

Handout for Neil Hamilton Presentation at Santa Clara Leadership Symposium – March 23, 2018

A. What is a “learning outcome”?

1. A student learning **need** represents a gap between a student’s current level and some desired level of knowledge, skills, competencies, attitudes or habits of mind.
2. A student **learning outcome** clearly states the expected knowledge, skills, competencies, attitudes or habits of mind each student is expected to acquire so that the student learning needs are met. (National Institute for Learning Outcomes Assessment)
 - a. A learning outcome will focus on the student as the performer.
 - b. It will use an active verb to describe what knowledge, skill, competency, attitude, or habit of mind the student is expected to acquire.
 - c. It will be measurable with performance indicators to know if the student has achieved the outcome.
 - d. The learning outcome must be stated so that there can be a sequence of activities or actions that enable the student to achieve the learning outcome.

B. What are the key differences between the current time-based curriculum model and a competency-based curriculum model?

Note that the change to competency-based education is a major step for law schools.

Table 1 - Principles and Characteristics of Competency-based Education (CBE) Models¹

Principles	Characteristics
<ol style="list-style-type: none"> 1. Competencies are role-derived (e.g. lawyer), specified in behavioral terms and made public. 2. Assessment criteria are competency-based and specify what constitute stages of development culminating in a mastery level of achievement. 3. Assessment requires performance as the prime evidence but also takes knowledge into account. 4. Individual learners progress at rates dependent on demonstrated competency. 5. The instructional program facilitates development and evaluation of the specific competencies. 	<ol style="list-style-type: none"> 1. Learning is individualized. 2. Feedback to the learner is critical. 3. Emphasis is more on the exit criteria than on the admission criteria. 4. CBE requires a systematic curriculum that fosters development of competencies through a progression of steps. 5. The curriculum is modularized. 6. Both the learner and the program have accountability.

Table 2 - Comparing a Time-based and a Competency-based Curriculum²

	Traditional Time-based Education	Competency-based Education
Goal of educational encounter	Acquisition of knowledge	Application of knowledge
Responsible for driving educational process	Teacher	Learner
Responsible for learning	Teacher	Learner and teacher
Timing of assessment	Emphasis on summative	Emphasis on formative
Typical assessment context	Proxy on a single subject	Authentic in mimicking real tasks of professional work/multiple assessments into evaluation portfolio
Evaluation standards	Relative to peers	Relative to objective measures
Program completion	Fixed time	Variable time

¹ This table is adapted from ERIC HOLMBOE et al, THE MILESTONES GUIDEBOOK 6 (2016).

² This table is adapted from Jeffrey Kuvin, *Training Present and Future Cardiologists*, 108 AMER. J. CARD. 1508 – 1512 (No. 10, 2011).

Note that competency-based education requires:

1. assessment criteria for each learning outcome that are competency-based and specify what constitute **stages of development** that include some defined level of minimum competence that meets the faculty's requirements and culminates in a mastery level of achievement;
2. a systematic and modularized curriculum and assessments that foster development of learning-outcome competencies through a progression of steps;
3. formative and summative assessments to give effective feedback to each learner and to support and document the learner's progressive development of each learning-outcome competency; and
4. a shift of responsibility for driving the educational process from the teacher to the learner.

Given the time needed to develop competency-based education, legal education will see a hybrid of time-based and competency-based education for many years.

One key change that Table 2 emphasizes is that learners in a competency-based system must be “active agents co-guiding both the curricular experiences and assessment activities.”³ What does it mean for a student to be an active agent in her own learning and assessment? “Learners must learn to be self-directed in seeking assessment and feedback.”⁴ Learners should ideally: 1) be both introduced to the overall competency-based education curriculum at the beginning and engaged in dialogue about the overall program on an ongoing basis; 2) actively seek out assessment and feedback on an ongoing basis; 3) perform regular self-evaluations together with feedback from external sources; 4) direct and perform some of their own assessments such as seeking out direct observation of the learner by an experienced professional and creating portfolios of evidence regarding specific competencies; and 5) develop personal learning plans that students revisit and revise at least twice a year.⁵

The reader should also reflect on whether he or she believes law graduates are entering an era where more rapid technology and market changes will place even greater demands on lawyers to continually develop themselves in response to the changes. In this future, each lawyer must internalize a drive to be a lifelong learner and networker.

³ ERIC HOLMBOE et al, THE MILESTONES GUIDEBOOK 15 (2016).

⁴ Id. at 16

⁵ Id.

C. What are the learning outcomes that law faculties are adopting that are also sub-competencies of leadership in a legal context?

