

Learning to be a Lawyer: Transition into Practice Pilot Project, 6 GA. B. J. 8 (2001).

8. See Paul Maharg, p. 9.
9. See Nigel Duncan, p. 16.
10. Paul Maharg and his colleagues at the Glasgow Graduate School of Law are currently collaborating with the Effective Lawyer-Client Communication Project to develop an even more sophisticated system of teaching and assessing professional competence, following models being used in medical education. See Karen Burton, Clark D. Cunningham, Gregory Todd Jones & Paul Maharg, *Do We Value What Clients Think About Their Lawyers? If So, Why Don't We Measure It?* at <http://law.gsu.edu/Communication/>.
11. The Franklin Pierce Law Center has gone so far as to hire a full-time director for this program using its funds.
12. Dalianis & Sparrow at 24.
13. "To be effective, the teaching of lawyering skills and professional values should [include the] . . . opportunity for students to perform lawyering tasks with appropriate feedback and self-evaluation; [and] reflective evaluation of the students' performance by a qualified assessor." MACCRATE REPORT at 331.
14. Thanks to Paul Maharg for this felicitous quote. See Clark Cunningham, *Rethinking the Licensing of New Attorneys—An Exploration of Alternatives to the Bar Exam*, 20 GA. ST. L. REV. vii, xxvi (2004).

TRANSACTIONAL LEARNING ENVIRONMENTS AND PROFESSIONAL LEGAL EDUCATION IN SCOTLAND

by Paul Maharg

*Learners need instructional conditions that stress the interconnections between knowledge within cases as well as different perspectives of viewpoints on those cases. . . . Learners need flexible representations of the knowledge domains that they are studying, representations that reflect the uncertainties and inconsistencies of the real world.*¹

Scotland is a small jurisdiction. With a legal profession of 10,000 solicitors and over 400 practising advocates (the equivalent of barristers in England) serving a population of under five million, it is in size smaller than the legal bar of many states in the U.S.



PAUL MAHARG is co-director of Legal Practice Courses in the Glasgow Graduate School of Law (www.ggsllstrath.ac.uk), and director of the innovative Learning Technologies Development Unit in the GGSL. He is in charge of all curriculum design and implementations on the Diploma in Legal Practice and Professional Competence Course, which includes developments in information and communi-

cations technologies (video-based virtual learning environments, online simulations, etc.), and skills-based learning, teaching, and assessment. He is currently involved in a number of legal educational projects, including the Standardised Client Initiative and the Virtual Learning Environments Project (under the auspices of the UK Centre for Legal Education). His research areas lie largely in legal education. He is currently Chair of the British and Irish Law Education and Technology Association (BILETA—www.bileta.ac.uk).

The training of both advocates and solicitors takes nearly the same route at the initial stages. All lawyers in Scotland must qualify with an undergraduate law degree from an institution recognised by the Law Society of Scotland, or they must pass the Society's examinations following a period of self-study. (The great majority of students take the degree route into the profession.) Students who wish to enter the legal profession then begin the three-year course of professional training and education. They first enter a 28-week course called the Diploma in Legal Practice. Equivalent in many ways to the Legal Practice Course in England and Wales, the Diploma sets out to train law students in practice skills, knowledge, and values, and to equip them for the two-year traineeship that follows the Diploma. Currently there are five Diploma providers, all attached to university law departments or schools. The course is taught predominantly by tutor-practitioners working in specific areas of the law, and designed and administered by the university.

Either before or during their Diploma experience, students must arrange for a traineeship with a practising solicitor or a legal service employer in Scotland. On successful completion of the Diploma, they enter into a two-year contract of training with this employer. The traineeship is monitored by the Society: trainees are required to submit logs of work undertaken in the office, and review sheets are completed every quarter and submitted to the Society for monitoring. These documents form part of the ongoing assessment of the training program known as the Assessment of Professional Competence. Sometime between the 6th and 18th months of their traineeships, trainees are required to take another course called the Professional Competence Course. This course is designed to build upon the knowledge and skills developed in the Diploma, and relies upon the office experience that trainees will have gained in their traineeship to date. At the start of their second year of training, trainees obtain a restricted practising certificate which enables them to practise in the courts under certain conditions. At the end of their second year, if they have fulfilled all the conditions of the Society, and have obtained a discharge of their training contract and a signing-off statement from their employer, trainees can apply for a full practising certificate and entry to the profession.²

