

Nottingham Law School

**Pre-qualification work experience in professional legal education:
literature review**

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Errors and omissions are my own.

It is necessary to declare the following:

- I am a qualified solicitor and experienced what was then articles of clerkship between 1988 and 1990.
- I ran the paralegal section of the SRA's work based learning project between 2008 and 2013.
- I was a member of the Legal Education and Training Review research team.
- I have taught on the LPC and on the Professional Certificate in Trade Mark Law and Practice for intending trade mark attorneys.

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1 Executive summary

This report is a review of recent professional and academic literature on:

- Legal professions regulated under the Legal Services Act 2007;
- Legal professions in Guernsey, Jersey, the Isle of Man, Northern Ireland and Scotland;
- A selection of professions allied to law;
- A selection of legal professions in Australia, Canada, France, Germany, Italy and the USA;
- The British professions of accountancy, architecture, dentistry, medicine and surveying.

It considers forms of learning in the workplace, including the training contract/period of recognised training; sandwich degrees; law school clinics; paralegal work; apprenticeships and other forms of work experience such as vacation schemes.

Particular attention is given to jurisdictions in which a vocational course and placement is an alternative to a training contract, and jurisdictions where there is no formal training contract requirement.

Critical issues are:

- Understandings of the role of (mandatory) work experience.
- Variations in length of mandatory work experience and apparent rationales for those variations.
- The significance of specifications of approved work experience environments and implications for access to those environments.
- Challenges and benefits of the variability of workplace experience and attempts to structure this through competences or specifications of tasks or experiences to be covered.
- A variety of responses to certification and summative assessment, very few of which attempt a centralised assessment of learning from the workplace.
- The criticality of good supervision in the workplace.

Data could be collected about the comparative competence of those who have qualified with, or without, a period of mandatory supervised practice or other workplace experience, in a number of ways. However, doing so is not straightforward and very few studies appear to have attempted to do so.

If the SRA's statement of solicitor competence contains elements that can be learned *only* in the workplace then work experience of some kind is essential to the acquisition of competence. The kind of workplace in which these things can be learned is, of course, one in which it is possible to learn them, whether it be a clinic, a placement, a period of supervised practice or something else. This is a question of alignment between the work going on, and the work allocated to the trainee. The way in which that workplace, and the supervisor responsible for the trainee, facilitates learning is also important.

If the statement contains elements that can be learned just as well in the workplace or through simulated cases delivered to trainees in a classroom, then work experience could, be treated by the regulator, as it is in some legal and other professions, as a valid alternative route to competence. Whether employers and regulators in other jurisdictions then treat those routes as equivalent is a different matter. Which gatekeeper is then allocated responsibility for assessing or certifying the learning achieved during that period has, it appears from the various approaches discussed in this report, been a question of deliberate or implicit allocation, or of resources for summative assessment.

2 Scope of the investigation

As agreed with the SRA, the scope of investigation has been into twenty-first century publicly available information, about:

- Legal professions regulated under the Legal Services Act 2007;
- Legal professions in Guernsey, Jersey, the Isle of Man, Northern Ireland and Scotland;
- A selection of professions allied to law;
- A selection of legal professions in Australia, Canada, France, Germany, Italy and the USA;
- The British professions of accountancy, architecture, dentistry, medicine and surveying.

Insofar as it is possible to ascertain, material is up to date to 12th June 2016. although the text has been adjusted to cover, as far as is currently possible, the implications of Britain's withdrawal from the European Union. A full bibliography is available as a separate appendix.

This report is principally constructed as a literature review. However, as it involves comparison of approaches taken in a number of jurisdictions, a comparative law methodology has also been influential in evaluating the contribution of history and culture to the qualification frameworks in use in different professions and jurisdictions.

The report is divided into three main sections, covering description of the position in the UK (5-8); description of the position in a selected sample of other jurisdictions (9) and a final discussion section (10-11) drawing together the main themes.

Endnotes have been used in preference to footnotes for references in order to make it easier to read the main text.

3 Terminology

It is useful to define some terms for consistency. This is a simplification, but assists the reader as different professions and jurisdictions use different terminology. In particular, because "workplace experience" is available in a number of different forms, it is important to be able to distinguish between "clinic", "placement" and, adopting the term used in the LETR report, "supervised practice".

"academic stage"	Academic study of law, usually in a university. This may be a requirement for qualification but the law degree need not be designed solely as preparation for legal practice.
"bar examination"	A summative assessment delivered to all (or all domestic) aspiring entrants to a legal profession. The size and shape of the assessment may vary and need not be a time constrained written assessment of knowledge and analysis. The QLTS, proposed SQE, Guernsey Bar Examination and New York state bar examination are all examples.
"clinic"	An opportunity for students to provide legal advice/legal services in a supervised environment hosted by their law school. Supervisors are often practitioners employed by the law school.
"competence statement"	In the context of this report, an explicit articulation of what a newly qualified lawyer is expected to know and to be able to do, and to what standard, at the point of qualification/independent practice. For the SRA, the range of knowledge and skills and the required standard is set out in the threshold statement and represents the level of performance of a newly qualified solicitor who is normally subject to a limited licensure for a further three years.
"exempting degree"	A degree course that combines both academic and vocational stages (and sometimes work experience requirements). An example is a degree in England or Wales that combines the LLB and the LPC.

“law school”	A provider of formal classroom/online learning activity and sometimes assessment. This may be a university, a delegate of a professional organisation or a private body.
“lawyer”	For the purposes of this report, a person who provides legal services having had some education designed to equip them to do so. This is, necessarily, a broad and simplistic definition that, for current purposes, excludes judges, mediators, arbitrators and prosecutors, but included some specialist lawyers and paralegal roles.
“limited licensure”	Restrictions on practice following formal qualification. An example is the rule that a newly qualified solicitor in England and Wales may not normally be a sole practitioner or principal until three years after qualification.
“placement”	A period of work experience organised through a law school, but where the student’s principal supervisor is an employee of the host organisation. The law school may monitor or assess learning achieved during the placement.
“regulator”	The body responsible for the qualification system. This may be a professional body, a state court or other organisation.
“supervisor”	The person responsible for a trainee in a workplace situation, including a clinic or placement.
“supervised practice”	A required period of workplace experience not organised through a law school. This may be called apprenticeship, articles, devilling, period of recognised training, practical experience, qualifying employment or a training contract. In Australia, in particular, there is a distinction between comparatively unstructured “articles” and a more structured “training contract”.
“vocational course”, “vocational stage”	Formal education designed as preparation for practice, for example, the LPC, BPTC, or PLT courses in Australia. It also includes shorter bar admission programmes if they are mandatory (in contrast to US “bar prep” courses or preparatory courses for the QLTS).
“work experience”	Used in this report as a generic term including clinic, placement, supervised practice and shorter periods such as vacation schemes. It is contrasted with learning situated in the classroom or online (although simulations of workplace activity sometimes occur in the classroom).

Other acronyms appearing in the report:

ABA	American Bar Association (USA)
ABS	Alternative Business Structure(England and Wales, Scotland)
ACL	Association of Costs Lawyers (England and Wales)
BPTC	Bar Professional Training Course (England and Wales)
BTT	Bar Transfer Test (England and Wales)
CAPA	<i>Certificat d’Aptitude à la Profession d’Avocat</i> (France)

CILEx	Chartered Institute of Legal Executives (England and Wales)
CLC	Council for Licensed Conveyancers (England and Wales)
CLSB	Costs Lawyer Standards Board (England and Wales)
CPD	Continuing Professional Development. In some jurisdictions, this is called Continuing Legal Education.
EPO	European Patent Office
FILEx	Fellow of the Chartered Institute of Legal Executives (England and Wales)
FT	Full-time
GDL	Graduate Diploma in Law (one year conversion course for graduates of non-law disciplines: England and Wales)
IPReg	Intellectual Property Regulation Board (UK)
JD	Three year postgraduate law degree (Australia, Canada, USA)
LETR	Legal Education and Training Review (England and Wales)
LLB	Undergraduate law degree
LPC	Legal Practice Course (England and Wales)
LPO	Legal Process Outsourcing
MCQ	Multiple choice questions
NHS	National Health Service (UK)
NVQ	National Vocational Qualification (England and Wales, Northern Ireland). SVQs are the equivalent in Scotland.
OLQE	Overseas Lawyer Qualification Examination (Hong Kong)
OSCE	Objective, structured, clinical examination
PEAT	Professional Education and Training (solicitors, Scotland)
PLT	Practical Legal Training (Australia)
PSC	Professional Skills Course (solicitors, England and Wales)
PQE	Post-qualification experience
PT	Part-time
QLTS	Qualified Lawyers Training Scheme (solicitors, England and Wales)
SRA	Solicitors Regulation Authority (England and Wales)
STEM	Science, Technology, Engineering and Mathematics
SWT	Supervised Workplace Training (Victoria, Australia)
UBE	Uniform Bar Examination (USA)

4 Introduction

4.1 Balances between gatekeepers to qualification

Responsibility for professional legal education is, Anderson and Ryan argue, shared between four gatekeepers: the profession (which they suggest is the norm in England and Wales); the universities and other law schools (the norm in Australia); the [legal services] market (the USA) and the state (the traditional pattern in Japan).¹

In fact, different gatekeepers own different components of pathways to qualification as a lawyer, in sequence or in parallel. For example, the responsibility may vest in any of:

- The profession, which recruits both trainees/articled clerks and qualified lawyers who have (or have not) been required to undertake supervised practice prior to qualification; hosts placement and vacation scheme students and which, through a regulator, may be responsible for any bar examinations;

- The universities, who provide clinical experience, organise placements as well as (in some jurisdictions) delivering vocational courses¹ that may be an alternative to a period of supervised practice;
- The market for legal services, controlling the extent to which the profession is able to offer the particular configuration of supervised practice that leads to qualification; and
- The state, which may be responsible for bar examinations; in some cases for the structure and content of curricula; for the accreditation and funding of university study and, in for example, the modern British apprenticeship, creating alternative, non-university routes into qualification.

Sometimes gatekeepers may vary even within a country, as in the USA, where in some states the bar examination is administered by the state court, and in others by the bar association. The state may include supra-national entities such as the EU, which, for the moment, has a direct effect, for example, on the qualification of British patent attorneys. When, as in England and Wales as a result of the Legal Services Act 2007, the state requires the profession to separate its regulatory function from its representative function, this creates an additional category of gatekeeper.

This shared responsibility clearly creates the potential for tension between gatekeepers. Manifestations of this kind of tension appearing in the literature discussed in this document include suggestions that:

- A clinic experience supervised by a practitioner-academic is superior to a workplace experience supervised by a practitioner (or *vice versa*);
- Law schools allegedly hungry for status and fees produce too many graduates;
- The profession does not offer sufficient opportunities for training; or
- The state is diluting the status and quality of legal services by, for example, deregulation or insisting on apprenticeship routes

Each gatekeeper clearly has an interest in producing competent lawyers, but which of them takes responsibility for the workplace part of the process, including the certification or assessment of anything that is *only* learned, or learned *more validly*, in the workplace varies substantially in each of the examples discussed in this report. Historically, as Clarke describes, apprenticeships in law developed as an attempt, by professions, to improve their public status. The shift to university legal education for intending lawyers in much of the common law world outside the USA really began only in the later twentieth century.² In England and Wales, a post-war increase in university attendance, particularly by women³ assisted this trend. However, "it was not until after 1970 that a majority of new solicitors had even graduated from a university".⁴ The increase in recruitment of GDL graduates and transferees in the 21st century now means, however, that only around half of newly admitted solicitors in England and Wales enter the profession through the LLB + LPC "conventional route".⁵

Participants in the 18th International Congress on Comparative Law in 2010 carried out a useful internal investigation into the role of practice in legal education in 17 countries including England and Wales. They found that "a period of formal training is followed by a required period of [supervised practice] in every reporting country".⁶ This included civil law countries, where clinical education and placement was less well developed,⁷ so that "it [was] assumed that issues of practice can and will be taught adequately during the period of formal apprenticeship".⁸

A review of a larger sample of jurisdictions listed in a 2014 International Bar Association report⁹ also supports the assertion that most legal professions, globally, incorporate some kind of supervised practice requirement in their professional qualification regime.² In many cases, this period of supervised practice takes place before the professional title is conferred (equivalent to the SRA's period of recognised training/equivalent means). In addition, or instead, a period of limited licensure may be required after qualification, before the individual is allowed to practise independently,³ presumably as a means of protection for the public. In some cases – as with English barristers – these limitations are so extensive that the lawyer is not treated as being truly competent until the period of limited licensure has expired.

There appears to be an increasing trend towards offering alternative routes to legal qualification, so that some individuals achieve the goal of competence through a largely workplace-based environment and

¹ An unusual variant in the Netherlands is the Law Firm School, organised by the profession and accredited towards professional qualification for trainees in Amsterdam. Law Firm School, 'Law Firm School' (*Law Firm School*) <<http://thelawfirmschool.nl/>> accessed 26 May 2016.

² If work experience embedded in the Australian vocational courses (see section 9.2.1 below) is treated as supervised practice, the exceptions from the IBA sample appear to be: Argentina, Bahrain, Colombia, India, New Zealand (strongly reliant on a vocational course), Panama, Peru, Portugal, South Korea (strongly influenced by the USA), Spain, USA (most states) and Venezuela. Not all states were included in the IBA sample. However, clinic or other work experience may be routinely included in other parts of the qualification pathway, such as the degree and that there may be substantial limited licensure after qualification. The latter may fulfil the same function as a pre-qualification period of supervised practice.

³ This may be equivalent to Practice Framework Rules 2011, Reg 12.

others through a largely classroom or online environment. The division is not clear cut. For example, some City firms currently deliver what is intended to be workplace learning in litigation at least partly through a simulation. Further, clinical experiences during university vary in size and shape and mature entrants will bring with them workplace learning from other contexts and other disciplines. Whether workplace experience is a necessary – as opposed to desirable – precursor to acquisition of a professional title; a right to practise; competence to practise, or any of them is, therefore an increasingly critical question.

4.2 Isolating what is learned in the workplace

There is a considerable literature on the *process* of learning in the workplace, considering the range of approaches adopted by individual learners or groups; the characteristics of a workplace environment that facilitates learning; the role of the supervisor and barriers to learning. Much of this literature, however, deals with the learning of existing employees, rather than of those specifically placed in the workplace to learn. However, a number of concepts from this literature are useful in understanding not only what is learned, but also how it is learned. The Early Career Learning at Work (LiNEA) project of the universities of Brighton and Sussex on “Learning during the First Three Years of Postgraduate Employment” studied nurses, engineers and accountants in their early careers and concluded that their respondents learned the following in the workplace:

Task performance: speed and fluency; complexity of tasks and problems; range of skills required; communication with a wide range of people; collaborative work

Awareness and understanding: other people (colleagues, customers, managers etc.); contexts and situations, one’s own organisation; problems and risks; priorities and strategic issues; value issues

Personal development: self-evaluation, self-management; handling emotions, building and sustaining relationships; disposition to attend to other perspectives; disposition to consult and work with others; disposition to learn and improve one’s practice; accessing relevant knowledge and expertise; ability to learn from experience

Teamwork: collaborative work; facilitating social relations; joint planning and problem solving; ability to engage in and promote mutual learning

Role performance: prioritisation; range of responsibility; supporting other people’s learning; leadership; accountability; supervisory role; delegation; handling ethical issues; coping with unexpected problems; crisis management; keeping up to date

Academic knowledge and skills: use of evidence and argument; accessing formal knowledge; research-based practice; theoretical thinking; knowing what you might need to know; using knowledge resources (human, paper-based, electronic); learning how to use relevant theory (in a range of practical situations)

Decision making and problem solving: when to seek expert help; dealing with complexity; group decision making; problem analysis; generating, formulating and evaluating options; managing the process within an appropriate timescale; decision making under pressurised conditions

Judgement: quality of performance, output and outcomes; priorities; levels of risk

There is a limited literature on learning activities within law firms, and this is often from the business management perspective.¹⁰ There is a rather more extensive canon of literature on clinical legal education in law schools and some on placements and periods of supervised practice.

This report considers the relationship between work experience of various kinds and competence at the point of qualification/independent practice. The challenge is to identify, if it is possible, what can *only* be learned in the workplace (whether clinic, placement or supervised practice) or what, although it can be learned to some extent in the classroom or online, is learned *better*, is *applied* or *enhanced*, in the workplace. This involves differentiating between:

1. Knowledge, skills and attributes that *could* be learned in the classroom/online as an alternative to the workplace (e.g. a trainee who learns intellectual property law in the workplace, but could have covered the same material as an optional subject in a degree or LPC);
2. Knowledge, skills and attributes that can *only* be learned in the workplace (possibly: responsibility, working in a hierarchical team, progressing matters over a period and the matters assumed of lawyers transferring into the solicitors’ profession through the QLTS: intellectual, analytical and problem-solving skills and personal development and work management skills).
3. *Contextualisation* or *application* of what has been learned earlier in the classroom or online (e.g. interviewing real clients whose problems matter, as opposed to interviewing in simulation).

... the primary objective of articling is clear: to prepare the university law graduate to practice law competently. More specifically it is to train the law graduate to apply, in a practice setting, the procedural and substantive law that he or she has learned in law school; develop and acquire new practice skills in the context of actual practice situations and cultivate a sense of "professionalism" through exposure to the values, attitudes and beliefs of the legal profession.¹¹

4. *Improvement* to or beyond "competence" in skills, knowledge and attributes that have been learned earlier in the classroom or online by, for example, understanding the interplay of a wider range of variables in problem-solving.

... one difference between business lawyers with four years' experience and business lawyers with more than fifteen years' experience is not only that the more expert lawyers ... rapidly perceiv[e] patterns in problem situations and retriev[e] appropriate approaches to solutions. The more experienced lawyers also have a fundamentally different perception of the problem itself, a perception much more sensitive to the relationships between lawyer and client.¹²

Improvement is not confined to performing better in existing skills, knowledge and attributes, but also expanding the range of activity.¹³ This might include "dealing with more difficult and more complex problems ... widening [the] range of competence ... [and] acquiring greater responsibility"¹⁴ or working in a new area of law.

5. Specialisation *beyond* what has been learned earlier in the classroom or online.
6. More diffuse aspects of socialisation: developing a professional identity, adopting a professional code of ethics, becoming a solicitor as opposed to something else.

4.3 How people learn in the workplace

There is potential for a tension, whether in a commercial or public sector workplace, or in a clinic, between "task conscious" activity serving the client and "learning conscious activity" serving the learner.¹⁵

There are also likely to be competing agendas when tasks are allocated. Novices are more efficient on tasks where they already have enough experience, but also need to be involved in a wider range of tasks in order to extend their experience. Thus managers and/or senior colleagues have to balance the immediate demands of the job against the needs of the trainees as best they can, as well as satisfying the requirements of professional bodies and/or health and safety.¹⁶

Learning in the workplace is a sub-set of experiential learning ("learning by doing")¹⁷ but should not be confused with "experiential learning" in its widest forms.¹⁸ Other categories of experiential learning include skills classes, simulation and role-play of the kind seen in the York problem based learning (PBL) LLB;¹⁹ in the LPC; in the "litigation seat replacement" courses for trainees, and increasingly in US JD programmes. One distinguishing feature of work experience that is distinct from some classroom experience is that it is problem-based ("X Ltd has a problem with some of their employees") rather than driven by topics ("Today we are going to cover statutory claims for wrongful dismissal"). There is some evidence, drawn from medicine, that a PBL approach leads to accelerated and improved learning, at least if appropriately organised and supported by tutors.²⁰

Learning in the workplace may take place across a wide spectrum, from the highly structured, including appraisals, assessments, feedback and competence statements, to the almost entirely informal, where learning is by osmosis or observation.²¹ The role of supervisors, as role models, mentors, coaches and allocators of work, as well as of other colleagues, is critical to learning.

...they have to rely on colleagues for most of their learning and advice. In particular they valued working with senior trainees only one or two years ahead of them, who remembered what it was like to be a first year trainee [accountant] and were usually more approachable.²²

There is some evidence that the increased pressures of the workplace may, at first, cause a period of regression. For example, Boshuizen²³ saw an upward progression in diagnostic accuracy, but a dip in aspects of reasoning and problem solving, in fifth year medical students who were in the early stages of a new internship role that involved significant new stresses and demanding new responsibility.

In the best cases, the workplace is an "expansive" environment, which facilitates learning, fosters stepped progression to full participation and in which managers facilitate development. This can be contrasted with a "restrictive" environment, focused on organisational needs and "static" views of

development.²⁴ The LiNEA study also identified a relationship between learning factors and context factors in facilitating learning in the workplace for early career professionals.²⁵ They also found that positive learning factors were: challenge and value of the work; confidence and commitment; feedback and support (to which they later added “personal agency” in the sense of the individual’s self-determination):²⁶

...both confidence in one’s ability to do the work and commitment to the importance of that work are primary factors that affect individual learning. **Confidence** depends on the successful completion of **challenging work**, and that in turn may depend on **informal support** from colleagues, either while doing the job or as back up when working independently. Indeed the willingness to attempt challenging tasks on one’s own depends on such confidence. If there is neither challenge nor sufficient support to encourage a trainee to seek out, or respond to, a challenge, then confidence declines and with it the motivation to learn. **Commitment** is generated through social inclusion in teams and by appreciating the **value of the work** for clients and for themselves as novice professionals. Moreover, concerns about **career progress** that arise from inadequate feedback of a normative kind can weaken motivation and reduce commitment to the organisation.²⁷ [Emboldening in the original]

Context factors that promoted learning in the workplace were allocation and structuring of work; encounters and relationships with people at work and individual participation and expectations of trainees’ performance and progress. These themes of the criticality of the quality of the experience provided in the workplace²⁸ and the significance of the supervisor will appear consistently in the literature discussed in this report. First, however, it is important to examine the configurations in which mandatory workplace experience appears.

5 Mandatory supervised practice

5.1 In British legal professions

It is possible to divide regulated legal professions in the UK into three broad groups:

- Those where workplace experience (normally) takes place after formal classroom experience as a distinct “academic stage”: advocates/barristers, solicitors and notaries.²⁹ This model emphasises academic knowledge at the earlier stage and operational competence at the second stage with, in the case of courses such as the BPTC, LPC or Scottish Diploma in Legal Practice, the vocational stage as a kind of hybrid of the two.
- Those where workplace experience (normally) takes place in parallel with formal classroom experience (“earn while you learn”). This model often appears in professions that have developed from a paralegal role: CILEx, costs lawyers, licensed conveyancers and now, in apprenticeships.
- A hybrid group, which may be highly university oriented, but where vocational classroom experience (normally) takes place in parallel with workplace experience: the IP attorneys and some of the smaller jurisdictions.

The balance of power between the law schools, the profession and the regulators is normally distinct, with the regulator providing the framework and accrediting law schools who summatively assess the classroom activity:

Regulation of supervised practice involves three types of control: the length of the period; the nature of the supervisor; and the context (the nature of the work or of the organisation).³⁰

The profession then generally takes almost total responsibility for supervised practice, reporting to the regulator. In some cases, the supervisor must certify only that the trainee has been employed for the required length of time. In smaller jurisdictions, centralised bar examinations are used, possibly because this is a more efficient use of limited resources. In smaller professions, summative assessment is centralised by default, as there is a single law school offering the required course.

Table 1: British Legal Professions

[NB: this does not include special arrangements for transferees from other professions or jurisdictions or for mature entrants. It does not include assessments of character or antecedents or school level precursor qualifications]

Profession		Time requirements	Assessment/certification of work experience requirements	Working environment/required coverage	Supervisor specification	Other course/assessment requirements	Post qualification limited licensure
Barrister/advocate	England/Wales ³¹	6 months non practising, 6 months limited licensure [not pre-qualification]	Checklists for activity/competence certified by supervisor	Approved Training Organisation [currently] in a member state of the EU	Barrister with P/C, approved by their inn, with 2 years current experience. Alternatively 6 of previous 8 years practice as a barrister in EU or with litigation/advocacy rights from another approved regulator	Precursors: LLB/GDL and BPTC During period: Advocacy Training Course and Practice Management course	Qualification (call) takes place prior to pupillage. Forensic advocacy course and new practitioners programme required during first 3 years. Must work in chambers in first 3 years.
	Guernsey ³²	6 months (or 12 months for barristers who have not already completed at least 6 months pupillage)	Pupil Master reports that the pupil has discharged him/herself with due diligence during the pre-examination period and has achieved a standard which will enable the pupil to sit his/her papers with a reasonable expectation of passing them	A firm of Guernsey Advocates	Guernsey advocate of at least five years' standing	Precursor: qualify as a barrister/solicitor in England and Wales Prior to admission: Certificat d'Etudes Juridiques Françaises et Normandes Guernsey bar examination following 3 months PT study: constitutional law and ethics + 2 papers from Civil Practice and Procedure, Corporate and Financial Services Law, Criminal Practice and Procedure, Family law and Property law	Limited advocacy rights in first 3 months post call.
	Jersey ³³	2 years Jersey solicitors can become Jersey advocates after 3 years' experience.		Law firm or States of Jersey		Precursor: qualify as a barrister/solicitor in England and Wales, N Ireland or Scotland. During period: Jersey Law Course (1-3 years PT)) and Jersey Law Examinations Jersey Legal System and Constitutional Law; Law of Contract and the Law Relating to Security on Movable Property and Bankruptcy;	

Profession	Time requirements	Assessment/certification of work experience requirements	Working environment/required coverage	Supervisor specification	Other course/assessment requirements	Post qualification limited licensure	
					Testate and Intestate Succession; Law of Immovable Property; and Civil and Criminal Procedure + 1 from Company Law; Trusts Law; Family Law.		
	Isle of Man ³⁴	2 years	Individual interview by Council before admission and if suitable, recommended for admission	With a Manx advocate	With a Manx advocate	<p>Precursors:</p> <ul style="list-style-type: none"> LPC/BPTC Group interview <p>Prior to admission: Manx Bar exam: Accounts, Civil Practice, Criminal Practice, Constitutional and Land and Company Law, Financial Services Law, Taxation.</p>	
	N Ireland ³⁵	1 year [post call]	[No information located]	[No information located]	Practising barrister of not less than 7 years standing	<p>Precursor: LLB</p> <p>During period: must complete training courses and pass an advocacy course.</p>	After a further 3 years/1 year in a solicitors office can re-qualify as a solicitor
	Scotland ³⁶	Must complete at least 21 months of solicitors' 2 year training contract, then 8-9 month pupillage	Devilmaster reports that the intrant has "displayed sufficient diligence, competence, and trustworthiness during his pupillage to make him suitable to be admitted"	In Scotland with civil and criminal experience	Approved by faculty: Practising advocate (not a QC) of at least 7 years standing, with a primarily civil practice. Second criminal supervisor.	<p>Precursor:</p> <ul style="list-style-type: none"> LLB Faculty of Advocates exam <p>During period: 5 week foundation course and other 2 week courses.</p>	After a further 2 years can re qualify as a solicitor
CILEx fellowship ³⁷	England/Wales	3 years	Assessment certified by supervisor and verified by CILEx: portfolio demonstrating attainment of Work Based Learning Outcomes: practical application of the law and legal practice; communication skills; client relations; management of workload, business awareness; professional conduct; self-awareness and	Duties wholly of a legal nature for at least 20 hours each week.	Employed/supervised by an authorised person under s 18 LSA ³⁸	<p>Final year of the three year period of qualifying employment cannot be accredited until candidate has gained academic qualification as a Graduate member of CILEx (i.e. 2 of the 3 years is in parallel with formal study)</p>	FILEx who have qualified as CILEx practitioners can be self-employed in Advocacy; Litigation; Conveyancing; Immigration; Probate. ³⁹

