Situated Learning in Legal Firms: A Case Study

by

Georgina Caillard
LLB/BSc (Melb) Grad Dip Bus (RMIT) MMan (Monash)

Submitted in fulfilment of the requirements for the degree of
Doctor of Philosophy

Deakin University
September, 2015
I am the author of the thesis entitled

Situated Learning in Legal Firms: A Case Study

submitted for the degree of Doctor of Philosophy

This thesis may be made available for consultation, loan and limited copying in accordance with the Copyright Act 1968.

'I certify that I am the student named below and that the information provided in the form is correct'

Full Name: Georgina May Caillard

Signed: [Signature Redacted by Library]

Date: 19 September 2015
DEAKIN UNIVERSITY
CANDIDATE DECLARATION

I certify the following about the thesis entitled
Situated Learning in Legal Firms: A Case Study
submitted for the degree of Doctor of Philosophy (PhD)

a. I am the creator of all or part of the whole work(s) (including content and layout) and
   that where reference is made to the work of others, due acknowledgment is given.

b. The work(s) are not in any way a violation or infringement of any copyright, trademark,
   patent, or other rights whatsoever of any person.

c. That if the work(s) have been commissioned, sponsored or supported by any
   organisation, I have fulfilled all of the obligations required by such contract or
   agreement.

d. That any material in the thesis which has been accepted for a degree or diploma by any
   university or institution is identified in the text.

e. All research integrity requirements have been complied with.

'I certify that I am the student named below and that the information provided in the form is correct'

Full Name: Georgina May Caillard

Signed: 

Date: 17 September 2015

Signature Redacted by Library
Abstract

This study explores how organisational learning occurs in legal firms using the conceptual lens of communities of practice. There are two streams in the communities of practice literature – one structuralist functionalist and the other interpretive. This research draws upon the interpretive stream and particularly the seminal works of Lave and Wenger (1991), Brown and Duguid (1991) and Wenger (1998).

Unlike the majority of work on communities of practice, this work looks simultaneously at both reproduction and production of knowledge to explore the factors that affected their balance within a community of practice. Also unlike most of the extant literature, it considers both the processes within single communities of practice and the relationships between communities of practice within the law firm.

A single case study of a mid-tier private legal firm in Melbourne, Australia, called Benefics (a pseudonym) in this thesis, was employed to explore the research question. The data was collected through observation, semi-structured interviews and documents and then transcribed and coded using a priori and emergent themes.

The results show that several communities of practice exist in legal firms. The communities of practice involving the professional staff were nested, typically (from largest to smallest group) Benefics lawyer, member of specialist division and member of partner-centred work group. The salient community of practice was most likely to be the partner-centred groups in which the professional staff performed most of their day-to-day work, making these the most influential for learning practice. Within the individual communities of practice, reproduction (of the technical and aesthetic elements of the practice of the central partner) was dominant. New knowledge when discovered was often not recognised as such because of the gatekeeping function of the partners and therefore did not affect the power dynamics of the community of practice. Within the firm, the specialist divisions and, in most cases, the partner-centred communities of practice within them, had pooled interdependence. In relation to whole of organisation learning, due to the pooled interdependence, new technical knowledge usually did not need to flow between the communities of practice to benefit the firm. When knowledge flow between communities of practice was desired, the success of attempts to share knowledge depended upon the power and interests of the individual or group brokering the knowledge and the power and interests of the group receiving the new knowledge.

A limitation of this research is that it was conducted in a single, mid-tier private law firm. Firms of different age, size or specialist mixes may display quite different patterns of learning, both within and between communities of practice. Issues which would benefit from further research include the impact of non-novice newcomers; second career entrants to the profession; and non-lawyer managers to organisational learning. Other issues deserving of additional research include the impact of size upon learning, the generalisability of the findings to other professions. While not currently associated with communities of practice literature it would also be interesting to consider the institutional impacts upon power and knowledge in legal firms.
ACKNOWLEDGEMENTS

I am in no doubt that there is one person without whom this thesis would never have been completed. Professor Julie Wolfram Cox has been my supervisor and mentor throughout the long journey, forever patient and constructive. Thank you Julie for sticking it out and for your great support in this and my aspirations. I also thank the other supervisors who have advised me at various stages of the thesis: Professor Dianne Waddell, Professor Paul Couchman and Associate Professor Ambika Zutshi.

I thank Benefics for their generous access to conduct this research. Being married to a lawyer I know what lawyers’ time is worth yet I was rarely refused when I asked for interviews. I was also granted access for observation on an extended basis and given time and space to conduct my research, for which I am sincerely grateful.

Most patient of all has been my family, who have walked the knife edge of demonstrating interest in what I was doing without stressing me with their questions. Thank you particularly to my lovely husband, Tony, who called upon contacts when my initial leads for a subject firm fell through, who has provided for the family while I have studied and who has acted as sounding board and, at the last, proof reader when asked. My children also have been understanding of demands upon my time. Thank you Douglas, Monica, Duncan and Donald.

I would like to dedicate this work to my father, Don Pask who sadly passed away from cancer before its completion, and to my mother Bernice.
Table of Contents

Access to Thesis A
Candidate Declaration
Abstract ...................................................................................................................... i
Acknowledgement...................................................................................................... ii
Table of contents ........................................................................................................ iii
List of tables ................................................................................................................ vii
List of figures .............................................................................................................. viii
List of appendices ....................................................................................................... ix
List of pseudonyms ..................................................................................................... x

CHAPTER 1: Introduction to the Thesis .............................................................. 1
From Curiosity to Research Question ................................................................. 1
Research Question ................................................................................................... 6
Justification for the Research ................................................................................. 7
Evolving Conceptualisations of Communities of Practice................................. 12
Outline of the Thesis ............................................................................................... 16

CHAPTER 2: Literature Review ........................................................................ 18
Communities of Practice ....................................................................................... 18
Defining and Identifying Communities of Practice ........................................... 18
Points of Agreement, Difference and Gaps between Seminal Works .............. 28
  Formality/Informality ......................................................................................... 30
  View of Learning ............................................................................................... 32
  Concept of Community ..................................................................................... 37
  Diversity ............................................................................................................ 44
  Power and Conflict ......................................................................................... 47
Implications of Communities of Practice in Whole-of-Organisation Learning.... 56
Conclusion .............................................................................................................. 74

CHAPTER 3: Methodology ................................................................................. 78
Research Framework ............................................................................................. 79
CHAPTER 4: Results: Existence of Communities of Practice .................120
Existence, Boundaries and Relationships ..............................................120
Introduction to the Setting of the Research ...........................................121
 Structure of the Firm ..............................................................................121
 Physical Layout ......................................................................................126
Existence of Communities of Practice .....................................................130
 Sustained Mutual Relationships ..............................................................132
 Shared Ways of Doing Things Together ..................................................138
 Certain Styles Recognised as Displaying Membership .........................144
 Absence of Preambles; Quick Setup of a Problem ...................................145
 Substantial Overlap in Participants’ Descriptions of Who Belongs ..........149
 Shared Discourse Reflecting a Certain Perspective on the World ..........151
 The Ability to Assess the Appropriateness of Actions and Products .......153
 Boundaries within Benefics .................................................................156
 Relationships between Communities of Practice ..................................166
 Conclusion ..............................................................................................170

CHAPTER 5: Results: What is Learned? .................................................171
Four Vignettes ..........................................................................................172
 Context of Vignettes ..............................................................................172
of Practice in the Legal Firm? ................................................................. 278
Limitations of the Study ........................................................................ 279
Future Research Directions .................................................................. 280
Epilogue .................................................................................................. 282

References .............................................................................................. 283
LIST OF TABLES

Table 1.1 Disciplines of Organisational Learning ................................................. 4
Table 2.1 Indicators that a Community of Practice Has Formed ............................... 24
Table 2.2 Comparison Summary of Three Seminal Works ..................................... 29
Table 2.3 Comparative Summary of Approaches to Sharing and Assessing Knowledge across Boundaries ................................................. 70
Table 3.1 Summary of Data Collection Methods....................................................... 108
Table 3.2 A Priori Themes Coded in NVivo.............................................................. 114
Table 5.1 Graduates’ Learning Resources .............................................................. 175
Table 5.2 Attributes of a Competent Lawyer ......................................................... 211
Table 6.1 Factors Affecting Flow of Knowledge across Boundaries ........................ 250
LIST OF FIGURES

Figure 1.1 Initial Conceptual Framework .................................................................14
Figure 1.2 Refined Conceptual Framework ...............................................................16
Figure 4.1 Benefics Melbourne Office: Preliminary Map of Communities of Practice ...........................................................................159
Figure 4.2 Professional Staff Communities of Practice .............................................162
Figure 6.1 Knowledge Flow to Introduce the PPSA ..................................................235
Figure 6.2 Knowledge Flow to Introduce the Competency Framework ....................238
Figure 6.3 Knowledge Flow to Introduce the File Management System .................243
LIST OF APPENDICES

Appendix A.1 Interview Protocol: Graduates ............................................................ 296
Appendix A.2 Interview Protocol: Partners and Mid-Level Lawyers ....................... 298
Appendix A.3 Interview Protocol: Graduates’ Second Interview ............................ 300
Appendix A.4 Interview Protocol: Law Clerks ......................................................... 301
Appendix A.5 Interview Protocol: Administrative Assistants ................................. 302
Appendix A.6 Interview Protocol: Office Manager/COO ....................................... 303
Appendix A.7 Interview Protocol: HR Manager ...................................................... 304
Appendix B Log of Contacts ................................................................................... 305
Appendix C Emergent Themes Coded in NVivo ...................................................... 306
Appendix D Attributes of a Competent Lawyer Version 2 ..................................... 311
Appendix E.1 Competency Framework: Graduate .................................................. 316
Appendix E.2 Competency Framework: Lawyer/Associate ................................. 319
Appendix E.3 Competency Framework: Partner .................................................... 322
# List of Pseudonyms

<table>
<thead>
<tr>
<th>Name</th>
<th>Specialism</th>
<th>Relevant Relationships</th>
</tr>
</thead>
<tbody>
<tr>
<td>Partners</td>
<td></td>
<td></td>
</tr>
<tr>
<td>David</td>
<td>Property</td>
<td>Supervisor of Kate (Graduate)</td>
</tr>
<tr>
<td>Dennis</td>
<td>Corporations</td>
<td>Joint supervisor of Jane (Graduate)</td>
</tr>
<tr>
<td>Frank</td>
<td>Corporations</td>
<td>Second supervisor of Paul (Graduate)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Joint supervisor of Lisa (Graduate)</td>
</tr>
<tr>
<td>Gary</td>
<td>Property</td>
<td>First supervisor of Paul (Graduate)</td>
</tr>
<tr>
<td>Gerald</td>
<td>From Largest Office</td>
<td>On interview panel for law clerks and graduates</td>
</tr>
<tr>
<td>James</td>
<td>Dispute Resolution</td>
<td>Third supervisor of Paul (Graduate)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Joint supervision of Lisa (Graduate)</td>
</tr>
<tr>
<td>Peter</td>
<td>Dispute Resolution</td>
<td></td>
</tr>
<tr>
<td>Richard</td>
<td>Intellectual Property</td>
<td>Supervisor of Helen (Graduate)</td>
</tr>
<tr>
<td>Samuel</td>
<td>Corporations</td>
<td></td>
</tr>
<tr>
<td>Stephen</td>
<td>Dispute Resolution</td>
<td>Joint supervisor of Jane (Graduate)</td>
</tr>
<tr>
<td>Stuart</td>
<td>Dispute Resolution</td>
<td>Joint supervisor of Lisa (Graduate)</td>
</tr>
<tr>
<td>Lawyers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Adam</td>
<td>Dispute Resolution</td>
<td></td>
</tr>
<tr>
<td>Bethany</td>
<td>Corporations</td>
<td>Named as a mentor by several graduates</td>
</tr>
<tr>
<td>Jennifer</td>
<td>Dispute Resolution</td>
<td>Associate. Promoted to first female partner in Melbourne Office during fieldwork</td>
</tr>
<tr>
<td>Justin</td>
<td>Dispute Resolution</td>
<td>Senior associate named as a mentor</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Worked closely with Lisa (Graduate)</td>
</tr>
<tr>
<td>Kurt</td>
<td>Dispute Resolution</td>
<td></td>
</tr>
<tr>
<td>Martin</td>
<td>Corporations</td>
<td></td>
</tr>
<tr>
<td>Samantha</td>
<td>Dispute Resolution</td>
<td>Named as a mentor by several graduates</td>
</tr>
<tr>
<td>Graduates and Clerks</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alex</td>
<td>Dispute resolution</td>
<td>Law Clerk (part time while still studying)</td>
</tr>
<tr>
<td>Helen</td>
<td>Intellectual Property</td>
<td>Supervised by Richard</td>
</tr>
<tr>
<td>Jane</td>
<td>Corporations</td>
<td>Joint supervisors Frank and Stephen</td>
</tr>
<tr>
<td>Kate</td>
<td>Corporations</td>
<td>Supervised by Dennis</td>
</tr>
<tr>
<td>Lisa</td>
<td>Dispute Resolution</td>
<td>Jointly supervised by Stuart, Frank and James</td>
</tr>
<tr>
<td>Matt</td>
<td>Dispute Resolution</td>
<td>Graduate 2010 supervised by Stephen</td>
</tr>
<tr>
<td>Paul</td>
<td>Property and Corps</td>
<td>Supervised in turn by Gary, Frank then James</td>
</tr>
</tbody>
</table>
### Managers
- Philippa  HR Manager
- Veronica  Office Manager
- William  Chief Operating Officer

### Support Staff
- **Adriana**  IT Specialist from Head Office  Brought in as trainer at induction
- **Julie**  Admin assistant to Stephen, Jennifer and Adam  Named as influential
- **Mandy**  Admin assistant replacing Robyn
- **Robyn**  Admin assistant to Peter, Justin and Martin  Going on maternity leave, being replaced by Mandy
- **Stella**  Admin assistant to Dennis
CHAPTER 1 INTRODUCTION TO THE THESIS

I began my working life as a lawyer straight out of university and, although I left that profession five years later, certain attributes have persisted. Having been a lawyer is still part of how I identify myself. This thesis evolved from reflections upon my time as a lawyer and the lasting effect it has had upon who I am. In this chapter I will explain how these reflections led to the general direction taken in this research, the theoretical framework selected and from there to the aim and primary research question of this thesis. I will set out the justification for the research discussing the importance of private legal firms nationally and internationally, outlining the current research into learning in the law and identifying gaps in the literature. After this I will outline the evolution of my conceptualisation of communities of practice which has informed the various stages of field work. I will conclude the chapter by outlining the structure of the rest of the thesis.

From Curiosity to Research Question

I have found that having been a lawyer has been very impactful on both the way I do things and how I see myself. Others have also commented that my past profession has left its mark upon me, in my patterns of thought and reasoning and in aspects of my demeanour. Such comments prompted me to wonder what it was about lawyering that resulted in it so endurably being imprinted upon my identity. Unlike some lawyers I know, who have never wanted to be anything else, I more or less fell into the profession. While I had not had a burning desire to be a lawyer, I did well enough in my secondary education to earn a place in law and selected it at least partly because of its status. (I did consciously choose not to study medicine as, despite the status, I felt an aversion to blood was likely to be a handicap.) As I had
undertaken maths and science courses throughout secondary school I also studied science as an undergraduate, completing a double degree. Yet I have not worked as a scientist and do not identify as one. I conjectured that the significant impact upon my self-identification was therefore from working in the field and not from studying it alone.

When I began to consider doing a research thesis, learning to be a lawyer occurred to me as something which I could pursue, and I began to read accordingly. Since leaving the law I had been working and studying in business with interests particularly in organisational behaviour and organisation theory. These fields of interest channelled my reading towards the field of organisational learning.

Easterby-Smith, Crossan and Nicolini (2000) liken the field of organisational learning to volcanic activity; some topics persist, others wane in force while still others bubble up as new areas of activity. In line with this metaphor, they suggest that any map will be of limited use as the terrain is constantly changing. While a definitive and enduring map of the terrain may be an impossible dream, it is nevertheless important to be clear about the particular ‘location’ of any new research into organisational learning, as this will not only inform ‘the equipment’ one needs to explore the surrounds but also alert the explorer to the local hot spots that need to be traversed.

The ‘terrain’ is extensive. Easterby-Smith (1997) stated that the number of academic papers published on organisational learning in the single year, 1993, was as great as the number published in the whole decade of the 1980s. This trend has continued.
In a subsequent review of the field of organisational learning, Easterby-Smith, Crossan and Nicolini (2000, p. 783) stated that ‘there is far too much material available to allow full coverage in any single publication’. A review of the practitioner focused journals reveals a similar plethora of works with an increasing number of articles relating to organisational learning, often focusing on structuring for learning, knowledge management, or learning as a competitive strategy (see, for example, De Geus 1988; Garvin, Edmondson & Gino 2008; Ross, Beath & Quaadgras 2013; Senge 1992; Stata 1989).

Within the volume of writing and research in the field of organisational learning there is also a great deal of fragmentation and many and varied attempts to bring order to the chaos (see, for example, Easterby-Smith 1997; Easterby-Smith, Crossan & Nicolini 2000; Fulop & Rivkin 1999; Huber 1991). Easterby-Smith, Snell and Gherardi (1998) have suggested that there is divergence in the research along several lines, including the reason for studying organisational learning in the first place. Some authors focus upon the question of how learning does take place, whereas other authors have been concerned with how learning should take place. My curiosity with respect to learning relates to the first of these approaches leading me toward interpretive rather than positivist approaches to organisational learning. Easterby-Smith, Snell and Gherardi (1998, and see also Easterby-Smith 1997) identified six disciplines from which research into organisational learning has flowed (see Table 1.1).
Table 1.1 Disciplines of Organisational Learning

<table>
<thead>
<tr>
<th>Discipline</th>
<th>Ontology</th>
<th>Key Ideas</th>
</tr>
</thead>
<tbody>
<tr>
<td>Psychology and OD</td>
<td>Human development</td>
<td>Cognitive organization; development; communication and dialogue</td>
</tr>
<tr>
<td>Management science</td>
<td>Information</td>
<td>Knowledge; memory; feedback; error correction</td>
</tr>
<tr>
<td>Organization theory</td>
<td>Social structures</td>
<td>Effects of power and hierarchy; conflicts and interest; ideology and rhetoric</td>
</tr>
<tr>
<td>Strategy</td>
<td>Competitiveness</td>
<td>Organization/environment interface; learning between organizations</td>
</tr>
<tr>
<td>Production management</td>
<td>Efficiency</td>
<td>Learning curves and productivity; design to production times</td>
</tr>
<tr>
<td>Cultural anthropology</td>
<td>Meaning systems</td>
<td>Culture as cause and effect of organizational learning; values and beliefs</td>
</tr>
</tbody>
</table>

Source: Easterby-Smith, Snell and Gherardi (1998, p. 264)

This is not a closed list of disciplines, nor is it the only possible typology of disciplines underpinning organisational learning (Easterby-Smith, Snell & Gherardi 1998). Even within each discipline Easterby-Smith, Snell and Gherardi (1998) argue that it is possible to identify different ontological assumptions.

A significant difference evident between the identified streams in the literature relates to where learning takes place. Organisational learning has been seen by many authors as an individual, cognitive phenomenon, where the organisation is the context of the learning, while other authors have suggested a social element to learning in organisations where learning occurs between individuals and is perpetuated in their routines and artefacts. Easterby-Smith, Snell and Gherardi (1998) suggest that the cognitive approach has dominated the literature from USA.
and is epitomised in such work as Argyris and Schon (1996), March (1991) and Huber (1991). Examples of the social approach can be found in Cook and Yanow (1993), Lave and Wenger (1991) and Gherardi, Nicolini and Odella (1998).

A recent stream overlapping Easterby-Smith et al.’s (1998) cultural anthropology stream is that of practice theory (c.f. Gherardi 2000; Nicolini 2012; Schatzki, Knorr Cetina & Von Savigny 2001). Practice theory encompasses a family of approaches which shares an emphasis on understanding the social by examining activity. A focus on practice incorporates attention to discourse, the body and material surrounds and to issues of power and politics (Nicolini 2012). As within the field of organisational learning, practice theory emerges from several traditions (Nicolini 2012) which cannot be reconciled into a unified theory. Nicolini (2012) considers works which focus upon practice as accomplishment (as seen in ethno-methodology epitomised by the work of Garfinkel (1967)), practice as activity (which emerged from the work of Vygotsky (see, Miettinen, Samra-Fredericks & Yanow 2009); learning as culturally mediated comes from this stream), practice as discourse (drawing upon the work of Foucault (see, for example, Foucault 1980, 1991; Rabinow 1984)) and practice as tradition and community (incorporating communities of practice which emerged from the work of Lave and Wenger (1991)). This stream affords attention to how practices are passed on, providing a focus upon tradition, and in relation to how practices are transformed, which allows a consideration of adaptation and change. Practice-based theories also dissolve several dualisms which have proven problematic within other approaches, such as: actor/system, body/mind and social/material (Nicolini 2012, and see also, Miettinen,
Samra-Fredericks & Yanow 2009). For all these reasons, practice-based theorising appealed to me in relation to exploring organisational learning in legal firms.

In reading this literature, I was drawn to the work of Lave and Wenger (1991). A distinctive contribution of Lave and Wenger (1991) was the situated nature of the learning that takes place on the job, as newcomers gain competence in the practice of the collective. This tied in with my conjecture that it was through working as a lawyer that I learned to be a lawyer. Within their framework all knowledge is local knowledge, given meaning by the community in which it is employed. The socially constructed character of knowledge in Lave and Wenger’s (1991) approach to learning also resonated with me, leading me away from the unknowable processes of the individual mind to intersubjective spaces where knowledge is shared and meanings negotiated. Further, their approach linked learning and identity, which aligned with my initial curiosity. What is more, their examples were drawn from apprenticeships. Historically the practice of law was learned through apprenticeship and the current requirement for supervised practice prior to being qualified for admission retains an aspect of apprenticeship (Giddings & McNamara 2014).

**Research Question**

My initial curiosity about my individual learning had therefore led me to a stream of literature where the primary unit of analysis was the collective, widening the scope of the research. In communities of practice, the processes by which an individual learns are the processes by which the collective reproduces itself and also how the knowledge of the collective evolves. Being unsure how firms would be configured in terms of communities of practice the aim of the research became to explore
learning throughout the firm. I would need to identify communities of practice within the firm (assuming they existed), look at how learning occurred within them and also how learning occurred between them. I recognise that I could equally have chosen to base this research on other theoretical frameworks and that the choice is to some extent arbitrary. However, having made the choice, the primary research question became:

*Primary Research Question: How does organisational learning occur through communities of practice in legal firms?*

**Justification for the Research**

Quite aside from my personal curiosity, a ground for the study of learning in legal firms is the significance of the subject matter. There is a growing realisation that professional service firms constitute a special case, distinct in many respects from the business and manufacturing organisations more commonly studied in the past (Malhotra, Morris & Hinings 2006; Suddaby, Greenwood & Wilderom 2008). Accounting and legal firms, archetypical professional service firms, play a significant role in commercial transactions around the world (Suddaby, Greenwood & Wilderom 2008; Von Nordenflycht 2010) and are of economic importance in their own right. The top earning private legal practices are notable in both the number of people that they employ and in their annual turnover. For example, Baker & McKenzie, an international firm with offices in Australia, employs over 11,000 people in 77 countries (Baker & McKenzie 2015) and in 2012 had turnover in excess of US$2 billion (American Lawyer 2015). In the 2007-8 financial year (the most recent year for which statistics are available through the Australian Bureau of
Statistics) law firms in Australia employed over 84,000 people and 55 of these businesses earned in excess of $25 million each (Australian Bureau of Statistics 2009).

At least in part, the large revenues earned by legal firms around the world are possible because the profession enjoys a legal monopoly in its occupational area, established through charter or enactment of legislation (Neal & Morgan 2000). In return for this monopoly the legislation typically imposes standards upon the profession, both educational and ethical. In the Australian state of Victoria in which the research presented in this thesis was conducted, the monopoly and standards are codified in the *Legal Profession Act 2004 (Vic)*. The legal monopoly allows both the enactment of barriers to entry and the charging of higher fees, which in turn, contribute to the high status of the profession. The maintenance of the professional competence of the body of practitioners is a major concern for professions as it is essential to the maintenance of the monopoly and thereby of status and income.

There is therefore economic and commercial justification for the study of learning in professional service firms such as legal firms. Traditionally, common law countries trained lawyers through articles of clerkship, supervised practice under an experienced lawyer akin to a professional apprenticeship (Giddings & McNamara 2014), in more recent times requiring a university degree before commencing articles. The Ormrod Report (1971) in England, first among Common Law nations, stated an ideal learning environment for lawyers which involved three distinct stages: university training which was predominantly theoretical; practical training, which the report suggested could be entirely undertaken through coursework.
involving practical simulation exercises and be followed by admission as a lawyer but without the right to practice unsupervised for at least a year; and continuing legal education for qualified lawyers throughout their careers. These three stages are reflected in Victoria’s *Legal Profession Act 2004* and *Legal Profession (Admission) Rules 2008.*

A distinct body of work has developed around the education, training and induction experiences of professionals in occupations ranging from medicine (see, Becker et al. 1961) to auditors (see, Anderson-Gough, Grey & Robson 2001). A search of the literature relating to learning and law reveals thousands of articles and a significant number of books. However, a preponderance of the work focuses upon formal learning, particularly university-based law degrees. A growing emphasis in this work appears to be in teaching law students to learn from experience through the use of case studies and simulations (see, for example, Arnow-Richman 2013; Florescu 2012; Grose 2013) and increasingly through supervised placements during study, often referred to as clinical placements (Goldfarb 2012; Grose 2013; Valverde 2013), but also merely as placements (Hyams, Brown & Foster 2013) and even as ‘externships’ (Terry 2014). The aim of all these programs is to achieve ‘practice-ready’ graduates (Barry 2012), an endeavour that is arguably inherently flawed because of the importance of context to learning which is raised in this research.

There is much less work around learning that occurs after university, even though the structure of the legal profession implicitly recognises that without a period of supervised practice law graduates are not competent to act alone for clients. Anderson-Gough, Grey and Robson (2001) looked at post-university learning in the
profession of accounting, adopting a cultural perspective. They focus upon the means by which graduates are socialised into certain values within the auditing specialisation. However, while accounting and law are often seen as similar, they are increasingly diverging in organisational form, particularly the degree to which they resemble business organisations (Greenwood & Empson 2003; Malhotra, Morris & Hinings 2006). Further, much of the literature from a cultural perspective underplays the agency of the newcomer seeing socialisation as principally a unidirectional phenomenon (for more on the cultural perspective see, Cook & Yanow 1993; Weick & Westley 1996).

Giddings and McNamara (2014) look at post-university learning in the law, looking both at the growing trend in Australia for practical legal training (PLT) following university study and particularly at the role of the supervisor of graduate positions in firms. They criticise PLT as typically not integrating the program with the placement, recognising that there is frequently a disconnection between the formal ‘practical education’ and real world practice. Further, Giddings and McNamara’s (2014) emphasis upon supervision is primarily dyadic. They do acknowledge that the supervision takes place in a work, and a wider systemic, context but they see such context as the source of enabling and inhibiting factors which might affect the success of the supervisory relationship, rather than as determinative of meaning and good practice. Consequently, they advocate that supervisors be trained in their role to better fulfil the functions of support, management and education of the graduate. The graduate is personified still as a student, rather than as a newcomer to practice, a profound difference when considering identity. Further, the focus on formality risks losing sight of the tacit aspects of practice.
Studying learning in legal firms through the lens of communities of practice presents several possibilities not found in the existing research into the learning within professions. First, it offers an opportunity to consider learning not merely as something formal, as is the case in the majority of the writing about learning the law, even when that learning is concerned with practical skills. Second, it presents the learner as an active agent in his or her learning journey, unlike much of the socialisation literature. Third, it highlights context, the situated nature of learning necessary to become a competent practitioner, not merely as shorthand language for elements that affect learning, but as central to the meaning of knowledge.

The adoption of the concept for the study of learning in professional settings seems a logical step from its origins in a work about legitimate peripheral participation in apprenticeships (that is, Lave & Wenger 1991) given the historical roots of legal training reflected in modern requirements for supervised practice. Yet, I have found only one work that considers communities of practice in a legal context. Hara (2009) looks at how knowledge is shared through communities of practice in a public defenders’ office in the United States of America. However, this work takes a functionalist approach to communities of practice and therefore differs from the interpretive approach adopted in this thesis, as will be explained in the literature review, Chapter 2.

Legal firms are therefore significant as subjects for study due both to their economic footprint and to their influence upon commercial transactions more generally. Studying post-university learning informs the understanding of how law graduates
develop competency in the practice of law, a topic important to clients and to the profession itself, as demonstrating competence is relevant to maintaining the profession’s monopoly over the provision of legal services. Despite significant work relating to the formal education of lawyers and other professionals, there is little work upon post-university learning, and none that I have been able to locate which utilises an interpretive framework such as communities of practice. This research therefore fills a gap in the literature relating to learning.

In the same way that the aim of this research evolved as I identified and became more familiar with the concept of communities of practice, my conceptualisation of what communities of practice existed and how they would be related to each other within a legal firm also evolved. The next section briefly outlines this evolution and its impact upon the method employed in this research.

**Evolving Conceptualisations of Communities of Practice**

Having worked in a large private legal practice, I had some initial (naïve) ideas about the way communities of practice might work within law firms. I knew for example that it was usual to divide the firm up into practice groups or specialist divisions. The firm I had worked in had four divisions: banking and finance; property; commercial law and litigation. Sub-specialisations existed within these. For example, intellectual property was a sub-specialisation of commercial law. I also knew that there was a large number of support staff, among them legal secretaries; reception staff; accounts staff; librarians; mail room; and filing clerks.
Miles and Huberman (1994) expound the benefits of establishing a diagrammatic framework to inform qualitative research. The framework represents choices made about the variables to be examined and the relationships between them. My initial framework that informed the early steps of the field work is given in Figure 1.1. From the literature, and informed by my experience in legal firms, I assumed that I would be able to identify one or more communities of practice within each practice group and the initial design therefore conceptualised practice groups as discreet units to be investigated. To investigate organisational learning it was also necessary to consider how knowledge was generated and disseminated between and across practice groups. The literature had suggested that this was achieved through multiple memberships, boundary objects and boundary persons and Figure 1.1 incorporates my expectations in relation to these linkages. The first set of interview questions was shaped by the conceptualisation of Figure 1.1.
This early framework demonstrated a lack of knowledge of many characteristics of the boundaries of communities of practice, assuming that they would be relatively clear and consistent, although permeable. The communication of knowledge between communities of practice was envisaged as occurring mainly through the deliberate creation of boundary objects and conscious boundary roles.

It became obvious as the field work progressed that the conceptualisation required modification. Firstly, the boundaries of the practice groups were more fluid and at times appeared to overlap. It was also evident that the practice groups held differing positions of influence within the organisation. While administrative workers were officially within practice groups they appeared separate from the fee-earners in the ways they interacted and although I had initially conjectured that administrative staff would influence the learning and identity of new fee earning members, as the field
work progressed this appeared not to be the case. The modified framework in Figure 1.2 therefore has practice groups of different sizes to represent their different levels of influence and dotted boundaries to represent fluidity of membership. The administrative members of the firm are shown as a separate community. At this point it seemed to me that the knowledge flow was principally one way. The initial conceptualisation had also ignored the impacts of ownership, clients and non-fee earning management personnel or had subsumed them in an amorphous group of boundary persons. The modified framework therefore fleshes out a little more who these boundary persons might be. Boundary objects are ‘artifacts, documents, terms, concepts, and other forms of reification around which communities of practice can organize their interconnections’ (Wenger 1998, p. 105). Boundary objects in Figure 1.2 are shown as existing within the general frame of the organisation. While the ownership of the organisation is partly within the Melbourne office it also includes partners from other state offices. Similarly, some of the non-fee earning management were located entirely within the Melbourne office with Melbourne only responsibilities, others were located in Melbourne with responsibilities across the organisation and still others, who had responsibility for Melbourne, were located in other offices, usually Head Office.

It was this second conceptualisation that informed the latter half of my field work. Following the completion of my field work, my conceptualisation of communities of practice within the law firm, how they were related and how they impacted learning, continued to evolve as can be seen in Chapters 4 to 7.
Outline of the Thesis

The remainder of this thesis is structured as follows. Chapter 2 contains a review of the literature on communities of practice which informs this research. It identifies issues that are central to understanding how learning takes place specifying six sub-questions to be addressed in order to answer the primary research question. Chapter 3 covers methodology. It describes the research approach taken, outlining the ontological, epistemological and methodological assumptions that underpin it. It then goes on to explain the selection of the case study, justifying the use of a single...
case study in the creation and extension of theory, and to outline the methods by which data was collected and analysed. The results are given in three chapters. Chapter 4 addresses what communities of practice exist within the law firm, defining the boundaries of these communities and how they are related within Benefics. Chapter 5 considers what is learned within communities of practice, looking at both production and reproduction of knowledge. Chapter 6 focuses upon when and how knowledge moves across community of practice boundaries within Benefics. Interesting and unexpected results are discussed in Chapter 7. The last chapter is the Conclusion, Chapter 8, which demonstrates how the research aims have been met and the research question answered, identifies the limitations of the research and suggests areas for further research which have arisen from this work.
CHAPTER 2 LITERATURE REVIEW

This chapter will explore the literature relating to communities of practice. It will first define communities of practice. It will identify the two major streams which have emerged in the community of practice literature and position this research within the interpretive stream. Through a discussion of the commonalities and differences between the seminal works in this stream, the chapter will then identify the elements that will inform the empirical research. This process will also establish gaps and inconsistencies in the conceptualisation. The chapter will conclude with a consideration of the literature relating to whole-of-organisation learning through a communities of practice lens.

Communities of Practice

Defining and Identifying Communities of Practice

As noted in Chapter 1, Lave and Wenger (1991) are widely attributed with first coining the term ‘community of practice’. The focus of their work is how newcomers learn on-the-job and they illustrate their concepts with five apprenticeship situations (although naval quartermasters and non-drinking alcoholics may not immediately be recognised as apprenticeships by many). They name the process by which newcomers learn ‘legitimate peripheral participation’. In this process novice newcomers have only very limited access to the practices of the group they have joined as they are not yet considered to be competent. However, as legitimate members of the community they are allowed access ‘on the periphery’ to observe and participate in the practice of the group. As they participate, they develop in their mastery of the group practice, starting with simple tasks and moving
to progressively more complex ones, until they are recognised as fully competent members of the group. Mastery in this context incorporates the manual skills and technical knowledge of the group, as well as the value sets and culture of the group. The novice not only learns to do the practice but through increasing identification with the community, becomes a practitioner. While Lave and Wenger (1991) acknowledge that the newcomer may influence the practices of the community, the emphasis of their work is upon how the newcomer is influenced by the practices of the community.

Lave and Wenger (1991) articulate a concept of knowledge that differs from much of the work that preceded theirs. Traditional views of learning and knowledge valued ‘scientific’, universal knowledge (episteme). It could be extracted, stored and communicated as a commodity (Fox 1997) and taught in classrooms remote from where the knowledge was to be applied. In contrast, Lave and Wenger (1991) see knowledge as necessarily situated in a place and time. To be recognised as good or valuable, knowledge needs to be validated by the community through its practice and is learned in situ. It is this process of learning on the job that forms the central motif in their work. Community of practice is used in their work to describe where legitimate peripheral participation takes place and while they coined the term, Lave and Wenger (1991) do not further define community of practice.

Thompson (2011) suggests that Lave and Wenger’s (1991) conceptualisation is purely processual. However, while legitimate peripheral participation is purely a process, I do not believe the same can be said of communities of practice in their
work. It clearly relates to a collective within which legitimate peripheral participation occurs. Lave and Wenger (1991, p. 29) state:

Learning viewed as situated activity has as its central defining characteristic a process that we call legitimate peripheral participation. By this we mean to draw attention to the point that learners inevitably participate in communities of practitioners and that mastery of knowledge and skill requires newcomers to move toward full participation in the sociocultural practices of a community. “Legitimate peripheral participation provides a way to speak about the relations between newcomers and old-timers, and about activities, identities, artifacts, and communities of knowledge and practice.

It is therefore legitimate within the conceptualisation of Lave and Wenger (1991) to use descriptors which apply to the entity of ‘community’ (such as periphery – things have peripheries, whereas it makes less sense to talk of processes having peripheries) as long as one maintains the centrality of the process by which the entity is defined and delineated. That is, ‘the “community” in the expression is, if anything, a form of commonality performed by the practice and not vice versa’ (Nicolini 2012, p. 94).

Brown and Duguid (1991) employ the term ‘community of practice’ in an article published in the same year as Lave and Wenger’s (1991) monograph. They refer to an earlier version of the work of Lave and Wenger (1991) and therefore expressly align themselves with this work. However, their application of the concept differs in two significant ways that contribute to the popularity of the concept with management academics and practitioners. Where Lave and Wenger’s (1991) attention is upon the apprentice, foregrounding the newcomers’ learning of existing practice and their interactions with competent members of the community, Brown and Duguid’s (1991) focus is upon the evolution of practice as already competent members collaborate to solve problems. That is, Brown and Duguid (1991) illustrate the application of the concept to organisations, expanding it beyond situations that
are, or are analogous to apprenticeships, and they relate it to the creation of new knowledge.

Again, the term ‘community of practice’ is not defined in this work. Brown and Duguid (1991) make several points about communities of practice, however, which clarify their understanding of the concept. They state that learners in communities of practice are learning ‘the embodied ability to behave as community members’ (Brown & Duguid 1991, p. 48). Competence is judged against the accepted beliefs and values of the collective. That is, learning is situated and necessarily involves issues of identity. They also assert that communities of practice are emergent rather than deliberately constructed, and that community boundaries will not necessarily coincide with the formal organisational structure.

