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EMPLOYER PERSPECTIVES ON ESSENTIAL KNOWLEDGE, SKILLS AND ATTRIBUTES FOR LAW GRADUATES TO WORK IN A GLOBAL CONTEXT

DUNCAN BENTLEY* AND JOAN SQUELCH**

I INTRODUCTION

There is much agreement among legal academics and practitioners that law schools need to deliver law programs that take cognisance of global developments and the increasing emphasis on internationalisation.¹ It is further recognised that law graduates need to be prepared for work across multiple

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¹ See e.g., Vai Io Lo, 'Before Competition and Beyond Complacency: The Internationalisation of Legal Education in Australia' (2012) 22(1/2) *Legal Education Review* 3; Hariolf Wenzler and Kasia Kwietniewska, 'Educating the Global Lawyer: The German Experience' (2012) 61 *Journal of Legal Education* 462; Vai Io Lo, 'The Internationalisation of Legal Education: A Road Increasingly Travelled' in Mary Hiscock and William van Caenegem (eds), *The Internationalisation of Law: Legislating, Decision-Making, Practice and Education* (Edward Elgar, 2010) 117; Simon Chesterman, 'The Evolution of Legal Education: Internationalisation, Transnationalisation, Globalisation' (2009) 10(07) *German Law Journal* 883; Jan Klabbers, 'Reflections on Globalisation and University Life' in Jan Klabbers and Mortimer Sellers (eds), *The Internationalisation of the Law and Legal Education* (Springer, 2008); Michael Bogdan, 'Is there a Curricular Core of the Transnational Lawyer?' (2005) 55(4) *Journal of Legal Education* 484.

jurisdictions and in a wide range of employment contexts that extend beyond local private legal practice.²

This article addresses the question of how internationalisation is affecting what employers want from Australian law graduates and consequently what law graduates need from their legal education both to secure jobs and to be as effective as possible as new employees in an ever changing global environment. The article is based on research undertaken as part of an Office of Learning and Teaching Project aimed at understanding the knowledge, skills and attributes that are essential for law graduates working in a global, multi-jurisdictional environment, and the implications for internationalising the Australian law curriculum.³

The article first describes the context from an Australian perspective for the investigation, with an analysis of relevant literature. It identifies trends and thinking from three perspectives: employers of Australian law graduates; Australian education; and Australian legal education. Secondly, the article sets out the research question and the research approach. Thirdly, it reports on and briefly discusses the qualitative research findings from roundtable discussions with employers of law graduates. Finally, it draws conclusions based on the literature and findings from the employer roundtable discussions.

II EMPLOYERS OF AUSTRALIAN LEGAL GRADUATES

Globalisation has given rise to unparalleled growth in international trade and investment, the free movement of capital and labour, increased immigration, and the exponential transfer of ideas and knowledge across borders.⁴ Globalisation has had an impact upon all areas of society including the legal services sector and other sectors employing law graduates for their legal skills. Globalisation has resulted in significant growth in the import and export of legal services.⁵ It has also given impetus to the growth of the 'global law firm' (that is, firms that are located and operating in multiple international jurisdictions) and legal activities and services requiring law firms and practitioners to work in and

² See e.g., Steven Freeland, 'Educating Lawyers for Transnational Challenges: The Globalisation of Legal Regulation' (2005) 55(4) *Journal of Legal Education* 503; Jonathan Goldsmith, 'The Core Values of the Legal Profession for Lawyers Today and Tomorrow' (2008) 28 *Northwestern Journal of International Law and Business* 442; Carole Silver, David Van Zandt and Nicole De Bruin, 'Globalization and the Business of Law: Lessons for Legal Education' (2008) 28(3) *Northwestern Journal of International Law & Business* 339-414.

³ Office of Learning and Teaching Project, 'Internationalising the Australian Law Curriculum for Enhanced Global Legal Education and Practice' <<http://www.olt.gov.au/project-internationalising-australian-law-curriculum-enhanced-global-legal-education-and-practice-20>>.

⁴ See above n 1.

⁵ ILSAC, *Australian Legal Services: Strategic Global Engagement 2009-2012* (2012) <www.ilsac.gov.au>.

across different jurisdictions. This has necessitated a shift from law firms, including often the small local law firms, working within the parochial confines of national law and single jurisdictions, to law firms working across multiple jurisdictions and within a much broader international legal context and framework.⁶ As noted by Mortenson et al, 'through migration, trade and communications, legal relationships increasingly cross state and national borders, giving rise to cross-border – "multi state" cases'.⁷ Law firms now increasingly compete in a global market place. Australian and foreign companies expect top tier law firms to have the 'ability to address legal issues no matter the jurisdiction in which they arise'.⁸ Thus the challenge to 'big firms is not just to continue to perform at a high level but to do so while grappling with the threats and opportunities presented by the globalisation of the legal services market'.⁹ Local firms in Australia 'are increasingly measured against global ones in terms of experience, the spread of offices and depth of legal knowledge'.¹⁰

With the growth and diversity of global law firms and international legal trade and investment comes greater mobility of people and the opportunity to work, permanently or episodically, in different countries and across different jurisdictions.¹¹ Law graduates today do not expect to have one job or one career: 'We now deal with students who expect to move countries a few times, seeing themselves as part of a global elite in a worldwide market for talent'.¹² Given the proliferation in global challenges and global mobility, Klabbers argues that 'in a globalising world, lawyers will need to be educated in such a way as to make it easy to move across jurisdictions, across specialisations, and to move across employment opportunities'.¹³ Law graduates need to be 'comfortable in multiple jurisdictions, often simultaneously'¹⁴ and 'almost every lawyer must be prepared to face some transnational

⁶ Globalisation has seen most large and many small and medium-sized Australian law firms join multi-jurisdictional networks over the last five years. Former Chief Justice Spigelman gives a view from the bench in J J Spigelman, 'Global Engagement by Australian Lawyers' (2011) *Law Society Journal* 45.

⁷ Reid Mortenson, Richard Garnett and Mary Keyes, *Private International Law in Australia* (LexisNexis, 2002) 1.

⁸ Alex Boxell, 'Global Challenge' (2011) November *CFO Financial Review* 53.

⁹ Ibid. See also Margaret Thornton, 'The New Knowledge Economy and the Transformation of the Law Discipline' (2012) 19(2-3) *International Journal of the Legal Profession* 265.