In this essay I shall briefly describe some elements of professional training we have designed using information and communications technology (ICT) in the Diploma taught at the Glasgow Graduate School of Law (GGSL), and suggest why the approach might be considered as a part of some U.S. bar examinations. The key concept is that of “transactional learning”—in effect, learning environments that simulate practice—where students practise legal transactions and are assessed upon their practice skills and knowledge.³ Such transactional learning lies at the heart of attempts by educators

since John Dewey to address the relationship between learning and life.⁴ There are five general principles to our approach:

1. Transactional learning is active learning.

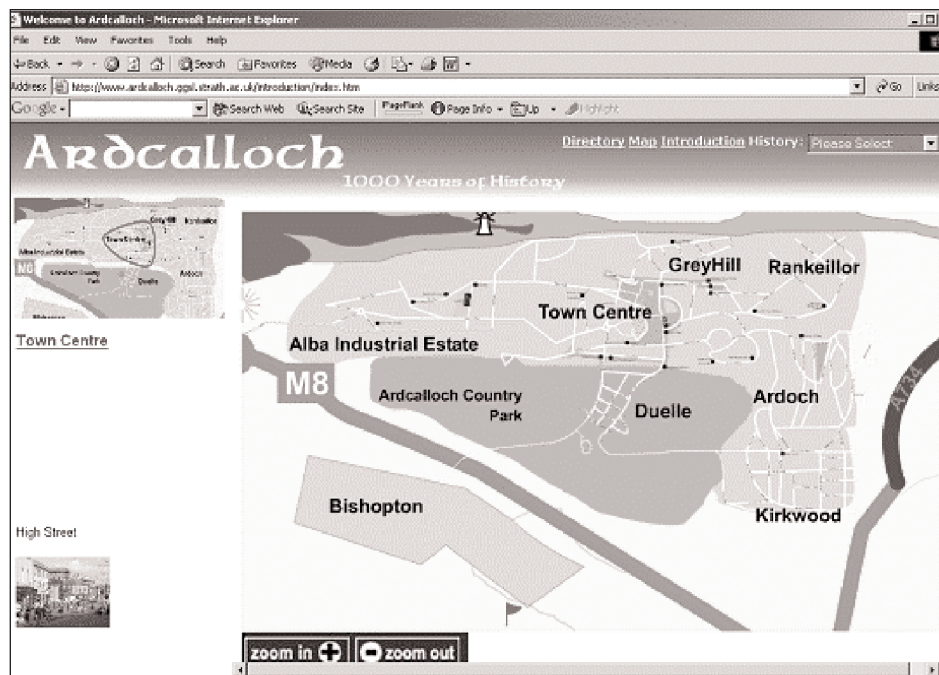
Our students are involved in activities within client cases, rather than standing back from the actions and learning about them. There is, of course, a place for learning about legal actions—indeed, transactional learning is rarely possible unless students first have a conceptual understanding of substantive and procedural law, which in the GGSL they gain from paper resources, video virtual learning environments, and face-to-face tutorials. However, transactional learning goes beyond learning *about* legal actions to learning *from being involved in* actual or simulated client cases. We would claim that there are some forms of learning that can only take place if students go through the process of some form of active learning.

To facilitate this process, we created a fictional town on the web called Ardcalloch; the town is represented on our website by a civic history, a map (see Figure 1, on the next page), and a directory. Within the town, we created several hundred fictional businesses, institutions, and citizens, and sixty-four passworded law firms to each of which were attached four students.

2. Transactional learning is based on completing legal transactions.

Within the firms, students act as newly qualified lawyers. In Conveyancing

Figure 1:
Map of
Ardcalloch



classes for example, students learn in tutorials about how property might be conveyed via purchase and sale, but their focus is on the two simulated transactions, which are also part-assessments of student competence in Conveyancing. Students thus learn in depth about the practical realities of this kind of transaction.

3. Transactional learning involves reflection on learning.

Transactional learning involves thinking about the transactions to be completed and includes consideration of action to be taken on ethical issues arising from those transactions. For our students, it means documenting their firms' transactions, logging individual activities, keeping a (confidential) personal log, and taking part in group reflection on these transactions with a tutor who is

the firm's Practice Management tutor/consultant. The tutor acts as a resource and also as a disciplinary figure should there be any doubt about the quality or quantity of individual student participation in the transactions.

