in a legal firm servicing commercial clients. The expectation is that successful completion of the unit will equip students to perform a range of tasks expected of an entry-level commercial lawyer. Specifically, the unit is designed to improve and focus their skills in interviewing, drafting and advising commercial clients in a typical modern practising environment (with a team-based, electronically focussed approach). Students are prepared for working collaboratively in the delivery of such advice and are encouraged to reflect on the proficiency of their delivery.

### Learning strategies

A range of student activities was designed to meet these objectives of skills development, interaction and reflection. One traditional activity was participation in some form of dialogue or discussion, either as a participant or observer.

Le Brun and Johnstone suggest that discussion-based teaching methods are most effective for long-term retention of knowledge and for the higher-level cognitive and affective objectives essential for legal studies.[4] The findings are supported by Kozma, Belle and Williams who say that the importance of discussion is even more emphatic in the case of those higher-level learning objectives that require the mastery of the processes of inquiry.[5] Similarly discussion is also crucial for acquiring the requisite attitudes of mind consistent with a professional. It was considered that the skills taught in the unit (though practical in application) required this mastery.

Brookfield and Preskill have described discussion as an effective method of intellectual inquiry.[6] They consider that the purposes of discussion are fourfold:

- To help participants reach a more critically informed understanding about a topic;
- To enhance participants' self-awareness;
- To foster an appreciation for the diversity of opinion which invariably emerges;

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[4] M Le Brun & R Johnstone, *The Quiet (R)evolution: Improving Student Learning in Law*, LBC, Sydney: 1994.

[5] R B Kozma, L W Belle and G W Williams, *Instructional Techniques in Higher Education*, Educational Technology Publications, 1978.

[6] S Brookfield & S Preskill, *Discussion as a Way of Teaching: Tools and Techniques for University Teachers*, Open University Press, Buckingham: 1999.

- To act as a catalyst in helping people take informed action in the world.

It was considered that discussion of this kind has a fundamental role in the learning process, regardless of whether students are on or off campus. There are a number of possible theoretical bases for this, but one of the most attractive is that of developmental theorists, such as Piaget.[7] Piaget sees the use of language as a tool of thought in the sense that language sets up an inner dialogue that then triggers thought. The prompt for this dialogue can be the gradual internalisation of language received from outside sources, including class discussions. It is the potential for such "instructional conversations" to be the trigger for individual original thought that makes effective discussion so important.

The benefits of discussion can arise equally from 'speaking' or 'listening'. 'Speakers' can learn in several distinctive ways:

- From generating a contribution, since the formulation of a response can be a valuable learning experience in itself
- From overhearing others' inputs
- From receiving others' responses to their input, and thereby being exposed to, and, hopefully, coming to see previously undiscovered perspectives.

Each of these learning opportunities can be the trigger for this inner reflective dialogue.

'Listeners' can learn from the observation of such conversations, in contrast to active participation. McKendree[8] in fact suggest that at some stages of learning, observation may be more beneficial than active participation. Students not actively 'participating' (at least in the sense of 'speaking') do not have the cognitive load of framing and rehearsing a response (nor the emotional load of propounding or defending a position) and are thus free to concentrate on understanding content and examining their underlying attitudes. There are also the ancillary benefits for students of feeling less isolated in a group sharing a common purpose. A strong focus on discussion as a learning strategy thus seems warranted.

### Assessment strategies

The approach and purpose of the Legal Workshop makes it ideally suited to criterion-referenced assessment. This is the case because the core

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[7] J Piaget, *The Origins of Intelligence in Children*, International Universities Press, New York: 1952.

[8] J McKendree, K Stenning, T Mayes, J Lee, & R Cox, "Why Observing a Dialogue May Benefit Learning: The Vicarious Learner, 1997, www.hcrc.ed.ac.uk/gal/vicar/VicarPapers.html, 31 July 2001.

objective of the course is to "equip students to perform *the range of tasks* expected of an entry level lawyer". In the Commercial Practice unit the traditional teaching approach has been task oriented with some resonance to what Biggs says about problem-based learning:

> *Problem-based learning is alignment itself. The objectives are to get students to solve problems they will meet in their professional careers - the teaching method is to present them with problems to solve; the assessment is based on how well they solve them.*[9]

But the proper alignment of assessment activities is not as obvious as this in practice. How to capture the learned difference in behaviour being sought (in this case the improved ability to solve legal problems) in a manageable assessment activity is not easy.