¹⁰ Boxell, above n 8, 53-54.

¹¹ ILSAC, above n 5.

¹² Chesterman, above n 1, 883.

¹³ Jan Klabbers, 'Reflections on Globalisation and University Life' in Jan Klabbers and Mortimer Sellers (eds), *The Internationalisation of the Law and Legal Education* (Springer, 2008) 17.

¹⁴ Tan Cheung Han cited in Chesterman, above n 1, 883.

issues, regardless of that lawyer's field of practice'.¹⁵ Law graduates must be equipped with the necessary skills and knowledge to deal with transnational issues, diversity and change, and be equipped to 'operate within the context of increasingly multilateral legal regulation, even over areas of law that have been regarded as within the exclusive domain of the sovereign state'.¹⁶

In terms of preparing law graduates for global legal practice, it is important to understand employers' perspectives on what they expect from graduates. The information sought from employers of law graduates should inform the development of a law curriculum that prepares graduates for the workplace. Just as employers have to respond to the impact of globalisation and constantly changing workplace environment, so too do universities have to respond to the needs of employers and to prepare graduates with the necessary knowledge, skills and attributes that will equip them for the world of work.

III UNIVERSITY RESPONSES TO GRADUATE EMPLOYABILITY

Traditionally universities have been places of highly intellectual, theoretical learning and research, with the emphasis on discovery, innovation and knowledge generation. However, university education has slowly but steadily changed over time in response to prevailing social, political and economic realities. While they retain a strong emphasis on knowledge generation, innovation and research, universities have come to play a more significant vocational role in contributing to the social and economic development of a country through a greater emphasis on educating and training a skilled workforce. Shapiro, for instance, argues that universities have 'a larger sense of purpose'¹⁷ and exist for the benefit of a broader society. Universities have become more complex and multifaceted organisations, and they have become far more international in terms of staff, students and programs.¹⁸

¹⁵ Michael Bogdan, 'Is there a Curricular Core of the Transnational Lawyer?' (2005) 55(4) *Journal of Legal Education* 484. Teresa C Stanton provides a useful bibliographical review from a US perspective in 'Globalization and the Internationalization of Legal Education in the United States: An Annotated Bibliography' (2010) 29(1) *Legal Reference Services Quarterly* 23.

¹⁶ Steven Freeland, 'Educating Lawyers for Transnational Challenges: The Globalisation of Legal Regulation' (2005) 55(4) *Journal of Legal Education* 503. See also John Flood, 'Legal Education in the Global Context: Challenges from Globalization, Technology and Changes in Government Regulation' (University of Westminster School of Law Research Paper, 2011) 11; James E Moliterno, 'The Lawyer of the Future: Legal Education: Rethinking the Problem, Reimagining the Reforms' (2013) 40 *Pepperdine Law Review* 423; Deborah L Rhode, 'The Lawyer of the Future: Legal Education: Rethinking the Problem, Reimagining the Reforms' (2013) 40 *Pepperdine Law Review* 437.

¹⁷ Harold Shapiro, *A Larger Sense of Purpose. Higher Education and Society* (Princeton University Press, 2005).

¹⁸ *Ibid.*

Universities no longer operate in isolation; they are more connected to business, governments and the community, and serve more diverse needs and interests. Shapiro notes that in the changing environment in which universities operate, 'universities not only need a constantly refreshed vision of their role that reflects the emerging reality of their time, but also the intellectual energy to pursue their vision and to convince society to envision them as an important component of society's own vitality'.¹⁹ Similarly, in terms of the role of the university in social and economic development, the *Employability Skills for the Future* report noted that

more than ever before universities are being relied upon as a vehicle for advancement of the national economy and wider society. They do this through the creation of new knowledge and by preparing graduates with appropriate skills and attributes. It makes sense, then, for them to maintain focus on keeping graduate capabilities in line with the needs of the economy and society.²⁰

In responding to the changing role of universities, there has been an increasing emphasis on graduate employability, and the kinds of knowledge and skills graduates require to meet the demands of an ever changing society. As Owen and Davis suggest, 'universities are under increasing pressure to nurture knowledge, skills and personal attributes of the professionals of the future, including discipline-specific and broader generic areas'.²¹ Although there are different interpretations attached to employability,²² typically graduate employability is viewed as 'being in possession of the understandings, skills and personal attributes necessary to perform adequately in a graduate level job'.²³ Employability is therefore more than suitability for entry-level employment; it is about equipping graduates with the skills and attributes for maintaining ongoing employment in a constantly changing environment. Employability implies something about the 'capacity of the graduate to function in a job, and is not to be

¹⁹ Ibid 39.

²⁰ Commonwealth of Australia, *Employability Skills for the Future* (2002) 25.

²¹ Susanne Owen and Gary Davis, 'Law Graduate Attributes in Australia: Leadership and Collaborative Learning within Communities of Practice' (2010) 4(1) *Journal of Learning Design* 15.

²² For a discussion on defining employability see Kevin Lowden et al, 'Employers' Perceptions on the Employability Skills of New Graduates' (University of Glasgow SCRE Centre and Edge Foundation, 2011) <http://www.edge.co.uk/media/63412/employability_skills_as_pdf_-_final_online_version.pdf>.

²³ Peter Knight and Mantz Yorke, 'Employability Through the Curriculum' (2002) 8(4) *Tertiary Education and Management* 261.

confused with the acquisition of a job, whether a “graduate job” or otherwise’.²⁴ As noted by Harvey:

Employability is not just about getting a job. Conversely, just because a student is on a vocational course does not mean that somehow employability is automatic. Employability is more than about developing attributes, techniques or experience just to enable a student to get a job, or to progress within a current career. It is about learning and the emphasis is less on ‘employ’ and more on ‘ability’. In essence, the emphasis is on developing critical, reflective abilities, with a view to empowering and enhancing the learner.²⁵

Yorke notes the concept of employability is complex and argues that it is evidenced by ‘the application of a mix of personal qualities and beliefs, understandings, skilful practices and the ability to reflect productively on experience’.²⁶ It is not simply ticking off a list of generic skills. The focus on employability and preparing graduates for the workplace is reflected in university ‘graduate attributes’, which is a more recent development in university teaching policies.²⁷ Graduate attributes are generally broad statements that describe the desirable kinds of knowledge, skills and attributes that graduates will have acquired on completion of a program of study. Murdoch University, for example, defines ‘graduate attributes’ as ‘generic capabilities and qualities that help university graduates to participate effectively in society and employment’.²⁸ Universities each have their own set of graduate attributes although there are commonalities. Graduate attributes tend to be broad, general statements that are mostly aspirational. Examples of statements from university ‘employability’ graduate attributes include the following: ‘ensur[ing] our students and graduates are work, career and future ready’;²⁹ [graduates are] ‘work-ready’;³⁰ and ‘graduates will be prepared for successfully engaging in the routine work or

²⁴ Mantz Yorke, ‘Employability in Higher Education: What it is, What it is not’ in *Learning and Employability Series* (The Higher Education Academy, 2006) 7 <<http://www.heacademy.ac.uk/resources/detail/employability/employability336>>.

