

Reviewed Article: Teaching and Learning in Clinic

SPECIALIST LEGAL CLINICS:

THEIR PEDAGOGY, RISKS AND PAYOFFS AS EXTERNSHIPS

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INTRODUCTION

Within clinical legal education there is a great deal of discussion at the moment about externships. Part of the motivation for all this conversation is the desire of law schools to get in on the clinical 'act' as inexpensively as possible. Some law Deans have the view that they can outsource clinics to firms and agencies and achieve reputable clinical outcomes with little or no expenditure. We beg to differ and in this article we explain why law school management of an externship experience is resource intensive and nearly as complicated as an in-house clinic. It may be less expensive, but an externship can never be set and forgotten.

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We also discuss the peculiarities of specialist externships, since many externship sites are in fact specialist legal practices. In fact, the attraction of an externship is the access it provides for students to participate in a specialised area of law, while overseen by specialist lawyers. We set out in detail the advantages and disadvantages of operating such placements and connect these to the recent Australian *Best Practices* in clinical legal education. To begin with however, we need to define some terms as they are used in an Australian clinical setting.

DEFINITIONS OF CLINICS IN AN AUSTRALIAN CONTEXT

Between 2010 and 2012 an Australian study of clinical practices in over 30 law schools (the *Best Practices*²) came to the very definite conclusion that specialist clinics are clinics, even though there may be no conventional client or there is a research task. What is important is that students work on real-life projects rather than simulations. The best practices recommended by the Australian study were unanimously adopted by the *Council of Australian Law Deans* (CALD) in late 2012.

They defined and described clinics as follows:

² See Adrian Evans, Anna Cody, Anna Copeland, Jeff Giddings, Mary Anne Noone and Simon Rice, *Best Practices: Australian Clinical Legal Education*, Australian Government, Canberra, 2013, 'Definitions', at p 20. In the United States, similar best practices for externship clinics can be found in Roy Stuckey and others, *Best Practices for Legal Education: A Vision and a Road Map (US Best Practices*)*, Clinical Legal Education Association, USA, 2007, Section D. United Kingdom scholars or clinics have not thus far sought to identify and establish best practices for externships. See Philip Plowden (ed), *Model standards for live-client clinics (UK Model Standards)*, Clinical Legal Education Organisation, United Kingdom, 2007.

What is 'Clinic'?

'Clinic' or clinical legal education (CLE) is a significant experiential method of learning and teaching. CLE places law students in close contact with the realities, demands and compromises of legal practice. In so doing, CLE provides students with real-life reference points for learning the law. CLE also invites students to see the wider context and everyday realities of accessing an imperfect legal system. Clinical pedagogy involves a system of self-critique and supervisory feedback so that law students may learn how to learn from their experiences of simulated environments, observation and, at its most effective level, personal responsibility for real clients and their legal problems. CLE is, in summary, a learning methodology for law students that compels them, through a constant reality check, to integrate their learning of substantive law with the justice or otherwise of its practical operation.

What is 'live client'?

Live-client CLE is intensive, essentially one-on-one in nature, with an implicit expectation that (mostly) self-selecting students will do well as they apply legal theory, develop lawyering skills and build their confidence in solving the legal problems of real clients for whom they are responsible, under supervision. Live-client CLE entails a high staff-student ratio and collaborative learning environments so each student is motivated to improve and perform at their best. Students are so motivated because of the personal responsibility of working with

and being accountable to clients, as opposed to software or other simulated accountability structures.

Clinic Type	Definition	Australian Example
Wholly law school funded in-house live-client clinic	On campus, wholly funded and controlled by law school for student education	University of South Australia Legal Advice Clinic
In-house live-client clinic (some external funding)	Substantially funded, substantially controlled by university, for student learning and client service	Kingsford Legal Centre, UNSW
External* live-client clinic ('agency clinic')	University students placed in an agency, under substantial supervision of agency, assessed by university, with input from placement	Springvale Monash Legal Service, Monash University
Externships* (includes 'internships' and 'placements')	University students placed in an agency, under supervision of agency, assessed by university, with input from placement	Griffith University Semester in Practice. ³

Any of these clinic types can accommodate specialised legal service delivery, as we describe further below. In practice, it tends to be the externships (as above*) in the Australian setting that provide a natural fit for specialised delivery, because the external agencies have most often been established to offer such specialised services. But it is important that we first emphasise something which the *Best*

³ Ibid.

Practices' research underlined: that the nature of *supervision* is the key linking ingredient between all types of clinic and the main reason why a 'set and forget' approach to externships (be they general practice or specialised) cannot be tolerated.

The *Best Practices* contain a number of specific practices that deal with this key requirement for a successful externship: the quality of supervision.

