ONLINE LEARNING: SHAPING THE FUTURE OF LAW SCHOOLS

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SUMMARY

The Covid-19 pandemic has wreaked havoc globally and has forced people to change their outlook and do things differently. The pandemic has also affected the education sector. It has brought classes to a halt and forced universities to shut down at times. Significantly, the pandemic has also forced law schools to move away from traditional methods and practices and look for creative ways in which to save the academic year. Inadvertently, it has provided an opportunity to revolutionise and revitalise legal education. As technology becomes ever-present and user-friendly, law schools should embrace the potential of online learning to enhance the value of teaching, expand the learning potential of students and, most importantly, equip students for the challenge of lawyering in the twenty-first century. There are risks and rewards to online learning, but key to education in the new millennium is for law schools to adapt to and embrace online learning with all its challenges. The article provides a cursory general overview of online learning in law schools with specific focus on how law schools have been adapting to online education in recent times. Crucially, the article explores ways in which law schools can overcome key challenges in transitioning to online learning. Going forward, the article looks at how law schools can design and implement online education in a manner that takes advantage of the new modality's potential.

1   INTRODUCTION

> "The world that twentieth century law professors know is no more. Fortunately, we stand at a crossroad where we have an opportunity to build a new one."[1]

December 2019 saw the emergence of the Covid-19 pandemic that would change the world and humanity forever. The pandemic, which started in Wuhan, China, transcended borders, boundaries and bodies at breakneck speed. The world was not ready for this contagion that affected all areas of life. Education is just one of many areas that has been impacted radically. As the pandemic spread at an alarming rate, governments worldwide were left with little option but to introduce lockdown regulations. The Ministry of Higher Education took drastic and immediate measures to contain the

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[1]   Binford "Envisioning a Twenty-First Century Legal Education" 2013 *Wash UJL and Policy* 157 180.

spread of the virus by suspending academic activity across the country.[2] Many institutions, in an effort to save the academic year, resorted to online education to continue with the learning process in a safe and secure environment.[3] It was no different for law schools as learners and educators had to adapt to online learning within a short period.[4] The pressing need to implement and adapt to a contemporary modality of learning deprived many law schools of the opportunity to shape and assess effective online learning strategies.[5] The speed at which the pandemic spread and the expectation placed on digital platforms to save the academic year left very little time for schools to validate their efficacy. Going forward, there is an urgent need to evaluate the effectiveness of online learning in law schools, more so in light of their traditional or unchanging approach to education. Issues of educational equity, achievement gaps, preparedness, instructional design, communication lines, accessibility and resources are just some of the issues that need to be explored when assessing the effectiveness of online education – even beyond the pandemic. The article examines some of the key challenges in transitioning to online education and explores ways in which law schools can overcome them.

2   ONLINE LEARNING

Unlike wealthier countries, low and middle-income countries like South Africa faced added afflictions in dealing with the sudden changed scenario of education, as fractured technical infrastructure, academic incompetence and lack of resources existed long before the pandemic.[6] However, in light of the pandemic, the pedagogical shift from traditional mode to the modernised approach to teaching, namely online education, was inevitable. The urgent need to rethink, revamp and redesign a traditional formal education system, in addition to mending a fractured education system, created unforeseen challenges but also exciting opportunities. In the past, online education (also commonly referred to as e-learning or digital learning) was seen as part of non-formal education, but current circumstances have seen it gradually take its place in the formal system.[7] Online learning is learning that takes place

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[2]   On 30 April 2020, Dr Blade Nzimande, Minister of Higher Education, Science and Innovation, delivered a wide-ranging statement on the state of higher education in the context of the Covid-19 pandemic. In an effort to slow down the spread of the virus, save lives and possibly save the 2020 academic year, he announced that all campus-based academic activity throughout the PSET sector be suspended during the level-4 lockdown period.

[3]   Khalil, Mansour and Fadda "The Sudden Transition to Synchronized Online Learning During the COVID-19 Pandemic in Saudi Arabia: A Qualitative Study Exploring Medical Students' Perspectives" 2020 *BMC Med Educ* 285.

[4]   *Ibid*.

