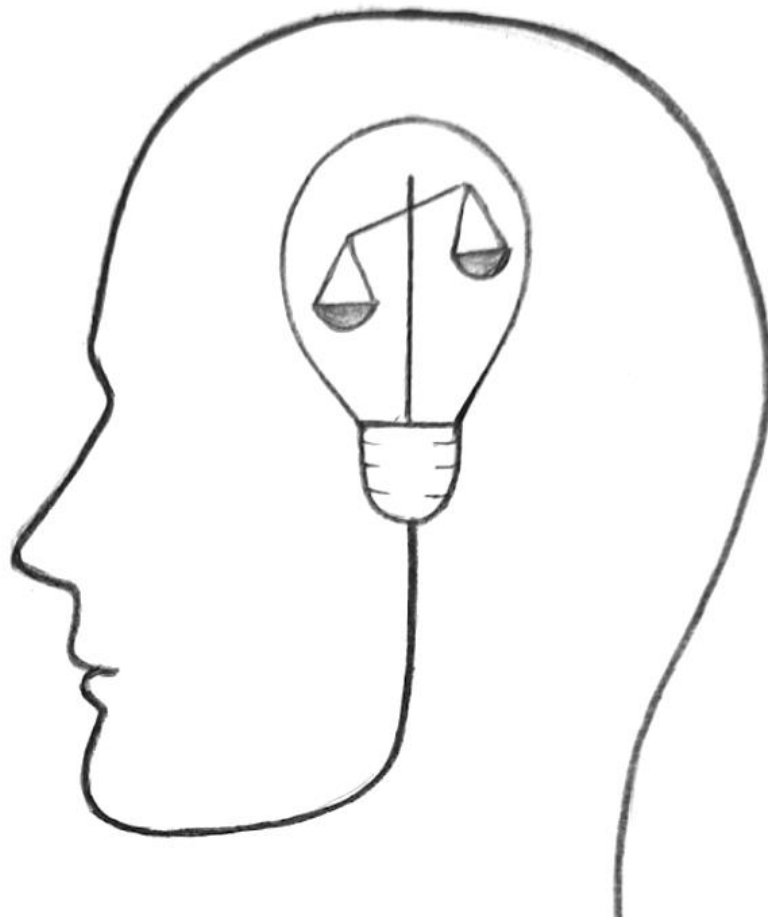


Teaching How to Think Like a Lawyer: Seven Essential Legal Skills

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1. Introduction

For a long time, law was not a “taught profession”. For example, in England, until the 1970s, there was no need to have a degree to become a lawyer.¹ People were becoming lawyers as a result of a training contract (solicitors) or pupillage (barristers). The English system of legal education still requires a training contract or a pupillage before one can become a qualified lawyer. This is different from the United States and most other jurisdictions.² However, what unites many jurisdictions is the growing gap between teaching law and practicing law.³

In many jurisdictions, law degrees do not allow graduates to practice law successfully (on their own or even attempt to qualify as lawyers for regulatory reasons and because law graduates are, to a significant extent, detached from real-world practice.⁴ Conventional legal education often produces lawyers with theoretical knowledge about law and problem-solving capacity but have with weak skills to do actual legal work with clients. Large law firms both pay these recent graduates and charge their clients in accordance with their inputs (hourly rates) rather than their outputs.⁵ It is, therefore, not surprising that the high hourly rates of law firms have been criticized for effectively making clients subsidize the training of their junior lawyers.⁶

The article begins by discussing the need to balance the taught and practical elements of legal education and various approaches to what it means to “think like a lawyer” and what makes legal education different from education in other areas. It then discusses the differences between various jurisdictions and the construction of a transnational legal profession. The rest of the article focuses on the analysis of a series of interviews conducted by the author with senior legal practitioners about essential legal skills and how to make teaching more relevant to the practice of law.

The article formulates seven essential legal skills based on conducted interviews which begin with focusing on the factual nuances that matter to effectively present client-centric solutions.

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¹ JOHN FLOOD, LEGAL EDUCATION IN THE GLOBAL CONTEXT. CHALLENGES FROM GLOBALIZATION, TECHNOLOGY AND CHANGES IN GOVERNMENT REGULATION (2011).

² Ibid.

³ See, e.g., Umesh Sharma & Jahirul Mullick, Bridging the Gaps Between Theory and Practice of Inclusive Teacher Education, in Oxford Research Encyclopedia of Education (2020); Jessica Dopierala, Bridging the Gap Between Theory and Practice: Why Are Students Falling off the Bridge and What Are Law Schools Doing to Catch Them, 85 U. DET. MERCY L. REV. 429 (2007). Laura Bugatti, *Legal Education in the Next Future*, 26 INT’L J. CLIN. LEGAL EDUC. 3, 15-6 and 19-20 (2019).

⁴ See, e.g., Jay Gary Finkelstein, *Practice in the Academy: Creating Practice-Aware Law Graduates*, 64 J. LEGAL EDUC. 622 (2014); Larry E. Ribstein, *Practicing Theory: Legal Education for the Twenty-First Century*, 96 IOWA L. REV. 1649 (2010).

⁵ David B. Wilkins and Mitu Gulati, *Reconceiving the Tournament of lawyers: Tracking, Seeding, and Information Control in the Internal Labor Markets of Elite Law Firms*, 84 Va. L. REV. 1581, 1592 (1998).

⁶ RICHARD SUSSKIND AND DANIEL SUSSKIND, *THE FUTURE OF THE PROFESSIONS: HOW TECHNOLOGY WILL TRANSFORM THE WORK OF HUMAN EXPERTS* (2015).

The article also makes specific recommendations on how to teach these legal skills, such as using real-life scenarios, involving practitioners more, introducing international and comparative law elements, and offering flexible online courses.

2. Balancing the taught and practical elements of legal education

Legal education has a hybrid nature, combining traditions of craft, judgement, and public responsibility with those of the modern research university.⁷ However, unlike, for example, medical education, where the initial years deal primarily with basic science and the later years focus on clinical instruction, in law, most of the practical training is deferred until after obtaining the law degree.⁸ Moreover, in many countries, students accumulate significant amounts of debt, even though their education does not guarantee them passing the bar exam to be admitted to practice or subsequently find employment, which will help them pay out the accumulated debt.⁹

In the United States and some other jurisdictions, a typical route from law school to legal academia requires a period of private practice. Often, this route is also chosen because it allows graduates to pay off education loans.¹⁰ In many other countries, however, legal academics go straight to teaching immediately after legal studies without having a good idea about what legal practice is and how the law actually operates in real-life.¹¹ It is hard to imagine someone who becomes a professor of medicine without having any real interaction with patients, but one can become a law professor with no experience of practicing law, who will have a limited practical skills to transfer to students.

