

Learning to be a lawyer: English legal education and law firms in an international perspective

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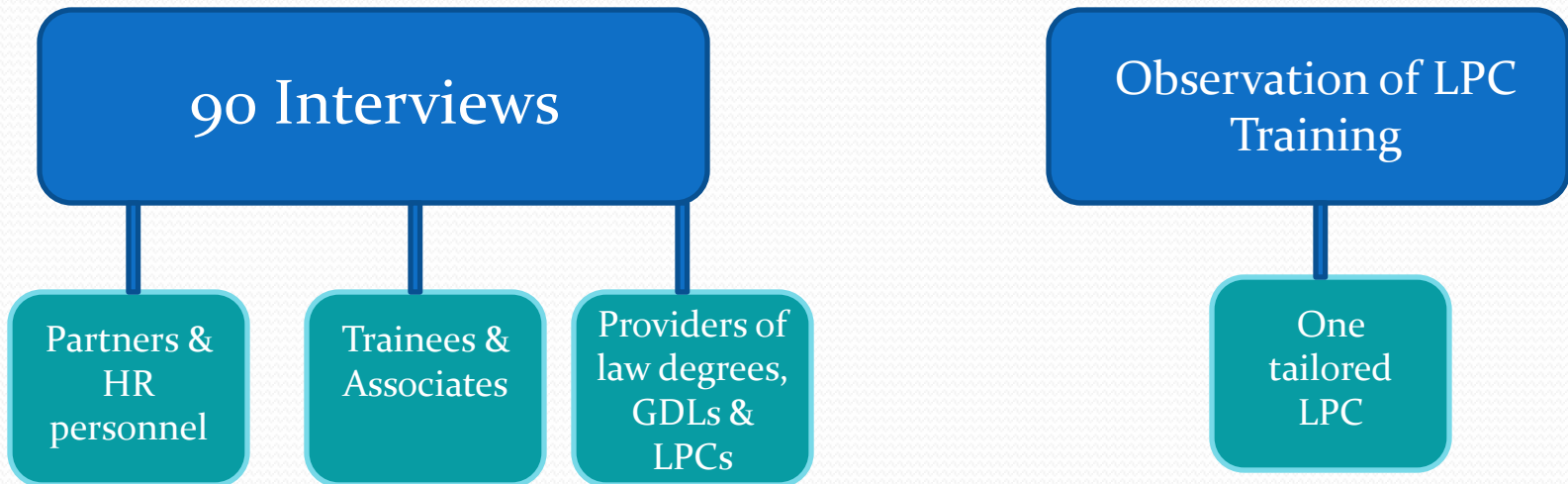
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Our Research

Three Questions

1. What is the role of different recruitment strategies and post-recruitment training in the development of a cohort of effective lawyers?
2. What is the role of professional training provided by firms in the management of cultures of professional work and in the development of the key skills needed by corporate lawyers?
3. How does compulsory (regulated) training for lawyers interact with additional training provided by firms and how is this managed worldwide?

Methods



The Headline Story



Legal education is most effective when tailored to the realities of work in a law firm

- Less classrooms and more learning in practice?
- Extension of the tailoring of legal education?
- What role for the traineeship and WBL?
- What can be learned from other countries?



Some Limitations

- We only looked at large City firms
- We are not lawyers and don't have an opinion about law degrees!



Outline



- The form and function of 'formal' education
- The firm as a place of learning
- International comparisons
- Take home messages

The form and function of 'formal' education

**'Fundamental'
education**

Law Degrees
GDL

**'Practice-related'
education**

LPC

- ‘Fundamental Education’

The core knowledge base is vital

- How to make it meaningful and relevant to practice?