4. Transactional learning is based on collaborative learning.

Students are valuable resources for each other, particularly if they have opportunities to engage in both cumulative talk (the accumulation and integration of ideas) and exploratory talk (constructive sharing of ideas around a task).⁵ In the GGSL, collaborative learning is used to balance individual or cellular learning. There is of course a place for silent study, individual legal research, and so on, and we emphasize these methods as preparation for collaborative work. Thus, in a personal injury transaction, students

carry out fact gathering and analysis, legal research, and negotiation. They can gather information in real time. On average, a firm will generate around 20 to 30 letters in this process (see Figure 2, below), which ends with a negotiated settlement of the claim. Aspects of firm performance are tracked and presented in feedback sessions to students.

5. Transactional learning requires holistic or process learning.

In their traineeships, the students are asked to undertake tasks that demand a holistic understanding of legal process and legal procedure. In this sense, students need to arrive in their traineeships not only with a sufficient knowledge of the parts of a transaction—which letter is sent to whom, what content it should include, etc.—but also with a holistic

knowledge of the entire transaction. When they are given a file-in-progress in the office, for instance, they need to be able to move from part to whole, and vice versa, in order to identify what has been done and why, and what needs to be done next. It therefore makes sense to give them considerable practice in carrying out whole-to-part and part-to-whole thinking. Such thinking is effectively the basis of practical legal reasoning, and our students begin to learn this skill by working through simulations of office-based and court-based transactions.

Transactions are embedded within the teaching and learning of specific subjects. For example, in the Diploma curriculum, the “Private Client” unit deals with transactions such as the inheritance of property after death, the winding up of estates, and the making of wills. In the GGSL course there are no lectures and no examinations, per se. Instead, the tutorials

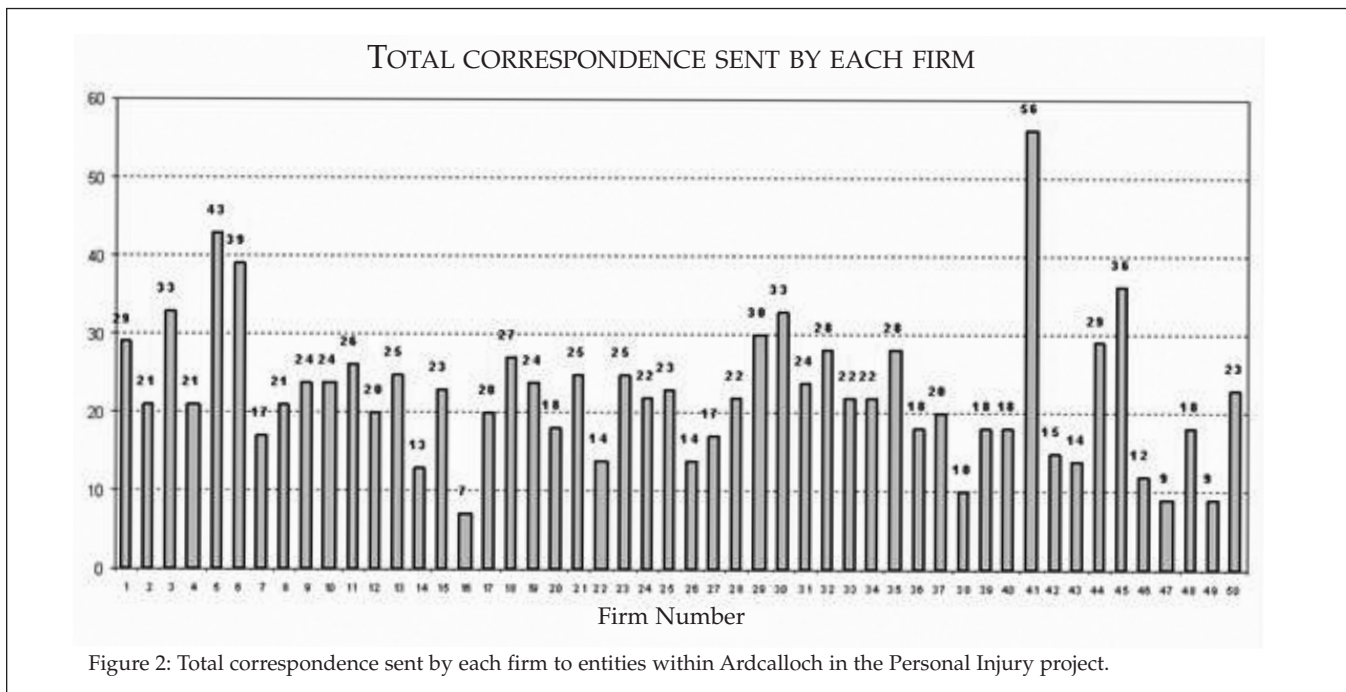



Figure 2: Total correspondence sent by each firm to entities within Ardcalloch in the Personal Injury project.