Profession		Time requirements	Assessment/certification of work experience requirements	Working environment/required coverage	Supervisor specification	Other course/assessment requirements	Post qualification limited licensure
			development; working with others.				
Costs lawyer ⁴⁰	England/Wales	3 years	ACL/CLSB may audit alleged relevant experience to "ensure it was achieved and was indeed relevant".	"[R]elevant costs work experience"		3 year modular course and its assessments must be completed before, during or after period of work experience.	
Licensed conveyancer/probate practitioner ⁴¹	England/Wales	1200 chargeable hours based on 25 supervised hours a week for 48 weeks	Supervisor certifies that candidate was in "full or part-time employment assisting in the provision of conveyancing/probate services for at least 1200 chargeable hours based on 25 supervised hours a week for 48 weeks". CLC may audit.	Standard conveyancing processes or standard wills and probate processes in an environment headed by a qualified person	Conveyancer, solicitor or FILEx entitled to offer conveyancing/probate direct to the public	Entry, foundation and final level examinations must be completed before applying for first licence. Examinations cover: introduction to conveyancing, introduction to law and legal method, contract, land law, accounts, conveyancing law and practice, landlord and tenant.	First licence is limited to practice as an employee - separate application required for independent practice.
Notary ⁴²	England/Wales (in Scotland and Northern Ireland notaries are solicitors) ⁴³	2 years [post appointment] or 3 years for conveyancing/probate.	Supervisor must make minimum number of visits and inspect records and accounts. Supervisee must also visit supervisor and produce records. Supervisor must contact at least once every 3 months and supervisee must then report on progress. Records kept of visits, inspections, advice, courses attended. Sign off is by supervisor	Supervisee must comply with practice rules and "conducts himself in a manner calculated to maintain the reputation of the office and profession of a public notary"	Current practising certificate and at least 5 years PQE. If the supervision is for probate/conveyancing, that must have been a "substantial part" of their practice in the last 5 years, as a notary, solicitor or licensed conveyancer. Supervisor must be within a reasonable distance of the supervisee so as to be able to visit and must be able to offer support and guidance	Precursor: Solicitor/barrister or UG degree Notarial Practice Course During period: <ul style="list-style-type: none"> Compulsory day courses/seminars during experience - must report on these to supervisor. Must also pass office practice course 	Supervised practice takes place after admission. If notary admitted before 2012 wishes to take on conveyancing/probate later in their career they have to do a further 3 years supervised practice in conveyancing/probate (unless they are in partnership with someone else already carrying out those activities)

Profession		Time requirements	Assessment/certification of work experience requirements	Working environment/required coverage	Supervisor specification	Other course/assessment requirements	Post qualification limited licensure
Patent Attorney ⁴⁴	UK	2 years FT supervised of 4 years unsupervised	Training diary recommended (but not required) and suggested that it is certified by supervisor and may be called for by IPReg. Admission is by applicant producing a statutory declaration as to required length of experience	"In the field of intellectual property, including substantial experience of patent attorney work." A competence statement is available but explicitly only as a guide. ⁴⁵	Patent attorney or a barrister, solicitor or advocate with substantial experience of patent attorney work in the UK	Precursor: STEM degree Foundation and final level examinations in patent law and procedure can be taken during or before experience.	Patent attorneys must also [currently] satisfy EU regulations in order to appear before the European Patent Office. ⁴⁶ May acquire higher advocacy/litigation rights
Solicitor (excluding apprenticeship route) ⁴⁷	England/Wales	2 years (max). Alternatively, can be achieved by "equivalent means" measured against augmented work-based learning outcomes. ⁴⁸	Record of training "which contains details of the work he or she has performed, how the trainee has acquired, applied and developed his or her skills by reference to the Practice Skills Standards and the Principles, and the trainee's reflections on his or her performance and development plans, and is verified by the individual(s) supervising the trainee." Completion of the period and satisfaction of the standards is certified by the supervisor. ⁴⁹	Must be an authorised training provider which can provide: <ul style="list-style-type: none"> • (paid) experience in at least three distinct areas of English and Welsh law and practice; • ability to achieve the Practice Skills Standards and compliance with code of conduct (the Principles) • appropriate supervision, including regular review and appraisal. 	Training principal must have current solicitors' practising certificate or be a practising barrister and must ensure "ensure that any person involved in the training and supervision of a trainee has adequate legal knowledge and experience in the practice area they are supervising and the skills to provide effective supervision"	Precursor: LLB/GDL + LPC or FILEx + LPC. Either or both may be substituted by equivalent means. During period: Professional Skills Course (paid by employer)	Cannot be a sole practitioner or principal for a further 3 years. ⁵⁰
	Jersey ⁵¹	3 years		Law firm or States of Jersey		Precursor: LLB/GDL/ During period: Jersey Law Course (1-3 years PT)) and Jersey Law Examinations Jersey Legal System and Constitutional Law; Law of Contract and the Law Relating to Security on Movable Property and Bankruptcy; Testate and Intestate Succession; Law of Immovable Property; and Civil and Criminal Procedure + 1 from Company Law; Trusts Law; Family Law	Need permission to prosecute in Magistrates court. Can re-qualify as Jersey advocate after 3 years

Profession		Time requirements	Assessment/certification of work experience requirements	Working environment/required coverage	Supervisor specification	Other course/assessment requirements	Post qualification limited licensure
	N Ireland ⁵²	2 years. Can be extended if student fails vocational course assessments	Both Master and Apprentice must cooperate with the Society should the Society require an assessment to be made of the quality of training during apprenticeship	Law firm or public service [NB: ABSs are not available in Northern Ireland]	Proposed master must have been admitted for at least 7 years and a partner/sole practitioner for at least 3 years. Alternatively solicitor in public services for at least 10 years	Precursor: <ul style="list-style-type: none"> • LLB • Entrance examination During period: vocational course runs in parallel with apprenticeship and apprenticeship must be secured prior to entry on the course.	Practice must be supervised for a further 3 years (or 2 years if sufficient CPD acquired)
	Scotland ⁵³	2 years though can seek admission (but not discharge of t/c) after 1 year at the discretion of the firm if competence achieved. Part-time and training contract shared between organisations available	8 quarterly PEAT 2 reviews and reflective record. Must meet outcomes by end of period.	Includes local and central government, in-house and procurator fiscal. No requirement to provide seats. PEAT 2 outcomes: professionalism; professional communication; professional ethics and standards; and business, commercial, financial and practice awareness.		Precursor: <ul style="list-style-type: none"> • LLB • Diploma in Professional Practice (PEAT 1) During period: 60 hours of trainee CPD (including mandatory ethics) ⁵⁴	If admitted after 1 year can appear in court. Practice must be supervised for a further 3 years
Trade mark Attorney ⁵⁵	UK	2 years FT supervised or 4 years unsupervised	Training diary recommended (but not required) and suggested that it is certified by supervisor and may be called for by IPReg. Admission is by applicant producing a statutory declaration as to required length of experience	"In the field of intellectual property, including substantial experience of trade mark attorney work." A competence statement is available but explicitly only as a guide. ⁵⁶	Trade mark attorney or a barrister, solicitor or advocate with substantial experience of trade mark attorney work in the UK	Academic course and assessments at Queen Mary /Bournemouth, followed by vocational course and assessments (including skills e.g. interviewing and advocacy) at Nottingham Trent which may be concurrent with workplace experience	May acquire higher advocacy/litigation rights.

5.2 Supervised practice for intending solicitors of England and Wales

There is a very strong cultural attachment in the domestic solicitors' profession to learning in the workplace.⁵⁷ The "five years articles" route for school leavers remained in existence until the 1980s, when CILEx qualifications in effect replaced it. Graduates of this route remain in practice.⁵⁸ Its modern manifestation is in the new apprenticeship routes discussed in section 5.3 below. The Law Society of England and Wales has recently articulated its understanding of the value of the current requirement for supervised practice in two dimensions:

- (a) It enables trainees to develop legal judgement which comes from working with and learning from more senior lawyers - it teaches trainees how to "think as lawyers". It is a period of time in the development of lawyers where learning is key and when ethics and professionalism can for the first time be observed and learnt in live situations. It therefore serves a particular regulatory purpose in developing ethical, responsible lawyers. ...
- (b) The period of practical work - place based training enables lawyers to develop their practical client-facing skills pre-qualification. ...⁵⁹

At present, the supervisor certifies the two year period of recognised training (previously known from the 1990s as the "training contract" and before that as "articles") by reference to the Practice Skills Standards.⁶⁰ It would be possible for a supervisor to refuse to certify, but there is no explicit provision in the SRA regulations for a trainee to "fail" the training contract.⁶¹ Participants in a recent Law Society survey expressed disquiet about this.⁶² Some firms, however, have very clearly articulated internal processes for review, appraisal, and additional classroom activity.⁶³ Other, smaller firms may offer a more personal, community of practice-based craft apprenticeship.⁶⁴ Where there is failure of supervision, however, the trainee may find that they cannot qualify and the supervisor is in breach of the code of conduct.⁶⁵

The Practice Skills Standards are different from the day one outcomes, some of which are assessed in the Qualified Lawyers Transfer Scheme (QLTS) for transferring lawyers who wish to become solicitors in England and Wales. The SRA intended to replace the Practice Skills Standards with the work-based learning outcomes (which, with some additions, are used in the equivalent means process), but this project was postponed when the Legal Education and Training Review (LETR) research phase commenced. As part of the SRA's Training for Tomorrow project, the Statement of Solicitor Competence is, it is assumed, to replace the work-based learning outcomes and day one outcomes. The differences between the various articulations of competence demand caution in determining whether data about Practice Skills Standards in the existing training contract/period of recognised training, or about the SRA's work-based learning pilot, are reliable predictors for the Statement of Solicitor Competence.

Table 2: Competences in communication for the point of qualification as a solicitor

Communication	
Practice Skills standards⁶⁶	<p>“Trainees should understand the need to⁴ refine their communication skills so that they can present oral and written communication in a way that achieves its purpose and is appropriate to the recipient.</p> <p>They should be given work that will help them to:</p> <ol style="list-style-type: none"> 1. select appropriate methods of communication 2. express ideas concisely, clearly and logically 3. use appropriate language 4. use correct grammar, syntax and punctuation 5. pay attention to detail by proof-reading, checking the format and numbering of documents, cross-referencing and using consistent terminology 6. listen actively and speak effectively <p>Trainees can develop these skills by:</p> <ol style="list-style-type: none"> 1. drafting letters, internal notes and memos 2. reporting to clients and others by telephone 3. taking notes in meetings 4. dictating notes and letters <p>The importance of keeping clients regularly informed of the progress of a matter and the client care outcomes in Chapter 1 of the SRA Code of Conduct should be emphasised to trainees. Trainees should be given regular advice, guidance and feedback on their performance.”</p>
Work-learning/Equivalent outcomes	<p>based means</p> <p>“By the end of the period of Work-Based Learning, a successful candidate should be able to</p> <ol style="list-style-type: none"> 2.1 use clear, concise and unambiguous language in all communications with clients and other recipients 2.2 tailor his or her style of communication to suit the purpose of the communication and the needs of different clients and other recipients 2.3 demonstrate sensitivity to clients’ and other recipients’ diversity and to any vulnerability or disadvantage, and make appropriate adaptations to the style and content of communications 2.4 elicit relevant information through effective questioning 2.5 address all relevant factual and legal issues in client communication 2.6 listen effectively to others.”
Day one/QLTS outcomes⁶⁷	<p>“D5 Knowledge to communicate effectively, orally and in writing, with clients, colleagues and other professionals [further detail is given by reference to LPC/PSC outcomes]”</p>
Statement of Solicitor Competence⁶⁸	<p>“Communicate clearly and effectively, orally and in writing, including</p> <ol style="list-style-type: none"> (a) Ensuring that communication achieves its intended objective (b) Responding to and addressing individual characteristics effectively and sensitively (c) Using the most appropriate method and style of communication for the situation and the recipient(s) (d) Using clear, succinct and accurate language avoiding unnecessary technical terms (e) Using formalities appropriate to the context and purpose of the communication (f) Maintaining the confidentiality and security of communications (g) Imparting any difficult or unwelcome news clearly and sensitively.”

⁴ Conceptually “understanding the need to” do something is different from being able to do it oneself.

The QLTS may be attempted by candidates whose home jurisdiction does not require pre-qualification supervised practice. However, the day one outcomes related to intellectual, analytical and problem-solving skills and to personal development and work management skills do not appear in the QLTS assessments “as they are assumed of all qualified lawyers”.⁶⁹ Those outcomes may, however, represent a category of competences that individuals especially learn in the workplace.

A question for the SRA’s future policy will be whether, if supervised practice continues to be required, it can take place in a wider variety of environments. The SRA’s work-based learning pilot was, in part, intended to test this. Between 2008 and 2013, the SRA investigated the potential for assessment of the workplace experience of groups of trainees, participants in an exempting degree at Northumbria University coupled with a placement and a group of volunteer LPC graduate paralegals against 37 work based learning outcomes, divided into 8 categories.⁷⁰ These outcomes were similar to those piloted and now used by CILEx in their assessment of portfolios for fellowship candidates.⁷¹ and are currently used, with some adjustment, for applicants through the SRA’s “equivalent means” scheme

All groups had to evidence their achievement by portfolio, assessed in some cases by the employer and in others by an external organisation (a university) over a period equivalent to that of a training contract/period of recognised training. In some cases, this “hub” support allowed candidates who changed employment during the period to maintain consistency and to transition effectively between employers.

Entrance requirements for the paralegal participants were that they could obtain experience in at least three distinct areas of legal work and in both contentious and non-contentious work; and that they were able to receive some element of supervision from a solicitor. In some cases, the solicitor was not an employee of the same organisation as the paralegal but, for example, worked in that organisation’s outside law firm. Participants were working in large and small law firms (some of which also had trainees); local government; a wide range of corporate entities and other professional organisations including accountancy firms and barristers’ chambers. As the paralegal candidates had to obtain approval from their employers to enter the pilot, many of them were particularly valued senior employees who had achieved levels of experience and expertise beyond that of a newly qualified solicitor and one of the two evaluations of the pilot⁷² noted a tension between “evidencing” their existing skills and developing new skills. Some large firm candidates with limited autonomous client contact and some in-house lawyers whose clients were also their colleagues, encountered challenges in meeting some of the outcomes.⁷³ The influence of the pilot is now apparent in the element of the SRA’s equivalent means scheme relating to the period of recognised training, which requires candidates to evidence their achievement of the work-based learning outcomes with a small number of additional outcomes identified as omitted from the pilot (e.g. negotiation).⁷⁴ Both the pilot and the equivalent means process indicate, with the caveat about the difference in the competences tested, that useful competence may be achieved outside the conventional training contract/period of recognised training environment.

Table 3: Summary of final evaluation of the SRA work-based learning pilot⁷⁵

Conclusions of the final evaluation (reproduced verbatim)
Employer support is reasonably high. There is no sense that employers gave trainees in work based routes any less support than those on traditional training contracts.
The evidence on whether employers were sufficiently equipped and advised to provide support is ambiguous. On one hand, only one out of sixteen employers interviewed gave a score at the negative end of an offered ‘sufficiency scale’. On the other hand, seven gave a neutral, mid-point score (of 3) and only one gave a ‘completely sufficient’ score. The data suggests that there may be scope for improvement in this area.
Candidates were generally adequately or well supported through their WBL training.
There is no major issue with candidates ensuring they obtained the necessary experience. However, it would be valuable if the WBL syllabus could find a more effective or consistent way of overcoming the inherent difficulty of supplying junior staff with experience in ‘senior’ tasks.
Part-time candidates were at no specific disadvantage in terms of the WBL training process. They simply faced the pressures which apply to people who seek to study for a qualification whilst holding down a job.
Differences in delivery mode between part-time and full-time candidates do not result in different standards of training and learning. Numbers of WBL trainees are still small but it appears that a WBL approach is robust and allows flexible delivery without dilution of standards.

No apparent issues arise with the framework's ability to cope flexibly with a variety of contexts and situations in which trainees train and with consequent variety of their training experiences.

There may be scope to extend WBL's capacity to accredit prior experience allowing assessors, in consultation with employers, to credit this without much further requirement on the candidate.

Where candidates are in conditions supportive of their completion, WBL has a high success rate. However, in conditions where the overall number of trainee solicitors is decreasing there is inevitable constraint on the capacity of the sector to absorb WBL trainees.

A wider roll-out of the pilot may benefit if the number of outcomes is streamlined with more emphasis placed on achieving against the eight broad outcomes in order to reduce the overall workload for candidates and employers

Whilst there is some debate around the WBL pilot's contribution to 'development of skills' versus 'evidencing of existing skills', the general thrust of this study is that the pilot produces people who are adequately skilled to enter the legal profession as a solicitor

Post-employment rate from the pilot appears high in its own right as does the overall salary increase and there appears to be no major concern that graduates of the programme are not generally acceptable to the sector.

The pilot appears to show that it has made a contribution to lowering barriers to access to the legal profession for those candidates who took part. However, if the pilot was to be delivered in a similar way in the future there may be some concern that, in cases where paralegals become qualified but do not move up into a fully-qualified status position as a solicitor, the programme's impact is a little muted.

At the present time, the sector is likely to see the WBL approach not as a competitor to, or replacement of, the traditional approach to the training of solicitors but as a variation which has specific value in specific circumstances and should be developed and promoted as such.

Training contract/period of recognised training experiences vary as much as individual law firms do. There is a limited amount of data on the training contract. A 2004 study, however, found a lack of continuum between it and the LPC: "Some participating firms recognised that they perhaps should try to make more of a link between the two stages, by talking to their prospective trainees on the LPC, and at the beginning of the training contract."⁷⁶ Some firms have subsequently addressed this issue by working with providers to create bespoke LPCs.⁷⁷

Table 4: What can be done/learned in the training contract/period of recognised training

There is no significance to the order in which items appear in this list. In the absence of secure recent empirical data, the list is no more than indicative.

Learning
Content of practice skills standards
Specialist areas of law not covered in the previous academic stage or in the LPC
Business practices of the particular organisation (assuming the trainee does not move firms on qualification)
Research; Managing small files; Meeting/dealing with clients (and linked with note-taking in client meetings; Drafting; Writing. ⁷⁸ However, there can be a significant step change in expectations on transition from trainee to solicitor, including marketing, and file and matter management. ⁷⁹
"[T]he degree to which a trainee is regarded as a fee earner decreased as the size of the firm increased, with the smallest firms ... in a sense expecting the most of their trainees" ⁸⁰
Socialisation into professional norms: "As experiential learning, in which practices (both technical and cultural) are modelled by the master, it serves to break trainees down and re-make them in the image of the firm. The formal training in legal skills is designed to inculcate those dispositions which embody the culture of an organization, and although full professionalism will ultimately be exemplified by certitude, initially the effect on the trainee tends to be loss of confidence". ⁸¹
Maturity: "The journey of the training contract, the maturity they develop, is great. The maturity we see developing during those two years is key, they get a multi-disciplinary approach, it makes them broader people." ⁸²
"Organisation or time management ... is a function of the training contract being for some ... the first situation where they have to think about being organised in a way that differs from their education experience, even though they are encouraged to be organised on the LPC" ⁸³

Experience varies from seat to seat with, for example, black letter law being more significant in litigation seats than in property seats. ⁸⁴
Commercial awareness: "The commercial antennae [of those who have completed a training contract] are much sharper compared to those who did a short placement or no training contract" ⁸⁵
That the approach of the supervisor is significant as, for example, a micro-manager can inhibit a trainee in developing workload management skills. ⁸⁶
Supervision or management of paralegals
Administrative tasks where some element of legal knowledge is required: "Of course, trainees can't escape typical "trainee" tasks like bundling, but we try to balance that with higher-level work where they can really get involved in a case." ⁸⁷
When and who to ask for help. ⁸⁸
"[A] trainee needs to learn to assimilate and understand a lot of information at one time make sound judgments on the relevance of this information for the particular task they are looking to complete, and present professional work suited to their particular client's needs". ⁸⁹
"Learning exactly how to communicate with clients and what angle to take is a real skill and it comes with time and practice". ⁹⁰
"Learning when you draft something and you give it to a qualified lawyer and ... you see why they've made certain changes. That is the most useful way to learn". ⁹¹ [Scotland]

It is also useful to consider what is, perhaps, *not* done, or *not* learned during the training contract. Professional conduct matters may be routed away from trainees, to administrative staff or paralegals in the case of conflict checks, or to more senior staff in the case of serious ethical dilemmas. A 2011 study of new lawyers in New South Wales found that 30% of individuals in the sample never encountered "ethical dilemmas" and the majority of the remainder did so only "sometimes". The authors speculate, however, that the "never" figure could have resulted from "an inability to recognise ethical dilemmas and a lack of understanding of the need for ethical decision making".⁹²

It is well known that some of the larger firms whose work is largely non-contentious have to satisfy current requirements for litigation experience through a combination of classroom simulation and pro bono work.⁹³ Some firms may repackage requirements for advocacy as marketing or non-contentious presentation skills. Some supervisors may not allocate work with an eye to stretching the individual.⁹⁴ Where seat rotation is used, a three or six month period in a department may be too short to see complex transactions from beginning to end and to allow the trainee to see the implications of work they have done. Opportunities for client contact in the sense of taking instructions and interviewing may be substantial, minimal, nil, or found only in pro bono work. Some trainees on the other hand, have to take on substantial caseloads from the first day.

5.3 Apprenticeships in legal services

Facilitated by government initiatives, including subsidies for employers, apprenticeships in legal services are now available in England and Wales, some of which are at degree level. The government is committed to having three million apprenticeships in all disciplines available by 2020⁹⁵ and is seeking statutory protection of the word "apprentice".⁹⁶

Although designed as a route into worthwhile professional activity for school leavers, there is evidence that, in fact, employers use apprenticeships principally to support existing employees. Indeed, across all disciplines, approximately 40% of apprentices are over the age of 25.⁹⁷ A similar phenomenon, rewarding employees who have already proved themselves, also appeared in the SRA work-based learning project (discussed at section 5.2 above). The LETR report expressed some reservations⁹⁸ about the potential for apprenticeship routes to be colonised by alert middle class parents seeking to avoid university tuition fees, rather than the more disadvantaged groups they were designed to empower. Consequently, recommendation 21 was cautious:

Work should proceed to develop higher apprenticeship qualifications at levels 5-7⁵ as part of an additional non-graduate pathway into the regulated professions, but the quality and diversity effects of such pathways should be monitored.

Before named apprenticeship routes in legal services were developed, some firms used other apprenticeship routes in Business Administration to support young paralegals. In addition, National Occupational Standards for Legal Advice capable of being included in, for example, NVQs or foundation degrees, have been in place for a number of years. To some extent the legal services apprenticeship

⁵ Level 5 is equivalent to second year undergraduate study, level 6 to final year undergraduate study or the CILEx Level 6 Diploma in Law and Practice. Level 7 is equivalent to masters' level.

formalises combinations of part-time degrees and LPCs and permissible overlap with the period of recognised training that have been supported by employers for some time. See for example, the Mayer-Brown "articled apprenticeship".⁹⁹

Once frameworks for legal services apprenticeships were developed, CILEx, with recognised experience in workplace learning at levels 3 and 4, led the earlier stages. At that point, apprenticeships were envisaged as qualifications for paralegals¹⁰⁰ for England¹⁰¹ and, separately, for Wales¹⁰² and could be incorporated into CILEx' existing range of qualifications. At present, for example, CILEx Law School provides the following legal services apprenticeships:¹⁰³

- Level 2 Intermediate Apprenticeship in Legal Administration;
- Level 2 Intermediate Apprenticeship in Business Administration;
- Level 3 Advanced Apprenticeship in Legal Services;
- Trailblazer Paralegal Apprenticeship [from September 2016 replacing the Advanced Apprenticeship in Legal Services];
- Trailblazer Solicitor Apprenticeship (integrated with an LLB at level 6).

The CILEx qualifications employ a combination of workplace education and existing CILEx modules. For the Advanced Apprenticeship/Trailblazer Paralegal Apprenticeship, workplace experience is assessed under the following heads,¹⁰⁴ by reference to a competence statement:¹⁰⁵

Mandatory units:

- Business and Ethics
- Communicate effectively with people
- Comply with legal, organisational and regulatory requirements
- Draft legal documents using precedents
- Manage files for legal matters
- Receive, transmit, store and retrieve information
- Plan and manage your own workload

Legal functions units:

- Communicating with legal advice clients
- Conclude legal matters
- Conduct research to progress legal matters
- Process clients' instructions and plan legal work

Transferable functions units (one unit only)

- Maintain and develop your own knowledge, skills and competence
- Contribute to the quality of team working

Summative assessment is by a combination of portfolio and two written examinations testing knowledge of the law and drafting skills. Successful completion of the level 3 apprenticeship permits progression towards qualification as a chartered legal executive qualification route. The assessment plan for this route essentially absorbs CILEx existing level 3, level 6 and work-based learning requirements with the addition of a case study selected as a kind of "apprentice piece" from the candidate's workload or conducted in simulation.¹⁰⁶

Later in 2016, the CLC will offer two apprenticeship routes, one for technicians and the other leading to qualification as a licensed conveyancer.¹⁰⁷

The apprenticeship route into qualification as a solicitor – based on a competence statement containing the headings of the SRA's statement of solicitor competence¹⁰⁸ - has proved more controversial.¹⁰⁹ The proposal has been cautiously welcomed in some quarters, particularly as a means of increasing diversity.¹¹⁰ However, others have objected strenuously to any suggestion that it could be possible to qualify as a solicitor without a level 6 qualification of some kind, as devaluing the status and standards of the profession.¹¹¹ Clearly not all solicitors at present are *law* graduates: this century's statistics consistently demonstrate that only around 50% of newly admitted solicitors enter through the conventional LLB + LPC route.¹¹² The remainder, including barristers, GDL graduates, CILEx fellows and other transferees, clearly possess a degree or other level 6 qualification, sometimes in law.

Paralegal and CILEx-based apprenticeship routes attracted some early adopters (e.g. Addleshaw Goddard,¹¹³ Browne Jacobson¹¹⁴ and Eversheds¹¹⁵). A brief search of vacancies websites for the purposes of this report¹¹⁶ found firms as diverse as Ashfords, Bott & Co, Hill Dickinson, Irwin Mitchell, Kennedys, Mayer Brown and Thomas Eggar seeking school leaver apprentices for different routes, including the

level 6 option. Eversheds has announced its intention to offer Trailblazer apprenticeships from autumn 2016¹¹⁷ in conjunction with BPP Law School, leading to solicitor qualification.¹¹⁸

There is clearly a potential to combine the level 6 and 7 Trailblazer apprenticeships and their Welsh equivalent¹¹⁹ with a law degree, whether on a part time basis, or in as a kind of sandwich degree.¹²⁰ The process has begun, at least for the CILEx apprenticeship, through the LLB available through City Law School and CILEX Law School¹²¹ and the Eversheds/BPP proposal. This is, perhaps, the evolution of the existing exempting degrees¹²² and the SRA work-based learning project. Numbers of apprentices, however, are low in comparison with those for more conventional trainee solicitor recruitment.

6 Other legal work experience

Work experience linked to the higher education sector may take a wide range of forms:¹²³

(i) supervised work experience as part of a sandwich course for a number of weeks (conventionally for an academic or calendar year); (ii) 'blocks' of work experience (occurring concurrently or recurrently) where there is a professional or regulatory body requirement that students undertake practical work as part of the undergraduate study; (iii) short periods of work experience, usually relevant to their subject; (iv) employer-linked project work (individual or in a team); (v) work-place visits.¹²⁴

In law, work experience is not only available at undergraduate level:¹²⁵ the University of Ulster provides an example at postgraduate level in an LLM obtained by clinic activity.¹²⁶ The packed GDL, LPC and BPTC curricula usually prevent anything other than volunteer clinic, vacation scheme or mini-pupillage. Other professionally oriented university courses such as the Notarial Practice Course or Professional Diploma in Trade Mark Law and Practice are normally part-time for students already in employment.

