



2013 CEPLER Conference

# The Futures of Legal Education and the Legal Profession

Friday 18th October 2013, 9.30am – 5.30pm

The University of Birmingham, in partnership with No5 Chambers,  
presents 2013 CEPLER Conference.

CEPLER, the Centre for Professional Legal Education and Research, fosters collaboration between legal academics and practitioners, promoting a responsive and relevant research agenda and, in partnership with No. 5 Chambers, is delighted to present the second annual CEPLER Conference.

This year's event aims to engage with some of the key issues confronting the profession and legal education today. Professor Hilary Sommerlad, CEPLER Director of Research, opens the conference with a brief analysis of the current state of the legal profession in both the field of practice and education, setting the scene for the two distinct streams. Delegates can then opt for either The Future of Legal Education or The Future of the Legal Profession and enjoy a stimulating programme of expert speakers who will examine the transformation and challenges ahead.

The two streams reunite for the keynote address and we are delighted to welcome as our speaker Professor Richard Abel, Connell Distinguished Professor of Law Emeritus and Distinguished Research Professor from UCLA, after which there will be an opportunity to mingle with fellow participants at a drinks reception.

**Conference Venue:** Lucas House, Edgbaston Park Road, Edgbaston, Birmingham B15 2RT

**Delegate Fees:**

Practitioner and Academic: £69

Student: £59

**THIS EVENT ATTRACTS 6 CPD POINTS**

To register visit: [www.birmingham.ac.uk/ceplerconf13](http://www.birmingham.ac.uk/ceplerconf13)

# The Futures of Legal Education and the Legal Profession

**Plenary: 09.50 - 10.10**

Welcome by Professor Andrew Sanders, Head of Birmingham Law School

**Professor Hilary Sommerlad**, Director of Research, CEPLER  
Reflections on the current state of the legal profession

## Legal Education Pathway

**Session One: 10.20 – 12.15**

**Transforming Legal Education: Meeting the Needs of a Changing Profession?**

Chair **Steven Vaughan**, Birmingham Law School

*A Review of the Legal Education Landscape and the Legal Education and Training Review*

**Professor Julian Webb**, Warwick Law School

*Led by the Bar Standards Board, ILEX Professional Standards, and the Solicitors Regulation Authority, the Legal Education and Training Review (LETR) has been described as the largest review of legal education and training since the 1971 Ormrod Report. As part of a distinctive evidence-based approach, the three regulators commissioned a consortium of academics to produce an initial report and recommendations to inform their work. The independent research team reported in June 2013. It concluded that Anglo-Welsh system was not fundamentally broken, but made recommendations to enhance quality, flexibility and accessibility, including: the development of 'day one' learning outcomes based on proper occupational analysis of the knowledge, skills and attributes required of legal services providers; the development of more flexible and non-graduate pathways to authorised practice, a stronger emphasis on 'outputs'-based or cyclical models of continuing education, the creation of better information resources for would-be students, and structures to better coordinate research, development, evaluation and review of legal education and training in the future.*

*Since the publication of the LETR research report, the issuance of statutory guidance by the Legal Services Board, and the spectre of further regulatory reform of the legal services sector has highlighted the continuing uncertain and contested nature of legal education reform. Moreover, viewed internationally, LETR is not the only game in town. Legal education reform has been and continues to be on the agenda in many jurisdictions across the world including, eg, the USA, Australia, Canada, and much of East Asia. A number of common themes and challenges can be discerned from these processes, which may offer some clues to the plausible future directions of legal services education and training.*

*Creating a More Flexible Approach to Education and Training*

**Alex Roy**, Legal Services Board

*The Legal Education Training Review (LETR) is a significant milestone in the modernisation of the role that education and training plays in the regulation of legal services. It has fired the starting gun for frontline regulators who must now develop a more detailed blueprint for change in the medium term based on outcomes rather than detailed rules for those responsible for education. We consider that this flexibility can be achieved through effective targeting of regulation according to the risks posed. The potential for first-day outcomes to provide more targeted flexibility in training for educational providers, employers and those seeking to work in the sector is significant. We expect to see significant changes over the coming years and believe such changes should be welcomed by both providers of legal services and their clients.*

