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**‘THE KNOWLEDGE, SKILLS
AND ATTRIBUTES
CONSIDERED NECESSARY TO
START DAY ONE TRAINING
COMPETENTLY AND
WHETHER LIVE CLIENT
CLINICS DEVELOP THEM.’**

R A DUNN

PhD

2017

‘THE KNOWLEDGE, SKILLS AND ATTRIBUTES
CONSIDERED NECESSARY TO START DAY ONE
TRAINING COMPETENTLY AND WHETHER LIVE
CLIENT CLINICS DEVELOP THEM.’

RACHEL ANN DUNN

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requirements of the University of Northumbria
at Newcastle for the degree of Doctor of
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and Law

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Abstract

Much research has been done into the knowledge, skills and attributes that are important to legal practice; furthermore, many bodies have released reports on what they would like graduates to start practice with. As a result, clinical legal education has grown in popularity, with the use of live client clinics to educate future lawyers. However, little empirical research has been done into whether they work as educators intend, and develop the necessary knowledge, skills and attributes needed to start practice. This research investigated whether live client clinics develop students and which knowledge, skills and attributes are important to practice. This study used Kolb's Experiential Learning Theory as its conceptual framework, influential to clinical legal education.

The study used the Diamond16, a visual method, as its main data collection tool and semi-structured group interviews. Data was collected from a sample of students, tutors and lawyers, in four live client clinics, across three countries and two law firms. This study followed five firms in Northumbria's SLO throughout the academic year, collecting comparative data from the other participants. Results show the live client clinics can develop certain knowledge, skills and attributes in law students, but we cannot create "practice ready" graduates. Some of the learning in the student law office appeared to be because of their tutor's influence rather than experience. Lastly, the knowledge, skills and attributes which were perceived to be important to practice are presented, drawing on the distinction between "hard" and "soft" skills. This research produced important results for legal educator wishing to justify the establishment or sustainability of a clinic and for those within policy who are implementing changes to legal education and qualification.

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List of Abbreviations

ABA – American Bar Association

ACLEC – The Lord Chancellor’s Advisory Committee on Legal Education and Conduct

ADR – Alternative Dispute Resolution

ALT – Adult Learning Theory

BPTC – Bar Professional Training Course

BSB – Bar Standards Board

CBA – Canadian Bar Association

CLE - Clinical Legal Education

CLEO – Clinical Legal Education Organisation

EIs – European Institutions

ELT - Experiential Learning Theory

ENCLE – European Network of Clinical Legal Education

HEIs – Higher Education Institutes

LETR – Legal Education Training Review

LCCs - Live Client Clinics

LPC – Legal Practice Course

SLO – Student Law Office

SRA – Solicitors Regulation Authority

SQE – Solicitor Qualifying Exams

TEF – Teaching Excellence Framework

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Declaration

I declare that the work contained in this thesis has not been submitted for any other award and that it is all my own work. I also confirm that this work fully acknowledges opinions, ideas and contributions from the work of others.

Any ethical clearance for the research presented in this thesis has been approved. Approval has been sought and granted by the Faculty Ethics Committee from 27.10.14 – 05.02.16.

I declare that the Word Count of this Thesis is 85,877 words.

Name: Rachel Ann Dunn

Signature:

Date:

Chapter One: Introduction

“You must remember what you are and what you have chosen to become, and the significance of what you are doing.”

John Williams, Stoner

This thesis could have gone in a variety of directions, as can most. I started with quite an ambitious idea of what I wanted to do and had to, as all researchers do, narrow it down and focus on a specific area. The quote by Williams, applies to me as a researcher and also my participants who were involved in this research, whether as students or educators. When you are faced with an immense challenge, you must remember what is at its core and reflect on how this affects you and your personal and professional development.

1.1 Why this thesis?

It is hard to explain with any certainty what inspired me to do this PhD research. I think completing my undergraduate degree and the Bar Professional Training Course at Northumbria University, and engaging with clinical legal education (CLE) from the very start, is most likely where the inspiration began. I was able to benefit from various clinical activities throughout my legal education, from policy clinic to the Student Law Office (SLO) and representing my own clients, under supervision. My first introduction to CLE as an academic pursuit was when I gave a joint paper at the International Journal of Clinical Legal Education Conference, 2012, as an undergraduate student. I was amazed that law teachers and clinicians met from all over the world to discuss how I was educated and to share their experiences. I am a firm believer of a good education for all and CLE creates a holistic legal education and interesting areas to research.

One of my fears, before I started the SLO was that I would not be prepared for the realities of practice and I didn't know enough. Once I completed the SLO, I no longer felt like this. The SLO had a value in my education and I knew it must for others. CLE played such an important role in my legal education, I wanted to explore this further and provide some evidence of the benefits of CLE.

As CLE, prior to and including this thesis, has been so personal to me I have reflected this in my writing style. This thesis is written in the first person with my personality woven throughout. In a sense, I was a participant in my own study, making subjective choices as to the data collection and its analysis and my views of the reality around me. The certainties which I started the PhD with shifted and developed, creating a new certainty. This is evident throughout the reading of this thesis, with the epistemology reflecting this change. Reflecting on the Williams quote above, I had to remember my position within the research and the significance of what I produced.

1.2 Why focus on Live Client Clinics?

It can be seen in the mass of literature on CLE, that there are a variety of kinds, each with their own benefits and risks.¹ CLE, generally, is:

*'At its most basic level, clinical legal education is a method of training law students by putting them in situations where they must apply the legal theory, principles, and doctrines they have studied in the classroom setting.'*²

The definitions of CLE are quite broad and encompass all kinds, from problem-based learning, to simulations, to live client clinics (LCCs). Whilst I would have enjoyed looking at all of the various kinds, that would have been too much work for one thesis to contain. Thus, I decided to focus specifically on LCCs. A LCC, or in-house clinic as they are sometimes referred to, involves, '*students represent[ing] clients or perform[ing] other professional roles under the supervision of members of the faculty.*'³ LCCs are, therefore, placing the student directly into the role of a practising⁴ lawyer, but with the security of their supervisor, who has ultimate responsibility for the case. This, to me, is the best way for students to develop their knowledge, skills and attributes to then go on and start practice competently. Placing the students in these uncertain and challenging situations is what I wanted to explore, collecting data on their development and views of their education.

All university law clinics, whilst they are all similar in essence, have distinct characteristics. For example, some LCCs are advice only clinics, who do not take representation any further than written advice. Northumbria University Law School is host to one of the biggest student clinics in the world. In the academic year 2015-16, there were over 200 students who participated in the SLO, with 23 supervisors overseeing their work.⁵ 306 new enquiries and pre-existing cases were conducted, in nine areas of law.⁶ The SLO provides advice and, if educationally safe and desirable, occasionally represents clients in court. The work our students do is the same as a trainee solicitor, running cases from the start to when they are closed, with the same responsibility and professionalism they will need when practising. The SLO is a compulsory module for any student on the MLaw Exempting Degree and optional for most law students who are on a different course, such as the Bar Professional Training Course. The entire MLaw Degree revolves around experiential

¹ Dunn, R., 'The Taxonomy of Clinics: The Realities and Risks of All Forms of Clinical Legal Education,' 2016, 3:2 Asian Journal of Legal Education 129

² Bucker, A. and Woodruff, A., 'The Bologna Process and German Legal Education: Developing Professional Competence through Clinical Experiences,' 2008, 9 German Law Journal 575, p. 578

³ Stuckey, R., *Best Practices for Legal Education*, (CLEA, 2007) p.166

⁴ I would like to note here that there may be some irregularities of the use of practice and practise. Where others have used the noun of the verb in their studies I have followed suit, but strived to remain grammatically correct in my own writing.

⁵ Northumbria Law School, *Student Law Office, Annual Report 2015-16*, p.1

⁶ *Ibid.*

learning and the SLO is at the heart of this, embedding the LCC in our curriculum and degree design. Not all universities have the luxury which Northumbria Law School does, having a LCC available to all students in their final year of study, or an elective for those on certain courses. This creates a full clinical experience. Thus, when I refer to a clinic being a 'half clinic' in this thesis, I mean an optional LCC module, which is not as intensive as Northumbria's SLO. As I have highlighted, not all LCCs operate in the same, for example, some are advice only clinics, which do not offer any court assistance. This difference should be remembered when reading this work.

The amount of LCCs across the country has grown rapidly over the years, to help educate students and/or to help respond to the legal aid funding cuts.⁷ A study conducted by Grimes in 1995 found that eight of the 79 institutions surveyed offer a LCC element of their law degrees, with only two offering the full representation as a solicitors' practice would.⁸ If we compare this to more recent times, it can be seen that law clinics in universities have grown. In 2014, LawWorks reported that 70% of law schools offer pro bono opportunities, an increase from 46% in 2006.⁹ In their most recent report, it found that there were approximately 2,630 students participating in clinics across the year, a 26% increase of the year before.¹⁰ These figures show how CLE, and LCCs within this, have grown in popularity since Grimes' original study in 1995, and seem to continue to do so. With this increase, I wanted to provide some evidence that they actually do what we think they do, pedagogically.

Europe is becoming a desirable region to conduct research into CLE. With the Bologna Process¹¹ affecting our Higher Education structures and the desire to create partnerships with other European universities, we now have more access to other law schools in the region. European focused networks, such as the European Network of Clinical Legal Education (ENCLE), have been formed, with annual conferences and workshops. CLE is becoming a focus for legal education and

⁷ Campbell, E., 'Pro bono is great education for law students, but they shouldn't fill gaps left by legal aid cuts,' 2014, The Conversation. Accessed via <https://theconversation.com/pro-bono-is-great-education-for-law-students-but-they-shouldnt-fill-gap-left-by-legal-aid-cuts-34323> Last cited 19.07.17

⁸ Grimes, R., 'Research Reports on Legal Education, Number Two: Legal Skills and Clinical Legal Education,' 1995, 3 Web Journal of Current Legal Issues

⁹ Carney, D. *et al*, *The LawWork Law School Pro Bono and Clinic Report 2014*, LawWorks, p.10. Accessed via <https://www.lawworks.org.uk/sites/default/files/LawWorks-student-pro-bono-report%202014.pdf> Last cited 19.07.17

¹⁰ LawWorks, *LawWorks Clinics Network Report April 2015 – March 2016*, 2016, p.24. Accessed via <https://www.lawworks.org.uk/sites/default/files/LawWorks%20Clinics%20Network%20Report%202015-16.pdf> Last cited 19.07.17

¹¹ Milan, E., *Using the Bologna Process in Legal Clinic Training to Empower Students & Clients—empirical research re clinic cases over three years. Relate to learning outcomes*, International Journal of Clinical Legal Education Conference, July 2015, Turkey. For more information, please visit http://ec.europa.eu/education/policy/higher-education/bologna-process_en.

research, growing in importance. There has been research conducted into European LCCs,¹² but there is no data which provides how many are operating across Europe. However, there is evidence that more LCCs are being established in Europe,¹³ and their clinicians' presence is becoming increasingly present within our networks and conferences. Thus, I wanted to use European countries as my comparison for this thesis.

1.3 Rationale for this research and research aims

The main rationale for this research, was that there is a lack of evidence of whether LCCs teach and develop our students in the way intended in order to start practice competently.¹⁴ As was discussed above, LCCs are becoming increasingly more popular and require many resources and staff effort to sustain them. However, there is little research into, and very little empirical evidence, of whether or not they actually allow our students to develop the knowledge, skills and attributes needed for training and practice. Thus, the research question for this thesis was:

What knowledge, skills and attributes are perceived as important for a lawyer to start day one training competently, are they provided through clinical legal education, specifically live client clinics, and how are they understood in different European contexts?

The research aims which stemmed from this research question, identified from the gaps in the literature and knowledge, were:

A1 To explore with 4th year law students at Northumbria University who participate in the SLO which knowledge, skills and attributes they think are necessary for practice, and whether these views are affected by participating in a LCC

A2 To compare these findings with that of SLO tutors and practising lawyers and what they believe is important to practice

A3 To compare these findings with other LCCs in European Institutions (EIs) and whether any, or all, of the skills perceived necessary for practice are consistently identified across the various LCCs chosen for comparison

¹² Bartoli, C., *Legal clinics in Europe: for a commitment of higher education in social justice*, 2016, Diritto & Questioni Pubbliche. Accessed via http://www.dirittoequestionipubbliche.org/page/2016_nSE_Legal-clinics-in-Europe/DQ_2016_Legal-Clinics-in-Europe_specialissue.pdf Last cited 19.07.17

¹³ Askamovic, D. and Genty, P., 'An Examination of the Challenges, Successes and Setbacks for Clinical Legal Education in Eastern Europe,' 2014, 20:1 International Journal of Clinical Legal Education 427

¹⁴ Tomoszek, M., 'The Growth of Legal Clinics in Europe – Faith and Hope, or Evidence and Hard Work?' 2014, 21:1 International Journal of Clinical Legal Education 93, p.100

A4 To explore with clinicians from the EIs whether they think LCCs are beneficial to legal education, particularly focusing on which knowledge, skills and attributes can be taught

A5 Identify, both through the literature and empirically, whether these skills have been provided through participation in a LCC or whether some are left to practice.

There may be different interpretations to the terminology used in the research aims above. Thus, I find it important to highlight what some of the terms mean to me. Knowledge, skills and attributes, in this PhD, mean the following:

- Knowledge – the knowledge needed in order to work within the law. This includes, but is not limited to, theoretical, substantive and procedural knowledge. I appreciate that there is a complexity to legal knowledge and all it entails, which is not fully explored in this thesis, but something which I intend to explore further in the future
- Skills – these are the more technical aspects of legal practice, such as analysis and legal drafting
- Attributes – this relates to the more personable aspects of legal practice, such as empathy and teamwork.¹⁵

Furthermore, I move between using the term clinicians and Tutors in this research. Clinicians refer to those who work in LCCs in a wider sense, whilst Tutors refers to those who teach in the LCCs where I conducted this research.

1.4 How this study differs to previous studies

As will be seen in the literature review, there have been many studies conducted and much written on which knowledge, skills and attributes are important to practice and how is best to teach them. However, many of these studies focused on participants who are in practice and have been for a while. The studies which focused on the most useful kinds of experiences and educational methods for preparation for practice also focused on recent lawyers and trainees as their sample.

This study, however, focuses on the students themselves, as they are finishing their legal education. It tracks development and the influence of LCCs on students and asks them, in more depth, how

¹⁵ For example, the LETR report, cited extensively in this work, in Annex 1 list the currently prescribed knowledge, skills and attributes required at different stages of legal training. The descriptions I have provided are more general outlines of what is currently required. For Annex 1 of the LETR please see, <http://www.lettr.org.uk/the-report/chapter-2/annex-i-knowledge-skills-and-attributes-currently-prescribed/index.html> Last cited 26.09.2017

they feel about their legal education and going onto practice. I did not find any previous studies like my own. Further, it compares the experiences of the students with that of LCC tutors and some lawyers, for a comparison across groups. A goal of this thesis was to give students more of a voice of their experiences, as they are living them, rather than waiting for them to reflect on them once they have practised for some time.

The primary method used, the Diamond¹⁶, is an innovative research method,¹⁶ developed from construct generation studies in primary education research it produces a hierarchy validated by the contemporaneous group discussion and further unpacked in this study with interviews. The use of both quantitative and qualitative methods has allowed for easier comparison between participants, but also keeping their experiences personal to them and highlighting their differences. This kind of data collection, and its depth, has not been done previously in legal education. Further, the kinds of data collected introduce new ideas as to what is important to practice, something which previous studies did not particularly foster.

1.5 Contribution to knowledge and impact

There are many reasons why this research has been done at a much-needed time of legal education, increasing its impact. The Quality Assurance Agency for Higher Education in 2015 released Benchmark Statements for individual subjects, including law. This Statement aimed to define what is expected of a law student upon graduation, *'in terms of what they might know, do and understand at the end of their studies.'*¹⁷ When looking at the list provided of *'A law student's skills and qualities of mind,'*¹⁸ there are many more knowledge bases acknowledged, such as intellectual independence, awareness of principles and values of law and justice, knowledge of theories and the ability to apply knowledge. This benchmark is an important piece of work, which highlights what legal education institutions must develop with their students prior to graduation. Its impact on this thesis, however, is not great, as it does not specifically discuss knowledge, skills and attributes necessary to develop with students to prepare them for day one training. Thus, it will not be explored any further during the literature review in Chapter Two.

¹⁶ Clark, J., Laing, K., Tiplady, L. and Woolner, P., 'Making Connections: Theory and Practice of Using Visual Methods to Aid Participation in Research,' 2013, Research Centre for Learning and Teaching, Newcastle University, p.4. Accessed via <http://www.ncl.ac.uk/cflat/news/documents/MakingConnections.pdf> Last cited 20.12.16

¹⁷ The Quality Assurance Agency for Higher Education, *UK Quality Code for Higher Education, Part A: Setting and Maintaining Academic Standards – Subject Benchmark Statement: Law*, July 2015, p.1. Accessed via <http://www.qaa.ac.uk/en/Publications/Documents/SBS-Law-15.pdf> Last cited 13/12/17

¹⁸ *Ibid.*, p.7

The Teaching Excellence Framework (TEF) was introduced this year,¹⁹ ranking universities on their teaching. Student satisfaction, it has been argued empirically, has decreased in recent years.²⁰ Universities are now faced with needing to provide teaching which improves employability prospects, providing graduates with the knowledge, skills and attributes needed for industry and provides satisfaction.²¹ More specifically to legal education, recent reports, such as the Legal Education Training Review (LETR),²² highlight certain knowledge, skills and attributes which they believe law students should be graduating with. Law schools have to respond to this in some way, and experiential learning seems to be a solution to this.

The professional bodies are also continuing to have an impact on legal education. The Solicitors Regulation Authority (SRA) is completely changing the way in which solicitors qualify, with the Legal Practice Course (LPC) no longer to be offered to those qualifying from September 2019, unless already enrolled on a course. Instead, there will be two stages of Solicitor Qualifying Exams (SQEs) and two years of work-based learning.²³ It is not clear how this work-based learning will be monitored, but it will be tested practically during SQE 2. The work-based learning can take various forms, such as the current form of a training contract, but the SLO will now also contribute to this experience. Whilst the SRA believe this is a more rigorous test of competence and ensuring that all candidates are being assessed to the same standard, not all universities offer the same CLE experience which Northumbria University does. Ultimately, universities will have less involvement, or even none at all,²⁴ with the training of future solicitors. Thus, during a law degree, we must strive to make sure the students are ready for the next stage of their career and prepared professionally.

The Bar Standards Board (BSB), on the other hand, has taken a different stance to the changes of

¹⁹ For more information, please see French, A. and O’Leary, M., *Teaching Excellence in Higher Education: Challenges, Changes and the Teaching Excellence Framework*, (Emerald Publishing Limited, 2017); Bhardwa, S., ‘TEF: how will school pupils considering university use the results?’ 2017, Times Higher Education. Accessed via <https://www.timeshighereducation.com/student/blogs/tef-how-will-school-pupils-considering-university-use-results> Last cited 05.09.17 Last cited 05.09.17; Bhardwa, S., ‘What is the TEF? Results of the teaching excellence framework, 2017, Times Higher Education. Accessed via <https://www.timeshighereducation.com/student/news/what-tef-results-teaching-excellence-framework> Last cited 05.09.17

²⁰ Neves, J. and Hillman, N., Student Academic Experience Survey, 2017, p.12. Accessed via <http://www.hepi.ac.uk/wp-content/uploads/2017/06/2017-Student-Academic-Experience-Survey-Final-Report.pdf> Last cited 15.07.15 - This data shows that students level of satisfaction, that university is “value for money” has fallen to its lowest level since this survey first started.

²¹ The TEF measures ten metrics, including student satisfaction and employment outcomes. For more information, please see <http://www.hefce.ac.uk/lt/tef/whatistef/teffaq/>

²² Webb, J, *et al.*, *Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales (The Legal Education and Training Review (LETR))*, (2013). Available at: <http://letr.org.uk/the-report/index.html>

²³ For more information, please see <https://www.sra.org.uk/sra/consultations/solicitors-qualifying-examination.page>

²⁴ *Ibid.* – Under the new route of qualification, those wishing to become solicitors will no longer need to be awarded a qualifying law degree, just a degree or equivalent.

qualification of barristers.²⁵ They would like to give more control to HEIs, particularly with the academic stage of training and the mandatory modules required. The BSB provided four ways for barrister to qualify in their consultation, stating their preferred route is Option B.²⁶ Option B(ii) has a very similar design to the current MLaw degree at Northumbria University and they praised the MLaw programme in linking '*the degree qualification with employment skills.*'²⁷ They also used it as evidence of how this can work in practice and the potential cost implications. Thus, this thesis provides further evidence for the BSB when advocating for this integrated legal education, combining academia with skills training.

As will be seen throughout this thesis, specifically in Chapter Two, I separate the data in pre and post-1990 studies. One of the reasons for this was for easy comparison. There were, however, changes made to the way in which the legal profession operated in the UK post-1990, which had an impact on legal practice and what was needed by the legal academy and profession. Firstly, the Courts and Legal Services Act 1990 changed the way in which the legal profession operated. For example, solicitors were granted rights to audience under s.27,²⁸ allowing them to advocate in court. Furthermore, it rid the monopoly which solicitors had held over certain legal matters, such as conveyancing, previously enjoyed by a single legal market.²⁹ These changes and what is now required of legal practitioners, discussed throughout this thesis, are connected. Thus, exploring what was required prior to the Act, in terms of knowledge, skills and attributes, and what has been required after is necessary, but without further reference to the Courts and Legal Services Act 1990. Further, the government cuts to Legal Aid in 2013³⁰ has resulted in less people in the UK being able to afford and acquire legal services,³¹ meaning potentially less business for law firms or an increase of pro bono services. As a result, law firms have had to seek funds in other ways,³² meaning that they need lawyers who themselves are more business focused and commercially aware.

As I will discuss studies from around the globe, it is important to acknowledge the changes in global legal practice. It has been acknowledged that globalisation of the legal professions '*has been rapid*

²⁵ Bar Standards Board, *Future Bar Training: Consultation on the Future of Training for the Bar: Future Routes to Authorisation*, 2016. Accessed via https://www.barstandardsboard.org.uk/media/1794621/future_bar_training_routes_consultation_final.pdf Last Cited 20.07.19

²⁶ *Ibid.*, p.23

²⁷ *Ibid.*, p.37

²⁸ Courts and Legal Services Act 1990

²⁹ Ogus, A., 'Rethinking Self-Regulation,' 1995, 15:1 Oxford Journal of Legal Studies 97, p.105

³⁰ Legal Aid, Sentencing and Punishment of Offenders Act 2012

³¹ For more information, please see The Law Society of England and Wales, *Accessed Denied? LASPO four years on: a Law Society review*, 2017. Accessed via <http://www.lawsociety.org.uk/support-services/research-trends/laspo-4-years-on/> Last cited 18.12.17

³² Baski, C., 'Civil legal aid: Access Denied,' 2014, the Law Society Gazette. Accessed via <https://www.lawgazette.co.uk/law/civil-legal-aid-access-denied/5040722.article> Last cited 18.12.17

with exponential growth' from the mid 1980s and beyond.³³ Some of the reasons for a global legal market include production patterns and economic activities in many parts of the world, globally linked financial markets, the importance of international trade for GDP and trade barriers between countries decreasing.³⁴ Thus, the need for legal advice in other jurisdictions has risen greatly. Flood argues that there, *'is an interdependence between the organisation of legal work and its cultural context. Law firms develop specific cultures which are forced to adapt to changing social and economic circumstances.'*³⁵ The rise in globalisation of legal work and lawyers undertaking work in cross-jurisdictions has had an impact on cultures in law firms and, thus, legal education. Faulconbridge and Muzio highlight that the development of intergovernmental trade organisations, such as the WTO, and transitional legal frameworks, such as the EU, are increasingly affecting legal practice. Further, it isn't just commercial practice that is influenced, but also criminal with the rise of international criminal law and courts such as the International Criminal Court.³⁶ As a result, teaching professionalism in legal education is, *'clearly affected by geographical consideration and in particular by the peculiar characteristics of the country in question.'*³⁷ From an Australian perspective of legal education, Thornton outlines how new subjects in law schools are *'geared towards global business,'* such as international trade law.³⁸ Further, there is now a focus on other non-commercial subjects, such as international family law.³⁹ A report undertaken for Legal Services Board provided that the UK is one of the biggest exports of lawyers to other jurisdictions, using data from the Law Society that 6,000 solicitors on the Roll in 2010 were practising outside their home jurisdiction,⁴⁰ which could be due to the globalisation of legal work and the ability to move between different jurisdictions. The globalisation of legal practice will be an undertone of this work, most evident in the literature review, showing the changes in the field of law.

Lastly, technology is having an impact on legal services and how lawyers work with their clients, arguably increasing competition in the market,⁴¹ where some processes are able to be automated,

³³ Faulconbridge, J.R, *et al*, 'Global Law Firms: Globalization and Organizational Spaces of Cross Legal Work,' 2008, 28:3 Northwestern Journal of Cross-Border Legal Work 455, pp.455-456

³⁴ Trubek, D.M., *et al*, 'Global Restructuring and the Law: Studies of the Internationalization of Legal Fields and the Creation of Transitional Arenas', 1994, 44:2 Case Western Law Review 407, p.409

³⁵ Flood, J., 'Magalawyer in the global order: the cultural, social and economic transformation of global legal practice,' 1996, 3:1-2 International Journal of the Legal Profession 169, p.172

³⁶ Faulconbridge, J.R. and Muzio, D., 'Legal Education, Globalization, and Cultures of Professional Practice,' 2009, 22:4 Georgetown Journal of Legal Ethics 1335, pp1343-1344

³⁷ *Ibid.*, p.1343

³⁸ Thornton, M., 'The demise of diversity in legal education: Globalisation and the new knowledge economy,' 2001, 8:1 International Journal of the Legal Profession 37, pp.43-44

³⁹ Reynolds, W.L., 'Why Teach International Family Law in Conflicts?' 1995, 28:411 Vanderbilt Journal of Transnational Law 411

⁴⁰ Flood, J., *Legal Education in the Global Context: Challenges from Globalization, technology and Changes in Government Regulation*, Report for the Legal Services Board (2011), p.1. The data which Flood uses is from Law Society *Trends in the Solicitors' Profession: Annual Statistics Report 2010* London (2011)

⁴¹ Ware, R.F., 'Technology's Impact on the Legal Profession,' 21:6 Ohio Lawyer 2, p.4

and potentially increasing efficiency and lowering costs.⁴² As much more information and legal documents are available online now, compared to what it was pre-1990, lawyers now must be competent with the technology which is available,⁴³ as it is potentially '*radically altering traditional attorney-client interactions.*'⁴⁴ The effect of technology on legal services is not contained to the UK. For example, a study conducted in various countries with buyers of legal services found that 55% of respondents said that technology will be used for in-house legal tasks in the next five years.⁴⁵ This has resulted in some legal educators exploring and delivering education in digital legal skills, modernising our law graduates.⁴⁶ The use of technology in global legal education has begun, such as a legal game created which simulates the takeover of a foreign company, using real legal documents and interviews with clients.⁴⁷ However, what is required by a law graduate in terms of digital skills is not clear and the costs of training law students with technology can be high. Technology and how we use it is developing at such huge speeds, that law schools need to question if we can appropriately prepare students for this aspect of practice or is it changing at a pace we can't keep up with? Regardless, it may not necessarily make too much of a difference to how we currently educate our law students in terms of the technology which we incorporate into legal education, but that is something which will become more apparent over time. As lawyers move from a state of competence to expertise when practising, they will act '*effortlessly and fluidly, behaving in ways that are not easily described as deductive or analytic.*'⁴⁸ The competence, prior to expertise, is something which we can foster in our law graduates, helping them to move towards fluidity in an ever developing technological age.

1.6 Structure of thesis

This thesis is organised into seven Chapters, including the introduction and conclusion. Chapter

⁴² Thanaraj, A. and Sales, M., 'Lawyering in a Digital Age: A Practice Report Introducing the Virtual Law Clinic at Cumbria,' 2015, 22:3 International Journal of Clinical Legal Education 334, pp.338-340

⁴³ *Ibid.*

⁴⁴ Aderant, *Technology: Changing the Attorney-Client Relationship for the Better!*, An Aderant White Paper for Law Firms, July 2015, p.4. Accessed via <https://www.aderant.com/wp-content/uploads/2015/09/Tech-Client-Attorney-RelationshipRev07132015.pdf> Last cited 26.03.18. It is important to note that really reliable data for how technology is changing practising law is not yet available. However, the amount of legal information online and how this affects practice could be following a similar trend to medicine, evidenced in research such as Cline, R.J.W. and Haynes, K.M., 'Consumer health information seeking on the Internet: the state of the art,' (2001), 16:6 Health Education Research 671.

⁴⁵ Deloitte, *Future Trends for Legal Services: Global research study*, June 2016, p.4. Accessed via <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Legal/dttl-legal-future-trends-for-legal-services.pdf> Last cited 18.03.18

⁴⁶ Thanaraj, A. and Sales, M., 'Lawyering in a Digital Age: A Practice Report Introducing the Virtual Law Clinic at Cumbria,' 2015, 22:3 International Journal of Clinical Legal Education 334

⁴⁷ Flood, J., *Legal Education in the Global Context: Challenges from Globalization, technology and Changes in Government Regulation*, Report for the Legal Services Board (2011), p.1. The data which Flood uses is from Law Society *Trends in the Solicitors' Profession: Annual Statistics Report 2010* London (2011), p.12

⁴⁸ Berliner, D.C., 'The Development of Expertise in Pedagogy,' 1988, AACTE Publications, p.6. Accessed via <https://files.eric.ed.gov/fulltext/ED298122.pdf> Last cited 19.03.18

Two presents the systematic literature review, looking at grey literature and the conceptual, quantitative and qualitative literature surrounding knowledge, skills and attributes in legal education. It first discusses the methodology used, outlining the influence of the Cochrane Collaboration, the search terms used, the databases I searched and how I appraised the literature. Second, it explores the literature I found, discussing and synthesising it. The literature is separated into distinct sections, first discussing the grey literature, the conceptual papers sourced, then the quantitative and qualitative studies. The end of the Chapter presents and discusses a synthesis of the literature.

Chapter Three discusses the conceptual framework chosen for this thesis, and others which were not chosen. Kolb's theory of Experiential Learning (ELT) was influential to this work and this Chapter evaluates its strengths and weaknesses. How ELT applies to the SLO is outlined.

Chapter Four outlines my PhD journey and how I collected my data. I used mixed methods for this research, with the Diamond¹⁶, a visual method, as my main data collection tool and supported by group interviews. As so much data was collected, with a variety of participants and the differences of the quantitative and qualitative analysis, there were multiple research paradigms and philosophical frameworks adopted at different stages of the research process. Thus, this Chapter is written in a more narrative manner, to highlight the differences during the data collection and the decisions which were made throughout. The end of this Chapter displays how the analysis was approached.

Chapter Five, my first analysis Chapter, looks more deeply at the analysis process. This Chapter discusses the quantitative data results in more detail, drawing on the qualitative data to support my conclusions. It looks at the overall data from all participants, discussing which knowledge, skills and attributes were seen as important to practice, before looking at specific Groups and how they influenced the results. This Chapter looks at elements on the division between "hard" skills and "soft" skills and their perceived importance.

Chapter Six, my second analysis Chapter, looks at the effect of the SLO on the development of students within Northumbria's SLO. It focuses, in more depth, whether being educated in a LCC had an effect on their perceptions of practice and which knowledge, skills and attributes are needed to start practice competently. Whilst still drawing on the quantitative data, this Chapter focuses more heavily on the qualitative, with the last section discussing the interview data collected from the SLO students and EI Tutors in depth.

In Chapter Seven, the final Chapter, conclusions are discussed on the research and any recommendations and contributions to knowledge are offered.

1.7 Conclusion

This Chapter has introduced the elements of this thesis and what its focus and rationale is. The contribution to knowledge has been emphasised, particularly through the methods chosen and the kind of data collected. Most importantly, it has set the tone for this thesis, highlighting the importance of my role as the researcher and how my decisions have led to the completion of this work. I could not untangle my personal position from this work and the writing style will reflect this throughout.

Chapter Two: Literature Review

2.1 Introduction

This Chapter explores and discusses the literature surrounding knowledge, skills and attributes in clinical legal education (CLE), specifically live client clinics (LCCs). There has been much research into which skills are needed for the competent practice of law and whether they are provided through law school. However, there is little research, particularly empirical, of whether LCCs can give students the foundation of what is needed for practice and develop these knowledge, skills and attributes. To find the literature a systematic review was conducted. The first part of this Chapter discusses what a systematic review is, how they can be used in qualitative, as well as quantitative, studies and the methodology used to design my searches and analyse the data.

The second part of this Chapter discusses the literature found and highlights the gaps in knowledge. Whilst this is a European focused thesis I felt it necessary to not have any geographical restraints when conducting the systematic review. The work produced in Europe on CLE is not as advanced or on as large a scale as the rest of the world,⁴⁹ in terms of the amount of studies published. It was necessary for a comprehensive literature review to include research from outside of Europe to ensure that this thesis is properly informed.

2.2 Systematic review

Due to the amount of literature continuously published in the social sciences, and within CLE particularly,⁵⁰ I faced an '*information explosion*.'⁵¹ I felt it necessary to develop a strategy to engage with both the empirical and theoretical research on clinical teaching and skills, in order to manage and adequately synthesise the material I found. A systematic review was an effective way to do this.

This is not to say that traditional literature reviews do not have their place in research. There are great advantages to conducting a traditional literature review. For example, they can go into much more depth when discussing specific research and its theories, following academic debates from author to author and describing how the research has developed. They can help to find further research in the field, and create rich discussions. However, as Mkwebu highlights, '*...they do not*

⁴⁹ Dunn, R., 'A Systematic Review of the Literature in Europe Relating to Clinical Legal Education,' 2017, 24:2 International Journal of Clinical Legal Education 81

⁵⁰ Mkwebu T., 'A Systematic Review of Literature on Clinical Legal Education: A Tool for Researchers in Responding to an Explosion of Clinical Scholarship,' 2015, 22 International Journal of Clinical Legal Education 238, p. 241.

⁵¹ Major, C.H. and Savin-Baden, M., *An Introduction to Qualitative Research Synthesis: Managing the Information Explosion in Social Science Research* (Routledge, 2010), p.11

describe the methodological approach that would permit the minimisation of the risk of bias in selecting journal articles that answer a research question.⁵² Traditional literature reviews have been criticised, with claims that they can cause bias as the author will pick the literature which he would like you to read.⁵³ A systematic review can add rigour to the review, throughout the whole process. Piper describes this rigour in literature reviews as:

‘When faced with any question, being able to conduct a robust systematic review of the literature is an important skill for any researcher to develop; allowing identification of the current literature, its limitations, quality and potential.’⁵⁴

Not only have I searched for my literature using a strict methodology, but the system I have used to appraise and synthesise the strengths in my findings has allowed me to analyse and address any weaknesses and limitations discovered from the studies. This has added reliability to the thesis, developing a robust literature review.

Systematic reviews are not traditionally used for analysis of qualitative papers. The systematic review methodology was developed by the Cochrane Collaboration, primarily for the use of medical studies. This methodology has strict phases to follow in order to add the rigour to a comprehensive search and synthesis. They are:

- 1) ‘Mapping the field through a scoping review
- 2) Comprehensive search
- 3) Quality assessment
- 4) Data extraction
- 5) Synthesis
- 6) Write up.’⁵⁵

For the systematic review, I followed each of these phases, which will be discussed in more detail below, but had to alter them slightly to fit a mixed systematic review. It is usually easier to do a meta-analysis during the synthesis stage with quantitative studies, rather than qualitative. However, it is becoming increasingly more common to find systematic reviews published using

⁵² Mkwebu, T., 'A Systematic Review of Literature on Clinical Legal Education: A Tool for Researchers in Responding to an Explosion of Clinical Scholarship,' 2015, 22:3 International Journal of Clinical Legal Education 238, p. 241.

⁵³ Garg, A.X., Hackam, D. and Tonelli, M., 'Systematic Review and Meta-analysis: When One Study Is Just not Enough,' 2008, 3:1 Clinical Journal of the American Society of Nephrology 253, p. 253

⁵⁴ Piper, R.J., 'How to write a systematic literature review: a guide for medical students,' 2013, NSAMR, University of Edinburgh, p. 2

⁵⁵ Jesson, J., Matheson, L. and Lacey, F.M., *Doing your literature review: traditional and systematic techniques* (SAGE, 2011), p. 108

qualitative data, particularly in fields such as education and healthcare.⁵⁶ They recognise that qualitative data can add depth and explanation to quantitative studies, whilst also understanding that the field has many qualitative studies which can be looked at in new ways using systematic review techniques. Dixon-Woods *et al* argue this point, stating that qualitative studies can be used to 'explain the findings of a quantitative synthesis' and to 'Assist in the interpretation of the significance and applicability of the review.'⁵⁷ Petticrew expands on this notion, stating, 'Qualitative research can identify the range and nature of impacts of interventions and can give sense of whether they are rare or common. It can identify unintended, unanticipated impacts.'⁵⁸ Thus, qualitative research can go further than quantitative, helping to explain and answer research questions which may be limited by using quantitative data alone. After all, we not only want to know what the data is, but why it is like that. Whilst it is acknowledged that it is important to include qualitative data in a systematic review, there are still issues which haven't been completely resolved at the time of writing this thesis.

Dixon-Woods and Fitzpatrick identify three main issues with conducting a qualitative systematic review. The first is that there is an importance placed on the need for rigour when identifying research, and trying to accomplish this with qualitative research still 'remains frustrating and difficult.'⁵⁹ What is meant by this is, systematic reviews are designed for quantitative studies, and there is no qualitative version of the Cochrane Collaborative controlled trials register, but rather spread across many different databases. Secondly, there are still issues concerned around how to appraise qualitative studies and there does not seem to have been an agreement on how to successfully do it. The models for quantitative studies are not suitable, and as Dixon-Woods and Fitzpatrick state, 'We need to reach the stage soon where the accepted criteria provide guidelines for judging a paper, for deciding whether it should be included in a review, and on how to weight it.'⁶⁰ Finally, there has not been a consensus on how we synthesise qualitative data. It may be that:

'A natural tension exists between an approach that relies on interpretation and reflection (qualitative research) and an approach that seeks to expunge the potential for anarchy associated with such ungovernable processes (the systematic review).'⁶¹

There has been some development on the issue of a mixed methods systematic review, with

⁵⁶ For example, please see Bearman, M. and Dawson, P., 'Qualitative synthesis and systematic review in health professions education,' 2013, 47 Medical Education 252

⁵⁷ Dixon-Woods, M., Fitzpatrick, R. and Roberts, H., 'Including qualitative research in systematic reviews: opportunities and problems,' 2001, 7 Journal of Evaluation in Clinical Practice 125, p. 126.

⁵⁸ Petticrew, M., 'Time to rethink the systematic review catechism? Moving from 'what works' to 'what happens,' 2015, 4:36 Systematic Reviews

⁵⁹ Dixon-Woods, M. and Fitzpatrick, R., 'Qualitative research in systematic reviews,' 2001, 323 BMJ 765, p.765
Accessed via: <http://www.bmj.com/content/323/7316/765> Last cited 15/05/15

⁶⁰ *Ibid.*, p. 765

⁶¹ *Ibid.*

various researchers attempting to provide a sound framework for incorporating qualitative studies. It was recognised that the '*pooling*' of qualitative studies is not appropriate, as the methods can vary greatly in qualitative research.⁶² Harden *et al.*, developed a system whereby they classified the studies, compared and contrasted findings and finally conducted a thematic analysis of the studies.⁶³ Once classified into sub categories, or themes, you can then set quality criteria. How I used these steps will be discussed in more detail below, in the qualitative synthesis. By incorporating different methods into the systematic review, I added more breadth, identifying arguments, overlapping themes and supporting qualitative phenomenon.⁶⁴

Whilst there are issues to conducting a mixed methods systematic review they are not obstacles which cannot be overcome. There are ways to appraise and synthesise qualitative research which work well. Hopefully soon there will be a more universal model, as there is for quantitative research.

2.3 Methodology

I used my systematic review in order to find all of the peer-reviewed articles relating to skills, attributes and knowledge in CLE. As I already had a research question, highlighted in Chapter One, I found it relatively easy to formulate my key words for searches. I used a wide variety of key words and phrases in order to ensure I was searching in all of the relevant places. Thus, clinical legal education was my main search term, but then using legal education helped as a kind of sweeping search to ensure I had caught all the articles I needed to on a database. Law clinics and live client clinics were key words more specific to my research question, helping to focus my search on more relevant results. From my initial searches I did to '*map the field*,'⁶⁵ I saw that most of my key words worked. During this phase I noted how many results I was getting for each search and recorded any duplicates. This helped me to know how extensive my searching was; if I'm getting duplicates consistently then I know I have already looked through the majority of the relevant articles and have started to become, in a way, saturated-

⁶² Harden, A. *et al.*, 'Applying systematic review methods to studies of people's views: an example from public health research,' 2004, 58:9 *Journal of Epidemiology & Community Health* 794, p. 796. Accessed via: <file:///C:/Users/v000802/Downloads/v058p00794.pdf> , Last cited 14.08.17

⁶³ *Ibid.*, pp. 796-798.

⁶⁴ Greene, J.C., *et al.*, 'Toward a Conceptual Framework for Mixed-Method Evaluation Designs,' 1989, 11:3 *Educational Evaluation and Policy Analysis* 255, p.255. Accessed via http://scholar.google.co.uk/scholar_url?url=http://xa.yimg.com/kq/groups/18751725/9997427/name/Toward%2Ba%2BConceptual%2BFramework%2Bfor%2BMixed-Method%2BEvaluation%2BDesigns%2BGreen%2B1989.pdf&hl=en&sa=X&scisig=AAGBfm3umLZT5AGvXbSHvMkVcXLGB-KSVQ&nossl=1&oi=scholar&ved=0ahUKEwickISb5tbVAhUEYIAKHS9tADAQgAMIJygAMAA Last cited 14.08.17

⁶⁵ Jesson, J., Matheson, L. and Lacey, F.M., *Doing your literature review: traditional and systematic techniques* (SAGE, 2011), p. 108

2.3.1 Search terms

To aid my search I used Boolean logic,⁶⁶ which is used to combine search terms. I used the Boolean operators AND in every search I conducted. This helped to link together the key words, generating articles which only contained those search terms.

I also used speech marks to indicate an exact phrase. For example, “clinical legal education” only produced articles where these words are all grouped together. This helped to narrow my search results, as some databases would bring up many medical articles or those relating to areas such as clinical negligence. However, not all databases would support this kind of search and sometimes the speech marks had to be removed. This was always recorded on the spread sheet.⁶⁷

Finally, an asterisk was used to capture variations in a word. For example, ‘Competen*’ will find competent, competence and competency. This broadened my search slightly, looking for more articles which refer to competency in legal education. Again, not all databases supported this method of searching, and thus the asterisk would be removed and recorded.

Search Terms

- “Clinical legal education” AND Skills
- “Clinical legal education” AND Attributes
- “Clinical legal education” AND Knowledge
- “Law clinics” AND Skills
- “Law clinics” AND Attributes
- “Law clinics” AND Knowledge
- “Live client clinic*” AND Skills
- “Live client clinic*” AND Attributes
- “Live client clinic*” AND Knowledge
- “Legal education” AND Skills
- “Legal education” AND Competen*
- “Clinical legal education” AND Benefit
- “Clinical legal education” AND Advantage

Figure 2.1 - Search Terms used for Systematic Review

2.3.2 Databases

I used a wide variety of databases for my searches. Heinonline was my first choice, as it subscribes to many of the journals which focus on CLE and legal education. I then choose other legal databases,

⁶⁶ Mkwebu, T., 'A Systematic Review of Literature on Clinical Legal Education: A Tool for Researchers in Responding to an Explosion of Clinical Scholarship,' 2015, 22:3 International Journal of Clinical Legal Education 238, pp.248 - 253

⁶⁷ Please see Appendix 2.

such as Westlaw, Lawtel and Lexisnexis. Whilst there was not a huge amount of articles available on these databases for CLE, I was aware they may have journals which Heinonline did not. I then chose more generalised databases, SSRN and Web of Knowledge. Social science databases often have legal education articles, some of which I would not have found elsewhere. This made me feel ensured that I was finding the majority of the articles available to me. I knew I had exhausted the literature when I was getting more duplicates than I was articles to read in full.

Databases Searched with Dates
- Web of Knowledge (26/11/2015 - 27/11/15)
- Lawtel (27/11/2015)
- LexisNexis (12/01/2016 - 20/01/2016)
- Social Sciences Research Network (SSRN) (14/12/2015 - 08/01/16)
- Westlaw (25/01/2016 -01/02/2016)
- Heinonline (15/03/2016 - 25/04/16)

Figure 2.2 – Databases Searched for Systematic Review

2.3.3 Inclusion/exclusion criteria

I decided not to have a date limit to my searches and I would look at all of the work produced in this field. Intensive research into CLE began in the ‘modern wave’ of CLE,⁶⁸ meaning that that earliest decade I would be searching in would be the 1960s and this was feasible for my resources.

My inclusion/exclusion criteria was very simple.⁶⁹ I obviously had to exclude any articles not in English, as I do not speak any other languages and did not have the resources to have them translated. Any articles from journals my institution does not subscribe to were excluded, if I could not find alternative access to them. I found that most of the articles which were not available on the database were not actually relevant to the research question, and would have been excluded regardless of availability. Any articles which I did want to read I contacted the author directly or requested them on an inter-library loan. I gained three articles from inter library loans and two directly from authors. I excluded any articles not relating to legal education. Whilst I do take inspiration from clinical medical education,⁷⁰ and I would get many results in my searches for this area, I had to exclude them. I also excluded any articles which did not relate to skills, attributes and knowledge in legal education. There are many different areas of research in CLE, and most of them

⁶⁸ Bloch, F.S., *The global clinical movement: educating lawyers for social justice* (Oxford University Press, 2010), p.3

⁶⁹ Please see Appendix 1 for more information the inclusion/exclusion process.

⁷⁰ I take inspiration from general reading around medical education. Throughout this systematic review medical and healthcare systematic review articles and guidance were widely read and influential.

are not relevant to this thesis and had to be excluded, for example, instilling a social justice ethos. Whilst I am focusing on CLE, I also wished to look at the literature surrounding legal education more generally. This way I could compare any articles which looked at skills and attributes in legal education to that in LCCs. Skills and attributes are occasionally still taught in traditional legal education, and I wished to see how this compared to the pedagogies in CLE, particularly LCCs.

Even though this research is European focused I decided to include articles from any geographical area. The main reason for this is that there is not much research produced in Europe relating to CLE.⁷¹ It is growing, in terms of publications, but not at the same speed and consistency with other continents. I found it necessary to look at the literature outside of Europe, to see what other research has been done in this area. Before I conducted my searches, I knew that the majority of research into CLE has been produced from the US, Canada, Australia and the UK and other countries are starting to produce more research into this area. If I were to exclude research outside of Europe I would be excluding a great body of work which would help to influence and shape this thesis. Furthermore, there is not much empirical research in CLE at the moment, which is highlighted below. I did not want to exclude any empirical work which I knew would make this research more informed.

Inclusion/Exclusion criteria
<i>Inclusion</i>
- any geographic area
- any year of publication
- empirical or theoretical
<i>Exclusion</i>
- Articles not in English
- Articles in journals not subscribed to which I could not otherwise gain access
- Any articles not relating to legal education
- Articles not relating to skills and attributes in legal education

Figure 2.3 – Inclusion and Exclusion Criteria used for Systematic Review

2.3.4 Recording the articles

Once I had identified the articles which I wished to read in full text I recorded them onto a spreadsheet in Excel. That way I could keep a good record of which articles I wanted to read in full text and where to find them. I recorded the author, article title, article citation, which database and

⁷¹ Dunn, R., "A Systematic Review of the Literature in Europe Relating to Clinical Legal Education," 2017, 24:2 International Journal of Clinical Legal Education 81

search term I found it and any simple notes I had gathered from the first glance. For example:

Author	Title	Citation	Database and search term	Notes on first look
Uphoff, Rodney J.	Preparing the New Law Graduate to Practice Law: A View from the Trenches	<i>University of Cincinnati Law Review</i> , Vol. 65, Issue 2 (Winter 1997), pp. 381-422	HO -CLE AND Skills	MUST read - old but some very good arguments on why LCCs can only teach these skills.

Figure 2.4 – Example of Recording an Article to be Read in Full Text

2.4 Appraising the literature

In order to attach appropriate weight to the literature I had to develop a system to critically appraise it in a consistent manner. This helped me to decide which research should be included in the synthesis and how much weight to attach in terms of the reliability and relevance.

There is some discussion around whether we should conduct quality appraisals of qualitative literature. There have been over 100 proposals on how to conduct this kind of appraisal⁷² with little consensus of how to proceed. There have been recommendations on how to proceed with this kind of research. For example, the UK Centre for Social Research has produced a framework for appraising qualitative research.⁷³ It brings together pre-existing 29 frameworks, resulting in appraisal questions and quality indicators. This helped when I was designing my quality appraisal system. The Cochrane Qualitative Methods Group has also drafted guidance on how to conduct appraisals. They suggest that there are four main indicators when appraising qualitative research:

- Credibility - whether or not the findings '*hold true*' e.g. participant validation of data,
- Transferability - evaluating if the findings are transferable to other settings e.g. is there enough information regarding sample and participants to evaluate for which target groups the study can '*provide valuable information*',
- Dependability - whether there is a process of logical, traceable and clearly recorded research. This relates particularly to the methods chosen and any decisions made, e.g. reflexivity,
- Confirmability - are the findings are '*confirmable through the analysis being grounded in the*

⁷² Dixon-Woods, M. *et al.*, 'The problem of appraising qualitative research,' 2004, 13 *Quality and Safety in Health Care* 233. Accessed via <http://qualitysafety.bmj.com/content/13/3/223.full> Last cited 09.12.15

⁷³ Spencer, L., *et al*, *Quality in Qualitative Evaluation: A framework for assessing research evidence* (2003). Accessed via https://www.heacademy.ac.uk/sites/default/files/166_policy_hub_a_quality_framework.pdf Last cited 9.12.15

data' e.g. assessing the effects of the researcher.⁷⁴

I have incorporated these indicators into my quality appraisal. These indicators, as with the other guidance I have looked at, are attempting to measure the transparency of the research and the basic standard qualitative research should reach. When looking at previous research we need to know exactly how it was done to ensure its quality and reliability. If a study is not transparent this does not mean that the study does '*not offer a compelling, vivid and insightful narrative, grounded in the data,*'⁷⁵ but it is important to know exactly how the research was conducted when considering the quality of the data.

I believe that taking examples and inspiration from a variety of sources helped to ensure my quality appraisal was robust and adequate for this research. Whilst there are not standardised criteria or guidance for quality assessment for qualitative studies and research, there is now a move into that direction. With the amount of information available to design such an appraisal the design for this thesis was well informed.

To do this I developed a scoring system to appraise my articles.⁷⁶ This way I was appraising the literature consistently, reducing the risk of bias and any preference for certain articles. Whilst it is argued that appraising literature is still a subjective activity⁷⁷ there is still to be a consensus reached on how to reduce the subjectivity. I used this system to check how relevant the article was for my research, as well as its reliability. To develop this system I used many sources. I looked to medical and health care guidance on how to appraise qualitative literature and which questions I should be asking when appraising.

⁷⁴ Cochrane Qualitative and Implementation Methods Group, *Cochrane Handbook: Qualitative and Implementation Evidence and Cochrane Reviews* (2013). Accessed via http://methods.cochrane.org/sites/methods.cochrane.org.qi/files/public/uploads/Handbook52_QQ_Qualitative_web%20update%20Oct%202015.pdf Last cited 14.08.17

⁷⁵ Greene, J.C., *et al.*, 'Toward a Conceptual Framework for Mixed-Method Evaluation Designs', 1989, 11:3 *Educational Evaluation and Policy Analysis* 255, p.255. Accessed via http://scholar.google.co.uk/scholar_url?url=http://xa.yimg.com/kq/groups/18751725/9997427/name/Toward%2Ba%2BConceptual%2BFramework%2Bfor%2BMixed-Method%2BEvaluation%2BDesigns_Greene_1989.pdf&hl=en&sa=X&scisig=AAGBfm3umLZT5AGvXbSHvMkVcXLGB-KSVQ&nossl=1&oi=scholar&ved=0ahUKEwickISb5tbVAhUEYIAKHS9tADAQgAMIJygAMAA Last cited 14.08.17

⁷⁶ Please see Appendix 3

⁷⁷ Booth, A., Papaioannou, D. and Sutton, A., *Systematic Approaches to a Successful Literature Review* (SAGE, 2012), p. 115.

2.5 Findings and results

The results for my searches are presented below, in the form of a PRISMA flow diagram.

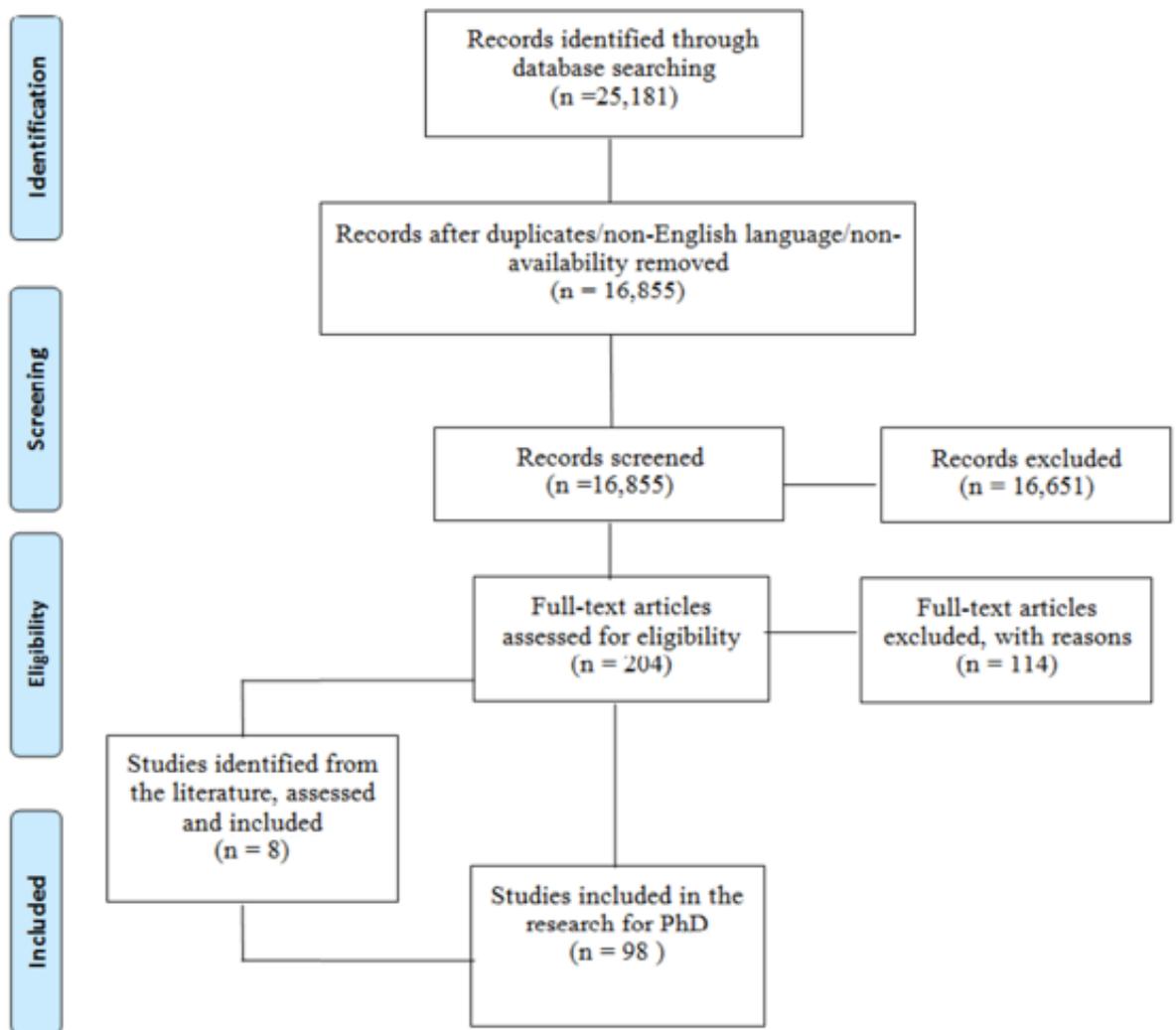
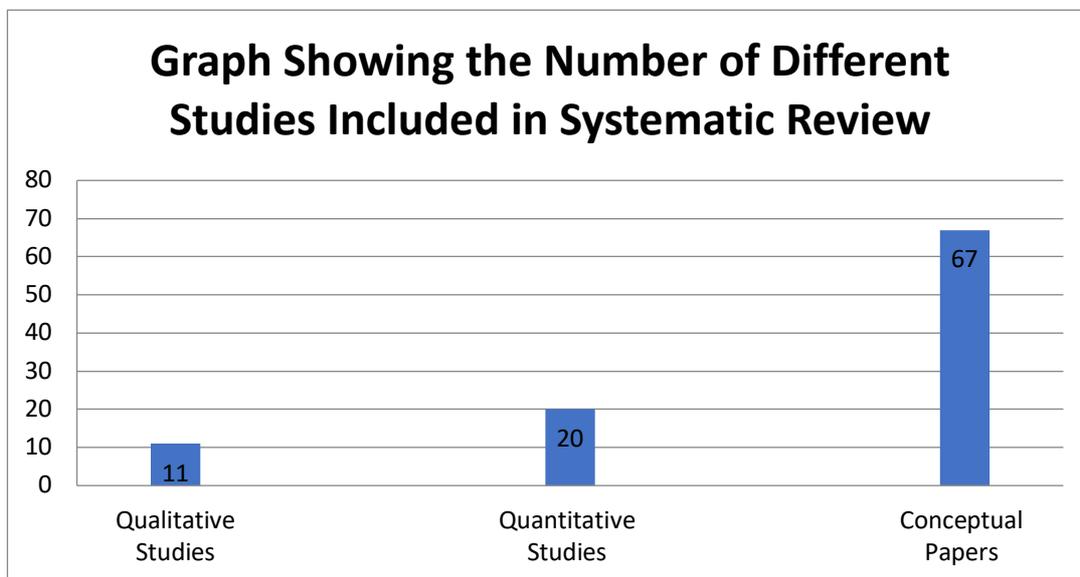


Figure 2.5 – PRISMA Flow Diagram Showing the Results of the Systematic Review Searches

Whilst this PRISMA flow diagram displays the amount of articles excluded from my review, showing the journey through the search, it does not communicate the number of articles involved that are empirical or conceptual. Thus, the below Graph shows the amount of studies included which are qualitative, quantitative and conceptual:



Graph 2.1 – Number of Studies in each Category

Looking at this simple Graph it is seen that there were significantly more conceptual papers than empirical selected for this literature review. Even though there is empirical investigation being done into CLE, there are still fewer empirical papers published than conceptual. I did find it interesting that there were this many empirical studies relevant to this research, as I was not expecting there to be. They provided a good insight into the research that is already out there and where my thesis fits into the gap in knowledge.

2.6 Searching the grey literature for context

It was also necessary to search within the grey literature. Grey literature is defined by GreyNet as:

‘...a field in library and Information science that deals with the production, distribution, and access to multiple document types produced on all levels of government, academics, business, and organization in electronic and print formats not controlled by commercial publishing i.e. where publishing is not the primary activity of the producing body.’⁷⁸

Thus, it is important to search for literature which is outside of the peer-reviewed journal article world. This literature can provide just as much insight into the field in which one is researching. There is some debate over this, however. For example, The Cochrane Handbook suggest that, ‘*Unpublished studies may be of lower methodological quality than published studies.*’⁷⁹ Whilst the Cochrane Collaboration acknowledge that peer-reviewed studies may not ensure validity of results,

⁷⁸ Grey Literature Network Services, accessed via <http://www.greynet.org/home/aboutgreynet.html>. Last cited 24.11.15.

⁷⁹ The Cochrane Collaborative, *Cochrane Handbook: Including unpublished studies in systematic reviews*, (2011). Accessed via http://handbook.cochrane.org/Chapter_10/10_3_2_including_unpublished_studies_in_systematic_reviews.htm Last cited 09.12.15

they do not completely advocate for grey literature. On the other hand, some researchers argue the need for grey literature, as peer-reviewed work which shows '*statistically significant positive results*'⁸⁰ are more likely to be published than those which do not. Thus, '*if systematic reviews are limited to published studies, they risk excluding vital evidence and yielding inaccurate results, which are likely to be biased to positive results.*'⁸¹ They may not be peer-reviewed, but it should be stated with caution that this kind of literature is frequently of lower quality than peer-reviewed articles.

I decided to use some forms of grey literature in my literature review, but not many. The primary reason for this is that you can get lost in grey literature. With more research being published in the form of blogs, newsletter and other various forums, it is virtually impossible to find it all and read it. I decided to use theses, books and some government and regulatory reports. There have been various reports relating to legal education, skills and competencies published and I knew they were important to include. The grey literature used in this literature review is not extensive but relevant and I considered it important to include.

2.6.1 Educators' intent: what do the textbooks indicate

Books have also been a great source of grey literature when determining which knowledge, skills and attributes we should, or should aim, to equip our students with for legal practice. Legal skills books are widely available, their purpose to aid students and teachers through legal skills training. As they are mainly written by legal educators I thought it useful to include what skills they are intending to teach. I decided to collate the skills mentioned as necessary to be taught from each book's content page, displayed in the following table:

⁸⁰ Blackhall, K. and Ker, K., 'Finding studies for inclusion in systematic reviews of interventions for injury prevention – the importance of grey and unpublished literature,' 2007, 13:5 Injury Prevention 359. Accessed via <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2610605/> Last cited 9.12.15.

⁸¹ *Ibid.*

Table 2.1 – Legal Skills Book and their Contents

Book	Knowledge, skills and attributes outlined
Lawyering Skills and the Legal Process ⁸²	Communication skills, teamwork, interviewing, ethics, professional conduct and values, writing skills, drafting, negotiation, advocacy.
Legal Skills ⁸³	Using legislation, using case law, legal research, writing skills, study skills, legal reasoning, essay/dissertation writing, answering problem questions, revision/examination skills, presentation skills, mooted, negotiation.
A Student Guide to Clinical Legal Education and Pro Bono ⁸⁴	Ethics and professional conduct, client funding, working with your supervisor, interviewing and advising, legal writing and drafting, practical legal research, organizing and strategizing, advocacy, presentations, reflection, assessment.
A Practical Guide to Lawyering Skills ⁸⁵	Legal writing, legal research, practical legal research, opinion writing, legal drafting, interviewing/conference (counselling)* skills, negotiation, mediation.
Lawyers' Skills ⁸⁶	Interviewing and advising, legal writing, drafting legal documents, legal research, practical problem-solving, negotiation, advocacy, managing your workload, continuing your learning.
Learning Legal Skills ⁸⁷	Precedent, interpreting statutes, facts, negotiation, advocacy, adjudication, critical skills, legal cultures and access to justice. *
Skills for Lawyers ⁸⁸	Writing and drafting, practical legal research, oral communication skills (interviewing and advising, negotiation and ADR, advocacy). *

* Some chapters were renamed for this table so it was clear what they were discussing.

I think that by looking at the contents page alone, we can see what educators are trying to teach in law schools. As the skills teaching movement has gained momentum more books are published to guide students and clinicians through the process. All of the books listed above give instructions and advice on legal writing and some kind of advocacy and presentation skills. The majority discuss some form of negotiation/ADR, interviewing and counselling and legal research. I find it interesting that some of the books cover using statutes, essay skills and assessment techniques. It demonstrates that academic skills are still covered when teaching legal skills and should not be overlooked. Some books explore professional ethics and some more personal attributes, such as managing workloads, working with your supervisor and continuing learning. There is a wide range of knowledge, skills and attributes focused on in these books, which they think important areas for students to develop. There are some skills which are very dominant in the contents pages, but it is interesting to note that attributes are not widely discussed in these textbooks. A reason could be that attributes are not developed by reading, but by experience and reflection. That is something

⁸² Maughan C and Webb J, *Lawyering Skills and the Legal Process* (Cambridge University Press, 2nd edn, 2005)

⁸³ Finch E and Fadinski S, *Legal Skills* (Oxford University Press, 5th edn, 2015)

⁸⁴ Kerrigan, K. and Murray, V., *A Student Guide to Clinical Legal Education and Pro Bono*, (Palgrave MacMillan, 2011).

⁸⁵ Boyle, F. et al, *A Practical Guide to Layering Skills* (Cavendish, 3rd edn, 2005)

⁸⁶ Webb, J. et al, *Lawyers' Skills* (OUP, 20th edn, 2015)

⁸⁷ Fox, M. and Bell, C. *Learning Legal Skills* (OUP, 3rd edn, 2007)

⁸⁸ Elkington, A., et al, *Skills for Lawyers* (College of Law Publishing, 2015/16)

which the data in this thesis will explore. Curiously some books in the table above are still very knowledge based, only covering the basic lawyering skills of negotiation and advocacy. Even though reports and legal employers are asking for more skills and attributes, discussed below, some academics are continuing to develop textbooks focused around how to use knowledge and the law.

2.6.2 Reports from the profession and regulators

Since the 1970's various governing bodies have tasked themselves with reviewing the legal profession, often focusing on legal education. The reviews of legal education and lawyer training have been informative for this work, with discussion surrounding the knowledge, skills and attributes needed to be a lawyer and when this training should be provided.

Legal education in the UK has undergone extensive reviews periodically. Not only do these reviews highlight how legal education should be conducted, but also which knowledge, skills and attributes we should be equipping our students with for the start of practice. The academic and skills divide in legal training is something which has been discussed and often criticised for over 200 years. Thomas and Mungham⁸⁹ acknowledge this criticism of the '*tradition of narrow vocational instruction*,' with example from Lord Campbell in 1846 stating that lawyers would perform their duties better had they had a more systematic legal education.⁹⁰

The ORMROD Report 1971,⁹¹ did not explicitly discuss which skills are needed for a competent lawyer to practice. It looked more at the construction of legal education and the qualifying of barristers and solicitors. This report, in some aspects, engrained the divide between academia and practical training, stating that students must complete the academic stage and the vocational course was to be a bridge between the degree and practice.⁹² The curriculum for the academic year consisted of what we now see as the core modules to complete a LLB degree,⁹³ leaving skills, such as drafting and advocacy, to the vocational stage. It also moved the vocational stage further to how we see it today: rather than the vocational stage being conducted by the Inns of Courts or the College of Law, approved Polytechnic Schools were now able to provide vocational training. This made the vocational stages accessible all over the country.

⁸⁹ Thomas, P.A. and Mungham, G.M., 'English Legal Education: A Commentary on the Ormrod Report,' 1972, 7 Valparaiso University Law Review Accessed via https://www.researchgate.net/publication/254717127_English_Legal_Education_A_Commentary_on_the_Ormrod_Report, Last cited 09.05.16.

⁹⁰ *Ibid.*, p.93

⁹¹ *Report of the Committee on Legal Education*, Cmnd. No. 4595 (1971), Hereinafter the ORMROD Report

⁹² *Education + Training... the world of Law*, 25 Education & Training 1983, p.6 - This article is extracted from Careers Encyclopedia, 10th Edition, edited by Audrey Segal, published by Cassell of London. Accessed via <http://www.emeraldinsight.com/doi/pdfplus/10.1108/eb002100>, Last cited 09/05/16.

⁹³ For example, please see <https://www.allaboutlaw.co.uk/stage/law-degree/law-degree-modules> Last cited 04.08.17

The Marre Report 1988⁹⁴ reviewed legal education, this time with more reference to skills training. This report took oral evidence from different people connected to legal services, including educational institutions. They discovered that some students had begun the vocational stage of their training with some serious inabilities, namely that of written arguments, undertaking independent legal research, lack of oral expression and insufficient knowledge of core subjects.⁹⁵ Whilst acknowledged this was a minority of students, the Committee still found it alarming. It was decided to leave the responsibility to those teaching law.⁹⁶

The knowledge, skills and attributes listed by the Marre Report were very extensive. Whilst it was an improvement on the last report, with the skills required to be taught in legal education being identified, there was still a huge separation of which skills would be taught during the academic stage and which to be taught during the vocational.⁹⁷ The skills to be taught during the academic stage remained doctrinal, with more emphasis placed on legal writing and legal research and the usual knowledge of substantial law and analysis. However, considering the need for oral communication to be improved had been highlighted, this was not a skill included in the academic stage, remaining in the vocational stage of legal training. Other skills in this stage included drafting legal documents, advising clients without legal jargon, communicating with clients effectively (such as dealing with clients who are distressed), negotiation and problem-solving skills.⁹⁸ Whilst this advanced the previous reports, there was still a divide between academia and skills training. This divide resulted in a lack of practical training where it could have been incorporated. However, the list of knowledge, skills and attributes provided was comprehensive, informing this thesis of the different lawyering skills recommended by regulating bodies.

In 1996 The Lord Chancellor's Advisory Committee on Legal Education and Conduct [ACLEC] released the First Report on Legal Education and Training.⁹⁹ This report called for training in law schools to reflect the changing legal market, in order to better prepare graduates for practice. For example, it called for students to learn other ADR skills, such as mediation, and to better develop legal research skills.¹⁰⁰ The ACLEC Report stated a '*necessarily superficial general statement*'¹⁰¹ of what legal education should achieve:

⁹⁴ A Time for Change: Report of the Committee on the Future of the Legal Profession. [Marre Report]. (1988).

⁹⁵ *Ibid.*, p.117, para 13.5

⁹⁶ *Ibid.*, p.118, para 13.9

⁹⁷ *Ibid.*, p.115, para 12.23 – this states that skills listed (1)-(9) should be taught in the academic stage and skills (10) – (24) during the vocational.

⁹⁸ *Ibid.*, pp. 113-114, para 12.21

⁹⁹ Lord Chancellor's Advisory Committee on Legal Education and Conduct, *First Report on Legal Education and Training*, (1996) Hereinafter the ACLEC Report.

¹⁰⁰ *Ibid.*, p.16

¹⁰¹ *Ibid.*, pp.20-21

- ‘Intellectual integrity and independence of mind’ – being able to think critically for oneself, be reflective, committed to truthfulness, open-minded, able to formulate and evaluate alternative possibilities and give reasons for doing so. This would all be developed at degree level
- ‘Core Knowledge’ – knowledge of principles and the development of law and analytical skills, developed through degree level
- ‘Contextual knowledge’ – appreciation of the law’s social, economic, political, philosophical, moral and cultural contexts, at degree level, legal or not
- ‘Legal values’ – commitment to the rule of law, justice, fairness and ethical standards, improving professional skills, promote equality and opportunity and ensuring adequate legal services are provided to those who could not otherwise afford them. It is stated that these are *‘acquired not only throughout the legal education process but also over time through socialisation within the legal profession’*
- ‘Professional skills’ – learning to act like a lawyer, how to conduct oneself in practice and carrying out those forms of practice. To be acquired through vocational courses and whilst in practice, *‘normally’*.¹⁰²

Whilst this is not a set list of skills and competencies, and very open to interpretation, it did further the work of the ORMROD Report. ACLEC acknowledged that the ORMROD Report made a stark distinction between the academic and vocational stage, but noted that since more institutions have started to provide the vocational stage of legal education, specifically referencing Northumbria University as the first and, at that time, only institution to provide the Exempting Law Degree, this distinction began to lessen.¹⁰³ ACLEC provided some alternatives to the then structure of academic and vocational training, one being integrated legal training. It was acknowledged that other professional disciplines, such as medicine, do not distinguish between education and training, with *‘professional skills and values...studied within a substantive and transactional context.’*¹⁰⁴ They applaud Northumbria for this integration, which *‘allows for progressive learning of analytical and conceptual understanding of both substantive law and procedure, and the acquisition of basic professional skills and values.’*¹⁰⁵ The other recommendations were postgraduate professional education and training and apprenticeships. Whilst it is pleasing that Northumbria University is so

¹⁰² *Ibid.*, p.21

¹⁰³ *Ibid.*, p.26

¹⁰⁴ *Ibid.*, p.29

¹⁰⁵ *Ibid.*, pp. 29-30

appreciated for its degree design, this thesis will explore the data collected to analyse if what work we do is working in practice.

Although I am focusing on UK and European legal education, there is need to draw on the US experience, which can be useful and insightful. Much of the US literature regarding skills training is focused around, and at least makes reference to, the MacCrate Report.¹⁰⁶ Chapter 5 Part B¹⁰⁷ of this Report gives an overview of skills and values in legal education, extensively listing the fundamental lawyer skills and values, which '*new members of the profession should seek to acquire*,'¹⁰⁸ or have before they have '*ultimate responsibility for a client*.'¹⁰⁹ This report lists the fundamental skills of lawyering is as follows:

- 1) 'Problem solving
- 2) Legal analysis and reasoning
- 3) Legal research
- 4) Factual investigation
- 5) Communication
- 6) Counselling
- 7) Negotiation
- 8) Litigation and alternative dispute-resolution procedures
- 9) Organization and management of legal work
- 10) Recognizing and resolving ethical dilemmas.'¹¹⁰

Interestingly, the obvious lawyer skills of reasoning and analysis are included in the list, but it goes further than this and calls for many more practical skills, usually learnt whilst practising. For example, it would be difficult to teach management of legal work, without having to actual manage a workload. There is extensive commentary accompanying this section, explaining the skills in more detail and what is expected to be acquired upon entry to practice.¹¹¹

¹⁰⁶ ABA Section of Legal Education and Admissions to the Bar, *Legal Education and Professional Development – An Educational Continuum* (Report of the Task Force on Law Schools and the Profession: Narrowing the Gap) (1992). Hereinafter the MacCrate Report.

¹⁰⁷ *Ibid.*, pp.138-221.

¹⁰⁸ *Ibid.* p. 242

¹⁰⁹ *Ibid.* p. 125

¹¹⁰ *Ibid.* pp. 138-140.

¹¹¹ *Ibid.*, pp. 141-207

The Best Practices Report¹¹² was another influential Report in the US for law schools. This report asked educators to better prepare students for practice and to expand educational objectives.¹¹³ They set goals for law schools, including to develop competence and to assist students in acquiring the knowledge, skills and attributes needed for competent practice.¹¹⁴ This report also contains a section devoted to LCCs. It is stated in this section that it is *'impossible to describe fully what a student might learn by participating as a lawyer in the representation of real clients.'*¹¹⁵ This is true as LCCs do vary and develop different skills. However, I think that all LCCs can develop all of the basic skills as long as there is adequate supervision and feedback, something explored further throughout this Chapter and thesis. Furthermore, they develop more than skills as, *'Students participating as lawyers also test their intellectual and analytical skills, and they learn how well they are able to apply practical judgment to the situations they encounter.'*¹¹⁶ It is interesting how when the reports discuss legal education, the recommended method of teaching them is through the supervised representation of live clients in LCCs.

The Carnegie Report¹¹⁷ is widely discussed in the conceptual and empirical papers included in this Chapter. This report advises that, *'Educational experiences orientated toward preparation for practice can provide students with a much-needed bridge between the formal skills of legal analysis and the more fluid expertise needed in much professional work.'*¹¹⁸ They also state that, whilst law schools cannot completely develop professional judgment, they can give students a solid foundation and guidance of what it is they will need for practice.¹¹⁹ From their field visits to various law schools they noted that LCCs can *'be a key setting for integrating all the elements of legal education, as students draw on and develop their doctrinal reasoning, lawyering skills, and ethical engagement.'*¹²⁰ It is interesting how the Carnegie Report has drawn from the MacCrate Report and Best Practices, to advocate even further for the inclusion of LCCs and a more integrated curriculum which aims to prepare students for the practical elements of practice.

The majority of the skills go beyond what would traditionally be taught in legal education. For example, problem solving for the client includes thinking of which course of action the client will

¹¹² Stuckey, R. et al, *Best Practices for Legal Education: A vision and a Road Map*, (The Clinical Legal Education Association, 2007, US). Accessed via http://www.cleaweb.org/Resources/Documents/best_practices-full.pdf
Last cited 14.08.16

¹¹³ *Ibid.*, p.5

¹¹⁴ *Ibid.*, p.6

¹¹⁵ *Ibid.*, p.139

¹¹⁶ *Ibid.*, p.141

¹¹⁷ Sullivan, W.M., Colby, A., Wegner, J.W., Bond, L., Shulman, L.S., *Education Lawyers: Preparation for the Profession of Law*, The Carnegie Foundation for the Advancement of Teaching, Preparation for Practice Program, (Jossey-Bass, California, 2007)

¹¹⁸ *Ibid.*, p.88

¹¹⁹ *Ibid.*, p.115

¹²⁰ *Ibid.*, p.121

consider possible, the time frame in which unknown information will become known and developing plans which will be open to new information.¹²¹ Communication skills includes both oral and written communication, and involves communication designed for persuasiveness, advice, elicit information and to establish legal obligations.¹²² Graduates, as new practitioners, should be able to decide what should be included and excluded from the communication and organising and presenting the communication effectively.¹²³

Some of the skills listed and discussed are very precise and only gained through working with live clients. It would be very difficult to be able to anticipate difficulties which may arise, as well as a constant understanding of ethical and professional rules,¹²⁴ if you had never had any practical experience prior. Due to this, the literature surrounding the reports and CLE has expanded greatly, academics attempting to decide the best way to implement these changes, which will be discussed further below in the quality synthesis.

A report from Australia, *A discipline assessment for the Commonwealth Tertiary Education Commission*,¹²⁵ was also sourced and added to the grey literature study. This report is slightly different, when compared with others mentioned in this Chapter, as the Pearce Report acknowledged the lack of empirical data in this area and sought to provide some. Not only did it analyse the then current methods of teaching in legal education, it also conducted a survey of recent graduates. This survey was not unlike those found in the quantitative studies, synthesised and discussed below, asking graduates to indicate the knowledge, skills and attributes important to their legal work and the role law school had in developing them.¹²⁶ The survey was distributed to graduates from years 1979-83 to all law schools excluding Queensland, Tasmania and QIT (now QUT). The conclusions drawn from the survey were that, whilst law schools had done a great job of preparing graduates and developing their knowledge in substantive law, there were gaps in developing the more practical knowledge, skills and attributes. I have summarised the Pearce Report findings in the following table:¹²⁷

¹²¹ *Ibid.*, pp. 142-148

¹²² *Ibid.*, p. 172

¹²³ *Ibid.*, pp. 173-175

¹²⁴ *Ibid.*, p. 184

¹²⁵ Pearce, D., Campbell, E., and Harding, D., *Australian Law Schools: A discipline assessment for the Commonwealth Tertiary Education Commission*, (1987) Hereinafter the Pearce Report.

¹²⁶ *Ibid.*, Chapter 4, pp.34-36.

¹²⁷ *Ibid.*, p.35 – the results of the survey were listed, rather than displayed in a table. The table I have created presents the results in a slight different way, whilst maintaining the original data and results.

Table 2.2 – Results from the Survey Conducted in the Pearce Report

Skill/knowledge	Percentage who said law school <i>have responsibility to teach</i> skills/knowledge	Percentage who said law school had <i>actually contributed</i> to this skill/knowledge
Knowledge of legal practice and procedure	79%	28%
Drafting of legal documents	78%	18%
Oral argument/exposition	77%	24%
Knowledge of Professional/ethical standards	73%	34%
Writing clearly and effectively	70%	38%
Knowledge of understanding of policy underlying the law	82%	57%
Knowledge of understanding of the social context of law	70%	40%
Giving practical advice	59%	10%
Negotiation	49%	5%
Mediation	49%	5%
Knowledge about government/community agencies	46%	9%
Knowledge of accounting and business procedures	43%	10%
Making judgments about one's professional role	43%	11%
Understanding the need and viewpoints of people	43%	12%

Looking at the results of the survey displayed in this table, it is clear to see that whilst many graduates felt as though law school could have taught these particular skills, they actually played little contribution in the developments of them. I feel as though this survey did not cover the wide range of knowledge, skills and attributes that a competent lawyer needs to practise, but it is consistent in the findings of the quantitative studies, discussed later in this Chapter. The report acknowledges that, at this time, there was a need for more emphasis on skills training and, where resources permitted,¹²⁸ the development of clinical education was desired.¹²⁹ Since the publication of this report, there has been an increase in the amount of schools providing CLE and LCCs specifically.¹³⁰ However, there is little empirical data to evidence whether the impact of CLE/LCCs has advanced the results presented above and if graduates now feel more prepared for practice.

¹²⁸ *Ibid.*, p. 27

¹²⁹ *Ibid.*, p. 31

¹³⁰ For more information please see, Giddings J, 'Clinical Legal Education in Australia: A Historical Perspective,' 2003, 3 *International Journal of Clinical Legal Education* 7

The Canadian Bar Association (CBA) released their report on legal services in 2014, which also focused on legal education.¹³¹ They agreed that the best model of legal education was to ‘*integrate the teaching of knowledge with related skills.*’¹³² This report does not necessarily discuss all of the skills they would like students to have upon graduation, but it does discuss some which in-house counsel would like them to have when they start practising. This includes business management and development, cultural competence, emotional intelligence and excellent communication skills. It also highlights that young lawyers need practical experience, ranging from court appearances, working with clients and networking.¹³³ This led to a recommendation of providing ‘*more opportunities for students to gain experience in legal clinics.*’¹³⁴ Whilst the skills are not as explicitly stated as in other reports, it is easy to see which skills are wanted in Canada and which category they can fall into. For example, emotional intelligence can include empathy, listening skills, patience, etc. By stating that there should be more opportunities for students to participate in LCCs affirms the ideologies that these knowledge, skills and attributes can only be developed through practical experiences, preferably with a live client.

I was sent a report, the result of research conducted at Osgoode Hall Law School, which collates certain Canadian reports.¹³⁵ Osgoode Hall acknowledge that the reports analysed generally call for legal education to provide students with these ‘*key skills*’:

- ‘The ability to employ an expansive user-centered vision of access to justice
- An entrepreneurial spirit
- Technological proficiency
- Strong emotional intelligence
- Knowledge of how to design services that are more flexible, versatile, efficient and cost-effective. In short, services that are designed for the user.’¹³⁶

By identifying the skills contained within the report, Osgoode Hall Law School have designed a curriculum around them, allowing students to develop the skills necessary for the modern legal

¹³¹ CBA Legal Futures Initiative, *Futures: Transforming the Delivery of Legal Services in Canada* (2014) – Chapter 7 discuss legal education. Accessed via http://www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20Futures%20PDFS/Futures-Final-eng.pdf Last cited 16.06.16

¹³² *Ibid.*, p. 59

¹³³ *Ibid.*, p. 59

¹³⁴ *Ibid.*, p. 60

¹³⁵ The reports included are the *Futures Report*, The Action Committee on Access to Justice in Civil and Family

Matters, *Access to Civil & Family Justice: A Roadmap for Change*. (Ottawa: Action Committee on Access to Justice in Civil and Family Matters, 2013) and The Canadian Bar Association and Jordan Furlong. *Do Law Differently: Futures for Young Lawyers*. (Ottawa: Canadian Bar Association, (Ottawa, 2016).

¹³⁶ Winkler Institute for Dispute Resolution, *Justice, Innovation and Access to Justice Reform: Report*, 2016, p.4

world.

The extensive detail of what is required of a competent lawyer has been replicated in the Legal Education and Training Review Report (LETR).¹³⁷ It was undertaken jointly by the Solicitors Regulation Authority (SRA), the Bar Standards Board (BSB) and ILEX Professional Standards, outlining that is the first extensive review of legal training since ORMROD. Within this report they focus on ‘*competencies and standards, which prescribe outcomes and processes of learning.*’¹³⁸ From their research they discovered some skills and knowledge gaps in current legal education, and sought to fill them with a non-exhaustive list of their own, compiled after discussion with various members of the legal profession and academics. Splitting the skills into various dimensions, they were compiled neatly into the following table:¹³⁹

DIMENSION	ATTRIBUTE
COGNITIVE	<ul style="list-style-type: none"> Core knowledge Basic communication skills Information management Abstract problem-solving Applying knowledge to real world situations Using tacit knowledge and personal knowledge Self-directed acquisition of new knowledge Recognising gaps in knowledge Generating questions Using resources and digital literacy Learning from experience
INTEGRATIVE	<ul style="list-style-type: none"> Using legal reasoning strategies appropriately Linking legal knowledge and operational understanding of problems Managing uncertainty
CONTEXT	<ul style="list-style-type: none"> Understanding the professional work setting and professional work Office skills Efficiency
RELATIONSHIP	<ul style="list-style-type: none"> Interpersonal communication skills Handling conflict Teamwork and collaboration Supervision
AFFECTIVE/MORAL	<ul style="list-style-type: none"> Integrity Independence Emotional intelligence Respect for Clients Resilience Empathy Social Responsibility
HABITS OF MIND	<ul style="list-style-type: none"> Attention to detail Awareness of limits of own competence Reflection on one’s own abilities, thinking, emotions and techniques Willingness to acknowledge and correct errors

Figure 2.6 – LETR Report Dimensions of Knowledge, Skills and Attributes Needed for Practice

¹³⁷ Webb, J., et al., *Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales (The Legal Education and Training Review (LETR) (2013))*. Available at: <http://letr.org.uk/the-report/index.html> Last cited 04.08.17

¹³⁸*Ibid.*, p. 118.

¹³⁹*Ibid.*, p. 140.

This table outlines, very simply, the LETR's dimension of legal competency. Communication skills was an area where the LETR discovered gaps in learning. Students are not equipped with generic writing skills, nor are they developing their skills through writing to different audiences.¹⁴⁰ This also included issues with drafting legal documents and the discrepancies between the standards and styles on the Legal Practice Course (LPC) and the Bar Professional Training Course (BPTC). With regard to oral skills, *'providers and employers were largely in favour of the development of oral communication skills at the undergraduate level.'*¹⁴¹

Within the relationship dimension they emphasise the need for effective interpersonal communication skills and the ability to work with difficult clients. This interpersonal relationship also includes the ability of teamwork and collaboration.¹⁴² These areas of competencies are ones which may be developed and expanded during an undergraduate degree, continuing to the vocational stage, with the aid of LCCs.

The dimension of legal competency outlined by the LETR is separate from the SRA's competency statement. This statement outlines the knowledge which a solicitor should have acquired upon qualification, including both substantial and procedural knowledge.¹⁴³ The part of the statement, which includes skills, is separated into 4 sections: 1) Ethics, professionalism and judgement, 2) technical legal practice, 3) Working with other people, 4) managing themselves and their own work.¹⁴⁴ The skills included range from analysis, communication skills, legal research, drafting, advocacy, negotiation and time management. These skills are very similar to those suggested in the various reports, showing how regulators and legal employers also have a similar vested interest in legal education.

The BSB have now also created a Professional Statement for Barristers.¹⁴⁵ This is obviously aimed at barristers specifically, but some conclusions as to what skills are important for that start of practice can be drawn from them, as they are also aimed at informing legal educators. As an overview, the BSB have split their Professional Statement into 4 dimensions: barristers' distinctive characteristics, personal values and standards, working with others and management of practice.¹⁴⁶ The knowledge, skills and attributes are contained within the barristers' distinctive characteristics.

¹⁴⁰ *Ibid.*, p. 134.

¹⁴¹ *Ibid.*, p. 135.

¹⁴² *Ibid.*, p. 136.

¹⁴³ Please see <https://www.sra.org.uk/solicitors/competence-statement/statement-legal-knowledge.page>
Last cited 14.08.16

¹⁴⁴ Please see, <https://www.sra.org.uk/solicitors/competence-statement.page>

¹⁴⁵ Bar Standards Board, *Professional Statement for Barristers: Incorporating Threshold Standard and Competencies*, 2016. Accessed via https://www.barstandardsboard.org.uk/media/1787559/bsb_professional_statement_and_competences_2016.pdf Last cited 04.08.17

¹⁴⁶ *Ibid.*, p.2

It includes having knowledge of public and private law, legal procedures, analytical and evaluative skills, providing advice in writing and orally and the ability to negotiate. The more practical skills provided surround good communication skills, ensuring full preparation and effective research skills.

The Professional Statements provided by the BSB and the SRA outline the which are found in other reports of a similar nature. They aim to ensure that barristers and solicitors are covering a wide scope of competencies, stating that these can be used for aspiring law students to shape their legal education.

All of the reports, whilst presented in various forms and going into different amounts of depth, have provided insight for this work. Looking at what knowledge, skills and attributes the various governing bodies require has allowed me to explore which of these are developed in LCCs and whether students are equipped with them for practice.

Finally, the growth of LCCs has influenced the Clinical Legal Education Organisation (CELO) to produce a Model Standards for Live-Client Clinics.¹⁴⁷In this document CLEO state:

'The broad aims of live client clinics are to develop and enhance the students' learning experience and understanding of:

- 1.1 the substantive law and legal process
- 1.2 professional responsibility and ethics
- 1.3 legal and transferrable skills
- 1.4 the role of law and justice in society.'¹⁴⁸

It can be seen from a CLE organisation that the aims of LCCs are broad, but wish to impart all areas of practice to students. This is not just substantive law and skills, but also professional responsibility and a sense of social justice.

It is interesting to note the development of legal education through these various reports. When legal education was first reviewed there was still a great divide between the academic and vocational stage of training, each with its own clear goal. More recently, there is a call for more skills training in legal education and providing our students with some, if not all, of the competencies needed for practice. This could be due to pressures faced in the legal market, causing

¹⁴⁷Clinical Legal Education Organisation, Model standards for live-client clinics, 2007. Accessed via <http://ials.sas.ac.uk/library/archives/ukcle/78.158.56.101/archive/law/resources/teaching-and-learning-practices/grantham2/..%5Cclinical-legal-education%5Cindex.html> Last cited 14.08.16.

¹⁴⁸ *Ibid.*, p.4

law firms to have less time and resources to invest in new trainees and clients wanting more experienced lawyers working on their cases. It could also be that students are calling for more preparation for the practice of law, unsatisfied with the traditional legal education outcomes. This is explored further in the synthesis of the qualitative and quantitative literature, with helpful comments from the conceptual literature. Nevertheless, these various reports, from across the globe, have helped to show the development of legal education requirements and what is now seen as a necessity for law schools to provide. I sometimes feel that this begs the question of what more can we be doing and can we fully prepare students for the realities of practice?¹⁴⁹

2.7 What do employers say they want?

The synthesis of the quantitative studies is discussed in detail after the conceptual papers. However, it felt important to include the quantitative studies of what legal employers want of their graduates here, following the governing bodies and reports as another stakeholder in legal education, highlighting their interests. By placing these studies here, it will outline not only what legal education frameworks want to result from education, but also legal employers, before discussing how legal education is trying to respond to these concerns.

There were two theses identified as relevant to this research. One is included here and one in the qualitative synthesis. De Groot completed his thesis in 1993, University of Queensland.¹⁵⁰ This thesis, influenced by the ORMROD Report¹⁵¹ discussed previously, aimed to evaluate whether articles¹⁵² or the LPC is the better approach to produce competent lawyers. Both of these methods include learning by doing, but the LPC is generally seen as more structured, with less traditional lectures and more opportunities for students to participate in simulations and chances to participate in LCCs.¹⁵³ De Groot's methods consisted of distributing a survey to various members of the Queensland legal profession. Below is displayed his results of the highest scoring

¹⁴⁹ Dunn, R.A., *What More do you Want?! A Systematic Review of the Literature Surrounding Knowledge, Skills and Attributes in Clinical Legal Education: What Regulators and Governing Bodies Asked Universities to do and How we Have Responded*, European Conference on Education Research, Emerging Researchers Conference, August 2017, Copenhagen. It can also be seen in the synthesis of conceptual papers that some argue that we cannot.

¹⁵⁰ de Groot, J.K., *Producing a Competent Lawyer: A Study of Alternative Approaches to a Stage in the Process*, PhD Thesis, 1993

¹⁵¹ Thomas, P.A. and Mungham, G.M., *English Legal Education: A Commentary on the Ormrod Report*, 7 Valparaiso University Law Review (1972). Accessed via <https://www.researchgate.net/publication/254717127> English Legal Education A Commentary on the Ormrod Report Last cited 09/05/16.

¹⁵² Articles, in the UK, are the old name for training contracts, whereby trainee solicitors work under the supervision of a solicitor in a law firm before they became fully qualified.

¹⁵³ de Groot, J.K., *Producing a Competent Lawyer: A Study of Alternative Approaches to a Stage in the Process*, PhD Thesis, 1993, p.76

characteristics¹⁵⁴ according to his participants:

Table 7.2
The 10 highest scoring characteristics in the survey of key members of the Queensland legal profession

Characteristic	Ranking	Score	% Important	% Very Important	% Vital
Knowledge of the substantive law	1	125	10.6	16.7	48.5
A professional attitude to the practice of law (ethical, reliable, discreet etc.)	2	104	4.5	16.7	37.9
Ability to identify the legal issues raised by a fact situation	3	82	4.5	25.8	22.7
Committed to timely communications with his/her client (ie regularly reporting to client on the progress of the matter, promptly returning telephone calls from client, etc)	4	78	7.6	21.2	22.7
Knowledge of legal practice and procedure	5	76	6.1	27.3	18.2
Ability to give clients practical advice	6	71	7.6	18.2	21.2
Knowledge of professional or ethical standards	7	62	3.0	18.2	18.2
Commitment to staying up to date in the law and legal practice generally	8	59	4.5	10.6	21.2
Concern/care for well-being of clients	9	55	1.5	9.1	21.2
Diligent and persevering in his/her work (ie properly prepares and carries through the matter undertaken)	10	48	1.5	10.7	16.7

Figure 2.7 – Results of the High Scoring Characteristics, taken from de Groot’s Study

When asking those in articles what were the contributing factors to lawyer competency, this is what de Groot found:

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Table 10.1
Competency acquisition matrix for AC subjects

Contributing factors considered “very important”
shown as % of AC subjects so indicating

Competency Characteristic	LLB Study	Supervisor	Colleague	Experience	In-house CLE	External CLE
Knowledge of Legal Practice and Procedure	16	71	43	83	7	7
Knowledge of Substantive Law	58	31	19	47	11	13
Attention to Professional ‘Housekeeping’ Matters	0	60	36	83	7	2
Enthusiasm for/Dedication to ‘the Law’	10	29	21	38	2	2
Client Oriented	0	54	34	68	7	4
Fact Gathering/Analysis Ability	46	33	28	68	2	2
Orientation to Practical Solutions to Clients’ Problems	2	67	47	81	2	2
Proficiency in the Professional/Ethical Dimensions of Legal Practice	13	46	28	47	2	2

Figure 2.8 – Results of the Contributing Factors to Lawyer Competency, taken from de Groot’s Study

¹⁵⁴ *Ibid.*, p.98.

