

1-1-2015

Towards a Pedagogy of the Integration of Clinical Legal Education Within The Law Curriculum: Using De-Identified Clinic Files Within Tutorial Programs

Rachel Spencer
University of South Australia

Matthew Atkinson
University of South Australia

Follow this and additional works at: <https://epublications.bond.edu.au/ler>

 Part of the [Legal Education Commons](#)

Recommended Citation

Spencer, Rachel and Atkinson, Matthew (2015) "Towards a Pedagogy of the Integration of Clinical Legal Education Within The Law Curriculum: Using De-Identified Clinic Files Within Tutorial Programs," *Legal Education Review*: Vol. 25 : Iss. 1 , Article 6.
Available at: <https://epublications.bond.edu.au/ler/vol25/iss1/6>

This Article is brought to you by the Faculty of Law at ePublications@bond. It has been accepted for inclusion in Legal Education Review by an authorized administrator of ePublications@bond. For more information, please contact [Bond University's Repository Coordinator](#).

TOWARDS A PEDAGOGY OF THE INTEGRATION OF CLINICAL LEGAL EDUCATION WITHIN THE LAW CURRICULUM: USING DE-IDENTIFIED CLINIC FILES WITHIN TUTORIAL PROGRAMS

RACHEL SPENCER* AND MATTHEW ATKINSON**

I INTRODUCTION – INTEGRATING CLINICAL PEDAGOGY WITH LEGAL DOCTRINE

The development of a law curriculum that integrates clinical pedagogy within the wider law curriculum has long been advocated as desirable, even essential, for legal education. This article examines the advantages of such integration and is divided into three parts. The first part reviews the literature relating to the integration of clinical pedagogy within the broader legal curriculum. The second part examines and explains how the University of South Australia Law School integrates its clinical legal education program into the wider curriculum through the use of de-identified Clinic files in two courses, specifically *Professional Conduct* and *Civil Procedure*. The third part discusses the secondary advantages of this initiative, including the access to real ‘case scenarios’ for problem-based learning.

The discourse about integrating clinical and legal doctrine pedagogies into a law school curriculum requires clarification. The writers refer to integration as combining two distinct elements – clinical teaching and teaching of legal doctrine – to make a whole, in the same way that Giddings examines the prospects of integrating clinical pedagogy across the law curriculum.¹ Clinical teaching and the teaching of legal doctrine are distinct because they have very different pedagogical underpinnings.

* Director of Professional Programs and the Clinical Legal Education program at the School of Law, University of South Australia.

** Managing Solicitor of the Legal Advice Clinic at the School of Law, University of South Australia. This paper was originally presented in the form of a workshop at the ‘Common Ground’ Eleventh International Journal of Clinical Legal Education Conference and Twelfth Australian Clinical Legal Education Conference, Griffith University, Brisbane, Australia, 16 – 18 July 2013. Thank you to Robyne Lyneham for her skilled research assistance and Joanne White for her helpful comments. Additional thanks to Peta Spyrou for sharing her love of the AGLC.

¹ Jeff Giddings, ‘Why No Clinic Is an Island: The Merits and Challenges of Integrating Clinical Insights Across the Law Curriculum’ (2010) 34 *Washington University Journal of Law and Policy* 261, 265.

Clinical pedagogy entails students working solo or in small groups with a supervisor to help clients resolve legal problems.² Students take on responsibility for the work, and their actions invariably have an impact on clients, their supervisor and colleagues. Students are then required to critically reflect on their experiences and performance in a structured manner, with a view to developing new insights and a greater appreciation of the law and legal practice.³

Traditionally, teaching legal doctrine or *corpus juris* involved students learning from teachers, textbooks and printed judicial opinions.⁴ This approach resulted in knowledge about legal doctrine being derived primarily from cases, the reasoning for the decisions within cases, and the interpretation of legislation.⁵ Teaching of legal doctrine typically took place in a large lecture hall, and students were required to engage in Socratic dialogue and case analysis. Its aim was to have students learn legal principles and to think like a lawyer.⁶ Christopher Columbus Langdell of Harvard Law School in 1870 is credited as being the catalyst for this pedagogy,⁷ from which, as Cody describes, ‘the rich complexity of facts and people’s lives [is] largely extracted’.⁸

Today, blended learning, on-line support, flipped classrooms and a variety of new pedagogical techniques have displaced the Socratic method of teaching law in many law schools. A law school curriculum that exclusively uses the Langdell – Harvard method has long been viewed as unsatisfactory. In 1933, Frank argued that law schools needed to rediscover clinical pedagogy.⁹ He thought the practice of exclusively teaching legal doctrine to law students was akin to ‘future horticulturalists confining their studies to cut flowers [or] ... prospective dog breeders

² Ibid.

³ While the writers acknowledge there are varying views on the goals of clinical legal education, it is widely accepted that an important aspect is reflective learning. See generally Rachel Spencer, ‘Holding Up the Mirror: A Theoretical and Practical Analysis of the Role of Reflection in Clinical Legal Education’ (2012) 18 *International Journal of Clinic Legal Education* 181; Rachel Spencer, “‘First They Tell Us to Ignore our Emotions, Then They Tell Us to Reflect’”: The Development of a Reflective Writing Pedagogy in Clinical Legal Education Through an Analysis of Student Perceptions of Reflective Writing’ (2014) 21 *International Journal of Clinical Legal Education* <<http://www.northumbriajournals.co.uk>>; Rachel Spencer, ‘Private Lives: Confronting the Inherent Difficulties of Reflective Writing in Clinical Legal Education’ (2014) 21 *International Journal of Clinical Legal Education* <<http://www.northumbriajournals.co.uk>> .

⁴ Ross Hyams, ‘The Teaching of Skills: Rebuilding – Not Just Tinkering Around the Edges’ (1995) 13(1) *Journal of Professional Law Education* 63, 68.

⁵ See especially Catriona Cook et al, *Laying Down the Law* (LexisNexis Butterworths, 9th ed, 2014).

⁶ David R Barnhizer, ‘The Clinical Method of Legal Instruction: Its Theory and Implementation’ (1979) 30 *Journal of Legal Education* 67, 68. See also Sharon L Beckman and Paul R Tremblay, ‘Forward: The Way to Carnegie’ (2012) 32 *Boston College Journal of Law and Social Justice* 215, 216.

⁷ Jerome Frank, ‘Why Not a Clinical Lawyer-School?’ (1933) 81(8) *The University of Pennsylvania Law Review* 907.

⁸ Anna Cody, ‘What Does Legal Ethics Teaching Gain, If Anything, From Including a Clinical component?’ (2015) 22 *International Journal of Clinical Legal Education* 8 <<http://www.northumbriajournals.co.uk>>.

⁹ Frank, above n 7, 907.

who never see anything but stuffed dogs'.¹⁰ In 1984, Amsterdam claimed that legal education in the twentieth century failed to provide students with the necessary conceptual foundation to appreciate the role of lawyers and legal practice.¹¹ In 1995, Hyams argued that combining methodologies of law lecturing, tutorials and seminars together with practical, clinical components was necessary for effective teaching in law schools.¹² In 2002, the Law Commission of India handed down a report stating that clinical legal education should be compulsory.¹³ In 2007, the Carnegie Report¹⁴ recommended that law schools should offer an integrated curriculum that includes teaching of legal doctrine, an introduction to the many facets of practice as a lawyer, and an exploration and assumption of the values and identity of a practising lawyer.¹⁵ Also in 2007, the Clinical Legal Education Association's report *Best Practices for Legal Education*¹⁶ provided a bleak view of legal education in the United States and recommended that experiential education play a much greater role.