6.1 Sandwich degrees

Arguably, because of the ambivalent position of the British LLB as preparation for qualification into the legal professions, sandwich degrees in law are comparatively rare, although they have been available for more than 40 years. "Thick" sandwich LLBs are currently available at seven universities in England and Wales: Bournemouth,¹²⁷ Brunel,¹²⁸ Coventry,¹²⁹ Hertfordshire,¹³⁰ Nottingham Trent,¹³¹ Portsmouth¹³² and UWE Bristol.¹³³ Greenwich will launch a sandwich degree in 2016¹³⁴ but, as its placement is study abroad, it has been excluded from this discussion. Other four year degrees with study abroad years are also available, particularly where a joint award combines law with a modern language.

The sandwich degrees are likely to have small numbers of students,¹³⁵ and in some cases a legal services placement may be an alternative to study abroad. Placements may be envisaged as part of an employability mission allowing students to make informed career choices and to obtain experience that will aid them in later interviews. Literature on sandwich degrees generally (and in law¹³⁶) suggests that there is at least a maturing effect of having had time away from the university that enhances students' focus on their return and has a beneficial effect on performance in the final year of the degree.¹³⁷ A contributing factor may be, of course, that stronger students are more likely to obtain places on sandwich courses and into sandwich placements, although recent research questions this.¹³⁸ Some classes of student, for example mature students with family commitments, may be unable to take up placement opportunities in any event. Other factors, including finances; preference for an uninterrupted period of study or concern about the "gamble" of applying for a placement (and the implications of having to take an enforced year away from study if the gamble fails)¹³⁹ have been found to influence choice of placement options in other disciplines.

A recent Irish study¹⁴⁰ across a number of disciplines (not including law) found that the benefits and challenges of sandwich placements for different stakeholders were these:

- Academics valued the relationship with employers and the opportunity to enhance curriculum relevance and to embed employability in the curriculum, but found challenges in sourcing appropriate placements;
- Employers also valued the relationship with the universities and saw the placement as a recruitment mechanism and an opportunity to develop practice ready graduates. Their challenges were in communication with the university; duration and consistency of the placement and in clarity of expectations;
- Students valued the real world learning experience, opportunities to enhance independence, confidence¹⁴¹ and to network for career enhancement, but found challenges in clarity of

expectations, logistics such as cost and accommodation and the distance from the university, feedback and formative assessment.¹⁴²

Tensions have sometimes been identified in legal placements, as they have in periods of supervised practice, between the host's business drivers and the law school's learning objectives.¹⁴³ Sandwich placements need not be summatively assessed, but when they are, portfolios and competences may be used which, if they are also used in the period of supervised practice for a related professional discipline, can at least provide students with an introduction to them.¹⁴⁴ If there is assessment, this may count towards the degree or as a separate diploma. There is some evidence that graduates of sandwich degrees generally are more likely to obtain employment, or more highly paid employment.¹⁴⁵ However, in the solicitors' profession, this may not be the case, as higher status – and higher paying – law firms may not routinely target the group of largely new universities that offer the sandwich degrees. Bowes and Harvey in 2000 found a labour market advantage in sandwich degree graduates, at least in some disciplines with, in addition, in the built environment and business fields, a greater advantage for graduates of thick sandwich degrees.¹⁴⁶

In three of the LLB cases (Bournemouth, Brunel and Nottingham Trent), website information indicates that the sandwich placement can be (or has been) accepted by solicitor employers as "time to count" against the training contract under the existing SRA regulations.

6.2 Clinics

Expansion in university clinics¹⁴⁷ has begun to blur the distinction between them and sandwich degrees. The extent of clinic work varies enormously, but because of the size of the cases clinics are able to take on they have the potential to allow students to obtain a degree of direct client contact and experience of file management that they may not obtain in a training contract. Clinics normally operate, from the SRA's perspective, as "special bodies" but a small number of law school clinics in England and Wales has now acquired SRA-regulated ABS status,¹⁴⁸ permitting them at least in principle to offer reserved activity and to allow students to participate in the regulatory aspects of a legal services organisation. The 2014 report by LawWorks¹⁴⁹ indicates that, of a sample of 80 law schools and an increasing trend towards pro bono and clinic offerings, 96% offered some kind of pro bono experience, involving an estimated total of just over 6,000 students. A quarter of activity was summatively assessed.¹⁵⁰ There was a range of different kinds of clinic activity:

[p]ublic legal education (Street Law and other awareness-raising programmes) can be found at 67 of the 80 responding law schools. Generalist advice clinics can be found at 45 law schools, placements at 41, subject-specialist advice clinics at 32, miscarriage of justice (Innocence Project) clinics at 21 and court and tribunal representation at 18. There was also a range of quasi-legal pro bono work reported including form-filling clinics and mentoring schemes.

Clearly, there is a group of academics and practitioners who are committed to clinic and pro bono work. In the current economic climate, clinics may also be able to satisfy some otherwise unmet legal needs. However, it would be a challenge, particularly perhaps in the more research-oriented universities, without substantial recruitment of professionally qualified staff, to provide a full clinic experience for every LLB student, a proportion of whom may have no interest in joining one of the legal professions.

For others, however, this kind of work experience, sheltered to some extent within the law school, and supported by staff with both an educational and a practitioner background, may represent a useful form of transition into practice. The opportunity for conflicting drivers in the clinic experience is perhaps less than it is in placement or in periods of supervised practice. However, there remains the possibility of tension between the academic focused on social justice and the student conscious that clinic experience enhances a CV and might be credited towards a period of recognised training. It has been suggested that, although the clinical experience is intended to be wider, more reflective and value-laden¹⁵¹ than is usually the case in a professional competence statement, "assessed reflective clinical experience consolidates learning and provides law schools with demonstrable evidence that competencies, standards or [learning outcomes] have been met".¹⁵²

As clinic activity varies between institutions, a definitive understanding of learning from clinic is difficult to articulate. As elsewhere, empirical measurement of the extent of learning is also difficult to locate. However, a 2013 evaluation of the Avon and Bristol Law Centre Legal Advocacy and Support project asked a small number of clinic students to evaluate themselves "before" and "after" in a number of skills:

Asked which skills they felt had improved the most, they listed the following:

- Communicating with clients; preparing written documents
- Advocacy
- Preparation of written documentation e.g. submissions
- Understanding of building strong rapport with client
- The ability to orally explain legal and procedural matters to clients
- Being given the opportunity to represent clients has really improved my confidence in my advocacy skills and my knowledge of legal representation as a whole¹⁵³

Table 5: What can be learned in clinic and placement

As elsewhere, this table is only indicative. Items listed are in alphabetical order rather than in any degree of priority.

Learning is dependent on the nature of the activity but could include	
In clinic	As e.g. FRU accredited advocates, or in Employment Tribunals: advocacy
	"Business culture" ¹⁵⁴
	Collaboration skills ¹⁵⁵ which may in some contexts be inter-professional ¹⁵⁶
	Contextualisation and application of knowledge of black letter law
	Employability skills: ¹⁵⁷
	a) Document drafting
	b) Client interviewing
	c) Communication ¹⁵⁸
	d) Professionalism
	e) Case management
	f) Confidence
	File and matter management
	Form filling
	Implications of emotional labour ¹⁵⁹
	Informed career direction/CV enhancement
	Legal/Lawyering skills: ¹⁶⁰
	a) Analysis
	b) Argumentation
	c) Dealing with clients ¹⁶¹
	d) Advocacy
	e) Research
	Letter writing
	Practice management ¹⁶²
	Professional conduct: confidentiality, privilege, ethics, integrity ¹⁶³
	Professionalism ¹⁶⁴
	Reasoning and decision-making in conditions of uncertainty ¹⁶⁵
	Reflective learning techniques ¹⁶⁶
	Skills related to client contact: interviewing, ¹⁶⁷ establishing rapport ¹⁶⁸
	Social conscience (possibly) ¹⁶⁹
	Transactional work ¹⁷⁰
	Where the clinic is an ABS, exposure to regulatory concepts such as COLP, COFA etc.
	Workload management ¹⁷¹
In a (sandwich or longer) placement in addition or instead	Business context of host organisation
	Confidence, independence and self-reliance ¹⁷²
	Exposure to poor practice as well as good practice ¹⁷³
	Motivation and focus for later return to study
	Organisation and dealing with deadlines ¹⁷⁴
	Responding at speed and without the luxury of law library resources ¹⁷⁵
	Social competence ¹⁷⁶
	Understanding of the demands of the job/professionalism ¹⁷⁷

6.3 Other work experience organised in the university sector

6.3.1 England and Wales

High quality work experience should provide:

- insight and information about careers in the legal profession;
- the chance to learn about and develop the key skills that are needed in the legal profession; and
- sufficient exposure to legal work to enable the individual to make an informed career choice.¹⁷⁸

Forms of work experience outside the university other than sandwich placements in England and Wales may be comparatively short, for example, a vacation scheme of a week or so with a law firm;¹⁷⁹ a short period of study overseas or within a university endorsed volunteering programme. These experiences may be organised by a university or school, personally by the student or as a scheme operated by a legal services organisation. They are less likely to be summatively assessed and in some cases may be heavily laden with social events designed as part of a law firm's recruitment strategy. Another response to recruitment is to require that applicants undertake a short period of work experience with the firm, often during university vacations.¹⁸⁰

Many LLB, GDL and LPC students, part-time and full-time, will be in employment of some kind in any event. For working, part-time students and transferees from other professions, workplace skills in, for example, time management and team working may carry over effectively into a later legal workplace.

Law related short placements clearly have the potential to allow students a taste of the legal services workplace, which may inform later career decisions, even if they are brief. Data obtained by the Junior Lawyers Division, however, suggest that at least half of their sample had undertaken work experience of at least the same length as the Australian and Ontario mandatory placements described in sections 9.2.1 and 9.2.3 below.¹⁸¹

Study overseas and other extra-curricular activity may broaden student horizons, enhance cultural awareness and otherwise appear attractive to later employers.

Where prior workplace experience is formally¹⁸² or invisibly a prerequisite for recruitment, however, it may disadvantage some categories of applicant,¹⁸³ for example, mature students with childcare responsibilities, or those without the family or financial resources to take unpaid leave or unpaid internships,¹⁸⁴ or to travel abroad. The Junior Lawyers Division identified financial reasons as a key factor in decisions about whether or not to undertake this kind of work experience, and if so, of which kind.¹⁸⁵

6.3.2 Elsewhere

Placements or "externships" are also available in other jurisdictions, and in some cases of longstanding,¹⁸⁶ in other common law jurisdictions.¹⁸⁷ For example, the North Eastern University (USA) "thin sandwich" course, in place since the 1960s, has been recently shown to enhance career planning and development of professional identity and also:

A large proportion of co-op students reports dramatically improved communication skills, not only in writing and speaking, but also in their ability to read situations and adapt to the diverse communication needs of supervisors, peers and clients. Similarly, students report improved research skills. They contrast the structure and clarity of law school legal research projects with the time, resource constraints and messiness of real-world law practice. Students realize and appreciate that they are developing targeted and efficient practice skills as a result of these experiences.¹⁸⁸

Some of the vocational course and work experience configurations described later in this document could be described as sandwich models.

Challenges have been identified with external work experience (and this may extend to some of the sandwich degrees) that are similar to those sometimes identified for periods of supervised practice:

- lack of structure,
- potential for students to be allocated to administrative tasks; and
- the potential for tension between the business drivers of the host organisation and the learning objectives of the law school.

In the shared space of the placement, conflict can also exist between the academic responsible for the student and his or her reflection, learning and assessment, and the supervisor in the host organisation unless there is clarity about the two roles and/or training for the supervisor.¹⁸⁹

6.4 Paralegal work

It is notoriously difficult, in England and Wales, to define paralegal work and the size of the paralegal community.¹⁹⁰ The Institute of Paralegals suggests that their titles include “caseworker, contracts manager, legal assistant, compliance officer, housing assistant, company secretary, volunteer adviser, counsellor, trade mark clerk”.¹⁹¹ Some “paralegals” are members, or trainee members, of other legal professions – e.g. licensed conveyancers; junior members of CILEx; OISC immigration advisors – or align themselves with professions outside law – e.g. employment advisors; health and safety professionals; or accountants.

Provided they confine themselves to unreserved business, , or appear as a *McKenzie* friend or lay representative in court or tribunal, paralegals may be in independent practice rather than working as adjuncts to regulated legal professionals. A 2014 survey of 630 early career lawyers by the Junior Lawyers Division showed a sharp rise in entrants seeking paralegal work, rising from 45% in 2013 to 60% in 2014.¹⁹² Fifty-four per cent of their sample suggested that paralegal work had helped them obtain a training contract.¹⁹³ The Junior Lawyers Division survey found that a substantial proportion of their survey respondents had been in paralegal roles for more than a year. Seventy-nine per cent of their sample had undertaken unpaid work, sometimes falling further into debt to do so, with older respondents in particular sometimes working unpaid for long periods:

These findings suggest that some law firms are relying on free labour without much thought towards its long term impact on those they employ, or to the fact that they are potentially missing out on excellent candidates by not offering remuneration. They also suggest that respondents from non-privileged backgrounds have to overcome significant financial obstacles to gain access to some work placements.¹⁹⁴

Some firms explicitly expect applicants to undertake a period of paralegal work with them (the “year-long interview”) prior to a training contract.¹⁹⁵ This is not confined to traditional private practice firms.¹⁹⁶ Others reserve a number of training contract places for paralegals already in the firm.¹⁹⁷ Holding out the promise of a training contract to mollify unpaid interns and paralegals has, however, also been noted: “we have heard of paralegals who have been waiting years on a promise that never materialises”.¹⁹⁸ This is echoed in the LETR data:

There are reports of firms diverting recruitment substantially or entirely away from conventional training contracts, making the paralegal role a common point of entry, from which trainees could subsequently be selected according to need and capacity. Some evidence was obtained of firms making the process even more attenuated, so that those seeking work must first undertake an unpaid work placement or internship even to be considered for a paralegal role. This not only has implications for training contracts, but for the development of at least part of the paralegal workforce, as LPC/BPTC paralegals step into roles that might previously have been filled by CILEx members or even unqualified clerks or secretaries. ... There was a lack of consensus about whether, if the regulation of periods of supervised practice were changed to allow employment in a broader range of contexts, this would enable more people to qualify. Some felt that the practice of employing paralegals with no guarantee of progression was now so common that employers would simply continue to hire paralegals rather than undertake the additional administration of a period of supervised practice. Others felt that the market for solicitors and barristers was unlikely to increase, but that different roles, or more paralegal roles would become the norm in any event. Some respondents, however, felt that there was an appetite, in some sectors (for example, in-house practice) to provide supervised practice where that is currently blocked.¹⁹⁹

The transition from paralegal to trainee can, paradoxically, be one of diminishing autonomy and responsibility in some respects:

For me, having been in the team so long, I was used to running my own cases either with internal supervision or alongside counsel. I knew what was coming up in my diary, what the totality of my work was, and (as much as you can in law) knew what to anticipate coming up in the near future.

My experience so far as a trainee has been a steep learning curve adjusting to being asked to provide work on an ad hoc basis without being involved in the case in any detail, having minimum control over the cases I am working on, and most importantly adjusting to the styles and expectations of a new team after so long having my own.

In reality though, this doesn't take too long to get used to, and is actually a very good lesson for me to have learnt.²⁰⁰

It is not easy to determine whether the work and resulting competence of a paralegal is of the same scope and quality as that expected of a trainee solicitor except on a case by case basis. While some

paralegals will be in junior, administrative or specialist⁶ roles, others are carrying out a range and level of work at least equivalent to those of trainee solicitors. Many are LPC graduates; some are solicitors.²⁰¹ The paralegal section of the SRA work-based learning project, discussed further below, included some participants whose responsibility and expertise was far beyond that expected of a newly qualified solicitor. One was head of an in-house legal department. A very recent survey by *Lawyer 2B* magazine of 1,000 paralegals indicated that 86% of their sample had a degree, although only half had completed the LPC (slightly higher in London). Almost half of the sample were seeking a training contract or pupillage or pupillage. Twenty two per cent of the sample had a training contract arranged and 44% of that group had obtained it through paralegal experience.²⁰²

It is far more difficult to measure the *quality* of a paralegal's qualification or competence, in comparison with that of a solicitor or other more senior lawyer, in the absence of:

- qualifications at defined levels (as with the National Association of Licensed Paralegals and CILEx qualifications);
- a series of competence statements (but see the standards used by the Institute of Paralegals);
- a competence statement that can be mapped against that of another profession;⁷ or
- clear progression routes for the paralegal into higher status qualifications as there are, for example, with the apprenticeship routes.

A number of respondents to the *Lawyer 2B* survey expressed concerns about the transparency of training contract opportunities and other issues of comparative status including: "doing better work than trainees and not being a trainee" or "helping to train up a trainee who was being paid more than me".²⁰³ This reflects concerns expressed, during the LETR research phase about lack of progression routes and recognition for paralegals, as well as about the quality of supervision and training:

Recommendation 22

Within regulated entities, there is no clearly established need to move to individual regulation of paralegals. Regulated entities must however ensure that policies and procedures are in place to deliver adequate levels of supervision and training of paralegal staff, and regulators must ensure that robust audit mechanisms provide assurance that these standards are being met. To ensure consistency and enhance opportunities for career progression and mobility within paralegal work, the development of a single voluntary system of certification/licensing for paralegal staff should also be considered, based on a common set of paralegal outcomes and standards.

Recommendation 23

Consideration should be given by the Legal Services Board and representative bodies to the role of voluntary quality schemes in assuring the standards of independent paralegal providers outside the existing scheme of regulation. The Legal Services Board may wish to consider this issue as part of its work on the reservation and regulation of general legal advice.

In response, the Institute of Paralegals and National Association of Licensed Paralegals jointly founded the Professional Paralegal Register as a voluntary licensing and regulation scheme for paralegals outside the remit of the Legal Services Board.²⁰⁴ It issues practising certificates and can apply sanctions for misconduct. This body endorses four tiers of paralegal not working in solicitors' firms, and these tiers assist considerably in differentiating between the different kinds of paralegal:

- Tier 1 – is clearly an adjunct, administrative or secretarial role (is not issued with a practising certificate and is not therefore formally regulated).
- Tier 2 – has at least two years qualifying experience or a qualification at level 3 or above (so including recent LLB graduates as well as those who have worked in the field for prolonged periods). Paralegals in this tier may be practising independently or as adjunct staff.
- Tier 3 – has a qualification of at least level 6 and at least two years' experience.
- Tier 4- level 6 or greater, practice skills course, at least four years of experience and likely to have fellowship of a specialist professional body.

Qualifying experience is certified "either through employment or through work based learning evidenced by a portfolio".

⁶ E.g. as a research assistant working with professional support lawyers in a large law firm, or a nurse employed to assess medical records in a clinical negligence specialist firm.

⁷ The Institute of Paralegals Competency Standards are similar to those used by CILEx for fellowship and by the SRA in the work-based learning pilot which suggests that a mapping exercise would be possible.

The establishment of the register, together with the development of paralegal apprenticeship routes through CILEx, seems to suggest that some consolidation of the scope and qualifications of the paralegal sector is taking place. For those who wish to become solicitors, previous paralegal experience is becoming the norm rather than a CV enhancement. There is some suggestion that paralegals, particularly perhaps those with qualifications identical to those of entering trainees, are an economic bloc sought after in the near-sourcing market.²⁰⁵

The table that follows shows a selection of courses and accreditations for paralegal roles, demonstrating a spectrum from broad to highly specialist in *scope*. Qualification processes generally follow the tradition of the host profession or jurisdiction if there is one, so that the Washington Limited License Technician route is, like the US attorney qualification, highly examination focused, although, unlike the attorney qualification, it has a substantial supervised practice component. By contrast, the Scottish registered paralegal route is, like that of the Scottish solicitor, measured by reference to a competence framework.

Table 6: Paralegal qualification and assessment frameworks

[NB: Apprenticeship paralegal routes are discussed above and not included in this table]

Type of paralegal	Scheme	Length	Assessment	Overview of scope of Competences/standards
Specialist, adjunct	APIL portal claims handler ²⁰⁶	None prescribed.	Assessed by portfolio against competence statement. Is a senior member and normally the candidate's supervisor	Taking initial instructions Dealing with funding and regulatory matters Advising the client and managing their expectations Preparing the case, gathering evidence, and making the claim Dealing with the compensator Drafting documents Instructing counsel and experts Managing post-settlement and file closure procedures
Specialist, generalist, adjunct or independent	Institute of Paralegals ²⁰⁷	0-7.5 years' experience in "advising or assisting with the law" depending on level of membership	Membership on the basis of length of experience.	Competences are provided at three levels to assist employers and training providers: Advocacy Application of Legal Expertise Business Awareness Client Relations Communication Interviewing and Advising Managing Others Negotiating Practical Legal Research Professional Conduct Self-Awareness and Development Working with Others Workload Management Writing and Drafting
Specialist, generalist, adjunct or independent	National Association of Licensed Paralegals ²⁰⁸	LLB/GDL + 3 years or NALP level 4 + 5 years	By application to NALP	Experience must be in a solicitor's office, barrister's office, in-house legal department or "any other environment with a legal content". Work must be fee-earning or otherwise in non-secretarial legal activity.
Generalist, adjunct or independent	Ontario paralegals ²⁰⁹	Graduate from accredited Paralegal Education program Field practicum/placement of 120 hours	Placement/practicum assessed by joint report 7 hour, open book licensing examination ²¹⁰	Administrative law (30 hours) ADR (30 hours) Advocacy (30 hours) Communication/writing (20 hours) Criminal/Summary Conviction Procedure (30 hours) Employment law (30 hours) Ethics and Professional Responsibility (30 hours) Evidence and the Litigation Process (40 hours) Field Placement/Practicum (120 hours) Legal Accounting (30 hours) Legal Computer Applications (30 hours) Legal Research/Writing (30 hours) Practice Management/Operating a Small Business (40 hours) Provincial Offences/Motor Vehicle Offences (40 hours) Residential Landlord and Tenant Law (30 hours) Small Claims Court (40 hours) Torts and Contracts (30 hours) Tribunal Practice and Procedure (40 hours)

Type of paralegal	Scheme	Length	Assessment	Overview of scope of Competences/standards
				Introduction to the Legal System (40 hours)
Specialist, adjunct	Police station representative ²¹¹	12 months	Portfolio assessed by assessment organisation Live role play critical incidents test Written examination	Role of defending the client Understanding of criminal law and procedure Understanding of relevant immigration law and procedure Understanding of the common crimes Understanding of the rules of evidence PACE 1984 Communication skills Negotiating Skills Interviewing and Advising Skills
Specialist, adjunct	Scottish Registered Paralegals ²¹²	12 months	Supervised by a Scottish solicitor. Online assessment of achievement against competency statement every quarter.	Statements are available for a number of specialist areas: Commercial conveyancing Company secretarial Employment Law Family Law
Specialist, adjunct	Trade Mark Administrator ²¹³	Course of 10 ½ day workshops	Examination on course content	Course covers: "What is and what isn't a Trade Mark?" and the Lifecycle of a Trade Mark Searching & Clearance Filing & Prosecution Notarisation & Legalisation Renewals & Maintenance Seniority & Replacement Recording Title Updates Licences
Specialist, independent	Washington Limited License Technician ²¹⁴	Must have an associate level degree, completed a NFPA core competency assessment ²¹⁵ and at least 45 credits of ABA approved paralegal program (or 10 years' experience). Must also complete courses in specialist area and have 3,000 hours of substantive law-related experience supervised by a licensed attorney.	Licensing examinations in specific practice area and in professional responsibility. Length of supervised work is certified by supervisor.	Core curriculum: ²¹⁶ Civil Procedure, minimum 8 credits. Contracts, minimum 3 credits. Interviewing and Investigation Techniques, minimum 3 credits. Introduction to Law and Legal Process, minimum 3 credits. Law Office Procedures and Technology, minimum 3 credits. Legal Research, Writing, and Analysis, minimum 8 credits. Professional Responsibility, minimum 3 credits.
				Respond to the request to attend Consult with appropriate officers at police station Consult with the client Monitoring of and intervening during the interview Representing a vulnerable client Identification procedures Representing the client after the interview or identification procedure
				Reparation law Repossession litigation Remortgage Additional competencies questionnaire for new legal domains
				Security Interests Data Verification and a role in Intellectual Property Due Diligence Trade Mark Watching Opposition, Cancellation & Litigation Designs The Company Names Tribunal Domain Names Primer on Copyright

7 UK trends in legal services work and employment

The diverse range of demands and impacts on the profession is forcing a rethink of everything from training and development through to the type of people being recruited. Characteristics such as curiosity, creativity and strategic thinking skills could assume far more significance in the selection of tomorrow's lawyers than purely technical legal knowledge. With one in four lawyers in England and Wales now practising in-house, this branch of the profession is transforming the contribution that lawyers deliver to business.²¹⁷

For lawyers, a number of changes to business models and working practices have implications for what the legal practice means, and how and where individuals learn to practise it competently. Some of these changes, as well as external changes, such as the introduction of apprenticeship routes, have resulted in changes to models of recruitment and training. Apprentices and paralegals are dealt with in sections 5.3 and 6.4 above respectively. Questions of finance are clearly highly significant influences for individuals in their choice of career path and CILEx in particular may be benefiting from the lower cost of its qualification route. Both apprenticeships and paralegal routes indicate a possible shift in recruitment practices emphasising a desire to have the potential employee known to the organisation and tested as part of the working team rather than relying solely on external qualifications and a short interviewing process.

Although training contract regulations stipulate a breadth of experience, some organisations are showing evidence of streaming. Irwin Mitchell, for example, divides trainees into Personal Legal Services and Business Legal Services streams.²¹⁸ There is some evidence of attempts to create or recognise Susskind-like "new law jobs" but it is difficult to provide more than isolated concrete examples. Plexus Law, for instance, offered graduates pathways towards technical co-ordinator and team leader as well as solicitor.²¹⁹ Riverview Law is currently recruiting school leaver virtual assistants as IT support for "automation, expert systems, reporting, visualisations, data and management information".²²⁰ Gunnercooke has established a "nursery firm" to allow its young lawyers experience of running a business.²²¹ At the other end of the scale, increased use of freelance lawyer schemes such as Lawyers on Demand²²² may cause challenges in supervision, or, alternatively, represent a new environment for workplace learning.

DAS is offering graduates from a range of disciplines a two year period of employment in personal injury work with the possibility of later proceeding to qualification.²²³ It is not clear whether some of these initiatives represent the future of solicitors' practice, a new form of solicitors' specialisation or whether they are the embryo of entirely new professions.

Legal process outsourcing (LPO) by law firms and by in-house legal departments is now commonplace, with some international competition amongst LPO providers. Scottish Development International, for example, positively advertises Scotland as a site to which legal work can be outsourced and the Republic of Ireland, Northern Ireland, Australia and New Zealand are all favoured outsourcing providers.²²⁴ In India, which has an LPO income estimated to be in the region of \$4 billion,²²⁵ a discrete qualification for lawyers carrying out outsourced work is now available.²²⁶ Tasks routinely outsourced include document review and legal research,²²⁷ tasks on which trainees once cut their teeth. Indeed, it is now possible, at least in some fields, to delegate legal research²²⁸ and document review²²⁹ to software. There is some evidence that the job satisfaction of those engaged in outsourced work is not high:

...the contradictions in LPOs management of lawyers, in trying to create a corporate culture that seeks to entice lawyers to work in LPOs, but simultaneously espousing work routines that de-skill and de-professionalise the employees they hire. Until the quality of work in LPOs moves from the routine to more advanced legal work, the disillusionment experienced by Indian lawyers in LPOs will continue.²³⁰

There is, however, now a role for LPO and near-sourcing liaison and management²³¹ that could be a career path in itself.