[5]   Behbehani "Moving Education out of the Industrial Era: How the Pandemic is Reshaping Global Learning" (10 November 2020) http://insights.samsung.com/2020/11/10/how-the-pandemic-is-reshaping-global-learning/ (accessed 2021-02-10).

[6]   Thomas "Coronavirus and Challenging Times for Education in Developing Countries" 2020 *Brookings* 13.

[7]   Mishra, Gupta and Shree "Online Teaching-Learning in Higher Education During Lockdown Period of COVID-19 Pandemic" 2020 *International Journal of Educational Research Open* 5.

over the Internet and across distance rather than in a traditional classroom.[8] Online education can be classified as synchronous or asynchronous.[9] The former allows for "live" interactions between parties while the latter also involves the use of technology but in a delayed form of transmission.[10] The benefits of synchronous and asynchronous learning are limitless. Synchronous online learning allows lecturers to simulate a classroom environment with live interactions in the form of lectures, meetings, study groups and consultations taking place between lecturer and student.[11] Asynchronous online learning allows for different teaching techniques to achieve different learning outcomes; benefits include that students can access presentations from all over the world, lecturers can produce pre-recorded material for students, and students can interact among themselves and their lecturers through discussion forums, wikis and other online technologies.[12] Online instructional methods have generally been regarded as effective tools for learning.[13] There is no disputing that law schools have always been rich in tradition and have prided themselves on a conventional way of doing things but the pandemic and ongoing difficulties have inadvertently provided the ideal platform for online learning to flourish.[14]

3   OVERCOMING THE CHALLENGES OF ONLINE LEARNING

The Covid-19 pandemic has emphasised the digital rift among South African students as many of them come from remote areas or disadvantaged backgrounds, where internet access is limited.[15] Access to the Internet and technology is greater in developed American and European countries than in South Africa where the digital divide has been noticeable in recent years.[16] The digital divide goes beyond just being technological in nature as social, economic, cultural and political factors also play a key role.[17] What is required is that key role players such as the community, businesses and relevant stakeholders come together to address the digital divide.[18] While such challenges may hinder the e-learning process, exploring pathways such as the provision of free data bandwidth, free online resources and the

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[8]   Mpungose "Emergent Transition From Face-To-Face to Online Learning in a South African University in the Context of the Coronavirus Pandemic" 2020 *Humanit Soc Sci Commun* 113.

[9]   Khalil *et al* 2020 *BMC Med Educ* 285.

[10]   *Ibid.*

[11]   Pistone "Law Schools and Technology: Where We Are and Where We Are Heading" 2015 *Journal of Legal Education* 587.

[12]   *Ibid.*

[13]   Khalil *et al* 2020 *BMC Med Educ* 285.

[14]   *Ibid.*

[15]   Davids "Maybe the Coronavirus Will Set SA on a Path to a More Equitable Education System" (27 March 2020) https://m.news24.com/Columnists/GuestColumn/opinion-maybe-the-coronavirus-will-set-south-africa-on-the-path-to-a-more-equitable-education-system-20200327 (accessed 2020-11-08).

[16]   Van Deursen and Van Dijk "The First-Level Digital Divide Shifts From Inequalities in Physical Access to Inequalities in Material Access" 2019 *New Media Soc* 354–375.

[17]   Selwyn "Minding Our Language: Why Education and Technology Is Full of Bullshit … And What Might Be Done About It" 2016 41(3) *Learning, Media and Technology* 437–443

[18]   Mpungose 2020 *Humanit Soc Sci Commun* 113.

use of an information centre can assist in realising effective online learning.[19] In a recent study involving medical students who had transitioned from face-to-face to online learning, it emerged that although online education worked for the majority of students, in adopting the new system, many of them encountered challenges such as technical deficits, poor internet connection and lack of basic computer skills.[20] Many of the participants' experiences were also influenced by different learning styles, their characteristics, and uncertainty in adapting to a new learning modality, quality assurance issues and levels of engagement in online classes.[21] Competence in online learning varies from student to student and so it is important that universities cater for capacity building in respect of the use of software and learning management systems.[22] It can be a daunting task for students to adapt to new methods of teaching and assessment, and the loss of social contact and a supportive environment can create anxiety and panic. Fear of the unknown can affect some students negatively, causing them to be more conservative and resistant to change.[23] The challenge for any law school in fully transitioning to online learning is to ensure that students' feelings of isolation and fear of the unknown are minimised.[24]

