Assessing legal professionalism in simulations: The case of SIMPLE

Professor Paul Maharg
professionalism...?

Key description:

‘a dynamic, contingent and contested practice, responsive to a range of ideological, economic and situational factors’

the regulatory perspective in Scotland: core professionalism values

Professionalism
- Interests of justice & democracy
- Effective legal services
- CPD
- Diversity & public service
- Personal integrity & civility

Professional relationships

Professional communications
Throughout the programme a student should demonstrate a commitment to:

1. The interests of justice and democracy in society
2. Effective and competent legal services on behalf of a client
3. Continuing professional education and personal development
4. Diversity and public service
5. Personal integrity and civility towards colleagues, clients and the courts
<table>
<thead>
<tr>
<th>Outcome</th>
<th>Positive indicator</th>
<th>Negative indicator</th>
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<tbody>
<tr>
<td>5. Personal integrity and civility towards colleagues, clients and the courts</td>
<td>Is honest with all others on the course; relates to colleagues on the programme with civility; treats tutors, administrative staff and others with respect.</td>
<td>Exhibits traits of arrogance, intemperate behaviour, mismanagement of own affairs; lies to colleagues or programme personnel; plagiarises work; adopts the work of others as own work; is abusive or contemptuous towards colleagues or programme personnel.</td>
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</table>
‘We found that UCSF, School of Medicine students who received comments regarding unprofessional behaviour were more than twice as likely to be disciplined by the Medical Board of California when they become practicing physicians than were students without such comments. The more traditional measures of medical school performance, such as grades and passing scores on national standardized tests, did not identify students who later had disciplinary problems as practicing physicians’.

Papadakis, M. et al (2004) Unprofessional behaviour in medical school is associated with subsequent disciplinary action by a state medical board, *Academic Medicine, 79, 244-79*
the SIMPLE platform

- **personalized learning** in a professional environment
- **collaborative learning**
- **use of simulation spaces** in programmes of study, and the relation between simulation spaces and other learning spaces on a programme, including paper-based and online resources, face-to-face classes, and administration
- **use of rich media** in online simulations – video, graphics, text, comms., etc.
- **authenticity** in the design of simulation tasks, and effective **assessment** of professional learning
<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Email</th>
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<tbody>
<tr>
<td>Alexander, Anderson &amp; Brown</td>
<td>14 Parsley Road</td>
<td><a href="mailto:AlexanderAndersonBrown@awak.com">AlexanderAndersonBrown@awak.com</a> ardcalloch</td>
</tr>
<tr>
<td>Nelson Edwards</td>
<td>41 Shaw Road, Ardcalloch, Ardcalloch</td>
<td><a href="mailto:nelson@citizen.ardcalloch">nelson@citizen.ardcalloch</a></td>
</tr>
<tr>
<td>APS Architects</td>
<td>23 Steele Street, Runcorn Business Park, Ardcalloch</td>
<td>aps.business@ardcalloch</td>
</tr>
<tr>
<td>Ardcalloch Bootyard</td>
<td>The Waterfront, Ardcalloch, Ardcalloch</td>
<td>ardcallochboats.business@ardcalloch</td>
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<tr>
<td>Ardcalloch Digital Exchange (ADEX)</td>
<td>14 High Street, Ardcalloch</td>
<td>Adex.Direcory ardcalloch</td>
</tr>
<tr>
<td>Ardcalloch Insurance Company</td>
<td>41 Shaw Road, Ardcalloch, Ardcalloch</td>
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<tr>
<td>Ardcalloch Legal Information &amp; Advice Service</td>
<td>14 High Street, Ardcalloch</td>
<td>Alias.business.ardcalloch</td>
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<td>Ardcalloch Medical Centre</td>
<td>50 Anthony Wayne Ave</td>
<td>medical.ardcalloch</td>
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<td>75 High St., Ardcalloch</td>
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<td>12 Mesdorm Road, Ardcalloch, Ardcalloch</td>
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<tr>
<td>Ardcalloch Property Search</td>
<td>71 Globe St.</td>
<td>PropertySearch.Directory@ardcalloch</td>
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<td>Ardcalloch Riding School</td>
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<td>Ardcalloch Royal Infirmary</td>
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<td>Ardcalloch Solicitors Property Centre</td>
<td>70 Runcorn Rd.</td>
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<tr>
<td>Ardcalloch University</td>
<td>Prick Gardens, Ardcalloch, Scotland, ART 3IE</td>
<td>ardcalloch.University@ardcalloch</td>
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<tr>
<td>Callum Donaldson</td>
<td><a href="mailto:oblaston@citizen.ardcalloch">oblaston@citizen.ardcalloch</a></td>
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<td>Campbell Auctioneers</td>
<td>23 Arndoch Road</td>
<td><a href="mailto:campbell@businesses.ardcalloch">campbell@businesses.ardcalloch</a></td>
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<tr>
<td>Carville &amp; Chamberley</td>
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<td>CDPH Architects</td>
<td>10 Arndoch Av., Ardcalloch, Ardcalloch</td>
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<td>Companies House</td>
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<tr>
<td>David Jones Engineering</td>
<td>16 Bell St.</td>
<td><a href="mailto:davidjones@businesses.ardcalloch">davidjones@businesses.ardcalloch</a></td>
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<tr>
<td>Department of Work &amp; Pensions</td>
<td>22 Glenburn Crescent</td>
<td>Please check the web site for this address</td>
</tr>
<tr>
<td>Education Authority</td>
<td>1 Parsley Rd.</td>
<td>edu.gov.ardcalloch</td>
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<td>Erieskien Stockbrokers</td>
<td>43 Arndoch Rd., Ardcalloch, SUIH</td>
<td>erieskien.businesses.ardcalloch</td>
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<tr>
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<td><a href="mailto:fiona@dawson.citizen.ardcalloch">fiona@dawson.citizen.ardcalloch</a></td>
</tr>
</tbody>
</table>