“whilst you do have to be technically competent, I actually think that at the end of the day it’s your personality and your business skills that are probably more important than your ability as a lawyer...” (Associate, 2 yrs PQE)

“So I think then every trainee has that moment of realisation where you realise you can’t just present the law by reference to case law and references to articles you have to take it, break it down into just layman’s terms and apply it to what you’re doing. And I think that’s the difference when you qualify ..” (Associate, 3 yrs PQE)

- ‘Fundamental Education’

The core knowledge base is vital

- The key thing is to learn to **think** like a lawyer
- Tailored GDLs better than standard GDLs in this respect

Fundamental
technical
principles (inc.
research)

Legal
reasoning

Ethics and
Values

- ‘Practice-related’ education

The realities of work must be addressed

- Varies course by course...
- Those doing a tailored course had massively different views

“You know I wish I remembered more, I really wish I remembered more...at the time when you’re learning its very dry it doesn’t mean anything and then when you’re suddenly in a department and faced with reviewing an article that’s association on something you think shit I knew I once knew this but I can’t remember any more” (**Associate**)

“the courses were shorter to give you more time obviously to give you the practice you needed for the other skills courses. And I think it worked very well, I think you had enough time to do the work that you needed to do to learn the practical side of those legal options and you also had enough time to go away and practice the skills that they wanted you to learn” (**Associate**).

- ‘Practice-related’ education

The realities of work must be addressed

- The role of business-line specific simulation

“We [the training firm] have an Editorial Board [of lawyers] of forty two and the reason it’s so big is that we want, at each event, around eight or nine or ten of them to actually come to the event. So they sit on the tables with the delegates and they work the case study exercises with the delegates. So in that role they are immediately acting effectively as coaching and mentoring facilitators. But delegates love the fact that this is a real lawyer sat with me for two days chatting about how we should manage this case scenario...I see principally the role as being a sounding board. So somebody tells you [the editorial layer] what they think and you don’t offer your own opinion, you just challenge their assumptions and you keep challenging their assumptions until they become more robust in their opinion, or not as the case may be”

(Training Consultant).

The form and function of 'formal' education: **Implications**

- **The classroom should not dominate – simulations?**
- **Tailoring appears to have been successful – so more?**
- **But what about transferability – specialisation and requalification option?**

The firm as a place of learning

'Formal' education

Traineeship
CPD

'Informal' education

Mentoring
Learning through
doing

- ‘Formal’ Education – The Traineeship

Initial practical learning that MATTERS

- The key thing is to learn to **behave** like a lawyer and learn **procedures**
- Responsibility, intense soft-skills development and identity work

Coping with
responsibility
(however minor)

Everyday skills

Identity
transformation

- ‘Formal’ Education – The Traineeship

Practical learning and ‘the nitty-gritty’

- Are training contracts still relevant?

“I spent two weeks in the pensions department just sitting with a senior associate and just doing bits and pieces of work that he and others passed on to me. I spent my last week in the projects department which is part of the corporate department here and deals with things like mining and oil projects etc” (**Associate, English firm, 1 year PQE**)

“I think that my general complaint as a trainee was that you weren’t given much responsibility and I think now with all my grand experience of two months as a new qualifier I can see why that is because trainees come and go, three month seats are very short and actually by the time you’ve got them involved they leave again. So I certainly found as a trainee that tasks were quite ad hoc” (**Associate, 3 months PQE**)

- Informal education

“Learning through doing” seen as highly effective by the firms

Already occurs through training contracts and previously through the Articles system

“went for a two year or five year article clerkship and a lot of what you learnt was existing in a firm. You know, it was how to operate within a law firm, which is very different from the rest of the world, from education until then. How to deal with secretaries and a supervisor, how to deal with clients. A lot of things were done there that just weren't labeled and categorised and ticked and all the rest of it, but they were all very valuable” (**Senior Educator, LPC provider**)

- Informal education

“Learning through doing” seen as highly effective by the firms

Assessment and administration too complex?

B: “I think there is a great deal of um, objective criteria writing, everything has to be criteria based, everything, through the LPC but especially through the work based learning process and I think those many, many criteria probably make it, I’m not sure they work. But I mean there are 37 different um, standards you have to achieve in different parts of your um, work based learning. *It is a monumentally complicated thing*”

A: “37?”

