

TECHNOLOGY AIDED LEARNING IN DISPUTE RESOLUTION AND EVIDENCE: COMBINING VIDEO WITH ONLINE ANNOTATION/DISCUSSION IN A BLENDED LEARNING DESIGN

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The legal industry is expanding its use of technologies, which stimulates legal education practitioners to extend technology-enhanced learning opportunities. Law teachers can adopt innovative pedagogy to use the media of video to demonstrate dispute resolution skills such as negotiation/mediation and advocacy, supported by online discussion technology for granular analyses of skills demonstrated in the video. When teaching legal skills in two courses, Negotiation and Dispute Resolution (NDR) and Evidence, we argue that there is value in adopting a blended learning design that prepares students for practice through video and online annotation/discussion. The skills demonstrated by practitioners and built by students through this method offers scaffolds toward active student generation of authentic legal capability (eg practice through role-play) and written artefacts (eg a file note and cross-examination questions). This article explores the use of granular video annotation/discussion and key considerations for law teaching when adopting a blended learning design. It outlines two examples and provides a road map of how to approach blended learning when using video annotation/discussion in the legal education context.

I INTRODUCTION

In Australia, legal education increasingly acknowledges the need to teach about digital technology, and law schools have included elective and core curricula dealing with such issues.¹ There are now subjects that provide the opportunity to build computer applications to solve legal problems and core courses include information on issues such as smart contracts and blockchain. For example, *FineFixer*, an application devised to help the public implement strategies to deal with fines, was initially developed by RMIT University students in an elective course and was later made available through the Moonee Valley Legal Service, funded by a grant from the Victoria Law Foundation.² Understanding blockchain arguably should be part of contract courses due to the nature of blockchain providing a verifiable trail to changes in contract terms.³ A major area of development is online dispute resolution (ODR) and the changing nature of judging. Whilst alternative dispute resolution (ADR) has long been part of the legal landscape, providing the opportunity for dispute resolution that

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¹ Law Society of New South Wales, *The Future of Law and Innovation in the Profession* (Report, 2017) 76-80 (*FLIP Report 2017*).

² Moonee Valley Legal Service, 'About Fine Fixer', *Fine Fixer* (Web Page, 11 March 2019) <<https://finefixer.org.au/about-finefixer/>>.

³ Jake Goldenfein and Andrea Leiter, 'Legal Engineering on the Blockchain: 'Smart Contracts' as Legal Conduct' (2018) 29(2) *Law and Critique* 141.

is quicker, lower cost and more informal than litigation,⁴ ODR options are also now becoming more widespread. Tania Sourdin canvasses the various initiatives in ODR including online negotiation, mediation or decision-making portals and ‘bots’ as judges.⁵ However, there has been some robust criticism of this approach due to concerns about ODR methods not providing the same standard of justice as traditional courts.⁶ This is because the experience of ODR is markedly different from the experience of a court hearing with the accompanying procedural protections. Alongside changes to courts and dispute resolution are changes to the organisation of law firms, the use of artificial intelligence in basic legal work such as discovery, and outsourcing of common tasks such as research.⁷ These developments point to an unsettled state of emergent technology in the legal landscape that adds to a context of digital advancement with caution for legal university educators.

Law students will not only encounter digital disruption in the nature of their legal work, but they are also experiencing change in the teaching of the law curriculum at university. Higher education is evolving with faculty staff increasingly engaged ‘with options and technologies, including collaboration tools, video and media’⁸ where video, as a visualisation medium, taps into ‘the brain’s inherent ability to rapidly process visual information, identify patterns, and sense order in complex situations.’⁹ However, making sense of complex material is not necessarily guaranteed without the appropriate scaffolded learning experiences that are designed and supported by a sound understanding of online pedagogy.¹⁰ To provide quality learning experiences, digital technologies are best used as tools of participation and communication to foster collaborative knowledge construction.¹¹ Academics have long argued in legal education that there is value in teaching legal skills in substantive areas of law,¹² and teaching legal skills in higher education through the use of technology is intended to enhance student learning and engagement with digital change. While digital video can be used to scaffold learning for students and encourage reflection,¹³ it has often been used in legal education primarily for passive experiences. By combining video with online annotation or discussion it is possible to develop a more impactful learning design that improves student learning.¹⁴ A recent study that contrasted passive viewing of a

⁴ Laurence Boule and Rachael Field, *Australian Dispute Resolution Law and Practice* (LexisNexis Butterworths, 2017) ch 1.

⁵ Tania Sourdin, ‘Judge v Robot: Artificial Intelligence and Judicial Decision-Making’ (2018) 41(4) *University of New South Wales Law Review* 1114.

⁶ Riikka Koulu, *Law Technology and Dispute Resolution: The Privatisation of Coercion* (Taylor & Francis, 2018).

⁷ *FLIP Report 2017* (n 1).

⁸ New Media Consortium and EDUCAUSE Learning Initiative, *NMC Horizon Report: 2018 Higher Education Edition* (Report, 2018) 35

<<https://library.educause.edu/~media/files/library/2018/8/2018horizonreport.pdf>>.

⁹ *Ibid* 37.

¹⁰ Lillian Corbin and Lisa Bugden, ‘Online Teaching: The Importance of Pedagogy, Place and Presence in Legal Education’ (2018) 28 *Legal Education Review* 1, 10.

¹¹ Kwok-Wing Lai, ‘Digital Technology and the Culture of Teaching and Learning in Higher Education’ (2011) 27(8) *Australasian Journal of Educational Technology* 1263, 1264.

¹² Bobette Wolski, ‘Why, How, and What to Practice: Integrating Skills Teaching and Learning in the Undergraduate Law Curriculum’ (2002) 52(1-2) *Journal of Legal Education* 287.

¹³ Negin Mirriahi et al, ‘Identifying Engagement Patterns with Video Annotation Activities: A Case Study in Professional Development’ (2018) 34(1) *Australasian Journal of Educational Technology* 57.

¹⁴ Meg Colasante, ‘Using Video Annotation to Reflect On and Evaluate Physical Education Pre-Service Teaching Practice’ (2011) 27(1) *Australasian Journal of Educational Technology* 66, 83.

demonstration video of a cardiopulmonary resuscitation procedure with student annotation of the same video found that students who engaged with discussion via annotation experienced improved learning through increased concentration.¹⁵

Other studies have shown that there is value in scaffolding skills through the viewing of video of an industry representative performing a task or sharing professional practice insights.¹⁶ This kind of learning design incorporates an authentic approach to learning where 'real world' skills are taught.¹⁷ Use of video combined with online discussion can be a highly effective method of adopting digital technology in legal education.