²⁵ Lee Harvey, *Transitions from Higher Education to Work* (Centre for Research and Evaluation, Sheffield Hallam University, 2003) <http://staff.napier.ac.uk/services/sas/student_development/EnhancingtheCurriculum/VolunteeringResource/Documents/Extract%20from%20The%20Higher%20Education%20Academy.pdf>.

²⁶ Knight and Yorke, above n 23, 13.

²⁷ Although it has been a requirement of the Commonwealth Government since 1998 for universities to include statements of graduate attributes as part of their reporting, their recent development highlights differences in understanding and approach. See S C Barrie, ‘A Conceptual Framework for the Teaching and Learning of Generic Graduate Attributes’ (2007) 32(4) *Studies in Higher Education* 439-458.

²⁸ Murdoch University, *Graduate Attributes at Murdoch University* <<http://our.murdoch.edu.au/Educational-Development/Preparing-to-teach/Graduate-attributes/>>.

²⁹ Victoria University, *Graduate Capabilities and Skills* <<http://learningand>

professional practice of their discipline'.³¹ In addition, university graduate attributes typically include a combination of discipline-content specific attributes and the kinds of professional skills that are germane to employability. The most common skills include communication, problem solving, critical thinking and working as teams. For example, Curtin University graduates will be able to 'communicate effectively' and 'think critically, creatively and reflectively'.³²

Relevant to the internationalisation theme of this article, more universities are including graduate attributes in their programs of study stating that graduates will, for example, 'recognise and apply international perspectives',³³ '[be] competent in culturally diverse and international environments',³⁴ '[be] active global citizens',³⁵ or '[be] capable of applying their discipline in local, national and international contexts'.³⁶

Flowing from the general focus on graduate attributes, many law schools have program-specific graduate attributes that reflect the knowledge, skills and attribute that are desirable in law graduates entering the legal profession. These are discussed in the next section.

IV LAW GRADUATE EMPLOYABILITY

Although legal academic education has traditionally been theoretical and content driven, with the emphasis on the acquisition by law students of substantive knowledge, there has been a trend in recent decades towards including more skills-based learning, formerly the purview of professional practical legal training.³⁷ This trend has been aided by the introduction of national standards on quality education and curriculum development, such

teaching.vu.edu.au/student_skills_and_learning/skills_and_careers/capabilities_and_skills/

³⁰ RMIT University, *Teachings and Learning Graduate Attributes* <<http://www.rmit.edu.au/teaching/graduateattributes>>.

³¹ Griffith University, *Graduate Attributes* <<http://www.griffith.edu.au/gihe/resources-support/graduate-attributes>>.

³² Curtin University, *Graduate Attributes* <http://otl.curtin.edu.au/learning_teaching/graduate_capabilities.cfm>.

³³ Ibid.

³⁴ Griffith University, above n 31.

³⁵ Melbourne University, *Attribute of the Melbourne Graduate* <<http://www.unimelb.edu.au/about/attributes.html>>.

³⁶ University of New South Wales <<https://my.unsw.edu.au/student/atoz/GraduateAttributes.html>>.

³⁷ See, eg Richard Johnstone and Sumitra Vignaendra, *Learning Outcomes and Curriculum Development in Law* (Australian Universities Teaching Committee, 2003) 206; Bobette Wolski, *Skills, Ethics and Values for Legal Practice* (Lawbook, 2nd ed, 2009); William Sullivan, Anne Colby, Judith Wegner, Lloyd Bond and Lee Shulman, *Educating Lawyers: Preparation for the Profession of Law* (Carnegie Foundation for the Advancement of Teaching, 2007).

as the Australian Qualifications Framework (AQF), which sets out the knowledge, skills and attributes expected for each level of qualification.³⁸

The importance of including professional skills in the law curriculum has been articulated in a number of significant law reports, both national and international.³⁹ The influential MacCrate Report, for instance, published in 1992 by a task force of both practising and academic lawyers appointed by the American Bar Association, set out ten 'fundamental lawyering skills' for American lawyers: problem solving, legal analysis, legal research, practical investigation, communication, counselling, negotiation, litigation and alternative dispute resolution, administrative skills, and solving ethical dilemmas.⁴⁰

Similar 'lawyering skills' were broadly reflected in the recommendations of the Australian Law Reform Commission Report, *Managing Justice: A Review of the Federal Civil Justice System*, in which the Commission considered the importance of legal education and professional training to the justice system.⁴¹ Although this report did not specifically address the issue of internationalisation it did note the need for greater inclusion of professional skills in the curriculum and training, and the complementary nature of substantive knowledge and professional skills rather than a polarisation of these two dimensions.⁴²

While there may be ongoing debate about the inclusion of professional skills or 'employability' skills in the law curriculum, what they are and how this might best be achieved, the reality is that the AQF has firmly placed employability skills on the curriculum map.⁴³ The AQF sets out the learning outcomes for each level and type of qualification. These learning outcomes are

³⁸ Australian Qualifications Framework Advisory Board, *Australian Qualifications Framework* (Australian Qualifications Framework Council, 2nd ed, 2013) <<http://www.aqf.edu.au>>.

³⁹ See, e.g., American Bar Association, 'An Educational Continuum Report of The Task Force on Law Schools and the Profession: Narrowing the Gap' (1992) <http://www.americanbar.org/groups/legal_education/publications/maccrate.html>; Roy Stuckey et al, *Best Practices for Legal Education: A Vision and A Road Map* <http://law.sc.edu/faculty/stuckey/best_practices/>; Gary Davis et al, *Learning and Teaching in the Discipline of Law: Achieving and Sustaining Excellence in a Changed and Changing Environment* (Council of Law Deans, 2009) <www.olt.gov.au/project-learning-teaching-law-flinders-2006>.

