Australian National University

Legal education: assessment around the world

Professor Paul Maharg
paulmaharg.com/slides

preview

1. **Challenging hegemonies**

   Why it's difficult to change; how we can change

2. **Adapting from other disciplines – client-centred assessment**

   Standardised clients

3. **Learning from other jurisdictions – digital sim assessment**

   Online digital sims

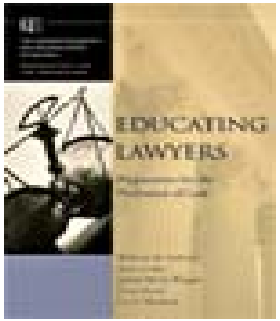
4. **Extreme law schooling**

2. Challenging hegemonies

conventional teaching & assessment

	If learning …	then assessment is often…
1	Is teacher-focused	Teacher-centred, not learner-centred.
2	Follows a transmission model of education	Focused only on what's supposed to have arrived / been delivered
3	Focuses only on the individual	Individual, alienating, where collaborative, peer-review or self-review can't take place
4	Consists of monolithic & substantive law content	Lacking interdisciplinarity, with little assessment of skills, values, attitudes as well as knowledge
5	Sits in the contested relations between practice & academy	Problematic, because content & forms of academic assessments can't transfer well to professional learning and formation of identity

signature pedagogies (Lee Shulman)



Sullivan, W.M., Colby, A., Wegner, J.W., Bond, L., Shulman, L.S. (2007) *Educating Lawyers. Preparation for the Profession of Law,* Jossey-Bass, p. 24

Surface structure
- Observable, behavioural features

Tacit structure
- Values and dispositions that the behaviour implicitly models

Deep structure
- Underlying intentions, rationale or theory that the behaviour models

Shadow structure
- The absent pedagogy that is, or is only weakly, engaged

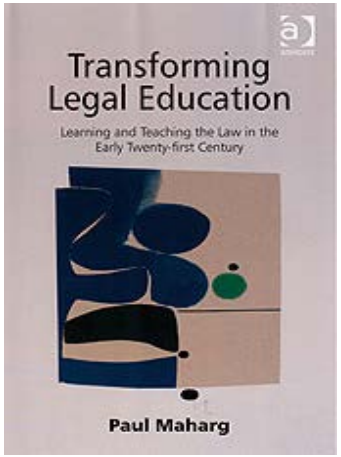
Transforming Legal Education: four key themes

Experience of…
- law in the world
- interdisciplinary trading zones
- creative, purposeful acts

Ethics in…
- an integrated curriculum
- habitual action
- reclamation of moral spaces in the curriculum

Technology for…
- our discipline, our curricula
- learner-centred control
- transactional learning

Collaboration between…
- students
- institutions
- academic & professional learning
- open-access cultures



2. Adapting from other disciplines – client-centred assessment

standardised client initiative

We train lay people to simulate clients, and do two things well:

- Discuss their case with the (trainee) lawyer in a way that is standard across the cohort of students/lawyers that the SC meets
- Assess the client-facing skills of the lawyer.

evidence from medical education

- Large body of research literature criticised oral exams beginning in 1960s
- ‘A test that is not reliable cannot be valid’ e.g. NBME (USA) studies exams of 10,000 medical examiners over 3 years and found correlations between 2 examiners in one encounter <0.25
- Use of Standardised Patients since 1963
- Now used in high-stakes competency examination for licensure in USA and Canada
- Extensively used in final exam ‘OSCE’ stations in UK medical schools

SCI project aims

- develop a practical and cost-effective method to assess the effectiveness of lawyer-client communication that correlates assessment with the degree of client satisfaction.

- *ie* answer the following questions…
  - Is our current system of teaching and assessing interviewing skills sufficiently **reliable** and **valid**?
  - Can the Standardised Patient method be translated successfully to the legal domain?
  - Is the method of Standardised Client training and assessment cost-effective?
  - Is the method of Standardised Client training and assessment more reliable, valid and cost-effective than the current system?

SC project concluded…

- Use of SCs **is as reliable** and **valid** as tutor assessments
- We make what the client thinks important in the most salient way for the student: a high-stakes assessment where most of the grade is given by the client
- We did *not* conclude that all aspects of client interviewing can be assessed by SCs
  - We focused the assessment instrument on aspects we believe could be accurately evaluated by non-lawyers
  - SCs are also trained to give feedback to students
- This has changed the way we enable students to learn interviewing…

Barton, K., Cunningham, C.D., Jones, G.T. and Maharg, P. (2006) What clients think: standardized clients and the assessment of communicative competence, *Clinical Law Review*, 13(1), pp. 1–65.

feasibility? cost? impact?

Feasible…?