Wenger (1998) subsequently expanded upon Lave and his (1991) theory of learning, including for the first time a definition of communities of practice. He emphasised that ‘practice’ and ‘community’ needed to be seen as a unit and proposed that communities of practice have three dimensions (Wenger 1998, p.73): mutual engagement; a joint enterprise; and a shared repertoire. Mutual engagement entails relationship between members rather than merely a unifying characteristic or belonging to the same organisation or having geographical proximity. It is clearly present when members make complementary contributions to the work of the community, such as the various members of a surgical team, but is also present when members perform the same or similar tasks and have overlapping competences (Wenger 1998). In communities of practice with overlapping competences members help each other, so it is not necessary to know everything because you know whom
within the community to ask. A joint enterprise creates coherence in the community and the process of negotiating the nature of the shared enterprise is integral to the creation of a sense of belonging. A joint enterprise ‘is not just a stated goal, but creates among participants relations of mutual accountability that become an integral part of the practice’ (Wenger 1998, p.78). A shared repertoire carries a connotation of a shared history, negotiated meaning, and accepted routines, language, stories and symbols. The need for a shared history reinforces Brown and Duguid’s (1991) point that communities of practice are emergent. While a group could be formally assembled with a joint enterprise and mutual engagement, shared meaning, language and symbols take time to establish and their content is hard, if not impossible, to dictate.

A shared repertoire will also include artefacts around which practice is focused (Wenger 1998). Artefacts are the knowledge of the community in material form and can be as diverse as medical claim forms to office architecture and layout, all of which are described in Wenger’s (1998) illustrative vignettes. However, without the practice that generates and uses them, the artefacts are without meaning or at best ambiguous. According to Wenger (1998) artefacts reify the knowledge of the collective and form foci for practice and collaboration, while at the same time it is practice which gives the artefacts meaning. Practice and artefacts are thereby mutually constituted. Artefacts are important in the work of Orr (1996) from whom Brown and Duguid (1991) draw their illustrative case. Orr (1996) discusses the machines upon which the technicians work as actors in their own right. However, artefacts do not form a significant aspect of the discussions of Brown and Duguid (1991) or Lave and Wenger (1991). Artefacts may be deliberately created, as in the
medical claim forms of Wenger’s (1998) illustrative case, or may be emergent, for example conventions around the appearance and demeanour of community members.

Wenger (1998) and Brown and Duguid (1991) both make the point that communities of practice are often invisible to the organisation in the same way that culture (Cook & Yanow 1993) and habit (Weick 1995) are invisible. Wenger (1998) offers suggestions of what participation in practice will look like to an outsider and these are set out in Table 2.1 below. They are not definitional characteristics and it is not necessary to identify all fourteen for a community of practice to exist (Wenger 1998). However, the more of these indicators that can be identified the more confident an observer may be that a community of practice exists.
Table 2.1 Indicators that a Community of Practice Has Formed

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Sustained mutual relationships—harmonious or conflictual</td>
</tr>
<tr>
<td>2</td>
<td>Shared ways of engaging in doing things together</td>
</tr>
<tr>
<td>3</td>
<td>The rapid flow of information and propagation of innovation</td>
</tr>
<tr>
<td>4</td>
<td>Absence of introductory preambles, as if conversations and interactions were merely the continuation of an ongoing process</td>
</tr>
<tr>
<td>5</td>
<td>Very quick setup of a problem to be discussed</td>
</tr>
<tr>
<td>6</td>
<td>Substantial overlap in participants’ description of who belongs</td>
</tr>
<tr>
<td>7</td>
<td>Knowing what others know, what they can do, and how they contribute to the enterprise</td>
</tr>
<tr>
<td>8</td>
<td>Mutually defining identities</td>
</tr>
<tr>
<td>9</td>
<td>The ability to assess the appropriateness of actions and products</td>
</tr>
<tr>
<td>10</td>
<td>Specific tools, representations, and other artifacts</td>
</tr>
<tr>
<td>11</td>
<td>Local lore, shared stories, inside jokes, knowing laughter</td>
</tr>
<tr>
<td>12</td>
<td>Jargon and shortcuts to communication as well as the ease of producing new ones</td>
</tr>
<tr>
<td>13</td>
<td>Certain styles recognized as displaying membership</td>
</tr>
<tr>
<td>14</td>
<td>Shared discourse reflecting a certain perspective on the world</td>
</tr>
</tbody>
</table>


Thompson (2005) suggests that these indicators of communities of practice may be divided into practice elements, and symbolic and material elements, which he subsequently calls ‘epistemic’ and ‘structural’ elements. He notes that items 1) to 9) in Wenger’s (1998) list relate to practice and items 10) to 14) to structure.

Wenger subsequently participated in a further book on communities of practice. Wenger, McDermott and Snyder (2002, p. 4) define communities of practice as ‘groups of people who share a concern, a set of problems, or a passion about a topic, and who deepen their knowledge and expertise in this area by interacting on an ongoing basis’. They state that practice ‘is a set of frameworks, ideas, tools, information, styles, language, stories, and documents that community members

24
share’ (Wenger, McDermott & Snyder 2002, p. 29). While superficially similar to
Wenger’s (1998) definition, this appears to require less mutual engagement and less
negotiation of shared meaning than the earlier definition. When Wenger (1998, p. 47) discusses practice (to the exposition of which he devotes a significant portion of
the book) he states that:

Such a concept of practice includes both the explicit and the tacit. It includes
what is said and what is left unsaid; what is represented and what is assumed.
It includes the language, tools, documents, images, symbols, well-defined
roles, specified criteria, codified procedures, regulations, and contracts that
various practices make explicit for a variety of purposes. But it also includes
all the implicit relations, tacit conventions, subtle cues, untold rules of thumb,
recognizable intuitions, specific perceptions, well-tuned sensitivities,
embodied understandings, underlying assumptions, and shared world views.
Most of these may never be articulated, yet they are unmistakable signs of
membership in communities of practice and are crucial to the success of their
enterprise.

The required depth of shared meaning and tacit understanding is significantly greater
in Wenger (1998). It would therefore seem that ‘interacting on an ongoing basis’
(Wenger, McDermott & Snyder 2002, p. 4) is less than the shared practice of
Wenger’s earlier work. An implication of the latter definition is that learning in such
communities of practice may be the same as learning about and need not involve
learning to be (Lave & Wenger 1991; Wenger 1998). While membership of such a
group will have an influence on identity (see further, Weick 1995), identity change
need not be an integral element of perceived competence and hence full membership
in such communities. The definition of community of practice as ‘a group of people
with a shared concern or passion who deepen their knowledge by interacting on an
ongoing basis’ is therefore wider than Wenger’s (1998) earlier definition.

Nearly all the writing about communities of practice claims lineage from one of
these four works, which Cox (2005) names as the four seminal works, yet they are
clearly not all talking about the same thing. Nicolini (2012) describes two distinct streams in the community of practice literature. One, representing structural-functionalist thinking, emphasises ‘community’ as an entity, and has been enthusiastically adopted by consultants and practitioners as a way to enhance productivity and innovation. In line with the functionalist emphasis, this stream is often directed to creating guidelines for how to create, nurture or ‘improve’ a community of practice (this stream is epitomised by Wenger, McDermott & Snyder 2002). In this stream, communities are overwhelmingly seen as beneficial structures enabling and encouraging knowledge sharing and cooperation (see, for example, Farrell 2004; Gabbay et al. 2003; Gongla & Rizzuto 2001; Heaton & Taylor 2002; Henderson & Clark 1990). Membership is not infrequently by express invitation (see, for example, Donaldson, Lank & Maher 2005; Hara 2009; Nicolini 2012) or even mandate (see, for example, Farrell 2004; Gabbay et al. 2003).

Cox (2005) proposes that this is now the dominant usage of the term ‘community of practice’ in organisational literature, and Nicolini (2012) acknowledges that this meaning is so well entrenched, in professional management and consulting circles at least, as to make it impractical to change the name. However, although Wenger, McDermott and Snyder (2002) assert that their concept of communities of practice is distinct from other structures, such as formal departments, operational teams, project teams, communities of interest and informal networks, in what ways they are different given the wide definition they employ is far from clear. The concept risks becoming indistinguishable from other, long established concepts in the literature if it is broadened too far and ‘loses its critical and postfunctionalist flavour’ (Nicolini 2012, p. 101).
The other stream identified by Nicolini (2012) emphasises that it is participation in the practice of the group that is of defining importance in the concept (Duguid 2005; Nicolini 2012). One must be permitted by the members of the community to share its practice in order to be a member. This stream, rather than trying to harness or manipulate a community of practice for managerialist ends, attempts to understand how communities of practice function, regardless of the outcome, and is therefore typically descriptive rather than prescriptive1. It is this second stream, which includes the work of Lave and Wenger (1991), Brown and Duguid (1991) and Wenger (1998) that interests me.

Cox (2005) suggests that modern management practices may mean that the sustained engagement necessary for communities of practice to emerge is rare. If Cox’s (2005) suggestion is correct in relation to legal firms it is possible that I will be unable to identify any communities of practice in the field work. An important preliminary question in order to answer the primary research question therefore becomes:

*Research Question 1: What communities of practice can be identified within the legal firm?*

---

1 Interestingly, the identification of two streams, one prescriptive and the other descriptive, mirrors the distinction drawn by Easterby-Smith, Snell et al. (1998) in relation to the distinction between the learning organisation and organisational learning. Much of the functionalist literature, although using the term 'communities of practice', expressly locates itself within the literature on knowledge management as distinct from organisational learning. See for example, Heaton and Taylor (2002).
While the three works of Lave and Wenger (1991), Brown and Duguid (1991) and Wenger (1998) all share a post-functionalist perspective, they nevertheless appear on their surface to also display inconsistencies in their interpretation and application of the concept of communities of practice (Cox 2005). The next section will look at the extent to which the three works, although displaying differences, can be reconciled, thereby drawing a more nuanced picture of the processes within communities of practice. It will identify issues that are unclear in these works drawing upon other writing in relation to communities of practice, practice theory or learning that may assist in the development of a clear and comprehensive conceptualisation.

Points of Agreement, Difference and Gaps between Seminal Works
Cox (2005) compared the four seminal works (including Wenger, McDermott and Snyder (2002)) across several characteristics illustrating how they differed. An extract of the table summarising his comparison (but excluding Wenger, McDermott and Snyder (2002) which I have already identified as from a functionalist stream of literature) is set out in Table 2.2. Many of the points of distinction raised by Cox (2005) prove to be differences in emphasis and focus, rather than conceptually irreconcilable disagreements. I discuss Cox’s (2005) categories below (excluding ‘level’ which, being related to the purpose and detail of the works rather than the concept itself, does not add to an understanding of communities of practice), beginning with ‘formality/informality’ about which the three authors are largely in agreement, and then moving onto ‘view of learning’, ‘concept of community’ and ‘diversity’. I will discuss ‘power and conflict’ last as this area is not well developed in the seminal works. ‘Change’ will not be dealt with as a separate category but is addressed within other categories, in particular ‘view of learning’ and ‘diversity’.
<table>
<thead>
<tr>
<th>Table 2.2 Comparison Summary of Three Seminal Works</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Concept of community</strong></td>
</tr>
<tr>
<td><strong>View of learning</strong></td>
</tr>
<tr>
<td><strong>Power and conflict</strong></td>
</tr>
<tr>
<td><strong>Change</strong></td>
</tr>
<tr>
<td><strong>Formality/informality</strong></td>
</tr>
<tr>
<td><strong>Diversity</strong></td>
</tr>
<tr>
<td><strong>Level</strong></td>
</tr>
</tbody>
</table>

*Source: Extracted from Cox (2005, p. 537, Table 5)*
**Formality/Informality:** All three works agree that communities of practice emerge informally. While the authors do differ as to the extent to which management can or should interfere with the operation of the community of practice, the difference is one of degree and of the authors’ intents in writing. Management action was not relevant to the work of Lave and Wenger (1991) whose work does not assume the existence of a formal organisational structure. Brown and Duguid (2001), on the other hand, advocate some management intervention to help promote the flow of information within and between communities in an organisation and, where appropriate, across organisation boundaries. They suggest that interventions should involve reducing epistemic differences between communities to allow information flow. However, Brown and Duguid (1991) warn against the possible negative consequences of interfering too much, especially through the formalisation of a community into an officially recognised organisational unit. ‘The reorganization of the workplace into canonical groups can wittingly or unwittingly disrupt these highly functional noncanonical – and therefore often invisible - communities’ (Brown & Duguid 1991, p. 49).

Thompson (2005) similarly advocates some management intervention but warns against certain forms of intervention or too much interference. Cox (2005) alludes to the potential negative impacts on informal communities of practice when he contends that modern management practices militate against the sustained mutual engagement that leads to their emergence. Even if the virtuous circle of the community of practice is not destroyed by management attempts to manipulate them, Wenger (1998) warns such interference may actually have consequences quite different to those intended.
In contrast, the functionalist stream epitomised by the work of Wenger, McDermott and Snyder (2002) proposes that communities of practice can be ‘cultivated’ by management. This involves deliberate actions to seed and nurture the growth of communities of practice and, while the authors acknowledge that the result cannot be precisely designed, they advocate a significant role for management if the knowledge embedded in and created by the community is to be ‘harvested’ for the benefit of the organisation. Even though she appears to adopt Wenger’s (1998) definition, Roberts (2006) is more aligned with the later work, Wenger, McDermott and Snyder (2002), as she urges that communities of practice should be ‘cultivated’ in order to fully enjoy their benefits. She further states that communities of practice cannot thrive in hostile organisational environments, yet this is precisely what Brown and Duguid (1991) suggest does happen with the photocopier technicians as they deliberately circumvent the guidelines created by the company in relation to the repair of machines. Some authors using the term ‘community of practice’ go even further in suggesting a role for management. For example in Gabbay et al. (2003, p. 285), ‘communities of practice’ are defined as ‘groups of people who may not normally work together, but who are acting and learning together in order collectively to achieve a common task while acquiring and negotiating appropriate knowledge’. Each community of practice in Gabbay et al.’s (2003) study was created by invitation and met only at formal meetings of which there were a total of seven.

Therefore, in line with the interpretive stream and rejecting the functionalist assertion that communities of practice may be created and managed, in my field work I will be looking for emergent, informal groups. Their boundaries may, but
need not, coincide with formal organisational boundaries. The practices within the community of practice may be sanctioned by the formal organisation. However, it is also possible that the practices of the group have emerged in response to the inadequacies of formal work processes, even in defiance of such processes.

*View of Learning:* The differences alluded to by Cox (2005) in relation to the view of learning in the three works are more of emphasis than concept. As noted above, nearly all authors on organisational learning prior to the ‘practice turn’ (Schatzki, Knorr Cetina & Von Savigny 2001) took a cognitive approach which sees learning as essentially an individual phenomenon (Cook & Yanow 1993). Simon (1991, p. 125) claims, ‘All learning takes place inside individual human heads; an organization learns in only two ways: (a) by the learning of its members, or (b) by ingesting new members who have knowledge the organization didn't previously have.’

Cook and Yanow (1993) suggest that those who take a cognitive approach to learning conceptualised organisational learning in one of two ways: organisational learning as the learning of key individuals within the organisation; or through attempting to identify processes that are identical or analogous to individual learning. Practice based approaches such as communities of practice offer an alternative that does not require finding in organisations an analogue for the brain – for decision making, memory and reason – and which can recognise in the collective knowing more than the sum of what resides in individual heads.

The three seminal works illustrate the concept’s application both to individual learning within the community of practice and to collective learning by the
community of practice (Osterlund & Carlile 2005). Lave and Wenger’s (1991) work was intended as a re-conceptualisation of individual learning away from the dominant cognitive model to an inherently social undertaking. They were not intentionally addressing organisational learning although the theory is wide enough to encompass such contexts. Drawing on their work Gherardi, Nicolini and Odella (1998) (see also, Gherardi & Nicolini 2000) suggest that the content of learning by the individual within a community of practice is guided by a ‘situated curriculum’, which they describe as a well-defined and established pattern of assigning work to novices, which acts as an implicit map for ensuring newcomers cover the required knowledge. A situated curriculum cannot be reduced to a formal instructional outline for several reasons. First, its content is context dependent relating to a particular job at a particular time. The learning opportunities offered to the novice depend not only upon the intent of the trainer but also upon the ebb and flow of the work. It follows that the situated curriculum of novices even within the same community of practice will vary. Second, related to the tacit nature of much of the knowledge to be learned, trainers are typically unable to articulate the full breadth and complexity of the learning involved as they, themselves, are unaware at a cognitive level of much of what they know practically (Gherardi, Nicolini & Odella 1998).

Despite context specific variation, Gherardi, Nicolini and Odella (1998) found that the situated curriculum tends to be relatively consistent across generations as the novice internalises the beliefs and values, as well as the technical know-how, embedded in the practice of the community. The way that novices are trained therefore becomes habitual and taken for granted in the same way that the other
aspects of practice are taken for granted. Variation in the master’s approach to the situated curriculum then is most likely to arise through incremental changes to practice.

Gherardi, Nicolini and Odella (1998) suggest that the content of the situated curriculum is also influenced by the individual style and strategy of the novice and by interpersonal factors between the novice and other members of the community of practice. Hence, a highly motivated novice will seek out opportunities to participate and learn whereas a less motivated novice will wait for opportunities to be presented. Relationally, experienced practitioners may see their role as involving ‘scaffolding’ (Gherardi, Nicolini & Odella 1998), that is helping to translate for the novice those tacit aspects of practice which may be hard to pick up otherwise, or as ‘authoritarian’ merely telling the novice what to do and leaving them to pick up the tacit aspects of practice through observation. At worst the interpersonal relationship between novice and master might be ‘neglectful’ (Gherardi, Nicolini & Odella 1998), where the novice is left on the margins of the practice.

With their focus on new entrants to a practice and how they learn to be a midwife, quartermaster, tailor, meat cutter or non-drinking alcoholic, Lave and Wenger (1991) draw attention to the learning of the individual, but the authors acknowledge that this is not the only learning that may occur in the dynamics of the community of practice. The newcomer may also influence the practice of their community. In this respect, communities of practice theory differs from the cultural perspective which emphasises processes of socialisation (Cook & Yanow 1993) which are predominantly one way.
The potential for the collective to learn was taken up by Brown and Duguid (1991) who focus upon collective learning. They expressly make the connection between communities of practice and *organisational* learning which is undiscussed but left open by the work of Lave and Wenger (1991). Brown and Duguid’s (1991) attention is not upon the newcomer but upon an established, competent group within an organisation. In their example, a functional unit of the organisation is considered as a community of practice and attention is directed to the collaborative processes by which problems may be solved within that collective. In contrast to Lave and Wenger (1991) who are primarily concerned with how the knowledge of the collective is perpetuated, Brown and Duguid (1991) are concerned with how new knowledge is generated. Yet Cox (2005) points out that the creation of new knowledge in the work of Brown and Duguid (1991), which is illustrated by Orr’s (1996) photocopier technicians, is not revolutionary but within known bounds. This leaves open the question of the potential role of communities of practice in radical innovation, the outcome of communities of practice advocated by the functionalist stream.

Wenger (1998) addresses both the individual and the collective in relation to learning. He shows how the two aspects, of production and reproduction, coexist in communities of practice. He deals in detail with issues of identity that are implicated in learning to be a competent member, in this respect focusing on the individual and their learning journey, but he also directs attention to the way individuals, through multi-membership, brokering and collective problem solving, may influence the practices of the group. In Wenger’s (1998) discussion it can be seen that
communities of practice necessarily involve both individual learning *within* the community of practice, and collective learning *by* the community of practice. The dualism of individual/organisation evident in cognitive approaches to organisational learning is thereby dissolved by communities of practice (Miettinen, Samra-Fredericks & Yanow 2009; Nicolini 2012).

The dissolution of the individual/organisation dualism has an implication not highlighted by Cox (2005) in his comparative work. That is, that organisational learning encompasses not-change, as newcomers assimilate and perpetuate the practices of the collective, as well as change. Again, this contrasts with theorists in the cognitive stream. Of the cognitive theorists, Argyris and Schon (1996, p. 3) are apparently the most sympathetic to learning as not necessarily involving change. They acknowledge that behavioural change is not necessary for there to be organisational learning. They state:

> Generically an organization may be said to learn when it acquires information (knowledge, understanding, know-how, techniques or practices) of any kind and by whatever means… the generic schema of organizational learning includes some informational content, a *learning product*; a *learning process* which consists in acquiring, processing, and storing information; and a *learner* to whom the learning process is attributed.

That is, according to Argyris and Schon (1996) organisational learning exists when new information is gathered and held, whether or not it generates a change in what the organisation does. While this is wider than many other authors who insist upon discernible change as evidence of organisational learning (for example, Chalofsky 1996; Hawkins 1994; Kim 1993; Stata 1989) and even wider than those who look for *positive adaptive* change as learning (see, for example Hawkins 1994; Stacey 1993),
it is nevertheless narrower than the conceptualisation of learning inherent in communities of practice, as it requires something new, not merely reproduction.

From an examination of the contrasting emphases upon learning of the three seminal works it therefore becomes clear that there is an ongoing tension between reproduction of existing knowledge and production of new knowledge in a community of practice. Yet this tension is rarely directly addressed in the literature which tends to focus upon one or the other, reflecting the difficulty of keeping both in view at once. How these tensions play out in a legal firm gives rise to a further question to be addressed in this research:

*Research Question 2: What is being learned in the communities of practice?*

*Concept of Community:* Another point of difference suggested by Cox (2005) between the first three works is the ‘concept of community’. According to Cox (2005), in the work of Lave and Wenger (1991), community is seen as ‘a group of people involved in a coherent craft or practice’, or in the non-drinking alcoholic example, ‘not a neat group at all’. Brown and Duguid (1991) discuss the community of practice as an informal group of workers engaged in the same type of work, and in Wenger’s (1998) work community is a ‘set of social relations that grow around a work process when it is appropriated by participants’ (Cox 2005, p. 537). That is, they appear to differ in the clarity of the community boundary, the extent to which formal organisational and community of practice boundaries coincide, and the diversity of tasks that may fall within a single community. Diversity is dealt with as a separate element by Cox (2005) and is discussed separately in this literature.
review. The other two points of difference may be reconciled when one considers that each of the three works illustrates their conceptual development from different empirical settings.

Lave and Wenger (1991) explore five different apprenticeships and they are therefore looking for situated learning in apprenticeships; any structure, formal or informal, outside the apprenticeship relationships is irrelevant to their discussion. Brown and Duguid (1991) illustrate their ideas by reframing Orr’s (1996) famous study of photocopier technicians, exploring how story telling helped them to solve novel problems. The wider organisation is relevant as context. The job assigned to the technicians is integral to their identity and thus impacts upon, but does not determine, who is considered to be inside and who outside the community. In particular, the structures and sanctioned work practices of the formal organisation provide a counter point to the emergent structures and practical knowledge of the technicians. Wenger (1998) illustrates his conceptualisation with vignettes within the claims processing department of a medical insurance company and again the wider organisation is seen as the context for the operation of the community of practice. In all three of the works, the choice of collective is pragmatic. Lave and Wenger (1991) make no attempt to explore whether the community of practice extends beyond the reported relationships, and Brown and Duguid (1991) and Wenger (1998) make no attempt to explore if the community of practice extends as far as, or further than, the formal boundaries of the subject work unit. It is sufficient for their purposes that the social interactions highlighted relate to a single practice.
Cox’s (2005) highlighting of ‘concept of community’ therefore clearly raises questions about boundaries in relation to communities of practice\(^2\). The literature on boundaries in communities of practice is not as prolific as that upon communities of practice in general and there is still open debate on this topic (Easterby-Smith, Crossan & Nicolini 2000), particularly where the concept is applied to collective learning rather than individual learning in organisations.

The communities of practice that Brown and Duguid (1991) and Wenger (1998) use to illustrate their conceptualisation are located within a single organisation. However, in later work Brown and Duguid (2001) explicitly raise the possibility of communities that cross organisational boundaries. In fact, the flexibility of the concept of communities of practice to encompass situations both within and across organisational boundaries appears to be part of its appeal. It has been applied in research to look at communities of practice which are intra organisational (for example, Assimakopoulos & Yan 2006; Gelin & Milusheva 2011; Levina & Vaast 2006), inter-organisational (for example, Faulconbridge 2007; Jørgensen & Lauridsen 2005; Van Buuren & Edelenbos 2006), virtual (Ardichvili et al. 2006; Farrell 2004; Koh & Kim 2003) and even combinations of intra- and inter-organisational and virtual in the one community of practice (for example, Brooks 2010).

\(^2\) I note that emphasis on boundary risks over-emphasising the aspect of community in the term community of practice and thus drawing this discussion towards a structuralist/functionalist perspective on communities of practice. However, as discussed earlier, even in its earliest formulation in connection with legitimate peripheral participation, communities of practice had an entitative element. It remains consistent with the theory if the boundary of this element, the collective called the community of practice, is drawn by reference to the process.
None of these variations is necessarily inconsistent with Wenger’s (1998) definition, although a joint enterprise, mutual engagement and a shared repertoire are logically less likely the more dispersed the community. The wider the meanings of these elements are stretched, the greater the risk that the concept will be indistinguishable from other longer established concepts such as that of profession\(^3\) (Nicolini 2012).

Many of the articles in relation to communities of practice, both theoretical and empirical, relate to a single community (see, for example, Assimakopoulos & Yan 2006; Fenwick 2008) and have focussed on the processes within the single community. Interactions across boundaries are typically not considered and the precise delineation of who is in and who is out has not been raised. Other works relate to several communities of practice with the purpose of comparing the processes within them and the relative effectiveness of each (see, for example, Gabbay et al. 2003; Hara 2009; Lave & Wenger 1991) so in effect are focussed on the processes within a community and not between communities. Boundary is no more relevant in such works than in the single community of practice study. In Lave and Wenger (1991) for example, with the focus upon the newcomer and the process of legitimate peripheral participation, there was no need to ask how far the community of practice extended. In fact, the examples of communities of practice given by Lave and Wenger (1991) are presented as black boxes devoid of influence from any forces beyond their boundary (Cox 2005).

---

\(^3\) The definition of profession is not without debate, particularly in relation to new or emerging professions. See for example Adams (2010).
Other work acknowledges influences beyond the community of practice upon the practices within the community, but nevertheless presents the boundaries as unproblematic. For example, Gherardi and Nicolini (2000, p. 10), when looking at the learning of safety in the construction industry, find communities of practice divided along professional/occupational lines; the two communities of practice they focus on are site managers and engineers. These two distinct practices are influenced, they find, by regulatory and inspection regimes of the wider industry and by the distinct cultures of the particular organisations, yet the distinctive concerns and world views, reflected in distinctive practices, between the two groups within each organisation defined them as separate communities of practice. It was not pertinent to their enquiry to ask whether there were site managers or engineers within the subject organisations who were outside the communities of practice which encompassed their occupational colleagues, so long as the members of each occupation could be seen to generally fit within the community of practice. Also, because their work was specifically focussed on safety knowledge, an area of knowledge where the world views and professional sensitivities of site managers and safety engineers were clearly distinct and largely incommensurable, the possibility that the boundary might disappear in respect of other types of knowledge did not arise. Although boundaries are seen as a concrete reality in works such as these, it is not necessary to consider exactly where they lie to answer the operative questions in the research, either because the boundary in relation to the knowledge in question is so clear as to be beyond dispute, or because the question can be answered probabilistically. That is, it does not need to hold for every person who might be identified as a member of the social group which is being studied as a community of practice, as long as it can be seen to be generally true.
A further body of work on communities of practice takes boundary as the central problem under consideration. Typically these works are about knowledge transfer across boundaries, specifically in relation to the role of communities of practice in innovation. The most commonly cited authors in this regard are Brown and Duguid (1991; 2001). Brown and Duguid (2001) discuss the ‘stickiness’ of knowledge within and ‘leakiness’ of knowledge across boundaries within and between organisations due to epistemic differences or similarities between the communities of practice. Knowledge, they propose, is ‘sticky’ when epistemic differences prevent it from being adopted as valid or valuable by other communities. Knowledge is ‘leaky’ when continuities exist between a community of practice and other individuals or groups outside the community of practice, including those outside the organisation. Such continuities may be supplied by professional or occupational affiliations or some other form of shared practice (Brown & Duguid 2001). ‘Stickiness’ and ‘leakiness’ are economically relevant to organisations as they may wish valuable new knowledge to propagate within the organisation, yet not spread beyond the organisation where competitors may exploit it.

Wenger (1998) devotes a chapter to boundaries, attributing them to historically created ‘discontinuities’ which disrupt the ability of outsiders to participate in the practice of the community. Such boundaries may be ‘reified by explicit markers of membership, such as titles, dress, tattoos, degrees, or initiation rites’ (Wenger 1998, p. 104) but such reification only makes the boundary more visible rather than creating it. Wenger (1998) then draws a distinction between boundary and periphery, stating that while both relate to ‘edges’ of communities, boundaries relate
to discontinuity while peripherality relates to continuities. This is, at first glance, a
nice distinction, but on closer examination his usage of the terms at this point is
confusing. Earlier in the chapter he discusses how boundary objects and brokering
‘can create continuities across boundaries’ (Wenger 1998, p. 104, emphasis is mine)
yet later in the same chapter he talks about areas of overlap and connection which
create continuities as *peripheries*. His example of peripherality is of a medical
claims processor having peripheral access to medical information. Unlike the usage
of the term ‘peripheral’ in ‘legitimate peripheral participation’ (Lave & Wenger
1991), which implies being inside the community even if ‘on the edge’ of it,
Wenger’s (1998) use at this point seems to indicate that the periphery spans the
boundary and includes person’s both inside and outside the community who have
access to the same information without the need to investigate if they give this
information the same meaning or utilise it as knowledge in the same way in their
practice. Due to the ambiguous usage of the term ‘periphery’ by Wenger (1998) I
will only be using the term ‘boundary’ to refer to the extent of the community of
practice and reserving the term ‘peripheral’ to describe a limited participation in the
practice of the community.

A complicating factor in relation to community of practice boundaries is that they
are not sharply drawn and fixed but instead are often ‘fuzzy’ and shift over time as
members leave and new members join the community of practice (Roberts 2006;
Wenger 1998). Carlile (2004) also suggests that boundaries may dissolve when
efforts to align practices between groups result in the discontinuities which have
separated them being transformed into continuities. Boundaries are therefore not
immutable.
Boundaries of communities of practice then, by definition, extend no further than the shared practice of the community (Wenger 1998) and a strong indicator of a boundary is the point at which epistemic differences prevent knowledge and meaning flowing between groups (Brown & Duguid 2001). The literature acknowledges that boundaries do change but the mechanisms by which it is suggested that this occurs are gradual, and boundary change is therefore likely to be relatively slow (Roberts 2006; Wenger 1998). Some suggest that management can play a role in softening the boundary (Brown & Duguid 2001; Roberts 2006) and even in dissolving it all together (Carlile 2004). As evidenced by the literature on single communities of practice, it is often not necessary to identify definitively whether an individual is inside or outside the community of practice. Yet, to explore the interactions between communities of practice such as would be expected in exploring the organisation as a whole, boundaries are likely to be important. A further research question therefore becomes:

*Research Question 3: Where are the boundaries of the communities of practice in the legal firm?*

*Diversity:* Cox (2005) contrasts the diversity evident in the communities of practice in the examples used by the seminal works. Diversity has several faces. Lave and Wenger (1991) emphasise the hierarchy of competence in the apprenticeship examples: masters; journeymen; and novices. The hierarchical diversity allows a novice a wider range of people from whom they may learn. In fact, journeymen may be more accessible and less intimidating to the novice than the master and therefore
more available as behavioural models. Journeymen are also more likely to be undertaking some of the simpler tasks in which a newcomer must gain competence. Hierarchical diversity therefore can be seen to facilitate reproduction in the community. However, strong reproduction is not inevitable, as illustrated by Lave and Wenger’s (1991) example of the meat cutters, where exploiting the unskilled labour of the newcomers was prioritised over developing their knowledge and skills.

Brown and Duguid (1991) present quite a different picture. The photocopier technicians in their discussion are presented as an ‘egalitarian group’ (Cox 2005). No mention is made of newcomers, nor would the knowledge of novices likely be incorporated into the problem solving stories because, within a community of practice, novices are not recognised as competent and their knowledge is therefore discounted. This picture of egalitarian groups presents a simplified picture of the relationships described by Orr (1996) in the work from which Brown and Duguid (1991) drew their example. Orr (1996) describes individuals who are recognised as possessing superior knowledge in relation to the machines they service, and these individuals do wield great influence in how problems are solved. The absence of the appearance of diversity in Brown and Duguid’s (1991) article is related to its purpose – to reassess work, learning and innovation through the lens of communities of practice – and not a characteristic necessitated by their conceptualisation.

Cox (2005) suggests that Wenger’s (1998) conceptualisation of community of practice allows for greater diversity in that it entails everyone working on the collective enterprise with mutually defining identities. Diversity would therefore include both the hierarchical diversity of Lave and Wenger (1991) and potentially
diversity in the tasks and skills employed by individuals in the collective enterprise. Task diversity offers greater resources to the community to solve problems. This logic may be seen in attempts to generate or support communities of practice as resources for new knowledge development (see, for example, Gongla & Rizzuto 2001). However, the potential for task diversity is curtailed by Wenger’s (1998) requirement of a shared repertoire. The indicators that Wenger (1998, pp. 125-6) points to include shared stories, jargon, styles recognised as displaying membership, and a shared discourse reflecting a certain perspective on the world. These indicators militate against great diversity.

The ability to coordinate work is not dependent upon belonging to the same community of practice. Members of distinctive communities can and do cooperate to achieve organisational ends without necessarily viewing the world in the same way or taking the same meaning from information and artefacts (Gherardi & Nicolini 2002). Yet, the point that a community of practice does not necessarily imply a single task or job description is well taken. It would be a mistake to assume that because individuals have different job descriptors that they cannot be in the same community of practice, just as it would be a mistake to consider that because they belong to the same task group that they are necessarily in the same community of practice. In this respect Wenger (1998) expands the possibilities in relation to communities of practice. The impact of diversity upon the learning in communities of practice, while raised by implication in the seminal works and in theory by Cox (2005) in his comparison, does not appear to have been the subject of any empirical research.
Power and Conflict: A final point of difference noted by Cox (2005) between the seminal works relates to their attention to issues of power and conflict. Lave and Wenger (1991) acknowledge theoretically that power differences exist hierarchically between the generational levels in the community, and that conflict occurs between generations as newcomers seek to establish themselves within the community, yet they recognise that issues of power are left underdeveloped in their monograph. In most of their illustrative examples power differentials between masters and novices appear functional and taken for granted, smoothing the acceptance by the novice of the situated curriculum. However, a potential dysfunctional aspect of the operation of power in communities of practice is illustrated by the meat cutter example, where powerless newcomers are unable to gain access to the more advanced practices of the community. Gherardi, Nicolini and Odella (1998) would describe this as an interpersonal relationship of neglect between the novice and master.

Power and conflict are dealt with quite differently by Brown and Duguid (1991). Brown and Duguid (1991) present the community of practice as being composed of technicians all on the same level (Cox 2005). Power between members of the community is equal and conflict between members is absent. Rather than internal issues of power and conflict Brown and Duguid (1991) highlight conflict (as did the work of Orr (1996) from which their illustrative case is drawn) between the management of the organisation and the technicians; power is evident in the technicians’ ability to subvert the formal guidelines set by management as to how their job should be done. The conflict is important in the identity work of the technicians. Wenger (1998) also focusses on conflict in relation to identity (Cox 2005) but discusses it largely as an individual internal issue arising from multi-
membership. Wenger (1998) is largely silent on other impacts of power, particularly in relation to its affect upon practice (Fox 2000).

While power is therefore important in understanding the processes and outcomes of learning in communities of practice, it tends not to have been well developed in either the seminal works or subsequent works (Contu & Willmott 2003). Osterlund and Carlile (2005) criticise Brown and Duguid (1991) for emphasising the social unity of community of practice of the technicians and suggest that it has led others astray. Work within the functionalist stream has largely ignored power (see, for example, Araujo 1998; Donaldson, Lank & Maher 2005; Gabbay et al. 2003) or assumed that it resides, unproblematically, with management (see, Wenger, McDermott & Snyder 2002).

Conceptual works dominate the sparse discussion of power in the literature. Here too the approach is not consistent. For example, Contu and Willmott (2003), in calling for power to be returned to the significant position inherent in Lave and Wenger’s (1991) original conceptualisation, adopt a radical perspective, emphasising ‘hegemony over resources’ and ‘alienation from full participation’ (Lave and Wenger, 1991, p. 42, cited in Contu & Willmott 2003, p. 285). Alternatively, Fox (2000, p. 859) suggests that within communities of practice generational power has a Foucauldian flavour.

… novices are subject to both the power and the knowledge of their more experienced colleagues. This could be seen as a straightforward example of the disciplinary matrix power/knowledge. Foucault’s later work draws our attention to the self who acts forcefully upon itself, either conforming to instruction or resisting such instruction.
From a Foucauldian perspective, the examination of power in communities of practice draws attention to self-conscious acts of conformity or resistance to the knowledge/practice of the community. Resistance implies access by the resisting individual to alternative discourses and a lack of alternative discourses makes resistance unlikely. One potential source of alternative discourses is supplied in Wenger’s (1998) discussion of multi-membership. According to Wenger (1998), developing recognised competence in the practice of the community is irrevocably tied to increasing identification with the community. However, the newcomer is simultaneously a member of several communities requiring that the identity of a competent member of any new community must be actively negotiated taking into account these other aspects of self that pre-exist entry into the community. This negotiation process gives rise to the potential for conflict both internal (that is, within the individual) and with other members of the community.