⁴⁰ American Bar Association, above n 35. For a more recent view, see Carole Silver, 'Getting Real About Globalization and Legal Education: Potential and Perspectives for the US' (2013) 24(2) *Stanford Law and Policy Review* 457.

⁴¹ Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System* (AGPS, 2000). For a discussion of this report and competency-based education in Australia see Geoff Monahan and Bronwyn Olliffe, 'Competency-Based Education and Training for Law Students' [2001] 3 *University of Technology, Sydney Law Review* 14.

⁴² Australian Law Reform Commission, *ibid* [3.24].

⁴³ Australian Qualifications Framework Advisory Board, above n 38.

constructed as a taxonomy of what graduates are expected to know, understand and be able to do as a result of learning. They are expressed in terms of the dimensions of knowledge, skills and the application of knowledge and skills.⁴⁴

The skills are expressed as generic learning outcomes that are non-discipline specific, and categorised as fundamental skills (e.g. literacy skills); people skills (e.g. team work); thinking skills (e.g. problem solving) and personal skills (e.g. being self-directed).

It is an important part of the process of curriculum development to identify and articulate graduate skills and attributes that are both meaningful and ascertainable. However, skills and attributes relating to employability presume an understanding of the kinds of skills and attributes that graduates need that are relevant to the workplace. Although such skills and attributes are identified in the literature and the AQF, employers are an indispensable participant both in curriculum design and the education process. They help to specify more specifically the skills needed and existing educational gaps or deficiencies.

V RESEARCH PROJECT

The Office of Learning and Teaching Project, 'Internationalising the Australian Law Curriculum for Enhanced Global Legal Education and Practice', was undertaken in 2011 and 2012.⁴⁵ The main aim of this Curriculum Priority Project was to provide a framework for designing an internationalised law curriculum that would prepare graduates for global legal practice. It was considered important for employers to identify those skills and attributes necessary to work as a law graduate in an international context. Although much is written from the academic perspectives on internationalisation and graduate attributes, there is far less literature and research on what employers think about

graduate attributes and skills.⁴⁶ A small-scale investigation was therefore undertaken to engage with employers in the legal profession. In particular, the aim was to seek employers' views on the knowledge, skills and attributes that are essential for law

⁴⁴ Ibid 11.

⁴⁵ Office of Learning and Teaching Project, above n 3.

⁴⁶ Even where there is such a focus, there is a tendency to give greater weight to evidence from graduate surveys rather than their employers/managers. For a more balanced approach see eg Lore Arthur, John Brennan and Egbert de Weert, *Employer and Higher Education Perspectives on Graduates in the Knowledge Society: A Report from the European Commission Framework VI Project: The Flexible Professional in the Knowledge Society* (The Centre for Higher Education Research and Innovation, 2007); Egbert de Weert, 'Graduate Employment in Europe: The Employers' Perspective' in U Teichler (ed), *Careers of University Graduates: Views and Experiences in Comparative Perspectives* (Springer, 2007) 225-246.

graduates working in a global, multi-jurisdictional environment, and the implications for internationalising the Australian law curriculum.

A Research Participants and Data Collection

The small-scale investigation involved a number of roundtable discussions with employers. These roundtables were conducted in Perth, Sydney, Canberra and Hong Kong.⁴⁷ Five roundtables were conducted between June 2011 and February 2012 and included a total of 70 participants from private legal practice, professional associations and accrediting bodies, government organisations, legal human resources, companies and academia.⁴⁸ Participants were specifically selected from various organisations and were invited to participate in the roundtables. This 'purposeful sampling'⁴⁹ was undertaken to ensure that the roundtables included key stakeholders that were representative of employers and who would be able to provide rich and relevant input.

The roundtable discussions were one and a half to two hours in duration. Although the roundtables were not considered to be in depth qualitative research focus group interviews, they nonetheless generated rich discussion and meaningful data that gave rise to consistent views and expectations about the knowledge, skills and attributes expected of law graduates.

Following a preliminary literature review on the research topic, a semi-structured interview schedule was developed that was used to facilitate the roundtable discussions. It was intended that the discussions should be free flowing and as interactive as possible, with opportunity to explore and discuss issues as they emerged. Extensive notes were taken during and immediately following the roundtable discussions and interviews. The following questions formed the basis of the roundtable discussions:

- To what extent are recent law graduates equipped to work in a global environment?
- What generic and specific skills and attributes do law graduates require in order to work in multiple jurisdictions? (What do employers and legal practitioners expect of graduates?)

⁴⁷ The roundtable was conducted in Hong Kong in order to engage with representatives from global law firms based in Hong Kong and to get an external perspective. The Hong Kong roundtable was followed up with three interviews in Hong Kong with representatives from global law firms. Hong Kong has a long history as one of the most open common law jurisdictions, and the experience of firms with global practices was seen as an effective way of providing qualitative validation of the preliminary research findings.

⁴⁸ For purposes of confidentiality, details of the participating employers, organisations and associations are not provided.

⁴⁹ John W Creswell, *Educational Research: Planning, Conducting, and Evaluation Quantitative and Qualitative Research* (Pearson Education Inc, 2008).

- What core areas of legal knowledge are essential for developing an integrated international law curriculum that will equip law graduates to work in a global environment?

B Data Analysis

The data gathered from the roundtables and interviews was analysed using the qualitative analysis technique of category construction described by Merriam.⁵⁰ Qualitative analysis is concerned with gaining a deep understanding of the phenomenon being researched from the participants' perspectives through words rather than statistics.⁵¹

The qualitative data was analysed using a process of category construction.⁵² This involves constructing meaningful categories or themes that capture and describe the recurring patterns of data that cut across the various data gathered from the discussions.⁵³ It is a means of deconstructing data and reorganising, classifying and grouping data into a meaningful whole.⁵⁴ As categories are constructed, they may be merged or subdivided as the data is consolidated, classified and refined.⁵⁵ The names of the categories reflect the focus of the research and the data analysed, but '[they] are abstractions derived from the data, not the data themselves'.⁵⁶ The names of categories were derived from the data and the literature, and importantly they 'reflect the purpose of the research'.⁵⁷ There is no hard and fast rule on the number of categories but it is recognised that the 'fewer the categories, the greater level of abstraction, and the greater ease with which you can communicate your findings'.⁵⁸

VI KEY FINDINGS AND DISCUSSION

The research data from the employer roundtable discussions was analysed and categorised into two broad themes: (1) substantive legal knowledge, encompassing the categories of foundational discipline knowledge and international-specific knowledge, and (2) professional skills and attributes made up of communication and presentation skills, problem solving, legal research, relationship building, and adaptability and resilience. The

⁵⁰ Sharan Merriam, *Qualitative Research and Case Study Applications in Education* (Josey-Bass, 1998).