This article explores the use of video in two courses (subjects) in a Juris Doctor program. *Negotiation and Dispute Resolution* (NDR) teaches the legal skills of negotiation and mediation while *Evidence* teaches advocacy. Through various learning and teaching investment grants from RMIT University, videos and curriculum designs were developed to prepare students with the legal skills and knowledge required to engage in role-plays or engage in legal writing tasks. The theory of blended learning was used in the learning designs to ensure that use of video and video-based discussion in the online environment was purposefully aligned to the face-to-face learning experiences. Blended learning refers to the intentional combination of online and face-to-face teaching and learning modes within the one course.¹⁸ In the designs discussed in this article, students actively engage with the video material through peer co-construction in online annotation and discussion. In the NDR course, we filmed a video with an industry partner that demonstrated the skills used in conducting a mediation. The students discussed sections of the video online to learn about mediation theory and practice and later demonstrated these skills in a weekend intensive class devoted to role-playing. In the Evidence course, a video was made of a cross-examination. Students watch the video and then discuss aspects of cross-examination practice online in a discussion forum. They later demonstrate their learning regarding the skill of cross-examination by crafting their own questions to a new scenario. A summary of the two courses is provided in Table 1 below (and detailed descriptions are provided in Section VII).

¹⁵ Po-Sheng Chui et al, 'A Video Annotation Learning Approach to Improve the Effects of Video Learning' (2018) 55(4) *Education and Teaching International* 459.

¹⁶ Narelle Lemon et al, 'Video Annotation for Collaborative Connections to Learning: Case Studies from an Australian Higher Education Context' In Laura Wankel et al (eds), *Improving Student Engagement and Retention through Multimedia Technologies: Including Video Annotation, Multimedia Apps, Videoconferencing, and Transmedia Storytelling Volume 6, Part F Cutting-Edge Technologies in Higher Education series*. (Emerald Group Publishing Limited, United Kingdom, 2013) 181, 185; Negin Mirriahi et al, 'Effects of Instructional Conditions and Experience on Student Reflection: A Video Annotation Study' (2018) 37(6) *Higher Education Research & Development* 1245.

¹⁷ Kathy Douglas, Meg Colasante and Amanda Kimpton, 'Exploiting Emerging Video Annotation Technology and Industry Engagement to Authentically Prepare Students for the Complex World of Work' in T Thomas et al (eds), *Research and Development in Higher Education: Learning for Life and Work in a Complex World* (Higher Education Research and Development Society of Australasia, 2015) vol 38, 1; Anthony Herrington and Jan Herrington 'What is an Authentic Learning Environment?' in Anthony Herrington and Jan Herrington (eds), *Authentic Learning Environments in Higher Education* (Idea Group, 2006).

¹⁸ Michael Moore, 'Foreword' in Curtis Bonk and Charles Graham (eds), *The Handbook of Blended Learning: Global Perspectives, Local Designs* (Pfeiffer Publishing, 2006).

Table 1. Summary of the use of video-based discussion in the two case examples

Course (Subject)	Legal skills demonstrated in video	Legal practitioner input in video	Discussion technology
Negotiation and Dispute Resolution (NDR)	Negotiation/mediation skills	Lawyer/mediator and parties enacting a mediation session	Discussion Board
Evidence	Advocacy skills	Barrister enacting cross-examination of a witness	Discussion Board

In this article, we first discuss the value of the legal skill demonstrated to the law students in these courses. Next, we outline the value of combining face-to-face student experiences with technology through the theory of blended learning. Later, after providing our two case examples, this article culminates with a roadmap of specific steps when using blended learning and video in the legal education context.¹⁹ Drawing upon research conducted in an initial video annotation project we used those research findings to underpin blended learning designs for the two courses of NDR and Evidence which are intended to be transferable to other university legal skills teaching contexts.

II ADR PEDAGOGY

ADR includes the key legal skills of negotiation and mediation, which are both knowledge areas and legal skills that are commonly taught in courses titled Dispute Resolution.²⁰ Law school offerings in this pedagogical area can combine civil procedure and ADR or offer ADR courses that are subjects in their own right.²¹ In late 2016, the Law Admissions Consultative Committee revised the Model Admission Rules for legal practice, altering Civil Dispute Resolution (formerly Civil Procedure) to include the teaching of ADR and thus including it in the core required areas for admission to legal practice.²² This course area will often include learning about the knowledge and skills used by a mediator in disputes through experiential role-plays.²³

¹⁹ We use the term ‘roadmap’ to connote a series of suggested steps for an approach to learning and technology. Our roadmap adapts and builds on a roadmap of the first author’s in a “how to” guide for teaching (Web Page, 30 June 2019).

<<https://emedia.rmit.edu.au/learningpatterns/content/blended-learning/>>. See for another roadmap example: Monash University, *Education Technology Roadmap* (Web Page, 12 March 2019) <<https://www.monash.edu/learning-teaching/innovation/tech-roadmap/>>.

²⁰ Judy Gutman, Tom Fisher and Erika Martens, ‘Why Teach Alternative Dispute Resolution to Law Students? Part One: Past and Current Practices and Some Unanswered Questions’ (2006) 16(1-2) *Legal Education Review* 125.

²¹ Kathy Douglas, ‘The Teaching of ADR in Australian Law Schools: Promoting Non-Adversarial Practice in Law’ (2011) 22(1) *Australasian Dispute Resolution Journal* 49.

²² Law Admissions Consultative Committee, *Model Admission Rules 2015* (at 11 March 2019) <https://www.lawcouncil.asn.au/files/web-pdf/LACC%20docs/212390818_8_LACC_Model_Admission_Rules_2015.pdf>.

²³ Edwin Greenebaum, ‘On Teaching Mediation’ (1999) 2 (Fall) *Journal of Dispute Resolution* 115.

Additionally, this area may also include consideration of the role of the lawyer²⁴ in the ADR processes. Lawyers are said to gain a ‘standard philosophical map’²⁵ through their legal education. This map usually privileges the role of litigation in dispute resolution and arguably derives from the nature of legal pedagogy. Put simply, the focus on adversarial means of dispute resolution in a legal curriculum (such as litigation) can influence law students and encourage an adversarial mindset in them as lawyers. The focus in law schools on the teaching of appellate decisions and the use of Socratic or case-based teaching methods has been said to promote an adversarial approach in students’ orientation to conflict.²⁶ ADR learning can temper this traditional adversarial mindset and promote a collaborative problem-solving frame for law students when considering legal problems.²⁷

Role-play is one teaching approach aimed at drawing out negotiation skills as compared to adversarial skills, and which can be supported through purposeful online preparation and face-to-face enactment. One of the benefits of the wide use of role-play in ADR courses is that the pedagogy adopted is more active²⁸ than in most traditional law courses. It employs experiential learning approaches that incorporate authentic learning scenarios and is therefore an important tool for skills development and the practical application of negotiation/mediation theory.²⁹ Nadja Alexander and Michele LeBaron argue that role-plays, while sometimes effective, can be overused with many students disconnecting from set roles, particularly where the scenarios and characters are culturally inappropriate.³⁰ New thinking in ADR pedagogy, whilst still largely endorsing thoughtfully designed role-plays used in a targeted manner,³¹ also advocates a variety of learning and teaching practices including adventure learning³² (where students venture out of the classroom to engage in ‘real life’ negotiations), and online learning.³³ The next step in ADR pedagogy is arguably the use of blended learning. This kind of pedagogy can provide an additional layer of deep learning for

²⁴ Suzanne J Schmitz, ‘Giving Meaning to the Second Generation of ADR Education: Attorneys’ Duty to Learn about ADR and What They Must Learn’ (1999) 1 (Spring) *Journal of Dispute Resolution* 30.