Two factors relating to multi-membership weigh upon whether alternate discourses will persist or be replaced by the dominant discourse of the new community. The first factor relates to the difficulty of objectively evaluating the knowledge and the second to the persistence of the knowledge and practice of our communities of origin. Alvesson (2001, p. 863) describes knowledge intensive firms as ‘firms where most work is said to be of an intellectual nature and where well-educated, qualified employees form the major part of the work force. The company claims to produce qualified products and/or services.’ Professional service firms, including private legal firms, fall within this category. Knowledge-intensive work is also ambiguity-intensive, due to the complexity of the knowledge base and the difficulties of evaluating quality (Alvesson 2001, p. 864).
In many pursuits, consensus provides reassurance about the quality of knowledge. However, in law, as in other knowledge-intensive work, consensus is not a reliable measure. Experience may, counter-intuitively, broaden rather than narrow the potential ‘answers’ to a problem. There may be several legal arguments available, emphasising different aspects of the law and different details of the context. The interpersonal strategies may also vary from conciliatory to aggressively adversarial. In non-standard situations there may actually be greater agreement between novices, less aware of subtle arguments and tactics, than between the most experienced workers (Alvesson 2001; Bédard & Chi 1993). Such non-standard situations are most visible when matters go to Court, as settlement is usually reached when there is a clear application of the law to undisputed facts, but for every matter that ends in Court there are numerous non-standard matters that proceed without dispute. Achieving the outcome desired by the client is similarly not an infallible measure of the quality of the knowledge employed by a lawyer. The satisfaction of the client may relate more to the rhetorical skills of the professional (Alvesson 2001) in persuading the client as to what they should expect, than to skilful problem solving and advocacy. It follows that a failure to achieve the desired outcome for the client may be due to a failure of rhetoric but may equally be the result of unexpected actions by clients, other lawyers or by judges (if the matter is litigated). Further, it is often impossible to determine if success is optimal success. For example, if you take your lawyer’s advice, or not, it is often difficult to judge its quality, because opting for one solution precludes testing any other. You cannot go to Court after you have settled to see if you obtained the best settlement, nor choose to settle once you have already contested a case. That is, in law, you might get a good outcome with no way
to test if it is the best, or you might get an undesirable outcome but without a failure of competence on the part of the lawyer (see further, Alvesson 2001).

As Alvesson (2001) points out, a consequence of the ambiguity of knowledge work, such as found in legal practice, is uncertainty and threats to the self-esteem of members of knowledge intensive firms. This drives identity work on the part of the individual.

Hierarchy and the prospect of making a career involve regulating identity through the creation and maintenance of a particular career mentality. Identity thus becomes significant as an object of management control and regulation to accomplish a ‘subjectivity base’ for the right kind of action, including whatever is in line with the image, rhetoric and orchestration of social interaction deemed to be appropriate.

Given the high level of ambiguity and the fluidity of organizational life and interactions with external actors, involving a strong dependence on somewhat arbitrary evaluations and opinions of others, many knowledge-intensive workers must struggle more for the accomplishment, maintenance and gradual change of self-identity, compared to workers whose competence and results are more materially grounded (Alvesson 2001, p. 877).

With limited resources to draw upon and much at stake, the newcomer draws upon available role models and organisational discursive practices to shape their self-identity (Alvesson & Willmott 2002). The ‘slipperiness’ (Alvesson 2001) of the knowledge in knowledge-intensive firms therefore makes it more likely that the newcomer will adopt the discourse of the existing members rather than resist in favour of knowledge originating in other communities.

The second factor relating to multi-membership that affects the likely acceptance of conflicting knowledge from a new community relates to the dominance of knowledge obtained early in life. Wenger’s (1998) emphasis on multi-membership relates to simultaneously belonging to multiple communities of practice. Yet, multi-
membership has a temporal aspect as well and in this respect early experiences may have a disproportionate influence on identity. Bourdieu (1977) (see also, Bourdieu 1990) developed the concept of ‘habitus’ which has been applied in the context of communities of practice by several authors (see, for example, Gherardi, Nicolini & Odella 1998; Handley et al. 2006; Mutch 2003). Gherardi, Nicolini and Odella (1998, p. 278) describe habitus as the ‘system of durable, transposable dispositions or principles which generate and organize practices and representations that can be objectively adapted to their outcomes without presupposing the conscious pursuit of ends or express mastery of the operations necessary in order to attain them’.

Bourdieu (1977, 1990) applied the concept to explain the persistence of class in society. He reasoned that those who grow up in a particular class, pick up unconsciously in early socialisation the rules and beliefs that orient action within that group, and thus ‘habitus’ acts as a code for the initiated. Actions that are reasonable to one group are unintelligible to another because the rules and dispositions that guide actions are different between the groups. Behaviours that are effortless and automatic for one group are alien and uncomfortable to another, as they do not know the rules or share the beliefs. Therefore, any individual who attempts to cross from one group to another, is likely to appear socially awkward or less competent, unless and until he or she picks up ‘the code’ of the new group. Applied to early socialisation in communities of practice, rather than the broader brush of social class, habitus suggests that the discourses of our formative years are likely to be more persistent than the discourses of communities we have passed through subsequently (for example, at university). These early discourses provide resources for resistance once a newcomer enters the legal profession.
It is noteworthy in this respect that the legal profession in Australia is becoming increasingly diverse in relation to new entrants to the profession. The number of law schools in Australia has increased over the 25 years to 2012 from 12 to 32 and there are now more than twice the number of people practicing as lawyers as there were in 1986 (23,179 in 1986 to 62,806 in 2012) (Thornton 2012). With the increased number of places has come a broadening of the social base of students (Bagust 2012; Larcombe & Malkin 2011) and noticeably an increase in the number of women studying law (65-70% of law students in Australia in 2012 were women) (Thornton 2012). It is reasonable to expect that increased social diversity will result in increased access to alternative discourses.

If multi-membership does give rise to conflicting discourses a number of alternatives conflict resolution strategies are available to the individual. Clearly, one way is through the newcomer negotiating a change in the practice of the community which they have joined. Logically, the perceived competence of the newcomer in the practice of the community will affect the chances of the community adopting the new knowledge into their practice^4^. In work which focuses upon novice newcomers learning the existing practice, such as Lave and Wenger (1991), the newcomer is perceived as incompetent and any relevant knowledge they may have is discounted. In fact, in discussing the quartermaster example from Lave and Wenger’s (1991) work, Fox (2000) suggests that some quartermaster chiefs prefer that their recruits have not attended a preliminary theory course, as then they do not have to ‘unlearn bad habits’. It is unclear from existing literature if the extensive formal educational

^4^ The degree to which the new knowledge is in conflict with the institutional logics of the field of professionals and/or legal firms is also likely to have an impact upon its acceptance (Greenwood, Hinings and Whetten 2014). However, exploring the institutional setting of legal firms is beyond the scope of this thesis.
requirements in professions such as law impart any greater legitimacy on the knowledge of the newcomer or alternatively are seen as ‘bad habits’ to be broken.

There is also scant literature relating to the impact of non-novice newcomers to communities of practice, except in the functionalist stream of literature (see, for example, Gabbay et al. 2003; Jørgensen & Lauridsen 2005; Swan, Scarbrough & Robertson 2002) where the co-opting of expertise is encouraged, but in that literature issues of conflict are underplayed or ignored. This remains an area that would benefit from further research.

Where the newcomer cannot negotiate the inclusion in practice of the knowledge they bring with them, Wenger (1998) suggests that individuals can ‘compartmentalise’ their identities and behaviours depending upon which community of practice they are currently ‘in’. In this way, they may not need to reconcile apparent internal conflicts by resolving inconsistent beliefs between their various communities. Handley et al. (2006) expressly reject this possibility, instead suggesting that, in the face of internal conflict, the individual will modify their level of participation in one or more of the communities. That is, they suggest that where the knowledge and practices of one group are inconsistent with those of another, an individual with membership of both communities may choose to remain on the periphery (or withdraw altogether) from one community if he or she cannot rationalise the difference or modify the knowledge and practice of that community to overcome the conflict.
If compartmentalisation occurs then conflict between the newcomer and the community is likely to be a rare occurrence, and as a consequence change of community practice facilitated by the entry of newcomers will also be rare. If compartmentalisation does not occur then one would expect to see examples of failure to progress towards competence, as newcomers modify their level of participation in the face of conflicts they cannot reconcile. It is also possible that different individuals deal with internal conflict in different ways, or that whether a conflict is ‘compartmentalised’ or participation withheld might depend upon the nature of the conflict and its importance to the individual. I can find no empirical work which addresses which of these possibilities applies and this research may therefore offer some further insight into this issue.

Clearly, power will affect the learning of the individual within communities of practice as it impacts upon what newcomers learn and from whom. Power will also affect learning by communities of practice as it impacts upon the willingness and ability of members to introduce new knowledge into the community of practice. A further research question is evident.

_Research Question 4: How does power affect learning in the legal firm?_

Having so far focussed upon single communities of practice, the next section will turn to look at the organisation as a whole. It will first consider how whole-of-organisation learning has been conceptualised in the literature. It will then consider interdependency between organisational units and how this affects the need for knowledge flow across community of practice boundaries. Last it will consider how
knowledge may move across boundaries and the factors that make such knowledge flow more or less likely.

**Implications of Communities of Practice in Whole-of-Organisation Learning**

The literature on whole-of-organisation learning from a community of practice lens is under-developed and inconsistent. A notable area of difference is that authors do not adopt a consistent metaphor to investigate communities of practice in whole-of-organisation contexts. When discussing groupings of communities of practice, Wenger (1998) takes a pragmatic approach. He proposes that some groupings, while sharing a connection which generates discernible continuities, are too wide to be studied meaningfully as single communities. While some continuities exist, there are also discernible discontinuities between elements of the wider grouping which mean that all members do not share a single practice. To cover such wider groupings he coins the term ‘a constellation’ of communities of practice.

Wenger (1998) uses the term ‘constellation’ as it carries connotations of groupings perceived by the observer, leaving open the nature of the connection. He proposes that the connection may be as diverse as shared historical roots, a related enterprise, shared artefacts, proximity or having members in common. What particular connection is drawn upon, and therefore the ‘shape’ of the constellation, will depend upon the particular purpose of the observer. He notes that the members of any community in the constellation need not have a sense of being a part of the constellation. It follows that, if the purpose of the observer is to understand whole-of-organisation learning through a community of practice lens then the organisation would be a relevant constellation within Wenger’s (1998) formulation. Such a
categorisation therefore specifies units of analysis (organisation and group) and the connection between them (single organisation) but does not inform what the relationship between the communities of practice is, or how, if at all, knowledge passes from one community to another within the constellation.

Brown and Duguid (1991) suggest that all but the smallest of organisations should be conceived of as ‘a community of communities’. Their purpose in this early work was to draw attention to the non-canonical activities that emerge in practice and enable day to day work, and their reference to the organisation as a whole is intended to emphasise the informal aspects of organising rather than outline a theory of relationships between communities of practice. However, use of the word ‘community’ in this expression is open to the same criticism as it has received in relation to its use in the term ‘community of practice’; it carries connotations of unity and inclusion thereby obscuring issues of power, conflict and difference (Nicolini 2012). In a later work Brown and Duguid (2001, p. 203) themselves seem to resile from this assertion when they state, ‘Indeed, if regarded as a community at all, any but the smallest organization should probably be regarded as a "community of communities of practice"’ (emphasis is mine).

In their work Brown and Duguid (1991) expand upon how they conceptualise that communities of practice are implicated in organisation wide learning. Useful organisational innovation, they assert, frequently occurs in ‘inventive non-canonical groups’ (Brown & Duguid 1991, p. 51). Taken in context, their reference to ‘the organisation’, however, is either a reference to management (especially when used as part of the term ‘the core organisation’) or is a collective term encompassing an
unspecified milieu of canonical and non-canonical groups. Brown and Duguid (1991) propose that the organisation as a whole can make use of the practical innovation of communities of practice if management recognises and supports the improvisation and ‘enactment’ (Daft & Weick 1984) that occurs in its constituent communities of practice.5

… [I]t is the organization's communities, at all levels, who are in contact with the environment and involved in interpretive sense making, congruence finding, and adapting. It is from any site of such interactions that new insights can be coproduced. If an organizational core overlooks or curtails the enacting in its midst by ignoring or disrupting its communities-of-practice, it threatens its own survival in two ways. It will not only threaten to destroy the very working and learning practices by which it, knowingly or unknowingly, survives. It will also cut itself off from a major source of potential innovation that inevitably arises in the course of that working and learning. (Brown & Duguid 1991, p. 53)

How the organisation as a whole benefits from the innovation is not discussed, although from the example of the photocopier repair technicians (Brown & Duguid 1991; Orr 1996), new knowledge created in that community serves the purposes of the wider organisation even if it goes no further than that community of practice. The members of the local team of repair technicians share knowledge amongst themselves on how to repair the machines. No other unit in the organisation is dependent upon this knowledge to get their work done, even though arguably, the organisation could benefit more widely from such knowledge. For example, repair technicians at other locations could learn of the insights so they did not need to discover for themselves the solutions already worked out in another location. Engineers could incorporate new knowledge of existing faults into better design.

5 This approach is reflected in later work such as that of Gongla and Rizzuto (2001). This work compares the effectiveness of several communities of practice within the same organisation (IBM) considering how the organisation affects the community (from a structuralist/functionalist perspective it is noted) but does not consider how the communities of practice affect each other. That the communities of practice affect the overall performance of the organisation is assumed but not explored.
Trainers of technicians could incorporate the new knowledge into courses and manuals.

The work of Brown and Duguid (1991) therefore prompts consideration of whether it is necessary to transfer knowledge from a single, originating community of practice to other groups in the organisation before organisational learning may be claimed. This is an issue of the dependency between two or more units within the organisation. The level of interdependence of units may make it unnecessary for new knowledge to move beyond a single community of practice. However, as noted in relation to the photocopier repair technicians, just because the organisation does not need the knowledge to move beyond a single group does not mean that it is not desirable for that knowledge to circulate more widely.

Dependence and interdependence are addressed in several works but not specifically in relation to communities of practice. One of the best known works is that of Thompson (1967) linking technology, interdependence and organisational structure. He proposed that the best structure for organisations depended upon the transformation process linking the units in the core organisation (see also, Lemak & Reed 2000). He identified three types of technology requiring increasing levels of cooperation and coordination between organisational units: mediating; long-linked; and intensive. In mediating technology there is the least interdependence between units. Each unit contributes separately to the success of the organisation and coordination is achieved largely through formalisation. A typical example of an organisation employing mediating technology is a bank, where the branches each contribute to the overall profit of the bank without significant need to coordinate
between branches. Where transactions between branches occur they do so in
standardised ways. At the next level of technological complexity, long-linked
technology, the outputs of one unit become the inputs of the next. Interdependence
is sequential, following set paths and timings. A production line epitomises such a
technology. Thompson (1967) proposes that more complex coordination
mechanisms, including extensive planning and scheduling, are required to enable the
interdependencies of such technologies to be effectively managed. At the most
complex, intensive technology requires the interaction of units at various points in
the work process, moving backwards and forwards between groups as the job
requires. The order of and duration of the interventions of the separate units are not
standard or predictable. A typical example is the staff in a hospital in relation to
patient care as doctors, nurses, allied health and administrative personnel coordinate
their roles and tasks in relation to each individual patient. In intensive technologies
the need for coordination and flexibility is high, requiring, in addition to
formalisation and planning, that the parties extensively share information through
mutual adjustment.

In Orr’s technician example (Brown & Duguid 1991; Orr 1996), the management of
Xerox clearly perceived the technicians to be outside the core production units of the
organisation. The technicians were not a regular part of the production processes as
Xerox’s ideal would be that the repair services of the technicians not be called upon
at all. Further, the repair technician groups globally did not depend upon knowledge
sharing with each other. Xerox management attempted to coordinate and control
their actions through high levels of formalisation. Yet, thanks in large part to Orr’s
ethnographic work, Xerox management became aware that there was useful
knowledge being generated by technicians and instigated a database to capture it (Brown & Duguid 2000). Tips for the database are submitted by technicians, vetted by other technicians and engineers and, if they pass this vetting process, they are posted to the database for access by Xerox technicians around the world. The originator of the tip is credited by name in the database. Brown and Duguid (2000) suggest that knowledge sharing through the database is successful because of the social status which accrues to technicians who are successful in having a tip posted (generating contribution) and the trust generated through the vetting process (encouraging access to and utilisation of the tips by other technicians).

The ‘tips’ process seems to change the nature of the interdependence, bringing the repair function more within the production core of the organisation. Other groups, such as engineers, re-enter the process to assist in vetting the knowledge, and the new knowledge therefore enters their domain of practice and may impact upon future design decisions. The technicians themselves cease to be disconnected, isolated groups. From a community of practice perspective, focusing upon informal rather than formal structures of the organisation, there is a significant difference in organisational learning practices before and after the database is instigated. Before the database, the insights and new knowledge generated in each group of technicians involved the production of new knowledge that enhanced the organisation’s capacity, but because Xerox management perceived the technicians to be outside the production core, the learning was restricted to the practice of a single group of technicians. After the database is instigated, we see the movement of new knowledge from one community of practice (local technicians) to the wider organisation (other groups of technicians and engineers) at the impetus of another,
more powerful community (management) using the database, an object specifically designed to fulfil the purpose of communicating knowledge. Organisational learning was enhanced largely due to a reconceptualisation of the interdependence of the communities of practice.

The Xerox example illustrates that technology is socially constructed, and thereby susceptible to re-imagining and social evolution, especially in knowledge intensive organisations which are not constrained by equipment that dictates work flow. Nevertheless the accepted technology does structure the interactions of groups within organisations, affecting who members of a community of practice believe that they need to interact with, who they feel that they may interact with and even those that they believe they should not interact with.

While useful, Thompson’s (1967) work is limited, especially in the face of innovation and learning. Thompson’s (1967) typology provides a ‘snap shot’ of dependencies and requires that the ‘snap shot’ be retaken when practices change. A more dynamic approach to interdependence is described by Carlile (2002 2004) citing the work of Henderson and Clark (1990). In relation to product manufacture and design Henderson and Clark (1990) distinguish component innovation, which affects the work of only one group in an organisation, from architectural innovation, which affects the way work between groups is coordinated. To illustrate this, within a single unit of a manufacturing organisation, changes may occur to the component which it is responsible to produce without any impact upon the rest of the organisation, as long as the finished component interfaces with the rest of the production process in the same way. For example, if the final product requires a
widget of a particular size and strength, the organisational unit that makes the widget can improve the widget (or the process for making the widget) without affecting the work of any other units in the organisation, provided the widget remains the same size and strength. This is component innovation. If however, a design engineer determines that the final product can be enhanced by producing it another way, for example through testable sub-assemblies where previously assembly all took place at the end, the order of the tasks and specifications of components may need to change to enable this to happen. As a consequence of the innovation, the organisational units need to interact differently and what they used to know about their work and how it fitted with other parts of the organisation is rendered obsolete. This is architectural innovation as defined by Henderson and Clark (1990).

While proposed in relation to product manufacture, there is no reason the concept of component and architectural innovation cannot be expanded to service organisations, such as legal firms. Some innovations or changes will occur within and affect only one specialism within the firm, that is, they will be component innovations. Other innovations will require changes to practice that affect multiple groups within the firm. These are architectural innovations and will require knowledge to flow across community of practice boundaries.

Both types of interdependence are relevant to organisational learning in legal firms. Thompson’s (1967) typology outlines the extent to which individual units perceive the need to interact and the coordination challenges that accompany the level of interaction. Interaction over time generates a pool of common knowledge between groups that allows the transmission of required information between groups, in ways
that become habitual and taken for granted, only entering into consciousness when something occurs to disrupt the understood meaning of the interaction or information (Carlile 2004; Weick 1995). Innovation potentially disrupts this common knowledge. However, as Henderson and Clark (1990) point out, not all innovation is equally disruptive. The effects of component innovation (Henderson & Clark 1990) are felt only within the practice in a particular group. Architectural innovation on the other hand will, at least temporarily, disrupt the established practices of communities and require knowledge flow across community boundaries in order to re-establish patterns of effective interaction.

In order to explore organisational learning in legal firms I will therefore first need to understand the type of interdependence that exists between communities of practice in the firm. This leads to a further research question.

*Research Question 5: How are communities of practice within legal firms related to each other?*

Establishing the type of interdependence and innovation will identify if knowledge flow across community of practice boundaries is necessary but does not explain *how* that knowledge flow takes place. Brown and Duguid (2001) suggest that one factor contributing to the ease of flow of knowledge is epistemic difference or similarity. The greater the epistemic difference between communities of practice the ‘stickier’ is the knowledge. The greater the epistemic similarity, the ‘leakier’ is the knowledge. In their work, the similarities may exist due to occupational or professional training, which has the unfortunate consequence that commercially
valuable knowledge often ‘leaks’ across organisational boundaries, but does not flow easily within them. The mechanism of epistemic similarity anticipates that when knowledge crosses boundaries its meaning will remain substantially unchanged in the receiving community. The very thing that enables the knowledge to flow, epistemic similarity, maintains the meaning of the knowledge. They urge that management has a role to play in diminishing the epistemic barriers to knowledge flow within organisational boundaries (Brown & Duguid 2001).

When considering organisational learning however, especially in professional organisations such as legal firms, this mechanism alone will be inadequate, as the support functions will not possess the lawyers’ knowledge acquired from years of study. To reduce the epistemic difference between the lawyers and others would be impractical. Further, as the senior management is made up largely of lawyers who have status and power within the organisation precisely because they possess arcane knowledge, management of legal firms is unlikely to wish to pursue the breaking down of epistemic barriers. Other conduits for knowledge flow are therefore needed. Wenger (1998) claims that connections between communities of practice may be formed through people and through boundary objects. Brokering, already mentioned as a means by which new knowledge may enter a community of practice, may facilitate the coordination of the activities between communities of practice. The broker becomes a conduit by which knowledge is transmitted and, if necessary, translated. Wenger (1998) suggests that some brokers intentionally choose to remain on the periphery of communities of practice to better act in this role. Some organisational roles, such as manager, almost inevitably entail elements of brokering (Wenger 1998).
The role of broker requires an individual to be adept at translating knowledge and addressing conflicting interests to achieve the necessary alignment between practices (Wenger 1998). Wenger (1998) points to the delicate balance that successful brokers need to achieve. If they are pulled too far into full membership of a community then they will not see or value new knowledge from outside the community, yet if they remain too much on the periphery they risk being seen as interlopers and any new knowledge they possess will not be valued.

Another conduit for information and knowledge mentioned by Wenger (1998) is the boundary object. Wenger (1998) attributes sociologist of science Leigh Star with coining the term. In an often cited article she and a colleague described boundary objects as follows:

Boundary objects are objects which are both plastic enough to adapt to local needs and the constraints of the several parties employing them, yet robust enough to maintain a common identity across sites. They are weakly structured in common use and become strongly structured in individual-site use. These objects may be abstract or concrete. They have different meanings in different social worlds but their structure is common enough to more than one world to make them recognizable, a means of translation. The creation and management of boundary objects is a key process in developing and maintaining coherence across intersecting social worlds. (Star & Griesemer 1989, p. 393)

Boundary objects may be specifically created for the purpose of facilitating collaboration across boundaries (for example, the medical claims forms in Wenger’s (1998) illustrative case) or may be created or exist outside the communities which employ them (for example, Wenger (1998) suggests that a building’s architecture can have a coordinating effect on various occupants but need not have been designed
or built by any of them). Sustained relationship between two or more communities of practice is likely to result in the negotiation of boundary objects which carry such knowledge across community of practice boundaries as is necessary for day to day coordination of activities (Carlile 2002).

Architectural innovation may render irrelevant or useless the common knowledge however that is held or communicated, within boundary objects, carried by brokers or more dispersed within the community. Architectural innovation thus exposes the processes by which coordination is achieved and requires the negotiation of new boundary objects or the integration of new knowledge. In the absence of architectural innovation the genesis of the processes of coordination may be lost to time and the knowledge which enables coordination taken for granted.

While Wenger (1998) discusses the role of brokers and boundary objects in coordination between communities of practice, they are addressed in general terms and the elements that may make the negotiation of broker roles or boundary objects and the integration of new knowledge more or less difficult in specific situations are not addressed. Carlile’s (2002, 2004) work explores these processes in more detail (and see also, Black, Carlile & Repenning 2004). He points to three characteristics that impact the movement of knowledge between groups in organisations (Carlile 2004): difference; dependence; and novelty.

In Carlile’s (2002, 2004) analysis, difference both creates boundaries and determines how much effort is needed to move knowledge across the boundary. The greater the difference between the knowledge of two groups the more effort is necessary. This
is consistent with Brown and Duguid’s (2001) discussion of epistemic difference. It is important to remember here that, as knowledge is situated, the difference is not objective but subjective. Dependence gives rise to the need to coordinate activities (Carlile 2004) and the level of dependence will affect how much understanding needs to be shared (Thompson 1967). The third characteristic, novelty, has been discussed above in relation to innovation. Carlile (2004) uses the term ‘novelty’ to refer to anything new which impacts upon the sufficiency of knowledge within or between groups. Novelty has at least two significant impacts. First, it disrupts common knowledge built up over periods of stable interaction (Carlile 2004). Second, it carries potential costs if new knowledge is to be integrated into the practice of one or more groups (Carlile 2004). Where new knowledge supersedes old knowledge there is a loss of competence giving rise to resistance and the existing power relations of the parties may be disrupted. The more difficult it is to assess the validity and value of the new knowledge the greater the resistance is likely to be (Carlile 2002, 2004).

Carlile (2002, 2004) identifies three types of boundaries in his studies of new product development: syntactic; semantic; and pragmatic. Where the differences and dependencies between the two groups are known then a syntactic boundary exists. All that is required is the transfer of information across such a boundary to re-establish cooperation and coordination of activities, the meaning of the information to the other group being either clear or irrelevant for the work of the receiving group to continue. In semantic boundaries shared meaning is necessary for the activities of

---

6 Carlile (2002, 2004) uses the term ‘innovation’ to refer to the outcome of the design process which he is studying and therefore requires another term to refer to new knowledge to be incorporated in practice. As the process of legal work is not specifically aimed at producing ‘new’ outcomes it is not necessary to maintain this linguistic distinction and I will use the two terms interchangeably.
the groups to be coordinated and this may be lost due to novelty. Higher levels of communication need to be established between groups so that understanding of meaning can be re-established between them. Where integration of knowledge involves a competence cost, a pragmatic boundary exists. At pragmatic boundaries there will be resistance, and to overcome resistance political effort is required.

Table 2.3 sets out the types of boundary proposed by Carlile (2004) and the challenges of integrating knowledge across such boundaries. The solutions as the complexity of the boundary increases are cumulative, so that at a pragmatic boundary there needs to exist between groups a common lexicon, an understanding of the meaning that the knowledge has for the other group and a willingness to negotiate with respect to the costs of integrating the new knowledge. It is also evident that Carlile (2004) applies the term ‘boundary objects’ to a wide range of media which may communicate information, knowledge and meaning across boundaries, subsuming Wenger’s (1998) categories of artefact and broker.
**Table 2.3: Comparative Summary of Approaches to Sharing and Assessing Knowledge across Boundaries**

<table>
<thead>
<tr>
<th>Circumstances</th>
<th>Syntactic boundary: A transfer or information-processing approach</th>
<th>Semantic boundary: A translation or interpretive approach</th>
<th>Pragmatic boundary: A transformation or political approach</th>
</tr>
</thead>
<tbody>
<tr>
<td>Differences and dependencies between actors are known. A common lexicon is developed to share and assess knowledge at a boundary.</td>
<td>Novelty generates some differences and dependencies that are unclear—different interpretations exist. Common meanings are developed to create shared meanings and provide an adequate means of sharing and assessing knowledge at a boundary.</td>
<td>Novelty generates different interests between actors that impede their ability to share and assess knowledge. Common interests are developed to transform knowledge and interests and provide an adequate means of sharing and assessing knowledge at a boundary.</td>
<td></td>
</tr>
<tr>
<td>Solutions</td>
<td>Theory: Information processing (Shannon and Weaver 1949, Lawrence and Lorsch 1967) - <strong>transferring</strong> knowledge</td>
<td>Theory: Learning (i.e., communities of practice) - creating shared meanings (Dougherty 1992, Nonaka 1994), <strong>translating</strong> knowledge</td>
<td>Theory: “Creative abrasion” (Leonard-Barton 1992) - negotiating practice (Brown and Duguid 2001); <strong>transforming</strong> knowledge (Carlile 2002, Bechky 2003)</td>
</tr>
<tr>
<td>Techniques: Syntactic capacity, taxonomies, storage and retrieval technologies.</td>
<td>Techniques: Semantic capacity, cross-functional interactions/teams, boundary spanners/translator</td>
<td>Techniques: Pragmatic capacity, prototyping and other kinds of boundary objects that can be jointly transformed</td>
<td></td>
</tr>
<tr>
<td>Challenges</td>
<td>Increasing capacity to process “more” information (Galbraith 1973)</td>
<td>Making tacit knowledge explicit (Polanyi 1966, Nonaka 1994)</td>
<td>Changing knowledge that is “at stake” (Bourdieu and Wacquant 1992, Carlile 2002)</td>
</tr>
<tr>
<td>A common lexicon is necessary but not always sufficient to share and assess knowledge across a boundary.</td>
<td>To create common meanings to share and assess knowledge often requires creating new agreements.</td>
<td>To create common interests to share and assess knowledge requires significant practical and political effort.</td>
<td></td>
</tr>
</tbody>
</table>

Source: Carlile (2004, p. 560)

Carlile applied his insights in relation to the crossing of boundaries in organisations in two empirical settings: the development and production of a new type of high volume valve (Carlile 2002) and automobile design (Carlile 2004). In both cases the
input of several specialist groups of engineers was required with the specific intent of generating an innovative product as an outcome of the cooperation of the specialist groups. The groups were significantly different in the specifics of their knowledge. The meanings they attached to various design aspects were also different. For example, in the valve design study, production engineers were concerned with how the final product could be efficiently constructed to achieve the desired volumes. This prompted the production engineering group to propose the production of the valve using several subassemblies. The design engineers were focussed upon the performance specifications that needed to be achieved and did not think in terms of subassemblies, but the entire unit. Production of subassemblies would require them to rethink the entire design and threatened their knowledge in relation to the production of a valve that met performance specifications. These differences created boundaries that needed to be spanned.

Carlile’s (2002, 2004) empirical settings involve physical products, but the elements of difference, dependence and novelty are sufficiently general to be applied to professional service organisations such as legal firms. However, two important differences in the power structures of the subject organisations are evident. First, in product design scenarios all the specialist groups share an interest in resolving disruptions in knowledge flow generated by novelty. Unless all specialist groups reach an accommodation, the work of each and every group will fail. For example, it is of no benefit to design a better engine if it does not fit within the body design of the car. Hierarchical interests are similarly harmonised. Unless the design engineers can come to a negotiated position, managers also fail in their goal of achieving a new automobile design. Second, the power between the different groups of design...
engineers was relatively equal, with shifting differences related to the order of the
design process and due to historical factors (Carlile 2004) but never so that one
group acquired the absolute power to dictate to others. Negotiation and compromise
were always necessary.

Professional service firms, such as private legal firms, differ from manufacturing
organisations in both their organising and their management arrangements (Suddaby,
Greenwood & Wilderom 2008). Traditionally private legal firms have been
structured as professional partnerships (Greenwood & Empson 2003; Greenwood &
Suddaby 2006). Malhotra, Morris and Hinings (2006, p. 174) describe elements of
the governance and structure of professional partnerships:

Partnership as a governance form embodies three beliefs: the fusion of
ownership and control; a form of representative democracy for purposes of
strategic and operational decision-making; and the non-separation of
professional and management tasks…Structurally the P² [professional
partnership] archetype is characterised by a low degree of differentiation as
specialties are built around individuals rather than departments…Overall the
P² archetype has minimal hierarchy and emphasizes collegial structures.

Compensation of partners in the traditional professional partnership is based upon
seniority rather than performance. Promotion is typically ‘up-or-out’. That is, non-
partner professionals in the firm are either on a trajectory to become partners or they
leave the firm. Such a promotion system encourages high effort as the ‘carrot’ of
partnership is held up before more junior lawyers (Malhotra, Morris & Hinings
2006; Malhotra, Morris & Smets 2010). In response to market pressures, such as the
increasing sophistication of client demands and globalisation trends, a shift in
organising structures in professional service firms has been noted by some (see, for
example, Malhotra, Morris & Hinings 2006) as business structures have been
superimposed on the existing partnership structures. Increasingly departments such
as marketing, human resources, finance, knowledge management and management functions have been formalised with an increasing focus on business-like systems, such as financial control and strategic planning. However, as noted by Suddaby, Greenwood and Wilderom (2008) much of the study of professional service firms has tended to present them as exhibiting uniform characteristics, where there is an increasing awareness that the differences between professions and intra-profession may also be significant. For example, while accounting firms have embraced business structures enthusiastically, especially the large global firms that dominate the industry, legal firms tend to have retained the remuneration and promotion policies of the pure partnership (perhaps ramping up their performance measurement and appraisal processes) resulting in a hybrid form, not quite business, not quite pure partnership (Malhotra, Morris & Hinings 2006).

As a result it is not possible to predict with certainty the governance and structural elements of any particular firm. Nevertheless, the interests of the parties in cooperating with each other and the distribution of power between groups and individuals within a professional service firm will be significantly different to those encountered by Carlile (2004) in a product design and manufacturing organisation and this may affect the methods. For example, in the more individualistic environment of a law firm the interests of the parties are not as clearly aligned as they are in new product design, making the integration of new knowledge trickier. As a consequence, the amount of effort needed to integrate knowledge across community of practice boundaries is also likely to be different. The dispersal of power amongst several partners, who are simultaneously operational staff and owners, may make political activity more necessary in order to achieve goals even
where the boundary might otherwise be seen to be syntactic or semantic. In fact Empson (2013) noted high levels of political activity in legal firms (partners and others) despite assertions by parties that they were, or tried to be, apolitical.

The differences in power distribution and the balance of interests may impact upon the applicability of Carlile’s (2005) knowledge sharing typology to legal firms. A last sub-question therefore that needs to be addressed if organisational learning in legal firms is to be understood is:

Research Question 6: How is new knowledge integrated across the boundaries of communities of practice in the legal firm?

Conclusion

In this research I seek to understand how learning takes place within legal firms (Primary Research Question) and I have chosen to employ the conceptual lens of the community of practice to explore this. The first thing I will need to establish is what communities of practice exist within the legal firm, if any (Research Question 1). To do this I will be employing the definition proposed by Wenger (1998) as consistent with the concept named by Lave and Wenger (1991) and Brown and Duguid (1991). In his work Wenger (1998) provided a table containing fourteen indicators that a community of practice had formed. These indicators are not definitional nor is it essential that all fourteen be identified for a community of practice to exist but they provide a useful practical guide to assist in identifying the necessary degree of shared practice and identification.
Individuals learn the practices of the community through legitimate peripheral participation which primarily results in reproduction of practice (Lave & Wenger 1991). However, new knowledge may also enter the community through newcomers and multi-membership (Wenger 1998), and through problem solving within the community (Orr 1996). New knowledge threatens the status quo (Wenger 1998) and there will therefore be a tension between production of new knowledge and reproduction. Most empirical work on communities of practice has looked either at reproduction or production, but not at this tension between them. Given the reputation of legal firms for tradition yet their flexibility in the face of unique client demands and changing laws, how these tensions play out will be fascinating (Research Question 2).

The learning that occurs within and by single communities of practice does not fully address the issue of learning in legal firms as all but the smallest of firms is likely to be made up of several communities of practice (Brown & Duguid 1991; Wenger 1998). Several issues in relation to whole of organisational learning are under-developed in the literature. One issue that is conceptually under-developed relates to the boundary of communities of practice. To explore the learning in the whole of the firm it will be necessary to understand how far boundaries extend (Research Question 3), so that the relationship between communities within the firm may be understood (Research Question 5).

Depending upon the relationship between the communities of practice, particularly their interdependence, knowledge may or may not need to cross community boundaries for the organisation to benefit from the knowledge. For example, in the
case of pooled interdependence each community may operate independently without the need for knowledge to move from one to the other (Thompson 1967). The type of interdependence will also affect the depth of knowledge that must pass and level of mutual understanding that must exist between communities for them to coordinate their activities (Carlile 2004). Cooperation over time may establish means by which knowledge may be transferred and, if necessary, translated across community boundaries (Star & Griesemer 1989; Wenger 1998). However, novelty (which may be generated within a community as it develops new knowledge or emanate from the environment) disrupts this common knowledge requiring action to re-establish coordination. How these processes operate within legal firms will be explored in this research (Research Question 6).

In an eagerness to explore and exploit the innovative capacities of the collective, power is often lost sight of in the research into communities of practice (Contu & Willmott 2003). Power will affect what is learned within the community of practice, shaping the situated curriculum (Gherardi, Nicolini & Odella 1998) and affecting the capacity of newcomers to influence the knowledge and practice of the collective. Power may also affect how knowledge moves between communities of practice, although I can find no literature directly on this point. Exploring the effects of power is therefore critical to all aspects of this research (Research Question 4).

The next chapter will set out the methodology used to explore organisational learning in legal firms. It will discuss the ontology and epistemology of the concept of communities of practice adopted in this research. It will then describe what types
of data were collected and how this was undertaken. Finally it will discuss how the
data was analysed.
CHAPTER 3 METHODOLOGY

The purpose of this chapter is to explain the choices made with respect to the selection of the research approach, the data sources and the subsequent data analysis. In the Introduction (Chapter 1) I explained that my initial interest arose from concern to understand the processes within legal firms through which novices learned to be lawyers, and not just how they learned to do law. In researching theoretical frameworks which addressed issues of culture and identity in addition to learning technical aspects of the law, I came upon the literature relating to communities of practice. This literature presented the tantalising potential to explore collective learning (which includes change but also reproduction of the knowledge of the collective) together with individual learning through legitimate peripheral participation (the mechanism by which the knowledge of the collective is reproduced over generations). Adopting communities of practice shifted the initial focus of the research away from the individual experience alone. The primary research question became: How does organisational learning occur through communities of practice in legal firms? Subsidiary questions (see Chapter 2) flowed from this directing attention to both the processes within communities of practice and those between them.

This chapter will discuss in detail the research approach selected to explore how learning occurs in legal firms through communities of practice. It will begin with a brief discussion of the framework guiding design of this research, outlining the ontological, epistemological and methodological assumptions underpinning it. I will then discuss the choices of method available and the applicability of the case study.
method adopted, demonstrating the value of the single case study to enable the testing and extending of conceptual frameworks. The chapter will then address the particular case study of this research, including case selection and the methods of data collection. The processes employed to ensure the quality and integrity of the data collection, including the ethical framework, will be discussed here. Last, this chapter will outline the methods employed in data analysis. Choices made in coding, data reduction and the drawing of conclusions will be discussed to demonstrate the rigour of analysis and plausibility of the conclusions drawn.