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid 179.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid 181.

⁵⁷ Ibid 183.

⁵⁸ Ibid 185.

categories articulate the key findings in relation to employers' perceptions that emerged from the roundtable data.⁵⁹

As the OLT Research Report provides a comprehensive discussion on the categories and supporting data, what follows is a general overview of the key findings of the participant employers' perspectives.⁶⁰

A *Substantive Legal Knowledge*

The first two categories that emerged from the data on legal knowledge relate to foundational knowledge and international-specific knowledge. Both these categories are concerned with substantive legal knowledge. The first category concerns itself with participants' views on core areas of legal knowledge, while the second category deals with the specific issues that were raised in relation to teaching international and comparative perspectives. However, it is telling that given the context of the roundtable discussions and the validation in different settings, substantive legal knowledge was seen as critical for global practice. The participants were in agreement that graduates need to have a thorough and deep understanding of the broad fundamental concepts and principles of law rather than a detailed technical, rules-based approach that did not necessarily lead to a deeper understanding of 'first principles' and an ability to translate and apply these principles in diverse situations. Klabbers, for example, argues that legal education should be

fairly general in nature: the lawyer who knows her Finnish criminal code by heart but not much else will have a hard time surviving professionally, and might be better off having an understanding of the principles underlying the criminal code, rather than the details of that code itself.⁶¹

A broad, principled approach was seen by participants as fundamental in preparing lawyers for practice across jurisdictions. It is well supported in the literature.⁶²

Although the 'Priestley Eleven'⁶³ was raised, participants did not express any particular views on this, and considered the

⁵⁹ As reported in the Office of Learning and Teaching Project, above n 3.

⁶⁰ Ibid.

⁶¹ Klabbers, above n 1, 17. Needless to say, Klabbers was writing about the situation in Finland.

⁶² See note 1 and the essays in Mary Hiscock and William van Caenegem (eds), *The Internationalisation of Law: Legislating, Decision-Making, Practice and Education* (Edward Elgar, 2010). See further, Mary Hiscock and William van Caenegem (eds), *The Internationalisation of Legal Education: The Future Practice of Law* (Edward Elgar, 2014).

⁶³ The Priestley Eleven areas of knowledge are: Criminal Law and Procedure, Torts, Contracts, Property, Equity, Company Law, Administrative Law, Federal and State Constitutional Law, Civil Procedure, Evidence and Professional Conduct. They are named after the Law Admissions Consultative Committee (LACC, commonly known as the Priestley Committee as it was

Priestley Eleven to contain an appropriate set of subjects, which did not impede the development of the skills required for global legal practice. Participants, however, all reiterated the importance of contract law and tort law in any common law jurisdiction. Equity, private international law, and comparative law were also cited as important units and some participants strongly suggested that statutory interpretation should be a core subject, given increased regulation in most jurisdictions. From an employer's perspective, the curriculum framework and structure are less important in preparing students for global legal practice than a deep and intelligent understanding of the law and how to use that knowledge in a range of settings, including across jurisdictions.⁶⁴

A key aspect of the research was to seek employers' views and perspectives on 'internationalising' the law curriculum; in particular, their views on the core areas of legal knowledge that will equip law graduates to work in an international context. It was interesting that overwhelmingly the participants did not expect graduates to have specialised knowledge in areas of international law. Participants were of the view that graduates would specialise in international aspects of law (e.g. International Trade Law) through further studies and, importantly, during the course of their employment as they gained more experience and took on more specialised cross-jurisdictional work. However, as noted above, private international law was considered to be an important subject and was recommended by participants as a mandatory unit.⁶⁵ A number of participants also noted that a unit in comparative international law would be a useful area of study that would help graduates work across different jurisdictions.

Although participants did not expect graduates to have specific 'international law knowledge', participants did strongly emphasise and support the fact that graduates do need to develop an 'international perspective' or awareness, and be familiar with different legal systems, especially if graduates want to work in countries with a different legal system, in particular a civil

chaired by Justice Priestley of the New South Wales Supreme Court in 1992) and have been adopted as fulfilling the academic component of the pre-admission requirements in all jurisdictions.

⁶⁴ This is hardly novel, but it does get lost in the 'noise' of arguments for curriculum reform. This is well covered in Bobette Wolski, 'Continuing the Internationalisation Debate: Philosophies of Legal Education, Issues in Curriculum Design and Lessons from Skills Integration' in Hiscock and Van Caenegem, above n 62, ch 4. The principle was expressed in the now classic article, W Twining, 'The Great Juristic Bazaar' (1978) 14 *Journal of the Society of Public Teachers of Law* 185.

⁶⁵ Private International Law (or Conflict of Laws) is a specific area of international law that comprises principles, rules and policies guiding how foreign elements in a legal dispute should be dealt with: Reid Mortenson, Richard Garnett and Mary Keyes, *Private International Law in Australia* (LexisNexis, 2002) 1.

(European) system.⁶⁶ A similar view was expressed by Silva et al in their research into what law firms in the US expect, and they concluded that ‘a strong education in substantive U.S law is a necessity’ but that this is not sufficient and in addition developing ‘global sensitivity is crucial’ because law firms need ‘their lawyers to be effective in working across jurisdictions and cultures’.⁶⁷

Roundtable participants were also in agreement that an ‘international perspective’ and ‘global sensitivities’ could be embedded and integrated across the curriculum, especially within subjects that lend themselves to international and comparative perspectives. This approach was preferred to offering a separate add-on ‘transnational law’ unit, which generally includes aspects of private and public international law as well as other elements of international law.