²⁵ Leonard Riskin, ‘Mediation and Lawyers’ (1982) 43(1) *Ohio State Law Journal* 29, 43.

²⁶ Leonard Riskin and John Westbrook, ‘Integrating Dispute Resolution Into Standard First Year Courses: The Missouri Plan’ (1989) 39(4) *Journal of Legal Education* 509.

²⁷ Tom Fisher, Judy Gutman and Erika Martens, ‘Why Teach Alternative Dispute Resolution to Law Students? Part 2: An Empirical Survey’ (2007) 17(1) *Legal Education Review* 67.

²⁸ Paul Ramsden, *Learning to Teach in Higher Education* (Taylor & Francis, 2nd ed, 2003).

²⁹ Melissa Conley Tyler and Naomi Cukier, ‘Nine Lessons for Teaching Negotiation Skills’ (2005) 15(1-2) *Legal Education Review* 61; Greenebaum, (n 23); Michael Moffitt, ‘Lights, Camera, Begin Final Exam: Testing What We Teach in Negotiation Courses’ (2004) 54(1) *Journal of Legal Education* 91.

³⁰ Nadja Alexander and Michelle LeBaron, ‘Death of the Role-Play’ in Christopher Honeyman, James Coben and Giuseppe De Palo (eds), *Rethinking Negotiation Teaching: Innovations for Context and Culture* (DRI Press, 2009) 179.

³¹ Noam Ebner and Kimberlee Kovach, ‘Simulation 2.0: The Resurrection’ in Christopher Honeyman and James Coben (eds), *Venturing Beyond the Classroom* (DRI Press, 2010) 245.

³² James Coben, Christopher Honeyman and Sharon Press, ‘Straight Off the Deep End in Adventure Learning’ in Christopher Honeyman and James Coben (eds), *Venturing Beyond the Classroom* (DRI Press, 2010) 109.

³³ David Matz and Noam Ebner, ‘Using Role-Play in Online Negotiation Teaching’ in Christopher Honeyman and James Coben (eds), *Venturing Beyond the Classroom* (DRI Press, 2010) 293.

students via online experiences such as the viewing of video and annotation.³⁴ In the same ways, learning about advocacy (discussed next) can be taught through engagement with video and online discussion.

III ADVOCACY PEDAGOGY

An adversarial system of trial, as is used in Australia, requires lawyers to have a range of advocacy skills to present and persuade a trial judge of contentious facts. Advocacy skills are taught in the second of our case examples, that of Evidence (see Table 1).

In an adversarial system, a party's principal objective is to persuade the court that their client's version of the facts should be accepted in order to secure a favourable outcome. Thus, advocacy skills are crucial for law students who ought to be equipped with a range of skills for practice, including oral and written communication skills, persuasive argument and cross-examination. These crucial skills can be taught in a range of subjects in a law degree including in civil litigation,³⁵ evidence law,³⁶ or specific advocacy electives. Anthony Hopkins emphasises the need for 'active-learning' through simulations by having students adopt and perform the role of prosecution and defence lawyers in a mock-trial.³⁷ However, this approach to assessment design is not without challenges as it is dependent on sufficient hours in the course to teach both theory and practice, availability of moot-court facilities, and the course being led by a lecturer with trial and advocacy experience.³⁸

There are a variety of technological tools that can aid in the teaching of advocacy simulations and these tools are part of 21st century legal pedagogy.³⁹ For instance, in New South Wales, Joel Butler and Rachel Mansted have attempted to bridge the gap between legal education and legal practice by developing a course where students can undertake mooting, appellate advocacy, and legal practice skills in a mock law-firm environment.⁴⁰ As part of the preparation and teaching techniques, the authors relied on an in-class deconstruction of an advocacy simulation video. The use of video and visual media in teaching law courses can be particularly beneficial in leading to positive student engagement and enhanced communications skills.⁴¹ The use of specifically made videos demonstrating advocacy skills can be particularly helpful to

³⁴ Judy Gutman and Matthew Riddle, 'ADR in Legal Education: Learning by Doing' (2012) 23(3) *Australasian Dispute Resolution Journal* 194; Kathy Douglas, Josephine Lang and Meg Colasante, 'The Challenges of Blended Learning Using a Media Annotation Tool' (2014) 11(2) *Journal of University Teaching and Learning Practice* 1, 3-4.

³⁵ Jacqueline Horan and Michelle Taylor-Sands, 'Bringing the Court and Mediation Room Into the Classroom' (2008) 18(1-2) *Legal Education Review* 197.

³⁶ Andrew Palmer, 'A Proof-Oriented Model of Evidence Teaching' (2002) 13(2) *Legal Education Review* 109.

³⁷ Anthony Hopkins, 'Teaching Evidence Law within the Framework of a Trial: Relating Theory to Practice as Students Take to Their Feet and Take Responsibility for the Trial Narrative' (2009) 2(1-2) *Journal of the Australasian Law Teachers Association* 173.

³⁸ *Ibid*, 182-4.

³⁹ John Sonsteng et al, 'Teaching the Art of Effective Advocacy in the 21st Century: A Paradigm Shift' (2018) 44(1) *Mitchell Hamline Law Review* 163.

⁴⁰ Joel Butler and Rachel Mansted, 'The Student as Apprentice: Bridging the Gap Between Education, Skills and Practice' (2008) 1 *Journal of the Australasian Law Teachers Association* 287.

⁴¹ Penelope Carruthers et al, 'Enhancing Student Learning and Engagement in the Juris Doctor through the Rich Tapestry of Legal Story-Telling' (2017) 1 *Journal of the Australasian Law Teachers Association* 26.

offer a model of practical skills that students are striving to attain, such as cross-examination. By combining video with annotation or discussion exercises students are actively engaged in learning by being prompted to critique, apply their own learning, or reflect on their observations. The next section explores how the combination of two modes of learning - interwoven online and classroom activities to form blended learning - can assist to foster active learning and increase student engagement in advocacy and dispute resolution.