- Very: lots of experience out there in Strathclyde, Northumbria. Initial and refresher training needed for SCs, but no high-maintenance.

Cost…?

- Training of SC trainer + SCs; payment of SCs.
- SC documentation is freely available under CC:

Impact…?

- Big: on students, on ethical performance, practice of skills within professional value contexts; formative and high-stakes assessment.
- Also on regulatory bodies, eg Law Society of Scotland, SRA

who uses SCs?

Strathclyde University Law School (DLP)	WS Society (Edinburgh)
University of New Hampshire (Daniel Webster Scholars programme)	The Australian National University College of Law (GDLP)
Northumbria U Law School, LLB	Kwansei Gakuin U Law School, Osaka
SRA (Qualifying Lawyers' Transfer Scheme, QLTS)	Law Society of Ireland (CPD)
Hong Kong University Faculty of Law (PCLL)	University of Adelaide Law School (LLB)
The Chinese University of Hong Kong Law School	National Skills Centre for Social Care, London

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Daniel Webster Scholar Honors Program

- Two-year Bar practicum
- Training in professional skills and judgment through simulated, clinical and externship settings
- Exposure to numerous fields, including real estate, business, and litigation is offered.
- Instead of a two-day bar exam, the programme provides a two-year, comprehensive exam in conjunction with the training received.
- Students who complete the program are certified as having passed the New Hampshire Bar examination, subject only to passing the Multistate Professional Responsibility Examination (MPRE) and the New Hampshire character and fitness requirements.

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The Chinese University of Hong Kong Law School	National Skills Centre for Social Care, London

QLTS assessment regime

Assessment consists of:

- The Multiple Choice Test (MCT)
- **The Objective Structured Clinical Examination (OSCE)**
- The Technical Legal Skills Test (TLST)

OSCE

Tests the oral skills of interviewing and advocacy/oral presentation together with the three content areas of:

- Business
- Civil and criminal litigation
- Property and probate

Components of the OSCE

Each candidate completes three stations in each content area:

- Station 1: Client interview and completion of attendance note
- Station 2: Client interview and completion of attendance note
- Station 3: Advocacy/oral presentation

valid & reliable assessment?

Table 9. Quality assurance statistics.

Date 2011	Assessment	No. of candidates who attempted the full assessment	Test technical quality indicators	
			Cronbach's alpha	SEm
6 July	MCT #2	117	0.91	3.28%
7–9 September	OSCE #2	50	0.78	3.90%
10–12 September	TLST #2	51	0.74	5.49%

'Overall the test quality is remarkably good for such a new set of assessment procedures and challenging targets for a new high stakes assessment have largely been met.'

Eileen Fry , Jenny Crewe & Richard Wakeford (2012) The Qualified Lawyers Transfer Scheme: innovative assessment methodology and practice in a high stakes professional exam, *The Law Teacher*, 46:2, 132-145, p.144.

test quality of standardised clients?

‘Assessment by standardised clients proved to be very reliable, with the six standardised client assessments conducted for each candidate by a total of 45 different actors having an alpha coefficient of 0.81 and SEm of 5.07% in OSCE #2.’

Eileen Fry , Jenny Crewe & Richard Wakeford (2012) The Qualified Lawyers Transfer Scheme: innovative assessment methodology and practice in a high stakes professional exam, *The Law Teacher*, 46:2, 132-145, p.144.

SCs: people as co-producers, co-designers

The SC approach challenges:

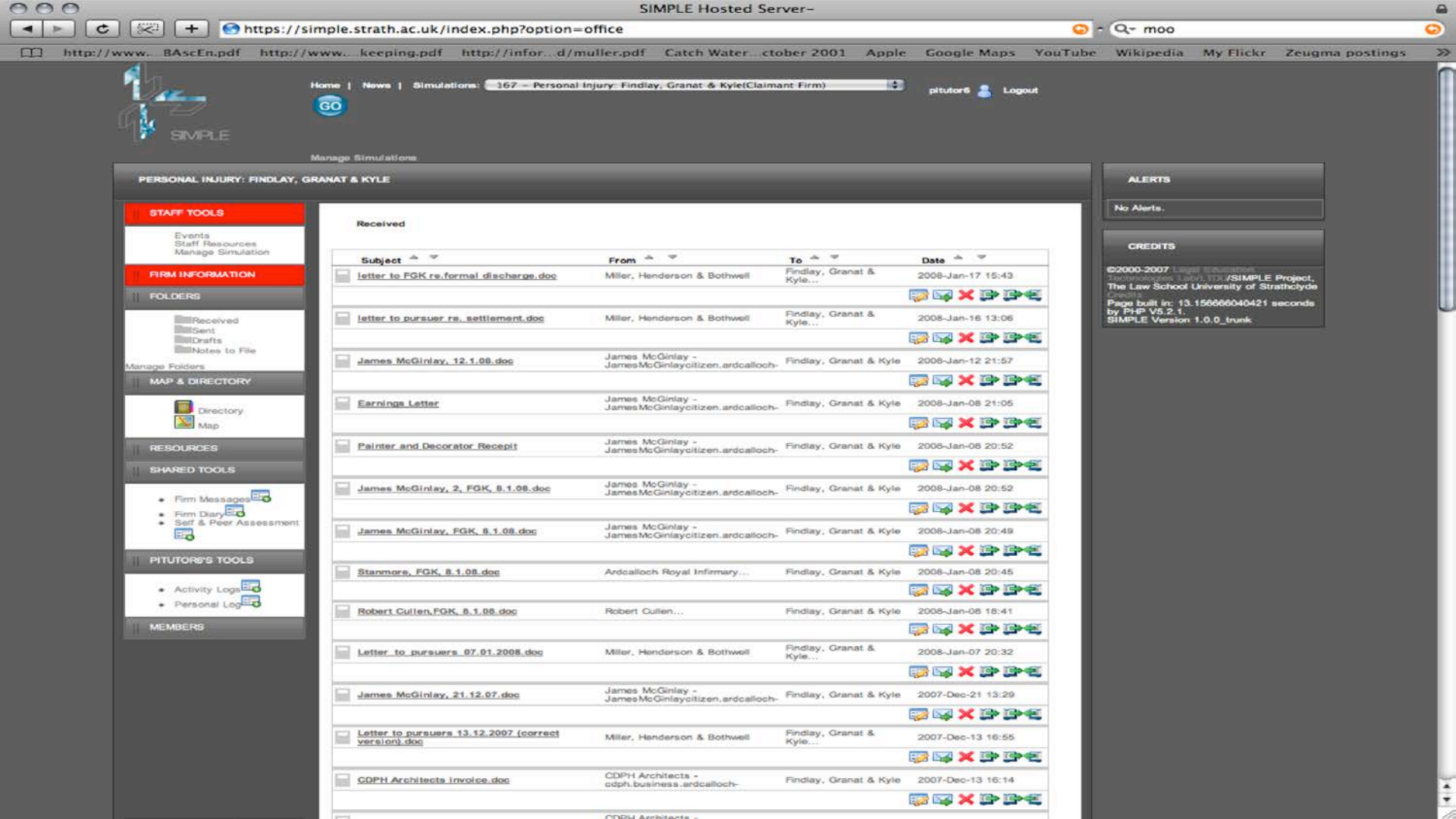
1. Curriculum methods
2. Ethics of the client encounter
3. The cognitive poverty of conventional law school assessment
4. Law school as a self-regarding, monolithic construct
5. Law school categories of employment
6. The curricular isolation of clinic within law schools
7. Hollowed-out skills rhetoric
8. Conventional forms of regulation by regulatory bodies
9. The role of regulator, as encourager of innovation & radical reform…?
10. Disciplinary boundaries – what about a SC Unit that's interdisciplinary?
11. Local jurisdictional practices: how might such a project work globally?

2. Learning from other jurisdictions – digital sim assessment

What is SIMPLE?

SIMulated Professional Learning Environment enables students to engage in online simulations of professional practice. Its special pedagogy is based on transactional learning:

active learning
through **performance in authentic transactions**
involving **reflection in & on learning,**
deep **collaborative learning**, and
holistic or **process learning,**
with **relevant professional assessment**
that includes **ethical standards**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Manage Simulations
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STAFF TOOLS
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Drafts
Notes to File
Manage Folders
MAP & DIRECTORY
Directory
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RESOURCES
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Firm Diary
Self & Peer Assessment
PITUTOR6'S TOOLS
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MEMBERS
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Subject
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To
Date
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Findlay, Granat & Kyle...
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letter to pursuer re. settlement.doc
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Findlay, Granat & Kyle
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Robert Cullen,FGK, 8.1.08.doc
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Miller, Henderson & Bothwell
Findlay, Granat & Kyle...
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James McGinlay, 21.12.07.doc
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Letter to pursuers 13.12.2007 (correct version).doc
Miller, Henderson & Bothwell
Findlay, Granat & Kyle...
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CDPH Architects invoice.doc
CDPH Architects - cdph.business.ardcalloch-
Findlay, Granat & Kyle
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ALERTS
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CREDITS
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SIMPLE Version 1.0.0_trunk