Supervision

The agreed principles of supervision include several which frame the ideal relationship between an external supervisor and their students:

- Supervision arrangements are designed to assist students to link theory and practice and to work collaboratively with supervisors in addressing clients' needs.
- Supervision is structured, with ground rules and clear learning objectives. As a system, it ensures students' right to supervision and feedback, together with support and respect for both supervisees and supervisors.
- Supervisors meet with each student on a regular basis as well as have the capacity to respond to unpredictable events.
- Development of a strong supervision relationship relies on supervisors as role models.⁴

⁴ Evans *et al*, n 6, p 55.

Externship supervisors, just as much as their in-house colleagues, need these attributes, according to the *Best Practices*:

Supervisors also need to have particular personal attributes. They should -

- be able, both as teachers and practitioners;
- model constructive work relationships;
- provide feedback and constructive criticism (see 'feedback' below);
- be available, in that they are co-located with the students or are able to meaningfully interact through use of technology;
- be approachable;
- be adaptable and flexible in maintaining a constructive and student-focused approach;
- communicate effectively; and
- self-evaluate and accept evaluation by supervisees and peers.⁵

Furthermore, external supervisors are asked to be accountable for their supervision in the same way as in-house supervisors. This list of best practices goes on to make it obvious that an externship is not a cheap dumping ground for students who cannot be housed in an in-house clinic.

All supervisors, including short-term, locum and agency-employed supervisors, must be trained in the process of supervision and provided with the time and resources to fulfil their responsibilities. Supervisors must also be able to participate in specific supervision training courses and skills development

⁵ Ibid.

processes. Universities should be able to give ongoing commitment to the professional development of supervisors.⁶

In agency clinics and externships the training is provided to supervisors by the law school in conjunction with the agency. Training addresses the ways in which the dual purposes of client service and student learning can be advanced together. There is a shared commitment to meaningful liaison between academic staff and externship agency staff.

Training includes a clear understanding of:

- the learning outcomes of the externship;
- the role of the supervisor in supporting the student learning; and
- how the assessment from the agency staff feeds into the students' academic progress.

Law schools and their clinical courses provide to supervisors:

- structures to effectively support junior and sessional supervisors;
- a supervisor manual;
- access to other clinical supervisors for mentoring purposes;
- sufficient time to develop supervision skills before a full supervision load is required of them; and
- sufficient time and resources to ensure their professional development – in both clinical teaching and the areas of law in which they are practising.

⁶ For a general discussion of the importance of all supervisory issues in the Australian context, see Jeff Giddings, *Promoting Justice Through Clinical Legal Education*, Justice Press, Melbourne, 2013.

In agency clinics and externships, supervisors receive an induction into clinical methodology and some training in supervision. This training addresses the provision of feedback to students. Supervisors are sufficiently accessible to deal promptly with unexpected critical incidents. Supervisors also enable the student to incrementally develop the understandings and skills identified by the clinic as important. In externships, supervision arrangements, including regular meetings, are discussed and established collaboratively by the student, the supervisor and the clinical academic responsible for the course.

The constructive provision of feedback is central to student supervision. Feedback is clear and is focused on enabling the student to build on good performance and develop their skills and understandings. It must also be provided in a timely manner so as to enable the student to address and build on the feedback. Further students need to undergo training to constructively receive feedback. In an agency clinic, the nature and timeliness of feedback is planned collaboratively between university and externship agency.⁷

If supervision must meet these standards in a general externship setting, can they be any less rigorous in a specialised setting? In principle, the answer is no.

In the next section, we describe in more detail the nature of a specialist clinic and its relationship to the externship setting, in an effort to demonstrate why clinical externships that deliver specialised legal services must be treated with the same

⁷ Evans, *et al*, op cit, p 57.

respect as in-house clinics if quality educational outcomes are to be achieved for law students placed there.

DESCRIBING AND EXPLAINING SPECIALIST (OR SPECIALISED?) CLINICS

Specialised clinical legal education commenced in Australia in 1995, with a sexual assault clinic at Monash Law Faculty. This description of that inaugural clinic, which was located inside the then Springvale Legal Service Inc. (SLS), was written a year later:

“In conjunction with the South Eastern Centre Against Sexual Assault (SECASA) and Monash Medical Centre (MMC), SLS has commenced a pilot joint clinical legal service to assist victims of sexual assault. This is the first of a number of specialised options to be made progressively available to law students over the next few years. A steering committee of SLS and SECASA selects as possible ‘staff’, students who have performed competently and demonstrated a developed feminist analysis during their placement at the legal service. Those selected have been invited to volunteer for the pilot clinic and all have done so.

