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MEDICAL LAW AT PLYMOUTH: A DIFFERENT APPROACH

Pippa Trimble¹

Introduction

Medical law at an undergraduate level is often taught as an academic elective. At Plymouth we have tried to take a different approach focusing on medical law in practice from both the claimant and defendant perspective. We believe our approach is unique amongst UK Higher Education Institutions. MedLaw at Plymouth is a 40 credit work based learning (WBL) module open to third year LLB students. The first two years were run as a pilot with limited student numbers². The module is currently part way through its third year and is still developing. It is likely that student numbers will increase in the future. Medlaw at Plymouth uses experiential learning in two different environments to develop students' knowledge and skills. There are many definitions of experiential learning, but Yardleys, 'experiential learning is constructing knowledge and meaning from real life experience'³ and Hall and Kerrigans, 'experiential learning that requires the student to engage with and reflect upon the practice of law'⁴ are particularly apposite for this module.

Many would consider medical law in practice to be predominantly concerned with negligence; clinical negligence practitioners tend to specialise in either claimant or defendant work, although some may cross the divide during their career. In this module we provide the law students with experience of both sides, to encourage a critical perspective and an open mind, as well providing an introduction to the main pillars of medical law such as consent and confidentiality. The claimant perspective is provided through situated WBL; the defendant perspective is provided by inter-professional learning with healthcare students and has been developed jointly with Plymouth University Peninsula Schools of Medicine and Dentistry (PUPSMD).⁵

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² 4 law students each year

³ Yardley S., Teunissen P., and Dornan T., 'Experiential Learning; transforming theory into practice.' *Medical Teacher* (2012) 34, 161-164.

⁴ Hall, J., and Kerrigan, K.,) 'The Clinic and the wider law curriculum' *International Journal of Clinical Legal Education*, (2011) 15-16, 25-37.

⁵ Dr Kerry Gilbert, Associate Professor Medical Education and Medical Sciences, Lead for Problem & Enquiry Based Learning

1 Claimant Perspective

Claimant WBL is provided by paralegal level work experience in two local solicitors firms with a national reputation in claimant clinical negligence, Enable Law and Wolferstans. The students spend half a day a week in their clinical negligence departments, working on live client files under the supervision of an experienced solicitor. Their work is extremely varied and throughout the 6 month period they are with the firm they are likely to review medical notes, draft letters of claim, draft witness statements, review expert evidence, attend client meetings/telephone conferences, prepare attendance notes, write to the client and/or experts, undertake quantum research and if the opportunity arises, attend the County Court or Coroner's Court. The students learn not just about medical law in practice from the claimant perspective but also about civil litigation practice and procedure, funding arrangements and professionalism in a work place environment.

A work-based placement is not suitable for all third year students and we select carefully to ensure those that take the module are both confident and competent enough to enjoy it and really benefit from it. Students apply to the project through the Law Clinic application process and are then interviewed by the module tutor and supervising solicitors at Wolferstans and Enable Law to ensure their suitability. We also provide regular support for the students through the module tutor by way of feedback sessions, formative appraisals and a general open door policy as well as a lecture programme for all WBL students covering general work based learning skills including professional conduct and reflection. The students are assessed on their performance and by submission of a reflective portfolio. The performance criteria are common to all Law Clinic projects and it is widely accepted that reflection enhances experiential learning.⁶ The portfolio also provides the incentive for the students to develop their own reflective practice, a useful and necessary skill in their subsequent professional careers.⁷ Thus far, the feedback from the students in placement has been extremely positive in terms of enjoyment, intellectual development both personally and professionally and employability. Students who successfully completed the MedLaw module in its first two years of operation have been offered employment either by the firm they were placed with or by others who noted the value of this type of WBL experience.

⁶ Schon, D., *The Reflective Practitioner* (New York: Basic Books, 1983); Kolb, D., *Experiential Learning: Experience as a Source of Learning and Development* (New Jersey: Prentice Hall, 1984); Gibbs G., *Learning by Doing: A guide to teaching and learning methods* (Further Education Unit, Oxford Polytechnic: Oxford, 1988).

⁷ Bassot, B., *The Reflective Practice Guide: an interdisciplinary approach to critical reflection* (Abingdon: Routledge, 2016).