Near-sourcing, where a law firm delegates some of its functions, not to lawyers in another jurisdiction but to those elsewhere in the UK, appears to be a growing phenomenon. The firm may, therefore, have fewer employees in its main (London) office, but increase its staffing in a regional centre. Whether the lawyers in the regional centre have similar career opportunities to those in the head office, or whether their experiences might be closer to their peers in India, is, at best, unclear.²³²

A related issue is the outsourcing of legal work in effect to clients themselves, either in-house or members of the public.²³³ LegalZoom, hitherto a "self-service brand", is now an ABS and linked to a law firm.²³⁴ Other firms allow business clients access to an automated selection of materials, including template

documents, which they can use themselves, and this changes the work done within the firm: creating and servicing that provision, and carrying out on a more bespoke basis, the work the client cannot do for themselves. This represents, perhaps, law firms taking control of the phenomenon of clients finding legal advice, for themselves, over the internet, identified as a challenge by 48% of the 118 lawyers interviewed for the 2015 LexisNexis *Bellwether Report*.²³⁵

There has been a considerable rise in the proportion of solicitors in in-house practice,²³⁶ a sector that has not, historically, found it easy to offer training contracts. In July 2015, 21.6% of all practising certificate holders were in in-house practice²³⁷ but nine out of 10 new trainees were in private practice.²³⁸

The influences of ABSs are difficult to capture accurately because an ABS is a regulatory, rather than a business model. There is some evidence of a correlation for solicitors, between registering as an ABS and being otherwise innovative in practice.²³⁹ There is very limited evidence that law schools attempt to prepare students to work specifically in ABSs,²⁴⁰ although, as described above, a small number of universities have registered their clinics as ABSs. This may have an effect on the kind of things that students can learn in those clinics.²⁴¹ Larger organisations, whether law firms or non-traditional ABSs, as suggested in the LETR research report, are able “to develop more sophisticated training environments than smaller ‘high street’ competitors”.²⁴² The IFF/Sherr report for the SRA found limited differences between the internal approaches to training of ABSs and those of medium to large sized traditional firms. ABSs as a group were, however, less likely than the larger firms to use competence frameworks or lists; formal appraisals or reviews; annual training plans and budgets or mentoring. They shared the approach of the very largest firms in addressing lack of competence through remedial education.²⁴³ Where another profession – for example an accountancy firm – controls the ownership and management of an ABS, this may, however affect expectations about how workplace learning is configured and supported.

Table 7: Implications of changes in the legal services environment²⁴⁴

<p>International factors including globalisation of practice²⁴⁵</p>	<p>Opportunities for workplace experience outside England and Wales but inside/outside the EU could be affected positively or negatively.</p> <p>“... looking at how our business is going, the chances are that of the fifty trainees that qualified at our firm in the last twelve months, fifty per cent of them will be making their careers somewhere else in the world, not in the UK ...”²⁴⁶</p>
<p>Brexit (UK withdrawal from the European Union)</p>	<p>Terms of the withdrawal are not yet clear. There may, however, be changes to:</p> <ul style="list-style-type: none"> UK students studying at EU universities on joint degrees or as part of exchange schemes Arrangements, including fees, for EU students studying at UK universities Regulatory arrangements for UK lawyers practising in the EU²⁴⁷ and EU lawyers practising in the UK. A trend for UK lawyers to seek practice rights in the Republic of Ireland is already apparent.²⁴⁸ Dual qualification and practice rights for UK lawyers wishing to work in EU countries may in future be determined by each individual nation and, as is the case in the USA, distinguish between routes to qualification.⁸ General changes to the UK legal sector market,²⁴⁹ including financial services²⁵⁰ and the use of London as a favoured jurisdiction.²⁵¹
<p>Impact of technology on how lawyers practise and what clients are enabled to do for themselves²⁵²</p>	<p>Limited availability of the more straightforward tasks that might previously have been allocated to a new trainee as a vehicle for learning. New activities and practices requiring new knowledge and skills.²⁵³</p> <p>Possible increase in transnational virtual law firms such as Keystone Law.²⁵⁴</p>
<p>Increased devolution in Wales</p>	<p>The question whether effective practice in Wales may in time come to require workplace experience in Wales /in Welsh.²⁵⁵</p>
<p>New entrants into the legal services market – new entrant ABSs, accountancy firms, multidisciplinary organisations, growth in unregulated sector²⁵⁶</p>	<p>New entrant ABSs with their own internal training programmes aligned to other regulators or to no legal services regulator (but which might in fact align in whole or in part with the SRA Statement)</p> <p>Differences in expectations about the role, shape and size of workplace experience derived from non-legal qualification frameworks.</p> <p>Specialist practice. In addition, as e.g. court fees rise and mediation increases, reduced opportunities to provide contentious work to trainees.</p>

⁸ The GDL, at one year of full time study, is too short to meet US requirements for the academic stage.

	<p>Multidisciplinary practice supervised by members of non-law professions</p> <p>New opportunities for work experience in unregulated sector/reduced opportunities for conventional work experience if work is diverted to the unregulated sector.²⁵⁷</p>
Financial factors: tuition fees and legal aid	<p>Reduction in social justice/personal plight practice and its possible partial replacement by law school clinics.</p> <p>“...there’s certainly going to be fewer trainees in the legal aid subjects ... they will use paralegals where they can which means that in ten, twenty years time the qualified solicitors are not going to be there to do that sort of work.”²⁵⁸</p> <p>Drivers to avoid the LLB/GDL (or diversity factors impinging on who qualifies by which route)</p> <p>Assertiveness by CILEx of the financial benefits of the CILEx route</p> <p>Personal plight clients not seeking advice from solicitors on the basis it would be “too expensive”,²⁵⁹ Possible growth in alternative providers filling the gap (e.g. paralegal firms,²⁶⁰ CILEx practitioners or, in the case of SMEs, accountants,²⁶¹ claims management companies or insurance companies²⁶²).</p>
Competition between legal services providers e.g. CILEx and CILEx practitioners, the Bar, regulator shopping (domestically and internationally)	<p>Individuals qualifying into profession A (and its code of conduct) in an organisation regulated by the regulator of profession B. Some evidence that CILEx qualified lawyers are less likely to feel the need to qualify as a solicitor as they can now become owners and practise independently.</p>
New business, regulatory and training models, including nursery firms, apprenticeships	<p>Appetite for apprenticeships from a) legal service providers and b) students.</p> <p>Implications of workplace experience in a law school ABS, “nursery firm”, or potentially shared between different workplaces with a training organisation (e.g. Accutrainee²⁶³) as a hub. Any potential for changes to legal services regulation.</p> <p>Freelance lawyer schemes may limit opportunities for consistency of training or supervision or, alternatively provide a new career model.</p>
Equivalent means route	<p>To date the number of individuals qualifying by this route is very small. Some investigation of both successful and unsuccessful applicants would be useful to identify trends. There does not yet appear to be an industry in coaching or otherwise assisting candidates to prepare applications.</p>
Outsourcing²⁶⁴ and near-sourcing	<p>Limited availability of the more straightforward tasks that might previously have been allocated to a new trainee as a vehicle for learning. New activities and practices requiring new knowledge and skills. Differentials between trainees in the main office and those in the near-sourced office.</p>
Increases in in-house practice	<p>Local government ABSs are now able to provide legal services to external clients. Increasing population and role of in-house lawyers in organisations that may be less likely in the current system to be authorised to take trainee solicitors. Changes to client relationship skills for external lawyers with in-house lawyer clients.</p>
Internships and paralegal roles	<p>At present, this is a buyers’ market so that LPC graduates and qualified solicitors are sought for paralegal roles. Individuals may have obtained a significant degree of practice experience and expertise in “uncredited” intern and paralegal roles. Use of paralegals in junior roles in commoditised practice:</p> <p>“There’s supposed to be about eight paralegals per solicitor in terms of monitoring but that’s always honoured in the breach ... to our mind it makes a bit of a mockery about the whole talk about standards and quality of service to the client when potentially half of your fee earners – they’ve got no training at all and no-one seems to care.”²⁶⁵</p> <p>Possible increase in and sophistication of offering by independent paralegals.</p>
Law School clinics and ABSs	<p>Increasing professionalisation and breadth of service offering (including potential for reserved business).</p>

8 Patterns of required workplace experience in selected UK non-legal professions

Bravenboer and Lester have identified a trend in the UK towards an increased focus on the supervised practice element of professional training frameworks generally:

From the 1980s onwards more attention started to be given to the level of proficiency of practitioners at the point of sign-off, so that while in the past the practical element of professional training could be little more than semi-structured timeserving, a trend emerged towards some form of assessment against explicit criteria.²⁶⁶

This, they suggest, provides the opportunity to formalise the supervised practice element by “the introduction of some form of competence model and associated assessment process”, particularly where there is also a driver to increase the range of entry routes. However, evidence is also emerging, they argue, of

more sophisticated conceptions [of competence] and approaches that have a less finite perspective, reflecting to some extent the idea of capability that emerged in higher education during the 1990s.²⁶⁷

Lester has also identified a trend “towards increased flexibility, more thorough assessment of the practising phase, and some movement away from defined routes towards frameworks with robust exit criteria”.²⁶⁸ This tendency to retain a reliance on periods of supervised practice, but to support it by using competence statements and by top down (examinations) and bottom up assessments (portfolios, interviews) appears in the selection of examples below.

8.1 Accountancy

There is a variety of accountancy professions in the UK,²⁶⁹ some of which are regulators under the Legal Services Act, and may be authorised to regulate ABSs providing legal services. Some are specialist and others, rather like CILEx, pride themselves on providing a non-graduate route²⁷⁰ that may allow progression to chartered status.²⁷¹ Some accountants provide unreserved legal business, such as advice on tax law. It is notable that the majority of the Big Four accountancy firms have elected to obtain SRA ABS status (which allows them access to reserved business under the Legal Services Act 2007).²⁷² Accountancy and Finance undergraduate degrees are widely available, some of which include sandwich or placement elements.²⁷³ Edden’s recent comparative qualitative study of accountancy students who had experienced a formal placement, and those who had had to take a gap year for other reasons, found some evidence that the beneficial effects of increased motivation and improved approach to studying resulted from having been in a workplace, rather than from the structured and formalised placement *per se*.²⁷⁴

Apprenticeships²⁷⁵ and Higher Apprenticeships²⁷⁶ are well established²⁷⁷ – including in the Big Four firms²⁷⁸ – and this will extend to the Trailblazer apprenticeship routes and their Welsh equivalents.²⁷⁹ For the ICAEW, only around 30% of graduate entrants have an undergraduate degree *in accountancy*²⁸⁰ and, perhaps as a result, there is no GDL equivalent. The LiNEA data suggested that the audit team, as a cohesive environment that provides opportunities to assign novices to tasks of increasing levels of complexity, is a particularly supportive learning environment for new accountants.

[w]hat this structure enables is the early allocation of simple tasks under close supervision, followed by gradual increases in the complexity of task, the amount of work that can be delegated at any one time and the level of independent responsibility taken by the trainee. As a result trainees became net contributors to their teams within a couple of months, which was highly motivating for them and accelerated their inclusion.²⁸¹

The LiNEA study described trainees’ perception of their own learning in the workplace as including:

... many different forms of progression:

- size of task: doing a test to doing a whole section
- speed of work: getting things done more quickly
- significance of task: low risk to high risk for validity of audit
- complexity of audit: very simple to very complex
- confidence: pursuing questions more rigorously, interviewing more senior client officers.
- increasing range of clients: the more experience, the easier to understand the business of a new client.

- increasing responsibility: being coached, close supervisions, only outcomes checked unless a problem is signalled, only person on client site.²⁸²

In contrast to the legal professions,²⁸³ there is an international body – the International Accountancy Education Standards Board²⁸⁴ - that sets standards and provides guidance for accountancy education globally. This includes a standard for workplace experience, revised in July 2015, that

recognizes that practical experience is relevant in developing the competence of an aspiring professional accountant. ... promotes greater flexibility in measuring practical experience; permits practical experience supervisors to direct, advise, and assist an aspiring professional accountant's experience; and requires practical experience to be recorded in a verifiable and consistent form.²⁸⁵

Crawford *et al's* 2014 comparative study of a number of accountancy professions in Australia, Brazil, Colombia, India, Italy, Mexico, Russia, Saudi Arabia, Uganda, the UK and the USA found that all but one prescribed a period of workplace experience. These ranged from under a year to five years, with about a third of professions demanding that the period take place in an approved organisation. Almost half of the professions required a mentor to be in place and assessment methods ranged from self- or mentor certification to records, reports and portfolios assessed by the professional body.²⁸⁶ Approaches to assessment or certification of period of workplace experience vary within the UK accountancy professions. For example, ICAS assesses by reference to competences,²⁸⁷ the ICAEW requires six monthly reviews and maintenance of a log²⁸⁸ while CIPFA uses a reflective portfolio assessed by the professional body.²⁸⁹

8.2 Built environment disciplines

8.2.1 Architecture

Architecture in the UK demands at least two years of supervised practice, although it is common to undertake an earlier year of monitored workplace experience after the undergraduate degree (RIBA 1) and before undertaking the RIBA 2 assessment.²⁹⁰ A 2012 study of participants in this first stage of supervised practice found a wide diversity in range of working practices and responsibilities allocated to the trainees, and a potential diversity effect for those trainees who had been unable to obtain placements in higher status studios (sometimes unpaid). There was, however, a distinct socialising effect in the period as trainees "learnt to identify with the profession and they assimilated its practices, even when the profession was not as they had expected".²⁹¹

A distance learning route for RIBA 1 and 2 is available for "office-based" candidates in the EAA, Switzerland, Isle of Man and the Channel Islands.²⁹²

A mandatory two year period of supervised practice takes place between RIBA 2 and the final RIBA 3 examination. Coleman describes the latter, somewhat pejoratively, as "preoccupied with management and administration and, in particular, with how architecture sits within the construction industry".²⁹³ It does, however, appear to involve an explicit assessment of what has been learned during the workplace experience.

RIBA began an education review in 2013 and a final report is expected in 2017. The review is driven by concerns about tuition fees and student debt, and about changes to European legislation currently affecting the minimum duration for architecture education. The aim of the review, therefore, is to create a "better value, more flexible, and fully integrated structure".²⁹⁴ Recommendations issued in 2015 propose that in 2019, the qualification process will involve:

- A route involving at least two years of assessed "professional practical experience (PPE)" normally within an overall seven year period. The period of supervised practice has been retained because

[t]he synergistic relationship between academic study and experience in practice is vital to developing an holistic professional understanding, and this recommendation emphatically endorses the continuation and extension of this important principle.

- Assessment criteria for the PPE period are to be worked out by consultation with architectural practices.
- A normal seven year integrated award (although universities will still be able to offer an undergraduate exit award). This would include academic elements, the PPE and a test of professional competences. It is suggested that with stronger liaison between universities and the

professions, "when economic circumstances do not permit employment, [the process should retain] capacity for students to shadow practice 'in survival mode'"²⁹⁵

- A facility to accredit the prior learning of candidates who have a year's work-based experience towards qualification requirements.
- Bologna compliance to enable portability of the qualification.
- Award of the title on completion of the integrated course.

8.2.2 Chartered Surveyors

Chartered surveyors in the UK have moved, over time, away from a purely "articled pupil" and professional examination approach to one where a wide range of university degree courses are accredited by the RICS. An apprenticeship route became available from 2015. This combines a part time undergraduate degree with work experience and a progression route to full chartered status.²⁹⁶

At least one exempting, work-based degree has been proposed which would allow:

...the evidence of professional competence [to be] gathered at the same time as they are undertaking them rather than post qualification. This approach is a concrete demonstration of the possibility of comprehensively aligning the recognition of professional competence with an academic qualification.²⁹⁷

A detailed competence framework is used containing mandatory, core and optional elements. It also has a range of levels representing knowledge at level 1; application at level 2 and "reasoned advice" at level 3. It is assumed that level 1 could be achieved during the university degree, with some level 2 learning achieved in the later years of a degree or in a sandwich placement. Level 3, however, requires the candidate to be in a position of some autonomy where they are expected to provide advice. This is more challenging to achieve during the degree except perhaps in project work.²⁹⁸

The competences, to which different pass levels are allocated depending on whether the competency is mandatory, core or options, are tested by a formal assessment of professional competence arranged by the professional body. This involves:

- An online ethics module;²⁹⁹
- A report on a project for which the candidate has had responsibility in the workplace after graduating;
- An interview.

There are different pathways to final assessment representing specialist sub-disciplines.³⁰⁰ Some commentators have expressed disquiet that the assessment could be more difficult for some pathways than for others.³⁰¹

A comparative study in 2013 of 425 quantity surveyors who had pursued different routes to qualification evaluated a number of technical tasks in which respondents felt most confident, finding that this correlated with the frequency with which they had carried out those tasks. Those who had followed a part-time route to qualification – study while working in the field – perceived themselves to be more competent in the list of tasks than those who had followed a full time route. Graduates of sandwich courses felt more confident in a range of tasks than those who had completed more conventional degrees.³⁰²

8.3 Medical disciplines

8.3.1 Medicine

There is an international trend towards competence-based education in medicine, although not necessarily consensus on what the appropriate competences are.³⁰³ The OSCE is now a commonplace feature of clinical assessment in a simulated context and may appear at undergraduate level.³⁰⁴ Portfolios are common in the workplace although other methods of assessment in the workplace including the Mini-CEX (an observation) are also in use³⁰⁵ and a more holistic "programmatic assessment" involving planned cycles of training, assessment and feedback is a more recent development.³⁰⁶

Workplace, that is, clinical, experience is inherently embedded in medical education with, in hospitals, the case presentation³⁰⁷ and the ward round as specific teaching vehicles in hospitals. There is some evidence that logistical pressures and interruptions place pressure on the utility of the ward round as "learning conscious" as opposed to "task conscious" activity.³⁰⁸ Fatigue and workload pressure can also inhibit learning in the workplace.³⁰⁹ A recent study by Laskaratos *et al* of 40 trainees at a London teaching hospital found that foundation year trainees found ward rounds to be "useful in knowledge acquisition,

selection, and interpretation of diagnostic investigations, patient management, record keeping, and approach towards patients. In contrast, they were not considered as useful in developing history taking, physical examination, leadership skills, or in learning ethical principles".³¹⁰

The report *Modernising Medical Careers* in 2005 resulted in a substantial restructuring of medical education in the UK, in particular shortening its duration.³¹¹ At present, then, the starting point in medical education is an undergraduate degree. The typical length of such degrees is five to six years for those with science A-levels or Highers and at least six years for those without, or who are from disadvantaged backgrounds.³¹² It may be possible to intercalate for a year to obtain a BSc and electives between the third and fourth years may include a short placement.

There is also a small number of Access to Medicine courses designed to assist those without science qualifications, found to have had a small effect in increasing participation from under-represented groups.³¹³ Most medical schools expect applicants to have had some kind of medical or social care work experience before applying:

Selectors strongly recommend that candidates have explored what a career in medicine entails and that this is reinforced by work experience. The interview will explore your understanding of the realities of a career in medicine. We recognise the challenge of obtaining work experience and a period of volunteering in a caring role can be equally as valuable.³¹⁴

There is evidence that obtaining suitable work experience can be a barrier to those from disadvantaged backgrounds.³¹⁵

There is also a number of four year graduate-entry medical degrees, for graduates of any discipline, often with a strong problem based learning component in their curriculum.³¹⁶ Where universities, such as the University of Nottingham, provide both, the two groups of students may be taught together in later stages of the degree³¹⁷ and there is a single set of outcomes for graduates.³¹⁸ Some longitudinal studies have been carried out comparing the approaches and outcomes of the two groups.³¹⁹

Following the undergraduate degree, the individual is provisionally registered with the General Medical Council and undertakes the first of two postgraduate "foundation house officer" years. Kellett *et al* found a number of respects in which foundation year doctors found the transition from the degree to be problematic.³²⁰ The foundation years, however, involve rotations around different specialities, a variety of assessments and, normally, the maintenance of an electronic learning portfolio.³²¹ Systematic studies of the use of portfolios in undergraduate and postgraduate medical education found benefits, but, consistently with some of the findings of the SRA work-based learning pilot, challenges in the quality of reflection and in the time required to maintain the portfolio.³²²

After demonstrating the required competences for the first year³²³ the trainee obtains full registration, completes the second foundation year and then proceeds to two further years of core medical training in either general or hospital practice. Candidates must also pass the MRCP (UK) examination.³²⁴ Part 1 of this, a written examination, can be taken after the first foundation year. Part 2, which includes a practical assessment of clinical examination skills by OSCE,³²⁵ is taken during the core training phase. Additional outcomes for capabilities, including communication and team working, will be introduced into postgraduate curricula from 2017.³²⁶

The doctor then goes on to specialised training of four to six years or general practice training of three years.³²⁷ Assessment during this stage includes examinations administered by the different speciality colleges. The assessment for general practitioners, for example, involves an applied knowledge test, a clinical skills assessment and a workplace based portfolio assessment.³²⁸

Substantial criticisms were made of *Modernising Medical Careers*, particularly after a crisis in 2007 when logistical problems prevented many junior doctors progressing into training jobs in the NHS.³²⁹ The Tooke Inquiry found a substantial degree of lack of clarity and consensus in the system, including on the role of doctors at the different career stages; fragmentation between different stakeholders and lack of flexibility.³³⁰ In particular, the inquiry identified problems in the foundation year system and proposed that the supervised practice elements of the first foundation year should be pushed back into the undergraduate curriculum, rather than prolonging the period of pre-registration practice and for standardised competency assessments at the end of the first foundation year.³³¹ The *Shape of Training* project for the UK, initiated in 2011 as a result of the Tooke Inquiry, reported in 2013.³³² It proposes full registration at the point of graduation from the undergraduate degree (on condition of fitness to practise); followed by a two year foundation phase including four to six month placements in a variety of settings. Broad based speciality training would then take a further four to six years, leading to a certificate of specialty training.³³³ Attempts are also being made to create a single point of assessment, an equivalent to the QLTS, for overseas transferees.³³⁴

8.3.2 Dentistry

Based primarily on the apprenticeship model, postgraduate dental training (as with postgraduate medical training) involves an emphasis on experiential learning within the workplace, involving elements of coaching through appropriate supervision and mentorship, supplemented by formal educational events and self-directed learning. In addition, modern day training programmes have an increasing focus on learning within clinical teams, which bring into play socio-cultural learning theories.

Dental foundation programmes enhance trainees' learning by providing context for clinical practice across different environments, experience in 'real time' and exposure to aspects of care that cannot be recreated in the classroom e.g. time constraints and heavy demands on workload, continuity of care and a supportive working environment. One to one teaching sessions and the provision of constructive feedback have been identified by postgraduate trainees as particularly valuable.³³⁵

In the UK, students initially study a four to five year undergraduate degree,³³⁶ which may include clinical experience.³³⁷ A review of dental training in 2006 introduced a subsequent two year period of supervised practice ("dental foundation training", DFT) based on a competence statement.³³⁸ Competence-based approaches to dental education appear to be the trend globally.³³⁹

Until at least 2013, the second year (dental foundation year 2) allowed the trainee either to build on their learning in the first year (if they intended to go into general practice) or to specialise. This period of supervised practice has now been reduced to one year.³⁴⁰ Its purpose is to:

[build on] the achievements of the dental undergraduate curriculum as defined in "The First Five Years" (General Dental Council) that aims "to produce a caring competent reflective practitioner able to develop their career in any branch of dentistry to the benefit of patients" (A Curriculum for UK Dental Foundation Programme Training) and to demonstrate a level of competence appropriate for independent practice.³⁴¹

However,

DFT is not aiming to train a 'practice owner', or equip Foundation Dentists with the skills required to set up and run a dental practice, but rather prepare individuals for independent practice as an associate / performer / employee within the General Dental Services.³⁴²

Competition for the year is "fierce"³⁴³ but organised centrally. Foundation dentists are employed by the NHS under a standard contract.³⁴⁴ Completion of the year also enables newly qualified dentists to be entered on the performers list and to be contracted to the NHS as, in principle, independent practitioners, thereafter.

During the course of the foundation year, the trainee has access to two supervisors. The educational supervisor

... is responsible for overseeing the educational progress of the trainee, agreeing a learning plan, undertaking tutorials, appraisals, 3-monthly progress reviews, carrying out workplace based assessments, providing regular feedback on progress to the trainee, advising the Deanery about progress and providing evidence and recommendation for completion of training.³⁴⁵

The clinical supervisor is "responsible for day to day clinical supervision, facilitating and carrying out assessments, supporting the trainee, ensuring appropriate workload, liaising with Educational Supervisor and Scheme Adviser/Programme Director, providing progress reports".³⁴⁶ The roles may be combined in the same person. Interim assessments may be used including observation, discussion and peer assessment.³⁴⁷ There is also some evidence that feedback and reflection linked to these improves patient care.³⁴⁸ Candidates must complete an e-portfolio. This is assessed against the competence statement.³⁴⁹ An enhanced version of this assessment is being piloted:

From September 2015 all Deaneries in England, Wales and Northern Ireland will be introducing and piloting 'satisfactory completion' for Foundation Dentists. There will be a formal, robust assessment framework, which will ensure that each Foundation Dentist has demonstrated the required competencies in all four domains of the Dental Foundation Training (DFT) Curriculum: clinical, professional, communication³⁵⁰ and leadership and management, in order to be awarded a Dental Foundation Training Certificate³⁵¹

Following qualification, an individual dentist may elect to obtain further certification.³⁵² The Diploma of Membership of the Joint Dental Faculties (MJDF) examination is in two parts coupled with a portfolio.³⁵³ From April 2016 Part 1 will involve "150 Single Best Answer (SBA) questions within a single three-hour paper"³⁵⁴ taken during the first year after graduation. Part 2 will involve a three-hour circuit of OSCE and SCR (structured clinical reasoning) assessments taken in the second year. The Scottish Diploma of Membership of the Faculty of Dental Surgery assessment is in a similar format.³⁵⁵

The framework has recently been reviewed, resulting in a draft 2015-2016 revised curriculum and competence statement. The background to the review included a number of factors:

Recent changes both within dental practice and the training landscape in terms of clinical focus, patient care, structure and duration have prompted the need to review the curriculum. In addition to the move to DFT becoming a one year period of training, completed within General Dental Practice¹, recent changes include the publication of the updated National Health Service (Performers List) Regulations (England) 2013, and standards published by healthcare regulators, in particular the Care Quality Commission (and UK equivalents) and General Dental Council (GDC). Further, the work being taken forward by the Department of Health England to develop Advanced Care Pathways for Dentistry is directly relevant, with the completion of DFT being aligned to the service provision expected of a level 1 practitioner.³⁵⁶

It is now proposed that the one year period will be followed by two or three years of "dental core training" and, where relevant, a further three to five years of speciality training.³⁵⁷

Table 8: Selected British Non- Legal Professions

[NB: this does not include special arrangements for transferees from other professions or jurisdictions or for mature entrants. It does not include assessments of character or antecedents or school level precursor qualifications]

Profession	Time requirements	Assessment/certification of work experience requirements	Working environment/required coverage	Supervisor specification	Other requirements	course/assessment	Post qualification limited licensure
Architect (RIBA)	2 years (paid)	RIBA 3 assessment covers: <ul style="list-style-type: none"> • 24 months of practical experience recorded on the PEDR website • Professional CV and career evaluation • Case study • Written examination • Final oral examination 	At least 12 months of period must be in the EEA, Channel Islands or the Isle of Man	Architect	Precursor: UG degree (BA, BSc) An addition 1 year period of (paid) work experience after the UG degree, supervised by an architect or other construction industry profession is not mandatory but if undertaken is recorded online and monitored by an academic and a mentoring architect. Two year RIBA 2 qualification (BArch, Diploma, March) During period: study towards RIBA 3 examination		
Chartered Accountant (ICAEW)	450 days	6 monthly reviews and submission of a log	Authorised employer. Must cover at least one of: accounting, taxation, financial management, insolvency, information technology, audit, assurance		Precursor: UG degree /apprenticeship During period: <ul style="list-style-type: none"> • Professional examinations • Ethics and professional Scepticism training • Professional development training 		
Chartered Surveyor (RICS)	2 -3 years	APC includes assessment of a workplace project and an interview	Not specified, but in practice is dictated by APC Final Assessment pathway subjects		Precursor: UG degree/apprenticeship Must pass APC Final Assessment and online ethics module		
Dentist	1 year (paid)	E-portfolio completed during period Assessments leading to a Dental Foundation Training Certificate	In a training practice attached to a Dental Foundation Training Scheme. Coverage based on competence statement: clinical, communication, professionalism, management and leadership	Educational supervisor and clinical supervisor	Precursor: UG degree (5 year) During: 25- 30 days of day release study		None subject to continuing fitness to practise ³⁵⁸ [although specialist qualifications may be required/obtained]
Medical doctor (GMC/BMA)	2 years (initially)	By e-portfolio and other assessments during 2 foundation years	Foundation Programme Curriculum includes core and specialist medical skills plus professional behaviour and trust, communication, team working and leadership, clinical care, safety and quality		Precursor: UG degree Must pass MRCP (UK) parts 1 and 2 by the end of the 2 foundation years		Registration occurs at the end of foundation year 1 but trainees must also complete foundation year 2

9 The international context

This section discusses the literature on a selection of legal qualification routes and their attitude to learning in the workplace.