focus on the work of two transactions, namely winding up the estate of a deceased intestate client, and drafting a will for another client. We have four assessment points which involve students in drafting wills, court documentation, letters, and revenue tax forms. The virtual firms are given two opportunities to pass the assessments for each task, with feedback from tutors. The task assessment criteria are based upon acceptable practice performance—for example, if any of the court documentation would have been rejected by court administrators, the assessment is marked as “not yet competent” by the tutors. Each year the feedback from students demonstrates how useful they found the assessment.

Simulations are only beginning to be recognised as powerful learning environments and assessment tools—and none too soon.⁶ There is a need for attractive learning environments and above all, assessment activities that draw students into tasks that are absorbing and that retain the complex, multi-layered sense of reality—what Jonassen in the quote that begins this essay called “the uncertainties and inconsistencies of the real world”—while at the same time enabling students to reflect on their simulated practice and obtain feedback upon that practice. Such an approach requires a fresh view of what constitutes professional learning.⁷ Above all, transactional learning and assessment is highly flexible: it can be adapted to full-time or part-time courses. It could be developed as part of a professional competence assessment framework.⁸ For practice-based assessments such as we need on the Diploma it is one answer (though by no means the only one) to the problem of creating imaginative learning and assessment applications that simulate what fee-earners and others do in everyday legal practice. 

ENDNOTES

- 1 D.H. Jonassen, *Cognitive flexibility theory and its implications for designing CBI*, in INSTRUCTION MODELS IN COMPUTER-BASED LEARNING ENVIRONMENTS 385-403 (S. Dijkstra, et al., eds. 1992).
- 2 Further detail about the Scottish system is provided in P. Maharg, *Professional Legal Education in Scotland*, 20 GA. ST. U. L. REV. 947 (2004) (available online at: <http://law.gsu.edu/ccunningham/Professionalism/Index.htm> under “Rethinking the Licensing of New Attorneys—An Exploration of Alternatives to the Bar Exam”).
- 3 For further descriptions and analyses of this model, see P. Maharg, *Negotiating the Web: Legal Skills Learning in a Virtual Community*, 15 INTERNATIONAL REVIEW OF LAW COMPUTERS & TECHNOLOGY 3, special edition, WEB-BASED TEACHING, LEARNING & ASSESSMENT IN LAW 345-361 (P. Maharg ed., 2001); P. Maharg & A. Paliwala, *Negotiating the Learning Process with Electronic Resources*, in EFFECTIVE LEARNING AND TEACHING IN LAW 81-104, (R. Burrige, et al., eds., 2002); P. Maharg & A. Muntjewerff, *Through a Screen, Darkly: Electronic Legal Education in Europe*, 36 LAW TEACHER, LEGAL EDUCATION IN EUROPE 3, 307-332 (2003).
- 4 See J. Dewey, DEMOCRACY AND EDUCATION: AN INTRODUCTION TO THE PHILOSOPHY OF EDUCATION (1916). Note that Dewey was invited to teach at Columbia Law School by Dean Harlan F. Stone in the 1920s.
- 5 C. Van Boxtel, et al., *Collaborative Learning Tasks and the Elaboration of Conceptual Knowledge*, 10 LEARNING AND INSTRUCTION 311-330 (2000).
- 6 See, e.g., James Gee, WHAT VIDEO GAMES HAVE TO TEACH US ABOUT LEARNING AND LITERACY (2003). For a range of current simulation providers to industry, see reports available from Brandon Hall at www.brandonhall.com.
- 7 In an experimental/control group experiment on the use of resource-based learning environments, Vermetten, et al., found evidence of improved performance in students only where the innovative approach was a prominent element of the curriculum. See Y. J. Vermetten, et al., *Powerful Learning Environments? How University Students Differ in Their Response to Instructional Measures*, 12 LEARNING AND INSTRUCTION 263-84 (2002); see also J.D. Vermunt & N. Verloop, *Congruence and Friction Between Learning and Teaching*, 9 LEARNING AND INSTRUCTION 257-280 (1999).
- 8 We are working with Dutch colleagues in the RechtenOnline Foundation to produce international simulation projects using their simulation environment, Sieberdam, as well as Ardcalloch.