His conclusions were that general experience in practice, '*appears to be the dominant contributing factor*', with CLE not seen as a significant contributing factor.¹⁵⁵ There were similar conclusions drawn from those on the LPC. It is interesting that at this time CLE was not seen as a significant factor to lawyer competency, and that general experience contributed so greatly. With regard to the overall aim of this thesis, there was no conclusion reached from the data whether articles or a LPC are a better method of legal training. The LPC did produce a more even result, but not so significantly to draw strong conclusions.¹⁵⁶ Furthermore, looking at the table above it seems that legal employers are of the opinion that they are the providers of practical legal training, developing graduates where law school has not. Whilst law school is reported as efficient at providing knowledge of substantive law and fact gathering, it appears to be lacking in other areas which are then enhanced when practising.

From the studies conducted by Bright and Chew and Guest Pryal, discussed in more detail below, it is seen that employers are increasingly asking for and expecting new lawyers to be equipped with certain skills and attributes. They want graduates who have more interpersonal skills, able to adapt to different situations and relate to people on a professional level, which is reflective of reports such as LETR and the Canadian Reports. However, it seems as though these "softer" skills are not the ones which have been given much attention in law schools.

The following table shows the synthesis of the two studies which explored which knowledge, skills and attributes employers expected law students to develop during their education. Both studies are post-1990, but are 14 years apart in reporting.

¹⁵⁵ Ibid., p.148

¹⁵⁶ Ibid., p.162

Tables 2.3 – Synthesis of Bright,¹⁵⁷ Chew and Guest Pryal¹⁵⁸

Study	Which knowledge, skills and attributes legal employers expect law students to develop in law school	Percentage of legal employers who expect them to be developed
Bright, S. 1991 Chew, A.Z. And Guest Pryal, K.R. 2015	<i>Knowledge</i>	None listed
	<i>Skills</i> Legal research skills Written/drafting skills Oral communication/advocacy skills Negotiation skills Mean for skills	 84.0 77.3 47.5 40.0 62.2
	<i>Attributes</i> Listen well Follow directions Problem solving Accept criticism and change behaviour Work collaboratively with supervisors Work independently Work collaboratively with peers Teach themselves unfamiliar tasks Teach themselves unfamiliar areas of law Time management skills Engage empathetically with clients Generate new business Mean for attributes (outlier excluded)	 95.0 95.0 93.0 93.0 91.0 91.0 86.0 76.0 73.0 69.0 68.0 15.0 78.75 (84.5)

Extremely surprisingly, there are no knowledge bases included in this synthesis. They were obviously not included in either study, which could indicate a variety of reasons. Perhaps they wanted to focus more on skills and attributes. It could be that it was seen as not needed to test for knowledge bases, as law schools are known to be adequate at teaching legal knowledge, which was acknowledged in the various reports. If legal employers know to expect new employees to start practice with legal knowledge, as it is the core of legal education, then that is not what we need to explore. Whatever the reason, which is not explicitly explained in the studies, it is interesting that

¹⁵⁷ Bright, S., 'What, and How, Should We Be Teaching,' 1991, 25 Law Teacher 11

¹⁵⁸ Chew, A.Z. and Guest Pryal, K.R., 'Bridging the Gap between Law School and Law Practice,' 2015, SSRN Accessed via http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2288714 Last cited 26.08.16

there is no discussion of knowledge bases here.

The skills listed show how legal research and writing are heavily wanted by legal employers. I did find it surprising that oral communication did not score as highly, but when put with advocacy it makes more sense, as not many employers expect advocacy to be well developed before practice. Other studies show that advocacy is not used by all lawyers and not always desired by legal employers, as will be discussed below. The attributes listed again show how the focus of legal practice is shifting. If we exclude the outlier in attributes, generating new business, we can see that the mean for attributes is significantly higher than skills. Legal employers want to hire graduates who can work independently and within a team, who can organise their work flow and engage with their clients. Furthermore, it seems as though they want graduates who are able to develop and progress, asking for them to change behaviour where necessary and to follow directions. Law firms seem to want to invest more in lawyers who have the desired personalities to succeed in the legal world, now with higher expectations of skills and attributes. This is also reflected in the reports discussed above, with a shift in various legal bodies asking for these attributes to be developed during legal education.

2.8 Discussion of conceptual papers

The conceptual papers I found varied greatly, but mostly shared the ideas of CLE and curricular outcomes. Some papers were very descriptive, of how LCCs had been established with some benefits of them mentioned. Others went into theoretical detail of how this learning can provide students with the skills needed to practice competently. Others advocated that CLE is not the way to make our students “practice-ready” and that this is not even a possibility. One similarity drawn from the conceptual synthesis is that the skills identified in the grey literature, particularly in the various reports discussed below, are not as easy to completely put into practice. I found that the papers which only discussed the benefits of CLE, especially LCCs, but did not consider other possibilities or any empirical data, actually scored quite low at the quality appraisal stage. Sufficient weight was attached to the papers to reflect this. The results of the quality appraisal for the conceptual papers is displayed below:

Table 2.4 – Quality Appraisal Scores for Conceptual Papers

Low score (0-12)	Medium score (13-24)	High score (25-36)
5	39	23

The analysis and synthesis of the conceptual papers did inform this thesis more theoretically than empirically. It seems as though, whilst the empirical papers were informed implicitly by theory on

the whole, it was only the conceptual papers which discussed theoretical concepts in great detail. The papers which discussed theory heavily were not included in the synthesis below, but left to the conceptual framework discussion,¹⁵⁹ as I felt they were better suited for that Chapter. In order to organise and explore the relationships within the conceptual papers I made a concept map. This uses a diagram to visually show the themes and relationships presented in the conceptual papers.¹⁶⁰ In order to map the different papers included I decided to group or cluster the papers,¹⁶¹ to see the common themes and the relationships between them. The below figure displays this concept mapping, which will be used to aid the discussion of these papers.

Most of the concepts which branch off from the themes do not need further elaboration or explanation and speak for themselves in *Figure 2.9*. For example, we know as educators it is important to have a balance between doctrinal law and skills teaching. However, I felt some concepts called for more discussion, as the arguments surrounding them could not be easily displayed above. The theme of reports is further away from the centre and purple in colour. I did this because the reports based papers do not completely sit within the conceptual map. Whilst they feed into our curriculum design and which methods we choose to teach the curriculum, they do not discuss LCCs in the same kind of detail. I included the papers in the concept map as some papers drew heavily on the reports and they have influenced what academics discuss within the literature. However, the arrows represent how the reports dictate our curriculum and why we chose certain methods of teaching. It is a continuous cycle. I have separated their discussion into three different sections: whether we use simulations, externships or LCCs (blue arrows), the arguments against LCCs (red arrows) and what is missing from the reports and how do we as educators attempt to provide what is missing (green arrows). I will be referring to these relationships throughout the discussion below.

¹⁵⁹ Please see Chapter Three. 14 papers were left to this Chapter, whilst some included below were also used in the conceptual framework.

¹⁶⁰ Popay, J, *et al.*, *Guidance on the conduct of narrative synthesis in systematic reviews: A product from the ESRC Methods Programme* (2006), p. 20. Accessed via https://www.researchgate.net/profile/Mark_Rodgers4/publication/233866356_Guidance_on_the_conduct_of_narrative_synthesis_in_systematic_reviews_A_product_from_the_ESRC_Methods_Programme/links/02e7e5231e8f3a6183000000/Guidance-on-the-conduct-of-narrative-synthesis-in-systematic-reviews-A-product-from-the-ESRC-Methods-Programme.pdf Last cited 04.08.17.

¹⁶¹ *Ibid.*, p. 27

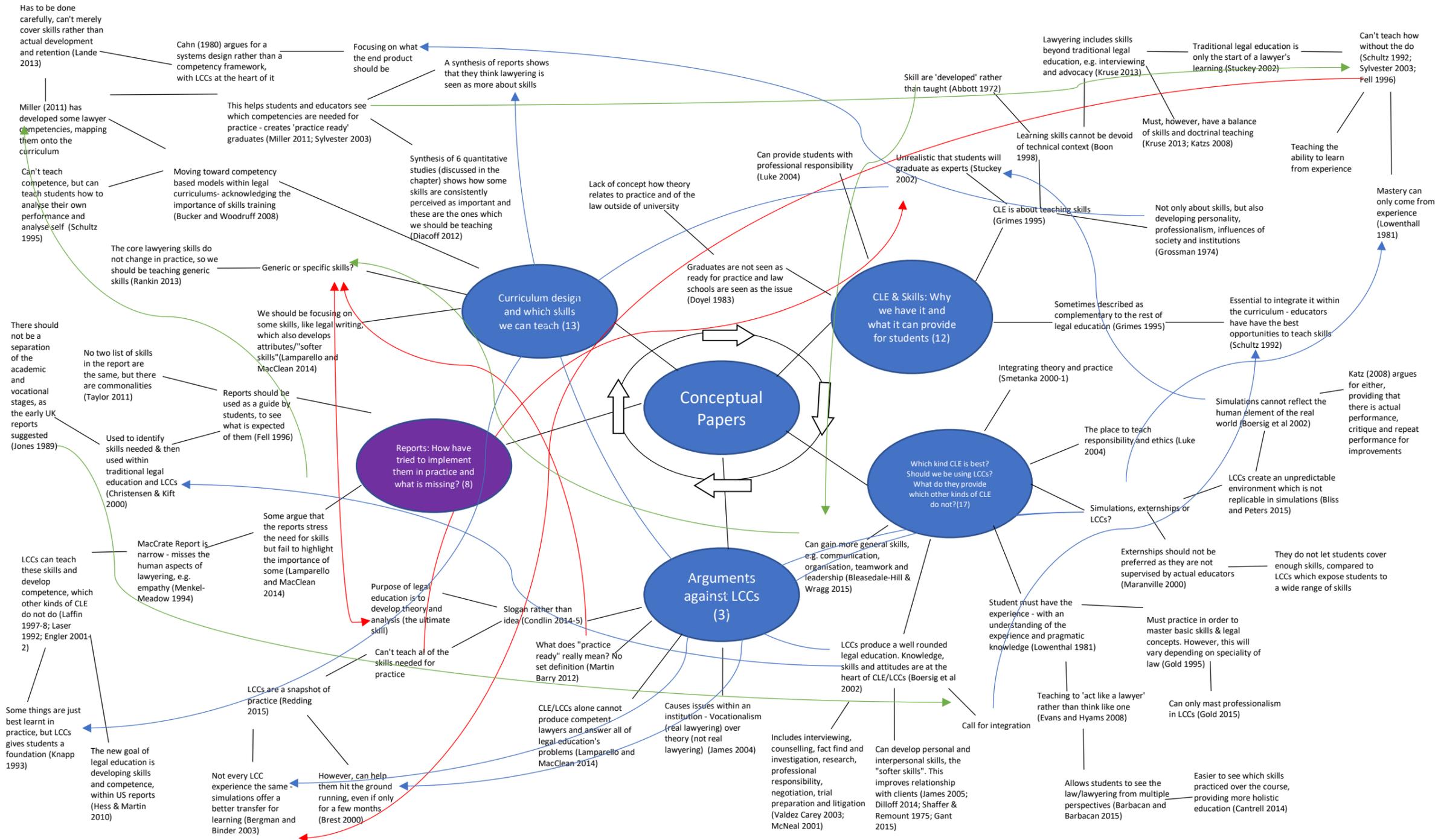


Figure 2.9 – Mapping of Conceptual Papers

2.8.1 Simulations, externships or LCCs?

There has long been debate surrounding which kind of CLE is the most appropriate to give students the introduction and preparation for practice which they need. There are many different reasons why institutions prefer one method over another. For example, LCCs can be very expensive to run and sustain, which may not be possible for some law schools to achieve.¹⁶² CLE generally is a method to teach students how to put what they have learnt in the classroom into practice, whether that be with a live client or not.¹⁶³ Lowenthal states that '*knowledge, skill and desire to perform effectively are essential ingredients of effective lawyering,*' and that students learn this from experience, with an understanding between the experience and pragmatic knowledge.¹⁶⁴ By integrating theory and practice we provide a more holistic legal education which is better than '*either experience by itself.*'¹⁶⁵ Thus, surely any kind of CLE experience is useful and preparing our students for practice? According to some academics, perhaps not.

Some argue against the use of externships. Whilst students are immersed within the real world of law this is not always the recipe for a good educational experience. What students will cover during an externship can vary greatly. They generally will not be allowed to actually interview a client themselves, but may be asked to conduct legal research and to draft some documents. It is not likely that they will have the opportunity to cover most of the skills they will need when practising. Furthermore, they may not be receiving the most effective teaching, as lawyers are not always educators who are experienced in imparting knowledge to law students. The level of supervision and feedback is not always consistent.¹⁶⁶ This may create disjointed learning for students and not the educational experience needed to transfer their learning for when they start practising.

Binder and Berman argue that simulations should be the preferred method, as they often repeat the same skills, in order for students to transfer the learning into other contexts.¹⁶⁷ LCCs may not be the best method to do this, as students do not always have a repeat of certain experiences¹⁶⁸ in different contexts, which does not foster a transfer for learning.¹⁶⁹ However, simulations cannot

¹⁶² Grimes, R. and Smith, C., 'Reviewing Legal Education - What do we Want from our Future Lawyers and How do we Get it?' 2007, *Delhi Law Review* 1, pp.25-26

¹⁶³ Smetanka, S.L., 'The Multi-State Performance Test: A Measure of Law Schools' Competence to Prepare Lawyers,' 2000-2001, 62 *University of Pittsburgh Law Review*, p.761

¹⁶⁴ Lowenthal, G.T., 'Theoretical Notes on Lawyer Competency and an Overview of the Phoenix Criminal Lawyers Study,' 1981, *Arizona State Law Journal* 451, pp.457-460

¹⁶⁵ Smetanka, S.L., 'The Multi-State Performance Test: A Measure of Law Schools' Competence to Prepare Lawyers,' 2000-2001, 62 *University of Pittsburgh Law Review*, p.761, p. 763

¹⁶⁶ Maranville, D.A., 'Passion, Context, and Lawyering Skills: Choosing among Simulated and Real Clinical Experiences,' 2000, 7 *Clinical Law Review* 123, p.142

¹⁶⁷ Binder, D.A. and Berman, P.B., 'Taking Lawyering Skills Training Seriously,' 2003, 10 *Clinical Law Review* 301, p.307

¹⁶⁸ For example, due to time constraints a clinician may not take on too many cases for their students.

¹⁶⁹ *Ibid.*, p.313

replicate the more interpersonal and human aspects of lawyering.¹⁷⁰ They do not foster the relationship between a student and client or the court. It is a good way for students to practise certain skills, but it does not allow for them to practise them in a real-world setting, no matter how good the replication is. We can see the blue arrowing pointing to Lowenthal's statement, that mastery comes from experience. We can also see now from the quantitative studies below and the reports that the role of a lawyer now requires more "soft" skills and attributes than it seemed to previously. Thus, we should be using methods which foster learning for these skills and attributes, which simulations may not always do.

LCCs are advocated for in the literature, as they allow students to practise certain lawyering skills with real clients, in a secure educational environment. We can see on the map that CLE is a method which combines skills with practice. However, Grossman advances this statement, by adding that CLE can also instil professionalism, develop personalities and teach of the influences of society and institutions on the law.¹⁷¹ We can see a blue arrow leading to the curriculum theme, linking to Chan's argument that legal educators should be focusing on the end product.¹⁷²

Boersig *et al* highlight that LCCs can provide a more holistic legal education, as '*knowledge, skills and attitudes are at the heart of clinical legal education.*'¹⁷³ LCCs are an environment whereby knowledge is combined with developing the skills and attributes required of being a lawyer. It can be seen on the map that this feeds into the reports theme, in that the report state which skills should be developed during law school and LCCs are a way in which to foster this learning.¹⁷⁴ On the map we have another blue arrow leading from Boersig's statement, leading to Millers' synthesis of various reports and how they seem to conclude that being a lawyer is more about skills.¹⁷⁵ If this is so, can LCCs be an effective way to teach these skills?

Boersig *et al* claim that the '*human aspect*' is the most important in a LCC.¹⁷⁶ It can be seen at the bottom right of the map that the "harder" skills, such as interviewing, advocacy and research can

¹⁷⁰ Boersig, J., Marshall, J. and Seaton, G., 'Teaching Law and Legal Practice in a Live Client Clinic,' 2002, 6 Newcastle Law Review 51, p.58

¹⁷¹ Grossman, G.S., 'Clinical Legal Education: History and Diagnosis,' 1973-1974, 26 Journal of Legal Education 162, p.192

¹⁷² Cahn, E., 'Clinical Legal Education from a Systems Perspective,' 1980, 29 Cleveland State Law Review 451, p.451

¹⁷³ Boersig, J., Marshall, J. and Seaton, G., 'Teaching Law and Legal Practice in a Live Client Clinic,' 2002, 6 Newcastle Law Review 51, p.57

¹⁷⁴ Christensen, S. and Kift, S., 'Graduate Attributes and Legal Skills: Integration or Disintegration?' 2000, 11 Legal Education Review 207, pp.215-218

¹⁷⁵ Miller, N.P., 'Mapping Lawyer Competencies Onto the Law School Curriculum to Confirm that Graduates are Prepared for Law Practice,' 2011, Western Michigan University Cooley Law School. Assessed via <http://ssrn.com/abstract=2461037> Last cited 29.09.16

¹⁷⁶ Boersig, J., Marshall, J. and Seaton, G., 'Teaching Law and Legal Practice in a Live Client Clinic,' 2002, 6 Newcastle Law Review 51, p.68

be developed in LCCs, as well as the “softer” skills, such as empathy. This *‘human aspect,’* as stated above, is not easily replicable, if at all, in simulations, as there is no lawyer and client relationship. Furthermore, externships mostly involve a student observing rather than participating, meaning that the “harder” skills are not always developed in this model either.

Regardless of which kind of CLE chosen, we can see from the blue arrow starting at this section on the map, CLE can help our students to hit the ground running. Katz argues that it does not matter which kind of CLE we choose, as long as there is actual performance, critique and repeat performance for improvements.¹⁷⁷ Any practical training is surely a help and whilst we may not be creating “practice ready” graduates, we are helping our graduates to *‘hit the ground running’* if only for their first few months of practice.¹⁷⁸ Others who have not had these clinical experiences may catch up with those who have quickly, but the fear or stress of the transition into practice may be alleviated.

2.8.2 What is missing from student experience according to the reports and how can LCCs provide them?

It is established that law schools do well at imparting legal knowledge to their students. This is highlighted below when discussing the quantitative studies. The teaching of substantive law and theory is not to be undermined and is a very important aspect of law school. Without this knowledge students could not practice law. However, it is becoming increasingly common in the literature surrounding legal education that we need to be teaching beyond this, including more practical and interpersonal skills.¹⁷⁹ It has been argued that we should be focusing on teaching the “softer” skills needed in lawyering, such as empathy, and the best way to do this is through experiential learning.¹⁸⁰ Lawyers need good interpersonal skills in order to effectively represent their client.¹⁸¹

Lamparello and MacClean argue that the reports do well at highlighting the importance of some skills, but fail to emphasise the importance of others, such as legal writing.¹⁸² Menkel-Meadow

¹⁷⁷ Katz, H., 'Evaluating the Skills Curriculum: Challenges and Opportunities for Law Schools,' 2008, 59 Mercer Law Review, p.918

¹⁷⁸ Brest, P., 'Skeptical Thoughts,' 2000, 6 Dispute Resolution Magazine 20, p.23

¹⁷⁹ Kruse, K.R., 'Legal Education and Professional Skills: Myths and Misconceptions About Theory and Practice,' 2013, 45 McGeorge Law Review 7

¹⁸⁰ Natt Gant II. and Lomi, B.V., 'Teaching Knowledge, Skills, and Values of Professional Identity Formation,' 2015, Building on Best Practices: Transforming Legal Education in a Changing World 1, p.11

¹⁸¹ Shaffer, T.L. and Redmount, R.S., 'The Worship of the Disembodied Brain - The Result is a Legal Education That Sanctifies Thinking over Feeling, Technique over Tenderness,' 1975, 2 Learning and the Law, 9, p.10.

¹⁸² Lamparello, A. and MacLean, C.E., 'Integrating Legal Writing and Experiential Learning Into a Required Six-Semester Curriculum that Trains Students in Core Competencies, 'Soft' Skills, and Real-World Judgment,' 2014, 43:1 Capital University Law Review. Accessed via

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2423787 Last cited 04.08.17

states that the MacCrate Report misses the more human elements of layering in their recommendations.¹⁸³ Thus, we can see a green arrow leading from this idea to Miller's work, which explains his curriculum mapping, using a competency framework throughout a student's legal education.¹⁸⁴ The reports may be missing elements, but we can see that educators are attempting to fill the gaps in legal education. However, Lande asserts that merely covering skills does not mean a student has developed and retained it.¹⁸⁵ If we are teaching skills, we must do it with purpose and ensure that students are actually learning and developing.

A green arrow on the map highlights how skills are developed rather than taught,¹⁸⁶ creating a relationship with how students can gain the more general skills of communication and teamwork.¹⁸⁷ As LCCs allow students to interact and take responsibility for their own clients there is an opportunity to develop these more interpersonal skills. By developing these skills, students are gaining this well rounded legal education which the reports are requiring. This then leads us to the arguments of whether we should be teaching general or specific skills, discussed in more detail below. However, it is important to highlight here that the reports discussed these skills generally, rather than targeted at a certain kind of practice.

A common relationship which emerged from the map was the idea of integration of CLE and LCCs into the curriculum. This relates to both blue and green arrows. The blue arrow makes a relationship between this call for integration of skills into a curriculum, with Schultz's claim that educators have the best opportunity to teach these skills, thus integration is essential.¹⁸⁸ As Jones stated about the Marre Report, there should not be a separation between theory and practice, the academic and vocational stages.¹⁸⁹ If there is this separation there becomes a risk of LCCs and skills courses becoming '*isolated*' from the rest of the curriculum, which results in learning becoming '*disconnected*'.¹⁹⁰ Students will not be able to see the theory we teach as it should operate in practice, bringing the skills slightly out of context. By mapping skills onto the curriculum and how they relate to the theory they are learning, we are instilling the theory of '*can't teach how without*

¹⁸³ Menkel-Meadow, C., 'Narrowing the Gap by Narrowing the Field: What's Missing from the MacCrate Report--Of Skills, Legal Science and Being a Human Being,' 1994, 69 Washington Law Review 593, p.595

¹⁸⁴ Miller, N.P., 'Mapping Lawyer Competencies Onto the Law School Curriculum to Confirm that Graduates are Prepared for Law Practice,' 2011, Western Michigan University Cooley Law School, assessed via <http://ssrn.com/abstract=2461037> Last cited 29.09.16

¹⁸⁵ Lande, J., 'Reforming Legal Education to Prepare Law Students Optimally for Real-World Practice,' 2013, 1 Journal of Dispute Resolution, p.11

¹⁸⁶ Abbott, C.M., 'A Primer on Clinical Legal Education,' 1973, 9 Georgia State Bar Journal 443, p.444

¹⁸⁷ Bleasdale-Hill, L. and Wragg, P., 'Models of Clinic and Their Value to Students, Universities and the Community in the post-2012 Fees Era,' 2013, 19 International Journal of Clinical Legal Education 257, p.264

¹⁸⁸ Schultz, N.L., 'How Do Lawyers Really Think,' 1992, 4 Journal of Legal Education 57, p.62

¹⁸⁹ Jones, P., 'A Skills-Based Approach to Professional Legal Education - An Exemplary Case,' 1989, 23 Law Teacher 173, p.176

¹⁹⁰ Cantrell, D.J., 'Are Clinics a Magic Bullet?' 2014, 51 Alberta Law Review 831, p.846

*the do,*¹⁹¹ highlighted by the green arrow on the map.

It is interesting to note the journey of legal education through the reports above, whilst exploring how legal educators have adapted to these demands, through curriculum design and experiential teaching methods.

2.8.3 The concept of “practice readiness”

As with any other method of teaching, there are arguments against the use of LCCs in legal education. Firstly, the idea of a “practice ready” graduate has been debated. Martin Barry,¹⁹² who does advocate for the use of CLE, even questions the phrase herself. There is to date no set definition of what “practice ready” really means. Does it mean that we will be providing graduates who can walk out of law school and straight into representing clients? Or does it mean that once they have left law school they will be more equipped to learning the practicalities of full time lawyering? I do not feel able to state which of these it is with confidence, but do agree that it is time we had a set definition. Without it, how do we know what the end product should be and what kind of graduates we want to produce? Condlin argues that “practice ready” is not an idea at all, but a mere slogan for universities to use to attract prospective students.¹⁹³ He goes further to state that the purpose of legal education is to impart theory and not practice. Legal educators should be developing intellectual capabilities and critical thinking skills,¹⁹⁴ as these are the ‘*ultimate skills*.’¹⁹⁵ Anything further is not necessary, as intellect and critical thinking allows for the development of other skills.

Condlin’s main argument, which is often discussed in the literature, is that we cannot create “practice ready” graduates as such people do not exist. There are simply too many skills needed for legal practice and it is not possible to impart them completely during legal education.¹⁹⁶ Furthermore, there are some skills which simply cannot be taught in an academic institution, such as client retention.¹⁹⁷ This is something which is developed with experience in a

¹⁹¹ Schultz, N.L., 'How Do Lawyers Really Think,' 1992, 4 *Journal of Legal Education* 57; Sylvester, C., 'Bridging the Gap - The Effect of Pro Bono Initiatives on Clinical Legal Education in the UK,' 2003, 3 *International Journal of Clinical Legal Education* 29; Fell, N., 'Development of a Criminal Law Clinic: A Blended Approach,' 1996, 44:3 *Cleveland State Law Review* 275

¹⁹² Martin Barry, M., 'Practice Ready: Are We There Yet?' 2012, 32 *Boston College Journal of Law & Social Justice* 247, p.249

¹⁹³ Condlin, R.J., "'Practice Ready Graduates": A Millennialist Fantasy,' 2014-2015, 31 *Touro Law Review* 75, p.80

¹⁹⁴ *Ibid.*, p 79

¹⁹⁵ *Ibid.*, p 99

¹⁹⁶ *Ibid.*, p87-90.

¹⁹⁷ Bliss, L. and Peters. D., 'Delivering effective Education in In-House Clinics,' 2015, Georgia State University College of Law: Legal Studies Research Paper No 2014-04, p.22 Accessed via http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2536497 Last cited 08.08.16

law firm. It is supported by Redding, who states a snapshot of clinical cases cannot provide students with all of the skills needed for practice, and the cases they do work on may not transfer to the cases they will have in practice.¹⁹⁸ Even Stuckey states it is '*unrealistic to expect most law students to graduate from law schools as experts.*'¹⁹⁹ This notion is partly acknowledged in the Best Practices Report, and that we cannot determine which knowledge, skills and attributes are developed in LCCs, as every LCC experience is different.²⁰⁰ This caused the relationship in the concept map of whether we should be teaching generic skills, or more specialised skills relating to a specific area of practice. If we teach our students the general skills needed for practice, are we preparing them for any aspect of practice? The red arrow leading this way suggest that we do, even when questioning what "practice ready" even really means. Rankin argues that the core lawyering skills do not change dependant on which kind of practice a graduate goes into.²⁰¹ Thus, if we teach them the core skills they are then adaptable to any specialised practice. Grimes agrees with this notion, as stating that CLE generally is about the imparting of skills, and a student must acquire a variety of general and specific skills, both theoretical and practical.²⁰² I think any skills we can provide our students with is a benefit. We will never be able to teach them everything they need to know for practice, but we can give them a foundation to start practice more competently, better than if they had had no skills training. However, without any empirical data, this statement is not supported. Whether or not we can give students a foundation for practice is explored in the next section and in Chapters Five and Six of this thesis.

2.9 Quality synthesis of quantitative literature

There were more quantitative studies found than anticipated when I conducted the systematic review. Some of these studies date back to the 1960's, during the modern wave of clinical legal education, starting in the US. These studies mainly explored which knowledge, skills and attributes lawyers engaged with the most on a day to day basis and whether or not they were developed during law school. Whilst these studies are slightly old now, and there were not as many clinical opportunities at that time,²⁰³ I felt that they were a good foundation for this thesis. Exploring which skills lawyers believe are important to practice has shaped how I perceived the literature, seeing if

¹⁹⁸ Redding, R.E., 'The Legal Academy Under Erasure,' 2015, 64 *Catholic University Law Review* 359, p.398

¹⁹⁹ Stuckey, R., 'Preparing Students to Practice Law: A Global Problem in Need of Global Solutions,' 2002, 43 *South Texas Law Review* 649, p.668

²⁰⁰ Stuckey, R. *et al*, *Best Practices for Legal Education: A vision and a Road Map*, (The Clinical Legal Education Association, 2007, US), p.138. Accessed via http://www.cleaweb.org/Resources/Documents/best_practices-full.pdf Last cited 14.08.16

²⁰¹ Rankin, S.K., 'The Fully Formed Lawyer: Why Law Schools Should Require Public Service to Better Prepare Students for Private Practice,' 2013, *Chapman Law Review*, pp. 2-3. Accessed via https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2259866 Last cited 04.08.17

²⁰² Grimes, R., 'Reflections on Clinical Legal Education,' 1995, 29 *The Law Teacher* 169, pp.171-172

²⁰³ For example, please see, Amsterdam, A.G., "Clinical Legal Education—A 21st Century Perspective," 1984, 34:4 *Journal of Legal Education* 612, p. 617

the participation in LCCs has had an impact on lawyer competency when they start practising. One of the quantitative studies was included in this systematic review, but not in the synthesis below. This is because it was measuring how many law schools in the UK have clinics and I felt that it should be mentioned before this synthesis and is thus found in Chapter One.

The synthesis of these studies was not as simple as I would have liked. Whilst most of the studies were very similar²⁰⁴ the knowledge, skills and attributes they provided to participants and the way in which they were measured did vary. Where possible, certain knowledge, skills and attributes have been amalgamated as they were the same kind, just phrased differently in the survey. The earlier studies conducted have been synthesised separately from the later studies. This is mainly due to the fact that the studies were designed slightly differently, and the synthesis felt more effective if they were analysed separately and then discussed together. I have grouped together studies which have recorded the skills' importance, etc. in the same way. I took an average of the knowledge, skills and attributes, so if one survey did not mention a particular skill, it was taken out of the average calculation for the other studies and included on its own. For example, if three studies mentioned a skill and one did not, the average was taken from the three which did mention it. If a study mentioned skills separately where others had been grouped together as general skills, all relevant skills were included when taking the average. Thus, in a table where there are three studies synthesised, 6 skills could have been used in one average. The tables below displays each of the synthesised studies and I will discuss each in turn.

Where appropriate I have also calculated the overall mean for knowledge, skills and attributes. I decided to use the mean as I felt it gives the most accurate representation of the data involved. The mean is used where the distribution of the data is normal. Where there are deviations from the mean, or outliers, I have discussed this in relation to that table, as the mean is not always the appropriate calculation and the median may be preferred. The median does not change due to extreme values in a data set, whereas the mean can be pulled up or down depending on an influencing outlier. This will be acknowledged in each section where applicable and discussed.

The studies were separated into pre and post-1990 studies. Whilst organising these studies I realised I would have to conduct some arbitrary sorting and I found that this was the most efficient method to organise. After analysing the reports, I found that a kind of chronological organisation helped me to track the historical development of the various knowledge, skills and attributes, allowing the evolvement of legal practice and what is important for a competent lawyer to acquire.

Lastly, the results of the quality appraisal for the quantitative studies are shown in this table:

²⁰⁴ For example, sample size, questions asked and targeted participants.

Table 2.5 – Quality Appraisal of Quantitative Studies

Low score (0-45)	Medium score (46-90)	High score (91-136)
1	15	4

The majority of papers scored in the medium region of the quality appraisal scoring. Only one paper scored low, at 36/136. I am confident that the quality of the papers displayed below are of an acceptable standard to include in this systematic review. As stated above, no studies were excluded due to quality, just the appropriate weight attached to them.

2.9.1 Pre-1990 studies which show the importance in a percentage score

The below table synthesises three pre-1990 studies. These studies sent out questionnaires to lawyers in various States in America and asked them to rate certain lawyer knowledge bases, skills and attributes as to how important they are to practice. The percentage shows the amount of participants who ranked the skill as important to practice.

Table 2.6 – Synthesis of Schwartz, Baird and Zemans and Rosenblum

Studies	Synthesised knowledge, skills and attributes identified from the studies as important to practice	Percentage of participants who thought them important to practice
Schwartz 1973 ²⁰⁵ Baird, L. 1977-1978 ²⁰⁶ Zemans and Rosenblum 1980 ²⁰⁷	<i>Knowledge</i>	
	Knowledge of theory underlying law	54.0
	Knowledge of substantive law	49.5
	Knowledge of procedural law	44.5
	Knowledge of political science, psychology, economics, sociology	40.0
	Knowledge of agency regulations	26.1
	Knowledge of common law	21.7
	Knowledge of ethics of the profession	16.9
	Knowledge of municipal ordinances	6.0
	Knowledge of community resources	4.1
	Mean for knowledge	<hr/> 29.2
	<i>Skills</i>	
	Analysing cases	63.6
	Communications skills	59.3
	Legal research	54.8
	Gathering and marshalling facts	52.6
	Drafting	52.0
Written skills	49.9	
Legal analysis/synthesis	49.5	
Negotiating	47.2	
Financial/accounting	43.5	
Interviewing/counselling	37.15	
Advocacy	33.32	
Memorising legal concepts	4.0	
Mean for skills (outlier excluded)	<hr/> 45.6 (49.3)	

²⁰⁵ Schwartz, R.A.D., 'The Relative Importance of Skills used by Attorneys,' 1973, 3 Golden Gate University Law Review 321

²⁰⁶ Baird, L.L., 'Survey of the Relevance of Legal Training to Law School Graduates,' 1977-1978, 29 Journal of Legal Education 264

²⁰⁷ Zemans, F.K. and Rosenblum, V.G., 'Preparation for the Practice of Law-The Views of the Practicing Bar,' 1980, American Bar Foundation Research Journal 1

<i>Attributes</i>	
Instilling confidence	68.0
Understanding viewpoint of others	61.0
Getting along with other lawyers	55.0
Organizing/directing work flow	24.35
Mean for Attributes	52.1

It is interesting to see how not all of the knowledge areas in this table are seen as important to practice. Not surprisingly, knowledge of procedural law is seen as important, along with substantive law and theory underlying the law. Excluding memorising legal facts, all of the skills scored above 30%. After analysing cases, communications skills were the highest scoring skill. This demonstrates a need for us to be developing communication skills with our students. The attributes, predominantly relating to managing relationships and understanding other people, also scored very highly. This can show the need for team work skills and to be a part of a bigger picture within a law firm.

When looking at the average percentages for knowledge, skills and attributes it is noted that in pre-1990 studies knowledge was not perceived as important to practice as skills and attributes by quite a large amount. This suggests that lawyers have perceived for a while that competent practice is not necessarily about what you know but how you use it. The skills and attributes listed are more homogenous than knowledge and not as varied in their results. However, for skills memorising legal concepts has scored quite low, bringing the mean for skills down, but not by a significantly high amount. I placed memorising legal concepts in skills rather than knowledge, as memorising is more of a skill. However, it is related to legal knowledge, so it could also be in the knowledge category. I do not think this category is really robust to stand on its own, but it is curious that it was seen as important enough to include in a study.

The synthesis of this first study highlights the issues described above of using the mean. The mean for skills is affected by memorising legal facts, which is the only low score of its kind on the category. If it were not included the mean would be 49.35, which is higher. If I were to use the range for the skills category it would be 59.6, which is significantly higher than the current mean score. Using the median produces a score of 49.7, which is higher than the current mean. Using the mean without the outlier is more representative of the measure of the dispersion.

2.9.2 Pre-1990 studies which show the importance in a mean/importance score

This table shows the pre-1990 studies which display the knowledge, skills and attributes important to practice, but measured using an importance score. Both studies used questionnaires sent to lawyers in various States in the US. The differences of how the importance is measured is why these two studies could not be amalgamated and synthesised as the studies displayed above. Whilst both used ordinal scales to measure the importance to practice, they have used them in opposite ways. Benthall-Nietzel has used the number 1 to indicate as being extremely important to practice and 5 being not important at all, whilst Mudd and La Trielle have used 5 as an indicator of a high level of competence needed for practice and 1 as a low level of competent needed for practice professionally. Thus, it was not possible to amalgamate these studies, as they were not the same. However, for ease both are shown as if both used 1 to indicate important to practice and 5 not important.

Table 2.7 – Results from Studies Conducted by Benthall-Nietzel and Mudd and La Trielle

Studies	Knowledge, skills and attributes identified from the studies as important/needed for practice	Importance score of participants who thought them important to practice				
		+				-
		1	2	3	4	5
Benthall-Nietzel 1974-1975 ²⁰⁸	<i>Knowledge</i>					
	Knowledge of statutory law subjects	x				
	Knowledge of trial and appellate procedures		x			
	Knowledge of common law subjects			x		
	Knowledge of administrative procedure				x	
	Mean for knowledge		x			

²⁰⁸ Benthall-Nietzel, D., 'An Empirical Investigation of the Relationship Between Lawyering Skills and Legal Education,' 1975, 63 Kentucky Law Journal 373

1988 ²⁰⁹	<i>Skills</i> Capacity to analyze Capacity to communicate effectively in writing Capacity to approach tasks in a thorough fashion Capacity to separate a multi-faceted legal problem into its legal parts Capacity to communicate effectively orally The ability to perform legal research Capacity to react on one's feet Mean for skills	 x x x x x x <hr/> x
	<i>Attributes</i> Possesses the trait of honesty Possesses the trait of integrity Capacity to act ethically Possesses the trait of reliability Possess trait of judgment Possesses the trait of maturity Capacity to deal effectively with others Possesses the trait of motivation Manifests a desire for professional growth Possesses a trait of industry Manifests a desire to achieve personal and individual potential Capacity to maintain a pattern of continued professional education Possesses the trait of tolerance and patience Capacity to understand human behavior Possesses the trait of self-confidence Mean for attributes	 x x x x x x x x x x x x x <hr/> x

I find these two studies particularly interesting. For Benthall-Nietzel, apart from knowledge of statutory law, no other knowledge scored as highly as 1. This can indicate that we should maybe focus less on teaching legal knowledge as heavily. Other skills, such as legal research and interviewing clients scored higher than the other knowledge bases. Attributes, such as understanding human behaviour and self-confidence also scored quite highly. It seems like interpersonal attributes and skills were perceived as being very important to practice, and knowing that you will get along and trust the people with whom you work was influential.

²⁰⁹ Mudd, J.O. and La Trielle, J.W., 'Professional Competence: A study of new lawyers,' 1988, 91 Michigan Law Review 34

Again, it is intriguing from these studies that attributes are seen as more important to practice, followed by skills and then knowledge. Whilst the difference is not as great as the other pre-1990 studies shown above, it is curious that these studies are consistent with those above. It is appreciated that there is only one knowledge base included in this study when grouping knowledge, skills and attributes together. However, when looking at them individually knowledge still scores the lowest.

2.9.3 Post-1990 studies with knowledge, skills and attributes listed in order of importance to practice

Hamilton conducted a similar synthesis of various quantitative studies when he asked the 14 top Minnesota law firms to provide him with their associates' evaluation forms, exploring the firm's competency models.²¹⁰ Some of the studies I had found were already reported and digested by Hamilton. I used his report and added any other studies which I found from my searches, whilst keeping any studies reported by Hamilton which I had not found myself. In order to assure that Hamilton's tables were accurate, I located and read the other studies to ensure that there were no mistakes in reporting and quality appraised them. Hamilton's study is displayed in the following table, with other indicated post-1990 studies, with the knowledge, skills and attributes in order of importance. It is important to note that the study Lakhani did not ask lawyers directly what was important to practice. Rather, they looked at the grey literature, for example, firm websites and blogs, to see which knowledge, skills and attributes the firms were asking for.

I found it was not suitable to synthesise these studies as they varied too greatly in design and results, so they are shown separately. In the right-hand column I have provided whether they are knowledge, skills and attributes in various colours so that where they sit in importance is more simply seen and how often.

Table 2.8 – Results of Studies by Shultz and Zedeck, Lakhani, Hamilton and Taylor

Studies	Synthesised knowledge, skills and attributes identified from the studies as important/needed to practice	
Shultz and Zedeck, 2011 ²¹¹	1. Analysis and Reasoning 2. Creativity/Innovation 3. Problem Solving 4. Practical Judgment	Skill Attribute Attribute Attribute

²¹⁰ Hamilton, N., 'Law-Firm Competency Models and Student Professional Success: Building on a Foundation of Professional Formation/Professionalism,' 2013, No. 13-22 U of St Thomas (Minnesota) Legal Studies Research Paper 38

²¹¹ Shultz, M.M. and Zedeck, S., 'Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions,' 2001, 36 Law & Social Inquiry 620

	<ul style="list-style-type: none"> 7. Legal competency/ expertise/knowledge of the law 8. Dedication to client service/responsive to client 9. Initiative/ambition/drive/strong work ethic 10. Commitment to firm, its goals, and values 11. Commitment to prof. development toward excellence 12. Integrity/Honesty/Trustworthiness 13. Research skills 14. Delegation, supervision, mentoring 15. Pro Bono, community, bar association involvement 16. Inspires confidence 17. Stress/crisis management 18. Ability to work independently 19. Seeks feedback/responsive to feedback 20. Leadership 21. Negotiation skills 22. Demonstrates interest in business and financial arrangements with clients 23. Strategic/creative thinking 	<p>Knowledge</p> <p>Attribute</p> <p>Attribute</p> <p>Attribute</p> <p>Attribute</p> <p>Attribute</p> <p>Skill</p> <p>Attribute</p> <p>Attribute</p> <p>Attribute</p> <p>Attribute</p> <p>Attribute</p> <p>Attribute</p> <p>Attribute</p> <p>Skill</p> <p>Attribute</p> <p>Attribute</p>
Taylor, 2015 ²¹⁴	<ul style="list-style-type: none"> 1. Likeable and personable 2. Logical and analytical abilities 3. Competent and have little conviction 4. Basic rules and basic black letter law 5. Communicate and articulate 6. Persuasive yet flexible 7. Oral advocacy/the ability to present oneself 8. Research 9. Organizational skills 10. Writing <p>Values</p> <ul style="list-style-type: none"> 1. Honesty 2. Integrity 3. Good reputation 4. Truthfulness 	<p>Attribute</p> <p>Attribute</p> <p>Attribute</p> <p>Knowledge</p> <p>Skill</p> <p>Skill</p> <p>Skill</p> <p>Skill</p> <p>Attribute</p> <p>Skill</p> <p>Attribute</p> <p>Attribute</p> <p>Attribute</p> <p>Attribute</p>

²¹⁴ Taylor, B.F., 'Through the Looking Glass: Perceptions on the Law School Learning Experience,' 2015, 61 Loyola Law Review 275

By colour coding the difference between knowledge, skills and attributes, it can be seen that knowledge bases have not been widely explored in the post-1990 studies. Shultz & Zedeck do not have any knowledge bases in their study. Could this be because of the changing nature of practice? Law schools are expected to produce graduates who know the law and how to apply it. This research is asking what more legal educators can be doing and which other skills and attributes are important for students to develop during their legal education. There are more attributes listed than skills. Legal employers seem to want to hire graduates who they know will fit in the firm, be pleasant to work with, work well with clients and be organised within their work life. These attributes may be deemed as important because of the changes in legal work, where it is more client focused and business orientated. It is easier to develop some skills than some attributes, so if graduates start practice with these attributes already developed it is easier for them to begin their training.

2.9.4 Post-1990 studies which show the importance in a mean/importance score

The following two studies asked lawyers to identify which skills were important to practice, rating on a scale of 1-5, creating an importance score. As with the pre-1990 studies shown above, each of these studies had used the scale in an opposite way. Peden and Riley used 1 as essential to practice and 5 as undesirable. Hamilton used the scale from 0 – not considered important to practice – to 5 – critically important to practice. As they had used the scale differently I could not synthesise these studies and they are shown separately in the table below. However, as with the above tables showing an importance score, I have displayed them both as though 1 is the most important to practice and 5 as the least importance for practice.

Table 2.9 –Results of Studies by Peden and Riley and Hamilton

Studies	Synthesised knowledge, skills and attributes identified from the studies as important/needed to practice	Importance score of participants who thought them important to practice				
		+				-
		1	2	3	4	5
Peden and Riley, 2007 ²¹⁵	<i>Knowledge</i>					
	Knowledge of legal principles	x				
	Think across different areas of law		x			
	Understand legal theory			x		
	Knowledge of court procedures				x	
	Mean for knowledge	<hr/>				
			x			
	<i>Skills</i>					
	Write grammatically	x				
	Electronic research	x				
	Read and understand cases	x				
	Find cases and secondary material	x				
	Apply/distinguish cases to facts	x				
	Awareness/ability in paper research	x				
	Collect, correlate, display, analyse, and report observations		x			
	Criticise judgments			x		
	Argue positions in writing			x		
	Argue positions orally				x	
	Write legal advice				x	
	Interview clients					x
	Draft basic clauses					x
Mediate disputes					x	
Negotiate contracts					x	
Act as advocate in court					x	
Mean for skills	<hr/>					
			x			
<i>Attributes</i>						
Behave ethically	x					
Think independently	x					
Work cooperatively	x					
Adhere to deadlines consistently	x					
Work independently				x		
Speak confidently					x	

²¹⁵ Peden, E. and Riley, J., 'Law Graduates' Skills - A Pilot Study into Employers' Perspectives,' 2007, Sydney Law School Research Paper No 07/81

	Mean for attributes	x
Hamilton 2014 ²¹⁶	<i>Knowledge</i> Legal competency /expertise/ knowledge of law	x
	Mean for knowledge	x
	<i>Skills</i> Analytical skills: identify legal issues from facts, apply the law, and draw conclusions	x
	Effective written/oral communication skills	x
	Research skills	x
	Negotiation skills	x
	Mean for skills	x
	<i>Attributes</i> Integrity/honesty/trustworthiness	x
	Good judgment/ common sense/problem solving	x
	Initiative/ambition/drive/strong work ethic	x
	Dedication to client service/responsiveness to client	x
	Commitment to firm/department/office and its goals and values	x
	Initiates and maintains strong work and team relationships	x
	Project management, including high quality, efficiency, and timeliness	x
	Ability to work independently	x
	Commitment to professional development toward excellence	x
	Strategic/creative thinking	x
	Inspires confidence	x
	Seeks feedback/responsive to feedback	x
	Stress/crisis management	x
	Leadership	x
Pro bono, community, bar association involvement	x	
Delegation, supervision, mentoring	x	
Mean for Attributes	x	

These two studies are thought provoking. Peden and Riley’s study has focused very heavily on skills, then attributes and then knowledge. Hamilton’s study showed more attributes, skills and then knowledge. Even though there is the focus on the teaching of knowledge in law schools and the view that skills can be left until practice, here there are many skills and attributes which are important to practice. From Hamilton’s study it seems as though lawyers are focusing more on

²¹⁶ Hamilton, N. ‘Empirical Research on the Core Competencies Needed to Practice Law: What Do Clients, New Lawyers, and Legal Employers Tell Us?’ 2014, University of St. Thomas (Minnesota) Legal Studies Research Paper, No. 14-34

strategy, team work, drive and maintaining relationships. In Peden and Riley's study there were many skills and attributes seen as more important to practice than knowledge bases. For example, the attributes of behaving ethically, thinking independently and team work were ranked more important than knowledge of legal principles. This is just one further example of where skills and/or attributes are perceived as more important or relevant to practice than legal knowledge, even though still seen as important.

Looking at the averages taken for the knowledge, skills and attributes we see a slight contrast. Peden and Riley's results display attributes as most important, followed by skills and then knowledge. Hamilton's shows knowledge, skills and then attributes, the first time in this synthesis. Even though attributes have half of their scores higher than that for knowledge, the knowledge average is bigger. I am not sure why this is, but skills is not far behind knowledge, by only one point. Could this be an indication in Hamilton's study that the need of knowledge and skills in legal practice are not that far divided? This cannot be answered here, but will be explored throughout this thesis.

It is also interesting to note how the skills and attributes have changed over the years, comparing from the pre-1990 studies. There seems to be a shift now of requiring lawyers to develop more interpersonal skills, asking for collaboration, problem solving, strategising, leadership skills, etc. These are not attributes seen in the earlier studies, which could be the legal world adapting to meet its client's needs. This raises the question of are we just not responding to the reports and changing legal education, or are we just requiring much more of our lawyers now so that legal education can't keep up?²¹⁷ This question cannot be answered by this research, but can be pursued in future research, especially in light of the SRA proposals discussed in Chapter One.

2.9.5 Pre-1990 studies with percentage indication of which skills can/should be taught in law schools

The following table synthesises studies which explored which knowledge, skills and attributes could and should be taught in law schools. Whilst the studies slightly differ, in how they approached their questions to participants, I felt that they still synthesised well.

²¹⁷ Dunn, R.A., *What More do you Want?! A Systematic Review of the Literature Surrounding Knowledge, Skills and Attributes in Clinical Legal Education: What Regulators and Governing Bodies Asked Universities to do and How we Have Responded*, European Conference on Education Research, Emerging Researchers Conference, August 2017, Copenhagen

Table 2.10 – Table Showing the Results of Studies by Dunn, Benthall-Nietzel and Stern

Studies	Synthesised knowledge, skills and attributes identified from the studies which can/should be taught in law schools	Percentage of participants who believe can be taught in law schools
Dunn, 1969 ²¹⁸	<i>Knowledge</i>	
Benthall-Nietzel, 1974-1975 ²¹⁹	Knowledge of statutory law	87.8
	Inter-disciplinary	86.0
	Knowledge of trial and appellate procedures	74.7
Stern, 1972 ²²⁰	More theoretical law work	17.0
	More contact with other academic disciplines	5.0
	Mean for knowledge (outliers excluded)	<hr/> 54.1 (82.8)
	<i>Skills</i>	
	Legal research	89.5
	Case study/analysis	64.1
	Organizing facts/argumentation	63.9
	Written skills	52.1
	Interviewing/counseling	42.9
	Negotiation	40.8
	Thinking quickly on one's feet	34.3
	Memorizing facts/legal concepts	33.6
	Persuasive argument	30.8
	Mean for skills	<hr/> 60.2
	<i>Attributes</i>	
	Problem solving	72.0
	Understanding non-legal problems	23.5
	Mean for attributes	<hr/> 47.75

Not surprisingly the knowledge bases scored very highly on what can and should be taught in law

²¹⁸ Dunn, R.E., 'Legal Education and the Attitudes of Practicing Attorneys,' 1969, 22 Journal of Legal Education 220

²¹⁹ Benthall-Nietzel, D., 'An Empirical Investigation of the Relationship Between Lawyering Skills and Legal Education,' 1975, 63 Kentucky Law Journal 373

²²⁰ Stern, B., 'Retrospection: What Recent Law School Graduates Think of Their Education,' 1971-1972, 17 Student Lawyer Journal 27

schools. This is particularly so when the outliers are excluded, producing a score of 82.8. If we were to use the median it is 74.7 This highlights that law schools are good at teaching legal knowledge. This is reassuring as this is mainly what is taught in law schools. However, certain skills were also perceived to be able to be taught during law school, such as legal research, written skills and interviewing/counselling clients. One thing these studies do not provide is how participants thought this should be done, e.g. whether they thought these skills and attributes could be developed in the traditional classroom, or if they needed elements of experiential methods. However, participants were clear in Dunn’s study that there was not a need for more theoretical training in law schools, but more need for practical training.²²¹

When looking at the overall percentages it is interesting to note that on average it is seen that more skills can be taught in law schools. Even pre-1990 lawyers were asking for more skills training in law schools and highlighted that they don’t have to be left until practice.

2.9.6 Pre-1990 studies with indication of which skills developed in law school

Developing this theme, the next table explores which skills were actually developed during a students’ time at law school. Dunn also included this in his study, and two others were located. They are shown in a percentage as how many participants thought that these skills were developed during their legal education.

Table 2.11 – Table Showing Results from Studies by Dunn, Baird and Zemans and Rosenblum

Studies	Synthesised knowledge, skills and attributes identified from the studies which were taught in law schools	Percentage of participants who thought developed knowledge, skills and attributes during law school
Dunn, 1969 ²²²	<i>Knowledge</i>	
Baird, 1978 ²²³	Inter-disciplinary	86.0
Zemans and Rosenblum,	Knowledge of theory underlying law	84.0
	Knowledge of substantive law	52.2
	Knowledge of procedural law	38.35
	Knowledge of ethics of the profession	21.7

²²¹ Dunn, R.E., 'Legal Education and the Attitudes of Practicing Attorneys,' 1969, 22 Journal of Legal Education 220, p.225

²²² *Ibid.*, p.224

²²³ Baird, L.L., 'A Survey of the Relevance of Legal Training to Law School Graduates,' 1978, 29 Journal of Legal Education 264

1980 ²²⁴	Knowledge of agency regulations	10.6	
	Knowledge of municipal ordinances	6.5	
	Knowledge of community resources	6.3	
	Knowledge of political science, psychology, economics, sociology	6.0	
	Mean for knowledge	34.6	
	<i>Skills</i>		
	Legal research	68.4	
	Analyse/synthesise law/facts	65.8	
	Investigate/marshal facts	23.8	
	Legal writing/drafting	19.9	
	Communication skills	11.7	
	Financial/account skills	8.5	
	Interview/counseling	4.2	
	Negotiation	3.5	
	Mean for skill	25.7	
<i>Attributes</i>			
Problem solving	72		
Understanding the viewpoint of others	10		
Organising work	7.0		
Instilling confidence /getting along with other lawyers	4.0		
Mean for attributes (outlier excluded)	23.25(7.0)		

Again, not surprisingly some knowledge bases were seen as to have been thoroughly developed in law schools, such as theory underlying the law. However, knowledge of procedural law is somewhat significantly less than theory, which makes one wonder if we have been adequately preparing our students with at least the knowledge of procedure, never mind the skills which are attached to it. Legal research and analyse/synthesising the law and facts both scored highly as a skill, but all other skills fell below 25%, displaying how the skills important to practice were not being developed in law schools.

²²⁴ Zemans, F.K. and Rosenblum, V.G., 'Preparation for the Practice of Law-The Views of the Practicing Bar,' 1980, 5:1 American Bar Foundation Research Journal 1

This is displayed when looking at the averages. Knowledge was the highest, unsurprisingly, for being developed during law school. Some knowledge bases scored very highly, such as theory of law. However, some knowledge bases still have the need for development, such as ethics and community resources, which are practice specific knowledge bases. Skills and attributes are very low in the averages, demonstrating that law schools were not fully teaching and developing them. If we were to exclude the outlier for attributes, problem solving, we have a mean of 7. Using the median in this instance produces a result of 8.5. This makes attributes considerably lower than that for knowledge and then skills, suggesting that law schools were not doing enough to develop attributes in law students.

2.9.7 Post-1990 studies with indication of which skills developed in law school

The following table displays studies exploring how good law schools were at preparing students for certain knowledge, skills and attributes, post-1990.

Table 2.12 – Synthesis of Studies by Garth and Martin and Sonsteng and Camarotto

Study	Knowledge, skill and attributes which law schools are good at preparing students for	Percentage of participants who think law school did develop them
Garth, B.G. and Martin, J., 1993 ²²⁵	<i>Knowledge</i> Knowledge of substantive law	53.0
Sonsteng, J. and Camarotto, D., 2000 ²²⁶	Knowledge of procedural law Mean for knowledge	40.5 <hr/> 46.75

²²⁵ Garth, B.G. and Martin, J., 'Law-Schools And The Construction Of Competence,' 1993, 43 Journal of Legal Education 469

²²⁶ Sonsteng, J. and Camarotto, D., 'Minnesota Lawyers Evaluate Law Schools, Training and Job Satisfaction,' 2000, 26 William Mitchell Law Review 327

	<i>Skills</i>	
	Research skills	71.5
	Legal analysis	67.0
	Written communication	52.5
	Oral communication	40.5
	Diagnose and plan solutions to legal problems	34.5
	Fact gathering	25.0
	Drafting	21.5
	Negotiation	21.0
	Litigation	20.5
	Counselling	19.0
	Mean for skills	<hr/> 37.3
	<i>Attributes</i>	
	Sensitivity to ethical issues	59.5
	Instilling confidence	20.5
	Organization and management of legal work	12.5
	Ability to obtain and keep clients	7.0
	Mean for attributes	<hr/> 24.9

It is interesting that some knowledge bases have actually gone up in preparation, such as substantial and procedural law. Also, some skills measured have also gone up in preparation. For example, oral skills, written skills and negotiation are all higher than in the pre-1990 studies. Even legal research and analysis has moved up slightly. For the attributes, we can see that law schools seem to be getting better at developing confidence and instilling it in others. This should be taken lightly, as these studies were done in different geographical areas and with different graduates, etc. However, I think it important to note these changes over the years. Is it because now law schools are spending less time on knowledge and more time on developing skills? This question cannot be answered by this thesis, but can be investigated in the future.

Again, the averages are similar to the pre-1990 studies, which show that knowledge was the most developed in law school, followed by skills and then attributes. Considering how the majority of studies exploring what is important to practice found that attributes were most important, followed by skills and then knowledge, how law schools are preparing lawyers for practice is somewhat backwards. Attributes are reported to be almost half developed as what knowledge is.

2.9.8 Pre-1990 study with indication of how good law school was at preparing students for practice (graduates' views)

This table shows a general overview of how good law school was at preparing its students for practice. The percentages shown are the numbers of participants who indicated the certain performance:

Table 2.13 – Results of the Study by Stevens²²⁷

Study	How good law schools were at preparing students for practice in percentage of participants
Stevens, R. 1973	Outstanding – 26.2 Well – 45.5 Satisfactorily – 24.7 Poorly – 3.3 Disastrously – 0.17 Undecided – 0.0

It can be concluded that it was not seen from this study that law schools were particularly bad at preparing their students for practice. Only 3.47% of participants scored at under satisfactorily. However, the majority of participants voted for well and only 26.2% at outstanding. This indicates that law schools were doing okay at preparing students for practice, but more can be done. Although, it is not clear whether the participants thought they should be “practice ready” when they left law school or how they were measuring feeling prepared for practice. This may have had an impact on their response.

2.9.9 Post-1990 study showing the helpfulness of legal education experience in transition to practice

The following studies show the helpfulness of various legal training to preparedness for practice. It explored which kinds of educational experiences were helpful in the transition from student to practitioner, the percentage shown for the amount of participants who agreed it was helpful. Again, the following studies were different in how they approached collecting their data. It was not possible to synthesise the results and are shown separately. Sonsteng and Camarotto asked for ratings on 15 different sources of training across 17 skills. I took an average of the results across participants just for LCCs for each skill.

²²⁷ Stevens, R., 'Law Schools and Law Students,' 1973, 59 Virginia Law Review 551

Table 2.14 – Results of Studies by Sonsteng and Camarotto and Sandefur and Selbin

Study	Helpfulness of education experience shown in percentage of rating as helpful to extremely helpful	Percentage who thought experience helpful to practice
Sonsteng, J. and Camarotto, D. 2000 ²²⁸	Counselling Fact gathering Ability to diagnose and plan for legal problems Instilling others' confidence in you Drafting legal documents Oral communication Negotiation Understanding and conducting litigation Organization and management of legal work Ability to obtain and keep clients Ability in legal analysis and legal reasoning Written communication Knowledge of procedural law Knowledge of substantive law Sensitivity to professional ethical concerns Library legal research Computer legal research	10.4 8.5 8.2 6.5 6.2 5.1 4.9 4.7 4.7 3.7 3.6 3.3 3.2 2.4 1.2 1.2 0.7
Sandefur, R.L. and Selbin, J. 2009 ²²⁹	Legal employment (summers) Legal employment (school year) Clinical courses/training Legal writing training Internships Upper-year lecture courses Course concentrations First-year curriculum <i>Pro bono</i> service work Legal ethics training	78 67 62 60 58 48 42 37 31 30

I do not think it unexpected that legal employment, both during the school year and the summer, were seen as the most helpful experience in Sandefur and Selbin. This relates back to the discussion above, in the conceptual section, of which kind of experience is better and provides a more realistic

²²⁸ Sonsteng, J. and Camarotto, D., 'Minnesota Lawyers Evaluate Law Schools, Training and Job Satisfaction,' 2000, 26 William Mitchell Law Review 32

²²⁹ Sandefur, R. and Selbin, J., 'The Clinic Effect,' 2009, 16 Clinical Law Review 57

portrayal of practice. However, not all students will have had these opportunities, and competition for legal employment can be high for interns. Clinical experiences are third in ranking, with 62% of participants indicating them as helpful to practice transition. Whilst they may not have been the most helpful they were still seen as significantly helpful. However, the kind of CLE experience is not stated. This could be simulations, LCCs or PBL. It would have been helpful to have known what it is was exactly meant by this. However, when you compare this to the more traditional methods of legal education, CLE and internships score more highly, indicating that learning from experience is the best kind of education for the transition to practice. It is noted that *pro bono* service scored quite low. I cannot think of any explanation for this, but it may be an indication that students wish to focus more on their education than on social justice. However, that is research beyond the scope of this thesis.

Comparing this to the results from Sonsteng and Camarotto shows quite a stark difference. LCCs were not seen as a significant source of legal training. However, this survey did not only include legal training, but also training once graduated and in practice. The four most significant kinds of legal training were a lawyers' own experience, law-related work experience during law schools, advice from other lawyers and observing other lawyers. I think if this study had only measured training in law school the results may have been different and that this study included too many factors in this section. Furthermore, we do not know anything of these clinical courses from the article, as the authors themselves do not know specifically which kind of CLE a participant was involved in, so we cannot assess ourselves whether the pedagogy would be effective. Interestingly, the law school curriculum, or traditional legal education, scored as more important than LCCs in many instances. The occasions that it didn't, the area related to attributes more than skills or knowledge. This can indicate that LCCs are not the "magic bullet"²³⁰ we perceive them to be and that traditional legal education is better at preparing our students for practice for the majority of knowledge, skills and attributes. When looking at Sandefur and Selbin we can see some evidence that CLE is beneficial for students. This thesis aims to clarify whether LCCs are useful at preparing students for practice, building on these studies.

2.10 Full synthesis of quantitative studies

I wished to do a full synthesis and comparison of the studies included in the quantitative section, to highlight the difference in legal practice now, compared to the earlier studies. By tracking the studies in this way and comparing them it has enabled me to see the development and changes of legal education.

²³⁰ Cantrell, D.J., 'Are Clinics a Magic Bullet?' 2014, 51:4 Alberta Law Review 831

2.10.1 Synthesis of pre-1990 studies and which knowledge, skills and attributes explored, compared to post-1990

I found it interesting that the knowledge, skills and attributes tested for in the pre-1990 studies were quite different to the post-1990 studies. There could be various explanations for this. However, as mentioned in some of the synthesis above, this could be because of the changing legal market and what is expected of lawyers practising now. If we look back to the discussion on reports, we can see the earlier reports, such the Marre Report, called for students to be better equipped in legal research, communications skills and even some core knowledge bases.²³¹ We then get the reports²³² moving forward and including more managerial and entrepreneurial aspects of lawyering, calling for more skills and attributes to be developed during legal education. Has this been reflected in the quantitative studies?

In order to show this difference, I copied the various knowledge, skills and attributes tested for, separated into pre and post-1990 studies, and put them into a wordle. Below are the wordles, visually displaying what was commonly tested for. Wordles can be a simple, yet effective, way to display written data visually, allowing one to see the commonalities and differences between the studies rather quickly.

²³¹ A Time for Change. Report of the Committee on the Future of the Legal Profession. [Marre Report]. (1988), p.117, para 13.5

²³² Such as the LETR 2013 and CBA Legal Futures Initiative, *Futures: Transforming the Delivery of Legal Services in Canada* (2014) – Chapter 7 discuss legal education. Accessed via http://www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20Futures%20PDFS/Futures-Final-eng.pdf Last cited 16.06.16, discussed earlier in this Chapter.

Immediately it can be seen that the pre-1990 studies measured knowledge much more than the post-1990 studies. Whilst knowledge can still be seen in the post-1990 wordle, it is much smaller than in the pre-1990. This may not be an indication that knowledge is less important now than what it was pre-1990. It could be that knowledge taught in law schools is well established and it is acknowledged that they do well in this area. Perhaps we have moved on to see what further we can be doing to prepare our graduates for practice.

In the pre-1990 wordle it is seen that other words, such as law, legal, capacity and trait are very prominent. This is compared with the post-1990, which shows legal and law are still prominent, but other words such as skills, management, work and development are appearing larger. It gives the impression that what is now important to practice has changed, highlighting the development of legal practice and education. The question asked, if whether what is deemed as important to practice has changed since 1960, appears to be answered. As stated above, the reports have developed with legal education, asking for more interpersonal and business skills. These wordles indicate that what is tested for in terms of importance is also changing to adapt with the changing legal world.²³³

Looking at this wordle it is an indication of what is necessary for competent legal practice. Knowledge, whilst still important, is not the ultimate goal of legal education and practice anymore. It is understood that a law graduate will possess some adequate legal knowledge. The post-1990 wordle highlights the change from legal knowledge and capacity as the most measured to the more business and management aspects of working in a law firm. Trait, which is very prominent in the pre-1990 wordle, does not appear again in the post-1990 wordle. However, the traits are more spread out and measured, with many of the smaller words being attributes. There are not as many attributes measured pre-1990, according to the wordle. Traits have developed into attributes and characteristics when considering the role of a lawyer. It is seen that they can be developed with a person, rather than being inherent, which is something explored within my data. Furthermore, it relates closely to the studies explored in this Chapter regarding which knowledge, skills and attributes employers wish for graduates to possess. We can see from the studies conducted by Bright and Chew and Pryal that legal employers wish for their new employees to be competent in some skills bases, and particularly certain attributes. They are requesting trainees to be able to listen well, adapt and change and have good time management skills, to name a few. The wordles reflect these studies.

²³³ This is actually highlight in Webb, et al., *Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales (The Legal Education and Training Review (LETR))*, (2013) p.v. Available at: <http://letr.org.uk/the-report/index.html> Last cited 04.08.17

2.10.2 Synthesis of studies showing the most important skills for practice, which can be developed in law schools and if they actually were

The diagrams below show the synthesised results for both pre and post -1990 studies. The interesting distinction in these diagrams is that the post-1990 synthesis does not include any studies of whether certain knowledge, skills and attributes could/should be actually developed in law school. This gap in the diagram demonstrates the lack of research in this area, further establishing the need for the research in this thesis. However, there can be a comparison drawn on what was developed and whether it is perceived that certain skills can be taught in law school.

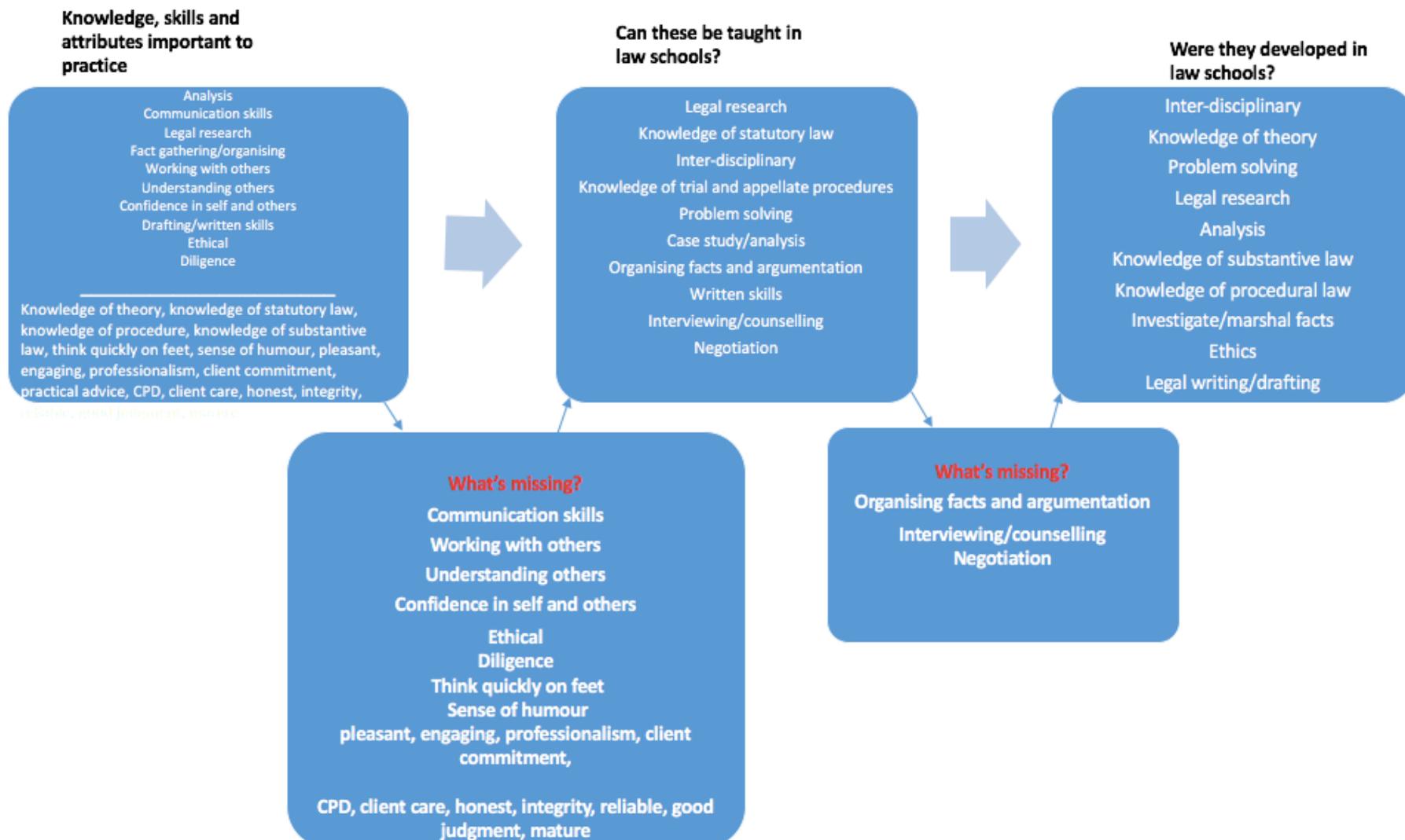


Figure 2.12 – Diagram Displaying the Most Important Skills for Practice, if they can be Developed in Law School and if they Actually were, Pre-1990 Studies

This diagram shows the top ten knowledge, skills and attributes from each study, the top skills deemed to be able to be taught in law school and the results of what actually was. By looking at the studies in this way we can see the gap of which knowledge, skills and attributes are important to practice, which ones can/should be taught and which ones were actually developed. This is tracing the journey of legal education and its needs. I think the most important issue to highlight here is that we are teaching legal theory and substantive law. They are persistent throughout the journey. However, we seem to be letting the “softer” skills fall off. Whilst it is mainly skills and attributes which are deemed as important to practice, the “harder” skills are more dominant in our teaching and outcomes. Other skills and attributes, such as communication, working with others and awareness of ethics are deemed as being able to be taught in law school, but not always what is actually taught. Even some of the necessary “hard” skills such as organising facts is not being transferred during legal education. I think helps to reaffirm that we are and have been doing very well at imparting legal knowledge, but we can be doing more in developing certain skills and attributes.

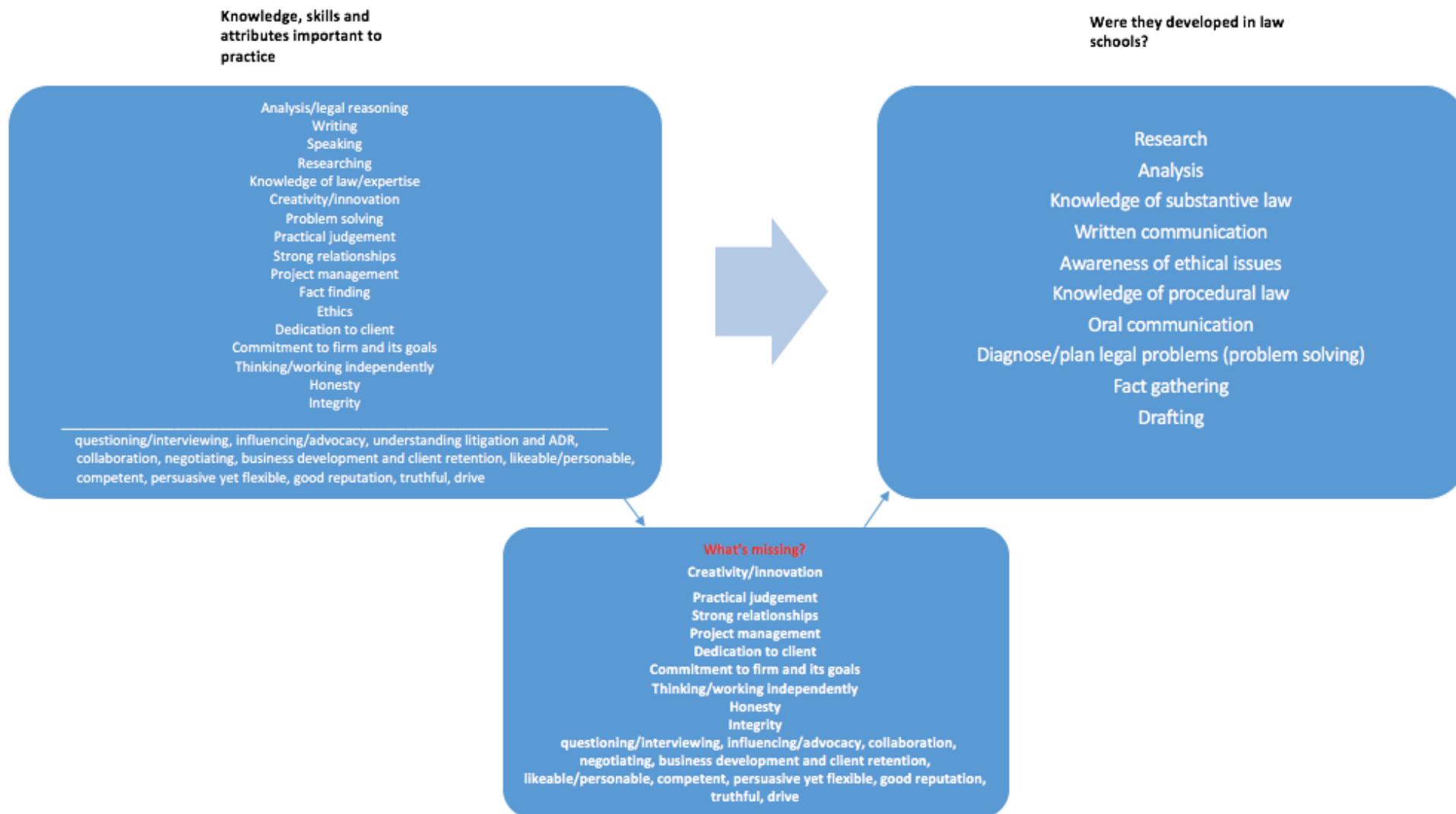


Figure 2.13 – Diagram Displaying the Most Important Skills for Practice and if they can be Developed in Law Schools, Post-1990 Studies

An important observation between these two diagrams is that the knowledge, skills and attributes considered important pre-1990 has not really changed post-1990. We still have the same requirements of legal knowledge, analysis, communication skills, honesty, etc. However, we can see some different requirements appearing in the post-1990 diagram. It is deemed important in the post-1990 studies that a lawyer be business focused, client centred, showing drive and commitment to a firm. I have discussed above how this could be due to the changing legal market and will not repeat here. However, it is necessary to emphasise how the 'important' skills needed for practice have changed and evolved over the years, meaning we must also evolve and adapt legal education as well. As there were no studies found which asked what can actually be taught in law school we have a gap in knowledge and must move to what knowledge, skills and attributes were actually taught.

We can see in the box of what is missing between important skills and what is actually taught, there are still many gaps in legal education. Legal education is in need of teaching certain skills and attributes, the development of the "soft" skills which a lawyer needs to succeed. A lawyer cannot simply know the law, but must know how to use when practising, how to communicate and work with people, with a movement towards entrepreneurship and a business focus. A holistic legal education today looks very different to what it did pre-1990. However, we can see in this final box we may not be teaching these necessary skills and attributes during legal education. Graduates are still equipped with legal knowledge, analysis, problem solving, legal writing and drafting, and we seem to be doing better at teaching oral communication. However, are we leaving our graduates to learn for themselves when it comes to knowing the workings of a law firm, how to retain clients and developing working relationships and professionalism? Using these diagrams has enabled a visual representative of what we are good at teaching and where we may need to improve within legal education.

How we teach them without using CLE is unclear, as they are best learnt through experience, according to some of the literature and empirical studies.²³⁴ If we look back to the results of the study in the Pearce Report, we can see that Australian graduates did not generally feel prepared for practice after completing their legal education. It was not seen that law school contributed to certain skills and attributes, even some knowledge bases, and their development. This is consistent with the US studies, from pre-1990 studies, such as Zemans and Rosenblum,²³⁵ to the post-1990

²³⁴ For example, please see Sandefur, R. and Selbin, J., 'The Clinic Effect,' 2009, 16 *Clinical Law Review* 57 and Condlin, R.J., "'Practice Ready Graduates": A Millennialist Fantasy,' 2014-2015, 31 *Touro Law Review*, 75

²³⁵ Zemans, F.K. and Rosenblum, V.G., 'Preparation for the Practice of Law-The Views of the Practicing Bar,' 1980, 5:1 *American Bar Foundation Research Journal* 1

studies, such as Garth and Martin.²³⁶ If we are missing some important aspects of lawyering in our curriculum we must find a way to fill this gap. This thesis intends to fill the gap in knowledge of whether LCCs can provide what it in those boxes above.

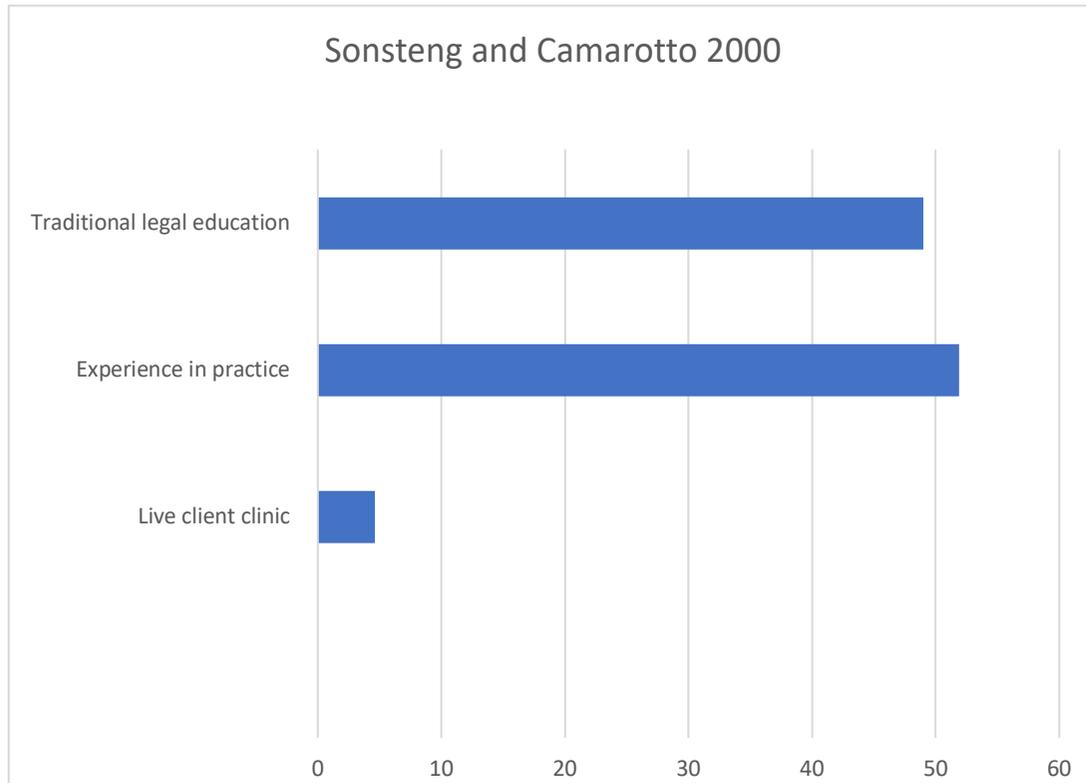
2.10.3 Diagram which synthesises which of knowledge, skills and attributes were actually taught in law schools and which kind of education helped to prepare for practice

This area called for focus, as what I am measuring in this thesis concerns legal education methods and their effectiveness for giving students a foundation for practice. There were two studies included above which show²³⁷ contrasting results as to which educational experience was valuable to practice. Thus, they are shown in separate diagrams below and then synthesised into one, to display how differently the educational methods were perceived in each study.

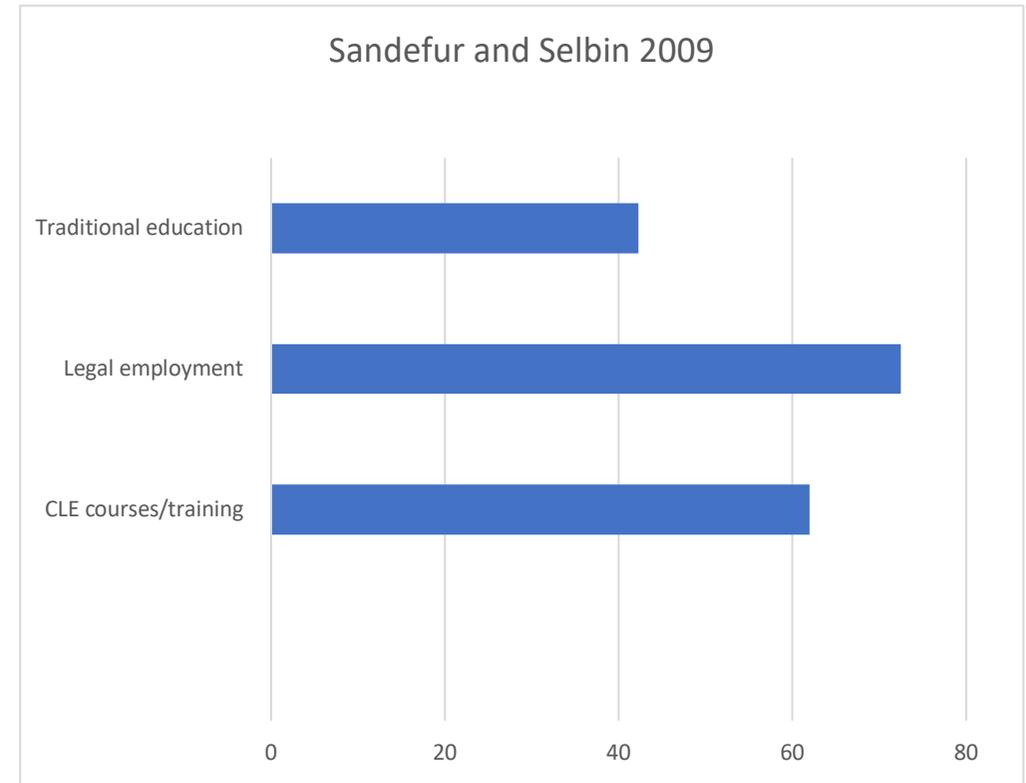
Both studies are post-1990. I have shown the results in two bar Graphs, displaying the results of which kind of educational experience was the most helpful to practice. In both studies results have been amalgamated and synthesised, where applicable.

²³⁶ Garth, B.G. and Martin, J., 'Law-Schools And The Construction Of Competence,' 1993, 43 Journal of Legal Education 469

²³⁷ Sonsteng, J. and Camarotto, D., 'Minnesota Lawyers Evaluate Law Schools, Training and Job Satisfaction,' 2000, 26 William Mitchell Law Review 32; Sandefur, R. and Selbin, J., 'The Clinic Effect,' 2009, 16 Clinical Law Review 57



Graph 2.2 – Which Kind of Legal Education was Most Useful for Going into Practice, Sonsteng and Camarotto



Graph 2.3 – Which Kind of Legal Education was Most Useful for Going into Practice, Sandefur and Selbin

When inspecting these two graphs the results only differ slightly. In Sonsteng and Camarotto experience in practice was perceived to be the valuable experience for transition to practice, followed closely by traditional legal education and live client clinics being significantly lower than them both. In Sandefur and Selbin we can see that legal employment is still the highest, then followed by CLE and lastly traditional legal education. This indicates that, not surprisingly, actual experience in practice is the best kind of experience for preparing lawyers for practice. Again, this is an understandable result, as there is no better alternative than actual experience. I cannot state why CLE and LCCs experience has grown so much in the time between these studies. Is it because clinical courses are becoming more widely recognised than they were in 2000? It would seem so when considering the statistics presented in Chapter One of how many law clinics are currently operating in the UK.²³⁸ Have we developed LCC pedagogy so that it is more helpful in preparing our graduates for practice? Are our graduates beginning to see the benefits of CLE and educationally driven valuable experience? These questions cannot be answered here, but these questions will be addressed during the data analysis of this thesis.

²³⁸ Carney, D. *et al*, *The LawWork Law School Pro Bono and Clinic Report 2014*, LawWorks, p.10. Accessed via <https://www.lawworks.org.uk/sites/default/files/LawWorks-student-pro-bono-report%202014.pdf> Last cited 19.07.17

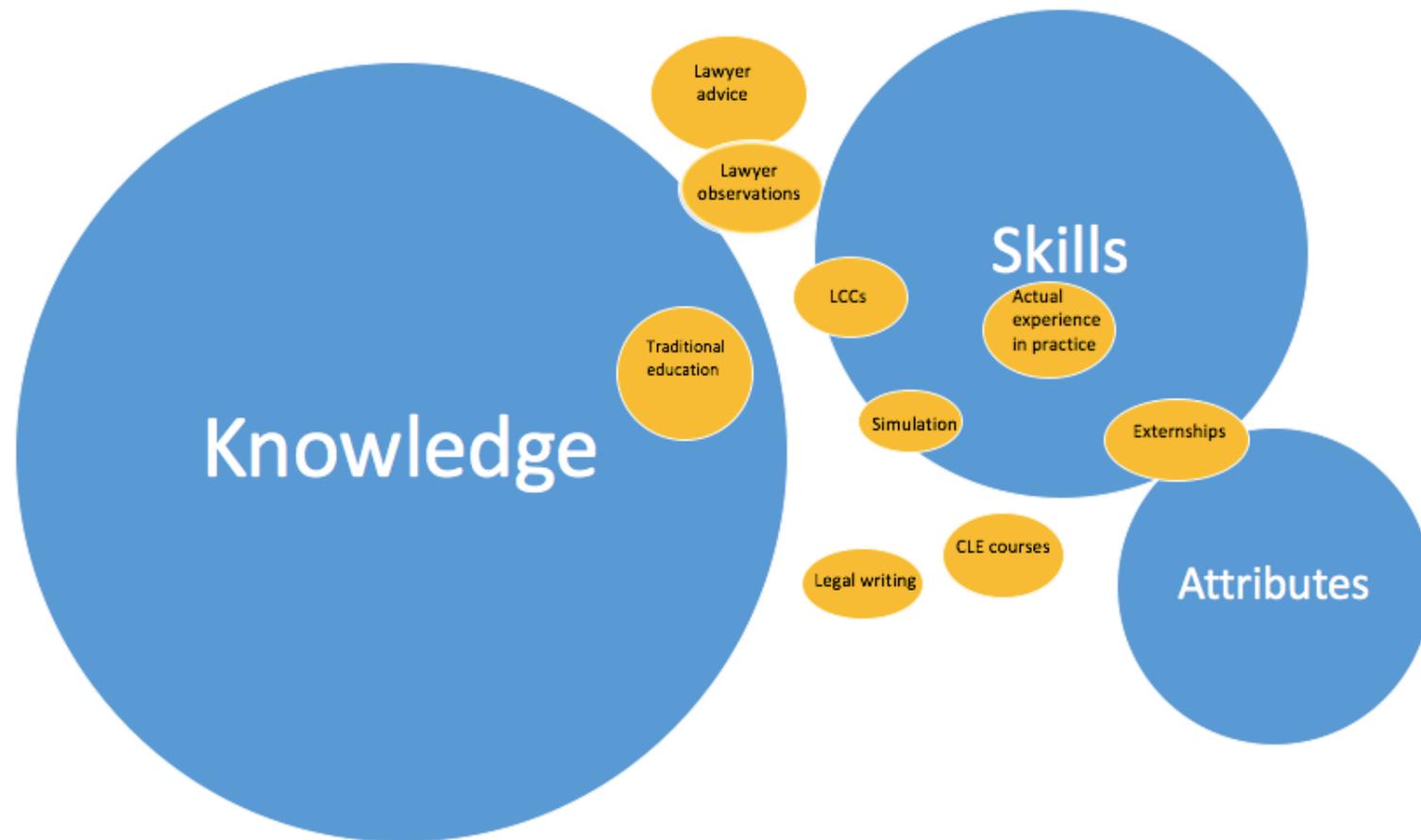


Figure 2.14 – Diagram of Full Synthesis of Knowledge, Skills and Attributes are Taught in Law in Law Schools and Which Kind of Education was Most Helpful

This diagram is the synthesis of both studies of educational experiences, shown in the smaller orange planets. The larger blue planets represent the studies which explored what was actually taught in law schools. Knowledge, which resulted in being the most taught or developed area in law school, is the largest planet, followed by skills and then attributes. We can then see that traditional education is very close to knowledge, showing its importance in teaching legal education. Actual experience of being a qualified lawyer is closest to the centre of skills, as it scored the highest almost consistently in one study, in regards to which method was the best to teach certain legal skills. It is interesting to note how we can differentiate between educational experiences and practice experiences. These various experiences make us approach situations in different ways and to learn differently from them. In a LCC you are protected by your supervisor checking your work and taking ultimate responsibility. This disappears once you are in practice, where you are ultimately responsible for your actions. Thus, the learning which results from actual practice is much quicker, in order to adapt in the legal environment and to ensure you are doing your job appropriately. Furthermore, a student may not practise all lawyer skills in a LCC, highlighted in the Best Practices Report,²³⁹ meaning that experience in a real setting will expose you to a wider range of skills. This is further shown in the thesis of de Groot, discussed above.²⁴⁰

2.10.4 Conclusions

The synthesis of the studies above indicates some very important ideas about legal education:

- The knowledge, skills and attributes measured for in the pre-1990 studies as compared to the post-1990 studies show that the direction and focus of legal education has changed and developed along with the legal environment. This is also reflected in the development of the reports²⁴¹
- There isn't yet in the literature a consensus of which kind of teaching method is the most effective in legal education. One study²⁴² has shown that LCCs have helped prepare lawyers for practice and another²⁴³ concluded that real life experience in actual practice is the best

²³⁹ Stuckey, R. *et al*, *Best Practices for Legal Education: A vision and a Road Map*, (The Clinical Legal Education Association, 2007). Accessed via http://www.cleaweb.org/Resources/Documents/best_practices-full.pdf Last cited 14.08.16

²⁴⁰ de Groot, J.K., *Producing a Competent Lawyer: A Study of Alternative Approaches to a Stage in the Process*, PhD Thesis, 1993, p.148

²⁴¹ Webb, *et al.*, *Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales (The Legal Education and Training Review (LETR), (2013))*, p.v. Available at: <http://letr.org.uk/the-report/index.html> Last cited 04.08.17

²⁴² Sandefur, R. and Selbin, J., 'The Clinic Effect,' 2009, 16 *Clinical Law Review* 57

²⁴³ Sonsteng, J. and Camarotto, D., 'Minnesota Lawyers Evaluate Law Schools, Training and Job Satisfaction,' 2000, 26 *William Mitchell Law Review* 327

way to learn. However, regardless of the method, studies²⁴⁴ indicate that whilst knowledge is being well taught in law schools the same cannot be said for the development of skills and attributes

- What lawyers need for practice, compared to what can/should be taught in law schools and what really is highlights a gap in our legal education.²⁴⁵ We may be covering certain skills and attributes with our students, but are we actually developing them? There is a difference between what is considered as important for practice now and in the pre-1990 studies. There is a need for us to be developing more skills and attributes with our students, but this does seem to be transpiring through the data as actually happening²⁴⁶
- Overall, we can see that knowledge is more developed in law school than skills or attributes, which are often perceived as more important to practice.²⁴⁷ However, these are not always developed during law schools, usually left to be advanced in practice.²⁴⁸ From the quantitative literature we do not know which is the most effective method for teaching in legal education, which is where this thesis will provide some answers.

The quantitative data has provided great insight into this thesis and what research has currently been conducted. It has enabled me to see the gaps in knowledge and where we must provide some answers or explanations. Furthermore, it indicates what the priority of teaching in law schools is and where we need to expand our teaching.

Whilst we can see a lot of information within the tables above, it is important to add dialogue to these results. Quantitative data can only tell us so much and qualitative data can add more depth to the figures above.

2.11 Quality synthesis of qualitative literature

Synthesising qualitative literature can be done in a variety of ways and I found it somewhat more difficult to synthesise the qualitative studies. They scored lower than the quantitative studies at the

²⁴⁴ For example, Garth, B.G. and Martin, J., 'Law-Schools And The Construction Of Competence,' 1993, 43 *Journal of Legal Education* 469; Zemans, F.K. and Rosenblum, V.G., 'Preparation for the Practice of Law-The Views of the Practicing Bar,' 1980, 5:1 *American Bar Foundation Research Journal* 1; Sonsteng, J. and Camarotto, D., 'Minnesota Lawyers Evaluate Law Schools, Training and Job Satisfaction,' 2000, 26 *William Mitchell Law Review* 327.