IV BLENDED LEARNING

Blended learning in the broadest sense combines two or more learning modes.⁴² More specifically it is known as the combination of online teaching and learning with face-to-face classroom experience.⁴³ However, it is more than this. It includes co-dependency between modes and scaffolding across activities rendering the design more than a combination, but an effective blend.⁴⁴

A key benefit of blended learning is its ability to support an active learning environment with the use of technology.⁴⁵ As a component of blended learning, an online discussion environment allows greater time for reflection during the discussion process. As Charles Graham notes, when engaged in an online interaction, 'learners have time to more carefully consider and provide evidence for their claims and provide deeper, more thoughtful reflections'.⁴⁶ In a study undertaken by Kylie Burns et al, active learning was shown to be effective in engaging students in high level thinking around law and legal issues.⁴⁷ In their study, 25 students responded positively to the use of technology where there remains active interaction with lecturers and clear assessment criteria. However, Burns et al note that this positive response is more likely to be linked to improved student satisfaction than to improved learning outcomes.⁴⁸

Charles Dziuban et al studied the concept of blended learning and its relationship with the teaching and learning environment.⁴⁹ In their study, the authors concluded that information technology, as a main driver of information, remains essential to our education system.⁵⁰ The authors further concluded that technology should be adopted into education not only to enhance learning and support active learning but also to assist educators. Limitations to blended learning are related to the learning objectives affiliated with each course. First, it is important to assess whether the course is suited for blended learning and, further, the pedagogical implications must be contemplated and risks must be pre-assessed. Face-to-face environments may be the best for spontaneous interaction; however, where 'control of pace' is beneficial to the learning

⁴² Moore (n 18).

⁴³ Charles Graham, 'Blended Learning Systems: Definition, Current Trends, and Future Directions', in Curtis Bonk and Charles Graham (eds), *The Handbook of Blended Learning: Global Perspectives, Local Designs* (Pfeiffer, 2006).

⁴⁴ Francine Glazer, 'Introduction' in Francine Glazer (ed), *Blended Learning: Across the Disciplines, Across the Academy* (Stylus Publishing, 2012).

⁴⁵ Kylie Burns et al, 'Active Learning in Law by Flipping the Classroom: An Enquiry Into Effectiveness and Engagement' (2017) 27(1) *Legal Education Review* 163, 164.

⁴⁶ Graham (n 43) 18.

⁴⁷ Burns et al (n 45) 167.

⁴⁸ Ibid.

⁴⁹ Charles Dziuban et al, 'Blended Learning: The New Normal and Emerging Technologies' (2018) 15(1) *International Journal of Educational Technology in Higher Education* 1.

⁵⁰ Ibid 3.

goal, an online learning experience will offer a better environment. If the pedagogical implications of blended learning are not thought through, the approach risks incorporating the worst aspects of each of the learning modes utilised, leading to the opposite of the intended outcome.⁵¹ Second, the learning objectives must be clear and the skills must be identified to select the best mode.⁵² Hence, it is important that when using blended learning, educators not only focus on benefits but also contemplate limitations to attempt to minimise these prior to and during the implementation of the model. Further, educators should adjust the model and consider ways of improvement based on the experiences of using blended learning.

Even though blended learning can provide a more active learning environment, law lecturers using blended learning increasingly report that students attend class underprepared.⁵³ A response to this issue has been the development of an inverted model of blended learning, frequently referred to as a flipped classroom approach, which addresses the overburdened curriculum and student. This is achieved by (a) reducing the load of new materials covered within class time and (b) by encouraging student engagement via exploring new concepts and interacting with each other and their teachers, to overall develop a stronger relationship between the pre-class, in-class and post-class learning opportunities.⁵⁴ In fact, Burns et al, who employed flipped learning, reported that students came to class with a better understanding of the material, with the academics having more time in class to work on practical skills and provide guidance and feedback, resulting in an overall improvement of class performance.⁵⁵ The use of terminology such as flipped classroom becomes redundant when the key thrust of the learning design focuses on the purposeful alignment of online learning and preparatory activities to on-campus learning experiences. Law lecturers would arguably benefit from more examples of blended learning designs and the insights gained in the use of this approach to learning. Next, we outline the value of video-based discussion in a blended learning format.

V VIDEO-BASED DISCUSSION

Online video provides students with the affordances of repeat access to information.⁵⁶ This can be contrasted with traditional forms of face-to-face learning where students have no direct control or repeat access to information gained through in-class attendance and video viewing. Having video records available for as-required access means not having to rely on memory to recall specific content such as demonstrated practices.⁵⁷

⁵¹ Graham (n 43).

⁵² Moore (n 18) xxvi.

⁵³ Melissa Castan and Ross Hyams, 'Blended Learning in the Law Classroom: Design, Implementation and Evaluation of an Intervention in the First Year Curriculum Design' (2017) 27 *Legal Education Review*, 143, 148.

⁵⁴ Ibid 144.

⁵⁵ Burns et al (n 45) 167.

⁵⁶ Grainne Conole and Karen Fill, 'A Learning Design Toolkit to Create Pedagogically Effective Learning Activities' (2005) 8 *Journal of Interactive Media in Education*; Peter J Rich and Tonya Trip, 'Ten Essential Questions Educators Should Ask When Using Video Annotation Tools' (2011) 55(6) *TechTrends* 16.

⁵⁷ Kim Koh, 'The Use of Video Technology in Pre-Service Teacher Education and In-Service Teacher Professional Development', in Swee Fong Ng (ed.), *Cases of Mathematics Professional Development in East Asian Countries: Using Video to Support Grounded Analysis* (SpringerVerlag, Singapore, 2015) 229.

In isolation, video has been identified as an acquisition medium,⁵⁸ which can be viewed relatively passively apart from basic student controls of start, stop, and replay.⁵⁹ Depending on the pedagogical purpose, this may be enough. However, when the pedagogical purpose requires the development of complex discipline-specific practices, simply viewing a demonstration video may not support development of a deep understanding of legal skills represented in the video. The speed of the audio-visual content and/or slick editing can render video as providing cognitive overload experiences or alternatively entertainment fixation, unless students are carefully guided toward considered analysis, such as through strategic use of video controls or the video being chunked into smaller segments.⁶⁰ Video has great potential to contribute to student learning via opportunities 'to experience visual portrayals and discussions of issues centered around... [concepts such as] advocacy'; skills which may 'go largely unseen unless the student is already working... in specific areas of the field.'⁶¹ Video representations can address the *how-to* of practice, but recordings need to be used in a way that helps students to also address the *why*.⁶²

Various industries and university disciplines use videos to demonstrate profession-relevant skills. For example, medical schools that use video to illustrate concepts and practices for interviewing patients in community settings found that students improved their knowledge of interviewing and their self-awareness within this process.⁶³ Beyond watching the videos, the medical students post their observations onto an online discussion board, supported by a moderator who challenges assertions, probes students for deeper reflections, and rounds the discussion with a summary. In another example, in-service teachers view video of their own or others' mathematic teaching practices to then respond to various set questions in an online survey tool.⁶⁴ This approach—involving isolated text responses rather than group discussion—led to recommending (a) using a facilitator to scaffold the analysis, and (b) trialling collaborative rather than individual approaches to allow in-depth group analysis of practices viewed.