B: “different standards you have to achieve, they all got to be knocked down as skills that have to be achieved, **tick boxed over two years**, and clearly if you do something in the first part of the training contract it won’t be as good as it should be by the end of the training contract, especially about renewal. *I think probably it has become a monster.*” (Senior educator, LPC provider)

How effective are traineeships?

- **Highly effective for learning day-to-day procedures.**
- **Quality of training is HIGHLY variable.**
- **Learning through doing is core to the traineeship and most effective.**
- **Could the traineeship become more specialised?**
- **How to streamline assessment: principles rather than content?**

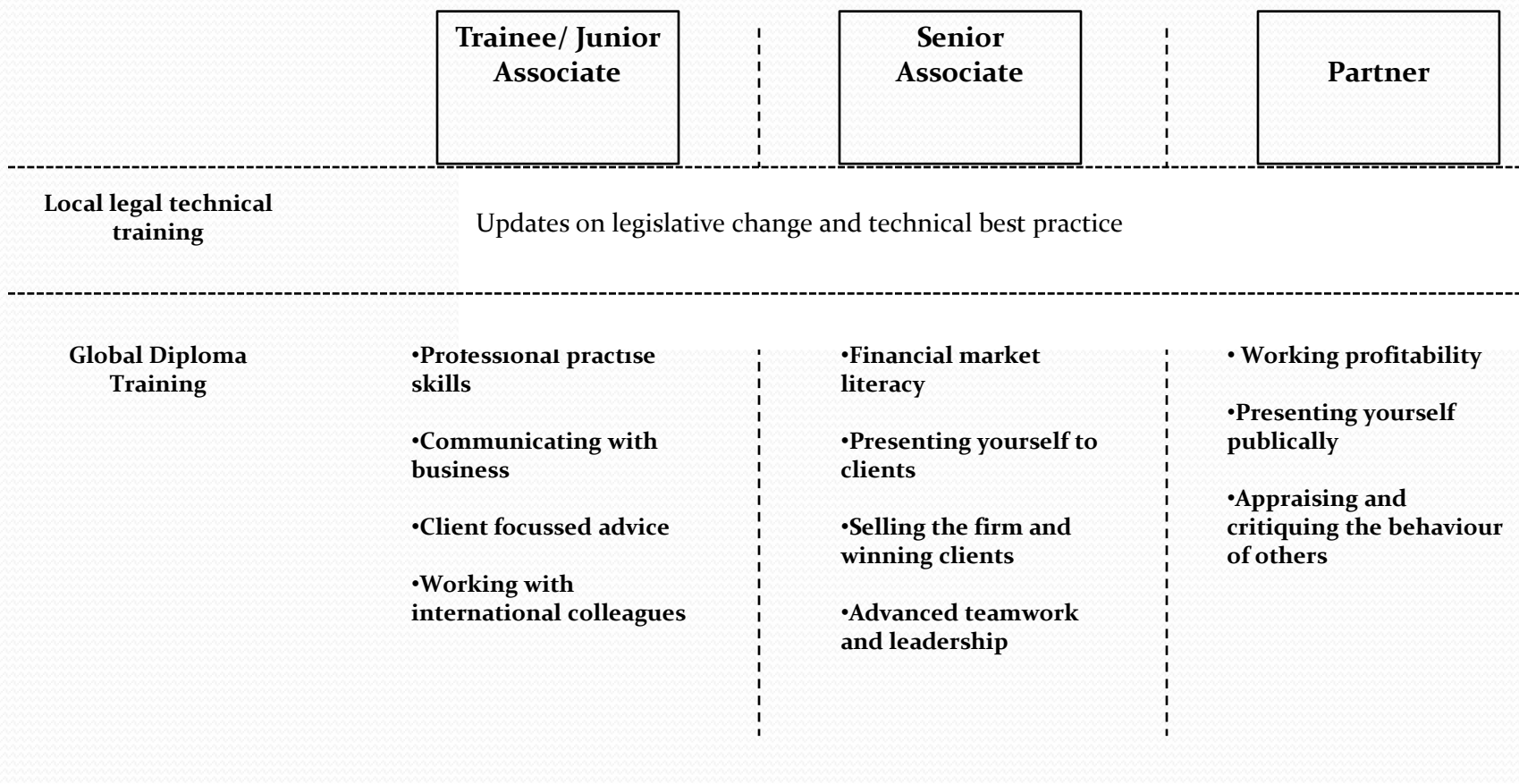
• Continuing Professional Development

Plentiful, varied and effective: Exceeds SRA requirements

- Large firms formalise to encourage attendance.
- In-House Universities: Selling CPD

“we’ve got this block of practice diplomas which is for the first 4 years, so that finishes, hopefully about when you’re going to be appointed to Managing Associate which is the more senior level Associate, and then we’re going to have at that level Managing Associate Diplomas, which will have a slightly different content but will take you through the next stage and then we will have training and development for partners as well so it goes all the way through. It is really cradle to grave training and development” (**Global Head of Training, English Firm**)

A typical training and Diploma programme at an English transnational law firm.
 Source: Documents collected during fieldwork.



What works, what inspires?

Puts lawyers off

- Didacticism
- Matter perceived as obvious
- Poor quality presenters
- Irrelevance
- Staid pedagogical techniques

Encourages attendance

- Interactivity
- Matter perceived as interesting
- Engaging presenters/trainers
- Industry/firm relevance
- Innovation!

The firm as a place of learning: Implications

- Less theory, more practice?
- Performance in simulations part of accredited training?
- Marrying innovation with rigorousness
- Less emphasis on doing everything?
- A requalification option?

International comparisons

- Can we learn from the rest of Europe?
- Is the approach from Civil Law jurisdictions relevant, appropriate and rigorous?
- Some lessons from Italy & Germany.

National variations in Legal Education Systems

	England and Wales	Germany	Italy
Qualifying degree	Any subjected to GDL conversion course	Law	Law
Education Duration	3 years	4 to 5 years (plus optional thesis)	4 years in theory but often more (6-7)