²⁴⁵ For example, as shown in Benthall-Nietzel, D., 'An Empirical Investigation of the Relationship Between Lawyering Skills and Legal Education,' 1975, 63 *Kentucky Law Journal* 373

²⁴⁶ For example, as shown in Garth, B.G. and Martin, J., 'Law-Schools And The Construction Of Competence,' 1993, 43 *Journal of Legal Education* 469

²⁴⁷ Garth, B.G. and Martin, J., 'Law-Schools And The Construction Of Competence,' 1993, 43 *Journal of Legal Education* 469; Sonsteng, J. and Camarotto, D., 'Minnesota Lawyers Evaluate Law Schools, Training and Job Satisfaction,' 2000, 26 *William Mitchell Law Review* 327

²⁴⁸ Sonsteng, J. and Camarotto, D., 'Minnesota Lawyers Evaluate Law Schools, Training and Job Satisfaction,' 2000, 26 *William Mitchell Law Review* 327

quality appraisal stage, which has been found in other studies using qualitative data.²⁴⁹ This was mainly due to the studies revealing less information about how it was conducted, sample size, design, etc. Less weight will be placed on these studies as a result, but I felt them important to include nonetheless. It is acceptable not to exclude a study purely based on quality, but to apply relevant weight to it during the discussion.²⁵⁰ The quality appraisal results for the qualitative studies are seen in this table:

Table 2.15 – Quality Appraisal Scores for Qualitative Literature

Low score (0-45)	Medium score (46-90)	High score (91-136)
2	9	0

The approach to synthesising the qualitative studies was thematic synthesis. Booth *et al*, describe thematic analysis as ‘a comparable type of analysis to bring together and integrate findings of multiple qualitative studies.’²⁵¹ Harden *et al*²⁵² outline that the use of thematic synthesis is particularly useful when exploring questions about people’s perspectives and experiences, within a systematic review. I wanted to use qualitative data to enrich the quantitative data, adding narrative to the numerical figures. Whilst quantitative data can tell us a great deal about a phenomenon, qualitative data can add richness and depth to the interpretation of the data and discussion,²⁵³ which is why thematic synthesis was seen as an appropriate approach to the qualitative data. However, there have been some criticisms of using thematic synthesis. Dixon-Woods, *et al*, discuss the issues with thematic synthesis, due to the process of creating categories and themes, placing the literature into themes from which they derived,²⁵⁴ can thus decrease transparency of the research. This lack of transparency can create issues of distinguishing between “data-driven” and “theory-driven” approaches to synthesis.²⁵⁵ Thomas and Harden argue that this is not necessarily an issue, so long as the results are written in a transparent way and by

²⁴⁹ For example, please see Harden, A., *et al.*, 'Applying systematic review methods to studies of people’s views: an example from public health research,' 2004, 58 *Journal of Epidemiology Community Health* 794, p. 795

²⁵⁰ Jesson, J., Matheson, L. and Lacey, F.M., *Doing your literature review: traditional and systematic techniques* (SAGE, 2011) p, 114.

²⁵¹ Booth, A., Papaioannou, D. and Sutton, A., *Systematic Approaches to a Successful Literature Review* (SAGE, 2012) p. 149

²⁵² Thomas, J. and Harden, A., 'Methods for the thematic synthesis of qualitative research in systematic reviews,' 2008, 8 *BMC Medical Research Methodology* 45

²⁵³ Plummer, K., *Documents of life: an introduction to the problems and literature of a humanistic method* (Allen & Unwin, 1983)

²⁵⁴ Dixon-Woods, M., *et al.*, 'Synthesising Qualitative and Quantitative Evidence: A Review of Possible Methods,' 2005, 10 *Journal of Health Services Research & Policy* 45, p.47

²⁵⁵ *Ibid*

incorporating themes which '*go beyond the contents of the original study.*'²⁵⁶

The qualitative literature was thus separated into the following themes:

- Did graduates feel prepared for starting practice?
- Has CLE played a role and how has it?
- What do they want from legal education?
- What do employers/clients want?

The first theme explored, of whether graduates who had entered practice actually felt prepared, enhanced the findings found in the quantitative studies on this issue.²⁵⁷ It has been stated many times that students upon graduation feel as though they are not prepared for the actually practising law, even though they have been taught what the law is.²⁵⁸ Taylor's study looked at newly practising lawyer's perception of their law school education in preparing them for the practice of law. This study focused on newly practising criminal lawyers, graduates from seven different law schools across the country, with nine participants in total, conducted with one-to-one interviews, and some observation of the lawyer in the courtroom. It drew on Kolb's Experiential Learning Theory (ELT),²⁵⁹ concluding that participants had not gone through the different stages of this experiential learning model.²⁶⁰ Taylor highlighted that law school is designed to teach what the law is, but now how to do it. Whilst participants felt satisfied with how law schools did this, and they had gained an understanding of the law, one participant noted, '*[I]f the end result is you want to have people practicing law,*'²⁶¹ then law schools were not reaching their aim. Participants called for greater training in legal writing, advocacy and some procedural elements of a criminal trial.

Boys, *et al.*,²⁶² conducted a qualitative survey of law students enrolled on a clinical course in the UK. Students were asked if their legal education had prepared them for practice, which further skills

²⁵⁶ Thomas, J. and Harden, A., 'Methods for the thematic synthesis of qualitative research in systematic reviews,' 2008, 8 BMC Medical Research Methodology 45, pp.53-54

²⁵⁷ For example, please see Sonsteng, J. and Camarotto, D., 'Minnesota Lawyers Evaluate Law Schools, Training and Job Satisfaction,' 2000, 26 William Mitchell Law Review 327 or Pearce D, Campbell E and Harding D, *Australian Law Schools: A discipline assessment for the Commonwealth Tertiary Education Commission*, (1987), p.35

²⁵⁸ For example, Taylor, B.F., 'Through the Looking Glass: Perceptions on the Law School Learning Experience,' 2015, 16 Loyola Law Review, 274, p.278

²⁵⁹ Kolb, D.A., *Experiential Learning: Experience as the Source of Learning and Development*, (Pearson Education Inc, 2nd edn, 2015)

²⁶⁰ Taylor, B.F., 'Through the Looking Glass: Perceptions on the Law School Learning Experience,' 2015, 16 Loyola Law Review, 274, p. 308

²⁶¹ *Ibid.*, p. 296

²⁶² Boys, S.K. *et al.*, 'Social Work Skills Can Fill the gaps in Legal Education: Law Student Opinions of their Preparation for Practice with Clients,' 2015, 3 UK Law Student Review 87 – accessed via <http://www.uklsa.co.uk/wp-content/uploads/2015/01/UKLSR-v3i1-A7.pdf> Last cited 23.05.16

they felt they should be taught and if they think interdisciplinary learning can help to fill this gap. This study found that students generally did not feel prepared to work with clients: any feelings of preparation were due to prior work in the clinic.²⁶³ This is not reflected in studies such as Sonsteng and Camarotto, which found that real life experience was the best contributing factor to being prepared to practice law. Whilst there is no substitute for real life experience, this study provides some insight into the quantitative results. The majority of students (95.5%) in this qualitative survey stated that law school was not effective in preparing them for practice.²⁶⁴ There were also only 4.5% of participants who stated that the clinic courses were not effective in preparation for practice, with 31.8% stating they only were when combined with practical experience with clients, highlighting the importance of real life experience, as found in the quantitative studies. However, it seems that it was a mixture of the clinic course (31.8%) and outside experience (45.5%) which made students feel prepared to actually counsel a client. It is becoming apparent that law students need training in the communication elements of practice. Students in the survey stated that law school actually taught them too much theory, and nothing to do with the actually practising law.²⁶⁵

Participants in Taylor's study also highlighted that experiential education was much more helpful to them than was the didactic method of teaching,²⁶⁶ bringing this study into the second theme. Taylor states that participants, '*identified that andragogical learning principles were the most beneficial in their preparation to practice law,*'²⁶⁷ giving them the knowledge, skills and attributes needed to practice. All the participants in this study had engaged with some form of experiential learning, including LCCs. Participants shared that their most valuable experiential experiences in law school related to reading and writing courses, helping them to start practice more smoothly. Those who participated in LCCs found them '*invaluable learning opportunities*'²⁶⁸ and for some it was their first actual exposure to law. This was not only because of what skills they gained during their time in the LCC, but because it also helped them to determine which area of practice they wanted to go into. This is something which is not explained through the quantitative studies, and the qualitative data provides insight here. Even if LCCs were not the most useful experience, as shown in the numerical data, this does not mean that students do not value them during their education. However, they found that other kinds of CLE, such as externships and internships, to be the most valuable experience. It allowed them to see how fast-paced a law office can be and how

²⁶³ *Ibid.*, p.93

²⁶⁴ *Ibid.*, p.94 – It is stated in the study that this participant thought this included LCCs. He did not think that general legal education did prepare one for practice.

²⁶⁵ *Ibid.*, p.95

²⁶⁶ Taylor, B.F., 'Through the Looking Glass: Perceptions on the Law School Learning Experience,' 2015, 16 *Loyola Law Review* 274, p. 297

²⁶⁷ *Ibid.*

²⁶⁸ *Ibid.*, p.299

a courtroom works.²⁶⁹Boys *et al.*, found that most students felt '*reasonably prepared*' for practice since taking part in the clinic, but that the clinic course was not enough, which explains why externships and legal employment scored more highly than LCCs in the quantitative data.²⁷⁰

These studies are similar to that of Uphoff *et al*, who explored whether recent graduates felt like law school had prepared them for practice. They reported that most graduates felt as though their legal education was too far detached from practice. Some areas of practice, when just theory and abstract, make much more sense if they included some real experience.²⁷¹Some participants highlighted the need for communication skills to be taught. They thought that students are not prepared for the kinds of people they will be working with, particularly not understanding which interpersonal skills are needed.²⁷²The skills needed for practice were concluded to be developed through LCCs and allowed students to more easily transition into practice.²⁷³ However, it should be noted that not every graduate who had experience in a LCC will be able to start practice competently.²⁷⁴But from this research, they generally found that students who did have LCC experience were better prepared for practice and understood its demands.²⁷⁵

A study conducted by Krieger,²⁷⁶ found that generally third year law students are better able to identify legal rules, but those enrolled in the LCC were more able to identify relevant legal rules.²⁷⁷ This was the same for fact recall, where LCC students only recalled relevant facts and those not in the LCC recalled more, but many, irrelevant facts.²⁷⁸ Furthermore, those who has participated in the LCC were more likely to identify a clients' interests, knowing where to take to case next, compared to those students who had not participated in a LCC.²⁷⁹ This study is an example of where CLE, specifically LCCs, can take legal education further, helping students to '*stick to the facts and not to jump to conclusions*.'²⁸⁰However, it was noted that this could have negative impacts on brainstorming about facts as part of the problem solving process.²⁸¹

²⁶⁹ *Ibid.*, p.300

²⁷⁰Boys, S.K. *et al.*, 'Social Work Skills Can Fill the gaps in Legal Education: Law Student Opinions of their Preparation for Practice with Clients,' 2015, 3 UK Law Student Review 87, pp. 95-96. Accessed via <http://www.uklsa.co.uk/wp-content/uploads/2015/01/UKLSR-v3i1-A7.pdf> Last cited 23.05.16,

²⁷¹ Uphoff, R.J., *et al.*, 'Preparing the New Law Graduate to Practice Law: A View from the Trenches,' 1997, 65 University of Cincinnati Law Review 381, p. 392

²⁷² *Ibid.*, p.397.

²⁷³ *Ibid.*, p.401

²⁷⁴ *Ibid.*, p.402

²⁷⁵ *Ibid.*, p.403

²⁷⁶ Krieger, S.H., 'The Effect of Clinical Education on Law Student Reasoning: An Empirical Study,' 2008-2009, 35 William Mitchell Law Review 359

²⁷⁷ *Ibid.*, p. 383

²⁷⁸ *Ibid.*, pp. 377-378

²⁷⁹ *Ibid.*, p. 388

²⁸⁰ *Ibid.*, p. 395

²⁸¹ *Ibid.*, p. 395

A case study by Marson, *et al*,²⁸² highlighted the benefits of LCCs, in that it allows students to ‘*foster attention on reflection and critical thought.*’²⁸³ This case study acknowledged that not only are the basic skills, such as research, drafting, interviewing and negotiation, developed in LCCs, but students also get to develop interpersonal skills.²⁸⁴ The effect of LCCs on students interpersonal skills, specifically empathy, was explored by Westaby.²⁸⁵ This study found that generally, students refrained from being too emotionally attached to their client or case, but did display empathy as a skill. It was acknowledged that often students in LCCs do not spend much time with clients which may stop them from becoming too emotionally involved.²⁸⁶ However, almost half of the participants referred to empathy as an important skill, and drew on their experience in a LCC. Westaby states that ‘*it is clear that the law clinic had an impact on a number of the participants’ understanding of professionalism.*’²⁸⁷ It allowed them to explore the benefits of using emotional labour, something which I doubt they could have done in a professional manner away from a LCC.

Taylor’s study explored what recent graduates wanted from legal education. All participants expressed the need for experiential opportunities within law schools, some participants even stating that they should be mandatory, as legal aid clinics are the best opportunities to learn.²⁸⁸ Participants said that it was important to have this practical experience, allowing you to develop how you present the law, orally as well and in writing. This was also highlighted in Boys, *et al*. with regards to preparation to counsel clients. 59.1% of participants highlighted that they would like more training in interview skills and 27.3% stated in some way that they would like instruction on human behaviour and human interaction. Thus, we can see that if students want to feel more prepared for practice they would like to develop more interpersonal and communication skills, rather than the harder lawyer skills, such as analysis. In Boys *et al.*, participants also called for more training in the “softer” skills, wanting to better understand human behaviour and how to control a client during an interview.²⁸⁹ In a survey of LPC students, Collino found that students were calling for more skills training,²⁹⁰ such as research and drafting, being more important than learning the

²⁸² Marson, J., Wilson, A. and Van Hoorebeek, M., ‘The Necessity of Clinical Legal Education in University Law Schools: A UK Perspective,’ 2005, 7 *International Journal of Clinical Legal Education* 29

²⁸³ *Ibid.*, p. 37

²⁸⁴ *Ibid.*, pp. 37-39

²⁸⁵ Westaby, C., ‘A qualitative study of the impact of law clinics on students’ perceptions of emotional labour expectations,’ 2014, 48 *The Law Teacher* 248

²⁸⁶ *Ibid.*, p. 275

²⁸⁷ *Ibid.*, p. 278

²⁸⁸ Taylor, B.F., ‘Through the Looking Glass: Perceptions on the Law School Learning Experience,’ 2015, 16 *Loyola Law Review* 274, p.301

²⁸⁹ Boys, S.K. *et al*, ‘Social Work Skills Can Fill the gaps in Legal Education: Law Student Opinions of their Preparation for Practice with Clients,’ 2015, 3 *UK Law Student Review* 87, p.96. Accessed via <http://www.uklsa.co.uk/wp-content/uploads/2015/01/UKLSR-v3i1-A7.pdf> Last cited 23.05.16

²⁹⁰ Collino, J., ‘Research: A Bridge between Academic Law and Practice,’ 2002, 2 *Legal Information Management* 30

content of the law.

In terms of what employers want from their lawyers, Fancourt found that the most tasks identified in practice were legal research, conduct of small files and drafting. This was then followed by good oral and written communication and people skills being the most required attribute.²⁹¹ It was also highlighted that new trainees are given a high level of responsibility quite early into their training contract. Trainers would also like to see better grammatical skills from trainees and more directed and concise research.²⁹² Trainees seemed to just be stating the law in their research, not taking it a step further as to what to do with it practically.²⁹³ An interesting study conducted by Breger, *et al*,²⁹⁴ collected perspectives of professionalism and legal services from clients, counsel and the judiciary. This study found that child clients wanted their lawyer to be more involved with them, to be on their side and to be honest with them. Children who thought of their lawyers as professional felt as though their needs had been represented properly and felt as though their lawyer genuinely wanted them to be happy. This was quite similar to the adult views of their lawyers, who wanted their lawyer to be more interested in the case, treat them with respect and to explain legal matters properly without being patronising. Opposing counsel thought the students working in LCCs should not have been working on live cases and that the students still didn't understand the realities of practice. Finally, it was found that judges could be impatient with students, wanting them to settle a case, get it off the list and to not over-advocate. Breger, *et al*, concluded that the interactions with other members of the profession can affect a student's perception of professionalism, and perhaps make them adopt bad habits. However, if you use these experiences as teaching opportunities in a LCC you can foster a student's perception to make them more aware of their own professionalism and what is expected of them.²⁹⁵ Edwards found similar results, with the legal profession struggling with graduates who do not know how to practise the law.²⁹⁶ They are not fully prepared for the realities of practice, and the main argument for this was that professors did not care to teach beyond theory because they have not practised.²⁹⁷

The final qualitative study I found was rather different to those above. Greaves²⁹⁸ did a qualitative analysis of learning outcomes for the different stages of legal education in Australia. By using NVivo

²⁹¹ Fancourt, A., 'Hitting the Ground Running - are LPC Students Ready for Practice?' 2004, 4 Legal Information Management 168, p. 167

²⁹² *Ibid.* p. 169

²⁹³ *Ibid.* p. 170

²⁹⁴ Breger, M.L., Calabrese, G.M. and Hughes, T.A., 'Teaching Professionalism in Context: Insights from Students, Clients, Adversaries, and Judges,' 2003, 55 South Carolina Law Review 303

²⁹⁵ *Ibid.* p. 336

²⁹⁶ Edwards, H.T., 'The Growing Disjunction between Legal Education and the Legal Profession,' 1992, 19:1 Michigan Law Review 2191, p. 2211.

²⁹⁷ *Ibid.*, p.2215

²⁹⁸ Greaves, K., 'Test Out the Scaffolding': A Qualitative Comparison of LLB Threshold Learning Outcomes and the PLT Competency Standards for 'Lawyers' Skills,' 2013, SSRN, pp.27-28

he was able to analyse which skills were most consistently mentioned as relevant for students to graduate with. It is interesting to see from this research how the skills which are stated are not always the focus of development. For example, when looking at the standards for interviewing clients, 'practice' was the highest number of coding references, followed by circumstance, understand and communicate.²⁹⁹ I think it interesting how the actual skill of interviewing calls for more of the human, interpersonal aspects, or the "soft" skills of lawyer. This was an interesting study, showing which skills, knowledge and attributes are actually asked for legal education to provide.

MacFarlane's thesis studied the role of CLE in legal education in 1989.³⁰⁰ She valued the use of empirical research into CLE, something which had not been done in the UK until this thesis, and embarked on surveys, interviews and observations within various UK LCCs.³⁰¹ MacFarlane found that preparing students for practice was given a very low score and the most important was the development of general intellectual skills, when asking legal educators their objectives.³⁰² However, the universities which do have LCCs encouraged their students to take practical responsibility for their clients.³⁰³

Students were also asked what benefits they expected to gain from the LCC they would be participating in. Answers ranged from personal benefits, such as self-confidence, specific lawyer skills, such as interviewing, interpersonal skills and career benefits.³⁰⁴ Furthermore, students interviewed stated that they felt '*challenged*' by the clinic and that it '*stimulated their personal interest*'.³⁰⁵ Finally, the majority of students concluded that they were happy to have taken part in a LCC.³⁰⁶

It can be appreciated that the qualitative studies have helped provide some insight into the quantitative studies results. Whilst LCCs are not a substitute for real life practice, some new graduates felt they contributed significantly to them feeling prepared for practice. Furthermore, we can see which exact issues some legal employers have with new employees. For example, when the quant shows an issue in the skill legal research, it does not necessarily provide what the issue is. The qualitative studies have furthered this notion, stating it is the issue of using irrelevant

²⁹⁹ *Ibid.*, p.27-28

³⁰⁰ MacFarlane, J., *An Evaluation of the Role and Practice of Clinical Legal Education, with Particular Reference to Undergraduate Legal Education in the United Kingdom*, PhD Thesis, South Bank University, 1989.

³⁰¹ *Ibid.*, p.87.

³⁰² *Ibid.*, p. 97.

³⁰³ *Ibid.*, p. 241

³⁰⁴ *Ibid.*, pp. 236-237.

³⁰⁵ *Ibid.*, p. 242

³⁰⁶ *Ibid.*, p. 264

materials in legal research.³⁰⁷The inclusion of the qualitative studies has added a depth to this Chapter, which the quantitative papers alone could not have.

2.12 Bringing all studies together

When reading all of the literature, links began to form. Thus, it appeared that it could be viewed in this way:

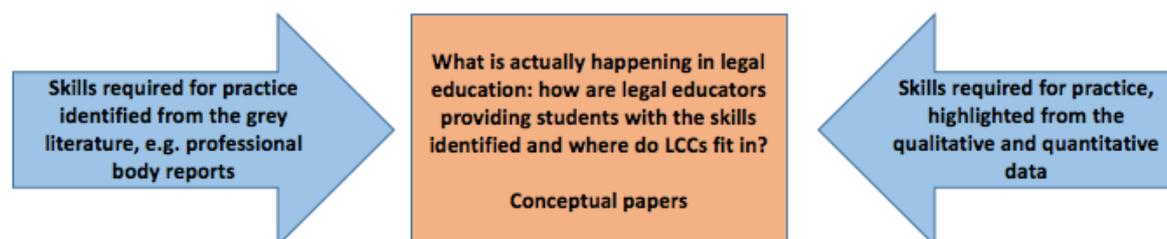


Figure 2.15 – Diagram Displaying how the Literature Relates to One Another

The grey literature has a great impact on the conceptual papers. The majority seem to look at the various educational reports in detail and then discuss how this has been attempted to be put into practice. The empirical data has the same effect. The earlier studies of what a competent graduate needs upon starting practice has influenced contextual papers, stating the skills found in this research and how it has been attempted to teach them. Thus, we can look at the literature in this way, shown in *Figure 2.15*: what do governing bodies want to see in those entering the legal profession, what do legal employers and recent graduates wish to be equipped with, and what are the legal education providers doing about this? Whilst some state that it is not fully the responsibility of legal educators to provide students with the knowledge, skills and attributes needed for practice,³⁰⁸ it appears from the literature that more institutions are attempting to engage in further skills training. Furthermore, it seems from the literature that more LCCs are being established and other forms of CLE are being widely incorporated into the curriculum. This isn't surprising, as more and more reports are calling for CLE opportunities and the benefits of CLE, particularly LCCs, is globally advocated.³⁰⁹ However, whilst we state these benefits there is very little data found to back it up. Some empirical studies found concerned the employability aspects

³⁰⁷ Fancourt, A., 'Hitting the Ground Running - are LPC Students Ready for Practice?' 2004, 4 *Legal Information Management* 168

³⁰⁸ Stuckey, R. et al, *Best Practices for Legal Education: A vision and a Road Map*, (The Clinical Legal Education Association, 2007), p.8. Accessed via http://www.cleaweb.org/Resources/Documents/best_practices-full.pdf Last cited 14.08.16

³⁰⁹ *Ibid.*

and prospects of LCCs,³¹⁰ rather than if they do provide students with the knowledge, skills and attributes ready for the successful start of practice.

From the literature we can also see that many of the skills necessary for practice are not confined to one particular situation or learning experience. Rather, the knowledge, skills and attributes needed can be intertwined and developed in many situations. It seems that the “softer” skills, such as empathy and patience, can be developed alongside the harder skills. It is becoming increasingly recognised that we must provide our students with generic professional skills in order for them to be able to practice competently.

From the quantitative studies, it can be seen that there are gaps in legal education, but this seems to be decreasing ever so slightly. Educators are attempting to make graduates more well-rounded and prepared for practice. LCCs are acknowledged to have played a good part in this and CLE generally is becoming more popular in law schools throughout the country. From the qualitative studies, we can conclude that this is helping students feel better about the transition of practice, but they still have a lot to learn once they are in practice.

2.13 Conclusion

I think it is clear from the literature that law schools globally are doing a fine job of theoretically preparing our students for practice. New lawyers are entering the field know how to find the law, analyse it and apply it. However, when looking at both the quantitative and qualitative data available, it seems that the skills used for the majority of practitioners, or deemed most important to practice, are not always developed before graduation. There has been a shift in the literature from the 1960s, when CLE opportunities were new and fairly scarce. We can now see that students are calling for more training into the “softer” lawyer skills, and that CLE, especially LCCs, are recognised as playing a part in this. It is interesting to note that whilst CLE has developed and it seems that more law schools are adopting this approach, we do not seem to have progressed much during the last 40-50 years. There still seems to be a gap between education and practice, whereby students do not feel prepared and employers do not perceive them to be. Whilst there have been some significant changes when looking at the earlier reports, e.g. the divide between academia and the vocational stage of education has narrowed, there isn't yet a full focus on skills training. CLE is creeping into legal education, but not at a great rate and not always with the use of LCCs.

Even though the systematic review was a very time-consuming process I still think that it was the

³¹⁰ For example, please see Francis, A., 'Legal Education, Social Mobility, and Employability: Possible Selves, Curriculum Intervention, and the Role of Legal Work Experience,' 2015, 42 *Journal of Law and Society* 173. This article was selected for full text analysis, but excluded as employability influenced by CLE is beyond the scope of this thesis.

best option for this thesis. I believe it helped me to find studies which I otherwise would not have located or acknowledged.

Moving forward from the literature, there is a need to see if the LCCs we profess are the best way to teach skills are actually doing that. The literature displays the gap in knowledge which my data strives to fill a part of, that certain knowledge, skills and attributes can be provided by legal education through the use of LCCs, helping students to develop as professionals and start practice competently. The next Chapter focuses on the conceptual frameworks influencing CLE. As stated above, some of the papers found in the systematic review were included in the next Chapter, as their relevance can be discussed in a better context.

Chapter Three: Conceptual framework

3.1 Introduction

There are many different conceptual frameworks within adult and experiential learning. Some theories were discussed within the literature sourced from the systematic review. It was decided to include these papers with this Chapter, as I felt they were more appropriate within this discussion. It was important to devote an individual Chapter to my conceptual framework, rather than to include it in my methodology, to give it the focus necessary. It has resulted in a deeper discussion of the different frameworks, allowing for further justification of the methods chosen.

This Chapter will discuss the different theories surrounding the research and justify my conceptual framework. It explores different theories relevant to adult learning and experiential theories, outlining why Kolb's Experiential Learning Theory (ELT) was chosen to influence this research. It also discusses how ELT and Adult Learning Theories (ALTs) influence clinical legal education (CLE) and how the process is replicated in live client clinics (LCCs).

3.2 What is learning?

It is important to highlight from the start, that defining learning can be difficult. Bower and Hilgard emphasise that there is not any academic disagreement about what learning is, but rather disagreement about what this should entail and how to encompass all of the different elements. They state, '*Their differences are over issues of interpretation, not over definition.*'³¹¹ Thus, the issue is not so much with what the theories are stating is learning, but rather how they are interpreted and then put into practice, which should be remembered when reading this Chapter.

If we are to discuss experiential education, it is necessary to define what an experience actually is. The Oxford dictionary defines experience as, '*the knowledge or skill acquired by a period of practical experience of something, especially that gained in a particular profession.*'³¹² Thus, experience is the practical application of knowledge, skill or attribute in a practical setting. Dewey describes poetically that, '*Every genuine experience has an active side which changes in some degree the objective conditions under which the experiences are had.*'³¹³ Here, we stray into the difference between experience and genuine experience. Kolb defines this differently, as concrete experiences

³¹¹ Bower, G.H. and Hilgard, E.R., *Theories of Learning*, (Prentice-Hall, 5th edn, 1981), p.14

³¹² Accessed via <https://en.oxforddictionaries.com/definition/experience> Last cited 22.11.16

³¹³ Dewey, J. *Experience and Education*, (Kappa Delta Pi, 60th Anniversary edn, 1998), p.39

which, '*focuses on being involved in experiences and dealing with immediate human situations in a personal way.*'³¹⁴ Thus, for an experience to be genuine or concrete it must not be a discrete experience to the learner. When Dewey discusses habit, he explains that its basic characteristic, '*is that every experience enacted and undergone modifies the one who acts and undergoes, while this modification affects, whether we wish it or not, the quality of subsequent experience.*'³¹⁵

The issues surrounding the Kolb's concrete experience necessity will be discussed in further detail below. However, we can take experience to mean a person acquiring knowledge, skills or attributes from the active participation in a situation, physically and emotionally, whereby this participation changes that person's perceptions of how they act in future, similar situations. The need for it to be genuine or concrete means, to me at least, for the participant to be aware of the experience and know how to use it to advance their learning. This will be explored throughout this Chapter.

Furthermore, some argue the difference between experiential learning and experiential education. Batt claims that experiential learning can happen anywhere, even outside of law school and when on externships, and is random and without intent.³¹⁶ On the other hand, experiential education, incorporates experiential learning but with clear aims and goals which students are to strive towards. Thus, experiential education can be described as organised, intentional experiential learning,³¹⁷ which is one of the arguments against the use of externships as opposed to LCCs, highlighted in the literature review. Experiential education also includes the encouragement of reflection, adequate supervision which focuses on learning and fostering the use of knowledge, skills and attributes, how it relates to theory and the wider world generally.³¹⁸ It can be seen that experiential education is the umbrella term for the various kinds of experiential learning which takes place, allowing for the experience to feed into future learning and practice.

Kolb, whose work is the main focus in this Chapter, describes learning as, '*the process whereby knowledge is created through the transformation of experience.*'³¹⁹ Learning is not merely the acquisition of knowledge, but using that knowledge in real life experiences.

³¹⁴ Kolb, D.A. *Experiential Learning: Experience as the Source of Learning and Development*, (Pearson Education Inc, 2nd edn, 2015), p.105

³¹⁵ Dewey, J. *Experience and Education*, (Kappa Delta Pi, 60th Anniversary edn, 1998), p.35

³¹⁶ Batt C, 'A Practice Continuum: Integrating Experiential Education into the curriculum,' 2015, 5 Stetson University College of Law: Legal Studies Research Paper, pp. 8-9

³¹⁷ *Ibid.*, p.9

³¹⁸ *Ibid.*, pp. 9-10

³¹⁹ Kolb, D.A. *Experiential Learning: Experience as the Source of Learning and Development*, (Prentice-Hall, 1984), p.41

3.3 Development of Experiential Learning Theory

ELT was developed by Dewey, Lewin and Piaget.³²⁰ Kolb was influenced by philosophical pragmatism (Dewey), social psychology (Lewin) and the cognitive development genetic epistemology (Piaget) to form his own ELT.³²¹

Dewey has written extensively on how important the use of experience is to education, criticising '*traditional education.*' Dewey worked on the theory that all principles are abstract and become '*concrete in their circumstances*' as a result of application,³²² thus turning an experience into knowledge. Education is formed by information and skills which we must transfer to our students.³²³ Furthermore, it is not only about the experience our students have, but the *quality* of those experiences.³²⁴ He states, '*the belief that all genuine education comes about through experience does not mean that all experiences are genuinely or equally educative.*'³²⁵ I interpret this to mean that not all experiences form sound education, as there can be bad experiences, which do not open up a student to all of what there is to be learnt. These bad experiences can be explored further when considering Peirce and *The Fixation of Belief*. It can be argued that further enquiry and learning can stem from a bad experience, outlined by de Waal, who interpreted that, '*For Peirce, inquiry always starts from the situation we actually find ourselves in, which all the doubts and belief come from.*'³²⁶ In order to displace our doubts, we think to our experiences, which form our beliefs and then feed into future experiences. Peirce does not seem to specify between a good or bad experience: any situation which unsettles our belief and causes doubt will stimulate a human to do their best to return to belief, whether this the old or a new belief.³²⁷ Thus, '*The irritation of doubt is the only immediate motive for the struggle to attain belief,*'³²⁸ regardless of whether this doubt is a good or bad one, in our fixation of belief.

Furthermore, whilst experiences can be fun, they can also be detached from one another. This can create a lack of sensitivity or careless and bad attitudes, and dissipate energy, causing a person to become '*scatter-brained,*'³²⁹ which may result in less control over future experiences. Dewey also

³²⁰ Kolb, D.A., Boyatzis, R.E. and Mainemelis, C. 'Experiential Learning Theory: Previous Research and New Directions' 1999, p.2. Accessed via <http://learningfromexperience.com/media/2010/08/experiential-learning-theory.pdf> Last cited 16.08.15.

³²¹ *Ibid.*

³²² Dewey, J. *Experience and Education*, (Kappa Delta Pi, 60th Anniversary edn, 1998), p.6

³²³ *Ibid.*, p.2.

³²⁴ *Ibid.*, p.16

³²⁵ *Ibid.*, p.25

³²⁶ de Wall, C., *Peirce: A guide for the perplexed*, (Bloomsbury, 2013), p.93

³²⁷ *Ibid.*, p.95

³²⁸ Peirce, C.S., 'The Fixation of Belief,' 1877, *Popular Science Monthly* 1, p.5 Accessed via <http://www.bocc.ubi.pt/pag/peirce-charles-fixation-belief.pdf> Last cited 26.11.16

³²⁹ *Ibid.*, pp. 25-26

adopted a constructivist epistemology, being somewhat a naturalist, when explaining his theory. He further established the need for learning to take place within society and that learning works best when an individual is interacting with their environment. He states that, *'all human experience is ultimately social: that it involves contact and communication.'*³³⁰ Thus, the learner is constructing, or directing, their learning from the social encounters they have and the environment around them.

The way in which Dewey's theory operates is seen in the diagram below:

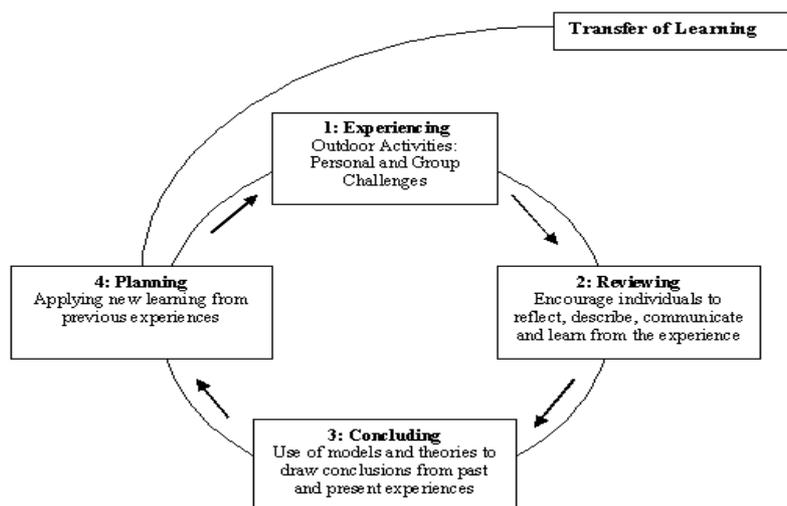


Figure 3.1 – Dewey's Theory of Experiential Learning³³¹

I will soon acknowledge that Kolb's learning cycle is rather similar to Dewey's, just perhaps more mature in the description of the different stages. In *Figure 3.1*, it is seen that Dewey is calling for an experience, reflection on the experience, concluding what this means for learning, planning the next experience and then proceeding through the cycle. This results in a transfer of learning from one experience to the next. Kolb follows the same cycle, in a way, allowing for planning for the next experience after reflection, but does not include the transfer of learning in his cycle, explored further below.

As much as I praise ELT and Dewey's contribution, I also appreciate that it has come under criticism. For example, Bantock argues that Dewey's theory focusses too much on enquiry, whereby students are concerned with problem solving, which results in *'over emphasis[ing]'* the *'importance of 'problems' in the search for knowledge as well as misrepresenting the knowledge itself.'*³³² However, Ord argues that Dewey's theory is as much about how we understand the world as well as how we

³³⁰ *Ibid.*, p.38

³³¹ Accessed via <https://sites.google.com/site/pllearningcontent/overview-theorists/john-dewey> Last cited 02.11.16

³³² Bantock, G.H., *Education in an Industrial Society*, (Fabian, 1963), p.31, as referenced in Ord, J. 'John Dewey and Experiential Learning: Developing the Theory of Youth Work,' 2012, 108 *Youth and Policy* 55, p.63 Accessed via <http://www.youthandpolicy.org/wp-content/uploads/2013/07/ord-yandp108.pdf> Last cited 3.11.16

operate within it.³³³ After all, learning, *'is as much about 'meaning making' as about a concern with the discovering solutions to 'practical' problems.'*³³⁴ Ping concurs with this notion, arguing that, *'inquiry is that attempt 'to make sense,' but to do so in the light of what other people have concluded in similar circumstances.'*³³⁵ Thus, Dewey believes that an activity shall have a meaning to the individual.³³⁶ This is similar, again, to that of Peirce discussed above, who argues that inquiry is what drives and motivates an individual to move from doubt to belief.³³⁷

Lewin was also influential to Kolb's ELT, drawing on his innovative methods and developing action-research and group training.³³⁸ What Lewin means by action research is described by Baumfield, Hall and Wall as, *"research that will help the practitioner' by providing clarity about what is to be done in complex situations.'*³³⁹ He continuously called for, within his work, more integration between theory and practice. Lewin discovered that learning best takes place, *'in an environment where there is dialectic tension and conflict between, immediate, concrete experience and analytical detachment.'*³⁴⁰ Lewin himself stated that, *'if you want to truly understand something, try to change it,'*³⁴¹ highlighting the need for experimentation in education.

Lastly, Kolb drew on the work of Piaget, who focused on cognitive development and the development of intelligence.³⁴² Piaget refers to learning as *'intelligen[t] adaptation,'*³⁴³ focusing on the assimilation, accommodation and equilibrium of an experience. He viewed learning and cognitive development as the building of schemata, which can be described as a cognitive index of experiences.³⁴⁴ He argues that, *'every response, whether it be an act directed towards the outside world or an act internalised as thought, takes the form of an adaptation or, better, a re-adaptation.'*³⁴⁵ Thus, a person being placed in a new or unsettling situation, meaning that the

³³³ Ord, J. 'John Dewey and Experiential Learning: Developing the Theory of Youth Work,' 2012, 108 Youth and Policy 55, p.63 Accessed via <http://www.youthandpolicy.org/wp-content/uploads/2013/07/ord-yandp108.pdf> Last cited 3.11.6

³³⁴ *Ibid.*, p.63

³³⁵ Ping, R., *John Dewey: A Philosopher of Education for our Time?* (Continuum Library of Educational Thought, 2007), p.65

³³⁶ Dewey, J., *The School and Society, The Child and the Curriculum*, (University of Chicago Press, 1990), p.23

³³⁷ Peirce, C.S., 'The Fixation of Belief,' 1877, *Popular Science Monthly* 1, p.5 Accessed via <http://www.bocc.ubi.pt/pag/peirce-charles-fixation-belief.pdf> Last cited 26.11.16

³³⁸ Kolb, D.A. *Experiential Learning: Experience as the Source of Learning and Development*, (Pearson Education Inc, 2nd edn, 2015), p. 9

³³⁹ Baumfield, V, Hall, E, and Wall, K. *Action Research in Education*, (SAGE, 2nd edn, 2013), p.3

³⁴⁰ Kolb, D.A. *Experiential Learning: Experience as the Source of Learning and Development*, (Pearson Education Inc, 2nd edn, 2015), p. 10

³⁴¹ Lewin, K., *Field Theory of Social Science: Selected Theoretical Papers*, (Harper & Brothers, 1951) p. 169

³⁴² Kolb, D.A. *Experiential Learning: Experience as the Source of Learning and Development*, (Pearson Education Inc, 2nd edn, 2015), p. 12

³⁴³ Piaget, J. *Psychology of Intelligence*, (Routledge and Kegan Paul Ltd, 1st (English) edn, 1950), p.7

³⁴⁴ Wadsworth, B.J., *Piaget's Theory of Cognitive and Affective Development*, (Pearson, 5th edn, 2004), pp14-17

³⁴⁵ Piaget, J. *Psychology of Intelligence*, (Routledge and Kegan Paul Ltd, 1st (English) edn, 1950), p.4

equilibrium between the individual and their environment has altered, acts on this and this '*tends to re-establish the equilibrium.*'³⁴⁶

There are three stages to this kind of learning: assimilation, accommodation and equilibrium. Assimilation is a being in a new situation, and using a schema in order to deal with it. This leads a person to accommodation, whereby they change their behaviour to deal with a new situation, when a schema has not worked. Equilibrium happens when a schema can deal with new situations. We are thrown into disequilibrium when a past schema cannot deal with a new situation, which can be viewed as a driver of our learning. As a result, the individual learns from this experience and it forms a new schema for future learning. This, in essence, is the cognitive basis for learning from experience.³⁴⁷ When we apply Peirce, we can see that the fixation of belief in the stages of assimilation, accommodation and equilibrium. The assimilation of being in a new situation causes a doubt in our beliefs, which we immediately attempt to rectify, moderating our behaviour in order to attempt reaching equilibrium. We have we stored our belief, whether it be old or new, for future behaviour.³⁴⁸ This can highlight one of the criticisms of experiential education, discussed further below in regards to Kolb, that an experience must be beautifully constructed for it to be an experience. However, experiential education should constantly keep a student on the brink of learning, because if they become comfortable and the more defined the inquiry is, the less likely they are to be motivated for the belief to be attained.

Piaget's theory has been applied to education previously, although not originally intended for that purpose, as he explains that children learn best from action and experience. For example, the Plowden Report, concerned with the transition from primary education to secondary education, drew heavily on the work of Piaget, asking for his constructivist epistemology to be incorporated into the classroom.³⁴⁹ This has been adapted and influences learning within higher education and pedagogic or andragogic methods.

From all of these different theories we will see the process in which Kolb has developed ELT below, outlining the different stages of learning, with the influences of the above theories apparent. ELT incorporates many different elements, thinking of the cognitive, philosophical and social psychology. Prior to Kolb's theory being discussed, I felt it necessary to indulge in other theories which are outlined in the CLE literature, but not necessarily influential to Kolb's work. They have

³⁴⁶ *Ibid.*

³⁴⁷ *Ibid.*, pp.5-7

³⁴⁸ Peirce, C.S., 'The Fixation of Belief,' 1877, Popular Science Monthly 1, p.5 Accessed via <http://www.bocc.ubi.pt/pag/peirce-charles-fixation-belief.pdf> Last cited 26.11.16

³⁴⁹ For more information please see: Gilliard, D., 'The Plowden Report,' (2004) Encyclopaedia of Informal Education, Accessed via http://www.infed.org/schooling/plowden_report.htm Last cited 02.11.16

not been critically analysed, as such, but the basis and description of the theory is provided. This, in turn, helps to explain why ELT was chosen as the framework for this thesis and not another.

3.4 Knowles

Knowles departs from the term pedagogy, preferring andragogy as the basis for his learning theory, or ALT. He criticised that earlier learning theories focused too much on pedagogy, and the science of teaching children, rather than the science of teaching adults,³⁵⁰ as we do in higher education, albeit usually those who have just reached adulthood. Knowles also found influence in the work of Dewey, as well as Lindeman, who he states, '*laid the foundation for a systematic theory about adult learning.*'³⁵¹ If we look at the work of Lindeman we can see how the use of experiential learning is influential. He outlined that, '*the resource of highest value in adult education is the learner's experience.*'³⁵² We can also apply to work of Freire here, who aimed to change education and empower people to enact positive change.³⁵³ Freire also highlights the need of experience within learning, and that '*education banking,*' whereby a teacher deposits their knowledge into a depository, the student, projecting their ignorance of a subject and keeping the oppressed, oppressed.³⁵⁴ Thus, this discussion is not so much about the pursuit of knowledge, but more the consideration that learning for adults should set them free.³⁵⁵ It enables them to let go of the need of knowing how a situation will turn out and enables them to focus on just needing to know how to find out. Thus, they will no longer be considered a depository, as they inquire for themselves, empowering to challenge conflicting beliefs and work for change.³⁵⁶

Due to the nature of andragogy and developing systems for adult learning, Knowles' theory has been influential within the CLE literature, which will be discussed in further detail later in this Chapter.

Knowles' ALT is comprised of five parts, or foundations, of adult learners, which have been developed throughout his career and influenced by previous ALTs. They are as follows:

1. *Motivation:* Adults are motivated to learn as they mature, experiencing '*needs and interests that learning will satisfy.*' Thus, learning is internal

³⁵⁰ Knowles, M., *The Adult Learner: A Neglected Species*, (Gulf Publishing Company, 2nd edn, 1978), p.27

³⁵¹ *Ibid.*, p.28

³⁵² Lindeman, E.C., *The Meaning of Adult Education*, (New Republic, 1926), p.9. Accessed via <https://archive.org/details/meaningofadulted00lind> Last cited 09.08.17

³⁵³ Freire, P., *Pedagogy of the Oppressed*, (Continuum, 30th Anniversary edn, 2005), Accessed via <http://www.ilearnincambodia.net/uploads/3/1/0/9/31096741/freireped.pdf> Last cited 27.11.16

³⁵⁴ *Ibid.*, p. 72

³⁵⁵ *Ibid.*, p. 39

³⁵⁶ *Ibid.*, pp. 54-55

2. *Orientation*: As we become adults, we shift from being subject based learners, to situation based learning. Our '*orientation to learning is life-centered.*' We appreciate the value in immediate application.
3. *Experience*: It is '*the richest source for adult's learning,*' and thus, experience should be the core methodology for learning.
4. *Self-Direction*: As we become adults we prefer our learning to be self-directed. As a result, the role of the teacher is, '*to engage in a process of mutual inquiry with them rather than to transmit his or her knowledge.*' Again, we can see the work of Freire applying here, and his work regarding '*education banking*' and conscientization. We cannot be merely fed knowledge without using it. Conscientization is the awareness of a social reality through action and reflection, allowing the participant to direct their learning for change.³⁵⁷
5. *Individuality*: Differences between people increases with age; '*therefore, adult education must make optimal provision for differences in style, time, place and pace of learning.*'³⁵⁸

There are many beneficial outcomes which Knowles outlines for ALT. The one which applies most to this work is that an individual should be equipped with the skills needed to enhance their potential personality. It should be an aim of education to give someone the skills in order to make full use of their abilities.

ALT, whilst very influential to this work, was not seen as suitable for the conceptual framework of this thesis. Though it is appreciated that Knowles highlights the importance of experiences in andragogy, I did not feel he went into enough depth of how we work through those experiences and take them further in future learning. Whilst we can see Knowles' ALT within ELT, Kolb's theory is better suited for the learning which takes place in LCCs.

3.5 Schön

Schön was never considered to be the conceptual framework for this thesis, but as he was quite influential within the CLE literature and the academic criticisms for Kolb's theory, it is important to include an outline of his work. It is easy to understand why clinicians relate to and use his theory, as it is heavily influenced with how practitioners think and learn in action.³⁵⁹ He states that, '*the situations of practice are not problems to be solved but problematic situations characterized by uncertainty, disorder, and indeterminacy.*'³⁶⁰ Borrowed from Dewey's *Logic: the Theory of Enquiry*, it re-establishes the constructivist epistemology, which flows through so many of the theories

³⁵⁷ Freire, P., 'Culture Action and Conscientization,' 1998, 68:4 Harvard Educational Review 449

³⁵⁸ Knowles, M., *The Adult Learner: A Neglected Species*, (Gulf Publishing Company, 2nd edn, 1978), p.31

³⁵⁹ Schön, D.A., *the Reflective Practitioner" How Professionals think in action*, (Ashgate, 1991), pp. viii-ix

³⁶⁰ *ibid.*, pp.15-16

discussed in this Chapter. Thus, through these situations expertise is arising. The essence of Schön's theories formulate through the use of reflection; reflective activity, knowing-in-action and reflection-on-action, in particular, will be discussed.

Schön defines knowing-in-action by explaining, *'our knowing is ordinarily tacit, implicit in our patterns of action and in our feel for the substance with which we are dealing. It seems right to say that our knowing is in our action.'*³⁶¹ What Schön means by this is that practitioners act within their knowing consistently. If there comes a time when they are confronted with a phenomena, or attempting to make use of research-based theories, they will use the judgements and skills acquired from previous experience to apply it to the new situation. It refers to, *'the sorts of know-how we reveal in our intelligent action.'*³⁶²

Whilst a practitioner is attempting to make sense of this new situation or phenomena they will also be reflecting-in-action. This means that, *'as he tries to make sense of it, he also reflects on the understandings which he surfaces, criticizes, restructures, and embodies in further action.'*³⁶³ When a practitioner is acting in the moment, they are also assessing their understanding and ability to work in a specific situation, acknowledging previous experience and what must be changed for a successful future experience. This should not be confused with reflection-on-action, which occurs when we think back to what we could have done differently when knowing-in-action produces a surprising result.³⁶⁴ Thus, reflection-in-action aims to shape what do whilst we are actually in the action, without interrupting it.³⁶⁵ This then feeds a new experiment, whereby we, *'think up and try out new actions intended to explore the newly observed phenomena, test our tentative understanding of them, or affirm the moves we have invented to change things for the better.'*³⁶⁶ This appears to be similar to Kolb, which will be explained in more detail in the next section. However, there is no use in reflection, if it is not used to influence new experiences and actions and create a transfer of learning. The learning stems from the implicating of the reflection as much as the reflection itself. Without further action, the reflection and ideas of changes to behaviour to fit the new phenomenon will be merely a thought rather than a tested way of developing and learning.

However, the distinction of *'in'* and *'on'* action may not be so simple in practice as in theory. Reflection is not something which is commonly easy for people to do, and students can find it

³⁶¹ *Ibid.*, p.49

³⁶² Schön, D.A., *Educating the Reflective Practitioner*, (Jossey-Bass Inc, 1987), p.25

³⁶³ Schön, D.A., *the Reflective Practitioner: How Professionals think in action*, (Ashgate, 1991), p.50

³⁶⁴ Schön, D.A., *Educating the Reflective Practitioner*, (1987, Jossey-Bass Inc) p.26

³⁶⁵ *Ibid.*

³⁶⁶ *Ibid.*, p.28

uncomfortable and hard to engage with reflection-on-action.³⁶⁷ We seem to be able to tolerate reflection, but if we attempt to tolerate too much of it then it disturbs the balance we have between the experience and putting it back into practice. If we force reflection, we can inhibit reflection.³⁶⁸ Hodgkin reinforces the power of experiential learning and reflection when he stated, ‘*When our competence is stretched we feel the existential quality of the ‘frontier’ zone and strong feelings are likely to be present – awe, excitement, fear, as well as plain curiosity.*’³⁶⁹ Thus, when a student is confronted with an unfamiliar area or situation, many different feelings will be present, which encourage learning and then reflection. Hodgkin refers to the infinity ‘*cycle of creativity,*’ which is displayed in the diagram below:

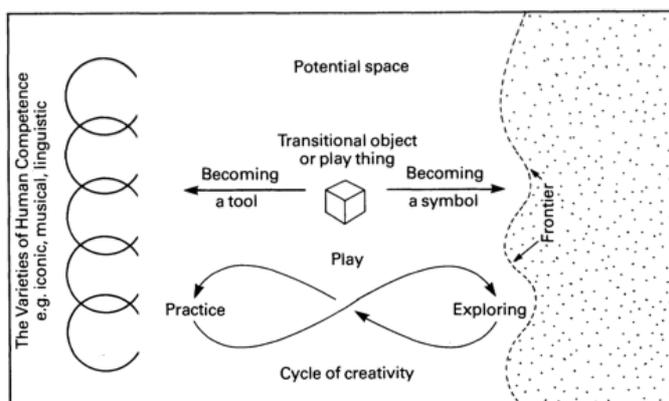


Figure 3.2 – Hodgkin’s Theory of Experiential Learning and Reflection³⁷⁰

We can see that a learner, when confronted by the frontier, whilst developing learning tools and symbols, will move continuously between practice and exploring. In order to do this, the learner will reflect on their previous experience, feeding into continuous exploring and practice. There is an understanding that:

‘all people, from infancy to old age, need to encounter the universe more profoundly; not just viewing it on a screen or in a prescribed experiment (though these have their place) but *at all levels of active experience*. Such encounters involve real people and real things and generative ideas which dwell in the mind, hold together in the mind, come to life in the mind, because the mind once dwelt in them with enjoyment and even love.’³⁷¹

Schön highlights that reflection isn’t only a good tool for learning, but also ‘*a corrective to over-learning.*’³⁷² Over-learning occurs when practice has become ‘*repetitive and routine*’ and knowing -

³⁶⁷ Gibbons, J., ‘Oh the irony! A reflective report on the assessment of reflective reports on an LLB programme,’ 2015, 49:2 The Law Teacher 176, p.184

³⁶⁸ *Ibid.*, p.181

³⁶⁹ Hodgkin, R.A., ‘Cognitive Objects,’ 1988, 14:3 Oxford Review of Education 353, p.357

³⁷⁰ *Ibid.*, p. 357

³⁷¹ *Ibid.*, p. 361

³⁷² Schön, D.A., *the Reflective Practitioner” How Professionals think in action*, (Ashgate, 1991), p.61

in-practice 'becomes increasingly tacit and spontaneous.'³⁷³ When over-learning happens, a practitioner may not be assessing and reflecting on his actions, may become bored and 'drawn into patterns of error.'³⁷⁴ Thus:

'through reflection, he can surface and criticize the tacit understanding that have grown up around the repetitive experience of a specialized practice, and can make sense of the situations of uncertainty or uniqueness which he may allow himself to experience.'³⁷⁵

Reflection is a learning tool, not only for students who are getting ready to enter the profession, but also for those whom have been practising within it already. By teaching reflection at an early stage, a practitioner can take this with him into his career for future development and learning. This, in my opinion, is an element of Knowles' ALT and Freire's indication of how learning can set one free, as one can continuously learn throughout one's life. Reflection is important in any aspect of a profession, and Schön's theory emphasises this.

3.6 Kolb and others (but mainly Kolb)

Kolb advanced ELT, which has become relevant in many different educational disciplines and research areas, including this thesis. It has been developed and is influential globally, demonstrating its cross-cultural applicability.³⁷⁶ Beard and Wilson define experiential learning as:

'the sense-making process of active engagement between the inner world of the person and the outer world of the environment. Experiential learning is, in essence, the underpinning process to all forms of learning since it represents the transformation of most new and significant experiences and incorporates them within a broader conceptual framework.'³⁷⁷

Kolb offers that:

'the emphasis is often on direct sense experience and in-context action as the primary source of learning, often down-playing a role for thinking, analysis, and academic knowledge.'³⁷⁸

³⁷³ *Ibid.*

³⁷⁴ *Ibid.*

³⁷⁵ *Ibid.*, p.61

³⁷⁶ Kolb, A.Y. and Kolb, D.A. 'Experiential Learning Theory: A Dynamic Holistic Approach to Management Learning, Education and Development,' 2001, p. 43. Accessed via https://www.researchgate.net/profile/David_Kolb/publication/267974468_Experiential_Learning_Theory_A_Dynamic_Holistic_Approach_to_Management_Learning_Education_and_Development/links/5559122408ae6fd2d826eb12.pdf Last cited 18.10.16

³⁷⁷ Beard, C.M. and Wilson, J.P. *Experiential Learning: A Best Practice Handbook for Educators and Trainers*, (Kogan Page Ltd, 2nd edn, 2006), p.19.

³⁷⁸ Kolb, D.A. *Experiential Learning: Experience as the Source of Learning and Development*, (Pearson Education Inc, 2nd edn, 2015), p.xviii

Experience and learning appear to be closely linked, with each influencing the other.³⁷⁹ Kolb and Kolb highlight that ELT is an integration of other experiential learning scholars, some discussed in this Chapter. However, they all share these key six propositions:

1. 'Learning is best conceived as a process, not in terms of outcomes
2. All learning is re-learning
3. Learning requires the resolution of conflicts between dialectically opposed modes of adaptation of the world
4. Learning is a holistic process of adaptation
5. Learning results from synergetic transactions between the person and the environment
6. Learning is the process of creating knowledge.³⁸⁰

These characteristics point to learning being a holistic experience, with an '*integrated function of the total person*.'³⁸¹ This includes a person's thoughts, feelings and behaviour. This learning must, thus, take place in the person's environment, allowing them to interact socially with it and learn from that experience.³⁸² This experience is the process of creating knowledge, proposing a constructivist epistemology of learning, '*whereby the social knowledge is created and recreated in the personal knowledge of the learner*.'³⁸³ Consequently, learning occurs in many kinds of experience, which are transformed into knowledge and used to adapt the next experience. Without this deeper learning and turning experience into knowledge, there is the risk of a student merely memorising what is taught, rather than learning.³⁸⁴ Kolb adds that the focus is on this learning, meaning the emphasis is not on the outcome, but on the process itself.³⁸⁵

Thus the SLO at Northumbria University is a model of experiential learning, students learning from the responsibility of having live clients, using this experience and turning it into knowledge for further learning. This will be explored further when considering Kolb's diagram explaining ELT,

³⁷⁹ Beard, C.M. and Wilson, J.P. *Experiential Learning: A Best Practice Handbook for Educators and Trainers*, (Kogan Page Ltd, 2nd edn, 2006), p.19.

³⁸⁰ Kolb, A.Y. and Kolb, D.A. 'Experiential Learning Theory: A Dynamic Holistic Approach to Management Learning, Education and Development,' 2001, pp. 43-44. Accessed via https://www.researchgate.net/profile/David_Kolb/publication/267974468_Experiential_Learning_Theory_A_Dynamic_Holistic_Approach_to_Management_Learning_Education_and_Development/links/5559122408ae6fd2d826eb12.pdf Last cited 18.10.16

³⁸¹ *Ibid.*, p. 43

³⁸² *Ibid.*, p. 44

³⁸³ *Ibid.*

³⁸⁴ Jarvis, P. *Adult Learning in the Social Context*, (Routledge Library Editions: Education, Volume 78, 2012), p. 19

³⁸⁵ Kolb, D.A. *Experiential Learning: Experience as the Source of Learning and Development*, (Pearson Education Inc, 2nd edn, 2015), p.37

displayed below:

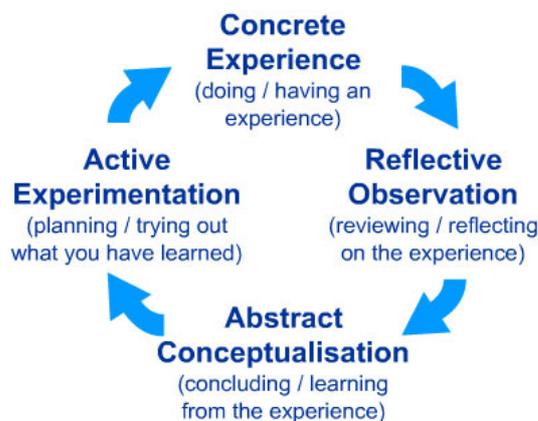


Figure 3.3 – Kolb’s Theory of Experiential Learning Cycle³⁸⁶

Kolb explains that this model displays two dialectically related forms of grasping experience (concrete experience and abstract conceptualisation) and two dialectically related forms of transforming experience (reflective observation and active experimentation) and that, *‘immediate or concrete experiences are the basis for observations and reflections.’*³⁸⁷ Thus, by observing and conceptualising, this allowed for experience to be gained and then transformed into learning, by reflection and active experimentation. By transforming the experience an individual can *‘interpret and act on that information.’*³⁸⁸ Furthermore, learning can start during any stage of this cycle. However, this may affect the learner’s functioning, as there are differences in people’s learning styles.³⁸⁹ Students, typically in a LCC, will have their *‘concrete experience’* during interactions with a client or during their case work. They reflect on this work subconsciously and actively during their firm meetings with their tutor. They learn from this experience and put it into practice during their next experience. As I could so clearly see the SLO in Kolb’s learning cycle, I found it to be most influential to this research.

Kolb has conducted research into learning styles as well, looking at their effect on ELT. He states that our past experience, hereditary characteristics and present learning environment can affect

³⁸⁶ Diagram copied from <http://www.simplypsychology.org/learning-kolb.html> Last cited 16.08.16

³⁸⁷ Kolb, D.A. *Experiential Learning: Experience as the Source of Learning and Development*, (Pearson Education Inc, 2nd edn, 2015), p.51

³⁸⁸ *Ibid.*, p.51

³⁸⁹ Moon, J.A. *A Handbook of Reflective and Experiential Learning: Theory and Practice*, (Routledge Falmer, 2004), p.114

what kind of learner we become.³⁹⁰ ELT suggests, according to Kolb, that learning is key to development and how we learn affects personal and professional development.³⁹¹ Kolb and Joy have done further research into learning styles and cultural birth and residence, however, I feel that it is beyond the scope of this thesis to discuss in great detail, but nevertheless important to include.³⁹²

We also must consider any issues associated with Kolb's learning cycle. Some argue that it is too simplistic, as it is conceivable that other kinds of learning can be used to achieve the same results without active experimentation.³⁹³ Jarvis also criticises that entry can be made at any stage of the model and can reverse the direction of the cycle flow, meaning that the stages of Kolb's cycle are not always sequential.³⁹⁴ As the model is simple, what is happening in between the sequences is not always clear. It does not explain or consider other factors, such as the transfer of learning.³⁹⁵ Miettinen argues, in his polemic on Kolb, that Kolb's cycle is '*inadequate*.'³⁹⁶ One of the reasons for this, he states, is that Kolb's cycle doesn't account the individual's experience, in that, '*Through its humanistic connection, the concept of experience also has an ideological function: faith in an individual's innate capacity to grow and learn*.'³⁹⁷ This idea directs us towards phenomenology:

'a philosophical movement based upon a self-critical methodology for reflectively (reflexively or introspectively) examining and describing the lived evidence (the phenomena) which provides a crucial link in our philosophical and scientific understanding of the world.'³⁹⁸

However, straying too far into phenomenology will be a digression as it is outside the scope of this work. What must be stressed is that Miettinen criticises Kolb's cycle as, '*The rich variety and modes of human experience characteristic of various human activities are replaced by a narrow and particularistic conception of experience*.'³⁹⁹ Because of this narrowness it does not divulge the

³⁹⁰ Kolb, A.Y. and Kolb, D.A. 'Experiential Learning Theory: A Dynamic Holistic Approach to Management Learning, Education and Development,' 2001, p. 46 Accessed via https://www.researchgate.net/profile/David_Kolb/publication/267974468_Experiential_Learning_Theory_A_Dynamic_Holistic_Approach_to_Management_Learning_Education_and_Development/links/5559122408ae6fd2d826eb12.pdf Last cited 18.10.16

³⁹¹ *Ibid.*

³⁹² Joy, S. and Kolb, D.A. 'Are there cultural differences in learning style?' 2009, *International Journal of Intercultural Relations*, 33(1), 69

³⁹³ Jarvis, P. *Adult Learning in the Social Context*, (Routledge Library Editions: Education, Volume 78, 2012) p. 19

³⁹⁴ *Ibid.*, p. 18

³⁹⁵ Wallace, M., *When is Experiential Learning not Experiential Learning?* Chapter 2 of: Atkinson et al., *Liberating the Learner: Lessons for Professional Development in Education* (Routledge, 1996) pp.18-30

³⁹⁶ Miettinen, R., 'The concept of experiential learning and John Dewey's theory of reflective thought and action,' 2000, 19:1 *International Journal of Life Long Education* 54, p.54

³⁹⁷ *Ibid.*

³⁹⁸ Reeder, H.P., *The Theory and Practice of Husserl's Phenomenology*, (ZETA Books, 2nd edn, 2010), p. 21

³⁹⁹ Miettinen, R., 'The concept of experiential learning and John Dewey's theory of reflective thought and action,' 2000, 19:1 *International Journal of Life Long Education* 54, p.61

individualisation of an experience.

Another issue some academics argue within ELT is that there must be a concrete experience, that an experience itself is not enough. Thus, too much emphasis can be placed on having an experience as a phenomenon of the individual, rather than allowing for any experience, including the experience of others, to rest within the learner. Newman argues many of these points, stating that working rigidly within the cycle means that we may not be allowing for experiences to really settle within an individual. As it is a predictable movement through the cycle, perhaps due to its simplicity, we may not let experiences *'enter into our souls to rest there, develop, change and influence us in some more disordered, unexpected and 'natural' way.'*⁴⁰⁰

However, Moon argues, and I agree with the notion, that the issues taken with Kolb's ELT is not with the theory itself, but rather how it has been interpreted by those using it.⁴⁰¹ Thus, we now find many advances and alterations to Kolb's ELT, in order to incorporate the detail which others think it lacks in practice. For example, Cowan has built upon ELT, influenced by the work of Schön, to include more detail on reflection. He argues that some find Kolb's learning cycle either *'depressing or misleading – or both.'*⁴⁰² Thus, Cowan has suggested pulling the diagram up, creating a kind of spiral, *'reaching ever upwards and onwards.'*⁴⁰³ Cowan's diagram is displayed below:

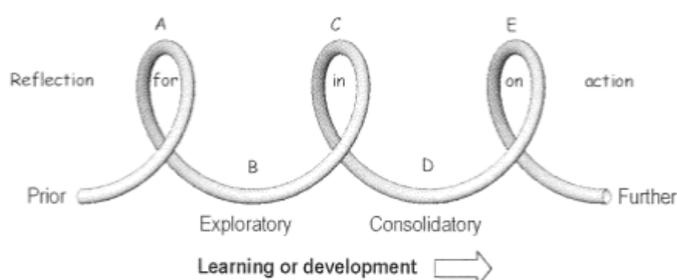


Figure 3.4 – Cowan's Diagram of Experiential Learning and Reflection⁴⁰⁴

Here, Cowan embraces Kolbian theory and the development of learning, but has advanced it to incorporate more of Schön's work on reflection, thus, attempting an amalgamation of the two theories. He works more with active reflection throughout the learning process. For example,

⁴⁰⁰ Newman, M., *Maeler's Regard: Images of Adult Learning*, (Centre for Popular Education, 1999), p.71. Accessed via http://www.michaelnewman.biz/pdf/maelers_regard-COMP.pdf Last cited 20.10.16

⁴⁰¹ Moon, J.A. *A Handbook of Reflective and Experiential Learning: Theory and Practice*, (Routledge Falmer, 2004), p. 115

⁴⁰² Cowan J, *On Becoming and Innovative University Teacher* (Society for Research into Higher Education and Oxford University Press, 2nd edn, 2006), p.52

⁴⁰³ *Ibid.*

⁴⁰⁴ *Ibid.*, p.53

when students got to loop C on the Figure 3.4, Cowan would interrupt them ten minutes before the end of the task and ask them to immediately reflect. This immediate reflection, Cowan argues, may take time away from the action for a few minutes, but *'can be immensely valuable, because of that very proximity to action.'*⁴⁰⁵ They would then reflect further after the action had concluded. Then, these experiences would form a student's prior experience and the loop begins again. By incorporating more reflection Cowan appears to be arguing for a deeper learning. However, the issued faced by Cowan here is that the reflection becomes overly summative. This results in more focus of the outcome of the process (summative), rather than the process of development at that time (formative).⁴⁰⁶

Boud and Walker have also adapted Kolb's cycle of ELT, to incorporate more reflection at the different stages of learning. They first developed their model in 1983 and have further developed and clarified it in 2000, with the use of participant's in conferences. They have also developed a cycle, which incorporates more reflection and previous experiences of the learner, something which is highlighted above as an issue with Kolb's theory. They acknowledge that they did not instantly realise the issues which are associated with experiential learning and the negative impacts learning can sometimes have.⁴⁰⁷ They state that these issues, or barriers, *'became the focus for our further reflection.'*⁴⁰⁸ Boud and Walker's learning cycle is displayed below:

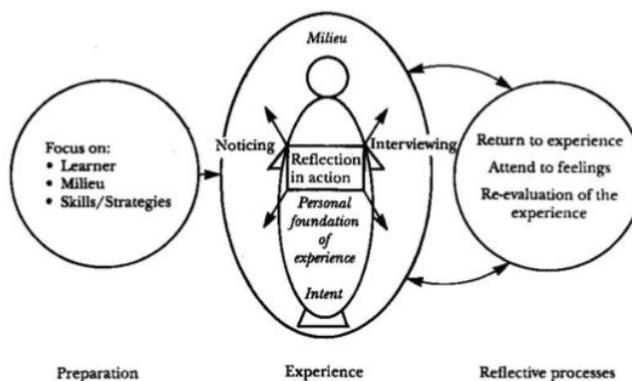


Figure 3.5 – Boud and Walker's Learning Cycle⁴⁰⁹

This model of the reflection process in experiential learning, whist I can appreciate the detail

⁴⁰⁵ *Ibid.*, p.54

⁴⁰⁶ Taras, M., 'Summative and Formative Assessment. Active Learning in Higher Education,' 2008, 9:2 SAGE Publications 172. Accessed via <https://hal.archives-ouvertes.fr/hal-00571974/document> Last Cited 12.08.17

⁴⁰⁷ The full list can be found at *Ibid*, p.79, table 5.1. The list is very comprehensive, including previous negative experiences, lack of self awareness, lack of time, lack of support and expectations of others.

⁴⁰⁸ Boud, D. and Walker, D., *Using experience for learning*, (Society for Research into Higher Education and OUP, 1983), pp.77-78

⁴⁰⁹ *Ibid.*, p.77

incorporated, is rather complicated and calls for some explanation, with the different kinds of reflection.

When discussing '*attending to feelings*,' shown in the right circle above, Boud and Walker are referring to '*building on the positive*' and fostering supportive feelings.⁴¹⁰ This, as some acknowledge as a furtherance of Dewey's and others work, is highlighting the associated of emotions with experiential learning. They do not want to dehumanise the process of reflection, and offer a:

'challenge of incorporating ideas around reflection, which in some cases are only partially understood, into teaching contexts which are not conducive to the questioning of experience – that is, situations which do not allow learners to explore 'a state of perplexity, hesitation and doubt,' 'inner discomforts,' 'distorting dilemmas,' uncertainties, discrepancies and dissatisfactions which precipitate, and are central to, any notion of reflection.'⁴¹¹

Thus, this can provide for a more holistic learning, incorporating feelings of the experience in with the technicalities of it. This is something which is discovered in the work of Piaget, with assimilation, accommodation and equilibrium and that of Peirce and the use of doubt in establishing a belief. Both of these theories, discussed earlier, highlight how discomfort is what enables a human to return to their equilibrium and belief, as doubt and disequilibrium makes one strive for. This is reflected in Boud and Walker's model and the need for feelings, whether good or bad.

There are issues with ELT, which is acknowledged by those who use and develop it. Nevertheless, Moon argues that '*often, the cycle is used more to underpin a process of the management of learning, than necessarily of the learning process itself*.'⁴¹² However, I think that Kolb's learning cycle, whilst lacking some detail within the cycle itself, still incorporates all of the above in Cowan and Boud and Walkers depictions, just more simplistically. It is understandable that some may think reflection occurs too early in Kolb's cycle, when it should be the last element of the cycle. Kolb's theory goes further than reflection. When reflection has taken place, Kolb is allowing for a learner to draw on that reflection and move forward, onto learning from what one has reflected on and then putting that into further practice, trying out what has been learnt from the experience in a new one.

⁴¹⁰ *Ibid.*, p.78

⁴¹¹ Boud, D. and Walker, D., 'Promoting reflection in professional courses: the challenge of context,' 1998, *Studies in Higher Education*, 23:2, p. 192

⁴¹² Moon, J.A. *A Handbook of Reflective and Experiential Learning: Theory and Practice*, (Routledge Falmer, 2004), p.116

As I see so many similarities between Kolb's ELT and the LCCs in which I conducted my fieldwork, I decided to continue its use and influence throughout this thesis, whilst appreciating the critiques and developments of others. I appreciate that not all LCCs will work in this way globally, but those used in this research did encourage reflection and worked through the Kolb's cycle, even if they were not necessarily aware of that.

3.7 CLE literature

As stated in the literature review, some conceptual articles found in the systematic review were felt best left to this Chapter, discussing them in the context of the conceptual frameworks explored above. Furthermore, some discussed in the literature review in a different context were also included here, as they heavily drew on the frameworks in their studies, as well as other papers identified by the research found in the systematic review. Different papers found sometimes moved between theories, drawing on different frameworks to help describe the processes used in CLE. By doing this I aim to have created a deeper discussion of the various conceptual frameworks which have influenced this work.

All papers showed the influence of the different ELTs and ALTs, arguing that CLE is the best method to teach law, as it is an, '*integrated process of learning theory and practice.*'⁴¹³ Ortiz highlights how legal education has been failing our recent graduates, as students are taught, '*to dehumanize the human subject of cases.*' *Our focus is sometimes too much on case analysis, and less on 'the effect of the law on human beings.*'⁴¹⁴ Ortiz, influenced by Schön and the reflection-in-action process of clinical teaching, recognises that CLE is not necessarily "the magic bullet" discussed in the literature review, as a LLC '*cannot prepare a student for every task the student may need to accomplish.*'⁴¹⁵ However, it can help to provide that foundation needed to start practice competently. ELT develops students as continuous learners, so that even if they do not know how to carry out a certain task, they can feel more confident in trying and developing the skills needed for future tasks, as CLE is a form '*experience and feedback.*'⁴¹⁶

There are a range of theories used in the conceptual papers, and Kolb occurs quite frequently in the discussion. Taylor argues that Kolb's model for ELT fits well with law clinics, and the benefits

⁴¹³ Miyagawa, S. 'Develop and Challenges of Clinical Legal Education in Japan,' 2012, 15:1 Inha Law Review 21, p.21

⁴¹⁴ Ortiz, D. 'Going back to Basics: Changing the Law Curriculum by Implementing Experiential Methods in Teaching Students the Practice of Law,' 2011, p.3. Accessed via https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2038067 Last cited 29.10.16

⁴¹⁵ *Ibid.*, p.10

⁴¹⁶ Mack K, 'Bringing Clinical Learning into a conventional Classroom,' 1993, 4 Legal Education Review 89, p. 94

from students participating in LCCs are '*clear*.'⁴¹⁷ Taylor, drawing on the work of others included in this thesis, argues that CLE opens student's eyes to the application of the theory of law into practice.⁴¹⁸ Furthermore, CLE can offer more than skills training alone, introducing '*students to questions of social justice and the dynamics of legal system*.'⁴¹⁹ When one thinks of a holistic legal education, these should be incorporated and fostered through the use of CLE, particularly LCCs. After all, '*only in real life contexts can students learn how they measure up to the legal requirements and expectation of the legal profession*.'⁴²⁰ However, Park argues that the use of simulations can bring '*an element of excitement and is an active way of learning*,' when discussing Kolb's theory of ELT. They can be highly behavioural, whilst allowing control and flexibility within the learning.⁴²¹ Thus, any experience can be seen as beneficial within legal education, whether it be with a live client or not.

Even where papers have not expressly discussed Kolb's theory, we can see where ELT is reflected in their opinion of CLE and what it should encompass. For example, Fell acknowledges that, in order to respond to the MacCrate Report and incorporate more skills and values training into a curriculum, it will involve three components:

1. 'the development of concepts and theories underlying the skills and values to be taught;
2. the opportunity for the students to perform lawyering tasked with appropriate feedback; and
3. reflective evaluation of the student's performance by a qualified assessor.'⁴²²

Thus, we can see that educators are implementing the steps of ELT, even if very basic and without realising, in order to foster effective teaching in CLE. However, Fell does continue the discussion of this design to incorporate the influence of Schön, and how the '*art of lawyering*' means learning by doing.⁴²³ By incorporating different ELTs we can foster this holistic legal education, as '*experiential learning is the strongest of learning tools*,' when done properly.⁴²⁴ This means, in my opinion, fostering all kinds of learning, whether it be skills, social or theory based. For example,

⁴¹⁷ Taylor, L. 'Skills, Skills- Kind, Inclusion and Learning in Law School,' 2001, 3 UTS Law Review 85, p.108

⁴¹⁸ *Ibid.*

⁴¹⁹ Taylor, L. 'Skills, Skills- Kind, Inclusion and Learning in Law School,' 2001, 3 UTS Law Review 85, p.109, based on Rice, S., *Review of the Clinical Legal Education Program in the Law Faculty at the University of New South Wales*.

⁴²⁰ Batt C, 'A Practice Continuum: Integrating Experiential Education into the curriculum,' 2015, 5 Stetson University College of Law: Legal Studies Research Paper, p.29

⁴²¹ Park, R. 'Appropriate Methods for the Teaching of Legal Skills in Practical Training Courses,' 1990, 8:2 Journal of Professional Legal Education 161, p.178

⁴²² Fell, N. 'Development of a Criminal Law Clinic: A Blended Approach,' 1996, 44:3 Cleveland State Law Review 275, p.283

⁴²³ *Ibid.*, p.284

⁴²⁴ *Ibid.*, p.284

Hunter argues that CLE can place *'too much emphasis on performance and far too little emphasis on intellectual inquiry of a broad conceptual kind.'*⁴²⁵ Thus, when we are moving through the ELT cycle we should be allowing students to focus on all of the different effects of lawyering, and that skills is not the only focus within ELT. However, if we were not to have these theories, we run the risk of students not developing skills in an appropriate and transferable manner. Taylor, drawing on Kolb and Knowles, outlines the process of experiential learning for skills training as:

- 'provision of knowledge/information
- explanation of the importance of the skill in that context
- observation of the skill
- undertaking the skill
- feedback as to how well the skill was used
- personal practice of the skill
- personal reflection and feedback as to how well the skills has been developed.'⁴²⁶

Taylor admits this is similar to ELT. I am of the opinion that Taylor's steps are doing what Cowan and others called for, included in the discussion above: less simplicity. We can see Kolb's cycle within this process, but with some more added detail of the way in which the learning takes place, leaving reflection to the end. However, it lacks some of ELT, with how to take that knowledge further into future learning. By there being this constant emphasis on reflection and where it should be placed, however, has been criticised. For example, Kotkin argues that clinicians can, *'improve the learning process... by facilitating their ability to function in role, rather than focusing only on the reflection and abstraction stages of the experiential cycle.'*⁴²⁷ We should be placing equal emphasis on each stage of the cycle. Without it, we may be creating reflective practitioners, but one's who are not confident with acting out the lawyering process. However, it is important to note that *'in clinical education, the live-case contact is the foundation upon which the educational experience rests.'*⁴²⁸ The use of experiential learning in legal education, and the benefits it can provide, is to be further explored in this thesis.

Yet, ELT can go further than skills training. Park highlights that CLE cannot only rely on behavioural models, whereby students are taught the skills and replicate them. It must go further than this, for students to, *'investigate their role as practitioners within the context of the needs of their*

⁴²⁵ Hunter, J. 'Teaching Plumbing with Periclean Ideal: Should it be done? Can it be done? Advocacy and Courtroom Scholarship,' 1996, 30, *The Law Teacher* 330, p.333

⁴²⁶ Taylor, L., 'Skills, Skills- Kind, Inclusion and Learning in Law School,' 2001, 3 *UTS Law Review* 85, p.121

⁴²⁷ Kotkin, M.J., 'Reconsidering Role Assumption in Clinical Education,' 1989, 19 *New Mexico Law Review*, 185, p.196

⁴²⁸ Fell, N., 'Development of a Criminal Law Clinic: A Blended Approach,' 1996, 44 *Cleveland State Law Review* 275, p.293

society.⁴²⁹CLE is also about developing the necessary interpersonal skills for competent lawyering, developing students to become client focused. Davis outlines the importance of ELT and its use within legal education as, *'it holds the key to the elusive goal of coalescence of the practical and theoretical. Indeed, it shows that one without the other is insufficient for competence.'*⁴³⁰

However, in order for ELT to work, there is this call for integration, which is heavily outlined in the literature and discussed on the conceptual mind map in the literature review. Schehr contends that without changes to the current legal education system, *'legal clinics and the philosophy and epistemology that guide them will continue to operate as appendages to more mainstream political and ideological driven pedagogy.'*⁴³¹In order for students to be exposed to real life lawyering and develop the knowledge, skills and attributes needed to do this affectively, we must allow for experiential education and to expose students to the problems they will most likely encounter when beginning their practical careers.⁴³²

As well as Kolb, legal educators within CLE also draw on the work of Knowles⁴³³ and, as this Chapter does explore ALT, I thought it necessary to discuss the conceptual papers in this field. Park discusses the learning that can take place when using CLE, focusing on Knowles' five foundations of ALT. Park argues that there are no reason why legal skills curriculums cannot meet the criteria set out in ALT. Furthermore, if we adopt ALT within our teaching it helps to diminish the issue that, *'many students perceive that they are being treated like school children with little autonomy and self-direction.'*⁴³⁴If we want our students to become and remain enthusiastic about their learning, then incorporating ALT into the curriculum can help foster this.

McCaffrey, an advocate for LCCs and experiential learning in legal education, states that, *'the experiential nature of clinical legal education appeals to adult learners and is in fact very appropriate for law students at adult learners.'*⁴³⁵ McCaffrey links Knowles' ALT back to LCCs,

⁴²⁹ Park, R., 'Appropriate Methods for the Teaching of Legal Skills in Practical Training Courses,' 1990, 8:2 Journal of Professional Legal Education 161, p.178

⁴³⁰ Davis, L., 'Competence as Situationally Appropriate Conduct: An Overreaching Concept for Lawyering, Leadership, and Professionalism,' 2012, 52 Santa Clara Law Review 725, p.755

⁴³¹ Schehr, R., "'The Lord Speaks Through Me": Moving Beyond Conventional Law School and Pedagogy and the Reasons for Doing So,' 2009, 14 International Journal of Clinical Legal Education 9, p.29

⁴³² *Ibid.*, p.30-31

⁴³³ For example, Grose, C., 'Beyond Skills Training Revisited: The Clinical Education Spiral,' 2013, 19 Clinical Law Review 489, p.12

⁴³⁴ Park, R., 'Appropriate Methods for the Teaching of Legal Skills in Practical Training Courses,' 1990, 8:2 Journal of Professional Legal Education 161, p.181

⁴³⁵ McCaffrey, A., 'Hamline University School of Law Clinics: Teaching Students to Become Ethical and Competent Lawyers for Twenty-Five Years,' 2002-2003, 24 Hamline Journal of Public Law 1, p.30

arguing that students in a LCC are expected to be *'self-directed'* and that they are motivated by their task of *'becoming a lawyer.'*⁴³⁶ Furthermore, supervisors within a LCC are expected to be *'democratic,'* becoming more of a mentor to the students and not the primary source of information.⁴³⁷ By doing this students remain motivated within a clinic, as the students are, *'acquiring knowledge that can be immediately applied to a situation they are facing and that is closely related to their task of becoming a lawyer.'*⁴³⁸ Thus, by fostering ALT within a LCC we are not only motivating students, but developing their capacity to face uncertain circumstances and to solve the problem on their own or within a team.

As discussed above, Schön was influential within the CLE literature, not surprisingly when discussing reflection. For example, Fell states that, *'it is this self-reflective quality that is clinical education's special gift to the emerging lawyer.'*⁴³⁹ Thus, a large part of teaching in a clinic is to develop reflective practitioners which will aid them during their career, fostering further development. This appears to be a consensus within the literature, that *'learning from past experiences will inform the student's future practice.'*⁴⁴⁰ Brayer goes onto to suggest that legal educators should explore the use of systematic interaction from experience within a clinic. He explains that this operates on the *'premise that students should reframe how they look at their surroundings so that the challenges that make up their profession system are not seen as problems but as a means to a solution.'*⁴⁴¹ I appreciate Brayer's idea of a clinical systems theory, but it is not so dissimilar to that of other theories and used within CLE. For example, we explored a criticism of Dewey above, that he can focus too heavily on a problem as the key to knowledge, with discussion provided by Bantock, Ord and Ping. This is very similar to previous theories discussed, demonstrating even further how clinicians can be working with a theory without knowing. He states that a clinical systems theory is consistent with the principles of experiential learning and reflection. Thus, we can already acknowledge the similarities with many other theories within experiential education.⁴⁴² Brayer does discuss his theory in light of work by Piaget (for the learning and equilibrium) and Schön (for the use of reflection for development in different situations).⁴⁴³ When applying Schön, Brayer maintains the constructivist epistemology established, in that, *'students learn how to develop and*

⁴³⁶ *Ibid.*, p.31

⁴³⁷ *Ibid.*, p.32

⁴³⁸ *Ibid.*, p.41 See also, Sonsteng, J.O., *et al*, 'A legal Education Renaissance: A Practical Approach for the Twenty-First Century,' 2007-2008, 34 William Mitchell Law Review 303, pp.390-392

⁴³⁹ Fell, N., 'Development of a Criminal Law Clinic: A Blended Approach,' 1996, 44 Cleveland State Law Review, 275, p.291

⁴⁴⁰ Brayer, P.C., 'A Law Clinic Systems Theory and the Pedagogy of interaction: Creating a legal learning system,' 2013-2013, 12 Connecticut Public Interest Law Journal 49, p. 49

⁴⁴¹ *Ibid.*, p.50

⁴⁴² *Ibid.*, p.53

⁴⁴³ *Ibid.*, pp. 55-56

*change by interacting with their environment.*⁴⁴⁴ Thus, whilst theories may differ in approach they seem to be consistent in their epistemology: interacting with one's environment is an important aspect of experiential education.

Others have taken inspiration from Schön's tacit knowledge, which students may or may not have, and how this feeds into knowing-in-action, and then knowing-in-practice. Laser states that, '*surprise occurs because a student is solving problems in an indeterminate environment,*'⁴⁴⁵ which are later reflected on. As a result of reflection, '*the quality of [their] future performances in the zone of indeterminacy will improve.*'⁴⁴⁶ Thus, the benefits are twofold: the student will be able to adapt in uncertain situations and their performance will be better, as well as gaining the method of reflective learning which will help with their practice in the future. However, he also provides that developing students to become this reflective practitioner depends on a significant amount of CLE, drawing on Schön's opinion that a reflective practitioner takes more time to develop than a curriculum generally requires.⁴⁴⁷ Although, as there can be resourcing and staffing issues within CLE, this could be a downfall of Schön's theory in practice.

Finally, Kreiling draws on Schön's work, which he developed with Argyris, and "*theories in action,*" which when combined make up "*theories of professional practice.*"⁴⁴⁸ In order to learn from the experience one must analyse it. Thus, '*to become aware of the ineffectiveness of professional behaviour, a person must articulate his framework for problem solving – he must verbalize his "theory-of-action,"*'⁴⁴⁹ and once it is communicated it is then testable. Once this ineffectiveness has been identified, there is then motivation to learn why it has occurred.⁴⁵⁰ This, as a result, highlights any "*learning dilemmas*", which arise when there is a conflict between theory in use and the application of it. Thus, the juxtaposition of theory and practice encourages one to modify their behaviour for future successful professional behaviour.⁴⁵¹ This will foster experiential learning and reflection on that learning. Kreiling states that, '*the ability and willingness to be reflective and methodical about practice are necessary conditions for lawyer competency and high professional standards.*'⁴⁵² This seems to conclude how clinicians attempt to incorporate Schön's work into reflection within their pedagogical practice.

⁴⁴⁴ *Ibid.*, p.58

⁴⁴⁵ Laser, G.S., 'Educating for Professional Competence in the Twenty-First Century: Educational Reform at Chicago-Kent College of Law,' 1992-1993, 68 *Chicago-Kent Law Review* 234, p.258

⁴⁴⁶ *Ibid.*, p.264

⁴⁴⁷ *Ibid.*, p.278

⁴⁴⁸ Argyris, C. and Schön, D.A., *Theory in Practice: Increasing Professional Effectiveness*, (Jossey-Bass, 1974)

⁴⁴⁹ Kreiling, K.R., 'Clinical Legal Education and Lawyer Competency: The Process of Learning to Learn from Experience Through Properly Structured Clinical Supervision,' 1981, 40 *Maryland Law Review* 284, p.291

⁴⁵⁰ *Ibid.*, p.292

⁴⁵¹ *Ibid.*, pp. 294-295

⁴⁵² *Ibid.*, p.336

Exploring the CLE literature within the different conceptual frameworks has been enriching. Furthermore, it highlights how different theories are influential to CLE and legal educators, and a '*variety of teaching methods will yield the best result for students.*'⁴⁵³ However, not many of the papers identified and discussed here actually acknowledge the literature criticising such theories. It seems as though the basic models are influential to legal educators, but we do not seem to look deeper into the model, or beyond it. Furthermore, some articles highlighted the importance of multiple theories, but neglected to explain how they related to each other and the strengths and weaknesses of each. We cannot, as a result, fully engage with how CLE relates to the theory and apply it. However, the work of Jung can apply here and psychometrics. People are all different; they approach and engage with situations in different ways, due to their psychological functions.⁴⁵⁴ The same can be said with how understand and apply different theories. There are many similarities between them, but different ways of enacting them. For example, we all work through Piaget's stages of assimilation, accommodation and equilibrium, but will all do this differently, with the same goal reached at the end. These differences can give us a broader understanding of experiential learning and how this relates to learning styles within the curriculum generally. For example, Newton provides that, '*People are obviously different and Learning Styles appear to offer educators a way to accommodate individual learner differences.*'⁴⁵⁵ This is a fair assumption, which Newton dismisses due to a lack of evidence, with studies not criticising but merely accepting the Learning Style inventory and how it is used within a curriculum.⁴⁵⁶ Thus, Newton is calling for more understanding of learning methods within a curriculum, which are not necessarily dependant on the uncriticised learning styles. This will help to foster learning. We can see in Jung's assertions above that learning styles can result from one's preferred ways of adapting to the world,⁴⁵⁷ which is very prominent in experiential learning and further establishes the constructivist epistemology, which is so prevalent in the various theories.

Whilst the theory discussed within the literature may not be very detailed, it is refreshing to see how clinicians are engaging with it and understanding the concept within which CLE operates. By discussing the theories within which CLE functions, clinicians will further justify their work and allow for the field to be developed and explored theoretically.

⁴⁵³ Sonsteng, J.O., *et al*, 'A legal Education Renaissance: A Practical Approach for the Twenty-First Century,' 2007-2008, 34 William Mitchell Law Review 303, p.390

⁴⁵⁴ Jung, C.G., *Psychological Types*, (Routledge, 2014), p.6

⁴⁵⁵ Newton, P., 'The Learning Styles Myth is Thriving in Higher Education,' 2015, 6:1908 *Frontiers in Psychology*, p.2

⁴⁵⁶ *Ibid.*, p.5

⁴⁵⁷ Chapman, A., 'Kolb learning styles: David Kolb's learning styles model and experiential learning theory (ELT),' Accessed via <http://www.businessballs.com/kolblearningstyles.htm> Last cited 30.11.16

3.8 Conclusion

This Chapter has discussed a wide range of learning theories. It has also highlighted the one chosen, ELT, is present within our teaching in LCCs, particularly the SLO in Northumbria University. The methods used to collect data reflect the characteristics of ELT, in that I wanted my participants to be actively engaged in the data collection and validation process. As the conceptual framework, and the reasons why chosen, for this thesis have been explained and justified, we will move onto discuss methodology in the next Chapter.

I did not want to explore ELT in LCCs using only traditional and non-experiential methods of collecting data. Thus, Kolb's ELT has not only influenced the conceptual framework, but also the methods and ways in which I approached my data collection. The next Chapter describes the PhD journey I embarked on, the philosophical underpinnings, methods, sample and approach to the analysis.

Chapter Four: Research Methodology

'The bees plunder the flowers here and there, but afterward they make of them honey, which is all theirs; it is no longer thyme or marjoram. Even so with the pieces borrowed from others; he will transform and blend them to make a work of his own, to wit, his judgment.'

- Michel de Montaigne⁴⁵⁸

4.1 Introduction

The purpose of this Chapter is to describe, discuss and justify the approach adopted in this thesis. It outlines the chosen theoretical underpinning, conceptual framework, the methods adopted and the reflective critique of the research. It will describe in detail how I approached this research and why I chose the methods used.

This Chapter will not be written in the conventional way. As there was no one research paradigm that I felt I fit into, I had to adopt several, moving between them as I collected my data. Thus, this Chapter will follow my journey through this research, describing how I approached certain methods and the theoretical underpinning influencing it. I did not firmly decide on my methodology prior to the data and approached my research with more of an inductive process. I made a scientific decision of what I wanted to do, but I had to accept, and adapt for, how the research changed and developed. It will be highlighted in this Chapter that I started from a positivist stance, but developed a more interpretivist and pragmatic view once I was deeper into the research. A part of the interpretivist position is that it is an inductive process, which changes and develops during the research process. Thus, you will find my naïve voice in partnership with my theoretical voice. I am like the bees de Montaigne describes above: I did not have a set honey recipe, I created one from various flowers.

The epistemology influencing this research, constructivism, highlights that humans construct their own meaning of the world around them, through social interactions. This, '*mirrors the concept of intentionality*,'⁴⁵⁹ and something which was very inherent to me during this research process. Intentionality rejects both objectivism and subjectivism. It is, instead, an '*interaction between*

⁴⁵⁸ de Montaigne, M., *On the Education of Children*, (1575), p.3. Accessed via <http://media.bloomsbury.com/rep/files/primary-source-77-michel-de-montaigne-on-the-education-of-children.pdf> Last cited 16.02.17

⁴⁵⁹ Crotty, M., *The Foundations of Social Research: Meaning and Perspective in the Research Process*, (SAGE, 1998), p.44

*subject and object,' or 'humans engaging with their human world.'*⁴⁶⁰ When I was conducting my research I was continuously acting with intent. I intended for certain data to be collected, but then I intended for certain methods to be excluded or abandoned as I moved between different certainties. By collecting my data from an early stage, I was able to see how my methods were working and which data sets were answering my research question. I interacted with my social world, not only for data collection, but to strengthen my research methodology. When writing this Chapter it has been as important to understand what I did not do, as well as what I did do.

4.2 Background to the research

It was discussed in Chapter Two that there is much literature surrounding clinical legal education (CLE) and how it can provide students with the knowledge, skills and attributes needed for practice, but not much empirical evidence that it is actually working.⁴⁶¹ The amount of investment (monetary, time and personal) law schools and their clinicians put into live client clinics (LCCs) calls for more evidence that this kind of learning is benefitting students by providing them with the foundation needed to begin practice competently.

The principal question in this research was:

What knowledge, skills and attributes are perceived as important for a lawyer to start day one training competently and are they provided through clinical legal education, specifically live client clinics, and how are they understood in different European contexts?

In order to explore this question, the following research aims were adopted:

A1 To explore with 4th year law students at Northumbria University who participate in the Student Law Office (SLO) which knowledge, skills and attributes they think are necessary for practice, and whether these views are affected by participating in a LCC

A2 To compare these findings with that of SLO tutors and practising lawyers and what they believe is important to practice

A3 To compare these findings with other LCCs in the European Institutions (EIs) and whether any or all of the skills perceived necessary for practice are consistently identified across the

⁴⁶⁰ *Ibid.*, p.45

⁴⁶¹ Tomoszek, M., 'The Growth of Legal Clinics in Europe – Faith and Hope, or Evidence and Hard Work?' 2014, 21:1 International Journal of Clinical Legal Education 93, p.100

various LCCs chosen for comparison

A4 To explore with clinicians from the EIs whether they think LCCs are beneficial to legal education, particularly focusing on which knowledge, skills and attributes can be taught

A5 Identify, both through the literature and empirically, whether these skills have been provided through participation in a LCC or whether some are left to practice

I also had another aim of this research, which was later excluded. A6 was:

A6 To develop insight into how to best prepare our students for practice.