The legal services markets around the world are also changing as a result of the greater use of more flexible working arrangements, such as fixed-term contracts, temporary agency work or offshoring legal tasks to other countries with cheaper labor costs.¹² In the post-industrial society, a much greater share of skilled specialists work from home (teleworking), do not have a permanent employment contract with fixed hours and can have their employment terminated much more easily compared to the industrial society.¹³

In most jurisdictions, including the United States and the United Kingdom, legal education is segregated from legal training. In the United States, law graduates must take special expensive bar

⁷ See, e.g., WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 4 (2007).

⁸ SULLIVAN et al., *supra* note 7, 8.

⁹ Richard A. Matasar, *The Rise and Fall of American Legal Education*, 49 N.Y.L. SCH. L. REV. 465, 471-2 (2004).

¹⁰ Steven R. Smith, *Financing the Future of Legal Education: 'Not What it Used to Be'*, 2012 MIC. ST. L. REV. 579, 609 (2012).

¹¹ See, e.g., University Grants Commission, *Guidelines on Minimum Qualifications*, 59-61, https://www.ugc.gov.in/pdfnews/4033931_UGC-Regulation_min_Qualification_Jul2018.pdf (July 2018) (no requirement of practical/law firm experience); Canada - National Occupational Classification 41200 (2022), <https://www.statcan.gc.ca/en/12-583-x/12-583-x2021001-eng.pdf>, 304-305.

¹² Daly and Silver, *supra* note 47, at 401; DELOITTE, *IMPLEMENTING A CORPORATE LEGAL PROCESS OUTSOURCING SOLUTION. KEY CONSIDERATIONS BEFORE EMBARKING ON THE LEGAL SERVICE DELIVERY TRANSFORMATION JOURNEY* (2017); John S. Dzienkowski, J. S., *The future of big law: Alternative legal service providers to corporate clients*, 82 FORDHAM LAW REVIEW 2995, 2995-3040 (2014).

¹³ YARIK KRYVOI, *PRAVOVOE REGULIROVANIE ZAJOMNOGO TRUDA* (2007).

revision courses such as BARBRI to pass state exams.¹⁴ Law schools do not offer preparation for bar exams. In the United Kingdom, law graduates must take a one-year Legal Practice Course on top of their degree to get more practical training on various aspects of law.¹⁵ In Germany, legal education with very limited interaction between students and academics led to a proliferation of overcrowded private schools that helped students pass state examinations.¹⁶ In the United Kingdom, only in the last 30 to 40 years has legal education become more open to ideas such as clinical legal education, moving away from the concept of teaching law as a doctrine or rules and principles which have to be learned and repeated.¹⁷

To sum up, law degrees typically do not allow graduates to practice law successfully or even attempt to qualify as lawyers because they are, to a significant extent, detached from real-world practice. Students learn very few of the practical skills required in the workplace, which results in the detachment of legal education from legal practice. The subsequent sections will focus on what skills lawyers need to succeed in practice and how to teach them.

3. What does 'thinking like a lawyer' actually mean?

As a matter of law, investors from any state can equally benefit from protections offered by international investment agreements. However, in practice investors from developed capital-exporting states are much less likely to use from the system than poor capital-importing states.

Although teaching and learning patterns can travel across subject areas,¹⁸ discipline-specific pedagogies can offer solutions better tailored to a particular discipline.¹⁹ The American Bar Association argued that professional legal education is a peculiar area of education that goes beyond learning history, facts or logic and involves active participation in a learning community to

¹⁴ Catherine Martin Christopher, *Modern Diploma Privilege: A Path Rather than a Gate*, 107 MINN. L. REV. 2777, 2818 (2023).

¹⁵ Solicitors Regulation Authority, *Legal Practice Course (LPC) Route*, SRA (July 2024), <https://www.sra.org.uk/become-solicitor/legal-practice-course-route/>; Nigel Duncan, *Gatekeepers Training Hurdles: The Training and Accreditation of Lawyers in England and Wales*, 20 GA. ST. U. L. REV. (2004); see further, Andrew Boon & Julian Webb, *Legal Education and Training in England and Wales: Back to the Future?*, 57 JOURNAL OF LEGAL EDUCATION 79, 81 (2008). However, the LPC is now being phased out by the recently introduced Solicitors Qualifying Examination (SQE). See, The Law Society, *Solicitors Qualifying Examination (SQE)*, THE LAW SOCIETY (September 21, 2021), <https://www.lawsociety.org.uk/career-advice/becoming-a-solicitor/solicitors-qualifying-examination-sqe>. For a brief comparison, see, BPP Editorial Team, *Should I do the LPC or the SQE?*, BPP (June 16, 2023) <https://www.bpp.com/insights/lpc-or-sqe-key-differences>.

¹⁶ Heinrich Amadeus Wolff, *Bar examinations and cram schools in Germany*, 24 WISCONSIN INTERNATIONAL LAW JOURNAL 109, (2006).

¹⁷ Flood, *supra* note 45.

¹⁸ Diana Laurillard and Dejan Ljubojevic, *Evaluating Learning Designs Through the Formal Representation of Pedagogical Patterns*, in INVESTIGATIONS OF E-LEARNING PATTERNS: CONTEXT FACTORS, PROBLEMS AND SOLUTIONS 86, 86-105 (Christian Kohls and Joachim Wedekind eds., 2006).

¹⁹ Workshop Report, Lee Shulman, *The Signature Pedagogies of the Professions of Law, Medicine, Engineering, and the Clergy: Potential Lessons for the Education of Teachers*, MATH SCIENCE PARTNERSHIPS (MSP) WORKSHOP: "TEACHER EDUCATION FOR EFFECTIVE TEACHING AND LEARNING", HOSTED BY THE NATIONAL RESEARCH COUNCIL'S CENTER FOR EDUCATION (2005), https://taylorprograms.com/wp-content/uploads/2018/11/Shulman_Signature_Pedagogies.pdf.

experience and develop certain skills.²⁰ Legal education involves interaction with faculty and students not only in the formal classroom setting but also in other places and other times “by inquiry and challenge, review and study groups”.²¹

One obvious distinction between legal education and other disciplines is that it is usually based on national law, which differs from one country to another. However, as a result of globalization and the development of information technologies, the law is increasingly not practiced in isolation within national borders but is affected by laws of other countries and international law, as discussed in more detail in Part VII of this article.