The importance of assessment becomes even more pronounced in the case of distance education students who are supremely "assessment-focussed". As suggested by Rowntree, they see the assessment as 'the *de facto* curriculum'[10]. Such students may shape their learning principally around the assessment requirements and if these activities do not adequately encapsulate the learning objectives, the assessment may be wasted in that it has not 'measured' the outcome expected. How effectively this was done is examined in the review process described below.

## 3. The revised learning strategy

A revised learning strategy was first developed and trialed in the subject Commercial Practice in semester one, 2001. Two further iterations of the strategy were developed in semester two, 2001 and semester one, 2002. Each of these iterations concentrated on the use of discussion as a learning strategy facilitating reflective learning.

### The first trial

In semester one, 2001 there were a total of approximately 150 students. These students were divided into two cohorts. One group of approximately 50 students completed the unit in three weeks of fulltime on-campus study. They attended morning classes as a group and were divided into 5 or 6 homerooms to complete individual and group work in the afternoon. The second group of approximately 100 students undertook the unit over an extended period of eight weeks off-campus. They had no face-to-face classes and were provided with mainly traditional distance learning

[9] J B Biggs, "What the Student Does: Teaching for enhanced learning," (1999) 18 *Higher Education Research & Development* 71.

[10] J Rowntree, *Assessing Students: How Shall We Know Them?*, Kogan Page, London: 1997.

written materials designed to facilitate self-directed learning.

Seminars were conducted with the face-to-face group and they participated in presentations by visiting legal practitioners. I kept a reflective journal of the quality of their discussion in the seminars[11]. In the journal I reflected upon the question: "Did today's discussion help students gain a better understanding of how this aspect of the law operates in practice?"

From these reflections I made a number of observations about the features of the face-to-face discussion. In summary these were:

- There was a reliance by the group on a small number of students to raise questions and make comments
- Participants showed a preparedness to expose common ignorance and uncertainty and explore solutions
- The group self-adopted roles as 'frequent speakers' (3 or 4 students), 'less frequent speakers' (5 or 6 students), with the remainder (30-40 students) usually making little or no oral contribution
- A single (but different) student usually self-adopted (or was allocated) a 'summing up' role at the end of the discussion.

Parallel to this, the off-campus students were introduced to online discussion to supplement the existing learning opportunities. These students were allocated to online groups (of 5 participants) and could conduct on a common access website (using WebCT) asynchronous discussions to which only they had access but which the lecturer could monitor. As a small number of students did not have regular web access, participation in discussions, though encouraged, was not an assessable item. I maintained a reflective journal to note the progress of these discussions.

A review of the effectiveness of these changes is provided in the evaluation section.

## The second trial

A smaller group of 60 students were enrolled in semester two 2001. While a third of these students elected to complete the course by attending on campus; this time there was no clear distinction made in the delivery method between face-to-face students and distance learning students. As a result of the move to flexible delivery in the Legal Workshop program all students undertook the unit over an eight-week period and all were provided with the same distance learning materials. However, on campus students had the benefit of a series of less intensive seminars.

[11] The opportunities for discussion in these seminars varied enormously depending upon the approach and style of the presenter.

Online discussion was again encouraged to supplement the existing learning opportunities, but this time for all students. A number of changes were made to the online format. Group size was increased (from 5 to 15) and participation in discussion was now assessed (at 10% for 'significant contribution'). The written materials were also changed substantially with self-instructional workbooks replaced with a series of online preparation exercises which formed the content of the discussions.

A further emphasis in the second trial was an attempt at properly aligning the aims, activities and assessment of the course. The online discussion were used as a thread for this purpose. The aims were revised to specify more precise competencies in *"the typical matters and issues which arise in the practice of commercial law"*.

Students were required to master three modified assessment tasks:

1. Conducting an interview (either face-to-face or by telephone) in which they advised a 'client' about suitable legal entities for conducting a business;
2. Drafting clauses for inclusion in an agreement for the sale of a business being purchased by the 'client';
3. Advising the 'client' with respect to the taxation and revenue issues relating to that purchase.