However, I realised that the kind of data I was collecting did not actually relate to this research aim, nor could it answer any questions it posed. Furthermore, my positionality within the clinic, discussed in further detail throughout this Chapter, did not allow for it. I had restricted access into the clinic and this aim was effected by it.

It is also important to highlight from the outset the relationship between my research and Europe. This PhD was initially intended to be European focused. However, having to exclude some research methods, which will be discussed in further detail below, it could no longer be completely European focused. Thus, this research resulted in becoming a comparison and slightly different shape than originally planned. Due to the results of the systematic review, and other research,⁴⁶² the comparison focused on some of the most developed countries in terms of CLE. The EIs in the countries studied have very developed LCCs and their tutors are active in the research field.⁴⁶³ These pockets of activity in the systematic reviews have driven where I could have reasonably be expected to collect data. It would not have been beneficial to go to a newer LCC in a country such as Germany, as the comparison data would not have given me what I wanted for this research. This large scale, European focused, research will be pursued with further research later.

4.3 The Diamond16

Though the Diamond16 is a method and would normally be discussed later in this Chapter, I found it necessary to outline its design and uses here. The Diamond16 is such an important aspect of this

⁴⁶² Dunn, R., 'A Systematic Review of the Literature in Europe Relating to Clinical Legal Education,' 2017, 24:2 International Journal of Clinical Legal Education 81.

⁴⁶³ For example, please see, Tomoszek, M., 'The Growth of Legal Clinics in Europe – Faith and Hope, or Evidence and Hard Work?' 2014, 21:1 International Journal of Clinical Legal Education 93

Chapter, to discuss it later would be confusing when reading the next section. As will be further discussed below, Professor Hall directed me to the Diamond16. It is a research method traditionally used in primary education. Her background is in early childhood and primary education research, and this influence is reflected in this thesis.

The Diamond16, traditionally called the Diamond9, is a form of hierarchy ranking. The purpose of the Diamond is to, 'encourage discussion about the relative importance of certain factors.'⁴⁶⁴ It is a 'thinking skills tool,' which encourages and facilitates discussion.'⁴⁶⁵ A typical Diamond9 looks like this:

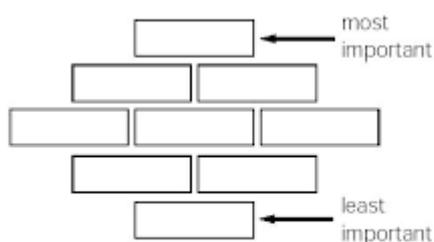


Figure 4.1 – The Diamond9⁴⁶⁶

Participants are given nine cards with statements, words or pictures and asked to rank them in order of importance. Any cards that are placed on the same row carry the same weight of importance. Cards may be moved once placed and all card must be placed on the board for a complete Diamond. I adapted the Diamond and made it so that there were 16 placements instead of nine. I gave participants 11 pre-determined skills cards I created, which were:

1. Assertiveness
2. Intuition
3. Analysis
4. Patience
5. Thick skin
6. Empathy
7. Written skills
8. Authority
9. Perseverance
10. Oral skills
11. Awareness of ethical issues

⁴⁶⁴ Rockett, M., and Percival, S., *thinking for learning*, (Network Education Press, 2002), p.99

⁴⁶⁵ Clark, J., Laing, K., Tiplady, L. and Woolner, P., 'Making Connections: Theory and Practice of Using Visual Methods to Aid Participation in Research,' 2013, Research Centre for Learning and Teaching, Newcastle University, p.6. Accessed via <http://www.ncl.ac.uk/cflat/news/documents/MakingConnections.pdf> Last cited 20.12.16

⁴⁶⁶ Taken from <http://sessionbuilder4.blogspot.co.uk/2014/03/diamond-9-organisation.html> Last cited 19.12.16

The skills on these cards were borrowed from a friend's pupillage application, whereby she had to rank ten skills in order of importance to practice. I added '*awareness of ethical issues*' as I felt it was important to measure. I acknowledge that in the 11 pre-determined cards which I provided participants with during the Diamond16s did not include the card legal knowledge, even though it is something which I am measuring. I was curious to see how often legal knowledge would be created, if not already highlighted to participants. It has been stated throughout this thesis that I have moved from being a naïve researcher, to a more informed one. It would be interesting when using this method in the future, whether legal knowledge as a pre-determined card would be placed in high importance or not.

I created the Diamond16 and tested it on my friends and other PhD students within the first month of starting the PhD. I even tested it on friends who had not done a law degree. This relates back to my naivety when I first started this research and being a novice researcher. I tested the Diamond16 informally, as that was the natural way for me to do it, following the naturalistic style of researching. I realise that most of my participants were training or qualified solicitors and not barristers. However, I felt these skills so generic to any kind of lawyer activity that they are transferable to the LPC students.

I also gave participants five blank cards on which they could create their own skills. I encouraged my participants to discuss which skills were to be created, where all skills should be placed and why. During the Diamond16 exercise I did not talk to my participants, bar for any confirmation on how to carry out the task. Each Diamond16 took on average between ten minutes and 30 minutes to complete and were filmed on my iPad. Once filmed each Diamond16 was transcribed⁴⁶⁷ and allowed me to collect four kinds of data:

1. The five created skills cards
2. The movements of cards before the final placement
3. The discussion around the cards
4. The final placement of the cards on the board

Asking participants to rank certain lawyer knowledge, skills and attributes in this way required them to make decisions on importance and to form relationships between different cards. By organising their knowledge they made, '*their understandings available for analysis and comparison.*'⁴⁶⁸

⁴⁶⁷ Please see Appendix 8 for an example of a Diamond16 transcription

⁴⁶⁸ Clark, J., Laing, K., Tiplady, L. and Woolner, P., 'Making Connections: Theory and Practice of Using Visual Methods to Aid Participation in Research,' 2013, Research Centre for Learning and Teaching, Newcastle University, p.6. Accessed via <http://www.ncl.ac.uk/cflat/news/documents/MakingConnections.pdf> Last cited 20.12.16

Furthermore, *'when ranking items – for example, statements, objects or images – the participants are required to make obvious the overarching relationships by which they organise knowledge.'*⁴⁶⁹ The result is seeing the participants really think about their choice of ranking, making their knowledge of the world vulnerable. I made my participants aware that there was no right or wrong way to place the cards and that it was purely their opinion that mattered to me. This seemed to make them more comfortable with the task.

There are different ways in which to use the Diamond16. It can be done for opinions on importance, interest or significance. The qualitative element added depth to the placement of the cards, and the justifications of why a card was placed where it was can be a data-set in itself. The use of quantitative elements in visual methods is not excluded from its practice, and researchers are able to combine both qualitative and quantitative methods.⁴⁷⁰

The Diamond16 is a kind of visual method. Visual images are created by their participants, *'in the context of, or in response to, human social action.'*⁴⁷¹ Thus, they are separate to the participant, but remain linked to them as a representation of the phenomenon. There are two kinds of visual images which we can identify: those images which are made by participants to analyse *as* data and those created by the researcher to *collect* data.⁴⁷² Visual methods have culture, society and human culture as *'subject,'* which is consistent with the theoretical frameworks and epistemologies discussed below.

I found that my participants enjoyed the Diamond16. Some students who participated from the SLO used the pictures taken as tools for their final reflection piece. Furthermore, tutors also used my Diamond16 board to aid their own teaching, tracking which skills and attributes needed further development and attention within the clinic. It is now not uncommon for educators to use visual methods as an aid for learning, asking themselves *'what is the most effective layout for learning.'*⁴⁷³ This learning does not have to be strictly pedagogical, but I found my participants did find an educational benefit in their involvement. Learning was very much a part of the process for myself as well as them. The task of finding a participatory mixed method, which allowed me to collect a variety of data in a short space of time, was met.

⁴⁶⁹ Niemi, R., Kumpulainen, K. and Lipponen, L., 'Pupils as active participants: Diamond ranking as a tool to investigate pupils' experiences of classroom practices,' 2015, 14:2 European Educational Research Journal 138, p.140

⁴⁷⁰ Banks, M., 'Analysing Images,' found in Flick, U., *The SAGE Handbook of Qualitative Data Analysis*, (SAGE, 2014), p.402

⁴⁷¹ Flick, U., *The SAGE Handbook of Qualitative Data Analysis* (SAGE, 2013), p.394

⁴⁷² *Ibid.*, p. 396

⁴⁷³ Kress, G. and van Leeuwen, T., *Reading Images: The Grammar of Visual Design*, (Routledge, 2nd edn, 2006), p.14

The use of visual images does have its advantages. Bailey and Van Harken highlight in their research that the use of visual images, *'could help to alleviate anxiety about the research process and to clarify the role of researcher.'*⁴⁷⁴ Visual images are not only useful at aiding the participant's journey through research, but also the researcher themselves. I very much knew my position throughout the Diamond16 and then the group interviews, knowing how much of myself to put into a research session and when to let the participants have more autonomy over the data collection process to *'set the agenda.'*⁴⁷⁵ Others highlight how the use of visual methods is inclusionary for participants and less demand on literacy skills can include those who may have not otherwise felt comfortable in a traditional research method.⁴⁷⁶ However, no method is perfect, and the group discussions in the Diamond16s did have some limitations. As in any activity involving group participation, there will be more dominant personalities and some members of the groups, when arguing over the importance of a card, will have had to recede. This kind of interaction between participants is not uncommon by any means,⁴⁷⁷ and some researchers actually encourage the debate and disagreement between participants.⁴⁷⁸ It is impossible that every participant will agree with one another, which is ultimately a benefit in mine and others' opinion, as it results in rich and deep discussion of the lived experience.⁴⁷⁹ Again, I have been transparent in the discussion of the data where a participant has backed down to other members of the group and the Diamond16 allowed for the process of decision making to be visible. Furthermore, by having multiple groups of participants it allowed for more reliability, as *'if a series of groups are analysed concurrently, the researcher can determine the point at which there seems to be consensus on the range of issues deemed to be relevant of the participants, even if determining agreement on each of these individual issues is not feasible.'*⁴⁸⁰ Even though I took a group decision, I have tried to express the individual opinions of my participants where appropriate, to foster an individual voice, as well as a collective one.

⁴⁷⁴ Bailey, N.M. and Van Harken, E.M., 'Visual Images as Tools of Teacher Inquiry,' 2014, 64:3 Journal of Teacher Education 241, p.245

⁴⁷⁵ Prosser, J., 'Visual methods and the visual culture of schools,' 2007, 22:1 Visual Studies 13, p. 22

⁴⁷⁶ Clark, J., Laing, K., Tiplady, L. and Woolner, P., 'Making Connections: Theory and Practice of Using Visual Methods to Aid Participation in Research,' 2013, Research Centre for Learning and Teaching, Newcastle University, p.4. Accessed via <http://www.ncl.ac.uk/cflat/news/documents/MakingConnections.pdf> Last cited 20.12.16

⁴⁷⁷ Wong, L.P., 'Focus group discussion: a tool for health and medical research,' 2008, 49:3 Singapore Medical Journal 256, p.260

⁴⁷⁸ Kitzinger, J., 'The methodology of Focus Groups: the importance of interaction between research participants,' 1994, 61:1 Sociology of Health and Illness 103, pp. 106-107

⁴⁷⁹ Sim, J., 'Collecting and analysing qualitative data: issues raised by the focus group,' 1998, 28:2 Journal of Advanced Nursing 345, p. 348

⁴⁸⁰ Sim, J., 'Collecting and analysing qualitative data: issues raised by the focus group,' 1998, 28:2 Journal of Advanced Nursing 345, pp. 348-349

4.4 Mixed methods

The research question and aims above highlight the questions asked within the field and its literature. *Which* knowledge, skills and attributes and *how* can they be developed to ensure lawyers can begin their career competently. Asking these kinds of questions do not necessarily fit into one paradigm, which may make the research process more difficult. I knew that my data collection and analysis process would be equally inductive and deductive to respond to quite different aims. This is a rather naturalistic aspect to the study, justifying why this thesis is written in a, '*personal and relatively informal voice of a naturalistic researcher*.'⁴⁸¹ This personal voice highlights that I was a participant in my study, I made choices as to the data which was, and was not collected, and this is a reflection of myself as a human and my own opinions and beliefs.⁴⁸² This personal voice and my intent are woven throughout the reading of this Chapter.

Positivist theory and, I argue, quantitative data can only take us so far to answering a research question. Quantitative data can help to answer one set of questions in this thesis. I used quantitative data to demonstrate which knowledge, skills and attributes are seen as important and necessary to the practice of law. However, the quantitative data and positivist stance cannot tell us why they are important and/or more or less important than other knowledge, skills and attributes. To aid this, the qualitative data fills this gap, adding a depth and narrative which the quantitative cannot. Using a mixed methods approach I can not only demonstrate the *which* and *how* from my data, but also the *why*. The reason I wished to adopt mixed methods, in light of the above, was because I wanted to explore which knowledge, skills and attributes are important to practice and *why* they are important. As Flyvbjerg states, '*Good social science is problem driven and not methodology driven, in the sense that it employs those methods which for a given problematic best help answer the research questions at hand*.'⁴⁸³ Cresswell and Clark outline what mixed methods provide to research which either qualitative or quantitative alone cannot:

- The weaknesses of one is made up for by the strength of the other. For example, quantitative cannot voice the views of the individual and add dialogue to findings. On the other hand, qualitative can be criticised for its interpretive nature and allowing room for unreliability or bias. Quantitative is seen to be able to make reliable generalisations
- It is more comprehensive, allowing researchers to explore a variety of methods
- It encourages the discussion and development of both qualitative and quantitative

⁴⁸¹ Johnstone P.L., 'Mixed Methods, Mixed Methodology Health Services Research in Practice,' 2004, 14:2 Qualitative Health Research 259, p.262

⁴⁸² *Ibid.*

⁴⁸³ Flyvbjerg, B., 'Five Misunderstandings About Case-Study Research,' 2006, 12:2 Qualitative Inquiry 219, Accessed via <https://arxiv.org/ftp/arxiv/papers/1304/1304.1186.pdf> Last cited 11.01.17, pp.26-27

methods and how they can be used harmoniously

- Mixed methods can encourage the use of a variety of paradigms, which is what I have done
- It is '*practical*' because it gives the researcher the freedom to choose which methods they think best for the research aims.⁴⁸⁴

By using mixed methods, this research was not restrained by a specific method and allowed me to explore and work with different, and occasionally contrasting, paradigms. In other words, '*the use of quantitative and qualitative approaches in combination provides a better understanding of research problems than either approach alone.*'⁴⁸⁵ The use of contrasting paradigms in mixed methods may be not be desirable due to the differences in language used.⁴⁸⁶ However, whilst paradigms should not be '*whimsical or arbitrary*' and must be coherent and strong, this does not mean that they are '*static or unshakeable.*'⁴⁸⁷ There is an opportunity to use contrasting paradigms together, dependant on the essence of the paradigm remaining consistent and robust.

This idea of research paradigms being used within the same research emphasises commensurability. Within mixed methods research:

'...it is essential that the paradigmatic philosophies and the methods of inquiry be evaluated for commensurability and that the advantages and disadvantages of combining methods are delineated as they relate to each paradigm.'⁴⁸⁸

Some argue that using different paradigms is incommensurable, as they rely on different beliefs, meaning it is not possible to mix them. For example, how can one use positivism at the same time as constructivism? There may be some instances where they are commensurable, but it is advised to proceed with caution.⁴⁸⁹ Greene, on the other hand, believes that this view contradicts how those working with mixed methods think. By only working with one or comparable paradigms we may find that we create, '*a missed opportunity for fresh perspectives, new insights, ideas previously unimagined!*'⁴⁹⁰

⁴⁸⁴ Creswell, J.W. and Clark, V.L.P., *Designing and Conducting Mixed Methods Research*, (SAGE, 2007), pp. 9-10

⁴⁸⁵ *Ibid.*, p.18

⁴⁸⁶ Kuhn, T.S., 'Commensurability, Comparability and Communicability,' (1982) PSA: Proceedings of the Biennial Meeting of the Philosophy of Science Association Vol. 1982, Volume Two: Symposia and Invited Papers 669, p.670

⁴⁸⁷ Greene, J.C., *Mixed Methods in Social Inquiry*, (John Wiley & Sons, 2007), p.52

⁴⁸⁸ O'Byrne, P., 'The Advantages and Disadvantages of Mixing Methods: An Analysis of Combining Traditional and Autoethnographic Approaches,' 2007, 17:10 *Qualitative Health Research* 1381, p. 1381

⁴⁸⁹ Lincoln, Y.S. and Guba, E.G., 'Paradigmatic controversies, contradictions, and emerging confluences, revisited.' Chapter 6 of *The Sage Handbook of Qualitative Research*, (SAGE, 1994), pp.169-174. Accessed via https://sabinemendesmoura.files.wordpress.com/2014/11/gubaelincoln_novo.pdf Last cited 02.02.17

⁴⁹⁰ Greene, J.C., *Mixed Methods in Social Inquiry*, (John Wiley & Sons, 2007), p.53

Whilst it is possible to work with differing paradigms, commensurability may not suit, nor be possible, for every researcher to achieve. It requires one to appreciate the different paradigms can be isomorphic and to, '*learn how to switch perspectives and create new perspectives,*' which can be difficult.⁴⁹¹ Kuhn asserts that, '*no more in its metaphorical than its literal form does incommensurability mean incomparability.*'⁴⁹² Thus, the differences in philosophies, particularly in their language, does not mean that they can never be used together. Using both quantitative and qualitative methods, and being able to cognitively switch between them, can result in:

'the meta-inferences will provide a more fully mixed worldview; it will go beyond the provision of both traditional viewpoints by offering a third, well-informed viewpoint based on consideration of both qualitative and quantitative thinking.'⁴⁹³

The theorists used and discussed in the previous Chapter, such as Dewey and Peirce, were pragmatists so is it necessary to include in here for a complete theoretical picture. Furthermore, the de Montaigne quotation at the head of this Chapter, is a pragmatist dialogue.

Pragmatists believe that knowledge is constructed, consistent with the constructivist epistemology adopted by theorists as such as Dewey.⁴⁹⁴ It does, however, refuse to perceive knowledge as a '*copy*' of truth, but to study objects to see how they can be improved in the future. This links practice with action research.⁴⁹⁵ Dewey, '*emphasised the empirical approach by treating knowledge as a kind of experience arising out of human activity creating a problem, and which is attained when the problem is solved.*'⁴⁹⁶ Thus, empirical activity is essential to the attainment of knowledge, which is stressed in the previous Chapter when studying *Education and Experience*. Elements of this stance can be seen within this research. I am looking at the practical application of LCCs and whether it is an effective form of education. Their practical application is present, as is the ability to reform it. Our practices, according to pragmatism, are adequate to gain knowledge of the world and challenge the assumption that they, '*require backup from some standard or principle which lies beyond them.*'⁴⁹⁷ Whilst theory is important, practice is equally so. They have to work together: if theory doesn't work in practice then we change the theory to fit the practice. It is their relationship that is

⁴⁹¹ Johnson, R.B., Onwuegbuzie, A.J. and Turner, L.A., 'Toward a Definition of Mixed Methods Research,' 2007, 1:2 Journal of Mixed Methods Research 112, p. 126

⁴⁹² Kuhn, T.S., 'Commensurability, Comparability, Communicability,' 1982, The University of Chicago Press 669, p. 670. Accessed via https://www.jstor.org/stable/192452?seq=1#page_scan_tab_contents Last cited 14.01.17

⁴⁹³ Onwuegbuzie, A.J. and Johnson, R.B., 'The Validity Issue in Mixed Research,' 2006, 13:1 Research in the Schools 48, p. 59

⁴⁹⁴ Bulmer, H., *Symbolic Interactionism: Perspective and Method*, (Prentice-Hall, 1969), p.140

⁴⁹⁵ *Ibid.*

⁴⁹⁶ Freeman, M.D.A., *Introduction to Jurisprudence*, (Sweet & Maxwell, 8th edn, 2008), p.986

⁴⁹⁷ Bacon, M., *Pragmatism: An Introduction*, (Polity, 2012), p.vii

important.

It is possible for mixed methods to be used in a pragmatist stance, and Denzin outlines that, '*Under a soft pragmatic paradigm, quantitative and qualitative methods became compatible and researchers could use both in their empirical inquiries.*'⁴⁹⁸ As I would consider my use of the theory 'soft' I could use both kinds of inquiry. Furthermore, since I was inquiring into practice and human activity, pragmatism was present.

Even though the strengths of mixed method research are what makes this kind of research rich⁴⁹⁹ and informative, it would be simple to conclude that, by default, using them leads to increased validity or holistic understanding of what is happening.⁵⁰⁰ Silverman advocates for caution when using mixed methods. He argues against mixed methods in certain kinds of social research and their purposes is '*simply not useful*' to create an '*overarching reality to which data, gathered in different contexts, approximate.*'⁵⁰¹ However, Fielding and Fielding state that triangulation allows for '*different accounts of the same situation.*'⁵⁰² Thus, if following strict theoretical frameworks and ground rules, triangulation can add depth and breadth to research, but not accuracy.⁵⁰³

I am strong in my view that using a mixed method approach was beneficial in developing my research and myself as a researcher.⁵⁰⁴ I am not claiming that by using mixed methods I have dramatically increased the accuracy of this research, but I advocate it has added depth. Both qualitative and quantitative methods can be used in harmony and I agree with Flyvbjerg when he asserts that, '*good social science is opposed to an either/or and stands for a both/and on the question of qualitative versus quantitative methods.*'⁵⁰⁵

4.5 Research philosophy and theoretical underpinnings

Developing a fully articulated research philosophy and theoretical underpinning for this thesis caused some difficulties. Using mixed methods, I approached my data collection in various ways and consequently, I felt it difficult to place myself in one set theoretical framework.⁵⁰⁶ It can be seen that when conducting my systematic review, I moved from a positivist stance, when

⁴⁹⁸ Denzin, N.K., 'Moment, Mixed Methods and Paradigm Dialog,' 2010, 16:6 Qualitative Inquiry 419, p.422

⁴⁹⁹ Fielding, N.G. and Fielding, J.L., *Linking Data*, (SAGE, 1986) - Fielding and Fielding argue that that qualitative data is never rich, but rather the research is '*enriched*' by it when it is grounded in theoretical perspective.

⁵⁰⁰ Denzin, N.K., 'Moment, Mixed Methods and Paradigm Dialog,' 2010, 16:6 Qualitative Inquiry 419, p.422

⁵⁰¹ Silverman, D., *Doing Qualitative Research: A Practical Handbook*, (SAGE, 4th edn, 2013), p.137.

⁵⁰² Fielding, N.G. and Fielding, J.L., *Linking Data*, (SAGE, 1986), p. 25

⁵⁰³ *Ibid.*, pp. 33-34

⁵⁰⁴ Flyvbjerg, B., 'Five Misunderstandings About Case-Study Research,' 2006, 12:2 Qualitative Inquiry 219, Accessed via <https://arxiv.org/ftp/arxiv/papers/1304/1304.1186.pdf> Last cited 11.01.17, p.6

⁵⁰⁵ *Ibid.*, p.26

⁵⁰⁶ Denzin, N.K., 'Moment, Mixed Methods and Paradigm Dialog,' 2010, 16:6 Qualitative Inquiry 419, p.422

methodologically searching for and appraising the literature, to an interpretivist stance, when synthesising the literature and exploring the themes for extraction. However, during my data collection, specifically with the Diamond 16, I felt I did the opposite. What began as very exploratory and inductive, when conducting the Diamond26s and gathering the qualitative and quantitative data, became more positivist during the data analysis process.

This encouraged the realisation that I identified strongly with several different theoretical underpinnings, dependant on which kind of data I was collecting or which phase of the research process I was engaged in. Each effected this thesis in different ways and it is the reflection on these experiences that has created what I believe is a holistic foundation for the approach taken, rather than a divisive tension which others may feel.

Prior to explaining and discussing the various kinds of philosophical underpinnings I find it necessary to outline how I approached it. Philosophical and theoretical underpinnings are arguably a living entity, constantly being changed and adapted. Hughes and Sharrock argue that, '*one of the principle reasons why philosophy and social research remain deeply interconnected*' is because of the stance of '*foundationalism*.'⁵⁰⁷ Foundationalism as an underpinning for social science research, they explain, is, '*the view that true knowledge must rest upon a set of firm, unquestionable set of undisputable truths from which our beliefs may be logically deduced*.'⁵⁰⁸ Thus, the foundation remains the same, but we form '*further ideas about the world*.'⁵⁰⁹

Foundationalism is explained in the following diagram by Crotty:

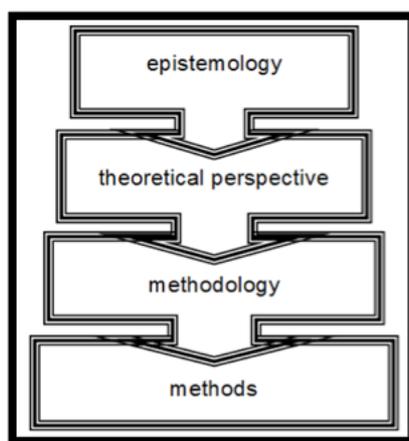


Figure 4.2 – Crotty's Stages of Foundationalism⁵¹⁰

⁵⁰⁷ Hughes, J. and Sharrock, W., *The Philosophy of Social Research*, (Longman Limited, 3rd edn, 1997), p.4

⁵⁰⁸ *Ibid.*

⁵⁰⁹ *Ibid.*, pp.4-5

⁵¹⁰ Crotty, M., *The Foundations of Social Research: Meaning and Perspective in the Research Process*, (SAGE, 1998), p.4. Diagram taken from

As can be seen, social science research and foundationalism start with epistemology. Once an epistemology is established it feeds into the theoretical perspective, influencing and justifying the methodology and methods chosen. Thus, all foundationalism begins with this justification, which, *'reaches into the assumptions about reality that we bring to our work.'*⁵¹¹

I, however, did not work with foundationalism following the strict path as in *Figure 4.2*. Collecting data in a variety of ways can result in there being several philosophical underpinnings or ontologies adopted, creating my own path as I conducted my research. The way in which I approached my data collection is shown as follows:

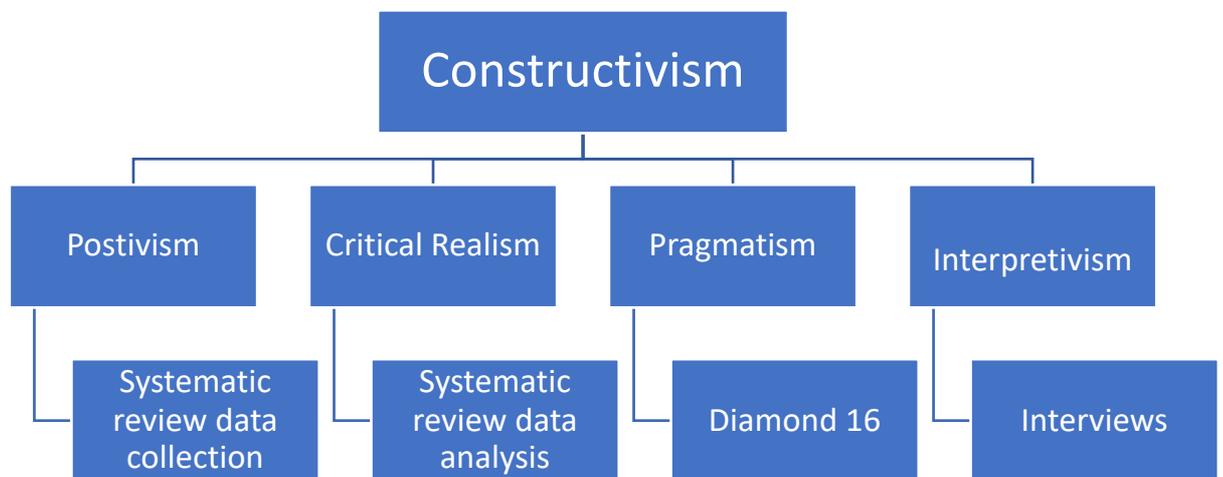


Figure 4.3 – The Epistemological and Ontological Stages of this Research

It can be seen that my epistemology led my research, working with constructivism. It is consistent with the epistemology used by Dewey and Kolb, discussed in the previous Chapter. As my epistemological stance did not change throughout the research process I find it necessary to highlight and discuss it prior to explaining my methodological journey during this thesis.

There are many different definitions of epistemology, which can be easily accessed, and is simply, how do we know what we know?⁵¹² What concerns me more is how it works in practice. Hughes and Sharrock state it is, *'concerned with evaluating claims about the way in which the world can*

https://www.google.co.uk/search?q=crotty+four+elements&espv=2&biw=1366&bih=638&source=lnms&tbm=isch&sa=X&ved=0ahUKewj_7duVuaPRAhXFuRoKHZ6uBxwQ_AUIBigB#imgrc=vKuRRIXbmXwwSM%3A

Last cited 02.01.17

⁵¹¹ *Ibid.*, p.2

⁵¹² Hofer, B.K. and Pintrich, P.R., *Personal Epistemology: The Psychology of Beliefs and Knowledge and Knowing*, (Psychology Press, Routledge, 2004), pp. 177-178

*be known to us and, as such, involves issues as to what it is to know anything.*⁵¹³ We are looking for answers, but also evaluating them to ensure that they present a portrayal of what is actually happening within the world. Epistemology is important because it affects theoretical underpinning, or it can be viewed as, *'Methodologies justify methods, and methods produce knowledge, so methodologies have epistemic content.'*⁵¹⁴

Constructivism is a branch of constructionism, which essentially is the view that meaning and knowledge is not discovered, but constructed.⁵¹⁵ It claims that, *'meanings are constructed by human beings as they engage with the world they are interpreting.'*⁵¹⁶ Although it seems that I am stating that positivism is objective and constructionism is always subjective, this is not so. Constructionism may seem to be wholly subjective in its approach, but it can be viewed as an amalgamation of both. The world can be viewed as full of objects which are meaningless until we give them meaning. We look at them both objectively and subjectively.⁵¹⁷ By doing this we realise that meaning is, *'contingent upon human practices, being constructed in and out of interaction between human beings and their world, and developed and transmitted within an essentially social context.'*⁵¹⁸

Social constructivism casts even more focus on constructing knowledge, by adding more emphasis on engaging with the social world. It claims that, *'if the same thing, event or process is social in origin, it is not given or established by nature. So there is nothing fixed or inevitable about it.'*⁵¹⁹ Studying the social world then seems to highlight some issues. If we are studying a social world which is full of individuals with the capacity to change the social world, then it is obvious that we can interpret it differently.⁵²⁰ This may cause some to question its validity or truth. However, *'what constructionism drives home unambiguously is that there is no true or valid interpretation.'*⁵²¹ Instead, we can find helpful or enlightening contributions from the people who have constructed the society and, *'developed meanings for their activities together.'*⁵²² As those who live in it interpret it themselves, it exists and has meaning before the researcher arrives. Blaikie asserts that

⁵¹³ Hughes, J. and Sharrock, W., *The Philosophy of Social Research*, (Longman Limited, 3rd edn, 1997), p.5

⁵¹⁴ Carter, S.M. and Little, M., 'Justifying knowledge, justifying method, taking action: epistemologies, methodologies and methods in qualitative research,' 2007, 17:10 *Qualitative Health Research* 1316, p.6 Accessed via <https://ses.library.usyd.edu.au/bitstream/2123/14500/1/justifying-knowledge-PP-2007.pdf> Last cited 11.01.17

⁵¹⁵ Crotty, M., *The Foundations of Social Research: Meaning and Perspective in the Research Process*, (SAGE, 1998), p.42

⁵¹⁶ *Ibid.*, p.43

⁵¹⁷ *Ibid.*, p.44

⁵¹⁸ *Ibid.*, p.42

⁵¹⁹ Hibbers, F.J., *Unfolding Social Constructionism*, (Springer, 2006), pp. 2-3

⁵²⁰ Crotty, M., *The Foundations of Social Research: Meaning and Perspective in the Research Process*, (SAGE, 1998), p.47

⁵²¹ *ibid.*

⁵²² Blaikie, N., *Approaches to Social Enquiry: Advancing Knowledge*, (Polity, 2nd edn, 2003), p.10

this is the same in the natural world, as well as the social, which is interpreted before we arrive as one whole world.⁵²³

Being a part of society means that individuals will be attempting to understand the world in which they live. Creswell asserts that the understanding and meanings individuals develop are, '*varied and multiple, leading the researcher to look for the complexity of views rather than narrowing meanings into a few categories or ideas.*'⁵²⁴ This results in the research exploring views of the experience being studied, and the researcher relying on such views. Therefore, it is best to ask open ended questions, allowing participants the freedom to explore their views, '*typically forged in discussions or interactions with other persons.*'⁵²⁵ This was present within my own research. The Diamond16 allowed for a completely open-ended discussion between the participants, which I did not contribute to. They discussed the cards in their own context, allowing me to understand their conceptions and views of the various knowledge, skills and attributes. I relied on their views to construct meaning to their social world, not by merely observing it but interacting with the people within it, individually and collectively.

There have been some issues with the differences between constructionism and social constructivism, and confusion as to exactly what they mean. Crotty states that constructionism can be taken to mean an understanding of a general group, whereas constructivism is concerned more with an individual's ideas and adds value to each of their meaning to the world.⁵²⁶ This can be criticised and interpreted that social constructivism ignores the importance of culture. However, I assert that culture is still present, it is just explored differently, building upon each individual's experience to explain a phenomenon within a culture and society. Individuals make and influence society, and their role within it is impossible to ignore. This emphasis on an individual's views will be clear throughout the analysis Chapters that follow.

There are various kinds of theories, epistemologies and ontologies, which can change dependant on the research methods⁵²⁷ and, I believe, the researcher. Research is conducted by individual people who each bring a certain idea or way of thinking to it. It would be naïve to assume that one's philosophical stance is not influenced by a person's thoughts or feelings, which effects how you

⁵²³ Crotty, M., *The Foundations of Social Research: Meaning and Perspective in the Research Process*, (SAGE, 1998), p.57

⁵²⁴ Creswell, J.W., *Research Design: Qualitative, Quantitative and Mixed Method Approaches*, (SAGE, 3rd edn, 2009), p.8 Accessed via [http://ncbaeryk.yolasite.com/resources/John%20W.%20Creswell-Research%20Design%20Qualitative,%20Quantitative,%20and%20Mixed%20Methods%20Approaches-SAGE%20Publications,%20Inc%20\(2009\).pdf](http://ncbaeryk.yolasite.com/resources/John%20W.%20Creswell-Research%20Design%20Qualitative,%20Quantitative,%20and%20Mixed%20Methods%20Approaches-SAGE%20Publications,%20Inc%20(2009).pdf) Last cited 10.01.17

⁵²⁵ *Ibid.*

⁵²⁶ Crotty, M., *The Foundations of Social Research: Meaning and Perspective in the Research Process*, (SAGE, 1998), p.58

⁵²⁷ Hughes, J. and Sharrock, W., *The Philosophy of Social Research*, (Longman Limited, 3rd edn, 1997), p.14

conduct the research. This is something which I admittedly struggled with. After completing a law degree and getting called to the Bar, the various ways of approaching research confused me and my personal epistemology. As a result, I found that I approached my own research in various ways, taking guidance and inspiration from an array of underpinnings. Thus, I found it more natural to collect my data and reflect on how I approached it, rather than establishing from the start what my theoretical and epistemological decisions were. I did my research and upon reflection realised that I was a constructivist. In a sense, this is opposite to foundationalism as Hughes and Sharrock explain it. The view that, '*epistemology as prior to empirical research*,'⁵²⁸ was not present in my research. I *had* to do my research first to then understand and relay why I had done it in that way.

Philosophy is a living entity, adapting and changing. Bhaskar explains:

'if the relation between the theories is one of conflict rather than merely difference, this presupposes that there are alternative accounts of the *same* world, and if one theory can explain more significant phenomena in terms of its descriptions than the other can in terms of *its*, then there is a rational for criterion for theory choice... a positive idea of scientific development over time.'⁵²⁹

Thus, when I was conducting my research I was often in conflict with the different theories and myself. I used various theories for scientific development, with a rationale for each. When discussing the different philosophical underpinnings below I will describe how and when it related to my research and to myself.

4.6 My research process

As highlighted above my research process was not linear, nor was it always clear to me. I find the easiest way to explain it is by discussing the journey I had, including my ethics, positionality and reflection throughout the remainder of this Chapter. The below diagram displays how each of my methods and their analysis related to the different paradigms:

⁵²⁸ *Ibid.*, p.4

⁵²⁹ Archer, M., Bhasker, R. *et al.*, *Critical realism: Essential Readings*, (Routledge, Centre for Critical Realism, 1998), pp. x-xi, emphasis in original

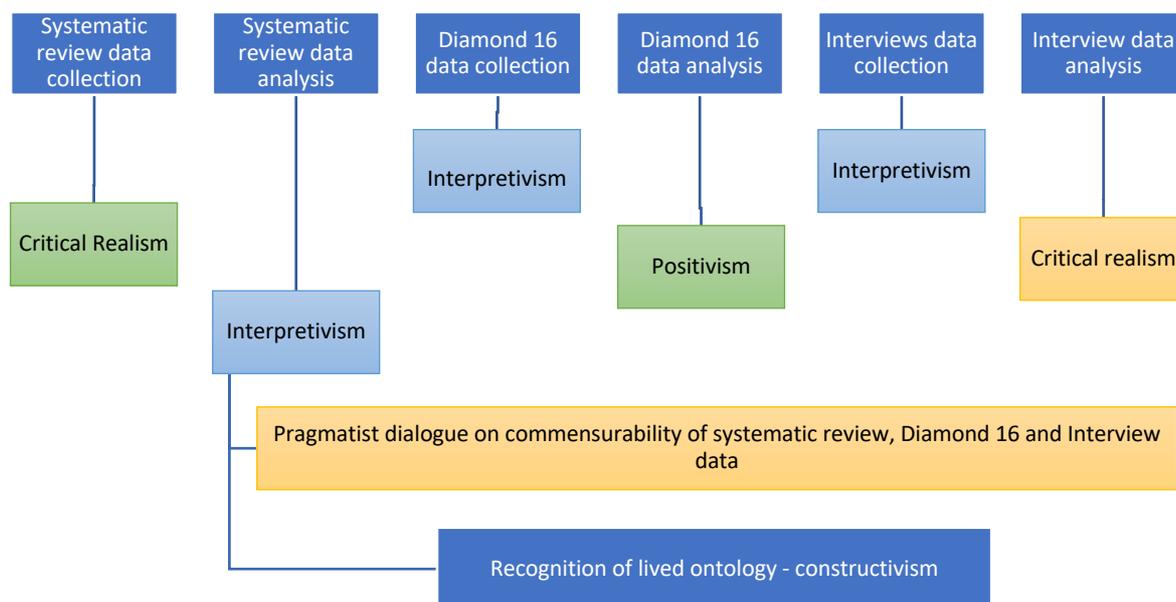


Figure 4.4 – The Philosophical Underpinnings which Influenced the Various Stage of Data Collection and Analysis

The diagram shows that I always started with my methods, chosen from a stance of *'problem solving'*:⁵³⁰ stressing again that a philosophical stance was not adopted until after the data collection process. Once the stance was discovered in relation to each method, we can see an undercurrent of pragmatism within certain methods, before the realisation of the epistemology and ontology of the research. It can also be seen that the philosophical underpinning of each methods was different during the data collection and analysis stages. This will be unfolded further in this section. Each of the different methods and the theoretical underpinning relating to them will be discussed in turn, grouping together the methods which had the same theory relating to them.

As seen in Figure 4.4, during the systematic review, the Diamond16 and interviews there was a pragmatist dialogue, which could not be ignored. Flyvbjerg's statement above, that social science is *'problem driven and not methodology driven'*,⁵³¹ highlights the pragmatist undertone of this thesis. Pragmatism was discussed above, and by using this undertone to the data collection commensurability was easier to achieve. By making my research *'problem driven'* I was able to

⁵³⁰ Flyvberg, *ibid.*

⁵³¹ Flyvbjerg, B., 'Five Misunderstandings About Case-Study Research,' 2006, 12:2 *Qualitative Inquiry* 219, Accessed via <https://arxiv.org/ftp/arxiv/papers/1304/1304.1186.pdf> Last cited 11.01.17, pp.26-27

adapt and move between different philosophical underpinnings.

I want to emphasise that when I began collecting data there were four data collection methods I had decided to use: the Diamond16, observations, a survey and interviews. Clearly not all these methods were ultimately used and this will be explained why throughout the Chapter.

The sample, relating to each method is as follows:

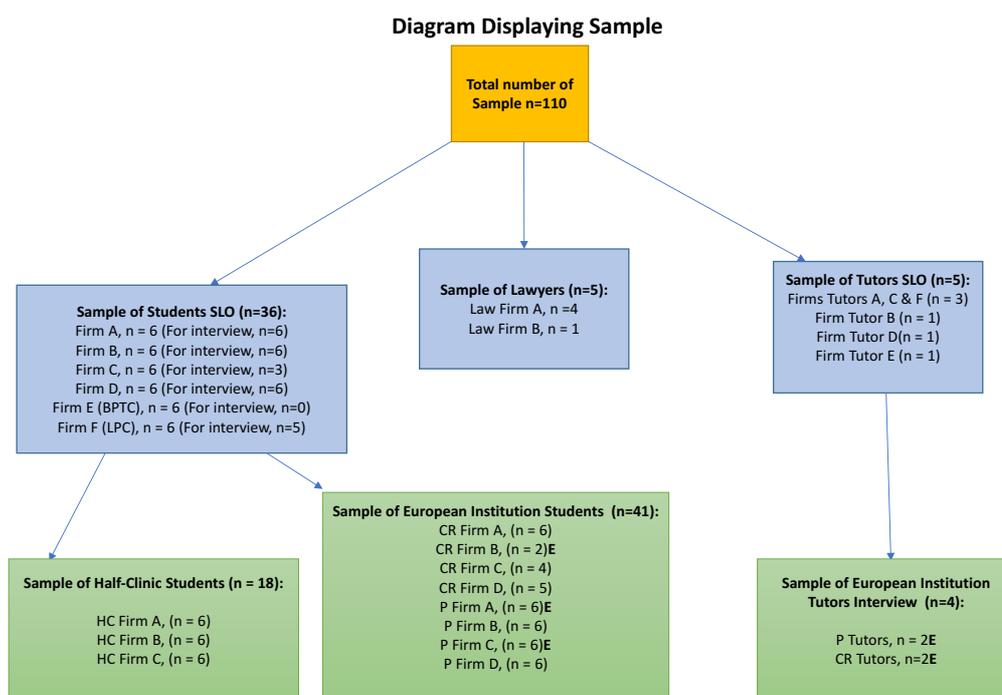


Figure 4.5 – Total Sample Amount and Amount of Participants in Various Research Groups

The blue boxes represent my primary data, collected from the UK. The green boxes show the data collected for comparison, from another North-East law school and the EIs. The sample from Northumbria University was sourced by sending out an email to all SLO tutors and asking if I could use their students in the set firm meeting time to participate in my research. The Actual Law Firms were sourced by using connections through the university. Northumbria University staff have great contacts with law firms in Newcastle and after introductory emails were sent out, lawyers were more than happy to participate. The EIs were sourced through connections and previous collaborations within the SLO. I visited Palacký University in Olomouc, Czech Republic and Lazarski University, Warsaw, Poland. They were very helpful and receptive with helping to organise my fieldwork.

It is important to note that the students who participated in the SLO did the Diamond16 three times during the academic year: once at the start of the course, once in the middle and once at the end.

Firm F (LPC) did the Diamond16 twice, once at the start of the course and once at the end. Not all students were consistently present for each Diamond16 exercise. It was noted how many students took part each time. The figures shown in the diagram above display the maximum number of students who took part for each firm. As I was collecting a group response, rather than an individual response, I found that my data was not particularly affected by the absence of any of the firm members.

Taking the above diagrams together we can track the research journey, as well as the epistemological and philosophical stances. The below diagram visually displays my research journey, showing when ethical approval was applied for, which data collection took place and how my positionality evolved:

Key

- Blue box - primary data
- Green box - comparison data
- Red box - excluded data
- Clear box - other research activity
- Yellow circle - ethical application for PhD
- Purple circles- ethical application for other research
- Blue circles - positionality
- Red line - ethical issue

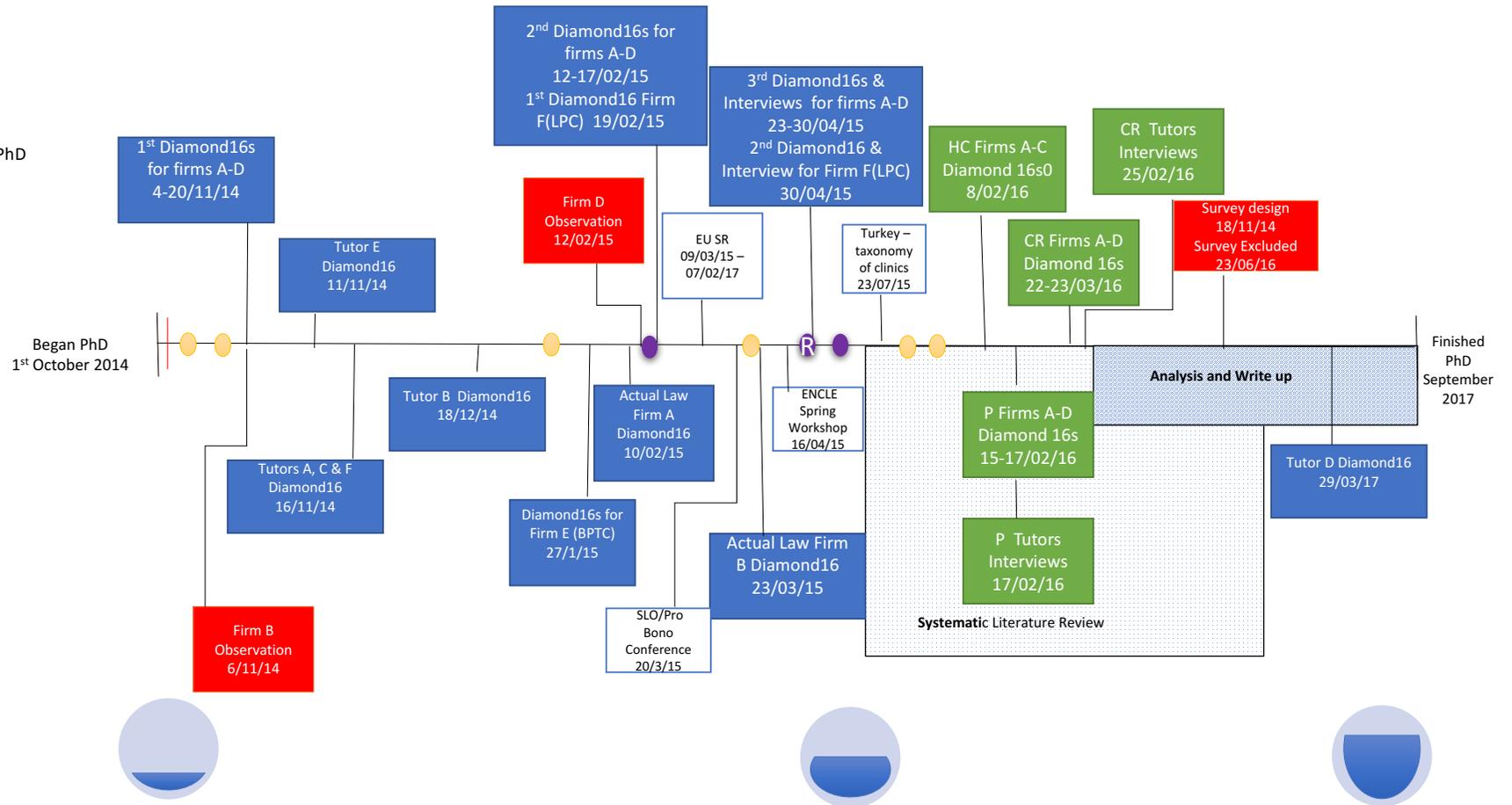


Figure 4.6 – My Research Journey

The blue boxes represent stage A of my data collection, my primary data. The green boxes represent stage B, the comparison data collection. Stage C is the systematic literature review and the analysis and write up stage, represented by the patterned boxes. Each section will be explained in turn, discussing my experiences, the theoretical underpinning and reflection throughout.

Prior to starting this PhD I graduated from Northumbria University and was called to the Bar, but never pursued pupillage. When I started the PhD I was very much still in the black letter law mind set, accepting what exists as definite for the time, but prepared for change to become the new norm. In other words, the law is the law, but it does change and develop and we accept it and work with it. We can strive for change, but until that change happens it is temporarily stable and accepted. We develop a theory, always considering how our opposition will argue their own case. Thus, moving into research, where we have to establish and explore our position within the world, was difficult for me. The lawyer in me accepts that the world is as it is, and there is knowledge to be discovered. However, the researcher in me has accepted that we can construct our own knowledge and meaning and that there are various ways to do this, especially when working with mixed methods.

To reflect this journey and evolving philosophic underpinning, the remainder of this Chapter will be narrative, telling my PhD journey. As I describe the methods I used, including ethics and positionality, I will feed in the theory which influenced that stage of the research. Thus, I will take each stage in turn and chronicle how the research unfolded. I believe the narrative of this Chapter will help to justify the methods chosen, display greater transparency of the research process and report the, *'research... [as] true to the experience.'*⁵³²

4.7 Stage A – Primary data collection in the UK

I met with my supervisor before my initial PhD starting date. I knew I wanted to start collecting my data as soon as possible, so I designed my methods prior to officially enrolling. I had originally decided to conduct interviews with all of the students. A part of this would be for them to rank certain lawyer skills, in a list of 1-10. When I showed this to Professor Hall, she directed me towards the Diamond16 as an alternative method to the list. When I explored this option, it appealed to me greatly. Not only was it interactive, but it would enable me to collect many different data sets in a short amount of time, with quite simple analysis and comparison. Before this could take place, however, I had a few obstacles to manoeuvre round.

4.7.1 Before the data collection began

I had also decided, with the support from my supervisor, to conduct observations and interviews and designing a survey to be distributed to legal employers throughout Europe. The aim of each method varied. The Diamond16 and interviews aimed to measure what skills were important to

⁵³² Straker, A. and Hall, E. 'From Clarity to Chaos and Back: some reflections on the research process,' 1999, 7:3 Educational Action Research 419, p. 420

practice and if they are provided within LCCs. The intent of the observations was to explore how these skills are taught in LCCs. Finally, the survey intended to collect the perceptions of legal employers, what they want from their employees and trainees and their opinions of employees who had or had not undertaken work in a LCC. The Diamond16 would become a part of the survey, with the aim of Northumbria's IT department making an online interactive version. As can be seen on *Figure 4.6* the survey and observations were later excluded, which will be discussed later.

When I first started my PhD, my positionality was somewhat undefined. I had previously been a student in the SLO during my MLaw Degree, and some of the tutors already knew me. Furthermore, I met almost all the tutors when I pitched the Diamond16 at the start of the year SLO meeting. This made me assume that access to the SLO would be easy and no issues would arise. When I sent out the initial email,⁵³³ asking SLO tutors if I could use their firms as part of my research, I was overwhelmed by the positive response. I had initially asked to observe firm meetings which focused on case work and skills. *Figure 4.6* shows a red line before my first ethical application, indicating an ethical dilemma. Some tutors raised the issue of confidentiality, and that I should not be allowed to hear any case details. It was not practicable for them to gain consent from every client whose case details I may have been exposed to, and there is nothing in the SLO terms and conditions which outlines that their cases can be used for the purpose of research. After meeting with other SLO tutors, it was decided that I could only observe firm meetings which were purely skills based and no case details could be mentioned in my presence. Whilst at the time I felt this would greatly impact my research, it actually helped to narrow my research area and data collection, allowing for more depth into what I was ultimately exploring. Moreover, it decreased my data set, as some tutors did not do purely skills based firm meetings. Thus, the research aim, A6, which was excluded was effected also. I could not answer which were the best pedagogical practices to prepare our students for practice, but which knowledge, skills and attributes a LCC can develop.

This is when I first explored positionality in detail. I had thought that I was a member of the SLO and that access would be guaranteed. It made me feel as though I wasn't really a part of the culture and perhaps made my approach a little bit more cautious. As much as I wanted to collect my data I didn't want to do anything which could ultimately damage the SLO's long standing reputation. Even though I thought I was an insider, I realised I was very much an outsider. As a researcher, where you place yourself within the world of your participants is important to reflect on. To be an insider you research the population of which you are also a member.⁵³⁴ In contrast, being an outsider you are not a member of the population that you study. I believe I was somewhere in

⁵³³ For email please see Appendix 5

⁵³⁴ Kanuha, V.K., "'Being' native versus 'going native': Conducting social work research as an insider,' 200, 45:5 Social Work 439, p.440

between, gaining benefits from both. I had the benefit of being accepted into the SLO, and the tutor's acceptance of me into their firm meetings led the students to accept me also. However, this prior experience meant that my perceptions could have been misguided by them. Although, there is no guarantee that being an outsider raises no issues of 'undue influence' on the part of the researcher.⁵³⁵ So my positionality bubble on *Figure 4.6* is quite empty, demonstrating that my positionality was more of an outsider than an insider.

Once the confidentiality matter was decided upon, I could go ahead with my ethical application. As no tutors had come forward saying that I could observe their firm meetings, my first ethical application was for the Diamond16 only. This ethical application covered all of the Diamond16 exercises with the students and their tutors for the academic year. This meant that I would not have to do multiple ethical applications. However, one tutor allowed me to observe a firm meeting in the first semester, so I quickly put in another ethical application⁵³⁶ to cover this also, which are the two yellow dots on *Figure 4.6*. Every participant was provided with a consent form, and made aware that they could withdraw at any time, without an adverse effect on their SLO grade. Furthermore, after the ethical issues outlined above, it was in my consent form that no student should discuss any case details in front of me, and this was restated before the data collection.

4.7.2 The stages of the Diamond16

Figure 4.6 shows that the data collection with the student Firms A-D happened at three points of the academic year: just after they started in the SLO, at the middle and in their last week before completing the course. Firm E (BPTC) only participated once. Firm F (LPC) participated twice, at the start of their time in the SLO and just before the end. The reason for this was to track their development and their potential changes in opinions of what they need to practice. Their development and evolution can justify whether or not LCCs are the best method to teach certain knowledge, skills and attributes.

A few months after conducting my last observation, shown on *Figure 4.6*, I decided to consult Professor Hall about excluding them. She agreed that I was already collecting enough data. Furthermore, they no longer related to the focus of the thesis, and what they measured became outside the remit for this research. As I only had conducted two observations, I did not consider that I had excluded a major part of my data, merely data which was no longer relevant to what I was studying. My intent for the research had changed, from exploring how these knowledge, skills

⁵³⁵ Corbin Dwyer, S. and Buckle, J., 'The Space Between: On Being an Insider-Outsider in Qualitative Research,' 2009, 8:1 International Journal of Qualitative Methods 54, p.59

⁵³⁶ For an example of a consent form, please see Appendix 4

and attributes are taught, to whether or not they are gained and developed from learning in a LCC.

During this phase I also carried out or assisted other research activities, shown in the clear boxes on *Figure 4.6*. The ethical applications, marked by purple circles, advanced my skills and knowledge in applying for ethical procedures. For example, the purple circle with a 'R' in it indicated retrospective consent for the ENCLE Spring Workshop, for after an activity has taken place which is then wanted to be used as data. This was not a common application and, whilst it passed at the time with some concerns, has since been declared as forbidden and ethical consent must be applied for prior to any research taking place. This experience of working with ethics, particularly where there is little or no guidance, helped my research development. Furthermore, it has made me aware that I should notice when there are potential data collection opportunities. Sometimes we can get data through interactions without realising that would have been the result. As this data was collected from colleagues, I felt comfortable applying for retrospective ethical consent and I knew that they would be happy to provide their consent. I also conducted the Diamond16 with students at the Northumbria Student Pro Bono and Clinic Conference. This was another opportunity to work with the developed Diamond16, used to foster a discussion with the students who attended. Again, ethical application was made for this. My EU systematic review, published separately to this thesis⁵³⁷ was conducted during Stage A of the data collection, and presented at the ENCLE Spring Workshop. This work prepared me for the rest of my PhD and gave me the opportunity to develop as a researcher. By doing a systematic review when I started, I knew exactly how it had to be done for the skills elements, which mistakes to avoid and to work more efficiently. The taxonomy of clinics research, conducted at the International Journal of Clinical Legal Education Conference 2015, was initially intended to form part of this PhD research.⁵³⁸ Unfortunately, there was not enough space in this thesis, and was published separately.⁵³⁹ This was a further opportunity to work with visuals methods and to test my ideas on experienced clinicians. All of the extra activities conducted in the first year of my PhD were valuable to my growth and so it is helpful to briefly discuss them here. Also, after reflecting on the ENCLE Workshop, this was an ethically robust research activity, with ethics granted before I arrived in Turkey, so I did not have the same issues surrounding retrospective consent.

⁵³⁷ Dunn, R., "A Systematic Review of the Literature in Europe Relating to Clinical Legal Education," 2017, 24:2 International Journal of Clinical Legal Education 81.

⁵³⁸ For the slides of this paper, please see Appendix 11

⁵³⁹ Dunn, R.D., 'The Taxonomy of Clinics: The Realities and Risks of all Forms of Clinical Legal Education,' 2016, 3:2 Asian Journal of Legal Education 174

4.7.3 Working with tutors and law firms

All the tutor Diamond16 exercises took place in the first semester during Stage A. The intent of doing the Diamond16s with the tutors was to get a different perspective on which knowledge, skills and attributes were important to practice. I felt that the results from the tutors would be different than that of the students, who had not yet practised, and the lawyers in law firms, who do not have a pedagogical focus on these opinions. Where possible, the tutors conducted the Diamond16 in a group. This meant that I still had the discussion around the placement of the cards, like with the students. I do not think that this has altered nor drastically changed my results in any way. Tutors from Firms E (a barrister) and B and D (solicitors) did the Diamond16 on their own, as it we could not find a time where everyone was available. Furthermore, Tutor D did the Diamond16 towards the end of the PhD journey. Initially this participant was not available for me to conduct the research with. However, during the analysis stage it became obvious that this input was needed. An area of analysis has arisen which was not originally anticipated and for holistic results it was necessary to collect. This, I feel, further demonstrates how research is unpredictable and a researcher must adapt for unexpected situations. The naivety, discussed at the start of this Chapter, never truly leaves us. Since there was no group discussion around the cards, once they had decided on their final placement I asked them to explain the board to me. I asked what all the created cards meant to them, to ensure I was analysing the same meaning as they intended. I also asked them to explain why they had placed each card as they had, working from the top down. This meant I still had some qualitative data to work with and that I had fully understood the quantitative data.

This was similar for the Actual Law Firms, which both took place during the second semester of Stage A. Actual Law Firm A, a commercial firm, had four participants, all involved in the training or hiring of trainees, one of whom was from HR. This, again, gave me a slightly different perspective. They were very avid in their discussions, and gave some very rich qualitative data. Actual Law Firm B, a legal aid firm, only had one participant. As with the SLO tutors, after his final placement of the board I asked him for clarification on the created cards and to explain the positioning of each card from the top down. This meant that all of my UK data had both qualitative and quantitative elements to it.

I thoroughly enjoyed conducting my Diamond16 with the tutors and lawyers. I found that there was intrigue with the Diamond16 and both groups instantly saw how they could use it for their own means. The tutors now use the Diamond16 as a teaching method in the SLO, either to foster discussion or as a development tool. The lawyers from Law Firm A asked if I could send it to them for them to use with their trainees when they first start their training contract. It gave me immense satisfaction to know that the tool I had developed could be shared with and implemented by others,

demonstrating its impact.

4.7.4 Diamond16 philosophical underpinning

During this stage of the data collection I was working with an interpretivist underpinning. Even though I was an observer of what was happening, I was not completely objective, drawing on my own experiences and cultural beliefs.⁵⁴⁰ The lived experience of the researcher conducting the Diamond16 is one of engaging with rich perspectives, becoming caught up in the social world of the participants. As positivism can be seen as the driving philosophy of quantitative studies, interpretivism is this to qualitative, crudely put. It is often stated that it was developed in contradiction to positivism, as was critical realism.⁵⁴¹ When one reads about and discusses interpretivism it is often linked to the work of Weber, Dilthey and Rickert,⁵⁴² but there are aspects of it which are present in earlier works, such as Rousseau and Montaigne, who is quoted at the head of this Chapter.⁵⁴³ Interpretivism rejects the notions that positivism strives by, that the world is separate to us and all we can do is observe it. This difference is due to social scientists working with people as individuals, compared to working with the natural sciences, such as atoms and chemicals. The latter are naturally determined and usually remain the same irrespective of culture. People, however, make their own sense of the world, which is determined by their own culture and beliefs, which in terms effect how they act and interact within the world.⁵⁴⁴ Simply put, interpretivism argues:

‘...that we cannot understand why people do what they do, or why particular institutions exist and operate in characteristic ways, without grasping how people interpret and make sense of their world and act on their interpretations: in other words, without understanding the distinctive cultural character of their beliefs, attitudes, and practices, how these have developed over time, and/or how they ongoingly generate the social world.’⁵⁴⁵

However, collecting the data with the Diamond16s and analysing the data from it are two different philosophical frameworks. As can be seen on *Figure 4.4*, the interpretivist stance only worked for the data collection. When it came to the analysis of the Diamond16s it was necessary to switch to a positivist framework. I had very different experiences collecting and analysing the Diamond16, which will be discussed in further detail below.

⁵⁴⁰ Hammersley, M., *What is Qualitative Research?* (Bloomsbury, 2013), p.27

⁵⁴¹ Crotty, M., *The Foundations of Social Research: Meaning and Perspective in the Research Process*, (SAGE, 1998), p.66

⁵⁴² *Ibid.*, p.67

⁵⁴³ Hughes, J. and Sharrock, W., *The Philosophy of Social Research*, (Longman Limited, 3rd edn, 1997), p.96

⁵⁴⁴ Hammersley, M., *What is Qualitative Research?* (Bloomsbury, 2013), p.26

⁵⁴⁵ *Ibid.*, p.27

4.7.5 Interviews with students

The interviews with the students served two purposes: to validate the Diamond16 data and to provide further insight into participant's perceptions of skills and how they felt about starting to practice law. Validation will be discussed in more detail in the analysis section. The interviews were conducted from 23rd-30th April 2016, during the final week of the students' time in the SLO before they had their final hand-in. This concluded their participation in this research, tracking them through their journey in a LCC.

I decided to conduct the interviews as I felt there needed to be some more dialogue around the Diamond16. Whilst it is a very useful and effective method, it could not address all my research aims fully. Interviews are a form of qualitative research, conducted in a variety of ways. The interview method used in this thesis was face-to-face semi-structured interviews. This form of interview was developed by Scheele and Groeben to study '*subjective theories*'.⁵⁴⁶ Simply put, this is studying an area which the interviewees have a '*complex stock of knowledge*' of the topic.⁵⁴⁷

As can be seen in *Figure 4.6*, the interviews were conducted immediately after the final Diamond16. Ethical application for the interviews was sought and informed consent gained from each participant. I created a guide for the interview, highlighting questions to be asked and the topics to be explored. The semi-structured interviews consisted of ten open ended questions.⁵⁴⁸ The questions were asked in the order on the guide, unless the conversation naturally steered towards another, so that it could have been covered before moving onto the next. By doing this, the interview felt a lot more relaxed, and allowed my participants to speak more freely. This helped to '*give a voice to the common people,*' to attempt '*to understand the world from the subjects' points of view and to unfold the meaning of their lived world.*'⁵⁴⁹ What makes these kinds of interviews unstructured is the ability of the interviewer to digress from the plan, to follow '*topical trajectories.*'⁵⁵⁰ One of the ways I did this was by referring to the Diamond16s with my participants, using the quantitative data to feed my qualitative data. This can be referred to as '*master-servant*' design, whereby, '*one method serves the needs of the other.*'⁵⁵¹ There was a sequence used, and all

⁵⁴⁶ Flick, U., *The SAGE Handbook of Qualitative Data Analysis* (SAGE, 2013), p.156

⁵⁴⁷ *Ibid.*

⁵⁴⁸ For the full interview question plan please see Appendix 6

⁵⁴⁹ Kvale, S., 'Dominance Through Interviews and Dialogues,' 2006, 12 *Qualitative Inquiry* 480, p. 481

⁵⁵⁰ Cohen, D. and Crabtree, B., 'Qualitative Research Guidelines Project,' 2006, p.1. Accessed via <http://www.sswm.info/library/3079>

Last cited 13.01.17

⁵⁵¹ Easterby-Smith, M., et al, *Management & Business Research*, (SAGE, 5th edn, 2012), p.95

Diamond16s were conducted before any interviews took place. I like to think these methods served each other, as the interviews helped to shine more light on the data of the Diamond16s. However, the Diamond16 was the dominant data collection tool, thus the '*master*' in this research. It is not unusual to use semi-structured interviews after another kind of data collection.⁵⁵² The interviews were designed based on what was collected from the Diamond16s, exploring the concepts already gathered in more detail, which I could not ask or probe during the Diamond16 exercise. The first part of the interview⁵⁵³ consisted of me presenting each Firm with pictures of their previous two Diamond16s. I asked them to look at each one and tell me what they thought of the difference. Students discussed this with each other and myself, which formed the data validation.

It led naturally into the next stage of questions, concerning their opinions around their time and education in the SLO. It focused around the skills they believed they had gained and whether they thought that they were better prepared for practice. Some questions focused around the compulsory aspect of the SLO and the final questions focused around employability and how they use the LCC experience when they are in interviews for legal and non-legal jobs.

As stated above, I wanted the interviews to be quite relaxed and wanted the students to feel comfortable. Kvale states that interviews should be one way and if an interviewee begins to ask questions of the interviewer, it is '*bad taste*' and threatens the '*authority*' of the researcher.⁵⁵⁴ I, however, think that a good interview should relax the participant and they and the researcher should feel comfortable together. Whilst the interviewer will always retain some authority, as the interview is taking part due to them, the participant should also feel as though they have some control over the interview. I think Kvale's view of participants, particularly when he refers to them as '*subjects*,⁵⁵⁵ does not relate to my researcher self. My participants were not '*subjects*' to me and due to my nature and my positionality I took a much more democratic perspective when I was carrying out my research. It helps to relax the participant into talking and feel comfortable in the presence of the researcher. If this does not happen, you may find a participant too scared to speak openly and withhold some important perspectives. Thus, I liked to treat my participants as equal to me, but was still able to direct the interview as I wished. This was achievable by my questions sounding relaxed and as if they flowed naturally from the last, rather than a list to work through. The interview process was influenced by the same philosophical underpinning as the Diamond16s: interpretivism. I could not understand my participant's world and experiences within a LCC if I did not speak to them and attempt to make sense of their world and their interpretations of it.

⁵⁵² Cohen, D. and Crabtree, B., 'Qualitative Research Guidelines Project,' 2006, p.1. Accessed via <http://www.sswm.info/library/3079> Last cited 13.01.17

⁵⁵³ To see full interview guide, please see Appendix 6

⁵⁵⁴ Kvale, S., 'Dominance Through Interviews and Dialogues,' 2006, 12 Qualitative Inquiry 480., p.484

⁵⁵⁵ *Ibid.*, p. 481

At the end of Stage A, I felt a shift in my positionality, particularly with the students. What helped was that I left the interviews until my final data collection exercises. By then the students knew me, as I had visited their firm meetings throughout the year and they had seen me regularly in the SLO. As I wasn't a tutor in the SLO they spoke to me about the SLO course and what they liked and didn't like about it. The advantage of being a kind of outsider meant that students divulged in their concerns⁵⁵⁶ of the SLO, perhaps to a greater extent than they would have had I been a tutor. It was a strange relationship, one where I was aware I had to keep some distance as they were my participants. However, the students were particularly interested in my career decisions and degree modules, since I had recently graduated from the University. I would talk with the students happily about this and built up some trust with them. I believe that if I had done the interviews sooner, or with a fresh group of participants, I would not have gotten the depth and richness of interview data that I did. Thus, the positionality ball on *Figure 4.6* is half full at the end of Stage A. I was familiar with the staff and students in the SLO, and I had been accepted as having a role within their culture. However, being a kind of member of the SLO did not '*denote [me] complete sameness within that group.*'⁵⁵⁷ Furthermore, by the second round of Diamond16s I had started teaching within the University. This made me feel more justified in feeling comfortable to be considered a colleague and more than a student. I felt much more confident about my status at this point than I had been at the start.

Stage A of the PhD was successful. I was satisfied that I had a UK dataset, which would be comparable and provide an original contribution to knowledge. I was ready for Stage B of the data collection: collecting data during my visits to the EIs, distributing my survey and starting my systematic review.

4.8 Stage B – Secondary data collection: home and away

During Stage B I was still teaching. I changed module to Year 3 Student Law Office, which is the preparatory module to prepare students for the SLO the next year. I enjoyed this change, glad to be teaching a subject more related to my thesis. I could see my research in action and enjoyed my time with my students. This made me feel even closer to the SLO culture, feeding my positionality to be more of an insider.

It also gave me confidence at the International Journal of Clinical Legal Education Conference, 2015,

⁵⁵⁶ Boner, A. and Tolhurst, G., 'Insider-outsider perspectives of participant observation,' 2002, 9:4 Nurse Researcher 7, p. 13

⁵⁵⁷ Corbin Dwyer, S. and Buckle, J., 'The Space Between: On Being an Insider-Outsider in Qualitative Research,' 2009, 8:1 International Journal of Qualitative Methods 54, p.60

Turkey. Professor Hall spent some time introducing me to our European colleagues, whom have established LCCs at their University. I left the conference with some useful data, described above, and with some established connections, both home and away.

4.8.1 Organising the secondary data collection

During the first semester of Stage B I began the initial searches for my systematic review to form the literature review of this thesis. After completing the EU systematic review I felt significantly more prepared for the task. I met with staff at the Library, to confirm my knowledge and skills and to learn more about how grey literature can be used. Professor Hall also arranged a meeting to take place between us and IT staff, to discuss making the Diamond16 interactive and a part of a survey. We planned to pilot it at the International Journal of Clinical Legal Education Conference, 2016, Toronto.⁵⁵⁸ Our colleague in IT was confident that it could be made, it was more a question of resources, both money and staff. We left it with her to explore and consult on.

I also contacted colleagues at Lazarsky University, Poland, and Palacký University, Czech Republic. I asked them if I could visit their University for a week each in February 2016 to conduct some research with them and their students. Both replied that they were more than happy to host me and I was in continuous communication with them until I arrived. During this time it was unsure that I would receive any funding from Northumbria University for this fieldwork. I applied for some external grants, but was unsuccessful in each. Thus, I paid for the fieldwork myself. On reflection, I am glad of the experience of applying for external grants and their feedback on my applications was insightful. Again, I could feel myself developing as a research, learning to not take rejection personally.

It was decided that I would conduct Diamond16s with four groups of no more than six students in each EI. I would also lead an interview with the tutors of the LCCs. I designed a cloth version of the Diamond16 which could be transported easily in my suitcase. I left this at the LCC in Palacký University, as their researchers in the LCC wanted to work with it further. I also used a paper version of the Diamond16 when I was asked to teach a legal skills class for the Erasmus students. This was very successful and the students were very engaged in their discussion.⁵⁵⁹ During this time I was still influenced by an interpretivist underpinning, as displayed on *Figure 4.4*. I was very much

⁵⁵⁸ For more information, please see <https://www.northumbria.ac.uk/about-us/academic-departments/northumbria-law-school/law-research/legal-education-and-professional-skills/the-risks-and-rewards-of-clinic/>

⁵⁵⁹ For more information, please see <http://m.zurnal.upol.cz/pf/zprava/clanek/studenti-prav-se-zapojili-do-vyzkumu-britske-doktorandky-skladali-diamant/> (In Czech – for a Version in English, please see <https://www.northumbria.ac.uk/about-us/academic-departments/northumbria-law-school/law-research/legal-education-and-professional-skills/>)

involved subjectively in the data collection, and interpretivism, '*accentuates the involvement and personal interpretative process involved in understanding and making sense of phenomena.*'⁵⁶⁰

Before this stage of the data collection began, I had another meeting with IT to discuss the progress of making the Diamond16 into a computer programme. Someone in the department had agreed to take on the challenge and wanted to meet to finalise how it would work. It was looking very probable that it would be ready for Toronto in the summer.

4.8.2 Sunderland University and half clinic

As can be seen on *Figure 4.6* I applied for my ethical applications just before I visited Sunderland University and the EIs. I was granted full ethical approval for both the interviews and Diamond16s in the UK and away. I had originally wanted to conduct the Diamond16s at Newcastle University, as they do not have a LCC. I believed that it would have been a good comparison between those who had never been taught in a LCC and those for whom it is compulsory. However, I found it difficult to get access to Newcastle University. After emailing some colleagues and someone in admin, I was not getting any further to gaining access. Thus, Professor Hall suggested Sunderland University, which has an optional LCC, thus being a kind of half-clinic.

I already had contacts of colleagues at Sunderland University, and a visit was decided very quickly. I attended a lesson for the clinical students and my colleague explained who I was. I told them about the Diamond16 and gave each participant a consent form. Again, I had no issues with refusal or withdrawal. There were three groups of students, six students in each. The Diamond16s were all conducted in the same room. Once a group had finished I allowed them to leave. I do not think that allowing the students to be in the same room effected the data adversely. When a group was doing the Diamond16 the other students would talk amongst themselves and did not seem to be paying attention to the exercise. Doing the Diamond16 with half-clinical students meant I had more comparable data. As the SLO is compulsory and intensive for our students, I wanted to see if the results were consistent for students who opted into a LCC, and may not have had as much clinical experience.

4.8.3 Lazarsky University, Poland

The consent forms were emailed to my contacts at the EIs before I left the UK, so that they had time to look at them. My contact at Lazarsky University arranged a translator for me, to whom I emailed the consent forms so that he could translate them for the students. I also explained to him

⁵⁶⁰ Carson, D., Gilmore, A., Perry, C and Gronhaug, K., *Qualitative Marketing Research*, (SAGE, 2001), p.7

how the Diamond16 operated, so that he was familiar with the exercise before I arrived, where he would take on the role of interpreter.⁵⁶¹ This also meant I had to design the interviews in advance. Again, I chose semi-structured face-to-face interviews with the tutors, creating an interview guide which consisted of eight questions.⁵⁶² I had realised that during the first interview in Poland some questions asked were actually repetitive, which I hadn't realised. Thus, during the interview I excluded some questions which I felt had already been covered. I found that the EI Tutors were so enthusiastic to discuss their teaching in the LCCs and their thought of students' preparation for practice, that they would discuss items on my guide before I had reached them.

My week at Lazarsky University went quite smoothly. All the student groups for the Diamond16s were arranged before I went, with six students in each group. All the students were currently working in the LCC or had been in the previous semester. It was a voluntary option for them. The translator attended all the Diamond16s, to explain to the participants how it worked and make sure they understood each of the cards. Where the Diamond16s were conducted in English, or mostly in English, this is marked on *Figure 4.5*. However, I felt that the reliability of the data was effected by the translator, even though I greatly appreciate Lazarsky University for providing me with one. I did not always know exactly what he was saying to my participants and I am sure it was not exactly what I was saying. Furthermore, as the research went on I found he grew progressively more involved in the exercise, and would express his opinion to participants about the cards. Though I had explained to him that I do not talk to my participants during the exercise, and I take their opinions as they are, even if I do not agree with them, he would actively dissuade students from creating or placing certain cards or provide a different word which he felt was better. As he became so involved, he also stopped translating the discussion as much as I desired, to listen to and discuss the task himself with the participants. This meant that I lost much of the qualitative data and explanation behind the cards. In a way, the translator became one of my participants.⁵⁶³ This was not my intention, but it was important for me to realise that *'the translator always makes [their] mark on the research, whether this is acknowledged or not.'*⁵⁶⁴ The translator was always going to affect my research, just perhaps more than I had originally thought. Thus, some argue that we should move away from the translator being a *'shadowy figure,'*⁵⁶⁵ and to being an *'interpretive*

⁵⁶¹ Squires, A., 'Methodological Challenges in Cross-Language Qualitative Research: A Research Review,' 2009, 46:2 International Journal of Nursing Studies 277, p. 279

⁵⁶² Please see Appendix 7

⁵⁶³ Squires, A., 'Methodological Challenges in Cross-Language Qualitative Research: A Research Review,' 2009, 46:2 International Journal of Nursing Studies 277, p. 278

⁵⁶⁴ Temple, B. and Young, A. 'Qualitative Research and Translation Dilemmas,' 2004, 4:2 Qualitative Research, 161, p.171

⁵⁶⁵ Temple, B., 'Crossed Wires: Interpreters, Translators and Bilingual Workers in Cross-Language Research,' 2002, 12:6 Qualitative Health Research 844, p.853

*guide and coresearcher.*⁵⁶⁶ However, I would have found it difficult to see the translator as a '*coresearcher*' as I did not feel like the relationship was going in that direction. I actually found him too troublesome to be an active researcher in the research.

At the time of the data collection I found this very frustrating. However, I realised that this is the realities of research in other countries, and it was naïve to think I would get a data set to the exact same standard as my UK data set. I am a firm believer in transparency of research. Whilst I did not think it effected my data so much as to exclude it from the thesis, it is stressed that this part of the data should perhaps have less weight attached to it and the rich qualitative data may not be present to explain the quantitative data collected from the European Institutions.⁵⁶⁷ The translator was also present for the interviews with the tutors. However, both the Tutors spoke good English, one fluently, so the translator did not play a great role in this aspect of the research. Also, by changing the structure and excluding questions during the interview, I found that this frustrated the translator, as he was not aware of where the interview would be going. I tried to ignore this and to trust my instinct that I would have a better interview experience. Thus, how a researcher chooses to use a translator can affect the '*results researchers obtain from participants.*'⁵⁶⁸ I chose not to rely on the translator during the interviews with the tutors and I felt that it increased the reliability of this data.

4.8.4 Palacký University, Czech Republic

At Palacký University I was also provided with four groups of students, which varied from two-six participants. The students who participated had been in the LCC the semester before. As the new students in the LCC had not yet started, I was happy to do the exercise with previous students on the course. I did not have a translator present for the Diamond16s, but both the Tutors helping me both spoke fluent English and would transcribe what was being said at times. One group of students managed to do the entire exercise in English, which was very much appreciated. Both of these Tutors participated in the interview and there were no language issues which could have affected my data. The data collection was the same process as Lazarsky University and I managed to collect comparable data to my UK data set.

The strength I felt in my positionality at conclusion of Stage A in the SLO was not the same as when

⁵⁶⁶ Larkin, P.J., De Casterle, B. and Schotsmans, P. 'Multilingual Translation Issues in Qualitative Research: Reflection on a Metaphorical Process,' 2007, 17:4 *Qualitative Health Research* 468, p. 475

⁵⁶⁸ Squires, A., 'Methodological Challenges in Cross-Language Qualitative Research: A Research Review,' 2009, 46:2 *International Journal of Nursing Studies* 277, p. 278

I visited the EIs. I was very much an outsider to them; they had never met me before and I was a new visitor to the Universities and the cities. Thus, I did not have a rapport with them, nor did I feel completely comfortable in my new surroundings. The strong positionality I felt at the point in the SLO was no longer present at the EIs and I did not have the same social capital. To help with this, I tried to conduct myself in as warm and friendly a manner as I could. I made sure to thank my participants and let them know how much I appreciated their time. The judging Moser felt during her research⁵⁶⁹ made me aware that the tone of the data collection would mostly depend on me. However, I agree with Corbin and Buckle when they assert that being an insider or outsider is not the key ingredient of research, but rather, *'an ability to be open, authentic, honest, deeply interested in the experience of one's research participants, and committed to accurately and adequately representing their experience.'*⁵⁷⁰ I got along well with the students, and they enjoyed participating in my research. At Lazarsky University, my colleague had students not involved in the LCC contacting her asking if they could do the Diamond16, as they had heard about it from friends. I may have been an outsider to the EIs, but I intrigued them. In a sense, I felt my positionality shifting back to how it was at the start of my data collection in the SLO. As I was more of an outsider in the EIs I knew I would have to work harder at being accepted by the students.

4.8.5 The end of data collection

My last contact with the IT department was the beginning of March 2016. The individual who had agreed to make the Diamond16 online was no longer working at the university. Another colleague was assigned to the task, but unfortunately it did not really take off. Due to demands of the department, the Diamond16 became low priority. After returning from my fieldwork I started to feel like I had enough data to finish this thesis. During June 2016 I consulted with Professor Hall and we agreed that I could exclude this method. I already enough data and at the time, the designing was proving to be a challenge. To continue with being on track for a timely completion of this thesis, exclusion started to seem necessary. This is something which will be revisited during post-doctoral work. However, this is the point where the PhD was no longer European focused, but became a comparative piece between the LCCs I collected data in. My intention for a European focused study was there, but unfortunately it was not what could have happened.

Thus, at the conclusion of Stage B I had collected all of my empirical data. I found my fieldwork quite challenging and at time was anxious that I did not have another colleague from Northumbria

⁵⁶⁹ Moser, S. 'Personality: a new positionality?' 2008, 40:3 Area, 383, p.383

⁵⁷⁰ Corbin Dwyer, S. and Buckle, J., 'The Space Between: On Being an Insider-Outsider in Qualitative Research,' 2009, 8:1 International Journal of Qualitative Methods 54, p.59

University present to support me through it. However, I felt that this experience, again, developed my research skills and gave me further insight in how to collect data in other countries. Now, I could focus on completing my systematic literature review, analysing my data and writing my thesis.

4.9 Stage C – Systematic review, analysis and write up

Stage C of the PhD process felt peculiar to me. I had thoroughly enjoyed collecting my data. Engaging with my participants was my favourite aspect and I felt a bit down that I would no longer be collecting data for the thesis. However, it did mean that I was in the final stretch. I had some very rich data, which I have enjoyed working with and writing about immensely.

4.9.1 Systematic review

When I returned from my fieldwork I knew it was time to emerge myself in the systematic review of the literature. I will not return to the methodology of it here, as it was explained extensively in the literature review. What is important to highlight here is the philosophical stance which was adopted for the systematic review. Due to the nature of the systematic review, being mixed method and working with inconsistent data, I approached the collection of the data and its synthesis differently. *Figure 4.4* shows that during the time of collecting and appraising my literature I was working from a critical realist stance. It is a philosophical movement which was inspired by, or '*appropriated insights*' from, phenomenology,⁵⁷¹ outlined in the previous Chapter. Critical realism was developed by Bhaskar, who wished to develop a '*systematic realist account of science*.'⁵⁷² The term critical realism arose from amalgamating Bhaskar's phrase of '*transcendental realism*' and '*critical naturalism*.'⁵⁷³

Critical realism highlights the importance of ontology and the need to be a realist of ontology, and avoids '*foundationalism*.'⁵⁷⁴ Thus establishing that, '*things exists apart from our experience and knowledge of those things*.' Furthermore, '*it argues for a structured and differentiated account of reality in which difference, stratification and change is central*.'⁵⁷⁵ It accepts that there is one '*real*' world, but '*it does not follow that we, as researchers, have immediate access to it or that we are able to observe its every aspect*.' This highlights that there can be a harmony between positivism,

⁵⁷¹ Smith, M.J. and Pangsapa, P., *The SAGE Handbook of Social Science Methodology: Chapter 21 – New Controversies in Phenomenology: Between Ethnography and Discourse*, (SAGE, 2007), p. 393

⁵⁷² Bhaskar, R., *A Realist Theory of Science*, (Leeds Books, 1975), p.8

⁵⁷³ Archer, M., Bhaskar, R. *et al.*, *critical realism: Essential Readings*, (Routledge, Centre for Critical Realism, 1998), p.ix

⁵⁷⁴ Collier, A., *Critical Realism: An Introduction to Roy Bhaskar's Philosophy*, (Verso, 1994) p.ix

⁵⁷⁵ Bhaskar, R., 'What is critical realism?', Blog post. Accessed via <https://roybhaskar.wordpress.com/what-is-critical-realism/> Last cited 30.12.16

and the world existing separate to us, and the social constructionist view of people constructing any meaning to be made of this reality.⁵⁷⁶ Thus, there is a pluralism existing in critical realism, which helps to support the use of both quantitative and qualitative methods.⁵⁷⁷ It was created somewhat out of oppositions to positivism or empiricism, but still values science, as '*there is no "scientism," no valorization of empiricism.*'⁵⁷⁸

Relating this back to the systematic review, when I was searching and collecting articles to be assessed for inclusion, I was working in a very positivist manner. The articles were out there to find, they existed separately to my experience and knowledge. I followed a strict methodology, which allowed for both qualitative and quantitative methods to be included. My need for a set structure of appraising the articles and synthesising them also highlights this stance, striving to make the literature review as robust as possible. The social constructivism element arose when I was assessing which articles to be included for full text. I decided which articles were relevant and which were not, meaning that there was some subjectivity added into the process. I was making my own meaning of the articles, adding this to the reality. However, when I moved from collecting the articles to appraising them and analysing them I returned to an interpretivist stance, making meaning from their language. The synthesising was wholly subject, as I made my own choices of what was important to include and which parts of the articles to extract. This extraction will be different and may not carry the same meaning to different researchers.⁵⁷⁹ So again, my theoretical underpinning changed, dependant on how I was working with data.

4.9.2 Analysis of the Diamond16s

The Diamond16s were easier to analyse than I initially thought they would be. As I was taking guidance from analysis of the Diamond9, I knew that I would have to alter it slightly for a bigger board. For example, Woolner *et al* explain how they analysed Diamond9 data, by splitting the board into five sections based on each of the rows.⁵⁸⁰ I did the same, just grouping rows together to make the analysis of the Diamond16 as so:

⁵⁷⁶ Houston, S., 'Beyond Social Constructionism: Critical Realism and Social Work,' 2001, 31 British Journal of Social Work 845

⁵⁷⁷ Anastas, J.W., 'The Science of Social Work and its Relationship to Social Work Practice,' 2014, 25:4 Research on Social Work Practice 571, p. 574

⁵⁷⁸ *Ibid.*, p.161

⁵⁷⁹ Gough, D., Oliver, S. and Thomas, J., *An Introduction to Systematic Reviews*, (SAGE, 2012), p.12

⁵⁸⁰ Woolner, P.*et al*, 'What Is Learning? Views of Ideal and Institutional Learning Held by HE, FE and School Teachers Engaged in Practitioner Enquiry' (The European Association for Practitioner Research on Improving Learning (EAPRIL) Conference Paper) 24th-26th November 2010

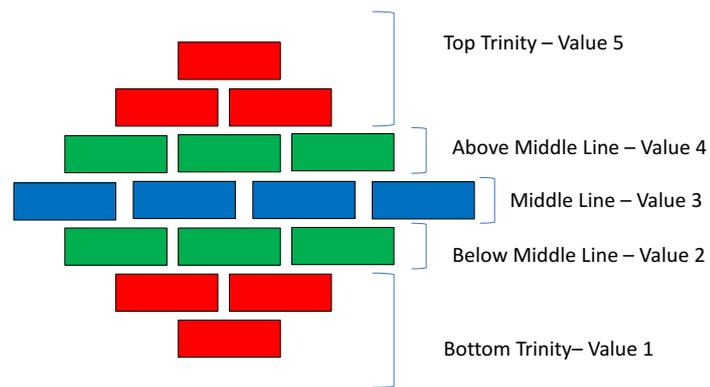


Figure 4.7 – How the Diamond16 Board was Organised for Analysis, Including Numerical Values

The name of top trinity came from some of the student participants in Czech Republic, who called their top three skills ‘The Holy Trinity.’ As the board was bigger, I think that grouping it this way for analysis makes it less confusing and easier to see what the top skills placed were collectively. Also, by splitting the board this way there were equal numbers of cards in each section except for the middle line which has four. This results in more equal representation of where the cards are placed and being mathematically attractive. What is meant by this is that humans are attracted to the number three. For example, Dicken’s three ghosts in A Christmas Carol, the Three Musketeers and even phrases, such as ‘stop, drop and roll.’ The Latin phrase, ‘*omne trium perfectum*,’ translates to ‘*everything that comes in threes is perfect*.’⁵⁸¹ Thus, I felt it justifiable to group the cards into different sections using at least three cards in each and an instance of four cards.

After splitting the board in this way, each skill was placed into an Excel spreadsheet.⁵⁸² Thus, the value given of each group relates to the value it was given on the analysis spreadsheet, and how it will relate to the Graphs in the next Chapter. The spreadsheets contained for each group of participants:

- Where each of the predetermined skills cards were placed
- What the created cards were and where they were placed
- Where any card was moved to, measured as moved up or moved down and,
- Which cards were discussed (meaning, more than just an agreed placement and narrative around what it meant or why it should be placed in a space) during a Diamond16.

⁵⁸¹ <https://triadtheory.wordpress.com> Last cited 22.02.17

⁵⁸² To view spreadsheets, please see Appendix 9

Transferring the Diamond16 pictures to the spreadsheet meant that I could see what had happened during each Diamond16 and begin to make graphs using Excel.

As the Diamond16 boards were set in their structure and participants could not stray from the design, the theoretical underpinning stemmed naturally from positivism. Positivism is the scientific, naturalistic way of researching within the world. It is also referred to as empiricism, the '*refusal to extend knowledge claims beyond those that could be fully supported by evidence of this kind,*' meaning methods which are an '*explicit procedure,*' whereby the same conclusions are reached would be the same irrespective of who conducted the research and their social, cultural and personal characteristics.⁵⁸³

We can see the difference between positivism and critical realism distinctly when looking the above claims. Critical realism, whilst retaining some of these claims, takes the finding of reality further than what is merely observable. Positivism claims that ideas can only become knowledge when they have undergone the '*test of empirical experience.*'⁵⁸⁴ Thus, there cannot be knowledge about the world before there is an experience.⁵⁸⁵

When I was analysing the Diamond16, it was less about my interpretation of it, as the placement of the cards spoke for themselves. The qualitative discussion collected is used more to explain the placement of the cards, adding more depth to the quantitative. It was not wholly open to my interpretation. Having the rigid structure of the Diamond16 board means that the conclusions reached will be the same, regardless of the researcher. It was objective analysis, studying the claims made of skills in relation to the value added to them by participants. I had no knowledge of what the participants thought of certain knowledge, skills and attributes prior to the Diamond16 experience. Naturally, positivism applied here and this reflects the use of mixed methods and its benefits. The objectivist structure means that I am not wholly involved within the research process. I may have wanted to hear certain things discussed during the Diamond16, but without my influence they ultimately weren't. I may have had an idea of what knowledge, skills and attributes are important to practice in my own opinion, but the objective nature of this research meant that my opinions were separate to my participant's opinions. In this way, mixed methods research has increased the reliability of this research.

⁵⁸³ Crotty, M., *The Foundations of Social Research: Meaning and Perspective in the Research Process*, (SAGE, 1998), p.23

⁵⁸⁴ *Ibid.*, p.29

⁵⁸⁵ *Ibid.*

4.9.3 Validity

The interviews conducted at the end of Stage A were also used as a chance to validate the Diamond16 data. Data validation in mixed method research has stirred some discussion in the literature. Onwuegbuzie highlights that using both qualitative and quantitative methods, each with their own issues, can be, *'plagued by the problems of representation, integration, and legitimation.'*⁵⁸⁶ It is not only important to capture the true representation of the lived experience, but also to making *'inferences that are credible, trustworthy, dependable, transferable, and/or confirmable.'*⁵⁸⁷

Data validation can be best explained with the question posed by Kvale:

'The commonest definition of validity is epitomized by the question: are we measuring what we think we are measuring? In a broader concept validity pertains to the extent that a method investigates what it is intended to investigate.'⁵⁸⁸

Validation becomes a kind of investigation, checking and questioning the theoretical findings and their interpretations.⁵⁸⁹ It is a part of the research process, as important as any other stages. Data analysis and validation are quite different when working with quantitative or qualitative data and they do vary in their approaches. The latter can largely be done with the aid of computer software, and the positivist approach usually adapted allows for rigour within this process. However, with the former this *'still leave[s] the research agenda and the validity of data analysis largely in the hands of the researchers.'*⁵⁹⁰ Thus, there can be errors in interpretation of data and miscommunication of the participant's initial meaning. This can then affect the validity of the data.

There are different ways in which one can validate data, designed to increase the accuracy of the interpretation of qualitative data.⁵⁹¹ An element of triangulation is that of respondent validity or *'member checks.'*⁵⁹² There are two ways to do this, and one or both may be used. Firstly,

⁵⁸⁶ Onwuegbuzie, A.J. and Johnson, R.B., 'The Validity Issue in Mixed Research,' 2006, 13:1 Research in the Schools 48, p. 52

⁵⁸⁷ *Ibid.*

⁵⁸⁸ Kvale, S., *Issues of Validity in qualitative research*, (Studentlitteratur, 1989), p.74

⁵⁸⁹ *Ibid.*

⁵⁹⁰ Torrance, H., 'Triangulation, Respondent Validation, and Democratic Participation in Mixed Methods Research,' 2012 6:2 Journal of Mixed Methods Research 111, p.112

⁵⁹¹ Daytner, K.M., 'Validity in Qualitative Research: Application of Safeguards,' 2006, online application, ERIC. Accessed via <https://eric.ed.gov/?id=ED516416> Last cited 16.02.16

⁵⁹² Creswell, J.W., *Research Design: Qualitative, Quantitative and Mixed Methods Approaches*, (SAGE, 4th edn, 2014), p.251 Accessed via <https://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0ahUKEwj-gszH1uTQAhUJymMKHRdUBKkQFggIjMAE&url=https%3A%2F%2Fwww.researchgate.net%2Ffile.PostFileLoader.html%3Fid%3D55eb95f16307d984de8b4584%26assetKey%3DAS%253A273846907670528%254014423>

participants can read or observe the raw data the check its accuracy and perhaps add anything they wish after the period of reflection. Secondly, they may be invited to read the discussion of the data, and check whether, *'emerging account is recognized as a fair and reasonable reflection of the situation as they understand it.'*⁵⁹³ Creswell does not agree with the use of raw data being used as a form of validation, but states that a research should wait for a *'polished or semi-polished product, such as the major findings, themes.'*⁵⁹⁴ I did a hybrid, using both at the same time. I presented my participants with pictures of their first two Diamond 16 exercises, alongside the last one they had just completed. I encouraged them to look at all three and discuss the changes over the academic year, which will be discussed in more depth in the next two analysis Chapters. I also reminded them of discussion or comments made in previous Diamond exercises and asked them how they felt about it at the end of their academic year. Once participants had discussed this, it led nicely into the group interviews, asking more in-depth questions about their views on CLE and LCCs in particular.