Ardcalloch directory
what is ‘Transactional Learning’?

Seven characteristics:

**active learning**
through performance in authentic transactions
involving reflection in & on learning,
deep collaborative learning, and
holistic or process learning,
with relevant professional assessment
that includes ethical standards
what are we assessing in SIMPLE?

- Professionalism and ethical performance
- Skilled performance to benchmarked levels
- Substantive knowledge of law
- Procedural knowledge
- Many other categories of assessable experience

Purpose of assessment:
- Formative (feedback and feedforward)
- Summative

Think of a social space where both workspace, learning space & assessment space co-exist, eg, between master & apprentice.
how are we assessing in SIMPLE?

1. Discrete tasks, eg drafting, letter-writing, research (Estate Planning)
2. Whole file + performative skill (Personal Injury)
3. Tasks + whole file (Real Estate)
4. Tasks + file + performative skill (Litigation)
1. tasks

- Set context (or not: let student figure that out – the clearing in the forest...)
- Set task (but in how much detail? Supported with templates? Guidelines? Commented examples?)
- Design feedforward (but don’t do the task for students)
- Deadline a task (bearing all contextual factors in mind)
- Task completed (and sent to staff in role)
- Feedback on task (by staff in role)
- Debrief (either in role or out of role)
2. whole file + performative skill

- Holistic assessment of document chain
- Bodies of evidence generally, but can embed critical points of assessment, eg report to client, speech plan, etc
- Preparation for performative skill, including overlap with other skills – eg relation of legal research to professional negotiation.
Specific tasks are the foreground, eg draft the completion certificate...

... but students must also complete entire file process. No completion, no competence.