In addition, unlike many other professions, lawyers are usually required to engage in continuing legal education.²² The main rationale is that laws are constantly changing, and lawyers need to be on top of it. In the United Kingdom and many other countries, the higher education sector plays a modest role in providing continuing legal education.²³

Legal education is supposed to teach how to think like lawyers, which, according to the Carnegie Foundation’s report on legal education, requires translating “messy situations into the clarity and precision of legal procedure and doctrine and then to take strategic action through legal argument in order to advance a client’s cause before a court or in negotiation.”²⁴

It must be noted that lawyers play different roles in society, and each role requires a different set of skills. One of the most prominent American theorists of law wrote that what law means depends on who is using it.²⁵ From the judge’s standpoint, the law is a ground for decisions, and counsellors aim to influence and predict the course of the decision. From the citizen’s point of view, it is guidance on conduct. From the teacher’s perspective, it is a logical system. The role of legal education is to equip future professionals working in various areas with the right set of adaptive skills, e.g., being able to apply their existing knowledge, legal rules and principles adaptively to reflect their understanding of the practical context that changes depending on the task at hand.

One definition of the unique features of legal education draws parallels with professional competence for physicians, taking “the habitual and judicious use of communication, knowledge, technical skills, legal reasoning, emotions, values, and reflection in daily practice for the benefit of the individual, organization, or community being served.”²⁶ The competence of lawyers is based on professional skills, legal knowledge, and moral development.²⁷ The competence serves several functions: a cognitive function – acquiring and using knowledge to solve real-life problems; an integrative function – using legal and factual data in legal reasoning; a relational function –

²⁰ AMERICAN BAR ASSOCIATION (SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR), TEMPORARY DISTANCE EDUCATION GUIDELINES (1997).

²¹ *Id.* at 12.

²² For an assessment of the trends in the US, UK, Germany and Switzerland, see, CONTINUING LEGAL EDUCATION – AMBITION AND REALITY (Andreas Kellerhals, Michael Mayer & Janick Elsener eds., 2023); for a further evaluation of the French, Canadian, Australian and Indian models for continuing legal education, see, Centre of Excellence in Public Policy and Government-Indian Institute of Management Kashipur, GLOBAL PRACTICES IN CONTINUING LEGAL EDUCATION: EMERGING PLATFORMS FOR PROFESSIONAL DEVELOPMENT OF ADVOCATES (2021).

²³ FIONA WESTWOOD AND KAREN BARTON, THE CALLING OF LAW: THE PIVOTAL ROLE OF VOCATIONAL LEGAL EDUCATION (2016).

²⁴ 2 WILLIAM M. SULLIVAN et al., EDUCATING LAWYERS. PREPARATION FOR THE PROFESSION OF LAW (2007).

²⁵ Roscoe Pound, *Hierarchy of Sources and Forms in Different Systems of Law*, 7 TULANE LAW REVIEW 475, 475 (1932).

²⁶ ROY T. STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION 44 (2007).

²⁷ *Id.*

communicating effectively with clients, colleagues, and others; and an affective/moral function – the willingness, patience, and emotional awareness to use these skills judiciously and humanely.²⁸ In other words, the integration of knowledge, skills, and values is essential for professional competence.

4. Differences between jurisdictions and legal traditions

Laws and morality change from one jurisdiction to another, from one historical period to another. For example, in Sparta, theft was not regarded as immoral because of its communist-style economy, which had no respect for private property. Those caught stealing from the table were punished, but those who managed to steal unnoticed were not punished even if later their conduct became known.²⁹ In Tsarist Russia, the main purpose of education was to bring up an obedient subject or a loyal official.³⁰

Common law and civil law traditions are the two most widespread legal traditions in the world. These traditions also shape how law is taught and learned. Common law is prevalent in the English-speaking world, where courts and judicial decisions play a much greater role than in civil law, which is followed by most countries in the world.³¹ In common law jurisdictions, students (such as England and most states in the United States) primarily focus on judgements and learning how to read and critique cases.³² Law in these jurisdictions largely consists of a series of precedents decided by courts in the past. Learning law becomes an empirical study to distil certain principles and logic of judicial decisions, which help predict future outcomes.³³

A former dean of Harvard Law School, Christopher Columbus Langdell, in the 19th century popularised the case law teaching method inspired by the techniques of the chemistry laboratory. The idea was to extract parts of appellate court judgements and to question students using the Socratic method. Students were marked on the basis of very interactive class discussions and examinations, which gave employers a good idea about not only the knowledge of students but also their skills relevant to their future work.³⁴

²⁸ *Id.*

²⁹ Fred Brown, *An Historical and Clinical Study of Criminality with Special Reference to Theft*, 21 JOURNAL OF THE AMERICAN INSTITUTE OF CRIMINAL LAW AND CRIMINOLOGY 400, 410 (1930).

³⁰ LEV VYGOTSKY, PEDAGOGICHESKAYA PSIKHOLOGIYA [EDUCATIONAL PSYCHOLOGY] (1991).

³¹ In addition to the United States and England, other common law jurisdictions are India, Australia, New Zealand and Hong Kong. According to some estimates, common law, which forms the basis of the legal systems of more than one-quarter of the world's 320 jurisdictions. The CityUK, Legal Excellence, Internationally Renowned. UK Legal Services 2019, December 2019, <https://www.thecityuk.com/media/qfabwhhx/legal-excellence-internationally-renowned-uk-legal-services-2019.pdf>.

³² Debora L. Threedy and Aaron Dewald, *Re-conceptualizing Doctrinal Teaching: Blending Online Videos with In-Class Problem-Solving*, 64 JOURNAL OF LEGAL EDUCATION 605, 606 (2015).

³³ ELLIOTT A. KRAUSE, DEATH OF THE GUILDS: PROFESSIONS, STATES, AND THE ADVANCE OF CAPITALISM, 1930 TO THE PRESENT (1999); Sheilagh Ogilvie, *Rehabilitating the guilds: A reply*, 61 THE ECONOMIC HISTORY REVIEW 175, 175-82 (2008).

³⁴ ARTHUR E. SUTHERLAND, THE LAW AT HARVARD: A HISTORY OF IDEAS AND MEN, 1817-1967 (1967).