Video annotation or discussion via a tandem thread, for example as part of the learning designs of the two case examples in this paper, provides the opportunity for students to engage with video material in an active rather than passive mode via discourse.⁶⁵ The video can be developed by the student, industry, or by the teacher/s of a course.⁶⁶ Learning from video can be heightened by collaborative group discussion and student

⁵⁸ Diana Laurillard, *Teaching as a Design Science: Building Pedagogical Patterns for Learning and Technology* (Routledge, 2012).

⁵⁹ Dongsong Zhang et al, 'Instructional Video in E-learning: Assessing the Impact of Interactive Video on Learning Effectiveness' (2006) 43(1) *Information & Management* 15.

⁶⁰ Salvatore Alaimo and Shinyoung Park, 'Use of Video in Philanthropic and Nonprofit Studies Programs' (2018) 8(2) *Journal of Nonprofit Education and Leadership* 122.

⁶¹ Ibid 133.

⁶² Ibid.

⁶³ John M Wiecha et al, 'Collaborative e-Learning Using Streaming Video and Asynchronous Discussion Boards to Teach the Cognitive Foundation of Medical Interviewing: A Case Study' (2003) 5(2) *Journal of Medical Internet Research* e13.

⁶⁴ Marc Kleinknecht and Jürgen Schneider, 'What Do Teachers Think and Feel When Analyzing Videos of Themselves and Other Teachers Teaching?' (2013) 33 *Teaching and Teacher Education* 13.

⁶⁵ Colasante (n14) 66.

⁶⁶ Meg Colasante and Kathy Douglas, 'Prepare, Participate, Connect: Active Learning with Video Annotation' (2016) 32(4) *Australasian Journal of Educational Technology* 68, 69.

reflection by allowing the student to engage in critical discussion with their peers.⁶⁷ For example, when using annotation after each student group has commented, teachers or industry representatives can mark their annotations and provide feedback.⁶⁸ Such an approach to the use of video requires careful planning and communication with students to optimise student learning. Video annotation, or tandem electronic discussion, enhances student learning by providing the opportunity for reflection and group dialogue regarding visual, digital representations.⁶⁹ Video-based discussion can help students master employment skills (such as legal practice skills) and promote critical reflection.⁷⁰ When developing video for discussion it may be useful to frame the design in the practice of a particular industry such as mediation.⁷¹

VI EVOLUTION OF A LEARNING DESIGN

This stage of our own practice represents a key reflection point in the evolution of designing blended learning with video-based discussion in the law discipline at RMIT. A subject in the Juris Doctor, Evidence, was one case in a multiple case study in 2011 that examined active video-based learning utilising a video annotation tool (MAT) for professional learning-based curriculum.⁷² The cases involved nine classes of students and their teachers from various disciplines and across vocational education and undergraduate courses, and one postgraduate course, Evidence, which is one of the law discipline courses under focus in this article).

There were several key lessons learnt from the multiple case study,⁷³ four of which are summarised in row A of Figure 1 below. First, the curriculum design utilising video-based discussion must be carefully developed to fit with the subject. The learning should be authentic to the discipline and the activities purposefully designed for the students to be motivated to achieve as intended. The online learning through the use of media should reference other learning activities and flow seamlessly for optimum results. Additionally, teachers need to plan carefully when blending a learning design ensuring that they link intended learning outcomes with the technology.⁷⁴ The course design generally should include assessment to motivate students to make the appropriate time commitment.⁷⁵ It is also important to ensure learning objectives and

⁶⁷ Alan D Greenberg and Jan Zanetis, *The Impact of Broadcast and Streaming Video in Education; What the Research Says and How Educators and Decision Makers Can Begin to Prepare for the Future* (Commissioned CISCO to Wainhouse Research Report, March 2012).

⁶⁸ Colasante (n 14) 66.

⁶⁹ Negin Mirriahi et al (n 13).

⁷⁰ Meg Colasante, 'Using a Video Annotation Tool for Authentic Learning: A Case Study' in Siew-Mee Barton, John Hedbery and Katsuaki Suzuki (eds), *Proceedings of Global Learn Asia Pacific* (Association for the Advancement of Computing in Education 2011) 981.

⁷¹ For the mediation industry we developed a learning model that provides guidance regarding developing an authentic video for peer discussion: Kathy Douglas, Tina Popa and Christina Platz, 'Teaching Mediation Using Video and Peer Discussion: An Engaged Video Learning Model' (2019) 29(1) *Australasian Dispute Resolution Journal* 182.

⁷² This research was funded by a \$46,000 university Learning and Teaching Investment Fund Grant.

⁷³ Douglas, Lang and Colasante (n 34).

⁷⁴ *Ibid* 14.

⁷⁵ Meg Colasante and Josephine Lang, 'Can a Media Annotation Tool Enhance Online Engagement With Learning? A Multi-Case Work-In-Progress Report' in Jose Cordeiro, Markus Helfert and Maria J Martins (eds), *Proceedings of the 4th International Conference of Computer Supported Education* (Science and Technology Publications, 2012) vol 2, 455.

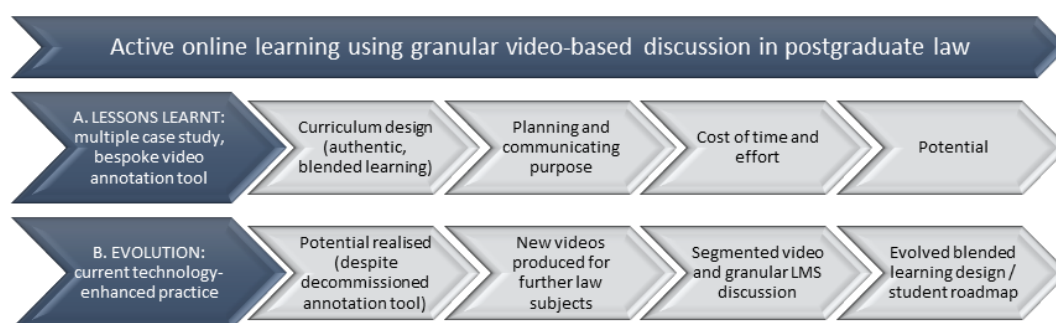
the assessment of the annotation of video or electronic discussion are constructively aligned.⁷⁶ One assessment option is to require students to draft a reflective report about the annotation or discussion forum.

Second, not only does the pedagogical design need to be purposeful, but teachers need to carefully plan how they will communicate the activity purpose to the students, to increase their understanding and motivation to engage. It is crucial to articulate a narrative of purpose for annotating video to encourage student engagement.⁷⁷ Students need to understand why they are using the video medium and how subsequent online discussion will assist learning. Teachers should also practice with the technology to ensure that it is effective and easy to use for students.