**Research Framework**

The research questions, involving the exploration of how learning takes place within the law firm, suggest qualitative rather than quantitative methods are appropriate. Quantitative methods typically attempt to illicit causal relationships between defined sets of variables. Qualitative research on the other hand is better suited to addressing ‘how’ and ‘why’ questions and inductively discovering previously unexpected relationships (Miles & Huberman 1994; Silverman 2005). In particular, qualitative methods allow for the exploration of the way ‘that people in particular settings come to understand, account for, take action, and otherwise manage their day-to-day situations’ (Miles & Huberman 1994, p. 7).

Within qualitative research however, there are many possible approaches to research. Different authors approach these choices in different ways. Creswell (1998), for example, lists five traditions: a biography; a phenomenological study, a grounded theory study; an ethnography; and a case study. While some of these traditions carry with them distinctive assumptions about the nature of reality, that is ontology, and
how that reality may be known, epistemology, others do not. For example, phenomenology postulates a subjective reality that may only be known through engaging the subjective interpretations of those involved in the phenomenon under investigation. Case studies on the other hand relate to a choice of subject matter (Stake 1994, 2005) rather than a framework or paradigm (Denzin & Lincoln 2003) rooted in particular ontological and epistemological assumptions.

The stream of literature which encompasses Lave and Wenger (1991), Wenger (1998) and Brown and Duguid (1991) postulates that knowledge, and what amounts to good and valuable knowledge in particular, is socially constructed. That is, reality is subjective (Pascale 2011), placing this research within an interpretive frame. Interpretive research attempts to access and understand the subjective reality of research participants through engaging with their interpretations of their reality (Pascale 2011). However, it also recognises that the researcher is part of the world that they are researching and hence an insider whose interpretations are also engaged in understanding the research subject (Blaikie 1993). Interpretive research therefore risks being distorted by the biases and presuppositions of the researcher, a risk that I have remained conscious of throughout this research.

A prominent paradigm emerging within interpretive research is social constructionism was first articulated by Berger and Luckmann (1966) drawing upon the work of social scientist including Schutz, Weber, Durkheim and Marx (Andrews 2012; Blaikie 1993). Social constructionism assumes that social reality is created by the mind rather than discovered but through our socialisation into this created world from birth this created world becomes our lived in reality.
Social reality consists of the cultural objects and social institutions into which we are all born, within which we have to find our bearings, and with which we have to come to terms. From the outset, we, the actors on the social scene, experience the world we live in as a world both of nature and of culture, not as a private but as an intersubjective one, that is a world common to all of us, either actually given or potentially accessible to everyone; and this involves intercommunication and language (Blaikie 1993, pp. 41-2, citing Schutz 1963, p. 236).

Crotty (1998, p. 42) defines social-constructionism as ‘the view that all knowledge, and therefore all meaningful reality as such, is contingent upon human practices, being structured in and out of interaction between human beings and their world, and developed and transmitted within an essentially social context.’ Social constructionism at its broadest is not inconsistent with an objective reality but merely contends that such an objective reality cannot be accessed except through subjective experience (Andrews 2012; Pascale 2011). At the other extreme it assumes that there is no objective reality to access (see, for example, Gergen 2009) and this second variation is sometimes referred to as social constructivism, although the terms constructivism, constructionism, social constructionism and social constructivism are used in different ways by various authors. In this research it is not necessary for me to hold that there is or is not an ultimate objective reality underpinning the subjective experience of it. It is enough that I recognise that this reality may only be accessed through accessing the subjective interpretations of participant. Where it is relevant, I will adopt the term social constructionism to denote this understanding.

A further ontological issue affects the choice of research framework. Thompson (2011) points to the distinction between processual and entitative understandings. Some authors writing on communities of practice focus on the processual aspects of
the concept while others emphasise the entitative aspects. Wenger’s (1998) concept of community of practice, adopted in this research, initially drew on various process oriented theories consistent with his earlier work with Lave (Lave & Wenger 1991), but ‘the primary focus exhibits a shift away from Lave and Wenger’s original dynamic of LPP [legitimate peripheral participation]…to the more entitative construct of the CoPs [communities of practice] themselves – those groups of people who could be said to be exhibiting signs of the dynamic’ (Thompson 2011, pp. 763-4). Nevertheless, ontological and epistemological alignment is maintained through attention to the processes by which the entities of community of practice and artefact become reified (Thompson 2011). It follows that this research involves the investigation of process and that the method must allow the capture of movement (Chia 2002) and not merely the taking of snapshots of entities.

**Research Design**

The detailed methods of data collection and analysis must flow from the research questions and be consistent with the ontological, epistemological and methodological assumptions and paradigms that underpin the constructs around which the research is structured. Where it is possible to identify a case of the ‘something’ in which the researcher is interested a case study may be an appropriate research design (Silverman 2005 and see also; Stake 1994, 2005). My primary research question identifies a logical case for selection and examination – a legal firm. It is a bounded system (Creswell 1998) and within that bounded system I will be addressing a focussed research problem (Silverman 2005), learning within and between communities of practice. Case studies may arise from different traditions (Stake 2005). Different disciplines and epistemic communities may have different
expectations with respect to methods and criteria of quality in research (Schwartz-Shea 2006). For example, flowing from the different histories of the research designs, different data collection methods enjoy different levels of privilege. In qualitative case studies multiple sources of data such as documents, interviews and observation are given more equal weight (Creswell 1998).

A single case study may be an appropriate study design for several reasons (Yin 2003): it is a critical case; it is an extreme or unique case; it is a representative or typical case; it is a revelatory case; or it is a longitudinal case (see also, Flyvbjerg 2006). Intrinsic case studies are more likely to arise around extreme or unique cases, or revelatory cases (which may allow a phenomenon to be studied for the first time). Critical, representative and longitudinal case studies allow insight into particular issues. I was seeking a representative case that would provide some insight into likely processes of learning in other similar legal firms. In that learning is a process, I was also looking for a case that would allow data collection over time as processes cannot be understood from a single ‘snapshot’ and may only be approximated from a series of such ‘snapshots’ (Thompson 2011).

Provided good method is employed (Eisenhardt 1991) single case studies may be valuable in several ways (Stake 1994). First, even in intrinsic case studies where there is no aim of looking beyond the individual case, a well written description adds to the experience of the reader and can be used by the reader in the same way as personal experience to enhance understanding of the world. It provides cues and meanings that the reader may draw upon in the future, quite possibly in ways not envisaged by the researcher in the writing of the report (Yanow 2006). The ability to
learn from the case ‘ultimately derives from how the case is like and not like other cases’ (Stake 1994, p. 240). To this end, thick description is provided, to allow the reader to assess the extent to which the case is like another. Further, in some single case studies, such as in this research, it is possible that there will be several units of analysis (communities of practice) embedded within the single case (the law firm) (Flyvbjerg 2006; Yin 2003). Last, it is possible to use a single case study to extend existing theory by studying its application in novel settings (Eisenhardt & Graebner 2007).

Methods of Data Collection

Having selected a single case study as an appropriate method for this research, this section will now outline the method employed. I will first discuss the selection of the case and will then outline the methods of data collection.

Selection of the Case

Purposive sampling requires that a case be selected that allows the best possible opportunity to learn (Stake 2003). Silverman (2005) adds that in most cases purposive sampling will be the same as theoretical sampling, which he explains using a quote from Mason (1996, pp. 93-4 cited in Silverman 2005, pp. 130-1):

> Theoretical sampling means selecting groups or categories to study on the basis of their relevance to your research questions, your theoretical position… and most importantly the explanation or account which you are developing. Theoretical sampling is concerned with constructing a sample … which is meaningful theoretically, because it builds in certain characteristics or criteria which help to develop and test your theory and explanation.

The logical criteria for selection of a particular legal firm as the site of this case study included that the firm needed to be large enough to contain several distinct
communities of practice, to enable the investigation of knowledge related processes within the communities of practice and the study of knowledge transfer across community boundaries within the firm. As set out in Chapter 2, communities of practice emerge around shared practices and are characterised by mutual engagement, a joint enterprise and a shared repertoire. It was assumed that a small practice dominated by one or two partners (usually the owners of the business) and a small number of junior staff and support personnel was unlikely to contain more than a single community of practice. All tools, understandings, language conventions and understandings of the world were likely to be shared firm-wide. However, a firm with several distinct practice areas (for example, specialist sections in litigation, commercial law, property law or family law) with separate legal and support staff allocated to each practice area, was considered much more likely to reveal several communities of practice. While it could perhaps be argued that the firm shared the same enterprise (although it cannot be assumed that all members of an organisation would agree on the purpose of their organisation), it was anticipated that the opportunities for mutual engagement across specialisations would likely be limited and the language, tools used and basic assumptions in the different specialisations were likely to be distinct. Given the desirability of several distinct practice areas in the subject firm, it was therefore necessary to consider only medium to large legal firms in the selection of a case.

Accessibility is also a relevant concern for selection of a case to study (Silverman 2005; Stake 2003; Yin 2003). This was raised as a possible problem due to the highly sensitive and confidential nature of much of the work undertaken by legal firms. Cold calling legal firms to gain access for the research did not seem to me to

85
be an avenue that was likely to meet with great success in gaining access to a research site.

The law firm for which I had worked 18 years previously was a large firm with several practice areas spread over several floors of a prominent office building in the CBD. It fulfilled the theoretical requirements of a firm suitable as the subject of the case study. In addition, it maintained an alumni register and sent regular newsletters to alumni such as myself, setting out achievements and tracing the illustrious careers of past staff members. They also held alumni drinks on occasions, and early in my research journey they forwarded an invitation to such an event. I determined to attend an event and to raise the possibility of conducting my research in the firm with whomever would listen.

I struck up a conversation with a partner of the firm with whom I had worked closely when at the firm and he expressed interest in the research. He arranged to meet with me and subsequently introduced me to the staff member responsible for learning and development in the firm. She invited me to supply further information and make a formal request to conduct the research at the firm, but was warned that, as a national firm, permission needed to be gained not just from the local office but from all partners. I followed up my request for access several times over subsequent months receiving encouraging responses but being advised that approval was still needed from some people. Eventually I requested a definite answer one way or the other and was advised to my shock, that although everyone who had looked at the proposal felt it was an interesting research topic, they were not prepared at the time to commit the resources necessary to permit my research to be conducted within the firm.
With the benefit of hindsight, the eventual refusal of the larger law firm to allow access may have actually aided the achievement of the research purpose. A very large firm such as my old firm, will have many practice areas usually spread over several floors of a building if not over several buildings. The practice areas are also large and peopled by a number of partners and a larger number of middle level and junior lawyers. It would not have been practical to interview and observe members of all practice groups. That is, the research would have at best looked at a part of the organisation and attempted to extrapolate how organisational learning occurred from that part. In addition, due to the physical separation of practice groups across floors and the inevitable higher levels of bureaucracy (see Empson 2007) interactions between practice groups would be rarer and more formalised. This would affect the transfer of knowledge across community of practice boundaries and almost certainly make the processes of organisational learning harder to observe. (This difference however, would suggest an area for fruitful further research into the difference that size does make to organisational learning in legal firms.)

Within six hours of the refusal of my old law firm to participate in this research I had called upon friends and acquaintances in the legal profession asking for contact names of lawyers within medium to large legal firms. That day, I emailed six city based law firms with a proposal for conducting the research at their firm. The email was addressed to a particular member of the firm rather than to the firm in general and stated up front that the addressee’s name had been given to me by my personal contact, who I named. In the case of these first six contacts the legal ‘friend’ who supplied contact names was my spouse. Another friend also provided a contact with
the firm where he was a partner, and while this firm expressed initial interest in the research, I had by that time already secured access to a firm.

Four of the addressees responded that they would consider the request to conduct research and take the matter to the appropriate people for consideration. Two of these firms responded within a week that they were not willing to accommodate the research. One firm responded immediately that they would not consider it on the basis of a bad recent experience with a student conducting research at their firm. One addressee did not respond at all to the first email but when a follow up email was sent a week later, he apologised for his failure to respond and within a week that firm had approved the research.

The law firm that is the subject of this research was therefore selected using purposive sampling (Silverman 2005) as well as having an element of convenience. As Silverman (2005) points out it is common and indeed sensible to avail oneself of the accessible or convenient case if it otherwise fulfils the requirements of a suitable case through which to address the research aims. The subject firm, which I will hereafter call Benefics (a pseudonym), has offices in four Australian capital cities including Melbourne, which is the main office involved in this research. My initial contact was located in the Melbourne office, but as a partner of the law firm he was not particularly interested in the day to day issues around the research and I was referred to the Manager of Human Resources as my primary contact for arranging access and other details of the research. The Manager of Human Resources was responsible for two offices, Melbourne and the Head Office. She resided in the state of the Head Office but flew into Melbourne regularly to undertake her duties there.
The convenient case does raise issues (also encountered in ethnographies of familiar communities) of whether the connection with the case that facilitated access affects the researcher’s experience of the case. Ybema and Kamsteeg (2009) draw attention to the tension experienced in ethnographic research between being sufficiently outside the community to see the everyday activities as ‘other’ while sufficiently inside the community to gain an understanding of the meaning of everyday events and activities. Where the community is familiar, the risk is that the researcher will take many of the unique characteristics for granted and overlook as natural things that ‘outsiders’ would see as significant (Adler & Adler 1994). Where the community is alien, the outsider is likely to be surprised by many things giving rise to two issues. First, there is the practical issue of quantity and significance of the data. Where everything is new there is no guidance in initial stages of the research about what is likely to be significant for the research and what is trivial (Adler & Adler 1994). As the research progresses and the researcher becomes more familiar with the context, this is likely to be a diminishing problem, particularly as qualitative research allows, even encourages, working with the data during the period of fieldwork, allowing the researcher to refine understandings of concepts and discernment of what is significant within the concepts, as the research progresses (see Miles & Huberman 1994). The second risk in unfamiliar contexts is that the researcher will interpret what they see through their own, alien, world views and therefore fail to grasp the meaning of the community being researched (Ybema & Kamsteeg 2009; Ybema et al. 2009).
was concerned that my prior work as a lawyer might blind me to some issues of significance or lead me to interpret events in light of my own prior experience perhaps missing the way familiar actions and objects may have been reinterpreted since I left legal practice. I maintained two journals (see Silverman 2005) as one way to minimise these possibilities. The first was an observation journal in which I made contemporary notes of physical settings, and the actions, interactions and conversations of members of the firm. This journal, at least initially, was as detailed as possible, recording setting, behaviours, affect and dialogue as accurately and completely as possible, but restricted by what I could physically get down on paper and sometimes constrained by situations where it was not possible to make contemporary notes. More will be said on observation below. At the same time I maintained a reflective journal in which I recorded my own reflections including how familiar or unfamiliar the interactions felt and also embryonic ideas of patterns and relationships within the data.

**Data Collected**

Data collection took place over a period of more than twelve months between February 2009 and April 2010. The access granted by Benefics allowed me to collect interview, observational and documentary data, three common sources found in case study research (Creswell 1998; Silverman 2005; Yin 2003). Collection of all three data sources overlapped but, presented different opportunities and problems so will be discussed separately. I will first outline the interviews undertaken, explaining the general outline of the interview protocol I devised and how the question sets relate to the research questions. I will then describe the observational opportunities I had and the methods of recording my observations. Last I will briefly
outline the documents I was able to view and, usually, of which I could obtain a copy.

*Interview Data:* As is common practice in interpretive case studies, all interviews were semi-structured (Fontana & Frey 1994, 2005), following protocols setting out themed questions informed by the literature review and my understanding of communities of practice at Benefics at the time (see Introduction Figures 1.1 and 1.2 for how my conceptualisation of communities of practice at Benefics evolved during the field work). The protocols contained open ended questions that allowed me to explore the meanings and understandings of the interviewees. The interviews occurred in several blocks over the course of a year. In this and following chapters all names used for participants are pseudonyms.

The first set of interviews, carried out over three days, involved the cohort of law graduates who commenced at Benefics in 2009. There were five law graduates in that year, the largest number of graduates that the Melbourne office had ever taken on in any one year and all agreed to be interviewed and for the interviews to be recorded on a digital audio recorder. The initial graduate interviews took between forty-five minutes and one hour each.

At this time I had an unsophisticated understanding of how communities of practice might be involved in the learning of the graduates (see Figure 1.1) and anticipated that the principal information I would illicit from these interviews related to what was being learned within the communities of practice within Benefics and how this was being learned (relating to Research Question 2). I was also hoping for some
initial indications of who the graduates considered to be within the community of practice (Research Question 3). The protocol (Appendix A.1) begins with general demographic information, including how long the interviewee had been with the firm, what formal qualifications he or she had and his or her work experience. I included these questions more or less by rote as all the qualitative research interviewing with which I had been involved included such background information. I did not consider at this time that background would be of much significance as much of the writing about communities of practice was silent about issues outside the community of practice (see, for example, Lave & Wenger 1991) or addressed it as an issue of contemporaneous multi-membership (Wenger 1998) requiring negotiations of identity to belong. What the newcomer brought with them by way of past experience was rarely discussed7.

The next set of questions explored the graduates’ understanding of what they needed to know and do to be competent lawyers and how they thought these things might be learned. Following the general questions about becoming a lawyer, the questions explored the graduates’ actual experiences, touching on what they found enabling and influential and also what barriers they experienced. Included in this section was a question asking how the graduates’ thought competence was assessed. While I expected this question to reinforce responses around what it was they thought they needed to know, I also hoped that it might raise some issues of power (Research Question 4).

---

7 I had not yet discovered the literature which incorporated the concept of habitus into discussions of communities of practice.
Wenger (1998) in particular emphasised the role of artefacts within communities of practice and I therefore included a set of questions asking about the impact on the graduates’ learning of the physical layout of the firm, the facilities, technology, precedents and other forms. The last set of questions attempted to illicit information about important relationships and especially identification with others within the firm.

The interviews of the graduates, as were all interviews save that of the office manager, were carried out at Benefics. For the graduate interviews I was allocated a small internal conference room. I was conscious for these interviews of the effect of how I presented myself as this could affect the development of rapport with the interviewee (Fontana & Frey 2005) and I recorded my concern in my research journal. A number of options were possible: as an academic conducting research; as a student conducting research (this is similar to the first option except it puts me more on the level of the novice lawyer in that I am a beginner too); as a past lawyer. In retrospect I employed different strategies depending upon who I was interviewing. To the junior lawyers in these first interviews I positioned myself as ‘informed novice’, admitting to inexperience and sharing that I was learning my craft too. By the time of the second interviews with these same graduates I had already established rapport and credibility. With the more senior professional staff I downplayed my inexperience and made reference to the fact that I too had been a lawyer. With the non-fee-earners, administrative assistants (admins) and managers, I emphasised the academic nature of my role rather than the ‘past lawyer’ aspect that had helped establish rapport with the lawyers. These shifts in persona were largely intuitive.
Reflecting the origin of Lave and Wenger’s (1991) concept in discussion of apprenticeship I anticipated that a pivotal person in the learning of the graduates would be their supervising partners. I therefore conducted a round of interviews with partners of the firm, commencing as soon as could be arranged after the completion of the graduates’ interviews. The first partner interview took place early in the month following the graduates’ interviews but due to the busy work loads of some partners the last partner interview took place three months later. All the partners who were supervising the new graduates agreed to be interviewed with the exception of the partner who supervised the male graduate, Paul. Paul’s partner declined on the basis that he was too busy to spare the time. One other partner was also interviewed whose name had come up in the graduates’ interviews as a person from whom they received work or advice. In total I interviewed five partners (out of a total in the Melbourne Office at the time of 11 partners). The interview protocol (Appendix A.2) follows the same structure as that used for the graduates with the addition of one question in the section on their own experiences. This question asked the partner what they saw as their role in the learning of junior lawyers. The partner interviews took between one and two hours each. In the case of one partner, Stephen, the interview was not completed in a single sitting but was conducted over two days.

Interestingly, when reviewing my journal, I have not mentioned any concern with my physical appearance with respect to the partner interviews. I was clearly more comfortable with the setting and culture around attire by this stage and it no longer struck me as an area of concern. I did however, record on several occasions what I

---

8 All names used in this thesis are pseudonyms.
wore: a neutral coloured pants suit with a white shirt, either plain or with a pastel stripe. My field notes from the induction record my observation of the mix of skirts and pants on the female professional staff and also the prevalence of striped shirts (amongst male and female professional staff). My description of my attire indicates conformity with the apparent female professional dress code.

One of the novel aspects that marked the work of Lave and Wenger (1991) was that the conceptualisation of communities of practice moved learning away from the dyadic models of learning which had dominated the literature up to that point (Nicolini 2012). In communities, the novice has access to others apart from the ‘master’ from whom they can learn the knowledge and skills needed to become competent members. In the graduate interviews the names of several of the mid-level lawyers were raised as people that the graduates would go to with questions or problems. I therefore felt it was important to interview some ‘journeyman’ lawyers and in the month after I concluded the partner interviews I interviewed a (male) associate and a (female) first year lawyer, both of whom had been named as mentors by the graduates. The interview protocol used was the same as for partners (Appendix A.2).

By early 2010 my understanding of how communities of practice might affect learning at Benefics was more sophisticated (see Figure 1.2). I suspected that the communities of practice formed around specialisations might overlap, with some lawyers being simultaneously within several communities of practice. I was also beginning to suspect that administrative assistants formed their own community of practice rather than being part of a specialist community alongside the lawyers.
Influential individuals appeared to exist within the Melbourne office (for example, the Chief Operating Officer and the Office Manager), outside the firm (for example, clients) and within the wider firm but outside the Melbourne office (for example, the owners/partners in other offices).

I arranged to conduct a second round of interviews with the graduates, all of whom were now admitted as first year lawyers. Four of the graduates were still at Benefics, although Paul, the only male graduate, had moved practice areas and was now working primarily with two partners, one of whom was my initial contact. Jane had taken leave from the firm to take up a position as Judge’s Associate in the Federal Court. I managed to contact her through Kate, with whom she had established a friendship and she also agreed to a second interview.

The second interview protocol (Appendix A.3) was briefer than that for the first as it did not need to repeat demographic and background questions. It attempted to capture the graduates’ perceptions of their learning over the preceding year. I asked them who they had worked with in that time, again trying to identify the extent of communities of practice (Research Questions 1 and 3), and whether they felt more confident of their ability to deal with problems than they had a year earlier as an indicator that they had progressed in their learning to be lawyers. One of Wenger’s (1998) indicators of whether a community of practice has formed is the ability of members to assess competence within the community, so I again asked about the assessment of competence, but this time asked them how they assessed their competence and the competence of others rather than how they believed their competence was assessed. I also asked them to look forward to discuss their
ambitions, which was useful in helping to identify levels of commitment to and identification with their specialist division, firm and profession. The last question in the protocol asked the graduates for stories about their learning journey over the previous year, intending to prompt stories which might fill inadvertent gaps in the questions or reveal unexpected issues. In practice it emerged as a natural way to start conversations with the graduates, so it was used at the start of the interviews. I ended each interview by referring back to issues that had been identified as significant in the first interview to explore how these issues had developed.

While the interview protocol for Jane, who had left the firm, was largely the same as for the other graduates, the phrasing of some questions was changed to allow for the fact that she no longer worked at Benefics. One additional question was added about her learning in and for the new position. The interviews ranged between 30 minutes and one hour, and all but the interview of Jane were carried out at Benefics. Jane’s interview was conducted at a café near to the Federal Court Building where she worked.

In 2010 Benefics employed only a single graduate, who I arranged to interview using the same interview protocol as I had used in the first graduate interviews. Repeating the same interview with the following years’ graduate offered me the opportunity to gauge by comparison some of the contextual issues that might affect the learning experiences of graduates. However, while the interview employed the same questions as the first interviews my conceptualisation had moved on. As a consequence I asked additional follow on questions that I did not ask in the first interviews. Coupled with my greater comfort with interviews by this stage and the

97
easy going nature of the graduate, Matt, this interview ran for over one hour, considerably longer than the other graduates’ first interviews had taken.

In 2010 Benefics also only employed a single law clerk. Law clerk was a term used by Benefics to describe law students who they employed for one to one and a half days per week. I wondered if the role of law clerk was perceived very differently to that of law graduate and if so whether the differences could provide any insights into the processes of learning and of identification at Benefics. The interview protocol (Appendix A.4) asked background questions, what he had learned and how he thought he had learned them.

The more sophisticated conceptualisation of communities of practice at Benefics raised issues in relation to the role and impact of the non-lawyer members of the firm. Therefore, during March 2010 I interviewed two admins, the Chief Operating Officer (COO), the Office Manager and the HR Manager. The admins both worked for the same partner, Peter. Robyn had been working for Peter for eight years but was leaving to have a baby and Mandy, her replacement, had started less than three weeks previously. I felt the contrast of old timer and newcomer that this presented might highlight some of the taken-for-granted aspects of firm practice that would otherwise escape notice. At this point I was also concerned to get a picture of the operation of the firm as a whole and I therefore asked the admins about their learning and also their part in the learning of others in the firm (Appendix A.5). In line with the interview protocols of other members of the firm I also asked them about relationships with others in the firm and the impact of artefacts.
The positions of the COO and Office Manager placed them officially in boundary positions across all of the practice groups in the Melbourne office, and consequently they potentially offered insight into the working of the firm as a whole that was not available to firm members in other roles. In addition I anticipated that their perspectives might be different to those of the professional staff (Empson 2007), with the possibility of raising different interpretations. In line with the interview protocol for the admins, the questions in the interview protocol used for the COO and Office Manager (Appendix A.6) addressed their roles and the whole of the firm in relation to learning at and by the firm.

The last interview conducted was with the HR Manager, Philippa. As she was not located in Melbourne but merely travelled regularly to Melbourne from the Head Office, I was confronted with the choice of conducting a phone interview, travelling myself to the Head Office to conduct the interview there, or waiting for a convenient time to interview her during one of her regular visits. As it happened she was scheduled to be in Melbourne in April 2010 in order to participate in interviews for prospective law clerks for the following year. I was given permission to attend some of these interviews and arranged to conduct my final interview immediately afterwards. The main thrust of the questions (Appendix A.7) was around selection and development of lawyers, both lawyers new to the firm and also those within the firm.

In total I conducted 24 semi-structured interviews: five with the law graduates commencing in 2009 and five follow up interviews just on one year later; five interviews with partners; two interviews with non-professional managers; two
interviews with ‘mentors’ who were middle level lawyers; the 2010 Law Graduate and Law Clerk; two administrative assistants and the Human Resource Manager. All participants of interviews were given a plain language statement prior to the interview and were allowed the opportunity to read it and ask questions. They were then asked to sign a form consenting to the interview.

Data from Observation: Interview data is limited. It presents the perspective of an individual which is necessarily partial and potentially biased (Fontana & Frey 2005). What is more in interview, attempts to explain actions may produce post-justifications where actions were habitual or unconscious (Weick 1995). A more complete, less biased picture may be obtained by supplementing interview data with data from other sources, such as observational data (Cox & Hassard 2005; Schwartz-Shea 2006). Citing a classic work by Gold (1958) in relation to naturalistic research roles, Adler and Adler (1994, p. 379) identify ‘four modes through which observers may gather data: the complete participant, the participant-as-observer, the observer-as-participant, and the complete observer.’ These modes involve an increasing degree of detachment from the setting being observed. Over the several periods of observation I was a complete observer, not participating at any level in the day to day activities of the firm, a risk being that I would be so detached from the operations of the firm that I would lack connection points through which to come to an understanding of the insider meanings at play (Pader 2006). The flip side to this risk is that where one is too familiar the taken-for-granted assumption that underpin action are likely to remain invisible (Pader 2006). It was important for me to be conscious of these risks. Having been a lawyer I was familiar with the vocabulary and hierarchies of law firms and needed not to take what I observed as natural or
inevitable, but to maintain a questioning approach to the observation. Yet, I had not
been a lawyer for 18 years and much can change in that time opening up the
possibility of misinterpreting through an outsider’s lens what I was observing.

As an aid to maintaining a balanced between insider and outsider sensibilities, I have
maintained a research journal in which I have recorded issues about my involvement
in the research, including my feelings and significant personal events that might
impact upon the research as suggested by Silverman (2005) and Stake (1994). My
journal was useful in helping me to keep a focus on the things that were significant
early in the processes of observation but which could have become taken for granted
once the setting became more familiar. I have also tended to use the journal to
speculate about the meanings of observations and interviews (Silverman 2005;
Yanow & Schwartz-Shea 2006), in effect throwing around a few ideas that I can
access later. For example, speculations about the membership of communities of
practice and the relationships between them were recorded in the journal and
contributed to the evolution of my conceptualisations set out in the Introduction
chapter.

Benefics recommended that I begin my research by attending the induction of new
graduates. Throughout the research, in addition to a research journal I have also
maintained field notes. I was able to record extensive field notes during the
induction as I was not expected to participate in that event and all participants were
happy for me to record observations at the time. In fact, as the importance of
assimilating as much of the information as possible appeared upper most in the
graduates’ minds I feel that my presence was largely forgotten in the process.
Throughout this research, all parties who have been observed, including those not the main subjects of the observation, were given copies of the plain language statement to read, offered the opportunity to ask questions and were asked to sign consent forms.

The first graduates’ interviews conducted at Benefics offices also offered opportunities for observation. Observations directly relating to the interviews were recorded as soon as possible following the completion of the interviews. The observation notes attempted to capture the affective elements of the interview as well as issues of setting and context that I felt might be relevant. On a couple of occasions, interviewees asked for the audio recording equipment to be turned off and they talked about issues that they did not want recorded, but which they were nevertheless happy for me to know. These have also been recorded as faithfully as possible (although obviously not verbatim) following the completion of the interview.

During early opportunities to observe, such as the induction and early interviews, I particularly made note of different aspects of the physical setting of the firm. It is notable that aspects of the physical elements of the firm impacted me differently on different occasions. For example, on my first visit I was struck but the long and austere walk from the elevators to the reception desk, while on another the quality of the reception area seating and the existence of a large flat screen television tuned to a pay TV news channel seemed particularly impactful. The physical layout of the firm was significant in several respects and will be discussed further in Chapter 4.
Following the second graduate interviews I sought permission from the firm to observe one of the graduates over a period of several weeks. Obtaining permission to shadow a junior lawyer was not straightforward. During the first and second round of interviews with the graduates I had foreshadowed my desire to be able to follow the daily activities of one of them over an extended period. Paul said that he would be happy to have me follow him around. The others were not against the proposal but were less enthusiastic than Paul. When I emailed the willing graduate’s supervising partner (who also happened to be the partner who introduced me to the firm) to see if the shadowing would be possible, I received a telephone call from the Office Manager, Veronica, within one hour, asking if there was a specific reason that I had selected to observe that particular young lawyer. I explained that it was because of his expressed willingness to be shadowed but that otherwise there was no particular reason. The office manager suggested that I might want to follow someone ‘more typical’ (Journal, January 2010).

Subsequently on 14 January 2010, Lisa contacted me volunteering to be shadowed. It was evident from the timing and the tone of the contact email that it had been suggested to her that she ‘volunteer’ for this. On 18 January 2010 she again contacted me by email expressing some apprehension about being observed and also noting ‘I am very quiet at the moment and don’t predict things picking up for at least another month to 6 weeks’ (Lisa, Email communication). I attempted to reassure her that I would be as unobtrusive as possible and that my intent was not to distract her from her work. I added that I was also a bit nervous as I had not undertaken this type of research before. I have recorded in my research journal that in her next email she seemed resigned to the observation rather than enthusiastic about it. Due to the
subject’s variable workload and my own family commitments, observation did not commence until 1 March 2010. At that time I was allocated a desk in the central corridor usually occupied by administrative staff and law clerks (law graduates were given offices only after the last of the graduates who commenced in the same year was admitted as a lawyer). Lisa noted that my desk had been her desk until a few months ago.

During the period of time in which I shadowed Lisa I was particularly looking to record patterns of interaction within the firm, to identify both individual communities of practice (Research Question 1), the relationships between them (Research Question 5) and knowledge flow within the firm as a whole (research Question 6). Early in the research I had endeavoured to capture these interaction patterns through the use of a ‘log’ to be maintained by the five graduates of 2009, all of whom agreed to keep these records for the purposes of the research. The logs required the participant to record all those with whom they had communicated during the work day, whether the communication was task related or personal, face to face or through media such as email or telephone (Appendix B). The purpose of the communication was to be indicated by a ‘T’ if the communication was task related (defined in the log instructions as ‘where the communication is primarily for the purposes of gathering facts or information to advance a task that you are undertaking as part of your job’) or ‘S’ if the communication was principally socially (defined as ‘if the primary purpose of the communication is social rather than task related’). In hindsight, this categorisation was simplistic. The graduates tended to ask their friends and closer acquaintances if they had a problem, and untangling the social or task related nature of such communications was often impossible. The
duration of the communication was also to be recorded in rough figures. I was more interested to know whether it was an extended communication or fleeting than to know to the minute or second how long it actually took. In this I was also hoping that recording ‘ball park’ figures would be simple enough that it was a feasible means of gathering this data. While all the law clerks submitted logs to me when requested after the first week, it was apparent that they were not complete. The participants struggled with remembering to record every interaction and the requirement overlapped with the obligation imposed by their employer to record time for the purposes of billing. I therefore concluded that the logs were not timely and accurate records of interactions and discontinued them as part of the research.

A final observation opportunity presented itself in early 2010 with respect to the interviews for law clerks for the following year. I had been trying to arrange an interview with the Human Resources Manager and she mentioned that she would be in Melbourne for a short period of time for the purposes of interviewing candidates for the following year’s law clerk and graduate positions. I asked whether there was any chance of attending some of these interviews and, after consultation with a senior partner who came from a third office to assist with the selection process, I was allowed to observe three interviews. For each of these interviews, I was introduced to the candidate. They were given a plain language statement and all consented to me sitting in as an observer. The interviews were conducted around a large table in a conference room, with the candidate at one end and the visiting partner, a local partner (on a rotating basis according to availability) and the Human Resources Manager towards the other end. I was in a corner at the same end of the room as the firm representatives. As I was not involved in the interview I was able to write
extensive notes while the interview took place. Consent was not given to this
process being audio recorded. The HR Manager escorted the interviewee from the
room at the end of each interview. During the time she was absent I recorded my
impressions of the candidates and when she returned the three interviewers
compared their notes on the candidate. This process revealed in strong relief certain
aspects of the process particularly in relation to how the expectations in relation to
applicants may have changed since my personal experience. It also raised for me a
few questions about the application, shortlisting and interview process that I was
able to clarify immediately after the selection interviews in my interview with the
HR Manager.

Documents: The third source of data collected in this research is documents. In the
course of observation and interview several documents have been used or referenced.
Whenever possible I requested a copy of the documents. Documents reify
knowledge (Wenger 1998) and may also act as boundary objects, as discussed above
(Star & Griesemer 1989; Wenger 1998). They therefore contribute to the transfer of
knowledge between communities of practice. Where organisations consist of more
than one community of practice such transfer is essential to whole of organisation
learning. Documents and other artefacts provide enduring records, which may be
used to gain insight into meanings or against which to compare the interpretations of
interviewees (Pader 2006; Schwartz-Shea 2006).

In any contact I made with the firm, whether related to interview or periods of
observation, I made note of and where allowed acquired copies of any documents
which were presented or referred to. Hard copy documents were collated in a
physical file and electronic documents maintained in a computer file for reference during analysis. The methods of data collection are summarised in Table 3.1.
Table 3.1 Summary of Data Collection Methods

<table>
<thead>
<tr>
<th>Dates</th>
<th>Observation</th>
<th>Interview</th>
<th>Documents</th>
</tr>
</thead>
<tbody>
<tr>
<td>February 2009</td>
<td>Two day induction of graduates</td>
<td>Interview</td>
<td>Induction Timetable</td>
</tr>
<tr>
<td></td>
<td>Training day including library training.</td>
<td></td>
<td>Induction power point presentation</td>
</tr>
<tr>
<td></td>
<td>(N.B. In addition to formal periods of observation, records of observations</td>
<td></td>
<td>A Guide to Library Services</td>
</tr>
<tr>
<td></td>
<td>were made whenever I had contact with the firm.)</td>
<td></td>
<td>Legal Research: Case law and legislation</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Floor map with staff designations</td>
</tr>
<tr>
<td>March 2009</td>
<td>Physical layout of reception, ‘café’ and conference rooms.</td>
<td>Graduate 1</td>
<td>Internal directory of Melbourne office</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Graduate 2</td>
<td>Interaction logs</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Graduate 3</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Graduate 4</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Graduate 5</td>
<td></td>
</tr>
<tr>
<td>April 2009</td>
<td></td>
<td>Partner 1</td>
<td></td>
</tr>
<tr>
<td>May 2009</td>
<td></td>
<td>Partner 2</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Partner 3</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Partner 4</td>
<td></td>
</tr>
<tr>
<td>June 2009</td>
<td></td>
<td>Partner 2 (2nd interview)</td>
<td>Leaflets displayed in foyer relating to the firm and firm specialisations.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Partner 5</td>
<td></td>
</tr>
<tr>
<td>July 2009</td>
<td></td>
<td>Lawyer 1</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Lawyer 2</td>
<td></td>
</tr>
<tr>
<td>January 2010</td>
<td>Negotiation of permission to shadow a junior lawyer.</td>
<td>Graduate 1 (2nd Int)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Graduate 2 (2nd Int)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Graduate 3 (2nd Int)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Graduate 4 (2nd Int)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Graduate 5 (2nd Int)</td>
<td></td>
</tr>
<tr>
<td>March 2010</td>
<td>Shadowed Graduate 3 (now an admitted lawyer) for three weeks.</td>
<td>Admin 1</td>
<td>Revised Floor Map</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Admin 2</td>
<td>In-House CLE material: Ethical Considerations in Daily Legal Practice</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Executive</td>
<td>Viewed but could not retain training document on personal securities.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Law clerk</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Admin manager</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Graduate 6</td>
<td></td>
</tr>
<tr>
<td>April 2010</td>
<td>Selection interviews for 2011 clerk positions.</td>
<td>HR Manager</td>
<td>Competencies table</td>
</tr>
</tbody>
</table>

108
Sufficiency of Data – Redundancy and Triangulation

A critical question in any research relates to how much data is enough data. With quantitative methods there are well developed rules about the size of samples that are adequate but in qualitative research it is not as clear cut. An exhaustive search is impractical in relation to most research questions and it is now accepted that data collection need be sustained only so long as the investigation continues to produce new information that contributes to the understanding of the research question, referred to as the point of saturation (Pascale 2011) or redundancy (Guba & Lincoln 2005; Patton 2002). One cannot really make the judgment that further data collection is redundant unless analysis begins while the researcher is still in the field. This in fact is the recommendation and expectation of most writers on qualitative research (see for example, Miles & Huberman 1994; Patton 2002; Silverman 2005).