## *Key Issues in Legal Education from the Profession's Point of View*

**Tony King**, Director, Clifford Chance

*The legal services sector (covering all providers of legal services from solicitors and barristers to will writers and licensed conveyancers to name a few) is a major employer (approx 350k people) and a significant contributor to GDP. It has and will continue to undergo change as a result of a range of issues - the current economic situation, new entrants coming into the sector, the Legal Education and Training Review (LETR) to name a few. Law in all its forms is at the heart of society and the sector needs to be able to service the public's diverse legal needs. To do so and ensure access to justice for all, the sector needs to attract quality entrants. It continues to do so but are all branches of the sector sufficiently well-resourced to meet the legal needs of the public? To put it overly starkly, for the commercial/business "branch" - yes but for some parts of the private client "branch" – perhaps no. Why? The recruitment dominance of the commercial firms? The financial constraints facing many private client firms (especially those reliant on legal aid)? I could go on. What is the solution? The market is addressing this to some extent with the arrival of ABS (such as Co-operative Legal Services). The regulators should (will?) do more post-LETR to facilitate access, mobility, transferability. The Academy and the practising profession can do more - innovative teaching structures (to create cost-effective but still high quality courses), better communication with would-be entrants (to help them understand the pros/cons of entering the sector in all its branches), new access structures (to encourage/support talented would-be entrants whatever their backgrounds) etc. Is this easy? No! Is it necessary? Yes! If the sector is weakened, what is the future for society?*

## *Lab, Classroom, Reality: Lawyer Ethics and a Behavioural Turn*

**Professor Richard Moorhead**, University College London

*Beyond doctrine itself, the study of law and the study of lawyers, is heavily influenced by sociology and philosophy. Teaching of legal ethics courses is dominated by philosophy and empirical research by sociology (with economists and political scientists in the US especially taking a resurgent interest). Lawyer and law student agency is largely understood through these lenses and through clinical practice. In this paper, I want to explore the potential for a turn towards a more behavioural, psychological approach. I will discuss some of my own reasons for looking to psychology to explore lawyer ethics as a researcher and a teacher. I will end by suggesting some of the benefits and limitations in taking this behavioural turn in lawyer focused scholarship*

## **Session Two: 13.15 – 15.10**

### **Law Degrees and Law Students: At Home and Abroad**

**Chair Professor Paul Bleasdale QC**, No5 Chambers

## *Law as Engineering*

**David Howarth**, Cambridge University

*Legal education as it has developed in England largely assumes that lawyers are concerned exclusively with litigation, either as advocates or as judges. In contrast, the real work of most lawyers, both in the private and the public sector, is concerned not with litigation but with constructing legal devices - contracts, trusts, wills, regulations, statutes and so on - devices that are designed to achieve some (non-litigious) objective for a client. The question I have begun to raise in *Law as Engineering* (2013) is what implications that fact has for legal education? Should we, for example, pay far more attention to the difficult and basic skill of drafting? Should we try to ensure that future lawyers have a better understanding of the objectives of their potential clients, both in the commercial world and in government? Should we also make explicit the kind of ethical problems lawyers will face as a result of being asked to deliver what their clients want, including the ethical problems surrounding the common legal task of making an already powerful actor even more powerful?*

*One response is that legal education has nothing to do with becoming a lawyer in the first place, that it is an academic discipline in the same sense as history or classics, or even as physics or maths. But even if one believes that (and I cannot see how it is a viable view of legal education in the long term) an understanding of the legal system devoid of any understanding of what lawyers really do seems fundamentally deficient. Lawyers, like engineers (and like architects, planners and medics) are concerned with changing the state of the world, not just with understanding it, and the academic discipline of law should take its place alongside those other fundamentally practical disciplines which understand themselves as concerned with effective action and sound judgment.*