Tasks may shadow tutorial work or precede tutorial work or neither

*Quaere:* How many attempts at each task?
4. tasks + whole file + performative skill

- Most complex, most authentic and most demanding assessment
- Potentially 1-3 plus more – eg performative skill can be assessed *in role.*
use of interleaved learning support & assessment

- Eg PI project:
  - PI mentor: passes information in real time; takes all fictional roles including PI senior partner (instructs, praises, warns, & cd be ethically treacherous), e-comm only: student responses are assessed
  - Surgery mentor: gives detailed feedforward on task, f2f, out of role: responses not assessed
  - Discussion forum: gives detailed feedforward on task, e-comm, out of role: responses not assessed
  - Practice Manager: gives coaching on firm experiences, in role: support & coaching not assessed, but the result is...
example: personal injury negotiation project

Administration:

- 272 students, 68 firms, 8 anonymous information sources – PI mentors
- 68 document sets, 34 transactions
- Each scenario has embedded variables, called from a document server, making it similar, but also unique in critical ways
- students have 12 weeks to achieve settlement
- introductory & feedback lectures
- discussion forums
- FAQs & transaction guideline flowcharts
- voluntary face-to-face surgeries with a PI solicitor
We require from each student firm a body of evidence consisting of:

- **fact-finding** – from information sources in the virtual community
- **professional legal research** – using WestLaw + paperworld sources
- **formation of negotiation strategy** – extending range of Foundation Course learning
- **performance of strategy** – correspondence + optional f2f meeting, recorded
## Personal Injury: Claimants Forum

### Discussion forum guidelines
- Contributors to the forums should not post comments or remarks which are defamatory, obscene, profane, threatening or spitful.
- GGLS reserves the right to edit contributions, to remove potentially harmful material from the forums, and not to publish unsuitable contributions.
- Please do not post on the any personal information (such as your address or telephone number) that you do not want to become available to other students.
- Please do not include in your contribution any links or web addresses which are not directly relevant to the topic being discussed.

### Discussion forum etiquette
- Use clear intuitive subject headings on your message.
- Be concise and relevant to the subject under discussion.
- If you disagree with someone else's viewpoint, be as objective as possible when replying.
- If you wish to discuss something off-topic with another contributor, exchange emails and continue your discussion outside the forum.
- Act responsibly, showing respect for fellow contributors at all times.

<table>
<thead>
<tr>
<th>Subject</th>
<th>Replies</th>
<th>Posted By</th>
<th>Modified</th>
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<td>18/10/2004 13:50</td>
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<td>David McMenemie</td>
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<td>20/10/2004 12:55</td>
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<td>Maps &amp; photos</td>
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<td>20/10/2004 19:38</td>
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PI Defenders: Health and Safety Executive

Subject: Health and Safety Executive

Text: I read in the FAQs that the HSE has not been informed about the accident. On the basis of having read the Executive website, it would seem that the University has breached its duty in not doing so. Are we as legal representatives under a duty to report this to the Executive? My gut feeling would say yes but I am thinking that it would not do the University any favours and may upset our client!

Created at 17/11/2004 17:27 by
Last modified at 17/11/2004 17:27 by
Pltutor8

18/11/2004 17:52

Health and Safety Executive

Good question.

No, you have no duty to report the accident to the HSE if the client hasn`t done so. You could always write and advise the client that they should have (why do you think they should have ? - don`t rely on their website, look at the legislation and let me know the legal basis for the obligation to report an accident like this) - Assume the client says "Fine, thanks for your advice but we are not doing it. What will happen to us if they find out - which they probably wont." What advice would you give then ? CH
Total correspondence 2000/2001 sent by all firms
extended team working
real legal fact-finding
real legal research
process thinking in the project
setting out negotiation strategies in the context of (un)known information
writing to specific audiences
handling project alongside other work commitments
structuring the argument of a case from start to finish
keeping cool in face-to-face negotiations
more effective delegation
keeping files
taking notes on the process...
'In tackling this project I think that our group made two main mistakes. The first mistake we made was in approaching the task as law students as opposed to Lawyers. By this I mean we tried to find the answer and work our way back. Immediately we were thinking about claims and quantum and blame. I don't think we actually initiated a claim until a week before the final settlement. I think the phrase "like a bull in a china shop" would aptly describe the way we approached the problem. [...] Our group knew what area of law and tests to apply yet we ended up often being ahead of ourselves and having to back-pedal. The second mistake we made was estimating how long it would take to gather information. We started our project quite late on and began to run out of time towards the end. None of us appreciated the length of time it would take to gather information and on top of this we would often have to write two or three letters to the same person as the initial letter would not ask the right question.'
'At the beginning we thought we perhaps lost sight of the fact that we had a client whom we had a duty to advise and inform. On reflection we should have issued terms of engagement and advised the client better in monetary terms what the likely outcome was going to be.'