Students who are shy or unobtrusive tend to battle in expressing themselves in a classroom setting. Online education has the potential to create an environment where students with different personalities and from diverse backgrounds can flourish.[25] In this regard, introverts who find it difficult to participate in the classroom may find it easier to express themselves in online forums.[26] Students who are hampered by communication difficulties in the classroom can seek clarity and supplement their basic understanding of content at their own pace and in their own time using technology. Technological tools provide the platform to enhance communication and facilitate feedback.[27] Online streaming allows for more personal, one-on-one interactions with lecturers if required and greater flexibility in terms of time management, as well as constant and instantaneous feedback and clarification when required. The option of uploading recorded lessons can be beneficial if a student has missed a class or just wishes to recap or prepare for an assessment. Online learning allows students to construct and manage their own learning, which in turn develops critical thinking skills and more importantly, research skills required for tertiary readiness.[28]

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[19]   *Ibid.*

[20]   Khalil *et al* 2020 *BMC Med Educ* 285.

[21]   *Ibid.*

[22]   *Ibid.*

[23]   Watts "Synchronous and Asynchronous Communication in Distance Learning: A Review of the Literature" 2016 *Quarterly Review of Distance Education* 23–32.

[24]   McCrimmon, Vickers and Parish "Online Clinical Legal Education: Challenging the Traditional Model" 2016 *International Journal of Clinical Legal Education* 565.

[25]   Kerr "Why We All Want to Work: Towards a Culturally Based Model For Educational Change" 2005 36(6) *British Journal of Educational Technology* 1005–1016.

[26]   Cloete "Technology and Education: Challenges and Opportunities" 2017 *HTS Theological Studies* 3.

[27]   *Ibid.*

[28]   *Ibid.*

As technology has the potential to provide students with a new learning environment, the workplace can also be brought to the classroom and simulate real-life experiences. Breakthrough technology such as virtual and augmented reality (VR/AR) has the potential to transform online learning in significant ways.[29] AR and VR are three-dimensional immersive technologies that encourage creativity, discovery and interaction in the learning process.[30] VR allows a simulated environment to come alive and the use of headsets allows users to immerse themselves in a computer-generated environment.[31] Augmented reality, which is more advanced, allows computer images to be superimposed onto the user's view of the real world, and combines real-world scenarios with other relevant information to create a truly immersive experience.[32] Students can use their senses such as sight and hearing to connect their learning to the real world.[33] VR can be used to simulate working in different environments without some of the risks attached to a real-life situation while AR relays information directly to the user.[34] For law students, VR and AR can deliver rich experiential learning. It can allow them to explore the practical side through a safe, user-friendly environment. Even in instances where clinical and practical legal training is not possible at law clinics, VR and AR allow students to complete practical tasks in a simulated environment without losing the importance of skill training in a legal environment. Students can explore any location on the map and a trip to the Constitutional Court or legal firm is possible without spending time making arrangements or incurring the usual costs of transport and accommodation. Using sight and sound in a real experience provides an unforgettable journey that can never be achieved in a classroom setting. A virtual learning environment can be a welcome change to the traditional setting and instructional form and can provide fun, entertainment and enthusiasm, taking learning to the next level.[35]

It is understandable that some students may be unwilling to embrace online learning as a result of their commitments and a fear of the unknown. However, many students juggle different commitments and prefer to study at a time and place that suits them.[36] Students living in remote or rural areas where universities are some distance away, sometimes find it more opportune and financially viable to study online.[37] Surprisingly, Africa has now become the fastest e-leaning market in the world with internet users increasing by 20 per cent between 2017 and 2018.[38] With more and more students being unable to access traditional campuses owing to finances, distance and family commitments, online education has become the solution

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[29]   Marr "The 5 Biggest Virtual and Augmented Reality Trends in 2020 Everyone Should Know About" 2020 *Enterprise Tech* 10.

[30]   *Ibid.*

[31]   *Ibid.*

[32]   Marr 2020 *Enterprise Tech* 10.

[33]   *Ibid.*

[34]   *Ibid.*

[35]   *Ibid.*

[36]   McCrimmon *et al* 2016 *International Journal of Clinical Legal Education* 565.