*Another response is that in some sense all legal activity comes back to litigation, if only in the sense that potential litigation casts a shadow over all attempts at legal design. But that response fails to recognise two things. First, client objectives are never merely to win a potential case arising out of the design. They are to get something done in the real world. The principal purpose of a contract is to deliver the bargain the parties desire, not to settle who wins if that bargain fails, and the principal purpose of a regulation is that people behave in the way it prescribes, not to lay down what happens if they behave in some other way. The second is that contracts and regulations largely work through those affected applying the rules as drafted to themselves, not by being told by a court what the rules require. The consequence is that making legal devices - the practical matter of drafting contracts and regulations - requires an understanding that goes beyond predicting who would win in a dispute. It involves understanding what clients want (which will almost invariably include not becoming entangled in litigation) and what clients themselves will take the rules to mean.*

*None of this, however, implies that we should abandon black-letter law. Indeed, I argue in *Law as Engineering* that it means that we should teach more black-letter law on topics that most frequently affect what drafters are required to think about (for example intellectual property). But it does mean that we should perhaps spend more time on how clear rules can be used to achieve client objectives and less time on speculating about how judges might decide obscure unclear points, points that any good legal engineer will endeavour to ensure will never arise from their work.*

### *The Value of a Law Degree*

**Martin George**, Birmingham Law School

*In a recent debate at Cambridge, Lord Sumption argued that those who wish to practise law should not study law at university. Sumption made several points to illustrate his claim: first, it is both personally and professionally impoverishing to forego the opportunity to study something other than law in a career that will otherwise be devoted to it. Two of the human mind's greatest attributes, he argued - curiosity and imagination - are not best served by studying law: it is a closed world. Secondly, the function of a university education must be to acquire the greatest possible intellectual satisfaction out of not just one's career, but also one's life. Law does not give you much vicarious experience; other subjects (mathematics, sciences, philosophy, history, classics, languages) do. Thirdly, and relatedly, some of our greatest judges read other subjects at university, most notably Lords Denning (Mathematics) and Bingham (History). Fourthly, in the practice of law, the law is neither particularly important nor particularly difficult: it is common sense with knobs on, Sumption claimed. The practice of law is instead about the precise analysis of facts. Lastly, English law as written by judges is about language, and one's power to wield it. Law degrees do not prepare you in the use of language as well as other degrees.*

*This paper seeks to counter Sumption's claims in turn, and demonstrate why studying law at university is inherently valuable. It will be shown that, at its best, the common law is structured imagination: it is problem-solving, lateral-thinking and pure intellect. So too is the experience which the study of law brings enriching and important. Where else can you discuss philosophy and the death penalty, or focus on the world's great environmental challenges whilst analysing the effects that will be wrought by Legal Aid reform? Sumption's claim that 'great judges' often do not study law will also be put under microscope: just how true is it? Finally, the paper will turn to the language of law, and the complexity of meaning in some of our words - reasonable, intention, property, to name but a few - that only a law degree allows you to master.*

### *The Perfect Storm of Legal Education*

**Jon Harman**, The University of Law

*I will cover this topic in broad strokes: the research of Eric Mazur about student learning that lead to the notion of Flipped Learning and my experiences of doing this on ULaw's LPC, along with bringing technology and media into the classroom to bring learning to life. I will then move into notions of learning design and teaching as a design science, with particular reference to the work of JISC OULDI on curriculum business modelling. I will then give a broad overview of learning analytics and how this will start to impact HE provision and how it could improve learning. I will sum up with practical examples of work I have done at ULaw and R&D. I am looking at the provision of legal education with reference to the LETR and Saljo's work on Digital tools and challenges to institutional traditions of learning.*

*Legal Education in Europe: A Comparative Study*

**Professor Ole Hammerslev**, University of Southern Denmark

*The European legal area consists of a transnational legal order and different national legal systems. One barrier for an efficient functioning EU-law in the European states and a Single Market in the EU is the national legal education and training of the national legal professions and not least the judiciaries. Therefore the European Commission has increased its focus on the legal professions in Europe. Based on a comparative study of all European countries (published in Daniela Piana, Philip Langbroek, Thomas Berkmanas, Ole Hammerslev & Otilia Pacurari (red.) (2013) Legal and Judicial Training in Europe. The Hague: Eleven International Publishing) this paper examines similarities and differences in European legal education as concerns curricula, pedagogical methods and ways of setting up new forms of classrooms.*

### **Session Three: 15.35 – 16.40**

#### ***How Should the Legal Education and Training Review Change Legal Education Over the Next Ten Years?***

Conversation with **Professor Andrew Sanders**:

- **Simon Thornton-Wood**, Bar Standards Board
- **Mandy Gill**, Solicitors Regulatory Authority
- **Stephen Mayson**, Director , Legal Services Institute
- **Dr Julian Lonbay**, Birmingham Law School (Julian is currently doing research into the current regime for legal practice in Europe and its impact on national legal educational regimes.