Survey of Law School Learning Outcomes (Feb. 15, 2018)

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To what degree are law schools creating learning outcomes that give further definition to Standard 302(c)'s competency in "the exercise of proper professional and ethical responsibilities to clients and the legal system" while also defining "other professional skills needed for competent and ethical participation as a member of the legal profession"? As of Feb. 15, 2018, 138 out of the 202 ABA fully-accredited law schools had posted learning outcomes on the school's website. Of these 138 law schools, 47 have adopted essentially the minimum Standard 302(c) learning outcome that students will be competent in "the exercise of proper professional and ethical responsibilities to clients and the legal system," while 91 have adopted learning outcomes that go beyond the minimum of Standard 302(c).

Of the 91 law schools:

1. 50 law schools have adopted a version of a learning outcome that includes the competency of demonstrating understanding and integration of pro-active self-evaluation and professional development toward excellence at the competencies needed to serve clients and the legal system (self-directed learning). This includes 13 schools that have adopted the competency of self-evaluation and reflection;
2. 48 have a learning outcome that includes competency in understanding the value of providing pro bono legal services to the disadvantaged;
3. 44 law schools have adopted a version of a learning outcome that includes the competency of professionalism, high or the highest ethical standards, a personal code of ethics, or the internalization of values grounded in morality or faith;
4. 42 law schools include the competency of teamwork/effective collaboration; and
5. 42 include a learning outcome that students develop self-awareness and cross-cultural competency to work with those of diverse backgrounds.
6. 24 include a learning outcome on integrity;
7. 19 include judgment;
8. 17 include active listening; and
9. 8 include leadership.

A number of schools have also adopted learning outcomes relating to additional skills like interviewing and counseling, fact investigation, negotiation and trial practice.

If these same proportions hold true when all 203 ABA-accredited law schools post learning outcomes by May 31, 2018, approximately seventy-three law

schools will have adopted a learning outcome relating to self-directed learning. Seventy will have a learning outcome of understanding the value of pro bono legal services. Sixty-four schools will have adopted a learning outcome on professionalism/high ethical standards/personal code of ethics. Sixty-two will have adopted a teamwork learning outcome, and sixty-two will have adopted a cross-cultural competency learning outcome. Twenty-four will have adopted an integrity learning outcome. Twelve will have adopted a leadership learning outcome.

D. Focus on self-directed learning as a learning outcome. What are the stages of development for self-directed learning?

Table 3
Self-Assessment of Developmental Stages of an Internalized Commitment to Professional Development toward Excellence at All the Competencies of Effective Lawyering*

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	<u>Student Characteristics</u>
Dependent Stage	<ul style="list-style-type: none"> - Assumes passive role with respect to professional self- development - Lacks interest in developing competencies except minimum required by external authority - Does not generally want or seek feedback into strengths and weaknesses - May react negatively to such feedback - Depends on external authority for explicit direction and validation
Interested Stage	<ul style="list-style-type: none"> - Can see self-interest in professional self-development - May recognize weaknesses, but motivation to improve is principally externalized - Responds reasonably to questions and feedback on strengths and weaknesses - Is willing to engage mentors/coaches in goal-setting and implementation strategies - Shows some initiative and persistence to learn competencies
Involved Stage	<ul style="list-style-type: none"> - Is committed to professional self-development - Identifies strengths and weaknesses in development of competencies - Responds positively to and reflects on feedback concerning strengths and weaknesses and how to improve - Seeks insight from mentors and coaches in goal-setting and creation and implementation of written professional development plan - Is internalizing motivation to learn new knowledge and skills continuously - Is internalizing standard of excellence at all competencies - Shows substantial persistence in learning competencies
Self-Directed	<ul style="list-style-type: none"> - Is intrinsically motivated to professional self-development and learning new knowledge and skills over a career - Actively identifies both strengths and weaknesses in development and sets goals and creates and executes written professional development plan - Proactively develops mentor and coach relationships and proactively seeks help and feedback from mentors and coaches - Reflects on feedback and responds to feedback appropriately - Knows when and how to seek help - Actively seeks challenges - Has internalized standard of excellence at all competencies

* Adapted from Gerald Grow, "Teaching Learners to be Self-Directed," 41 ADULT EDUC. QUARTERLY (Spring 1991).

E. What Data Are Available to Help Law Schools Discern What Are the Key Competencies That Legal Employers and Clients Need? © Neil Hamilton

The empirical research listed below is the best data we have on what competencies employers want. We will see more of these studies of what competencies legal employers want, but so far, there is fairly strong convergence among the studies available which tends to increase our confidence in the data.