When not in the field I was typing up notes, transcribing interviews and coding the interviews.

I interviewed all the graduates employed in 2009 and 2010 along with the only law clerk in 2010, five of the 11 partners and five other members of the firm in various role. This exhausted the possible interviews of novice newcomers among legal staff. While I would ideally have liked to interview Paul’s initial supervising partner, Gary, this was not possible as he declined to be interviewed. The variations that were still occurring in partner interviews tended to relate predominantly to issues of background, and even here the theme was overwhelmingly about their experience under their early supervisors.
I interviewed only two middle level lawyers. These two were very different. One was male and one female. One had gone straight from high school to university to study law, and then into articles of clerkship, while the other had enjoyed a successful career in HR/Industrial Relations. One had been practising for eight years and the other for two. Nevertheless they held quite similar views about what lawyers needed to learn and how these things were learned. I am not confident here that I had reached redundancy in interviewing middle level lawyers but am confident that I have selected interviewees who were likely to express different opinions where they existed. One of the characteristics of analytic induction is that it consciously seeks the negative or deviant case in order to produce rich theory (Pascale 2011; Silverman 2005) and the purposive selection of these two interviewees offers an opportunity for this.

I was allowed several significant periods of observation, most significantly covering the induction of the graduates in 2009 and in 2010 the shadowing of Lisa over a three week period and the interviews of prospective clerks. In between these more extended opportunities for observation I attended the firm on another dozen or so occasions for interviews. My observations were guided by theory of communities of practice and, particularly later in the research, by insights emerging from interviews. Given this framework my observations were sensitised to significant elements and I did not need to form understandings of a foreign culture from scratch as I would if undertaking an ethnographic study (Creswell 1998; Ybema et al. 2009). Further observation was curtailed by the expiration of access to the firm for field work.
I have designed the method to include data from interview, observation and document analysis to allow triangulation (Miles & Huberman 1994; Patton 2002) (see also, Cox & Hassard 2005). In case study methods, where it is generally not possible to engage exhaustively with all possible cases or obtain data from a statistically significant sample triangulation provides assurance of the rigour of analysis (Creswell 1998; Silverman 2005). Triangulation ‘is understood, most broadly, as trying to understand a phenomenon using at least three different analytic tools’ (Schwartz-Shea 2006, p. 101). Triangulation presents the possibility of inconsistent and conflicting findings and engaging with such conflicts enriches the analysis by causing one to question assumptions that may go untested from a single source.

**Data Analysis**

‘The challenge of qualitative analysis lies in making sense of massive amounts of data’ (Patton 2002, p. 432). Creswell (1998) states that there are several steps in qualitative analysis that most, if not all, authors have in common. The first, he proposes is to the need to review the data as a whole to obtain an overall sense of it. In this research I have just under 200,000 words of interview transcript, around 40,000 words of typed field notes and observations and several hundred pages of collected documentation in hard copy and electronic form. I transcribed the interviews and typed up the field notes myself. Although time consuming, undertaking the transcription and typing up enabled me to revisit the data at this point. Following this initial step of gaining an holistic feel for the data, it then needs to be reduced and displayed in ways that make it intelligible to the reader (Creswell 1998; Miles & Huberman 1994; Patton 2002). ‘To review a set of field notes,
transcribed or synthesized, and to dissect them meaningfully while keeping the relations between the parts intact, is the stuff of analysis’ (Miles & Huberman 1994, p. 56, p. 56). A common means of reducing textual data, from transcripts of interviews and recorded observations is through the process of coding.

Coding

Coding is an aid to recognising patterns in qualitative data (Miles & Huberman 1994; Patton 2002). It involves the development of a classification scheme that can be applied to (usually textual) qualitative data to allow common themes to be drawn out of the various sources, condensing the material into more manageable portions. These portions may then be further reduced by various techniques if needed (Miles & Huberman 1994). In case study research such as this, where a conceptual framework informs the observation and interview questions, certain classifications may be drawn from the framework (Silverman 2005). I employed QSR’s Nvivo 9 to code the textual data in this research, which allows both the setting up of a priori themes and the addition during the process of coding and analysis of emergent themes. Themes may also be nested so that a meta-theme is identified, for example the attributes of a lawyer, and sub-themes may be created within the theme for particular attributes. Extracts of any length can be selected using Nvivo and coded to a theme. An extract may be coded to several themes.

At the time I set up the initial themes for analysis I had the simplistic conceptualisation of communities of practice within Benefics shown in Figure 1.1 which has also guided the drafting of the first graduate interview protocol, so at this point there was a fairly easy correspondence (although not so standard that the
coding could be automatic) between the questions asked and the coding. As
described in relation to the interview protocol, the questions and hence the coding
reflected a desire to explore what the graduates knew and what they believed they
needed to know. Also, in line with the emphasis Wenger (1998) placed upon
artefacts, the code of ‘Context’ attempts to capture statements relating to physical
setting and other reifications of organisational knowledge. The a priori themes are
set out in Table 3.2.
<table>
<thead>
<tr>
<th>Theme and Description</th>
<th>Sub-Themes and Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attributes of a Lawyer: Identification of abstract characteristics which distinguish good lawyers from others.</td>
<td>None</td>
</tr>
<tr>
<td>Learning: All issues to do with how the individuals, groups or organisation learn.</td>
<td>None</td>
</tr>
<tr>
<td>Challenges and Barriers to Learning: Those factors that professional and other staff identify as potential or actual barriers to learning.</td>
<td>None</td>
</tr>
<tr>
<td>Change: Any reference to the need to change or be adaptable.</td>
<td>None</td>
</tr>
<tr>
<td>Competence: How is it measured? How important to advancement?</td>
<td>None</td>
</tr>
<tr>
<td>Context: All those issues to do with physical, social and historical setting that impact upon doing the job or doing it well.</td>
<td>History: The impact of the history of the firm on the way things are done. Physical surrounds: The impact of the physical layout, design and decoration on the way work gets done. Precedents: How what has been done before affects what is done now. Administrative requirements: The degree to which administrative processes and requirements shape the work and the workers. Services: Ways in which professional staff are supported. Technology: The impact of computers etc. to the way work is done and work recorded.</td>
</tr>
<tr>
<td>Communities of Practice: Statements that suggest that there are separate groups within the firm that have different attributes and perhaps different knowledge.</td>
<td>None</td>
</tr>
</tbody>
</table>
Within several of the a priori themes, sub-themes emerged while coding. For example, I anticipated that there would be several quite different lists of attributes of good lawyers between the various groups of interviewees and also several different ways that people learned. I did not want to pre-empt what these might be by pre-setting any categories. Even when sub-themes were pre-set I found the need at times to extend them. For example, in ‘Context’, I set themes based on internal factors that might affect learning. Through the interviews it became apparent that the wider social context impacted in several ways and a category was therefore added to catch such references.

In addition to emergent sub-themes, whole new issues unanticipated at the commencement of the research may emerge as relevant. An example of this is the theme of career. Some interviewees had followed the path into law that was usual at the time I practiced, going straight from secondary school, to university to study law and then into articles of clerkship in a law firm to qualify for admission to practice. Others, in fact the majority of the 2009 Graduates, had had other careers and for some, the impact of the first career was significant to what and how they learned. Why the interviewee had chosen law also seemed relevant, so I ended up with three sub-themes under career: ‘First career’; ‘Subsequent career’; and ‘Legal career orientation’.

I was concerned that where I identified emergent themes after I had coded several interviews already, that I may have missed references in the earlier interviews; you see what you are looking for and I had not been looking for these themes at that time. However, when I did deliberately go back after identifying a few additional themes
to check that I had not missed relevant extracts I found that I had not. I believe, because I was conscious of the literature and concepts and familiar with the interviews, I identified new themes affectively when I encountered them for the first time.

Emergent themes may be found in Appendix C. While the list may appear quite long, Miles and Huberman (1994) state that a list of 50-60 codes can be kept ‘surprisingly well’ in short term memory, so that the coder does not need to keep referring back to the list as they code, increasing the risk of uneven coding. Not all themes coded for proved to be fruitful in analysis (although some perhaps may come into their own in writing after this thesis).

Reducing the Data

Once all interviews and field notes had been coded it becomes possible to extract the coded sections of the data and compare the views of different informants, cross referencing these where applicable with documents and field notes. For some themes, the extracts were relatively few and homogeneous making it possible to draw propositions directly from the extracts. To make sense of more complex coded extracts I created data displays to provide visual representations of data that make patterns apparent (Miles & Huberman 1994). While creation of displays is not difficult (Miles & Huberman 1994) thought needs to be put into the type of display and its contents. As applies often in qualitative analysis, there are guidelines on how this may be done but no rules (Patton 2002), an aspect of qualitative research that Cunliffe (2010a) proposes make such research a craft rather than a scientific endeavour.
I employed several matrices to assist me in discovering relationships. For example, I used a conceptually clustered matrix (Miles & Huberman 1994) to gain a better understanding of what informants believed to be the attributes that lawyers needed to possess or learn to be considered competent. Creation of the matrix requires several decision steps and it is imperative to record these with the matrix to explain what decisions were made and why (Miles & Huberman 1994). In the ‘Attributes of a Competent Lawyer’ matrix, I arrayed informants clustered according to their role in the legal firm (e.g. graduates, lawyers, partners, non-professional staff) along one axis and the coded attributes of lawyers along the other. I populated the cells with summaries of the relevant extracts (see Appendix D). I used summaries rather than quotes for the practical reason that the matrix was already quite large and quotes would have made it practically difficult to display it on A4 format in a readable font. Miles and Huberman (1994) point to the benefit of a display that can be scanned as a whole and I attempted to achieve this in all displays. I recognise that this is an interpretive step but, as the extracts from which the display is created are always at hand, I can return to these at any time if I wish to review my interpretation. Display does not remove the desirability of returning often to the data to ensure the relationships remained intact through the process of reduction.

Once the matrix is drawn commonalities and differences become more obvious and it may be helpful to modify the matrix to reflect insights from the first draft (Miles & Huberman 1994). For example, I combined several columns and expanded others on the basis of the cell summaries. Work Ethic and Attitude both included aspects relating to the approach to work and these were combined under a single column,
‘Approach to Work’. Creativity, Legal Research and Problem Solving also all appeared related in that they involved skills of problem definition, analysis and identification of possible solutions and these three codes were therefore combined in a single column headed ‘Problem Solving’. Interpersonal skills included getting on with people you worked with and with those outside the firm including clients and other lawyers. There was considerable overlap between the external category and networking. Therefore interpersonal skills were divided up into internal and external and networking was combined with external. The modified matrix demonstrates an unexpected consistency across the firm about what lawyers need to know. It also highlighted a surprising absence; the majority of informants did not mention integrity as an attribute of a competent lawyer. A similar process was employed to assist in making sense of the ‘Learning’ theme.

Overview of Collection and Analysis

In summary, by choosing to address the topic of organisational learning in legal firms through the concept of communities of practice I place this research within an interpretive framework. Qualitative methods are most apt for this research and I have chosen to undertake a case study of a mid-sized law firm which I have called Benefics. I have gathered data through interview, observation and the collection of documents. Interviews were transcribed and coded using QSR NVivo software according to codes some of which were determined on the basis of the literature review before initial coding began and some of which emerged as themes through the process of coding. The interpretations emerging from the analysis of the interview data was triangulated with that from observation and documents collected in the field.
**Reporting the Results**

Unlike quantitative research where the steps of data collection, data analysis and writing up results tend to be sequential and quite separate, with qualitative research these steps tend to be more iterative and intertwined (Miles & Huberman 1994). Furthermore, the analysis undertaken will be judged by how the data is written up, and it will not matter that appropriate steps were undertaken to make sense of the data if the reader cannot be convinced of the reliability and significance of the results (Silverman 2005). This too is a craft (Cunliffe 2010a, 2010b) not a science and ‘you can be sure that there are as many different styles for writing up a qualitative analysis as there are qualitative approaches to begin with’ (Cooksey & McDonald 2011, p. 505). The next chapter(s) will set out the choices made in relation to reporting the data and set out the results of the research. Chapter 4 will particularly address findings in relation to research questions 1, 3 and 5 by looking at what communities of practice can be observed, identifying their boundaries and considering the relationships between them. Chapter 5 will focus upon the question of what is being learned in the communities of practice (research question 2) exploring the findings in relation to the tension between reproduction and production in the communities of practice. Chapter 6 will present the findings upon how knowledge moves between communities of practice within Benefics (research question 6). The effect of power upon learning at Benefics (research question 4) suffuses all these issues and therefore is touched upon in each of these chapters.
CHAPTER 4 RESULTS: COMMUNITIES OF PRACTICE AT BENEFICS

Existence, Boundaries and Relationships

To look at how learning occurs through communities of practice in legal firms (the Primary Research Question) I must first establish what, if any communities of practice exist within Benefics (Research Question 1). To this end this chapter will first describe the general setting of the research. It will then draw out examples of several of Wenger’s (1998) indicators that a community of practice has formed. The indicators are not definitional, nor is it necessary that all be identified to be confident that a community of practice has formed. As some indicators are more informative and more easily identified than others given the research setting and design, not all fourteen will be discussed.

Learning occurs both within communities of practice (as newcomers learn to be practitioners, for example Lave and Wenger (1991)), by the community of practice (as practitioners develop new knowledge as they encounter novel problems, for example, Brown and Duguid (1991)) and potentially between communities of practice (as knowledge is transferred across community boundaries). As set out in the literature review, the first two forms of learning each have established, but largely separate, bodies of literature. In both these literatures which address learning within communities of practice, the issue of where the boundary of a community of practice lies is largely irrelevant. However, to address the last form of organisational learning, that between communities of practice, it is necessary to identify the boundary (Research Question 4) and the relationship between the communities (Research Question 6). The second part of this chapter will therefore delineate the
possible communities of practice within Benefics, clarifying how and where boundaries may be identified, and demonstrate how these may be related.

What is being learned within the communities of practice (Research Question 2) and how new knowledge is integrated across community of practice boundaries (Research Question 6) will be addressed in Chapter 5, first by looking at the learning that occurs within individual communities of practice and then by looking at what learning, if any, occurs between communities of practice. This will entail an examination of the impacts of power upon learning within and by Benefics (Research Question 4).

Introduction to the Setting of the Research

Structure of the Firm

Benefics can trace its history back nearly 170 years. Through a series of mergers and expansions the firm has grown and moved into other Australian capital cities. The Melbourne office was established about 150 years after Benefics was formed and at the time of this research had 12 partners, 17 other professional staff (including the graduates) and 22 additional staff members including support staff, admins and non-lawyer managers (Melbourne Telephone list as at 12 March 2009).

Benefics operates as an Australia–wide partnership with offices in four state capital cities: the Head Office in the founding state; the largest office; Melbourne; and the smallest office. The firm’s vision was that it would be a ‘proud mid-tier firm aiming for steady growth but not aspiring to compete with the well-established top tier firms’ (Philippa HR Manager, Day 2 of Induction, Field Notes). Philippa noted that
although the firm was fully integrated nationally there were different cultures between the states. The smallest office she described as ‘blokey’ (an Australian term with connotations of being male dominated and even unwelcoming to women). The largest office, being spread over two floors, exhibited subcultures and tended to be self-centred, whereas Melbourne was ‘relaxed’ and more aware of its place in the whole. Each of the offices had evolved to be weighted differently with respect to specialisation. Melbourne’s strength was in dispute resolution/litigation.

Traditionally, legal firms in Australia have been structured as professional partnerships in which ownership and control reside with the partners, who are both the most senior technical experts and managers (Greenwood & Empson 2003; Malhotra, Morris & Hinings 2006; Malhotra, Morris & Smets 2010). However, a trend towards increasingly business-like structures has been noted in professional partnerships, with the development of specialised departments, such as marketing and human resources, and business-like processes such as financial control and strategic planning (Malhotra, Morris & Hinings 2006). While accounting firms have enthusiastically embraced more corporate forms of governance, legal firms appear to be more reticent in their changes (Greenwood & Empson 2003) resulting in hybrid forms of governance. Benefics displays such hybrid characteristics, having a non-lawyer Chief Operating Officer (COO) and separate business departments including human resources (HR), development/marketing (BD) and information technology (IT).
Legally Benefics is structured as a professional partnership, with ownership and control centred upon the equity partners. The equity partners from around Australia meet bi-monthly to discuss governance issues. One of the senior partners is designated as Managing Partner, and during the period of my field work he was located in the largest office. The position of managing partner rotates and William (COO), reported in his interview that the managing partner during the period of this research was due to step down from the position in a matter of months to resume full time legal practice. William, although not a partner, nevertheless attended the partners’ meetings. He described his role:

\begin{quote}
My job is Chief Operating Officer. Varies to most other Chief Operating Officers in that I actually get into the partnership side of it as well. My job is pretty much to look at the strategic direction of the firm and also to look after all the shared services functions, so that HR, Finance, BD, IT, Library, Precedents, all report through to me. But I also have a good relationship with the managing partner who still practices.
\end{quote}

The business functions are not duplicated in all state offices. For example, the staff member responsible for HR in Melbourne, Philippa, was located at Head Office but travelled to Melbourne as necessary. Other staff positions, such as librarian, were part time. If issues arise beyond the capacity of a resident staff member or in the absence of a part-time member, expertise was called upon from larger departments in other states. For historical reasons, most of the shared services departments are headquartered at the Head Office.

\footnote{Only one partner in the Melbourne office is an equity partner (Philippa, HR Manager, Day 2 Induction, Field Notes). The others are salaried partners. While this distinction is not evident to clients, and salaried partners still enjoy many privileges and high levels of autonomy, they nevertheless are employees, rather than owners of the business).}
Nationally, the professional staff are organised into divisions. These are: Dispute Resolution; Property – Infrastructure and Environment; Property – Projects; Corporate; Intellectual Property and Technology; and Employment Relations (HR Manager, Day 2 of Induction, Field Notes). Each specialist division was headed by a partner designated as ‘Heads of Office Division’ (HOODs). The incumbent HOODs were located in the Head Office or the largest office, but not in Melbourne or the smallest office. Each state office was also formally organised into divisions. In the Melbourne office, all property work was subsumed into a single division, a single partner undertook all intellectual property work and there were no employment lawyers.

Annually, each office of Benefics hires one or more law students as law clerks. Law clerks work part time for a designated partner, typically up to one and a half days per week as their studies allow. Each office also usually hires one or more graduates. The year I commenced field work, Benefics Melbourne hired five law graduates, the most they had ever hired in one year. Of these graduates Lisa, Paul and Helen had worked as law clerks the year before but Kate and Jane had no previous connection with the firm. The following year, 2010, Benefics hired only a single graduate, Matt, who had worked as a law clerk during the previous year. His three fellow law clerks were not offered graduate positions for a variety of reasons. The number of graduates hired each year depended upon several factors: the general economy\(^{10}\), how many and which partners were seeking graduates to work with them; and

---

\(^{10}\) The GFC occurred in 2008 and this resulted in many firms cutting back the number of graduates that they employed when business conditions tightened. It appears that the most significant impact of the GFC was experienced by graduates in 2010, rather than 2009. Matt reported (Graduate, Interview) that several of his friends from university who had been told they had work with one large law firm were subsequently informed that their positions were suspended until further notice due to the downturn in business resulting from the GFC.
whether suitable graduates could be found for the particular partners seeking them (Philippa, HR Manager, Interview). Philippa stated that experience showed that it was preferable to disappoint a partner than appoint a graduate who was a poor match. While Philippa suggested that law clerks were hired in the hope that they would go on to become law graduates when they completed their degrees, history demonstrated that this often did not happen, as some proved to be a poor fit for the firm (Philippa, HR Manager, Interview), some took offers of graduate positions at more prestigious firms (Philippa, HR Manager, Interview), some chose to work or take a break overseas (Matt, Law Graduate, Interview) and sometimes economic conditions changed, meaning that the firm could not support as many graduates as they had anticipated the year before (Philippa, HR Manager, Interview).

The graduates who had worked as law clerks had some familiarity with the firm’s technology and processes which gave them a head start in relation to the skills to be productive. However, in another important aspect Kate and Jane were not as significantly behind their colleagues as may first have appeared. The role of law graduate was significantly different to that of law clerk. Law clerks, being part time and not yet having completed their degree, were typically given very specific research questions to pursue, often without the context of the matter to which the question related. Alternatively, they might be required to undertake processes such as collating documents or preparing for discovery which required attention to detail but not in-depth legal knowledge (Field Notes). As the law clerks’ time was heavily committed to their studies, their continuation at Benefics uncertain and their involvement with matters peripheral, law clerks tended not to identify strongly with the firm (Alex, Law Clerk, Interview). They stayed on the periphery (Wenger 1998).
due both to the firm’s processes and their own choice. This changed on becoming a law graduate, a full-time employee with career prospects. Helen (Graduate, First Interview) commented on the extra effort to which the firm went, once she moved from clerk to graduate, to help her feel that she belonged. Kate and Jane’s experience of Benefics began at this time so they immediately felt the firm’s efforts in this regard.

*Physical Layout*

When the Melbourne office was first established it was located in a building close to the Courts. These premises soon proved to be inadequate in both size and amenity and the firm relocated to larger premises in a building closer to the retail centre of town. The physical layout of the new premises is important and deliberate. In the original building Benefics inherited partitioning in which the offices were of vastly different sizes encouraging politicking and power plays among professionals in order to occupy the most prestigious offices. In contrast, the new premises were leased as an empty shell. The Office Manager, Veronica, was charged with designing the interior (Office Manager, Interview). She consciously chose to design all offices to the same dimensions, whether for partners, associates or junior lawyers. An exception was the corner offices which were slightly larger but not square and contained structural columns that affected the use of the space.

Similarly, the furniture – desks, and bookcases – were the same in all offices, eschewing ostentatious symbols of status such as partners’ desks. Active files were kept in white folders on the large bookshelf in the room rather than in files in filing cabinets. The chairs supplied were also standard, although in use some variation had
arisen, and some people had added coat racks (often to accommodate a change of
clothes in case of unexpected clients or court commitments or in some cases sporting
clothes, as a number of staff jogged at lunch times). As there were insufficient
offices around the exterior walls, internal offices were also placed around the lift
well in the centre of the building, as were several storage rooms and the catering
kitchen. The resulting wide corridors between the internal and external offices were
filled with desks separated by low partitions. These were largely occupied by the
support staff but law clerks and graduates were also given desks in this central
corridor, as was I during my period of observation.

The walls and sliding doors of the offices were glass without any form of curtaining
or blinds, so occupants were always visible to anyone walking past. Veronica stated
(Office Manager, Interview) that this was a pragmatic decision to allow as much
natural light as possible to penetrate to the inner offices, but it clearly had the added
consequence of permitting surveillance of staff. With glass doors shut it was
difficult to hear what was said within the offices, but it was the norm that office
doors remained open whether occupied or not (Field Notes). A couple of the
partners tended to shut their doors. However, for most in the firm, a shut door was
an indication that the occupant was pressed and needed to concentrate and therefore
should not be disturbed.

It was also a firm norm that lawyers did not meet clients in their rooms. Instead,
they were expected to book conference rooms for client meetings. One side of the
building contained all the conference rooms. There were four conference rooms
along the southern outer wall, including the largest, Conference Room 1, in the south
east corner. Conference Room 1 was used for firm-wide functions and large meetings. The two day induction of the law graduates at the beginning of my field research was predominantly conducted in this room. Smaller conference rooms were located on the inner wall but these were used only as a last resort. Unlike most of the partitioning, the walls of the inner conference rooms were not glass, but plaster and wood panelling. They therefore lacked natural light. In the south west corner was the kitchen/lunch room which Benefics called the café.

There were five lifts, two on the south side and three on the North side of a corridor. Given that the firm was located over 20 floors up, visitors had their first impression of the firm when they alighted from the lifts, as no-one used the stairs by choice. To the west end of the corridor was a wall displaying the Benefics logo and name, and to the east was reception. The reception desk was large and slightly elevated, backed by wall to ceiling windows with a magnificent view. The impression was grand but not ostentatious. To the right of reception but out of view from the lift well, were substantial leather chairs, a couple of low tables stocked with newspapers and business magazines and a large, wall-mounted flat-screened television permanently set to a news channel (Field Notes). It was here that clients would wait to be met by their lawyers when they had appointments.

To the left when facing reception, through a key-carded door, were the offices of the office manager, COO, and business support staff (including mail room and the office manager’s assistant who also acted as backup receptionist) and then the fee earners and admins for the property division. The property group was furthest from the café and this had the consequence that people on their way to make themselves a cup of
coffee did not walk past property. Personnel from property had two possible routes to the café, one past reception and conference rooms (slightly shorter but through a shut, key-carded door) and one around two and a bit sides of the floor.

The other sides of the floor were divided largely along practice grounds. The north wall housed some partners from corporate division and then, about midway down that side, the dispute resolution offices began. Dispute resolution offices continued to about midway down the western side of the floor. The occupants of the rest of the offices on the western side were specialists in insolvency, which was officially under the corporate banner but operated independently in practice. Immediately adjacent to the café was the library. The Melbourne library was quite small as the main library was at Head Office. However, arrangements were in place to scan and email copies of cases, texts or other material not available at Melbourne. Much of the case law, statute and some commentary was available in electronic form at the practitioners’ desks. A high proportion of the graduates’ and law clerks’ work, especially early in their time with the firm, involved researching specific points of law and they would therefore spend quite some time in the library and with the librarian. On occasion the librarian would also gather material for the lawyers if they could be specific enough about what it was they were after.

There were eight offices designated as visitors’ offices. These were set aside for members of other state offices who travelled to Melbourne so that they would have a base from which to work. One partner who travelled frequently was the Head Office taxation specialist as Melbourne did not have a resident taxation specialist (and the relevant law was federal, rather than state based). The Managing Partner, who came
from the largest office, was also a frequent visitor. Seven of the eight visitors’ offices were on the outer wall. This reflected that it was most often partners who travelled interstate. While hierarchy was not manifest in the size and furnishing of offices, location did indicate position in the hierarchy. All partners had offices along the outer walls. Other outer wall offices were occupied by the COO and associates (senior lawyers below partner level) and the most junior lawyers had the inner offices. Law clerks and law graduates before admission occupied the central corridor along with the admins and junior support staff.

It is in this organisational and physical context that learning takes place at Benefics. The next section will look at the evidence in relation to the existence of communities of practice within Benefics’ Melbourne office (Research Question 1).

Existence of Communities of Practice

Wenger (1998) suggested 14 indicators that a community of practice had formed. I will initially look at evidence for eight of these: sustained mutual relationships; shared ways of doing things; certain styles indicating membership; an absence of preambles; very quick set up of problems to be discussed (discussed under a common heading with the previous indicator); a shared discourse reflecting a certain perspective on the world; a substantial overlap in participants’ descriptions of who belongs; and the ability to assess the appropriateness of actions and products. Within this discussion I will make mention of several tools, representations or other artefacts so will not be considering this indicator under a separate heading. The indicators will suggest whether there are communities of practice within Benefics and raise possibilities with respect to the membership of such communities.
The identities of community members develop as they progress in competence from novice to master. It follows that the strength of identification will not be uniform. Further, as I spent much of my field work observing the graduates’ progression I would expect this to be a changing element and therefore not easy to use as an indicator of the existence of communities of practice. ‘Mutually defining identity’ does, however, become relevant in relation to the discussion of boundaries.

I have chosen not to discuss the remaining indicators for several reasons. As I related in the opening chapter, I was a lawyer for several years when I was younger and am still married to a lawyer. I found that this diminished my sensitivity to one of the indicators - jargon and shortcuts to communication - as I was, at least to some extent, an insider. In relation to the existence of local lore and shared stories, while I was told many stories about the firm, its history, the personalities of its staff members and the behaviours of individuals and groups, it was not practical to discover how widely these stories were known or circulated. Without data relating to the pervasiveness of the stories it lacked efficacy as an indicator of a community of practice. ‘The rapid flow of information and propagation of innovation’ (Wenger 1998), proved to be too complex to act as an effective indicator in the professional setting of Benefics for reasons that will become clear in the next chapter when I discuss what is being learned in the communities of practice. Knowing what others know, what they can do, and how they can contribute to an enterprise, is also problematic in the setting, as it may represent common knowledge developed over long periods of cooperation within an organisation and not necessarily a shared practice (Carlile 2004).
Sustained Mutual Relationships

Sustained mutual relationships make the development of shared practice possible, so this ‘indicator’ that a community of practice has formed is at the same time a pre-requisite to formation of communities of practice. At Benefics, the most intense relationships are formed between graduates and their supervising partners.

INTERVIEWER: …Can you describe how you’re learning to be a solicitor?...
KATE (Graduate, First Interview): I think that definitely your direct supervisor is the most influential because they’re the ones delegating all the work. They’re the one too that will basically shape your experience, whether it’s an open door policy or a closed door or if the type of tasks you’ll get, whether you’ll get invited to go to client meetings, whether you won’t. So I think that’s quite core.

INTERVIEWER: What is the most influential in your learning at this time?
JANE (Graduate, First Interview): Probably watching my partners. That’s going to influence me a lot. And, just seeing how they conduct themselves and how they deal with the clients and how they tackle their portfolios and stuff.

INTERVIEWER: What is most influential in your learning at this time?
LISA (Graduate, First Interview): Having a good supervising partner. I’m lucky, Stuart’s really approachable. If I have any problems I’m not intimidated at all to go in and say, ‘Can you tell me where to look?’ Or, if I’m on the wrong track [pause]. I think if there was intimidation or we didn’t sort of get along well it would make it harder and I think I’d waste a lot of time, kind of trying to figure things out myself, when he has the easy answer or he can guide me in sort of what to do.

The graduates will also work with partners of the firm who are not their supervising partners.

INTERVIEWER: What is most influential in your learning at this time?
PAUL (Graduate, First Interview): The work I’m getting.
INTERVIEWER: And where does that come from?
PAUL: It comes from the partners.
INTERVIEWER: All the partners?

11 While most graduates are assigned to a single supervising partner, and under the regulations governing admission to practice one partner is required to attest to a graduate’s competence in the admission application, Jane was assigned to work for three partners who all gave her work (Jane, Graduate, First Interview).
PAUL: Two of the partners. Mainly my allocated partner, Gary, and one of the corporate partners, Frank, who I’ve managed to get on with very well.

Graduates at Benefics might be asked by any partner to do some work for them if they were not fully occupied with work for their supervising partner. Often, graduates would seek work from other lawyers to expand their knowledge or, as in Kate’s case, because the type of work was preferred.

KATE (Graduate, First Interview): … even though you’ve got kind of one partner you report to, anyone can refer you work. I didn’t realise that because that wasn’t like that in seasonals [short term internships] that I’ve done elsewhere. My friends don’t, in other firms don’t have that. I think it’s a product of being in a smaller firm.

INTERVIEWER: Good or bad?

KATE: I think it’s good. I like it because I’ve been getting a lot of work from Justin to do with dispute resolution, which is actually where I’d like to go. So that’s been really good. But then my [pause] but Rob’s my partner. His work will always take preference. So it works both ways. I actually want to do some of the dispute resolution stuff more than some of the work I’ve been given so I’ll work harder to get that finished so I can get on to Justin’s work. But, yeah, so I like that, I like that. Like often, if like, James or one of the other dispute res [resolution] partners, if he’ll delegate something it’ll often be some very discrete task. They just need you for say 20 minutes, or to proof read something and so you just get a little snap shot of the type of clients they’re doing and the type of lit [litigation] drafting that they write. So even if it’s 30 minute tasks, or [pause]. David got me to do like, I don’t know, some research on this company that’s about to go under, so you get an idea of their type of clients. So even though they’re only small tasks you get a better feel because of what kind of clients or what kind of work they get. And also how different people write. Like, you know, draft letters and what not, so yeah, I like that it’s, that although you’re allocated to sort of one person you get a mix.

In seeking work from other lawyers the graduates generally had some freedom about who they approached, giving them the ability, at least to some degree, to shape the sustained relationships that they developed. Kate ensured that her partner’s work was completed satisfactorily and then sought other work, playing within the implicit rules of the firm. She was afforded a large degree of autonomy by her partner in seeking extra work provided it did not interfere with the completion of work he assigned. Paul, however, had quite a different experience.
PAUL (Graduate, Second Interview): …I was assigned to property initially but I was doing a lot of work with Frank [a partner in the corporate division] and what happened just after I was admitted, or just a few days prior to being admitted was I had a sit down meeting with Frank and Gary and you know discussed which way we were going in the future and I think Gary made it quite clear that I was to stay in property and progress in property. Now I have my own reservations about why he would have said that but anyway, the point being was that Frank kind of after hearing that took a step back and said, ‘You’re assigned to property. You’ve got to go for it.’ And so I spent a couple of months in property, maybe three months, up until about October, so four months in property doing what I would say was little to nothing, basically tearing my hair out, being bored out of my brains with research, having shocking mentoring, very occasional feedback, not having really any opportunity at all.

The officially sanctioned relationship between Paul and Gary was strained and he passively accepted Gary and Frank’s apparent agreement that he should not seek work from Frank. As a consequence Paul did not form strong relationships with either of these partners. (He was later offered the chance by Philippa, the HR Manager, and Frank to move across to work with Frank more or less exclusively, but unfortunately for Paul Frank left the firm only a few months later to take up another opportunity.)

Over time several of the graduates also formed working relationships with mid-level lawyers. A clear example of this was Lisa’s working relationship with Justin, an associate who also worked closely with Stuart, Lisa’s supervising partner.

Associates have more autonomy and are more self-sufficient with work than

---

12 The time a graduate must practice under supervision of a partner before admission varies depending upon whether the graduate undertakes a formal course of instruction through an accredited provider and if so which provider (Legal Profession (Admission) Rules 2008 (Vic)). All graduates at Benefics undertook studies at The College of Law. Some of the time spent in clerkships before graduation could be counted towards the practical experience component and Helen and Paul both met the requirements earlier than the other graduates. Helen chose to wait until a subsequent admission ceremony, but Paul chose to be admitted at the earliest possible date. He felt that there was some resentment from the firm management at this because he then became entitled to higher salary and other benefits.
graduates. They are encouraged to generate their own work through contacts and networking (Justin, Mid-Level Lawyer, Interview). They are well aware that their ability to do so affects their promotion prospects. To maintain budgets they also typically look to partners to supplement the matters that they generate themselves. However, due to increasing specialisation, as associates progress up the firm hierarchy, the number of partners from whom they seek this additional work typically diminishes. Thus, tight working groups of a partner and one or more mid-level lawyers may form into which a graduate may gain access. Such groups offer the graduate greater learning resources than groups with a partner only.

Another example involved Helen who formed a sustained relationship with a mid-level lawyer, Bethany. However, unlike the relationship between Lisa and Justin which centred on Stuart’s practice, Bethany did not work in the same specialisation as Helen’s partner. Whereas relationships with mid-level lawyers who work under the same partner are formed to support learning of the specialism and the partner’s idiosyncratic preferences, Helen valued her relationship with Bethany for what she learned of skilled social behaviour in the firm setting.

Interviewer: Alright. Last set of questions is about relationships and networks. Who’s been most influential in your learning journey?
HELEN (Graduate, First Interview): Definitely Richard, a partner and Bethany, a lawyer. As far as in the firm?
INTERVIEWER: Yep.
HELEN: Yeah, those two in the firm for sure.
INTERVIEWER: In what ways?
HELEN: Bethany, just watching. Her actually, just the way she works and her social networking, the way she sort of knows everyone in the office and makes the effort to go and see people and things like that. But the way she interacts, she always comes and says hello and makes the effort with you. So I find that has actually made me feel comfortable in the office. I’ve got to know people in the office through her and things like that. And she was allocated as one of our mentors to start with but she did a good job.
In addition to the firm-sanctioned relationships between lawyers in specialist groups and mentor relationships, the lawyers at Benefics also tended to maintain relationships with others on the same hierarchical level, especially those who began in the same year as themselves. The graduates would unfailingly drop in on each other if they were passing each other’s offices and spend a minute or two (and often longer, especially at the beginning of the day) talking about their work or social lives (Field Notes). Helen and Kate grew particularly close and regularly went together for a morning coffee in one of the outlets on the ground floor of the building. Justin and Martin, both associates of the same age in the dispute resolution division, also appeared to have an ongoing friendship that was both work related and social (Field Notes).

The firm encouraged learning relationships between lawyers on the same level by running activities aimed at different levels. For example, during induction and again during the period in which I shadowed Lisa, it was mentioned that seminars for first and second year lawyers would be held (Field Notes). Both times the topic mentioned was networking, clearly seen as a skill that junior lawyers needed to develop in order to progress. Philippa, however, noted in her interview that these seminars had not run in Melbourne as intended, although they had been run at the largest office. She stated that the firm was hoping to resume them. In Melbourne then, in practice, the demarcation between groups of lawyers based upon their years of experience may not have been as marked as in the largest office. It was certainly less formal.
Before commencing this research I had thought admins working in specialist areas might well form part of specialist communities of practice, and I was therefore looking for evidence that might either support or refute this. While it was common for lawyers to have the same admin for many years, admins typically worked for several lawyers simultaneously and not necessarily all in the same specialist division. They might also be moved around if there was a need or possibly if they did not temperamentally suit the partner for whom they were initially assigned to work. My observations showed that if they had questions about aspects of their job they went to other admins (Field Notes). Further, as they were all located in the wide corridors with only low partitions between them there was a fair bit of social chit chat between neighbouring admins, especially first thing in the morning (Field Notes). While a few held themselves aloof (for example, Mandy said she preferred to have lunch by herself and read a book (Mandy, Administrative Assistant, Interview) many of the admins had lunch together in the ‘café’.