9.1 Some aspects of qualification as an attorney in the USA

The USA has a strong adherence both to the JD as the model of legal professional education and to the individual's right to take his or her chance in independent practice in the market on completion of the bar examination.³⁵⁹ Unlike the LLB in the UK, the role of the three year postgraduate JD is explicitly seen as one of preparation for the legal profession:

At its core, legal education is a professional education, and part of the mission of every law school is to prepare its students to enter the legal profession. It is why law schools exist.³⁶⁰

Entry to the profession is through bar examinations overseen by state courts or by state bar examination boards as gatekeepers: "there is no national ministry of justice that oversees the major elements in legal education: admission of students, hiring instructors, setting tuition and fees, designing a curriculum and mandating certain courses or even forming a new law school".³⁶¹ Rather, "[c]ontrol of legal education is largely in the hands of state legislatures, bar associations and the American Bar Association, which holds the all-powerful law school accreditation authority, although it is a voluntary membership organization representing less than half of all licensed lawyers in the US".³⁶² Unusually, there is no general requirement for supervised practice:

... among more economically developed nations, the United States is virtually alone in not requiring a significant apprenticeship period before a person becomes a fully authorized lawyer.³⁶³

It should, nevertheless be noted that various forms of clinical legal experience and placement are routinely available in US JD programmes:

[A]pproximately one-third of contemporary law students are participating in clinics, and perhaps fifty percent or more are participating in some kind of live client (not simulated) experiential education.³⁶⁴

The extent to which it is the norm for US attorneys to qualify into independent practice in the absence of any kind of work experience, therefore, appears to be decreasing.³⁶⁵ As will be seen below, in addition, mentoring schemes and incubator programmes in some cases create a very special form of limited licensure that does not prejudice the right of the individual lawyer to compete for work in the market.

The point of transition to a university and market-led model is generally given as the 19th century and attributed by many commentators to the influence of Langdell at Harvard, a concept of law and legal analysis as "science" rather than a "handicraft" that could be learned in the workplace³⁶⁶ and, essentially, to civil law German traditions.³⁶⁷

Throughout the first one hundred years of the United States, legal education was self-education, by reading of law or serving an apprenticeship in a lawyer's office. Yet in 1878 in its second annual report, the new American Bar Association's Committee on Legal Education stated that "There is little, if any, dispute now as to the relative merit of education by means of law schools, and that to be got by mere practical training or apprenticeship as an attorney's clerk. Without disparagement of mere practical advantages, the verdict of the best in-formed is in favor of the schools."³⁶⁸

A series of influential reviews of legal education from the 1990s have, however, shifted the emphasis of the law schools towards experiential learning and a more explicit focus on skills and "practice-readiness". The *MacCrate Report* in 1990 sought a shared responsibility for professional training between the profession and the academy by provision of opportunities for learning both inside and outside law schools.³⁶⁹ *Best Practices for Legal Education*, in 2006, endorsed the clinical legal education movement that had begun in the USA in the 1920s.³⁷⁰

The most important lessons that can be learned in client representation courses include many of the same lessons that can be learned through simulations or observation, including the values, behaviors, attitudes, and ethical requirements of a lawyer (professionalism). However, the learning is deeper and more meaningful when a student is participating as a lawyer, rather than as an observer or assistant or in a make believe

simulation. This is particularly true of the key values of the profession: the importance of seeking justice and providing access to justice, the reasons for fostering respect for the rule of law, the essentiality of integrity and truthfulness, the need to deal sensitively and effectively with diverse clients and colleagues, and the value of nurturing quality of life in light of the stresses and time commitments of law practice.³⁷¹

Indeed, the authors of *Best Practices* preferred clinic to placements unless additional support and training could be established for workplace supervisors to help them “embrace their educational functions and work to develop their teaching knowledge and skills”. Even then, they suggested that academic supervisors could help students to reflect on and aspire beyond mediocre performance that they might see in the workplace.³⁷²

The influential *Carnegie Report* in 2007 noted that

[a]t present ... a law degree requires no experience beyond honing legal analysis in the classroom and taking tests. In most schools, this leaves direct preparation for practice entirely up to student initiative. Too often, the complex business of learning to practice is largely deferred until after entry into licensed professional status.³⁷³

However, its authors then focused on clinic or other work experience organised by the university, whose benefits were:

the pedagogical shift from reliance on the hypothetical questions typical of other phases of legal education (such as “What might you do?”) to the more immediately involving and demanding: “What will you do?” or “What did you do? ... Assuming responsibility for outcomes that affect clients with whom, the student has established a relationship enables the learner to go beyond concepts, to actually become a professional in practice. Taught well, it is through this experience of lived responsibility that the student comes to grasp that legal work is meaningful in the ethical, as well as cognitive, sense.³⁷⁴

In 2014, in parallel with the LETR research phase, the American Bar Association Task Force on Admissions to the Bar³⁷⁵ responded to concerns including the cost of legal education; and perceived over-standardisation of US law schools. They concluded, inter alia, that:

the core purpose common to all law schools is to prepare individuals to provide legal and related services in a professionally responsible fashion. This elementary fact is often minimized. The calls for more attention to skills training, experiential learning, and the development of practice-related competencies have been heard and many law schools have expanded practice-preparation opportunities for students. Yet, there is need to do much more. The balance between doctrinal instruction and focused preparation for the delivery of legal services needs to shift still further toward developing the competencies and professionalism required of people who will deliver services to clients.

To expand access to justice, state supreme courts, state bar associations, admitting authorities, and other regulators should devise and consider for adoption new or improved frameworks for licensing or otherwise authorizing providers of legal and related services. This should include authorizing bar admission for people whose preparation may be other than the traditional four-years of college plus three-years of classroom-based law school education, and licensing persons other than holders of a J.D. to deliver limited legal services. The current misdistribution of legal services and common lack of access to legal advice of any kind requires innovative and aggressive remediation.³⁷⁶

The ABA standards for the accreditation of law schools have, since 1996, required accredited US law schools to provide “substantial opportunities” for clinic and placement activity and to allow it to attract credit against the degree.³⁷⁷ There is evidence from the longitudinal *After the JD* study that attorneys valued clinical experience more highly than any other part of the JD in preparing them for practice.³⁷⁸ Now, all JD students must complete an experiential learning element of at least six credits,⁹ and this may be a simulation, clinic or placement:

To satisfy this requirement, a course must be primarily experiential in nature and must:

- (i) integrate doctrine, theory, skills, and legal ethics, and engage students in performance of one or more of the professional skills identified in Standard 302;
- (ii) develop the concepts underlying the professional skills being taught;
- (iii) provide multiple opportunities for performance; and

⁹ From a required total of 83, of which 64 must be face to face, clinic or placement.

(iv) provide opportunities for self-evaluation.³⁷⁹

There is current commentary recognising that the USA is an outlier in not universally mandating pre-qualification supervised practice, and in some cases advocating the adoption of a shorter JD and a training contract structure.³⁸⁰ However, the ABA's standards and their push towards inclusion of professional ethics, skills and experiential learning³⁸¹ in the JD clearly continue to treat the law school as the primary gatekeeper.

With calls for a shorter JD with a skills/clinic base in its third year, some law schools are, in effect, building an equivalent to a GDL + LPC + clinic or training contract model.³⁸² An innovation that predates these changes is the Daniel Webster Scholar Program at the University of New Hampshire³⁸³ where students spend the last two years of the JD on practice-relevant activity including simulated exercises with some similarity to those seen on the LPC, clinic and placement. They maintain a portfolio and are exempted from most of the bar examination in place of mentoring and review of their performance by an allocated bar examiner. Research evidence, including testing both graduates of the programme and graduates of traditional JDs on the same interviewing exercise, indicates that the model results in "accelerated competence".³⁸⁴

There have been calls from a variety of commentators for a reinstatement of a required period of supervised practice in the USA.³⁸⁵ There are substantial concerns about the effect of law school debt.³⁸⁶ Other responses to this concern have included early entry to the bar examination,³⁸⁷ its abolition³⁸⁸ or free access to it.³⁸⁹

There is evidence that some law firms have, in effect, reverse-engineered supervised practice requirements by developing substantial training programmes for their new associates³⁹⁰ that may include a "seat" system;³⁹¹ some states mandate mentoring schemes for the newly qualified (see below) and there is a wide variety of incubator schemes in place.³⁹² However, all of these approaches retain the concept of the new attorney as, inherently, autonomous in a way that may be culturally different from that of the domestic training contract/period of recognised training, in some cases very markedly:

"If I got a partner here and told him to share an office with a first-year associate, he'd be out the door—so we don't—partners get the big offices to themselves."³⁹³

In recent history, however, two states have insisted on a mandatory period of pre-qualification supervised practice. The Delaware requirement – to which the local profession appears strongly culturally attached – can be completed during law school.³⁹⁴ Vermont replaced its pre-qualification clerkship requirement in 2016 with a post-qualification mentoring period.³⁹⁵ Many states have mandatory post-admission courses of some kind and some extend this to a form of slightly distanced supervised practice rather like that used for notaries in England and Wales (see Table 1 above):

- Georgia – a one year mentoring programme combined with CPD requirements and simulated or real mandatory advocacy experiences.³⁹⁶ Mentors may be inside the lawyer's own organisation, outside it (for sole practitioners) or in a group setting for unemployed attorneys or those employed in non-legal environments. The model mentoring plan covers a range of suggested activities, observations and discussions covering: Introduction to the Legal Community; Introduction to the Community at Large; Introduction to Law Office Management; and Working with your Client.³⁹⁷ Completion is certified by the mentor.
- Illinois – a combination of courses, online discussions and at least eight face to face meetings with a mentor.³⁹⁸ These can count towards post admission CPD requirements. As in Georgia, there is a curriculum outlined in a mentoring plan – Professionalism; legal ethics; civility; diversity and inclusion; Wellness, Mental Health and Addiction- and certification is by the mentor.
- New Mexico – a one year mentoring programme with 12 meetings with the mentor,³⁹⁹ certified by the mentor and covering a curriculum tailored to the individual's practice (e.g. sole practice, large firm, in-house).⁴⁰⁰
- Vermont – From 2016, a post admission one year mentoring programme requiring at least 40 hours of activities replaces the pre-admission clerkship.⁴⁰¹ A mentor checklist sets out requirements for attendance at court hearings and other activities: civil litigation; family law, criminal law; probate, environmental law; administrative law, other litigation related matters; transaction law; access to justice (including pro bon activity) and bar functions.⁴⁰²

The rise of law office programmes in the USA seems to serve a different purpose and is dealt with further in section 9.1.3 below.

9.1.1 New York State Bar examination

The New York qualification has been selected because it is frequently seen as a 'competitor' to the domestic solicitor qualification.⁴⁰³ As it is envisaged as a route to qualification rather than (as with the QLTS) a transfer route for those already qualified elsewhere, it also attracts graduates who have not yet qualified in their home jurisdiction. As preparatory courses for the New York bar examination are now available in the UK, the model is also comparatively well known to the extent of being seen by some LPC and BPTC graduates – and to some extent marketed as – a means to bypass the training contract/period of recognised training bottleneck.⁴⁰⁴

Table 9: New York

USA: New York	
Profession	Attorney
Time requirements	50 hours of pro bono (may be carried out during law school)
Assessment/certification of work experience requirements	Affidavit of compliance required and hours certified by supervisor
Working environment/required coverage	Can be anywhere in the world. Must be for the disadvantaged or in the court/government system. "The work must involve the use of legal skills and law-related activities that are appropriate for lawyers-in-training not yet admitted to practice, and you must avoid the unauthorized practice of law". ⁴⁰⁵
Supervisor specification	Attorney in good standing in practice or employed by law school, judge or attorney employed in court system
Other course/assessment requirements	Precursor: JD/law office programme and certification of skills competency/non US law degree During or after period (from July 2016): New York online law course and MCQ examination ⁴⁰⁶ Uniform Bar Examination: MBE: 6 hour, 200 MCQ examination on Constitutional law, criminal procedure, criminal law, contracts, torts, real property and evidence. ⁴⁰⁷ MPT: 2 90 minute problems designed to test: "an examinee's ability to use fundamental lawyering skills in a realistic situation and complete a task that a beginning lawyer should be able to accomplish. The MPT is not a test of substantive knowledge. Rather, it is designed to evaluate certain fundamental skills lawyers are expected to demonstrate regardless of the area of law in which the skills arise" ⁴⁰⁸ MEE: designed to test ability to communicate effectively in writing over 6 30 minutes questions requiring candidates to: "(1) identify legal issues raised by a hypothetical factual situation; (2) separate material which is relevant from that which is not; (3) present a reasoned analysis of the relevant issues in a clear, concise, and well-organized composition; and (4) demonstrate an understanding of the fundamental legal principles relevant to the probable solution of the issues raised by the factual situation." ⁴⁰⁹
Post qualification limited licensure	None.

There is no requirement for US JD providers to "teach to" the bar examination. Indeed, "[i]t has always been one of the most insulting epithets that could be levelled against a law school that it is 'teaching for the bar'".⁴¹⁰ ...

Although there are variations within the USA, the norm is for "bar preparation courses" to be delivered by commercial organisations, as they are for the QLTS and, in Hong Kong, the OLQE. As a corollary of the move towards experiential learning and pursuit of "practice readiness" in law schools, JD graduates seeking admission in New York must now provide certification that they possess "the skills and values necessary to provide effective, ethical and responsible legal services in this State".⁴¹¹ The New York Pro Bono Scholars program allows some JD students to substitute pro bono work for the final semester of their JD.⁴¹²

The bar examination arrangements in New York will change from July 2016, following a report in April 2015.⁴¹³ This report recommended:

- Adoption of the Uniform Bar Examination, both for portability across the USA and to increase the performance test element.

- A mandatory online course and MCQ examination in New York Law (under previous arrangements it had been possible for candidates to compensate weak knowledge of New York law by stronger performance on other questions).

In the course of the investigation that led to the report, a number of respondents, including bar associations, suggested that a period of clinic or supervised practice could substitute for all or part of the bar examination. The committee's response was:

[a]lthough there can be no quarrel that practical skills courses play an integral role in today's legal education, the Committee does not endorse the idea that a clinic, guided externship or other experiential learning course should substitute for the bar exam or a portion thereof.⁴¹⁴

The rationale for rejecting this proposal was that:

- The topic was outside the remit of the advisory committee.
- "[C]linical and other experiential learning opportunities vary widely depending on the program, supervising attorney, and law school. Inserting a subjective element into what has always been a standardized licensing exam would raise fairness and quality-control concern".⁴¹⁵
- There would be logistical problems.
- It would prevent the state from benefiting from (the portability of) the UBE.
- Law schools did not consistently support the proposal.

However:

If, as certain commentators suggest, it is essential to ensure that new attorneys have had experiential training, then such training should be explored as a separate admission requirement rather than an optional substitute for a portion of the bar exam.⁴¹⁶

9.1.2 Pro bono requirements

An additional change to the bar examination requirements in New York has been the mandatory 50 hours pro bono work requirement introduced prior to the ABA's requirement for experiential learning in the JD. It is clear that the principal target⁴¹⁷ is unmet legal need and in instilling in new lawyers a commitment to pro bono work generally. Any educational outcome is secondary:

[H]elping prospective lawyers to build the valuable skills and acquire the hands-on experience so crucial to becoming a good lawyer. There can be no argument that newly-minted lawyers are simply better at their jobs when they receive direct experience in the practice of law.⁴¹⁸

Critics of the proposal argued that the quality of legal advice provided by those without prior practice experience would be limited and that the requirement exacerbated the existing debt burden of students.⁴¹⁹ Proponents pointed to the public good; the fact that work would be supervised and that the hours requirement was minimal.⁴²⁰ The definition of "pro bono" is generous and includes work anywhere in the world as well as during law school, in student clinics and in schemes where stipends are available.⁴²¹ A member of law school faculty, an attorney or a judge must supervise the work.⁴²² The ABA⁴²³ lists the advantages of the scheme as:

- Serving low-income clients and communities.
- Inculcating a service ethic among tomorrow's lawyers.
- Providing hands-on practice experience for lawyers in training.
- Yielding data to analyse the service impact [because entrants are required to submit an affidavit describing the work done].

Drawbacks were:

- Inadvertently diluting the definition of "pro bono" [the expression "pro bono or law-related public service" was preferred].
- Placing an administrative burden on non-profit and government law offices.
- Placing an administrative burden on law schools and students [in providing opportunities, or where the JD's pro bono requirement was different from that of the admitting authorities].
- Imposing a mandate to perform "volunteer" service.

Similar requirements are, or have been, under consideration⁴²⁴ in

- California, where the requirement for “pro bono or modest means” work will be completed at any point between the beginning of law school and the first year of licensed practice.⁴²⁵
- Connecticut, where a proposal made in 2013 has been shelved, apparently in favour of other means to encourage students to engage in pro bono activity.⁴²⁶
- Montana, where proposals to investigate were approved in 2014 (with one dissenter recording a concern about coercion and expense).⁴²⁷
- New Jersey,⁴²⁸ where proposals were rejected by the profession as “unnecessary, unworkable and an affront to consumers who expect experienced practitioners to provide legal services”.⁴²⁹

9.1.3 US law office/law reader programmes

Despite the explicit views of the National Conference of Bar Examiners that “[n]either private study, correspondence study, law office training, age nor experience should be substituted for law school education”,⁴³⁰ a number of states have developed “law office” or “law reader” routes and there is some advocacy for these to be expanded.⁴³¹

The defining route, however, remains the JD and bar examination and, on closer inspection, it becomes clear that the law office routes are, primarily, private tutoring arrangements aimed at passing the relevant bar examination. They appear to be designed for those who are unable, possibly for financial reasons, to pursue a full JD. As the bar examinations can be taken by, and are designed for, those with no workplace experience, it follows that they cannot assess topics that can only be learned in the workplace. Nevertheless at least in the New York version, law office candidates are exempt from the requirement to certify that they have achieved competences in skills and professional values during the course of their JD (i.e. the new ABA requirements). The Vermont law office route includes skills in the checklist candidates are required to complete.⁴³² This at least suggests that some learning of skills and professional values in the workplace is assumed.⁴³³

Table 10: US law office routes

	Length and eligibility	Supervision	Internal assessment and reporting	Relationship with bar examination	2015 rates ⁴³⁴	candidates/Pass
California ⁴³⁵	Study of law in a law office or judge's chambers during regular business hours for at least eighteen hours each week for a minimum of forty-eight weeks a year (for 4 years)	Personal supervision for at least 5 hours a week. Curriculum set by supervisor	Semi-annual reports on cases/books read and must include written examination questions and answers (set by supervisor)	Must pass both first year JD and state bar examinations	3 sat, 2 passed (67%)	
Maine ⁴³⁶	Student must have completed 2/3 of a JD prior to 12 months in a law office	Supervision is by a practising attorney. Curriculum must be set in advance		Must pass bar examination		
New York ⁴³⁷	Student must have completed 1/3 of a JD prior to 36 months in a law office in New York State	Supervision is by a practising attorney.	Affidavits by student and supervisor when applying for bar examination	Must also complete 50 hours pro bono requirement and pass bar examination	17 sat, 2 passed (12%)	
Vermont ⁴³⁸	4 years	Supervision by practising attorney with at least 3 years' experience. Recommended list of topics (including clinical experiences defined as attending hearings) ⁴³⁹	6monthly report on tasks done, skills learned, reading and plans for next 6 months (including skills learned)	Must pass bar examination	7 sat, 2 passed (29%)	
Virginia ⁴⁴⁰	3 years, minimum 25 hours of study a week	Supervisor must have a breadth of practice, an adequate library and provide at least 3 hours personal supervision each week. Supervisor must have teaching experience at university/practitioner level.	A written examination prepared, administered, and graded by the Supervising Attorney. May be oral evaluations of progress to the board. Quarterly written reports on progress and completion of examinations.	Must pass bar examination	7 sat, 1 passed (29%)	
Washington ⁴⁴¹	4 years of regular paid employment in Washington state with a lawyer or judge. Must have UG degree.	Must follow reading list. ⁴⁴² Supervisor must be lawyer/judge with at least 10 years practice experience.	Student reports every 3 months. Tutor reports monthly, including on examinations set.	Must pass bar examination	11 sat, 6 passed (55%)	
West Virginia ⁴⁴³	3 years as legal assistant/paralegal	Supervised by attorney admitted in the state. Curriculum must equip student to be "knowledgeable in the law, competent to practice law, and of good moral character"	Certified by two attorneys one of whom must have supervised the candidate for at least 6 months.	Must pass bar examination	n/a	
Wyoming ⁴⁴⁴	1/3 JD plus 2 years practice or 2/3 years JD plus 1 year practice	In the office of a member of the bar, or one of the judges of this state,		Must pass bar examination	n/a	

9.2 Different configurations of vocational courses and supervised practice

The concept of alternative routes to a single end point is common in England and Wales. The different routes towards qualification as a solicitor are, at present (disregarding the different routes to CILEx Fellowship):

Table 11: Routes to qualification as a solicitor in England and Wales⁴⁴⁵

Academic stage	Vocational stage	
Apprenticeship	Apprenticeship	Apprenticeship
CILEx Fellowship	LPC	N/A
LLB	LPC	Period of recognised training
UG degree + GDL/CPE	LPC	Period of recognised training
LLB	BPTC + short form LPC	Period of recognised training
UG degree + GDL/CPE	BPTC + short form LPC	Period of recognised training
LLB	LPC	Equivalent means
UG degree + GDL/CPE	LPC	Equivalent means
LLB	BPTC + short form LPC	Equivalent means
UG degree + GDL/CPE	BPTC + short form LPC	Equivalent means
Equivalent means	LPC	Period of recognised training
Equivalent means	LPC	Equivalent means
Equivalent means	Equivalent means	Period of recognised training
LLB	Equivalent means	Period of recognised training
UG degree + GDL/CPE	Equivalent means	Period of recognised training
LLB	Equivalent means	Equivalent means
UG degree + GDL/CPE	Equivalent means	Equivalent means
Equivalent means	Equivalent means	Equivalent means
QLTS	QLTS	N/A

Internationally, there seem to be four main approaches to alternative routes for domestic entrants, although some, e.g. Ontario, employ more than one:

- Equivalence is determined by assessment of all candidates against a set of competences (e.g. CILEx) or by a bar examination;
- Complete separation of routes and assessments (French notaries);
- Where the defining route is traineeship (as in Ontario) and the vocational course apparently perceived as a substitute for it;
- Where the defining route is an academic course (as in the USA) or a vocational or exempting course (as in Australia) and the alternative apparently perceived as a substitute for it.

Where transferees from other professions, states or countries are concerned, the split seems to be between:

- No special accommodation for transferees, other than, perhaps an accelerated route for mature entrants.
- A separate test for all or some categories of transferee (e.g. the QLTS, BTT, CILEx graduate entry, some US provisions for qualified US lawyers from other states, the OLQE in Hong Kong, modified domestic arrangements within the EU such as the French aptitude test⁴⁴⁶)
- As a matter of principle requiring all candidates to take the same assessment as domestic entrants (US provision for foreign transferees).

Almost certainly as a matter of international comity, there appears to be limited appetite to question the route an individual transferee has followed and, in particular, whether it did, or did not include a mandatory period of workplace experience. Where there are separate tests, these tend to focus on aspects of the local law and procedure, or on language competency.

9.2.1 Australia

The general trend in Australia⁴⁴⁷ has been to replace articles or training contracts with a combination of practical legal training course (PLT/GDLP/MLP/Tasmanian LPC⁴⁴⁸) and work experience requirements attached to those courses. A variant is the exempting degree offered by Flinders University.⁴⁴⁹ It should also be noted that the academic stage, in Australia, is generally represented either by a 4-5 year double degree in law and another subject or, increasingly, by a postgraduate JD.⁴⁵⁰ Clinical legal education is widespread and PLT workplace experience requirements may be, in large part, substituted by a clinical experience module.⁴⁵¹ There is a variety of PLT providers, including organisations such as the Leo Cussen Institute⁴⁵² and College of Law;⁴⁵³ universities as self-standing courses; as part of a Graduate Diploma/Certificate in Legal Practice,⁴⁵⁴ a master's degree or an exempting degree. In 2011, Evers, Olliffe and Pettit studied three cohorts of graduates from the PLT course at the University of Sydney, looking at the relationship between the PLT and the practice needs of newly admitted lawyers. They found that although there was a considerable degree of alignment between the course content and subsequent practice, further attention was needed to drafting, critical thinking, technological literacy, time management and negotiation.⁴⁵⁵

Douglas and Nottage identify this trend towards the vocational course in place of articles, moving from the profession to the universities as gatekeepers for entrance, as occurring from the 1960s.⁴⁵⁶ The shift was initially a response to increasing numbers of graduates placing pressure on available articling positions⁴⁵⁷ although a five year apprenticeship route remained available in New South Wales and Queensland until the 1970s.⁴⁵⁸ It should be noted that, in Australia, a distinct conceptual difference is often made between "articles", often perceived as being unstructured and haphazard, and "traineeship", seen to be more structured.