[37]   *Ibid.*

[38]   See article by Texila American University "Growth Online Education in Africa is on the Rise" (undated) http://zm.tauedu.org/growth-of-online-education-in-africa-is-on-the-rise/ (accessed 2021-02-10).

for students who want higher education but face difficulties.[39] Because laptop ownership is lower in Africa than in other parts of the world, and broadband infrastructure is still marginal, online learning can continue mostly on mobile devices in years to come.[40] The increased processor speeds of mobile devices makes the use of applications just as accessible as from desktop or laptop computers. Mobile development in African countries coupled with affordable smartphones and mobile data plans will now enable Africans, especially those living in remote areas, to overcome the issue of poor landline infrastructure.[41] Circumstances may have provided the ideal opportunity for universities to concentrate on the design of teaching materials and technological solutions for use on cellular phones/mobile devices and other technological instruments.[42] Government also has a key role to play in addressing the spectrum shortfall as together with service providers they can fast-track the resolution of uninterrupted, stable and fast internet connectivity, including the mass roll-out of 4G and 5G connectivity, which is critical for students interfacing with online learning.[43] The unequal socio-economic fabric of South Africa furthermore demands that higher education institutions continue to address demands that reverberate around curriculum reform, equality of access, africanisation and decolonisation of knowledge, funding, racism, demographic representation and responsiveness to the industry, among others. The transition to online learning must be addressed in conjunction with other key areas that require attention. It is thus crucial to understand the complex nature of technology and how it is linked to other socio-economic spheres before integrating it effectively into quality education.[44]

A successful transition to online education requires law schools to review their e-learning or online learning policies constantly to keep abreast of changes and address the needs of the student and lecturer.[45] A transition to online learning and use of technology requires not only a focus on the delivery mode but also the incorporation of technology into the curriculum, offering specialist law and technology courses and arranging access to various software programs.[46]

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[39] *Ibid.*

[40] Trines "Educating the Masses: The Rise of Online Education in Sub-Saharan Africa and South Asia" (14 August 2018) *World Education News & Reviews* http://wenr.wes.org/2018/08/educating-the-masses-the-rise-of-online-education (accessed 2020-11-10).

[41] See article by Texila American University http://zm.tauedu.org/growth-of-online-education-in-africa-is-on-the-rise/.

[42] See UNESCO Global Education Monitoring Report, 2020 https://en.unesco.org/gem-report/report/2020/inclusion (accessed 2020-11-10).

[43] Vermeulen "ICASA Sets Date for 4G and 5G Spectrum Auction in South Africa" (3 September 2020) https://mybroadband.co.za/news/cellular/366146-icasa-sets-date-for-4g-and-5g-spectrum-auction-in-south-africa.html (accessed 2020-11-11).

[44] Cloete 2017 *HTS Theological Studies* 3.

[45] Swartz, Ivancheva, Czerniewicz and Morris "Between a Rock and a Hard Place: Dilemmas Regarding the Purpose of Public Universities in South Africa" 2019 *High Education* 567–583. Also see Mpungose 2020 *Humanit Soc Sci Commun* 113.

[46] Goodenough "Developing an E-Curriculum: Reflections on the Future of Legal Education and on the Importance of Digital Expertise" 2013 *Chicago-Kent Law Review Paper* https://ssrn.com/abstract=2255005 (accessed 2020-11-12) 13–13.

4   THE WAY FORWARD FOR LAW SCHOOLS

The pandemic has forced the hand of law schools worldwide into rethinking and reimagining the old ways of transmitting knowledge. The sudden change has forced most places of learning to take education beyond the four walls of the classroom as the demand continues to grow for immediate digital transformation, modification of processes and innovation as well as flexible teaching and assessment methods.[47]

Anthony Salcito, Vice-President of Education at Microsoft stated that "the classroom, as we know it for centuries, will be re-imagined".[48] He said that technology has changed the world and students want to learn in a way that suits them.[49]

> "I think we will see a shift where schools will create a foundation of inclusive, flexible, data driven buildings and spaces that will enable students to learn beyond those walls."[50]