In summary, most of the roundtable participants concluded that graduates do not need a detailed understanding of international law or the specific law of different jurisdictions, but they do need a broad understanding that domestic law must interact across jurisdictions, that there is a context to that interaction, and of how that interaction works.

This view is certainly consistent with the literature. Grossman, for instance, argues that lawyers practising in a global environment must understand different legal traditions, which requires not only an understanding of the substance of law but also the legal culture such as common law, civil law or religious law: ‘lawyers practicing in the global environment must understand the legal traditions that influence other countries’.⁶⁸ Grossman suggests that ‘international law concepts should be woven into courses that have traditionally been thought of as “domestic”’. For example, various law subjects such as Legal Process, Contract Law, Property Law and Constitutional Law and can include aspects of international legal systems from a comparative perspective.⁶⁹

There is therefore a most useful prompt for law schools that want to prepare law graduates to practice across jurisdictions. The roundtable participants highlighted the importance of developing an ‘international perspective’ and ‘global sensitivities’. They stressed that, in their view, this might best occur through integrating and embedding international, comparative and cross-cultural perspectives and sensitivities as part of the knowledge development of law students. It is a theme that provides a catalyst for future research.

⁶⁶ Supported in the literature: for example, see Hiscock and Van Caenegem, above n 62.

⁶⁷ Silver et al, above n 2, 411, 412.

⁶⁸ Claudio Grossman, ‘Building the World Community through Legal Education’ in Jan Klabbers and Mortimer Sellers (eds), *The Internationalisation of the Law and Legal Education* (Springer, 2008) 21.

⁶⁹ Ibid 33.

B Professional Skills and Attributes

In a survey of Australian and overseas employers about the key attributes they look for when employing international graduates (not necessarily law graduates), the four most commonly cited attributes were English language competency, effective communication skills, the ability to work as part of a team, and effective problem solving skills.⁷⁰ These skills were also identified in the OLT research project as being essential skills for law graduates. The most common skills and attributes that were identified and discussed by the participants in the roundtables are grouped and discussed under the following five categories: communication and presentation; problem solving; legal research; relationship building; and adaptability and resilience. These are by no means the only skills and attributes relevant for law graduates; the five categories merely reflect the substance of the roundtable discussions.

Although the focus of the research and roundtable discussions was on understanding employers' views and perspectives on the professional skills and attributes that they considered essential for law graduates working in a global, multi-jurisdictional environment, it is evident from the discussions that the professional skills and attributes that were discussed were those that law graduates need generally, irrespective of jurisdiction or context. The roundtable participants did not identify specific skills and attributes that were uniquely relevant to working in a global context. Rather, as one participant commented, if a law graduate working in Perth law firm has the intellectual capacity, excellent professional skills and the ability to be flexible, multi-task, adapt to new situations and work effectively in teams then they should be able to work in any jurisdiction. Moreover, participants noted that an increased emphasis on generic professional skills in the curriculum means that law schools can prepare their students equally for both domestic and international work.

Building on the observations in the previous section, further research into this issue is needed. Are there incremental levels of skill development that distinguish between one graduate with generic high level professional skills and attributes and a second graduate with similar generic skills and attributes and a particular capacity to display an international perspective and global sensitivities? Or will the first graduate necessarily display such a capacity because she has those generic high level professional skills and attributes? Intuitively this seems unlikely, but it needs

⁷⁰ Australian Government, *Australian Education International: International Graduate Outcomes and Employer Perceptions* (2010) <[http://www.aei.gov.au/News/Latest News/Documents/2010_International_Graduate_Outcomes_pdf.pdf](http://www.aei.gov.au/News/Latest%20News/Documents/2010_International_Graduate_Outcomes_pdf.pdf)> v-vi.

testing. In order to do so there is a need to identify and articulate the meaning of, and the characteristics that reflect international perspectives and global sensitivities.⁷¹

1 *Communication and Presentation*

Effective written and oral communication was identified as one of the most essential skills for law graduates generally, whether or not practising across jurisdictions, and one that graduates needed continually to develop. As noted by roundtable participants, law graduates irrespective of the jurisdiction require a high level of communication skills given the nature of legal work, and for engaging in activities such as negotiation, mediation, interviewing and advocacy. Implicit in the discussion by roundtable participants was the assertion that the level of skill becomes more important when the communication takes place across cultures and needs to integrate cross-cultural understanding.

Flowing from this, the issue of being able to communicate in a second language was raised in the roundtables, especially for law graduates working in jurisdictions in which having a second language may be essential. For instance, in the Hong Kong roundtable it was noted that Mandarin would be a significant advantage when working in Mainland China. However, participants also emphasised that to practise law it would be necessary to be fluent in the language, and that this significantly raises the bar. This is reflected in what Daly (a former dean of a law school) refers to as graduates needing to be residents and not tourists – in other words, being fully immersed and competent in the language of the country in which they work.⁷² This highlights the difference between working across jurisdictions and working within the jurisdiction and the nuances of communication and meaning. Further research is necessary to identify the advantages and disadvantages for cross-jurisdictional practitioners when advising clients of retaining some distance from full immersion into and understanding of the local laws. In terms of communication competencies, participants also added that graduates needed to be ‘culturally literate’. For instance, participants noted that for graduates working in China and Hong Kong, ‘being China literate’ was important. With globalisation, the ‘requirement of people to be able to communicate in a

⁷¹ The development of generic and specific legal skills and their identification and articulation is discussed extensively in the MacCrate Report and Roy Stuckey and others, above n 39. See further, William M Sullivan et al, *Educating Lawyers: Preparation for the Profession of Law* (Jossey-Bass, 2007).

⁷² Mary C Daly, ‘Tourist or Resident? Educating Students for Transnational Legal Practice’ (2004) 23(4) *Penn State International Law Review* 785-786.

multidisciplinary market is increasing',⁷³ and lawyers operating in a global environment need to be able to communicate with foreign lawyers in a culturally sensitive way. Participants observed that many graduates lack cultural and general business awareness and acumen. Cultural and business awareness was considered by the roundtable participants an important dimension of being able to communicate effectively in an international context. For those working in a number of jurisdictions, 'literate' might essentially mean, as Magallanes argues, that 'all those in transnational communication must be aware of their own cultural mindsets and patterns of communication' and that it 'helps to study other cultures' mindsets and patterns'.⁷⁴

2 *Problem Solving*

Problem solving and legal reasoning skills, including the skills of critical thinking, analysis, interpretation, synthesis and evaluation, were strongly emphasised by all participants. Participants placed emphasis on students having these intellectual skills to enable them to work through complex legal issues and problems. Participants were of the view that by their nature, cross-jurisdictional problems add another layer of complexity to purely domestic problems. Implicit in the commentary was the assertion that this would require a more finely developed skillset to think through such problems critically, and analyse, interpret, synthesise and evaluate them.