Structured around the following questions:

1. *Are there still gaps in our knowledge about the education/training needs of the legal profession? What are the most pressing issues for exploration?*
2. *On the assumption that the GDL/QLD stage stays much as now, what major changes would you like to see in the other stages?*
3. *How far should the technological revolution change the way we think about education and training? Is the era of 9-month courses and days full of lectures over?*

### **Plenary: 16.45 - 17.30**

*Agenda for Research on the Legal Profession and Legal Education: An American Perspective*

**Professor Rick Abel, UCLA**

# The Futures of Legal Education and the Legal Profession

**Plenary: 09.50 - 10.10**

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Reflections on the current state of the legal profession

## Legal Profession Pathway

**Session One: 10.20 – 12.15**

**Fragmentation, Globalisation and Change: the law firm in transition**

Chair **Professor Hilary Sommerlad**, Birmingham Law School

*Professionalism: theoretical changes and challenges*

**Professor Julia Evetts**, University of Nottingham

*Is there any future for professions or are we witnessing the final demise of the guilds and of guild-like institutions? For a long time the sociological analysis of professional work differentiated professionalism as a special means of organizing work and workers and saw professionalism as being in contrast to the hierarchical, bureaucratic and managerial controls of industrial and commercial organizations. Professionalism had a different logic and a different culture.*

*So the question becomes is it possible to preserve, maintain and encourage professionalism in practitioners who work in service and knowledge-based occupations such as law, which now operate and function in a market economy and with profit expectations. The presentation will consider to what extent the logics and culture of professionalism, expertise and service might be reconciled to and linked with the logics and culture of enterprise, profit, commercial success and organizational efficiency. It will ask if professionalism and enterprise are inevitably contradictory or whether, and under what circumstances and conditions, the two might be complementary. The first part of the presentation will consider the arguments for seeing professionalism and enterprise as contradictory and as contrasting alternatives for organizing work. The second section of the presentation will consider the arguments for the consolidation of enterprise and professionalism and under what conditions the two might be complementary.*

*The Financialisation of Large Firms: Situated Discourses and Practices of Reorganisation*

**Professor Daniel Muzio**, Newcastle University

*This paper uses the case of the financialisation of large law firms to develop debates about the process of the 'capitalisation of everything' whereby financial logics spread both geographically and sectorally from one industry to another. Drawing on work that analyses how discourses of shareholder value have led to the re-organization of firms, the presentation will argue that large law firms have undergone 'surgery' as part of attempts to make them appear more and more profitable when assessed using the metric profits per equity partner. The influence of geographical context – English regulation and institutions relating to the legal profession on 'surgery' in the period 1993-2008 - will also be outlined as part of a situated analysis of the way regulations and institutions together prevent or enable the reproduction of financial practices in different industries and places, through the creation of conjunctural moments that help financial logics gain legitimacy.*

*Diversity and New Forms of Legal Practice*

**Dawn Dixon**, practitioner, founder member of Black Lawyers' Directory and former chair of the Association of Women Solicitors

*This paper aims to tackle globalisation based on personal and professional experience. I will examine the key aspects of globalisation as it relates to me as a woman, a member of an ethnic minority group, an owner of a practice who has had to close as a result of global threat, a consultant. How I view change within the Commonwealth for example when I speak about commoditisation it was quite bizarre that those from less developed countries of the commonwealth were only interested in whether or not they could advertise and they are still 10/15 years behind UK, Australia, Canada South Africa*

and NZ and we are grappling with questions of referral fees and cross border litigation.