DIRECTORY LISTING

Name	Address	Email	Link
Alexander, Anderson & Brown	14 Paisley Road	AlexanderAndersonBrown.lawyer.ardcalloch	
Alison Edwards		aedwards.citizen.ardcalloch	
APG Architects	41 Shaw Road, Ardoch, Ardcalloch	apg.business.ardcalloch	
Ardcalloch Boatyard	The Waterfront, Alba Industrial Estate, Ardcalloch	ardcallochboats.business.ardcalloch	
Ardcalloch Digital Exchange (ADeX)	Darien St	ADeX.Directory.ardcalloch	
Ardcalloch Insurance Company	23 Steele Street, Rankeillor Business Park,AR3 7SS	aic.businesses.ardcalloch	
Ardcalloch Legal Information and Advice Service	14 High Street, Ardcalloch	alias.business.ardcalloch	
Ardcalloch Medical Centre	50 Anthony Wayne Ave	amc.medical.ardcalloch	
Ardcalloch News	76 High St., Ardcalloch	ArdcallochNews.News.ardcalloch	
Ardcalloch Painters		ardcallochpainters.business.ardcalloch	
Ardcalloch Power Plant	12 Macadam Road, Alba Industrial Estate	PowerPlant.businesses.ardcalloch	
Ardcalloch Property Search	?? Glebe St	PropertySearch.Directory.ardcalloch	
Ardcalloch Riding School	12 Heather Lane, Ardcalloch, Scotland	ridingschool.business.ardcalloch	
Ardcalloch Royal Infirmary	14 MacDonald Rd.	ari.medical.ardcalloch	
Ardcalloch Savings Bank	15 Erskine St	SavingsBankbusinesses.ardcalloch	
Ardcalloch Solicitors Property Centre	70 Rankeillor Rd	aspc.businesses.ardcalloch	
Ardcalloch University	Priory Gardens, Ardcalloch, Scotland, AR1 3RE	ardcallochUni.edu.ardcalloch	
Callum Donaldson		cdonaldson.citizen.ardcalloch	
Campbells Auctioneers	23 Ardoch Road	campbells.businesses.ardcalloch	
Carvill, Darroch & Charnley	14 Priory Gardens	CarvillDarrochCharnley.lawyer.ardcalloch	
CDPH Architects	10 Arrol Ave. Alba Industrial Estate	cdph.business.ardcalloch	
Companies House	Companies House	CompaniesHouse.Gov.ardcalloch	
David Jones Engineering	16 Bell St	dje.businesses.ardcalloch	
Department for Work And Pensions	22 Cullen Crescent	Please check the web site for this address	
Education Authority	1 Paisley Rd	edu.gov.ardcalloch	
Erskines Stockbrokers	43 Ardoch Rd, AR1 8JH	Erskines.businesses.ardcalloch	
Eugene MacDonald	19 Luce Lane Kirkwood	EugeneMacDonaldcitizen.ardcalloch	
Fiona Dawson	11 Cambridge Place, Ardcalloch	fiona.dawson.citizen.ardcalloch	

ALERTS

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ACCOUNTS

super administrator
super:super

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Defender Student
studentb:studentb

Staff
staff:staff

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SIMPLE Version CE0.9

SIMPLE community.org

Ardcalloch directory

SIMPLE Community Demonstration-

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"graduate education academy", shulman

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Manage Simulations

MAP

Ardcalloch

search

Alba Industrial Estate

Town Centre

Grey Hill

Ardcalloch Country Park

Ardoch

ALERTS

No Alerts.