Validating the Diamond16s in this way supports my objectivist position during the analysis. As stated above, I had my own opinions of the cards. For example, thick skin was a card I believed to be very important to practice but, as will be seen in the following Chapters, was not one which was often placed on the top half of the board. If I were not objective during the data analysis then my opinion on this card may affect the discussion. It did not matter which skills were important to me, only that of my participants. Thus, the objectivist and positivist stance adopted meant that my views of the Diamond16 cards did not interfere with that of the participants', increasing the reliability of the data.

4.9.4 Analysis of the interviews

The method used to analyse the interviews was thematic analysis, whereby I identified and interpreted meanings, or the themes, from my interview data.⁵⁹⁵ This method of analysis is not restricted to one research paradigm, but can be used and applied across various theoretical underpinnings.⁵⁹⁶ As I worked with more than one research paradigm it made sense to use a method of analysis which is adaptable.

Thematic analysis identifies the themes which emerge from the data. Clarke and Braun define a

[01598571&usg=AFQjCNGf4Su2JGJvymUhDUdeluXwHE8I_w&sig2=9CUD-acRkJW6Wn4f3cqatw&bvm=bv.140915558,d.cGc](https://doi.org/10.1177/1526430315598571&usg=AFQjCNGf4Su2JGJvymUhDUdeluXwHE8I_w&sig2=9CUD-acRkJW6Wn4f3cqatw&bvm=bv.140915558,d.cGc) Last cited 8.12.16

⁵⁹³ Torrance, H., 'Triangulation, Respondent Validation, and Democratic Participation in Mixed Methods Research,' 2012, 6:2 Journal of Mixed Methods Research111, p.112

⁵⁹⁴ Creswell, J.W., *Research Design: Qualitative, Quantitative and Mixed Methods Approaches*, (SAGE, 4th edn, 2014), p.251

⁵⁹⁵ Clarke, V. and Braun, V., 'Thematic Analysis,' 2017, 12:3 The Journal of Positive Psychology 297, p.297

⁵⁹⁶ *Ibid.*

theme as something which, ‘captures something important about the data in relation to the research question, and represents some level of patterned response or meaning within the data set.’⁵⁹⁷ The analysis Chapters will discuss the themes which emerged from the data, identifying the patterned responses which my participants gave. The analysis for this research followed the six step guide established by Clarke and Braun:

Phase	Description of the process
1. Familiarizing yourself with your data:	Transcribing data (if necessary), reading and re-reading the data, noting down initial ideas.
2. Generating initial codes:	Coding interesting features of the data in a systematic fashion across the entire data set, collating data relevant to each code.
3. Searching for themes:	Collating codes into potential themes, gathering all data relevant to each potential theme.
4. Reviewing themes:	Checking if the themes work in relation to the coded extracts (Level 1) and the entire data set (Level 2), generating a thematic ‘map’ of the analysis.
5. Defining and naming themes:	Ongoing analysis to refine the specifics of each theme, and the overall story the analysis tells, generating clear definitions and names for each theme.
6. Producing the report:	The final opportunity for analysis. Selection of vivid, compelling extract examples, final analysis of selected extracts, relating back of the analysis to the research question and literature, producing a scholarly report of the analysis.

Figure 4.8 – Clarke and Braun’s Phases of Thematic Analysis ⁵⁹⁸

As I collected the data myself I came to the analysis with prior knowledge of it. However, by transcribing it, checking the transcriptions against the recordings and reading over it, I familiarised myself with what it contained. By doing this I could generate initial codes, which were then collated into themes.⁵⁹⁹ The themes and their story will be discussed in depth in the next Chapter. I worked deductively, moving from the general themes to the more specific.

At the end of Stage C, I was ready to write and complete my thesis. *Figure 4.6* displays my positionality now. The purple circle is almost full, but not completely. I felt more like a colleague than when I had first began the PhD, and more accepted into the SLO culture. I spoke more at meetings and was less cautious to express my opinions or ideas. However, I was still aware that I was not a full-time member of staff at the University, and that I was still different to those who teach and work within the SLO. I felt more comfortable, but it was not possible for me to feel completely an insider, as I wasn’t.

⁵⁹⁷ Clarke, V. and Braun, V., ‘Using Thematic Analysis in Psychology,’ 2008 3:2 *Qualitative Research in Psychology* 77, p.82

⁵⁹⁸ *Ibid.*, Table 1, p.87

⁵⁹⁹ Please see Appendix 10 for an example of the analysis of the interview data

4.10 Conclusion

This Chapter has outlined the methodology followed for this thesis and justified the various research paradigms adopted throughout. It maintained a narrative voice throughout to highlight my professional and personal journey. It tracked my development as a researcher and as a colleague, my influences and the philosophical stances which evolved. It addressed the benefits of using mixed methods in social science research, how each method can complement the other. All ethical procedures were followed and given keen attention to. Most importantly for research, this Chapter has been transparent. It gave details of what worked well, limitations, frustrations and abandonment. This transparency can only serve to add reliability to this thesis.

The results of the methods and analysis described and discussed in this Chapter, will be explored in the next two Chapters. The first analysis Chapter focuses on the methodological analysis of the Diamond16, providing an overview of all of the data, with attention mainly on the quantitative data and the qualitative data to explain the phenomenon. It also looks at individual Groups of participants, highlighting what each Group brought to the result and discussion. The second analysis Chapter focuses on the MLaw Firms and their development in the SLO, any tutor influence and the interview data discussion. This Chapter still discusses the quantitative data, but with more emphasis on the qualitative data.

Chapter Five: Analysis and Discussion 1: Methodological Analysis of the Diamond16

5.1 Introduction

This Chapter examines the analysis of the Diamond16s and discusses the findings. The next Chapter analyses and discusses what each MLaw firm decided was important to practice and their development during the SLO, with more focus on the qualitative data, as well as the quantitative data. Both Chapters of analysis discuss where this research sits within the wider literature explored in the systematic review. As the qualitative elements of the Diamond16s are so intertwined with the quantitative data they will often be used to highlight a trend shown by the methodological analysis. To discuss them separately would result in the qualitative data being discussed slightly out of context and not demonstrating the depth of the data collected. However, I found it important to give an overview of all the results, which focuses mainly on the quantitative data, before discussing each group separately. Providing this bigger picture of the entire data set will add more depth to the discussion of the individual groups, what they brought to the study and how the qualitative data explains their results.

Throughout the analysis it became apparent that there were many different aspects to analyse. They will be taken each in turn, discussing how the data collected helps to answer the research questions outlined in the previous Chapter. The Diamond16 gave me a number of analytical opportunities:

- to draw conclusions between what is considered as important to practice from the pre-determined and created cards
- to draw distinctions between the “hard” and “soft” skills associated with legal practice. In this study I make the distinction between “harder” skills such as analysis and legal knowledge. The “softer” skills relate more to attributes, like empathy and organisation. It is important to keep this distinction in mind when reading any of the analysis sections below
- to compare and contrast what each group thought was important to practice
- to explore whether a card being discussed or not discussed affected where it moved on the board.

In light of the above, this Chapter will partly all address Research Aims, but A4, to see which

knowledge, skills and attributes are considered important to practice across all groups, displayed below:

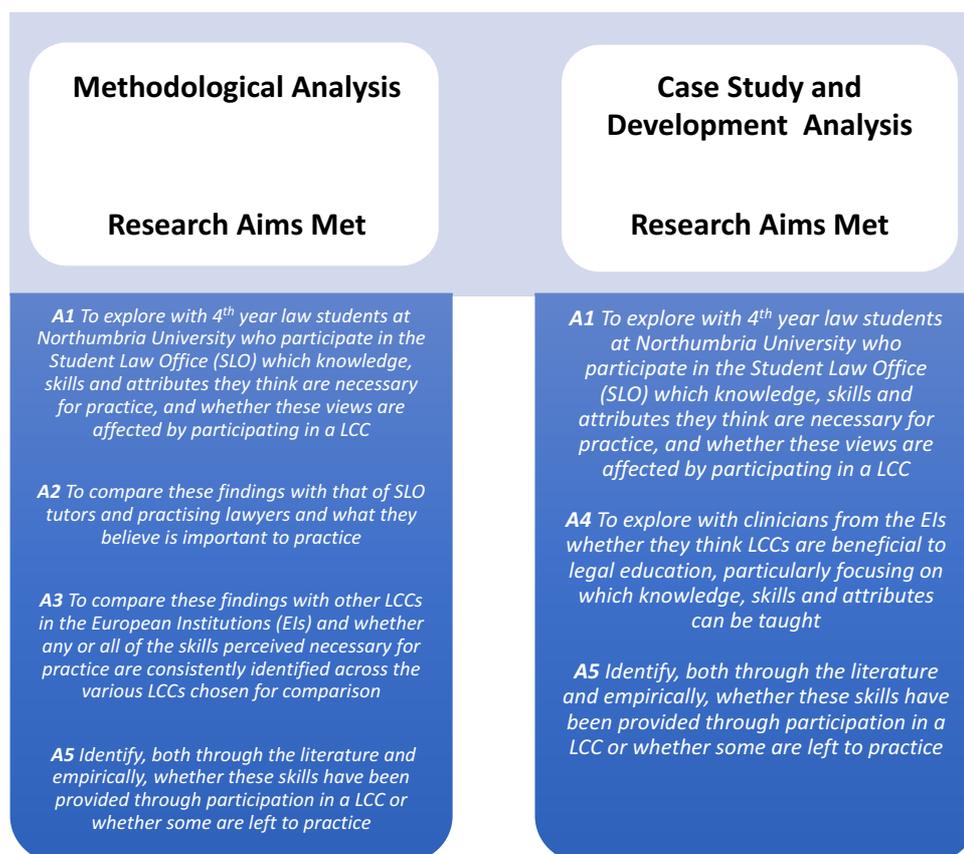


Figure 5.1 – Diagram displaying how each research aim relates to the analysis Chapters

Figure 5.1 highlights how this Chapter will address more research aims than the next Chapter. By looking at the quantitative data as a complete overview and where this research sits in the wider literature, I am not able to go in as much depth about the development of the MLaw Firms and the interview data. However, there is a need for some qualitative data in this section, to aid an explanation of the results of the quantitative data. Thus, we have some of the research aims appearing in both this Chapter and the next on *Figure 5.1*, emphasising that this data cannot be read as completely separate, but they help to feed and explain each other. The qualitative data helps to explain the ranking, but moreover, it explains the process behind each Diamond16 conducted.

The next Chapter, following a case-study analysis, as shown in *Figure 5.1*, will discuss some of the research aims in more detail, explaining the development of the MLaw Firms, any consistencies and differences and how participation in a LCC has affected their views focusing on interview data, providing a more in-depth Chapter.

5.2 Approach to analysis

All of the Diamond16s were transcribed and adapted to the written word after they had been conducted.⁶⁰⁰ The interviews were left longer for transcription and analysis, as I was conducting my systematic review of the literature. I felt more comfortable combining my analysis and discussion and that is reflected in the way in which this Chapter is written. The analysis process is shown in the diagram below:

⁶⁰⁰ Please see Appendix 8 for an example of a Diamond16 transcription

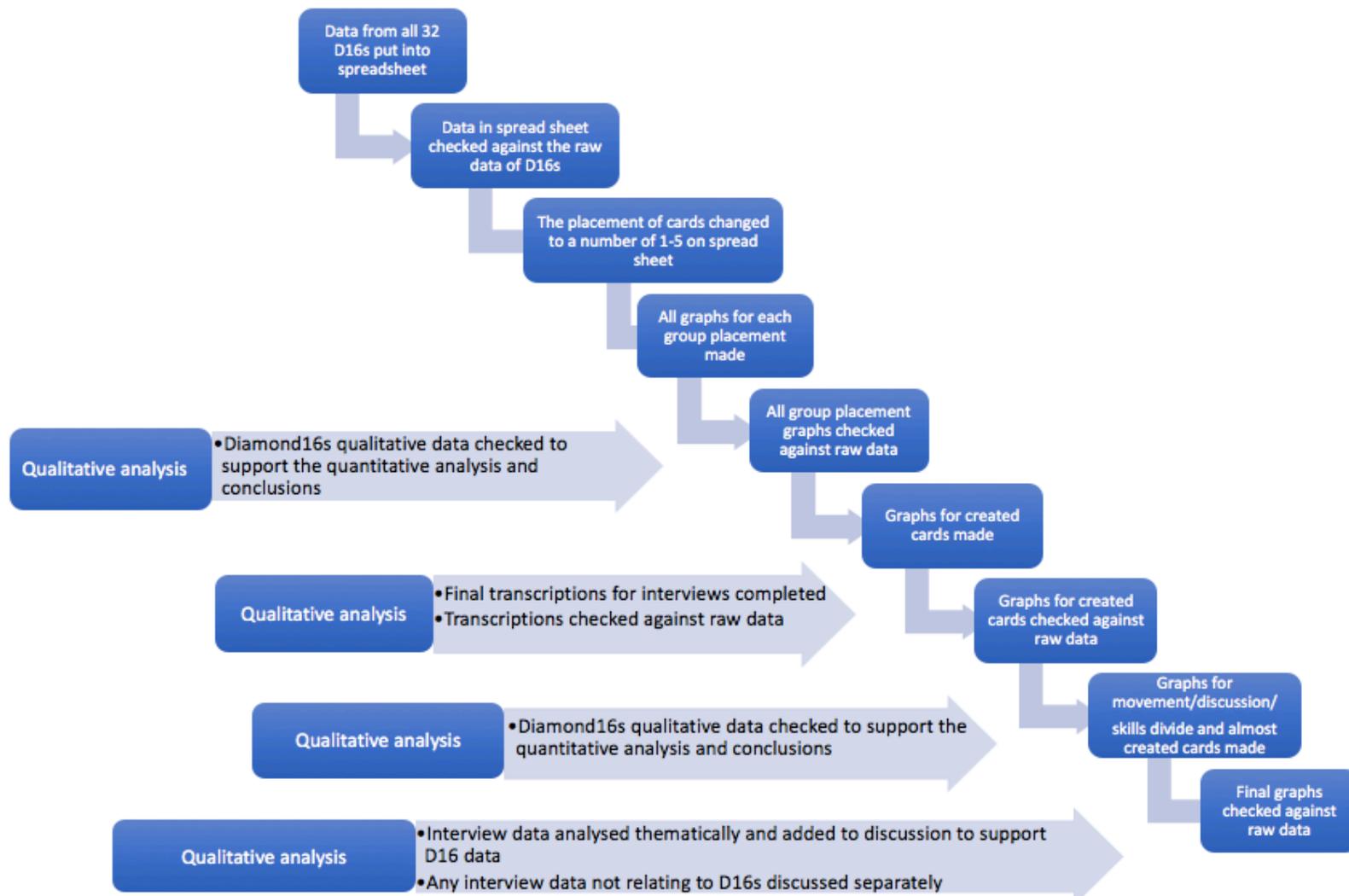


Figure 5.2 – Diagram showing the analysis and discussion stages

As stated in the previous Chapter and shown in *Figure 4.7*, the placement of the cards were given a number during analysis. Thus, the top trinity was given the value five, decreasing the numbers and ending with the bottom trinity with a value of one. This was done so that the higher value represented the high placement of the card and thus of higher importance.

I had planned to also present the findings of the placement of cards using either the mean, range or mode of the cards. However, whichever way I tried it, it did not quite work. When I attempted the mean it resulted in scores such as 2.5. Whilst one can understand what 2.5 means for this research, it is not actually a possible placement on the board and therefore not representative of what the Diamond16 is actually telling us. Furthermore, where, for example, a card was only created once, it was not representable of the actual placement, compared to cards created more than once. At this time I was also calculating the range of the placement of the cards. However, I had the same issues, that some cards were only created once, presenting a distorted analysis of what was actually happening with the cards and their placements. Lastly, the mode was attempted, to bring some kind of determined number to the placement and creation of cards. Still, there were some instances where there were multiple modes, again meaning that this measure of value did not statistically represent what I wanted to convey. All efforts to draw conclusions from the data in this way had to be abandoned.

Finally, it is important to emphasise that the analysis of the Chapter and the presentation of this data contained subjective and decisive choices. The issue of subjectivity in quantitative research has been discussed in the literature. When it came to analysing the data in this way, my objective stance could not remain and I had to make decisions based on the reality I had observed. Though quantitative methods attempt to distance themselves from this subjectivity, I have, *'come to embrace [my] involvement and role within the research.'*⁶⁰¹ In the previous Chapter I explained and discussed how I had worked with various research paradigms and theoretical underpinnings, outlining that this was the same during the data analysis stage, shown on *Figure 4.4*. The analysis of the placement of the cards in the Diamond16 was very much positivist, but when taking the data further and categorising it I have moved to a critical realist position. Thus, subjectivity will always be present during this process. Gelman and Hennig state that, *'As much as science aims for objectivity, it has to acknowledge that it can only be built from a variety of subjective perspectives through communication.'*⁶⁰² True objectivity cannot be achieved, and this requests more transparency in research to fully evaluate and justify the subjective decisions. Gelman and Hennig

⁶⁰¹ Winter, G. 'A Comparative Discussion of the Notion of 'Validity' in Qualitative and Quantitative Research,' 2000, 4:3 *The Qualitative Report* 1, p. 7 Accessed via <http://nsuworks.nova.edu/cgi/viewcontent.cgi?article=2078&context=tqr> Last cited 25.04.17

⁶⁰² Gelman, A. and Hennig, C., 'Beyond subjective and objective in statistics,' 2015, p. 11 Accessed via <http://stat.columbia.edu/~gelman/research/unpublished/objectivity10.pdf> Last cited 25.04.17

go further to argue that this need within science to appear objective has caused, '*confusion and even dishonesty regarding data coding and analysis decisions which cannot be motivated in supposedly objective ways.*'⁶⁰³

Chang asserts the position of '*active scientific realism,*' advancing the view:

'I take reality as whatever is not subject to one's will, and knowledge as an ability to act without being frustrated by resistance from reality. This perspective allows an optimistic rendition of the pessimistic induction, which celebrates the fact that we can be successful in science without even knowing the truth.'⁶⁰⁴

Due to this subjective nature, it is possible to present a version of the researcher's reality, without knowing what the truth actually is. This correlates with Gelman and Hennig's notion that '*there are also scientific virtues associated with subjectivity,*' which includes, '*honest acknowledgement of the researcher's position, goals, experience, and subjective point of view.*'⁶⁰⁵ I have acknowledged my position throughout this thesis, to increase transparency of the research process and decrease any unconscious bias.

Thus, I have placed cards in certain categories throughout the analysis dependant on what was said about the created cards by participants and where I felt they best represented the data. This has included elements of subjectivity, but elements which are justifiable and based on the reality of the data. Where I felt any bias entering this stage of the analysis and if my own judgement was presenting itself too greatly, I revisited the qualitative data to understand fully what was intended by participants. Throughout the next two Chapters I refer to "hard" and "soft" skills and divide cards between them. I understand that it may be confusing to go from referring to knowledge, skills and attributes to "hard" and "soft" skills. This division was done for various reasons. Firstly, it made the analysis simpler, by dividing the skills into two categories, instead of three. Secondly, this division was already present in previous studies, such as Lakhani, emphasising the difference between "soft" and "hard" skills. Lastly, as will be seen in the conclusion of Chapter Five, the knowledge skills and attributes can overlap with one another, meaning that displaying them as three categories would have been difficult. By myself subjectively dividing them into "hard" and "soft" skills, I believe I have emphasised to the necessary quantitative extent what the differences are between certain kinds of skills, before them relating them back to knowledge, skills and attributes in the discussion. I have discussed above the subjectivity of categorising in this section. I am extremely transparent throughout the next two Chapters as to how I categorised the different

⁶⁰³ *Ibid.*, p.6

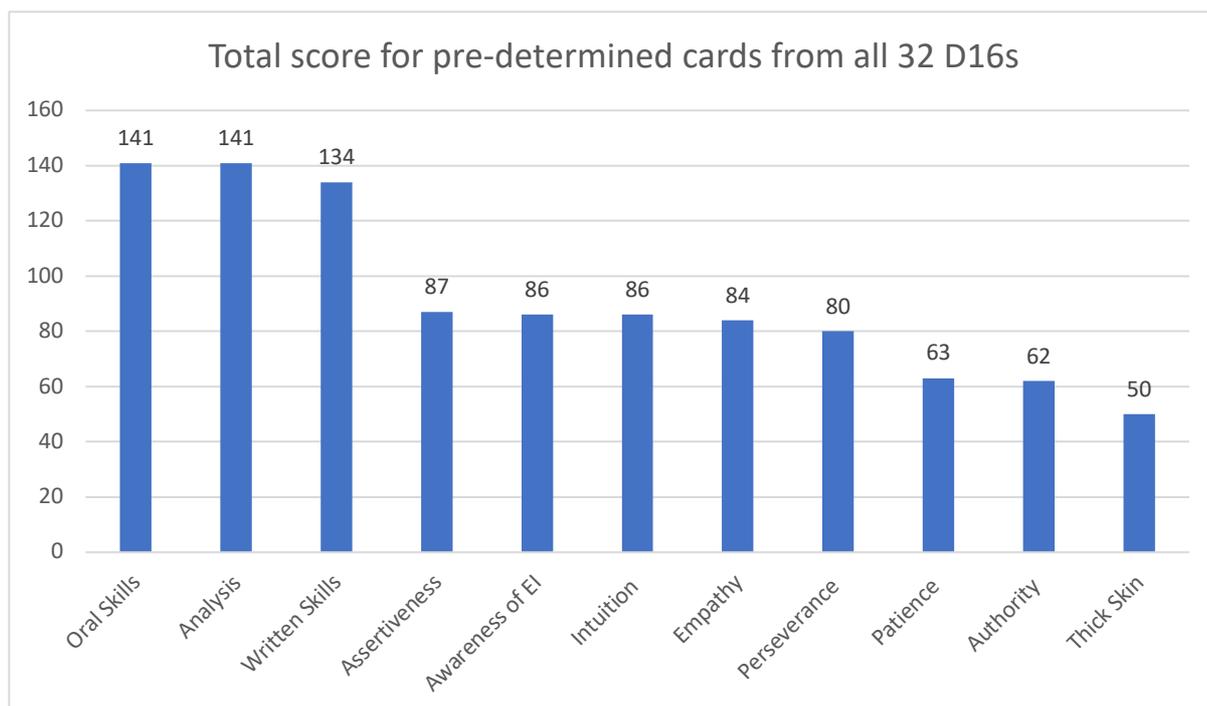
⁶⁰⁴ Chang, H., *Is Water H2O? Evidence, Realism and Pluralism*, (Springer, 2012), p.203

⁶⁰⁵ Gelman, A. and Hennig, C., 'Beyond subjective and objective in statistics,' 2015, p. 12 Accessed via <http://stat.columbia.edu/~gelman/research/unpublished/objectivity10.pdf> Last cited 25.04.17

knowledge, skills and attributes for analysis, meaning I can justify the decisions I have made.

5.3 Placement and opinions of importance of pre-determined cards

I decided to look at the placement of all the pre-determined cards which were given to participants, finding out what ‘won’ in terms of importance placement. To do this, I totalled each placement of the individual cards, the possible placement score from one-five as shown in the previous Chapter, from all 32 Diamond16s. The total score for each card is presented below:



Graph 5.1 – Total Scores for Pre-Determined Cards

There are some interesting observations which can be made from this Graph. The “harder” lawyer skills, namely oral skills, written skills and analysis are all placed high on the Diamond16, meaning that they are considered the most important skills for practice according to participants. Awareness of ethical issues, the only other “hard” skill, is in the middle with regards to importance. As will be seen in the Graphs below, its placement was much more varied than the other pre-determined “hard” lawyer skills. The skill which was considered to be the least important to practice was thick skin, with a score of only 50. Other skills, such as empathy and assertiveness, are not so low as to be not important, but also not so high to be considered very important to practice.

If we compare these results to the literature analysed in Chapter Two we can see some similarities. For

example, if we look at the synthesis of studies of Schwartz,⁶⁰⁶ Baird⁶⁰⁷ and Zemans and Rosunblum⁶⁰⁸ we can see that analysis is the second most important skill, at 63.6%. In these studies, written skills had a percentage importance of 49.5%, which is lower in importance than in this research. Furthermore, whilst oral skills were not tested specifically in these studies, the oral skill of advocacy only had an importance percentage of 33.32%. There are quite a few differences with these studies and my own, particularly when considering the earlier studies did not measure as many attributes or “softer” skills as I did. If we look at more recent studies, the post-1990 studies, such as Schultch and Zedeck,⁶⁰⁹ analysis was scored as the most important skill to practice. In the list of importance, written and oral skills were placed nine and ten respectively as important to practice. In Lakhani⁶¹⁰ analysis was placed second in order of importance and fourth in Hamilton 2013.⁶¹¹ Regardless of when the studies in the literature were conducted, all had analysis present in their skills tested. One can confidently conclude that analysis is a very important skill for competent practice and that this has not changed since these studies began.

If we look to the total synthesis of the studies in Chapter Two we can see the importance of knowledge, skills and attributes in each pre and post-1990 studies, to compare to this research. The wordles displaying what was commonly measured for in the pre and post-1990 studies showed us what was considered important enough for practice to be measured in the various studies. They are displayed, again, below:

⁶⁰⁶ Schwartz, R.A.D., 'The Relative Importance of Skills used by Attorneys,' 1973, 3 Golden Gate University Law Review 321

⁶⁰⁷ Baird, L.L., 'Survey of the Relevance of Legal Training to Law School Graduates,' 1977-1978, 29 Journal of Legal Education 264

⁶⁰⁸ Zemans, F.K. and Rosenblum, V.G., 'Preparation for the Practice of Law-The Views of the Practicing Bar,' 1980, 5:1 American Bar Foundation Research Journal 1

⁶⁰⁹ Shultz, M.M. and Zedeck, S., 'Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions,' 2001, 36 Law & Social Inquiry 620

⁶¹⁰ Lakhani, A., 'Required legal skills for the 21st century lawyer: legal education at a crossroads,' 2013, 6 International Journal of Private Law 38

⁶¹¹ Hamilton, N., 'Law-Firm Competency Models and Student Professional Success: Building on a Foundation of Professional Formation/Professionalism,' 2013, 11 University of St Thomas Law Journal 6

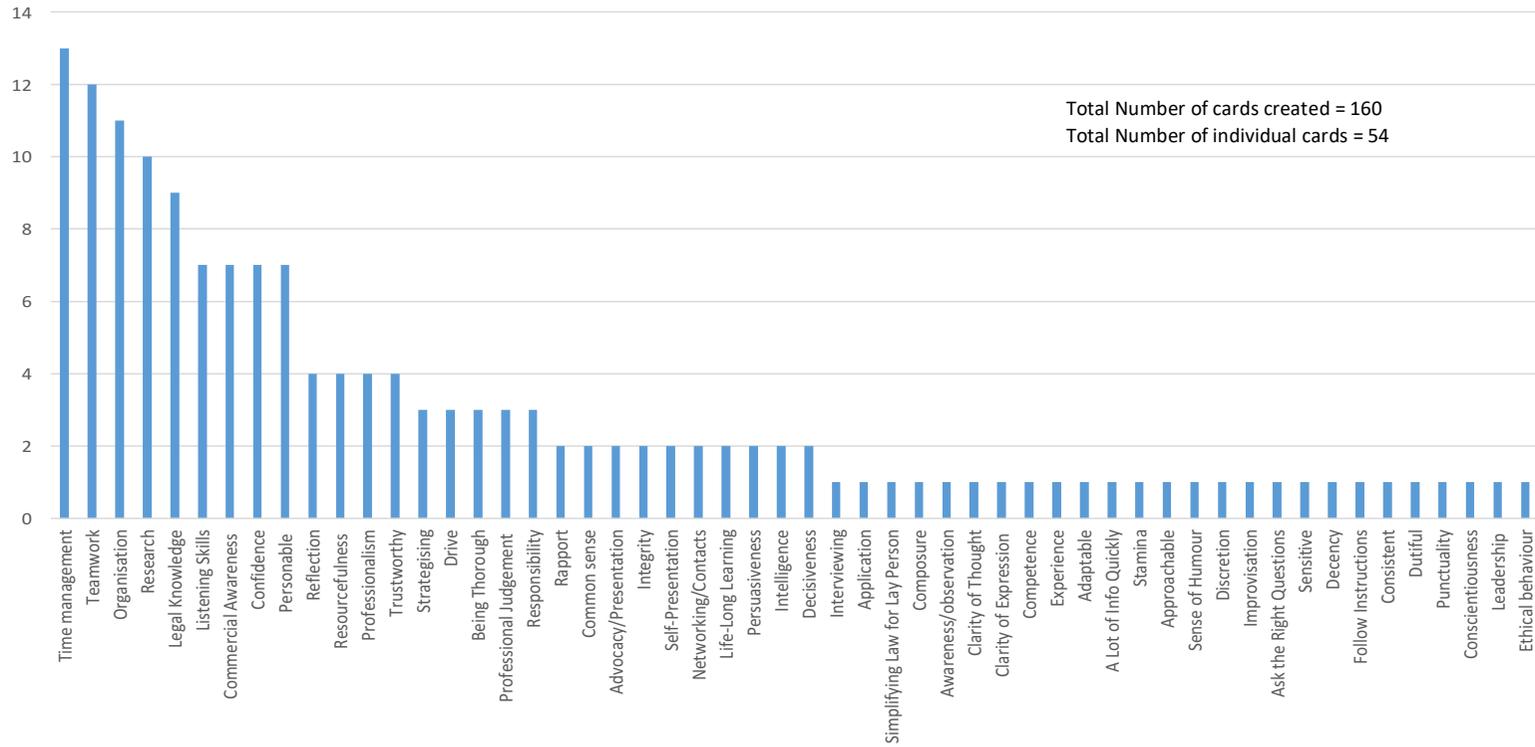
The pre-1990 wordle shows that knowledge, analysis, legal and trait as prominently measured skills. However, the post-1990 wordle expresses a shift in focus to skills, as the most prominent word, along with legal, management, work and development. Other words, such as relationships and commitment are in the focus. Knowledge is still measured, but it is not the main word appearing in the later studies. This research has also shown a shift in the appreciation and need for the “softer” skills, or attributes. Whilst the “harder” skills are still seen as necessary, they are not the complete focus for competent practice. This argument continues when we look at the separation between the “soft” and “hard” skills, later in this Chapter.

This Graph raises some areas for further analysis, which will be explored further and addressed through the qualitative Diamond16 data. For example, we can see that some similar skills, such as assertiveness and authority, were given quite different importance scores. Does it matter how a knowledge, skill or attribute is worded for it to be considered important? This is explored further below.

5.4 Created cards

An area of methodological analysis is the cards which were created by participants and their placement. To reiterate, for each Diamond16 participants were asked to create five cards of their own to be placed on the board. Across all 32 Diamond16s, this provided me with 160 created cards in total and 54 categories of cards. The categories of cards were decided based on my own opinions and the qualitative data, the subjectivity of which was discussed at the start of this Chapter. The Graph below shows all of the cards that were created and how many times:

Amount of times Cards Created Across All Participants



Graph 5.2 – Amount of Time Cards were Created Across all Participants

Looking at this Graph, we can see that time management was the most often created card, created a total of 13 times. We can see other skills, such as organisation, legal knowledge and commercial awareness as very popular cards.

Interestingly, commercial awareness is quite a commonly created card, created seven times. The next Chapter will discuss the creation of this card in more detail, but there is a need to highlight the context of this card in this study. It was created by both law firms, commercial and legal aid, who participated in the Diamond¹⁶, showing its importance to practice. Moreover, it was only further created by Mlaw Firm B, their tutor and the LPC Firm F. Thus, whilst it was a common card, it was only common in Northumbria's SLO and the Actual Law Firms. There was never an instance of being created by the Half Clinic or EI students. This could be that this as a skill is not as prominent in the EIs as it is in the UK, or its importance not emphasised as much during teaching in the Half Clinic LCC. This view on commercial awareness is reflected in the literature. In the pre-1990 quantitative studies there is never an instance of commercial awareness, or a relating skill, being measured. However, post-1990 studies it becomes more commonly measured. For example, it is listed in studies by Shultz and Zedeck⁶¹² as networking and business development, Lakhani⁶¹³ as commercial sense/awareness and Hamilton 2013⁶¹⁴ as business development/marketing/client retention. The shifting legal market and profession is echoed in this research, with the importance of commercial awareness and being more business savvy is becoming a new focus in legal education in some institutions.

Furthermore, if we look at post-1990 in the literature, such as Lakhani,⁶¹⁵ we can see that teamwork is placed ninth in order of importance in the "soft" skills section. Teamwork was also measured in other studies, such as Hamilton 2013 as the most important skill, Peden and Riley⁶¹⁶ and Hamilton 2014.⁶¹⁷ From this Graph we cannot see where teamwork is placed, but we can see that it was considered the second most important skill to create, as recent studies have found it important to measure. Comparing this to the pre-1990 studies, teamwork was not measured for importance. The only instance we find a skill like this is in the synthesis of Schwartz, Baird and Zemans and

⁶¹² Shultz, M.M. and Zedeck, S., 'Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions,' 2001, 36 Law & Social Inquiry 620

⁶¹³ Lakhani, A., 'Required legal skills for the 21st century lawyer: legal education at a crossroads,' 2013, 6 International Journal of Private Law 38

⁶¹⁴ Hamilton, N., 'Law-Firm Competency Models and Student Professional Success: Building on a Foundation of Professional Formation/Professionalism,' 2013, 11 University of St Thomas Law Journal 6

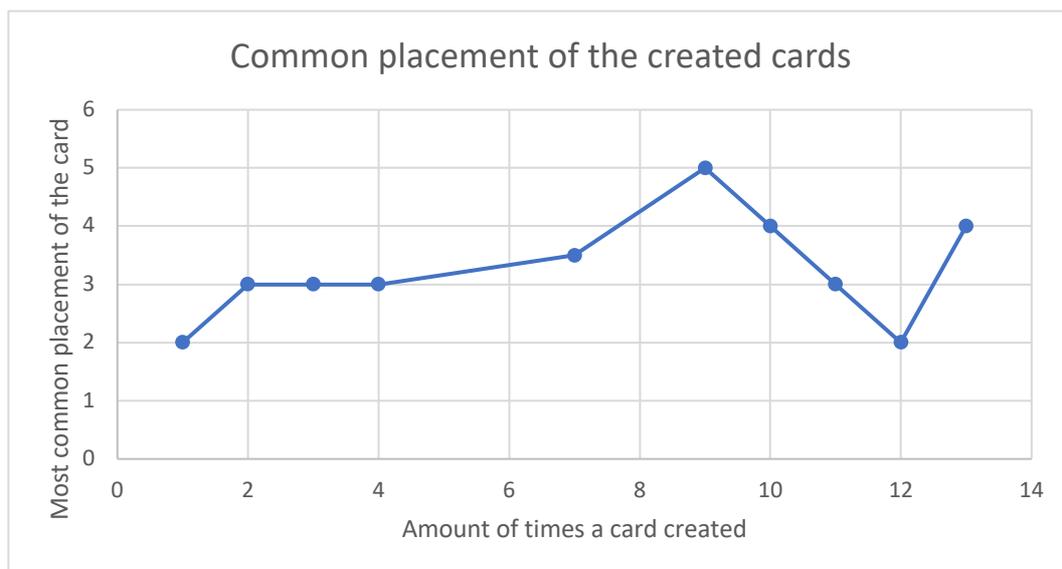
⁶¹⁵ Lakhani, A., 'Required legal skills for the 21st century lawyer: legal education at a crossroads,' 2013, 6 International Journal of Private Law 38

⁶¹⁶ Peden, E. and Riley, J., 'Law Graduates' Skills - A Pilot Study into Employers' Perspectives,' 2007, Sydney Law School Research Paper No 07/81

⁶¹⁷ Hamilton, N. 'Empirical Research on the Core Competencies Needed to Practice Law: What Do Clients, New Lawyers, and Legal Employers Tell Us?' 2014, University of St. Thomas (Minnesota) Legal Studies Research Paper, No. 14-34

Rosunblum,⁶¹⁸ where getting along with other lawyers was given an importance percentage of 55%. Thus, the results in this thesis are consistent with the post-1990 studies, showing how the knowledge, skills and attributes needed for competent practice have developed and evolved.

There also seems to be a link between the amount of times a card was created and where it was placed. If a card was created multiple times it was more likely to be placed on the middle line and above, except for teamwork and personable, two of the “soft” skills. The Graph below shows the amount of times a card was created compared to its common placement:



Graph 5.3 – Most Common Placement of a Card, Dependant on the Amount of Times Created

The only instance of a card being created multiple times and not having a common placement of the middle line or above is teamwork, created 12 times. After only single instances of cards being created, all other created cards are placed on the middle line and above. As can be seen, cards that were created seven times do not have a conclusive placement and they are commonly placed on the middle line and above middle line. Unfortunately, this could not be avoided during this stage of the analysis. There is only one instance of the created cards being most commonly placed in the top trinity, with nine as the amount of times created, which was legal knowledge, shown on Graph 5.3 above. This was the only card created nine times. Thus, where there is only one instance of an amount of created cards, it may be showing slightly distorted results compared to where there were multiple instances of cards created. However, we can argue that the more a card was created the more likely it was to be placed on the middle line and above, with Teamwork as an outlier. Thus,

⁶¹⁸ Zemans, F.K. and Rosenblum, V.G., 'Preparation for the Practice of Law-The Views of the Practicing Bar,' 1980, 5:1 American Bar Foundation Research Journal 1

this increased the importance which was added to the created cards, increasing ecological validity. Ecological validity is, *'the extent to which research findings would generalize to settings typical of everyday life. As such, ecological validity is a particular form of external validity.'*⁶¹⁹ As these cards were made across different institutions and geographical areas, it can be argued that we can generalise the findings as typical.

5.5 The distinction between “hard” and “soft” skills.

One of the areas for analysis which came apparent during the data collection process was the distinction between “hard” and “soft” skills. This was not an area of analysis which I had predicted, but one which came to light during the early stages of the data collection process. The differences in opinions and the way in which cards are discussed differs depending if they are “hard” or “soft” skills. Again, I subjectively made decisions of this quantitative data, to categorise the skills as “hard” or “soft.” As stated above, this subjectivity is present in all research and should be discussed, not ignored. I made the decisions based on my own opinion and what was said about the skills in the qualitative data. Thus, another may look at my decision and form their own reality of the data and put some skills into the opposite category. This can never be avoided, as subjective decisions are based on our own experiences⁶²⁰ and positions, but by showing which skills I think are “hard” or “soft” I have allowed for transparency of this analysis.

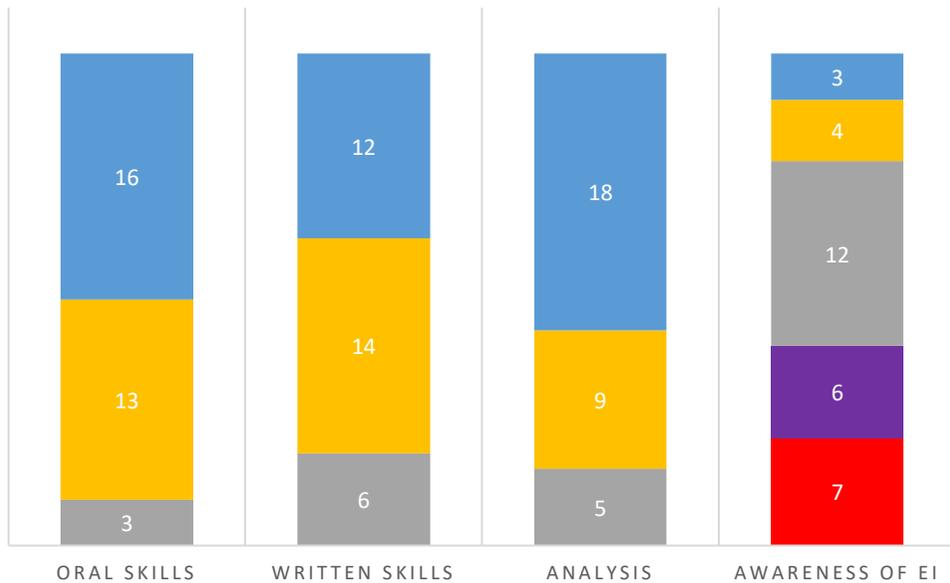
The discussion of the qualitative data will be discussed in more detail in the next Chapter. Here I would like to explore where the skills were placed and the differences between certain skills, which the above Graphs could not tell us. Below are Graphs showing the placement of the pre-determined “hard” and “soft” skills.

⁶¹⁹ SAGE Knowledge. Accessed via <http://sk.sagepub.com/reference/socialpsychology/n167.xml> Last cited 15.05.17

⁶²⁰ Gelman, A. and Hennig, C., 'Beyond subjective and objective in statistics,' 2015, p. 12 Accessed via <http://stat.columbia.edu/~gelman/research/unpublished/objectivity10.pdf> Last cited 25.04.17

CHART SHOWING THE PLACEMENT OF PRE-DETERMINED "HARD SKILLS" CARDS ALL D16S

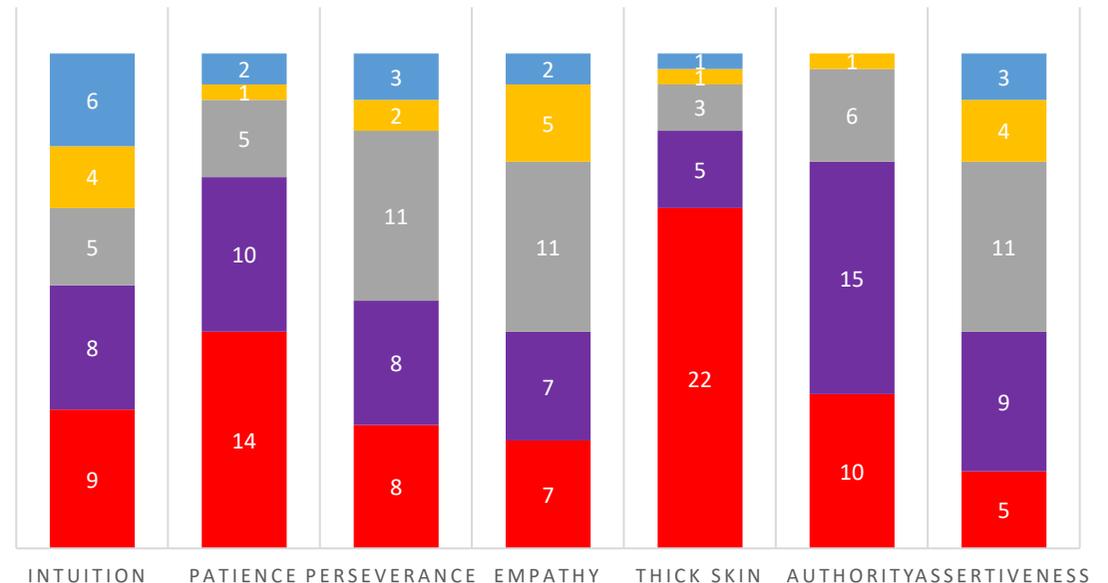
Bottom Trinity BML ML AML Top Trinity



Graph 5.4 – Placement of “Hard” Skills for all Groups

CHART SHOWING THE PLACEMENT OF PRE-DETERMINED "SOFT SKILLS" CARDS ALL D16S

Bottom Trinity BML ML AML Top Trinity



Graph 5.5 Placement of “Soft” Skills for all Groups

We can make some interesting observations from these Graphs. First, we can see that all of the pre-determined “hard” skills, except for awareness of ethical issues, were placed in the middle to the top half of the board. Comparing this to the importance score Graph above, we can see that not only did these skills win in terms of importance, but they were also consistently placed highly on the Diamond16 board. It further demonstrates that these skills are considered necessary for competent practice. Awareness of ethical issues, which was in the middle in terms of the importance score, is also placed with much more variety. It is placed in every section of the board, most commonly on the middle line. It is not definitive to say whether awareness of ethical issues was considered important or not, but somewhere in-between. For example, Tutor Firm B stated:

‘Awareness of ethical issues, well that’s important again of any lawyer and it should be, sort of, in the back of your mind at all times. So, it’s not right up the top, but it is also not so far down the bottom. It’s just right there in the middle.’

This sample of qualitative data helps to explain the positioning of awareness of ethical issues. For some participants, it is an important aspect to know about and be prepared for, but not so important that is placed above the middle line. This notion of ethical issues being *‘in the back of your mind,’* was asserted by Tutor Firm E, that they should be *‘second nature’* and *‘you know what is right and wrong and, in truth, ethical issues don’t arise that often.’* This participant placed this card in the bottom trinity.

I appreciate that there were more “soft” than “hard” pre-determined cards provided, but as stated above it was not an area of analysis I has anticipated. However, the amount of each kind of cards become irrelevant when we look at their placement. The placement of the “soft” skills cards all appear in each area of the board, apart from authority which never appears in the top trinity and only above middle line once. This more equal spread shows a higher range of opinions on the cards. Some are more often placed in the lower half of the board, such as thick skin and patience. Intuition, whilst having the most equal spread of all the pre-determined “soft” skills, was the card most placed in the top trinity. However, because of its equal spread it was in the middle for the overall importance score. Only empathy and assertiveness were placed from the middle line up more often than below. However, their prominence on the middle line means that they were scored nearly the same as intuition in terms of the overall importance. This indicates that the “softer” skills have a much more decisive and varied placement. The “harder” skills are never really disputed when it comes to their importance. Even when their placement is challenged in the qualitative data, they are never placed below the middle line. However, with the “softer” skills they are more likely to be based on personal and previous experience, usually based on their time in a LCC. For example, two participants from Firm D when conducting their final Diamond16, stated about patience:

'I've never really felt like it's mattered that much.'
'We've probably not had very awkward clients.'

This qualitative data suggests that if some of the participants had had *'awkward clients'* during their LCC experience, then patience may be seen as more important. It is understandable that if they have never experienced having to be patient they will not deem it to be as important as the other knowledge, skills and attributes they have used more frequently.

If we add some of the qualitative data to this discussion, the reasons for this spread becomes more clear. For example, thick skin was most often placed in the bottom trinity, followed by patience. Overall, participants did not think this skill very important for practice. The qualitative data from Actual Law Firm A, who placed both of these skills in the bottom trinity, stated they were there:

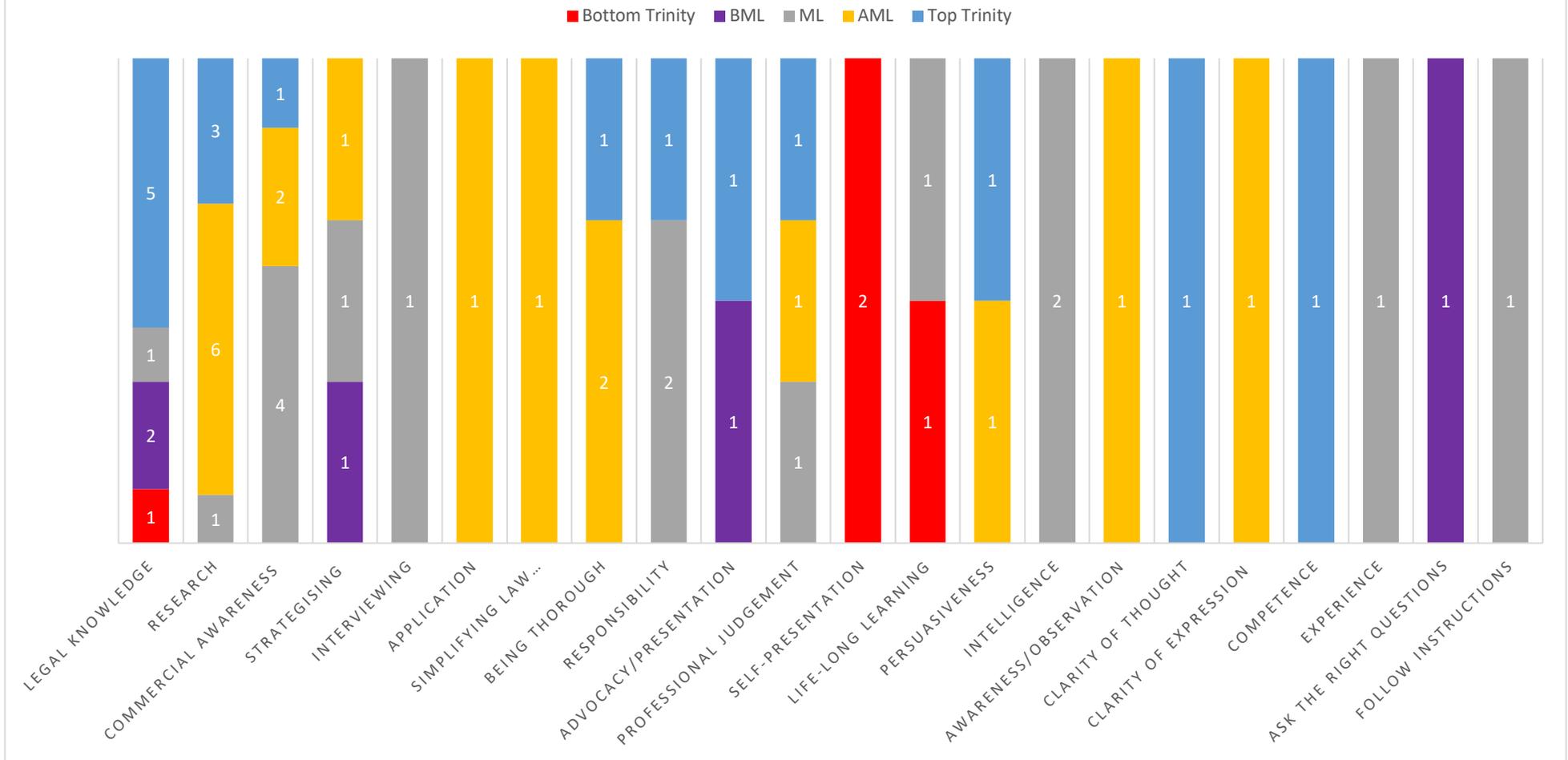
'Because you can manage that [pointing to thick skin and patience]. If you know the NQ in your team doesn't have a thick skin, doesn't have patience, you can manage it.'

Thus, these participants saw these skills as *'easy to manage,'* meaning that they are less important for lawyers to start practice competently. They saw these skills as possible to develop, so not so important to start with.

From looking at the qualitative data, we can see that the placement of the cards is dependent on the kind of work done by participants. Furthermore, we can see which cards are preferred over others. Some cards were discussed as similar by participants, and the decisions for some being placed higher than others add to this quantitative data. Poland Firm A saw patience and assertiveness as similar. Assertiveness was in the top trinity and this similarity was justification for these participants placing patience below the middle line. For Tutor Firm B, patience and perseverance were seen as *'quite similar'* and placed together. Firm C stated in their first Diamond16 that *'patience and perseverance go hand-in-hand. I wouldn't say there's one more important than the other.'* Thus, from the qualitative data we can ascertain that cards perceived as similar were either placed together or used as a justification to have one placed higher than another.

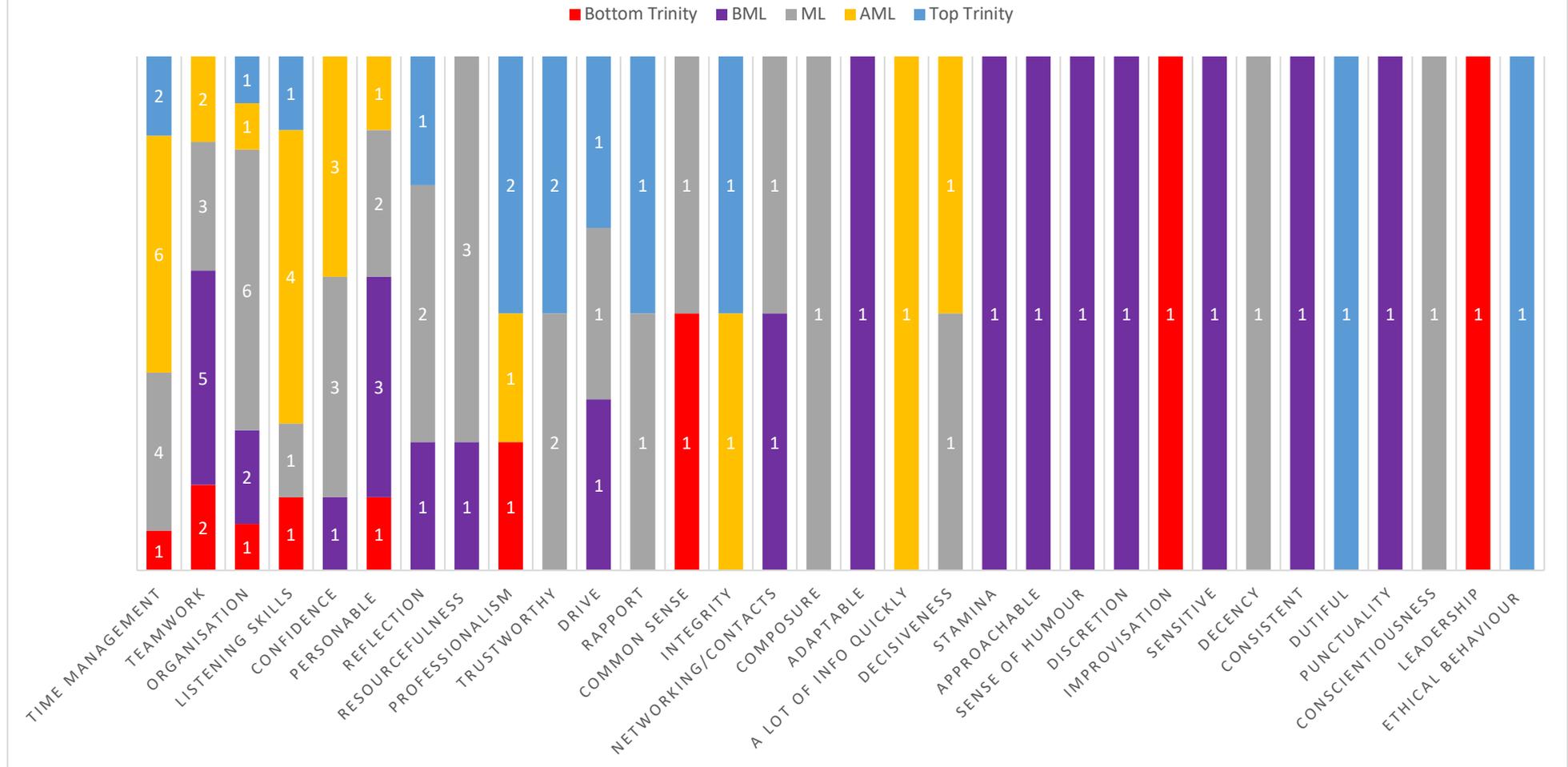
The same process of dividing the cards into "hard" and "soft" skills was also conducted for the created cards, displayed in the two Graphs below:

CHART SHOWING THE PLACEMENT OF ALL "HARD" SKILLS CREATED CARDS



Graph 5.6 - Placement of all "Hard" Skills Created Cards

CHART SHOWING THE PLACEMENT OF ALL "SOFT" SKILLS CREATED CARDS



Graph 5.7 – Placement of all “Soft” Skills Created Cards

The first observation to note here is that there were more “soft” skills created, a total of 32 categories, than “hard” skills, with 22 categories. A simple explanation could be that there are naturally more “soft” skills possible to create than there are “hard” skills. Another reason is that there are more “soft” skills needed in order to practice competently as a lawyer than there are “hard” skills. This explanation is also mirrored in the literature. When looking at the earlier quantitative studies, we can see a variety of knowledge bases and “hard” skills tested and not many “soft” skills. For example in the synthesis of Schwartz, Baird and Zemans and Rosenblum there were only five “soft” skills tested out of all 25 measured knowledge, skills and attributes. However, in the post-1990 studies there are less “hard” skills tested, and the research is more dominated by the “softer” skills. In Lakhani, there is even a whole section devoted to only testing the “soft” skills. Shultz and Zedeck’s study has no knowledge tested at all and we can see a dominance of attributes which were measured. The comparison of the literature to this research shows a consistent rise in the amount of “soft” skills needed for competent practice, and their importance is now dominating legal education and practice. Furthermore, we can see the now prominence of the “softer” skills in the legal education reports, presented in Chapter Two. The earlier reports, such as the Marre Report⁶²¹ and the Pearce Report,⁶²² do not list as many “soft” skills as they do “hard” skills. The later reports, showing a consistent trend with the quantitative studies, ask for many more “soft” skills to be developed for practice. For example, the Canadian Bar Associations 2014 Report⁶²³ and the LETR 2013 Report⁶²⁴ now include aspects of commercial awareness, interpersonal skills and communication skills. It is not just those in practice calling for the above “soft” skills to be developed, but also regulating bodies.

Looking at *Graph 5.6*, it is clear that the “hard” skills created cards are more likely to be placed from the middle line and above. There are only nine instances of a “hard” skills card being placed below the middle line. If we compare this to the “soft” skills, *Graph 5.7* shows that they appeared below the middle line on 32 occasions. Thus, whilst more “soft” skills cards were created, the “hard” skills were seen as more important, consistent with the pre-determined cards. This is interesting, as more “soft” skills created indicates more of these skills needed for practice, but is not necessarily

⁶²¹ A Time for Change. Report of the Committee on the Future of the Legal Profession. [Marre Report]. (1988).

⁶²² Pearce, D., Campbell, E. and Harding, D., *Australian Law Schools: A discipline assessment for the Commonwealth Tertiary Education Commission*, (1987)

⁶²³ CBA Legal Futures Initiative, *Futures: Transforming the Delivery of Legal Services in Canada* (2014) – Chapter 7 discuss legal education. Accessed via http://www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20Futures%20PDFS/Futures-Final-eng.pdf Last cited 16.06.16

⁶²⁴ Webb, J, et al., *Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales (The Legal Education and Training Review (LETR))*, (2013). Available at: <http://letr.org.uk/the-report/index.html> Last cited 04.08.17

indicative of their importance to practice. The qualitative data can provide an explanation to this. Actual Law Firm A discussed the final placement of the cards as what they expect someone to start with at the top, and what later becomes important at the bottom:

'...it's much easier if you have an NQ lacking authority, that's a situation you have to deal with once a week. If you have an NQ who lack written skills, drive and oral skills [all placed in the top trinity] you're dealing with that every minute. It's draining to actually improve those skill sets.'

Thus, if a new lawyer has the “hard” skills already developed for practice, it is an easier experience and the “softer” skills will be developed later and when needed. This was also stated with Tutor Firm D, who placed leadership in the bottom trinity, explaining:

'Leadership is only important later on, so I'm going to put it... well, only really important later on, so I'm going to put it there.'

There is a relationship between what is needed for the start of competent practice being at the top and what is needed later and during career progression being placed at the bottom.

The placement of the “soft” skills, displayed on *Graphs 5.5 and 5.7*, shows a much more varied placement of these created cards. There are more instances of “soft” skills being placed in all areas of the board, compared to the “harder” skills where they still dominate the top half of the board, to an extent. As part of the “hard” and “soft” division, I was curious to see how often either of these kinds of skills were placed on the different sections of the board, for all 512 cards. The results are shown in the table below:

Table 5.1 - The amount of times a “hard” or “soft” skill (pre-determined and created cards) was placed in each section of the Diamond¹⁶

Placement of card	Amount of times a “hard” skill was placed here	Amount of times a “soft” skill was placed here
Top Trinity	65	31
Above Middle Line	57	39
Middle Line	42	86
Below Middle Line	11	85
Bottom Trinity	11	85
Total	186	326

This table displays the data so that we can see placement over the total number of cards. It is clear that the “hard” skills dominated the top half of the board, whilst the soft skills dominated the bottom half of the board. However, there were more “soft” skills in the top half of the board than there were “hard” skills placed on the bottom. This is explained by there being more “soft” skill pre-determined cards. If we were to take the pre-determined cards out of this calculation and look at how many cards were created in each category, we see some differences. Over the 32 Diamond16s there was a total of 128 pre-determined “hard” skill cards and 224 pre-determined “soft” skill cards. If we subtract these cards from the total amount of cards shown in this table, there were 58 created cards in the “hard” skills category and 102 cards in the “soft” skill category. There was almost double the “soft” skills cards created than there were “hard” skills. However, this does not seem to have effected their placement, as “hard” skills were inevitably placed higher more often than the “soft” skills. The lack of “hard” skills in the bottom half of the board indicates that the “hard” skills are seen as more important, even though there were less created. Thus, there is a strong conclusion that the “hard” skills are inherently important to practice, which can be advanced when looking at the qualitative data. Actual Law Firm A further argue this. The above comment by them indicates that the “hard” skills are important because they are the hardest to develop with a new lawyer at the start of practice. However, they do not always stay important, and these participants discuss a ‘merging’:

‘...to a certain degree, as you go through your career and develop as a lawyer, there’s almost a merging of this. You know, the bottom skills having to move up a little bit to deal with that fact you have developed and.... You know, you’ve developed the skills in the top half that allow you to then, as you’ve move up the chain perhaps in a firm, to develop more of a thick skin to deal with issues and become more assertive, etc.’

This idea of the skills needed at first at the top and those which can be developed later was highlighted by Half Clinic Firm B:

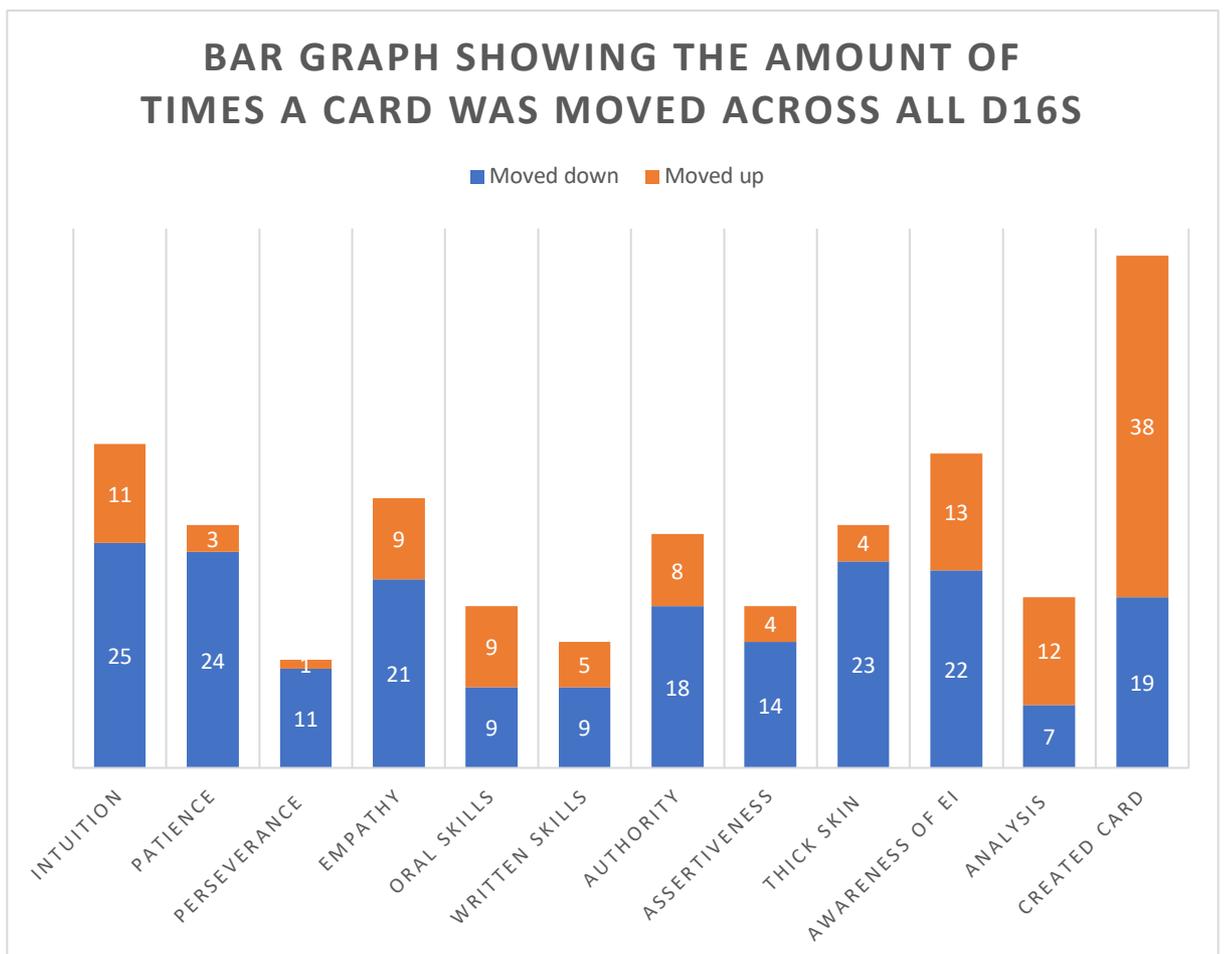
‘I think a lot of those ones down the bottom you can build up. Whereas, the ones [at the top] I think you need to go into the job.’

These comments provide a deeper understanding of the “hard” skills dominating the top of the board and the “soft” skills being placed in the bottom half. Once the “hard” skills have been developed to the extent needed for competent practice, the “softer” skills can take priority and be established.

5.6 Movement and discussion of cards

This kind of analysis tells us a bit less about the importance of the knowledge, skills and attributes and more about the other methodological kind of analysis the Diamond16 creates. I was able to track every time a card was moved to a different placement on the board and how often individual cards were discussed. However, before presenting this data, it is necessary to explain how movement and discussion was measured. Discussion of a card entailed more than merely stating where a card should be placed. It was measured as a comment about the card, and an opinion if whether it should go higher or lower on the Diamond16 board, or what the participant's thought the card meant and its relation to other cards. Movement was tracked as soon as a card was placed on the board. Only once it was placed on a row was it tracked for movement.

Graph 5.8 below shows how many times a card was moved up or down across all of the Diamond16s. It is important to note that the created cards category includes all 160 created cards, so it is naturally higher in value than the single pre-determined cards.



Graph 5.8 – Amount of Times a Card Was Moved up or down across all Diamond16s

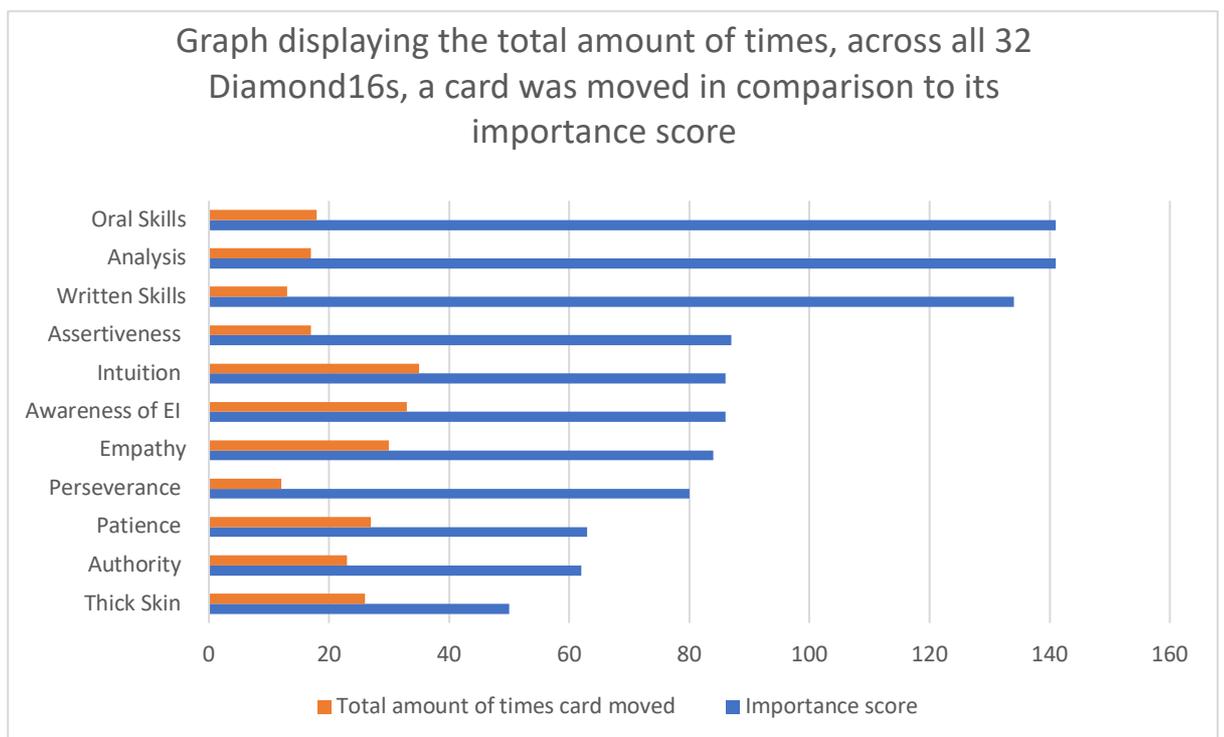
It is notable that the “hard” skills, apart from awareness of ethical issues, were not moved as often as the majority of the “soft” skills. This could be because of the importance of these skills, discussed above, meaning that once placed participants were hesitant to move it. If we relate this to Pierce and *The Fixation of Belief*, discussed in Chapter Three, we can argue that this analysis of the movement is not currently causing distress, but nor is it challenged by experience.⁶²⁵ We can see that across participants, and across the different countries, they are fixed by the belief that the “harder” skills are the most important and should not be moved as often as the “softer” skills. There is a culture of belief surrounding the knowledge, skills and attributes needed for a successful legal career, which is continuously evolving, evident by the change highlighted between the pre- and post-1990 studies.

From *Graph 5.8* above, we can see that most of the “soft” skill cards were placed below the middle line, such as thick skin, authority and patience. Thus, that these skills were moved down more than up the board highlights that these skills had started higher on the board but were moved down. This emphasises a consistency between placement and movement. Furthermore, it was highlighted above that intuition appeared the most in the top trinity of all of the “soft” skills. Out of all of the “soft” skills it was also moved up the board the most, which can indicate that it more varied placement was due to active movement.

The created cards were moved up the board more than down the board. This can be explained by participants creating these cards after placing many of the pre-determined cards, meaning that they had to make room for the created cards and moved them up according to their importance to the group. This also justifies most of the “softer” skills moving down, in order to make this room. If a participant has actually thought of their own knowledge, skill or attribute important enough to add to the Diamond¹⁶ and felt as though it is missing from the pre-determined cards, then they will most likely consider it to be important enough to be placed on the middle line or above. As a result, some of the pre-determined cards must be moved down to compensate for this. By giving participants this option to decisively create and place their own cards, there is an increase in ecological validity, when comparing it to studies where participants are only given pre-determined categories to work with. As participants acted in a consistent way across groups and countries, we can determine a generalisation here, adding to the validity of this study and the data analysed. It was not by chance that the cards were placed and moved as they were, but by an active decision made consistently.

⁶²⁵ Peirce, C.S., ‘The Fixation of Belief,’ 1877, *Popular Science Monthly* 1, Accessed via <http://www.bocc.ubi.pt/pag/peirce-charles-fixation-belief.pdf> Last cited 26.11.16

There seems to be a strong correlation between importance and movement for the pre-determined cards. In most instances the more important a card was perceived the less it was moved, demonstrating another methodological use of the Diamond16. This use builds upon the discussion of Peirce above, indicating that these ideas of what is important have not yet been challenged by experience. Thus, if we truly consider Peirce here, it can be argued that what is considered important to practice is ultimately an idea that has not been challenged, so the participant will remain fixed in their belief. This is displayed in the Graph below:

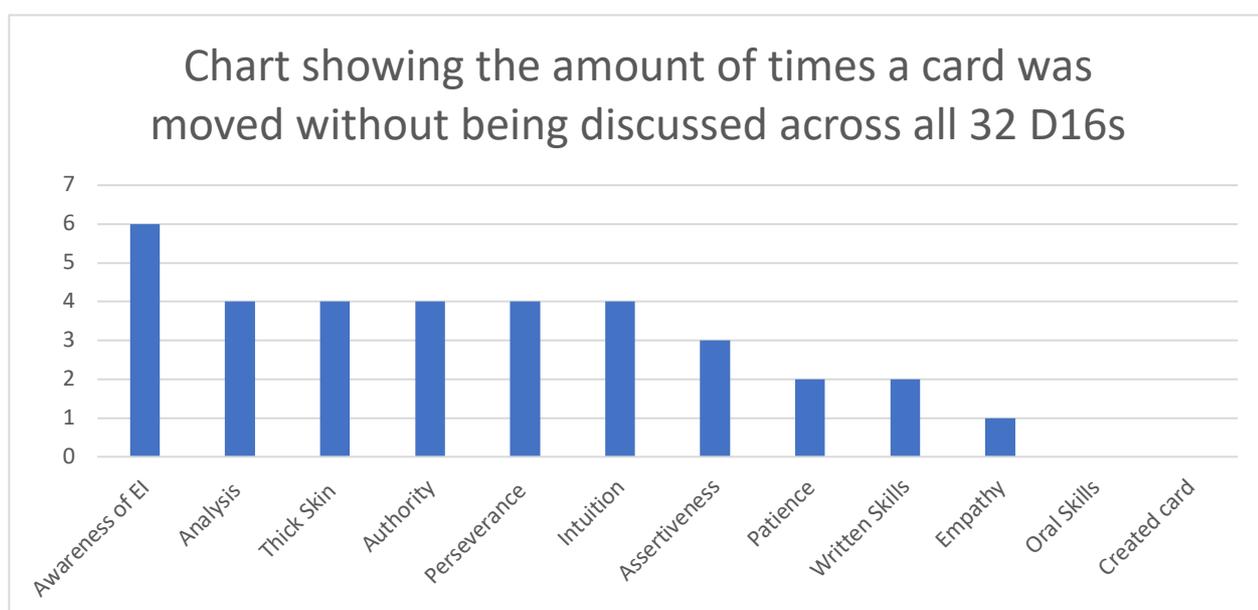


Graph 5.9 – Comparison Between Movement and Importance Score of Pre-Determined Cards

We can see that the more important a knowledge, skills or attribute is perceived the less likely it is to be moved, in every instance but perseverance. Thus, if a card considered important, it will stay where it is on the board and participants will be reluctant to move it. However, if a card is wavering in important from the outset, it is less likely to be immobile and will be moved more. If we look at *Graph 5.8* above, we can see that perseverance was moved down 11 times and up once and was the least moved card. Also, we can see from *Graph 5.5*, that it was most likely to be placed in the middle line and below. As this skill usually started quite low, there was less reason and space for it

to move down further, explaining why it is an outlier on this *Graph*.

When regarding the discussion, it is important to note that I only tracked discussion once for each card per Diamond16. I did not track how many times each card was discussed during a Diamond16. Furthermore, eight of Diamond16s were excluded from the discussion measurement, due either a single participant or language issues. The *Graph* below tells us some more about the movement and discussion of the cards:



Graph 5.10 – Amount of Times a Card Was Moved Without Being Discussed

This *Graph* displays how many times a card was moved without being discussed at all during the Diamond16. For the purposes of this *Graph*, movement was only counted once per Diamond16. I thought this more interesting to analyse than when a card was moved and discussed, as it is natural participants would move a card and discuss it.

Oral skills is the only pre-determined card which was never moved without any discussion. All created cards were discussed, as they were discussed in order to be created, meaning the score is justifiable as zero. We can see that awareness of ethical issues was the most moved card without any discussion. From *Graph 5.8* we can see that this card was moved down more than up during a Diamond16 and was also one of the most moved cards. It was also in the middle in terms of importance score and most often placed on the middle line. We can assume that the indifference of this card in terms of importance also transpired for discussion. Participants were more willing to move this card, particularly down, without discussing why.

This same conclusion cannot be reached for the other cards on *Graph 5.10*. The next cards moved

without discussion were all “soft” skills, except for analysis. Analysis was the only of these cards which was placed from the middle line and above consistently, with the others being placed below the middle line more often. However, analysis appears to move in a more limited space on the board, mainly above the middle line, compared to some of the other cards. Looking at all the data, there was only one instance of analysis being placed below the middle line, but it was instantly placed back onto the middle line. When we think that the Diamond16’s purpose is to stimulate decision making, there must be a reason why certain cards seem to have no consideration of being placed in the bottom half of the board. Is it that we have a foundational analysis we all understand collectively, or do we all carry different views of what analysis is and its importance? Unfortunately, these questions cannot be answered by this research, but there is potential in the future to explore this further. Thus, we cannot say that the discussion and movement here depends on the final placement of the card. We cannot even say that the card being a “hard” skill, rather than a “soft” skill, is less likely to be moved and not discussed, as would be consistent of other findings in this thesis. Thus, whilst this is an interesting analysis of the Diamond16 methodologically, it does not explain what is going on in terms of discussion and movement.

5.7 Comparisons across all Groups

This section will amalgamate certain groups together, for a comparison between them all. Placing Firms into the Groups was simply done by who was in the firm and their institution. Firms are all contained in a specific Group, which are:

Table 5.2 – How Firms were Organised into Groups

Firms Included	Group	Diamond16s Conducted Overall	Maximum Importance Score per Card for Group
MLaw Firms A-F	Student Group	15	75
Poland Firms A-D, Czech Republic Firms A-D and Half Clinic Firms A-C	Student EU Group	11	55
Tutors Firms A-F	Tutor Group	4	20
Actual Law Firms A and B	Lawyer Group	2	10

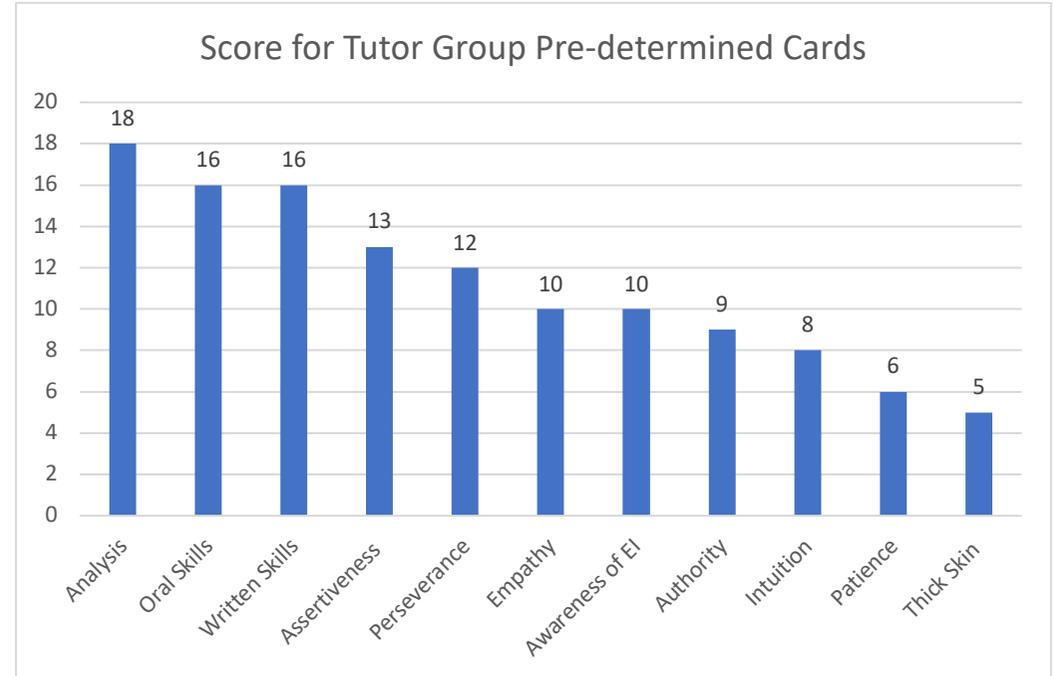
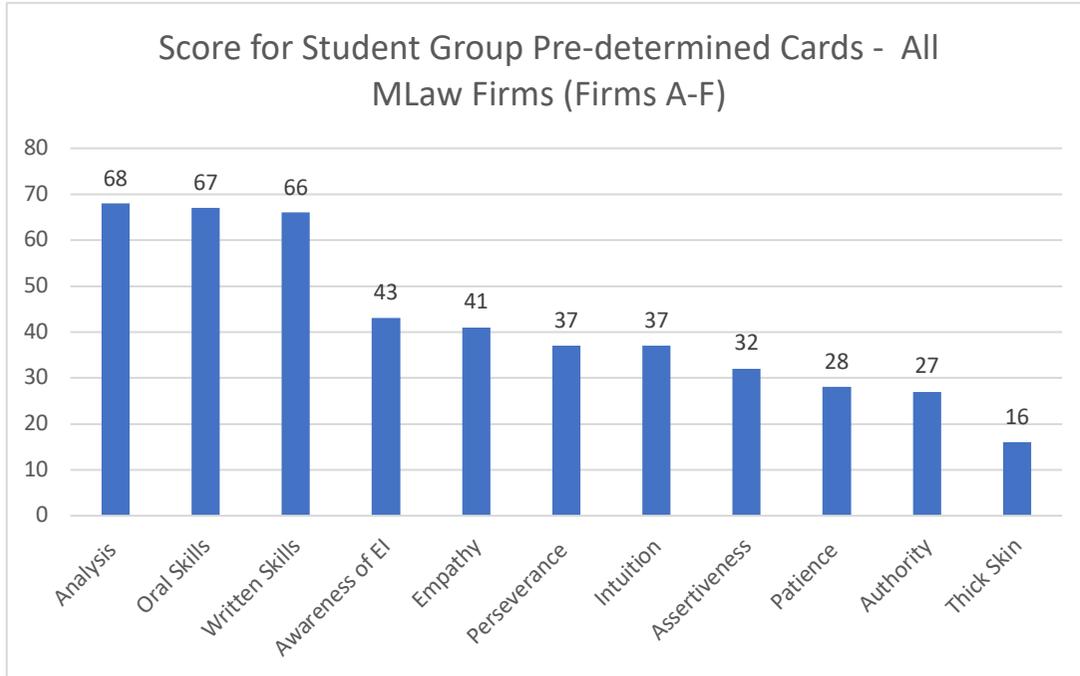
It is noted that there are many more Diamond16s conducted by both the Student Groups. This is explained by the MLaw Firms A-D and F conducting the Diamond16 multiple times and there being more students available to participate in this research than tutors and lawyers. This section is

divided into three sub-sections, focusing again on the pre-determined skills score, the created cards and the “hard” and “soft” skill division.

5.7.1 Placement and opinions of importance of Grouped pre-determined cards

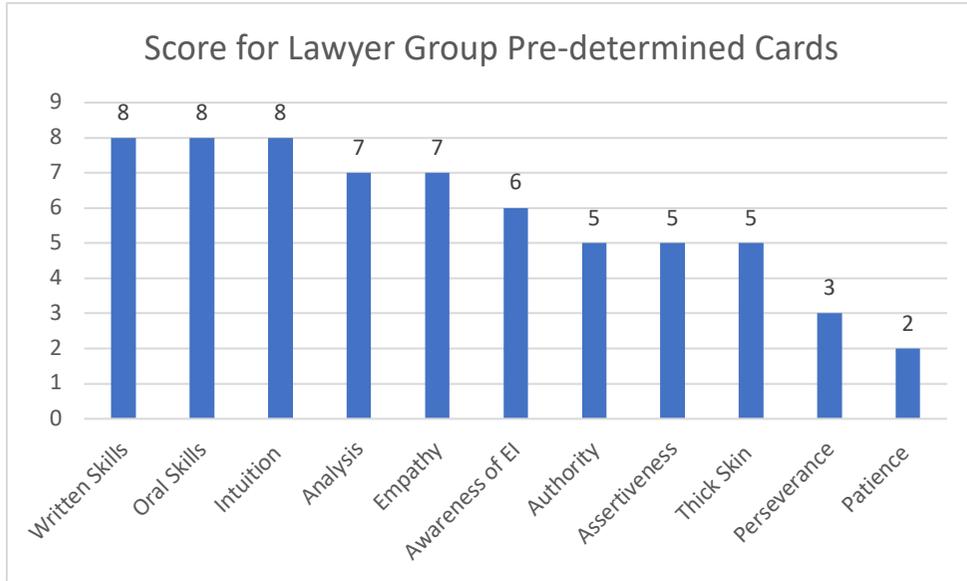
A previous section of this Chapter displayed the results for what won overall for the pre-determined cards with importance scores. By studying the importance scores for all the groups individually it is possible to see if they are consistent with the overall scores and what differences they bring to the analysis. Again, this importance score was calculated from the total scores of each knowledge, skills and attributes, based on their placement value of one-five.

This Graph displayed the importance scores for each Group:

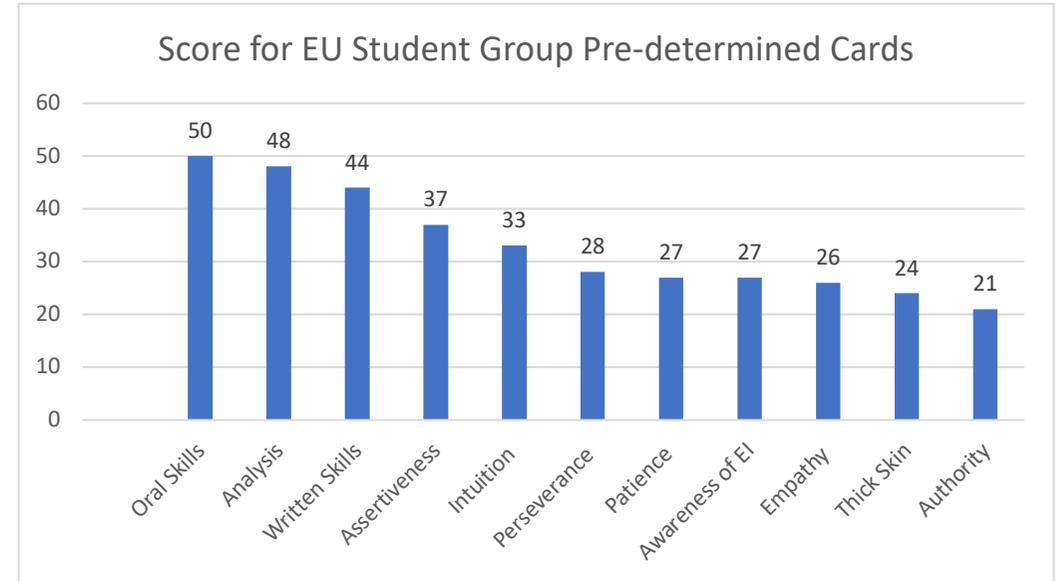


Graph 5.11- Displaying the importance scores for the Student Group

Graph 5.12 - Displaying the importance scores for the Tutor Group



Graph 5.13 - Displaying the importance scores for the Lawyer Group



Graph 5.14 - Displaying the importance scores for the Student EU Group

Looking at all four of these Graphs, we can make some instant observations. All of the Groups, apart from the Lawyer Group, had analysis, written and oral skills as the most important skills. Instead of analysis, the Lawyer Group had intuition. It should be noted here that the differences in size of the Groups could be the reason for this, as there were more in the other Groups to pick analysis. When I looked at the individual Diamond16s, Actual Law Firm A, intuition was placed on the middle row and analysis was placed just above the middle line. However, Actual Law Firm B placed intuition in the top trinity and analysis on the middle row. So, they were only given one score of difference in terms of importance. Thus, we can see in both Actual Law Firms, analysis wasn't necessarily given too much consideration as important, compared to the other Groups. When studying the qualitative data, there is no apparent explanation for this, as neither of the Actual Law Firms discussed analysis and its placement. However, some of the discussion indicates that oral and written skills and analysis were perceived to be a, '*good grounding for a lawyer,*' but also skills which, '*sort of develop with time.*' It seems that the influence of practising every day has affected the Lawyer Group's opinion of what is important to have to start practice competently, and what can be developed as they gain experience. Comparing this to the literature, we can see some consistencies with both the pre and post-1990 quantitative studies. For example, in the synthesis of Schwartz,⁶²⁶ Baird⁶²⁷ and Zemans and Rosenblum,⁶²⁸ analysis was scored the most important skill to possess, followed by communication skills. This was the same for Mudd and La Trielle,⁶²⁹ with analysis first, then written communication skills. The later studies, such as Shultz and Zedeck⁶³⁰ and Lakhani,⁶³¹ also have analysis placed as the most important skill for practice. However, some of the post-1990 studies do not stress its importance as much as these studies, such as Hamilton 2013.⁶³² Thus, it is arguable that the Lawyer Group is moving along with the changing culture of practice, with analysis still seen as important, but perhaps not as important than other skills and attributes needed for practice.

If we look at the middle of the *Graphs*, we can see that awareness of ethical issues is the only card which never leaves this section. As I have already discussed the perceptions of importance

⁶²⁶ Schwartz, R.A.D., 'The Relative Importance of Skills used by Attorneys,' 1973, 3 Golden Gate University Law Review 321

⁶²⁷ Baird, L.L., 'Survey of the Relevance of Legal Training to Law School Graduates,' 1977-1978, 29 Journal of Legal Education 264

⁶²⁸ Zemans, F.K. and Rosenblum VG, 'Preparation for the Practice of Law-The Views of the Practicing Bar,' 1980, 5:1 American Bar Foundation Research Journal 1

⁶²⁹ Mudd JO and LaTrielle JW, 'Professional Competence: A study of new lawyers,' 1988, 91 Michigan Law Review 34

⁶³⁰ Shultz, M.M. and Zedeck, S., 'Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions,' 2001, 36 Law & Social Inquiry 620

⁶³¹ Lakhani, A., 'Required legal skills for the 21st century lawyer: legal education at a crossroads,' 2013, 6 International Journal of Private Law 38

⁶³² Hamilton, N., 'Law-Firm Competency Models and Student Professional Success: Building on a Foundation of Professional Formation/Professionalism,' 2013, 11 University of St Thomas Law Journal

surrounding awareness of ethical issues above, I do not feel it necessary to repeat it here. However, it is interesting to note that each Group thought it of some importance, but not necessarily very much. Empathy, was most often scored in this section of the Graphs, apart from with the EU Student Group. In fact, out of the eleven Diamond16s conducted in this Group, empathy only appeared above the middle line twice. Whilst empathy wasn't necessarily scored very highly for the other Groups, the placement of it for the EU Student Group differs to a high extent. The feelings around this card were discussed by the EU Tutors during their interview. One participant felt as though students were, '*very selfish with empathy,*' and not fully understanding how their client may be feeling or how they should interact with them. The perceptions of empathy may be explained by this statement.

Comparing this to the bottom of the Graphs, we can see that thick skin was considered to be low in importance for each Group. Only two of the Groups, interesting both the Groups within Northumbria University, had given it a score which made it last. Thus, if we compare the individual Groups to the overall pre-determined card scores above, we can see how much thick skin was considered to not be important to practice. Looking at these scores in this way has emphasised the views of thick skin.

The cards which most often appear in the least important part of the Graph change in each Group. For example, authority appears in the bottom for two of the Groups, patience three times and others, like perseverance and intuition, once. Apart from thick skin, there is no other card which was always placed of low importance in all of the Groups. This, again, is similar to the quantitative studies discussed in the literature. In all of the studies, we can see different skills and attributes having differing opinions of importance. For example, Benthall-Nietzel's⁶³³ study had understanding human behaviour as the most important attribute, but Mudd and La Trielle⁶³⁴ had honesty. The later study by Lakhani⁶³⁵ had emotional intelligence as the least important for emotional skills. Some of the later studies, such as Peden and Riley⁶³⁶ and Hamilton 2014 did not measure for emotional skills at all. Hamilton 2014⁶³⁷ measured for, '*responsiveness to client,*' but not specifically emotionally. Thus, the fact that there was no general consensus on these skills and

⁶³³ Benthall-Nietzel D, 'An Empirical Investigation of the Relationship Between Lawyering Skills and Legal Education,' 1975, 63 Kentucky Law Journal 373

⁶³⁴ Mudd, J.O. and La Trielle, J.W., 'Professional Competence: A study of new lawyers,' 1988, 91 Michigan Law Review 34

⁶³⁵ Lakhani A, 'Required legal skills for the 21st century lawyer: legal education at a crossroads,' 2013, 6 International Journal of Private Law 38

⁶³⁶ Peden E and Riley J, 'Law Graduates' Skills - A Pilot Study into Employers' Perspectives,' 2007, Sydney Law School Research Paper No 07/81

⁶³⁷ Hamilton, N. 'Empirical Research on the Core Competencies Needed to Practice Law: What Do Clients, New Lawyers, and Legal Employers Tell Us?' 2014, University of St. Thomas (Minnesota) Legal Studies Research Paper, No. 14-34

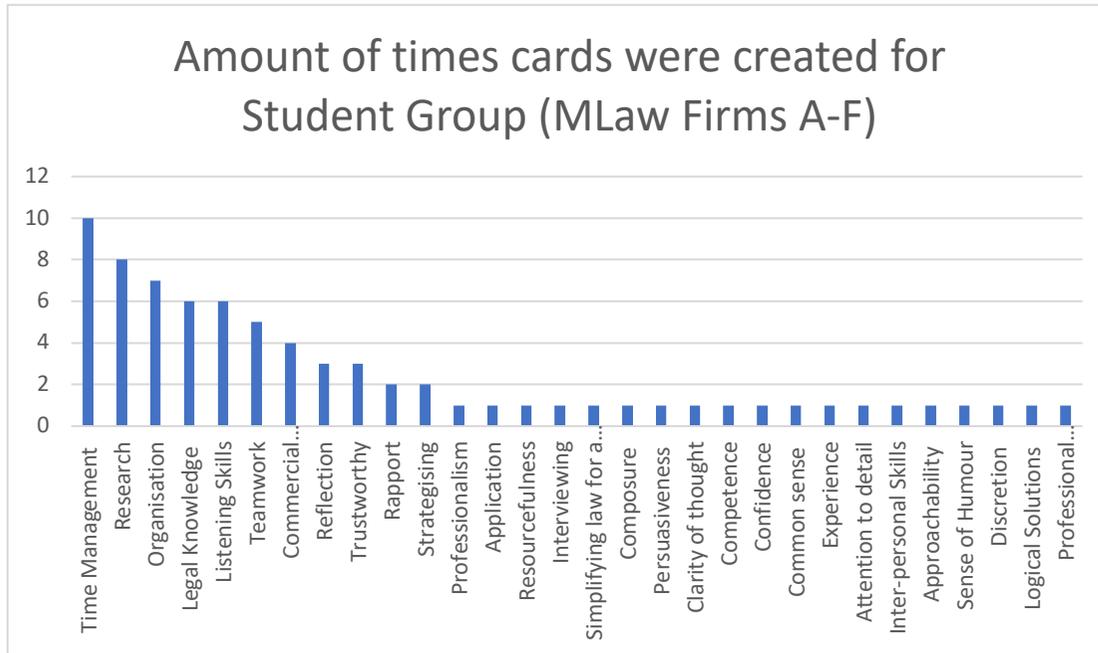
attributes is the same for other studies.