Lawyers rarely ate lunch in the ‘café’ (Field Notes) although a few partners, such as Stuart, made a point of eating lunch there every now and then, as he felt it important to be accessible to staff (Field Notes). Even so, when Stuart ate in the ‘café’ he sat away from the main table where the admins sat to eat, preferring to eat on a couch near the large flat screened television at one end of the room. Therefore, while there was an ongoing relationship between admins and the lawyers for whom they worked, the relationship was of quite a different nature to the relationship between lawyers. However, this does not preclude the existence of a community of practice involving different tasks, as this was clearly contemplated by Wenger (1998).
Many sustained relationships therefore exist at Benefics, including those between: 1) partners and those lawyers who work regularly with them in relations to their specialisation; 2) lawyers on the same hierarchical level; 3) graduates and mentors; and 4) lawyers and their admins.

*Shared Ways of Doing Things Together*

One of the most readily observed indicators that a community of practice has formed (Wenger 1998, pp. 125-6) is ‘shared ways of doing things together’. Shared ways within one group are often easiest to discern in their contrast with other groups who do things differently. In this section I will therefore be highlighting differences between groups in the firm. While the state offices of Benefics were reported to differ in several respects (Philippa, HR Manager, Day 2 of Induction) I was not able to observe these differences personally. I am therefore not in a position to consider the whole of the Australia wide firm in this thesis.

In the Melbourne office, marked differences in world view and practice were evident between the professional staff and the support staff. Alice, during day 1 of the induction (Field Notes) frequently referenced differences in tasks between support staff and professionals. For example, admins typically opened files so needed to know specifics about the many fields that needed to be completed when a file was opened. While Alice described these to the graduates she also told them that she did not expect them to remember how to do it. Admins, not lawyers, also ran checks at the time files were opened to ensure that the firm did not act for both sides in a matter. Lawyers on the other hand needed to know how to search out precedents and
were given some suggestions about naming files to make it easier to locate them if needed. Professional ethics also clearly distinguished lawyers from support staff.

After lunch on day 2 of the induction Philippa led the graduates and me to one of the smaller conference rooms where several other junior lawyers were already gathered, awaiting a video-linked presentation by Gerald, a senior partner in the largest office. Gerald summarised the ‘three most important duties [of lawyers] as professional advisors’ (Field Notes, Day 2 of Induction). These were: confidentiality of client matters; conflict of duty and interest; and the dual duty a lawyer holds to their client and as officers of the Court. Whilst support staff assisted the professional staff to maintain ethical standards, for example checks to avoid conflicts of interest, the responsibility rested squarely on the shoulders of the lawyer. Membership of the profession, attested to by possession of practicing certificates, placed duties and obligations upon them which could not be delegated.

Several policies to which Philippa drew attention on day 2 of the induction also distinguished between professional staff and support staff. For example, Benefics offered lawyers a time allowance and financial support not available to support staff to enable them to undertake continuing legal education. A policy also encouraged and rewarded lawyers for bringing work into the firm through referral and another policy spelled out the process of promotion as a professional staff member. Again, these were not replicated for support staff.

Differences in practice were evident between the broad specialist divisions. The way matters typically unfolded in property, dispute resolution and corporate matters
tended to be quite different and hence the practices that arose to deal with them. Property matters were largely transaction based with contracts that were mostly standardised if not prescribed. Matters typically had clear beginning and end dates and standard contractual stipulations for default. Bills of costs were structured around the type of transaction and frequently were not generated by reference to the time taken to complete them. Dispute resolution matters in contrast always related to individual circumstances even when acting for large litigious clients such as insurance companies. Time frames were dictated by the Courts and outcomes were more unpredictable. Matters, by their nature, were adversarial. Pre-estimating costs was particularly difficult as many variables could affect the time needed to complete a matter and litigation experience merely alerted practitioners to where variation might slip in, rather than inform them as to how long a matter would take. Issues dealt with by the corporate division were diverse, ranging from insolvency to joint ventures, share issues to creating securities, and intellectual property to taxation. If all went well, matters reflected agreement between the parties, rather than disagreement as was the case in dispute resolution. More than the other specialist divisions, the corporate division seemed to generate sub-specialisations. Time frames of matters were not dictated by custom, statute or the Courts but were subject to the whims and wishes of the parties. Experience was useful in predicting how long a matter would take to resolve.

The specialist divisions also differed in other ways, some not so clearly dictated by the demands of the specialism. For example, while the computer package used was the same across all offices and specialisations, there were differences between parts of the firm in how the various activities were completed. According to Alice (IT
specialist, Field Notes, Day 1 of Induction), the dispute resolution division was quite
good at undertaking the administrative steps for opening a file, but ‘corporate gets
quite slack’. There were also subtle differences related to dress. Benefics nominated
Friday as a casual day at the office and it was not unusual to see male lawyers
without neckties and even sometimes in jeans on Fridays. However, dispute
resolution lawyers might be required to attend Court at very short notice and it
would be inappropriate to turn up at Court in jeans and tie-less. Consequently,
dispute resolution lawyers rarely if ever wore jeans. In fact, the junior lawyers in
dispute resolution rarely came in casual dress at all.

More micro distinctions between practices could also be detected. For example,
doing work for several different partners, even in the same specialist department,
was not a straight forward exercise for novice lawyers, as partners had quite
distinctive preferences in relation to drafting and writing style.

INTERVIEWER: …Something I suppose that has interested me but I haven’t
got it in the questions here, is how much you’re shaped by the actual style of a
particular partner, like they’ll want you to write in a particular way.
LISA (Graduate, Second Interview): My three are all very different.
INTERVIEWER: Yeah. How do you cope with that?
LISA: Frank used to sort of write in the first person and Stuart would be the
third person. At first I struggled and Frank would always change it. But now
Frank’s sort of learned to adapt on the files that I work on, that he knows that
that’s how I write with Stuart so he’s sort of allowed that change. And Stuart
and Frank are both not very sort of legalese rather than James likes to impress
the client with all the big words and stuff, so I find it so much easier with
Frank and Stuart…

There was also a strong preference for the partner’s own precedent documents and a
suspicion of documents which had been drawn up by someone else, even in the same
specialisation but in a different office of the firm.

HELEN (Graduate, Second Interview): …Richard [supervising partner]
changes his mind a lot whether he likes a precedent or not and it doesn’t
always get changed on the system, so if he’s done one that he likes it goes in
my folder. If I know that’s something where he’s gone, ‘Yeah that’s how I like it done’. Especially the [specialised] stuff, a lot of our precedents, he hates the way it’s worded so we’re sort of going through this process of trying to create some new ones, so I’m just keeping it to one side.

The strong preference for the partner’s own precedent documents over documents generated elsewhere in the firm could also be seen as satisfying another of Wenger’s (1998) indicators that a community of practice had formed, the existence of specific tools, representations, and other artefacts. In this respect differences between groups centred upon specific partners became apparent.

Other differences were discernible along hierarchical lines as well. For example, many of the partners had their admins complete many of the administrative tasks on a file, including opening them, checking for conflicts, drafting the initial estimate of costs and even entering their time from paper records. More junior (typically younger) fee earners tended to do more of these tasks themselves, especially entering their own time on matters (Mandy, Administrative Assistant, Interview). Whether this was because the junior staff members were of a generation more comfortable with electronic systems or whether their more junior status meant that they could not call upon administrative time to the same extent as could the partners, is uncertain.

In addition partners had access to information not available to other members of the firm, especially in relation to issues of individual budgets and firm finances. A significant power in this regard related to the power to write off work recorded against matters, where they judged that it should not all be billed to the client. This power extended not only to the amount of time to be written off but, where more
than one lawyer had worked on the matter, against whom that time should be written off.

SAMANTHA (Mid-level Lawyer, Interview): …I have experienced partners writing off all of my time so that they can bill all theirs to the client. So knowing that an excessive amount has been charged to the client, they’ll sacrifice my billable time rather than going it even or doing whatever. And in the situation I’m thinking of it’s not a case where I went off on a frolic of my own and unnecessarily incurred costs. I followed the partner’s direction all the way through, but he just took the wrong path and at the end of the day, I wore it, not him.

Some of the differences between the practices of various groups could be traced to legislation, some to the distinctive demands of the particular legal division and some flowed from the personal preferences and beliefs of the partner at the centre of the work team. However, not all differences in practice were attributable to the practices of distinguishable groups. For example, while practices in relation to what time was recorded tended to differ between support staff, partners and graduates, practices in relation to how and when that time was recorded onto the system were also evident. Some fee earners, such as Lisa, entered their time directly into the computer package at the time of undertaking the work (Lisa, Graduate, First Interview). Others, including Helen and Paul, recorded time using pen and paper and entered the time onto the computer at the end of the day (Day 1 of Induction, Field Notes). However, the junior lawyers did not necessarily emulate the practice of their supervising partner, and not all partners behaved the same way, nor did there seem any consistency across specialisms. I therefore conclude that this variation relates more to personal preference than a shared practice of a community.

Shared ways of doing things therefore suggest a number of possible communities of practice. In the Melbourne office of Benefics, support staff were distinct from
professional staff in many of their practices. The broad specialist divisions also
differed from each other and within specialist divisions smaller groups centred upon
partners and their practice developed distinct preferences as to the right way to do
law and be a lawyer. Hierarchically, different levels – partners, associates and junior
lawyers, had different levels of autonomy, different responsibilities and access to
different information.

Certain Styles Recognised as Displaying Membership

While ‘style’ may refer to behaviours as well as personal appearance, one of the
more easily observed characteristics of people is how they dress. On Day 2 of the
Induction, Philippa introduced the graduates to several HR policies including the
dress policy. The policy was not prescriptive but rather rested upon the principle of
looking ‘professional’ and presentable. Every Friday was casual dress day, but
Philippa suggested that the graduates ‘exercise common sense if going to Court or
seeing clients’ (Philippa, HR Manager, Day 2 of Induction, Field Notes). She said
that the guiding principle should be, ‘will my partner take me seriously in this?’
Throughout my field work, which included quite a few Fridays, I did not observe
Paul out of a suit and tie, even though several partners regularly turned up on Fridays
in open necked and even coloured shirts. One of these was Stuart, Lisa’s supervising
partner, who had significantly more client contact than Paul. Lisa also tended not to
differentiate between Fridays and other days in what she wore. She explained that,
as she was in dispute resolution, she could find herself unexpectedly in Court and
was therefore not able to wear casual clothes. (Unexpected Court attendance was
more of an issue for junior lawyers who might be sent down to the Courts for small
procedural matters that partners and more senior lawyers delegated.) Although the
The wording of the policy was universal, the interpretation differed between roles. For example, the admins (exclusively female) often dressed less conservatively and with wider variation in individual style than the professional staff and managers. One admin, Stella, was well known for her flamboyant clothing, typically colourful dresses, which were at times quite low cut.

While the wording of the dress policy therefore indicated uniformity, the practice of how members of Benefics dressed demonstrated distinct differences: between support staff and professional staff; and between different specialist departments. However, individual differences, such as Paul choosing never to go tie-less despite being in a specialisation where client contact and Court appearances made open-necked shirts on Fridays quite acceptable, prevent dress being an unequivocal indicator of who is in a particular community and who is not.

**Absence of Preambles; Quick Setup of a Problem**

Both an absence of preamble and quick set up of problems indicate a common body of technical knowledge and a familiarity with the specific issues involved in the problem. A common specialism and close working ties facilitated these indicators developing. While shadowing Lisa I attended weekly meetings called by Stuart (Field Notes) which included one other partner, James, two associate level lawyers, Justin and Martin, and two of the graduates, now first year lawyers, Lisa and Paul (who by this time was working with James as Frank had left the firm). Nick (the only law clerk at the firm at the time) was present from the second meeting but had been overseas at the time of the first meeting. Stuart’s admin also attended from the
second meeting at the suggestion of Martin, as it was her task to notify all attendees of times and dates and to take minutes.

At these meetings Stuart went around the circle and asked each attendee about his or her work load (Field Notes). Without fail everyone declared that they were very busy. Each added some minor detail about matters that were occupying their time, and Stuart prompted with a few extra questions, indicating that he both knew what they were doing and was keeping tabs on it. Although Stuart had called the meeting and chaired it, James made a point of adding questions himself or commenting about his understanding of the matter or his role in it. Stuart also gave a brief overview of his matters, suggesting at the second meeting that he had been ‘out of control’ (Field Notes) the week before but after working extended hours over the weekend, was now back under control. Noticeably, both partners were less forthcoming about their files than the more junior lawyers. Although the formal documentation of the firm which I had been shown did not divide the divisions up into sub-groups, they clearly operated as such in this case. This was however, the only group I observed operating with two partners. Single partner centred groups dominated Benefics Melbourne office.

During my period of shadowing Lisa I witnessed many examples of ‘ongoing conversations’ (Wenger 1998) involving Lisa and Stuart and Lisa and Justin. Lisa and Stuart were very busy at this time with a litigation matter that had been Frank’s before he left the firm. It was due to be heard within a couple of weeks after I began

---

13 At the time of my field work Jennifer was an associate working with Stephen in the Insolvency sub-specialism. She was subsequently made partner which would make this a second group operating around two partners but I had no opportunity to observe how this affected the dynamic.
to shadow Lisa (Field Notes). Several times a day Stuart would walk the few metres to Lisa’s door and raise a question, such as, ‘How is the chronology going?’ with no need to elaborate upon which matter. Sometimes Stuart would start a letter of advice or a file note of a client meeting and Lisa would check it and add to it as she thought fit and return it to Stuart to finalise. On other occasions the work would start with Lisa doing a draft, Stuart checking and amending, and Lisa finalising.

When Justin was away ill during my period of observation, Lisa crossed to his room and removed a file from his book shelf (Field Notes). She then made a few telephone calls and made some notes on the file. On his return they carried out a conversation across the corridor through their open doors relating to Lisa’s progress on the file. The conversation assumed knowledge of both what the matter was about and about the character of the client. Later that same day, Lisa crossed to his room and they discussed the applicability of several cases Lisa had been researching to another matter they were both working on. The conversation progressed straight to the cases, without a need to explain the context of the research. All these interactions suggested a thorough familiarity by both lawyers with particular shared matters.

Similar close working relations were evident in the group centred upon insolvency expert Stephen. At the time I interviewed him his wife had injured herself and was immobile meaning that Stephen needed to get his three older school aged children to primary school and his youngest child to childcare. Without some knowledge of what each of the other members of the team was doing it would have been very difficult for Stephen, if not impossible.
STEPHEN (Partner, Interview): In terms of managing a practice, really, really important to be conscious of ensuring that we all do work as a team. Break it down into files and some files [pause] I don’t have a practice where I’m running Bell Resources, where you do have a team, massive piece of litigation and you do need large teams of people on them. I’ve always wondered how I would do that. I think I’d be good at managing and overseeing it. Very different beast again. What I have is, I’ve got a team of: myself; senior associate, hopefully soon to be partner, Jennifer; Kurt, we made associate, which was a really good decision last year; Adam, Adam’s older than all of us, he came to it late in the piece; and we’ve now got a law clerk and Julia’s our administrative assistant. And that’s our team…. On Monday afternoon, we are a bit player in a Full Court appeal in the Family Court, yesterday morning I was just going to turn up to do it, but I found out Monday afternoon that it began at ten. And I thought, ‘there is no way on earth I am going to get to the office by ten o’clock, let alone to Court.’ So I rang Jennifer up and said, ‘Jennifer, what are you doing tomorrow morning?’ That would have been after three thirty ‘cos I was picking the kids up from school. And she said, ‘Nothing’ … Jennifer’s gone and said, ‘fine’….In terms of team work, knowing that I’ve got people like Jennifer there to hold my back when things like this happen, and she’s been great, all of them have been.

Not all partners let others into their matters to the same extent. James, for example, tended to delegate discrete issues.

LISA (Graduate, Second Interview): James’s very private with his work and he only shares what he wants to share and when he needs help, so it’s really hard to tell. Whereas Stuart and Frank are a bit more open and they’ll say, you know, ‘We got this good result’ or ‘We could have done this better’ or ‘The client’s going to be upset with this.’

Helen’s supervising partner, Richard, also needed prompting to let Helen into the wider picture of his matters.

HELEN (graduate, Second Interview): …He’s good at delegating work. I think it’s one thing he does very well, but I think on the other side of that, with the delegation, he does sort of neglect, and I spoke about this in my review with him, is sort of being involved in the whole matter in regards to being involved from start to finish rather than just, ‘Can you do this one thing from this file’, which I know will happen a lot but it would be nice on just a few of the matters to see it through, even if I can’t charge my time for a lot of it. I’d still like to be involved in it just so I can see how it works with the clients, how he talks to the clients, where the next stages go from, because a lot of the time we have so much going on there might be so many things happening, that I might do something. I never see it go to the client, I never see the client’s response and then two steps down the track all of a sudden something will
come back to me and then it’s a matter of catch up with the file, hoping it’s all on there, wondering why he may, you know, you can always read a file, but if you’re involved you can sort of see why he made the decisions he did and how it actually occurred to the clients.

I did not observe ‘ongoing conversations’ in larger groupings such as the specialist divisions as a whole or amongst members of the same hierarchical level, but my ability to observe these was limited. For example, I did not have access to partnership meetings, where I would expect to see these dynamics in action. The ‘ongoing conversations’ I did observe suggest that some, but not all, partner centred groups may operate as communities of practice.

*Substantial Overlap in Participants’ Descriptions of Who Belongs*

Descriptions of who belonged to groups within the organisation were consistent. Roles were clearly delineated between lawyer and support staff as was the power structure of the firm. Admins, no matter how experienced and capable, would not undertake work unless instructed to do so by the lawyers they worked for. While the position of graduates in the hierarchy was ambiguous, probably at a level with the admins they sat alongside, the lowliest lawyer had the authority to instruct an admin. The progression from equal to superior that accompanied the graduates’ admission was not without problems, however, as reported by Helen (Graduate, Second Interview) in relation to a conflict she had with her admin around the time of her admission.

…some people say there’s an issue because all of a sudden you’re a lawyer. You’ve got more responsibility and she’s a power player and she wanted to dictate what was happening in my world instead of me asking her to do work. It was an interesting sort of time and I’ve had a lot of other people tell me since, you know, ‘You’re not the first one.’ Apparently it can be quite common.
The admins also recognised the difficult transition but attributed the conflicts to the new lawyers feeling the need to exert their newly acquired authority, something they believed lawyers with more experience did not feel the need to do.

MANDY (Admin, Interview): …it’s really only the younger lawyers who change things.
INTERVIEWER: Really? That’s an interesting observation.
MANDY: Yeah, they seem to think that they need to put their stamp on it.
INTERVIEWER: So it’s a power and authority thing.
MANDY: I think so.

There were many artefacts which set out or these reinforced group structures. One of the first things Philippa showed the graduates at the induction was an organisation chart of the professional structure of Benefics showing the equity partners at the top, Chairman, Managing Partner and COO on the next level and the named Heads of Division below the Managing Partner on the third level. The location of each person was colour coded: blue for the largest office; red for Melbourne; orange for the smallest office; and pink for the Home Office. Another chart showed the hierarchy and state office locations of the shared services staff including library, IT and HR. Thus the distinctions between the state offices, between specialist divisions and between professional and support staff were clearly set out.

In the Melbourne Office, the physical layout of the floor reinforced similar divisions. Support staff (along with law clerks and graduates before admission) sat at partitioned desks in corridors, while professional staff had offices. Different specialist divisions occupied different walls of the building. Artefacts such as the telephone list found on every desk also distinguished similar groups. In the first column, fee earners were listed by hierarchical level, separating out under bold headings partners from senior associates, associates, lawyers, graduates and last, a
sole paralegal who worked in the property division. After each fee earner’s name was their specialist division and then the name of their admin. A second column gave the names and telephone extension numbers of management and administrative support staff and for conference and other non-occupied rooms. Also listed in this column were the national library manager and the part-time business development staff member. In this way the major groupings within Benefics’ Melbourne office were set out and populated: Lawyers, their number cut and sliced according to hierarchical level and also by specialist division; and then support staff divided into admins and other shared services.

*Shared Discourse Reflecting a Certain Perspective on the World*

Sitting in the corridor while I was shadowing Lisa, I heard Stuart discussing how he had spent a considerable proportion of the last two weekends in the office to get on top of his workload (Field Notes). That same day he asked Lisa to attend a networking event that began at 6.30 pm and would likely go until 8.30 pm (Field Notes) and as Lisa was currently living nearly an hour away by train this would mean a very late night. She acquiesced without demur, despite the fact that she had been in by 7.30 that morning. Several lawyers, including Lisa and Martin, had packets of breakfast cereal on their bookshelves and would eat breakfast at their desks. All these behaviours point to a common belief about the time commitment needed to succeed in the job.

In contrast admins started at 8.30 am and left at 5.00 pm (Field Notes). On very rare occasions a partner would ask their admin to stay behind to assist with an urgent matter, yet they were reluctant to make that request. Shared services were also
strictly 8.30 am to 5.00 pm and were never in my experience asked to stay behind.

William, as COO worked hours similar to, if not greater than most of the lawyers (William, COO, Interview) and Veronica, as office manager, also put in extra hours (Veronica, Office Manager, Interview) but not as many as William. In this respect, William and Veronica stood apart from other non-fee earning staff members. These different attitudes to time and commitment indicate different world views.

Both fee earners and support staff seemed to share some views. One example of apparently shared world view is in relation to the need for clients to be carefully managed, that they were almost a necessary evil. Several partners lamented the lack of loyalty of clients and the need to be constantly on your toes to meet client expectations.

RICHARD (Partner, Interview): Look, it’s a difficult profession. It’s not an easy way to make a buck. There’s lots of easier ways to do it. That hits you at some point when you realise it’s constantly demanding, you know, clients are demanding and there’s no escaping that. There would be few lawyers who can afford to turn away clients but most of us don’t know where our next client is coming from so we’re constantly on edge.

STEPHEN (Partner, Interview): I think it’s easy to lose that tactical sharpness and clients recognise that. They realise that somebody’s not on top of their game and they’ll move on. Client loyalty is almost non-existent. You’re as good as your last case these days. The old days, you know like Mr Rumpole of the Bailey had the Timpson family forever, I mean those days are pretty much gone. If you muck up a case you’ve pretty well lost a client, so it’s difficult to retain client loyalty. It’s a huge issue and it’s a generation Y, it’s progressively become a generation Y thing where people just move on. You’re a passing fancy until they find something fancier and you’re out of the game.

On the first day of induction, Alice expressly placed herself, and by implication other support staff, alongside the fee earners by identifying clients as a common ‘enemy’. She stated (Field Notes, Day 1 of Induction), ‘You know what clients are
like. They will go through the bill with a fine toothed comb.\textsuperscript{14} Attitudes to time and work ethic suggest a clear distinction between professional staff and support staff. Yet the firm seemed united in their attitude to clients as a group.

\textit{The Ability to Assess the Appropriateness of Actions and Products}

When the graduates commenced at Benefics there were many unknowns to them. While they all had law degrees they were unsure of the extent to which this would help them do the job of lawyer. They were also moving from being predominantly students to being Benefics lawyers and even those who had been law clerks at Benefics needed to discover what this meant in practice. In their first interviews, when they had only been full time employees for a very brief time, several expressed uncertainty as to what behaviours were acceptable. Kate for example, had a tattoo on her shoulder which would be visible in a sleeveless top. Aware that some people disapprove of tattoos but unaware of how the firm, and particularly her supervising partner, viewed them, she wanted to keep the tattoo a secret. Her anxiety was sufficiently high that she asked that the tape be turned off while we discussed her concerns (Field Notes). However, as time went on she became more comfortable with what was acceptable. I asked her about it in her second interview a year later.

\textsc{INTERVIEWER:} There’s one other thing I’ve made a note of. You made particular reference about being a little concerned about casual Friday because of a certain bit of body art.

\textsc{KATE (Graduate, Second Interview):} Oh yeah. No. It’s been fine. I mean, I have been pretty conservative, like with dressing, but then, ‘cos me and some of the other girls do running, so we run to The Tan maybe once a week or twice a week, so you’re going to, so like the partners and that would see it. You obviously can’t run with massive long shirts so that was too bad.

\textsc{INTERVIEWER:} So it’s out there and they’re ok with it.

\textsuperscript{14} The attitude was reserved for discussion of clients as an abstract class and not demonstrated when clients visited the firm or apparent in conversations about specific clients (Field Notes). Specific clients were treated as individuals with individual traits and personalities, some of whom were pleasant and some difficult.
KATE: Yeah, they’re ok with it. Or whether or not they’re ok with it they haven’t directly commented.

The graduates did not understand how their competence was measured:

INTERVIEWER: What’s most challenging in your learning to be a competent solicitor?
PAUL (Graduate, First Interview): What’s most challenging? Just knowing what, just knowing where I should be at, what I should be doing, if I’m meeting the learning curve, you know, just not having a structure. You know [at University], you have an assignment, you do it, you get a mark, and then you say hey, I’m good at, you know, so and so but I’m crap at that. So, you know what bits to work at whereas here you know, there’s not that kind of clear line of feedback and communication really.

The graduates also had little to go on to judge the competence of the more senior levels, save the expressed opinions of others. For example, Matt justified his judgement of his supervising partner upon the partner’s own demeanour and an award he was to receive.

INTERVIEWER: Can I just ask you, how do you judge that he’s a very, very good lawyer?
MATT (Graduate, Interview): Just from the way that I suppose clients deal with him and the thing is when he provides his advice, he’s very, he’s somewhat direct but it’s still well received by the client. And also he’s, I think he’s about to receive an award. Please keep that quiet. He’s about to be named as one of the best insolvency lawyers in Australia. It hasn’t been announced just yet.

By the time they make partner what amounts to acceptable behaviour for a lawyer has been internalised to the extent that judgements of competence appear to be made intuitively.

FRANK (Partner, Interview): …It’s almost an instinctive thing with lawyers as to how competent someone else is. I know it’s been said truly that the only way you can prove something is to measure it. I know there should be better measuring sticks of competence. Unfortunately most law firms deal with competence as in billable hour, bills written, costs written off, writing off is when you can’t justify a certain cost. Unfortunately, like most firms, this firm uses that as a performance measure. There are performance appraisals. But I think, apart from the simplistic, which are those measures I have just said, there is also an instinctive understanding of particularly younger lawyers, and I
suppose you’re talking about younger lawyers here. But how competence is measured in senior lawyers, look you just know.

Admins also had opinions about what attributes made a good lawyer, yet the assessment of a good lawyer was very much based upon how they made the admin’s job easier.

INTERVIEWER: What would you consider to be some of the characteristics of a good lawyer? ...
MANDY (Admin, Interview): Someone who doesn’t get flustered, someone who doesn’t hang around like a bad smell, you know.
INTERVIEWER: Looking over your shoulder
MANDY: Yeah, just go away. I’ll give it to you when it’s ready. It’s certainly not going to get done with you hovering. And someone who can dictate precisely instead of just, oh, so many people cannot dictate. It’s appalling. Absolutely appalling. There should be dictation skills. You know, men, they should attend dictation skills classes.

Admins also tended to accept a confident demeanour as a hallmark of competence.

INTERVIEWER: …In your opinion what characteristics does a good lawyer possess?
ROBYN (Admin, Interview): Has to know his stuff, has to know his law, has to be confident in what they know I think, knowledge of law. I think confidence plays a heap, in their own, like in the advice they’re giving or what they’re drafting, I think. If they’ve got that confidence that they know exactly what they want to do and they just spit it out…

While admins and graduates assessed the competence of the more senior lawyers based at least in part upon the senior lawyer’s own assessment reflected in their manner, the ability of the lawyers to assess competence progressed, so that by the time they were partners it was intuitive. ‘You just know’ suggests an internalisation of the markers of competence, an insider’s assessment of practice, whereas the assessment by admins remained that of an outsider.
Boundaries within Benefics

Given the ease of identifying eight of Wenger’s (1998) indicators, I am confident that communities of practice exist within Benefics. To determine how many communities of practice exist and how they are related to each other, however, requires that the boundaries of the communities of practice be identified. The picture to this point is confusing. In some respects, the whole Melbourne office is a joint enterprise, with shared stories and common tools. Everybody knows what everybody else knows. However, the world views of the professional staff are quite distinct from the support staff. They even dress differently so that at a glance admins are distinguishable from the lawyers for whom they work. Yet even amongst the professional staff there are barriers, as specialisations respond to their different contexts and partner centred groups distrust the precedents of others.

The literature makes several points about the extent of communities of practice. First, and by definition, they must involve a joint enterprise (Wenger 1998) making it unlikely that large collectives, such as professions, will be a community of practice, but not excluding the possibility that the whole of the Melbourne firm may operate as a single community. Brown and Duguid (1991, 2001) suggest that a single community of practice is unlikely in all but the smallest of organisations, yet the existence of a joint enterprise does not draw a clear boundary. Brown and Duguid (1991) state that it is epistemic difference that creates boundaries as it renders participation in the practice of the community by outsiders impossible. Yet this also leaves a confusing picture. Clearly, novice newcomers do not possess much of the knowledge that marks competent members of the community, yet it is nonsensical to place them outside the community boundary. More is needed. The
above boundary markers have an appearance of objectivity, yet the knowledge that
gives rise to epistemic difference is situated in time and place, negotiated by the
members of the community as they participate in the practice. That is, the
knowledge is subjective. It follows that the boundary also will be subjective.

What one believes to be good practice and true knowledge is tied to who one is.
Communities of practice affect who one is through the increasing identification that
accompanies mastery of practice (Lave & Wenger 1991; Wenger 1998). Without
some level of identification with the community of practice one cannot enter into
legitimate peripheral participation at all. Full participation involves acceptance of
the community’s unique world views as well as rejection of the conflicting world
views of outsiders, whether at a conscious level or not. That is not to say that there
must be total unanimity within the community of practice (Nicolini 2012). Identity
involves both a personal aspect (Who am I?) and a social aspect (Who are we?). The
complexity of identity allows for significant personal variation while still accepting
social alignment (Ashforth, Harrison & Corley 2008).

Ashforth, Harrison and Corley (2008, p. 326) state that ‘every entity needs to have a
sense of who or what it is, who or what other entities are, and how the entities are
associated. Identities situate entities such that individuals have a sense of the social
landscape, and identification embeds the individual in the relevant identities.’ Social
identities distinguish between groups (Ashforth, Harrison & Corley 2008) as
members of a social group develop an understanding of who they are and evaluate
themselves against other social groups. Applied to communities of practice,
mutually defining identities are both an indicator of the existence of a community of practice (Partnership Act 1958) and bound the practice.

Social identity enables a clear boundary to be drawn between admins and lawyers. Despite physical markers, such as being located at desks in the corridors alongside admins, the graduates identify as lawyers. As soon as possible they grasp a significant marker of this membership through attaining an office. Artefacts such as phone lists and the physical layout of the firm and different styles of dress both flow from and reinforce the distinction. Further, members of the professional staff have different perspectives on time and commitment, different ethical obligations and have different understandings of what is competent action by lawyers. While professional and support staff work cooperatively ‘the knowledge, technology of practice and the culture of that practice’ (Gherardi, Nicolini & Odella 1998, p. 278) relating to each group are distinct creating discontinuities between them.

Further, support staff including the librarian, IT technicians, human resource personnel, receptionist, accounts and the mail room staff appear distinct from the admins, although whether they together form a separate community of practice, several communities of practice or operated as individuals, is beyond the scope of the data I have collected. A preliminary map of the communities of practice within Benefics might therefore resemble Figure 4.1 below.
That admins, support staff and professionals belong to distinct communities of practice sits comfortably with the many works on communities of practice that utilise organisational functional groupings. For example, Wenger’s (1998) vignettes which focus upon the claims processing department as a community of practice and Gherardi and Nicolini’s (2000) discussion of safety engineers and site managers as separate communities of practice. Brown and Duguid (1991) illustrate their work with the photocopier service technicians of Orr’s (1996) ethnographic work.

At Benefics the boundaries between support staff and professionals are strongly drawn by the mutually defining identities of the members of each of these groups. However, there are a few examples of where the boundary is more blurred: in
relation to Lisa (who was an administrative assistant at another firm before she
studied to became a lawyer), who early in her time at Benefics struggled with
making the shift in identification from one community to the other; in relation to
William, the COO, whose technology and culture of practice is more aligned to the
lawyers than the non-lawyers in the firm; and in relation to the lone firm paralegal
who appears to fit in neither community of practice but sit at the periphery of both.

The situation is more complex in relation to what communities of practice exist in
relation to the professional staff and where the boundaries lie between them. In
some respects the knowledge and practice of all lawyers at Benefics are the same,
notably in relation to professional ethics. Lawyers have privileges under the HR
policies not open to non-lawyers. They sit in offices and not corridors. However, in
other respects the specialist divisions are distinct from each other. In the same way
that the floor layout distinguishes support staff from fee earners, the layout
reinforces the distinction between specialist divisions, as each is clustered along their
own wall of the floor. Apart from the technical details of the law in which they
specialise, the divisions also differ in the extent to which matters are transaction
based, the extent to which the different specialists have control over the timing of
matters and the certainty of outcome of their work. Their relationship to the Courts
is also different, with the Corporations and Property divisions seeking to stay out of
Court and Dispute Resolution dealing with the Courts on a daily basis. Such
differences have led to cultural differences in relation to dress, file opening and time
recording. In yet other respects many of the lawyers are members of small, partner-
centred work groups. The sustained relationships in the firm are most intimate in
these groups. They typically have their own precedents which they prefer over
others produced elsewhere in the firm and also tend to have distinctive styles of expression reflecting the preferences of the partner at the centre.

Such possible communities of practice draw to mind the nested nature of organisational identity discussed by authors such as Ashforth, Harrison and Corley (2008). Organisational identities may adhere in roles or in collectives (Ashforth, Harrison & Corley 2008); that is, members of Benefics may identify as lawyers and as members of particular discipline and specialist groups. Organisational identities may also involve several levels of the organisation, such as project group, department and organisation (Ashforth, Rogers & Corley 2011). ‘The notion of nested identities suggests that individuals have levels of self in organizations, ranging from lower level identities such as one’s workgroup and department to higher level identities such as one’s organization and industry’ (Ashforth, Harrison & Corley 2008, pp.347-348). Consistent with social identification theory, the salience of a particular nested identity will vary with the context (Ashforth, Harrison & Corley 2008) and some identifications will be stronger than others. Ashforth, Harrison and Corley (2008) conclude that lower order identifications, such as work groups (or at Benefics the partner-centred communities of practice) tend to be strongest, when compared to higher order identifications with departments (Benefics’ specialist divisions) or the organisation (Benefics). This is consistent with the responses of interviewees who unfailingly identified their supervising partner as the most influential in their learning to be a lawyer, and this was independent of whether the graduates felt they had a good relationship with their supervising partner or not.
The boundaries of organisational identification, and I suggest communities of practice at Benefics, solidify and dissolve depending upon the salient identity of the individual, which in turn is affected by the social and material cues of the context (Ashforth, Rogers & Corley 2011). At the lowest level, and therefore likely to be the strongest identification, are the partner-centred groups. Several partner-centred groups exist in each specialist division which themselves are nested within the community that encompasses all lawyers at Benefics. Thus Benefics professional staff may be mapped as set out in Figure 4.2.

Figure 4.2 Professional Staff Communities of Practice

Benefics Melbourne operates with three broad specialist divisions. The sizes of the specialist divisions differ as do the sizes of the partnered centred groups within them.
Some partner-centred teams have associates, junior lawyers and graduates but some have only one or two other lawyers. Not all partners generate communities of practice around them. Some do not seek to have graduates or junior solicitors work with them. For example, Gary, Paul’s supervising partner had never before had a graduate work under him (Philippa, HR Manager, Interview). Others, for example James, tend not to share adequate details of their practice to generate a shared practice (Lisa, Graduate, Second Interview).

The position of the partners raises the question of whether they form a distinct community of practice or stand out only as the most expert members of the nested professional communities of practice. The partners at Benefics, particularly the equity partners who are owners of the firm, are responsible for the firm’s governance (Greenwood & Empson 2003), a role not held by other professional members of the firm. This is further emphasised by a competency framework generated by the HR Managers of the Head Office and the largest office, and accepted by the firm after the completion of my field work. The framework specifies that the core value of partners in relation to people and in relation to financial issues are as follows:

Our people competencies will attract and retain the best people Partners are leaders and live the values of the firm. They develop others through coaching, mentoring and effective performance management. They seek to understand the unique contribution that each member of the team can make and help align team members, division and firm goals.

Our financial competencies will drive resilience and profitability. Partners plan for the firm's future and engage colleagues in their thinking. By managing financial performance and risks, they contribute to the long-term resilience, profitability and reputation of the firm. They comply with firm processes and systems to drive consistency and ensure that others comply.
The corresponding values for associates and lawyers (who share a competency framework suggesting that the practice of associates is not different in nature but only in skill level to that of other lawyers in the firm) is as follows:

Our people competencies will attract and retain the best people. **Lawyers & Associates** are highly valued contributors to their team. They willingly accept responsibility and help others when required. They start to develop clarity about career goals and areas of professional focus.

Our financial competencies will drive resilience and profitability. **Lawyers & Associates** support the firm by complying with its systems and processes. They focus on personal financial accountability, efficient work management and supporting risk and file management procedures.

Partners ‘lead’ where lawyers ‘contribute’. Partners ‘plan’ where lawyers ‘comply’.

Further, when partners had questions about their work they typically took them to other partners.

**INTERVIEWER:** Are there certain go to people if you have a problem.

**STEPHEN:** Yeah. Here at the moment I suppose would be Dennis, one of the senior lawyers, older guys here, the older partners.

**INTERVIEWER:** Mmm, I’ve met Dennis.

**STEPHEN:** Dennis’s a good guy and I’d always have a chat to him. Peter, Dennis and I all started within a month of each other here at the firm. I think they were in January, and, a couple of months I think, because I was in October. And Peter and I are about the same age as well, not dissimilar backgrounds.