ACCOUNTS

super administrator
super:super

Claimaint Student
studenta:studenta

Defender Student
studentb:studentb

Staff
staff:staff

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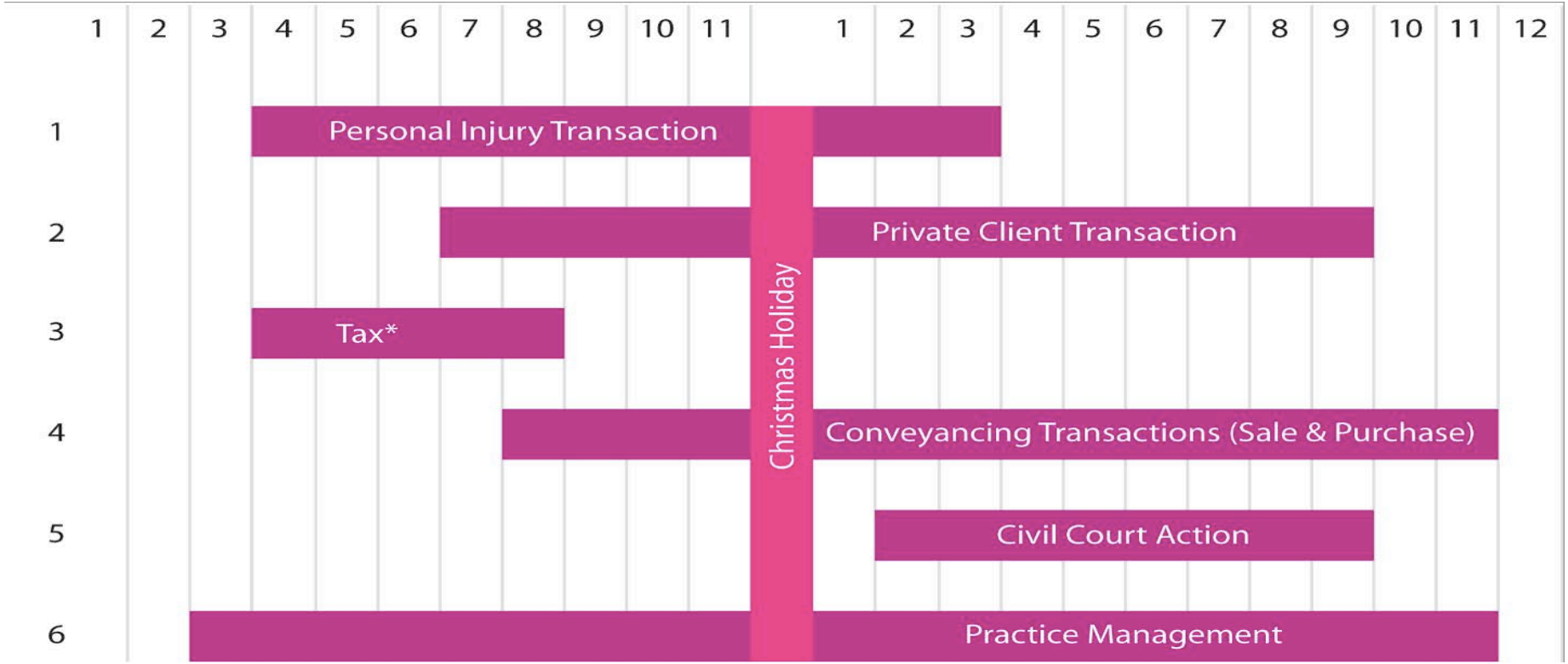
SIMPLE community.org

map of Ardcalloch

key issue: simulation complexity and tempo



Personal Injury project: assessment criteria

We require from each student firm a body of evidence consisting of:

- *fact-finding* – from information sources in the virtual community)
- *professional legal research & comms*
- *formation of negotiation strategy* – extending range of prior learning in a curriculum spiral
- *performance of strategy* – correspondence + optional f2f meetings, recorded

PI project: (some of) what students learned

- extended team working
- real legal fact-finding
- real legal research
- process thinking in the project
- setting out negotiation strategies in the context of (un)known information
- writing to specific audiences
- handling project alongside other work commitments
- structuring the argument of a case from start to finish
- keeping cool in face-to-face negotiations
- more effective delegation
- keeping files & taking notes on the process...
- being professional about work and life

what are we assessing in SIMPLE?

- Professionalism and ethical performance
- Skilled performance to benchmarked levels
- Substantive knowledge of law
- Procedural knowledge
- Many other categories of assessable ***experience***
- Purpose of assessment:
  - Formative (feedback and feedforward)
  - Summative

Think of a social space where both workspace, learning space & assessment space co-exist, eg, between master & apprentice.

how are we assessing in SIMPLE?

1. Discrete tasks, eg drafting, letter-writing, research (Estate Planning)
2. Whole file + performative skill (Personal Injury)
3. Tasks + whole file (Real Estate)
4. Tasks + file + performative skill (Litigation)

1. discrete tasks

- Set context (or not: let student figure that out – the clearing in the forest…)
- Set task (but in how much detail? Supported with templates? Guidelines? Commented examples?)
- Design feedforward (but don't do the task for students)
- Deadline a task (bearing all contextual factors in mind)
- Task completed (and sent to staff *in role*)
- Feedback on task (by staff *in role*)
- Debrief (either in role or out of role)

2. whole file + performative skill

- Holistic assessment of document chain
- Bodies of evidence generally, but can embed critical points of assessment, eg report to client, speech plan, etc
- Preparation for performative skill, including overlap with other skills – eg relation of legal research to professional negotiation.

3. tasks + whole file

- Specific tasks are the foreground, eg draft the completion certificate…
- … but students must also complete entire file process. No completion, no competence.
- Tasks may shadow tutorial work or precede tutorial work or neither
- *Quaere:* How many attempts at each task?