In addition, a general movement towards the use of professional competence frameworks was visible in Australia from the 1990s. A contents list for practical legal education, applying to both PLT courses and articles, was published in 1993;⁴⁵⁹ and a national competence framework for newly qualified lawyers was developed in 2002.⁴⁶⁰ The current version was issued in 2015.⁴⁶¹ Writing in 1998, Crebert and Gasteen saw competence as inherently connected with having had experience in practice that could not be replicated in the classroom:

...it is only when practitioners can construct their own theory of practice based on their consistent performance of the skills necessary to carry out their work that they can be called competent. To qualify as competent a lawyer must display a consistent level of "'learned and practised skills' preferably at a high, rather than a base level. A competent lawyer will integrate holistically his or her knowledge of the law with an ability to practice that law."⁴⁶²

More than one Australian author has described what is learned in the workplace by reference to a key concept of "responsibility":

The business of a solicitors' office; the dynamics of the provision of legal services; contact with and responsibility to clients; the process of professionalization.⁴⁶³

The employee has for the first time a responsibility to satisfy others, whether to a supervising practitioner for a demonstration of cost efficient knowledge and skills, to the office for facilitating its administration by following the procedures laid down, or to the client to expedite the matter.⁴⁶⁴

By 2009, however, Northern Territory, South Australia, Queensland and Western Australia were the only states to offer articles, combining them with required classroom activity. Victoria was the only state to retain a period of articles without accompanying classroom-based training as an alternative to a vocational PLT course.⁴⁶⁵ Concerns about the variable quality of articles continued to be articulated, and Chrapot and Lansdell commented:

.. as conveners of PLT programs, we regularly receive applications from students who have left articles and sought admission by way of a PLT course because the conditions/experience in articles was less than adequate. For those practitioners who experienced worthy articles training, the articles system will usually be better than PLT: who can compete with the real thing? However on an objective basis most articles cannot cover all the substantive and skill areas which are covered in practical legal training.⁴⁶⁶

In 2014, Giddings and McNamara identified a different tension between the PLT and workplace experience:

The recommendation for PLT programs to replace articles was made on the basis that there 'would still remain, however, the need for actual and supervised office practice in the handling of clients' affairs'. Acceptance by PLT programs that they 'cannot act as a direct substitute for articles', and uncertainty around the academic efficacy of online delivery, reinforces the need for actual workplace training. The predominant mode of practical training in PLT programs is simulated activities. Although useful for teaching a wide range of skills, they 'are not a substitute for client instruction and supervision in a "real" setting'.⁴⁶⁷ [Footnote references omitted]

Three states currently offer the PLT and a training contract as alternative routes: Queensland, Victoria and Western Australia. Australia does not use a centralised bar examination, although Tasmania does so by default, having a single law school. The 2015 version of the competence statement,⁴⁶⁸ with detailed performance criteria appears in Schedule 2 of the Legal Profession Uniform Admission Rules 2015.⁴⁶⁹ These will explicitly apply to PLT (at level 8 in the Australian Qualification Framework); placements attached to PLTs and articles/traineeships where these are available, requiring competence to be assessed in each skill, practice area and value. Where performance criteria require observation rather than personal performance, "the entry-level lawyer must document in writing and critically evaluate what has been observed; and (ii) the resulting record must be assessed by the relevant PLT provider or SLT provider". Under the rules, a PLT workplace placement must be of at least 15 days.⁴⁷⁰ Where a training contract or articles is available, this must amount to "12 months' full-time work which includes a minimum of at least 90 hours' programmed training. So far, only New South Wales and Victoria have adopted this set of rules.⁴⁷¹

Douglas and Nottage noted that, as places on the LLB/JD and PLT are freely available, the market now operates as a gatekeeper after qualification. There is normally a limitation post-qualification on independent practice for up to two years⁴⁷² and this may operate as an equivalent to the training contract/period of recognised training of England and Wales. Foley *et al* carried out a rare longitudinal study between 2009 and 2011 of a sample of newly admitted lawyers through their first year of practice – under this limited licence - after the PLT. Their findings were that critical elements of transition to practice (that is, what is learned in the workplace) involved:

- Finding the best balance between autonomous/ independent work and close mentoring and supervision
- Realising that legal practice is not simply a rational and rule-based activity, but one that will involve ongoing uncertainty [which included emotional labour⁴⁷³]
- Finding a comfortable accommodation between the new lawyer's own values and those modelled by colleagues.⁴⁷⁴

The requirements of supervision during the limited licence period are, however, not explicit, "meaning that there is a great deal of variance between understandings of what supervision entails in a practical sense"⁴⁷⁵ although best practice guidelines may be available.⁴⁷⁶

It should, however, be noted that a review, not unlike the LETR, is underway in Australia, working backwards from entry level

Once we understand what a legal practitioner needs to be able to do in order to practise effectively, it would then also be possible to derive the threshold level of competence required of entry-level lawyers; and to propose appropriate means to ensure that all those seeking admission have that threshold competence.⁴⁷⁷

A component of this review involves "determining whether a period of supervised workplace experience is required before or after admission, and whether the content of that experience needs to be more closely regulated".⁴⁷⁸

New South Wales

The history of solicitors' legal education in New South Wales has been a shift from articles, to, in the 1970s, a vocational course⁴⁷⁹ followed, (as a compromise) by admission and a period of limited licensure rather than pre-qualification supervised practice.⁴⁸⁰ Proposals were, however, made in the 1990s⁴⁸¹ to reinstate the pre-qualification supervised practice requirement because:

- "[T]he abolition of articles has meant that experience has been lost or at best transferred to after admission. Experience, however, remains an essential element of the whole process of preparation for practice";

- Treating the post-qualification limited licensure year as a training period had proved ineffective;
- The accompanying vocational course “is better able to prepare its students for practice if it can take into account that the preparation will also include a period of work experience”;
- Some aspects of competence for the point of qualification are better learned in the workplace than in the classroom or in simulation
- Resources did not permit continued provision of the vocational course to those who did not wish to practice but simply to acquire the title.”⁴⁸²

In common with the Australian Capital Territory, the Northern Territory, South Australia and Tasmania, admission in New South Wales is now entirely by vocational course combined with work experience and followed by a period of limited licensure. New South Wales, in common with Victoria, has now implemented the 2015 Uniform Admission Rules.⁴⁸³ Although these allow for an articles/traineeship route, there is no evidence that one has been, or is to be, reinstated in New South Wales.

Queensland

There is a particular interest in Queensland in the role of the supervisor. Giddings and McNamara, in a 2011 study of lawyers in Queensland, found 2/3 of the sample spending 20% of their time on supervision.⁴⁸⁴ A repeated survey in 2013, which compared law firms with incorporated legal practices, found that almost three quarters of supervisors now spend at least 20% of their time on supervision.⁴⁸⁵

Victoria

A survey of 216 newly qualified solicitors in 1998⁴⁸⁶ indicated that the preferred approach was to retain articles, with a proposal similar to the Ontario minority approach of coursework. A proposal for a 3 year limited licence period was the second choice and the vocational course alternative the third (although graduates of the two existing systems were more likely to favour the route they had followed themselves). Those who had followed the articles route raised familiar comments about lack of structure (particularly in smaller firms), pay and working conditions, and variability in experience and supervisor effectiveness. There was some support for integrating the PLT into the LLB. Another survey in 2004⁴⁸⁷ of 265 articulated clerks indicated that 63% of trainees were in firms with a specific in house training programme.⁴⁸⁸ Nevertheless, increased mentoring from colleagues was requested by 45% of respondents. Results about what was learned are summarised in the table below. However, some respondents added other topics (such as “managing partners’ egos” or “photocopying, hand deliveries”) and some responses included examples of observation only. Sixty-one per cent had been asked to perform non-legal administrative tasks.

Table 12: What is learned in a Victorian articulated clerkship (2004)⁴⁸⁹

	N =	Percentage of Total Sample
Ethics and professional responsibility	185	69.8%
Work management	229	86.4%
Legal writing, drafting and preparing documents	250	94.3%
Interviewing and communication skills	170	64.2%
Negotiation and dispute resolution	135	50.9%
Legal analysis and research	236	89.1%
Advocacy (such as appearances at directions hearings or callovers) ¹⁰	128	48.3%
Advising clients	196	74.0%
Other	14	5.3%

¹⁰ An application to obtain a trial date.

A review of legal education in Victoria took place in 2006⁴⁹⁰ considering, inter alia, “whether there is merit in abolishing articles altogether and replacing it with practical legal training”. The report balanced concerns about the variability of the experience in articles and its lack of standards and content with a belief in “good quality 'workplace experience' [as] the best method for equipping a person for legal practice”. This led to replacement of articles by the more structured traineeship in 2008⁴⁹¹ and the retention of the period of supervised practice as an alternative to the vocational course. In 2015, Victoria moved to a model where “supervised workplace training” (SWT) is the alternative to a PLT. Statistics indicate that the PLT route has gained importance, with 597 articulated clerks and 262 PLT graduates admitted in 2005, compared to 152 SWT graduates and 1,086 PLT graduates in 2015.⁴⁹²

The state adopted the Legal Profession Uniform Admission Rules 2015 from July 2015, continuing to retain the alternative routes.

Table 13: New South Wales, Queensland, Victoria and Western Australia

Profession	Time requirements		Assessment/certification of work experience requirements	Working environment/required coverage	Supervisor specification	Other course/assessment requirements	Post qualification limited licensure
Solicitor	New South Wales	15 weeks or 5 weeks plus Clinical Experience Module.	Work experience ⁴⁹³ certified by supervisor.	Anywhere in Australia and possibly overseas. Working for legal practitioner in private practice, approved "government, semi-government or corporate legal office or department, employer or employee association"; judge; legally qualified tribunal member, Community Legal Centre, any other approved organisation. Must cover application of legal knowledge and skills to the resolution of real-life problems of a legal nature; experience of procedures and dynamics commonly found in offices in which legal services are provided; contact with clients of the work experience placement; and experience in the process of becoming a professional practitioner of the law.	Legal practitioner with full PC/restricted PC for 2 years; judge; legally qualified tribunal member, other Australian lawyer (with permission), member of College of Law Staff	Precursor: LLB/JD at accredited university or Diploma in Law Work experience can be done before or after PLT coursework component. Length of course depends how it is configured as it may, for example, be studied in parallel with a JD ⁴⁹⁴	18 months if qualified via traineeship (i.e. historically), otherwise 2 years. Qualified lawyers may become barristers after passing the NSW Bar Examination and then satisfactorily completing the 1 month Bar Practice Course ⁴⁹⁵
Legal practitioner ⁴⁹⁶	Queensland	15 weeks or 5 weeks plus Clinical Experience Module.	Work experience ⁴⁹⁷ certified by supervisor.	Anywhere in Australia. Working for legal practitioner in private practice, judge, legally qualified tribunal member, Community Legal Centre, any other approved organisation. Must cover: application of legal knowledge and skills to the resolution of real-life problems of a legal nature; experience of procedures and dynamics commonly found in offices in which legal services are provided; contact with clients of the work experience placement; and experience in the process of becoming a professional practitioner of the law.	Legal practitioner with full PC/restricted PC for 3 years; judge; legally qualified tribunal member, other Australian lawyer (with permission)	Precursor: LLB/JD at accredited university Work experience can be done before or after PLT coursework component. Length of course depends how it is configured but could be 6-12 months.	2 years Qualified lawyers may become barristers by passing Bar Practice Examinations and 6 week Bar Practice Course. ⁴⁹⁸
	Queensland	At least 1 year traineeship ⁴⁹⁹	Supervisor must certify that APLEC competences achieved.	A law practice, or an office other than the office of a law practice. Must cover a list of skills drawn from the national competence statement	Legal practitioner with 5 years of legal practice (at least 3 years as a solicitor).	Precursor: LLB/JD at accredited university During period: 90 hours programmed training during traineeship, including ethics.	18 months Qualified lawyers may become barristers by passing Bar Practice Examinations and 6 week Bar Practice Course. ⁵⁰⁰
Lawyer	Victoria	15 weeks or 5 weeks plus Clinical Experience Module.	Work experience ⁵⁰¹ certified by supervisor.	Legal practitioner in private practice, approved "government, semi-government or corporate legal office or department, employer or employee association"; judge; legally qualified tribunal member, Community Legal Centre, any other approved organisation. Must "occur in the delivery of legal	Legal practitioner with full PC/restricted PC for 2 years, judge, legally qualified tribunal member, other Australian lawyer (with permission)	Precursor: LLB/JD at an accredited university Work experience can be done before or after PLT coursework component. Length of course at one of	2 years ⁵⁰² Qualified lawyers may become barristers by passing Bar Practice Examinations and 8 week Bar Readers Course. ⁵⁰³

Profession	Time requirements	Assessment/certification of work experience requirements	Working environment/required coverage	Supervisor specification	Other course/assessment requirements	Post qualification limited licensure	
			services and include: application of legal knowledge and skills to the resolution of real-life problems of a legal nature; experience of procedures and dynamics commonly found in offices in which legal services are provided; contact with clients of the work experience placement; and experience in the process of becoming a professional practitioner of the law."		3 accredited providers depends how it is configured but could be 6-12 months.		
	Victoria	1 year supervised legal training	A training plan must be approved prior to commencement. The competency standards must be reached through internal or external training (approved providers ⁵⁰⁴). Must maintain workbook mapped against competences and this plus statutory declaration by supervisor is submitted with application for admission.	Australian lawyer in private practice or a government, corporate, commercial or community legal office, in the jurisdiction. Coverage must be as set out in the approved training plan.	With at least 5 years practice as solicitor/barrister of which last 3 years as a solicitor. Others, e.g. judges, may be approved.	Precursor: LLB/JD at an accredited university	18 months Qualified lawyers may become barristers by passing Bar Practice Examinations and 8 week Bar Readers Course. ⁵⁰⁵
Lawyer (it is possible to practise as a barrister only) ⁵⁰⁶	Western Australia	15 weeks or 5 weeks plus Clinical Experience Module. ⁵⁰⁷	Work experience certified by supervisor.	Australian legal practitioner/ government legal office/judge/legally qualified tribunal member. In any Australian jurisdiction. Must cover: "(a) contact with clients (b) application of legal knowledge and skills to the resolution of real-life problems of a legal nature; (c) experience of procedures and dynamics commonly found in offices in which legal services are provided; and (d) experience in the processes of becoming professional practitioner of the law."	Australian legal practitioner with 2 years practising certificate/legally qualified tribunal member/government lawyer with 2 years' experience/judge	Precursor: LLB/JD at an accredited university. ⁵⁰⁸ Work experience can be done before or after PLT coursework component. Length of College of Law Course may vary depending on choices made.	2 years
	W Australia	1 year articles of clerkship ⁵⁰⁹ (possible reduction 6 months for former judges' associates).	Supervisor must certify that competences achieved.	A law practice. Must achieve competences.	Local legal practitioner approved by the board "It is generally expected that the principal is practising on their own account, i.e. as a sole practitioner or equity partner in a law practice, or as a legal practitioner director of an incorporated legal practice. Other practitioners may apply for approval." ⁵¹⁰	Precursor: LLB/JD at an accredited university During period: must complete Leo Cussen Articled Clerks Training Program. ⁵¹¹ Must cover 2 option areas either in-house or through Leo Cussen.	18 months

9.2.2 France

France, like England and Wales, has a number of recognised and regulated legal professions, as well as an unregulated sector (which includes the in-house *juriste d'entreprise*). Although not formally regulated, a paralegal role as an adjunct to the work of a notary has some recognition: "un technicien du droit qui rédige les actes, rassemble les pièces administratives nécessaires, suit les dossiers et parfois reçoit les clients".¹¹⁵¹² Two professions have been selected for the purposes of this document, one that is moving towards an increased emphasis on workplace experience and one that has alternative routes to qualification.

Table 14: France

[Details may vary in different administrative regions/*départements* of France]

Profession	Notaire (voie universitaire)	Notaire (voie professionnelle)	Avocat
Time requirements	2 years (paid)	30 months (paid)	6 months <i>stage cabinet</i> as part of 18 month CAPA course [at present]
Assessment/certification of work experience requirements	Training Report of 40 – 60 pages on the work experience and the 4 courses taken in parallel assessed by a jury of two academics and a <i>notaire</i> to the <i>Diplôme supérieur de notariat</i> ⁵¹³	Training Report on the work experience assessed by a jury of an academic, two <i>notaires</i> and a <i>notaire assistant</i> ⁵¹⁴ leads to the <i>Diplôme de Notaire</i> . Arrangements for the assessment of the report change from January 2017. ⁵¹⁵	CAPA examination of "five-hour written assessment where the candidate gives client advice and then four oral arguments covering substantive law, professional conduct and a report on the training period with the <i>avocat</i> ." ⁵¹⁶ [at present]
Working environment/required coverage	Notarial office. There may be requirements for range of exposure and regular reporting to supervisor. ⁵¹⁷	Notarial office or, at least in some areas: an <i>avocat</i> , <i>huissier</i> , liquidator, accountant, public administration or legal services/tax organisation, overseas with a regulated lawyer. ⁵¹⁸ There may be requirements for range of exposure and regular reporting to supervisor. ⁵¹⁹	Office of an <i>avocat</i> .
Supervisor specification	<i>Notaire</i> (or other approved professional)	<i>Notaire</i> (or other approved professional)	<i>Avocat</i>
Other course/assessment requirements	Precursor: <i>Master 1 en droit</i> (4 years) <i>Master 2 droit notarial</i> (1 year) at one of 9 universities ⁵²⁰ During period: a course and examination once every 6 months. ⁵²¹	Precursor: <i>Master 1 en droit</i> (4 years) ⁵²² <i>Master 2 en droit</i> (1 year) required from 2014 Initial module (1 month) with written and oral examination During period: 5 course modules in family law 1 and 2; property law 1 and 2 and company law each with written and oral examinations. ⁵²³	Precursor : <i>Master 1 en droit</i> (4 years) CAPA entrance examination (from 2017 a single national entrance examination) ⁵²⁴ First 12 months of 18 month CAPA course
Post qualification limited licensure	Qualification is as a <i>notaire assistant</i> . Progression to <i>Maître notaire</i> on nomination by the Ministry of Justice	Qualification is as a <i>notaire assistant</i> . Progression to <i>Maître notaire</i> on nomination by the Ministry of Justice	Must register with a <i>barreau</i> and maintain CPD requirements [at present]

As with other civil law countries, the route to qualification as an *avocat* has historically been strongly based in the university. The route to qualification is prescribed by legislation. The one year *Certificat d'Aptitude à la Profession d'Avocat* (CAPA) course followed by a two year period of supervised practice was changed, in 2014 to an 18 month period composed of a six month course, a six to eight month *projet pédagogique individuel* followed by a six month period of supervised practice.⁵²⁵ More recently, however, the Conseil National des Barreaux formed a commission to review legal education, including:

...considering an in-depth reform of the initial training; primarily, this would focus the training on internships. The extension of the training to 18 months raises both the issue of financing professional legal training, and the related issue of equal access to the profession. However, students receive an honorarium during their law office internships, and this may also be true of their PPIs.¹² There is also a system of scholarships granted by

¹¹ "a legal technician who drafts documents, collates the necessary legal documents, manages files and sometimes sees clients."

¹² Personal pedagogical project completed as the second 6 months of the CAPA course.

the federal government that help students finance their training; however, these do not completely, or even substantially, cover their costs.⁵²⁶

The commission reported in 2014, recommending

- Centralisation of the CAPA entrance examination
- A revised vocational stage comprising:
 - Four months in the classroom;
 - Six months in the workplace in France or elsewhere in the EU;
 - Two months break or preparation for the CAPA examination.
- That the six month *projet pédagogique individual* becomes optional.
- Revision of the CAPA examination to focus on ethics and “*deux épreuves d’admission: une note de contrôle continu et un grand oral*”.
- A mandatory one year of post-admission supervised practice.⁵²⁷ This proposal appears to have received support from the profession, but concerns were expressed by at least some students about payment, the additional delay in qualification and the dependent status of the *référendaire*.⁵²⁸

The CAPA entrance examination will be centralised from 2017. Current activity of the commission focuses on the academic stages and, following a recent judicial review, the right of students to progress within the Master 1 degree.⁵²⁹

The notarial profession in France has operated alternative routes for some time. At present (from 2014⁵³⁰) there are two. One is based in a university or Centre de Formation Professionnelle Notariale and the other embedded in the workplace with courses in parallel provided by a Centre de Formation Professionnelle Notariale. Each progresses towards its own diploma. Work experience (the *stage*) is normally obtained through the market, and French students express many of the same concerns about obtaining a *stage*,⁵³¹ and potential exploitation within it⁵³² as do their British peers.

9.2.3 Ontario

Articles are culturally well embedded in Canada, and arguments that they should be abolished have consistently failed.⁵³³ Writing in 1998, Fitzgerald suggested a systematic review of articling models focused on identifying what needed to be learned to bridge the gap between what was required for practice and what entering students already knew. This, she argued, would be a way to address the commonly identified problems of variation in experience; inconsistencies in supervision and feedback; “inconsistent instruction about professional values and attitudes”; treating the period as one of probation, and deploying trainees on routine and mundane activities.⁵³⁴ As a result of concerns of this kind, steps were taken in 1992/93 to strength the quality and consistency of articles by requiring educational plans covering a defined list of skills areas to be filed and approved in advance; specifying who could act as principal and requiring regular reporting.⁵³⁵

A newer development is that of the National Competence to Practice Standards,⁵³⁶ perceived by at least one writer to encourage a distinct “experiential turn” in the legal academy:⁵³⁷

...there has been little research done in Canada into law school education in the context of its contribution to competencies needed in practice. We need facts and figures in order to determine where we are and where we need to go.⁵³⁸

However, concerns have been expressed about the reliability of performance assessment models currently used to assess the competences.⁵³⁹ The Federation of Law Societies of Canada currently proposes a centralised national examination of those competences.⁵⁴⁰ There is some internal evidence that this plan has been constrained by resources: interviewing competence, for example, is to be tested by candidates reviewing a transcript of an interview rather than by OSCE.⁵⁴¹

Table 15: Ontario

Ontario, Canada		
Profession	Lawyer (articling route)	Lawyer (LPP route)
Time requirements	10 months	4 months linked to LPP course
Assessment/certification of work experience requirements	Supervisor appraisal of performance against competencies	As part of LPP course
Working environment/required coverage	Competences: Ethics and professional responsibility, interviewing, fact investigation and legal research, drafting and legal writing, planning and advising, file and practice management, negotiation, advocacy, transactional/advisory matters	Competences: Ethics and professional responsibility, interviewing, fact investigation and legal research, drafting and legal writing, planning and advising, file and practice management, negotiation, advocacy, transactional/advisory matters
Supervisor specification	Principal must be "actively engaged in the practice of law for three of the five years immediately preceding the commencement of an articling placement, and must also be an exemplar of the profession, having regard to all circumstances, including but not limited to the licensee's experience, competence, ethical standards and professional conduct record" ⁵⁴²	Organised by law school.
Other course/assessment requirements	Precursor: JD Before, during or after period: licensing examination	Precursor: JD Before, during or after course: licensing examination
Post qualification limited licensure	None	None

The current position in Ontario is a response to a perceived "articling crisis", with between 12 and 15%⁵⁴³ of law school graduates⁵⁴⁴ unable to find a suitable position (disproportionally high for those in equality groups). Levin and Alkoby suggest that contributing factors include increased tuition costs that have driven up salaries so that small firms are deterred from offering articles.⁵⁴⁵ They also note a differential effect on students from minority groups and those not wishing to practise in commercial firms. There has also been an increase in law schools and in the number of graduates.⁵⁴⁶

The Articling Task Force of the Law Society of Upper Canada has conducted a detailed consultation process on a number of options:

Option 1- The Status Quo: Under this option the Law Society would continue its current approach, with no major changes to the articling system.

Option 2-The Status Quo with Quality Assurance Improvements: This option adds to Option 1 by accepting that there should be systemic assessments or benchmarks against which to evaluate articling students' competence.

Option 3- The Replacement of a Pre-licensing Transition Requirement with a Post-licensing Transition Requirement: Option 3 is premised on a view that successful completion of the Law Society's licensing examinations is a sufficient threshold for licensing, if coupled with specific transitional training for the newly-licensed lawyer based on the employment or practice structure the newly-licensed lawyer enters.

Option 4- A Choice of either an Articling Requirement or a Practical Legal Training Course (PLTC) Requirement ("after law school" model or "during law school" model): This option continues articling but, recognizing that increasing placement shortages may pose an unreasonable barrier to licensing, provides a two-pronged approach to meet transitional training goals, using a PLTC as the alternative.

Option 5- Only a PLTC Requirement: Under this option, articling would be abolished and replaced with a PLTC requirement (whether after or during law school) for all candidates for licensing.⁵⁴⁷

The final report, published in 2012,⁵⁴⁸ adopted option 4 by a majority. The consultation and response to the reports attracted a great deal of attention including a live-streamed debate.⁵⁴⁹ The authors of the report agreed that retaining the status quo was not appropriate. They felt that there should be a pre-qualification rather than post-qualification "transition to practice" requirement; that "at least a significant part" of the required skills training could take place outside the workplace and that a new course, either as an alternative to, or a replacement of, articles could improve access. The majority of the authors felt alternative pathways could achieve this and that consistency would be assured by requiring candidates from both routes to achieve the same competences and to pass the same summative examination.

The minority felt that articling was not an appropriate way of ensuring competence and that access to it was not fairly distributed.

... a transitional training program must be justified as effective and directly related to ensuring that licensees have the core competencies to be lawyers. It should be fair and available to all who have the academic qualifications to seek to be a lawyer in Ontario. Articling does not meet these objectives, and we should not preserve it, or excuse its continued existence, by creating a new, inequitable, alternative route to licensing.

...

The majority acknowledges the limitations of articling, noting that “[t]o some degree the description of what the ideal articling experience addresses is a theoretical construct that is not reflected in the reality of the current profile of placements.” Indeed, the majority appears to accept that articling cannot be validated on any objective basis. In light of this, it is difficult to justify its proposal to have not one, but two, lengthy transitional programs, the first of which (articling) cannot be validated, and the second of which (the LPP) creates a new, unfair and similarly flawed approach. ... abolishing articling and having one track to licensing available to all is equitable and furthers access to justice.⁵⁵⁰

They recommended a two to three month course and assessments on legal knowledge, skills, business, professional and ethical issues, with ongoing Law Society supervision and inspection only of those lawyers who then immediately entered sole practice.⁵⁵¹ That is, a public protection model.

In the Ontario pilot of option 4, then, articles of 10 months⁵⁵² are seen as the defining route with the four month course and four month placement route (Legal Practice Program, “LPP”) an alternative to it.⁵⁵³ The placement is organised through the law school and targets areas of practice where there is an unmet legal need.⁵⁵⁴ The first two providers – Ryerson University (English)⁵⁵⁵ and the University of Ottawa (French)⁵⁵⁶ - have been joined by Lakehead University whose exempting JD includes the LPP within its three year curriculum.⁵⁵⁷

Both routes are aligned with the same list of competences that include tasks to be undertaken including, for example, carrying out an interview.⁵⁵⁸ Students in articles and their principals are required to upload records of their progress towards those competences.⁵⁵⁹

Candidates from both routes are also required to take the same pair of seven hour, open book multiple choice licensing examinations.⁵⁶⁰ However, as these can be taken at any stage prior to admission, it must be assumed that they cannot assess topics that can only be learned in the workplace, whether articles or the alternative four month experience. Comparison of the competences assessed in each environment demonstrates some alignment, with a focus on oral skills in the workplace and knowledge and analysis skills in the examinations.