In Australia, the Commonwealth Government has recognised the importance of universities producing employable, job-ready graduates. In the 2014-15 budget, the 'Upholding Quality – Quality Indicators for Learning and Teaching' initiative was introduced.¹⁷ This resulted in the Government commissioning a purpose built website which brings together survey data from employers and Australian university graduates.¹⁸ The website allows prospective students and their families to make informed decisions about undertaking higher education studies. As part of the Government's new initiative, an 'Employer Satisfaction Survey' is being developed for the website.¹⁹ It is intended that the survey provide 'ongoing assurance from employers about the quality of the university experience.'²⁰ The need to incorporate work-integrated learning into tertiary courses in order to improve the employability of graduates has also been documented and promoted in the 2015 National Work Integrated Learning Strategy.²¹ The strategy aims to improve graduate

¹⁰ Ibid 912.

¹¹ Anthony G Amsterdam, 'Clinical Legal Education: A 21st Century Perspective' (1984) 34(4) *Journal of Legal Education* 612.

¹² Hyams, above n 4, 63.

¹³ Margaret Barry, 'Clinical Legal Education in the Law University: Goals and Challenges' (2007) 27 *International Journal of Clinical Legal Education* 27, 29.

¹⁴ William M Sullivan et al, *Educating Lawyers: Preparation for the Profession of Law* (Jossey-Bass, 1st ed, 2007).

¹⁵ Ibid.

¹⁶ Roy Stuckey et al, *Best Practices for Legal Education* (Clinical Legal Education Association, 2007) ch 1, 2 and 5.

¹⁷ Department of Education and Training, *Upholding Quality - Quality Indicators for Learning and Teaching* (11 December 2015) <<https://www.education.gov.au/upholding-quality-quality-indicators-learning-and-teaching>>.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Social Research Centre Pty Ltd, *Employer Satisfaction Survey (ESS)* (11 December 2015) <[http://www.qilt.edu.au/about-this-site/employer-satisfaction-survey-\(ess\)](http://www.qilt.edu.au/about-this-site/employer-satisfaction-survey-(ess))>.

²¹ Universities Australia, *Landmark Strategy to Make Graduates More 'Job Ready'* (11 March 2015) <https://www.universitiesaustralia.edu.au/news/media-releases/Landmark-strategy-to-make-graduates-more--job-ready-#.Vm9boL9gh_B>.

employability through provision of relevant practical experience that connects with courses being studied at university.²²

Giddings provides a comprehensive historical perspective of clinical legal education in Australia,²³ setting out the origins of the country's clinical legal education movement, commencing with the first 'live client' clinical program at Monash University in 1975. Clinical pedagogy in Australian law schools has developed exponentially over the last ten years, with most Australian law schools now offering a clinical program.²⁴ While the value of clinical legal education has been generally acknowledged in Australia for the past twenty five years,²⁵ very few universities do more than pay lip service to their clinics and the (lack of) funding for clinical programs remains an omniscient dilemma. As a result, most Australian clinical programs are supplementary in nature, and not integral to the law school mission.²⁶ Clinical programs are characteristically found in later year elective courses with experiential learning taking place in a practice setting.²⁷ Typically, this is achieved by placing students in a university legal clinic or an externship placement.

This characterisation of clinical pedagogy in part explains why it is supplemental to the law school curriculum of most universities. Placing large numbers of students into suitable practice settings is resource intensive, and also a very costly proposition when it involves a university legal clinic. Of course, being supplemental rather than integrated into the law curriculum has drawbacks. Giddings points to there being 'a lack of what might be described as "clinical fluency" amongst Australian law schools'.²⁸ He also notes '[t]he sustainability of any clinical program will depend on how effectively its advocates can anticipate and address concerns, identify opportunities and emphasise natural strengths'²⁹ and that '[p]roviding an intense and productive clinical experience for

²² Ibid.

²³ Jeff Giddings, 'Clinical Legal Education in Australia: A Historical Perspective' (2003) 3 *International Journal of Clinical Legal Education* 7.

²⁴ Evans et al, *Best Practices Australian Clinical Legal Education, The Final Report of the Project Strengthening Australian Legal Education by Integrating Clinical Experiences: Identifying and Supporting Effective Practices* (Office and Teaching and Learning, 2013) <<http://www.olt.gov.au/project-strengthening-australian-legal-ed-clinical-experiences-monash-2010>>.

²⁵ See, eg, Adrian Evans, 'Developing Socially Responsible Lawyers' (1990) 15 *Legal Service Bulletin* 218; Kathy Mack, 'Bringing Clinical Learning Into a Conventional Classroom' (1993) 4(1) *Legal Education Review* 89; Sally Kift, 'Lawyering Skills: Finding Their Place in Legal Education' (1997) *Legal Education Review* 43; Judith Dickson, '25 Years of Clinical Legal Education at La Trobe University' (2004) 29 *Alternative Law Journal* 41; Tamara Walsh, 'Putting Justice Back Into Legal Education' (2007) 17 *Legal Education Review* 119; Colin James, 'Lawyer Dissatisfaction, Emotional Intelligence and Clinical Education' (2008) 18 *Legal Education Review* 123; Ross Hyams, 'Multidisciplinary Clinical Legal Education: The Future of the Profession' (2012) 37 *Alternative Law Journal* 103.

²⁶ Giddings, above n 1, 270.

²⁷ Kingsford Legal Centre, *Clinical Legal Education Guide* (University of New South Wales, 11th ed, 2014).

²⁸ Jeff Giddings, 'Contemplating the Future of Clinical Legal Education' (2008) 17 *Griffith Law Review* 1, 4.

²⁹ Ibid.

students needs to be balanced with making such experiences available to as many students as possible'.³⁰

Maranville et al suggest that experiential courses that involve a stand-alone placement are no longer adequate for the future curriculum reform era, and that legal educators must expand the curriculum for experiential learning.³¹ Similarly, Giddings points out that effectively integrating clinical pedagogy into the law curriculum requires a sequenced program rather than a stand-alone placement.³² Further to this, the tenor of the literature that advocates integration of clinical legal education pedagogy into the wider law curriculum has changed in recent years, and become far more exigent. Goldfarb argues that integration of clinical pedagogy is critical for the survival of law schools.³³ She reasons that the relationship between the workplace and law school has fundamentally changed, and that the legal profession is reliant on legal educators to prepare students to perform in a variety of professional environments.³⁴ Moliterno also argues that American law schools are in a crisis and that they need to adapt to a market that expects it to produce law students who are better equipped for legal practice.³⁵ Similar to Goldfarb, Moliterno claims that law schools must place a greater emphasis on clinical legal education.³⁶ Cody contends that the inclusion of a clinical component within a standard legal ethics course can be valuable for the development of 'competent, self-directed and autonomous lawyering'.³⁷

It is axiomatic that for clinical legal education pedagogy to play a greater role in the wider law school curriculum an integrated rather than a supplementary approach is required. While the scope for integrating clinical and legal doctrine pedagogies is theoretically boundless,³⁸ there are practical considerations that can limit the endeavour. The primary limiter is resources.³⁹ Other factors include the organisational mission, faculty, students, and effectively linking clinical activities to the law school curriculum.⁴⁰ These practical considerations have given rise to varying views on how clinical educational pedagogy should be integrated into the wider law curriculum. Many legal educators argue that the

³⁰ Ibid 5.