I will end with how I see the legal profession going forward and the effect of commoditisation of the legal profession and how this has reduced the amount of reserved work and the increase of Co-op/Tescos into our market and what we need to concentrate on ourselves as lawyers to show our own USP (Unique Selling Point).

## **Session Two: 13.15 – 15.10**

### **The Changing Courtroom**

**Chair James Lee, Birmingham Law School**

*Delivering Family Justice: observations on a changing professional landscape*

**Mavis Maclean, University of Oxford**

*I will draw on our empirical work in Oxford on family solicitors (Family Lawyers 2000), the family bar ( Family Law Advocacy ) and the judiciary (Family Justice 2013) to stress the importance of observational work in informing understanding of access to justice in family matters. I will then reflect on the changing forms of delivery following the reduction in resources available for legal representation following the specific impact of LASPO and the general impact of economic austerity. In particular, the changing mix of client care and product sales offered by solicitors, mediators, and the internet.*

*Judicial Diversity And The 'New' Judge*

**Professor Rosemary Hunter, Kent Law School**

*Judicial practices and subjectivities have arguably been radically reshaped over the past 20 years under the influence of three 'modernising' trends: neoliberalism, the rise of biopolitical power, and the equality and diversity agenda. These have seen the introduction, for example, of judicial case management, individual docket systems and the promotion of settlement; training, performance evaluation, key performance indicators and performance improvement groups for the judiciary; multi-disciplinary practice in problem-solving courts, family courts and therapeutic jurisprudence; transparent and merit-based application and appointment processes; equal treatment Bench Books; adjustments to processes to cater for litigants in person; and a judiciary whose profile, at least at its lower levels, is much broader than was previously the case.*

*This paper attempts to trace the relationships between these various developments, to identify the attributes of the 'new' judge, and to consider also the extent to which this transformation of the judiciary is incomplete and the 'old' judge continues to hold sway.*

*Use Of Foreign Jurisprudence In The English Courts*

**Helene Tyrrell, Queen Mary University of London**

*The paper considers changes to the work of the UK's highest court. In particular it considers the consequence of certain changes by reference to one feature of judicial reasoning: the use of jurisprudence from foreign domestic courts. The paper presents a sample of quantitative data gathered from the first four years of the Supreme Court's activity, which illustrates the patterns in the use of foreign jurisprudence. This shows that the Supreme Court does make reference to foreign law and that the proportion of cases in which foreign law is explicitly cited has remained fairly constant across the first four years of the Court's activity. This is so in all cases before the Supreme Court, but the number of individual citations appears to be declining in human rights cases especially.*

*In these cases, the reduction in the use of foreign jurisprudence is undoubtedly indicative of the heightened importance of jurisprudence from the supranational court—the European Court of Human Rights. However a number of additional factors are likely to have fed into these patterns. These include the personal style of the Justices, (insofar as they have a propensity to investigate the jurisprudence of foreign domestic courts) and the more collegiate atmosphere at the Supreme Court. The changes in judgment styles since the move from the House of Lords to the Supreme Court have also had an obvious effect; for example, it is clear that the Justices are increasingly inclined to work towards plurality style judgments, which in turn yield significantly fewer citations to foreign law. The paper reflects on this evidence and contemplates the consequences of these changes on the work of the Supreme Court and the role of advocates and academics in supporting it.*

### **Session Three: 15.35 – 16.40**

#### ***Can Research Help Shape the Future of the Legal Profession?***

Conversation with **Professor Richard Young**:

- **Professor Ed Cape**, University of the West of England
- **Dr Louise Ashley**, Kent Business School
- **Professor David Sugarman**, Lancaster University
- **Nina Fletcher**, Law Society

Structured around the following questions:

1. *Have you been involved in research that you feel made a difference to the policies or practices of the legal profession? Were there particular difficulties you faced in undertaking this research, or in helping to translate the findings into policy?*
2. *Where do you see the biggest gaps in our knowledge about the legal profession? What are the most pressing issues for exploration?*
3. *What kind of research might make a difference to the legal profession as it is currently developing? Is there still a case for small-scale qualitative studies, or do you think notice will be taken only of large-scale quantitative surveys?*

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