He asked that governments shift their thinking away from the traditional testing and curriculums to a more modernised personal approach where each student's personal needs, passion and talent is unleashed. The new breed of students are called "digital natives"; they have been born or raised in a world of technology so making the transition at university level may not be as difficult for them as some critics may think.[51]

The demand for core skill sets such as creativity and innovation in the digital age now requires a re-evaluation of the traditional approaches to educating future lawyers.[52] In the past, many professional bodies in South Africa have highlighted the disjuncture between legal education and professional demands. There has been a clarion call for more well-rounded graduates who display readiness for practice in the twenty-first century.[53] The national LLB review, which was mandated by the Council of Higher Education in 2012, highlighted a key challenge in the standards document, which was the need for LLB programmes to be responsive to ever-evolving technology. The issue of technological competence is now seen as an integral component of any LLB programme and law students are expected to be able to solve legal problems at the click of a button. The progress made in respect of online learning, as a result of the pandemic, should be seen as

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[47]   See UNESCO https://en.unesco.org/gem-report/report/2020/inclusion.

[48]   See Yates-Roberts "Technology Will Personalize Education, Says Anthony Salcito" (23 January 2020) Discussing the keynote address by the vice-president of Microsoft at the 2020 Bett Show https://news.microsoft.com/en-gb/2020/01/23/bett-2020-students-will-use-tech-to-embrace-seamless-learning-says-microsofts-anthony-salcito/ (accessed 2021-01-28).

[49]   *Ibid.*

[50]   *Ibid.*

[51]   Pistone 2015 *Journal of Legal Education* 587.

[52]   Fenwick, Kaal, Wulf, Vermeulen and Erik "Legal Education in the Blockchain Revolution" 2017 Legal Studies Research Paper No 17–05 https://ssrn.com/abstract=2939127 (accessed 2020-11-08).

[53]   Van Niekerk "The Four Year Undergraduate LLB: Where to From Here?" 2013 34(3) *Obiter* 533.

the kick-start that was needed to prepare law students for the twenty-first-century technology-based employment.

A transition to online learning and use of technology requires not only a focus on the delivery mode but also the incorporation of technology into the curriculum, offering specialist law and technology courses and arranging access to various software programs.[54] From a practical perspective, technology can be infused into the curriculum in many ways. Assignments and post-graduate study topics can focus on new-age lawyering areas such as data security, digital drafting, e-discovery and legal analytics; and students should be urged to submit their work via online platforms rather than in hardcopy. Technology competence can also be integrated into the curriculum by linking it to course electives, upper-level technology courses or stand-alone modules such as Legal Skills or Legal Practice, where it can form part of an ethical requirement or professional skill.[55] Online education has benefits in terms of time allocation and management, as it allows lecturers to spend less time on the normal day-to-day tasks that they traditionally engage in, such as marking, setting assessments, tracking progress, and preparing reports, among others.[56] Lecturers and students can take their teaching and learning out of the physical classroom and onto an online classroom platform where they can collaborate with others in different locations, places and contexts.[57] The New York Bar Association Task Force, in its report on the future of the legal profession, focused extensively on the role of technology in practice and recommended that law schools and firms commence or increase the training of lawyers in the use of technology.[58] The report went on to recommend that law schools increase their offerings on technology and incorporate crucial areas such as online legal research, e-discovery, document management technology, technology in the courtroom and project management into the curriculum.[59] Crucially, the report highlighted the importance of technology in helping lawyers work faster, more efficiently, find better solutions to legal problems, compete more effectively in the marketplace and work consistently.[60] Law schools need to become creative and innovative by redesigning their curriculums to include technology in their course offerings, offer training programmes that create opportunities for student activities and look at the benefits of a "cyber clinic" to facilitate live-client clinical experience.[61]

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[54] Goodenough 2013 *Chicago-Kent Law Review Paper* https://ssrn.com/abstract=2255005 13–13.

[55] O'Leary "Smart Lawyering: Integrating Technology Competence Into the Legal Practice Curriculum" 2021 *University of New Hampshire Law Review* 201.

[56] Levin and Schrum "Using Systems Thinking to Leverage Technology for School Improvement: Lessons Learned From Award-Winning Secondary Schools/Districts" 2013 *Journal of Research on Technology in Education* 29–51.