Third, the cost of time and effort can form a barrier to both teachers and students. If the technology takes too long to learn or to use, the teachers may not make best use of the inherent affordances and/or students may resort to using surface approaches to learning or even reject the activity. In the multiple case study, teachers highlighted the cost of their own time in using a blended learning approach in trialling new technological approaches to teaching.⁷⁸ There are also costs of professional development and technological support.⁷⁹ There is usually a significant production cost to developing a video; however, the use of mobile devices with video capability can limit that cost.

Fourth, one of the key findings of the multiple case study was the potential of using the affordances of the video annotation tool to foster purposeful video-based discussion across diverse contexts that adopt authentic learning designs. The adoption of video annotation/discussion that promotes peer debate and learning has significant potential that is worth exploring.⁸⁰ Lastly, it is important when using these kinds of learning designs that students need to be given timelines to complete the group work, video annotations, and reflections as the learning design requires a considerable time commitment.⁸¹

Figure 1. Evolution of active online video-based discussion from lessons learnt from the initial multiple case study (A), to current practice (B).



⁷⁶ Judith McNamara and Kelley Burton, 'Assessment of Online Discussion Forums for Law Students' (2009) 6(2) *Journal of University Teaching and Learning Practice* 1.

⁷⁷ Douglas, Lang and Colasante (n 34) 15.

⁷⁸ Ibid.

⁷⁹ Ibid 16.

⁸⁰ Ibid 17-8.

⁸¹ Ibid.

Since the multiple case study of 2011, the use of video-based discussion for active learning in law at RMIT University has evolved from the effects of continual scholarly reflection, additional funding, and a change in video-based discussion technology. These changes are reflected in the case examples detailed in the next section, such as how technology-enhanced practices continue into current practice and are represented in summary in row B of Figure 1. First, the potential of online video-based discussion has been carried over into other practices without reliance on a bespoke tool. The decommissioning of the annotation tool (MAT) meant that promising and proven practices needed to change to a more sustainable format.

Second, while video remains the key representational and demonstration medium, there is now an expanded range of cases due to additional funding mechanisms and collaborations with industry bodies. The experience of the initial 2011 advocacy video for the Evidence course has been applied to further video examples. In 2013 the negotiation/mediation video and learning design was developed for the NDR course and implemented in 2014.⁸² In 2017, funding allowed for a new video to be made for the Evidence course, implemented in 2018, that extended the focus from general advocacy to the specific skill of cross-examination and the development of legal writing skills.⁸³

Third, the technology to enable student discussion on the finer points of the practical legal skills demonstrated in the videos changed from a bespoke video annotation tool to the routine affordances of a learning management system (LMS). While the annotation tool effectively enabled pin-point peer discussion, the readily available affordances of an LMS contribute to a reliable learning environment in which to conduct video-based discussion, utilising basic video upload functions and discussion forum threads. The remaining missing feature, the ability for students to anchor discussion to pin-point video segments at various granulations (from seconds to minutes of footage), was largely mitigated by teacher segmentation of videos into key chunks of demonstration content.

We next outline two examples of the use of this blended learning approach, before presenting a blended learning roadmap drawn from these examples.

VII CASE EXAMPLES OF BLENDED LEARNING USING VIDEO-BASED DISCUSSION IN TEACHING NEGOTIATION/MEDIATION AND ADVOCACY

The case examples provided in this section explain the implementation of video-based discussion in the blended learning design of two postgraduate law courses, *NDR* and *Evidence*. Each blended learning design considers the semester-wide pedagogy involving seamless and purposeful learning across both online and classroom spaces. Each course has a particular legal skill set that students develop through video demonstration with industry practitioner input, plus student peer discussion on the skills to draw out the underpinning knowledge explicitly or implicitly on display in the videos. Detailed descriptions are provided on the two courses below, which extends the summary provided in the introduction (see Table 1).

⁸² The project was funded by a \$20,000 University Global Learning by Design Learning and Teaching Grant.

⁸³ This project was funded as part of a \$40,000 College Digital Uplift Learning and Teaching Grant.

A *Negotiation and Dispute Resolution | Mediation Skills*

The key skills that have been identified in teaching this course are negotiation and mediation skills with an emphasis on underpinning communication skills. The design aims to prepare students for a written journal assessment that requires students to critically reflect on their own performance in role-plays as well as those of their peers. The course is delivered across three on-campus weekend intensives.

Prior to attending the first intensive, students are asked to study the underpinning theory of conflict, negotiation, and mediation topics online through the LMS. Students engage with readings and a negotiation/mediation video that is broken up into various parts and hosted on the learning management system. The aims are for students to familiarise themselves with the readings and videos and to integrate theory and practice.

Communication skills such as active listening, the ability to ask open-ended questions, and reframing are relevant for development of negotiation and mediation skills. For this course, these skills are best learnt through role-play and the learning design prepares students for the demonstration of these skills. The negotiation/mediation video was segmented into shorter videos linked to separate discussion board threads (see Figure 2 below) to support video-based discussion. The aim was to provide the students with an opportunity to watch the video and to identify and learn the articulated negotiation and mediation skills via the active learning of peer discussion. The video developed for NDR demonstrates a legal dispute with two parties and a mediator. This video was developed in a joint project with the Alternative Dispute Resolution Committee of the Victorian Bar, and actors in the video were barristers who were mediation trainers. By demonstrating a business partnership dispute, the video provided an authentic legal scenario for the students to engage with.

The conflict depicted in the video relates to dissatisfaction with a partnership arrangement. During the video the mediator, who is a barrister and mediation trainer, demonstrates the various stages of a mediation, including introductions, opening statements, setting the agenda, private sessions, negotiations, and agreement writing. The mediator also demonstrates various negotiation/mediation communication skills including asking open and closed questions, establishing rapport, summarising and reframing statements and assisting parties to negotiate a settlement. For example, in the video the mediator shows active listening regarding the partnership dispute by his open body language, strategic nodding to indicate that he is hearing the parties, and frequent eye contact. The mediator also asks open prompting questions that helps the parties to expand on their concerns about challenges in the partnership and on occasion reframes the concerns raised to take any 'blaming' language out of the assertion.

Figure 2. Example of Video and Discussion Board



Published Edit

This is a graded discussion: 0 points possible due 21 Dec 2017

Assessment 1(b) - Video Part 4: Exploratory Negotiations

Please also see the information posted in Announcements for more information about this task.

Use the 'Questions for consideration' to prompt your discussion.

As a guide, each post should be approximately 300 words (ie maximum of 600 words altogether). You may post one initial posting for one mediation video and a response to another student on another discussion OR you may make two posts for different video discussions.

