

Current and Future Challenges for Clinical Legal Education

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Thank you very much. It's an honor to participate in the Conference on Experiential Learning and Innovations in Legal Education, sponsored by the Faculty of Law at The University of Hong Kong.

I thank Principal Lecturer Julianne Jen for extending the invitation, and I thank the entire Faculty of Law at The University of Hong Kong. I only wish I had been able to be there with you in person. My presentation, as the title suggests, focuses on current and future challenges for clinical legal education. As you will see during my talk, the challenges for clinical legal education are themselves rooted in challenges to the legal profession and to legal education in general.

My topic is organized around what I believe are the five greatest challenges to clinical legal education. There is a little irony in the first challenge that I identify, which is technological innovations, because without the technological innovation of Skype, I would not be with you today. The other challenges are internet legal services providers, non-lawyer legal services providers, the shrinking demand in some countries for law schools, and the need to train law students for new roles. Each of these challenges also provides some measure of opportunity for law schools and clinical legal education. And will discuss those opportunities as well.

In terms of technological innovations, they are occurring rapidly. These changes are also transformative. Just think, every person at the conference today likely has a smartphone with them. But the first smartphone was not released until June of 2007. In the span of a little more than a decade, smartphones have become something that many of us rely upon and we would find our lives difficult to manage without them. For example, I also know at least for myself, I use my smartphone not only to find the restaurant that I am going to visit but also to read the reviews of the restaurant.

Technological innovations have also been occurring in the law, and they are occurring at an increasing speed. Consider artificial intelligence, AI. Law Geek AI recently did a test of AI versus lawyers, and the results are instructive of how technological innovations will be changing the practice of law. In the test, Law Geek AI used the review of non-disclosure clauses, NDAs, in contracts. AI had a 94% accuracy rate versus the overall accuracy rate of 85% for lawyers. While 85% is the average of all of the lawyers, the best lawyers did match the AI accuracy rate of 94%. But some of the lawyers only had a 67% accuracy rate. And the time involved in reviewing these contracts was remarkable. To review five contracts, artificial intelligence took only 26 seconds, while it took the lawyers an average 92 minutes. If you do the math, in the same amount of time that it took a lawyer to review five contracts, AI could review 1061 contracts and have an accuracy rate equal to the best lawyers.

Many of you have probably heard of ROSS Law Firm AI, which is now being used by many law firms to do legal research, document and contract review, and analyzing data from past cases to protect legal outcomes. These developments mean that law firms and in-house counsel are using AI to do more work that lawyers do. This means there is a demand for fewer lawyers. The American Bar Association, the ABA, did a survey in 2017 that showed that 10% of U.S. law firms were using AI. AI use increases to 35% among larger law firms, firms of 500 or more lawyers. And AI use drops to only 4% for law firms with 2 to 9 lawyers. AI, like all technology, will be constantly improving and the cost will come down. And it will only be a short amount of time before every law firm and even solo practitioners, lawyers practicing on their own, will be using AI to help them with their work.

The second challenge facing the practice of law, legal education, and clinical legal education are internet legal services providers. Some of the usage is quite remarkable. Rocket Lawyer has over 20 million users, and Legal Zoom has 3.6 million subscribers. A U.K. based internet provider called Robot Lisa, which at the present time focuses on non-disclosure agreements and property contracts, is spreading. There are other internet legal services providers, and many of these are providing basic legal forms and some of them, such as LegalZoom and Rocket Lawyer, will also help consumers of legal services find lawyers that could help them with more particular kinds of issues. In addition to those internet providers that provide forms, there are some other developments. So for example, in the United States, there is an online service called Off the Record that helps a person fight traffic tickets, and another one called DoNotPay to fight

parking tickets. And, in California, there's a self-help divorce document online programme called Hello Divorce.

The third challenge is a development that is related to internet legal services providers and that is the extension of non-lawyer legal services providers. This is occurring in many countries, and some countries have permitted non-lawyers to provide some legal services for many years. But the use of non-lawyer legal services providers is starting to grow in some countries that have rarely permitted it. For example, in the United States, some state jurisdictions are licensing individuals who do not have law degrees to provide limited legal services, and some states permit the non-lawyers to provide some legal services without the supervision of a lawyer. The non-lawyer legal services providers are permitted to give certain types of legal advice or perform certain kinds of legal services for individuals. These non-lawyer legal services providers, as well as the internet legal services providers, are helping to address the access to justice gap, which is great in every country. Because people with money can always find a lawyer, but people with little resources often find it is impossible to find a lawyer that they can afford. But both internet and non-lawyer legal services providers are reducing the demand for lawyers, which affects legal education.