2 Defendant Perspective

The Defendant perspective is provided by an innovative inter-professional problem-based-learning (PBL) or enquiry-based-learning (EBL) with healthcare students. There is academic debate about the exact definition and parameters of interdisciplinarity⁸ but a useful definition of inter-professional learning for our purposes is 'when 2 or more professions learn with, from and about each other to improve collaboration'.⁹ This aspect of the module was developed jointly with PUPSMD.¹⁰ The law students join four medical or (for the first time this year) four dental students¹¹ to learn about the defendant's view of clinical negligence and to develop their knowledge of substantive medical law in integrated interdisciplinary PBL or EBL sessions. These sessions provide the opportunity to explore medical law from the healthcare professional's perspective considering how and why negligence claims arise as well as looking at legal and ethical issues in consent, capacity, confidentiality and those arising at the beginning and end of life. Importantly students from both disciplines have had some practice experience, the law students through their clinical negligence placements and the medical students as part of an integrated degree and it therefore provides the opportunity for both professions to share and discuss their respective professions' practices, attitudes, regulation and resources discovering where the synergies and differences lie.

For those not familiar with PBL/EBL as a pedagogy, it uses a problem to build, create and develop knowledge; the problem provides the catalyst for the learning process itself and is not merely the means of testing it. As Havelock sets out, 'PBL makes realistic problems the focus and catalyst for the acquisition of knowledge through student centred activity rather than teacher transmission of information'.¹² We chose PBL for this aspect of the module as it is ideally suited to experiential learning, providing the opportunity for active participation, a professional and practice context through the scenarios provided and by encouraging reflection. It is also particularly appropriate for interdisciplinary learning, providing the opportunity for interdisciplinary discussion and peer to peer learning. Whilst PBL has been widely used in medical education for some time, it is less common in legal education. At Plymouth PBL/EBL is an established pedagogy in both the Medical and Dental Schools but apart from this bespoke module, it is not otherwise used in the Law School.

⁸ See Havelock, 'Law studies and active learning'.

⁹ World Health Organisation, *Framework for Action on Interprofessional Education & Collaborative Practice* 2010, <https://hsc.unm.edu/ipe/resources/who.html> accessed 12.12.17.

¹⁰ Dr Kerry Gilbert, PUPSMD, n5.

¹¹ In collaboration with Dr Catherine Coelho, PUPSMD, Associate Professor and Senior Lecturer in Dental Education

¹² Havelock, R., 'Law studies and active learning: friends not foes?' *The Law Teacher*, (2013), 47:3, 382-403.

Student feedback has been very positive and encouraging, examples include:

PBL learning is great.... It allow[s] students to gain real problem solving techniques, teach teamwork and give[s] students the ability to act out a real life scenario.....you remember more.. as you are applying your knowledge practically rather than just through exams or coursework. (Third year law student).

It was good to have the PBL style for the sessions ... it facilitated discussion between the professions to highlight the differences we had and allowed us to view the case from a different perspective. (Third year medical student).

The scenarios used for the PBL/EBL sessions are set in a clinical environment and raise medical and ethical issues that occur regularly in clinical practice. The first year we ran one pilot scenario with four law and four medical students; the second year we ran two. This year we are running three, the third with dental students. In previous years the law module was limited to 20 credits and therefore the law students' time available to participate in these sessions as well as their work placements was limited. This year the expansion to 40 credits has given scope to increase the inter-professional sessions and the law students will attend nine sessions over the course of the year, divided into three scenarios of three sessions each. The medical or dental students currently have less time available and therefore only join the module for one scenario, delivered over three sessions; this year scenario one is with second year medical students, scenario two with third year medical students and scenario three with second year dental students. The law students are again assessed as part of the overall module in respect of their performance and by reflective portfolio. The medical and dental students involved are assessed within their own discipline as part of ethical or educational single study units or are not assessed and participate as volunteers.

Interest and support for interdisciplinary teaching and learning in the Higher Education sector is growing rapidly and can be found in many university strategy documents¹³ but recent research has shown that it tends to be driven by the 'committed, entrepreneurial academic' and is 'often an activity that is found on the margins of mainstream teaching'.¹⁴ This may be due to the practical and institutional difficulties of delivering an interdisciplinary module. These have been discussed in more detail elsewhere¹⁵ but in summary, the logistics of inter-school delivery can be problematic, often for seemingly simple issues such as finding time in the timetable when both sets of students are free to meet. Assessment is another challenge,

¹³Lyall, C, *Interdisciplinary Provision in Higher Education: current and future challenges* HEA 2015, available on-line at <https://www.heacademy.ac.uk/knowledge-hub/interdisciplinary-provision-higher-education-current-and-future-challenges>, accessed 12.12.17.