Participants noted the importance of graduates being able to examine a problem from different perspectives, to identify a range of solutions and to be able to 'make judgments' about the most appropriate course of action. The participants also commented that graduates need to be able to work with and manage large volumes of complex material and information, which they need to be able to organise, interpret, synthesise, and communicate efficiently and effectively. Again, the assertion was that as soon as more than one jurisdiction is involved, the skills are even more important.

Being able to deal with complex legal problems, including problems that may involve multiple jurisdictions, was identified by the participants as requiring what is sometimes called an ability to 'think like a lawyer',⁷⁵ and engage in legal analysis. Legal analysis

⁷³ Steve Mark, 'Legal Education for the 21st Century Law Graduate' (Speech delivered at the Continuing Legal Education Association of Australasia Conference, Sydney, 16 October 2008).

⁷⁴ Catherine J Iorns Magallanes, 'Teaching for Transnational Lawyering' (2005) 55(4) *Journal of Legal Education* 520.

⁷⁵ James R Maxeiner, 'Integrating Practical Training and Professional Legal Education' in Jan Klabbers and Mortimer Sellers (eds), *The Internationalisation of the Law and Legal Education* (Springer, 2008) 42.

and ‘thinking like a lawyer’ combine theory and practice, and require the use of the ‘legal methods’ of finding and applying the law.⁷⁶ Participants suggested that this is not an intuitive process; rather, it is a skill that needs to be taught and practised, and there are few better ways to do so than through practice on cross-jurisdictional issues. While problem-solving is a generic skill that is transferable to all jurisdictions, the further question to be explored is the extent to which teaching problem-solving skills incorporating international examples that cut across different jurisdictions can enhance skill acquisition. Roundtable participants were of the view that good research skills go hand-in-hand with problem-solving skills.

3 *Legal Research*

There was wide agreement amongst the roundtable participants that graduates need to have good legal research skills, which are associated with effective communication skills and legal problem solving skills as a basic requirement for the global practice. Participants expressed the view that some graduates did not have good research skills; they expressed concern that this was perhaps not receiving enough attention in law programs and was ‘a skill being lost’. Participants also expressed concern that law programs may not include legal research and writing as a mandatory core unit.

Participants also raised the issue of technology, which has become an indispensable tool in legal research and work. It was noted that graduates today, with the help of technology, seem to have little difficulty in finding and accessing resources but were not necessarily discerning in their use and application of technology. Concerns were expressed about using Internet sources such Wikipedia as a primary legal authority. It seems that there is still the need to teach students how to appropriately analyse and make judgements about information acquired through the use of technology in legal research.

Once again, roundtable participants focused on the need for high-level basic skills as a prerequisite for success at the more complex cross-jurisdictional level. They felt that graduates’ research skills need to encompass the ability to research international law, foreign law and legal issues in different jurisdictions.

The impact of globalisation and the importance of extending legal research to include international legal research find some support in the literature. Magallanes for instance points out that ‘the proliferation of international laws has led many lawyers to

Maxeiner also notes that this is what the Japanese call the ‘legal mind’ and the Germans refer to as ‘legal thinking’.

⁷⁶ Ibid 42, 43.

work in fields that require the domestic incorporation and application of such laws' and therefore 'students should be familiar with the skills required to undertake such tasks'.⁷⁷ Likewise, Rumsey argues that 'exposing students to international or foreign law will not help them much if they do not have the tools to research the law in those jurisdictions',⁷⁸ and that in this regard 'the globalisation of law practice imposes obligations on law schools'⁷⁹ to adequately prepare graduates for legal practice by providing them with the necessary research skills and tools.

Hutchinson, who advocates for legal research training 'to be mandatory in the first year of the law degree',⁸⁰ also recognises that shifts to transnational education 'make legal research skills training even more necessary, as research is a practical legal skill required of modern lawyers in the global legal world'.⁸¹ Hutchinson cogently argues for the need to move away from the traditional doctrinal paradigm of teaching legal research to one that includes a range of methodologies and perspectives, practical applications and 'an acceptance of the substantial impact of international law on national agendas'.⁸²

4 *Relationship Building*

Another strong theme to emerge from the roundtable discussions was the importance of developing skills in relationship building. This encompasses the ability to work effectively in teams and to network with people. Participants noted the importance of graduates being able to develop effective client-lawyer relationships as well as work with and interact with a wide range of people within and external to the legal profession. Participants recognised that these skills were not peculiar to global legal practice, but were an essential element of it, given the consistent references during the discussions to cultural awareness, cross-cultural communication skills and a broader global awareness.

The importance of relationship building is emphasised by Munneke, who argues that the top-ranked lawyering skills set out in the MacCrate Report remain highly relevant, and that human relations and relationship building skills such as collaboration, working in teams and cultural sensitivity are fundamental:

⁷⁷ Magallanes, above n 74, 519.

⁷⁸ Mary Rumsey, 'The Skills They Need: International and Foreign Legal Research' (2009) 28(1-2) *Legal References Services Quarterly* 133.

⁷⁹ *Ibid*, 145.

⁸⁰ Terry Hutchinson, 'Developing Legal Research Skills: Expanding the Paradigm' (2008) 32 *Melbourne University Law Review* 1065.

⁸¹ *Ibid*, 1081.

⁸² *Ibid*, 1084.

Law school sometimes gives law students the impression that they are solitary warriors, doing battle for their clients without reference to any support staff. If ever this was an accurate representation of the way law is practiced, it is certainly not the case today. Lawyers practice law as part of a team, frequently as the leader of the team, but always as a part of it. To the extent that team participation skills, such as team building, cooperative problem solving, active listening, work flow modelling and motivation are integral to the competent delivery of legal services, these skills should be regarded as fundamental lawyering skills.⁸³

To this description should be added, the requirement that all lawyers develop each of these skills to work across cultures and jurisdictions, with deep sensitivities to the nuances of each.