‘[...] unlike other group projects I was involved in at undergraduate level I feel that I derived genuine benefit from this exercise in several ways:

1. reinforcing letter-writing, negotiation, time-management and IT skills
2. conducting legal research into issues of quantum
3. working effectively in a group as a group - not delegating tasks at the first meeting and then putting together pieces of work at the second meeting.’
Claimant firm to claimant:

‘You have indicated that you would prefer to not have this matter proceed to court. Please inform us as soon as reasonably possible of your instructions of the amount we would be able to accept on your behalf in full and final settlement of this claim following negotiation with the defenders.’

Claimant reply:

‘As for the total amount, my wife and I have discussed it and we’re happy with the sort of amounts you’ve stated [in a previous letter – around £12750]. As I say, I’m not wanting to go to court, but I do want as much as I can get though I realise you’ve got to be realistic. I’m not looking for apologies or anything.’
Claimant, to claimant firm:

Just one more thing. I notice that the Agreement is signed by you rather than me, which is fair enough I suppose, if you are my solicitor. I don’t know about the details of these things. But it just seemed odd to me that you sent me the agreement signed by you, and I had not said if I agreed with the amount. I just wonder what would have happened if I had changed my mind?
what’s at stake here?

- Client empowerment: the strategy left the client out of the agreement
- Congruence of feelings (Rogers) between client and solicitor
- Lack of professional judgment
- Little foresight or contextual awareness
Claimant firm, to client:

‘In our report to you dated 16th December 2008 we asked for your instructions as to the amount that we could accept on your behalf in full and final settlement of the claim. In your letter of 4th January 2009 you indicated that you were happy with the amounts that we had indicated and that we were to do our best and just get as much compensation as we can for you. We took this to be your instructions for us to settle on your behalf and are sorry if we misinterpreted these and for any confusion involved in the process.’
Feasible...?
- Very: lots of experience out there in Strathclyde, Northumbria, ANU. Once sims are created using the SIMPLE Toolset, easy to maintain.

Cost...?
- Development of sims; learning support for students
- SIMPLE is open-source and freely available – there is technical support (funded by CALI) till June 2011
- SIMPLE blueprints are freely available under CC licences
- guidance documentation is freely available under CC:

Impact...?
- Big: on students, on ethical performance, practice of skills within professional value contexts; formative and high-stakes assessment; transactional learning; learning by doing (Dewey)
multimedia used to support TL...

- used as exemplars of good/poor practice
- support for high-stakes assessment
- deep-linked to spiral curriculum
web/podcasts + sims

- used to replace large group teaching -- well-liked by students
- surgery model of large-group interaction developed by staff
- dovetailed into conventional & innovative T&L+self-assessment
- interactive and portable into the profession
Expensive, niche apps?

‘entire course on an iPhone?
... screen’s way too small…’

BarMax offers bar prep on the iPhone for $1000

News is going around about yet another expensive app bucking the trend on the App Store, but here's the twist: this one actually has a good reason for such a high price. BarMax CA [iTunes link] is an app currently cut that costs $999.99 -- that's right, while most developers are haggling with customers over 99 cents, this one's selling for a full $1000. But there's actually a good reason for that. It's a bar prep app, designed to help would-be lawyers pass their bar exams. Comparable services cost up to three or four times the price of this one, so if you have an iPhone and are planning to take the bar, this could actually be a "bar"gain (sorry, please don't sue us). The app is over a gig in size and brags about squeezing 50 lbs of books into the palm of your hand -- there are test questions, reference guides, audio lectures, and practice cards all included in the app's purchase.

Of course, if you really do want to buy something like this, just getting it for your iPhone probably isn't the best way to do it -- you should probably do the research and see what other bar prep programs are out there before you jump into this one. And the app description in iTunes even says they'll ship you an iPod touch just to use the program, so even if you go with BarMax, you might as well see how you can get an iPod touch with it, right? But an app like this may show that there is a market for super-expensive apps, even if they have to fit very strongly into a specialty niche.