¹⁴ Ibid

¹⁵ Trimble, P., Gilbert, K, 'Interdisciplinary learning: lawyers and doctors' Presented at Association of Law Teachers Annual Conference 2017, 10 April 2017 at Portsmouth University; Vice-Chancellors Teaching and Learning Conference, 30 June 2017, Plymouth University

whether to do so jointly or by individual discipline. Finally, there needs to be a desire by staff to collaborate¹⁶. We have found that with some tenacity these can be overcome and the reward provided by the student feedback is more than worth it:

The cross-disciplinary learning ... has assisted my learning of how the medical profession works. Listening to some of the medics' experiences it is easy to see how their primary aim is the care of the patient and possibly not always all legalities. (Third year law student)

It is very helpful to understand how the medics think, what their procedures are.. and their opinions on certain situations. (Third year law student)

Working with lawyers has provided another dimension to my learning.... The lawyers have allowed me to question the topic further and consider areas of learning which I would not have considered if the PBL session were with medics. (Third year medical student).

3 Building Professional Bridges

We hope that the inter-disciplinary nature of the PBL sessions will have further benefits beyond providing a defendant perspective. The arguments over which side is to blame for the escalating costs of NHS litigation are well aired, with claimant lawyers blaming the NHS for being slow to admit when errors have been made and defendant lawyers blaming claimants for being too eager to bring claims in a 'compensation culture' and running up excessive legal costs.¹⁷ At a time when NHS funding is limited and difficult resourcing decisions have to be made, the need to manage and reduce these costs is a live issue.¹⁸ We hope that learning together and about each other at an undergraduate level will foster a better understanding of the attitudes, issues and challenges the healthcare and legal professions both face and that this greater understanding may produce wider benefits for both patients and the public.

Although the practice of law and healthcare students learning together is highly unusual in UK Higher Education Institutions, we are not alone globally.

Ten years ago Tobin-Tyler reported that in the US:

¹⁶ Shibley., I, 'Interdisciplinary team teaching: negotiating pedagogical differences' *College Teaching* 54, Issue 3 (2006) On-line at <https://doi.org/10.3200/CTCH.54.3.271-274>

¹⁷ <http://www.independent.co.uk/news/uk/home-news/nhs-clinical-negligence-bills-finances-budget-healthcare-trusts-doctors-a7934546.html>.

¹⁸ National Audit Report; managing the costs of clinical negligence in trusts 2017 <https://www.nao.org.uk/wp-content/uploads/2017/09/Managing-the-costs-of-clinical-negligence-in-trusts-summary.pdf>, accessed 12.12.17; Medical Protection Society, *The rising cost of clinical negligence; who pays the price*, <https://www.medicalprotection.org/docs/default-source/pdfs/policy-papers/striking-a-balance-policy-paper-65gs4rc7.pdf> accessed 12.12.17.

Rather than focus on the divide between the professions over medical-malpractice lawsuits, some legal and medical practitioners and educators have begun to focus on what the professions have in common and what they have to offer one another. In fact, lawyers and doctors share many professional values. They both value professional autonomy and decision making: both have a fiduciary duty to the individual client or patient.¹⁹

Dr Liz Curren has also been developing a Health Justice Partnership model in Australia and more recently in Canada and now the UK²⁰.

Conclusion

MedLaw at Plymouth is an exciting and innovative undergraduate medical law module but we are not standing still. We are continuing to develop and expand the module and hope to provide new practice based learning opportunities and collaborations with other healthcare professions for the next academic year. We also intend to formally evaluate the inter-professional element over the course of this year.

We would like to thank Wolferstans Solicitors and Enable Law for providing fantastic work experience opportunities for our students and Dr Kerry Gilbert and Dr Catherine Coelho of PUPSMD for taking on the inter-disciplinary challenge. We would also like to thank our Head of School, Dr Daniel Gilling for supporting what must have seemed, at its inception, to be a rather ambitious project.

¹⁹ Tobin-Tyler, E., *Allies not Adversaries: teaching collaboration to the next generation of doctors and lawyers to address social inequality*. Roger Williams University School of Law Faculty (2008) at http://lsr.nellco.org/rwu_fp/17.

²⁰ Curran, E., *Multi-disciplinary Practice Health Justice Partnerships – working ethically to ensure reach to those most in need* (2017) https://www.ntu.ac.uk/data/assets/pdf_file/0026/440657/NLJ-Vol26-2017-REV-Text.pdf, accessed 12.12.17.