In civil law jurisdictions (e.g., all mainland European countries), the approach is different. Originally based on Roman Law, in the absence of the common law-style precedents, legal rules to a greater extent originate from public authorities other than courts.³⁵ Learning law means learning to understand and interpret abstract principles, usually established by the legislator, and applying them to various factual situations. In this context, private lawyers are not engaged in “creating” or “changing” laws through precedents like in common law jurisdictions.

In civil law jurisdictions, the focus of legal training is on the interpretation of statutes and, occasionally judgements, so they also apply their knowledge to practical situations in tutorials. In addition to acquiring the skill of reading cases, students are also learning new areas of law, such as civil procedure, criminal law, or contracts.³⁶ The students learn to understand the doctrinal aspects of a particular field of law as well as how cases are structured and their hierarchy, among other sources of law, to appreciate the meaning of law.

Despite differences across national legal systems and between common and civil law traditions, lawyers in all jurisdictions need to work with legal rules and principles, whether they come from judge-made law or the legislator. Moreover, in some areas of practice we observe the emergence of transnational legal profession where very similar legal skills are required.

5. Construction of a transnational legal profession

Although the laws of various countries differ, international legal practice and skills are becoming increasingly homogeneous for several reasons. First, nearly all the world’s largest international law firms are headquartered in common law jurisdictions (mostly in the United States and London). These firms operate through a vast network of offices in different parts of the world.³⁷

For example, one of the world’s largest law firms, DLA Piper is headquartered in London and Chicago has offices in more than 40 countries and 140 cities throughout the Americas, Europe, the Middle East, Africa and Australia.³⁸ International law firms such as DLA Piper offer their services to the world’s largest companies, shaping their corporate structure, contracts, and dispute resolution. They work in a variety of sectors—from government contracting and energy to tax, employment, and intellectual property.

International law firms achieve this success at such a scale and coverage because they have accumulated significant experience and know-how in giving advice on transactional and dispute resolution work for cross-border and entirely domestic legal practice. They shape not only the templates used by various companies but also their attitudes to risk, conflict management, fees, and

³⁵ JOHN HENRY MERRYMAN AND ROGELIO PÉREZ-PERDOMO, *THE CIVIL LAW TRADITION: AN INTRODUCTION TO THE LEGAL SYSTEMS OF EUROPE AND LATIN AMERICA* (2019).

³⁶ Threedy and Dewald, *supra* note 32, at 606.

³⁷ For example, according to one estimate, 96 out of 100 largest law firms by revenue were headquartered in common law jurisdictions, typically in the United States or England. Global Legal Leaders, Directory of World’s Largest Firms by Revenue, <https://www.globallegalleaders.com/leading-firms-by-revenue>.

³⁸ DLA Piper – Locations, <https://www.dlapiper.com/en-us/locations>.

other aspects of doing business.³⁹ Global legal and audit firms influence rankings and policies of international financial institutions in areas such as the ease of doing business and protection of investors.⁴⁰ In addition to a domestic law degree, such firms typically expect fluent legal English and, ideally, a Master of Laws (LLM) degree, preferably from an English-speaking country. Being admitted to practice in other jurisdictions (in particular, New York and England) is also often seen as an asset.

Not surprisingly, the world's leading international arbitration institution, the International Court of Arbitration, reports that English law remains the most frequently used law selected by parties for disputes worldwide involving various countries and sectors.⁴¹ In other words, English law, more than any other law, serves as a common denominator for commercial transactions and dispute resolution between parties from different jurisdictions.

Another reason for a greater convergence of law and practice around the world is the growing importance of intergovernmental organisations. These include not only organisations specifically tasked with harmonisation of law, such as the United Nations Commission on International Trade Law or the Hague Conference on International Private Law, but also international financial institutions.⁴²

International financial institutions such as the World Bank and the International Monetary Fund, headquartered in Washington, DC, have a significant impact on legal reforms. Regional development banks, such as the European Bank for Reconstruction and Development, the African Development Bank and the Asian Development Bank, through their judiciary reforms and rule of law promotion, stimulate greater harmonization of domestic laws.

As a result of what has become known as the “Washington Consensus”, various countries, particularly in the developing world, are encouraged to implement privatization and deregulation, and to simplify tax and property registration procedures, among other measures.⁴³ Other regional initiatives include efforts of the Council of European Bars (CCBE) to harmonize legal education in Europe.⁴⁴

³⁹ Glenn Morgan and Sigrid Quack, *Global Networks or Global Firms? The Organisational Implications of the Internationalisation of Law Firms*, in MULTINATIONALS, INSTITUTIONS AND THE CONSTRUCTION OF TRANSNATIONAL PRACTICES 213, 213-38 (Anthony Ferner et al. eds., 2006); James Faulconbridge and Daniel Muzio, *Organizational professionalism in globalizing law firms*, 22 WORK, EMPLOYMENT AND SOCIETY 7, 7–25 (2008).

⁴⁰ THE WORLD BANK GROUP, DOING BUSINESS CONTRIBUTORS (2016).

⁴¹ Herbert Smith Freehills – Arbitration Notes, *The ICC 2013 Statistics – Another busy year for international arbitration* (2014), <https://hsfnotes.com/arbitration/2014/09/09/the-icc-2013-statistics-another-busy-year-for-international-arbitration/>.

⁴² See, e.g., World Bank Group, *Global Program on Justice and Rule of Law*, WORLD BANK GROUP, <https://www.worldbank.org/en/programs/global-program-on-justice-and-rule-of-law/knowledge>; Nadia Rendak, *The International Monetary Fund and Law Reform*, in LAW REFORMS AROUND THE WORLD (Asif Qureshi ed., 2023); Salif Nimaga, *THEMATIC REVIEW: PBF-SUPPORTED PROJECTS ON TRANSITIONAL JUSTICE* (2020); Food and Agriculture Organization, *The Development Law Service*, Food and Agriculture Organization, <https://www.fao.org/legal-services/en/>; World Health Organization, *Using Law to Improve Health*, WHO, <https://www.who.int/westernpacific/activities/using-laws-to-improve-health>; WHO, *Health Law and Ethics*, WHO, <https://www.who.int/westernpacific/about/how-we-work/programmes/health-law-and-ethics>; UNCTAD, *E-Commerce and Law Reform*, UNCTAD, <https://unctad.org/topic/ecommerce-and-digital-economy/ecommerce-law-reform>.

⁴³ JOHN WILLIAMSON, DID THE WASHINGTON CONSENSUS FAIL? (2002).

⁴⁴ COUNCIL OF THE BARS AND THE LAW SOCIETIES OF THE EUROPEAN UNION (CCBE), CCBE DISCUSSION PAPER WITH A VIEW TO THE HARMONISATION OF THE QUALITY OF THE LAWYERS' TRAINING IN THE EUROPEAN UNION (1999).