The pilot process is limited to three or four students, each with a maximum of three clients referred from SECASA. Initial interviews will be conducted jointly with the referring SECASA counsellor. Clinical services will concentrate on crimes compensation applications, civil actions for damages (if appropriate), emergency housing relocation and police-victim liaison (in the event of criminal proceedings commencing).

Professional and educational acceptance of this innovation depends on demonstrating that the low file load and high supervision ratio (four students

supervised by two volunteer, experienced community lawyers) can ensure both quality clinical education and - because the students will work in conjunction with SECASA counsellors and have more time available per file than private practitioners - far better than average professional services.

Specialised clinical experience of this sort is designed to consolidate and deepen a student's perception of a range of professional issues, including drafting, advocacy, multi-disciplinary approaches and 'client care'. Sexual assault is only one example of this potential.⁸

In 1995, the Monash Law Faculty already had a 20 year history of running a general practice clinic at SLS. SLS was then and is now an externship site, with its own community elected Board of Directors and its own client service and law reform agendas. But the peculiar history of SLS⁹ meant that its director had always been a legal academic¹⁰ and this person had come to understand that there were advantages for an advanced approach to teaching a specific area of law and serving a particular type of clients to a higher standard than was feasible in a general practice clinic.

Specialisation has since become commonplace in Australian clinical programs.

These clinics have thrived not only because they mimic the way in which most

⁸ Adrian Evans, 'Specialised clinical legal education begins in Australia' (1996) 21 *Alternative Law Journal* 79.

⁹ See generally, Kerry Greenwood, *It Seemed Like a Good Idea at the Time*, Springvale Legal Service Inc., 1994.

¹⁰ As of 2014, the leadership of SMLS has been divided between an Academic Director (a Law Faculty academic) and an Executive Director, a lawyer employed by SMLS.

law is practised in the private profession,¹¹ but because they make pedagogical sense, particularly when they develop organically from earlier general practice clinics.

Specialised clinical students who come out of best practice approaches to legal education are, we assert, likely to be among the most proficient and balanced of any clinical graduates. Where a law school has embraced good law teaching wholeheartedly, it will have invested in good skills simulation, critical awareness of access to justice issues and general practice clinical environments. Students entering a specialised clinic with such a background will automatically build on the skills and attitudes they have already acquired in previous simulated and clinical experiences.

From excitement to contribution.

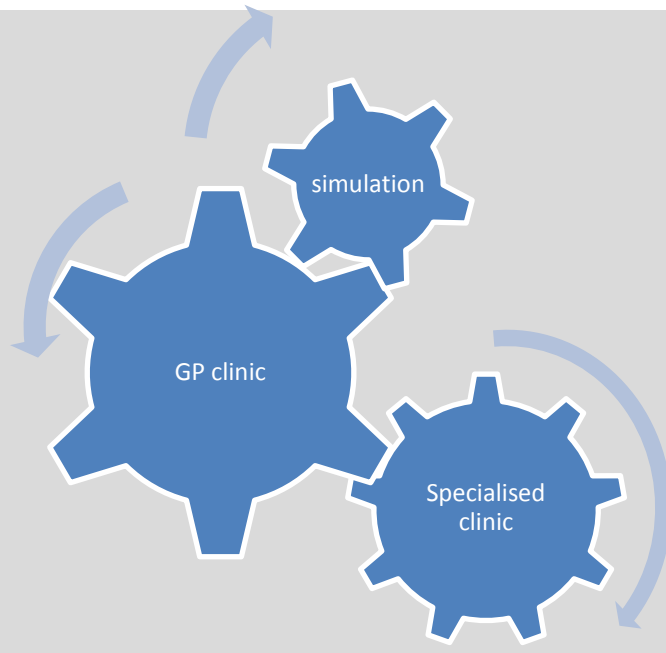
So what is the pedagogical and developmental value of a specialised clinic? What can it provide over and above that of a generalist in-house clinical experience? The first and most obvious advantage is the consolidation and refinement of primary professional skills and legal knowledge. These are both made more acute because of the narrower legal content of the specialisation and the greater similarity of presenting client problems, allowing students (and their supervisors) to acquire a greater depth of experience in the available time.

¹¹ See for example, Adrian Evans and Clark Cunningham, 'Speciality Certification as an Incentive for Increased Professionalism: Lessons from Other Disciplines and Countries' (2003) 54(4) *South Carolina Law Review* 987-1009.

It is not the case that a general practice clinic automatically offers an inadequate preparation for the realities of legal practice. Far from it. Many graduates of such clinics have made profound contributions to the law and to wider society. A significant general practice experience is central to translating simulations into dealing with real clients (see Figure 1 below). But specialised clinics take the experiential process to its logical conclusion: the emulation of all aspects of private specialised lawyering, save that of billing.