Education Focus	General legal reasoning principles and techniques. Highly specialised electives	Systematic mastery of laws and procedures. Generalist focus. Many historical or theoretical electives	Systematic mastery of laws and procedures. Generalist focus. Many historical or theoretical electives
Pedagogy	Increasing focus on transferable skills and practice based learning. Focus on extra-curricular activities	Generally theoretical, academic and traditional	Theoretical, academic and traditional.

National variations in qualification paths

	England and Wales	Germany	Italy
Duration of qualification process	6 or 7 years depending on degree subject	Minimum 6 but normally longer (8+)	Minimum 8 but normally longer
Vocational education	1 year Legal Practice Course + 1 year GDL for non law graduates. Compulsory Professional Skills Course as part of training contract	This is not a formal requirement Candidates generally use private companies (repetitors) to help with state exam preparation	Option to substitute 1 year of practice with 1 year of vocational education
Training Practice	2 year remunerated training contract with an existing solicitor	2 year Referendarzeit run and remunerated by the State Ministry of Justice. Exposure to a broad range of legal work and professional roles. Includes some theoretical classes.	2 year usually unremunerated training contract with an existing avvocato

National variations in qualification paths

	England and Wales	Germany	Italy
State exam	No State exam. Individual assessment with each LPC module	First State exam (written and oral) set by Local Court of Appeal (awarding law degree). Second State exam set by Ministry of Justice (awarding right to practice)	Run and set by the Ministry of Justice. Written and oral component
Pass rates	Very high	First exam (65% pass) Second exam (85% pass)	Regional variations but usually low (30% pass rate or less in Rome). It is normal to take exam multiple times
Exam/vocational training content	High level of flexibility and customization. Wide range of specialized and business orientated options. Growing emphasis on commercial solutions and applied skills	Generalist and traditional (written exams include civil, criminal and public law). Emphasis on technical excellence and case studies	Generalist and traditional (written exams include civil, criminal and administrative law)
CPD	Mandatory 16 hours per year	No mandatory requirement	Mandatory. Many exemptions
Influence of Professional Institutions	High as education and training is regulated by the SRA in conjunction with the universities (i.e. qualifying law degree)	Limited. Process is regulated and governed by the state (Ministry of Justice)	Limited to the post university stage and subjected to the overall control of the State (Ministry of Justice)