The growing role of the United States in the post-World War II world makes its legal education particularly attractive to foreign students. According to some observations, the US system of legal education is now attracting more followers than the English system. Countries such as China, India, Japan, South Korea and Canada are tilting towards the US model despite the fact that some of these countries historically had strong links with the United Kingdom.⁴⁵ Most recently, Japan and South Korea switched to the three-year graduate Juris Doctor model of legal education that is typical of the United States.⁴⁶ In other words, countries are moving away from the apprenticeship model favored in England towards the American model.

It must be noted that not only those who want to practice with large international law firms might be interested in topping up their domestic law degrees. Legal services are increasingly outsourced to countries such as India, creating more jobs and opportunities for those who are suitably qualified.⁴⁷ Some legal education tasks, such as marking and preparing slides, can be outsourced to jurisdictions with cheaper labor so that academics can focus on other activities.⁴⁸ Artificial intelligence (largely developed in Western countries) is playing a greater role in legal education.⁴⁹

Doing an LLM in an English-speaking country typically carries more prestige but usually requires a significant commitment of time and temporary relocation to another country. In addition, admission to the top universities can be very competitive. The other extreme is when universities recruit hundreds of LLMs every year, which often results in little interaction with faculty members, and very little individualized feedback. Tuition fees and living costs in countries such as the United States and the United Kingdom could be prohibitively expensive, particularly for students from developing countries, perpetuating the fact of law as a profession for the privileged.

To sum up, international legal practice requirements are becoming increasingly harmonized because of the activities of international law firms, international organizations and the globalization of business. Legal education needs to adapt to these changes, offering the knowledge and skills required in the international marketplace. The question that the subsequent sections will address is what specific skills are required in the international marketplace.

⁴⁵ Matthew S. Erie, *Legal Education Reform in China Through US-Inspired Transplants*, 59 JOURNAL OF LEGAL EDUCATION 60, 60–96 (2009); JOHN FLOOD, LEGAL EDUCATION IN THE GLOBAL CONTEXT. CHALLENGES FROM GLOBALIZATION, TECHNOLOGY AND CHANGES IN GOVERNMENT REGULATION (2011).

⁴⁶ Flood, *supra* note 45; Rosa Kim, *Americanization of Legal Education in South Korea: Challenges and Opportunities*, 38 BROOKLYN JOURNAL OF INTERNATIONAL LAW 49, 49–52 (2012).

⁴⁷ Mary C. Daly and Carole Silver, *Flattening the World of Legal Services? The Ethical and Liability Minefields of Offshoring Legal and Law-Related Services*, 38 GEORGETOWN JOURNAL OF INTERNATIONAL LAW 401, 405-6 (2007).

⁴⁸ See, on the role of outsources in various areas of legal practice: Jayanth K. Krishnan, *Outsourcing and the Globalizing Legal Profession*, 48 WM. & MARY L. REV. 2189 (2006).

⁴⁹ For an in-depth analysis see *Artificial Intelligence and Legal Education: Special Issue*, 70 J. LEGAL EDUC. 1, (2020).

6. The seven essential legal skills

To better understand what senior legal practitioners regard as the most important legal skills, the author has conducted a series of interviews with partners of international law firms based in the United Kingdom, the United States, the United Arab Emirates, Hong Kong and Ukraine.

Another rationale for conducting the interviews was to better understand the training needs of law firms and fill the gaps between legal education and legal practice.⁵⁰ All interview participants were sent ten interview questions, which aimed to provide an in-depth examination of the key characteristics of legal education and the skills and knowledge of young practitioners that are essential to their professional role but were often not developed sufficiently by conventional legal education. The interviews conducted in 2021 were timely, as practitioners were newly aware, post-pandemic, of online education technologies, so they also explored their perceptions of the role online technologies play in delivering training to legal professionals. The analysis of interviews was intended to facilitate more effective education design choices in the course to deliver the needed skills and knowledge.

The interviews discussed in more detail below suggest that being able to spot critical issues, combine macro and micro perspectives, and offer solutions are key skills for good lawyers. It must be noted, however, that such skills are required not only in law but also in many other professions (e.g., business management consulting, medical profession). Perhaps more than any other profession, lawyers are expected to defend various positions (e.g., that of their client) with a great emphasis on the use of written and oral advocacy skills.⁵¹ Essentially, advocacy skills involve the ability to convey arguments and persuade the intended audience (e.g., judge, arbitrator, client, official) that a particular position on a legal matter is the correct one or the most appropriate.

The figure below results from analyzing responses of interviewed senior legal practitioners to questions related to the skills that “good lawyers” need. There is an implicit sequence in the themes identified. First, good lawyers should be able to focus on the relevant facts which matter. Then, they need to be able to spot the critical legal issues, find the relevant law, and apply it in a particular context. As a result of this application, they should be able to evaluate the strengths and weaknesses of various positions and come up with client-centric solutions. Finally, they should be able to effectively present such solutions to their client.

⁵⁰ In July-August 2021 eleven interviews were conducted via Zoom to understand the views of practitioners on the skills and knowledge the lawyers need to practice law as well how legal education, whether conventional or online, can address these needs. Each interview lasted on average 25 minutes. Eight males and three females were interviewed, all partners with international law firms. The interview participants were partners of law firms, and members of the Investment Treaty Forum of the British Institute of International and Comparative Law. The researcher contacted the participants directly to conduct interviews via Zoom or phone. The interviews were conducted in English with participants based in five countries: the United Kingdom (6), the United States (2), Hong Kong (1), Ukraine (1), and the United Arab Emirates (1). With the permission of the participants, all interviews were recorded. Subsequently, nine interviews were fully transcribed and two were partially transcribed.

⁵¹ Matthew J. Arnold, *The Lack of Basic Writing Skills and its Impact on the Legal Profession*, 24 CAP. U. L. REV. 227, 227 (1995); Roger J. Miner, *Confronting the Communication Crisis in the Legal Profession*, 34 N.Y.L. SCH. L. REV. 46, 46 (1989).