Specialisations 'speak' directly to the burgeoning particular interests of individual students and can generate an even greater degree of energy for the specialisation than they experienced in the general practice clinic. If general practice students suddenly find themselves becoming *passionate* about legal practice, specialised students become *committed*. The general practice flush of excitement becomes the specialist's vocation. They suddenly recognise the opportunity to link personal passion with the chance to develop long term expertise – and for some, realising that they actually have a sense of ambition about a particular workplace environment and career path.

Figure 1:
... from simulation to specialised clinic – GP clinics are central to the progression.



Despite these profound connections, there are occasional queries about the legitimacy of describing a specialised clinic as a ‘clinic’.

The following case studies from Monash University tease out the difficulty of achieving externship best practice in concrete, specialised settings.

CASE STUDY – THE MONASH FACULTY OF LAW SUITE OF CLINICAL OFFERINGS

Currently, Monash Law offers a suite of seven ‘specialist’ clinics which operate as externships inside a ‘shell’ unit known as *Clinical Externship*, in addition to the original and primary clinical unit, *Professional Practice*.

In some of these specialist clinics, a student who seeks entry and who has satisfactorily completed *Professional Practice* will receive priority consideration over other equally credentialed students who have not completed *Professional Practice*.

The priority entry process is intended to emphasise and incentivise the sequential nature of clinical methods for Monash Law students in the manner outlined above.

The published outcomes for these specialist clinics identify that at the completion of the unit students should:

- a. *have further developed the personal and communication skills acquired in Professional Practice to a higher level of sophistication*
- b. *have a good understanding of the principles of law in their chosen area*
- c. *have an understanding of the practical application of the law in their chosen area*
- d. *be able to assess the effectiveness of the law and applicable legal remedies in their chosen area*
- e. *have further developed their ability to work jointly with a professional in another discipline*
- f. *graduate with highly developed skills and recognised expertise in their chosen field.*

The seven specialist clinics are:

1. Sexual Assault Clinic¹² - in conjunction with the South Eastern Centre Against Sexual Assault (SECASA) at Springvale Monash Legal Service (4 places, three times per year) - legal services to victims of sexual assault.
2. Human Rights Clinic - in conjunction with the Castan Centre for Human Rights at Holding Redlich, Solicitors (2 places, twice a year) - litigation involving human rights in the broadest sense - everything from compensation for workplace injuries and discrimination to assisting asylum seekers and elderly victims of fraud and predatory lending. Immediate casework supervision is provided by the law firm and academic coordination by a member of the clinical staff.
3. Family Violence Clinic - assisting victims of Family Violence (2 places, three times per year) - assisting victims of family violence by attending the court on family violence list days and assisting the duty lawyer to help clients make victims of crime applications to the Victims of Crime Tribunal (Victoria).
4. JobWatch clinic - Students are based at *JobWatch*, in central Melbourne (2 places, twice a year). Students receive extensive training and support to give advice on the telephone advice line in relation to various employment law issues, and assist with legal education materials.
5. Monash/Ashurst Corporate Governance and Responsibility Clinic - (4 places, twice a year) This clinic is open to students who have completed *Corporations Law*. Students participating in this clinic work with faculty members,

¹² This is the original Monash specialist clinic referred to above, n2

practitioners and corporations to provide advice on corporate governance and social responsibility issues to not-for-profits and/or ASX listed companies.

6. Supreme Court clinic (2 places, twice a year). Students participating in this clinic work with judges and other judicial staff members of the Court. Students are required to assist judges and other judicial staff in Judges' Chambers at the Court in drafting speeches, preparing case summaries and undertaking complex legal research. They also assist Judges' Associates in other legal and administrative duties in Chambers and Court. As part of their assessment, students are required to prepare an oral presentation of 20 minutes on a topic approved by their court mentor in consultation with clinical legal education staff. The presentation is assessed jointly by a Judge of the Supreme Court of Victoria and a member of the clinical teaching staff of the Faculty.
7. Victorian Civil and Administrative Tribunal (VCAT) Self Help Centre (10 students, twice a year). Students attend VCAT for one full day each week over a 12 week period, providing unrepresented parties with information about VCAT's practices and procedures that will help parties make or defend claims in diverse areas such as planning and environmental, tenancy, consumer, guardianship, mental health, equal opportunity and building and property law.