4. tasks + whole file + performative skill

- Most complex, most authentic and most demanding
- Potentially 1-3 plus more – eg performative skill can be assessed *in role.*

use of interleaved learning support & assessment

- Example: PI project:
  - PI mentor: passes information in real time; takes all fictional roles including PI senior partner (instructs, praises, warns), e-comm only: **student responses are assessed**
  - Surgery mentor: gives detailed feedforward on task, f2f, *out of role:* **responses not assessed**
  - Discussion forum: gives detailed feedforward on task, e-comm, *out of role:* **responses not assessed**
  - Practice Manager: gives coaching on firm experiences, *in role*: **support & coaching not assessed, but the result is…**

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Bell, Freeland & Dalton

Home | Conveyancing Purchase | Conveyancing Sale | Personal Injury | Private Client | Civil Court Action | Practice Management | Log Book

trainee notice board

* Use this area to communicate with other student members of the firm.

Conveyancing Project 18/03/2005 15:06
by Barry Price
Hi. All the stuff seemed fine and so I just sent it. Project completed.

Fees 18/03/2005 06:58
by James O'donnell
Hi Maxine! I have been looking at fees this morning and none of it is making any sense, I will look again after I have had some sleep, J.

Conv Purchase 17/03/2005 22:27
by Barry Price
Hi.

Just a quick note to say that Mathew and myself sent off the completed things for the sale aspect and so that half of conveyancing is now over. If either Maxine or Jim could send off the stuff for the purchase (including the registration...

Settlement Letter 11/03/2005 13:31
by Barry Price
I have made some minor amendments to the letter which Mathew produced to incorporate the sample one we recieved in the sale. It is now sent and submitted. Thanks to all.

Conveyancing 11/03/2005 02:07
by James O'donnell
Looks fine to me Matthew!

(More Announcements...)

Add new announcement

- Ardcalloch Town
- Firm Website

Add new link

tle help

firm diary

<		June 2005				>
Mon	Tue	Wed	Thur	Fri	Sat	Sun
30	31	1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
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27	28	29	30	1	2	3

Add new event

Done Trusted sites

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Blake & Associates

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Activity Log

Personal Log

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Date 08/06/2005 Class Misc

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TimeSpent 00:00:00 (dd:hh:mm)

Notes: Enter Any Notes Here

save cancel

Date of Entry | Project | Activities | Time Spent | Notes

Done Trusted sites

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Blake & Associates

Home | Conveyancing Purchase | Conveyancing Sale | Personal Injury | Private Client | Civil Court Action | Practice Management | Log Book

Personal Log

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Google Search Web 12 blocked AutoFill Options

Practice Management Tutor Workspace

Hello , welcome to the Practice Management Tutors workspace.

Please select a group:

Group

Activity Log | Personal Log

View Firm

	Date	Comment
View	07/02/2005	Had a Firm meeting today, eveything going well and all the projects still on schedule. We all have our allocated tasks to do and know what timescales we have to do them in. The Firm is working well together.
View	27/01/2005	Everything on target for the Private Client project, I completed the third part of the project which I did so timeously. We are also progressing with the Conveyancing project quite well. Eveerything within the Firm is fine we are all working together as a team.
View	08/11/2004	I was unable to go to meet the girls in the Firm today, they knew this on Friday, I don't think was too pleased, but I had appointments I had to keep, I'm still trying to sort out some personal problems, although some of them are just about sorted. I know its important to keep up with the workload of the Diploma and of the Firm projects but I'm doing my best at the moment when I've also had some serious issues to sort out, this isn't whingeing or poor old me, its just things that had to be worked out.
View	31/10/2004	I was off last week as I had a few personal problems to sort out. However, my task on the personal injury project was to compile a letter to the University regarding obtaining a copy of their entry in the Accident Book, I drafted this and gave it to the girls in my Firm, they were ok and understanding about me being off although they don't know the facts as to why.
View	22/10/2004	Met with Firm to compile and send a letter of intimation of claim in the personal injury project and delegate tasks for next meeting. My task is to draft a copy of an e-mail/letter to the University to request a copy of the Accident Book entry for the clients accident. As a joint venture with the other members of the Firm, I am also going to do a bit of research regarding personal injury claims
View	20/10/2004	Met with Firm to discuss our initial strategy for the personal injury project. Next meeting for the Firm

Trusted sites
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Practice Management Tutor Workspace

Hello , welcome to the Practice Management Tutors workspace.

Please select a group:

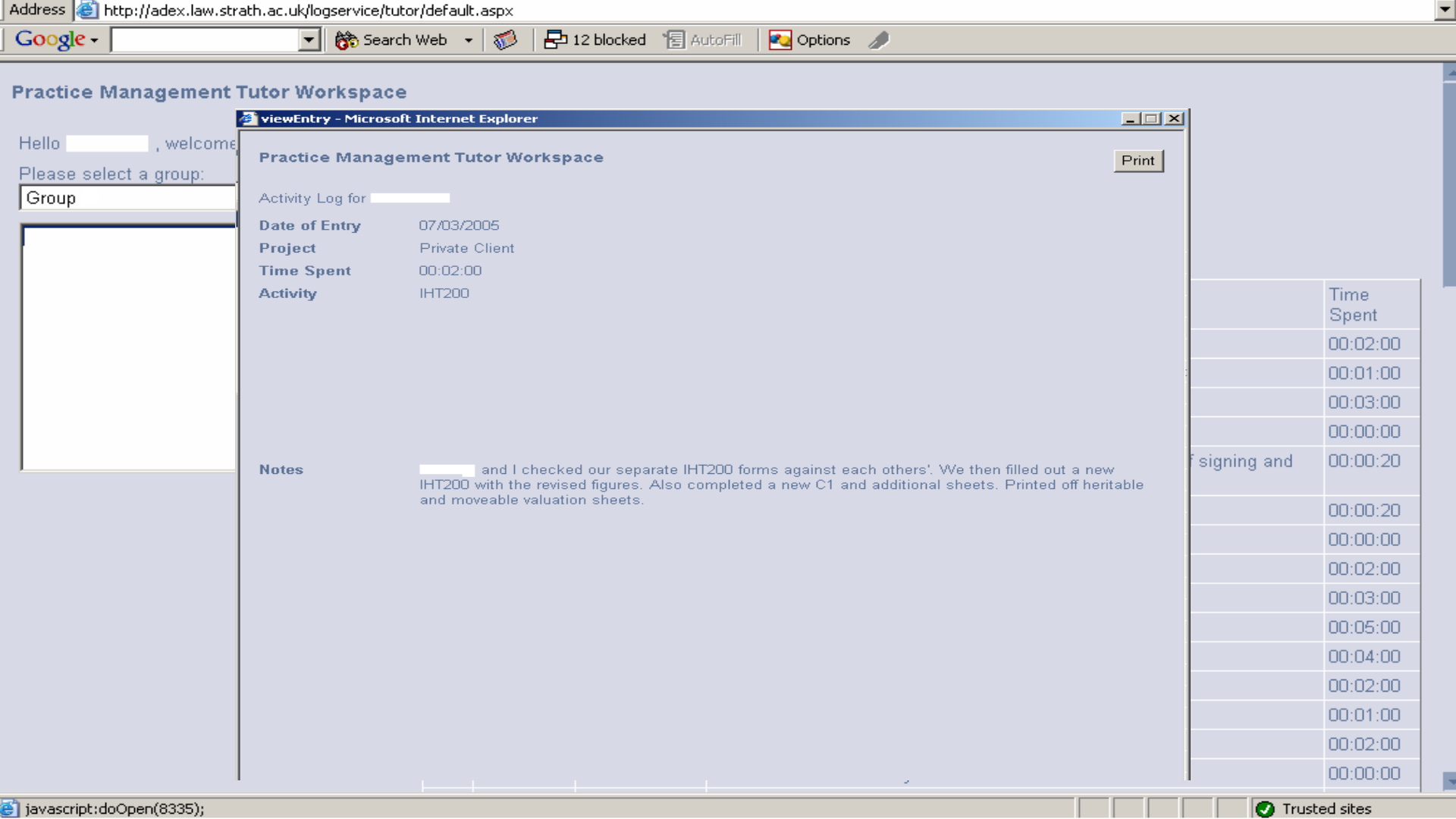
Group

Activity Log | Personal Log

View Firm

	Date	Project	Activity	Time Spent
View	07/03/2005	Private Client	IHT200	00:02:00
View	07/03/2005	Conveyancing	Conveyancing Purchase	00:01:00
View	04/03/2005	Private Client	Wednesday 2nd March	00:03:00
View	04/03/2005	Private Client	Enter Your Activities Here	00:00:00
View	01/03/2005	Conveyancing	Sent Standard security to clients, along with particulars of signing and covering letter	00:00:20
View	01/03/2005	Private Client	Divided up PC work, printed off IHT215	00:00:20
View	01/03/2005	Private Client	Enter Your Activities Here	00:00:00
View	28/02/2005	Conveyancing	Saturday 24th February	00:02:00
View	22/02/2005	Conveyancing	work for Conveyancing Purchase	00:03:00
View	21/02/2005	Misc	Saturday 19th February	00:05:00
View	21/02/2005	Misc	SUnday 20th February	00:04:00
View	21/02/2005	Conveyancing	Work for Conveyancing Purchase	00:02:00
View	21/02/2005	Misc	Work for Company Commercial.	00:01:00
View	16/02/2005	Misc	Civil Court Action	00:02:00
View	11/02/2005	Misc	Work for Civil Court Project	00:00:00