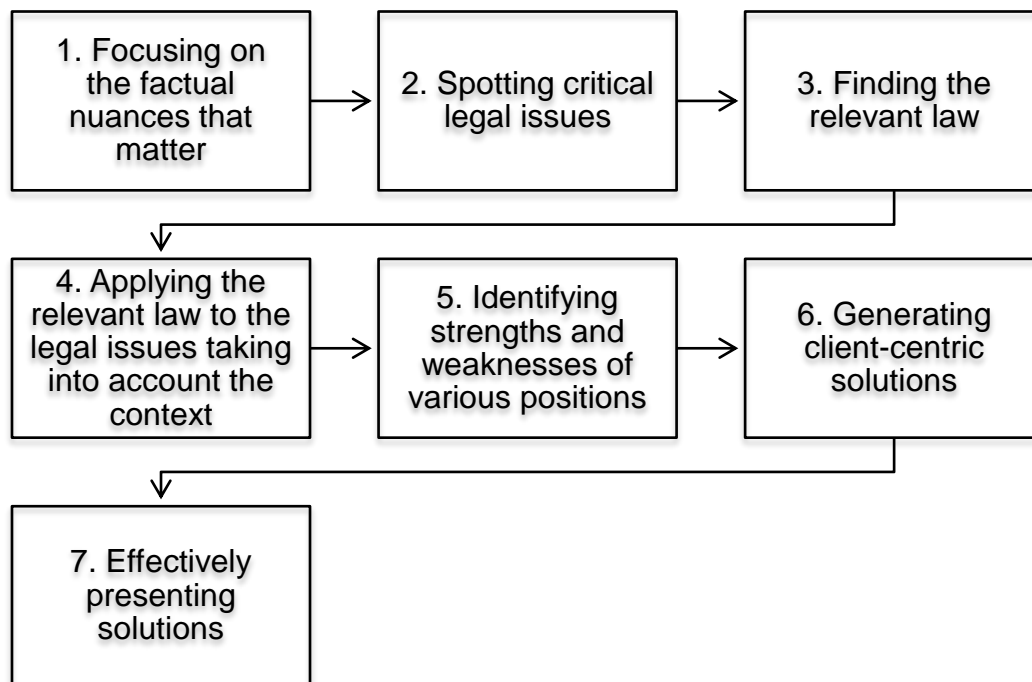


Figure 1. Seven essential legal skills

Figure 1 illustrates seven essential legal skills as understood by the interviewed legal practitioners. The subsequent sections analyze each skill in more detail, with specific relevant quotes.

1. Focusing on the factual nuances that matter

Any legal transaction or dispute involves both facts and legal issues. Most participants noted the importance of an ability to pay attention to the factual details that matter. Small variations of facts may lead to a different application of law, which in turn may result in serious consequences. The practitioners highlighted the need to “combine the high-level macro perspective and the micro rigor and diligence” (P4), “not being bogged down in the detail, being able to see the big picture” (P9), and “to work with real problems of the clients” (P11). This combination of attention to detail and the strategic perspective should inform the way the law applies. Therefore, being able to spot and recognize the facts that may have an impact on the determination of legal issues is an essential skill for good lawyers.

2. Spotting critical legal issues

Understanding the commercial context is closely linked to the ability to spot the most important legal issues. The participants commented that good lawyers could identify “what the real issue actually is” (P8), need “not to be distracted by non-essential issues” (P10), and should be “able to foresee issues in advance, what will happen to a transaction or an issue” (P3). In other words, recognizing specific fact patterns that trigger the application of specific legal norms defines the practice of law. Both transactional lawyers (e.g., those drafting contracts) and dispute resolution lawyers (e.g., those engaged in arbitration) who deal with disputes need to distinguish particularly controversial issues, which may lead to different interpretations (by business partners, officials, consumers, judges, etc.) Different interpretations lead to disagreements, the need to amend contracts, or even litigation or

arbitration. These responses highlight the importance of correctly identifying the relevant legal issues and distinguishing between essential and non-essential issues in a given context.

3. Finding the relevant law

Many interviewed practitioners thought that the most important capability in the legal profession was to know the law. However, interviews suggest that the best practitioners “are not those who remember law” (P7), because the law is “changing so rapidly that it’s not the best use of headspace” (P11). Moreover, it is impossible to know all legal systems which come into play in complex disputes or transactions (P4) (e.g., law governing the contract, law governing the agreement to arbitrate, law governing the enforcement of an arbitral award). This is why the focus should be not on “teaching the law but teaching how to think” (P8) and how to find the relevant law (P9). Closed book exams testing the memory of law received a fair amount of criticism (P9) as not reflecting the reality of law practice, in which practitioners always consult the relevant sources rather than rely on their memory. In other words, the ability to find the relevant sources of law is a crucial skill for practicing lawyers.

4. Applying law in the relevant context

All legal practitioners interviewed commented that a gap separates legal education and practice, and that the reality of practicing law is more complex and nuanced. Many highlighted that it was not enough to know “law on the books”, but lawyers should be able to apply it to specific situations. Much of the legal practice is about “understanding various aspects going into the case, beyond the applicable law” (P10) and “seeing nuances” rather than reading “a correct answer in a book” (P8). Some noted that learning the rules does not necessarily mean “knowing the principles behind these rules” (P2).

Very often, the application of law is informed by a particular business situation or the needs of a client. “Understanding commercial context and where clients come from (government or industry) is very important” (P7). As one participant put it, it may be insufficient to state that “the law says this, because the arbitrator may not be attracted to this position” (P8). The same participant said that while certain things “may look clever theoretically”, they may not necessarily gain traction in the real-world scenario.

These responses suggest that lawyers need to see how the law operates in the broader context, taking into account commercial, cultural and political considerations. Identifying and adopting such considerations is an important skill for lawyers.

5. Identifying strengths and weaknesses of various positions

Spotting the legal issues is the first step that lawyers take before analysing how to apply the law. Such application depends on whom the lawyer represents. One can be a judge focused on finding a fair solution for all parties involved, a representative of a foreign investor taking care of its business interests, or a government official making sure that the regulation is adopted or implemented in the way it was intended to. One of the characteristics that makes legal education different compared to other professions is the ability to take different positions on relevant legal issues.

The participants highlighted the skill to “conduct analysis in an objective, almost detached way, [be] able to defend various points of view” (P2), “look at an issue and assess both risks and benefits of various options” (P6), and “really being able to focus on what we are trying to do in a particular

instance” (P3). In other words, lawyers need to defend various points of view depending on their task in a particular situation.