Legal Mediation Part 4 - Exploratory Negotiations



Questions for consideration:

Describe a least one instance in the video in which emotion is expressed. How may emotion impact on a mediation?

Search entries or author Unread Subscribe

Write a reply...

Discussions		Ordered by recent activity
word count	Last post 6 Feb 2018	1 1
Assessment 1(b) - Video Part 1: Introductions	Last post 23 Dec 2017	Due 21 Dec 2017 at 23:59 21 21
Assessment 1(b) - Video Part 5: Private Sessions	Last post 22 Dec 2017	Due 21 Dec 2017 at 23:59 14 14
Assessment 1(b) - Video Part 2: Statements	Last post 22 Dec 2017	Due 21 Dec 2017 at 23:59 20 20
Assessment 1(b) - Video Part 3: Setting the Agenda	Last post 22 Dec 2017	Due 21 Dec 2017 at 23:59 7 7
Assessment 1(b) - Video Part 6: Negotiating Outcomes	Last post 21 Dec 2017	Due 21 Dec 2017 at 23:59 7 7
Assessment 1(b) - Video Part 4: Exploratory Negotiations	Last post 21 Dec 2017	Due 21 Dec 2017 at 23:59 11 11
Assessment 1(b) - Video Part 7: Agreements	Last post 21 Dec 2017	Due 21 Dec 2017 at 23:59 3 3

In the discussion that ensues from watching the video material, students debate key ideas in the online discussion board. Students discuss each video segment in a tandem threaded discussion, linking the mediator's practices that they are viewing with legal theory. Questions are set by the lecturers to guide students and help them to deeply focus on the important aspects of the video. The lecturer also monitors the discussions while asking questions to prompt in depth discussion and critical thought. This is the key to preparing students for negotiation and mediation in the face-to-face environment. The blending of the activity means that when students attend class for the intensive weekend they already possess familiarity with the negotiation/mediation process and are prepared to demonstrate negotiation and mediation skills in the role-plays. Hence the online activities prepare students for the on-campus learning experiences.

Next the students reflect on their online discussions. They consider which two discussion board posts best demonstrates their own understanding of the theory, its practical application, and critical engagement with peers, and then submit these posts for assessment. The actions of reflecting on their learning online and choosing their areas of strength provides a meta-assessment of what they have learned.

Ultimately, students are required to write a journal for assessment critically reflecting on their role-play experiences and critiquing their own skills and performance as well as those of their peers.⁸⁴ In this journal, students culminate their integration of theory with practice, with reference to negotiation and mediation,⁸⁵ for this course. To assist them with their reflection students are provided with a detailed marking guide after each role-play to help guide them to assess their performance as well as the performance of their peers. Reflective writing is discussed during the face-to-face classes to scaffold this kind of assessment and links are made with the reflections in the discussion boards conducted online.

B Evidence | Advocacy Skills

As discussed earlier, advocacy is a critical skill that law students must be equipped with as part of their legal education. Advocacy involves teaching written and oral communication skills, as well as court-specific skills such as cross-examination. In the course Evidence, which is delivered over a semester, the video-based discussion task features in two parts: video discussion board and a file note to counsel. The watching and commenting on the video and writing of the file note occurs in the online environment. The online experiences are combined with face-to-face weekly classes. Students commence their study of evidence principles by first learning about the nature of the adversarial system of justice. While the Evidence course is predominantly practice-orientated, students nevertheless engage with doctrinal analysis of legislation and case law underpinning the legal system. For example, students must engage with and understand the legal rules about introducing types of evidence (such as opinion or hearsay evidence), before they can apply their learning in practice.

⁸⁴ Michael G Moore, *The Handbook of Distance Education*, (Routledge, 2nd ed, 2007); Katalin J Kabat, 'Time, Space, and Dialogue in a Distance-learning Class Discussion Board' (2014) 11(2) *E-Learning and Digital Media* 162.

⁸⁵ Judith McNamara and Rachael Field, 'Designing Reflective Assessment for Workplace Learning in Legal Education' (Conference Paper, ATN Evaluation and Assessment Conference, 29-30 November 2007).

To facilitate the learning of the nature of the adversarial system, it is imperative to identify the relevant skills that students ought to acquire from a practice-orientated subject such as Evidence. Students learn advocacy skills, cross-examination skills, and persuasive argument as these are all articulation skills a lawyer must possess for court advocacy.

During the course, students view a video of a lawyer cross-examining a witness. The scenario depicted in the video forms a demonstration as the starting prompt for the video-based discussion task. Students are provided with three documents to accompany the video. The first explains the background scenario leading to a criminal indictment, the second contains a witness statement to be used in court proceedings, while the third document is a transcript of the video. The video itself depicts a scene where the defendant's lawyer cross-examines the prosecution's witness (see Figure 3). The purpose of the task is to provide students with a practical demonstration of selected areas of Evidence law, with students viewing a video of a mock cross-examination in preparation for further learning engagement.

The Evidence video centres on a scenario where the accused is charged with murder and a key witness has provided testimony to the police. The video depicts the accused's defence barrister cross-examining the prosecution's key witness in the stand. During the video the defence barrister asks the witness numerous leading questions, such as: 'It was in these circumstances you say you identified Mr Wolfe as one of the men who had got out of the Ford Falcon?' The defence barrister also demonstrates admissibility of various forms of evidence including prior inconsistent statements, identification evidence, and privilege. Further, the video demonstrates the application of the rule in *Browne v Dunn*,⁸⁶ which provides that that when a witness is giving evidence and counsel intends to call evidence that contradicts the witness' testimony, counsel must put the substance of the contradictory evidence to the witness to afford them an opportunity to explain, accept, or deny the contradictory evidence. In the video the defence barrister provides the witness with a copy of his police statement and proceeds to question the witness on the inconsistency between the written statement and the oral testimony. Students are required to identify the barrister's conduct to discuss the impact that failure to comply with the rule would have on admissibility of the evidence. In addition, the video shows oral communication skills, persuasive argument through questioning, and active listening skills to the witness' testimony, which are all integral skills of court advocacy.

After viewing the video students are required to answer five questions, as set by the lecturers and as relating to the video, on a discussion forum. Students are directed to various parts of the video and prompted to discuss whether certain evidence ought to be admissible, or to demonstrate an understanding of the consequences of failure by counsel to comply with court rules. The discussion forum provides an opportunity for students to apply the knowledge they have gained from engaging with legal theory and watching the video to engage in meaningful debate with their peers.

After engaging in dialogue with their peers on the online discussion board (similarly to NDR) students reflect on their learning in the discussion forum through the process of selecting their preferred online discussion contributions to submit for assessment purposes.

⁸⁶ (1893) 6 R 67.