³¹ Deborah Maranville et al, 'Re-vision Question: A Law School Guide to Designing Experiential Course Involving Real Lawyering' (2011-2012) 56 *New York Law School Law Review* 517.

³² Giddings, above n 1, 261.

³³ Phyllis Goldfarb, 'Back to the Future of Clinic Legal Education' (2012) 32 *Boston College Journal of Law and Social Justice* 279.

³⁴ Ibid 292. The Langdell-Harvard method was also viewed as a necessary law school reform so that law educators could produce law graduates who could meet the changing needs of society at that time. See Barnhizer, above n 6, 68.

³⁵ James E Moliterno, 'A Way Forward for an Ailing Legal Education Model' (2013) 17(1) *Chapman Law Review* 73.

³⁶ Ibid 88.

³⁷ Cody, above n 8, 36.

³⁸ Kathy Mack, 'Bringing Clinical Learning into a Conventional Classroom' (1993) 4 *Legal Education Review* 89, 112.

³⁹ Julie A Davies, 'Methods of Experiential Education: Context, Transferability and Resources' (2009) 22 *Pacific McGeorge Global Business and Development Law Journal* 21, 30.

⁴⁰ Giddings, above n 1, 277-81.

curriculum should teach legal doctrine in the first year, introduce lawyering skills through simulations in the second year, and provide real client work in the third year.⁴¹ Moliterno and Schehr advocate a complete overhaul of legal education in favour of a three year simulated practice model.⁴² Most recently, Barry proposed a law curriculum that combines teaching of legal doctrine with legal practice in first year classes culminating in final year students spending time in a legal practice setting.⁴³

While there are varying views about when and how clinical experiences should be introduced into the law curriculum, the commonality in these views is the importance of a sequenced program. Giddings states, '[i]ntegrative approaches are likely to be most effective where they culminate in real client work, building on simulations and class-based discussions'.⁴⁴ Similarly, Coughlin, McElroy and Clark advocate the 'see one, do one, teach one' approach, which has been successfully used in medical education.⁴⁵ In their article, the authors suggest that legal educators should use samples and simulations – such as an actual contract or a video of excellent advocacy – to teach legal doctrine.⁴⁶ This should then lead to students applying legal doctrine and skill by performing an activity – drafting the contract, undertaking an advocacy exercise – to master the theory and link it with a legal practice skill.⁴⁷ Finally, after learning the doctrine and performing the legal practice skill, students should engage in peer teaching of the activity to further develop their understanding and also retain their newly acquired knowledge.⁴⁸

In view of the foregoing discussion, the writers' instigation of a model that utilises the resources of the clinical program within courses offered to second and third year law students seems timely. The writers do not claim that this model is necessarily the best approach for introducing a sequenced clinical legal education program in the wider law school curriculum. Rather our intentions are far more modest: we hope this article will assist or encourage other legal educators to think of new ways to integrate clinical legal experiences into their law school.

The Carnegie Report suggested that the incorporation of lawyering, professionalism and legal analysis from the very beginning of a law degree is important. Although clinical programs are now being offered

⁴¹ Deborah Maranville, 'Passion, Context, and Lawyering Skills: Choosing Among Simulated and Real Clinical Experiences' (2000) 7 *Clinical Law Review* 123, 124.

⁴² James E Moliterno, 'Experiential Education and Professional Responsibility' (1996) 38 *William and Mary Law Review* 71; Robert Schehr, 'The Lord Speaks Through Me: Moving Beyond Conventional Law School Pedagogy and the Reasons for Doing So' (2009) 14 *International Journal of Clinical Legal Education* 9, 46.

⁴³ Margaret Barry, 'Practice Ready: Are We There Yet?' (2012) 32 *Boston College Journal of Law and Social Science* 247.

⁴⁴ *Ibid* 269.

⁴⁵ Christine N Coughlin, Lisa T McElroy and Sandy C Patrick, 'See One, Do One, Teach One: Dissecting the Use of Medical Education's Signature Pedagogy in the Law School Curriculum' (2009) 26(2) *Georgia State University Law Review* 361.

⁴⁶ *Ibid* 380.

⁴⁷ *Ibid* 396.

⁴⁸ *Ibid* 405.

widely across many law schools, this is primarily to final or later year students, meaning that the integration of clinical pedagogy is not happening in the early years of a law degree. While some legal educators have advocated for a complete overhaul of legal education in favour of a three year simulated practice model,⁴⁹ the writers have instigated an alternative model which utilises the resources of the clinical program within courses offered to second and third year students.

II THE DEVELOPMENT OF AN INTEGRATED CLINICAL LEGAL EDUCATION PROGRAM WITHIN THE WIDER LAW CURRICULUM THROUGH THE USE OF CLINIC FILES IN TUTORIALS IN TWO CORE COURSES

A *Why Use Real Legal Problems?*

The Legal Advice Clinic in the School of Law at the University of South Australia uses a real client model of clinical legal education. Students interview clients in pairs, in the absence of the supervisor, but confer with the supervisor before providing any advice. Like most clinical programs, the clinical program at the University of South Australia⁵⁰ is founded upon two main pillars.⁵¹ The first is to provide law students with the opportunity to apply their knowledge of legal doctrine in a practical setting and to develop specific legal skills such as interviewing and drafting. The second is to provide access to justice to members of the community who might otherwise not have such access. Bloch notes that clinical legal education ‘presents the legal academy with a unique opportunity to cut across [the] traditional lines of conflict’ between academic inquiry and practical training and service delivery, but that it still occupies ‘an uncertain place in the legal academy’.⁵² It is not the intention of this article to explore the already vast literature on clinical scholarship,⁵³ but as mentioned above the debate about the role of clinical legal education within law schools continues, most notably around the question of funding. One of the writers of this paper teaches both a *Clinical Legal Education* elective course and a compulsory *Professional Conduct*⁵⁴ course. In 2012 an experiment was carried out using real Clinic files to provide the case scenarios for tutorial discussions for *Professional Conduct*. Following a successful initial trial in Term 1 2012, the use of real files in *Professional Conduct* tutorials is now a fixture of the *Professional Conduct* program. A similar trial took place for *Civil*

⁴⁹ Schehr, above n 42, 31.

⁵⁰ See University of Australia, *Legal Advice Clinic* (14 December 2015) Community Clinics <<http://www.unisa.edu.au/business/law/clinic/>>.

⁵¹ T O Ojienda and M Oduor, ‘Reflections on the Implementation of Clinical Legal Education in Moi University, Kenya’ (2002) 2 *International Journal of Clinical Legal Education* 49; Frank S Bloch, ‘The Case for Clinical Scholarship’ (2004) 6 *International Journal of Clinical Legal Education* 7, 8.

⁵² Bloch, above n 51, 8.

⁵³ *Ibid.*

⁵⁴ From 2015, this course will be called *Lawyers, Ethics and Society* (LAWS 4006).

Procedure, and Clinic files are now also used in selected tutorials for that course.