We can make an observation here that the “harder” skills are seen as important by each Group. However, the “softer” skills are much more varied in their importance. This highlights how much the “harder” skills seem to have these foundational perceptions of their importance, instilled through the development of the legal profession and from its origins. For example, the analysis of the contents of legal skills textbooks in Chapter Two, show they all direct on some kind of written, oral and analytical skills. The “softer” skills, however, took more consideration for the participants and seemed to be based more on personal experience and were more variously placed across the board as a result. This will be explored more below, when looking at the division of “hard” and “soft” skills per Group.

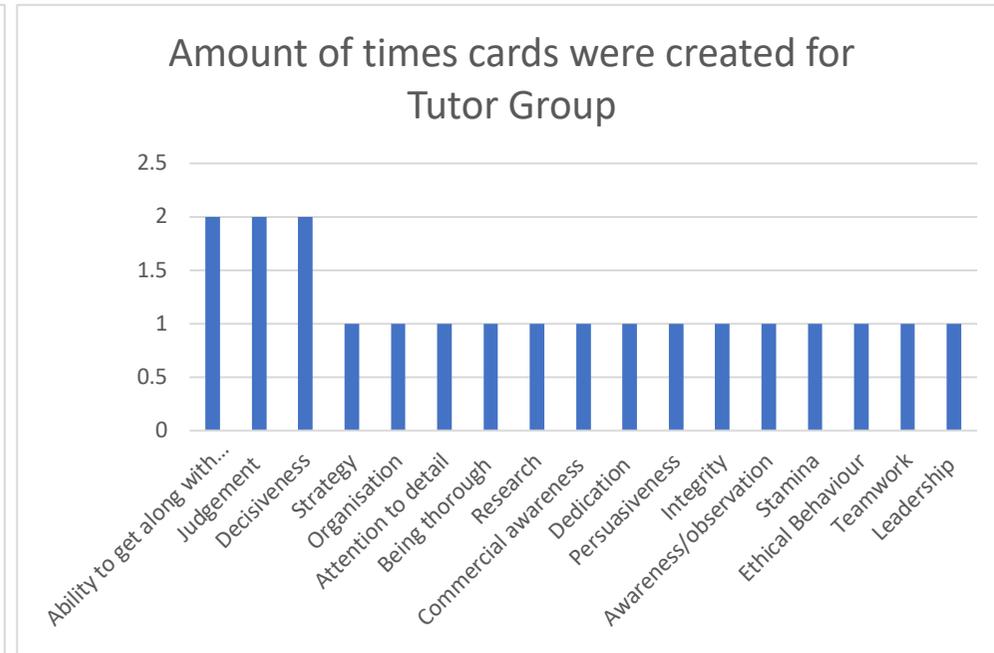
Exploring the pre-determined cards importance scores per Group has further established the overall importance scores for these cards. Breaking it down Group by Group, we are able to study and analyse what each Group thought was important. However, the more intriguing differences and observations can be made during the next section, when discussing the created cards.

5.7.2 Created cards per Group

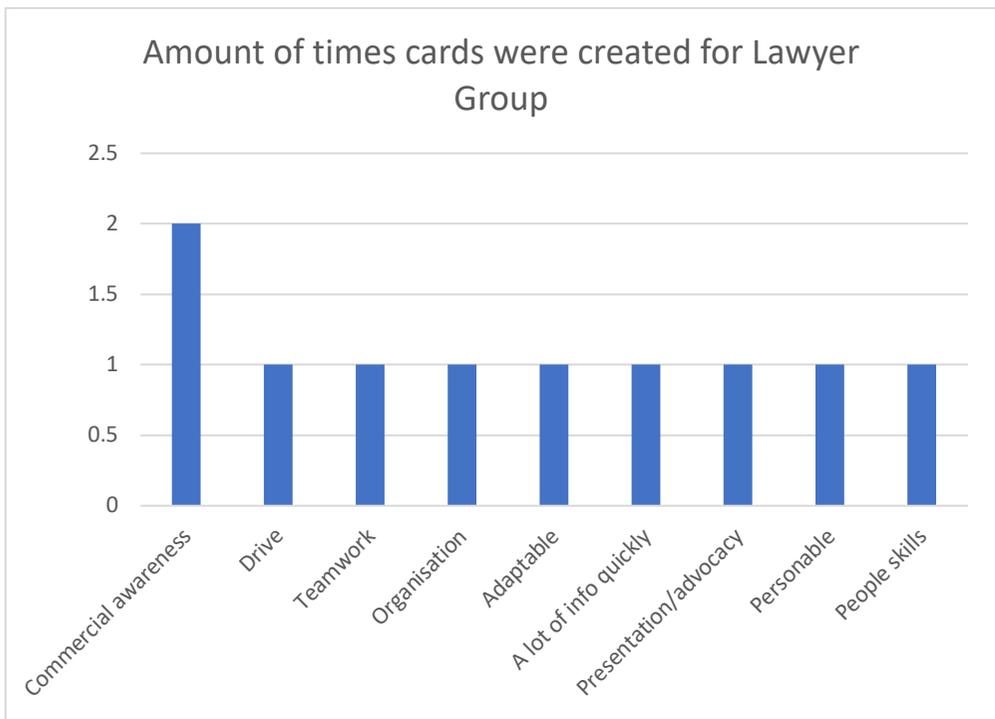
The created cards allow for some more insightful conclusions on the participant’s perceptions of importance to practice. Below are displayed the Graphs showing the cards created per Group and how many times they were created:



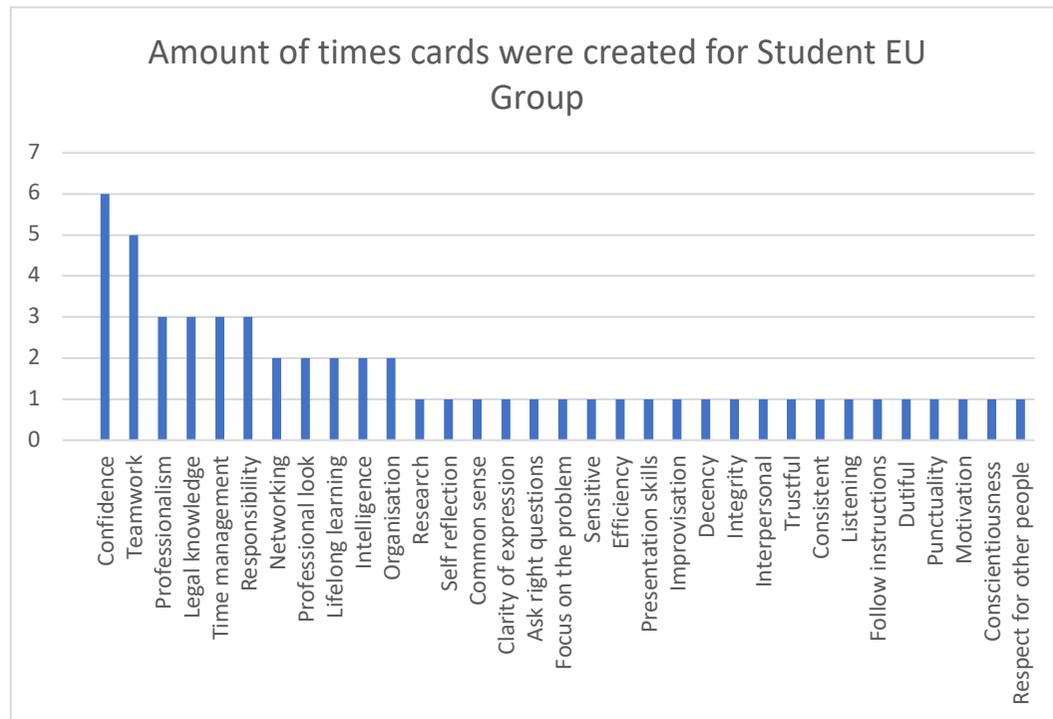
Graph 5.15 – Displaying the Cards Created and Amount of times Created for Student Group



Graph 5.16 – Displaying the Cards Created and Amount of times Created for Tutor Group



Graph 5.17 – Displaying the Cards Created and Amount of times Created for Lawyer Group



Graph 5.18 – Displaying the Cards Created and Amount of times Created for Student EU Group

Studying these Graphs, we can see that there were some cards which were created by each Group, for example, teamwork and organisation. There were also many cards created across the Groups, which were very similar in nature. For example, we can see elements of interpersonal and people skills, the ability to communicate and listen and the need to be thorough and rigorous over their work. Again, this is consistent with what was measured during the other quantitative studies. All of the studies, in some form, measure for effective communication, interpersonal and team working skills. Thus, that each Group measured these skills themselves, of their own accord, instils their importance to practice. Those being created by each Group highlights their importance in a way the other studies couldn't have, as they were provided to the participants instead of thought of by the participants, providing ecological validity.

However, there are some noticeable and intriguing differences. For example, commercial awareness was created by all of the Groups, except for the Student EU Group. I cannot say why this is, but this element of practice was not even discussed during the Diamond16s. As there was also another UK institution included in this Group, I do not feel as though I can argue cultural and geographical differences are the cause. Rather, I would tentatively argue that it is the way in which we teach at Northumbria University, stressing the importance of being commercially aware and business savvy. We instil this way of thinking in our students during their time in the SLO, making them keep a record of units of time spent on work and discussing commerciality with them. However, it is not clear whether this is taught or discussed with students from other institutions. Thus, it seems to be a cultural and institutional aspect of the perceived importance of commercial awareness. For example, Firm B, who created this card mostly for the Student Group, did so because, *'everybody bangs on about it all the time.'* This creation of commercial awareness will be discussed more in the next Chapter, when discussing whether there is evidence of Tutor influence on their Firm's perceptions of importance.

Another observation with commercial awareness is that both law Firms in the Lawyer Group created this card. The same cannot be said of the other Groups. This seems to intensify its importance, as it was the only card in common. Thus, no matter the area of law, commerciality is important to practice and lawyers will emphasise that. I cannot be sure that this would have been consistent with a bigger lawyer sample, but the creation of this card is consistent with the post-1990 literature. For example, Shultz and Zedeck⁶³⁸ measured for networking and business

⁶³⁸ Shultz, M.M. and Zedeck, S., 'Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions,' 2001, 36 Law & Social Inquiry 620

development, Lakhani⁶³⁹ for commercial awareness and Hamilton 2013⁶⁴⁰ for business development and client retention. Again, as these cards were created by the participants, we can argue that their importance is further established. It is interesting that this particular skill isn't particularly highlighted in the education reports⁶⁴¹ as important for us to develop during legal education, but the nature of this skill is hard to teach and replicate outside of practice.

The only Groups which created the card legal knowledge, were both the Student Groups. No Tutors or Actual Law Firms created this as a skill. It is interesting that both of the Groups which were, or had been, in full time practice did not feel the need to create this card. As this card was not created by these Groups, it is not possible to say why this was so from the qualitative data. However, we can explore what the Student Groups said about it, to provide some evidence of why they thought it important. For example, some participants in the Student EU Group thought it important because it is the starting point of being a lawyer. A participant in the Student Group said it was what a lawyer does, along with research, making legal knowledge an identifying factor of being a lawyer. I believe that a reason as to why the other Groups did not create this card is because when they start practising and have gained some experience, acquiring legal knowledge is not an immediate concern. Thus, it is not that legal knowledge becomes less important, it is just that it is no longer the main focus to be competent, as it may be when a student. It seems as though the Actual Lawyers and SLO Tutors are more consistent with the post-1990 studies than the students are, potentially explainable by their experience of practice.

Furthermore, only students from Northumbria's SLO and the Czech Republic LCCs created the card time management. There isn't anything in the qualitative data to suggest why this is so, nor do I wish to make any sweeping generalisations. However, it could be that students are learning to balance a workload to this standard for the first time, focusing on both academic and live client work. This pressure may add to their need to manage their time appropriately and feel up to date with all of their work.

Another skill which was made by both Student Groups, but not by the Tutor or Lawyer Groups, was confidence. Again, this may be because the Tutors and Lawyers have confidence in their abilities,

⁶³⁹ Lakhani, A., 'Required legal skills for the 21st century lawyer: legal education at a crossroads,' 2013, 6 International Journal of Private Law 38

⁶⁴⁰ Hamilton, N., 'Law-Firm Competency Models and Student Professional Success: Building on a Foundation of Professional Formation/Professionalism,' 2013, 11 University of St Thomas Law Journal 6

⁶⁴¹ For example, it is not present in, Webb, J, *et al.*, *Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales (The Legal Education and Training Review (LETR), (2013)*. Available at: <http://letr.org.uk/the-report/index.html> Last cited 04.08.17

and it is not something which they feel a need to focus on. However, for the students, who are still developing professionally and practically, this is an attribute which they may be concerned about. If we look at the qualitative data, there is no evidence to suggest this is so, because it was not widely discussed. Therefore, I do not want to say definitively that this is the reason, but it seems a logical explanation. This can also be said of created cards, such as professionalism, networking themed skills and time management, the most created card of all. Again, this could be because of where the students are with their legal education. They need to build contacts and network, in order to gain employment. They are trying to identify as professionals, so professionalism is something which they are developing. And balancing all of their academic work with their clinical work calls for time management and balancing their workloads. This was mentioned by some of the participants during their interviews and will be discussed in greater detail in the next Chapter. The skills which the students are working with, and on, are things which the Lawyers and Tutors have already developed, so may not have considered them during the Diamond16. However, this means that the Tutor and Lawyer Groups are departing from the literature slightly. All of the pre-1990 studies measured for confidence, even if it wasn't deemed to be of high importance. Only Hamilton 2013⁶⁴² has an element of confidence measured in the post-1990 studies. All of the pre-1990 studies do, however, measure for some kind of organisation and time management skills, highlighting their importance. As the Lawyer Group did have organisation as a created card, we can see some similarity with the literature.

Finally, we can see that there were many cards which were only created once by each Group. This, to me, establishes the differences between the Groups and what their experience and perceptions brings to each Diamond16. The Student EU Group has the most amount of single created cards, despite not being the largest Group examined. This could be because of the cultural, institutional and practical differences between the legal culture and how institutions teach. Thus, we can see some of the consistently created cards being foundational in the perception of importance and some which are unique to Groups.

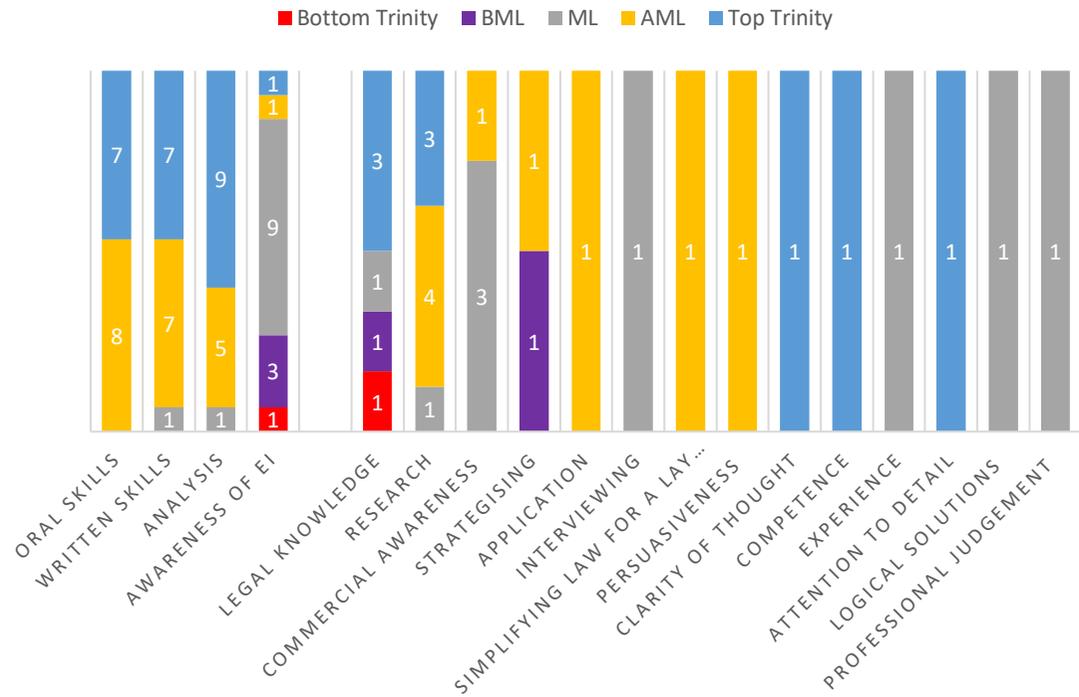
5.7.3 The division between “hard” and “soft” skills per Group

Looking at the division between the “hard” and “soft” skills above enabled us to see the differences in opinions between the more technical lawyer skills and the more personable and personal skills. Breaking this down and looking at the division per Group lets one analyse the differences of perceptions of each kind of Group, exploring how their experience affects these divisions.

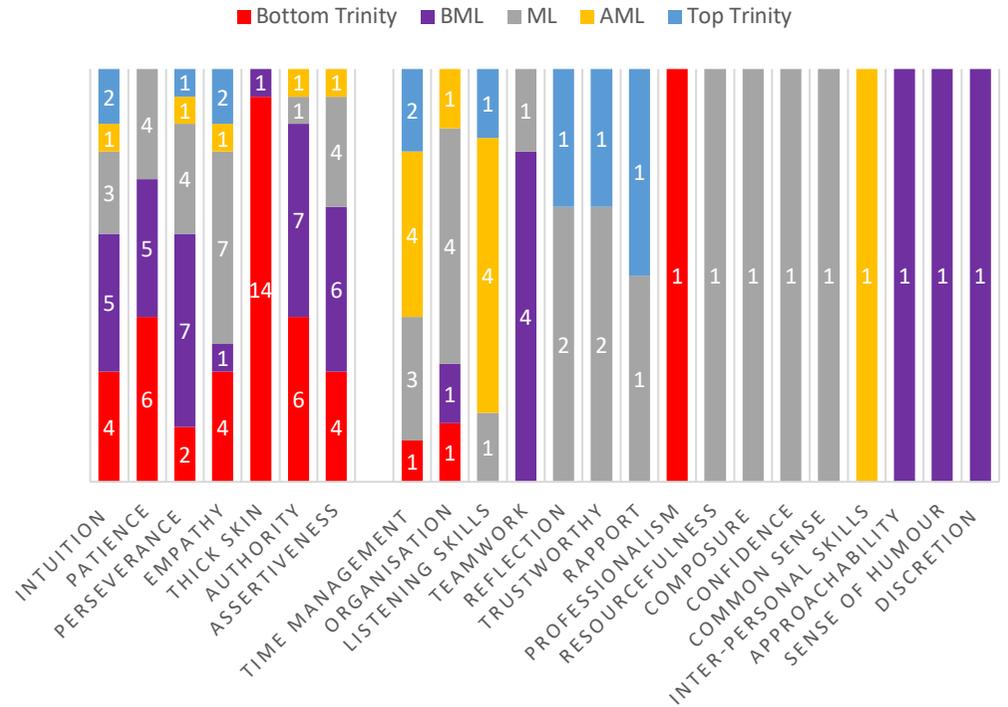
⁶⁴² Hamilton, N., 'Law-Firm Competency Models and Student Professional Success: Building on a Foundation of Professional Formation/Professionalism,' 2013, 11 University of St Thomas Law Journal 6

Below are presented two Graphs for each Group. One Graph shows the “hard” skills and their placement and one shows the “soft” skills and their placement. Each Graph presents both the pre-determined and created cards for each Group, separated by a gap in the plot area to distinguish between them.

PLACEMENT OF PRE-DETERMINED AND CREATED CARDS FOR "HARD" SKILLS, STUDENT GROUP (MLAW FIRMS A-F)



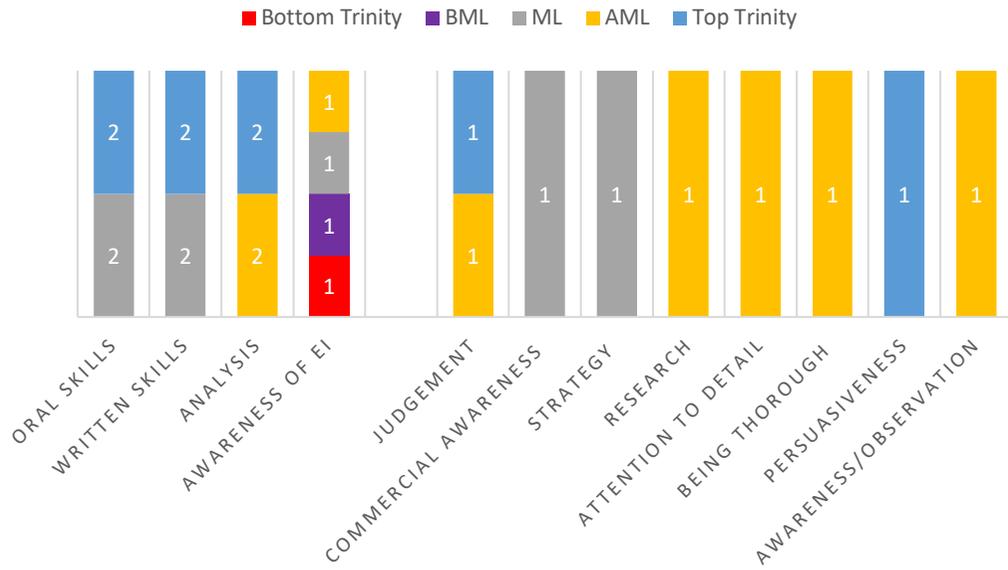
PLACEMENT OF PRE-DETERMINED AND CREATED CARDS FOR "SOFT" SKILLS, STUDENT GROUP (MLAW FIRMS A-F)



Graph 5.19 – Graph showing the placement of pre-determined and created cards for the “hard” skills, for the Student Group

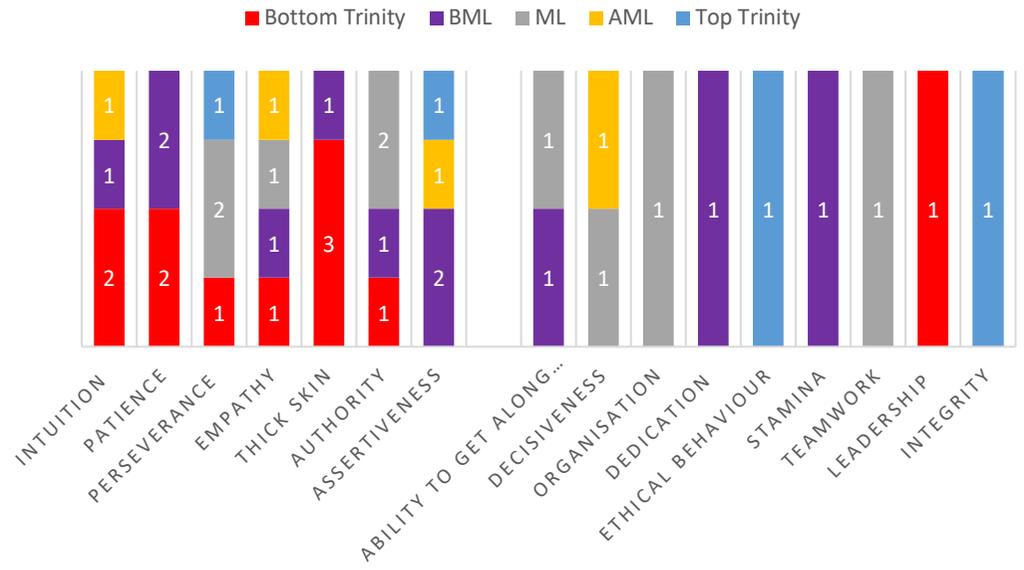
Graph 5.20 – Graph showing the placement of pre-determined and created cards for the “soft” skills, for the Student Group

PLACEMENT OF PRE-DETERMINED AND CREATED CARDS FOR "HARD" SKILLS, TUTOR GROUP

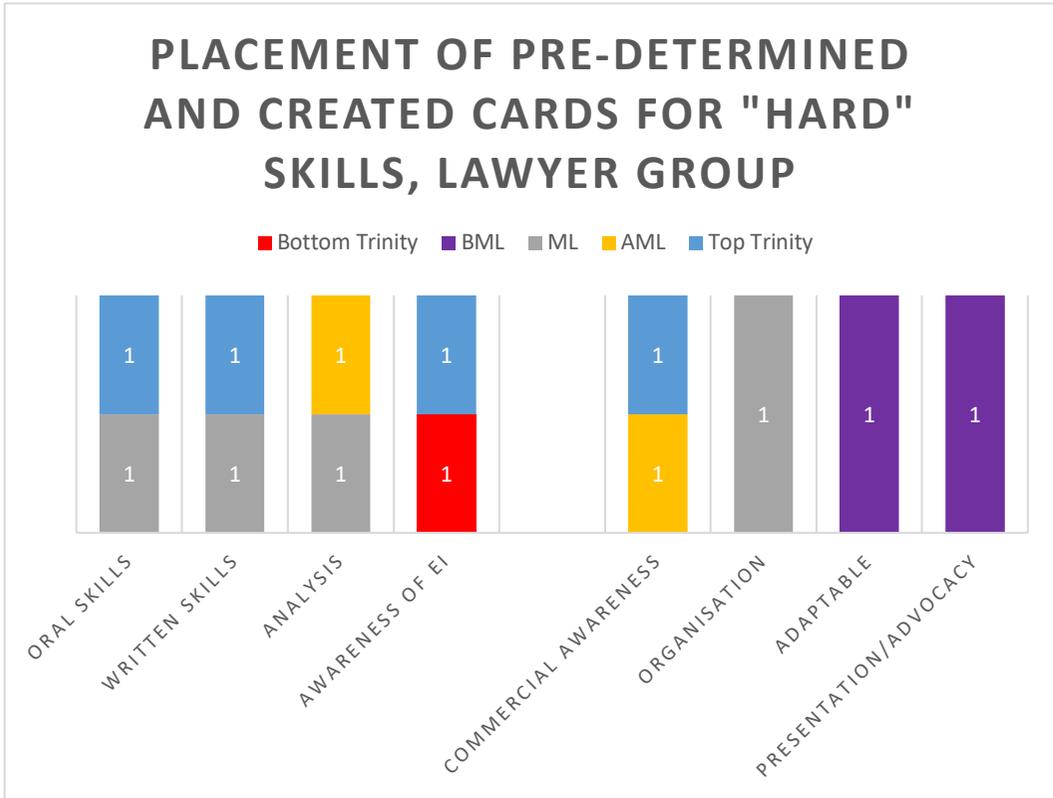


Graph 5.21 – Graph showing the placement of pre-determined and created cards for the “hard” skills, for the Tutor Group

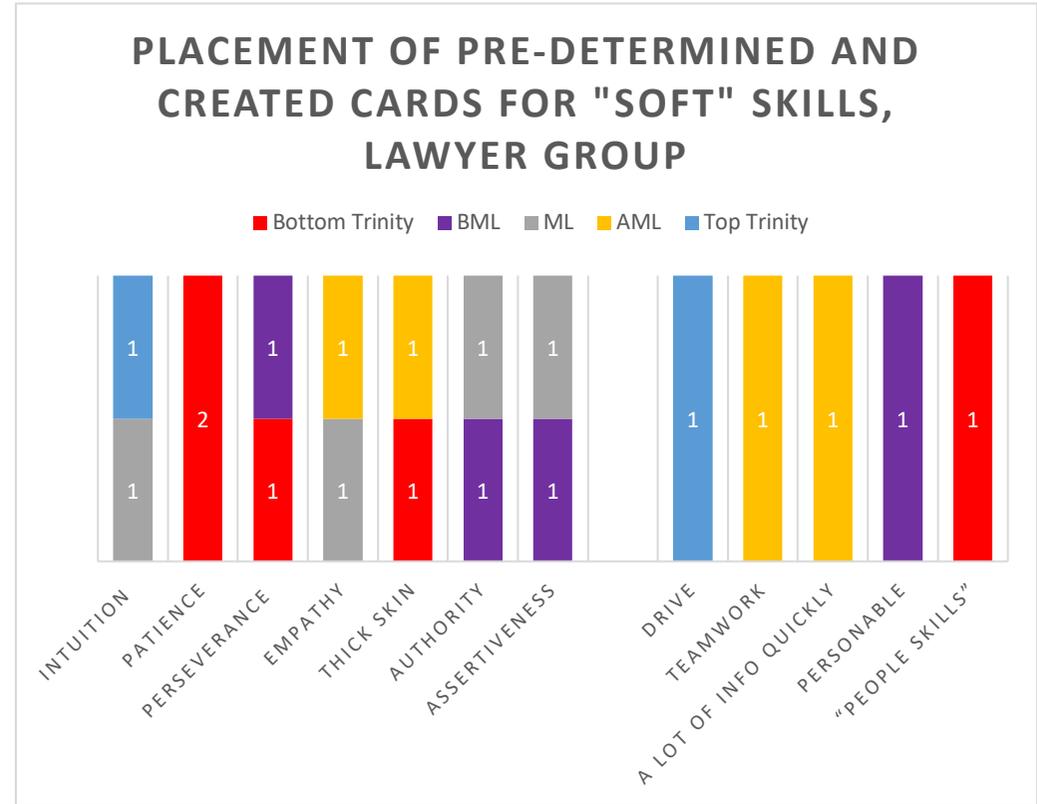
PLACEMENT OF PRE-DETERMINED AND CREATED CARDS FOR "SOFT" SKILLS, TUTOR GROUP



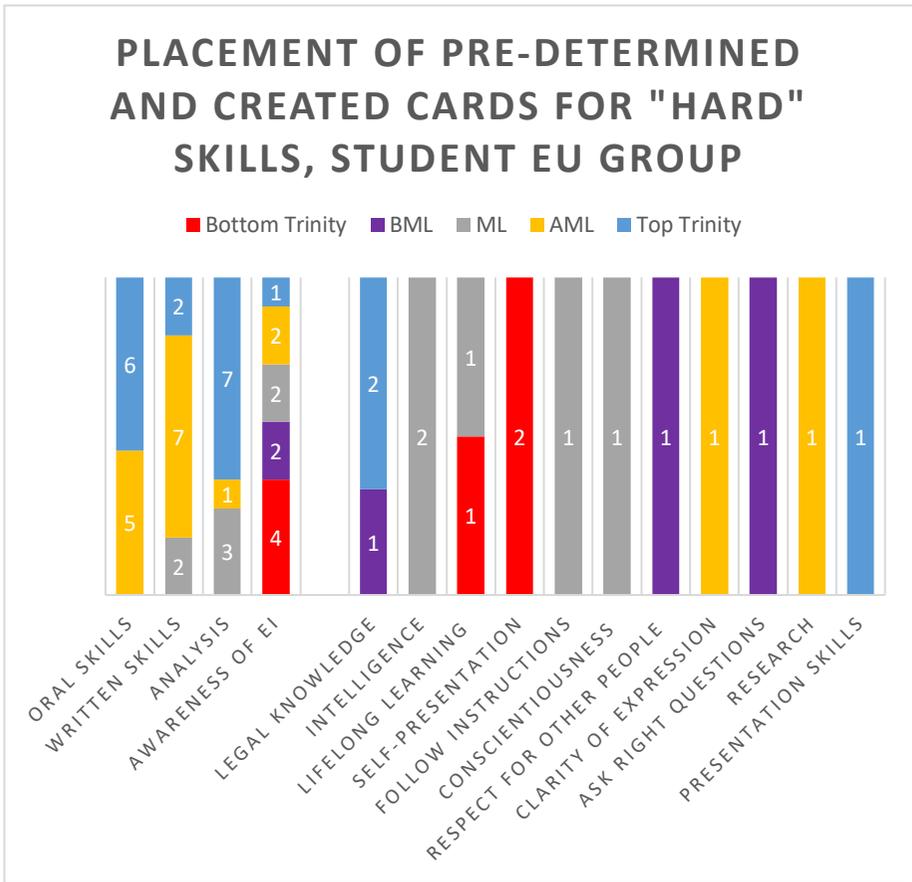
Graph 5.22 – Graph showing the placement of pre-determined and created cards for the “soft” skills, for the Tutor Group



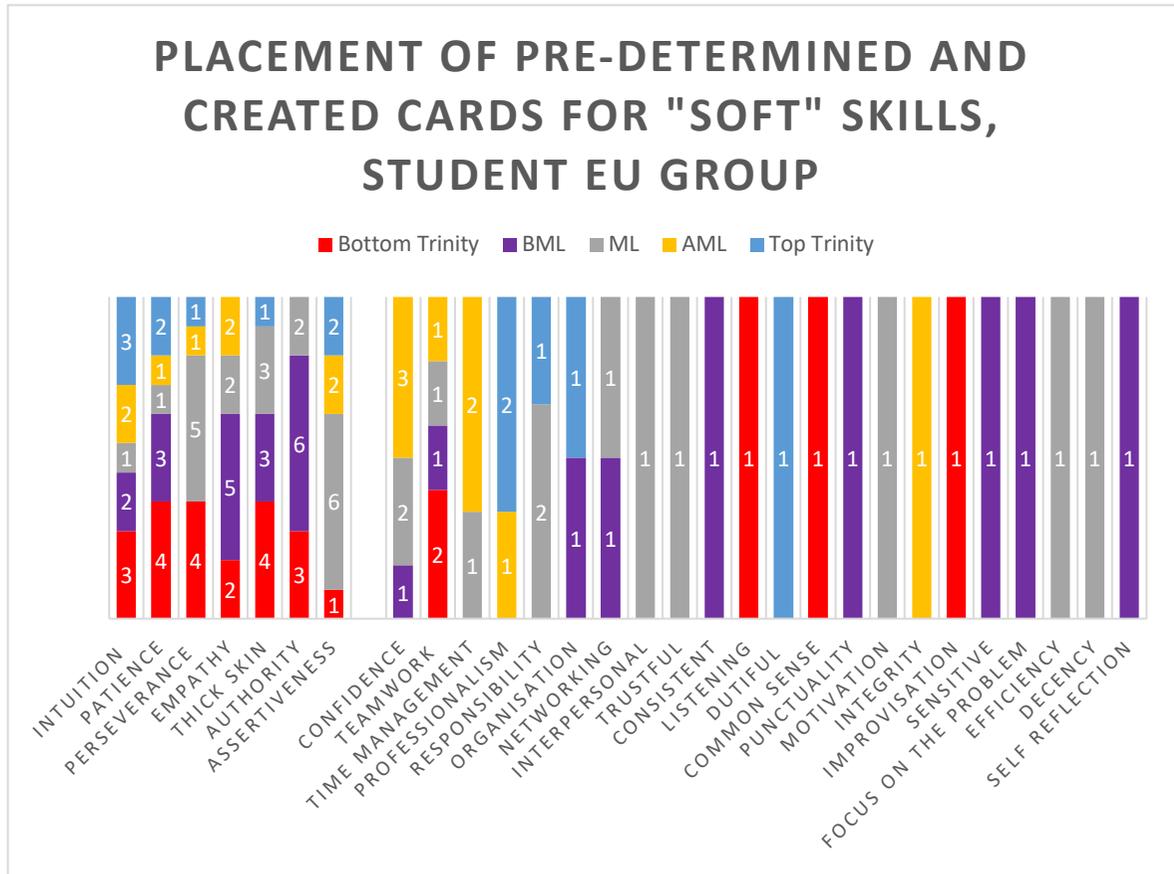
Graph 5.23 – Graph showing the placement of pre-determined and created cards for the “hard” skills, for the Lawyer Group



Graph 5.24 – Graph showing the placement of pre-determined and created cards for the “soft” skills, for the Lawyer Group



Graph 5.25 – Graph showing the placement of pre-determined and created cards for the “hard” skills, for the Student EU Group



Graph 5.26 – Graph showing the placement of pre-determined and created cards for the “soft” skills, for the Student EU Group

One immediate observation of the Graphs above, it that for all Groups there were more “soft” skills created than “hard” skills, apart from the Lawyer Group, who had equal amounts. Thus, the overall numbers of there being more “soft” skills created are almost consistent with each Group. To remind the reader, both the Student Groups had more Diamond16s conducted, which explained why there are many more skills displayed on the Graphs compared to the Lawyer and Tutor Groups.

If we look at the “hard” skills for each Group, we can see a difference between the pre-determined and created cards placement. When we looked at the overall picture above, we saw that the pre-determined “hard” skills, except for awareness of ethical issues, were always placed from the middle line and above, but the created cards were more varied across the board. Each Group, except for the Lawyer Group, had several “hard” skills placed below the middle line. However, the created “hard” skills were most often placed from the middle line and above in each Group, consistent with the placement of the pre-determined cards, except for awareness of ethical issues. If we look at the “hard” skills which won in terms of overall importance, analysis, written and oral skills, it was more common from the Tutor and Lawyer Groups to place these cards on the middle line than it was for both the Student Groups. This could be because the Student Groups do not yet feel as though they have the authority to think any less of these skills, as they are yet to have experience in actual practice and develop them fully. The Tutors and Lawyers know these skills are important, and where they have placed them have reflected this, but feel more confident to not show them as the most important skills needed for practice. The “soft” skills for each Group were more varied in placement, highlighting the differing opinions of these cards and how experience influences their placement. My reason for explaining this is that, whilst the overall Graphs, displayed above provide us with a wealth of data and some interesting conclusions, looking at each Group individually provides some more depth to the data. We can see the influence of each Group, providing more context for the qualitative data.

As stated above, the Student Groups were the only groups to create the card legal knowledge. If we look at its placement, however, its perception of importance changes slightly. It was placed in the top trinity on five occasions across both of these groups, but was also placed below the middle line on four occasions. Thus, whilst it was a skill considered important to create by students, it is not always placed as important. Some participants placed knowledge high in importance, as knowledge is the starting point of becoming a lawyer. Others thought it was important, because you can’t conduct analysis if you don’t already have the knowledge. However, there were some statement which differed. For example, a participant in Firm A said during their last Diamond16 that, *‘you can research to get the knowledge.’* Another participant in Firm C thought that legal knowledge and research skills were, *‘really big parts of being a lawyer.’* Thus, knowledge is seen as

important, but other skills could be more important or aid the possession knowledge.

Time management, the most created card, was only created by both the Student Groups. Furthermore, it was only placed below the middle line once. Thus, not only is its importance established by the amount of times it was created by these Groups, but also by its consistently high placement. If we compare this to the literature, there are some similarities already highlighted.

Looking at each Group individually, we can see some similarities in placement for certain skills. For example, patience was most often placed below the middle line in each Group, as was thick skin and authority. It is also important to highlight any differences. For example, intuition was a card which was most often or equally placed below the middle line, except for with the Lawyer Group. The Student Groups maybe did not understand this skill yet, and thus did not deem it important. For example, in the SLO students work at a slower pace on cases than they would when practising. Furthermore, all of their work is checked by their Tutor, who makes ultimate decisions on the direction of the case. Thus, intuition is not something which they will have experience on a larger scale. In fact, it seems as though the Tutors prefer the students not to work off intuition. Tutors Firms A, C and F, said that intuition, *'comes with its risks. Because if you purely act on intuition, just sort of go with what your gut says, that's not necessarily going to be the best thing to do.'* They also said intuition is not an excuse for a negligence claim, indicating that the students working off intuition whilst handling cases is risky for them. The Tutors who did think it more important, talked more of having a feel for the case or the client, particularly of how truthful the client is being. Thus, for them it is more of a feeling rather than an act, which can explain this difference. However, with the Lawyer Group, their cases are much faster in progress, usually, and have ultimate responsibility for the client and case themselves, which may be why intuition was never below the middle line. They will most likely be working off their intuition more than a student would. The participant from Actual Law Firm B, who placed intuition in the top trinity, stated that, *'I think that a good lawyer is the one that knows what's coming round the corner. I think intuition is a good definition of that. Being able to advise on what's likely to happen, so it's not all about intuition, it's basically about your legal knowledge.'* Thus, this lawyer sees intuition as combining knowledge and experience to predict how a case will go. As that is what clients most often want to know about their case, and it helps with the management of the case, intuition is important and something they must work with daily.

Teamwork, a card created by each Group, was never placed in the top trinity by any of the Groups. This observation shows that just because a card is created multiple times, does not mean that it is necessarily as important as it seems. By looking at the placement of the skills, we can separate the

importance of creation and the importance of placement for each Group. Similar conclusions can be made about other multiple created cards, such as organisation and confidence. The discussion above surrounding these skills in the literature applies here. The previous studies did measure for these skills, but they were also varied in perceptions of importance, creating no general consensus of their importance to practice. However, it can be argued that their measurement and creation, at all, highlights how they are needed for practice.

5.8 Conclusion

The methodological analysis of data for this research was interesting and provided a number of crucial insights, demonstrating the different kinds of data the Diamond16 generates. Although I could not always draw strong conclusions from the data, particularly with the movement and discussion of the cards, this Chapter has highlighted what is considered important to practice in a way not previously explored. Using the Diamond16 resulted in a variety of methodological data, the quantitative elements showing a bigger picture of what is going on with the data, before bringing it down to individual studies in the next Chapter.

To bring all of the data together, the Venn diagram below presents the knowledge, skills and attributes of the pre-determined and created cards in a different way. By splitting the cards into sections 'study,' 'professional' and 'personal,' we can see which kinds of cards were created and how many fell into each category, including how many times they were created or their importance score. These categories can align with knowledge, skills and attributes. It appreciated that some may disagree with where I have placed certain skills, but I would like to highlight that this element of the data analysis and interpretation is subjective in nature, as discussed in the approach to the analysis. Furthermore, the decisiveness of my location in the Venn diagram reflects the decisiveness of the participants when they placed these cards. Thus, this is a study made of participants' subjective decisions and their decisive placements, which is presented as an insight into the knowledge and value hierarchies of students, lawyers and law teachers. Below, the created cards are shown in black and the pre-determined cards in red. The larger the text the more importance attached to the knowledge, skills, or attribute, or the more times the card was created, with the actual amount provided in brackets. For the pre-determined cards, the bigger the lettering the higher the importance score with the score provided in brackets.

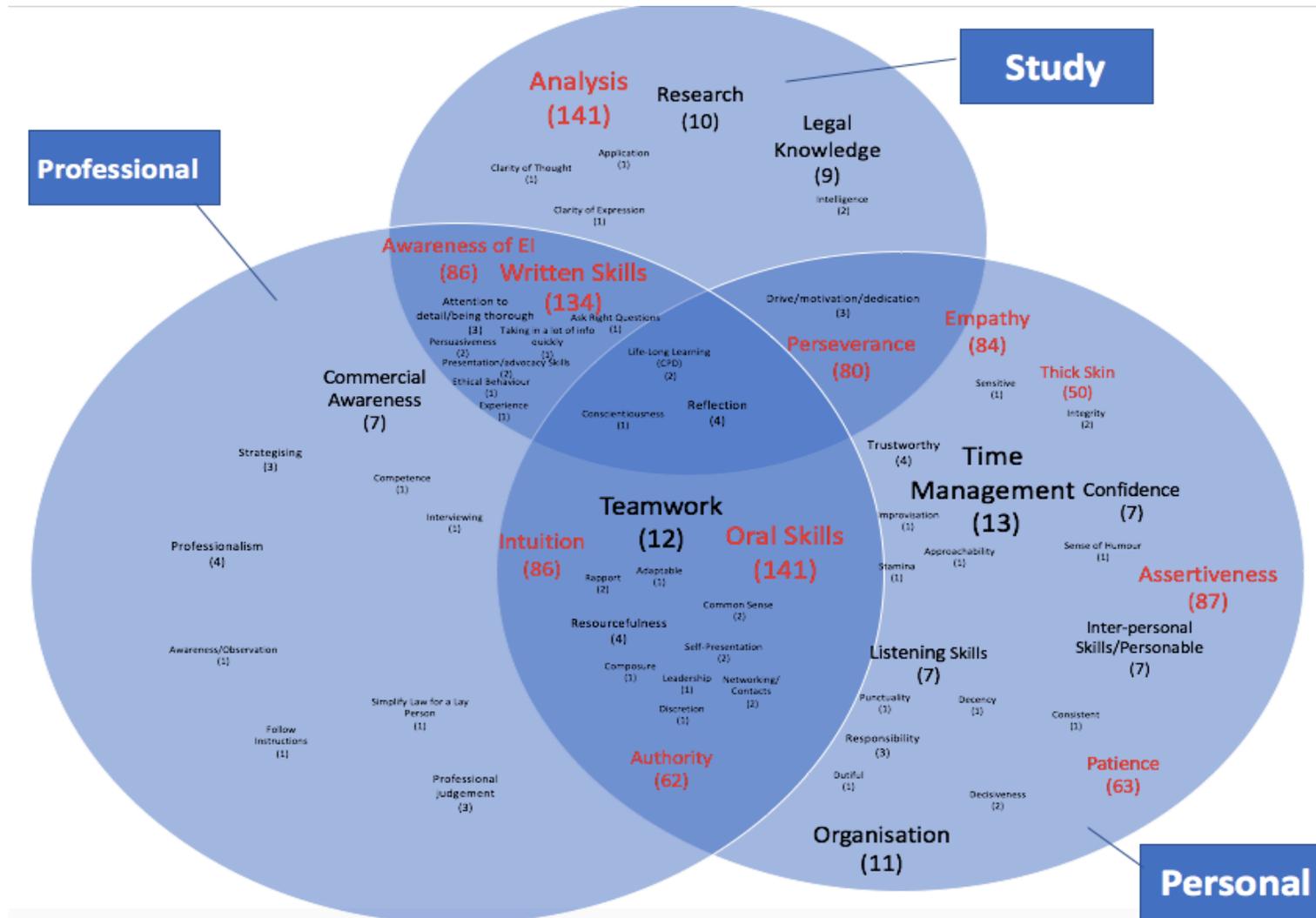


Figure 5.5 – Venn Diagram displaying all the pre-determined cards with importance score and all created cards with amount of times created, separated in categories

Displaying the data in this way allows one to see what is happening in a way a Graph can't. For example, we can see that there were more personal skills created, followed by professional and then study. There were only three skills which fit into the centre of the Venn diagram, relating to each category, all created cards, but none created more than four times. There were also many skills which fell into both professional and personal category and professional and study category. However, only two skills appeared in both the personal and study categories. This arguably could be because one has to develop their study skills, which feeds into their professional career and developing themselves personally. As will be discussed in the next Chapter, only once working with live clients, whether in practice or a LCC, can these personal skills be developed to feed into a professional career.

Even though there were fewer skills placed in the study category, we can see some of our most created cards in this category, such as research and legal knowledge. Also, one of the most important pre-determined skills, analysis, was placed here. Thus, it is arguable that some of the study skills are imperative to practice and must be developed to feed into the professional capacity, for competent practice. It would not be wise to suggest that any one category is more important than another in terms of competent practice. However, whilst knowledge and legal study is still important, we can see an appreciation of the more personal skills developing. All of the other most created cards, like teamwork, organisation, personable skills and listening skills, appear in the personal or professional category, some in both. However, there were no high scoring pre-determined cards placed exclusively in the personal category, with oral skills being placed in the overlap with the professional capacity. Again, this is reflected in the quantitative literature displayed in Chapter Two, with more skills and attributes now being measured and less of the knowledge bases or "harder" skills.⁶⁴³ It is acknowledged more that in order to practice competently it is necessary for holistic training and certain skills or traits to be developed. This study has added to the previous quantitative studies, going further than merely measuring skills. By asking participants to create their own cards I am able to confidently say which skills are important to practice. If it is consistently created by participants then there is a common belief that it is needed for practice, highlighting importance.

The Venn diagram can show us where there is the most overlap with the different categories. The space linking study and professional contains nine created skills, whereas the space between professional and personal contains thirteen. It is clear that we have more overlap between professional and personal skills than either category does with study, indicating that these

⁶⁴³ For example, Shultz, M.M. and Zedeck, S., 'Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions,' 2001, 36 Law & Social Inquiry 620 do not measure any knowledge bases in their study. The other studies shown in this synthesis only measure one or two knowledge bases.

professional and personal skills may be developed together. Subsequently, professional can be seen as the strongest category in this Venn diagram, even when containing less skills than personal. Professional has the strongest links with the other two categories, demonstrating that what is important to practice is focused more around professional skills, being influenced by study and personal skills.

Looking at the data overall, we can make the following conclusions for this Chapter:

- this research shows that the “harder” pre-determined and created knowledge, skills and attributes are considered to be more important to practice overall, compared to the “softer” knowledge, skills and attributes. This is mostly consistent with the literature analysed and synthesised in Chapter Two
- the cards which were created are consistent with the literature, with teamwork, legal knowledge and research occurring frequently. Even skills which are more prominent in the post-1990 literature, such as commercial awareness, were commonly created, highlighting its importance
- there is a strong division between the “hard” and “soft” skills, with the “harder” skills more likely to be placed on the middle line and above and the “softer” skills appearing more frequently in the middle line and below. This indicates a lack of dispute of the importance of the “harder” skills, seen as more inherently important to practice, across all Groups, increasing ecological validity. However, there were more “softer” skills cards created and, even with a more varied placement overall, this suggests that there are more “soft” skills needed to practice competently
- the more important a skill was perceived, the less likely it was to be moved during the Diamond16 exercise. It appears as though the “softer” skills were sacrificed and moved down in order to create space for the created cards and the “harder” skills remained in the top half of the board, fixed by the participant’s belief
- looking at each individual Group allowed us to see the differences each brought to the overall data. We can see certain cards created, such as legal knowledge and time management, only by the Student Groups, with the Tutor and Lawyer Groups bringing their own unique perceptions to the data. In this sense, we can see how experience has influenced each Group, with the Student Groups having room still to grow as a professional and develop their opinions of practice.

These conclusions validate previous work. However, they go further than previous data provided and show us the process behind the decision making. Instead of having mere percentages showing

importance to practice, as the other survey data did, this data displays when knowledge, skills and attributes are considered equal in importance and the distinctions created between skills by participants. Asking participants to actively rank certain knowledge, skills and attributes, attaching equal importance to some, and the ability to create their own, has provided data that basic ranking, common in the previous studies, could not have. Furthermore, the previous studies usually measured one geographical area or country. This study, conducted across three countries, four LCCs and two law firms, increases the ecological validity and ability to draw strong inferences of what is considered important to start practice competently. The qualitative elements of the Diamond16 has only added depth to this analysis, being able to provide reasons for the placement and quantitative data. This research is not merely numbers on a page, but an intense analysis of what those who are involved in legal education and practice feel important to competent practice.

Chapter Six: Analysis and Discussion 2: Analysis of Student Development and Reflection on Being in a LCC

6.1 Introduction

The aim of this Chapter is to look at the development of the MLaw Firms, and how participating in a live client clinic (LCC) has affected their learning and preparation for practice. Thus, each Firm will be discussed as a case study, displaying each of their Diamond16s and showing the results in a graph for easy comparison. Discussing each Firm in this way allows for a deeper discussion of how they have developed during their time in the Student Law Office (SLO), and whether the LCC has helped this development. This calls for more reliance on the qualitative data, both from the interviews and the Diamond16s, to explain and justify the final placements of the groups. The final part of this Chapter will discuss the interview data in greater detail, highlighting the reflections and opinions the MLaw Students had of their time in a LCC, how they are moving forward and the discussions collected from the EU Institution (EIs) tutors.

Thus, this Chapter will take the following form:

- Discussing the MLaw Firms A-D and Firm F, looking at their development across the year and whether a LCC has affected their views on what is important for legal practice
- Comparing two Firms with their Tutors, to explore whether there is any influence between the students and their Tutors of what is important to practice
- Exploring the interview data, focusing on the reflections of the students and their time in the SLO and the EI Tutors and their opinions of LCCs and legal education.

As stated in the previous Chapter, this analysis and discussion relates less broadly to all of the research aims. It is displayed again for convenience:

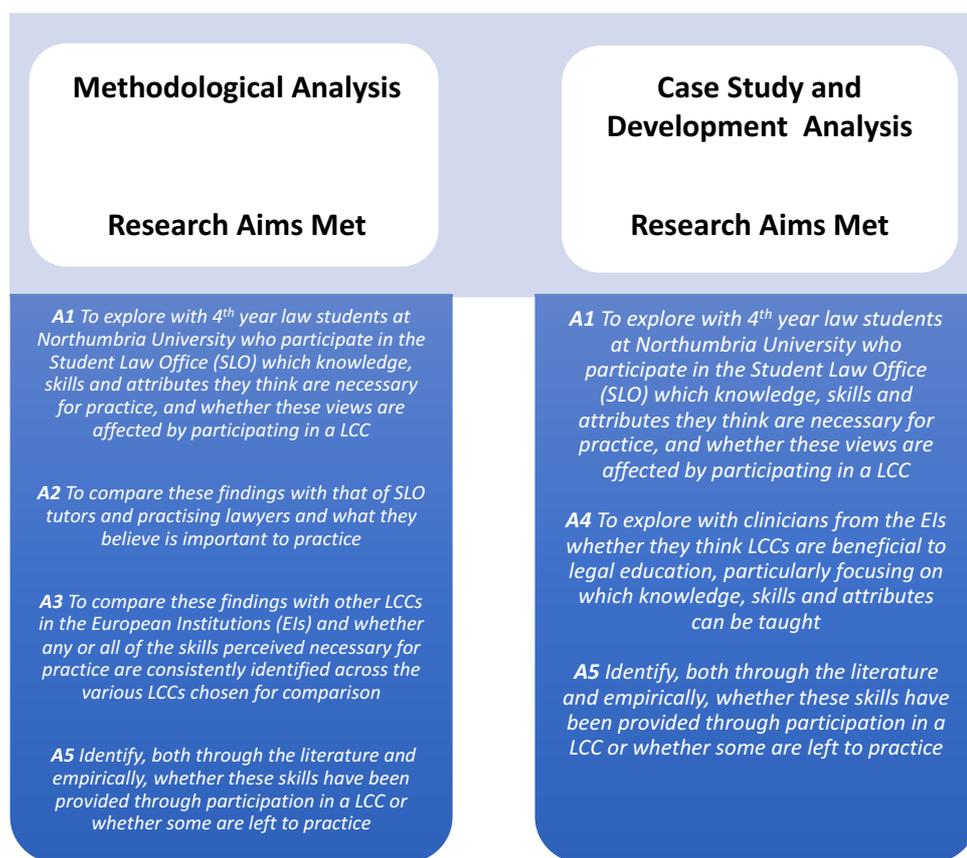


Figure 6.1 – Diagram displaying how each research aim relates to the analysis Chapters

Looking at the individual Firms provides a foundation for deeper insight into the data and the individuality of each Firm and allows for the development to be better explained. The previous Chapter, whilst discussing some individual opinions and elements of the Firms, did not foster much discussion of development. Thus, this Chapter will address the research aims surrounding whether skills have been developed with the use of LCCs and what EI Tutors think about LCCs. As the quantitative data is explained through the qualitative data, it is imperative that they are not discussed separately. The qualitative elements will be present when explaining any trends and placements of the knowledge, skills and attributes for the individual MLaw firms.

It is important to emphasise that not all of the data will be presented in this Chapter. The MLaw Firms were analysed individually, then the themes emerged and illustrated case examples were selected. This was done by looking for trends in the quantitative data and finding qualitative data to support the placements and any changes. Thus, the themes emerged from the quantitative data first. As there was an abundance of data collected for this thesis, it is not possible to present it in all of the various themes. Rather, I would like to tell a story of what was happening behind the quantitative data to reach the research aims. When selecting the data to explain a theme, I also

looked for any contradictory comments in a Firm's Diamond16 data and their interview. This helped to ensure that the data presented in this Chapter is a holistic portrayal of each Firm's collective reality.

During this Chapter, instrumentalism will be discussed in relation to certain themes and Firms. I feel it necessary to discuss what this is here. Instrumentalism is:

*'the view that the value of scientific concepts and theories is determined not by whether they are literally true or correspond to reality in some sense but by the extent to which they help to make accurate empirical predictions or to resolve conceptual problems.'*⁶⁴⁴

This Chapter presents the individual experience and opinions of each Firm and the theories arising may not be literally true, but they have helped the make an accurate conclusion of what happened in the SLO with these Firms.

We can relate this to instrumentalism in education also. Dewey, discussed in Chapter Three where his relationship to pragmatism was emphasised, also developed instrumentalism. He stated that, *'As a general term, "instrumental" stands for the relation of means-consequence, as the basic category for interpretation of logical forms.'*⁶⁴⁵ Thus, consequences are an important aspect of logic to determine meaning and are necessary for a pragmatist approach.⁶⁴⁶ Ideas must be attempted experientially to ensure that they work in the world, and any mistakes are used for further inquiry.⁶⁴⁷ Schneider explains that, *'instrumentalism was originally a theory of judgement. As such it meant the thesis that judgements are instruments by which man enhances his control over his environment.'*⁶⁴⁸ Clearly influenced by Peirce and *The Fixation of Belief*, Dewey provides that once a person is put into an unfamiliar situation, they will use their logic to form a judgement which they will feed into future experiences, similar to the doubt/belief theory.

We can take this further, to explore instrumentalism in culture. A person's environment and culture clearly have an impact on their ideas and fosters their inquiry. This happens out of one's physical environment, but also from their social and cultural environment interactions.⁶⁴⁹ Thus, *'for Dewey,*

⁶⁴⁴ de Nueufville, R., Instrumentalism, Encyclopedia Britannica. Accessed via <https://www.britannica.com/topic/instrumentalism> Last cited 25.06.17

⁶⁴⁵ Dewey, J., Edited by Hickman, L.A. and Alexander, T.M., *The Essential Dewey: Ethics, Logic, Psychology*, Vol. 2 (Indiana University Press, 1998), p.168

⁶⁴⁶ Garrison, J., 'John Dewey's Theory of Practical Reasoning,' 1999, 31:3 *Educational Philosophy and Theory* 291, p.291

⁶⁴⁷ Gouinlock, J., John Dewey, American Philosopher and Education, Encyclopedia Britannica. Accessed via <https://www.britannica.com/bioGraphy/John-Dewey> Last cited 25.06.17

⁶⁴⁸ Schneider, H.W., 'Instrumental Instrumentalism,' 1921, 18:5 *The Journal of Philosophy* 113, p.114

⁶⁴⁹ Dewey, J., Edited by Hickman, L.A. and Alexander, T.M., *The Essential Dewey: Ethics, Logic, Psychology*, Vol. 2 (Indiana University Press, 1998), p.167

*all meanings are consequences of socially shared action, and all objects, all truth, including formal laws of logic themselves, are the fallible and contingent objectives of inquiry.*⁶⁵⁰ In this research, we have cultural aspects when considering the geographical areas, the culture of higher education and of the legal profession.

However, the term instrumentalism, and its original purpose, is now often confused with a view of overly rigid processes, mainly by social constructivists, such as Vygotsky. Vygotsky believes, as did Dewey, that, *'the human condition is based in social interactions.'*⁶⁵¹ However, Vygotsky differs by discrediting Dewey's assertion of education as free inquiry and calls for more direction from the teacher, as, *'free inquiry is, in many ways, eclipsed by culturally significant and appropriate inquiry.'*⁶⁵² So, whilst Dewey focuses on solving problems in experience, Vygotsky takes the view that the cultural and social aspects of the individual is where experience emerges. In aid of this kind of learning, Vygotsky offers a zone of proximal development: the difference between a learner being able to do a task with the aid of the teacher or independently. This zone has, in turn, been interpreted as the teacher as the representative of society.⁶⁵³ So, the teacher should have a set of clear goals of which knowledge and skills they would like the learner to have at the end of the educational process. The freedom of inquiry somewhat disappears when these goals and outcomes are rigorously applied and sought. Thus, *'instrumentalism is understood as a narrowing of teachers' autonomy, in the sense that tests and their implicitly defined learning goals become instruments that should control parts of the teachers' work.'*⁶⁵⁴ Just as some think that the best way is to teach through using clinical legal education (CLE), we are aware it is not the only way to teach the law. We understand that we need a mixed, holistic form of education. If we compare this to Kolb's Experiential Learning Theory (ELT), we can see that instrumentalism as it is known now has no place in Kolb's thinking. The strict focus on outcomes and goals can distort what is a *'concrete experience,'* and how it can be used to feed into future learning. We need our students to engage with uncertain and, perhaps, black swan scenarios, in order for them to adapt and learn naturally and from their experience. If this is obscured by goals and learning outcomes, the learning which takes place is not as deep.

Throughout, I will refer to the literature discussed in Chapter Two more broadly than it was in the

⁶⁵⁰ Garrison, J., 'John Dewey's Theory of Practical Reasoning,' 1999, 31:3 Educational Philosophy and Theory 291, p.291

⁶⁵¹ Glassman, M., 'Dewey and Vygotsky: Society, Experience, and Inquiry in Educational Practice,' 2002, 30:4 Educational Researcher 3, p.5

⁶⁵² *Ibid.*, p.6

⁶⁵³ *Ibid.*, p.4

⁶⁵⁴ Hillen, S. and Aprea, C., *Instrumentalism in Education – Where is Bildung left?* (Waxmann Verlag, 2015) pp.131-132

previous Chapter, looking at the conceptual and qualitative literature as well as the quantitative. Furthermore, the comments made and the theories developed will highlight the influence of ELT discussed in Chapter Three. By doing this I will highlight where this research is placed within the wider knowledge already established, emphasising its original contribution. Measuring development is important when exploring knowledge, skills and attributes, as it was highlighted in the conceptual literature discussed in Chapter Two, that skills are developed rather than taught.⁶⁵⁵ Teaching skills should not encompass '*education banking*,'⁶⁵⁶ which Freire argues projects ignorance of the subject, but develop them so they can be used in their future career.

6.2 Student Law Office MLaw participants – Tracking development throughout their time in a LCC

The firms which will be discussed in this section are Firms A-D and Firm F (LPC). Firm E (BPTC) will not be discussed here, as they only conducted one Diamond16 and therefore, there is not enough data to track development. Instead, Firm E was included in the comparison discussion of groups below. As the interviews were a way to validate the Diamond16 data and discuss the student's LCC experience, different extracts will be included to help aid the discussion. To remind the reader, Firms A-D all did the Diamond16 exercise on three separate occasions during their time in the SLO, at the beginning, middle and end. Firm F joined the SLO during the middle of the academic year and I was able to collect two Diamond16s with them, at the start and the end of their LCC experience, to leave significant time between the data collection to track development. Each Firm will be taken in turn, with photos of their final placements for each Diamond16, followed by Graphs showing the placement.

⁶⁵⁵ Abbott, C.M., 'A Primer on Clinical Legal Education,' 1973, 9 Georgia State Bar Journal 443, p.444

⁶⁵⁶ Freire, P., *Pedagogy of the Oppressed*, (Continuum, 30th Anniversary Edn, 2005), p.72 Accessed via <http://www.ilearnincambodia.net/uploads/3/1/0/9/31096741/freireped.pdf> Last cited 27.11.16

6.2.1 Firm A

This Firm was an employment law firm. Below are the three pictures taken of each of their Diamond16s:

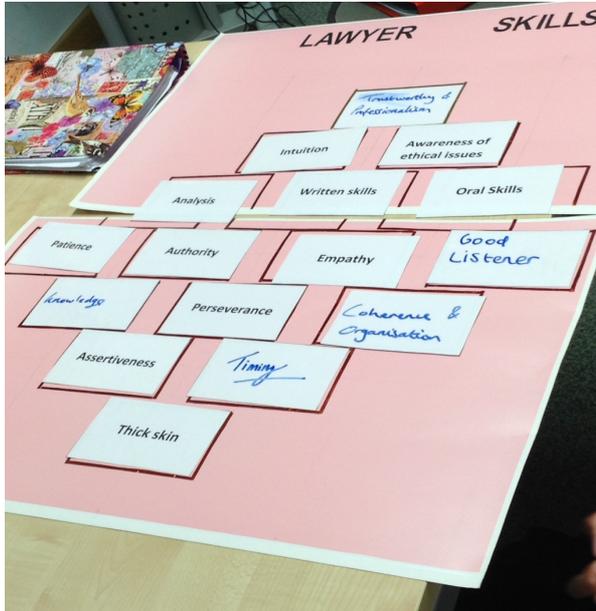


Image 6.1 - Firm A First Diamond16

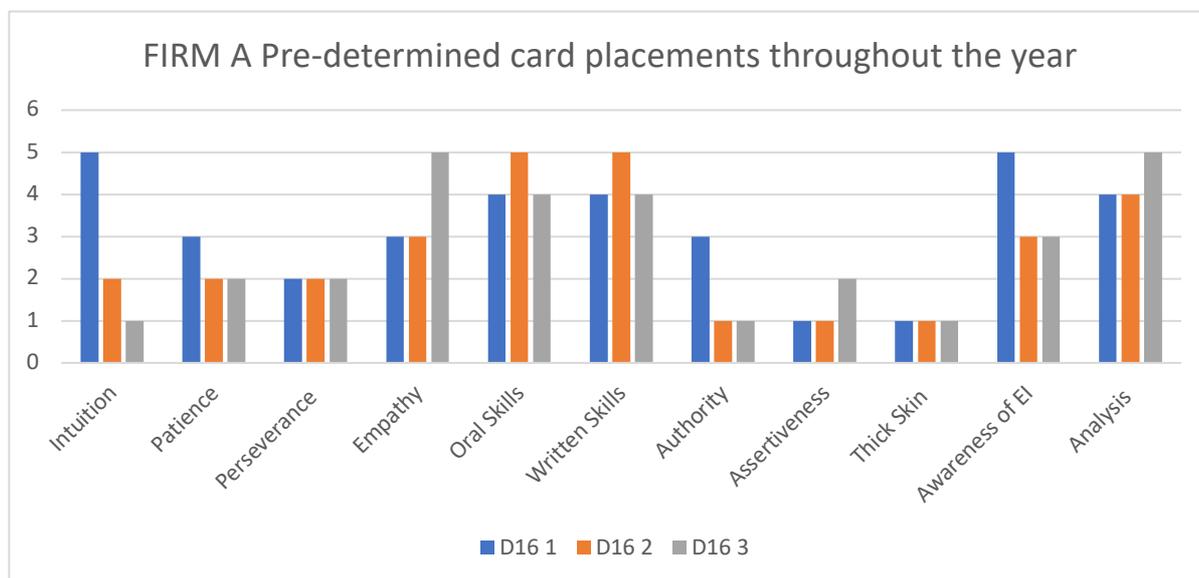


Image 6.2 - Firm A Second Diamond16



Image 6.3 - Firm A Third Diamond16

The Graph below displays the results of each of their Diamond16s pre-determined cards placement:



Graph 6.1 – Graph displaying the results of the placement of pre-determined cards for all Diamond16s for Firm A

From *Graph 6.1* we can see that analysis, written skills and oral skills were always placed above the middle line or in the top trinity. However, they are more likely to be found above the middle line. This Graph tells us that Firm A always had a created card placed in the top trinity for all of their Diamond16s. Much can be said here in terms of the student’s development. For example, intuition and awareness of ethical issues were placed in the top trinity for the first Diamond16. However, by the last Diamond16 they were placed in the bottom trinity and on the middle line respectively. An explanation for intuition being placed so high in the first Diamond16, is that they included other skills and attributes within it. For example, a participant offered ‘*identifying legal skills,*’ as a created card, but another participant said this was included in intuition and, ‘*knowing where you’re going with something.*’ This was similar for awareness of ethical issues. ‘*Respect,*’ was discussed as a created card, but the participants thought it would be, ‘*very cliché,*’ for this to be the top skill and decided it was included within awareness of ethical issues.

Interestingly, by the second Diamond16 intuition was still stated to be important, but placed below the middle line. It was not discussed in the last Diamond16 and awareness of ethical issues was also not discussed. The reason could be that from experience their opinions of what these qualities entail is different to their original thoughts. Furthermore, they may be important still, but their

experiences have taught them that there are other, more important, skills to focus on.

By the last Diamond16 empathy was placed in the top trinity with analysis. As all of the other “softer” skills either decreased in importance or stayed in the same half of the board, the qualitative data is needed to explain this difference. When the students looked at all of their Diamond16s together, they did notice that empathy was higher than it has been previously placed, with one participant stating, *‘I don’t think it should ever be high.’* Thus, for some of the participants, empathy being placed this high is a kind of anomaly. However, for others it was very important, with one participant stating, *‘Empathy is really important. I wrote about it in my reflection.’* This highlights that the Diamond16 being conducted in groups can cause some tension between the different views of the individuals, but helps to foster the qualitative data and the discussions around the methodological aspects. Furthermore, this student also thought that empathy was so important that it had to be included in their reflective piece at the end of the SLO year. This, as discussed in the previous Chapter, looks back to Pierce and *The Fixation of Belief*. If this student found a skill so important to write about it in their reflection, then they will obviously find it important enough to be placed in the top half of the board. However, the qualitative data from the first Diamond16 provides a different insight into their opinions on empathy. One student stated, *‘Do you think empathy should be placed at the top, as it’s what we always get taught to do?’* Another firm member replied, *‘That’s just because of your first one you did,’* meaning their first case. Thus, we can see an element of experience and actually working with a live client effecting participant’s views on what is important. They are influenced by their experience and what they have been taught by their tutor, so what they think is important is due to their experience and education. Furthermore, by the other firm members stating they only think that way because of their first case indicates that they do not think empathy is so important as to be placed in the top trinity and they have not yet experienced the need to use it. The six propositions of experiential learning,⁶⁵⁷ discussed in Chapter Three, offers that, *‘Learning requires the resolution of conflicts between dialectically opposed modes of adaptation of the world’* and, *‘Learning results from synergetic transactions between the person and the environment.’*⁶⁵⁸ If they have not had this conflict or a transaction between themselves and their environment, then they have not necessarily learnt this skills during their ELT. Thus, it is arguable that not all students will learn the same during ELT, as it is dependent on the environment. If some students had to incorporate empathy into their client work, then this synergetic transaction has not taken place. As it is extremely difficult to guarantee that all students have the same clinical

⁶⁵⁷ Kolb, A.Y. and Kolb, D.A., ‘Experiential Learning Theory: A Dynamic Holistic Approach to Management Learning, Education and Development,’ 2001, pp. 43-44. Accessed via https://www.researchgate.net/profile/David_Kolb/publication/267974468_Experiential_Learning_Theory_A_Dynamic_Holistic_Approach_to_Management_Learning_Education_and_Development/links/5559122408ae6fd2d826eb12.pdf Last cited 18.10.16

⁶⁵⁸ *ibid.*

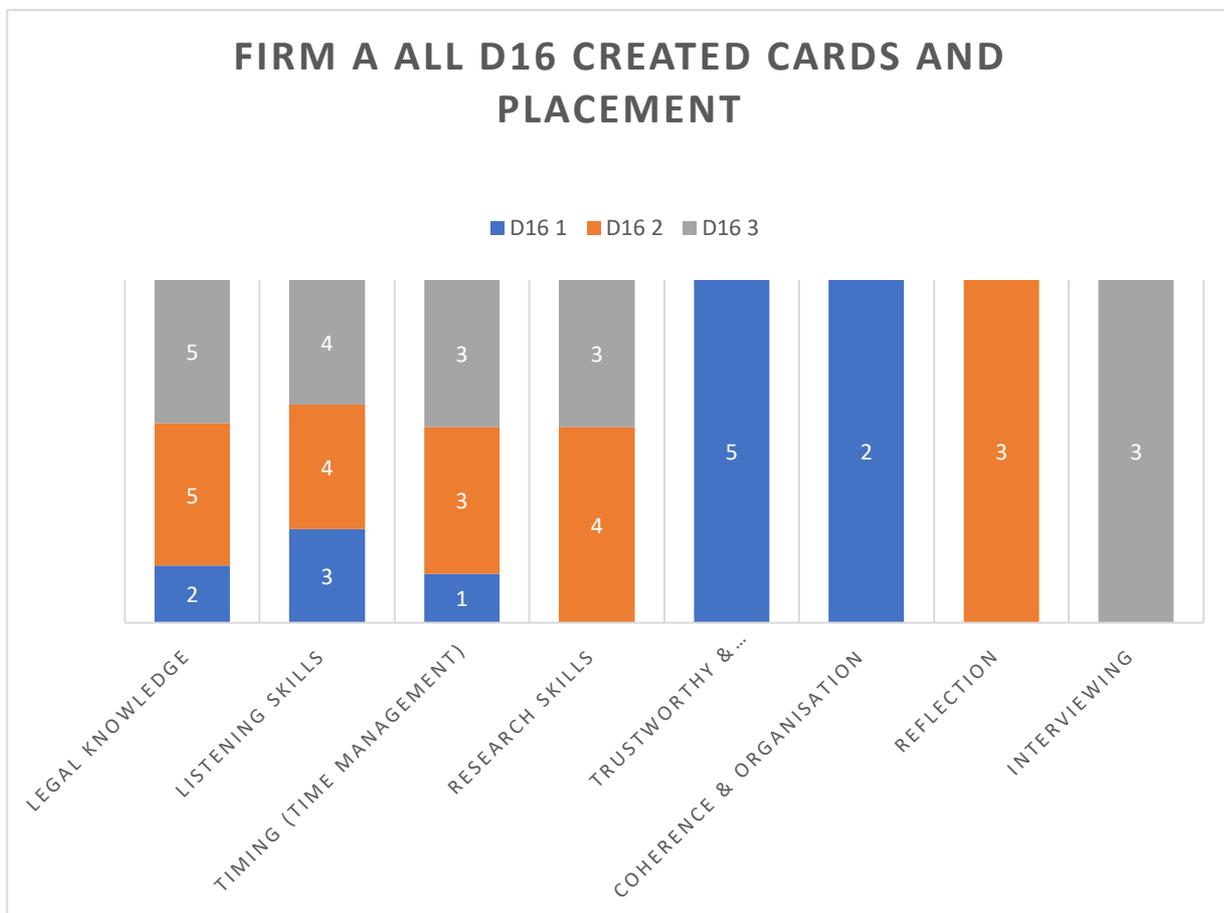
experience in the SLO, it is highly likely that they will be in conflict with each other as they have had different conflicts to learn from, as *'social knowledge is created and recreated in the personal knowledge of the learner.'*⁶⁵⁹

There are two instances of some cards continuously being placed in the same part of the board. Thick skin was always placed in the bottom trinity and perseverance below the middle line. Their perceived importance has either not changed since the start of the year, or they have not encountered these skills in the LCC to affect their opinion. During their second Diamond16 a participant stated, *'You don't need to have a thick skin, you can cry in the toilet on your own.'* Thus, this is not something which should affect your work, but a personal aspect of the profession. Because you can do this in private, there is no need for it to be placed higher on the board. During their interview, a participant stated that thick skin and perseverance were so low because the skills on the board are interchangeable:

'I think at the end point of your SLO experience these sort of skills are interchangeable and when you're presented with different things. So, the sort of order of importance changes with each client and where you're at, at that time. So, I think at the minute because everyone's writing their dissertations and reflections and stuff, written skills and knowledge seem to be going quite high up. We start talking about patience and thick skin, perseverance and what not, sort of going lower again because we're not really doing any of that sort of... like I said it's becoming interchangeable.'

Thus, these skills are dependent on the kind of client and the stage the student is at with the case and what else is happening during their legal education. As they did not have to deal with, or did not experience, the need for a thick skin or to persevere, they were not seen as important. The skills continuously placed at the top of the board are the ones which were needed and used the most throughout the SLO. Therefore, importance can be seen as continuation or regularity of use rather than necessity.

⁶⁵⁹ *Ibid.*, p.44



Graph 6.2 – Graph Displaying the Created Cards and their Final Placement for Firm A

This Graph shows us that legal knowledge, listening skills and time management were consistently created across all Diamond16s. This increases their perceived importance for Firm A and this opinion did not change throughout their year in the LCC. However, their placement also displays their perceived importance. These three consistently created skills were each placed on the middle line or below during the first Diamond16, but by the second they had moved up, some considerably. For example, legal knowledge was first placed below the middle line, but for the second and third Diamond16 it was placed in the top trinity. This is better explained through the qualitative data. They acknowledged in their interview when observing all of the Diamond16s that knowledge was placed quite low on the board. The reason it grew in importance was the realisation that, *'The fundamental basis of law needs to be in your brain before you start moving on.'* Thus, legal knowledge grew in importance once the students realised how necessary it was. If we look back to the quantitative literature, it was concluded that legal knowledge is important to practice, but more so in the pre-1990 studies. Those measuring legal knowledge as a requirement for practice lessened during the post-1990 studies, with studies such as Shultz and Zedeck⁶⁶⁰ not measuring any. When there is a knowledge base listed, it is not in as much depth as the pre-1990 studies. For example,

⁶⁶⁰ Shultz, M.M. and Zedeck, S., 'Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions,' 2001, 36 Law & Social Inquiry 620

Taylor only measures for basic rules and basic black letter law as a knowledge base.⁶⁶¹ It does not divulge into specialities. However, we see other areas being measured, such as creativity and innovation,⁶⁶² and good judgement/common sense/ problem solving.⁶⁶³ Thus, knowledge is still important, as knowledge is needed to get into practice, and we have a theme here of foundational legal knowledge. There is a split in the literature of whether lawyers need to graduate with specific knowledge or foundational knowledge.⁶⁶⁴ If we press that knowledge is more important than other skills and attributes, we begin to move away from instrumentalism. Students need '*instruments*' to construct their learning and emphasising knowledge can move away from the need of experience. However, employers now are more concerned with what you do with this knowledge and how you use it to benefit the client and the firm. As the students are not yet at this stage, and being business savvy is not a pressing need for them, legal knowledge is still of importance.

Coherence and organisation was a skill only made during the first Diamond16, again influenced by the mark scheme of the SLO and their Tutors. A participant argued to create coherence, '*because they always talk about it in the mark scheme.*' Interestingly, these kinds of comments were not made in the second and third Diamond16. This heavily suggests that the students stopped being so concerned with what was in the mark scheme and based their placement more from their experience. Again, Kolb is present here, when considering how past experience feeds into future learning. With the two dialectically related forms of grasping experience (concrete experience and abstract conceptualisation), which here is the students representing live clients, leading to the two dialectically related forms of transforming experience (reflective observation and active experimentation),⁶⁶⁵ the students adapt themselves as a result of the experience, feeding their experience into future experiences and transforming it. By transforming this experience, they can '*interpret and act on that information.*'⁶⁶⁶ Only by having the opportunity to work in a LCC can students gain the experience and information to act on in future work. Allowing our students these opportunities demonstrates a move away from instrumentalism. These experiences, which allow for the unexpected and unknown encounters, enables free inquiry, which is not so rigorously determined by learning outcomes and goals. The learner, here, is liberated to reflect on the experience and feed it into future learning, with less concern over a mark scheme. This is a departure from instrumentalism and, as Broadfoot states, feeds the '*desire to create more*

⁶⁶¹ Taylor, B.F., 'Through the Looking Glass: Perceptions on the Law School Learning Experience,' 2015, 61 Loyola Law Review 275

⁶⁶² Shultz, M.M. and Zedeck, S., 'Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions,' 2001, 36 Law & Social Inquiry 620

⁶⁶³ Hamilton, N., 'Law-Firm Competency Models and Student Professional Success: Building on a Foundation of Professional Formation/Professionalism,' 2013, 11 University of St Thomas Law Journal 6

⁶⁶⁴ Grimes, R., 'Reflections on Clinical Legal Education,' 1995, 29 The Law Teacher 169, pp.171-172

⁶⁶⁵ Kolb, D.A., *Experiential Learning: Experience as the Source of Learning and Development*, (Pearson Education Inc, 2nd edn, 2015), p.51

⁶⁶⁶ *Ibid*, p.51

*motivated and skilful learners.*⁶⁶⁷ This moves our students away from being too teacher dependant and helps them to engage in deeper learning. This provides evidence that students working in a LCC is imperative to fully prepare them for starting practice, developing their knowledge, skills and attributes and creating lifelong learners.

⁶⁶⁷ Broadfoot, P., 'Empowerment of Performativity? English Assessment Policy in the late twentieth Century.' 1999, Assessment Reform Group Symposium on Assessment Policy, Conference Paper. Accessed via <http://www.leeds.ac.uk/educol/documents/00001216.htm> Last cited 09.07.17

6.2.2 Firm B

Firm B was a crime firm. Below are the three pictures taken of each of their Diamond16s:

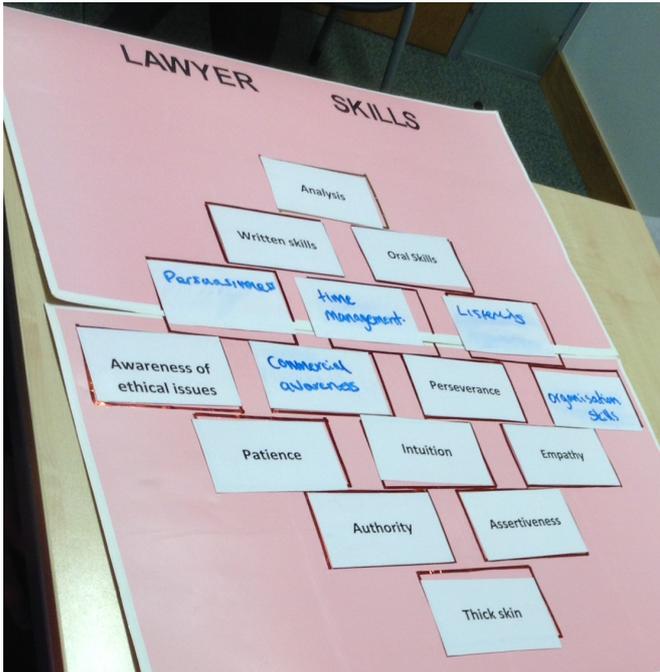


Image 6.4 - Firm B First Diamond16

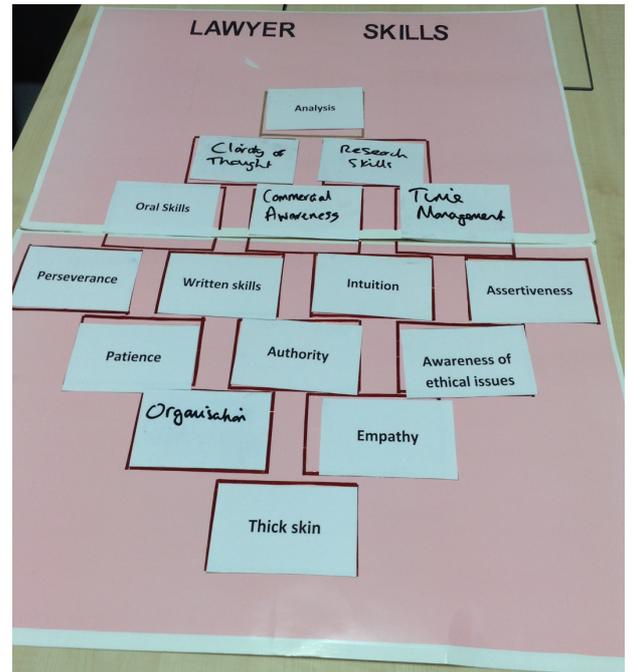


Image 6.5 - Firm B Second Diamond16

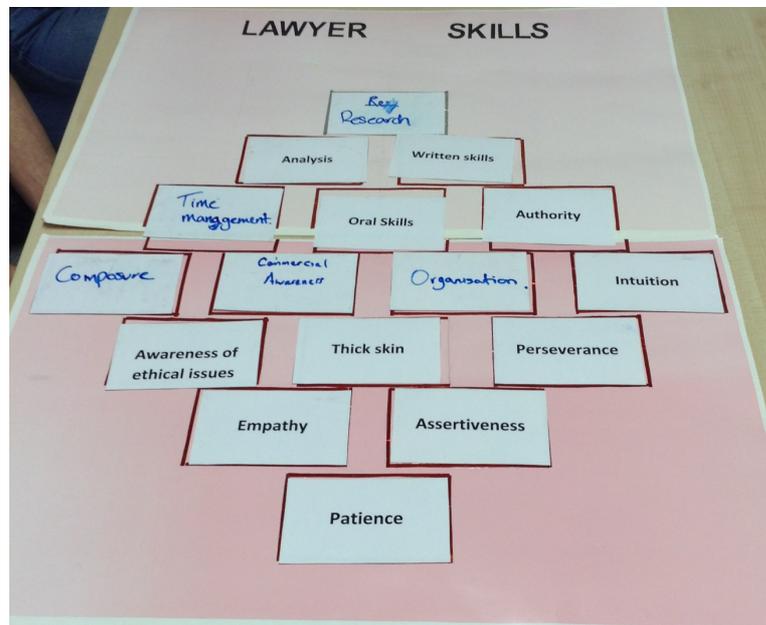
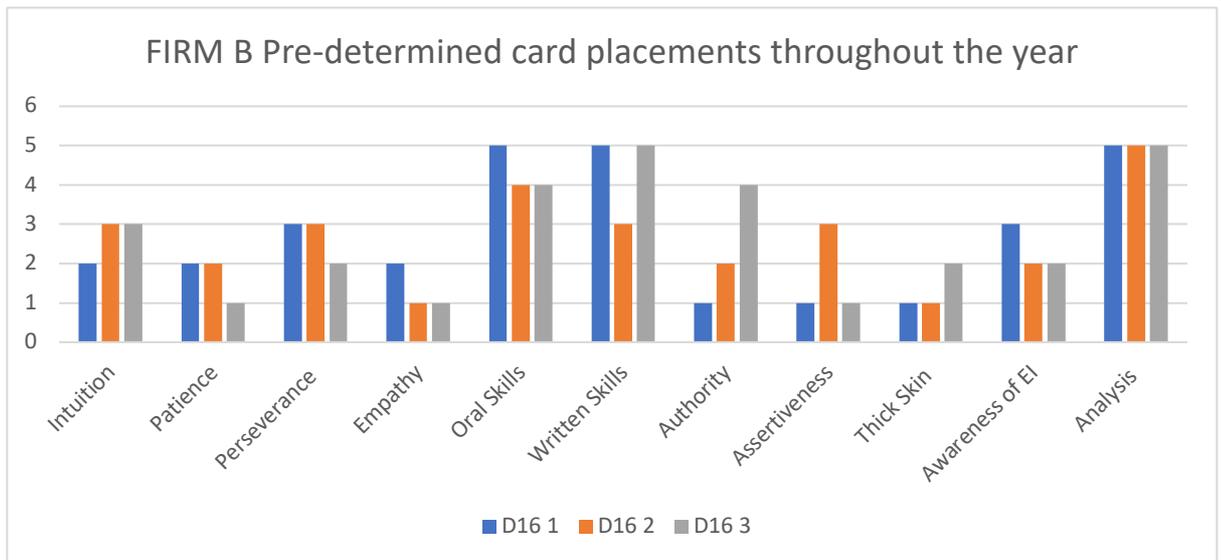


Image 6.6 - Firm B Third Diamond16

Below is a Graph displaying all of their Diamond16s throughout the year for pre-determined cards:



Graph 6.3 – Graph displaying the results of the placement of pre-determined cards for all Diamond16s for Firm B

Firm B always placed analysis in the top trinity. Again, this could be because it is inherently important to practice or because it has not yet been challenged by experience.

Written and oral skills change in placement, but are only placed in the same section of the board during the first Diamond16. Furthermore, for this Firm they have the same overall importance score, even though they are not often placed in the same area of the board. This highlights the need to look at some individual Firms and their final placements, as the importance score does not always tell us exactly what has happened during the Diamond16s. After the first Diamond16, oral skills was placed below the middle line, whereas written skills moves down to the middle line and then back up to the top trinity. This is interesting movement, as during the first Diamond16 a participant stated, *'...do you not think equally, though, you need to be able to speak and write?'* Thus, when they started their time in the SLO, these skills were considered equal. Further qualitative data can help explain this change in opinion. During their final Diamond16 a participant argued, *'Is written skills not quite important? Because if you can't write then you've got a problem.'* Oral skills was not discussed, so the importance of written skills came from what you really need for practice, and oral skills dropped down slightly. The qualitative data does not describe why written skills dropped so low during the second Diamond16.

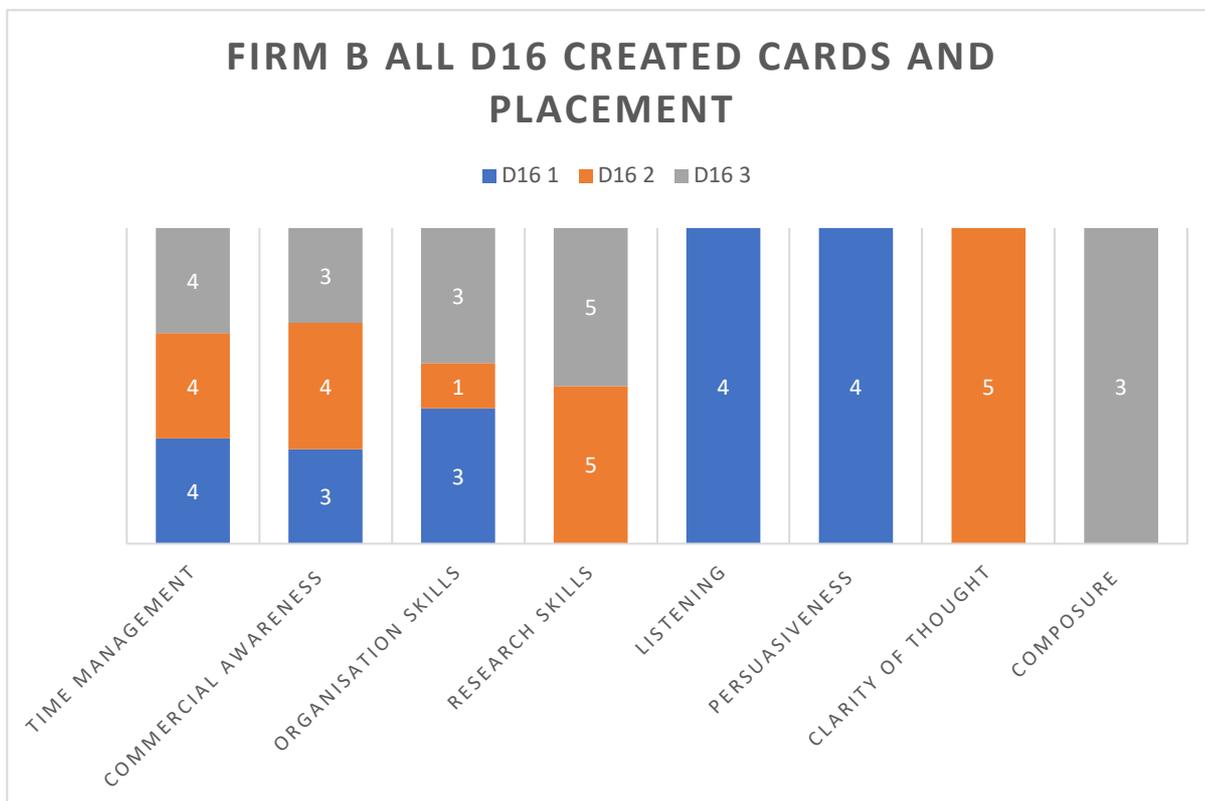
Interestingly, awareness of ethical issues and none of the "softer" skills are placed above the middle

line during any of the Diamond16s, except for authority in the last. We can see this importance of the “harder” skills consistently with the individual firms, as well as the holistic data set discussed in the previous Chapter. Some of the “softer” skills are never placed on the middle line or above, for example empathy, thick skin and patience. When studying the qualitative data, there are also indications that the opinions of these firms are influenced by the mark scheme and their tutors. For example, a participant said, *‘You need all of them. But I don’t think I’ve ever been told to be patient.’* Again, if they aren’t told to be patient, or it is not a skill widely discussed, they may not deem it to be important, or more important than the others.

Furthermore, I asked them about thick skin whilst looking at all of their Diamond16s. During the first Diamond16 they all unanimously decided that it was the least important skill and should be placed at the bottom of the board. However, it moved up a section by the final Diamond16, with the participants stating it is an important skill to have within a crime firm, due to the people and circumstances which are dealt with. In the interview, they indicated that thick skin is more important than they had initially thought, particularly in crime and commercial work. However, this rise in importance was slight and not significant enough to state it had risen dramatically throughout the year. If we relate this back to the conceptual papers discussed in Chapter Three, Redding asserts that LCCs cannot introduce all of the skills needed for practice to students, as the cases are a snapshot of practice and may not transfer all of what is necessary.⁶⁶⁸ Furthermore, the Tutor’s picking of cases and deciding what the students should be exposed to, could be a hindrance on learning. This decision on what we expose our students to could be taking away some of the reality of the cases,⁶⁶⁹ and has not allowed for students to develop some skills, such as thick skin.

⁶⁶⁸ Redding, R.E., ‘The Legal Academy Under Erasure,’ (2015) 64 *Catholic University Law Review* 359, p. 398

⁶⁶⁹ Dunn, R.D., ‘The Taxonomy of Clinics: The Realities and Risks of all Forms of Clinical Legal Education,’ (2016) 3(2) *Asian Journal of Legal Education* 174, p. 177



Graph 6.4 – Graph Displaying the Created Cards and their Final Placement for Firm B

As stated in the previous Chapter, this was the only Firm to create commercial awareness as a card (apart from Firm F (LPC) once), and they did so consistently throughout the year. It fluctuated around the middle line and above the middle line. Again, we can see some influence here of the SLO requirements, as one participant stated, ‘...the amount everybody bangs on about it all the time, it’s got to be relatively important.’ Its importance has been emphasised to them, so they have created it without necessarily knowing why it is important. What is also to be considered, it that we do not teach commercial awareness in the SLO, as it is not possible. We make our students aware of its importance, but we cannot let them engage with it as they will when practising, so it is highly unlikely that this perception has been embedded from their experience.⁶⁷⁰ Thus, we can see some evidence of instrumentalism in relation to culture, as they have been influenced by their Tutor, which will be discussed further below. They are learning how to be in the profession and fulfilling an expectation, rather than necessarily learning. This highlights the difference between learning from experience and learning from a teacher, the differences inherent in the thoughts of Dewey and Vygotsky.