Finally, students actively apply the knowledge they have gained by generating authentic legal artefacts. After reviewing a new written hypothetical scenario and instructions, students are required to prepare a file note to a barrister that critically analyses the legal issues arising out of the scenario. They are also required to draft a set of questions intended to be put to the witness in cross-examination on the legal issues identified. The design requires students to develop legal writing skills to prepare these questions.

Figure 3. Example of Cross-Examination Video



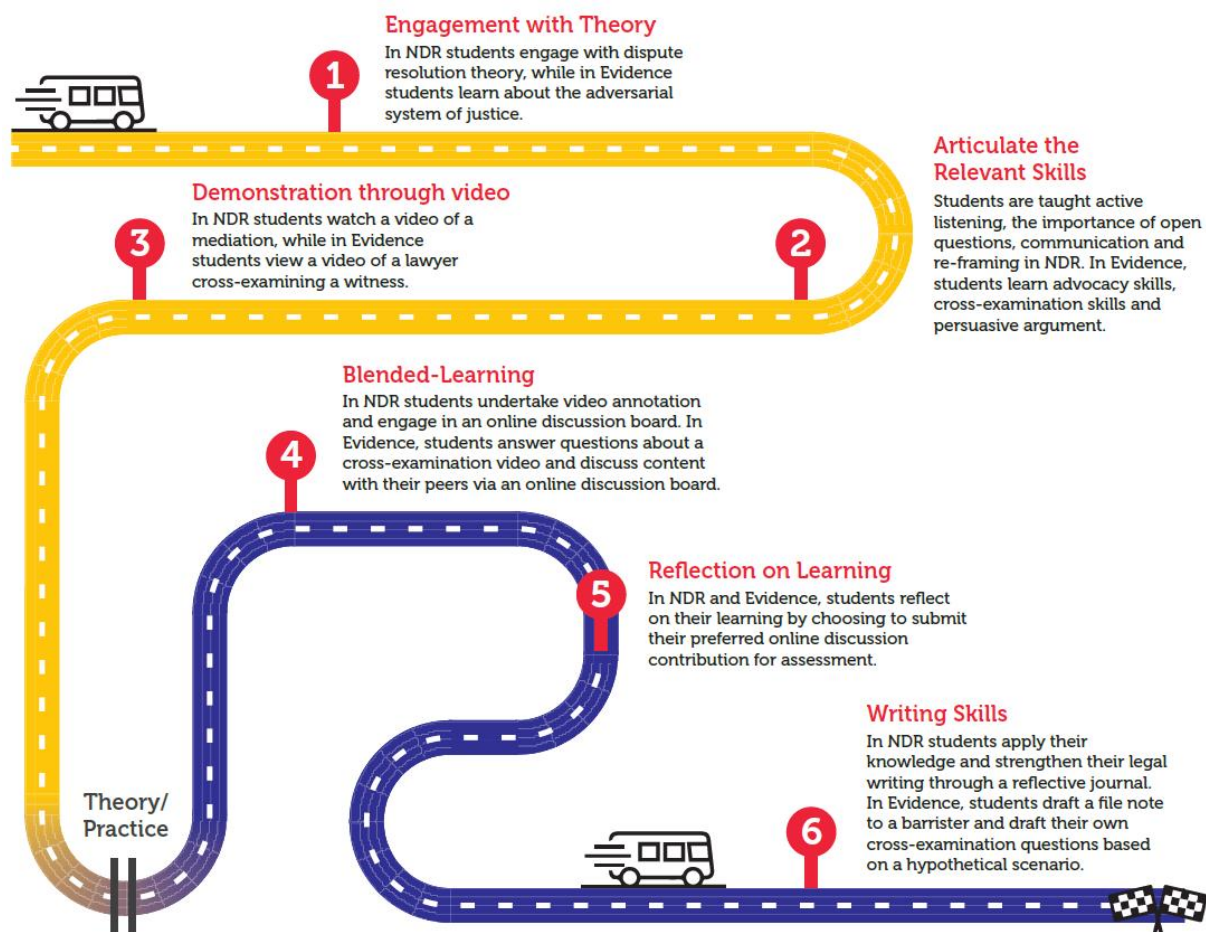
VIII BLENDED LEARNING ROADMAP

This article presented two case examples of blended learning utilising video-based discussion. From these, a single roadmap is extrapolated, intended to assist other university teachers who may choose to use this curriculum design model for their own legal teaching. We have drawn out the common features of the two case examples of NDR for negotiation/mediation skills, and Evidence for advocacy skills, to draw out six key steps in a student's journey through the respective courses (see Figure 4). Each step is annotated with a summary of what this entails for the NDR and Evidence case examples.

This roadmap utilises the pedagogical benefits discussed in earlier sections of this paper. It employs digital technology in the form of online video and peer discussion technology, as well as access to readings and other theoretical documentation. These resources enable engagement with theory to both learn and eventually articulate required legal skills (negotiation/mediation and advocacy), which are also demonstrated via authentic legal demonstrations in video. However, this is not a passive learning experience. Students participate in online peer dialogue to actively discuss and debate the skills represented in the video demonstrations, in reference to the theory. This provides for deeper learning opportunities and preparation for on-campus learning experiences (eg role-play) thus forming purposefully aligned blended learning courses. Assessment tasks support the blend by tasking students to studiously reflect on their video-based discussions in order to evaluate their best work to submit for assessment purposes. Further assessment tasks in the respective courses involve

generating written artefacts to further demonstrate legal skill application (eg a critical reflection journal on role-played legal skills, a file note, and cross-examination questions).

Figure 4. Legal skill building: A roadmap for blended learning curriculum incorporating video-based discussion.



IV CONCLUSION AND NEXT STEPS

An integral aspect of law studies is the need to equip law students with skills necessary for legal practice, such as mediation and advocacy. In this paper the authors have explored the use of blended learning utilising video-based discussion as a means of teaching law students these crucial legal skills. The blended learning designs involve a combination of both traditional face-to-face modes of learning and online learning using video and technology. Video-based discussion can promote active blended learning by creating an opportunity for students to not only view a video of a legal skill, but also to apply it through online discussion in preparation for face-to-face learning activities. This type of learning design facilitates a more interactive method of learning when compared with traditional forms of teaching as students are actively engaged with media and are also encouraged to engage with their peers. A roadmap extrapolated from our two examples is offered with the intention of transferability or adaptability to other university legal courses.

To further examine the evolution of blended learning practices utilising video-based discussion in the law discipline at RMIT University, a further research project has commenced. The methodological approach involves a multiple case study with a longitudinal focus. The two classes of NDR and Evidence discussed in this paper form the cases of the new study. Additionally, the original case involving Evidence in the 2011 multiple case study will be drawn upon to illustrate and/or challenge 'how certain conditions and their underlying processes change over time'.⁸⁷

⁸⁷ Robert K Yin, *Case Study Research: Design and Methods (Applied Social Research Methods)* (SAGE Publications, 5th ed, 2014) 53.