The Legal Advice Clinic opens approximately thirty new files per month. This provides a rich variety of case studies that can be used beyond the Clinic in other aspects of the curriculum. The Clinic advises clients in a number of areas of law, but predominately criminal law, minor civil claims, tenancy matters and family law. The minor civil claims files provide excellent examples for students in the *Civil Procedure* course to develop an understanding of litigation theory. All files potentially offer ethical issues. This pedagogy aims to take up the challenge set by the Carnegie Report to link ‘the interests of legal educators with the needs of legal practitioners and with the public the profession is pledged to serve’.⁵⁵

The use of real cases as the basis for discussion requires minimal resources and appears to have been particularly successful in the writers’ law school. Students regularly tell the writers that they prefer the use of real legal case studies as tutorial problems rather than fictitious dilemmas. As Schehr says,

[m]ost of my learning experiences as a student were frustrating because there was no involvement beyond class work. It was dissatisfying because it was too abstract. Alienation from the process is what made the experience a failure.⁵⁶

Schehr advocates the stimulation of ‘alternate pedagogical methods that draw upon student development theory to enhance what education scholars know about cognition’.⁵⁷ Schehr describes the ‘absence of a coherent integrated curriculum’ as a burden on second and third year curricula.⁵⁸ Similarly, Stuckey et al lament that faculty do not integrate upper-division course themes, concepts, and ideas nor do they ‘help students progressively acquire the knowledge, skills and values needed for law practice’.⁵⁹

The use of real legal problems is designed to eliminate the ‘abstract’ feeling described by Schehr. Even though the *Professional Conduct* and *Civil Procedure* students are not directly involved with the clients, there is a direct connection between the application of knowledge and a problem that a real person has actually experienced. Unlike with fictitious scenarios, students will often ask questions about the client, and how the matter was resolved in the end. The concept of empathy for clients is a fundamental aspect of the pedagogical basis for the clinical legal program.⁶⁰ Notions of empathy are far more easily discussed and

⁵⁵ Sullivan et al, quoted in Schehr, above n 42, 14.

⁵⁶ Schehr, above, n 42, 15.

⁵⁷ Ibid 10.

⁵⁸ Ibid 11.

⁵⁹ Ibid 12.

⁶⁰ The importance of empathy as part of client-centred practice is a subject that goes beyond the scope of this article. The subject of empathic understanding is a core element of the clinical legal education course. See e.g. Marjorie Silver, ‘The Professional Responsibility of Lawyers: Emotional Competence, Multi-Culturalism and Ethics’ (2006) 13 *Journal of Law and Medicine* 431; Jane Harris Aiken, ‘Striving to Teach Justice, Fairness and Morality’ (1997) 4 *Clinical Law Review* 1; Beverly Balos,

examined when there is a real person to whom emotions can be attributed. Schehr argues that the pedagogy for teaching sports is applicable to education: the formula of (1) introduce; (2) demonstrate and (3) execute can be applied to law.⁶¹ Moliterno also advocates that experiential education should be a 'process of synthesis' involving exposure to, then experience of, an activity, followed by reflection on the relationship between the theory and the experience.⁶² Stuckey is of the view that 'in order for students to fully engage in experiential education they must continuously be exposed to a four stage process that includes experience, reflection, theory, and application'.⁶³ The Clinic file tutorial program represents the *Stage 2 Demonstration* stage of Schehr's formula. The de-identified Clinic files are used to demonstrate how the relevant principles actually apply 'in real life.'

In *Professional Conduct* tutorials, use of Clinic files 'constantly gives rise to spontaneous and various ethical questions which challenge and test students'⁶⁴ even though these students do not meet the actual clients.

For many students, this is their first experience reading and analysing a real, de-identified legal file. The files provide an opportunity for students to learn about the basic mechanics of file keeping. In addition, seeing real letters of advice going out to real people can be enlightening for students whose only connection with law has been through academic essays and exams.

Student learning in these tutorials goes beyond simply parroting what the 'Rules' might say in response to ethical dilemmas. Students have an opportunity to recognise the complexity in the concept of ethical decision-making. The concept of confidentiality, for example, is brought to light by the fact that students must sign an undertaking that they will not discuss the contents of the file beyond the classroom (see below).

The use of de-identified Clinic files can assist students to reflect on 'how a lawyer contributes to the legal system and its ability to deliver justice', which Cody articulates is a necessary component of professionalism.⁶⁵ Students can see first-hand how the particular subject matter actually applies to real-world situations. The fact that the files depict scenarios that are happening in their home city also adds to their

'The Bounds of Professionalism: Challenging our Students; Challenging Ourselves' (1997) 129 *Clinical Law Review* 129; Stephen Ellmann, 'Lawyers and Clients' (1987) 34 *UCLA Law Review* 717; Gerard Egan, 'Sharing Empathic Highlights: Communicating and Checking Understanding' in *The Skilled Helper: A Problem-Management and Opportunity-Development Approach to Helping*, (Brooks/Cole Publishing Co, 2002) Chapter 6.

⁶¹ Ibid 15.

⁶² Schehr, above n 42, 31 citing James E Moliterno 'Experiential Education and Professional Responsibility' (1996) 38 *William and Mary Law Review* 71.

⁶³ Schehr, above n 42, 33 citing Roy Stuckey, 'Teaching with Purpose: Defining and Achieving Desired Outcomes in Clinical Law Courses' (2007) 13 *Clinical Law Review* 811.

⁶⁴ Giddings, above n 23, 24, quoting Judith Dickson and Mary-Anne Noone, 'The Challenge of Teaching Professional Ethics' (Paper presented at the Australasian Professional Legal Education Council International Conference, Skills Development for Tomorrow's Lawyers: Needs and Strategies, Sydney, September 1996, published in Conference papers Volume 2, 847).

⁶⁵ Cody, above n 8, 6.

recognition that they are learning about the legal system as it affects their fellow citizens. Students in the tutorials also show a genuine interest in the Legal Advice Clinic and the tutorials provide a forum for discussion about how the Clinic works and how students can become involved if they want to participate.

B *How to Use Real Legal Problems: The Use of Clinic Files in Tutorials*

Ethics and professional responsibility are taught through clinical legal education in many law schools⁶⁶ and the inclusion of a 'clinical component' in an ethics course has also been noted to be 'equally effective'.⁶⁷

At the University of South Australia, these subjects are taught in *Professional Conduct*. It is a course generally taken by students in the last year of their Bachelor of Laws degree. It is designed to inform them of the ethical and professional responsibilities of those engaged in the practice of law. Completion of this course (or a comparable course) is a requirement for admission to practice. Tutorials in this course now involve students working with client files from the UniSA Legal Advice Clinic as a vehicle for the discussion of ethical and professional conduct issues.

Likewise, *Civil Procedure* is a later year course, although as there are a number of part-time students and double-degree students with complex timetable arrangements, both this course and *Professional Conduct* could potentially be taken in any year after first year. Completion of *Civil Procedure* is also a requirement for admission to practice. Some of the tutorials in this course now involve students working with client files from the UniSA Legal Advice Clinic to provide real examples of civil litigation issues.