These clinics generally follow the same assessment regime, however alterations to this format are made in discussion with the hosting body, depending on the

nature of the tasks being performed at the clinic and the educational objectives of the clinic:

Assessment Task	Value
1. Casework at Clinic (the actual criteria change, according to the work of the clinic)	80%
2. Research paper (1000-1500 words)	20%

The following section provides a detailed description of one of the most recent Monash specialist clinics:

Objectives, operation and reality in the Corporate Social Responsibility clinic

This clinic was created because we realised we had a gap in clinical offerings. There was nothing to appeal to students who had a more commercial leaning and we saw no reason why students with a strong interest should not receive a clinical experience. Students participating in this clinic work with faculty members, practitioners and corporations to prepare corporate governance reports for ASX listed companies. Students work alone, or in pairs or groups of up to four on a report under the supervision of a faculty and/or practitioner mentor.

There is some debate among Monash clinicians as to whether this new Ashurst clinic can truly be considered a clinic, considering the 'client' is a corporation and

the social justice routes of the Monash program. In fact, the clinic has a high-order social justice agenda and teaches very practical skills and these two aspects appear sufficient for it to be considered a clinical externship, rather than just 'work experience', work integrated learning or an observational placement.

Casework inside the CSR clinic is divided up as follows:

SKILL AREA	MARK
Ability to accept responsibility, exercise initiative, respond to feedback, collaborate with others and work effectively as part of a team	out of 25
Ability to communicate effectively with clients and colleagues and act in an ethical and professional manner	out of 25
Ability to research, understand and analyse the relevant law, and the relevant factual and commercial context, and apply the law in a practical manner	out of 25
Ability to write clearly and succinctly, in an appropriate style, and with a logical structure	out of 25
TOTAL	/100

The CSR clinic has provoked excellent feedback from students:

My experience with the clinic was overwhelmingly positive, largely due to the support, enthusiasm and guidance of Bruce and Corey [the Ashurst partners], and also the really lovely team dynamic we developed amongst our little group of students.

I think the best aspects of the unit were the chance to experience life at Ashurst, our ability to drive our own research and divide work amongst ourselves, the chance to work for and meet a real client, and the in-depth understanding we gained of a very specialised area of corporate law (although I picked up a lot of general knowledge about the financial world as well).

I also really appreciated Bruce and Corey's efforts in making us feel at home - we had security passes, meeting rooms booked, were introduced to many staff members and were invited to several functions. I think we all felt very included, and that Bruce was really proud of the project which was nice.

This sort of feedback emphasises how important it is to have 'buy in' from the firm!

WHY OPERATE SPECIALIST CLINICS AS EXTERNSHIPS?

Specialist clinics are and can be both in-house and external, without loss of pedagogical value and there is no imperative to operate a specialised externship clinic (SEC). However there are several reasons why they make sense. First, the externship site will itself often be engaged in precisely the specialised area of service delivery that a law school considers attractive or offers a good fit to the law school's priorities. Well-known in-house clinical 'norms' of practice, for example, human rights and some types of criminal practice can be standard bearers and encourage more recent specialisations (such as corporate social responsibility). If the same specialisation were to be offered in-house, the law school might face considerable logistical and recruiting problems, attempting to find suitable staff and develop the sort of profile and reputation that specialist clients would consider appropriate. All this takes a lot of time. So a law school

will typically prefer to bypass many of these difficulties by going straight to an established and reputable NGO or law firm and begin to talk about the potential externship clinic.

Second and for similar reasons, the SEC is potentially more affordable than an in-house equivalent. Specialised externships can be cost neutral or lower cost to the law school because the external agency or firm can often be persuaded to fund the cost of the supervision itself, in return for the labour and commitment of the allocated students.

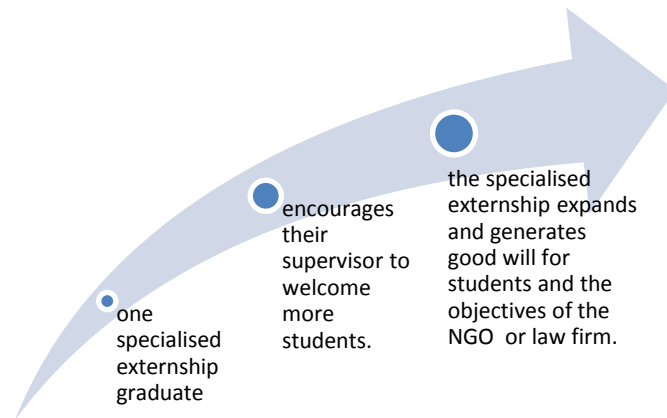
Third, a SEC offers complete alignment with the growing recognition that 'work integrated learning' (WIL) concepts are central to all educational approaches.¹³ The SEC is 'real' and foreshadows the experience students will require in that *specialised* practice area. While Law and Medicine (for example) have always understood the importance of integrating academic learning with its application in the workplace, much wider service sector recognition has now reached the point that many NGOs and niche law firms find it unsurprising that a law school would propose a specialised externship.