6. *Generating client-centric solutions for actual and potential problems*

Spotting the relevant issue and then applying the law to this issue, taking into account the needs of the client and the business context, are the first but not the only steps. Lawyers need to find solutions that resolve the problems. The participants thought that it was crucial for good lawyers to offer “solutions, being creative in a particular context” (P11), come up with a “strategy in the context of a dispute or transactional advice for an individual, knowing the law and being able to deploy it effectively” (P7), and “come up with a solution in a timely manner so that the risk can be mitigated” (P3). A law practitioner engages with a legal problem, and the initial steps of identifying the legal issues and different perspectives to them, which is then followed by coming up with solutions to problems generated while “thinking on your feet” (P1) or “under time pressure” (P6).

These responses suggest that a client-centric approach requires coming up with different theories to justify or resist a particular claim being aware of the risks of different approaches and how to mitigate them.

7. *Effectively presenting solutions (advocacy skills)*

It is important for lawyers not only to come up with solutions but also to present them effectively, bearing in mind the client and the ultimate target audience. This includes “[d]rafting, particularly written advocacy in correspondence and legal pleadings” (P1), and being able to “marshal the arguments, but not in an argumentative way. Identifying the matters that go to support a particular proposition” (P8). Shaping and communicating the narratives “constructively and comprehensively” (P3) constitute a core legal skill, which makes the legal profession different from other professions. Moreover, the practitioners most frequently mentioned this skill as the one most commonly missing among the beginning lawyers. Some were sceptical about the possibility of teaching this skill, as the culture of communicating should be “learned on the job” (P4).

The practitioners also noted that for many young professionals, the lack of advocacy skills (particularly written advocacy) is “a real problem” (P6). Legal writing skills include independently putting together a variety of legal documents, including “memos, briefs, mock arguments, that would help to understand how you frame the argument, how you focus on the key issues” (P10). Writing in legal practice is different from university-style “theoretical essays” (P9). Often, lawyers have very weak skills when it comes not only to drafting pleadings, applications or contracts but even professional correspondence and day-to-day communication (P6). In other words, legal writing skills include not only producing legal documents *stricto sensu*, but also communicating with colleagues, clients, regulators, and other law practice actors.

Drafting using clear language “could be useful for all lawyers, regardless of their practice group.” (P11). Moreover, preparing business pitches, addressing clients, and approaching government officials is “not included in any legal studies, not usually taught at law schools” (P11).

These responses suggest that it is not enough to be able to find and apply law; it is also important to effectively apply and present solutions in writing or oral form. Lawyers need to be able to prepare answers serving different purposes (letter to a client, memorandum, claim) in clear and professional language, guided by an example.

The themes deriving from the expert interviews below suggest that lawyers need to have seven key legal skills to effectively deal with practical problems. These skills go beyond deciding how to apply law to a particular pattern and include several other legal skills, which the participants deem to be essential for a successful practice of law.

7. How to teach legal skills

The interviewed senior practitioners also shared their views on the best ways to equip lawyers with the skills they need for the practice of law. All interviewed practitioners participated in trainings, and many conducted trainings themselves, including internal sessions organized by law firms for their lawyers. Their perspectives on how traditional university legal education and in-house learning opportunities could be improved resulted in valuable recommendations, which could subsequently be implemented in legal education more generally and in online learning more specifically.

Four themes emerged from interviews on teaching methodology: using real-life scenarios, greater involvement of practitioners, introducing international and comparative law elements and offering flexible online courses.

1. *Using real-life scenarios, cases, and simulations*

Often, law books and lectures merely include theories or descriptions of various laws by legal academics, many of whom have little or no first-hand experience practicing law. One way to bridge the gap between legal education and the practice of law is to enrich legal training with real-life scenarios.

Most participants argued that using mock or real cases and issue-spotting type problems as opposed to theoretical essays should play a more prominent role in legal education (P1, P7, P3, P2). Understanding distinctions between various cases (P1) and coming up with solutions (P7) should be a part of legal education. Moot courts, simulated transactions, and legal clinics allow learners to apply legal knowledge to real-life situations or simulations. One participant (P4) suggested that the hours they spent preparing for the Jessup International Law Moot Court Competition (an international court simulation) “was highly enjoyable and valuable” despite the effort it required. Another practitioner commented that “having done 5-6 transactions, most junior lawyers will be able to understand how to identify legal issues, how to approach them, how to solve them” (P3).

These responses highlight the importance of integrating teaching materials with questions based on real-life scenarios, referring to real cases and making the learning experience as closely related to real-life as possible by introducing simulations and moot courts. The learners should also be able to prepare answers serving different practical purposes (letter to a client, memorandum, claim).

2. *Greater involvement of practitioners*

Despite some exceptions, legal academics in most jurisdictions typically do not have much experience practicing law. A greater involvement of practitioners could help bridge the gap between the legal education and the profession. In some countries, such as the United States, practitioners often engage in teaching as adjunct professors while in other countries, such as the United Kingdom, their involvement has a more ad hoc nature and is not as well integrated into the curriculum.

So, what exactly can the practitioners contribute? Practitioners can help at “the stage of formulating the curriculum, help professors not become too disconnected from the real world” (P6). Also, they can give “practical examples” and can “speak to particular cases and their experience” (P7). Practitioners can share their knowledge about career “opportunities, downsides, to make an informed decision about their career choices” (P3). All participants argued that practitioners should have a greater role to play in legal education. It could be argued that the most valuable contribution of practitioners could be their discussion of practical experience and real-life cases, which links well to the recommendation of using more real-life materials in teaching.

3. *Introducing international and comparative law perspectives*

The nature of a particular legal practice defines the need for internationalization of legal education. While comparative and international law approaches would be less relevant to local solo practitioners, those who work for bigger international firms and in an international context would certainly benefit from them (P8, P9). Most practicing lawyers in big law firms confront issues related to comparative and international law.

Practitioners regularly deal with questions such as “How do you apply a particular concept in a civil law jurisdiction? In a different common law jurisdiction? They would benefit from having some idea how of how other jurisdictions regulate tax, corporate law, trusts, equity, etc.” (P7). The practice of law requires one “to get very comfortable to operate in different legal systems” (P4) and to understand “how different jurisdictions approach the law” (P10). For these reasons, some thought that an international or comparative law course should be a mandatory part of the curriculum for lawyers (P1, P6).

When it comes to the delivery of such courses, the practitioners expressed a variety of views, noting that “a broader more Catholic approach to international law is needed” (P1) and there are gaps when it comes to specialized “niche” topics, which “need to be plugged” (P10). One practitioner also liked “the idea of a hybrid of theoretical introduction with a practical discussion with battlefield experience” (P1). The same practitioner also mentioned that junior lawyers often do not have specialized knowledge about international law, and “there is a gap, which needs to be plugged.”