Using Clinic files in the absence of actual client contact appears to be pedagogically effective at the University of South Australia law school. Students get a sense of how a legal office operates, the issues and challenges that arise when dealing with actual clients, and real-life legal problems and the challenges of having to deal with a number of tasks within a limited time frame. Cody has identified that clinical placement of students does not automatically teach them ethics or how to engage in ethical reasoning: 'It has to be consciously planned and incorporated.'⁶⁸ This use of Clinic files is part of that conscious planning, providing the base of a scaffolded introduction to the Clinic.

Another apparent benefit is that students also are provided with a unique opportunity to understand the relationship between academic study and the practical application of those principles. Finally, using the Clinic files highlights the legal profession's service ideal and promotes a pro bono culture. An aim of the program is also to enable students to

⁶⁶ Ibid 14.

⁶⁷ Ibid.

⁶⁸ Ibid.

acquire high-order professional skills and a deep appreciation of ethical standards and professional responsibility.

Clinic files to be used in tutorials are chosen for their subject matter, relevant legal issues, ethical issues and other general points of interest. The files are copied and de-identified (names and other identifying information are removed) for tutorial use. They are then placed in coloured folders (yellow for *Professional Conduct*, pink for *Civil Procedure*) so as not to confuse them with actual Clinic files, which are kept in plain manila folders. Enough copies are made of each file so that students in tutorials can read them in pairs. The files are kept in separate filing cabinets in the Managing Solicitor's office. From time to time, the Managing Solicitor will identify new files that would be suitable for use in the tutorial program and these are added to the 'bank' of tutorial files.

C The Professional Conduct Tutorial Program

1 Week 1 of the Professional Conduct program

Like many tutorial programs, the first week of the *Professional Conduct* tutorial cycle is devoted to 'getting to know you'. Students not only get to know each other, they are also introduced to the function and operation of the Clinic and to the Clinic's Managing Solicitor. This is done through a series of facilitated questions. Students are asked to discuss (first in pairs, then in a larger group) their responses to questions that encourage them to consider the concepts and philosophy of clinical legal education and some basic practical ethics issues. In particular, week 1 focusses on confidentiality, conflicts of interest and the importance of keeping accurate client records. The discussion questions are:

- Why does the Law School have a legal advice clinic?
- Who can give legal advice?
- What are the restrictions/ethical obligations on lawyers in relation to the advice that they give?
- What is meant by a conflict of interest?
- Why do we keep records of clients?
- What is meant by legal professional privilege?
- What does that mean in practical terms?

Following this general introductory discussion, the Managing Solicitor talks to the students about the operation of the Clinic, including how clients make appointments, the structure of the interview process and its practical day-to-day operation. This discussion also includes a detailed briefing about the importance of maintaining the confidentiality of clients, and the necessity to inform the tutor (one of the writers) immediately if, during the course of tutorials, a student thinks that a conflict, a potential conflict or the perception of a conflict may exist in relation to a client whose file is being discussed. Even though files are de-identified for tutorial purposes, it is possible that a student may think he or she knows

the identity of a party from the circumstances.⁶⁹ Of course, given that the file is de-identified, the identity of any party involved in the file will never be revealed in a tutorial. Therefore, client confidentiality is always maintained in all tutorials.

2 Confidentiality and Conflicts

The fact that access to these files is a privilege is stressed to students. Students are taught in *Professional Conduct* that to hold the position of officer of the court is a privileged role in society, not least because they become privy to the private and confidential information that is told to them by their clients. This provides a tangible basis for discussions about ‘the privilege which is granted to them by the community (via legislation)’ and the fact that ‘the public must be satisfied that the privilege is being exercised in the public interest’.⁷⁰ Having access to ‘real’ facts is instrumental in re-enforcing this message. It also assists with ‘negotiating the connection between individual values and professionalism’.⁷¹

Clients give their informed consent to the use of their files for educational purposes. The retainer agreement signed by all Clinic clients contains a section which acknowledges that the provision of legal advice is part of an educational program and therefore their file will be used for educational purposes. The retainer agreement provides as follows:

Your file will be used for educational purposes. Your legal matter will be discussed within the clinic office by one or more students and one or more supervisors; it may also be the subject of a de-briefing session within the classroom. The classroom component of clinical legal education is an important part of the clinical experience for students. However, the Clinic will treat your information with strict confidence. All persons involved in the Clinic have had extensive training about client confidentiality. The information you provide will only be seen and discussed by persons involved in the Clinic for educational purposes and to ensure our work meets the highest standards. Your confidential information will only be released to persons not involved in the Clinic when you authorise such disclosure or when the Clinic is permitted or compelled by law.

For teaching and learning purposes, de-identified excerpts from your file (with all of the parties’ names, addresses and identifying details deleted) may be discussed in a supervised classroom for other teaching and learning purposes. Your case example may be used to provide an example about a particular type of law, a legal concept or legal procedure. For example, if your matter is about a car accident, the fact scenario (with all names and other identifying features removed) might be provided as a

⁶⁹ This has happened once. The student notified the tutor (who is one of the authors) immediately and the student was given a different file to examine. In that particular tutorial, which was a file costing exercise, there was no class discussion about the actual facts or legal issues of the file.

⁷⁰ Judith Dickson, ‘Clinical Legal Education in the 21st Century: Still Educating for Service?’ (2000) 1 *International Journal of Clinical Legal Education* 33, 41-42.

⁷¹ Cody, above n 8, 7.

case example to assist law students with learning about the law of negligence.⁷²

If the client agrees to this, the client is asked to sign the retainer agreement. Law students who have contact with Clinic clients receive intensive training. Further to this, students are trained in summarising and explicitly reading through the dot-points in the retainer agreement – this is done at the commencement of every client interview. After the students read through the retainer agreement with the client, the document is signed and dated.

The very nature of clinical legal education necessitates that all client files are used for educational purposes. Clients' legal matters are discussed within the clinic office by one or more students and one or more supervisors; they may also be the subject of a de-briefing session within the classroom. The classroom component of clinical legal education is an important part of the clinical experience for students. It is here that they deconstruct their experiences, analyse their disorienting moments⁷³ and reflect on what they have learnt. This is explained to all clients. It is not possible to operate a clinical legal education program without the files being used for educational purposes. Accordingly, the Clinic is unable to provide any advice if the client declines to sign the retainer agreement, and instead will attempt to provide a referral to other free legal services. (This has only happened twice out of over a thousand files.)

The obtaining of the client's consent to use their de-identified file ensures compliance with the Australian Solicitors' Conduct Rules concerning confidentiality.⁷⁴ If the client has any questions about the retainer agreement – such as the use of their file for educational purposes – students record the client's questions, excuse themselves from the interview room, and then discuss the possible answers with a clinic supervisor. Students are constantly reminded that no advice can be given to a client without it first being approved by a clinic supervisor.

Additionally, all students who have access to de-identified client files are required to sign a Confidentiality Undertaking⁷⁵ that is discussed at length in the first tutorial (see above). For the rest of the term, at the beginning of each tutorial, the tutor asks the class if there is anyone present who has not signed a Confidentiality Undertaking, and reminds everyone of their confidentiality obligations. Students are reminded at the beginning of every tutorial that they are not permitted to discuss the files outside of the classroom.

During the tutorial program, a different file is used every week. Below are some examples.

⁷² See Appendix 1.

⁷³ Jane Harris Aiken 'Striving to Teach Justice, Fairness and Morality' (1997) 4 *Clinical Law Review* 1.