⁶⁷⁰ Alexander, J. and Boothby, C., *Future-proofing Law Clinic – Aligning the Law Clinic Curriculum/Experience with Employer Expectations to Enhance Employability*, Association of Law Teachers Annual Conference, March 2016, Newcastle – This research highlighted that we don’t teach commercial awareness and that students hadn’t realised the demands of client networking and retention prior to practice, even after having participated in the SLO

When we discussed commercial awareness during their interview, there were some mixed opinions on what it meant and whether it was important. For example, one participant stated that, *'It is good to know, but I think there's better skills to be developed than that.'* Another thought it was more for the partners of a firm to worry about, rather than a trainee. This was a skill which was decided to be better left until a training contract to develop, as in the actual practice environment it would, *'come naturally,'* from, *'experience.'* The participants agreed it was more to do with experience and speciality as to what commercial awareness actually meant and being able to advise your client properly and knowing what kind of service they expect. Thus, during their time in a criminal firm they did not experience using commercial awareness, as their clients were, *'not bothered about that type of thing, all their worried about is they want their stuff done.'* They knew they will have develop it properly in the future, but the SLO was not the forum to do so. As was discussed in the literature review, we cannot teach all of the skills necessary for practice.⁶⁷¹ However, there is evidence here that the skills developed during their time in the SLO will help them *'hit the ground running,'*⁶⁷² having more confidence in what is needed to start practice competently.

Research skills was not created during their first Diamond16, but was placed in the top trinity for the second and third. During their interview, Firm B were shocked that they didn't have research at the start, wondering if, *'at the start did we just think that we didn't need research?'* This displays their development, that they realised how important research is to practise competently, and not something which they would not consider after their SLO experience. The shock they displayed highlights the transformative experience they had during the SLO, changing their perceptions of what is necessary for competent practice.

Composure was a skill only created during their last Diamond16. I asked about this during their interview, as I thought it may have been prompted by an experience in the SLO. They indicated that it was the time of the year and they were feeling the pressure of their work load. However, they also emphasised the importance of being able to separate their personal and professional life: *'Because if you were in a proper firm and things were happening in your personal life you couldn't just sack off going to the office because something's going on. You do still need to carry it on, and that's what we've had to do over the year.'* Composure was created because they realised how important it is not to let personal circumstances effect their professional lives.

Finally, time management was always created as a card and always placed above the middle line.

⁶⁷¹ Redding, R.E., 'The Legal Academy Under Erasure,' (2015) 64 Catholic University Law Review 359, p. 398

⁶⁷² Brest P, 'Skeptical Thoughts' (2000) 6 Dispute Resolution Magazine 20, p.23

However, it was not a skill which was discussed in-depth by the Firm, during the Diamond16s or the interview. Its constant placement above the middle line indicates its importance has not changed throughout the year, however, we can also argue that they have a fixed belief on it, either not challenged or confirmed by experience.

6.2.3 Firm C

Firm C was a housing law firm. Below are the three pictures taken of each of their Diamond16s:

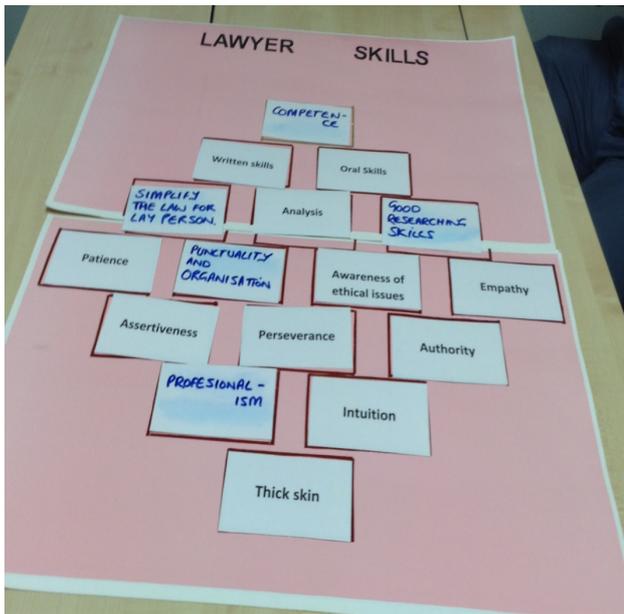


Image 6.7 - Firm C First Diamond16

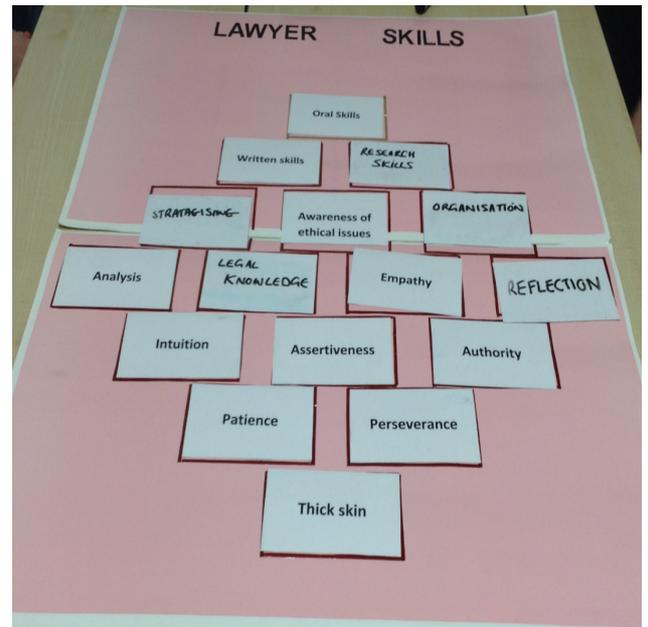


Image 6.8 - Firm C Second Diamond16

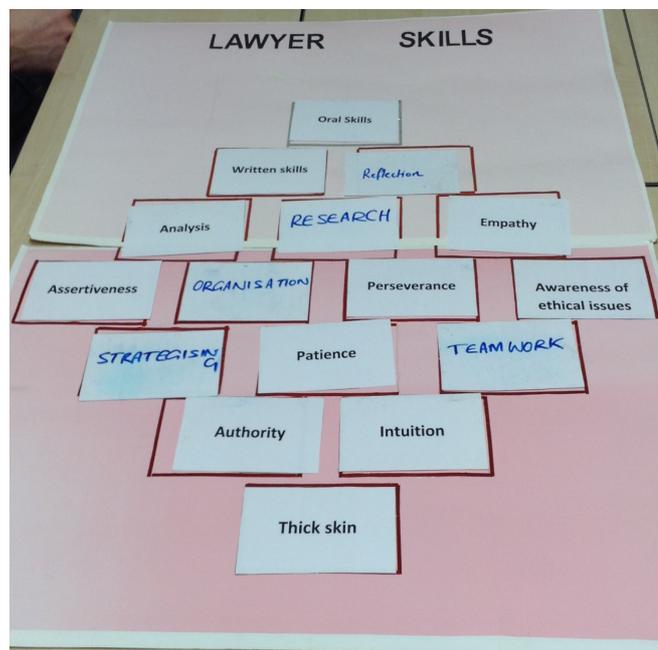
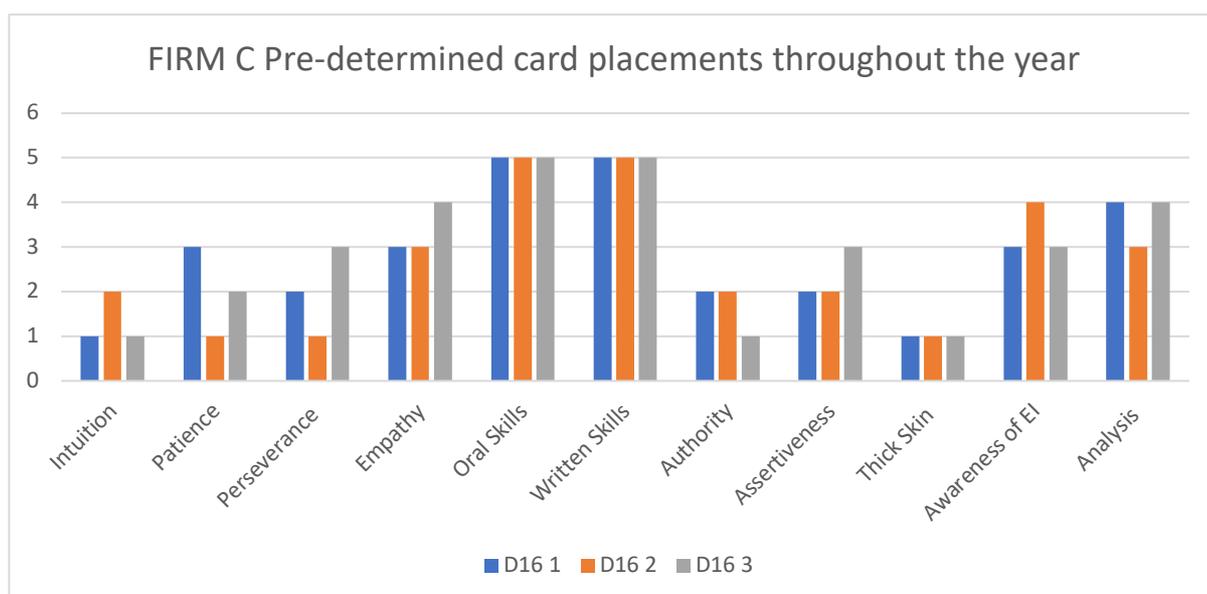


Image 6.9 - Firm C Third Diamond16

Below is a Graph displaying all of their Diamond16s throughout the year for pre-determined cards:



Graph 6.5 – Graph displaying the results of the placement of pre-determined cards for all Diamond16s for Firm C

Firm C seems to have diverged from the expected slightly, particularly when we look at analysis. Analysis never appears in the top trinity for this group and takes a slight dip in the middle of the year. There were not any significant comments made about analysis for this Firm in the qualitative data. However, if we compare our other overall winning, we can see that written and oral skills were both consistently placed in the top trinity, for all Diamond16s. This could be because their importance did not change, or of the pre-conceptions of what these skills mean to legal practice. During their first Diamond16, Firm C discussed how written and oral skills are equally important to practice:

‘Well obviously written skills are quite important, because you’ve got to fill in court forms and things like that.’

‘Would you not put them two together as equally important?’

‘I think oral skills are more important than written skills and a little bit more important than empathy as well. Because, you might not have the most empathetic person but as long as you can communicate with them and they can communicate with you.’

They did a vote of who thought oral skills should be at the top. This was a draw, with two students saying yes and the other two saying no. The other two then backed down and it was moved to the top.

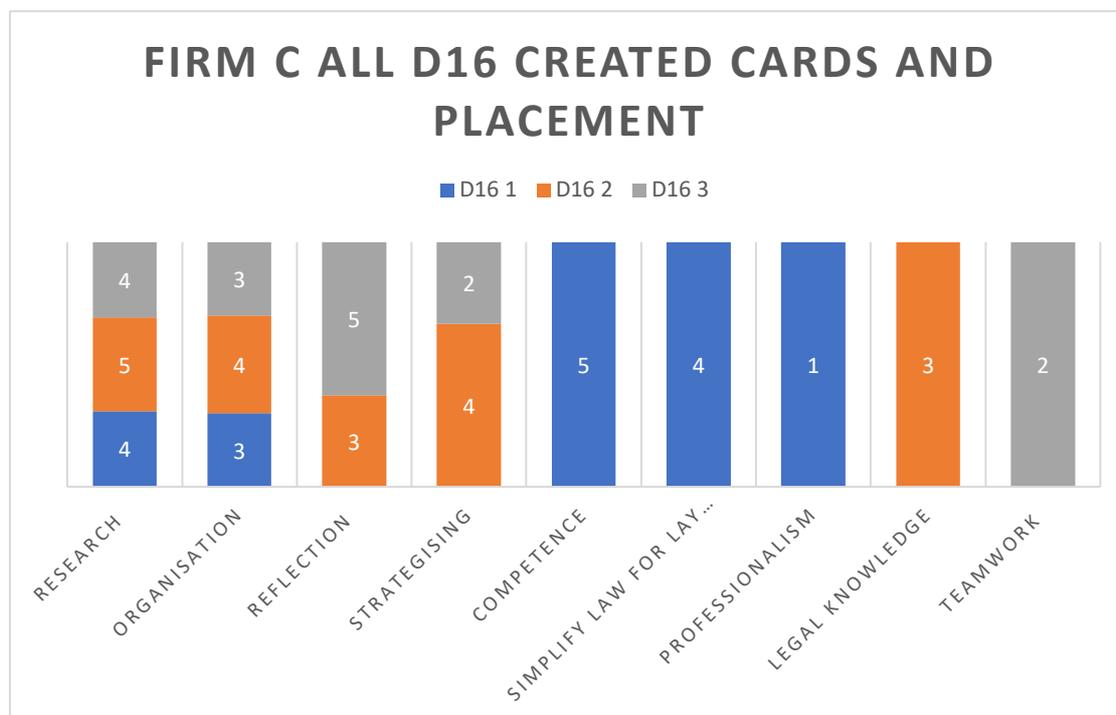
They then decided that they should be equal again. One student said, ‘you need to speak like a lawyer and write like a lawyer.’ Another student agreed, ‘you can’t be good at one and not at the other.’

This extract highlights some important observations of this Firm. Not only does it demonstrate why written and oral skills were always placed in the same section of the board, it displays how the Diamond16 exercise is one of cooperation and occasional conceding to others. There were no further discussions like the one above after the first Diamond16. I feel as though some skills and their perceived importance were decided from the first Diamond16. Again, we can relate this back to Pierce, wondering if they have merely not been challenged by experience and the participants have fixated their belief on them being very important to practice. Alternatively, the participants could have decided that these skills were as important at the start as they were at the end. Again, oral and written skills were not their focus during the interview when looking at all of the boards.

If we look at the “softer” skills we can see some consistencies with the other groups. For example, thick skin was always placed in the bottom trinity, as it was with many other Firms. This was the only skill which was always placed in the bottom trinity and the other “softer” skills fluctuated in placement. This Firm did not consider thick skin to be of importance at all, with one participant offering, *‘thick skin just seems sort of a daft one, doesn’t it? I don’t feel like it’s a skill, so much as an attribute.’* Thus, if something is an attribute within the “softer” skills, then it is less likely to be important to the participants, with the “harder” more technical skills taking the lead. I do not know the exact reason for this, but one explanation could be the control they feel over skills compared to that of attributes. A “softer” skill, such as time management, is easier for them to have agency over, meaning that they will see more immediate results. However, an attribute, such as thick skin or empathy, is more out of their control and dependant on other extrinsic factors, such as the client they are dealing with. This, in a way, displays a pragmatist approach to learning our students often take, wanting more agency and control over their education.

Apart from empathy in the final Diamond16, none of the “softer” skills appeared above the middle line. We can see an emphasis on the importance of the “harder” skills needed for practice. The discussions surrounding the card empathy raised some observations of the data not initially considered. I have spoken in detail how the mark scheme and tutor opinions may affect what is happening on the board, but Firm C created a new factor. During the first Diamond16, one particular student was not happy that empathy was being moved down the board, insisting its importance to practice. Another student replied, *‘Yeah, obviously you’re really good about it.’* Thus, some participants may think that a skill is important because they enjoy or feel as though they fulfil that particular skill or attribute. As the opinions surrounding the Diamond16 can be so subjective, the participants mostly doing the exercise as a group can add a little bit more objectivity into the data. As discussed above, this brings us to a constructivist epistemology of learning, *‘whereby the*

social knowledge is created and recreated in the personal knowledge of the learner.⁶⁷³ If knowledge is created by the learner, then multiple learners conducting the Diamond16 will have different experiences from the SLO to bring to the discussion and final placement.



Graph 6.6 – Graph Displaying the Created Cards and their Final Placement for Firm C

The created cards for Firm C display some similarities between the other Firms. Organisation was created for every Diamond16, a commonly created card. It was never placed in the top trinity, but moved around the middle line and above the middle line. As both oral and written skills were consistently in the top trinity, we can see that there was also always a created card placed there. In the first Diamond16 it was competence, which has some intriguing qualitative data attached to it. During the interview, the student who had suggested this card commented:

'I'm surprised because I know I wrote competence, and I think I remember saying competence, because I've done my reflection on this and when I first started I was really stressed about not appearing competent. So, I wonder if that's sort of... I do feel like I am more competent but I wonder if it's sort of pointing out that it's not something that I worry about anymore because I feel that it's...'

'It's either that, or it's the experience as times gone on, like you start to

⁶⁷³ Kolb, A.Y. and Kolb, D.A., 'Experiential Learning Theory: A Dynamic Holistic Approach to Management Learning, Education and Development,' 2001, p.44. Accessed via https://www.researchgate.net/profile/David_Kolb/publication/267974468_Experiential_Learning_Theory_A_Dynamic_Holistic_Approach_to_Management_Learning_Education_and_Development/links/5559122408ae6fd2d826eb12.pdf Last cited 18.10.16

feel more competent. So, you're sitting there thinking it's not really an issue anymore (agreement from group).'

Again, we see an example of what this student felt was important because they felt it personally. Being afraid of not appearing competent has caused them to stress its importance. However, this skill was not created after the first Diamond16, which is explained that they now feel more competent and have done progressively throughout their time in the SLO. By having the '*concrete experiences*,'⁶⁷⁴ Kolb emphasises they were able to reflect on their learning, participate in abstract conceptualisation and learn from the experience to feed into future active experimentation. These experiences have allowed them to move past any initial fears, build on their learning and move onto develop other necessary knowledge, skills and attributes.

There is also a curious observation here, surrounding the theme of voyage. When discussing voyage, I am referring to what cards the students created in the first Diamond16, compared to their second and last. There are instances in every Firm measured of cards being created in their first Diamond16, which do not reappear after. The comment from the Firm C above suggests that skills they believed they needed at the start of the SLO were found to actually not be needed once they had gained some experience. Thus, what was originally packed for the voyage was not needed and ultimately left behind and sometimes forgotten about. By the second or final Diamond16 they were wondering why it had been packed in the first place and whether they still needed it or not for the journey. Before the '*concrete experiences*' have occurred, they are conducting their learning in answer to the demands they feel. These demands are placed on them by the university and their assessments as well as what legal employers state they require of new trainees. It can be argued, therefore, that they have a distorted view of the reality of practice and what is actually important for them to develop. They are influenced by extrinsic opinions, consistent with the discussions of instrumentalism above, not knowing what practice entails. This is easily related to ELT. The students now have perceived wisdom and knowledge, a product of their '*concrete experiences*.' By having such experiences, and reflecting on them, they are able to learn from it and feed it into future experience. This is not a realisation which would be gained from traditional, non-experiential, legal education.

The other created skills which were placed in the top trinity were research and reflection, both created more than once during the Diamond16s. In light of the comments above, it can be more confidently assumed that these skills are important to practice and their experience has not changed

⁶⁷⁴ Kolb, D.A., *Experiential Learning: Experience as the Source of Learning and Development*, (Pearson Education Inc, 2nd edn, 2015), p.51

this, as competence was no longer created after the first Diamond16. We can see that reflection was first created during the second Diamond16, explained by the fact that reflection will not have been their focus during the first Diamond16. However, by the second Diamond16 they are drafting practice reflections and by the third they are submitting their final reflective pieces. Thus, there is evidence that the skills created are affected by the stage of the SLO the students are at. What they are actually doing in the SLO influences their perceptions of importance. As experience and learning appear to be closely linked when considering ELT, they obviously influence each other.⁶⁷⁵ What they are actually experiencing at a certain time affects what they are learning, or focusing their leaning on.

The participants commented on the slight movement of research during their interview, stating:

'But still roughly in the same area though. It hasn't moved by too much. It's always remained in the top half. Because, at the end of the day, it is important. If your research isn't good you can't, like we said earlier, you can write as well as you want, but if what you're writing about is wrong then the wrong outcome is the result.'

Research has always remained in the top half of the board and, whilst not always being in the top trinity, this has reinforced its importance for the participants. Their reasoning seems to be that research is a foundational skill, without which you cannot be properly competent at other skills. Here we see an example of a skill feeding another skill and the need for them to be developed together. They also relate this back to some of the cases they worked on, stating that research was so important due to a lack of information on the case. This provides further evidence that real life experience of working in a LCC can influence what is important to practice. These students have learnt from their experiential learning, placing more emphasis on the necessity of good research skills. This necessity was explored in the qualitative literature discussed in the literature review. The study conducted by Fancourt found that one of the most identified tasks in practice was legal research. Further, employers stated that they wanted more direct and concise research from their trainees, with less focus on stating what the law is and more on how it can be used practically.⁶⁷⁶ The above comment provides evidence that participating in a LCC can affirm to students which skills are important to practice and why they are important. Without this clinical experience, they may not have had this realisation until after they had started training contracts, which really is not soon enough.

⁶⁷⁵ Beard, C.M. and Wilson, J.P., *Experiential Learning: A Best Practice Handbook for Educators and Trainers*, (Kogan Page Ltd, 2nd edn, 2006), p.19.

⁶⁷⁶ Fancourt, A., 'Hitting the Ground Running - are LPC Students Ready for Practice?' 2004, 4 *Legal Information Management* 168, p. 170

Another observation from Firm C's created cards is how low professionalism is placed. Interestingly, thick skin was moved from the sixth row to the bottom space in order to make room for it. Thinking back to the discussion in the previous Chapter, surrounding created cards and their heightened importance to participants, this small movement down to make room is consistent with that theory. Furthermore, even though the card professionalism was placed low on the board and stayed in the bottom trinity, it was important enough for them to move a pre-determined card. Studying the qualitative data from this Diamond16, we can see that professionalism meant to these students, *'the ability to separate work life and personal life.'* They comment in their final interview that it was only used once and then they, *'got rid of [it],'* for their voyage. Whilst it was a card important enough to be created at all, it was not so important to be created again. As Firm C progressed through the SLO, their experience fed into what they thought they needed to be able to successfully help their clients. They have had, *'immediate or concrete experiences,'* which are, *'the basis for observations and reflections.'*⁶⁷⁷ These immediate concrete experiences change as the year progresses, meaning the perceptions of importance progresses, based on their observations and reflection on the experience.

⁶⁷⁷ Kolb, D.A., *Experiential Learning: Experience as the Source of Learning and Development*, (Pearson Education Inc, 2nd edn, 2015), p.51

6.2.4 Firm D

Firm D was a civil law firm. Below are the three pictures taken of each of their Diamond16s:

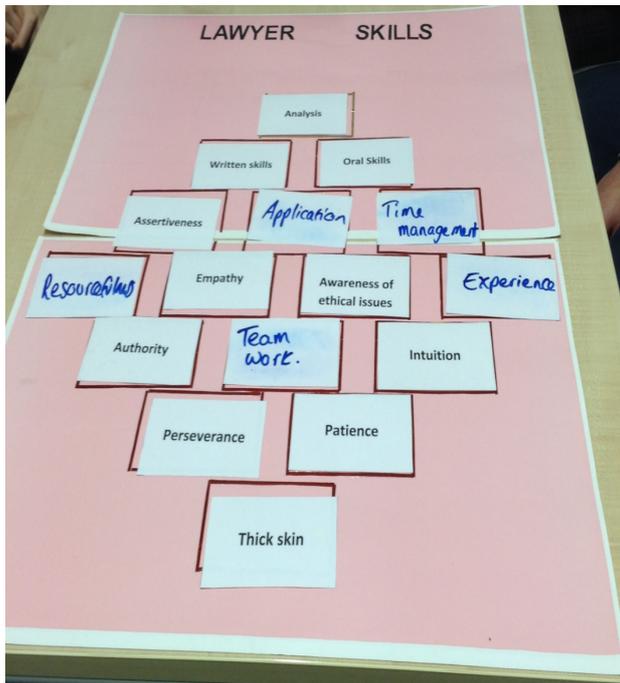


Image 6.10 - Firm D First Diamond16

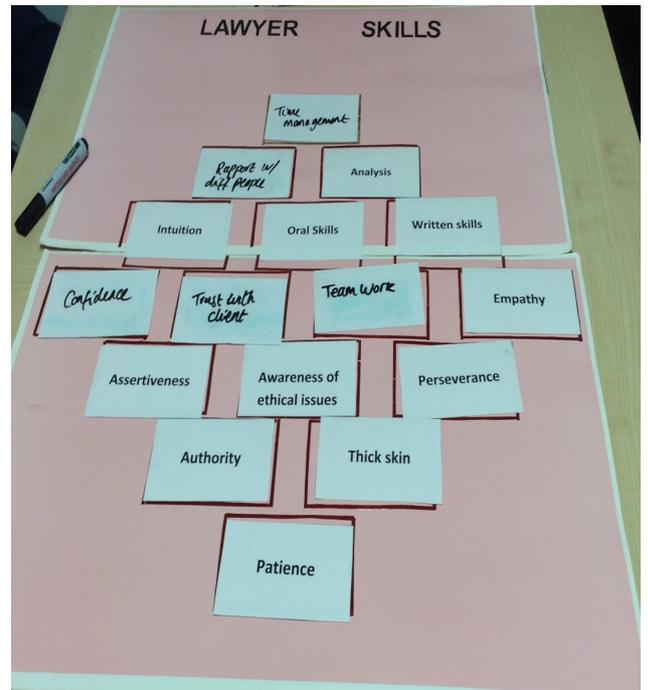


Image 6.11 - Firm D Second Diamond16

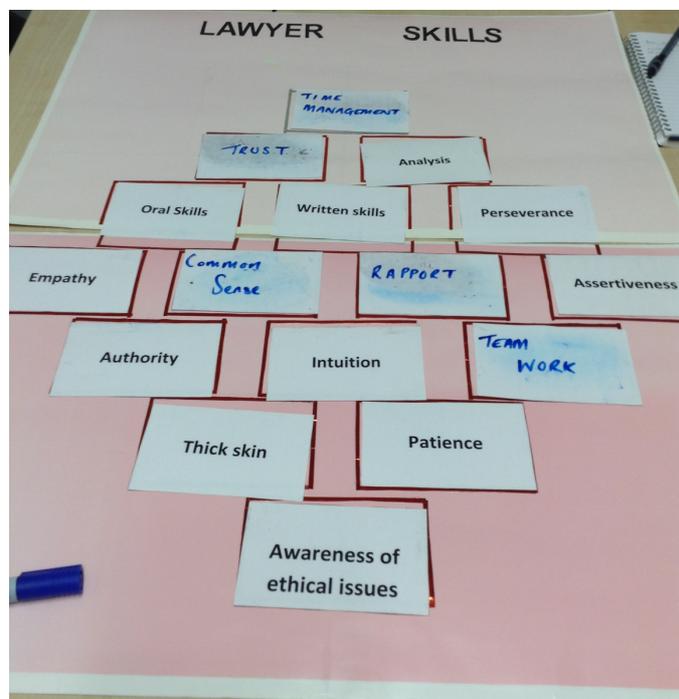
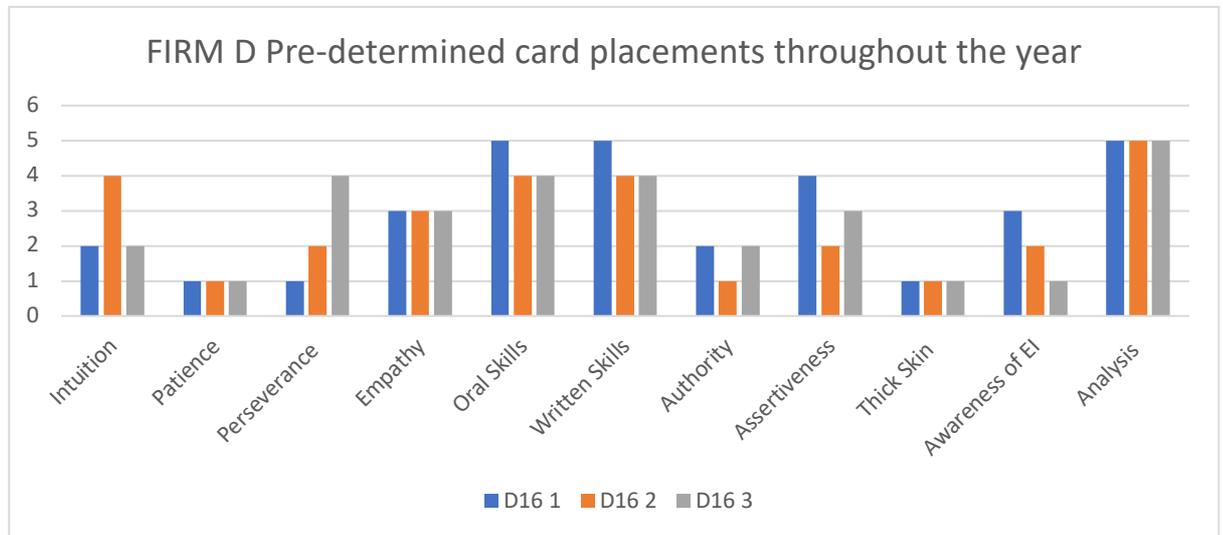


Image 6.12 - Firm D Third Diamond16

Below is a Graph displaying all of their Diamond16s throughout the year for pre-determined cards:



Graph 6.7 – Graph displaying the results of the placement of pre-determined cards for all Diamond16s for Firm D

Analysis was always placed in the top trinity for Firm D. Thus, its importance did not waiver throughout the year. Again, when we think of the discussion surrounding analysis in the previous Chapter, it is hard to tell whether this skill is actually important to practice, or if it has merely not been challenged by experience and the participants are fixating on their belief of its importance to practice. Oral and written skills were always placed in the top trinity or above the middle line and always placed together in the same part of the board. Again, there is a difference of those two skills compared to the other pre-determined cards, that they should be placed together. It seems that participants, particularly the students, find it difficult to separate and distinguish between them. This argument cannot be strengthened through the qualitative data, as the participants only stated that they did not think one was more important than the other during the first Diamond16. However, they both go down in importance after the first Diamond16. This indicates that they were not as important to the participants, possibly after some experience in the SLO. This was discussed in their interview:

'Yeah, I think so. I think when we first came in, looking at that (first diamond) we put oral and written skills quite high up. And I think the more time you spend in here, the more you realise that perhaps, yes they're important to have, but there are other things that are equally if not better... yeah you get a bigger picture and a bigger sense of what actually is important in the grand scheme of things.'

This exert helps to prove my theory that the experience of practice in a LCC can change a student's idea of what is important to practice. Once they have gained some experience, they realise that what they once thought was important may not actually be so once they got, *'the bigger picture.'* This may not have been possible during traditional, non-experiential, legal education. This is not a new conclusion. For example, Taylor found that students found LCCs *'invaluable learning opportunities'*⁶⁷⁸ and Boyes *et al* students stated that they did not feel that their legal education had prepared them for practice.⁶⁷⁹

Some of the skills never moved during the three Diamond16s. For example, thick skin and patience were continuously placed in the bottom trinity and this did not waiver. When discussing thick skin, Firm D shone a new light on why this was not important, as, *'...it's more of a benefit to yourself, rather than the client.'* Thus, because this skill isn't client orientated, it should not be placed higher on the board. This participant seems to think that to be a competent lawyer you must be client orientated, and what you need to succeed comes second to the client's needs. However, patience was discussed as being important during the second Diamond16, it just merely wasn't as important as other skills, such as time management, analysis and oral and written skills. It appears that the bottom of the board is used for two reasons: either because the skill is not important at all, or it is important, but there isn't any room for it at the top. This creates some new questions. For example, does this increase the difference between the top and the bottom of the board? If the top of the board is reserved for only the skills which are important, then the bottom of the board may be split into further categories of importance. This cannot be explored fully through this research, but does highlight factors and contributions for future research. By the third Diamond16 patience was felt to *'...never [have] mattered that much,'* potentially because they've, *'... not had very awkward clients.'* Thus, patience seems to have been reserved in importance, but because it was not ultimately needed during their time in the SLO, it did not matter much. It would be interesting to see if their opinions change during actual legal practice, when they may interact with certain skills more.

Empathy was always placed on the middle line. This skill was often compared to and grouped with other cards which were seen as similar. For example, during their first Diamond16, it was stated that empathy was *'similar'* to awareness of ethical issues, as well as resourcefulness. During the second Diamond16, it was questioned whether it should be placed higher than assertiveness, and

⁶⁷⁸ Taylor BF, 'Through the Looking Glass: Perceptions on the Law School Learning Experience,' 2015, 16 Loyola Law Review, 274. p.299

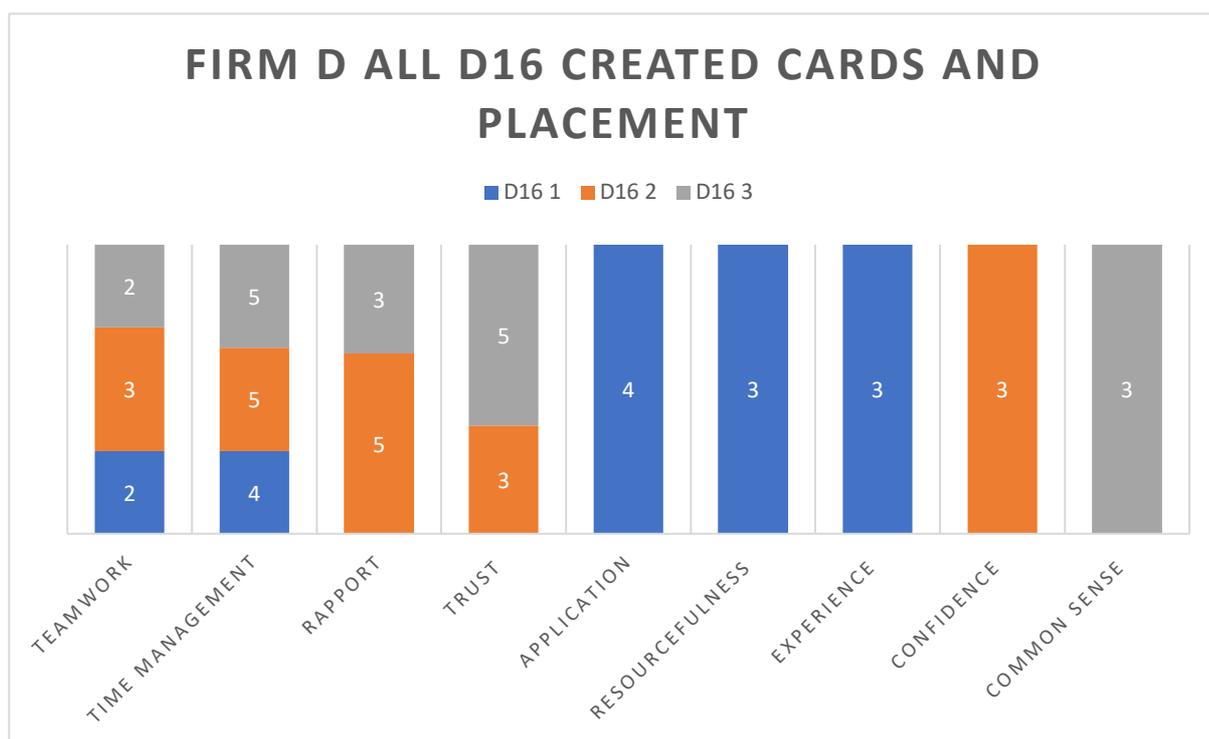
⁶⁷⁹ Boys, S.K. et al, 'Social Work Skills Can Fill the gaps in Legal Education: Law Student Opinions of their Preparation for Practice with Clients,' 2015, 3 UK Law Student Review 87, p.93 – accessed via <http://www.uklsa.co.uk/wp-content/uploads/2015/01/UKLSR-v3i1-A7.pdf> Last cited 23.05.16

a participant argued that, *'there's a cross over between empathy and rapport.'* Thus, the reason for the indifference to the importance of this card can be explained by it being easily comparative to other cards, created or pre-determined.

Awareness of ethical issues consistently dropped in importance over the year, never reaching the top half of the board. When I looked at the qualitative data from their interview, it wasn't necessarily that they thought awareness of ethical issues wasn't important:

'Like the awareness if ethical issues, it's not that we don't, like we're not aware of them, but as you kind of do it you just don't have to worry about that as much as maybe other things. Doesn't really affect you as much, you're kinda just constantly aware of that in the back of your head.'

Thus, it is not that this skill is not important, it is that it doesn't always affect day-to-day practice. Furthermore, it is not an active skill, but one that is on your mind and approached when needed. So, as the other skills became more prominent in importance over the years, some seemed to become less so with their experience.



Graph 6.8 – Graph Displaying the Created Cards and their Final Placement for Firm D

Firm D only created two skills continuously throughout all of the Diamond16s: teamwork and time management. It is intriguing to compare the placements of these two created cards. Teamwork was never placed above the middle line and appeared mostly below the middle line. Alternatively, time management never appeared on the middle line or below, but twice in the top trinity and once above the middle line. This highlights that even if a skill is considered important enough to be

created it may not be considered important enough to be placed on the top half of the board. Furthermore, the consistent placement of those skills shows how their importance has not changed, as was with the other MLaw Firms.

Teamwork was only discussed properly during the first Diamond16, and this interesting exchange was captured:

'I don't feel like that should be at the bottom.'
'Yeah, but you can be a solo lawyer, you don't have to have...'
'But you always need a bit of help. Like, lots of times you work in teams of an area of law, you're not just going to do it all alone.'
'What, in real life?'
'Yeah.'
'Yeah, like not like we do. They don't just do everything themselves. They have their own caseload, but...'
'I think you have to rely on other people when you need help.'
'And sometimes, on big things there's more than one lawyer working on one case.'

This seems to me like a rather confused interpretation of what teamwork means to the participants this early during their LCC education. They realise that they will have their own work, but will also need to work with other lawyers on bigger cases. Also, they are aware that they will occasionally need to ask other lawyers for help on their cases, meaning their team working abilities and professional relationship development will be vital. This opinion is consistent with the recent legal education reports, such as the *Legal Education and Training Review*, which stressed the need to develop teamwork and collaboration during legal education.⁶⁸⁰ However, the need for this kind of professional development was discussed in relation to another created card: trust. Trust was created twice across all of the Diamond16s, moving from the middle line to the top trinity. A comment from the third Diamond16 around trust was:

'I think trust has to be quite high.'
'Is it trust with the client?'
'Well, everyone.'
'Well, that's like lawyer skills. Maybe it's different here because we have to trust each other because we are getting marked.'
'I suppose it could be both. You definitely need the client to trust you.'

There are two points to raise with this conversation. Firstly, that there are multiple meanings of trust, and one of them is trust in your SLO partner. This trust is deemed to be more important than teamwork. Secondly, there is another focus on assessment and grades. As they are getting marked,

⁶⁸⁰ Webb, J, et al., *Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales (The Legal Education and Training Review (LETR))*, (2013) p.136. Available at: <http://letr.org.uk/the-report/index.html> Last cited 04.08.17

there has to be that trust that your SLO partner will do a good job. Thus, trust is high because they have so much depending on it, namely their degree grade which potentially dictates their future career. Trust, in this sense, departs from what a competent lawyer must possess to practice competently and what is needed to get into practice in the first instance.

Finally, most of the cards created during the first Diamond16, whilst being placed on the middle line and above the middle line, do not appear in any of the other Diamond16s. Again, we can relate this back to the voyage theme. Particular items the students' packed were actually not worn, and not needed. This indicates learning development throughout the SLO and the skills they once thought were important actually were not so important as to be created again. Thus, if we conceptualise this, their experience has fed into future learning, allowing for development which has affected their personal and professional growth.⁶⁸¹ In terms of professional development, those skills may have become less important as they progressed through the SLO, embedding their knowledge of what is important. However, when looking at the interview data, we see that some of the skills not included in the last Diamond16 being missed by the participants on the final board. One noted that they didn't have confidence in the final Diamond16, and it was, '*a good one,*' and they were, '*surprised they didn't keep confidence and things like that in.*' Another noted that, '*experience is quite important.*' So, they may have missed these skills and wished they had maybe been included in the final Diamond16, but the fact they weren't and they weren't thought of, indicates that their importance decreased over the year.

⁶⁸¹ Kolb, A.Y. and Kolb, D.A., 'Experiential Learning Theory: A Dynamic Holistic Approach to Management Learning, Education and Development,' 2001, p. 46 Accessed via https://www.researchgate.net/profile/David_Kolb/publication/267974468_Experiential_Learning_Theory_A_Dynamic_Holistic_Approach_to_Management_Learning_Education_and_Development/links/5559122408ae6fd2d826eb12.pdf Last cited 18.10.16

6.2.5 Firm F

As stated above, Firm F was a group of students on the freestanding LPC and started the SLO half way through the academic year. This was an interesting Firm, as they did not go to Northumbria to do their undergraduate degree and thus, had not had the same extensive clinical experience that the MLaw Firms had. Therefore, I feel that this firm demonstrates more development than the others, in terms of their opinions and decisions maturing from their experience of working with live clients. Below are two pictures taken of each of their Diamond16s:



Image 6.13 - Firm F First Diamond16

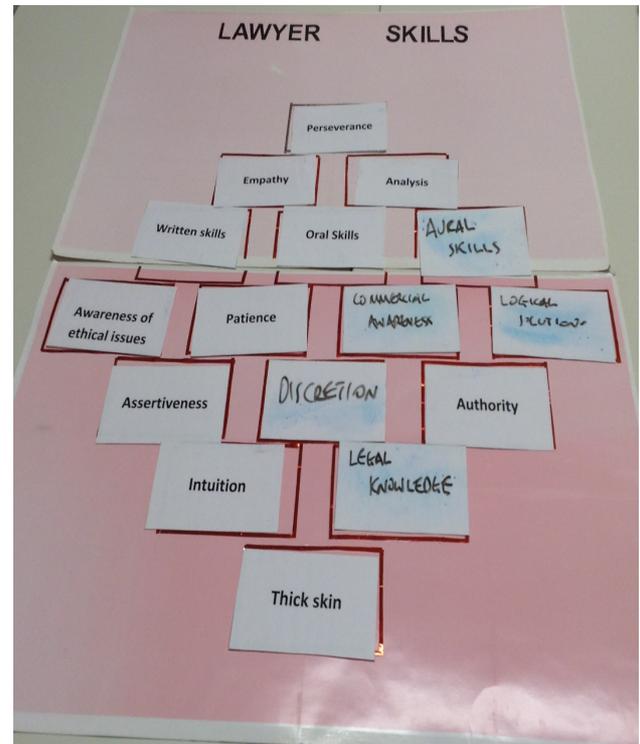
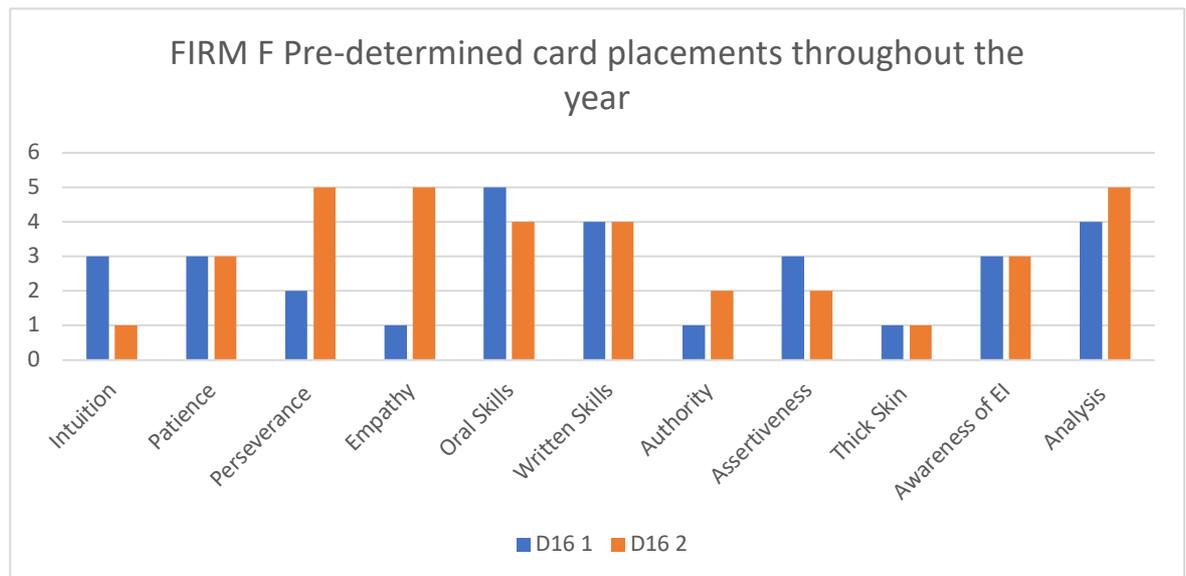


Image 6.14 - Firm F Second Diamond16

Below is their final placement for two Diamond16s pre-determined cards:



Graph 6.9 – Graph displaying the results of the placement of pre-determined cards for all Diamond16s for Firm F

Of all the Firms discussed in this section, Firm F has quite a dramatic change in their opinions, stressing their development. We can see that the “harder” skills, such as written skills and awareness of ethical issues, have stayed the same throughout their time in the SLO. Oral skills moved down from the top trinity to above the middle line and analysis moved from above the middle line to the top trinity. The LCC experience has not changed their opinions of the “harder” skills to a great extent. It is interesting that analysis moved up slightly. As most participants placed this skill highly in importance, we can see how analysis is important to practice to this Firm and the SLO may have made them realise this.

If we look at the qualitative data, analysis was not particularly discussed during the Diamond16s or during the interview. However, the comments surrounding written and oral skills are worth discussing. During the first Diamond16 the participants seemed to be focused on the different stages of a legal career and what the skills meant to each stage. For example, when discussing written skills, the participants said:

‘I think written skills are probably lower down, because if you’re really high up you’re not going to be writing or anything, are you? Someone else writes it all for you.’

‘Well, that’s true but you need to be able to write to get high up.’

‘I think you spend a lot of your time writing probably.’

'Yeah when you start written skills are very important.'

During the second Diamond16 it was discussed and placed in the same area of the board.

During the first Diamond16, the top trinity contained oral skills, interpersonal and listening skills. This led a participant to say, *'The thing is, placing those ones there are the top, you've gone very client based skills at the top, if that's the way we're going.'* Again, we can see a distinction between what is important personally to practice and what is important for the client, which creates another theme. Students are developing to understand that there can be a separation between skills which benefit themselves, as the lawyer, and those which benefit their clients. They are wondering who the skills are for and what they are for. Thus, this participant saw a client care centred board as a direction they were going in, even if it wasn't necessarily the direction they wanted to go in. This was not really discussed by other participants, but was mentioned in the Diamond16 done by Actual Law Firm A. They noted that their top half of the board did not, *'directly relates to how you actually deal with clients and the ability to deal with clients.'* Thus, it is not only students who consider who the skills are for, but lawyers in practice also.

This is something for clinicians to consider when they are teaching and an example of critical instrumentalism. Critical instrumentalism seeks to *'eliminate from society sources of inequality and unfairness,'* and, *'the purpose is therefore directly political and learning is socially embedded.'*⁶⁸² Thus, critical instrumentalism is the discussion of goals. The goals here relate to needs for the client and goals for the practitioner and the instrumentalism of what Tutors tell the students something is for. They are, through experience, discovering boundaries between what they have done for themselves and what they have done for the client, and this raises some further questions. For example, do we need to teach our students the difference between personal skills and client centred skills? Are they interchangeable and developed alongside one another? These questions cannot be answered by this research, but highlight an area for further inquiry.

This distinction between personal and client based skills is also present in the "softer" skills placement and their discussion. Some of the "softer" skills moved down in importance, such as intuition, and some stayed in the same position, such as thick skin and patience. However, we see a sharp rise in perceived importance for empathy and perseverance. I think the discussion surrounding these skills demonstrates how much the LCC developed Firm F. During the final interview, a participant stated:

'I think all those words have different meanings when you've actually done it in

⁶⁸² Scott, D., *Education, Epistemology and Critical Realism*, (Routledge, 2013) p.124

practice. When you look at the meaning of the words when you've never done it. When you think about what they mean now and how they've effected your practice, it's different.'

This statement outlines how the LCC has affected their view on what it means to be a practising lawyer. Before any clinical experience, they looked at these various skills and didn't really understand them or if they were important. However, after working with their live clients, they understand what they need for practice and how important some of these skills are. After all, *'only in real life contexts can students learn how they measure up to the legal requirements and expectation of the legal profession.'*⁶⁸³ If we explore what their opinions of empathy were in more detail, this inference is stronger.

During the first Diamond 16, a participant asserted that, *'Empathy should be the least important one.'* Another participant agreed, replying, *'Yeah, well it's probably not that important.'* That was the only comment on empathy and it was placed in the bottom trinity. So what made it rise to the top a few months later? During the second Diamond16, they discussed:

'It is important though, because it's just what I've been writing about in my reflection. That's how you get the client to talk properly, if you show you're empathetic. They're more clear and then you can...'

'It could be the most important, because if you show no empathy they're not going to do anything for you, they're not going to tell you everything.'

'It's about building a relationship. It builds the relationship I think. It chooses when you're going to get the business from them.'

'And that's ultimately what you do, isn't it? Build up relationships with people.'

It is clear that after their time in the SLO, they have realised how important it is to build a relationship with your client. This is not only important for the client's case, but also for continuing business, which as we see from the literature is an important skill now for practice. This was also affirmed during their interview: *'Because empathy doesn't necessarily mean empathy, it means building relationship and getting a relationship.'* This *'human aspect'* of lawyering was stressed by Boersig, who believes that this is the most important aspect of learning within a LCC and is not easily replicable outside of a clinic.⁶⁸⁴ Comparing this to their first Diamond16 and the literature, it is clear that the SLO has developed these students and made them more prepared for practice. This is also present in a comment from the interview:

⁶⁸³ Batt, C., 'A Practice Continuum: Integrating Experiential Education into the curriculum,' 2015, 2015-5 Stetson University College of Law: Legal Studies Research Paper, p.29

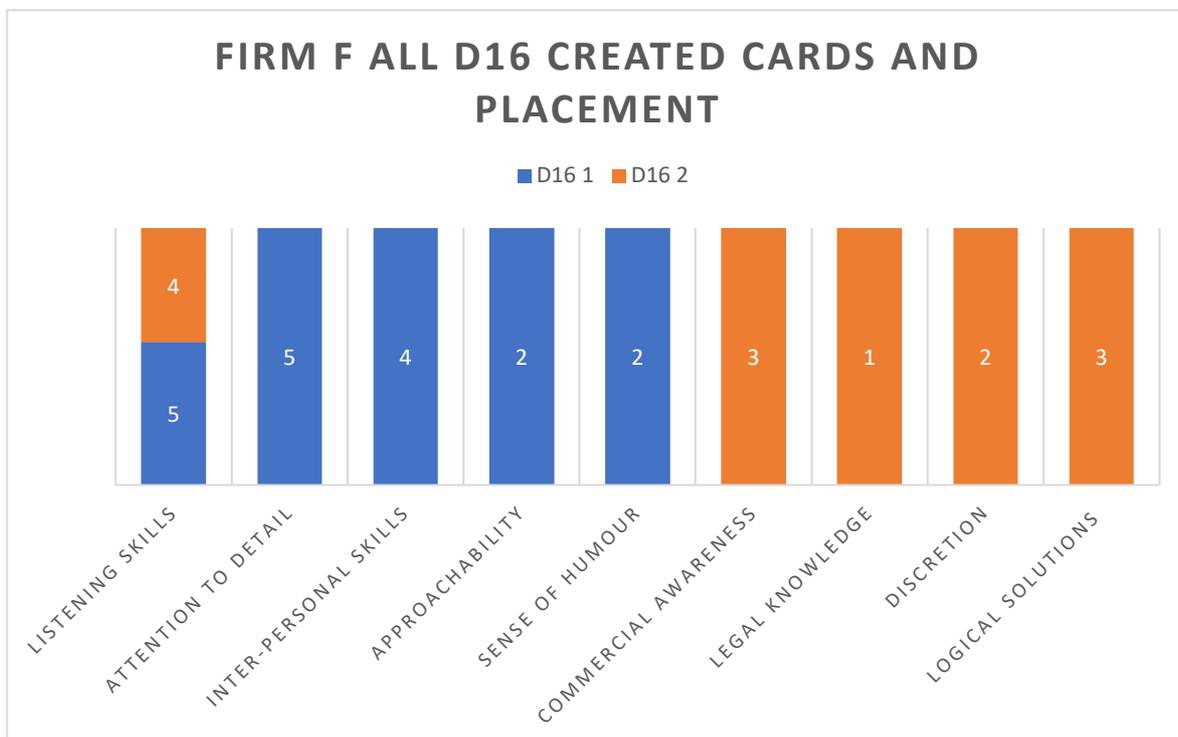
⁶⁸⁴ Boersig, J., Marshall, J. and Seaton, G., 'Teaching Law and Legal Practice in a Live Client Clinic,' 2002, 6 Newcastle Law Review 51, p.68

'...the meaning of the words is different now, like definitely for empathy. I think from what I now think as of empathy I would never have had a second thought, I kind of understood it. But how I understand it now... what else did we have at the top? We had oral skills at the top, that's so like technical, that's such a technical thing to have at the top really, you know? And actually I think being a lawyer is much broader than just being able to communicate. It is all about like relationships and working with people. And so perseverance and empathy, they are sort of the two important things to have, I think to actually build a relationship with a client. But here I think we're really focused on technical things here too, didn't we? There's that one... yeah listening skills, kind of second top. I think they're just like sort of basics really, those 3 that we have there. And that's just very much the sort of framework that you actually build being somebody who knows what they're doing...'

They thought they knew what was meant by empathy, but an experience of practice has taught them what it really means. They have realised that the technical legal skills are not always the ones which are needed or used the most. They also describe their top trinity in the first Diamond¹⁶ as '*basics*,' indicating that their experience has made the perceptions of practice less about what they needed to start in the SLO and there is more understanding of what is needed for practice. It is data such as this which makes me feel as though Firm F displayed the most development during the SLO. Again, this could be because of their lack of clinical experience before the SLO, compared to the MLaw students. It demonstrates the strength of CLE and just how much it can advance learning. As Kolb stressed, only by having concrete experience, and an interaction with their environment, can they transform this experience and '*interpret and act on that information.*'⁶⁸⁵ Furthermore, this is consistent with the findings Westaby's study, discussed in Chapter Two, which found that students in a LCC displayed empathy as a skill, and almost half referred to it as an important skill, drawing on their experience in a LCC.⁶⁸⁶ In both of these studies, this will most likely not have been a realisation or development in students, had they not had a LCC experience.

⁶⁸⁵ Kolb, D.A., *Experiential Learning: Experience as the Source of Learning and Development*, (Pearson Education Inc, 2nd edn, 2015), p.51

⁶⁸⁶ Westaby, C., 'A qualitative study of the impact of law clinics on students' perceptions of emotional labour expectations,' 2014, 48 *The Law Teacher* 248



Graph 6.10 – Graph Displaying the Created Cards and their Final Placement for Firm F

There was only one card created for both Diamond16s, which was listening skills. It was always placed in top half of the board, but did move down slightly in the second Diamond16. However, this skill was not discussed during the Diamond16s or the interview. It was just suggested as being important to create and placed highly. It seems as though they, as a group, agreed that this is an important skill.

Every other skill was only created once during both Diamond16s, and I think this makes an interesting comparison in terms of development. When considering the first Diamond16 created cards, we see attention to detail and interpersonal skills, both placed above the middle line, and approachability and sense of humour, both placed below the middle line. A comment made about sense of humour was, *'It's important, you've got to charm your clients.'* However, we can see from above that what they feel is really important now is building a relationship with the client, rather than *'charming'* them. During the interview, they laughed about this card and didn't understand why they created it. We can also see some other, rather inexperienced, opinions on the first created cards. For example, when discussing attention to detail a participant offered, *'I think attention to detail is very important, in that, if you miss something then you're not a good lawyer.'* From this comment, I don't feel like the participants knew what it meant to have attention to detail. It is rather an empty statement, not really discussing what they could potentially miss and why that would make you a bad lawyer. They also did not really discuss it during their interview, nor said it was a skill they would have liked on their final board. It is not that this is not an important skill to

have, and other participants did create it, but I feel as though they were right when they said they did not know what the skills meant for actual practice. However, when we look at the skills created during the second Diamond16 we can see some skills coming through which are influenced by experience. For example, commercial awareness is a card which was not even discussed during their first Diamond16. As commercial awareness is not necessarily taught in the SLO, but it is discussed by tutors and mentioned in their materials, as discussed throughout the analysis Chapters, we can see some influence of their experiential education here. Furthermore, we have skills such as legal knowledge being created, but being placed in the bottom trinity. A participant stated that, *'I agree that legal knowledge isn't that important, unless you're doing an academic law degree. But you do need to have it or you won't get a job in the first place.'* It is interesting that these students can now distinguish between what they need to start practice and what is needed later. As the first Diamond16 focused very much on their later career, their second focused on the here and now.

Lastly, the skills they created during the second Diamond16 were generally placed lower on the board than those created during the first Diamond16. This, I think, really highlights the importance of the skills at the top. As has been discussed previously, it is logical that students would move down pre-determined cards to make room for their own created cards. However, it can be argued that the created cards being placed low on the board means the pre-determined cards are too important to move. Thus, the differences between the two Diamond16s for Firm F really show their development and how their time in a LCC has affected their education. If we think back to ELT, Kolb stated:

*'the emphasis is often on direct sense experience and in-context action as the primary source of learning, often down-playing a role for thinking, analysis, and academic knowledge.'*⁶⁸⁷

Thus, ELT is present for this Firm. Learning and in-context action thinking has influenced their perception of practice, something which their undergraduate education did not do. Only through participation in a LCC has their knowledge and skills been advanced and developed.

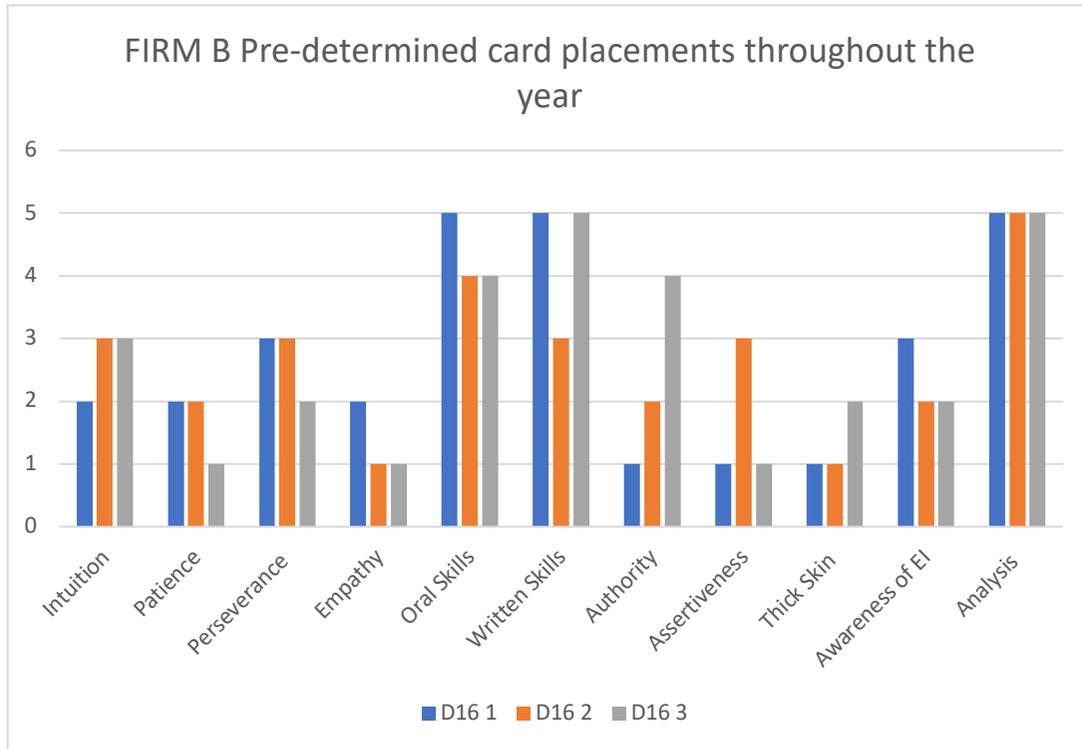
⁶⁸⁷ Kolb, D.A., *Experiential Learning: Experience as the Source of Learning and Development*, (Pearson Education Inc, 2nd edn, 2015), p.xviii

6.3 Tutor influence – A comparison of two Firms and their Tutors

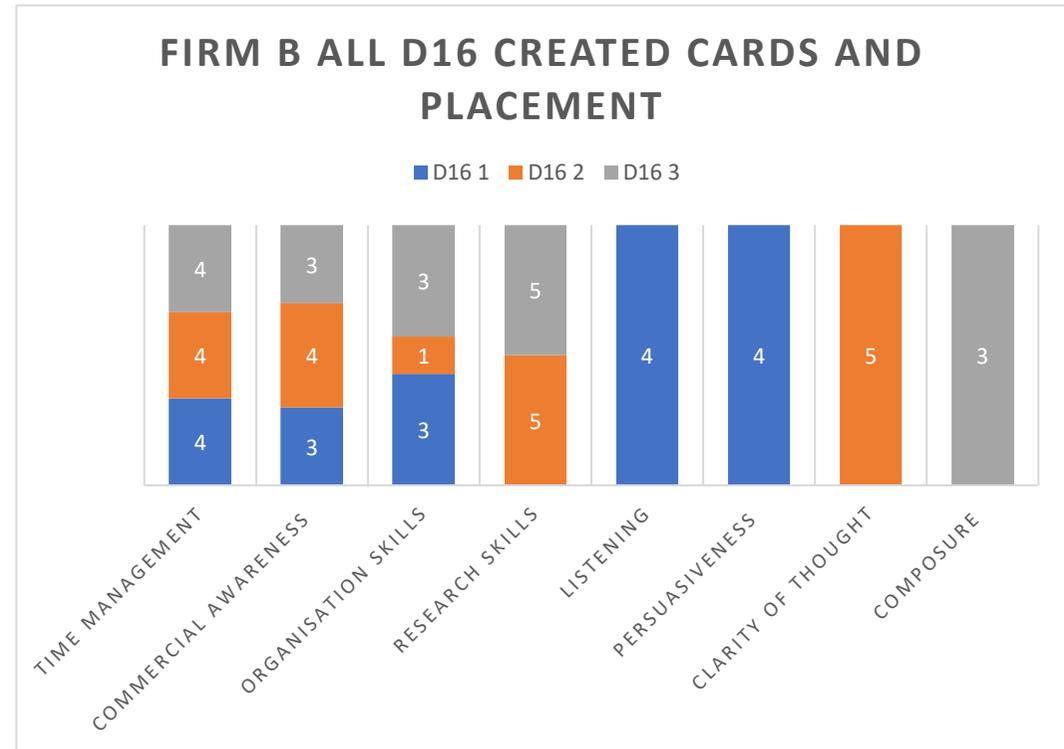
As was indicated in the previous Chapter, there were instances of the student's placements and created cards being very similar to their Tutors. Thus, there is an argument that LCC tutors are more influential to their students than they may realise. As this area of discussion only came to light during the analysis stage, I did not have the opportunity to collect data before the students had contact with their Tutors. However, that is a consideration for future research.

As there is an abundance of data, I have decided to display two Firms and their Tutors results for comparison. Tutor B will be used to display how there is an influence of what the Tutor believes is important and Tutor D to show a difference between the Tutor and their Firm, that may not be as strong as Firm B. Both of these Tutors were in practice as solicitors for a number of years before they began teaching in the clinic. Thus, they are interesting to study as they have real life experience, but also the experience of teaching and overlooking cases in the SLO. For ease of the reader, the Graphs for Firms B and D will be displayed again.

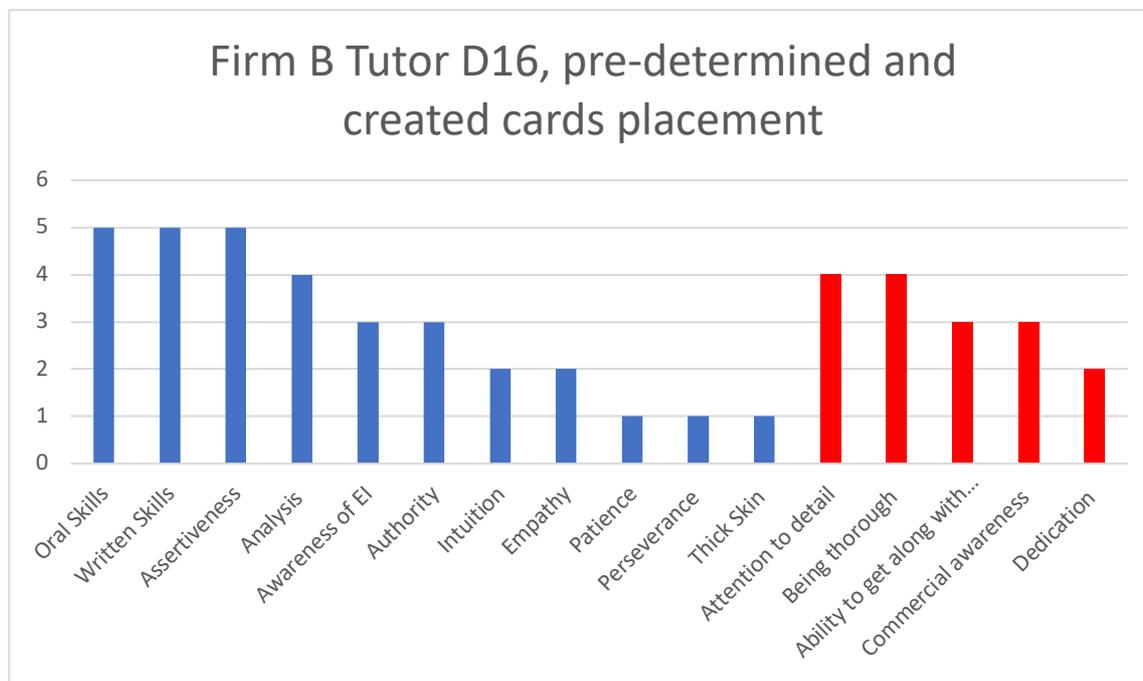
6.3.1 Firm B and Tutor B



Graph 6.11 – Graph displaying the results of the placement of pre-determined cards for all Diamond16s for Firm B



Graph 6.12 – Graph Displaying the Created Cards and their Final Placement for Firm B



Graph 6.13 – Graph displaying the final placement of pre-determined and created Cards for Tutor B

Instantly we can see some similarities between Tutor B and their Firm. Oral and written skills are placed in the top trinity, indicating high importance to legal practice. For the students, oral skills was placed most above the middle line and written skills in the top trinity. This, in itself, may not be an influence, as it was concluded from the previous Chapter that these skills are perceived as inherently important to practice. When asked why oral and written skills had been placed in the top trinity, Tutor B indicated to this inherent importance:

'Yeah, well I think those are the two most important skills, certainly for a criminal lawyer. You're an advocate, first and foremost, but also you have to orally communicate with your client and to all of the people that I've just mentioned. And written's there because I think that's important for any lawyer anyway. You'll be writing opinions, you'll be drafting briefs to clients, you'll be writing letters of advice and all that's communication.'

We can see from this comment that Tutor B believes those skills to be the most important, based on their continuous and varied use for practice. Being a criminal solicitor, Tutor B will have been to trial and advocated for clients many times. Oral skills is not only about advocacy, though, as Tutor B stressed the importance of needing to be able to communicate with your client. However, we see with written skills that this tutor thinks of this skill more generally applying to legal practice, rather than specifically to crime. This is interesting, as the students placed written skills in the top trinity during their last Diamond16 and not oral skills. This could indicate that the students have felt this skill more generally. They will not have had much oral contact with their clients, as most of the cases they worked on are appeal cases. They will not have advocated on behalf of their clients. Most of their work is written, and communication is mostly through letters, with the occasional

prison visit. Therefore, it appears that written skills being seen as more important to practice than oral is because the students have had more interaction with this skill.

Tutor B placed assertiveness in the top trinity. The students most often placed it in the bottom trinity, but it did peak and rose to the middle line during the second Diamond¹⁶. Tutor B placed assertiveness in the top trinity because:

'Well I think of this purely from a criminal lawyer's perspective, because that's where I, you know, come from. But I think you've got to have an element of assertiveness, because you've got to deal with... you deal with magistrates, you deal with district judges, you deal with client's who think they know better than you. You deal with prison officers, you deal with security staff and you've just got to have something about you that just... a level of confidence that just takes you through and helps you deal with all those people.'

Again, we can see the experience of the area of law coming through, with a focus on the importance of assertiveness for a criminal lawyer. The interaction with all of the different people you meet when working in criminal law has affected this perception of importance. Tutor B saw assertiveness as *'a level of confidence,'* to help with interacting with various people. The students will not have had much interaction with all of these people, as they will not have gone to court and their work is mainly paper based appeals. One student commented during the second Diamond¹⁶, *'I think assertiveness should go at the bottom. I don't think it's that important to be assertive.'* It is arguable that a lack of experience here has caused this difference in perception. They do not know they need assertiveness for practice, as they have had more of a chance to develop the "harder" lawyer skills, rather than these personal attributes. This links back to the discussion of the conceptual papers, particularly whether we should be preparing our students for generalised or specialised legal practice. The work of Rankin⁶⁸⁸ and Grimes⁶⁸⁹ highlights the need to teach these generic skills, as they do not change much across legal specialities. This, whilst perhaps not fully preparing them for practice, gives them a good foundation to start with. Tutor B sees the generic skills as written and oral skills, the basics for any speciality of law. The results of Firm B indicate that they are developing the generic skills and appreciating their importance to starting practice. Whilst they may not have had an opportunity to develop their advocacy skills, they have developed interviewing skills and letter writing, amongst other valuable skills.

This links nicely back to the literature, particularly the discussions surrounding whether or not our students can be "practice ready." For example, if we look back to the quantitative studies

⁶⁸⁸ Rankin, S.K., 'The Fully Formed Lawyer: Why Law Schools Should Require Public Service to Better Prepare Students for Private Practice,' 2013, 17 Chapman Law Review 17 pp. 19-20

⁶⁸⁹ Grimes, R., 'Reflections on Clinical Legal Education,' 1995, 29 The Law Teacher 169, pp.171-172

conducted by Sonsteng and Camarotto⁶⁹⁰ and Sandefur and Selbin,⁶⁹¹ whilst they had dissimilar results on whether traditional legal education and CLE were better at preparing students for practice, they both concluded that experience in practice and legal employment were perceived as the most useful for practice. As I stated previously, this is not a surprising result, as nothing substitutes real experience. Further, Condlin argued in the conceptual literature that we cannot create “practice ready” graduates as there are too many skills we need to teach for this to be possible.⁶⁹² Redding affirmed this, as a clinical experience may not provide students with all of the skills they will need to transfer to practice, with limited exposure to cases.⁶⁹³ Thus, unless the students have interacted with the knowledge, skill or attribute they will not understand its relevance for practice. Whilst this may be a disadvantage to their education, with them not being exposed to all elements of clinical practice, we can see how the effect of LCCs and students working with live clients has had on their perceptions of what is needed to practice competently, demonstrating some cause and effect.

We can also see some similarities between the placement of the “softer” skills. For example, thick skin, empathy and patience are all placed in similar parts of the board. Those skills were medium to low on the overall importance score presented in the previous Chapter, and there is some consistency between the Firm and their Tutor here. If we think back to a student stating about patience, *‘You need all of them. But I don’t think I’ve ever been told to be patient.’* Another student replied, *‘Did we not use patience today when [Client] kept going on?’* Thus, there is student basing their perceptions on what they have been told and what their Tutor thinks and another on their actual experience which they have reflected on.

In relation to the created cards for Firm and Tutor B, we see the strongest link between Firms and their Tutors. Firm B was the only MLaw Firm to create commercial awareness as a card (apart from Firm F (LPC)) and did so in every Diamond16 and Tutor B was the only Tutor to create this card. They were also similar in placement, with Firm B mainly placing it on the middle line and Tutor B placing it on the middle line. When discussing Firm B, we saw above that they were heavily influenced by what had been taught to them in the clinic, with comments such as, *‘the amount everybody bangs on about it all the time, it’s got to be relatively important.’* Tutor B has stressed this is important to practice and it has transferred over to their students. This kind of teaching is reassuring, as the legal education reports in Chapter Two state that commercial awareness and

⁶⁹⁰ Sonsteng, J. and Camarotto, D., 'Minnesota Lawyers Evaluate Law Schools, Training and Job Satisfaction,' 2000, 26 William Mitchell Law Review 327

⁶⁹¹ Sandefur, R. and Selbin, J., 'The Clinic Effect,' 2009, 16 Clinical Law Review 57

⁶⁹² Condlin, R.J., "'Practice Ready Graduates": A Millennialist Fantasy,' 2014-2015, 31 Touro Law Review 75, p.80

⁶⁹³ Redding, R.E., 'The Legal Academy Under Erasure,' 2015, 64 Catholic University Law Review 359, p. 398

entrepreneurial skills are desired.⁶⁹⁴ Furthermore, it has been stressed already in this Chapter that the quantitative data is now measuring these sorts of abilities more now than they were pre-1990.

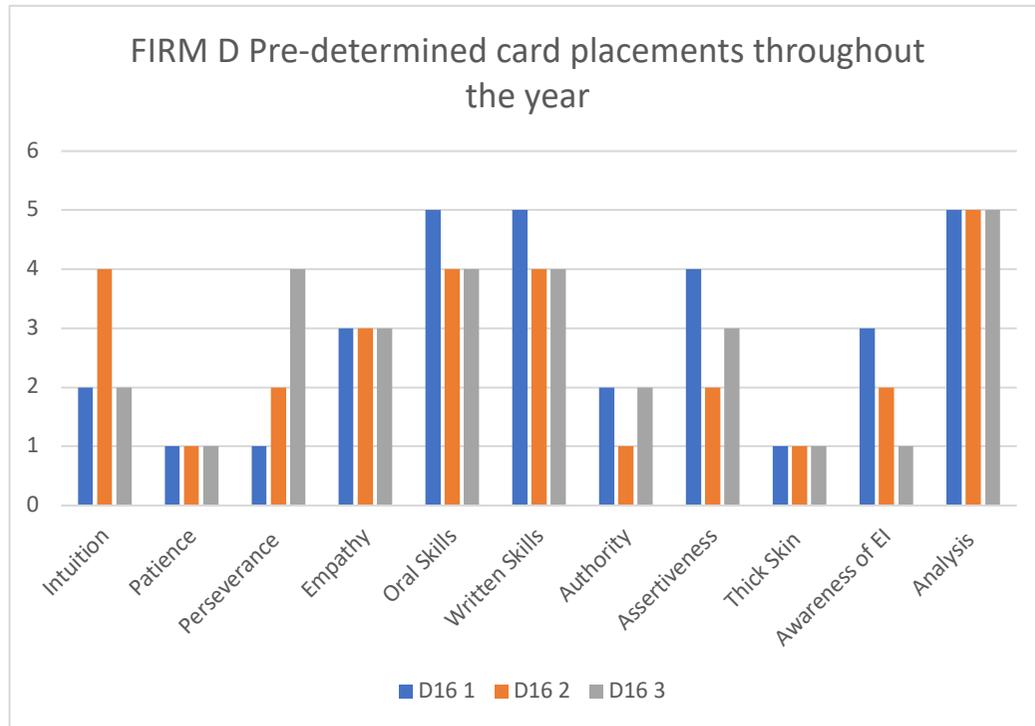
From this data, we can see some Tutor influence on Firm B. This is through the placement of the pre-determined cards and the cards which were created. Where there were not strong links of influence, it is arguable that this was because it was not possible for Tutor B to allow for these experiences. The students have developed the skills they were exposed to, the '*concrete experiences*' emphasised by Kolb in ELT.

⁶⁹⁴ For example, CBA Legal Futures Initiative, *Futures: Transforming the Delivery of Legal Services in Canada* (2014) – Chapter 7 discuss legal education.

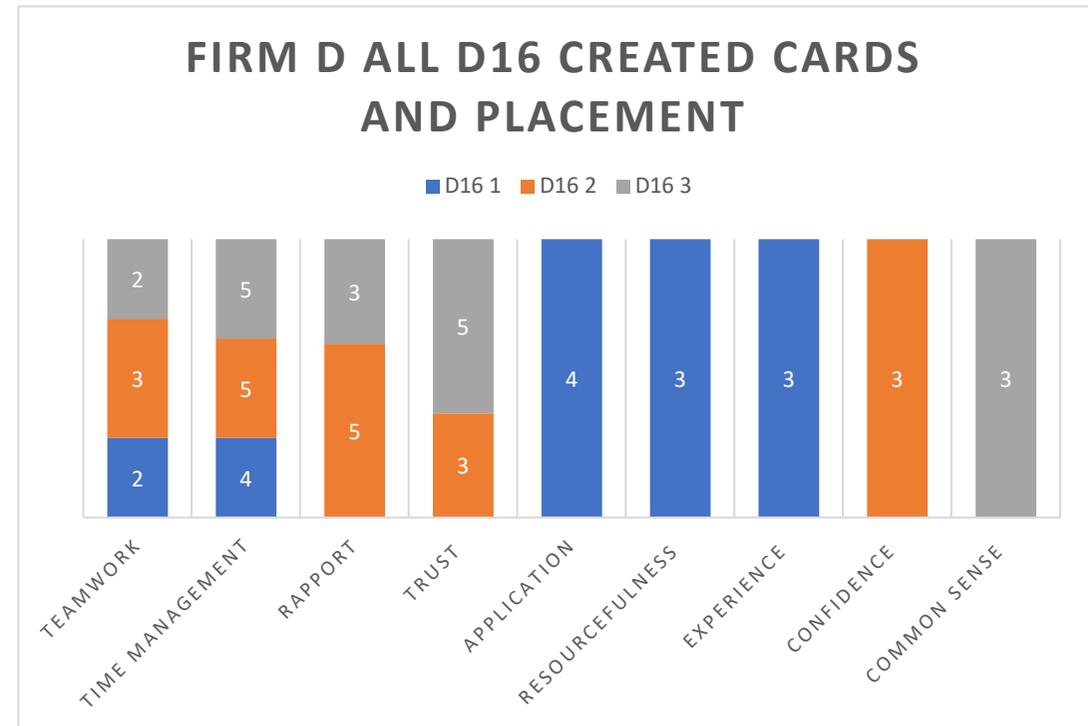
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http://www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20Futures%20PDFS/Futures-Final-eng.pdf Last cited 16.06.16

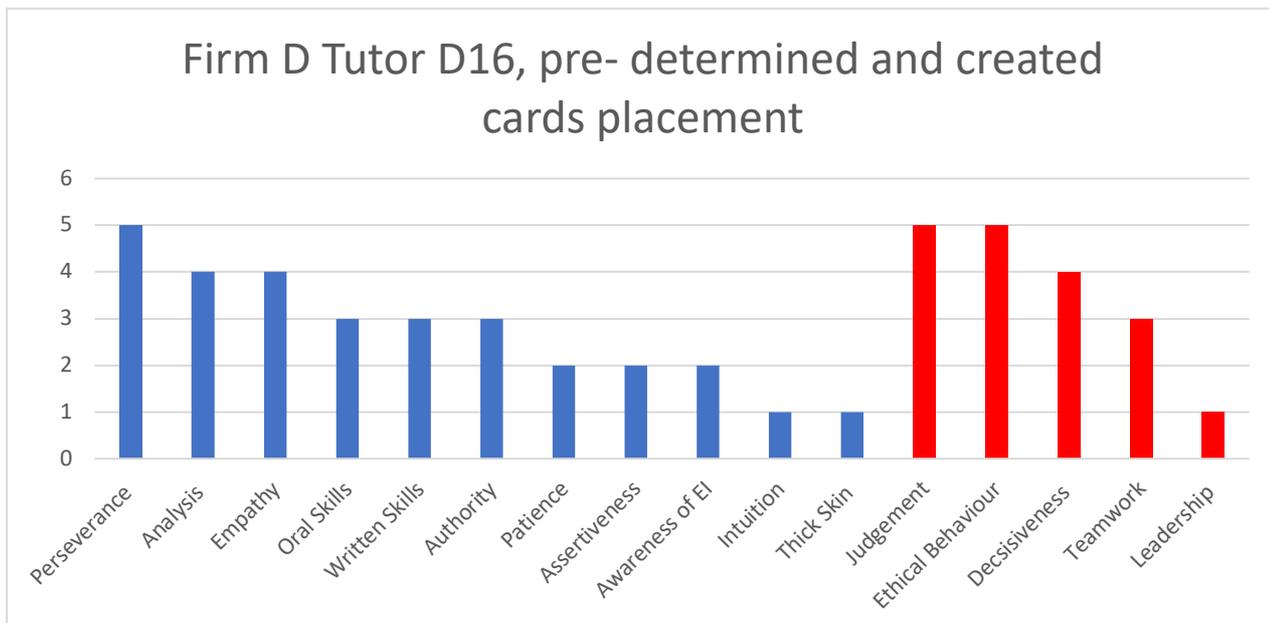
6.3.2 Firm D and Tutor D



Graph 6.14 – Graph displaying the results of the placement of pre-determined cards for all Diamond16s for Firm D



Graph 6.15 – Graph Displaying the Created Cards and their Final Placement for Firm D



Graph 6.16 – Graph displaying the final placement of pre-determined and created Cards for Tutor B

There are some differences between the “hard” skills and their placement between Firm and Tutor D. Tutor D placed oral and written skills on the middle line, whereas Firm D placed them most commonly above the middle line. Similarly, Firm D consistently placed analysis in the top trinity and Tutor D above the middle line. These differences, whilst not the most dramatic, show how some Tutors differed to their Firms. Interesting, oral and written skills did drop slightly in importance over the year for Firm D, and this could be because of influence from their Tutor. Tutor D did say during the Diamond16 that oral and written skills are, ‘both extremely important.’ However, even though thought of as extremely important, they were placed on the middle row. Tutor D’s comment on the final placement of the cards, stating:

‘So, it looks like, I think that the important things are really the kind of personal attributes at the top. As I go down, I’m looking at more technical ability, then I’m looking at some knowledge and some things that I just don’t think are as important because I would have put it here.’

So, whilst the technical skills are so important, it is the attributes which are the most important. The other two cards placed in the top trinity were both created cards, judgement and ethical behaviour. Having such skills deemed high in importance is consistent with the post-1990 literature. Attributes being more prominent at the top of the board is similar to the post-1990 quantitative studies, particularly Hamilton 2013. This study displayed team working and judgement as the two most important skills, present in these results. In this study, leadership was also listed as an attribute, but was placed almost at the bottom of the importance list.⁶⁹⁵ There are some similarities between Hamilton’s study and the results for Tutor D.

⁶⁹⁵ Hamilton, N., 'Law-Firm Competency Models and Student Professional Success: Building on a Foundation of Professional Formation/Professionalism,' 2013, 11 University of St Thomas Law Journal 6

I think the most interesting observation of this data is the placement of perseverance. Tutor D placed perseverance in the top trinity, in the top most place. The reason for this was:

'I view perseverance as very important from my experience as a practising lawyer. I think, if you don't persevere you're unlikely to be successful within the law firm and you're also unlikely to be successful for you clients. So, that's incredibly importance.'

This is a card which Firm D placed in the bottom trinity during the first Diamond16. It gradually rose and then peaked during the final Diamond16, placed above the middle line. As Tutor D is speaking from experience of actual practice, this peak for Firm D is arguable as an effect from experience. There isn't anything from the qualitative data during the Diamond16 to suggest this, but during their interview a participant stated the SLO had a good effect because, *'Maybe like self-motivation. I wouldn't get up for lectures and stuff like that as much as I have been for the SLO. You kind of have a drive to actually go in and do it.'* This, whilst not discussing perseverance itself, contains elements of this attribute. Without the SLO experience, this work ethic may not have been established to the same extent.

There are some other similarities between the Firms and Tutor D when we look at the "softer" pre-determined cards. For example, thick skin was placed on the bottom trinity for all of the Diamond16s. Comments offered by Tutor D were very similar to the of the students, stating that it was not important, but went further to state that perseverance had an element of having a thick skin already, so a thick skin by itself was dubious. Patience and intuition were also placed quite low.

Most of the differences between Firm and Tutor D stem from the created cards. The only card in common is teamwork, placed continuously in the same area of the board. We saw from the development discussion of Firm D above that in the first Diamond16 that they were uncertain of the importance of teamwork, and whether it was something they would encounter often. However, it was continuously created, indicating that it was important. Tutor D, when creating teamwork, stated:

'Sometimes lawyers don't think of themselves as team workers, but in most situations, even if I'm on the actual legal issues team working, you do need to be able to work with other people in the firm and you do have to be able to cooperate with others around the commercial realities of the firm, even if you're not on cases with other people. So, team work's really important.'

The comments made by the students is an example of not thinking of lawyers as team workers. This, for Tutor D, is something which has come from experience during long-term practice. Firm D

continuously creating teamwork as a card indicates some importance of this skill, and their Tutor emphasising it may have had an impact. As stated above, we can see teamwork present in the recent *Legal Education and Training Review*⁶⁹⁶ and in all but one of the post-1990 quantitative studies, placed as the most important in Hamilton's 2013 study.⁶⁹⁷

The other created cards are quite different. Whilst some of the cards are similar, for example there are elements of confidence and resourcefulness, which the student's created, and decisiveness created by Tutor D, they are not the same. The discussion surrounding Tutor D's Diamond16 showed that the created cards were very much based around their experience in practice. For example, leadership was not created by the students, as it is not something which they have encountered yet, nor may they for a while in practice. Tutor D highlight this, stating:

'I think leadership is also important. Not the first, but if you're going to be successful as a lawyer, you've got to be able to lead others sometimes as well as team work with others. So, I think that's important.'

Leadership builds upon team working skills, but is not an immediate experience or opportunity for students. Thus, teamwork is necessary to develop at the start of practice, and leadership skills will follow when they are needed. This comment reaffirms that there is no substitute for real life experience, as concluded by studies by Sandefur and Selbin⁶⁹⁸ and Sonsteng and Camarotto.⁶⁹⁹ Reaching the stage of needing to demonstrate leadership skills is not something which we should focus on with our students, as they will need team working skills as soon as they start practice, and will continuously build upon it.

⁶⁹⁶ Webb, J, et al., *Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales (The Legal Education and Training Review (LETR))*, (2013) p.136. Available at: <http://letr.org.uk/the-report/index.html> Last cited 04.08.17

⁶⁹⁷ Hamilton, N., 'Law-Firm Competency Models and Student Professional Success: Building on a Foundation of Professional Formation/Professionalism,' 2013, 11 University of St Thomas Law Journal 6

⁶⁹⁸ Sandefur, R. and Selbin, J., 'The Clinic Effect,' 2009, 16 Clinical Law Review 57

⁶⁹⁹ Sonsteng, J. and Camarotto, D., 'Minnesota Lawyers Evaluate Law Schools, Training and Job Satisfaction,' 2000, 26 William Mitchell Law Review 32

6.4 Interviews and reflection on LCCs

It was highlighted in Chapter Four that the student interviews took place when the MLaw students had finished their SLO experience and served two purposes: to validate the Diamond16 data and to collect data on their LCC experience. The EI Tutor interviews took place whilst on fieldwork at the EIs and aimed to collect data on their experiences of teaching in a LCC and which skills they think are important for their students to develop. All of the interviews were thematically analysed, with codes generated and then grouped into broader themes for discussion. The codes generated and how they were grouped together as themes are displayed on the diagrams below:

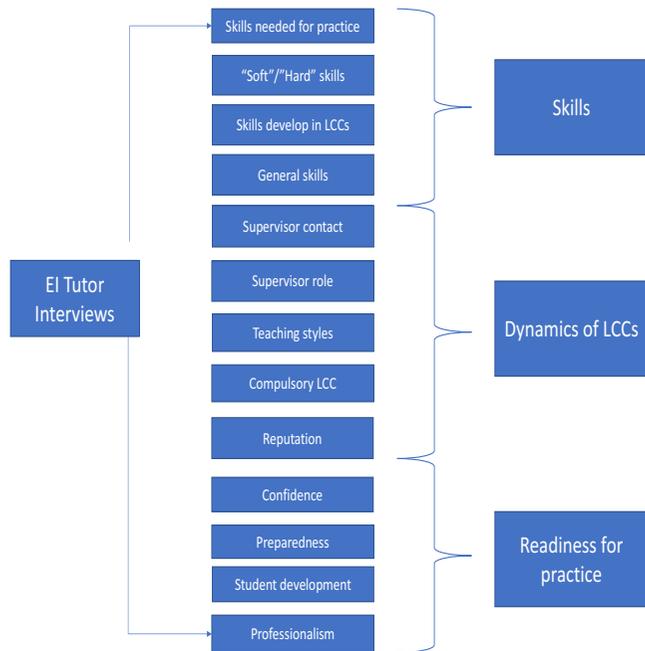


Figure 6.2 - Displaying the codes generated for EI Tutors interviews and how they were grouped into themes

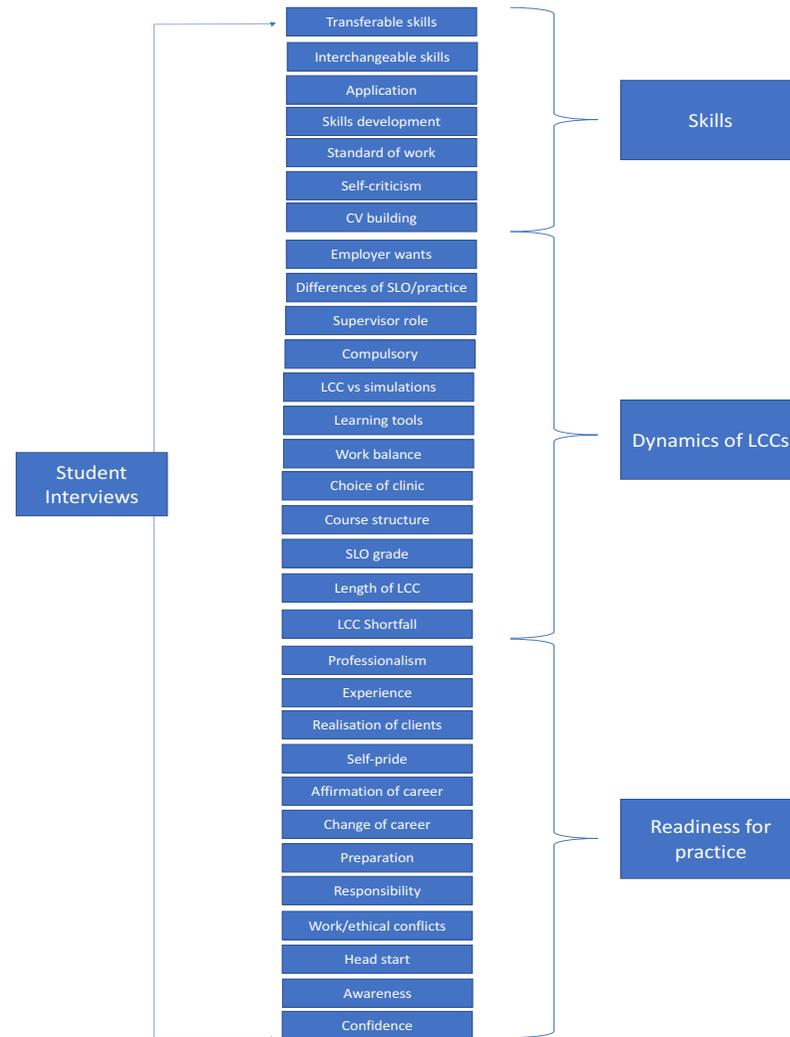


Figure 6.3 - Displaying the codes generated for student interviews and how they were grouped into themes

These diagrams show that there were more codes generated from the student interviews than the EI Tutor interviews. This is easily explained, as there were more participants and more interviews conducted for the student groups than there were for the EI Tutors. However, the codes generated from both groups fit into the same themes, shown on the diagrams. Not all of the codes will be discussed during each theme, as some do not relate completely to the research aims or answer the research questions, particularly in the dynamics of LCCs theme. Each of these themes will be discussed in turn and the qualitative data from the student and EI Tutor interviews will be discussed together.

6.4.1 Skills

The term skills here is used to inclusively include knowledge and attributes also. Skills as a theme is not surprising, as this thesis is focusing on knowledge, skills and attributes in LCCs. However, there were some codes generated which were not expected. There were some differences between what the EI Tutors discussed and the students explored. Looking at the codes, it seemed as though the EI Tutors focused more on what skills they think are necessary to teach in a LCC, whilst the students focused more on their own development in a LCC.

The EI Tutors highlighted that they wanted their students to graduate with a mixture of “hard” and “soft” skills. Whilst they wanted their students to be able to apply the law, have good written skills and problem-solving abilities, they also wanted them to develop strong communication skills. Particularly, empathy was emphasised in both EI Tutor interviews as an important skill to develop in a LCC. Being able to talk to a client, ‘*one human being to another human being,*’ and understand the client is something which they thought very important for their students to leave university with. It is interesting that the EI Tutors focused on empathy as a skill necessary to develop with their students, as this is something which has been explored in previous qualitative studies. Boys *et al* found that 27.3% of their participants stated that they would like more instruction on human behaviour and interaction.⁷⁰⁰ They wanted more training in the “softer” skills, to be able to control a client during interview, not something traditionally a focus in law schools, evident by the evolution of the reports.⁷⁰¹ However, the pre-1990 quantitative studies did measure for understanding human behaviour, and found that they were scored the highest in importance in the

⁷⁰⁰ Boys, S.K. *et al*, 'Social Work Skills Can Fill the gaps in Legal Education: Law Student Opinions of their Preparation for Practice with Clients,' 2015, 3 UK Law Student Review 87 – accessed via <http://www.uklsa.co.uk/wp-content/uploads/2015/01/UKLSR-v3i1-A7.pdf> Last cited 23.05.16, p.96

⁷⁰¹ For example, the Lord Chancellor’s Advisory Committee on Legal Education and Conduct, *First Report on Legal Education and Training*, (1996), does not highlight the need for empathy or any other “softer skills.”

attributes category.⁷⁰² Thus, with the evidence from this study, we see that this appreciation of how important the “softer” skills are present in legal education, and a focus on trying to develop them with our students.