Table 16: Competences assessed in different phases of the Ontario qualification

Experiential Training Competencies (LPP and articles) ⁵⁶¹	Entry Level Solicitor Competencies (examination) ⁵⁶²	Entry Level Barrister Competencies (examination) ⁵⁶³
Ethics and Professional Responsibility	A Ethical and professional responsibilities [by reference to 23 factors taken from the relevant code of practice]	A Ethical and professional Responsibilities
Interviewing	B Knowledge of the Law: Ontario and federal legislation, case law, policy, procedures and forms: General statutes, common law, policy, procedures and forms Real estate Wills, Trusts and estate administration and planning Business law	B Knowledge of the law: Ontario and federal legislation and case law Jurisdiction and fundamentals Limitation periods Evidence Principles of statutory interpretation Public law Criminal procedure Family law Civil litigation
Fact Investigation and legal research	C Establishing and Maintaining the Solicitor-Client Relationship Client identification Conflicts of interest Interviewing principles The retainer	C Establishing and Maintaining the Barrister-Client Relationship Identifying the client Conflicts of interest Interviewing principles The retainer

	Client communications	Client communication
Drafting and Legal Writing	D Fulfilling the retainer Administering the file Gathering information and analysing the file Developing the action plan Executing the action plan Completing the retainer	D Problem/Issue identification, analysis and assessment Information gathering, case analysis and planning Notice to affected parties Theory of the case
Planning and Advising	E Practice Management issues [including time management, costs, files management rules]	E Alternative dispute resolution ADR Negotiation
File and Practice Management		F Litigation Process Disclosure, production and discovery Motions and interim proceedings Trial or hearing preparation Applications for court, judicial reviews and prerogative remedies Conduct of the trial or hearing Appeals Post-disposition of matter
Negotiation		G Practice Management Issues
Advocacy		
Transactional/Advisory matters		
Performance Appraisal Competencies:		
Establishing the client relationship (task: interview a client)		
Conducting the matter: matter management (task: draft a legal opinion)		
Conducting the matter: advocacy (task: represent a client [in court, ADR or negotiation])		
Ethics and Professionalism (task: professional responsibility assessment)		
Practice Management (task: use of law firm/legal practice management system)		

This pilot is in the early stages and no formal evaluation has yet been published. A report on the first two years is expected in September 2016 with formal evaluation to be completed in 2017. It is, however, the explicit aim of the Law Society to evaluate and compare both routes with a view to determining whether either, or both, should continue.⁵⁶⁴ The LPP continues to have its advocates, particularly amongst those who had felt articling to be a barrier.⁵⁶⁵ Concerns continue to be expressed about:

- the effect of the sometimes unpaid placement on the availability of paid articling routes;⁵⁶⁶
- whether the short placement attached to the LPP is adequate to allow “good quality networking and mentoring”;⁵⁶⁷
- the effect on access to justice for the public;⁵⁶⁸
- the phenomenon of unpaid articling;⁵⁶⁹ and
- whether influential commercial firms favour the articling route, leaving the LPP, with its additional cost, for disadvantaged groups.⁵⁷⁰

It has also been argued that an increase of places created by the LPP simply shifts the bottleneck to post-qualification employment.⁵⁷¹

9.3 Germany: centralised assessments both before and after the period of supervised practice⁵⁷²

Table 17: Germany

Germany	
Profession	<i>Rechtsanwalt/in</i> ⁵⁷³
Time requirements	2 years
Assessment/certification of work experience requirements	<i>Assessorexamen/Zweite Staatsexamen</i> ⁵⁷⁴ with written and oral components, including drafting intended as a capstone assessment of all that has preceded it. The assessment is administered both to those wishing to become lawyers and those wishing to become judges. ⁵⁷⁵
Working environment/required coverage	Seat requirements for the <i>Referendariat</i> vary between <i>Länder</i> but must include periods at "a court of ordinary jurisdiction in civil matters; a public prosecutor's office or at a court with jurisdiction in criminal matters; an administrative authority; with counsel [in private practice]; and at one or more optional agencies ⁵⁷⁶ where proper training is guaranteed". ⁵⁷⁷ The relevant legislation provides that the period can be served with "supranational, intergovernmental or foreign training agencies or with foreign lawyers. Credit may be given for training undergone at a faculty of law and at the German Academy of Administrative Science in Speyer" ⁵⁷⁸
Supervisor specification	[No information located]
Other course/assessment requirements	Precursor: <ul style="list-style-type: none"> • UG degree (3 ½ - 5 years) • <i>Erste juristische Prüfung</i> During period: preparatory courses for second examination
Post qualification limited licensure	

The German qualification framework is deliberately unified. Intending practitioners and intending judges follow a route that is in principle identical⁵⁷⁹ although students have been allowed to take an elective subject as part of their degree since 2002.⁵⁸⁰ The influence of judicial training is perceived by some as a detriment,⁵⁸¹ leading Kirchner to question how, if at all, professional conduct or legal ethics more generally, is dealt with.⁵⁸² Martinek, writing in 2013, detected a trend towards increasing internationalisation in German legal practice.⁵⁸³

Law is initially studied as an undergraduate degree, almost entirely in the state sector.⁵⁸⁴ This takes 3½-4 years⁵⁸⁵ but often lengthens in order to allow students to prepare for the first bar examination. Students may also be required to undertake workplace experience during vacations as part of their degree. Clinics have been slower to develop,⁵⁸⁶ largely because of restrictions on provision of legal services.⁵⁸⁷ The status of in-house lawyers was confirmed by legislation only with effect from January 2016.⁵⁸⁸

Responsibility for the first examination has been, since 2002, shared between the law faculties in respect of the elective element (tested as part of the degree) and the relevant state government for the remainder, tested separately.⁵⁸⁹ It has a written element, in which students are required to write legal opinions on a range of case scenarios and an oral element, which may be administered to students in small groups.⁵⁹⁰

Following success in the first examination, students enter a two year period of supervised practice. During this period, they are employed as temporary civil servants and must rotate between seats in different legal organisations. The proportion of time in each is organised by the relevant regional government authority.⁵⁹¹

Private tutoring⁵⁹² is commonplace, particularly for the first examination, and may fulfil a role occupied in England and Wales by the vocational courses, as "many students believe they learn how to apply the law only in the cram schools".⁵⁹³

The second examination is organised by the relevant state authorities. Individual configurations⁵⁹⁴ and pass rates vary.⁵⁹⁵ It is intended to be more oriented to practice than the first examination. Consequently, for example, facts in the scenarios may be disputed so that evidential questions arise and the opinion is

required to be a persuasive submission, employing a practitioner or judge’s approach to case analysis, rather than an academic essay.

In 2006, Wolff expressed concerns about disconnection between this practical experience, the courses delivered as preparation and the subsequent second bar examination.⁵⁹⁶ Some states at least now appear to include an oral presentation based on a case file and this may be related to the elective seat undertaken.

9.4 Italy: reinforcing both supervised practice and bar examination

Clinical legal education is a recent development⁵⁹⁷ in Italy, where legal education has been strongly focused on the university. Reforms in 2016 have been targeted towards reducing the number of lawyers (by insisting that progression into the period of supervised practice is on merit and adding mandatory vocational education). Apparent problems in variable pass rates in the bar examination, which have prompted some candidates to qualify in Spain and then return as foreign qualified lawyers,⁵⁹⁸ have been addressed by adding six monthly assessments during the period of supervised practice, and adjusting the bar examination. Quality of work experience – including allegations that some bar examination candidates in fact had had no work experience at all⁵⁹⁹ – has been reinforced by greater specification about activity and certification.

Table 18: Italy

Italy ⁶⁰⁰	
Profession	<i>Avvocato</i>
Time requirements	18 months [from 2016] (some practice rights accrue after the first year) ⁶⁰¹ of <i>practica forense</i> [from 2016, at least reimbursement of expenses]
Assessment/certification of work experience requirements	<i>Certificato di compiuta pratica</i> on completion of supervised practice Bar examination (oral and drafting components). From 2016 there will be additional written components and the two oral examinations will be on a) legal subjects and b) a case file received by the candidate 24 hours beforehand. From 2016, oral and written examinations will also take place at 6 month intervals during the period of supervised practice.
Working environment/required coverage	Italian law firm. From 2016, experience in public sector and judicial offices for 1 year must be supplemented by 6 months in the private sector but 6 months can take place elsewhere in the EU, with permission From 2016 – twenty hours a week and involvement in at least 20 hearings a term, investigation and drafting From 2016, access to qualification will be limited on academic merit
Supervisor specification	[No information located]
Other course/assessment requirements	Precursor: 3-year UG degree in law 2-year graduate degree (<i>Laurea in Scienze Giuridiche</i>) or 5 year master’s degree During period: from 2016, at least 160 hours of course attendance, (although this may take place in parallel with university study).
Post qualification limited licensure	Supreme Court advocates must have 12 years’ experience or 5 years’ experience and successful completion of an examination.

10 Critical factors

It is possible to group criticisms of supervised practice requirements that are not clearly linked with law schools into a number of broad themes, each of which has been addressed by allocation of responsibility, explicit or implicit, between the gatekeepers.

For regulators [the move to OFR] creates a dilemma between what the literature defines as the solutions of hierarchical intervention (top-down command and control) and the solutions of design (where the field of practice is designed by regulators in order to mitigate the risk of misconduct); and between the controls of the marketplace (largely competition) and the practices of community (the nurturing of social norms).⁶⁰²

10.1 Role

There appears to be a general consensus that workplace experience is critical both to practice and to the identity of the legal profession. Thirty-eight per cent of respondents to the LETR survey “completely

disagreed” with abolition of the training contract, although, for obvious reasons, paralegals and law students were rather more ambivalent.⁶⁰³ Different gatekeepers will have different perspectives on this. However, where the requirement is for periods of supervised practice, the range of possibilities includes those in the following table. There is clearly potential for tension between these roles.

Table 19: Roles of periods of supervised practice

Purposes	
Acquisition of competences	<p>“The Society recognizes the importance of the articling component of the Admission Process in assisting Articled Clerks with the development of the necessary competencies to begin the practice of law. As such, the Admission Process is primarily an educational experience. A satisfactory articling experience will result in an Articled Clerk being competent for admission to the Bar because the Clerk has acquired and can demonstrate adequate knowledge of:</p> <ol style="list-style-type: none"> 1. Appropriate substantive law; 2. Legal practice skills; 3. Professional responsibility; and 4. Practice and Law Office Management⁶⁰⁴
Acculturation/socialisation/induction to profession’s or employer’s practices, ethical code and culture	<p>“In the course of articling, students are exposed to the culture and language of the profession, the norms of practice and the values and beliefs of practitioners. These matters cannot be taught – they must be experienced”. [Canada]⁶⁰⁵</p> <p>“...[T]he emphasis in [bespoke LPC courses] is on the acquisition of firm-specific skills, capabilities and values and on the induction into a specific corporate culture, suggesting that in law, like accountancy, the firm is replacing the professional association as the primary source of socialization and identity formation for many lawyers.”⁶⁰⁶</p>
Application of prior learning	<p>“Acquiring the skills of competent ‘lawyering’ requires grounding in both theoretical and applied knowledge that can only be gained in the actual practice of law.”⁶⁰⁷ [Australia]</p>
Competitive advantage	<p>The training contract and its contribution to developing practical professionally trained commercial lawyers is viewed globally as the gold standard in terms of legal training and distinguishes the England and Wales qualification from its main rival—the New York Bar.[England and Wales]⁶⁰⁸</p>
Consolidation of professional group identity	<p>Articles are part of the profession’s identity, which is of vital importance at time of transition or change when the profession perceives its powers and privileges to be under increasing threat and attack.⁶⁰⁹ [Canada]</p>
“Correction” of what has been learned in law school as inadequately reflecting the realities of practice	
A Period of “legitimate peripheral participation” where activity and autonomy becomes increasingly less peripheral as the individual approaches competence	<p>“A newcomer’s tasks are short and simple, the costs of errors are small, the apprentice has little responsibility for the activity as a whole. A newcomer’s tasks tend to be positioned at the ends of branches of work processes, rather than in the middle of linked work segments. ...”⁶¹⁰</p>
Protection of the public from incompetent practitioners ⁶¹¹	<p>This purpose appears to be more common where there are limited licensure requirements after qualification.</p>
The public good	<p>See discussion of clinical legal education and the US pro bono requirements</p>
A demeaning or instrumental rite of passage demanded as a price for admission to the professional guild	
A means used by established members of the profession to control (and limit) access by others.	<p>...whether articling is an educational device designed to ensure the quality and competence of newly admitted lawyers or whether it is a market control device used by the profession to restrict the number of lawyers admitted into the market for legal services.⁶¹²</p>
A means for an employer to assess a potential long term employee over time	

Where the role is not articulated, it may be inferred from the size and shape of the work experience required. This may also tell us something about the balance of power between the gatekeepers.

10.2 Length

Except where (as with OISC and the Institute of Paralegals) accreditation is as a result of accumulated prior experience, it appears to be universal for supervised practice requirements to be defined in terms of length. In its response to LETR Discussion Paper 1, the Law Society of England and Wales commented:

The Law Society is not, wedded to the precise two year, four seat, model that currently applies. In many cases it works well in giving entrants to the profession experience of a number of areas of law, enabling them to make better career decisions when it comes to choosing which area of law to enter. The two year period is less about the time served or attaining a true understanding of an area of law, and more about learning processes and skills and how to adapt them to different areas of law - which is valuable experience in whichever area the entrant then decides to pursue. It is also a valuable period of time when practical problem solving and client counselling skills can be applied in real life. It puts the newly qualified solicitor in the position of being able to identify what they do not know and are not qualified to advise on, where to seek advice and how to approach gaps in their knowledge, which is essential in their practice and is aided in large part by the breadth of their training experience. There may well be other ways of achieving the same outcomes and it may well be that the CILEX, work-based learning and other routes are suitable for this. The regulators should not be prescriptive but ensure that the right standards and knowledge have been achieved.⁶¹³

Frequently there are provisions for the period to be curtailed as a result of prior experience and occasionally (e.g., in Scotland) for it to be lengthened, perhaps where elements of a vocational course or bar examination have been failed. The prescription of length operates both as a maximum and as a minimum. It is a maximum where there are arrangements for the period to be curtailed so that only those without relevant prior work experience serve the full period. It is a minimum in the sense that, provided that the length of time has been served and relevant outcomes or assessments have been achieved then, unless there is specific provision for it to be extended, a candidate need not have any other work experience in order to qualify. Whether, in fact, they need to have had such other work experience in order to be able to obtain the kind of employment that counts towards qualification is not treated as a regulatory matter. Expressions of explicit minima are rare. However, the Queensland one year training contract option is expressed as a minimum, as are current ABA requirements for the experiential learning component of the US JD.

No clear discussion of the optimum length of a period of pre-qualification supervised practice has been located in the literature. Longer periods appear to represent a desire to expose trainees to a breadth of work, although in fact, each individual component may be comparatively short and, indeed, too short to see transactions or matters to an end, or the implications of tasks carried out. Nevertheless, a longer period allows repetition which leads to improved learning, when, Benner suggests, the learner has "coped with enough real situations to note ... the recurring meaningful situational components [including] ... global characteristics that can be identified only through prior experience".⁶¹⁴ Benner goes on to suggest that competence, as a mid-stage between novice and expert can be observed in a nurse "who has been on the job in the same or similar situations two to three years".⁶¹⁵ In the legal context, longer periods are seen where:

- Classroom study is part time or limited, often taking place in parallel with the period of supervised practice;
- There has not or not necessarily been any prior study of the discipline at university level (e.g. ICAEW⁶¹⁶);
- The practice requirement is, as for some IP attorneys, in fact unsupervised;
- It may be necessary to correlate the length of the period with the length of an alternative route (e.g. US law office programmes);

- A breadth of experiences or areas of practice need to be included (e.g. Germany, England and Wales);¹³
- There is a stepped transition into independent practice (e.g. the Bar first and second six components of pupillage);
- Possibly, where there is a need to assert professional status by reference to the length and difficulty of training by comparison with other professions, or in a highly deregulated market.¹⁴

These prescriptions only relate to formal supervised practice. As described above in section 6.4, it is now commonplace in England and Wales for sometimes substantial periods of work experience to have taken place on an unpaid or paid paralegal basis in addition.

Shorter periods appear where:

- There is a substantial role for the market as gatekeeper for competence (e.g. the USA);
- The primary role of the period appears to be socialisation;
- Other strong components, such as a vocational course or bar examination, seem to be primary gatekeepers;
- The focus is on post-qualification limited licensure (Australia, the Bar in England and Wales, notaries in England and Wales).

If the purpose of the period is to allow individuals to achieve competence, then some trainees, particularly perhaps those with prior work experience, mature students and those transferring from other professions will achieve competence in a shorter period. The LETR review consequently suggested:

Recommendation 15

Definitions of minimum or normal periods of supervised practice should be reviewed in order to ensure that individuals are able to qualify or proceed into independent practice at the point of satisfying the required day one outcomes.

However, in a competitive market, others may be pressured into curtailing what is, for them, a necessary period of apprenticeship in order to be deployed in a full fee-earning capacity.

¹³ British Columbia is an outlier, with a range of areas to be experienced within a 9 month period. It might be noted that some of the shorter required periods are roughly equivalent to the conventional length of a "seat" in a training contract in England and Wales.

¹⁴ Sweden, with a highly deregulated market, has had one of the longest periods of required supervised practice, now reduced.

Table 20a: Length of period of pre-qualification supervised practice (where it takes place after, or is embedded into, an academic or vocational course)

This table gives periods of supervised practice necessary before qualification or the award of a professional title. The award of the title does not, however, mean that the individual is therefore entitled to practise, or to practise independently: see the cases of the Bar and notaries in England and Wales. It does not take into account circumstances where in order to qualify into profession A, it is necessary first to have qualified into profession B, which has its own supervised practice requirement (e.g. Jersey and Guernsey lawyers who are first required to qualify as solicitors in England and Wales first).

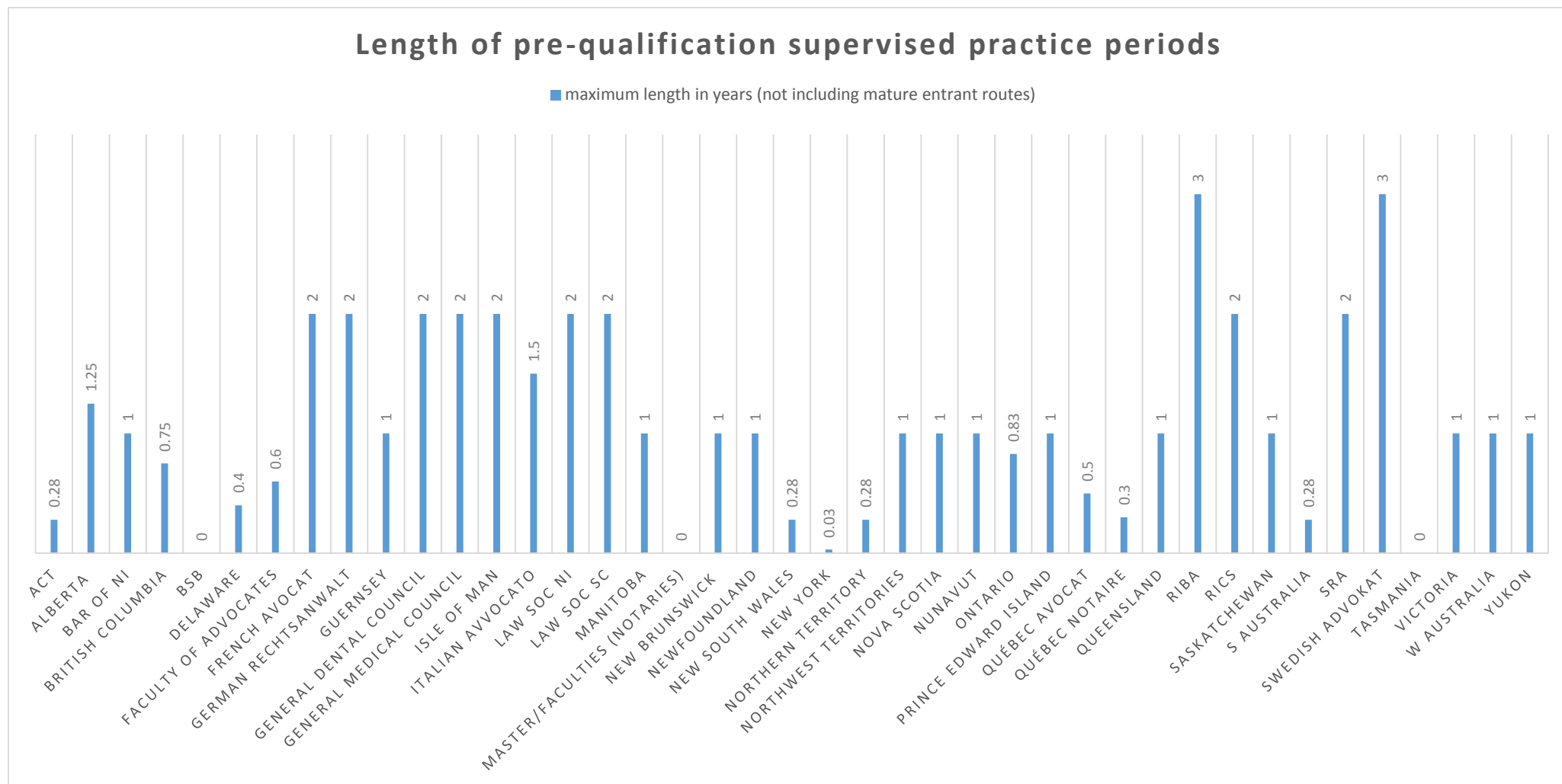


Table 20b: Length of period of pre-qualification supervised practice (“earn while you learn” work-place based models)

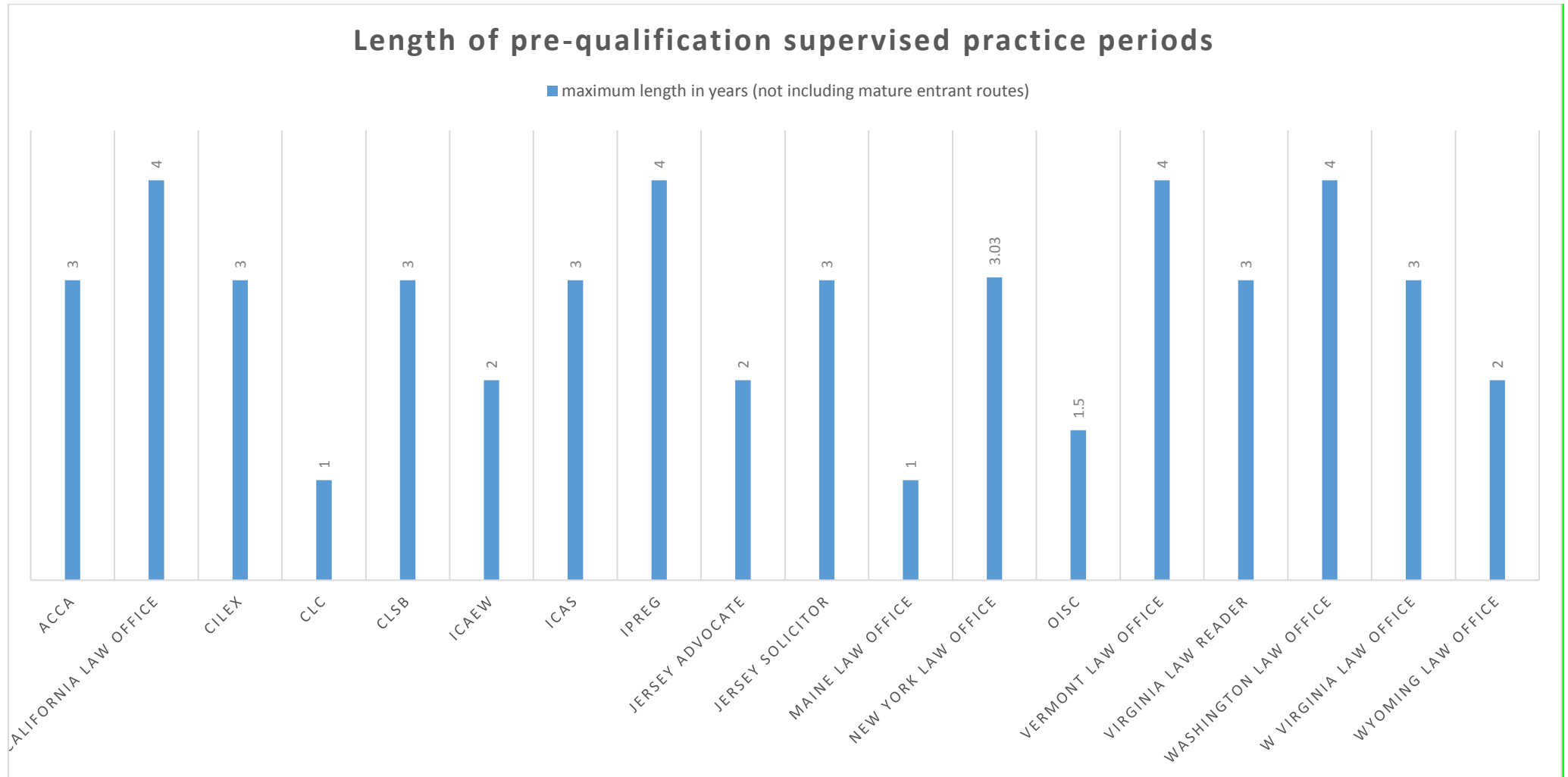
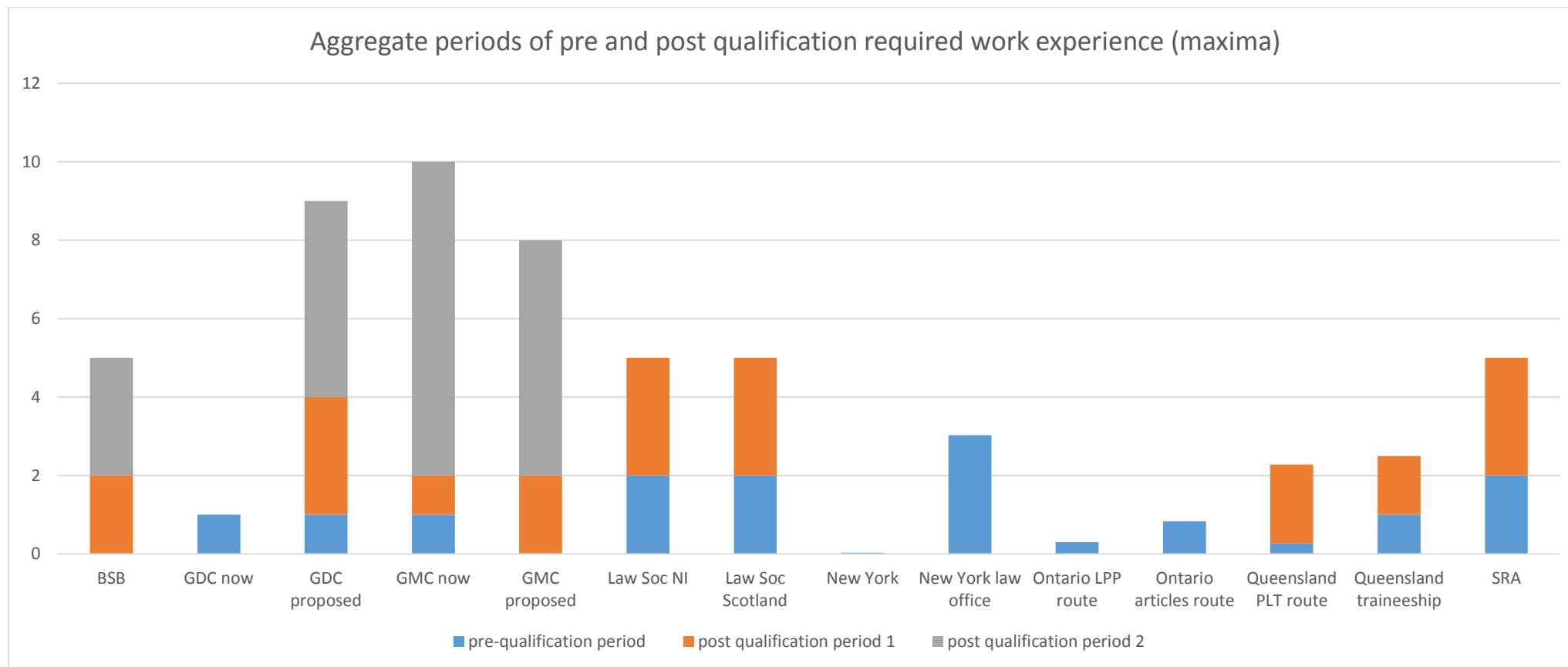


Table 20c: Selected professions: aggregate length of period of pre-qualification supervised practice and post qualification limited licensure¹⁵

Although some of these examples represent specialist training, if it appears to be the case that all individuals are expected to have some kind of specialist training, it has been included as mandatory. Voluntary specialist training that contains work experience components has not been included.



¹⁵ The New York pro bono requirement is too short to register on the scale.

10.3 Environment and access to it

10.3.1 Access

Access to periods of supervised practice may be left to the market (England and Wales), organised by the state (Germany) or allocated to the law school (USA). Access to clinic experience is determined by the law school and the resources of the clinic. Access to sandwich placements is controlled partly by the law school (governing acceptance into the degree) and the profession (willingness to host specific placement students). Access to other forms of work experience, including paralegal work, may be controlled by the employment market, or otherwise by the profession (e.g. obtaining a vacation place through personal contacts). Access to periods of supervised practice may also be governed by precursors to it, such as an ability to pay for an expensive vocational course or undertake a lengthy period of (unpaid) internship. Many of the smaller Anglo-Welsh professions appear to work on the basis that the trainee has obtained the security of a job before embarking on the vocational course and doing so is mandatory in Northern Ireland.

In Australia and Ontario the challenge of access has been addressed by providing a law school route as an alternative and by embedding periods of workplace experience into the vocational course, over which the university has at least some control. Nevertheless, as described above, there are concerns in Ontario about the diversity implications of the two routes.