⁷⁴ Law Society of South Australia, *Australian Solicitors' Conduct Rules* (at June 2011) r 9.

⁷⁵ See Appendix 2.

3 Professional Conduct Example File 1

The client had previously been convicted of child sex offences. The client did not seek advice about the criminal charge, but about another matter. The previous conviction was relevant to the matter for which the client sought advice. This file provides the basis for a discussion about providing advice to a morally repugnant or unlikeable client and whether or not a lawyer has a choice in acting for such a client. This file usually provokes strong reactions in a number of students, and generates animated discussion.

4 Professional Conduct Example File 2

This file involves a settlement negotiation. Students are first asked to consider and discuss the limits placed on lawyers in representing their clients. For example, they are asked to consider whether a lawyer may use trickery or deception or make unsupported allegations in representing a client; and whether a lawyer may try to intimidate the opposing party or file a frivolous action on behalf of a client. Students must also consider whether a lawyer may knowingly make false and/or misleading statements or conceal or fail to disclose information required to be disclosed by law. They are asked to discuss whether a lawyer may assist his or her client in conduct that the lawyer knows to be illegal or fraudulent.

Students are then given a file and asked to read it. They are then asked to consider the ethical duties inherent in assisting the client to negotiate a settlement. They are asked to discuss the following questions:

- Is it appropriate to demand an excessive sum on behalf of the client at the start of a negotiation? Why or why not?
- May a lawyer make a false statement to the other side in an effort to settle the matter?
- What duty does a lawyer have to encourage settlement of a litigious matter?
- Is there a need for a code of ethics in negotiation?

5 Professional Conduct Example File 3

During this tutorial confidentiality and privilege are discussed in the context of a case file. Students are given a de-identified file about a 17 year old male who was charged with driving a 50CC scooter without a licence. His father had made enquiries about whether the son was allowed to drive the scooter on a (car) learner's permit. The father's instructions were that he made enquiries and had been told by a police officer that this was permitted provided that the scooter was no greater than 50CC. This advice was wrong. The boy drove the scooter and had a minor accident. He was charged with driving a motor vehicle of a particular class when not authorised to drive such a vehicle. The father and the son came in to the Clinic together. Discussion in this tutorial revolves around the lawyer-

client relationship. Students are asked to consider if the client is the father or the son, or both. The following issues are discussed in the tutorial:

- Who is the client?
- To whom did the Clinic provide advice?
- When does the lawyer-client relationship commence?
- Imagine that the Clinic is a law firm. What advice is the firm obliged to provide about legal aid? Which Conduct Rule covers this?
- Imagine that you are a student advisor. What do you do if you suspect that the son is not being entirely truthful with you with his father in the room?
- What rights does the father have in relation to the legal advice relating to his son? Does he have a right to know what the advice is? If he had to pay for the legal advice, does the fact that he is paying for the advice make any difference?
- What are the relevant rules from the Australian Solicitors' Conduct Rules?
- Imagine that the son made a further appointment with the Clinic after the initial interview. Imagine that he instructed the advisors that he had actually done some research himself before the incident, and he knew that he should not be driving the scooter on a Learner's permit, but he did not tell his father. Would this change the advice that you might give?
- Imagine, then, that the father finds out that the son has been into the Clinic by himself. He asks to know what the son told you and what advice was given. What is your response?

6 *Professional Conduct Example File 4*

This matter involves a client who wishes to make a 'convenience plea' of guilty in relation to a shoplifting charge. Students are guided through the file and asked to identify the elements of the offence charged. This is followed by a discussion identifying elements of this offence that the defendant admits, and the elements that are not admitted. The class discussion then revolves around these questions:

- In this matter, why did the magistrate not accept a plea of guilty?
- If a solicitor advises this defendant to plead guilty, or pressures the defendant into pleading guilty, what rights does the defendant have? What might be the consequences for the solicitor?

7 *Professional Conduct Example File 5*

In one of the tutorials, usually the penultimate tutorial for the term, students work with a file in order to calculate the appropriate fee for work done. The Clinic does not charge clients any fees; this exercise is completed in the context of quantifying the value of 'pro-bono' work. Students work in pairs to calculate the costs of a file on the Supreme Court scale.

The general question of whether lawyers should be involved in providing their services for free is also considered, as is the question of whether it should be compulsory for lawyers to complete a certain number of pro-bono hours each year.

D The Civil Procedure Tutorial Program

1 Civil Procedure Example File 1

The client is a taxi driver who was involved in a motor vehicle collision. Judgment was entered against the client for the value of the damage caused to the other driver's car. The client did not own the taxi and had paid an insurance levy to the owner. The file involves the question of joinder of parties to a proceeding. Students are also required to identify an issue concerning jurisdiction and possible alternative means of resolving the dispute.

2 Civil Procedure Example File 2

The focus of this seminar is on the drafting of court documents including pleadings and affidavits.

The file involves a client who had been working as a nightclub security worker. During his workshift, the client did not complete the nightclub's security logbook correctly, and, as a result, the police issued the nightclub with an expiation notice (failure to keep an accurate logbook is an expiable offence). The nightclub contacted the client's employer about the expiation notice, and the employer paid the fine of approximately \$500.00. The employer then deducted this amount from the client's wages. The client made a successful complaint to the FairWork Ombudsman about the deduction. It was found that the employer was not entitled to take this action, and the client was paid all of his wages.

However, the employer did not appreciate the FairWork Ombudsman's decision, and commenced proceedings in the Magistrates Court against the client for his losses in making payment of the expiation notice. The court proceedings had come as a surprise to the client who thought the matter was resolved. The client had also recently resigned from his position as a nightclub security worker and was focussed on his studies.

The Clinic provided the client with assistance in drafting a defence to the former employer's claim. Subsequent to this, the client missed his first court hearing and the court entered a default judgment in favour of the former employer. The client received additional help from the Clinic with drafting an application and an affidavit to set aside the default judgment. In the seminar, the students are asked to examine and critique all of the court documents.

3 *Civil Procedure Example File 3*

At this seminar students are required to draft a Short Form Bill of Costs. The client purchased a bike rack from a retail shop. The client was not aware that the bike rack was missing a safety pin. The client drove his car to the coast for a weekend getaway with all of the family's bicycles loaded on the bike rack. The bicycles dislodged and were strewn across the road. The Clinic helped the client to write to the retailer seeking a refund for the purchase price of the bike rack together with compensation to replace the damaged bicycles. In the course of corresponding with the retailer, the client initially received no response, then a denial of responsibility, and then ultimately a proposed settlement. To receive payment, the client was required to sign a poorly drafted and unfavourably worded deed of settlement. The Clinic helped the client to negotiate more acceptable terms of settlement and ensure that his legal position was protected.

This exercise demonstrates the potential amount of money that a client might have to pay for legal advice, compared to a relatively small amount of money in dispute. It provides an example of the difficulties faced by many people in relation to the cost of access to justice.