Fourth, the external clinic can reduce the insular nature of some law school environments. Reliance on external skills and expertise means the potential within

¹³ See for example the February 2014 agreement between Universities Australia, the Australian Chamber of Commerce and Industry and the Business Council of Australia, at <http://theconversation.com/universities-australia-deal-to-get-students-work-ready-23719>.

an in-house clinic for internal exclusivity or narrowness of competence and attitudes is reduced.

Finally, a SEC is also a very good way to harness the goodwill of clinical alumni. Connections with these graduates can be developed to locate externship sites and potential supervisors at those sites can be carefully nurtured, benefiting both those professionals by allowing them the chance to give back to their law school and the SEC students, by connecting them with possible future employers. The process completes an alumnus-student-alumnus loop that may be both expanding and self-sustaining within a few cycles. Firms led by alumni recruit from trusted current students, who become the next group of employers and so on:



A SEC can operate without a primary (general practice) clinical experience preceding it, provided the externship itself is carefully and thoroughly set up – but it's not as seamless or productive in the educational outcome sense as the preferred, progressive GP>Specialisation model advocated here, simply because there is less time for students to develop in their understanding of practice. The

stand-alone SEC may also be educationally deficient because students entering a SEC as their first clinic are not necessarily doing so with full knowledge of their own attributes, learning styles and learning needs.

Taken as a whole, the specialised externship does best when it follows a significant in-house GP experience, but even in this context, these clinics must be organised and set up carefully if they are to avoid some well-known traps.

WHAT ARE THE PITFALLS OF SPECIALISED EXTERNSHIPS?

The principal issue in setting up a secure and stable externship is not the area of specialisation, but the quality of the externship set up *per se*. A number of factors are in play here:

No control over the day-to-day experience of students

To a large extent, the quality of day-to-day student experience is a leap of faith. Clinicians have to be confident in the educative abilities of externship partners and rely on them to provide the students with educationally useful and valuable activities.

Reliance is also placed on the students being adult, independent and autonomous individuals who will report back any dissatisfaction with the quality of the experience.

Monash tries to deal with this via a mid-semester visit to all externships to speak with a firm representative and students independently, in order to gauge whether expectations (on both sides) are being fulfilled.

Quality control of mentors.

Legal education is being delivered by non-University staff and practitioners do not necessarily make good teachers. As such, the University cannot control what is being taught and how. The quality varies widely. Experience has demonstrated that the firms who are interested in offering clinical placements are keen and enthusiastic and that there is usually a 'champion' who is not only a good practitioner, but also a good teacher.

However, students do sometimes complain that, apart from the 'champion', other members of the placement firm were uninterested or even hostile. This is very hard to control. Part of the way of resolving this is to ensure that assessments in all externships are finalised by clinical staff. Accordingly, the host firm will assess the 'casework' aspect and sometimes provide a mark for the written work, but the program convenor will always second mark and second check the assessments and sign off on all final marks.

Student expectations and the reality of practice

Part of having successful external placements is the management of student expectations. Students need to have a good (and realistic) idea of what they will

and won't be doing as part of the externship experience. Sometimes they have an idealised concept of practice in which they are very important and lauded for their intelligent insights. The reality very rarely matches this expectation. Efforts are therefore made to be very clear to students about what they'll be doing in the externship, where they will be on the 'totem pole' (usually, the lowest of the low) and what they should expect to get out of the experience.

Maintaining student interest

Getting the word out to the student body about the suite of externships available is the hardest thing to do and takes the most effort. In a large law school in a very large University with many different double degree combinations and choices of electives, word of mouth is nowhere near as effective as might be thought. The adage of "build it and they will come" does not necessarily apply here.

The mantra therefore is promote, promote, promote.

Global emails and printed advertisements are a given, but scheduled information sessions where members of the hosting body come to speak to students are more effective. However, such visits are incredibly time consuming and administratively demanding. The difficulty is that if the program convenor does not have the appropriate students to provide for a particular externship, momentum is lost within the host firm, or worse their ire is incurred, as they are relying on their positions to be filled semester after semester.

Dealing with and managing external interests – time consuming!

Management of the externship relationship is probably the most significant issue with specialist clinic placements. The program convenor requires considerable patience and time in order to deal with externship personnel.

Their expectations of the relationship (kudos, free labour, fulfilling their *pro bono* requirements) must be juggled so that law school interests in appropriate work for students and professional on-site supervision are not compromised.