Outcomes – Scepticism in other countries qualifications

“One of the major differences we have experienced over the years is that most English lawyers, the trainees have very little knowledge of the law. This applies to all firms because your system is different, it does not necessarily need to take 3 or 4 years of law to become a lawyer contrary to what you do here... One company are thinking about providing a 6 month version [of the compulsory law degree] so, it is potentially after not having done a law degree, you be a lawyer after 18 months...English lawyers they find themselves lawyers but sometimes, their concepts are a bit nebulous...Honestly I believe our system [in Italy] has many failings, many shortfalls, but I feel more confident uh, in dealing with one of my youngsters that you know a trainee or youngster from the UK”. (**Managing Partner, English firm’s Italian office**)

Outcomes – Scepticism in other countries qualifications

“Sometimes we find it difficult even sometime we find I must say something it sits funny to us. For example you know in Italy to be a lawyer in Italy you have to practice, to study for 4 year course at least, then as a trainee for 2 years, then you have an exam which is quite difficult, when we know and we see that sometimes in other places you can have a university degree in matters different from law and then you make a course, a shorter course and you can be a lawyer. We have some partners here who graduated at Math or Physics or something like that” (**Associate Milan office of English transnational firm**)

Outcomes – Scepticism in other countries qualifications

“But the law that they get taught in Law School in the States is at an amazingly, at an amazingly high level whereas here, um, you know the kids don’t even have to do a law degree..... the contrast with young American lawyers who come here to the young English lawyers, and its not just academic law, it’s practical, its how the law works...When we started having trainees here, which I’m responsible for at the beginning of the decade, our office head, we had a vision that we would be able to treat the young English guys coming out of LPCs in a way similar to the young American guys do who arrive here out of Law School, and it’s just not possible. The young Americans arrive here and they’re ready to hit the ground, you know they still need smoothing, they need the skills about how you work in an office, but in terms of, “how do I do a deal, what are the things that people are interested in?”, the American system teaches it better”. **(Global head of training, Large US firm)**

Outcomes – Scepticism in other countries qualifications

“So the German system is much more technical and therefore the studies are much more technical, based upon the wording of the code while in the US legal system at least, as I saw it during the LLM, it is much more like an open discussion, the teaching method as well. So lets talk about the law before we get into the details. Yeah that really put into perspective the German legal system which to me seemed to be more superior after my year in the US, um, so I think when it comes, I talk to lawyers I studied with in the US, who went on to be lawyers afterwards, that law school didn't really prepare me for the actual work I have to do afterwards. So I guess they have to get their training and skills after law school. I do not want to say that the German system completely trains you for your job afterwards but it does give you all the technicalities you need” (Associate, English Firm German Office)

Each educational system is functional to its own context
Some evidence of convergence and compromise

International comparisons: Implications

- England is already a long way down the road of making education more practice orientated: **guarded continuity needed**
- The training practice stage is vital and makes up for shorter formal education: **focussed reform may be useful**
- Diversity and equality - the state exam and the less hierarchical university system solves outside of England (but of course of the are different sources of disadvantage there) : **reform needed before university to avoid a 2 tier system; 'funded' traineeships?**

Take home messages

1. **Education needs to be more practice orientated:** to achieve may require a rethinking of the qualification pathway (i.e. specialisation and requalification)
2. **The traineeship & WBL:** vital but shouldn't be too diverse or onerous (i.e. tailored to realities of future work)
3. **Equality and diversity:** its hard to imagine a system where university education doesn't matter (i.e. focus on pre-university measures and avoid a 2 tier profession); traineeships key