javascript:doOpen(8335);
Trusted sites


Address
http://adex.law.strath.ac.uk/logservice/tutor/default.aspx
Google
Search Web
12 blocked
AutoFill
Options
Practice Management Tutor Workspace
Hello , welcome
Please select a group:
Group
viewEntry - Microsoft Internet Explorer
Practice Management Tutor Workspace
Print
Activity Log for
Date of Entry 07/03/2005
Project Private Client
Time Spent 00:02:00
Activity IHT200
Notes and I checked our separate IHT200 forms against each others'. We then filled out a new IHT200 with the revised figures. Also completed a new C1 and additional sheets. Printed off heritable and moveable valuation sheets.
Time Spent
00:02:00
00:01:00
00:03:00
00:00:00
f signing and
00:00:20
00:00:20
00:00:00
00:02:00
00:03:00
00:05:00
00:04:00
00:02:00
00:01:00
00:02:00
00:00:00
javascript:doOpen(8335);
Trusted sites

Address http://adex.law.strath.ac.uk/logservice/tutor/default.aspx
Google Search Web 12 blocked AutoFill Options

Practice Management Tutor Workspace

Hello , welcome to the Practice Management Tutors workspace.

Please select a group:

Group

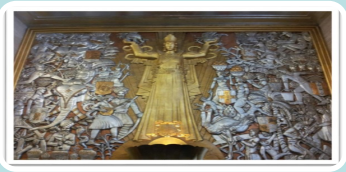
Activity Log | Personal Log

View Firm

	Date	Project	Activity	Time Spent
View	07/03/2005	Private Client	IHT200	00:02:00
View	07/03/2005	Conveyancing	Conveyancing Purchase	00:01:00
View	04/03/2005	Private Client	Wednesday 2nd March	00:03:00
View	04/03/2005	Private Client	Enter Your Activities Here	00:00:00
View	01/03/2005	Conveyancing	Sent Standard security to clients, along with particulars of signing and covering letter	00:00:20
View	01/03/2005	Private Client	Divided up PC work, printed off IHT215	00:00:20
View	01/03/2005	Private Client	Enter Your Activities Here	00:00:00
View	28/02/2005	Conveyancing	Saturday 24th February	00:02:00
View	22/02/2005	Conveyancing	work for Conveyancing Purchase	00:03:00
View	21/02/2005	Misc	Saturday 19th February	00:05:00
View	21/02/2005	Misc	SUnday 20th February	00:04:00
View	21/02/2005	Conveyancing	Work for Conveyancing Purchase	00:02:00
View	21/02/2005	Misc	Work for Company Commercial.	00:01:00
View	16/02/2005	Misc	Civil Court Action	00:02:00
View	11/02/2005	Misc	Work for Civil Court Project	00:00:00

javascript:doOpen(8335);
Trusted sites

Practice Management includes:

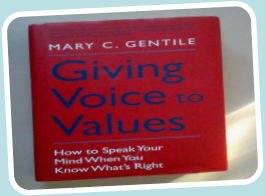


Developing professional identity

- Meeting deadlines, courtesy in communications
- Practice Organisation skills
- Ethical obligations

Supporting disruptive pedagogy

- Team work
- Time, file and risk management



Enhancing wellbeing

- Identifying responses and feeling comfortable with uncertainty
- Giving Voice to Values (GVV) – by Mary Gentile, Babson College

Thanx Anneka & Liz

feasibility? cost? impact?

Feasible…?

- Very: lots of experience out there in Strathclyde, Northumbria, ANU. Once sims are created using the SIMPLE Toolset, easy to maintain.

Cost…?

- Development of sims; learning support for students
- Software costs, whatever you use. Ideally software such as VOS will be open-source and freely available. If not, then commercial licences.

Impact…?

- Big: on students, on ethical performance, practice of skills within professional value contexts; formative and high-stakes assessment; transactional learning; learning by doing (Dewey)

Converging SCs + SIMPLE?

Process:

1. SCs role-play client (or others)
2. SCs remain in role throughout SIMPLE sim
3. Lawyers take instructions from client
4. Comms *via* video conferencing & cell phone

Assessment:

1. Formative as well as summative & high stakes
2. Creation of body of professional work by students.

4. Extreme law schooling

new programme design

- Eg JD + PBL + online
  - New 3 year curriculum: 2 (qualifying subjects) + 1 (Masters options).
  - Integration into clusters of traditionally separate subjects
  - Focus on collaborative problem-solving using a PBL methodology
  - Learning intellectual structures through problem immersion
  - Fusing learning and immersive, integrative assessment
  - Healing the academic / professional divide, in design and in new forms of employment (adjuncts as trained PBL facilitators)
  - Opening up choice of career pathways
  - Possibility of global partnerships with other innovative PBL centres.

assessment?

Integrative assessments are essential:

- Exams that embed course elements
- Skills that fuse with knowledge items
- Evaluation where formative becomes the new summative
- Ethics & social justice are threaded through an entire programme, via problems & assessments

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