The next challenge facing legal education and clinical legal education is the shrinking demand in some countries for law schools. I will use the United States as an example. Unlike Hong Kong, Singapore, Australia, the United Kingdom, and most other jurisdictions, virtually everyone who attends law school in the United States intends to become a licensed lawyer. Over 90% of law school graduates take the bar exam, and nearly everyone who takes the bar exam eventually passes the bar exam and becomes licensed to practice law, even if they do not remain practicing lawyers throughout their lives. Starting in 1950, there were 120 ABA-approved law schools in the United States, and the number of law schools continued to grow throughout the decades until there were 203 law schools in 2018. Enrollment generally kept pace with the growth of law schools. In 2010, that is when the Great Recession began to affect law schools and legal education in the United States, overall JD enrollment was 147,500 law students. In 2018, JD enrollment was down to 110,600 law students. First year law student enrollment also rose over the years, but then started declining in 2010. In the last two years there has been some slight increase in enrollment.

What does the decline in U.S. law school enrollment mean? Enrollment during the last academic year, 2018 – 2019, was equivalent to the law school enrollment in 1975 – 1976 academic year. In 1976, there were 163 ABA-accredited law schools, and in 2018, there were 203 law schools. This means that there are 40 more in law schools in the United States than we need to accommodate the current JD enrollment.

The decrease in enrollment also means that law schools have been closing. In fact, over the last three years, three law schools have closed. Currently, there are four more law schools that are ABA accredited that have teach-out plans and are in the process of closing. One additional law school is appealing the withdrawal of ABA accreditation, and that appeal is ongoing as of the date of this conference. Many observers of legal education in the United States predict more law schools will be closing. I know that law school demand in other countries has not necessarily experienced the same kind of decline, but in some countries there has been a lessening demand for law schools.

All of these challenges bring us to the last challenge, which is the need for legal education, including clinical legal education, to help train and prepare our students to be tomorrow's lawyers. If any of you have read *Tomorrow's Lawyers*, by Richard Susskind, you know that he predicts that law students will have to be trained to perform new roles, and he identifies what some of those new roles are. I would like to briefly review those with you.

One new way of thinking of legal education is for us to think about the need to train “legal knowledge engineers,” whom Susskind identifies as individuals who can organize and model enormous quantities of complex legal materials and processes. There is also the need to train “legal technologists,” whom Susskind states are individuals with the experience and skill to bridge the gap between law and technology. These are the individuals who can help the legal profession develop technologies that help deliver legal services. We also have to train “legal hybrids,” whom Susskind describes as lawyers who are expert in disciplines related to law. Basically, they are interdisciplinary individuals who will use their related training and knowledge in the practice of law. There will also be “legal process analysts,” whom Susskind describes as being able to perform reliable, insightful, rigorous, and informed analysis of their law firms’ or in-house legal departments’ main legal processes. The legal process analysts will help their firms or in-house departments become more efficient, oftentimes by applying technologies like artificial intelligence to do repetitive work currently being done by human lawyers. Susskind also envisions “legal project

managers," individuals who can allocate work to the appropriate providers, both within a law firm but also to other providers, and manage that work to make sure that it's produced on time and within budget. There is a need also to train "online dispute resolution practitioners," who will be expert in using electronic formats in resolving disputes. If you use Amazon and you have a dispute, those disputes are handled online oftentimes by computer programmes that have been developed. But the individuals developing some of these programmes have to have a law background. There are other types of individuals that Susskind predicts that law schools, including clinical legal education, need to train, and I will describe one more. Those are "legal risk managers," individuals that many in-house legal departments already have. But the legal risk managers Susskind envisions will more heavily rely on analyzing past data to help predict future outcomes.

Our law students are very well qualified to learn the professional skills that Susskind and others predict they are going to need to be lawyers in the future. Much of that training will take place in our law school classrooms, but there is a need for clinical legal education to play a role as well. Some clinics have already been incorporating new technologies and have been training students to use technology. I will conclude my remarks with a few examples.

One example, which I believe almost all clinics that are doing any kind of litigation work today are using more frequently, is the use of social media for investigations. This is and can be an incredible tool. The students in my clinic, the Criminal Justice Clinic, use social media frequently to research witnesses, and I know it is being used in other clinics. Social media information that is publicly available may be viewed as long as no deception is used to access the social media information. The information could be helpful in developing legal strategies for cases, finding additional witnesses, or even learning if a witness has made contradictory statements about a pending case. Another example is for clinical legal education to help train our students to use document assembly software, especially if a clinic is working on larger cases. Some law schools throughout the world have been developing clinics where law students are helping to create apps to deliver legal services, especially to underserved communities. Others clinics are training students on how to manage eDiscovery. Although there are a number of third party eDiscovery vendors, law firms need lawyers and other professionals who understand eDiscovery to manage the work that the law firms outsource.

Law schools, both in the classroom and in clinics, can and should train our students to meet these new challenges. I know later on in the conference there will be some discussion more specifically about technology in law schools, and some of that discussion will focus on other types of clinical programmes that might incorporate technology training in what they do. Everyone in legal education has to face up to the challenges that the legal profession is facing, and we have to equip our students who intend to become lawyers with the knowledge and skills necessary for legal practice as it is today and for legal practice in the future. Thank you very much.

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