The learning activities were modified from the traditional self-directed learning materials. Each revised activity consisted of a series of preparation exercises designed to draw out (and practise) the salient aspects of the skills to be assessed in the assessment tasks. Students were required to participate in online discussion about these preparation exercises as evidence of their completion and as preparation for the assessment tasks. These activities encouraged a collaborative effort amongst students and allowed them some opportunity to reflect on their approach to the task in comparison to the approaches taken by others.

## The third trial

The group of students in semester one 2002 was a substantially larger cohort of 185. The course design was subject to only minor changes in this iteration. More emphasis was placed on two unresolved matters: whether the online learning strategy could be made effective for a much larger group and whether the quality of online participation could be improved by clearer guidelines on participation. The participation mark was maintained (at 10%) but students were given clearer guidelines as to the quantity and quality of contributions expected.

## 4. Evaluation

### The first trial

Feedback was sought from students as to the effectiveness of the online discussion opportunity.[12] The evaluation consisted of the students' subjective perception of the benefit. There was no objective measure of whether students had performed more effectively in the assessment tasks as a result of the opportunity. Responses were sought to a series of open-ended questions. Selecting from these responses typical comments included:

1. Participation in discussion
   *I didn't contribute except once or twice, but followed discussion.*
   *Very useful conversation today.*
   *Only used it a couple of times in a panic.*
   *Disappointed that my group didn't activate, saw others that did.*

2. Observation of discussion
   *Mostly looked rather than 'spoke'.*
   *Accessed it every night, reassured me.*
   *I haven't noticed discussion flowing.*
   *I printed off what was on it and used it when I had assignments to prepare.*
   *I looked at it; it was quite useful psychologically because you could see other people were stuck on (the same thing)*

3. Other discussion opportunities
   *I don't need WebCT, other (students) sit next to me in Treasury.*
   *(I had) no real other group.*
   *I had a network with a group of 4 people - through work.*
   *10 of us in Defence, we tend to speak using internal email.*
   *I'm doing the course over a longer period, I'm different, I don't have a network.*

The participation in the online discussion was very small. For the group of approximately 100 distance students over the 8-week period only 97 postings were made. Interestingly, there was no lack of 'attendance' on the site with well over 2000 'hits', but there was very little 'speaking'. It was considered that the paucity of response could be addressed by providing an incentive in the shape of marks and increasing the size of each group significantly to generate some interaction. These changes were made in the second iteration.

[12] Responses were obtained from approximately 40% of distance students in telephone interviews.

## The second trial

Feedback was again obtained from students though in a more structured way. The extent of student participation was also tracked. Active participation had increased substantially compared with the first trial from an average of one posting per student to an average of ten postings per student for the same time period.[14] Typical comments from students in relation to the effectiveness of discussion and the alignment of the learning objectives and activities included:

1. Online group discussion opportunity
   *We were able to help each other with valuable input from the lecturer.*
   *The discussion group worked well as it provided instant feedback round the group.*
   *Interaction between distant students via the web proved a bonus.*
   *My group seemed to have some very cluey members and I learned a lot from reading their postings, which encourage me to contribute further.*
   *A class would still be my preferred option but this was a reasonable alternative.*
2. Preparation exercises: as preparation for assessment
   *The use of preparation exercises and the need to post to discussion was good in that it brought the readings into perspective and assisted in obtaining a deeper understanding than just the readings.*
   *The preparation exercises were very finely honed to the assessment, making them really useful to do.*
   *The preparation exercises really did prepare us for the assessment.*

It was concluded that making the participation assessable (10% of total mark) and increasing the group size (from 5 to approximately 15) had significantly improved the participation rate. The modification of the learning activities to transparently align these as preparation for the assessment tasks was welcomed by students. This provided a clear purpose for the discussion.

## The third trial

Similar feedback was sought from students.[15] The same level of participation as reported in the second trial was evident, with 1875 postings from 185 students over the 8-week period. In this iteration some students identified the online discussion (in response to the preparation exercises)

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[13] An online evaluation of the course was undertaken through CEDAM. Responses were obtained from 24 of the 60 students, a response rate of 40%.