The relationship cannot be maintained entirely by email or telephone and requires regular site visits, plus the willingness to go and meet externship supervisors at the site when a particular problem arises. Considerable negotiation is always required to come to a reasonable conclusion regarding student hours of work, the type of work, the avoidance of entirely junior supervisors of students and the assessment regime and other similar matters. As the *Best Practices* make clear, it's important to agree on a Memorandum of Understanding before the first group of students commences, so that everyone is in agreement with these basic matters.¹⁴

The on-going externship relationship also requires a lot of work. Contacting each externship before each group of students starts to ensure they are preparing for the next group can never be neglected. This is not a role for an introvert. At least one site visit during a placement period is also a good idea, to demonstrate the law school's investment and involvement to both students and the firm.

¹⁴ *Best Practices, op cit*, n 6, Infrastructure, Best Practice #3, p 65.

Ideological and educational disparities

Law firms tend to point out the difference between conventional law school learning and the 'real world'. Part of the large law firm mentality is the focus on time sheets, profits and efficiency. This is important for students to learn, but a mature understanding of clinical process requires a social justice agenda, the promotion of best practices and ethical interaction with clients.¹⁵

There may be a disparity between clinical legal education core beliefs and a pragmatic, big firm mentality. It is important to ensure that externship students are pre-equipped to deal with and discuss the large firm mentality in the interests of strengthening their understanding of the importance of a strong social justice priority in their own professional futures.

This, again, is very hard to control. However, differing practice cultures can be managed in a number of ways:

- a) Acceptance of pedagogy - in establishing the clinical externship, it is essential to ensure that those in authority at the externship site and the people who are dealing with students day-to-day understand the philosophical and ethical position of the clinical program, and particularly its social justice agenda.

¹⁵ *Op cit*, 'Law in Context in a Clinical Setting', p 53

- b) Counselling students regularly - students should be de-briefed during the externship period in order to draw out these issues and the clashes the students might be experiencing between the clinic's lawyering objectives and that of the firm.
- c) Reflective journaling – This requires students to formally write up confronting issues and submit them for discussion. Journaling forces students to unpick issues and incidents which may go unnoticed and undiscussed. These journals can be readily assessed.¹⁶
- d) Moral and ethical preparation – increasingly, it is necessary to prepare students to encounter 'real world' profit priorities in some externship sites by checking to see that their law school ethics curricula are not just focussed on rote learning of local professional conduct rules, but are underpinned by a more substantial understanding of general morality¹⁷ and legal ethical types.¹⁸

Experience suggests that a student who has reflected on the deeper issues of access to justice via these frameworks will manage some big firm cultures with a

¹⁶ See for example, Michele Leering, 'Encouraging Reflective Practice: Conceptualizing Reflective Practice for Legal Professionals', (2014) 23 *Journal of Law and Social Policy* 83; Hyams, R "Assessing Insight: Grading Reflective Journals in Clinical Legal Education" (2010) 17 *James Cook University Law Review* 25

¹⁷ See for example, Hyams, *et al*, *Practical Legal Skills*, 4th edn, OUP, Port Melbourne, 2014, Ch 4 'Keeping Out of Trouble'; Evans A, *The Good Lawyer*, Cambridge University Press, Port Melbourne, 2014.

¹⁸ See for example, Christine Parker and Adrian Evans, *Inside Lawyers' Ethics*, 2nd edn, CUP, South Melbourne, 2014, Chs 2 and 3 and Appendix.

stronger capacity to engage confidently in justice discussions inside the externship and subsequently.

ROOM FOR IMPROVEMENT

There remain several areas where improvements can be achieved in the management of clinical externships.

Expansion – more clinics or more students per clinic?

The problem with expansion is the danger of 'over extension'. There is no point having dozens of clinics and no students to participate. However, the wider the range of clinics available, the wider the appeal to a greater pool of students.

Part of the difficulty of expansion is that programs tend to draw on a limited pool of students who understand the value of a clinical experience. There will always be a hard core of 'commercially driven' students who cannot see any value in a clinical experience and thus will not expose themselves to a clinic, even if that specialist clinic focuses on an area of law (such as small business) that they envisage themselves working in, in the future. Clinical programs can rarely draw from the entire student body and this will limit the number of potential applicants to fill all the places in all the clinics provided. The other problem is that clinics take a lot of administrative work for small numbers of participating students. More clinics amounts to more administrative time. If the clinical convenor cannot absorb that work, someone else has to.

For the public face of the law school, these clinics have to be efficiently managed. The more there are, the harder it is for one person to administer them. So, specialist clinics ought only to expand with caution. It is essential to ensure that the program has the administrative infrastructure and the sheer student numbers to support expansions, not just Faculty goodwill.

Developing understanding of benefits of clinical pedagogy amongst students and faculty colleagues

Clinical method can be introduced early to students in the curriculum in various ways and when this occurs, the long-term development of clinical benefits is more likely. This can be done by:

- Observation and placement assignments in foundation years – Students are able to observe, shadow &/or ‘buddy’ students¹⁹ in the later-year clinics for a period of time and write a ‘content of the law’, reflective or ‘access to justice’ assignment.
- Continuous ‘awareness training’ – staff should constantly remind students of how to test doctrine being learnt in law school against the reality of practice, by participation in a clinical unit or by volunteering in appropriate NGOs or externship sites.