[57] McKnight, O'Malley, Ruzic, Horsley, Franey and Bassett "Teaching in a Digital Age: How Educators Use Technology to Improve Student Learning" 2016 *Journal of Research on Technology in Education* 194–211.

[58] See New York State Bar Association "Report of the Task Force on the Future of the Legal Profession" (2 April 2011) https://archive.nysba.org/futurereport/ (accessed 2022-02-27) 2.

[59] New York State Bar Association https://archive.nysba.org/futurereport/ 9.

[60] New York State Bar Association https://archive.nysba.org/futurereport/ 13.

[61] New York State Bar Association https://archive.nysba.org/futurereport/ 35.

Going forward, a number of technological initiatives can be undertaken by law schools for a smoother and more effective transition to online learning. A one-size-fits-all approach to instructional design should be avoided at all costs.[62] The unique needs and characteristics of each student must be considered.[63] The urgent need to facilitate access to financial aid as well as technological equipment cannot be ignored.[64] Content material should be provided in multiple formats, and tools should include accessibility features such as text-to-speech, keyboard shortcuts and alternative text.[65] Lectures should be recorded, and video and audio content should be captioned.[66] Online learning requires a flexible approach and the lecturer should prioritise project-based assignments, asynchronous participation and flexi-time for student assessment, lectures, tutorials and consultations.[67] Tracking a student's progress is extremely important but can be time-consuming for any lecturer. However, major advancements in technology now allow adaptive learning programmes to track a student's answers to questions, pick up areas of concern and then use an algorithm to adapt material to meet the specific need of each student.[68] Popular social networking sites such as Google, Google Drive and Google Plus can be used to facilitate collaboration virtually between students, mentors, legal professionals and others with discussion points around current trends, new innovations in law, new cases and legislation, practical skills and any area of study or research.[69] The arena for learning, exploring, conducting research and collaborating with others knows no boundaries and the click of a button now allows any student to transcend the confines of a lecture hall or library.

5   CONCLUSION

There is no doubt that online education is here to stay and most of our higher education institutions have already embraced it into their teaching and learning landscape. Despite the many problems, shortcomings and challenges highlighted in the transition process, online teaching is the only mode that can secure teaching continuity in these uncertain times. It is true that the technological competence of both students and lecturers, as well as the systemic and contextual factors that impede access, cannot be ignored.[70] However, the new digital age requires critical thinkers and

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[62] The research project conducted by Naffi, Davidson, Patino, Beatty, Gbetoglo and Duponsel met remotely with staff from 19 centres in Canada, the United States, the United Kingdom, France and Lebanon and published their findings in an article titled "Online Learning During Covid-19: 8 Ways Universities Can Improve Equity and Access" (30 September 2020) http://theconversation.com/online-learning-during-covid-19-8-ways-universities-can-improve-equity-and-access-145286 (accessed 2021-01-10).

[63] *Ibid.*

[64] *Ibid.*

[65] *Ibid.*

[66] *Ibid.*

[67] *Ibid.*

[68] Pistone 2015 *Journal of Legal Education* 587.

[69] *Ibid.*

[70] Kimmons, Miller, Amador, Desjardins and Hall "Technology Integration Coursework and Finding Meaning in Pre-Service Teachers' Reflective Practice" 2015 *Education Tech Research Dev* 809.

technologically advanced graduates who possess the skill set to deal with futuristic legal work such as smart contracts, big data, blockchain technology, artificial intelligence, cryptocurrencies and numerous legal and non-legal tasks.[71] As technology becomes ever-present and user-friendly, law schools must embrace the potential of online learning to enhance the value of teaching, expand the learning potential of students and, most importantly, equip students for the challenge of lawyering in the twenty-first century.[72] The onus is on law schools to design and implement online education in a manner that takes advantage of the new modality's potential.[73] A transition to online learning may just be the solution to bridging the gap between employers' needs and student skills, as well as revitalising legal education in a way that is untethered by the bounds of the classroom.

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[71] *Ibid.*

[72] Rosenberg "Confronting Cliches in Online Instruction: Using a Hybrid Model to Teach Lawyering Skills" 2008 *SMU SCI and Tech L Rev* 82.

[73] Kohn "Online Learning and the Future of Legal Education" 2020 *Syracuse L Rev* 70.