**RICHARD:** There’s probably one colleague in our corporate division, because there’s a little bit of overlap in the work that we do. He’s the kind of partner I’d walk into most days and say, ‘Look, I just want to bounce this off you. Am I missing something terribly here? I’m going to advise a client this and do you think I’m missing something major?’ I value his, just because I think he’s got the practice that’s closest to mine. He’s been around a little bit longer than I have so he’s kind of a high level big picture kind of guy, and probably a more detail kind of guy. He probably grounds me sometimes. He’ll say, ‘You’re worried about point A here, but what about point B. You haven’t really talked about that in your advice.’ He’s good. There’s another even more senior lawyer than that here, who I’ve said to him, that if I can convince you of my legal argument here I’m sure I can convince another lawyer or judge. Just because he’s been around for a long time. He’s a very thorough legal mind. So they’d be probably two people in particular.
That partners do distinct things in addition to the legal work that all lawyers do, and that they learn these things from other partners, suggest that they form a separate community of practice, co-existent with the practice groups in which they are the most experienced practitioners. The overlapping of communities of practice in organisations is described by Wenger (1998) who gives the example of managers, simultaneously members of their department and members of the community of managers. In fact, Wenger (1998) sees such multi-membership as an important means by which new knowledge may enter a community of practice.

While Cox (2005) suggests that modern management practices may render communities of practice in organisations rare, a review of the existence of communities of practice at Benefics actually suggests that they are prevalent. The professional staff are likely to belong to several nested communities from small practice groups centred on a single partner, to specialist divisions and, the largest community encompassing all lawyers at Benefics. Admins also appear to form a separate community of practice as do partners. While other support staff such as accounts staff, reception, IT, HR and librarians are outside these communities I am unable to determine on the data I have collected whether other communities of practice exist in relation to these staff members. To understand how knowledge is learned and used within Benefics it is now necessary to consider the relationships between these communities of practice within the firm. The next section will consider the interdependence between communities of practice which determines the need, if any, for knowledge to move between communities of practice and the extent of common knowledge required for collaboration.
Relationships between Communities of Practice

In the literature review, I discussed how the interdependence of communities of practice could be described using Thompson’s (1967) typology (and see also, Lemak & Reed 2000, applying Thompson's typology to service organisations). Given the nested nature of the professional communities of practice I will first discuss the interdependence between the partner-centred groups, as these are the lowest level and therefore most likely to be the salient communities of practice from day to day (Ashforth, Harrison & Corley 2008). I will then turn to the relationships within and between specialisms. Last I will look at the nature of the interdependence between professional communities of practice and others at Benefics.

Partner-centred groups at Benefics vary in the extent to which their work overlaps with that of other partner-centred groups. For example, within the corporate division one partner-centred group deals exclusively with intellectual property matters and another with insolvency matters. No insolvency work or intellectual property work is undertaken except by these teams. It follows that technical legal knowledge in relation to these specialisms is not needed by any other lawyers in the firm and, while the work they do benefits the firm through contributing to its profits, there is little or no value to the firm (at least in the short term) in the wider dissemination of the specialist knowledge. Such specialisms therefore exhibit a pooled interdependence (Lemak & Reed 2000; Thompson 1967). Even where partner-centred groups have work that potentially overlaps more extensively, for example in dispute resolution where the knowledge of Court procedures is common to multiple partner-centred groups, the preference that partners have for their own style and precedents means that these groups tend also to exhibit pooled interdependence.
That is, even though the sharing of knowledge across partner-centred groups could be valuable, it does not systematically take place. Richard (Partner, Interview) discussed this phenomenon, which he saw as related to the complexity of the law.

RICHARD: …The problem with the very decentralised, every partner is his own, his or her own little business, it’s highly inefficient. Learnings are learned at an individual level and they are not necessarily communicated and passed on, and, you know, the other extreme of these very good corporate memory type models where you’re all sort of brain cells in one big brain and learnings and experiences are sort of transparently shared among the whole organisation, sort of utopian ideal.
INTERVIEWER: Sounds good but I don’t know how you implement it in a legal firm.
RICHARD: No. Legal firms are very difficult. I mean you can see it in other companies in other areas that sell other products, you can see how they do that. But it’s extremely complicated. There’s ways you do it but they are all highly inefficient in some ways. I mean you get someone to share a great deal or a great case, you know, tell everyone around lunch time, you share the experiences. Those sort of things, and people teach each other as part of CLE [continuing legal education], share everything I know about wills for example, and therefore the knowledge is disseminated but it’s all imperfect ways of doing that. And that’s why lawyers are paid more than car mechanics, because what we do is complex and difficult and can’t be summarised on a little manual that you hang up on the garage wall for the next mechanic to come and reproduce next time a car comes in with the same fault.
INTERVIEWER: Or passed on over lunch in an hour.
RICHARD: In an hour. Just the mass, the quantity of knowledge, the complexity of the knowledge, tends to unfortunately, or fortunately depending on what way you look at it, it sits in individual people’s heads or individual group’s heads. It’s not so easy to disseminate and pass on.…

As Richard recognised, working in isolation is not the only way it could be done. It is a choice that feels inevitable to those within the practice. The pooled interdependence between communities of practice is even more entrenched between specialist divisions, reinforced as it is by organisational charts, floor plan and phone lists. However, occasionally individual partners and their teams may be members of two specialist divisions, a situation that typically arose for historical reasons. The Melbourne office, being quite young, had grown through the grafting on of the
practices of lawyers who transferred in from other firms as partners (Philippa, Day 2 of Induction, Field Notes; William, COO, Interview). It was expected that partners would bring with them their existing client base. Some partners came with a practice that fitted neatly within a single specialist division at Benefics, for example Tim who brought in his intellectual property practice and Stephen who brought in his insolvency practice (together with his associate, Jennifer, and his admin (Field Notes)). Frank, in contrast, had a more eclectic practice, and while he was officially within the corporate division, he maintained a small litigation practice which sometimes involved minor criminal matters. Lisa had been working on one such file with him (Field Notes) and when Frank left the firm Stuart inherited it. Frank’s multi-membership does not negate the pooled interdependence of the specialist divisions, but rather illustrates how entrenched the separation of specialism is, as when Frank left, his litigation matters were assigned not to another corporations lawyer, but to a partner in dispute resolution.

In contrast to the relationship between partner-centred groups, the relationship between lawyers, their admins and other support staff is intensive (Lemak & Reed 2000; Thompson 1967). Matters come into the firm, often through the efforts of partners (as the generation of work is an expected role of partners and central to the promotion aspirations of senior associates (Competency Framework)). Depending on their complexity (and the work load of the lawyer who generated the work), they may be allocated to a more junior lawyer or a more junior lawyer may be brought on board to undertake some of the more mundane aspects of the matter. The responsible lawyer’s admin will open the file completing all the required details and checks. The responsible lawyer will undertake research, draft documents and letters,
and communicate with the client, or may delegate some or all of these to other
lawyers or their admin. Accounts staff will issue regular bills unless other
arrangements have been made at the time the matter was commenced.

In order to coordinate these activities information must flow across the boundaries of
the communities of practice. Such communication flow is easily achieved in relation
to lawyers and accounts staff through simple boundary objects (Star & Griesemer
1989; Wenger 1998). According to standard operating procedures, the accounts staff
generate bills based upon the time and disbursements entered onto the system. The
bills in draft form are sent to the relevant partner who may modify the bill and then
authorises the modified bill to be sent out. The file management system and draft
bills adequately communicate all the required information with merely a shared

Boundary objects are also important to the coordination of the activities of lawyers
and their admins. Such boundary objects may be precedents, standard Court forms
or dictated letters or documents. However, the admin must have a higher awareness
of the meaning contained in the boundary object than is necessary for accounts staff,
but short of requiring them to know the ins and outs of the law. That is, between
lawyers and admins there is a semantic boundary (Carlile 2002, 2004).
Understanding develops over time as the two communities work together creating a
pool of knowledge that sustains coordination of activities in the absence of
architectural change (Henderson & Clark 1990). Most, if not all the changes that
affect the content of the law, be they statutory or case law, do not amount to
architectural change as they affect ‘the widget’ not how ‘the widget’ fits into the flow of producing the organisation’s product.

**Conclusion**

The communities of practice within Benefics form a complex map, with boundaries defined by practice, knowledge and identity. Lawyers exist in nested communities, which may be as wide as all the lawyers in the firm or as narrow as a partner-centred group within a specialist division, cued by the salient identity operative at the time. As the lowest level organisational identity tends to be the strongest (Ashforth, Rogers & Corley 2011), the partner-centred groups are likely to be the dominant communities of practice day to day. There is rarely a need for specialist knowledge to cross the boundary into another partner-centred group due to the pooled interdependence of the specialisms. Where the salient identity is that of a wider specialist division or even all lawyers at Benefics then boundaries dissolve and knowledge can be expected to flow easily.

The next chapter will consider what is learned within communities of practice, considering the tension between production and reproduction within them. Chapter 6 will address, when knowledge is required to cross community of practice boundaries, how this takes place.
Chapter 4 looked at the existence of communities of practice at Benefics, their boundaries and how the communities of practice are related to each other (Research Questions 1, 3 and 5). It suggested that professional staff at Benefics exist within nested communities of practice, delineated by their nested organisational identification as lawyers, specialist lawyers and members of partner-centred practice groups. The strongest identification is typically the lowest level and therefore the most influential community of practice will be the partner-centred group. This chapter will examine at Research Questions 2: ‘What is being learned in the communities of practice?’ The focus here is upon what is happening within single communities. The chapter will pay particular attention to the partner-centred groups as these relate to the strongest level of organisational identification (Ashforth, Rogers & Corley 2011) and are therefore most likely to be salient. I will present four vignettes relating to the learning experiences of four of the graduates. I will then compare and contrast their experiences and learning. The differences and similarities between the experiences highlight respectively micro and macro aspects of learning at Benefics which each point to factors that impact the balance of production and reproduction of knowledge within the firm. On a micro level, what the newcomer learns in a community of practice is shaped by the situated curriculum. I will therefore pay particular attention to how difference arises in respect to the situated curriculum of newcomers to the practice of law and, in turn, how this relates to what knowledge is perpetuated within the firm. On a macro level I will address the power structures within Benefics, a professional partnership as are
the majority of law firms in Australia, demonstrating how such structures favour reproduction of both technical and aesthetic knowledge.

Four Vignettes

Context of Vignettes

Five graduates began their graduate year at Benefics in 2009. I will describe the experiences of four of them, as presenting contrasting experiences: Lisa; Kate; Paul and Helen. I have chosen not to present Jane’s experience in vignette for two reasons. First, while unique in its entirety, her story shares major elements with each of the others and therefore would not add significantly to the insights to be drawn. Second, Jane left the firm to take up an associateship before the second interviews were conducted, and the influence of Benefics in her learning was obscured by her subsequent experiences as Judge’s associate.

The experience of the graduates at Benefics is significantly shaped by specialisation and particularly the partner-centred group into which they are employed. The decision about which graduates should be hired by Benefics and to which partner they will be assigned is based upon the deliberations of the interviewing panel (Philippa, HR Manager, Interview) and informed by the requests of partners for graduate assistance. The Melbourne office interview panel is typically made up of Philippa, Malcolm (a senior partner from the largest office who had, several years earlier, had sole control of the interview process) and another partner from the Melbourne office on a rotating basis (Field Notes; Philippa, HR Manager, Interview). Philippa explained (Interview) that Malcolm typically looked for legal knowledge and interest in relevant legal specialisations when evaluating candidates.
However, the Human Resource Department was, she said, slowly bringing the firm around to the understanding that matching the graduate to their supervising partner temperamentally was equally important to the success of the graduate year.

Depending upon the size of the specialist division and the size of the partner-centred group there may or may not be other partners or mid-level lawyers that a graduate might call upon should their supervising partner be unavailable (or unapproachable). Another obvious variable in the graduates’ experiences is their backgrounds. As mentioned in the literature review, the number of universities offering degrees in law has grown significantly and with it the number of places (Thornton 2012). This in turn has led to a widening of the social base of students (Bagust 2012; Larcombe & Malkin 2011), including more women and those entering law as a second career. The graduates at Benefics in 2009 reflect this increasing diversity. Four of the five graduates were women and interestingly, only one came straight from secondary school, to university and then into legal practice, three of the others having had prior careers and one taking a year as a judges associate between graduating and entering Benefics.

Table 5.1 sets out the work experience of the graduates featured in each vignette, the specialist division for which they expressed a preference and the specialist division to which they were appointed. It also shows the other lawyers within the specialism and in the same partner centred group who may act as models or supply information by which the graduate may pick up the practice of the community.
The four vignettes follow. Each will touch upon the graduate’s background, the sorts of tasks they were required to undertake, the relationship they had with their supervising partner and other lawyers significant to their learning, and aspects of their approach to their graduate year which affected their learning or the learning of their community of practice.
Table 5.1 Graduates’ Learning Resources

<table>
<thead>
<tr>
<th>Graduate</th>
<th>Lisa</th>
<th>Kate</th>
<th>Paul</th>
<th>Helen</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prior Career</td>
<td>Legal secretary</td>
<td>Nil</td>
<td>Nil</td>
<td>Hospitality (full time); publishing; media-researcher; internship at SBS</td>
</tr>
<tr>
<td>Other work experience</td>
<td>Nil</td>
<td>Judges Associate (Supreme Court); volunteer legal work; seasonal clerkships</td>
<td>Hospitality (part-time)</td>
<td>Volunteer legal work</td>
</tr>
<tr>
<td>Preferred specialisation before commencement</td>
<td>Dispute resolution</td>
<td>Dispute resolution</td>
<td>None stated</td>
<td>None stated</td>
</tr>
<tr>
<td>Specialist division at Benefics</td>
<td>Dispute resolution</td>
<td>Corporations</td>
<td>Property</td>
<td>Intellectual property (within Corporations division)</td>
</tr>
<tr>
<td>Partners in specialist division</td>
<td>4 (male)</td>
<td>3 (male)</td>
<td>2 (male)</td>
<td>1 (male)</td>
</tr>
<tr>
<td>Mid-level lawyers in specialist division</td>
<td>8 (3 female, 5 male)</td>
<td>2 (1 female, 1 male)</td>
<td>2 (1 female, 1 male) plus paralegal (female)</td>
<td>1 (female)</td>
</tr>
<tr>
<td>Mid-level lawyers working with supervising partner</td>
<td>2 (male)</td>
<td>0</td>
<td>0</td>
<td>1 (female)</td>
</tr>
</tbody>
</table>

Sources: Graduates’ first interviews; Benefics’ organisational chart; Benefics’ telephone listing

Lisa

Lisa (Graduate, First Interview) began her working life as a legal secretary at another Melbourne firm. She had always wanted to study law but failed to achieve the necessary marks straight out of high school so instead did a business degree and then started work in a legal firm. She was quickly promoted from office junior to accounts clerk and then to administrative assistant. She moved to a second firm and
began working for a partner there as administrative assistant. This partner was very supportive of her part-time studies in law and a great assistance to her in passing the course with Honours. During her final year of study she left that firm and began working for Benefics as a law clerk.

In her year as a law clerk she worked mostly for James in Dispute Resolution. As a graduate, Lisa worked with three partners, James and Stuart in Dispute Resolution and Frank in the Corporations division. James’ work was overwhelmingly insurance related, much of it routine claims work, which he increasingly delegated to Lisa. Stuart’s practice was much more varied, both in relation to the clients and to the types of matter, although it was predominantly commercial litigation. Despite the formal specialist division to which Frank belonged, he had brought with him to Benefics quite a mixed practice that involved commercial law but also some litigation, including minor criminal matters. It was with the litigation matters that Lisa assisted Frank.

Working for three partners presented Lisa with challenges not faced by Paul, Helen and Kate. Whereas the others had little choice but to prioritise the work of their supervisor over any work they were asked to do by other partners or associates, Lisa had to make active choices in relation to whose matters she gave preference. In addition, whereas Paul, Helen and Kate could focus upon the idiosyncratic likes and dislikes of their supervisor, Lisa had three partners to please. On the other hand having three supervising partners could be seen as an advantage as it multiplied the experts upon whom she could call to answer questions. She therefore had more
opportunity to find a partner whose teaching style matched her learning preferences than did the graduates with a single supervisor.

Lisa attempted to exercise some control over the mix of work she received, with a strong preference for the type of work she received from Frank and a dislike of the work from James.

LISA (Graduate, Second Interview): I’d like to do more with Frank. I’m not really enjoying the insurance stuff with James, but until [pause].
INTERVIEWER: Is that the nature of the work or is that the nature of the supervisor?
LISA: It’s both. The insurance law I find nobody wants to help you. Some of these claims are three or four years old and you’re acting for the insurance company. No one cares.

As well as the three partners, Lisa regularly worked with Justin, a senior associate also in Stuart’s partner-centred group, who was designated as a mentor of the graduates from Lisa’s year (Field Notes, informal conversation with Lisa). Justin’s office was just across the corridor from Lisa’s and the doors were rarely closed. It was not uncommon for a question to be fired across the space, ‘Have you called client X?’ ‘Did you write that letter to Y?’ They worked together on several files and Lisa was quite comfortable, when Justin was not in his office, to enter the room and remove files she needed to work on. Justin also made himself available to discuss areas of law about which Lisa was uncertain, even when they related to matters other than ones upon which Lisa and he were working together. He was extremely approachable and willing to assist, but Lisa was also conscious of not abusing the privilege, aware that time Justin took with her might affect his ability to make his billing budget. In addition to Justin, Lisa could theoretically also go to Martin, another associate in the division, although she did not do so during the
period of time I shadowed her. Lisa was therefore quite fortunate in having several people at various levels who she could approach with questions.

By the commencement of my field work, Lisa was already running a number of insurance files herself, with minimal supervision from the responsible partner, James. The work was usually routine and the large quantity of similar work that came through Benefics meant that she could look through old files for answers to most questions. Should she need information she was able to contact the client directly (Lisa, Graduate, Second Interview). When unexpected or more complex issues arose on any of these files, James tended to take them back without including Lisa in their conclusion, therefore limiting her exposure to some of the more complex aspects of his practice.

LISA (Graduate, Second Interview): …the files I have with James, I run until he gets sort of frustrated, or the client will say, ‘What’s going on?’ or if all of a sudden it turns into larger than what we thought then he’ll just take it over, and won’t then work with me on it or include me in it, so I’ve found it very hard, I’m going to say I hate working with him.

Lisa would have loved to work more extensively with Frank, as the sort of work he generated matched her own practice aspirations.

LISA (Graduate, Second Interview): [Frank] gets a bit of litigation referrals, sort of very minor sort of criminal. You know, failure to lodge tax returns and overloaded trucks and stuff, which is in an area, I mean criminal interests me, so Frank gets me on those.
INTERVIEWER: We were always told that criminal was bit grubby so you don’t want to get involved.
LISA: No. Yeah, that’s what you’re told. Stuart’s very, ‘Oh, you don’t want to do criminal’, but that’s what interests me so I put my hand up for it.

Unfortunately for Lisa, Frank left the firm to pursue other opportunities, but she nevertheless retained a strong passion for litigation of a particular nature. Her single-mindedness was not universally seen as a strength. Kate for example,
acknowledged that there was some benefit in not having been placed immediately in her preferred specialisation and pointed to how Lisa’s one-eyed focus on litigation limited her exposure to other areas of law.

KATE (Graduate, Second Interview): Yeah so I didn’t get a spot in litigation. I’m hoping that’ll free up at the end of the year. I think, my partner, which I think is right, that you need to have a commercial grounding to do well at litigation, so that’s what I’d like to do. And I also think this year has made it quite clear that I lack commercial acumen. I’ve never worked at banks, I’ve never had a commerce background or anything like that, so if they go, ‘Call the bank and make sure we’ve got all the loan documents’, I’m sort of ‘What are they?’ I’ve never taken out a loan, so just those really basic things, that’s just an experience thing, it’s better to get it in commercial and move it over, ‘cos you’ll be able to apply it…. I think they should have rotated us. They took that away. They used to always rotate. We’re the first year that hasn’t because of the College of Law. Or that’s what we’re being told. But then people like Lisa, I don’t think she would have wanted to rotate. You know, she’d go, ‘I do litigation. I want to do litigation.’ I don’t know that that’s a good mind set to have early on.

Lisa also undertook litigation work with Stuart. Her work with Stuart often involved working with facts, distilling down complex narratives into Court friendly detail. For example, in relation to a minor criminal matter which Stuart inherited from Frank when Frank left the firm, Lisa spent a few days going over hand written logs from the client and producing a chronology for use in Court (Field Notes). On another matter Stuart and Lisa together attended a client meeting which lasted several hours. Stuart then charged Lisa with the task of producing a formal record of the meeting to go on the file. She produced a draft which Stuart reviewed, adding a few details he considered important. Taking Stuart’s amendments, Lisa finalised the file note and added it to the file. Through this interaction she was able to discern the types of facts that Stuart considered to be important and those which he did not, refining her own sense of how a factual narrative should be crafted.
Several of the graduates commented on the inversion of the importance of fact and law from university to private legal practice. Formal legal education, involving the study and exposition of cases and statutes, tends to present facts as given and unambiguous. By the time a case reaches the reports, the facts have been sieved and sorted by lawyers, judges and sometimes juries, so that what is presented in the case report is a coherent and consistent account of what happened and when. Students are then led through how complex areas of law apply to the given facts. In practice, however, the facts are often far from straightforward and are frequently neither coherent nor consistent. Not only do different parties have different versions of events but memory, belief and self-interest can distort the telling. Learning to deal with the facts of situations is therefore a critical skill not adequately addressed in law school. Alex, a law clerk, had been forewarned of this difference between law school and practice by Stuart.

ALEX (Law Clerk): … I mean one of the things that [Stuart] said to me shortly after I started was, which I think is true, when you’re at uni [university] they’ll obviously test you on your knowledge of the law, so when you’re writing an answer to a hypothetical, you’ll have a whole lot of law and then a very short application to the facts and then a conclusion. Whereas I feel like here the facts are much more important so you’ll sort of spend a whole lot more time laying out the facts and then you’ll have a shorter section about the applicable law…

Research was also a major part of the Lisa’s workload but she was hopeful that the amount of research she received from her supervising partners would diminish as she advanced up the hierarchy (Lisa, Graduate, First Interview). The research might be related to a single isolated issue or be more complex. Sometimes it related to making sure that the law had not changed since the partner last had a similar matter. The law is not static. New statutes are regularly enacted, existing statutes are amended and the meaning of case law and statute is tested and expanded in the
Courts. Further, particularly relevant for dispute resolution, subtle differences in context may make significant differences to the application of the law so that each matter must be approached as potentially novel.

Research is time consuming so is usually delegated in the first instance to junior lawyers. When the results of the research merely confirm that the knowledge of the senior lawyer remains up-to-date it adds nothing to the knowledge of the group or the firm. However, when the research reveals a change in the law or addresses a novel situation, the researcher is adding to the knowledge of the group and the firm. The case law discussions between Justin and Lisa (Field Notes) demonstrated both aspects: confirming existing knowledge through checking that her understanding of the case was consistent with the understanding of the more experienced practitioner (‘Does this case mean X?’); and adding to knowledge (‘The current situation differs to the factual context of the case in Y ways that will affect the application of the law in Z ways’) (Field Notes).

Lave and Wenger (1991) and Wenger (1998) suggest that new knowledge introduced by newcomers provides the newcomer with some leverage through which to establish his or her place in the community and even to supplant the more experienced members. However, the new knowledge discovered by graduates in the course of their research did not offer this advantage. In both cases the researcher presents his or her research for confirmation by the senior lawyer and it is not clear to the novice lawyer that what they present to the senior lawyer is new knowledge. The senior lawyer must still approve it as correct, giving the appearance of reinforcing existing knowledge even where it is, in fact, supplementing knowledge.
In addition to learning about specific statutes and cases, through research newcomers increase their understanding of the way legal arguments are structured and the importance of facts. Beyond pure technical knowledge, however, behaviour is also important to perceptions of competence in knowledge intense organisations such as legal firms (Alvesson 2001). Projecting confidence in your work is important to persuade both the client and your colleagues that you know what you are doing. By Lisa’s own admission (First Interview) she lacked confidence. She explained that although her uncertainty was diminishing with time, she still felt sick when facing something new. Stuart attempted to reassure her, even to turn her lack of self-confidence into a virtue.

LISA (Graduate, First Interview): …Stuart says it’s really good I feel this way. I should have that sick feeling every day, at least for the next two or three years.
INTERVIEWER: Two or three years?
LISA: Yeah.
INTERVIEWER: That’s a long time to have that sick feeling.
LISA: He said if I’m worrying like that, at least I’m considering all the possible options and the client’s not missing out on anything, so, when I start to relax apparently, that’s when things will get missed.

However, Philippa (HR Manager, Interview) identified that an ongoing lack of self-confidence was actually holding Lisa back.

PHILIPPA (HR Manager, Interview): …So someone like Lisa, I’ve been telling her that for like two and a half years, to be able to say, ‘Lisa, you’re doing a really great job.’ But she’ll second guess herself every single time. She’s going to find it’s going to be a problem for her in the next twelve months because her peers are going to go and get promoted and she won’t because she’s second guessing herself and a partner cannot give a lawyer work who’s second guessing herself.

Lisa’s apparent lack of confidence may have been exacerbated by her background. She found it hard, when she began at Benefics, to identify with the legal
professionals whose ranks she had joined, but also did not identify with the administrative staff, although that identity was proving difficult to leave behind completely. Lisa (Graduate, First Interview) suggested that coming from the administrative assistant side of legal practice had benefits and downsides. Advantages included that she knew her way around computerised forms and files and had experience in online lodgement of Court documents and several other tasks that many professional staff never mastered. She could do many things for herself for which others depended upon their assistants.

However, Lisa felt that her prior occupation affected her status in the eyes of the administrative staff and that they failed to prioritise her work in the same way as they did the work of others.

Lisa (Graduate, Second Interview): [My administrative assistant] finds it difficult seeing me as a bit more senior. My work, whether urgent or not gets pushed to the back. That’s why I do a lot of it myself, but at the same time getting in trouble from Stuart and James for not pushing it out. So in that sense I think, ‘I can do it myself. I’ll just quickly do it.’ I’d rather know it, know how to do that stuff so that if I’m here at six o’clock at night and I need help, but there’s nobody else around I can just do it. And occasionally I’ll send a fax for Stuart who’ll be like, ‘Can you send this for me?’ because he doesn’t know how to do it. It doesn’t worry me.

It may also have lingered in the minds of some of her superiors. After office hours, when the administrative staff members had left for home, her expertise in administrative matters was sometimes called upon by other professional staff. Whether this reflected an association by them with her former occupation or not, it remains that she took pride in skills that many other professional staff eschewed.

As her work was largely in Dispute Resolution, the majority of documents that Lisa needed to draft related to litigation and the Courts. Her first port of call when
creating a new document was usually the Court Rules (Lisa, Graduate, First Interview). She would then search through the firm’s stored precedent documents located in an electronic filing system into which all documents created within the firm were stored, to find if the partner who had given her the matter had created a similar document in the past. She explained that this was ‘because some of the partners do have sort of varying ways of wording things too. So I sort of see how he likes to set it out and then work from there’ (Lisa, Graduate, First Interview). That is, she was not accessing the precedent for the knowledge it contained but rather to conform her style of expression to the style of the relevant partner.

A desire to please her superiors by emulating their preferred style is understandable. A major way that the graduates evaluate their competence in the eyes of the firm is feedback. This appeared as likely to involve aspects of style as of legal substance.

INTERVIEWER: Something I suppose that has interested me but I haven’t got it in the questions here, is how much you’re shaped by the actual style of a particular partner, like they’ll want you to write in a particular way.
LISA (Graduate, First Interview): My three are all very different.
INTERVIEWER: Yeah. How do you cope with that?
LISA: Frank used to sort of write in the first person and Stuart would be the third person. At first I struggled and Frank would always change it. But now Frank’s sort of learned to adapt on the files that I work on, that he knows that that’s how I write with Stuart so he’s sort of allowed that change. And Stuart and Frank are both very sort of legalese rather than James likes to impress the client with all the big words and stuff, so I find it so much easier with Frank and Stuart. And as I said before, with James, James amends his own letters say three or four times so I just have to remember that when I see it all covered in red and not get too disheartened.

Kate

Kate’s circumstances were quite different to Lisa’s. She had also worked in a legal environment before joining Benefics, but her job was as a judge’s associate (Kate, Graduate, First Interview), a position that involved many opportunities to learn about
the law and Court processes as she assisted her Supreme Court Judge in Court and out, reviewing documents, researching law and helping to draft judgements. Kate saw this as providing a strong environment for learning especially in relation to time. In private practice everyone was always pressed for time, pushed by budgets to work as quickly as possible and by Court and client deadlines. In contrast, as a judge’s associate there was the luxury of time. Judges had time to prepare judgements and time to explain the law to their associates (Kate, Graduate, First Interview).

Kate had also, as a student, volunteered in several different government and community legal services. She brought to Benefics a high level of confidence in her abilities in the law, and she would need this level of self-assurance in her graduate year. She was assigned to the supervision of Dennis. Kate was his first graduate at Benefics, in large part because he was a difficult person with whom to place a graduate (Philippa, HR Manager, Interview).

Dennis was within the Corporations division at Benefics. His practice, however, did not match Kate’s expectations of a corporate practice.

KATE (Graduate, First Interview): …obviously with Dennis as my partner, he’s got this real weird kind of practice where he does lots of, I mean it’s not very distinct at all. I find that, I got the impression that it was really distinct and it’s not at all. It’s all this kind of, yeah, everything quite interrelated, which is kind of hard as a graduate because instead of going, ‘Oh, I just need to learn about corps [corporations], you learn about, like, seven different things at once.

In her second interview she summarised the type of work she received from her supervising partner, Dennis.

KATE (Graduate, Second Interview): …I’ve been predominantly working with one partner, so we’ve been mainly doing estate planning and deceased estates. So although I’m in corporate, he’s a bit different. I’ve also done some
property, but not much. Civil litigation, there was one matter but that’s since
gone away. But as far as files that I’ve managed they’ve mainly been probate
so they’re much more contained files, and probates been granted for all those.

As with Lisa, the work that Kate received as a graduate lawyer involved some work
with facts, some work with forms and some research, in addition to technical issues
of law, any and all of which might entail the communicating to the client by phone
or letter. Dennis, alone among the partners at Benefics, had a substantial amount of
probate work in his practice (Kate, Graduate, First Interview; Second Interview).
Probate work largely involves filing the right documents at the right times and
collecting factual detail in relation to the contents of an estate. Knowing when and
what documents to file rapidly becomes routine and Kate soon had the running of
several probate files with only occasional input from Dennis. Especially at the
beginning of her graduate year, Kate found the research that she did for Dennis to be
frustrating. Law was taught in compartmentalised units but in practice many areas
overlapped (Kate, Graduate, First Interview) so it was often not clear to her what
broad areas of law she should be looking at in relation to the research problems.

Significant time could be wasted by heading off in the wrong direction.

KATE (Graduate, First Interview): …I’m always being given research tasks
and they can be such vacuums in time. Particularly when you haven’t heard
the terms before or you don’t have a context. So the partner will go, ‘This is
quite a small area of law and all I want you to look up is X’. But if you do not
have a context in which to anchor that you automatically, well I always end up
pursuing things that are totally off point because I don’t actually know enough
about it to see, to be able to make that judgment call. …You think, ‘I should
really get on to this’, but then you think ‘but I do not want to do a crappy job’
and yeah, and then you ask questions and they’ll say, ‘Oh, that’s way off beat’.
‘Oh Fuck’. So the rest, all the rest of the stuff you’ve done is [pause] yeah.

While Kate was willing to accept that her inexperience contributed to issues of time-
management in research, she also felt that at least part of the problem related to the
clarity of instructions from the delegating partner.
KATE (Graduate, First Interview): …I also find being able to get adequate instructions from partners. I find that’s like, that’s a hard one. Constantly need to clarify how much time, how many words, do you want me just to verbally give you the answer, or do you want a memorandum? All these sorts of things.

The problem of ‘wasted’ time improved with experience as Kate learned to listen more effectively when given instructions (Kate, Graduate, Second Interview). She also gained more confidence in identifying the relevant areas of law. Kate was thankful that Dennis did not push time limits, as he believed time limits inhibited learning and encouraged graduates to do shoddy work (Kate, Graduate, Second Interview). The type of work that made up the bulk of Dennis’s practice was not subject to externally imposed or contractual time limits the way that dispute resolution and property work tended to be.

KATE (Graduate, Second Interview): Strengths is that he, you always know where you stand. He’s never going to give you convoluted feedback. It’s either good or it’s bad. He’s very, very reasonable with time billing. For example, some things have taken me far too long but they’re the first time and he understands that. And if there have been mistakes or oversights, he’s reasonable with that. He still gets angry but it’s not, it’s founded or at least it’s tempered by my training, so I don’t think other partners necessarily have that. They just get a bit upset. But I guess his weakness is he doesn’t teach at all, and you’re not allowed to ask any questions.

INTERVIEWER: So how do you learn?
KATE: Well you have to go away and look at the problem and come back in light of your research and in light if your research you know, go, ‘I wasn’t sure about this but I believe it’s this because of this reason.’ Yes or no, rather than, ‘Oh, what does that mean?’

His approach also reflected his philosophy of how graduates learn to be good lawyers.

KATE (Graduate, Second interview): …Well yeah, it’s like he’s harsh and he’s hard but his logic behind it is that ‘if I just tell you an answer then you’ll forget it, but if you go and you learn it then you’ll remember.’ So ‘I don’t want to keep having this conversation every six months, about what does this mean.’

INTERVIEWER: Do you agree with that?
KATE: Yes and no. I’ve sometimes I think he’s right but I think he’s taking it too far.
Philippa (HR Manager, Interview) identified that one of Dennis’s shortcomings as a supervisor was the amount of feedback that Kate could expect to receive. The form of feedback was also an issue. Overt positive feedback was rare, so Kate learned to interpret subtle behaviours as providing positive feedback.

KATE (Graduate, Second Interview): …the way he complements it’s very subtle as well, so you’ve got to get better at picking up those cues. So he never sings your praises. He won’t say, ‘Oh that was really amazing.’ He’ll rarely say that, so you’ve just got to take them as they come, so I’m getting better at picking that up. I guess also you get complements from clients as well ‘cos you’ve got more dealings with them and you can tell if they like you, and Dennis will always pass that on which is nice.

She also rationalised some of Dennis’s more unpleasant behaviours. If his criticisms were unnecessarily blunt it was because he was stressed, the fault of his practice not of the person. If the criticism was sometimes hurtful, at least she was left in no doubt about whether she was right or wrong.

KATE (Graduate, Second Interview): …Well some of the criticism by Dennis has been brutal, like, and not necessarily constructive. But I think that’s just a product of him being stressed. I just don’t take it personally. It’s not personal. I think it’s just a product of he doesn’t deal with stress very well, so that’s been a bit testing, but you know, you’ve got to, but then, yeah, but you know where you stand on the plus side.

Unlike Lisa, who had several mid-level lawyers upon whom she could call for assistance in addition to her partners, Kate’s options were limited in seeking assistance or feedback other than from Dennis. While there were other partners in the corporate section of Benefics, Dennis’s practice was distinct. Kate did take more general queries to others, such as questions relating to systems and processes, particularly to Bethany who was in her third year as a lawyer. Her office was located quite close to Kate’s desk before she was admitted and given an office.
Kate also sought work from Dispute Resolution partners and associates, this being the area in which she had requested to work before commencing at Benefics. Unlike Lisa’s situation however, where she had three partners who could all allocate her work which she could then prioritise according to her own preferences to some degree, Kate could only take work from others when she was up-to-date with Dennis’s work.

KATE (Graduate, First Interview): …I’ve been getting a lot of work from Justin to do with dispute resolution, which is actually where I’d like to go. So that’s been really good. But then Dennis’s my partner. His work will always take preference. So it works both ways. I actually want to do some of the dispute resolution stuff more than some of the work I’ve been given so I’ll work harder to get that finished so I can get on to Justin’s work.

Apart from Dennis, and Justin in Dispute Resolution, she also received discreet research questions from James, Mark and Samuel, which questions might take at most two or three hours to research and resolve (Kate, Graduate, Second Interview). On those occasions she did not see the whole file or meet clients, remaining on the periphery of their practices.

The particular nature of Dennis’s practice also affected the use of precedent documents. In relation to much of the work she undertook for Dennis (other than standard probate forms), there were few if any precedent documents that Kate could draw upon from the Melbourne office. Precedents from other jurisdictions, while available to her on the database system Benefics used, were not relevant due to differences in the legislative rules between the states. She could and did use precedent documents when working on Dispute Resolution matters, but she used them differently to Lisa. Lisa’s primary stated concern was in matching her style to
the style of the partner for whom she was doing the work. Kate was concerned with content and understanding why things were done in the ways they were done.

KATE (Graduate, Second Interview): ...it’s different with just dispute res [resolution], because the same problems will come up over and over again so you’ve got multiple precedents, as opposed to say probate where it’s a bit different. So, yes, that’s quite handy, you’ll be able to look at like a whole array of, I don’t know, say a whole lot of negligence cases and see, ‘oh, so you tend to ask this question here, and this question here, and I can see why, I can yeah, make the link’…They’ll have precedents like, they’ll have all the law docs which you can use which will have the precedent. But actual examples of the precedent practice is much more useful. Because you know, draft a defence and you’ll notice you’ll go ‘admit, deny, admit, deny, admit, deny’ and then you’ll go ‘particulars’ and the particulars are the parts that are the hardest because you’ll go, you’ve got to be very specific and you’ve got to be tailored. So the format of how that happens isn’t so important rather than the content and sort of how specific they get into. And so, yeah, I find those quite helpful.

Kate’s learning as a newcomer to Benefics therefore was quite different to Lisa’s. The breadth of work from her supervising partner, Dennis, was much narrower than that of the partners to whom Lisa reported. Kate also had no intermediate level lawyers to whom she could take the more mundane questions, a gap exacerbated by the fact that Dennis was not an easy person to deal with. However, Kate was adaptable and resilient and made the most of the opportunities presented to her. She grasped the challenge of Dennis’s ‘sink or swim’ approach to learning and worked hard to satisfy his requirements. She actively solicited work in areas that interested her more and conscientiously sought to learn to be a better lawyer from the precedent documents available to her rather than merely employ them as templates to be slavishly followed.