5 *Adaptability and Resilience*

A recurring theme to emerge from the roundtable discussions was the need for graduates working in a legal environment generally, and in a global practice environment specifically, to be adaptable, resilient and responsive to change. The legal environment can be highly competitive, pressurized and stressful, and working across cultures and jurisdictions can take this to the next level. Moreover, the nature of the work requires graduates to be able to ‘think on their feet’, to ‘learn fast’ and to ‘multi-task’. Therefore resilience is increasingly recognized as an important attribute for law graduates as it better equips graduates to manage their mental well-being, to deal with and manage stress, to cope with change and competing demands, to manage demanding workloads, and to ‘bounce-back’ when faced with adversity.

Richardson defines the concepts of ‘resilience’ and ‘resiliency’ in terms of a ‘process of reintegrating from disruptions in life’ for which ‘some form of motivational energy [is] required’.⁸⁴ In essence, resilience is a process of coping with stress, adversity and change.⁸⁵ Similarly, Vines describes a resilient lawyer as ‘one who can deal with the tough issues that have to be handled in legal practice and come through the other side without breaking’.⁸⁶ According to the Council of Australian Law Deans, it is important for law schools to ‘demonstrate a high regard for mental wellbeing of its students and to improve their awareness of the stresses associated with legal education and practice and the means to

⁸³ Gary A Munneke, ‘Legal Skills for a Transforming Profession’ (2001-2002) 22 *Pace Law Review* 147.

⁸⁴ Glenn E Richardson, ‘The Metatheory of Resilience and Resiliency’ (2002) 58 *Journal of Clinical Psychology* 309; Prue Vines, ‘Working Towards the Resilient Lawyer: Early Law School Strategies’ (2001) University of New South Wales Faculty of Law Research Series Paper 31 <<http://law.bepress.com/cgi/viewcontent.cgi?article=1300&context=unswwps-flrps11>>.

⁸⁵ Richardson, *ibid*, 308.

⁸⁶ Vines, *above n 84*.

manage them'.⁸⁷ Building resilience can be achieved through a range of formal and informal activities, including the integration of activities in the curriculum (for example, role play).

To this end, the legal profession and law schools have recognised the need to actively develop and promote programs that will help develop resilience to reduce stress and potential mental health problems. Programs aimed at developing resilience and addressing mental health issues in the legal profession were given greater impetus following the publication of research on the high level of mental health issues in the law profession and amongst law students.⁸⁸ The College of Law (NSW), for example, was awarded a Mental Health Matters Award by the New South Wales Minister for Health in recognition of the introduction of the 'Well-being & Resilience for Lawyers' workshop into its curriculum. Some 4000 students have reportedly attended the workshop since it was introduced in 2011.⁸⁹ Law firms are also taking steps to promote resilience amongst law professionals. The 'resilience @ law program' is a collaborative project of several top-tier law firms aimed at addressing mental health issues in the legal profession. The 'resilience @ law program' was awarded the Martin Seligman Award for Health and Wellbeing at the 2011 Australian Human Resources Institute Awards.⁹⁰ An important next step in the research is an examination of the effect, deleterious or otherwise, global practice has on the development of adaptability and resilience. Any assumption that the simple addition of complexities in relationships, culture and communication might exacerbate stresses leading to decreases in well-being should be tested to determine whether, on the contrary, cross-cultural and cross-border engagement may provide a vehicle for both formal and informal activities to build resilience and adaptability.

VII CONCLUSION

There is broad consensus in the academic literature that law programs should prepare graduates to work across multiple

⁸⁷ Council of Australian Law Deans, 'Promoting Law Student Well-Being Good Practice Guidelines for Law Schools' (March 2013) <http://www.utas.edu.au/__data/assets/pdf_file/0005/422969/Promoting-Law-Student-Well-Being-Good-Practice-Guidelines-for-Law-Schools1.pdf>.

⁸⁸ NJ Kelk, GM Luscombe, SD Medlow and IB Hickie IB, *Courting the Blues: Attitudes Towards Depression in Australian Law Students and Legal Practitioners* (Brain & Mind Research Institute, 2009).

⁸⁹ Justin Whealing, 'College of Law Recognized for Combating Depression', *Lawyers Weekly* (11 October 2012) <<http://www.lawyersweekly.com.au/news/college-of-law-recognised-for-combating-depression>>.

⁹⁰ HerbertSmithFreehills <<http://www.herbertsmithfreehills.com/news/news20111125-fh-resilienceahriawards>>.

jurisdictions and in diverse contexts, and to face the challenge of dealing with a wide range of transnational, global issues. It is also recognised that this needs to be achieved through collaboration between academic providers, employers and the profession. The research project on internationalising the Australian law curriculum included a small-scale investigation of the perceptions and expectations of employers. It is recognised that, given the small number of participants, these findings cannot be generalised. The employer representatives who participated in the roundtable discussions emphasised the need for law graduates to be well grounded in the fundamental legal concepts and principles of the main discipline areas, especially in the context of successful global practice. Likewise, they placed strong emphasis on graduates being able to demonstrate essential professional skills and attributes that are relevant to any work context if they want to practice across jurisdictions. Implicit in their comments was the consistent theme that the global practice of law takes the generic lawyering skills to a higher level. However, it was also recognised that law schools can only do so much to develop and assess essential skills and attributes with evidence-based outcomes, within the time available and within the context of an increasingly demanding and overcrowded curricula. Law schools have a responsibility to engage in the continuous development and improvement of law curricula in response to changes in society, the workplace and, especially, in the legal education and practice environment. Engaging with employers of law graduates, nationally and internationally, and having a better understanding of employers' perspectives, needs and expectations and what practising lawyers actually do can enrich the process of curriculum development and renewal. The findings from the employer roundtables serve as a useful guide when developing a flexible framework for internationalising the law curriculum. They can also be used as a basis for critically reviewing existing law offerings and assessing the extent to which law curricula, course learning outcomes and learning and assessment activities are aligned and geared towards developing knowledge, skills and attributes that do meet employers' expectations and which will prepare graduates for working in a global context. Most importantly, they identify a series of further research questions which will refine and develop our understanding of the knowledge, skills and attributes that are useful and even essential for global legal practice.