The students were very eager to discuss their skill development in the SLO and how they felt they had developed personally. They talked about what they had been scared of before the SLO and how the LCC experience has helped them realise it's not as intimidating as they initially thought. A student from Firm A thought the SLO helps you, *'prepare for the unprepared.'* No one knows exactly what they will be facing in practice, but at least they will know how to run a case and interact with clients, etc. Another member of this Firm stated that researching the law whilst in the SLO has been beneficial, as they were worried they would be *'wrong'* in practice. However, working with their supervisors on an unfamiliar area of law they, *'eventually trust yeah I am right and I know I'm right. Rather than being like, ah I'm just a trainee, type thing.'* By conducting research for an actual case, they have developed their skills and feel confident in their abilities. Another participant from Firm B discussed research in relation to:

'...knowing how to get down to the actual research... sifting through all the other crap that you don't really need to know or think about and going, right this is what I need to find out and going and doing it. Whereas, I think at the beginning of the year we all took a lot longer to do stuff like that, because we didn't really know what was going on.'

This is evidence of skills development. Their worries they had at the start of the SLO have been eased by the LCC process. They trust in their abilities now and know that their skills have developed appropriately for when they start practice. A participant in Firm F felt the SLO was a place to iron out any issues and get the basic things out the way. For example, they said, *'You know, those first interviews that we did, they were okay but you wouldn't want to start you training contract doing that kind of stuff in front of your employer.'* Here, their skills had developed in a way that they felt more confident to display them to future employers. They will most likely still make some mistakes, as skills development is constant throughout a career, but they have a foundation on which to build. This observation correlates to the principles of experiential learning, set out in Chapter Three, particularly that *'all learning is re-learning'* and is a *'holistic process of adaptation.'*⁷⁰³ In the work place they will be confronted with new challenges and will have to adapt. Providing them with

⁷⁰² Benthall-Nietzel, D., 'An Empirical Investigation of the Relationship Between Lawyering Skills and Legal Education,' 1975, 63 Kentucky Law Journal 373 and Mudd, J.O. and La Trielle, J.W., 'Professional Competence: A study of new lawyers,' 1988, 91 Michigan Law Review 34

⁷⁰³ Kolb, A.Y. and Kolb, D.A. 'Experiential Learning Theory: A Dynamic Holistic Approach to Management Learning, Education and Development' 2001, pp. 43-44. Accessed via https://www.researchgate.net/profile/David_Kolb/publication/267974468_Experiential_Learning_Theory_A_Dynamic_Holistic_Approach_to_Management_Learning_Education_and_Development/links/5559122408ae6fd2d826eb12.pdf Last cited 18.10.16

experiential education opportunities develops this kind of learning, which they will take with them into practice and use throughout their career. The comparison between Firm and Tutor B above also reflect this, as Tutor B expressed the need to develop some of the skills later in practice, when you progress through a law firm.

Their development was also expressed through them becoming more self-critical about their work and appreciating the standard to which they had to work. Firm A discussed how they felt when they had first sent work to their supervisor, that they thought was correct and it came back 'slated' and the supervisor had changed it. They thought the SLO, 'makes you more self-critical.' They reflected that, 'in the first couple of months you send first drafts without even really looking over it. And then, by the end of it, you actually realise that you need to look over your work and make sure it is good before sending.' Without the SLO experience, they may not have had this realisation until they went into practice. They understand now that they have to try and get it right first time.

Their Tutors have helped them realise that they need to be more thorough when it comes to their research. For example, during the interview with Firm B the following comment was made:

'I think I've learnt to be thorough. I think I've always, kind of, it sounds really bad, but with my coursework and stuff I've always tried to get by on the bare minimum that I can do to get a 2:1 or whatever, you know. Whereas, this year (Tutor B) has been really like, right, you know this needs to be more in depth and more detailed and you need to find out all the information in your research.'

This is a clear link between LCCs and them providing a kind of learning that traditional education can't. Students, when it comes to their coursework and exams, sometimes work to get the grade they need rather than pushing themselves. However, the SLO does not allow for this, and they have had to adapt to be able to produce the standard of work expected by their Tutor and needed by their client. This learning is less to do with their academic ability and more relating to their professional and personal development. This seems to be moving away from instrumentalism, with learning not focused around assessments and outcomes and more about the right result for the client.

They realised quite quickly that the standard of work needed to be successful during the SLO was higher than they had previously experienced. For example, a participant in Firm B thought that they actually worked to a higher standard in the SLO than some practising solicitors. This was because, 'all our interviews are scrutinised and you have to do everything properly.' Students in the SLO have to ensure that they make the client understand everything and feel comfortable around them. Thus, the marking element can help produce a high standard of working. Another participant in this

Firm said that because of the SLO, *'now we've got a better starting point for knowing how well things need to be done and what standard they need to be done to.'* This development and acknowledgement is not likely to have been acquired during their academic education. This work builds upon previous studies, such as that of Uphoff *et al*, who found that students felt that legal education was too far detached from practice and those who had participated in LCCs generally felt more prepared for practice and understood its demands.⁷⁰⁴

However, it is also important to acknowledge that this standard of work is met because they are marked. Looking at the comment above by a participant, that they do more than a normal solicitor would because they are being scrutinised may not transition into practice. For example, a participant from Firm D stated that, *'sometimes we do stuff because (Tutor D) will like it. Whereas, we wouldn't do it if it didn't matter.'* We have evidence here of students working to a certain standard because their supervisor calls for it and their SLO grade depends on it. The little details Tutors like, such as stating what the next steps of the case are, may not be continued into their career. They know, *'they need to do that,'* and it is in their heads, but not something which they would actively write in their research or other work. The grade has taken some of the reality out of the case, and when they get into practice their habits will change. This moves them closer to instrumentalism, with more focus on goals and assessment. This was not touched upon by the EI Tutors during their interview, but is something which may benefit from further research for practical implementations of legal education.

6.4.2 Dynamics of LCCs

The dynamics of LCCs theme relates to their operation and structure. This includes the requirements of the course and the supervisor's role whilst they are working with students.

Discussed above was the importance of empathy and communication skills when working with a live client, expressed by the EI Tutors. The supervisor's role in a LCC was particularly interesting during these discussions. The Tutors who are in the LCC all of the time, observing the students' interviews and their interactions with clients believed that the "softer" skills could be developed with students, particularly immediately after their client interviews. Thus, their role was much more involved with the students and they felt like they could, *'handle the problem or issue right away.'* The supervisors who were not present in the LCC often, appeared to work more with the students on the "harder" lawyer skills, checking their research and opinions. Thus, they either were not sure

⁷⁰⁴ Uphoff, R.J. *et al.*, 'Preparing the New Law Graduate to Practice Law: A View from the Trenches,' 1997, 65 University of Cincinnati Law Review 381, p. 403

if the “softer” skills could be taught, or did not have a role in teaching the skills. A EI Tutor who did not have constant direct contact with the students stated:

‘I think (Tutor in LCC) has a unique position, that she can help develop the “softer” skills more than we do as supervisors, because we don’t see them in those daily situations in their contact with the client and what we see is their analysis and their reflection on what happened and stuff.’

This is consistent with the other EI Tutor who did not have a presence in the LCC:

‘I have no possibility to observe the student from very beginning to the very end. So I... well, my job is to read an email from a student, who tells me what is the case about and he shows me, the well, the proposition of the opinion. So, I have no influence on the “softer” skills probably... So, I have no possibility to observe how they work with the clients. So, this is outside of me.’

Thus, there is an element of proximity when teaching the “softer” skills needed for practice. The “harder” skills can be developed from a distance, with mainly written feedback over email. However, in order to develop these “softer” skills there needs to be an observation of the student’s interaction with their client and immediate feedback and discussion. Those in the LCC consistently can see when the student is, *‘frustrated... emotional or the client was tough,’* or, *‘they were nasty to clients.’* This proximity is dependent on what skills the students develop. Not surprisingly, to develop the human aspects of being a lawyer, there needs to be a human connection between the Tutor and student.

The SLO students did not discuss this in the same way as the EI Tutors, which was to be expected, as they most likely will not think about how they are taught legal skills. Some participants did discuss the presence of their supervisor and what kind of supervision they preferred. For example, Firm C stated that their supervisor had gave them, *‘quite a long rope to run on, and sometimes she’ll be like, no I wouldn’t go in that direction.’* Where this Tutor felt like the students could get on with their case and didn’t need too much guidance, she let them. However, where needed she would give them direction on their work. These students seemed to like this, as it allowed them to gain some control and authority over their case, but still had their supervisor present if needed. Students in Firm D said they liked their Tutor because they hadn’t, *‘babysat [us] as much.’* They were allowed to ring a client without a telephone plan of the call and them checking everything that will be said. Another student commented that it had helped that Tutor D, *‘was that little bit more laid back and confident that we’re able to do something, instead of let’s ring a client, without having to write it down, step-by-step.’* So, there appears to be a need to balance the supervisor role in a LCC. There needs to be enough presence to advice the students on their “softer” skills, as well as the “harder” skills. However, the students like having some control over their case and the ability to do the

simpler tasks without overbearing supervision. One participant described using their Tutor as a *'tool, rather than just checking my work,'* and another stated by developing their work to a higher standard their Tutor will gain, *'trust that you can do something correctly.'* They need their supervisor, but they want less of a teaching role and more of a mentor with a trusting relationship.

The students also divulged into their thoughts of the SLO course structure and how they found participating in a LCC for a full academic year. A participant in Firm D stated that they wished it could have been a half-module, because even though, *'it's a really valuable experience... it just takes up so much time that when you get to this point you get a bit sick of it and you start to sort of... you start to think, has it been worth it?'* Thus, whilst they appreciate the experience, they found it too long. One of the reasons for this was balancing it with other degree work, and if it had finished earlier they could have, *'focus[ed] on normally what people would do in their final year. Not the overall commitment of the law office.'* Due to their live clients, the students felt like the commitment of the SLO was too much at the end of the course, when they also needed to focus on their dissertations and any exams or coursework. Managing their time effectively was an important aspect of the course, and participants said how they felt the SLO had taught them how to manage work and prioritise. Some stated that if it was an option, they wouldn't have chosen it and some said they definitely would have.

If we compare this with the EI Tutor interviews, both EI Tutor groups said that they wished LCCs were compulsory for their students, but only for those on the full-time degree. A Poland Tutor stated that they would have it as a six-model system, ranging from live client work to mediation clinics to simulations. So, CLE generally would be compulsory, but not necessarily working with a live client, and giving students to autonomy to choose. The Tutors from Czech Republic stated that they wished they could make it compulsory and have that requirement for the degree, but they, *'still struggle with loads of other classes they have, along with the clinic.'* It is interesting that the worries the EI tutor has with students managing their time and work along with other degree requirements, is something which the SLO students flagged in their interviews. This seems to be unavoidable when students participate in a LCC, and this pressure increases for both Tutors and students when it is compulsory. However, thinking back to the question which arose during the literature review, of whether clinic courses are more widely recognised, we can see that this is so. Those who use LCCs as a method of teaching wish they could take this pedagogy further and offer it to all, or most, of their students, recognising the benefits it provides for graduates.

The last discussion of this theme surrounds the LCC vs simulation debate, which was discussed in detail in Chapter Two. When I asked students if they thought they could have developed these skills elsewhere on the course, they did refer back to simulation work they had done the year before.

Firm F highlighted that simulated work was, *'too far away from reality,'* and referred to actors playing their clients as, *'sort of silly games.'* This was also touched upon by one of the Poland Tutors, who believed that LCCs were the best place the learn skills, as, *'when you have to face the client, talk to them, then solve the real case that will influence somebody, this is something completely else than doing a case study among the students with the teacher.'* There is a similarity here between the students and this EI Tutor, that the experience of being face to face with a real client cannot be replaced by class simulations, as highlighted by Boersig *et al* in the literature.⁷⁰⁵

A participant in Firm A said they didn't think their interview skills or thick skin would have been developed if it wasn't for the SLO. Firm C asserted that these practical skills would have been developed, but not, *'to the extent that they are now,'* because with an actor, *'you know they're holding back information, or else they're really happy to give you everything, and things like that.'* Someone also stated that they knew a standardised client wasn't, *'going to do anything terrifying at all, flag anything up,'* again, detracting away from the reality of the situation. These comments help to dispute some of the claims made of simulations in Chapter Two, such as Binder⁷⁰⁶ asserting that simulations are the best method to teach skills, as they repeat the same skills continuously. Here, we find students stating that the lack of reality decreases the learning experience and skills development. We also found comments from Redding⁷⁰⁷ and Condlin⁷⁰⁸ that we can't possibly teach students all the skills they will need for practice and that the perception of "practice ready" is not realistic. I believe in some ways the students were consistent with this motion. Not at any point did a student say that they felt "practice ready," but rather more confident to go onto practice. The SLO had given them a foundation to further develop when they start practice, as a participant in Firm B stated, *'you can have the skills, but you can only really improve it a lot once you start doing it in practice.'* This will be discussed in more detail in the next theme.

They were still aware, however, that they were being marked and this, in a way, took some of the reality out of the SLO. For example, a participant in Firm D stated, *'It still does feel quite artificial, because even though obviously it is real clients you know that you're doing it for the sake of your degree.'* So, they appreciate the real-life experience, but the fact they are getting marked and it goes towards their degree, takes some of the reality from the situation.

⁷⁰⁵ Boersig, J., Marshall J and Seaton G, 'Teaching Law and Legal Practice in a Live Client Clinic,' 2002, 6 Newcastle Law Review 51, p.58

⁷⁰⁶ Binder, D.A. and Berman, P.B., 'Taking Lawyering Skills Training Seriously,' 2003, 10 Clinical Law Review 301, p.307

⁷⁰⁷ Redding, R.E., 'The Legal Academy Under Erasure,' 2015, 64 Catholic University Law Review 359, p. 398

⁷⁰⁸ Condlin, R.J., "'Practice Ready Graduates": A Millennialist Fantasy,' 2014-2015, 31 Touro Law Review, 75, p.80

6.4.3 Readiness for practice

As well as their skills and professional development, the interviews with both students and EI Tutors covered this feeling of being ready to move onto practice. There were many times the students stated how they felt more confident and less frightened to go onto practice. For example, a participant in Firm D said:

'... it gives you that foundation, doesn't it? And a little bit more confidence. I feel like if I go into something now, I'm going to feel far more confident and be able to say, well I've done something similar to this before so I'm quite happy to just go and have a go at it and let you see it, instead of perhaps being supervised more than you necessarily need to be.'

The SLO experience has given them the confidence to throw themselves into work and try to do their work more independently. It also helped them realise that, *'it's not rocket science, you just like talk to someone who has a problem, and you research and all that. So, there's no magic to it,'* as a participant from Firm F stated. Participants also expressed that they were able to see what could go wrong in a client interview, so *'it's not going to be a shock when that happens.'* There were also comments of feeling more *'comfortable'* when they go into a law office and an appreciation of being able to *'make mistakes and learn from it,'* in the SLO, rather than leaving these mistakes to practice. This need to make mistakes was also highlighted by the Czech Republic Tutors, as they thought without the LCC experience their students would struggle when they first started practice. The LCC is a safe place to make mistakes as they, *'are here to help them, or just to show them maybe the way and spare them with the troubles of finding, you know, the hard way.'* This educational support helps develop confidence in the students, by learning in a safe environment.

There was also a strong similarity between a comment made by a Poland Tutor and a participant made in Firm D. When the students were discussing what they had learnt during their time in the SLO they said, *'I never used to like ringing people on the phone that I didn't know and stuff like that. I hated doing stuff like that. But whereas now, I don't think twice because I have to do it.'* We can see how the SLO has made a slight change in confidence in this student, going from something they hated doing to doing it automatically. This fear of picking up the phone was highlighted by the Poland EU Tutor, who also trains new lawyers in a law firm, and had asked a student:

'...please tell me what is the most stressful for you here, in my office. And she said, the most stressful thing is picking up the phone. And I said, why, why, that was so strange, because for me picking up a phone and saying hello, what can I do for you, can I put you through with the extension number or something. She said that she's afraid of this reaction or, how to say... she was afraid of talking to people and she was afraid of being somehow visible.'

Intriguingly, Actual Law Firm A almost created a card, *'telephone skills,'* as a participant felt that this

was an important skill out of the remit of oral skills. Even though it was not created, its consideration by lawyers shows how they wish it was developed in trainees for when they start practising. There seems to be a consistency across the institutions as to what the students worry about when they first start interacting with clients. This fear of somehow making yourself 'visible' is something which disappears the more you engage with clients. The student in Firm D may have taken this fear or hatred into practice with them, had it not been dealt with in the SLO.

Students also used the term 'head start' consistently, when discussing how they felt about going onto practice. We discussed what they say to potential employers about the SLO, and one participant in Firm F stated:

'I think it's pretty much doing all the work that a solicitor does. So, you've got your own caseload, you've got to meet with clients, you've got to write letters, you actually do the research. So, it's pretty much doing what a qualified solicitor does.'

There is evidence that students feel more prepared for practice, because they have done the work already. It may not be to the same standard, and with slightly less responsibility than an actual solicitor, but they have run a case. This is reflected in a comment made by a participant in Firm C, who said, 'you're not saying you know everything, but you're saying that you're better, you know more than other potential candidates for the same job.' Another member of Firm F stated that the SLO gave them, 'a bit of a head start on the rest of our course mates.' So, it is not about completely preparing them for practice, but rather giving them the ability to hit the ground running and start practice with confidence in their abilities. For example, a member of Firm D described the SLO as more of a 'stepping stone,' to practice. Thus, we know we aren't creating "practice ready" graduates as debated in the literature, but we are providing a bridge from academia to practice by them learning in a LCC. If we think back to some of the questions posed in the literature review, specifically section 2.10.3, we are provided with some answers here. I asked whether we have developed LCC pedagogy so that it is helpful for students and whether graduates are now seeing the benefits. In light of the comments above, there is evidence that students are acknowledging the benefits of LCCs, for their education and starting their careers, finding this pedagogy helpful to their learning and development.

There was also an element of LCCs making students aware of what the profession is like and whether they really want to pursue it as a career, in both the student and EI Tutor interviews. Some of the students I interviewed no longer wanted to go into practice. For example, a participant in Firm C revealed that they no longer wanted to be a lawyer. A Firm A participant said they had wanted to go onto practice until they had failed a third year exam, and the SLO had not managed to change their feelings on this. However, a Firm C participant stated that the previous years on the

degree had made them question wanting to be a lawyer, but the SLO had, *'got [them] on the fence actually, because it was sort of everything I expected and more.'* So, we can see some conflicting views coming across. Either the SLO had affirmed their career choice, knowing what is to be expected in practice, and for others it had helped them decide that they did not want to go further with the law. One student said:

'I want to be certain as to whether I want to venture into the legal profession as a career. It's kind of your last chance to basically decide whether, or find out whether, you and the legal profession are compatible with each other.'

This element of affirmation of career choice was discussed during the interview with the Czech Republic Tutors. They spoke of wishing some students would take the LCC option, so as to further develop their skills, even if they do not want to go into practice:

'I would like for every student to have the, just for example, one client, I don't mind, just to come here maybe for a month, not even like the whole thing, big thing. But just see it and try it. And maybe they will realise this is not for me. But even that realisation is very important.'

We can see that the Tutor's also wish for students to have a LCC experience to help them decide what they will do after completing their degree. These Tutors were of the view that even if all a student learnt in the LCC was that they no longer wanted to pursue practice, then that was a valuable learning experience in itself. Like the student said from Firm C, it is their last chance to decide what they actually want to do after their degree. This is similar to the findings in the study by Taylor, who concluded that LCCs were *'invaluable learning opportunities'*⁷⁰⁹ and that they helped the students determine which are of practice they wanted to go into. We have consistent findings here.

6.5 Conclusion

Tracking the develop of students during their time in the SLO, and conducting interviews with them and EI Tutors has enabled me to make various conclusions from the data. In terms of development, we can see:

- links between participating in a LCC and skills development, from the quantitative data of the MLaw students, using the qualitative to explain any changes in placement
- a particular change in opinion of the skills from the created cards. Skills which they felt

⁷⁰⁹ Taylor, B.F., 'Through the Looking Glass: Perceptions on the Law School Learning Experience,' 2015, 16 Loyola Law Review, 274, p.299

important at the start of the year changed in importance once they had experienced working with a live client. Worries that they had at the start were dealt with, and their priorities of what they need to practice changed. Furthermore, we can see some cards created consistently throughout the year, meaning that their experience has affirmed their earlier opinions or had not challenged them

- that students draw off their experience when discussing importance, and understand how they have developed. This kind of learning is the essence of Kolb's ELT
- some links between what a Tutor believes is important to practice and what their students believe. This influence is present in the pre-determined cards and the created cards.

The interviews provided more depth to this research, providing evidence that:

- generally, students felt more prepared and confident to go onto practice after their time in the SLO, knowing what standard is expected of them in the workplace. They felt that they had a '*head start*' over other graduates who had not had a LCC experience
- there are common goals between how EI Tutors want their students to be able to start practice and how the students felt after participating in a LCC
- the "soft" skills can be taught in conjunction with the "harder" skills. However, for them to be adequately developed, Tutors need to be in close proximity to their students, to observe and deal with any issues when they arise, e.g. becoming impatient with a client
- the dynamic of a LCC depends on how students feel about their experience and development. Some felt that the length of the LCC course was too long and others felt it could be optional.

These results are consistent with the literature, in terms of how far LCCs can go to prepare our students to practise and what is considered important. However, the tracking of development displays originality, not present in previous studies. Previous studies evaluated a student's thoughts and feelings at the conclusion of the education, not providing any empirical data for how they felt at the start of the LCC. The research aims have been met for this thesis, exploring which knowledge skills and attributes are necessary to start day one training competently, and whether they can be provided through the use of LCCs. Whilst the notion that there is no exception for real-life

experience is still present, there is strong evidence that participating in a LCC does develop knowledge, skills and attributes and gives students a foundation to build on when they start practice.

The next Chapter concludes the findings of this research in more detail, recommending implications for educators, policy makers and practitioners. Additionally, further areas of research are emphasised.

Chapter Seven: Conclusion

7.1 Introduction

This Chapter will draw conclusions on the research presented in this thesis, highlighting the findings, issues and recommendations for moving forward. It will review the extent to which I met my research aims and answered my research question. As stated in the Introduction Chapter, the aim of this study was to provide evidence of which knowledge, skills and attributes are considered important to legal practice and whether they can be developed through education in a live client clinic (LCC). The following research question was answered:

What knowledge, skills and attributes are perceived as important for a lawyer to start day one training competently, are they provided through clinical legal education, specifically live client clinics, and how are they understood in different European contexts?

The research aims which stemmed from this research question, identified from the gaps in the literature and knowledge, were:

A1 To explore with 4th year law students at Northumbria University who participate in the SLO which knowledge, skills and attributes they think are necessary for practice, and whether these views are affected by participating in a LCC

A2 To compare these findings with that of SLO tutors and practising lawyers and what they believe is important to practice

A3 To compare these findings with other LCCs in the European Institutions (EIs) and whether any, or all, of the skills perceived necessary for practice are consistently identified across the various LCCs chosen for comparison

A4 To explore with clinicians from the EIs whether they think LCCs are beneficial to legal education, particularly focusing on which knowledge, skills and attributes can be taught

A5 Identify, both through the literature and empirically, whether these skills have been provided through participation in a LCC or whether some are left to practice

As stated in previous Chapters, it seems obvious that LCCs would develop the necessary knowledge, skills and attributes needed for practice, but there was little to no empirical evidence that this is what happens.⁷¹⁰

This thesis found that LCCs do have an impact on the education of law students. Specifically, I found that LCCs help the professional development of law students who are involved, enabling them to possess the knowledge, skills and attributes needed to practice. Furthermore, there is evidence that law students who are educated in a LCC feel more comfortable to go into practice and, mostly, found it beneficial to their education. In light of these new changes, providing evidence of the benefits of LCCs can help to inform professional bodies and emphasise their importance and the suitable support and development they provide to those going on to practise the law.

7.2 How the research aims were met

I did not find it possible to address my research aims individually here, as they were never explored individually. The data collected in this thesis, and the use of mixed methods, allowed for data which was deeper and richer than I originally anticipated, and the aims came together and overlapped. As a result, the research aims were discussed as interchangeable aims during the discussion. Thus, how my research aims were discussed and met took the following, iterative, form:

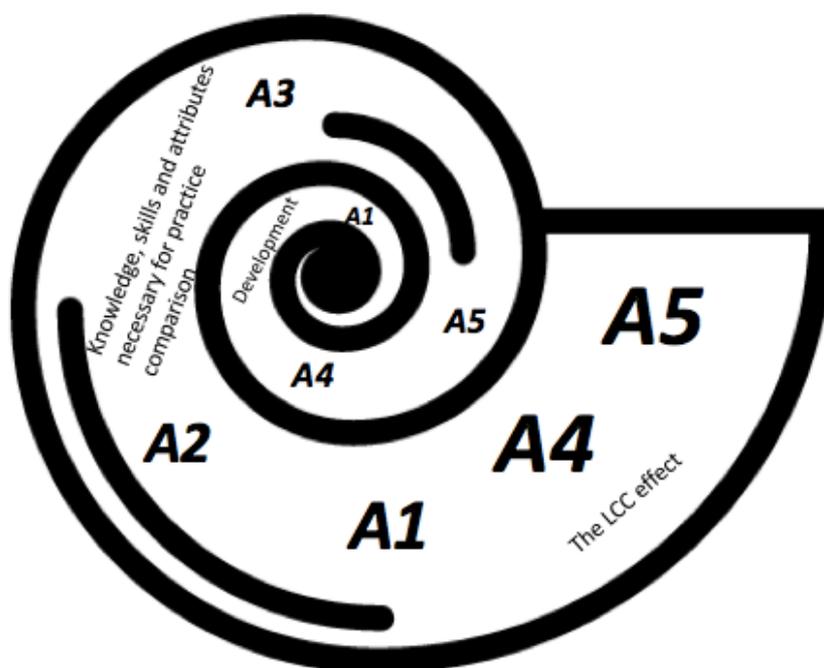


Figure 7.1 – Diagram showing how the research aims were met⁷¹¹

⁷¹⁰ Tomoszek, M., 'The Growth of Legal Clinics in Europe – Faith and Hope, or Evidence and Hard Work?' 2014 21:1 International Journal of Clinical Legal Education 93, p.100

⁷¹¹ Image taken from <http://freevector.co/vector-icons/animals/snail-shell-2.html>

We can see some aims in the centre of the snail shell and also on the outside of the snail shell. Some of the aims appear once and some twice. This is because some of the aims had a dual purpose. The aims in the centre of the shell relate to the development of LCCs on legal education explored and whether LCCs can develop certain knowledge, skills and attributes. As the aims progress and move towards the outside, we are looking at the comparisons of which knowledge, skills and attributes are considered important to practice and which ones can be achieved during legal education. Thus, these aims are shown how they were discussed: the nature of them coming together and overlapping. *Figure 7.1.* displays development as the core of the evidence provided, before moving onto which knowledge, skills and attributes are considered important to practice and then the LCC effect more generally. The remainder of this section will discuss the findings of this research, not as separate aims, but as the individual areas of analysis and discussion read in Chapters Five and Six.

7.2.1 The knowledge, skills and attributes considered important to practice: systematic review and empirical findings

The systematic review analysis of the legal education reports shone an interesting light on the development of legal education. The earlier reports, such as The ORMROD Report 1971,⁷¹² emphasised the separation between academic and vocational training, but allowed for Polytechnic Schools to begin providing vocational training. The Marre Report 1988,⁷¹³ for seemingly the first time, listed the knowledge, skills and attributes which are necessary for competent practice, but still with a distinction between the academic and vocational stages of training.⁷¹⁴ Leading to ACLEC, the call for integration between the two stages was first advocated,⁷¹⁵ specifically referencing the MLaw Degree provided at Northumbria University. Comparing these reports to the post-1990 reports, there has been a greater emphasis on students graduating with the necessary knowledge, skills and attributes needed for practice, with more focus on personable and communication skills.⁷¹⁶ This has also occurred in reports from various countries, such as Australia⁷¹⁷ and Canada.⁷¹⁸

⁷¹² Report of the Committee on Legal Education, Cmnd. (1971).

⁷¹³ A Time for Change. Report of the Committee on the Future of the Legal Profession. [Marre Report]. (1988).

⁷¹⁴ *Ibid.*, p.115, para 12.23 – this states that skills listed (1)-(9) should be taught in the academic stage and skills (10) – (24) during the vocational.

⁷¹⁵ Lord Chancellor's Advisory Committee on Legal Education and Conduct, *First Report on Legal Education and Training*, (1996), p.26

⁷¹⁶ For example, please see Sullivan, W.M., Colby, A., Wegner, J.W., Bond, L., Shulman, L.S., *Education Lawyers: Preparation for the Profession of Law*, (The Carnegie Foundation for the Advancement of Teaching, Preparation for Practice Program, (Jossey-Bass, California, 2007), p.172

⁷¹⁷ Pearce, D., Campbell, E., and Harding, D., *Australian Law Schools: A discipline assessment for the Commonwealth Tertiary Education Commission*, (1987)

⁷¹⁸ CBA Legal Futures Initiative, *Futures: Transforming the Delivery of Legal Services in Canada* (2014) – Chapter 7 discuss legal education. Accessed via

The most relevant today in the UK, the LETR,⁷¹⁹ introduced the dimension of legal competency. This report shows how law graduates must now be prepared for practice once their legal education ceases, focusing on a variety of skills and attributes, as well as legal knowledge.⁷²⁰

Moving on from the reports, the quantitative studies provided great insight into what is expected of new practitioners. The pre-1990 studies⁷²¹ measured for more knowledge bases than the post-1990, but with attributes and skills still perceived as more important for practice. Comparing this to the post-1990 studies,⁷²² there are less knowledges being tested for and much more emphasis placed on skills and attributes. By looking at the differences between the pre and post-1990 studies the changes of legal practice were recognised. For example, we see newer skills being measured for, such as commercial awareness, team working and creativity and innovation.

The reports and quantitative studies highlighted the need to adapt our legal education, with more focus placed on the conceptual papers and how legal educators have attempted to respond to these demands. With the introduction and gaining popularity of experiential education in law, debate was explored surrounding which is the best method to teach our law students. Some argue that simulations are preferred, as students are able to practise the same skills multiple times.⁷²³ Others state that LCCs are the best method to prepare students for practice in light of the reports,⁷²⁴ as they develop skills and also instil professionalism and a social justice ethos.⁷²⁵ However, the argument that we cannot provide “practice ready” graduates,⁷²⁶ is prevalent in the literature for various reasons. I appreciated that this is indeed not a possibility, but we can give students a foundation to start practice competently, as evidenced in this research.

http://www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20Futures%20PDFS/Futures-Final-eng.pdf Last cited 16.06.16

⁷¹⁹ Webb, J., *et al.*, *Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales (The Legal Education and Training Review (LETR) (2013))*. Available at: <http://letr.org.uk/the-report/index.html> Last cited 04.08.17

⁷²⁰ *Ibid.*, p.140

⁷²¹ For example, Benthall-Nietzel, D., 'An Empirical Investigation of the Relationship Between Lawyering Skills and Legal Education,' 1975, 63 *Kentucky Law Journal* 373; Mudd, J.O. and La Trielle, J.W., 'Professional Competence: A study of new lawyers,' 1988, 91 *Michigan Law Review* 34; Schwartz, R.A.D., 'The Relative Importance of Skills used by Attorneys,' 1973, 3 *Golden Gate University Law Review* 321

⁷²² For example, Shultz, M.M. and Zedeck, S., 'Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions,' 2001, 36 *Law & Social Inquiry* 620; Lakhani, A., 'Required legal skills for the 21st century lawyer: legal education at a crossroads,' 2013, 6 *International Journal of Private Law* 38; Hamilton, N., 'Law-Firm Competency Models and Student Professional Success: Building on a Foundation of Professional Formation/Professionalism,' 2013, 11 *University of St Thomas Law Journal* 6

⁷²³ Binder, D.A. and Berman, P.B., 'Taking Lawyering Skills Training Seriously,' 2003, 10 *Clinical Law Review* 301, p.307

⁷²⁴ Christensen, S. and Kift, S., 'Graduate Attributes and Legal Skills: Integration or Disintegration?' 2000, 11 *Legal Education Review* 207, pp.215-218

⁷²⁵ Grossman, G.S., 'Clinical Legal Education: History and Diagnosis,' 1973-1974, 26 *Journal of Legal Education* 162, p.192

⁷²⁶ Condlin, R.J., "'Practice Ready Graduates": A Millennialist Fantasy,' 2014-2015, 31 *Touro Law Review* 75

The data I collected and analysed, through the use of the Diamond16, found results quite similar to the post-1990 quantitative studies. Analysis and oral skills were given the highest importance scores for the overall scores, as is similar to Shultz and Zedeck.⁷²⁷ The cards which were created are similar to those measured in the quantitative studies. For example, the time management, teamwork and organisation were the top three most created cards. These are skills which appear in Hamilton 2013,⁷²⁸ Zemans and Rosenblum⁷²⁹ and Lakhani.⁷³⁰ However, the fact that these cards were created increases their importance, as participants thought them necessary enough for practice to include to the Diamond16. Furthermore, the skills mentioned in the various report, particularly, the LETR, are present. For example, there are various interpersonal skills created, such as strategising, teamwork and reflection. Thus, LCCs have made the students aware that these skills are important to practice and are responding the legal education requirements.

7.2.2 The division between “hard” and “soft” skills

The division between the “hard” and “soft” skills arose during the data collection stage and became a very thought-provoking area of analysis. Looking at the overall importance scores for the pre-determined cards, presented in Chapter Five, the “harder” skills, such as analysis and written skills, were perceived to be the most important skills for practice. The “softer” skills overall were not scored as highly as the “harder” skills.

Furthermore, if we look at the placement of the pre-determined cards, the “harder” skills were always, apart from awareness of ethical issues, placed on the middle line and above. The “softer” skills were much more varied in placement, but appeared more frequently on the middle line and below. There appears to be a lack of dispute over the importance of the “harder” skills, with there being a focus on foundational skills which are not disputed as important. This could be because of how they are taught, or that their importance has not been cast into doubt and challenged by experience.⁷³¹

Comparing this with the created cards, there were more “softer” skills created, but the “harder” skills were still mostly placed in the middle line and above. Thus, the placement of the “harder”

⁷²⁷ Shultz, M.M. and Zedeck, S., 'Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions,' 2001, 36 Law & Social Inquiry 620

⁷²⁸ Hamilton, N., 'Law-Firm Competency Models and Student Professional Success: Building on a Foundation of Professional Formation/Professionalism,' 2013, 11 University of St Thomas Law Journal 6

⁷²⁹ Zemans, F.K. and Rosenblum, V.G., 'Preparation for the Practice of Law-The Views of the Practicing Bar,' 1980, 5:1 American Bar Foundation Research Journal 1

⁷³⁰ Lakhani, A., 'Required legal skills for the 21st century lawyer: legal education at a crossroads,' 2013, 6 International Journal of Private Law 38

⁷³¹ Peirce, C.S., 'The Fixation of Belief,' 1877, Popular Science Monthly 1. Accessed via <http://www.bocc.ubi.pt/pag/peirce-charles-fixation-belief.pdf> Last cited 26.11.16

skills suggests high importance to competent practice but the amount of “softer” skills created suggest that there are more “soft” skills important to practice. These results are consistent with some of the post-1990 studies. They showed the increasing importance of the “softer” skills, with less emphasis on some of the “harder” skills.⁷³²

7.2.3 Comparison across Groups

When looking at the specific Groups, there were some similarities and quite stark differences, which I mainly argued was due to experience in actual practice. For example, the Student Groups were the only Groups to create legal knowledge and confidence as cards, suggesting that the Lawyer and Tutor Groups have less focus on these knowledge, skills and attributes after the experience of actual practice. Commercial awareness was created by all Groups, except the Student EU Group. This could be a cultural difference, but also an institutional difference, with Northumbria’s SLO stressing its importance and other LCCs or countries not. The pre-determined cards placement were mostly consistent with each Group and with the overall importance scores. The Lawyer Group was the only Group which didn’t have analysis in the top three skills, being one of the most stark difference, but on the whole the “harder” pre-determined skills were the most important to each Group.

7.2.4 Development of MLaw Students

The development of the MLaw Students and Firm F highlighted how a LCC can affect a law student’s education, with some evidence of Kolb’s ELT provided.⁷³³ The qualitative data was heavily relied upon in this discussion, as it explained how the students felt about the knowledge, skills and attributes.

There was also examples present in most Firms that the mark scheme or the future grades effected what the students thought was important to practice. This was particularly so when considering the stage of the LCC they were at. For example, no Firm created ‘*reflection*’ as a card until the second Diamond¹⁶, when they were writing one for their mid-year appraisal. Furthermore, some pre-determined skills were placed dependant on what they had been told, with comments such as, ‘*You need all of them. But I don’t think I’ve ever been told to be patient.*’ The effect of the mark scheme

⁷³² For example, Lakhani, A., 'Required legal skills for the 21st century lawyer: legal education at a crossroads,' 2013, 6 International Journal of Private Law 38; Hamilton, N., 'Law-Firm Competency Models and Student Professional Success: Building on a Foundation of Professional Formation/Professionalism,' 2013, 11 University of St Thomas Law Journal 6; Taylor, B.F., 'Through the Looking Glass: Perceptions on the Law School Learning Experience,' 2015, 61 Loyola Law Review 275

⁷³³ Kolb, D.A., *Experiential Learning: Experience as the Source of Learning and Development*, (Pearson Education Inc, 2nd edn, 2015

is a factor when considering learning and development in a LCC, as assessment can influence curriculum and learning.⁷³⁴

There were instances in each Firm of a skill created during the first Diamond16, but did not continue into the second or last. This created the voyage theme, that students thought they needed some skills for competent practice, so packed them, but found they were not actually needed and left behind. For example, Firm C created '*competence*' as a card and placed it highly in their first Diamond16. During their interview, this was highlighted and a participant stated, '*it's the experience as times gone on, like you start to feel more competent. So, you're sitting there thinking it's not really an issue anymore (agreement from group).*' Thus, we can see how the LCC has affected their opinion of what is need for practice, now based on experience rather than ideas.

Finally, some Firms, such as Firm F, stated that their experience in the SLO allowed them to realise what certain skills actually meant in practice. For example, empathy was seen as, '*build[ing] a relationship with a client,*' which was not the situation before their SLO experience, as it was placed in the bottom trinity in the first Diamond16. This Firm also highlighted the differences between client based skills and personal or professional skills, creating discussion around whether they are the same thing, or we should be exploring them separately.

Throughout the exploration of the development of the SLO students, there was evidence of Kolb's ELT in practice. Students working with live clients ('*concrete experiences*'), reflecting on the experience and learning from it ('*reflective observation*' and '*abstract conceptualisation*') then transforming this knowledge and trying it out in new experiences ('*active experimentation*'), in future client interactions and cases. The stages of ELT are present in the SLO and have clearly led to development of law students, providing them with more insight and experience to start practice with. These experiences make a good foundation to learn from when starting actual practice, transferring their knowledge from education to real life.

7.2.5 Tutor influence

The influence of Tutors on their Firms was, again, not an area of analysis I had anticipated, but one which was exciting to explore. The results presented in Chapter Six highlighted that what Tutors believe is important to practice is sometimes reflected by their students. For example, Firm B was the only MLaw Firm to create commercial awareness as a card, as was their Tutor the only tutor to.

⁷³⁴ Filer, A., *Assessment: Social Practice and Social Product*, (Routledge, 2002), p.19 – Filer makes reference here to Bernstein, who asserted that assessment is the, 'purest form of pedagogic control.'

It was created even if the students didn't understand why it was important, with comments such as, '*...the amount everybody bangs on about it all the time, it's got to be relatively important.*' Their Tutor has emphasised its importance, without being able to actually teach it, and their students have adopted this opinion.

This link, however, is not always present between a Firm and their Tutor. When looking at Firm D, we could see some instances of influence, but not as many or as strongly as Firm B. The placement of the pre-determined cards held some similarities, but there were not so many to make strong claims of influence.

7.2.6 Reflections on LCCs

Conducting interviews with the MLaw students was a valuable method to validate the Diamond16 results and to explore further their thoughts and experiences of participating and learning in a LCC. The students found that the SLO experience generally made them feel more prepared for practice, consistent with some of the qualitative studies discussed in Chapter Two.⁷³⁵ They spoke of feeling more '*confident*' for going into practice and that the SLO was a '*head start*' on those who had not participated in a LCC. The students understood that they weren't completely prepared for practice, but they appreciated the opportunity to practise skills and work with clients prior to starting a training contracting or equivalent.

The students felt as though their skills had been developed and that the SLO had helped them '*prepare for the unprepared.*' Working with their supervisor made them more self-critical over their work, wanting to get it right first time and be more careful over its construction than they had previously been during their degree work. This was refreshing, as the EU Tutors expressed that they wanted their students to feel prepared to going into practice from the LCC, giving them a safe environment to make mistakes before they don't have the same level of Tutor support.

The only negatives discussed about LCCs related more to the dynamics and their structure. The SLO being compulsory at Northumbria University was not always appreciated. Students found it hard to balance their time between client and academic work. Some would have preferred it to run for half of the year, rather than the full academic year. When we compare this to the EI Tutors, there is a desire for the clinic to be compulsory for students on the full-time degree courses. This may not necessarily be the LCC, but CLE more generally compulsory for students. However, concerns over staffing were expressed.

⁷³⁵ Uphoff, R.J. *et al.*, 'Preparing the New Law Graduate to Practice Law: A View from the Trenches,' 1997, 65 University of Cincinnati Law Review 381, p. 403

7.3 Contribution to knowledge

The original contribution to knowledge in this thesis was achieved in various ways. Firstly, there was not much empirical evidence on the effects of LCCs on a students' legal education and whether they adequately prepared graduates for practice.⁷³⁶ The prior studies identified in Chapter Two were mostly conducted with lawyers who had been in practice for some time or recent graduates. This study, by working with students and tutors in the SLO, has created an original contribution as a different perspective. Instead of asking new lawyers, after their legal education has concluded, I worked with students as they were being educated, tracking their development over an entire academic year. A study of this kind has not been conducted before, that I could find during the systematic review.

Secondly, whilst there have been many studies conducted into which knowledge, skills and attributes are important to practice, all the studies sourced and synthesised used traditional data collection tools, such as surveys and interviews. The use of the Diamond16 method in this thesis has sourced, developed and introduced a new way to collect data within legal education. Asking participants to rank certain cards on the Diamond16 board allowed me to record their decision making and their opinions on the relationships between the cards. Furthermore, allowing participants to create their own skills and place them on the board added a different element to this study, which others previous did not do. Including the created cards on the Diamond16 board with the pre-determined cards created an element of ownership for the participants, directing the board in their own individual way.

The original contribution for knowledge in this research was met by the sample, the duration, geographical compass and methodologically.

7.4 Limitations of the study

As with any research, this study did have its limitations. Firstly, this study had a European focus, but I cannot justify saying it is a European study. Unfortunately, I did not have the resources to conduct a study across all of Europe and thus, had to change the direction of the study slightly.

This study primarily focused on final year SLO students, who participated in the LCC. As Northumbria has such a big LCC programme, embedded into the curriculum with CLE starting in the

⁷³⁶ Tomoszek, M., 'The Growth of Legal Clinics in Europe – Faith and Hope, or Evidence and Hard Work?' 2014, 21:1 International Journal of Clinical Legal Education 93, p.100

first year of the degree, the influence on these students and their education has had a huge impact. Thus, the comparison with other LCC students from other EU institutions has allowed me to overcome this limitation, accepting the ecological validity of this study.

Furthermore, this was also a very north-eastern focused study. The law firms who participated were both in Newcastle and the Tutors who completed the Diamond16 were in Northumbria's SLO and the Half Clinic students in the UK were also from a north-eastern institution. Whilst the Diamond16 was conducted with students in Czech Republic and Poland, the rest of the UK may not feel represented in the UK collected data.

Even with these limitations acknowledged, they do not diminish the value of this study. It only highlights the need to replicate this research in more geographical areas and open it up to more participants, as will be discussed further below. However, we saw in Chapter Five that ecological validity⁷³⁷ was present in this study. Similar cards were created with different participants in different countries, meaning that we could generalise some of the findings as typical. I would like to argue generalisation more typically for these findings, as the limitations are concerned with the geographical areas and participants who participated. Hammersley defines empirical generalisation as a claim that, '*the particular setting investigated is typical of some larger whole or aggregate.*'⁷³⁸ It is an important consideration, as, '*Without generalization, there would be no evidence-based practice: research evidence can be used only if it has some relevance to settings and people outside of the contexts studied.*'⁷³⁹ Larsson outlines '*five lines of reasoning*' on generalisation, three of which, '*argue in different ways in favour of possible ways of generalizing.*'⁷⁴⁰ The one relevant to this research is generalisation through context similarity or, to the reader, transferability.⁷⁴¹ This means that the results of a study can be applied to another similar context.⁷⁴² In this study, we have participants from four LCCs across three different countries, which does increase generalisation. However, the nature of LCCs across the world follow a similar method of operating and representation for clients. Thus, it is arguable that generalisation is present, as this research can be transferred to most other LCCs which operate as the ones in this study do. Furthermore, we can

⁷³⁷ SAGE Knowledge. Accessed via <http://sk.sagepub.com/reference/socialpsychology/n167.xml> Last cited 15.05.17

⁷³⁸ Hammersley, M., *What's Wrong with Ethnography?: Methodological Explorations*, (Psychology Press, 1992), p.86

⁷³⁹ Polit, D.F, and Tatano Beck, C., 'Generalization in Quantitative and Qualitative Research: Myths and Strategies,' 2010, 47 *International Journal of Nursing Studies* 1451, p.1452

⁷⁴⁰ Larsson, S., 'A Pluralist View of Generalization in Qualitative Research,' 2009, 32:1 *International Journal of Research & Method in Education* 25, p.6 Accessed via <http://www.diva-portal.org/smash/get/diva2:209423/FULLTEXT01.pdf> Last cited 12.08.17

⁷⁴¹ CSU Writing Guide, *Generalizability and Transferability*, p.5 Accessed via <https://writing.colostate.edu/guides/pdfs/guide65.pdf> Last cited 12.08.17

⁷⁴² *Ibid.*

argue generalisation of the law firms studied. Even though there were only two law firms who participated, they were both very different in nature, one being a commercial firm and the other a legal aid firm. Thus, we have results from two different contexts, which do not vary much across the country. Many law firms operate in the same way and have the same needs and wants from their trainees and lawyers, meaning that we can further generalise these results to other contexts. Whilst there were some limitations in this thesis, there is no reason why this evidence can't be used by other LCCs in different contexts, should they operate in a similar manner to the participating LCCs.

7.5 Implications for policy, practice and legal educators

Many implications have been identified from this study, for a variety of legal stakeholders. Each will be taken in turn.

7.5.1 Policy

As was seen in Chapter Two, there have been many reports released, in the UK and internationally, determining what law schools should be teaching and the knowledge, skills and attributes which are desirable for law graduates to go onto practice with. However, not many of them draw on empirical data or acknowledge what is possible for law schools to teach. This research, therefore, can help to provide a framework of what is achievable during legal education and help to manage expectations of graduates and their employers. It may help make those in policy appreciate that whilst we cannot make our students "practice ready" we can help them to *'hit the ground running'* or give them a *'head start.'* Thus, what they say is imperative for students to learn during their legal education must be a result of empirical evidence and realistic expectations, not a wish list.

As was outlined in the introduction, regulating bodies, such as the Solicitors Regulation Authority (SRA) and the Bar Standards Board (BSB), are changing the way in which lawyers qualify. This thesis can help to provide some evidence of why LCCs are beneficial to legal education and should be incorporated into law curriculums for a holistic education. However, the resourcing this kind of education entails should be considered before requiring all law schools to run LCCs on the same scale as Northumbria University.

7.5.2 Practice

There are not many implications for law firms and practitioners which have arisen from this study, as the focus was on legal education prior to practice. However, I feel as though practitioners can

use this research to appreciate the knowledge, skills and attributes which are possible to develop in law schools and understand the position of trainees better. For example, they will be able to understand that students have an appreciation of commercial awareness, but it is not something which can be developed whilst in law school. However, their interpersonal skills are much better than they would have been had they not participated in the LCC. Thus, as with those in policy, there needs to be an awareness that we cannot create “practice ready” lawyers, which has been argued in the literature, but we can give them a ‘*head start*’ as established in the qualitative data in this research.

However, whilst there are not many implications for this stakeholder in legal education, there is the potential to use this research to work further with them. The Diamond16 can be used for training and development in law firms, producing the potential of further dialogue between educators and practitioners. If the Diamond16 is developed as an online tool, which will be discussed further below, it can be the basis of discussion of how far educators can take law students during their education and where law firms will have to pick up them up. This will generate further understanding between the two entities, particularly when considering the interest more generally in Higher Education Institutions and the quality of their services, we can do more with the Diamond16.

7.5.3 Legal educators

The implications from this research are most prevalent for legal educators. The evidence of development and learning presented in Chapters Five and Six can be used to argue the need for a LCC in a HEI or for its sustainability. For some countries within Europe, CLE, LCCs in particular, can be hard to establish and those working in them are not given appropriate work loading or acknowledgement of their efforts.⁷⁴³ Thus, the evidence of development provided in this thesis can help them justify their teaching methods.

The results from this research should be considered by clinicians and others teaching in LCCs, for a variety of reasons:

- What clinicians teach in a LCC, and what they emphasise as important to practice, is more influential than they may think. Whilst this is not a detriment, as clinicians are teaching the realities of legal practice, it must be a consideration for their teaching. Students mentioned

⁷⁴³ Dunn, R. and McKeown, P. ‘From the Field: The European Network of Clinical Legal Education Spring Workshop,’ 2015, 22:3 International Journal of Clinical Legal Education 312, pp. 324-330

their tutors, '*banging on about*' different aspects of legal practice and they must consider that their teaching carries significance for their students

- The proximity of the clinician to the student has an impact on their learning. In some clinics, such as Northumbria's SLO, the clinicians supervise the students at every stage of a case. Whilst they are not present during the client interviews, they have the opportunity to watch a video recording of them. Thus, their proximity to the students is close. However, we saw from the EI Tutors that they do not have the opportunity to observe their students in the LCC, but rather contact them through email and check written work. This meant that they only got to develop the "harder" skills with their students. It was the Tutor present in the LCC at all times who was able to observe the student interactions with the client and, '*handle the problem or issue right away.*' If a clinician wants to develop both "hard" and "soft" skills with their students, they must be present or observe their interactions with their clients. Proximity and presence is essential, though the ideal amount of supervision is still an area of debate amongst clinicians⁷⁴⁴
- Clinicians, and legal educators, must explore with students who the skills are for. We saw in Chapter Six that there is a distinction between personal and professional skills and client centred skills. If students are acknowledging these differences, it can be a valuable teaching moment and a chance to develop certain knowledge, skills and attributes
- This research has emphasised an appreciation that it may not be possible to create "practice ready" graduates.⁷⁴⁵ However, we can help students get a '*head start,*' as many of them felt they had. LCCs are ideal for developing a wide range of knowledge, skills and attributes, which many students during the interviews felt would not have happened had they not had the opportunity to work with live clients. Thus, whilst simulations and other forms of CLE are beneficial, LCCs are where students felt the most benefit and development
- The "soft" skills are just as necessary to develop with students as the "hard" skills. These can be done alongside each other, but are better developed in LCCs with a real client. After working with live clients, students appreciate the importance of empathy and perseverance, as well as the "harder" skills, such as oral and written skills

⁷⁴⁴ For example, London South Bank University hosted a conference, *Clinical Legal Education: Quality & Supervision*, 2017. More information can be found at, Unger, A. and Russell, A., 'Clinical Legal Education Conference: Quality & Supervision,' 2017, 24:1 International Journal of Clinical Legal Education 88. Accessed via <http://www.northumbriajournals.co.uk/index.php/ijcle/article/viewFile/581/1012> Last cited 05.09.17

⁷⁴⁵ Condlin, R.J., "'Practice Ready Graduates": A Millennialist Fantasy,' 2014-2015, 31 Touro Law Review 75, p.80

- There are some skills which we simply cannot fully develop with students, but are consistently highlighted within the post-1990 studies.⁷⁴⁶ For example, commercial awareness is something which we explore with our students in Northumbria's SLO, but not something which seemed to be explored with the students in the Half Clinic. This is because it is not possible to experientially teach this skill in a LCC. We are mostly *pro bono* services and do not handle money, nor do our students need to find and retain clients. Thus, we must make students aware that this is a reality of practice, but not something which we can teach in this way. Legal educators having this awareness means that they can inform students of the limitations of the LCC experience, so students can demonstrate this awareness in interviews and be ready for the 'step up' to practice.

The implications listed above are obviously not possible for all legal educators. The majority of the recommendations discussed above are only achievable when teaching in a LCC. However, for those who do teach in a LCC the implications can be developed and considered when teaching. Mostly, they need to consider what they emphasise as important to students, even the skills they cannot teach, and their proximity to the students they are supervising.

7.6 Recommendations for further research

This thesis highlighted many areas of further research, from both the literature review and the empirical data collected and analysed. However, I do not intend to address all of these recommendations myself. Thus, I indicate below which recommendations I wish to explore further in the future and those others may address, if they so feel inclined.

The recommendations for further research which I intend to explore in the future are:

- Creating the Diamond16 as an interactive online tool, so to open up the study to other geographical areas and participants. This will allow for a wider comparison between the knowledge, skills and attributes needed for practice. For example, I will explore which knowledge, skills and attributes are specific to a certain area of practice or legal speciality. Furthermore, the geographical areas will enable comparison between universal

⁷⁴⁶ For example, commercial awareness in Hamilton, N., 'Law-Firm Competency Models and Student Professional Success: Building on a Foundation of Professional Formation/Professionalism,' 2013, 11 University of St Thomas Law Journal 6

knowledge, skills and attributes and which are unique or more important in certain countries

- More exploration of the influence of Tutors and their students in a LCC. This will include research prior to the LCC students having any contact with their SLO Tutor. This will enable me to see how much the views of a SLO Tutor influences their students and their learning. This will, hopefully, include more observations of the Firm and their Tutor, to see what and how they are teaching and what the students are focusing on
- A deeper analysis of the foundational legal skills and their importance to practice. For example, are foundational skills important because they are important, or because we teach them to law students from the start of their education? Do we all carry the same collective views of specific skills, e.g. analysis, or are the views dependant on how we are taught? Because of this perception of importance, do we teach more knowledge than we do skills. This research will allow for legal educators to consider their curriculum and how we are teaching
- Is there a separation between the foundational skills which are needed for legal education and which are needed for practice? This thesis suggests that there is, but a much more in-depth study is needed to explore the distinction between practitioners and students and whether real-life experience effects these perspectives
- Further methodological uses of the Diamond¹⁶ and its analysis. During Chapter Seven, we saw the difference between the importance of the skills in the top half and the bottom half of the board. The skills which were placed in the bottom of the board weren't always perceived to not be important, thus the categorisation of their importance can be explored further.

The recommendations for further research which I do not intend to explore in the future, but others may, are:

- Whether or not we are able to produce "practice ready" graduates, providing more empirical evidence of this expectation on law schools
- The post-1990 quantitative studies synthesised and discussed in Chapter Two measured for less knowledge bases and more skills and attributes than the pre-1990 studies. However,

we saw in Hamilton 2014⁷⁴⁷ that the average for knowledge was higher than that for skills and then attributes. However, for Peden and Riely⁷⁴⁸ and many other studies in the post-1990 quantitative studies, knowledge was scored as the least important on average. This creates questions of how far apart knowledge and skills are in legal practice and whether we should continue this divide. Furthermore, the importance of academic knowledge to legal practice could be explored in further detail, particularly in light of the new changes to qualifications for solicitors⁷⁴⁹

- A further exploration between the “hard” and “soft” skills presented in this thesis in Chapter Six. For example, do others perceive the same skills to be “hard” or “soft” and further depth into how they are developed and taught together
- To what extent mark schemes and grades can deplete the reality of a LCC and the effect this focus has on student learning, as discussed in both analysis Chapters
- The distinction between personal and professional skills and client centred skills within legal practice and a LCC. Are they completely separate and should this be considered by legal educators when teaching future practitioners?

7.7 Conclusion

This thesis has provided some evidence that LCCs provide students with the opportunity to develop their knowledge, skills and attributes and start practice competently. It also highlights the knowledge, skills and attributes which are important to practice, emphasising what we should be teaching and with how much emphasis educators should teach it. The originality of this research has been stressed throughout this thesis and an original contribution to knowledge has been established, empirically and methodologically. The influence of Kolb’s ELT on legal education was explored empirically, with evidence provided from one of the world’s largest LCCs, of development and learning in experiential education.

⁷⁴⁷ Hamilton, N. ‘Empirical Research on the Core Competencies Needed to Practice Law: What Do Clients, New Lawyers, and Legal Employers Tell Us?’ 2014, University of St. Thomas (Minnesota) Legal Studies Research Paper, No. 14-34

⁷⁴⁸ Peden E and Riley J, 'Law Graduates' Skills - A Pilot Study into Employers' Perspectives,' 2007, Sydney Law School Research Paper No 07/81

⁷⁴⁹ For more information, please see <https://www.sra.org.uk/sra/consultations/solicitors-qualifying-examination.page>

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Appendices

Appendix 1 – Systematic Review Search Information

The inclusion/exclusion process was the same for each database, and I excluded during these following ways:

- Firstly, I would exclude articles by title. If it was obvious that an article was completely outside of the scope of my research question it would be excluded immediately. The majority of articles were excluded by title. This means that my research terms weren't always capable of excluding articles which I didn't need, but narrowing down my searches even further meant I may have excluded articles which were needed, which I discovered during my initial searches. In total, 15,933 articles were excluded by title.
- Often it was necessary to read the abstract to gain more of an idea of what the article was about and whether I should include it in my systematic review. It is not always obvious from the title what the research was focusing on and the abstract would help to decide if it was relevant. The abstracts I read had to refer to knowledge, skills and attributes in CLE, and preferably with reference to LCCs. If it was not clear from the abstract then the introduction or contents page was read to determine its relevance. They would be excluded under the abstract criteria. A total of 718 articles were excluded by abstract.
- Sometimes articles had to be excluded. This was due to articles not being written in English or it ultimately not being available to me. A total of 195 articles were excluded for these reasons.
- Many articles were excluded for being duplicates. From my initial searches I could tell that this number would be high. The same articles were often produced on the majority of my searches on a database, and it was necessary to exclude them. Some were excluded as duplicates due to the article being the same but having a different title. A total of 8,131 articles were excluded for being a duplicate.
- Lastly, some articles were excluded after reading them in full text. A total of 144 articles were excluded with reasons during the full text stage. The reasons for exclusion at this stage were:
 - They were not actually relevant to my research questions. On occasion the research was more focused on the effect LCCs can have on employability, rather than if it is a useful pedagogy for preparing students for practice.
 - Some of the articles were purely descriptive of what CLE is and a particular institution's programme, rather than a discussion of its benefits, advantages or whether it provides students with the skills, knowledge and attributes for the beginning of practice. As a result, I felt it not necessary to add them into the synthesis as they did not add to the academic discussion.

- When read in full, it was discovered that what I originally thought was a journal article was actually a book Chapter or report. These were excluded from the systematic review and added to the discussion in the grey literature if found relevant after reading the full text. One book review was also found, and this was excluded.

Appendix 2 – Systematic Review Search Spreadsheets

Key Words Used	Articles Produced	Excluded by title	Excluded by abstract	Excluded for other reasons, e.g. avail, lang.	Duplicates	Articles selected for full text	Article excluded for full text	Articles used
"Clinical legal education" AND Skills	7	0	5	0	2 (same article, different title)	0	0	0
"Clinical legal education" AND Attributes	0	0	0	0	0	0	0	0
"Clinical legal education" AND Knowledge	3	0	2	0	0	1	0	0
"Law clinics" AND Skills	0	0	0	0	0	0	0	0
"Law clinics" AND Attributes	0	0	0	0	0	0	0	0
"Law clinics" AND Knowledge	0	0	0	0	0	0	0	0
"Live client clinic" AND Skills	1	1	0	0	0	0	0	0
"Live client clinic" AND Attributes	0	0	0	0	0	0	0	0
"Live client clinic" AND Knowledge	0	0	0	0	0	0	0	0
"Legal education" AND Skills	79	31	31	4 (not avail) 4 (language)	0	2	7	3
"Legal education" AND Competen*	39	24	2	1 (language)	0	10	2	2
"Clinical legal education" AND Benefit	2	0	2	0	0	0	0	0
"Clinical legal education" AND Advantage	0	0	0	0	0	0	0	0
TOTAL	131	56	42	9	15	9	4	5

"Clinical legal education" AND Skills	2	0	1	1 (not avail)	0	0	0	0
"Clinical legal education" AND Attributes	0	0	0	0	0	0	0	0
"Clinical legal education" AND Knowledge	0	0	0	0	0	0	0	0
"Law clinics" AND Skills	0	0	0	0	0	0	0	0
"Law clinics" AND Attributes	0	0	0	0	0	0	0	0
"Law clinics" AND Knowledge	1	1	0	0	0	0	0	0
"Live client clinic" AND Skills	0	0	0	0	0	0	0	0
"Live client clinic" AND Attributes	0	0	0	0	0	0	0	0
"Live client clinic" AND Knowledge	0	0	0	0	0	0	0	0
"Legal education" AND Skills	103	63	28	9 (not avail)	0	3	0	0
"Legal education" AND Competen*	20	8	8	3 (not avail)	0	1	0	0
"Clinical legal education" AND Benefit	1	0	0	1 (not avail)	0	0	0	0
"Clinical legal education" AND Advantage	0	0	0	0	0	0	0	0
TOTAL	127	72	37	14	4	4	0	0

14/12/2015 - 08/01/16	SSRN	"Clinical legal education" AND Skills	177	85	55	3 (not avail)	1	33	19	14
		"Clinical legal education" AND Attributes	6	1	1	0	4	0	0	0
		"Clinical legal education" AND Knowledge	54	19	9	0	22	4	1	3
		"Law clinics" AND Skills	84	21	6	0	47	10	7	3
		"Law clinics" AND Attributes	5	3	0	0	2	0	0	0
		"Law clinics" AND Knowledge	32	11	3	1 (language)	15	2	2	0
		"Live client clinic*" AND Skills	5	1	1	0	2	1	1	0
		"Live client clinic*" AND Attributes	0	0	0	0	0	0	0	0
		"Live client clinic*" AND Knowledge	1	0	0	0	1	0	0	0
		"Legal education" AND Skills	736	548	45	1 (language)	127	15	8	7
		"Legal education" AND Competence (no results for Competen*)	90	58	15	2 (language)	12	3	1	2
		"Clinical legal education" AND Benefit	29	10	10	0	9	0	0	0
		"Clinical legal education" AND Advantage	7	2	2	0	3	0	0	0
		TOTAL	1226	759	147	7	245	68	39	29
12/01/2016 - 20/01/2016	LexisNexis	"Clinical legal education" AND Skills	41	29	8	0 (One turned up in the search 3 times!)	0	0	0	0
		"Clinical legal education" AND Attributes	14	3	0	0	11	0	0	0
		"Clinical legal education" AND Knowledge	39	17	0	0	22	0	0	0
		"Law clinics" AND Skills	13	6	1	0	6	0	0	0
		"Law clinics" AND Attributes	6	2	0	0	4	0	0	0
		"Law clinics" AND Knowledge	16	8	0	0	8	0	0	0
		"Live client clinic*" AND Skills	2	0	0	0	2	0	0	0
		"Live client clinic*" AND Attributes	0	0	0	0	0	0	0	0
		"Live client clinic*" AND Knowledge	2	0	0	0	2	0	0	0
		"Legal education" AND Skills	769	671	27	0	69	2	1	1
		"Legal education" AND Competen*	261	222	9	0	28	2	1	1
		"Clinical legal education" AND Benefit	39	2	0	0	37	0	0	0
		"Clinical legal education" AND Advantage	31	7	2	0	22	0	0	0
		TOTAL	1233	967	47	0	215	4	2	2

25/01/2016 - 01/02/2016	Westlaw	Clinical legal education AND Skills	181	151	15	0	4	11	8	3
		Clinical legal education AND Attributes	39	38	0	0	1	0	0	0
		Clinical legal education AND Knowledge	294	261	2	0	31	0	0	0
		Law clinics AND Skills	56	43	3	0	10	0	0	0
		Law clinics AND Attributes	22	16	1	0	5	0	0	0
		Law clinics AND Knowledge	138	109	2	0	27	0	0	0
		Live client clinic AND Skills	22	11	0	0	11	0	0	0
		Live client clinic AND Attributes	5	1	0	0	4	0	0	0
		Live client clinic AND Knowledge	55	32	0	0	23	0	0	0
		Legal education AND Skills	2508	2381	38	0	78	11	9	2
		Legal education AND Competen*	1719	1565	3	0	149	2	2	0
		Clinical legal education AND Benefit	353	274	7	0	69	3	2	1
		Clinical legal education AND Advantage	211	120	3	0	88	0	0	0
		TOTAL	5603	5002	74	0	500	27	21	6
15/03/2016 - 25/04/16	Heinonline	"Clinical legal education" AND Skills	2647	2276	180	54 (1 language, 53 not avail)	62	75	37	38
		"Clinical legal education" AND Attributes	808	540	48	12 (not avail)	202	6	4	2
		"Clinical legal education" AND Knowledge	2616	1484	31	14 (not avail)	1084	3	1	2
		"Law clinics" AND Skills	795	508	27	9 (not avail)	250	1	1	0
		"Law clinics" AND Attributes	197	83	1	2 (not available)	110	1	1	0
		"Law clinics" AND Knowledge	803	367	7	9 (not avail)	419	1	0	1
		"Live client clinic" AND Skills	229	140	7	0	79	3	2	1
		"Live client clinic" AND Attributes	77	15	3	0	59	0	0	0
		"Live client clinic" AND Knowledge	212	91	35	2 (not available)	81	3	1	2
		"Legal education" AND Skills	2812 (within law journal library, using the legal education filter - was 19445)	1504	11	38 (not avail)	1256	3	1	2
		"Legal education" AND Competen*	2141 (within law journal library, using the legal education filter - was 20935)	892	5	22 (not avail)	1222	0	0	0
		"Clinical legal education" AND Benefit	2128	572	6	0	1550	0	0	0
		"Clinical legal education" AND Advantage	1396	605	10	3 (not avail)	778	0	0	0
		TOTAL	16861	9077	371	165	7152	96	48	48
							204	114		90

Appendix 3 – Quality Appraisal Form

Tables for Appraising Empirical Research

Title and Author:

Citation:

Introduction and literature review	0	1	2	3	4
Are the aims of the paper adequately introduced?					
Is there a rationale given for the research?					
Is the literature up to date?					
Is the literature relevant?					
Does the literature review present a need for the research?					
Are there any gaps in the topics introduced in the literature?					
Does the literature review give a balanced/unbiased overview?					

0=Not at all; 1=Only to a limited extent; 2=At an acceptable level; 3=to a significant level; 4=completely

Methodology	0	1	2	3	4
Are the methods used clearly stated?					
Are they consistent with qualitative or quantitative research methods?					
Are they clearly explained and justified?					
Is the size of sample and how it was sourced properly explained?					
Are any ethical considerations explained and justified?					
Are the details of the data collection properly described so that it could be replicated?					
Is there transparency of what worked well and what didn't?					
Does the author state if they validated their results?					
Was the study design appropriate to answer the research question?					
Is there any bias involved in the data collection process, e.g. random error or systematic bias?					
Does the study test the stated hypothesis?					
Were the methods changed during the study and explained how and why?					
/has the researcher between researcher and participant been adequately identified?					
Was the data analysis rigorous?					
Does the author provide how they did their coding and how many times?					

0=Not at all; 1=Only to a limited extent; 2=At an acceptable level; 3=to a significant level; 4=completely

Results and Findings	0	1	2	3	4
Are the results presented clearly and consistently?					
Are any tables or Graphs explained clearly and coherently?					
Are any gaps in the data accounted for?					
Is the discussion and analysis balanced?					
Are the strengths and weaknesses of the study discussed?					
Does the discussion refer back to the points raised in the literature review?					
How clear are the links between the data and interpretation?					
Has the author considered evidence which contradicts their findings?					

0=Not at all; 1=Only to a limited extent; 2=At an acceptable level; 3=to a significant level; 4=completely

Conclusions	0	1	2	3	4
Does the data support the conclusions?					
Are the implications of the study identified?					
Are there any recommendations for further research?					
Is the research question answered?					

0=Not at all; 1=Only to a limited extent; 2=At an acceptable level; 3=to a significant level; 4=completely

Theoretical/Conceptual Papers	0	1	2	3	4
Are the aims of the paper adequately introduced?					
Is there a rationale given for the research?					
Is the literature up to date?					
Is the literature relevant?					
Does the literature used show a need for the research?					
Is the author's contribution to theory significant?					
Are the arguments presently clearly?					
Does the author's argument logically flow from the theory?					
Does the author give implications or recommendations for further research?					

0=Not at all; 1=Only to a limited extent; 2=At an acceptable level; 3=to a significant level; 4=completely

Information for Participants

My name is Rachel Dunn and I am a full-time PhD student at Northumbria University in the UK. My thesis explores *The Benefits of Clinical Legal Education to Students in European Pedagogy* and it is a comparative study looking at the educational experience of law students in a number of European settings. This document sets out the background to the study as a whole and provides detailed information about the part of the study in which you are invited to participate. If there are any questions that are not answered here, please contact me or my supervisors for further information.

Rachel Dunn
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Paul McKeown
Senior Lecturer
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The Benefits of Clinical Legal Education to Students in European Pedagogy

The purpose of this study is to provide data about whether and if so, how Clinical Legal Education (CLE) is of benefit to students. This is not only during their education, but also when they are practicing as lawyers or in other employment. There is much research on clinic that make claims for the benefits of clinical legal education but there is not as yet, detailed evidence or data to show how these benefits work. This research will contribute to the debate about whether clinical and experiential learning should be incorporated into legal courses. I will provide this data through a number of different activities:

- A systematic review of the literature on the pedagogic practice of CLE
- Observations of clinical skills teaching in a number of settings (audio and video recording)
- Discussions with law students about the key attributes of the practicing lawyer and how these are taught on their courses (audio recording)
- Interviews with legal educators exploring the place of clinical and experiential education in their curriculum design, pedagogy and assessment practice (audio recording)
- Interviews with law students exploring the impact they think CLE has had on their education and whether they feel better prepared for legal practice (audio recording)
- Questionnaires with lawyers and employers of law graduates enquiring whether they believe CLE has had a positive impact on the graduates they have hired or worked with, making them better prepared for legal practice (audio recording).

What being involved in the research will mean

Your participation in this study is voluntary. After signing this form you can withdraw from the study at any time and you will not be asked any questions as to why you no longer wish to take part. If you have withdrawn from the study you may rejoin at any time.

Participation in this study means that you provide me with permission to use the data I collect in reviews and other assessments in the research project. Your responses will be combined with those of other participants. Information about individuals will not be used in any published reports.

Risks and Benefits of being in the study:

There is no risk in participating in this project. The process of reflecting on the course you are involved in may prompt new perspectives and ideas which may be beneficial in the future. If you do not receive a direct benefit from your participation in this study, others may ultimately benefit from the knowledge obtained.

Confidentiality:

The records of this study will be kept confidential to the extent of the Data Protection Act 1998. In any reports on this study, I will not include any information that will make it possible to identify any individual or group (for example, universities will be given a letter - University A- so as not to be

identifiable). If an individual can be identified by the nature of their role, specific consent to waive confidentiality will be agreed and all written material will be subject to their scrutiny before publication. The research diary, video and audio data collected will not be included within the published research, only the information gained from them. This may include words that you have said.

Electronic copies of data, including videos and audio, will be stored securely within a password protected file on the university computer and will be backed up to the researcher's password protected MacBook. Any hard-copy paper documents will be stored in a securely locked cupboard on campus. Extracts may be shared and viewed by the research team and, in addition to the PhD thesis, other publications will be generated based on the data. All documentation will be made anonymous prior to this to maintain participant confidentiality.

The recordings on the iPad will be deleted within two weeks of the initial recording. The saved audio recordings will be deleted from the university computer and MacBook folders. However, they will be held for a period of up to 5 years. Within this time you may request to see any data collected in this particular study. However, as stated above, all names of individuals will be not be used and universities will be given a letter instead of their usual name.

Consent to Participate in the Element of the Study

I will visit your law clinic for one week. During this time you will be asked to place certain 'lawyer skills' on a board, in an order of importance. This will be done as a group with other students. You will also be asked to think of some skills you believe a competent lawyer needs, if they have been left out of the pack given to you. I will record the placement of the cards and the discussion using the video on my iPad; the resulting video will capture your voice and perhaps your hands and no visual images of you will be used.

During this week I will also be keeping a research diary. This diary will contain my experiences at your university and my research process. It is a tool to facilitate my research and to later reflect on my visit and data collection. This diary will contain no names or anything which could identify the university, its students or tutors.

Statement of Consent (please tick the relevant boxes here):

- I have read and understand the study that I will be participating in;
- I have been given an opportunity to ask questions about the study;
- I understand that taking part in the study will include being audio and video recorded;
- I have been given adequate time to consider my decision and I agree to take part in the study;
- I understand that any of my personal details, such as my name, will not be revealed to anyone outside of the research team;
- I understand that my words may be quoted in publications, reports and other research outputs but my name will not be used;
- I understand that no visual images of me will be used in any way in this research
- I understand I can withdraw from the study at any time and I will not be asked any questions about why I no longer wish to take part.

I agree to the University of Northumbria at Newcastle recording and processing this information about me. I understand that this information will be used only for the purpose(s) set out in this information sheet supplied to me, and my consent is conditional upon the university complying with its duties obligations under the Data Protection Act 1998.

Name of Participant: _____ Date: _____

Name of Researcher: _____ Date: _____

Appendix 5 – Email sent to SLO to request participants

Hello everyone,

I hope you are all well.

I met some, if not most, of you at the SLO meeting on the 17th September. For those of you who could not attend I am a PhD student, focusing on Clinical Legal Education in the SLO. I want to show how the SLO is beneficial to students and in pedagogic institutions. This will be done by observing firm meetings, small activities with students on what skills they believe a competent lawyer needs and, ultimately, of their experience in the office.

In order to do this I need 5 firms that I can join, observe and, occasionally, carry out more practical research. The practical research should only take up 10 minutes of a meeting and can be done whenever you feel that it won't interfere with your lesson plan.

It won't be every firm meeting. I would like to do 20 hours of observation this semester, spread across the 5 firms, making it 4 hours per firm. There will only be one 10 minute activity this semester.

If you are willing to help and volunteer your firm, which I would be very grateful, please send me an email. Once I have an idea of how many supervisors are willing we can take it from there and work around your timetable.

Thank you all.

Kind regards
Rachel Dunn

Appendix 6 – Interview Questions for Students

- 1) Looking at your answers on the board, do you believe that your time in the SLO has changed these answers?

If yes, how?

When looking at the board can also pick out things that were said in the initial D16. Let them discuss how they feel about those comments now after a year in the SLO.

- 2) Do you feel more prepared to go onto your training contract (or equivalent) because of your education in the SLO?
- 3) What is the most valuable thing you learnt in the SLO?
- 4) What *other* skills, knowledge or attributes do you think have you gained or developed whilst in the SLO?
- 5) Could you have developed these elsewhere in the course if you didn't have the opportunity to work with live clients?
- 6) If this was not compulsory, would you have opted to do the SLO?

Why?
- 7) What would you say to students choosing between degrees with and without clinic?
- 8) What are you saying to potential employers about your SLO experience?
- 9) Do you feel as though working with live clients under supervision has made you more confident for future practice?
- 10) Do you think the SLO will have a long term or short term benefit you for career?

Appendix 7 – Interview Questions for EI Tutors

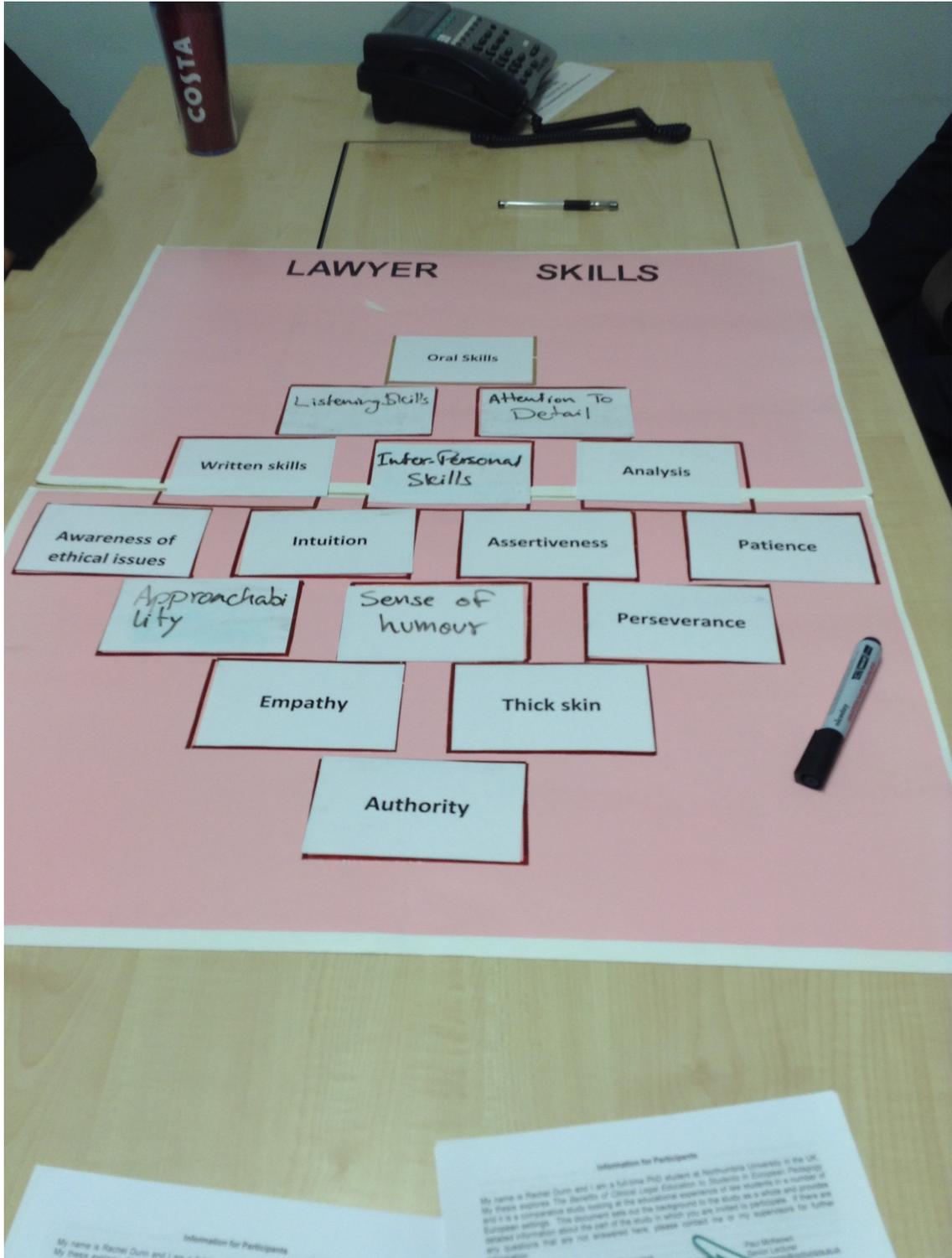
- 1) Which skills, knowledge or attributes do you believe are important for your students to develop during their legal education?
- 2) Do you think that these skills can be taught with the use of clinical legal education?
 - a. Do you think they can be learned *without* clinical experiences? If not, are they developed in the early years of practice? How?
- 3) What *other* skills, knowledge or attributes do you think they have gained or developed whilst in a live client clinic?
- 4) Which skills do you think are more important for student to develop in a clinic?
- 5) Do you believe that the ‘softer’ skills (e.g. empathy, patience etc.) can be developed in conjunction with the ‘hard’ skills (e.g. legal writing, interviewing etc.)?
 - Do you think they need to be developed separately?
 - As a clinical tutor, how do you feel teaching the ‘soft’ lawyer skills?
 - Which of the ‘hard’ lawyer skills do you believe are necessary to develop with your students for them to start practice competently?
 - Which of the ‘soft’ lawyer skills do you believe are necessary to develop with your students for them to start practice competently?
 -
- 6) Is clinic compulsory at your institution? If yes, why? If not, would you like it to be?
- 7) What advice do you give your students when they are choosing between clinic and no clinic during their legal education?
- 8) Have you had any feedback from the profession regarding your clinic and how it prepares students for practice?

Appendix 8 – Example of Diamond16 Transcript

FIRM F DIAMOND 16 - 19/02/15

This was a free standing LPC firm, just starting in the SLO . there were 4 participants all together. They had a mixture of placing pre-determined cards and writing their own. It took them approximately 13 minutes to complete.

FINAL PLACEMENT



Skills added

- Listening skills
- Attention to detail
- Inter-personal skills
- Approachability
- Sense of humour

Skills that were moved to a different position

- Intuition was moved from the 3rd row to the 4th, replaced with attention to detail
- Attention to detail was moved from the 3rd row to the 2nd, swapped with interpersonal skills

Other Notable Comments Made

- 'I'm not sure... it changes all the time. I don't know if it's even possible to do this.'
- 'I'm not sure how important authority is. Because you don't really need authority. Because you're not the authority it's the law. I don't think you need to be particularly authoritative to be a good lawyer.'
- 'You do need authority if you're a managing partner of a law firm.'
- 'Listening, interviewing. You need to listen.'
- 'I think written skills are probably lower down, because if you're really high up you're not going to be writing or anything, are you? Someone else writes it all for you.'
- 'Well, that's true but you need to be able to write to get high up.'
- 'I think you spend a lot of your time writing probably.'
- 'Yeah when you start written skills are very important.'
- 'Patience and thick skin, they should go side by side. And perseverance.'
- Pointing at oral skills, interpersonal and listening skills currently placed at the top: 'The thing is, placing those ones there are the top, you've gone very client based skills at the top, if that's the way we're going.'
- Intuition and analysis were said to go together.
- 'Empathy should be the least important one.'
- 'Yeah, well it's probably not that important.'
- Awareness of ethical issues: 'That's probably on the same line as empathy but probably more important than empathy.'
- 'It depends what the skills are for as well. I mean, if it's being a good lawyer or if

it's being a successful lawyer. There not necessarily the same thing.'
'Yeah I think a successful lawyer, most of the time, is violating ethical issues.'
Yeah, I don't know if I'd out it as high as the 3rd one, because people ignore them all the time.'

It was decided that written skills would be placed on the 3rd row instead.

- 'I think patience is a better quality to have than thick skin. If you're patient with someone rather than...

'I think patience is more for family law, criminal law... you don't really need it if you're a commercial lawyer do you?'

'Well, if you work on some contracts and it takes two years to put together.'

'Well, you'd rather be patient about something, rather than just put up with it.'

- When authority was placed at the bottom: 'Yeah, you're not really going to come across that as much. Because, you're either working for somebody else or yourself.'

'I don't think authority is necessarily a skills anyway. It's more of a trait or something that comes through your role, your job.'

- On sense of humour: 'It's important, you've got to charm your clients.'
- On approachability: 'I think that's important, because you've got to be able to not be threatening.'

'I think it's a skill you can gain, just by talking to people.'

- 'I'm just thinking, interpersonal skills and approachability, they're pretty much the same thing.'
- 'I think attention to detail is very important, in that, if you miss something then you're not a good lawyer.'

Appendix 9 – Example of Diamond16 data inserted into a spreadsheet for analysis

Firm A													
Pre Determined Cards													
	Intuition	Patience	Perseverance	Empathy	Oral Skills	Written Skills	Authority	Assertiveness	Thick Skin	Awareness of EI	Analysis		
D1 - 4/11/14		5	3	2	3	4	4	3	1	1	5	4	
D2 - 17/02/15		2	2	2	3	5	5	1	1	1	3	4	
D3 - 28/04/15		1	2	2	5	4	4	1	2	1	3	5	
Created Cards													
D1 - 4/11/14	Trustworthy & Professionalism	Good Listener	Knowledge	Coherence & Organisation	Timing (time management)								
		5	3	2	2	1							
D2 - 17/02/15	Legal knowledge	Listening Skills	Research Skills	Reflection	Time Management								
		5	4	4	3	3							
D3 - 28/04/15	Legal knowledge	Listening Skills	Research Skills	Interviewing	Time & Case Management								
		5	4	3	3	3							
Moved Cards													
D1 - 4/11/14	Authority	Intuition	Thick Skin	Analysis	Empathy	Assertiveness							
	Moved Up	Moved down & then Moved up	Moved down	Moved down & then Moved up	Moved down	Moved down							
D2 - 17/02/15	Patience	Awareness of EI	Empathy	Assertiveness	Oral skills	Research skills	Perseverance	Intuition	Analysis	Time management	Reflection	Thick Skin	Authority
	Moved up, moved down	Moved down, then moved up, then moved down, moved down	Moved down, then moved up, moved down, moved up	Moved down, moved down, moved up	Moved Up, moved up	Moved down, moved down	Moved down	Moved up, moved down	Moved Up	Moved down, Moved up	Moved up, moved up	Moved Down	Moved Down
D3 - 28/04/15	Oral Skills	Listening Skills	Analysis	Written Skills	Intuition	Empathy	Awareness of EI	Patience	Research skills	Perseverance	Thick Skin		
	Moved down	Moved up	Moved up	Moved Down	Moved Down	Moved Down, moved up, moved up	Moved Down, moved up	Moved Down	Moved Down	Moved down	Moved Down		
Cards Discussed													
D1 - 4/11/14	Not Discussed	Not Discussed	Not Discussed	Discussed	Not Discussed	Not Discussed	Not Discussed	Discussed	Discussed	Discussed	Discussed	Discussed	Discussed
D2 - 17/02/15	Discussed	Discussed	Not Discussed	Discussed	Discussed	Discussed	Discussed	Not Discussed	Discussed	Not Discussed	Discussed	Discussed	Discussed
D3 - 28/04/15	Not Discussed	Not Discussed	Not Discussed	Discussed	Discussed	Not Discussed	Not Discussed	Not Discussed	Not Discussed	Not Discussed	Not Discussed	Not Discussed	Discussed

Appendix 10 – Example of Interview Transcript and Coding

you know, what do we actually need to do? Whereas now, you were like yep, yep, we know what we're doing.]

'Yeah, it's quite interesting.'

[So, from your time in the student law office, and thinking about everything that you've learnt, do you feel like you're more confident to go on and do a training contract or whatever job it is that you're going to be going on to do?]

'Yeah.'

'Yeah, definitely.'

[Okay, why?]

'Because, actually I applied for a job and they rang me up and said we want to ask you some questions. And in the covering letter it had said that I'd worked in the student law office, because they're wanting someone who has experience. It was just legal secretary, but I was like, well I have experience because I worked in the student law office. It's an actual legal environment where I've had to deal with cases, so it's not directly secretary experience, but it's practical skills over people who've basically just done a three year course, when they've looked at a book and been able to do a couple of practical things, but not been actually able to put it in practice, and to make mistakes and learn from it. And I think it's impressive when, for the employers, when they actually hear about it, they're quite interested, it kind of derails the interview sometimes.'

experience

preparation

'I think the transition between going from the student law office or whatever, to a training contract is not as much as a step, compared to a normal degree. So, you'd feel a lot more comfortable when you go there. So, it would just generally be more relaxing in your first couple of weeks I think.'

confidence.

[Yeah, instead of going to open a file and being like oh shit how do I open a file. So, thinking about the skills on here and even some that might not be on here that you might not have come up with before, for you, what is the most valuable thing that you've learnt in the SLO?]

'Don't wanna be a lawyer anymore.' (laughter).

change of career.

[That's what I learnt as well! So you don't want to be a lawyer anymore?]

'Well, I'm not really sure but I'm...'

'Yeah, I'm on the fence now.'

'Well, I was pretty much dead against it and then before I came to the student law office, like I chose to come to this uni because of the student law office, got to third year and was like hell no, horrible, dislike it intensely. And then I got back into fourth year and I started

[Yeah, which is not how it should be at all. So apart from the skills on here, again, is there any other skills or knowledge or attributes that you think you've gained during your time in the SLO?]

'I don't know, confidence isn't a skill, but I think almost confidence in your opinion. Like, it's okay to have an opinion, having done you research, it's okay to trust your research and then be able to work on it and advise a client knowing that you're not telling them something completely wrong. Which I was really worried about at the beginning, that even though I'd done three years of law degree before that I didn't know how to research properly or (inaudible). That's not really a skill, it's sort of a feeling, I suppose if I'm honest.'

-development
confidence

'I think my ability to write has just gradually got improved throughout the whole degree. Like, before I wasn't very good at English when I was at school and now I feel I'm probably better than most. Probably one thing I would say.'

skills
development

'For me I would say, I wouldn't say my interviewing was like bad to start with, but the gradual practice that I've had over the year, like they don't phase us anymore, whereas like before I was like I've got a client coming in and like nervous and all that, and then after a like a couple of times it's just, client's coming in I'm not really bothered, just gonna tell them this, see what questions they come up with and all that. Before I'd be like oh what they gonna ask me, what I'm going to say, I don't really know, is this right. But now, it's just like it's fine, it's all fine.'

[Yeah, which comes with practice I guess. I think that's what happens when you become like an expert really or... in any job. No, I think it's nice to know that when you've got a client coming in you know what you're doing and it's not... you can kind of enjoy the interview a bit more because you're not constantly like...]

-development

'You can build more of a relationship over it, because you think more about that, rather than what you've got to say.'

[Definitely. Okay, if you weren't in the SLO, so you hadn't had this, do you think you would have developed these skills anywhere else? So, if you hadn't of worked with any live clients?]

'I think some of them would've developed, but I don't think they would have developed to the extent that they are now. I would say that they are quite well practiced and you know when you go to an interview and they say what's your three best skills? I feel like I can quite confidently say some of the things that are listed on here and giving good examples, rather than just being like, well I think I'm quite good at x, y and z. So, I think you would develop them. Like when we did, you know the acting clients? I don't know if everybody at university does that, but I just don't think that you developed anywhere near the skills that you do in the real situation (agreement from group) because you know that they're holding back information or else they're really happy to give you everything, and things like that. So, I suppose you do develop like your written skills and analysis through the course, it just helps to do it on a practical basis really.'

-see /
simulation

'She used, yeah she's left now, but she used to be like a legal executive for Sunderland City Council and she did pretty much the same work, but she's moved to like a totally different department because I think she just wanted a change. Because after doing it for like thirty odd years, she's just like...'

[(Laughs) Yeah, I think after doing anything for thirty years you're going to want a change. Okay, so if you had a student come up to you from college who was saying I'm thinking about doing a law degree, I've looked at one say at Newcastle, where they've got no clinic at all. Or, Northumbria, where there's the student law office, what would you tell them?]

'I suppose it kind of comes down to, like one of my considerations, like my supervisor at college said that I was a practical learner rather than a theoretical, I don't do so great with how to just take on information and deal with it at later days. So it comes down to that person and how they learn. But I would definitely say Northumbria, because it has got this actual live client situation. Like, why would you pass that up if you want to be a solicitor? In my head.'

'I also think the experience is invaluable if you want to go into the law.'

'I would probably want to find out from them whether they have an idea as to whether they want to. For example, I'd say they really want, they know they want to go into the profession I'd say yes, because it's a super experience to get you closer to what it's like in the profession, and then it'll be brilliant for your like CV and job applications and training contract applications. If they're not sure I'd say try it anyway because it can sometimes help you decide. But, I don't know what to tell them if they're like I just want to do a law degree, I'm not really bothered. Because having done second and third year here, you still do have SLO aspects of it. Like, when you do tort and crime it's in the litigation aspect, which is kind of more towards practice [It's like a problem-based learning.] yeah. Rather than the whole like theory of everything. So, it depends on like what you said, for regards to what type of learner they are. But if they definitely contemplating whether to go into the profession or they definitely want to, I'd say Northumbria.'

'I think Northumbria's degree, as well, is good because you get to the second year and finish it and think, I don't want to do this for another two years, I could just do it in the one. [Yeah, you've always got that option.] So, it's a bit more relaxed and in regards to Newcastle you could do three years and you're finished when everyone else finishes and then you're also like well I could have done another year and it might have helped me with my LPC and everything. [And a lot cheaper.] And a lot cheaper.'

[That's why I chose Northumbria.]

'Yeah, it is a lot cheaper.'

'I think you come out with quite an impressive package as well. At the end of the day, you can say that you've got an LLB, Masters and LPC and within that, you've not only just done them one after another but you've actually got practical experience. Like, it looks like, I

inherent benefits

The taxonomy of clinics: An interactive session exploring the risks and realities of all forms of CLE

Rachel Dunn
PhD Candidate
Northumbria University

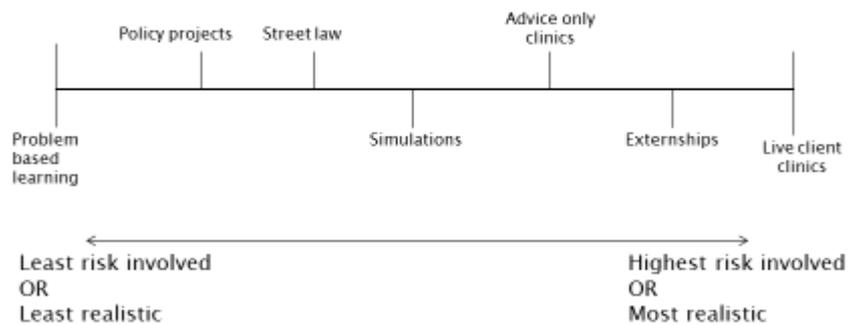


The risks and realities of CLE

- ▶ Why is this important to me?
- ▶ Can we easily identify the risks and realities of each form of CLE?
- ▶ What did I come up with?



My scale



Defining the different kinds of CLE

- Problem-based learning
- Policy projects
- Street law
- Simulations – some include vocational courses
- Advice only clinics – can include, CAB, PSU and other legal advice providers.
- Externships
- Live client clinics

Placing for reality

- ▶ Why is PBL at the bottom?
- ▶ Policy projects – odd one out?
- ▶ Externships above advice only clinics
- ▶ Which is more realistic – externships or live client clinics?



Placing for risk

- ▶ PBL – no client no risk!
- ▶ Policy project – different kind of risk
- ▶ Street law – less risky than simulations?
- ▶ Should advice only clinics be placed above externships?
- ▶ Live client clinics – what are the risks?
 - To the client
 - To the student
 - To the tutor
 - To the institution