1. Competencies emphasized by Educating Tomorrow's Lawyer survey (24,000 lawyers in 2015) as "necessary in the short term." The numbers indicate how the respondents ranked that competency in terms of what is "necessary in the short term." I grouped the various necessary competencies into umbrella categories of Trustworthiness, Respect for Others and Relationship Skills, Strong Work Ethic/Conscientiousness, and Common Sense/Good Judgment.

a. Trustworthiness

1. Keep confidentiality
3. Honor commitments
4. Trustworthiness/Integrity
15. Take individual responsibility
18. Strong moral compass

b. Respect for Others and Relationship Skills

2. Arrive on time
5. Treat others with respect
6. Listen attentively and with respect
7. Respond promptly
17. Emotional regulation and self-control
20. Exhibit tact and diplomacy

c. Strong Work Ethic/Conscientiousness

8. Strong work ethic
9. Diligence
10. Attention to detail
11. Conscientiousness

d. Common Sense/Good Judgment (this was 12th).

Note that Research the Law was 13th, Intelligence was 14th, Speak Professionally was 16th, and Write Professionally was 19th.

2. Competencies emphasized by National Conference of Bar Examiner's New Lawyer Survey (2013) and Hamilton's surveys of MN lawyers (2013-14)

- a. Trustworthiness/Integrity/Honesty
- b. Strong Work and Team Relationship Skills
- c. Dedication to Client/Responsiveness to Client
- d. Good Judgment/Common Sense
- e. Habit of Seeking Feedback
- f. Initiative/Strong Work Ethic

3. Note that there are very few empirical studies of what competencies clients want. The Shultz/Zedeck study discussed below is the best of these studies but note that the survey

population consists of lawyers imagining they were clients and then indicating what competencies they would most want.

In 2003, Professors Marjorie M. Shultz and Sheldon Zedeck at the University of California at Berkeley identified 26 factors important for lawyer effectiveness by interviewing people from five stakeholder groups associated with Berkeley Law: alumni, students, faculty, clients, and judges. They asked questions such as “If you were looking for a lawyer for an important matter for yourself, who would you identify, and why?” and “What qualities and behavior would cause you to choose that attorney?” The 26 factors important to lawyer effectiveness that emerged from the interviews are shown in Table 3.

The Shultz-Zedeck study did not list the 26 lawyer effectiveness factors in order of importance so for comparative purposes, the table below lists the 26 lawyer effectiveness factors using the same umbrella categories as the table above on the Educating Tomorrow’s Lawyers’ competencies “necessary in the short term.”

Table 3 - Shultz-Zedeck List of 26 Lawyer Effectiveness Factors

Trustworthiness

- Integrity/honesty
- Self-development

Relationship Skills

- Building relationships with clients and providing advice and counsel
- Developing relationships within the legal profession
- Networking and business development
- Listening
- Able to see the world through the eyes of others
- Community involvement and service
- Organizing and managing others
- Evaluation, development and mentoring of others

Strong Work Ethic/Diligence

- Passion/engagement
- Diligence
- Stress management

Common Sense/Good Judgment

- Problem solving
- Practical judgment
- Creativity and innovation

Technical Competencies

- Analysis and reasoning
- Researching the law
- Fact finding
- Questioning and interviewing

- Influencing and advocating
- Writing
- Speaking
- Strategic planning
- Organizing and managing one's own work
- Negotiation

We see convergence that legal employers want these ethical-professional-identity competencies:

- 1. trustworthiness⁶;**
- 2. respect for others and relationship skills including client relationship skills and teamwork;**
- 3. strong work ethic/initiative/conscientiousness;**
- 4. commitment to self-development including the habit of self-evaluation; and**
- 5. good judgment.**

F. The Students Will “Buy In” to Competency-Based Education if They Believe That Legal Employers Want the Competencies Included in the Faculty’s Learning Outcomes

- A. The students’ goals for attending law school are meaningful post-graduation employment and bar passage.
- B. The students need much more help than we currently understand to take ownership over their own professional development to grow toward later stages both of self-directed learning and of the other competencies that legal employers want (later stages of a benchmark model on a particular competency).
- C. How does a student develop evidence of these competencies that legal employers will find credible?

⁶ David Maister defines a trustworthiness quotient with a numerator of Credibility + Reliability + EQ over a denominator of Self-Orientation. In other words, the greater a student’s or lawyer’s self-orientation, the smaller the person’s trustworthiness.