III THE SECONDARY ADVANTAGES OF AN INTEGRATED PEDAGOGY

A Storytelling

Legal education regularly requires the invention of fictitious factual scenarios to which students can apply legal doctrine. To devise a fictitious tutorial problem to which students must apply their knowledge can be interesting and even engaging for students. However, the love of storytelling is an essential quality of being human and beneficial for adult learning.⁷⁶ One of the secondary advantages of integrating clinical legal education with the wider law curriculum is to tap into the value of narrative. In examining the pedagogical benefits of storytelling in clinical legal education, Tyler and Mullen observe that 'making [a] storytelling process transparent and systematic helps to increase student understanding of its relevance to the practice of law'.⁷⁷ Using real stories about real people has been found to be more engaging for students than fictitious narratives because they appreciate and enjoy the fact that the stories are 'real'. In the writers' experience, to tell students that 'this really happened' always garners extra interest.

It is critically important to constantly infuse pedagogy with the recognition that even the driest of High Court judgments originated with an agitated, worried, perhaps angry or tearful client sitting in a lawyer's waiting room. The student experience must be perpetually linked to this

⁷⁶ Jo A Tyler and Faith Mullen, 'Telling Tales in School: Storytelling for Self-Reflection and Pedagogical Improvement in Clinical Legal Education' (2011) 18 *Clinical Law Review* 283, 289-93.

⁷⁷ *Ibid* 329.

human dimension, which has been argued to be ‘sorely lacking in law school pedagogy’.⁷⁸ Barry puts it simply and succinctly: ‘[c]linics expose students to the impact that the practice of law has on people’.⁷⁹ So even if the students are not directly dealing with the clients themselves, but only reading and working from the file, the fact that the students have contact with a ‘real problem’ that ‘actually happened’ has a far greater impact than discussing the hypothetical impact of the law on a fictitious character in a fictitious tutorial question.

In addition, some students have had limited life experiences and may not be familiar with concepts such as mortgages, council rates, how the Medicare system works, cash flow for small businesses – the list is endless. Providing authentic scenarios can be eye opening for students, not just in relation to the law, but in relation to the realities of life. Using Clinic files can help students to recognise that legal problems are multi-faceted and often overlap with other aspects of life. Legal dilemmas are rarely discrete and separate. Clinic files can assist students to become aware of the complexity of how the law and the legal system affect different individuals.

B *Inclusiveness*

Many Clinic files involve marginalised people: those people whom the text books ignore. It is quite likely that students from culturally devalued backgrounds may recognise and empathise with the situations and issues presented by these clients. This not only provides a more inclusive educational experience for those students, but it can also be empowering for them to be able to participate in, or lead discussions that perhaps their fellow students from more privileged backgrounds may not be able to understand so readily. This is critical in the context of what Schehr defines as ‘the success narrative’ of law school where performance and competition are ritualised and become normative.⁸⁰ Schehr argues that law school education renders law students docile and disinterested in learning ‘because it fails to engage students in a dialogical process that leads them to real understanding of the world around them, their substantive interest, and themselves’.⁸¹ In discussing their own knowledge in the context of a real person, who has literally walked the same path as them through the corridors of the Law Building, students cannot avoid the reality of law as it connects with the wider world.

Schehr argues that:

Students emanating from culturally devalued class backgrounds experience education as a form of *symbolic violence*. Unlike the more privileged students, working class and poor students, female students, gay and lesbian students, and ethnic minority students⁸² tend not to learn much about their experiences, or people who are like them, from their textbooks

⁷⁸ Schehr, above n 42, 41.

⁷⁹ Barry, above n 13, 30.

⁸⁰ Ibid 27.

⁸¹ Ibid 28.

⁸² The authors would also include students with disability.

or classroom lectures. Rather, by way of omission, their experiences are marginalised and thereby devalued ... textbooks ... simply ignore them, their parents, their grandparents, their contributions to history, and so on, They are not present for students to recognize, take pride in, or even to criticize. They simply vanish from history.⁸³

Schehr also argues that modern law school curricula should be developed by way of a 'non-linear, dialogical pedagogy that privileges *experiential education* where the dominant philosophical and pedagogical emphasis is to expose students to their responsibility for improving the quality of life of those around them.'⁸⁴ Schehr agrees with Moliterno's emphasis on the need for experiential education which must consist of 'a designed, managed and guided experience'.⁸⁵

C Sustainability

Giddings has highlighted the difficulties relating to the sustainability of clinical programs,⁸⁶ not least because of the funding model under which Australian law schools operate. As law is placed in the lowest federal government funding bracket, clinics must constantly justify their existence, especially given that the staff/student ratio is disproportionate to other methods of teaching. While some classes might be able to operate with one staff member to 300 students (in a lecture for example), the accepted workable ratio in the Clinic environment is usually no more than 1:8.⁸⁷

At the writers' law school, the integration of Clinic resources with the wider curriculum has enabled financial resources from the Law School budget to be channelled directly into the Clinic to assist with Clinic staffing costs. A percentage of the EFTSL from each student enrolled in *Professional Conduct* and *Civil Procedure* is allocated towards the Clinic. This provides a source of funding for the Clinic, which in turn provides an engaging and stimulating experience for all students through the tutorial program of two core courses. In this way, the Clinic is effectively integrated within the School, both pedagogically and financially.

D Pro Bono Culture

The tutorial program serves as an introduction to the Legal Advice Clinic and as a basis for the development of a pro bono culture and a consciousness of access to justice issues at a local level, not just for students in the clinical program, but for all law students. Pro bono legal services are garnering greater attention in Australia, with many major law firms setting up pro bono departments.

In a sign of differentiation from one of the characteristics of Australian clinical legal education,⁸⁸ the Legal Advice Clinic at UniSA is

⁸³ Schehr, above n 42, 25.

⁸⁴ Schehr, above n 42, 30. .

⁸⁵ Schehr, above n 42, 31.

⁸⁶ Giddings, above n 28, 5.

⁸⁷ Evans et al, above n 24.

⁸⁸ Dickson, above n 71, 39.

not linked to a community legal centre, but it does still fit into the 'poverty law practice' model.⁸⁹ While clients are not means-tested, and all members of the community may attend an appointment and obtain assistance,⁹⁰ most clients of the Clinic are in some way disadvantaged or marginalised members of society. Because of this, both students who are engaged in the clinical program (those who actually interview clients and work on the files) and those students who have access to Clinic files through the tutorial program become aware of access to justice issues. In this way, the tutorial program is linked to the service ideal of the clinical program and enforces the notion that 'lawyers have an obligation...to involve themselves in the equal distribution of legal services'.⁹¹

In 2001, the national Pro Bono Task Force emphasised the importance of clinical experiences and suggested that all law students should be able to access Clinical Legal Education to enhance their appreciation of ethical standards and professional responsibility.⁹²

In 2009, the Attorney General's department report on access to justice recommended that undergraduate law degrees should include access to clinical legal education opportunities.⁹³ This recommendation came about through recognition of the fact that the legal profession is an important mechanism in promoting access to justice. The report observes that the legal profession is often the first point of contact for individuals who are experiencing legal problems. Students who graduate from law school with a well-rounded understanding of the legal system and the skills needed to begin their professional careers will be better equipped to assist such individuals in resolving their legal problems in a timely and cost effective manner. McCrimmon argues that clinical pedagogy, with its emphasis on critique and reflection can instil in students 'a desire to promote justice, fairness and morality for the poor, disadvantaged and marginalised members of society'.⁹⁴ Using Clinic files in the way described in this article exposes students to the sometimes harsh realities of access to justice for people from low socio-economic or other marginalised backgrounds. It helps them to recognise the bigger picture of justice.