These responses suggest that learners could benefit from being acquainted with international law and comparative law approaches, and how various jurisdictions approach the same issue. This is particularly important for lawyers whose work involves cross-border and cross-jurisdictional practice.

4. *Developing adaptive legal skills*

The interviews with legal practitioners support this understanding of legal skills in legal practice. The analysis of interviews shows the importance of specific legal skills: focusing on the factual nuances that matter, spotting critical legal issues, finding the relevant law, applying law in the relevant context, identifying strengths and weaknesses of various positions, and generating and presenting client-centric solutions. All these skills can be characterized as adaptive because they should reflect the relevant practical context and needs of the client.

It is not enough simply to learn black letter law, which changes more often than the essentials of many other disciplines. Adaptive skills in the context of legal education may be defined as the capacity to apply legal rules and principles more adaptively through increased reflection on their existing knowledge and understanding of the practical context. Adaptive cognitive skills would help learners

apply legal rules and principles by reflecting on their existing knowledge and adapting it to their understanding of the practical context of each different context of application.

The need to develop adaptive skills is not peculiar to legal education. Educators in other professions have similar concepts. For example, in medical education, the term “adaptive expertise” is characterised by critical thinking to challenge existing assumptions, openness to reflect on practice, meta-reasoning to recognise shortcomings, as well as the ability to reconstruct the problem. The idea is that learners should keep their knowledge active and flexible rather than automated. The model of adaptive behaviour in medicine reflects a similar concept. In management education, the concept of performance adaptation focuses on key elements of adaptive behaviour, and more specifically, “cognitive, affective, motivational and behavioural modifications made in response to the demands of a new or changing environment, or situational demands.”

5. Offering flexible online courses

Lawyers at big law firms are usually very busy with their client-related work, often billing over 50 hours per week, which makes it difficult for them to find time to attend training sessions at external venues. As one practitioner put it, “the main challenge with organizing training for lawyers is that they get very busy with their client work; popping downstairs for seminars seems to work” (P4). Practitioners are very busy, and some think that “online learning can be better” (P1).

Online technologies have already helped teachers devise new ways of legal training. One practitioner explained that online technologies allow them to roll out trainings globally: “a Zoom call allows wider participation, breakout sessions with 4-5 colleagues in one room” (P2). Another participant highlighted the use of webinars as common tools: “one can watch them at their leisure, but the downside is that it can be difficult to focus, not particularly interactive” (P9). The same practitioner prefers a combination of “video and audio, interactive tests to keep people’s attention.”

Larger law firms have well-developed induction programs and regular training for lawyers. Some offer “refresher courses online—anti-money laundering, data protection” (P5) or cyber-training (P6). Law firms usually opt for a combination of external and internal instructors (P5, P6, P9) but most trainings are delivered by lawyers from the same firm (their peers).

Some invite external speakers and either pay them or rely on those who are willing to come to promote themselves in the hope of generating business in the future (accountants, valuation experts, arbitrators, barristers) (P8, P9). The common theme is that online training allows flexibility and the potential to reach colleagues in other offices, but offline learning is still regarded as more entertaining and engaging with professors “throwing in a few jokes” (P5). Overall, the participants agreed that there was space for both online and offline learning.

Moreover, most law firms do not have the capacity to provide very specialized training for lawyers (P1). A demand exists for training “rolled out to multiple law firms at once and covering certain topics we felt were particularly important”, but “not much is on offer.” (P4).

These responses suggest that a growing demand has emerged for flexible asynchronous courses for practitioners, which would allow them to combine their busy schedules with learning.

8. Conclusion

Historically, law was not a "taught profession." In many countries, practical training such as pupillage (in England) or bar exams (in the U.S.) followed a law degree. However, modern legal education often fails to adequately prepare students for real-world legal practice. This gap is seen globally and often leaves graduates with theoretical knowledge but lacking in practical skills. Unlike professions like medicine, where hands-on training begins early, law students often encounter practical legal work only after graduation. The legal profession is starting to embrace more clinical legal education, but practical skills remain underdeveloped in many jurisdictions.

Legal education and practice vary across different legal traditions, particularly between common law and civil law jurisdictions. While common law focuses on case-based learning, civil law emphasizes statutory interpretation. Despite these differences, globalization is leading to a more transnational legal profession, where similar skills are increasingly in demand. Global law firms and international organizations are driving the convergence of legal skills and practices across borders.

Legal practice requires more than just knowledge of laws; it demands seven essential adaptive skills. Interviews conducted with practitioners from various jurisdictions, suggest that there are seven essential legal skills: focusing on relevant factual nuances, spotting critical legal issues, finding applicable law, applying the law in context, identifying strengths and weaknesses of various positions, generating client-centric solutions and effectively presenting solutions, especially through strong advocacy and communication skills. These skills highlight a combination of attention to both detail and strategy, the ability to contextualize laws in real-world scenarios, and creativity in problem-solving for clients.

Today, law graduates often struggle to transition from theoretical knowledge to practical application. Based on conducted interviews, this article proposes the following teaching approaches to breach the gap between legal education and practice. First, legal education should incorporate real-life scenarios, moot courts, and simulations to prepare learners for the complexities of legal practice. Second, practicing lawyers should be involved in curriculum development and teaching to bridge the gap between theory and practice. Their insights provide practical examples and career advice. Third, for those in international firms or dealing with cross-border issues, courses in comparative and international law are crucial to understanding how different jurisdictions handle legal principles. Given the time constraints on practicing lawyers, flexible, asynchronous online courses can provide continuous learning opportunities. However, a blend of online and in-person learning is recommended for engagement and practical interaction.

Like in other professions, such as medicine and management, legal education should focus on fostering "adaptive expertise"—the ability to reflect on existing knowledge, apply it to new contexts, and adapt to changing environments. Legal professionals should develop reflective, flexible approaches to applying law in diverse and evolving contexts, ensuring they can address the specific needs of clients in practical situations. Much of the benefit of legal education occurs through the development of adaptive skills characterized by the learners' gradual acquisition of new abilities, their increased capacity to gain perspective depending on the context, and reflection on their existing knowledge.

"Thinking like a lawyer" involves the ability to translate complex and ambiguous situations into clear legal procedures and arguments. It also requires strategic thinking, problem-solving, and effective

communication, distinguishing it from other forms of education. To succeed in practice, lawyers need a mix of cognitive, relational, and moral skills. The future of legal education lies in integrating these skills with theoretical knowledge, preparing graduates for diverse roles, and adapting to global changes in the legal profession.

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