Of course, to learn whether anyone actually buys it, we'll probably have to wait and see.

Tags: app, audio, bar-prep, barmax, iPod touch, iPodTouch, iTunes, lawyer, lectures, legal, questions, reference, services

http://www.tuaw.com/2010/01/19/barmax-offers-bar-prep-on-the-iphone-for-1000/
... so is this how it might it look?

My annotated documents

Sim case management

Web/pod/quickcasts

My e-portfolio

E-textbooks

LMS


Here's a mind map of my PLE
My e-portfolio

SIMPLE case management

LMS

E-textbooks

My annotated documents

Web/pod/quickcasts

so is this

how it might it look?
so is this
how it might it look?

SIMPLE case management

Web/pod/quickcasts

My annotated documents

E-textbooks

My e-portfolio

LMS

My e-portfolio

Web/pod/quickcasts

E-textbooks

My annotated documents

SIMPLE case management

LMS
learning as aggregation + high impact practices
Aggregates:

- Social media
- RSS
- Google Reader
- Customized ToC
- Photos, videos

into an online magazine format.

See also The Future of the Book:
http://vimeo.com/151423
myfamily.com keeps your family connected.
Share photos & videos. Schedule events. Have discussions.

Stay Connected
The whole family can stay connected online by sharing photos, videos and stories in one place.

Share Privately
A social website that puts families and privacy first. You decide who can join and participate in your family group.

Less than $10
Each family group is $9.95 for the first year and only one person pays for the entire group.

Social Integration
Share your photos, videos, and more with Facebook, Twitter, tumblr, and other services.

Blog!
Start a blog that the whole family and friends can follow. Post photos, videos, and more.

Events & Calendaring
Keep an online family calendar to remember and plan reunions, birthdays and other family events.

A great archive
Unlimited storage space and SiteSafe™ technology keep all of your family memories safe and secure. No matter what.

Share from Anywhere
Get the free MyFamily for iPhone app and keep your family updated on the fly, wherever you are.
Carl N Jones
Birth 3 Jun 1885 in Richmond, Chittenden, Vermont
Death

Parent
- Ralph E Jones
  1854 – 1933
- Hattie A
  1859 –

Spouse & Children
- Lottie Mains
  1888 – 1950
- Richard Ambler Jones
  1905 –

Timeline
- Birth 1885
  3 Jun
  Richmond, Chittenden, Vermont
- Residence 1900
  Richmond, Chittenden, Vermont
    Age: 15
- Residence 1910
  Richmond, Chittenden, Vermont
    Age: 25
- Residence 1920
  Richmond, Chittenden, Vermont
    Age: 35

Source Information
- 1900 United States Federal Census
- 1910 United States Federal Census
Think of aggregation as:

1. the social media of our students’ nested lives
2. a genealogy of knowledge where there is textura and the development around them of debate, analyses (glossa) which change more quickly than the textura
3. an ethical practice community that develops much faster than medieval scholarly circles
... and in real time

Jonathan Kantor, White Paper Company,
http://www.whitepapercompany.com/blog/?p=4895
signature pedagogies (Lee Shulman)

Surface structure
- Observable, behavioural features

Tacit structure
- Values and dispositions that the behaviour implicitly models

Deep structure
- Underlying intentions, rationale or theory that the behaviour models

Shadow structure
- The absent pedagogy that is, or is only weakly, engaged

Transforming Legal Education: four key themes

Experience of...
- law in the world
- interdisciplinary trading zones
- creative, purposeful acts

Ethics in...
- an integrated curriculum
- habitual action
- reclamation of moral spaces in the curriculum

Technology for...
- our discipline, our curricula
- learner-centred control
- transactional learning

Collaboration between...
- students
- institutions
- academic & professional learning
- open-access cultures
further information...?

http://simplecommunity.org

http://www.simshare.org.uk

http://paulmaharg.com