IV CONCLUSION

In a climate of increasing demands to enhance student engagement concurrently with shrinking budgets, clinical legal education faces ever increasing challenges. However, extending clinical legal education into

⁸⁹ Ibid.

⁹⁰ Subject to the discretion of the supervisor, and any conflict issues; there are also some areas of law for which the Clinic does not provide advice.

⁹¹ Dickson, above n 71, 39.

⁹² National Pro Bono Task Force, *Recommended Action Plan for National Co-ordination and Development of Pro Bono Legal Services* (Sydney: ALRC, 2001), cited in Les A McCrimmon, 'Mandating a Culture of Service: Pro Bono in the Law School Curriculum' (2003-2004) 14(1) *Legal Education Review* 53, 54.

⁹³ Commonwealth Attorney-General's Department, *A Strategic Framework for Access to Justice in the Federal Civil Justice System* (September 2009) Commonwealth of Australia, 149 <<https://www.ag.gov.au/LegalSystem/Pages/Accessstojustice.aspx>>.

⁹⁴ McCrimmon, above n 92, 73.

the broader curriculum can be achieved through the relatively simple mechanism of using files as case scenarios in core courses. This initiative has proved to be successful for the writers, especially for student engagement. Student engagement in the classroom indicates that students enjoy being able to apply their legal knowledge to real-life scenarios. Classroom engagement also indicates that student understanding of legal doctrine develop to a deeper level. An additional advantage has been the recognition that using Clinic resources is beneficial to the wider student cohort. The resultant win-win situation ensures that more students have access to clinical legal education principles, lecturers have access to useful and believable tutorial scenarios and the potential exists for clinical programs to receive a portion of law school funds. While student learning and student engagement are the main aims, the other advantages of this initiative make the use of Clinic files in tutorials in the broader law curriculum an attractive pedagogical consideration.

APPENDIX 1

University of South Australia (UniSA) Legal Advice Clinic

Client Agreement

About the Clinic: The Clinic is staffed by law students and provides confidential, free legal advice and assistance. It gives law students the opportunity to use their legal knowledge and further develop their professional skills. Law students are **not** qualified legal practitioners. All advice and assistance is provided under the supervision of a supervising solicitor who is a qualified legal practitioner.

Legal advice and assistance: A supervising solicitor must approve any advice and assistance that a law student will give to you. This means that law students will confer with the supervising solicitor during all of your interviews. Sometimes, advice and assistance will not be provided on the day, as the law student will need time to do research about your legal problem.

Obtaining legal advice and assistance is not automatic: Sometimes, the Clinic cannot provide any advice or assistance. The decision not to provide assistance (or to stop helping you) may occur because your dispute is too complex, a conflict of interest arises, or for other operational reasons. When such a decision is made it will be communicated in writing to you and we will provide you with the contact details of alternative legal services.

What we agree to do for you: If you require more than basic initial advice, we will write to you advising whether or not we can help. If we can help, we will outline exactly what we have agreed to help you with. **Please be aware** that even if we agree to help you, our assistance can end at any time. As outlined above, when the supervising solicitor makes a decision to stop assisting you, we will communicate this in writing and provide you with the contact details of alternative legal services.

Representation: Law students and the supervising solicitor **do not** represent clients. You will need to represent yourself. This means that all correspondence we have agreed to assist you with (including letters and court documents) is done in your name. It also means that we cannot speak with others on your behalf, nor can we represent you in court. If you want to be legally represented, please let the Clinic know and we will provide you with the contact details of alternative services.

You may need to pay 'disbursements': The Clinic does not charge for any work done. However, you are responsible for paying all your own expenses for your legal problem. Sometimes, you will need to pay money to others in order for us to help you – these are 'disbursements.' 'Disbursements' could include fees to lodge court documents, and to obtain expert reports. The Clinic **will not** make any contribution to your 'disbursements.'

Legal Costs: If your dispute is in (or goes to) Court, there is a risk you will have to make payment of the other parties' costs or counter

claim. The Clinic **will not** make any contribution to any costs or sum that the court orders you to pay.

Confidentiality: Your file will be used for educational purposes. Your legal matter will be discussed within the clinic office by one or more students and one or more supervisors; it may also be the subject of a de-briefing session within the classroom. The classroom component of clinical legal education is an important part of the clinical experience for students. However, the Clinic will treat your information with strict confidence. All persons involved in the Clinic have had extensive training about client confidentiality. The information you provide will only be seen and discussed by persons involved in the Clinic for educational purposes and to ensure our work meets the highest standards. Your confidential information will only be released to persons not involved in the Clinic when you authorise such disclosure or when the Clinic is permitted or compelled by law.

For teaching and learning purposes, de-identified excerpts from your file (with all of the parties' names, addresses and identifying details deleted) may be discussed in a supervised classroom for other teaching and learning purposes. Your case example may be used to provide an example about a particular type of law, a legal concept or legal procedure. For example, if your matter is about a car accident, the fact scenario (with all names and other identifying features removed) might be provided as a case example to assist law students with learning about the law of negligence.

Third party involvement: In order to provide you with legal assistance, we may need to consult with third party legal practitioners who are not involved in the Legal Advice Clinic. We will first advise you in writing should this situation arise. By signing this retainer, you agree that we may, if needed, release personal details relating to your matter to a third party legal practitioner. Your details will remain confidential when in the possession of a third party legal practitioner. We will only release your details for the purpose of determining whether the Legal Advice Clinic can provide you with assistance. You will not need to pay for this service.

What we ask of you: We ask that you keep all appointments but if you cannot, please contact the Law School receptionist on 8302 7436 to cancel or reschedule the appointment. We ask that you provide us with all information that we have requested promptly. We ask that you provide us with frank and proper instructions and maintain respectful and cordial relations with the law students and all other staff at the Clinic.

I acknowledge that:

- A Student Advisor has explained this agreement to me;
- A Student Advisor has explained 'disbursements' and legal costs;
- The Clinic cannot represent me and only provides advice and assistance;
- The Clinic can cease the provision of advice and assistance at any time; and

- My file will be used by the University of South Australia Law School for teaching and research purposes.

Client's full name	
Signature	
Student Advisor's name(s)	
Student Advisor's signature	
Date	

APPENDIX 2

CONFIDENTIALITY UNDERTAKING

I
(‘Student Advisor’) in relation to any client and confidential information of the Legal Advice Clinic (‘Clinic’), undertake as follows:

RECITALS

The Student Advisor may obtain client and confidential information through direct or indirect involvement with the Clinic.

The Student Advisor undertakes to keep secret the Clinic’s client and confidential information.

DEFINITIONS

‘client’ of the Clinic means a person who has provided any details to the Clinic or has left a message to make an appointment with the Clinic.

‘confidential information’ of the Clinic means regardless of the form of the disclosure or the medium used to store it, all confidential information of the Clinic, or information treated by the Clinic as confidential and of which the Student Advisor becomes aware, either before or after the date of this agreement, through the Student Advisor’s direct or indirect involvement with the Clinic.

DUTY OF CONFIDENCE

The Student Advisor undertakes that all client and confidential information:

- will be kept strictly confidential;
- will remain absolute property and exclusive property of the Clinic or the client, as applicable;
- will not be disclosed or divulged to any third party;
- will not be used for any other purpose other than set out above.

Signed by the Student Advisor

.....
Date