[14] In excess of 800 responses were obtained from the 68 students enrolled.

[15] The CEDAM-designed instrument was used, with 81 responses obtained from 185 students, a response rate of over 40%.

as an important thread between the course aims and assessment. Typical comments reflect this:

1. Online group discussion opportunity / course alignment
   *I liked the WebCT discussion and preparation exercises – invaluable in preparing for the assessment exercises.*
   *Very few postings interacted – they were just essays.*
   *The preparation exercises tied in with the assessment exercises extremely well.*
   *A good learning experience.*
   *Preparation exercises were excellent. Really prepared us for the assessment and gave us an in depth understanding of the key issues before we were tested on them.*

By the end of this third iteration it was clear that the modifications adopted (assessing participation, giving groups a critical mass, giving content to the discussion in the form of the preparation exercises) encouraged participation. The issue remains as to the quality of the discussion that ensued.

## 5. Discussion

The core learning activity developed throughout the three trials was online discussion. The preparation exercises provided the content of these discussions. Did better learning occur as a result? Online technologies have the capacity to provide a level of immediacy and interactions not previously available to off-campus [and sometimes on-campus] students.[16] Both the immediacy and interaction the technologies offer can facilitate collaboration and reflection. The larger range of interactions possible may provide more extensive possibilities for collaboration in terms of teamwork or mutual assistance on individual projects. Marttunen gives the example of attempting to create an online collaborative learning environment to enhance the ability of students to acquire argumentation skills.[17] Her study suggested that the collaborative atmosphere was more effectively created online than in traditional self-directed study or seminar modes. The asynchronous nature of e-discussions has the advantage of providing time for deeper analysis and the formulation of considered responses so critical to reflection. There may be real benefits for students able to construct and reconstruct their own knowledge and write for real audiences rather than in assignments only for the teacher.[18] If used appropriately, online discussion does have the capacity to promote collaboration and

[16] C Morgan & M O'Reilly, *Assessing Open and Distance Learners*, Kogan Page, London: 1999.

[17] M Marttunen, "Teaching Argumentation Skills in an Electronic Mail Environment", (1999) 34 *IETI* 208-218.

[18] G Salter, *Introduction to Online Teaching. Benefits of Discussion Groups*, 1999, www.137.154.72.224/onlineteaching/online.htm, 31 July 2001.

develop the requisite habit of reflection.

A second question is whether the revised learning strategy was more effective in enhancing student learning. The core revision is in aligning the aims with the assessment tasks using discussion of the preparation exercises as the common activity. Did the discussion that occurred in the preparation exercises achieve this purpose? One way to evaluate this to use Morgan and O'Reilly's "key qualities of distance learning assessments". They say distance units should ideally provide:

1. *A clear rationale and consistent pedagogical approach:* you need to be clear about what you are hoping to achieve
2. *Explicit values, aims, criteria and standards:* you need to clearly communicate what you regard as valuable about the course and students' work, they "need to be on the inside of the logic of the course"
3. *Authentic and holistic tasks:* you need to present students with authentic assessment tasks which encourage them to engage with real life problems
4. *A facilitative degree of structure:* you need an appropriate balance between structured tasks and self-directed learning
5. *Sufficient and timely formative assessment:* you need to provide assessment that is supporting the development of learning rather than merely testing achievement
6. *Awareness of the learning context and perceptions:* you need to accommodate students' other study commitments and prior learning.[19]

It is considered that the constructive alignment attempted in the revised learning strategy does substantially satisfy these criteria.

## 6. Conclusion

The challenge for online discussion is to reproduce 'the conditions that encourage productive interchanges such as occur when people regularly, over time, meet physically and converse in a classroom or at a conference table'. Whether the online discussions described here equate to such "intense, face-to-face intellectual exchange" remains to be seen. Certainly the thread of discussion that eventuated often seemed of more depth and complexity than that which occurs in face-to-face tutorials. This depth may well be a product of the time for reflection the online environment permits students. If the online component of the course has helped to instil the habits of the reflective practitioner, it has achieved its purpose.

[19] Morgan and O'Reilly, above, n 16.