10.3.2 Requirements about the nature of the working environment

Requirements about the environment in which a period of supervised practice must be served may tell us something about the perceived balance between socialisation into the profession, regulatory capture and experience of particular fields of practice. Apparent prohibition (without prior approval) of work experience outside a law firm or judge's chambers may indicate that, for example, in house practice is not perceived as real experience or, more prosaically, that where an employer cannot be easily identified as a law firm, it is necessary to investigate whether or not the experience is sufficiently aligned to legal practice. In some cases, the regulator must approve all environments. Where the experience is more clearly targeted towards learning to practise in the home jurisdiction, it may be more difficult to obtain permission to carry out a traineeship outside it. Where, however, the period is seen as primarily one of public service, as with the US pro bono requirements, there is no reason to restrict where it may be undertaken. Many professions do not require the period of supervised practice to be provided within the confines of a particular form of employment contract, although some (such as the French *notaires*) do.

Specifying that the supervisor must be a member of the same profession is clearly related to professional socialisation. In addition, there is a clear advantage, particularly to those in multi-disciplinary or in-house practice, of the supervisor and the trainee sharing the same code of professional ethics. In many federal states, this alignment extends to a requirement that the supervisor be qualified and practising in the home jurisdiction. It is not always the case, however, that the supervisor is employed in the same organisation as the trainee (e.g. notaries in England and Wales, US post qualification mentoring schemes). Where professions are used to working on a more multi-disciplinary basis (e.g. IP attorneys, costs lawyers, licensed conveyancers and CILEx), however, the supervisor may come from a range of professions and the focus appears to be less on the regulatory title or professional socialisation, but on the areas of practice.

It is fair to assume that if a trainee is being supervised by a member of the same profession in the same organisation, the supervisor's work is a reasonable example of the work of the profession and therefore is an environment in which competence to perform that work can be achieved. That need not be the only defining factor, however, as it is clearly possible, for example, for an in-house legal department headed by a barrister and staffed by legal executives and paralegals; or a paralegal firm conducting unreserved business, to be carrying out such work. The LETR research phase report concluded that there was scope for a widening of the environment requirements for legal professions in England and Wales:

Recommendation 15

...Arrangements for periods of supervised practice should also be reviewed to remove unnecessary restrictions on training environments and organisations and to facilitate additional opportunities for qualification or independent practice.

There seems to be some evidence of a widening of the range of permitted supervisors from principals to other colleagues⁶¹⁷ and this is, it is suggested, helpful, as in practice, trainees do seek advice and feedback from non-principals. In an ABS, indeed, the principals may not be lawyers in any event. It is,

however, extremely rare for the supervisor to be defined by anything other than professional qualification, regulatory good standing and length of period in practice. Questions of the adequacy of supervision in the workplace are commonplace and have been used in some jurisdictions to justify taking a different approach to supervised practice: see 10.6 below.

At present within England and Wales, a training contract/period of recognised training is defined as work within a particular kind of organisation, supervised by a solicitor or barrister, and covering the Practice Skills Standards. The best training contracts are undoubtedly carefully organised, incorporate relevant classroom/online training and periodic assessment, possibly against internal competence statements.⁶¹⁸ The worst remain, no doubt, overworked and exploitative.⁶¹⁹ That individuals can attain a set of defined competences in other contexts, including local government, charities and a barristers' chambers has been demonstrated by the SRA work-based learning project and is currently accepted in the SRA's equivalent means process. That at least sandwich degree length placement can be acceptable work experience is demonstrated by the profession's apparent readiness to treat it as time to count, unless this is driven only by a desire to hasten fee-earning capacity.

10.4 Variability of experience during the period⁶²⁰

A consistent theme in criticisms of required periods of supervised practice is its variability. It cannot easily be planned to expose the trainee to a pre-determined range of experiences. Moliterno has suggested, indeed, that this problem, even for clinics, is such that simulation is preferable.⁶²¹ By contrast, Billet advocates workplace learning as more directed and real than other environments:

Workplace learning experiences may be seen as *ad hoc* because they are not consistent with practices adopted in educational institutions. Yet, ... it is imprecise and misleading to describe engagement in work activities as being unplanned or unstructured, as they are intentional ... these experiences are often central to the continuity of the work practice.⁶²²

Variability leads to the potential for exploitation, where the trainee is deployed on meaningless administrative activities, or has limited opportunity for progression towards greater autonomy as the period continues. At the other end of the spectrum, a paralegal may be carrying out precisely the same scope and quality of work, or more challenging work, than someone who is on the route to qualification.

In some cases, the challenges of variability of work experience are clearly so great that they have been devolved entirely to the profession, with supervisors certifying the length of the period, or that the candidate is, in their opinion, suitable to qualify. Other approaches to managing variability have included:

- "Bottom up" approaches that mandate a list of tasks or experiences that the trainee must cover, or require the supervisor to file a training plan in advance;
- "Top down" approaches stipulating a set of competences that must be achieved (and evidenced by certification, portfolio or interview);
- Allocating responsibility for the acquisition of skills and competences back into the university stage (as in the USA);
- Identifying what is learned in the workplace as, essentially, too problematic to be assessed in a bar examination and allocating responsibility for it to the profession or the market.

Managing variability by reference to a bar examination seems to be a more limited approach: the majority of the bar examinations in the sample discussed in this report are taken before any required work experience, or must be capable of being passed by those without any work experience.

Competence statements issued by professional bodies appear likely to contain components that are capable of being learned in the workplace and, in some cases, possibly *only* capable of being learned in the workplace. The relationship between acquisition of competence and the point at which a title is acquired, or independent practice permitted, is less clear. The sometimes substantial post-qualification periods of supervised practice are sometimes, as with the Bar and notaries in England and Wales, clearly envisaged as learning periods, but in other cases, may be principally as protection for the public from lawyers who are, at least implicitly, not quite competent enough to be allowed to work unsupervised. A lack of clarity about the role of the period in New South Wales, for example, was suggested as a rationale for change to the qualification system.

10.5 Approaches to assessment or certification of workplace experience

The extent to which the professional regulator and the profession have allocated responsibility for learning in the workplace is visible in the variety of responses to certification or assessment of the period of supervised practice. Where the employer simply has to certify that service of a particular length has occurred, that the trainee has observed or participated in a range of tasks, or that, in the supervisor's opinion, the trainee is competent; responsibility appears to be allocated entirely to the profession. The period may be a rite of passage or a meaningful allocation of responsibility to the profession as the appropriate gatekeeper.

Where the supervisor is obliged to set and mark examinations, assess the candidate against competences (sometimes with a range of possible result bands), where the candidate must submit a portfolio, where there is auditing of the period and its records, the balance is to varying degrees, shared between the practising profession and the regulator. In some cases, assessment is delegated to law schools (by requiring a clinical component in the JD or PLT or certification of skills competencies). In other cases responsibility for certification is taken out of the hands of the individual professional through a more formal assessment by way of portfolio (e.g. CILEx), interview (Jersey) or bar examination.

Whether a centralised bar examination can attempt to assess what has been learned in the workplace depends, of course, on the design of the examination. It is clearly more challenging, and more resource-intensive, to assess oral skills than it is to assess knowledge or drafting. Formal summative assessments are generally set by the professional body or regulator, and in some cases by the state. As far as the balance between these gatekeepers is concerned, the placing of the assessment demonstrates whether or not the assessing gatekeeper is attempting to assess what has been learned in the workplace, or whether that is left to the professional supervisor who certifies the period of supervised practice.

- Where a bar examination is placed *before* the period of supervised practice, it goes without saying that it cannot be designed to assess what is learned in the workplace.
- Where the bar examination may be taken before, during or after the period (e.g. Ontario), it must also be assumed that it does not attempt to assess what can only be learned in the workplace.
- Similarly, where, as in Ontario, workplace experience is an *alternative* to the classroom, but the bar examination can also be taken by those who have no workplace experience, it again cannot attempt to assess what can only be learned in the workplace.
- Even where all or most students are working and studying in parallel, it is likely that bar examinations only assess topics that all the candidates are guaranteed to have in common – the content, level and approach of the formal curriculum and study materials – rather than the variety of approaches they might have encountered in the workplace. There is clearly also scope for the formal curriculum to represent *better* practice than that of an individual employer.

There is a level of irony in that the very messiness and unpredictability that is valued as defining the importance of workplace learning is precisely the characteristic that presents challenges in assessment. It is difficult to standardise the scope of what is learned, by what process and to what level of performance so that it can be sensibly assessed, if this is the aim, in a single point of assessment organised by the regulator, resulting in some of the approaches described at 10.4 above. An example of this challenge appears in the attempts in Scotland to create a viable test of professional competence for trainees.⁶²³

Another question for assessment designers is whether to attempt to assess, as is the case in the QLTS and some medical assessments, whether the candidate can "show how" they would perform in the workplace, or whether to go further and attempt to assess what the candidate actually "does" in the workplace.⁶²⁴ Some of the bar examinations described above, particularly those which for reasons of resource do not attempt to assess oral skill performance, do not ask candidates to "show how" across a full range of the competences that might be assumed to have been acquired from, or are necessary to perform in, the workplace (see also 10.9.1 below). Treating passage of a bar examination, without investigating what the specific examination attempts to assess and to what level, as a complete synonym for acquisition of competence is therefore, highly challenging.

Given the variability of workplace experience and of individual employing organisations, assessing what the candidate "does", perhaps even on multiple occasions or over time, is attempted by some of the professions described above by, for example, portfolio or diary, apprentice pieces or certification of performance in situ. Such an approach generates complex questions of consistency and resources in assessment (see 5.2 above) as well as in allocation of responsibility between regulator and employer.

10.6 Adequacy of supervision, mentoring and feedback during the period;

Any solicitor who intends to take on a trainee should be required to undertake specific training for supervisors. Currently, there are extremely poor examples. This should be required as mandatory under the CPD regime.

Solicitor (LETR online survey)⁶²⁵

With the exception of Virginia, none of the professions sampled for this report appear to define a suitable supervisor by reference to teaching qualifications or expertise. Clearly, within organisations, this may be a criterion for selection and some professions may offer or, as in the case of the English Bar, require, supervisors to attend training courses.⁶²⁶

The IFF/Sherr report for the SRA in 2014 identified ongoing supervision as the most frequently used, but also amongst the most effective, strategies supporting learning in legal services organisations.⁶²⁷ A study of City trainees suggested that a suitable supervisor was approachable, a clear communicator, able to delegate appropriately and honest.⁶²⁸ Others in the workplace also provide learning support, although this may not be recognised formally by the organisation: the respondents to the Victorian survey of articulated clerks in 2004 rated other lawyers as supporting their learning slightly higher than they did supervisors.⁶²⁹

Supervision and provision of a suitable learning environment within the workplace is clearly critical. Opportunities for feedback and reflection on experience have been found to be essential in the achievement of legal competence.⁶³⁰ The challenge of providing good quality supervision in the task conscious workplace (in contrast to the learning conscious clinic) has resulted in responsibility being removed from the practising profession and allocated to the university in a number of cases.

Some commentators cited in this report have suggested that workplace experience linked to the university has a number of advantages over other forms of workplace experience. These include supervision by practitioners employed by the law school who are better equipped to provide feedback and support learning and the opportunity to provide time for linking experience to theory, and reflection (including the opportunity to reflect on, and correct for poor practice seen in an external placement) in a clinic environment. The ability effectively to reflect on experience for learning is now in itself a competence for newly qualified solicitors.⁶³¹

A consistent adverse comment on periods of supervised practice organised entirely within the workplace is that of the potential for variability in the quality of supervision. Writers on workplace learning have noted the critical contribution of supervisors⁶³² – charged with achieving both business objectives⁶³³ and learning objectives⁶³⁴ – in the workplace. For legal services organisations, there is, of course, a substantial cost in supporting trainees, particularly when they may leave the organisation on qualification. This may be exacerbated in in-house practice.⁶³⁵

A balancing exercise is required between:

... the problematic nature of current workplace and professional cultures, with a focus on supervision of standards rather than support for [learning], where performance rather than understanding in learning is privileged ... [and] ... the importance of supporting professionals to feel comfortable learning in their own authentic way, yet challenging them to reflect on and question their practice.⁶³⁶

The final report of the LETR research phase recommended that there should be distinct support for supervisors of periods of supervised practice across the sector.⁶³⁷

Recommendation 16

Supervisors of periods of supervised practice should receive suitable support and education/training in the role. This should include initial training and periodic refresher or recertification requirements.

This endorsed, therefore, a comment made by the Law Society of England and Wales in its response to the first LETR discussion paper:

It is essential to the positive outcome of the training period that solicitors who are supervising trainees have a proper understanding of the role they are expected to fulfil and the importance of good supervision. They also need to know something about learning and teaching, and it would be appropriate for them to undertake activities related to their role as supervisors.⁶³⁸

To the extent that a purpose of the requirement is socialisation into a particular profession, it seems logical to require the trainee to have access to a senior member of the same profession, governed by the same code of conduct. The majority of professional routes require this, and it is clearly available in clinic, placements and much paralegal work.

10.8 What are its advantages and disadvantages

Table 21: Advantages and disadvantages of current period of recognised training requirements/arrangements

This table begins by repeating the possible gains and possible losses of a radical change to existing requirements for supervised practice set out in a table in the first LETR discussion paper to prompt debate.⁶³⁹ This has been supplemented by review of the data set – including public responses to discussion papers⁶⁴⁰ – submitted to the LETR research team on this topic, not all of which appeared in the report and from literature used in the compilation of this report. Table contents are not in any order of precedence and there is no significance to the horizontal placement of elements next to each other.

Positives of current supervised practice requirement/arrangements	Negatives of current supervised practice requirement/arrangements
From LETR discussion paper	
Leverage for individuals in being provided with a guaranteed “apprenticeship”, period of transition, learning support in the initial stages of the career. Ability for regulators to mandate the same (insofar as this is possible) and protection for consumers inherent in requirements	Title (where it is awarded only after this stage) could be awarded at an earlier stage: bottleneck in award of status removed.
Ability for existing market/profession to control entry to the profession	Limited opportunities at present to tailor initial stages of career more closely to organisation/field of practice
Common expectations of what has been covered in initial stages of career.	Limits the range of organisations to offer initial employment, including paralegal contexts, pro bono, sandwich and clinic
Mandated breadth of experience in initial stages of career, ability to experience a range of fields of practice	Limited access to status/employment/social mobility for those inhibited in training contracts (e.g. less “portable” mature graduates)
Consumer understanding of meaning of the title and its relationship to experience in the field/competence.	Limited ability to provide wider recognition of prior experience/learning in non-legal fields (e.g. career changers with pre-existing client relationships, workload management skills or dual qualification/transfer between professions).
Avoidance of a pejorative “two-tier” system and increased discrimination based on breadth, consistency or type of early career experience if arrangements are changed	Limited ability to move between employments in initial stages of career/increased ease for employers to discard unsatisfactory individuals in initial stages of career
Certainty in planning for employers: individuals not tied down for predictable periods. Certainty for individuals in a guaranteed period of initial employment.	Limited flexibility in recruitment, ability to respond quickly to need for additional staff/fewer staff
If requirements are changed: Pressure to demand increased responsibility/access to clients within a shorter period where inappropriate	Limited ability to allow increased responsibility/access to clients within a shorter period where appropriate
Additional comments	
Consensus that learning in practice is key to effective performance	Trainee salaries when compared to acquired debt.
Intensity and realism of learning experience when compared to the classroom. ⁶⁴¹	In larger firms – over emphasis on research or non-intellectually stimulating “proof reading, pagination and photocopying” ⁶⁴² to prejudice of client contact and file responsibility. In smaller firms – lack of breadth of experience and of structured learning experience ⁶⁴³
Transformative learning and critical socialisation “Critically [the training contract] shows lawyers embarking on a career how the knowledge they have acquired is applied in practice. By trainees moving around the firm they see how different areas of practice work. They are socialised into what we as employers believe to be appropriate legal behaviour. They begin to acquire some of the “soft skills” which are so important in practice; how to deal with clients; how to write	Highly dependent on the attitude of the supervisor “The experiences of two “identical” articulated clerks in the same firm can be very different. One supervisor may “neglect” an articulated clerk while another supervisor may “fast track ” the other.” ⁶⁴⁵

Positives of current supervised practice requirement/arrangements	Negatives of current supervised practice requirement/arrangements
in a practical way and for different types of recipient; how to use the technology we all rely on; how to behave in meetings; and a lot more. The experience for most is transformative." ⁶⁴⁴	
	Learning can be sacrificed to the needs of the business – trainees may have billing targets or be expected to take on significant caseloads. ⁶⁴⁶
	Experience can be variable ⁶⁴⁷ and is therefore difficult to map to a centralised assessment or single competence statement, or to monitor ⁶⁴⁸
	In most jurisdictions, controlled by the market and therefore dependent on recruitment practices which could be (possibly inadvertently) discriminatory. ⁶⁴⁹
	If recruitment is predicated on lengthy periods of internship or paralegal work the candidate may already have achieved competence. Opportunities for exploitation in recruitment by demanding prior service as an unpaid intern and/or paralegal ⁶⁵⁰
	Clients who object to paying for trainees ⁶⁵¹
	Risk that what is learned in a single organisation or from a single supervisor is bad or negligent practice
	Current regulatory constraints seen as a barrier to taking on trainees. ⁶⁵²
	Lip service paid to requirements for breadth of experience – inappropriate early specialisation ⁶⁵³
	Qualifying into a practice area not encountered during the training contract. ⁶⁵⁴

It will be apparent that many of the comments in the “negatives” column are not in fact about the *concept* of a mandatory period of recognised training, but about particular manifestations of it. Some of these may have been addressed by the equivalent means route or could be addressed by regulation.

Workplace learning should involve a spread of experience over a period of time, with reference to the Day One Outcomes and proper assessment at the end of the period. However, for this to be effective, there must be adequate systems and standards in place, with firms spending adequate amounts of time and resources on trainees. Regulators should play more of a role in regulating workplace learning, to ensure that these elements are in place and appropriately utilised to further the learning and experience of trainees.⁶⁵⁵

There may be questions about the level at which undergraduates participating in clinic or placement are able to operate: by the end of the second year, an undergraduate has the same length of university legal education as a GDL + LPC graduate, but at levels 4 and 5, rather than 6 and probably without the vocational emphasis of the LPC. Nevertheless, some of the positives may be easier to address in those contexts.

10.9 Can competence be achieved without work experience?

There are a number of difficulties in seeking to answer this question, and no satisfactory answer has been located in the literature. There is a consensus that significant learning, for lawyers, takes place in the workplace, demonstrated by pre-qualification requirements for work experience and an implicit consensus in many professions and jurisdictions that a newly qualified lawyer may not be quite competent enough for independent practice until a (further) period of supervision in the workplace has elapsed. There is therefore a difficulty in comparing definitions of competence at the point of qualification, as they must vary in their assumptions about what the lawyer is entitled to do after the title is conferred.

A second challenge is in attempting to measure, empirically, the effect of workplace learning on competence, once variations in its definition have been resolved by isolating it from other factors. There are several possibilities, but none is without difficulty.

10.9.1 Comparing bar examination pass rates for those who have, and those who have not, had a period of workplace experience

This approach is superficially attractive. US statistics indicate, virtually consistently, that domestic JD graduates from ABA approved law schools have a higher pass rate in state bar examinations than those from law office programmes or from foreign law schools (who may in fact be qualified lawyers who have had mandatory pre-qualification work experience).⁶⁵⁶ Numbers in the latter categories are, however, very small outside California and New York.

The first challenge to using bar examinations as a marker is that it is difficult to isolate in the sample those candidates who have or have not had workplace experience. For example, a candidate for the New York bar examination might be a JD graduate whose final semester was devoted to pro bono work; an Australian lawyer with a similar amount of workplace experience obtained in a PLT course; a British LPC graduate with no workplace experience, or a Scottish LLB graduate with fifteen years' experience as an accountant. The second is the extreme variety in size, shape, length and environment of that experience. Finally, and importantly, as has been acknowledged in the USA, following a detailed empirical study of the work of newly licensed lawyers,⁶⁵⁷ bar examination formats do not necessarily assess everything that is required for competent practice:

Modifying our tests to assess certain skill areas rated as highly significant (e.g., oral communication) may be difficult—or, in some cases, impossible—but other skill areas are worthy of our effort to incorporate them into what is assessed in the bar exam.⁶⁵⁸

Globally, however, there is a range of bar examination formats, some including interviews, portfolios and assessment of oral skills such as advocacy. Assessment of oral skills in particular is, of course, resource intensive. Resources and possibly geography seem to have influenced the Canadian proposal for a national assessment. Oral skills are, of course, assessed in the QLTS,⁶⁵⁹ using methods drawn from similar assessment in medicine although some elements of the day one outcomes, assumed of qualified lawyers, are explicitly excluded from the assessment. A study of the initial cohorts on the QLTS, albeit on the basis of a very small sample, showed both Australian and US lawyers performing extremely well on the OSCE element (100% and 93% respectively) but less well in the assessment of legal research, legal writing and legal drafting (67% and 63%).⁶⁶⁰ However, as the data do not indicate the proportion of these candidates, if any, who were newly qualified, and therefore relying only on pre-qualification work experience, if any, these data are of very limited assistance in this context. It is at least a possibility that there have been newly qualified US attorneys with no prior work experience who have taken, and passed, the QLTS, and are now practising as solicitors in England or Wales.

10.9.2 Comparing performance in those jurisdictions where there are alternative routes to qualification

A 1984 conceptual comparison of vocational course and workplace experience routes in Victoria and New South Wales concluded that the defining characteristic of workplace experience that could not be replicated in a vocational course was “responsibility”.⁶⁶¹

Where a regulator has endorsed more than one route to qualification, empirically evaluating differentials between them is a highly sensitive project although it has, as described above, been attempted for the Daniel Webster Program in the USA. It would also be extremely difficult to isolate the effects of workplace learning if, for example, the products of a classroom-based route are more likely to come from groups with other disadvantages, or different routes are preferred by employers, leading to eventual employment in different categories of legal work. It has not been possible to locate a publicly available empirical comparative study of this kind, although, as noted in section 9.2.3, the Law Society of Upper Canada plans to carry out some comparative evaluation of its pilot of alternative routes.

10.9.3 Collecting qualitative data from the profession and/or trainees

It is likely that there is a considerable informal body of understanding within the profession about the outcomes of different qualification routes. Domestically, some practitioners will have experience of working with, and appraising, solicitors who have qualified by the ‘conventional’ route and by the CILEX route. Internationally, City and global firms have considerable experience of recruitment from a wide range of qualification routes across the world, some of which is articulated in the Law Society of England and Wales *Global Competiveness* report.⁶⁶² Indeed, some British law firms described remedial practices they used to address perceived differences between those who have had no, or short, previous workplace

experience. These included discounting the salaries of US and Australasian lawyers until they had obtained parity in workplace experience, or employing them as paralegals; and insisting that newly qualified lawyers from other jurisdictions participate in a training contract.⁶⁶³ Firms in other jurisdictions will have experience of recruiting both lawyers from their own country and English/Welsh qualified solicitors. There are, however, substantial challenges in developing a robust methodology for this kind of enquiry.⁶⁶⁴ The most fundamental challenge in designing a robust comparative study would be to isolate the effect of workplace experience of different sizes and shapes on final performance. In addition, it would be necessary to compensate for any indications that people from particular routes or demographics are recruited into particular kinds of practice. Further, as indicated in the Law Institute of Victoria study,⁶⁶⁵ there is a natural tendency for individuals to endorse the route by which they themselves qualified. Further, qualitative data referred to in this report tends to rely on retrospective reporting of the extent of improvement over time in the workplace⁶⁶⁶ or reporting of knowledge, skills and attitudes acquired without reference to the standard to which they have been learned.⁶⁶⁷

10.9.4 Carrying out a longitudinal study tracking route against disciplinary or negligence findings

Disciplinary or negligence findings appear, on the face of it, to represent lack of competence, at least in isolated respects. So, for example, the pressure of law school debt may, it has been suggested, encourage new lawyers into premature independent sole practice in the USA (because they can) and create pressures on competence and ethics:

The greatest pressures are on solo practitioners, who may take work beyond their level of competency, face financial pressures to prolong litigation, or terminate a representation inappropriately if a client has difficulty paying.⁶⁶⁸

Data about such findings may be held variously by professional bodies, regulators or ombudsmen rather than centrally. Insurers will have records of claims notified to them. It is not however straightforward to correlate such information with an individual's qualification route. Isolating the effect of workplace experience from other factors placing financial or other pressure on an individual is extremely difficult. Other factors, such as being a member of a disadvantaged group, may also have an impact both on route to qualification chosen, and then on choice of practice area.

11 Is workplace experience essential to achieve competence? If it is, must it be placed within a "training contract"?

The Task Force is not aware of studies that demonstrate that there is a single proven method by which lawyers are best educated, trained and licensed. Nor is the Task Force aware of evidence that any one of the many training approaches produces lawyers who are by virtue only of their training superior to those in other jurisdictions.

In the Task Force's view this variety of approaches to licensing demonstrates that entry requirements to the legal profession reflect, at least to some degree, subjective conclusions about what preparation is important for entry-level competence and at what stage in a licensing process the requirements should be met.⁶⁶⁹

Maxeiner suggests that there are three fundamental questions to be asked about "practical training":

- *Which type of legal professional is being trained?* In England and Wales, the question is answered to some extent by the existence of a variety of regulated and unregulated practitioners. It is not answered to the extent of the enormous variety and degrees of specialisation within the solicitors' profession.
- *Which skills should practical training teach?* For solicitors in England and Wales, this is currently articulated in the Practice Skills Standards for the period of recognised training, the LPC outcomes and the QLTS day one outcomes. Overall, it is now articulated in its scope by the Statement of Solicitor Competence and, in the standard to be achieved, by the threshold statement.
- *Does practical training require apprentice practice?* As will be apparent throughout the discussion in this document, different professions and jurisdictions have answered this question in different ways, whilst maintaining a consensus about the value of workplace experience. For Maxeiner, the answer to this question first involves considerations of pedagogy. These involve, in particular, the variability of legal practice experiences, where it cannot be guaranteed that a trainee will see "the

complete range” of the profession’s activities. It also involves the question of feasibility. This Maxeiner describes as a consistency between what the trainee does during the apprenticeship and their later practice. This will be missing if the organisation does not have suitable work “that can be done by bright, but inexperienced trainees”; or if clinical experience is devoted to serving a kind of personal plight client whom some trainees will never encounter again.⁶⁷⁰

The final question been addressed by different professions and jurisdictions in different ways. In some cases this has involved placing the practical training within the law school; in others enforcing the range, level and specialisation by competence statements, bar examinations and, in some cases, alternative routes. Nevertheless, concerns about the size and shape of workplace experience; the quality of supervision, and the availability of time to reflect on experience for the purpose of learning, pervade the literature. Answering Maxeiner’s final question, particularly where the question is whether pre-qualification supervised practice in a particular configuration should be demanded of *all* entrants, involves, it is suggested, an attempt to isolate what is learned in the workplace.

If the SRA’s Statement of Solicitor Competence contains elements that can be learned *only* in the workplace then, necessarily, work experience of some kind is essential to the acquisition of competence. The kind of workplace in which these things can be learned is, of course, one in which it is possible to learn them, whether it be a clinic, a placement, a training contract or something else. This is a question of alignment between the work going on, and the work allocated to the trainee. The way in which that workplace and the supervisor responsible for the trainee, facilitates learning is also important.

If the statement contains elements that can be learned just as well in the workplace or through simulation in the classroom, then work experience could be treated by the regulator, as it is in some legal and other professions, as a valid alternative route to competence. Whether employers then treat those routes as equivalent is a different matter: see the examples of Ontario and Australia. In addition, where individuals wish to practise elsewhere, regulators in other jurisdictions may not treat different routes as equivalent. If what is learned in the workplace in fact transcends the regulator’s base level of competence, then some employers may prefer it in any event. Which gatekeeper is then allocated responsibility for assessing or certifying the learning achieved during that period has, it appears from the various approaches discussed in this report, been a question of deliberate or implicit allocation, or of resources for summative assessment.

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