¹⁹ See Hyams, R ‘Clinical Buddies: Jumping the Fact-Law Chasm’ in Naylor B and Hyams R (Eds) Innovation in Clinical Legal Education: Educating Future Lawyers – Monograph No 1(2007) *Alternative Law Journal*

It may be a little more difficult with faculty staff, who often have very entrenched views of the (perceived lack of) value of clinical experience. The best way to work with this limitation is by being very proactive by, for example, providing presentations at staff teaching seminars of educational approaches occurring in the clinics (such as reflective writing/skills and other exercises such as simulations and role plays) which may have relevance to mainstream units. It also adds credibility if clinical staff engage in presentations at staff research seminars of outcomes of clinical research, in relation either to pedagogy or “legal content” issues.

Clinical teachers need to engage with mainstream staff in academic environments to demonstrate the validity of clinical pedagogy and thus make it more relevant and less confronting for mainstream academic staff.

Developing a deeper understanding of pedagogical aims amongst ‘host’ placement firms.

Again, encouraging the acceptance of pedagogical objectives is an evolutionary, long term process. It is a matter of being very focussed on why a clinic is being established and maintained with a placement firm and an agreed set of goals.

The firm needs to see and deeply accept the difference between ‘observation’ or ‘work experience’ on one hand and clinical experience on the other.²⁰ The first two questions that should always be asked when an externship is suggested is:

²⁰ See further, *Best Practices, op cit*, Introduction, pp 10-11.

1. What are the aims of the clinic (i.e. student learning outcomes)? **and**
2. What will the students actually do?

The firm needs to be reminded about what benefit the students are receiving from participating in the clinic. They need to understand that students are not merely a source of free labour or that the firm can expect low-cost kudos from its association with a university. This means that the program convenor overseeing the externships must be very clear about their purpose and communicate that clearly and consistently to the host firms.

Deeper links between the profession and the Faculty through externship pedagogy.

The aim is mutual benefit from the relationship. It is very useful to have strong, wealthy and influential allies in the profession, if there is ever any threat to the clinical program from within the university. If the clinical program has a review, it is very powerful to have external, powerful firms speaking on its behalf and extolling its virtues. Many of these firms will also draw employees from students who have completed clinical placements, thus further strengthening the ties.

Law firms will also provide feedback to the law school about the sorts of skills and knowledge they are looking for in potential employees, which may influence the faculty's curriculum development directions.

At the least, that conversation provides a conduit for a useful discussion in this area. It is also possible in the long term that they may donate funds for the ongoing work of the clinics.

Opportunity for multidisciplinary work.

The future of clinical work may well be in multidisciplinary partnerships. This model reflects the reality of practice and is a very fertile learning environment for law students.²¹ Placements into 'non/quasi' legal environments are an opportunity for students to experience this collaborative agenda first hand. There is room for expansion to non-legal environments such as

- a) Family Relationship Centres in Australia – working alongside mediators and social workers in family law matters.
- b) Business and accounting firms – working with accountants and financial counsellors.
- c) Medical suites and hospitals – participation in medico-legal specialisations, writing wills for terminally-ill patients, etc.
- d) Small business clinics – working with finance and tax professionals.

The multidisciplinary pedagogy is also a fertile area for research for clinical teachers.

²¹ See Hyams R, Brown G and Foster R (2013) "The Benefits of Multidisciplinary Learning in Clinical Practice for Law, Finance, and Social Work Students: An Australian Experience" 33 (2) *Journal of Teaching in Social Work* 159; Hyams R "Multidisciplinary Clinical Legal Education: The Future of the Profession" (2012) 37 (2) *Alt LJ* 103; Hyams R & Gertner F "Multidisciplinary Clinics - Broadening the Outlook of Clinical Learning" (2012) 17 *International Journal of Clinical Legal Education* 23.

CONCLUSION

It should never be assumed that creating and sustaining clinical externships are easy because they are cheap and the supervisory work is outsourced to willing (and competent) partners. It is important that the objectives of the clinic are very clear in both faculty and the external partners' minds and that pedagogical aims are clearly defined before a clinic gets underway. Further, the faculty must satisfy itself that educational and ethical standards are being upheld. There are definitely a number of practical limitations and barriers which need to be negotiated in creating, operating and sustaining clinical externships. There are also some exciting pedagogical opportunities and positive consequences for law faculties in forging stronger bonds with the practising profession, all of which makes the effort worthwhile.