Paul

In contrast to all the other graduates in his cohort, Paul had gone straight from high school to university to study law, his only work experience being waiting at tables
while he was studying (Paul, Graduate, First Interview). Also in contrast to the others in his cohort he had not harboured long-term a burning desire to be a lawyer, but had considered it as an option only from his penultimate year of high school when he began to achieve grades that made law, a high status degree, look like a feasible alternative (Paul, Graduate, First Interview). He did not develop a strong preference for an area of law while studying and he was placed in the Property division at Benefics under Gary as his supervising partner. From the beginning he struggled with some of the expectations that the others seemed to take for granted. For example, whereas Lisa was regularly getting into the office at 7.30 am and not leaving until after 6.00 pm, fitting the rest of her life around the edges of her career, Paul was determined that his career would have to fit around his life.

PAUL (Graduate, First Interview): I’m very happy to work but I like the workplace to be a bit more flexible and I think if say for example here, I’m happy to work however many hours I have to but on a Tuesday and Thursday I want to leave a bit earlier, by earlier I mean 5.30 to get to footy training. Now if someone was going to stop me from doing that it takes a big part of my life out. It takes something that gives me a lot of happiness and, you know, that gives me a lot of passion and energy for life. When you take that away that’s when I start to have issues with the profession, but I think at the moment while it can be flexible and I can make it flexible, then it’s fine with me.

Paul and Gary made an uncomfortable team. Paul described Gary as aloof and a poor communicator. I did not hear this criticism of Gary from any others in the firm. I contrast this with Kate’s assessment of Dennis which was echoed by Philippa (HR Manager, Interview) and others (Field Notes). Philippa (HR Manager, Interview) attributed the poor rapport between the two to an intellectual mismatch. She also acknowledged later in her interview that Paul ‘has been probably the most difficult law clerk that we’ve ever had’ (Philippa, HR Manager, Interview). During his first year at Benefics, Paul had three supervisors. He was first moved from Gary, in the Property division, to Frank, in Corporations. Frank was, like Paul, gregarious and
charming and he had built for himself a practice with much variety ranging from typical commercial and corporate transaction work to minor criminal litigation. The amount of client contact and networking in which Frank involved Paul suited Paul’s personality, and Frank’s friendly manner and attention to positive feedback pleased Paul. Working with Frank, Paul saw a future for himself in the law (Paul, Graduate, Second Interview). Unfortunately for Paul, Frank left within months to take up another opportunity outside of private legal practice and Paul moved to his third supervisor, James, in his third practice group, Dispute Resolution.

While Gary was Paul’s supervising partner, Paul tended to be delegated discreet tasks within bigger files (Paul, Graduate, Second Interview). Paul rarely saw the full matter or was invited to meet the clients. He was often under-employed. Paul attributed this to Gary not being suited to partnership, as a partner should be feeding work to and developing a team.

PAUL (Graduate, Second Interview): I think there’s a few practitioners around the office like that who sort of operate like sole practitioners. My understanding of, you know, if Benefics’s aspiring to be a larger firm, you know, you can’t have a whole lot of Indians as partners you know. By that I mean you need some chiefs and leaders, you know, someone you can build teams off.

Philippa (HR Manager, Interview) suggested that the dearth of delegated work was actually due to Gary not trusting the intellectual rigour of Paul’s work. Gary continued to give Paul the same sort of tasks on files because he did not believe he had yet proven himself competent in these preliminary tasks and could therefore not progress to more complex ones. It is also interesting to note how Paul responded to being under-employed.

PAUL (Graduate, Second Interview): And so I spent a couple of months in property, maybe three months, up until about October, so four months in
property doing what I would say was little to nothing, basically tearing my hair out, being bored out of my brains with research, having shocking mentoring, very occasional feedback, not having really any opportunity at all. And then yeah, and then yeah, I was feeling exhausted by that stage and I was like you know, ‘What the hell is this all about?’ You know what I mean? ‘I’ve come this far and it’s just a load of crap.’ So I took a two week trip to Brazil in August which was fantastic. It might have even been a bit more, two and a half weeks, you know, had a friend up there, or a couple of friends actually and really sort of, I guess, took a moment to stop and, you know, reflect and say, whoa, Paul, you know, you’ve got this far and you know we did well, you know, I talked to myself, and so that was good, and I think it was kind of, I think taking that little break was pivotal to kind of find direction from then on because I guess I kind of, you know, had nothing to lose now. If they want me to sit here like a bloody janitor doing nothing then I’ll sit here but I’m going to get paid for it, and so what happened from then on I was doing pretty much very little work.

Human Resources at Benefics did make a concerted effort to keep Paul in the firm and productive. In social situations Paul came across as charming and confident. Philippa (HR Manager, Interview) explained, ‘[Paul]’s very likeable. You know people appeal to him and he appeals to people. You don’t get that in many first years, so you do bend over backwards to sort of say, “Ok”.’ Yet, despite efforts, Paul failed to find a place where he fitted in at Benefics, failing to form an effective working relationship with his third supervisor, James, and he left shortly after the end of his first year.

Where Kate had adapted to the difficult working relationship with her supervising partner and rose to the challenges his working style presented, Paul became resentful. Where Kate sought out work from other partners and associates in the firm which she found more interesting, having to work extra hard to clear her desk of work for her partner first, Paul rationalised that it was Benefics’ problem if he was underemployed. Where Lisa worked long hours to enable her to check and double check what she did so that her work was up to scratch, Paul does not seem to have
entertained the thought that any of the fault in the poor working relationship with Gary could be attributed to the quality of his work. In addition, Paul failed to see himself as a lawyer, except for a very brief time working with Frank, and this left him on the periphery of the practice.

Helen

Helen came to her role at Benefics with the greatest breadth of experience in areas outside of law (Helen, Graduate, First Interview) of any of the graduates starting that year. She had worked in Australia and the UK in publishing and media. It was not uncommon in both these industries for matters to be referred to lawyers and, over time, Helen became more and more intrigued by the legal implications of the work that she was involved in, eventually deciding to make law her career. It was logical, given her background, that Helen would be placed in the intellectual property group.

Helen got on well with her supervising partner, Richard, and respected his skills and knowledge (Helen, Graduate, First Interview; Second Interview). While there was a slightly more senior lawyer officially in the intellectual property group, Helen took her intellectual property queries directly to her partner. On more general question to do with being a graduate or a lawyer at Benefics she tended to approach Bethany, in the Corporations division, or Justin, in Dispute Resolution (Helen, Graduate, First Interview). Both had been introduced as mentors to the graduates at their induction. Bethany was only an office away from where Helen sat for most of her first year and Justin was a little further along the corridor.
Like both Lisa and Kate, the work that she received was a mix of forms, facts and research, sometimes incorporated in letters of advice. Helen soon had the running of much of the trademark work that came in, which largely involved filling in and lodging forms (Helen, Graduate, Second Interview). Apart from that she did a lot of research. Helen described Richard as a good teacher.

HELEN (Graduate, First Interview): …he’s very good at the education side of things. Like, he doesn’t give you a file without telling you all about it. He doesn’t sort of nod an answer. He’ll always explain the answer and go into the law of it, so I find that very helpful for my learning. Yeah, I don’t just get a short answer or a, ‘What do you think?’ And so he’ll actually go in and just tell you all about it.

However, as time went on she became conscious of not being involved in the whole matter, instead being asked to do discreet tasks such as specific research or document preparation. She resolved to do something about it and proactively raised the issue with Richard.

HELEN (Graduate, Second Interview): …I might do something. I never see it go to the client, I never see the client’s response and then two steps down the track all of a sudden something will come back to me and then it’s a matter of catch up with the file, hoping it’s all on there, wondering why he [Richard] may, you know, you can always read a file, but if you’re involved you can sort of see why he made the decisions he did and how it actually occurred to the clients. I think that’s a weakness he does, and he’s busy. I guess that’s with a lot of the partners, they’re busy and can’t baby you and walk you through every single bit of the file, but I sort of brought it to his attention saying that’s something I want …I have to push to sort of say, ‘Can I just draft a bit of advice and you can tell me if I’m wrong’, instead of giving you bits of research. Let me give it a go and fail miserably and then we’ll take it from there sort of thing.

Helen’s years in the workforce had several impacts upon her learning at Benefics. Through years of dealing with colleagues and clients some of whom were quite well known or powerful she had developed a robust self-confidence. This contributed to her ability to assess and push for her developmental needs. She also possessed a
business mind-set that found her very comfortable with the idea of time being a commodity for which the firm required an accounting.

HELEN (Graduate, Second Interview): It always has an impact on me, billing, even when I know it’s not counting yet, I think. To me I’m always aiming for budget or above budget because with my sale background I used to work on commission so I’m used to watching figures and numbers and that’s the business. …Now I know budgets are budgets and this is the job, and I’m acutely aware of that and care about that, because I know that’s, yeah, you don’t meet, you don’t cut the grade then yeah. I mean, I would if it was my business I wouldn’t employ anyone who couldn’t really hit budget. It’s that simple.

Unlike Paul, who moved straight from student to lawyer, Helen had to negotiate an identity at Benefics that included her past roles. In particular, she appeared more aware of her gender and how this related to the identity of lawyer than were the others in her cohort. It bothered her that the senior ranks of the firm were exclusively male despite a high proportion of women in the junior levels of the firm.

HELEN (Graduate, First Interview): …you do see the partner levels all being male. And you think, ‘What’s going on there?’ And then, I actually discussed with one of the partners here and I said, ‘Well what happened to all the female partners?’ He said, ‘It’s sort of one of those things. I mean, we do have children. Law’s not something you can really do part time, because you either work with your clients or you don’t.’ So it’s very difficult to find a part time area, and why they don’t come back I don’t know. But, yeah, I think at the high levels it’s men. But that’s probably a barrier you see not at the level I’m at, at the moment, definitely not. I’ve not experienced it.

Despite the implication that motherhood and being a lawyer were difficult to combine, Helen was not easily persuaded that this was true, as she had experienced them combined while working at a television station in Australia. There, all the in-house lawyers were women and had children, including young children. However, the issue of parenthood was not pressing at the time as she was not contemplating having children in the near future. Nevertheless, it was something that niggled at the back of her mind.
Helen also noted in interview two events that highlighted her transition from law graduate to lawyer (Helen, Graduate, Second Interview). The first involved her administrative assistant, who also worked for her partner and one other lawyer. Shortly after admission as a lawyer Helen took some sick leave and when she returned the administrative assistant, who up until that time had taken work from Helen unproblematically, began responding rudely and aggressively to requests. At this time Richard, her partner, was also on leave and the assistant was responsible until his return for distributing his emails to the appropriate lawyers who were overseeing his matters. Helen was responsible for several overseas trademark files. She described how on one occasion an email came in at 8.30 a.m. requiring work to be done before close of business that day. The email was not forwarded to Helen until after 4.00 p.m. putting her under a great deal of unnecessary pressure to complete the work within the required time. She suggested that the behaviour was related to her new status.

HELEN (Graduate, Second Interview): …some people say there’s an issue because all of a sudden you’re a lawyer. You’ve got more responsibility and she’s a power player and she wanted to dictate what was happening in my world instead of me asking her to do work. It was an interesting sort of time and I’ve had a lot of other people tell me since, you know, ‘You’re not the first one.’ Apparently it can be quite common.

At around the same time as this happened, another event occurred – the graduates were given offices. Until the last of the graduates who commenced together had been admitted all the graduates were situated at desks in the corridors, as were the administrative assistants. To the graduates, having offices had immense practical relevance because they now had doors. Helen explained (Second Interview) that when sitting at desks in the corridor, passing people were a distraction. Worse than
the distraction was the proximity of her desk to the main photocopier. The photocopier was a magnet that attracted people who would then stand about talking; it also set up a near constant whirr of machinery that made phone conversations and deep thinking nearly impossible. Apart from less distraction, offices had other advantages as well. Offices had space: space to bring in spare clothes allowing flexibility to ride or walk in to work or to wear casual clothes on Friday even if you might need to go to Court; space to store files so that graduates did not need to go in and out of others’ offices where files were held; space to spread out books and documents making it easier to do research.

Yet, at least as important as the practical implications of doors and space was the symbolic importance of the office space. The graduates moved from the corridors where they had been physically equal to the administrative assistants, to offices with the same shape and layout as the offices of all lawyers in the firm. They had symbolically joined the ranks of the lawyers by this move, even if they did still have a lot to learn to master that role.

INTERVIEWER: So do you feel more like a solicitor with an office? ...
HELEN (Graduate, Second interview): I thought I would. I feel a bit, it’s kind of I feel a bit more like a grown up, but then Richard comes in and says, ‘Your point of law is wrong’, and you kind of go, ‘Oh, I don’t feel like a solicitor anymore.’

Comparing the Experiences

There are several discernible differences between the experiences of graduates illustrated by the vignettes. Using the concept of the situated curriculum, the next section will explore the differences, particularly as they affect the learning of the graduate within the partner-centred community of practice, first considering the impact of the style and strategy of the graduate and then addressing the effects of the
interpersonal relationship between each graduate and their supervisor (Gherardi, Nicolini & Odella 1998). In this way the personal attributes of both the novice and their supervisor will be seen to affect the quality and breadth of learning within the partner-centred community of practice, aspects of what is being learned in the communities of practice (research question 2).

There are also distinct similarities in the experiences of the graduates and this section will go on to look at how the common experience of uncertainty by the graduates coupled with the power structures of Benefics affected the balance of production and reproduction of knowledge within the graduates’ partner-centred communities of practice.

*Differences between Graduates: The Situated Curriculum*

Gherardi, Nicolini and Odella (1998) (see also, Gherardi & Nicolini 2000) describe the situated curriculum as a well-defined and established pattern of assigning work to novices, which acts as an implicit map for ensuring newcomers cover the required knowledge. Consistent with this, each of the graduates tended to receive in their early days at the firm a mix of forms, facts and research, the amount of contact they had with clients, by telephone, letter and face-to-face, increasing as they gained competence. The forms typically were specialism specific: Lisa with Court forms; Kate with probate; Paul with property forms; and Helen with trademark forms.

The experiences begin to diverge more widely in relation to the matters of fact. Intellectual property transactions (Helen) and probate (Kate) typically involve the client and a regulatory body, meaning that the ‘important’ facts are defined by the
regulatory agency; working with facts therefore entails administrative and some detective work to collate the specified details. Lisa on the other hand, in the Dispute Resolution division, was typically working with unclear or disputed factual situations. Her work might involve clarifying factual situations, such as the preparation of the chronology I noted in the vignette, collating evidence in support of their client’s version of the facts, preparing for discovery (a painstaking exercise involving filing and cataloguing all documents belonging to the client that have any connection with the matter in dispute), or reviewing documents discovered by the other side. Paul did not mention in interview any work he did which was principally factual, instead remarking how his work with Gary stagnated upon small research matters (Paul, Graduate, Second Interview). That is, the situated curriculum of the graduates diverged immediately upon commencement at Benefics depending upon the specialism to which they were appointed and more particularly the practice of their supervising partner.

Typically, the research matters that the graduates received evolved as they gained experience. This was the case for Lisa, Kate and Helen. While the research began as small and contained, the breadth of the questions and the extent to which they were granted access to the wider aspects of the matter grew as they gained competence (although in Helen’s case she needed to prompt her partner to allow her the greater access to the file). At the same time, while the research questions they were given grew more complex, the number of research questions they were asked to look into decreased, especially if and when a more junior lawyer or law clerk came into their specialist division.
Gherardi, Nicolini and Odella (1998) suggest that the situated curriculum is influenced by the style and strategy of the novice and this is clear from the experiences recounted in the vignettes. Both Lisa and Helen were content in the specialisms to which they had been assigned and were little inclined to seek work from outside their specialism. If they were asked by a partner to do other work, typically research, they only took it if they had free time (Lisa, Graduate, First Interview; Helen, Graduate, First and Second Interviews). In Lisa’s case, free time was hard to come by as she tended to check and recheck her work due to a lack of confidence in her own abilities and judgement. As a result, she typically took longer to do things than the other graduates, and to ensure her billings remained high enough she worked very long hours. Helen worked more quickly. If she had free time she would first ask Richard, her partner, and only if he had no work for her would she seek outside work from others. She was not inclined to sit around under employed. Perhaps more than any of her cohort of graduates, Helen was aware of the need to make budget (Helen, Graduate, Second Interview), and it was this awareness that pushed her to seek work if under-employed.

In contrast to Lisa and Helen, Kate and Paul both wanted to be working in areas other than their assigned specialism. Paul had had no preference before he commenced work but soon developed a dislike for the property work he received, whereas Kate had requested to be in Dispute Resolution but had been allocated to the Corporations division. Paul initially sought work outside his specialism, and when he received it (especially from Frank with whom he enjoyed working) his effort outside his specialisation eclipsed his effort within. This led his supervising partner, Gary, to take action by talking to Frank directly, in an effort to have Paul expend
more effort in the Property division. They agreed that Paul should work exclusively in Property, not receiving work from Frank (Paul, Graduate, Second Interview). However, Gary did not make an effort to ensure that Paul was fully occupied or change the nature of the tasks he was assigning. Either because the work did not interest him or because he thought it Gary’s role to ensure he was busy, Paul did not request work when he had spare time. Instead, Paul’s response to the arrangement between Frank and Gary was to do little, resolving that if the firm wished to pay him for sitting at his desk then he would do just that.

Kate’s strategy was the complete opposite of Paul’s. She worked harder on Dennis’s work to complete it to his satisfaction in order to free herself up to seek other, more preferred work from other specialist divisions. She, like Paul, enjoyed the work she did with Frank and made an effort to acquire work from him when she could. Dennis (unlike Gary) had no reason to object, as his work always received priority (Kate, Graduate, First Interview) and was done to the best of Kate’s ability. As a consequence, Kate learned much from Dennis in relation to commercial practice and was also able to legitimately participate at the periphery of other communities of practice.

The styles and strategies of the graduates were different. Lisa sought to immerse herself in litigation work to the exclusion of other work and where possible she steered away from insurance related litigation. Kate also wished to manoeuvre herself into Dispute Resolution but realised that a breadth of knowledge, especially some commercial experience would enhance her abilities as a litigator and her value to the firm (Kate, Graduate, Second Interview). She consciously sought a wide
range of work across specialisations being granted legitimate peripheral participation in these other communities of practice. Helen was very happy to do intellectual property work finding it stimulating and challenging but was aware of the practice of law as a business. Her strategy therefore entailed getting as much intellectual property work as she could and never being under-employed as this affected her ability to achieve budget. The nature of the extra work she attracted outside of her specialism was of no particular interest to her other than as billable units affecting her attention to the potential learning from such work. In contrast to Kate, Helen was content to stay on the periphery of these other communities of practice. Paul did not appear to have a learning strategy. He was not where he wanted to be and felt that his efforts to get where he did want to be had been deliberately thwarted by his supervising partner. As a consequence he appeared to learn little from his supervising partner or any other lawyer.

The poor learning outcomes for Paul are not entirely attributable to his style and (lack of) strategy but clearly also relate to the interpersonal relationship between Paul and Gary. Paul considered Gary to be a loner, someone suited to being a sole practitioner rather than the leader of a team. There is some support for this assessment from William, the COO, who identified lack of team management skills as a wide-spread failing in the firm.

WILLIAM (COO, Interview): …There’s a mid-tier firm dilemma I call it, in that we put people in positions that they probably shouldn’t be in such as managing teams. The big organisations and big firms give a lot more training than what the smaller firms do and so we put people in positions that they’ve probably not rightly earned and probably not rightly qualified to do. And that makes it very hard, because it makes my job, and HR’s job and BD’s job, you know, very difficult because they are not managers. Lawyers are not good managers. They’re not good ‘people’ people and they struggle with that side of it so that’s something that I struggle with every day.
INTERVIEWER: Hmm, they tend to be a little bit, sort of, lone wolf?
WILLIAM: Yeah, but unfortunately you make them have teams and you put people underneath them and like I said you don’t give them that training. It’s something I’m trying to develop and work with them on but unfortunately I still think management and that type of skill, people, personality all of those things are things that you can’t just develop overnight. I think they’re in your blood and some people do it right or wrong or whatever. It’s just one of those things I don’t think lawyers are very good at and we just trust them to do that and I don’t think they do it very well.

However, Philippa (HR, Interview) suggested that the problem was more one of personal compatibility than mentoring style.

PHILIPPA (HR Manager, Interview): …We gave Gary a law clerk in 2008 and I said it wasn’t going to work because the individual wasn’t academically clever enough for Gary. Gary needs a balance of things and you really only have to talk to Gary to know what he likes and what his expectations are, and he couldn’t trust with that person. He couldn’t build that sense of rapport. Now that was fine because we moved that person into a practice group where they were going to get a better supervision, which is unfortunate because it’s the first time where we’ve actually had to do that, so it was also the first time that we got our assessment wrong. INTERVIEWER: That was Paul? PHILIPPA: Yeah, correct.

And later in the interview she said:

PHILIPPA: The personality wasn’t there and Malcolm didn’t realise even though we talked about it. He said, ‘I think it can work. I think Paul will toe the line.’ I said, ‘No, he’s too much of an extrovert. He’s got his way, he’s got his set way and Gary’s got his set way and they’re just going to clash.

In combination, Gary’s lack of trust in Paul’s intellectual rigour and Paul’s strategy, or lack of strategy to enhance his own learning resulted in Paul’s learning being neglected by Gary and meant that Paul remained on the periphery of the Property practice. Paul clearly identified strongly with Frank found him to be a more effective teaching through the ‘scaffolding’ he provided (Gherardi, Nicolini & Odella 1998). He may have had more success developing recognised competence in this partner-centred group but did not get the opportunity because Frank left the firm.

He said, in his first interview:
PAUL (Graduate, First Interview): …I guess Frank inspires me to want to be a lawyer. I want to be a lawyer like him. I think he’s just a fantastic mentor. You know, I love doing work him. When I’m doing work for him I love coming into the office. Gary, on the other hand, I admire how he goes about his work. He’s extremely professional, he’s extremely to the point, you know, his work is just flawless and his expectations are kind of perfect. But, I guess I don’t get the same inspiration from him I guess because he, it’s almost like it’s all a bit mechanical, you know, whereas Frank kind of still has you know these like beliefs and you know, like belief in the profession…

Interpersonal issues also had the potential to derail Kate’s learning experience.

Dennis was a difficult person with whom to work. However, Kate’s reaction was very different to Paul’s. She made an effort to identify Dennis’s positive points and to understand what skills and behaviours she could learn from him.

INTERVIEWER: Whose high opinion do you most value and why?
KATE (Graduate, First Interview): …So obviously at the moment it’s Dennis because that’s the main person I see and you know, and when I went to a client meeting with him, I was very impressed with how he handled it. Lovely clients and also all, like he said to me all his clients are lovely people, which I like. And that’s very hard to get a whole, high nett individuals that are really lovely and like with him it’s like striking a good balance between being social and being succinct, because you are charging them an hourly rate. And also delivering legal advice and how that is pitched and yeah, I was very impressed. I could do a very obvious compare and contrast with my skills of how I would have managed that interview to his. Like, a much higher level of sophistication, which is impressive and it’s good to know that your supervisor has those skills. I’d like to be able to run a client meeting like that and I’d like to be able to attract clients like that, like they were just lovely people…

Kate developed strategies to deal with some of his more difficult traits. He had a tendency to be blunt, even harsh, in his criticisms and sparing with praise. Kate rationalised his harshness as relating to the stresses of the job, thereby protecting her own self-esteem, and learned to take a lack of criticism as indicative that she was doing well (Kate, Graduate, First Interview; Second Interview). Dennis’s temperament, ideologies and preferences were moderated by Kate’s responses resulting in the relationship being authoritarian rather than neglectful (Gherardi, Nicolini & Odella 1998). Where the interpersonal relationship between Gary and
Paul resulted in consciously restricting Paul’s exposure to both the practice of the partner-centred group and also the wider professional communities within Benefics, the interpersonal relationship between Kate and Dennis resulted in Kate’s increasingly wide and deep exposure to Dennis’s practice. In addition, her strategy meant that she was exposed to the practice of several other partner-centred groups and was developing learning relationships within these as well.

Lisa (with Stuart) and Helen (with Richard) experienced similar interpersonal dynamics to each other in their partner-centred groups. Both Stuart and Richard were approachable and took the time to explain any areas where the graduates were unclear. In the terminology of Gherardi, Nicolini and Odella (1998), they providing scaffolding for their ‘apprentices’.

However, here again the graduate’s style influenced what he or she learned. Lisa was reluctant to ask too many questions or to push for different work to expand her knowledge, but Helen was not. Helen was an active agent in her learning whereas Lisa was passive. Lisa struggled to solve problems by herself, taking more time than any of the others to satisfy herself that her responses appeared competent. The fear of looking ignorant before her superiors actually impaired her chances of promotion (Philippa, HR Manager, Interview).

Each of the supervising partners had a particular approach in relation to how novices should be trained: Dennis, the authoritarian, believed that graduates should be required to discover the law themselves, being corrected when wrong but not handed ready-made responses (Dennis, Partner, Interview; Kate, Graduate, First Interview);
Stuart and Richard were more inclined to teach; and Gary was apparently neglectful. Yet, ultimately the style and strategies of the graduates appear to be at least as, if not more, impactful upon their learning than the philosophies and personalities of the supervisors.

*Shared Uncertainty: Reproduction and Production*

While the specialisms to which they are appointed, the learning styles and strategies of the graduates and their relationship with their supervising partner all contribute to the differences between the learning experiences of the graduates at Benefics, in other ways their experiences are quite similar. The first point of similarity to note relates to the nature of knowledge work in knowledge-intensive firms. As explained in the literature review, Chapter 2, in private legal firms (the epitome of knowledge-intensive firms) the complexity of the law and the difficulty of evaluating the quality of knowledge create ambiguity, which tends to generate an emphasis upon identity, image and rhetoric (Alvesson 2001). Whether consciously or unconsciously, management can exercise control over its workforce through discourse such as appeals to professionalism (Alvesson & Willmott 2002) in an industry where bureaucratic control is difficult.

Despite the fact that new entrants to the practice of law have typically been high achievers in their academic careers (which was pointed out by Samantha, Mid-Level Lawyer, Interview), the cocky attitude many bring into private practice from their previous academic success (Mandy, Admin, Interview) is quickly undermined through their exposure to practice. It did not take the graduates long to realise that the practice of law was different to the study of law. Law courses focus on theory
which, while forming an essential background knowledge, does not equip one for
action.

JUSTIN (Mid-Level Lawyer, Interview): I don’t think graduates really know
what they’re doing. They’ve just come out of law school which is very
theoretically based, not practice based and the practice of law is completely
different to the theory of law. No one tells you how to write a letter in
university. It’s all, ‘what does the law say?’

INTERVIEWER: Did you do civil procedure at all at uni?
JANE (Graduate): We did, but it wasn’t as practical. So we learned the
Supreme Court Rules, the Federal Court rules, but College of Law was just
case studies and practice so that really helped.

Another problem confronted by the graduates as they entered practice was that, in
the law course, topics had been taught as discreet units isolating specific aspects of
the law, whereas in practice several areas of law often applied in combination.

KATE (graduate): It’s all this kind of everything quite interrelated, which is
kind of hard as a graduate because instead of going, ‘Oh, I just need to learn
about corps [corporations law], you learn about seven different things at
once.

Facts, rather than being agreed and unambiguous as they were in the law course,
needed to be sorted and distilled, the relevant extracted from the irrelevant (Matt,
Graduate, Interview). Nor was it as simple as saying that an issue was either one of
facts or law as the two were intertwined.

KATE (Graduate, First Interview): …Particularly, what’s also hard as a
graduate is things that they go, ‘Oh you’ve studied contract law, so you can
review this contract.’ We studied the law, four years ago but we never actually
looked at a contract…
INTERVIEWER: I can tell you if you’ve got a contract, I can tell you if it’s
properly executed, but whether it’s got the right terms in it?
KATE: Yeah, cause like this one was basically asking the breadth of these
terms in light of what he does for a living, whether that would be oppressive. I
can give you a common sense opinion but I don’t know how legal it will be…
INTERVIEWER: Into the cases about oppressive contracts?
KATE: Yeah, well, I asked, ‘Is this a research exercise?’ And the partner’s
said, ‘No it’s not. It’s a pure construction of terms.’ So, which is good to get
new stuff straight away but, yeah, it’s hard when you get, you’ve got a presumption of knowledge and like, I don’t know that.

While the partner saw this issue as purely applying the consequences of the terms to the facts of the case, it nevertheless assumed an understanding of what would amount to an oppressive contractual term, something the partner seemed to take as self-evident. Added to these complexities is the ‘game’ that lawyers play.

FRANK (Partner, Interview): Oh the games to be played is, it’s what I call tricks of the trade, and I mean that not in an unethical sense, but there’s ways of getting from A to B that I mentioned before that’s quicker than messing around. Look, it’s such a subtle thing but, you know for instance when you’re dealing with a certain opponent, what sort of fight you should expect to have. And you know after a while you know how to deal with that person or not deal with that person, as the case might be. You know for instance some are there to make a buck out of the file, and you can make a buck out of most files and you can make a lot of bucks out of some files, and you know that some lawyers are going to play that game. And that’s not a game I choose to play. I’m not saying that just to big note myself, I just think the clients want to get from A to B as quickly and inexpensively as possible. Some clients want the fight. They want it drawn out. They want to hurt the other person. You particularly find that in family law and I used to be a specialist in family law in a different life. But most, and I’d say 97% of people want to have their case dealt with as quickly, as expeditiously, as cheaply as possible… So that’s what I suppose I mean when I say ‘game playing’.

A major source of uncertainty for the graduates was in not knowing precisely what it was that they needed to learn.

PAUL (Graduate, First Interview): What’s most challenging? Just knowing, just not having a structure. You know uni [university], you have an assignment, you do it, you get a mark, and then you say hey, I’m good at, you know, so and so but I’m crap at that. So, you know what bits to work at whereas here you know, there’s not that kind of clear line of feedback and communication really.

One partner, Samuel, did provide a statement of skills and knowledge areas he expected his graduates to attain over their first year in practice under his supervision, but he was alone in this.
SAMANTHA (Mid-Level Lawyer, Interview): The only thing in terms of learning as a graduate in a law firm, I think, when I started with Samuel he gave me a printed out sheet and said, ‘These are the sort of things we expect you to learn and pick up.’ But that was his little thing. That was what he did, and I had a look at it later and felt that we’d covered most of it off. He may well have kept a copy and was going through it himself. But that concept should apply to all graduates. There should be at the beginning, you know as a graduate, you should understand what the expectations are of you moving forward, and this was my problem through my articled clerkship.

Further, as Gherardi, Nicolini and Odella (1998) point out, attempts to formally articulate the components of the situated curriculum tend to result in impoverished outlines, omitting much of the scaffolding that allows competent action. It is therefore surprising that when asked in the first round of interviews what attributes are needed by a competent lawyer, lawyers at all levels presented similar concepts.

Table 5.2 summarises the responses identified from the following interviews: partners (n=5); mid-level layers (n=2); graduate lawyers (n=6); and the single law clerk (n=1). It also contains a column showing the closest equivalent from the Legal Profession (Admission) Rules (Vic) Schedule 3, which specifies the topics that a graduate must cover under supervision. The last column presents the nearest equivalent extracted from Benefics’ Competency Framework. This framework had been approved but not yet implemented at the time I finished my field work. Philippa (HR Manager, Interviewer) explained that the framework is an attempt to codify the expectations of the firm of all staff, including the different expectations of lawyers as they progress up the hierarchy\(^\text{15}\). It is included as an indication of the tacit expectations embedded within Benefics at the time of the research.

\(^{15}\) Competency frameworks were developed for all designations of worker at Benefics: Partner; Senior Associate; Lawyer-Associate; Law Graduate; Law Clerk; Paralegal; Legal Administrative Assistant; Shared Services Staff (for example, reception, mail room and accounts); and Shared Services Manager. Each competency document is presented as a table with five columns of foci (Our People, Team Work, Respect, Knowledge and Innovation) and six rows of ‘values’ (Core, Excellence,
### Table 5.2 Attributes of Competent Lawyers

<table>
<thead>
<tr>
<th>Attribute</th>
<th>Identified by</th>
<th>Schedule 3 of Rules (Heading and Element)</th>
<th>Benefics’ Competency Framework</th>
</tr>
</thead>
<tbody>
<tr>
<td>Communication</td>
<td>Graduates: 6 (n=6) Partners: 5 (n=5) Lawyers: 2 (n=2) Law Clerk: 1 (n=1)</td>
<td>Lawyer’s Skills: Element 1 (includes written and oral communication, interviewing clients, drafting letters and other documents, negotiating, and representing clients in Court. Relevant forms of communication are also covered in specific practice areas.)</td>
<td>Client and Market Reputation/Excellence Client and Market Reputation/Respect Technical Expertise/Excellence</td>
</tr>
<tr>
<td>Integrity</td>
<td>Graduates: 1/6 Partners: 2/5 Lawyers: 1/2 Law Clerk: 0/1</td>
<td>Ethics and Professional Responsibility: all elements.</td>
<td>Financial Success/Respect</td>
</tr>
<tr>
<td>Interpersonal skills (external - clients and others)</td>
<td>Graduates: 6/6 Partners: 3/5 Lawyers: 2/2 Law Clerk: 0/1</td>
<td>Ethics and Professional Responsibility: Element 6 (acting courteously) Work Management and Business Skills: Element 4 (keeping clients informed); Element 5 (working cooperatively with consultants and counsel)</td>
<td>Client and Market Reputation/all values</td>
</tr>
</tbody>
</table>

Teamwork, Respect, Knowledge and Innovation), giving a total of thirty cells. The details below have been taken from the Graduate Lawyer’s Table of competencies as being the most relevant comparison to the Admission Rules and to the understandings of the interviewed graduates. The Competency Framework for Graduates, Lawyers/Associates and Partners may be found in Appendices E.1, E.2 and E.3 respectively.

16 Respondents tended to identify communication as a global attribute. When asked what they saw it entailing it was typically ‘unpacked’ to include written and spoken communication. Some respondents specifically included listening as a skill, whereas others might include listening in another category such as taking instructions. It was also generally seen as being important internally, for example taking instructions from a supervising partner, and externally, taking instruction from clients, giving advice, drafting letters and documents and dealing with external parties such as other lawyers.

17 Interpersonal skills were seen as distinct from communication and typically internally involved getting on socially with colleagues and avoiding conflict.

18 External social skills included the highly valued ability to ‘network’.
### Table 5.2 Attributes of Competent Lawyers (cont.)

<table>
<thead>
<tr>
<th>Attribute</th>
<th>Identified by</th>
<th>Schedule 3 of Rules (Heading and Element)</th>
<th>Benefits’ Competency Framework</th>
</tr>
</thead>
<tbody>
<tr>
<td>Problem solving</td>
<td>Graduates: 3/6 Partners: 5/5 Lawyers: 2/2 Law Clerk: 0/1</td>
<td>Problem Solving: all Elements (‘An entry level lawyer should be able to investigate and analyse facts and law, provide legal advice and solve legal problems.’)</td>
<td>Technical Expertise/Excellence</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Technical skills¹⁹</td>
<td>Graduates: 4/6 Partners: 5/5 Lawyers: 2/2 Law Clerk: 1/1</td>
<td>Problem Solving: Element 2 (analysing law) Knowledge of the law is raised in all practice areas e.g. ‘identify relevant legislation’, ‘identify any possible common law remedies’.</td>
<td>Technical Expertise/Excellence</td>
</tr>
<tr>
<td>Time management</td>
<td>Graduates: 4/6 Partners: 4/5 Lawyers: 1/2 Law Clerk: 0/1</td>
<td>Work Management and Business Skills: Element 1 (managing personal time); Element 3 (managing files)</td>
<td>Financial Success/Core Financial Success/Excellence Financial Success/teamwork</td>
</tr>
<tr>
<td>Approach to work²⁰</td>
<td>Graduates: 6/6 Partners: 4/5 Lawyers: 2/2 Law Clerk: 0/1</td>
<td>Not addressed.</td>
<td>No specific statements but emphasis on meeting deadlines and financial targets.</td>
</tr>
<tr>
<td>Personality²¹</td>
<td>Graduates: 5/6 Partners: 1/5 Lawyers: 2/2 Law Clerk: 1/1</td>
<td>Not addressed.</td>
<td>Our People/Excellence Our People/Teamwork</td>
</tr>
</tbody>
</table>

**Sources:** Interviews; Legal Profession (Admission) Rules 2008 (Vic) Schedule 3; Benefics’ Competency Framework – Graduate Lawyers

¹⁹ Technical skills involved knowledge of the law and research skills.

²⁰ The most frequently identified aspect of approach to the work identified by all strata of the firm was a willingness to work hard and put in the hours. Other aspects included perseverance and resilience.

²¹ It was widely suggested that being a good lawyer required a certain type of person. However, there was not general agreement about what that type of person was. Some suggested that different specialisations called for different personalities whereas others emphasised the need to have a match to the culture of the firm or at least your work group.
It is unclear how the assessments of necessary attributes came to be so similar. Several possibilities exist, from cues gleaned at various legal schools to rapid socialisation once the graduates joined Benefics. However, it is beyond the scope of this research to explain the similarity. Yet, despite the broad agreement about what it is that the graduates need to learn to transition from student to practicing lawyer, there is still considerable ambiguity. In particular, at Benefics the measures of competence were unclear and feedback was problematic.

There was a consciousness at all levels that one measure of competence was financial, that is making budget.

INTERVIEWER: What sort of things do you expect will be covered in performance reviews?
JANE (Graduate, First Interview): Probably your billing, the sorts of tasks that you’re billing, not that we’re charging out but what we’ve been recording in [the system].

Helen expressed an understanding of billing as a measure of competence that was more nuanced than her fellow graduates. She recognised time recording as a measure, not of technical legal knowledge, but of the business side of the practice of law.

INTERVIEWER: So you use the budget and the billing as a way to assess how you’re going.
HELEN: Not how I’m going knowledge wise. I think they’re very different. I think how I’m going about how clever I’m being about what work I’m getting and how much I can churn out and if I’m really putting the work in trying to get the work for it. If it’s a dead month it’s a dead month. You accept it and you can’t do anything about it, and the thing is the firm knows that. But if I think I’ve been a bit lax and a bit lazy and I know I haven’t really applied myself, I look at my budget and I can sort of go, ooh, probably should have been doing something about that.
INTERVIEWER: But that’s an important part of the learning isn’t it?
HELEN: Oh yeah.
Interestingly, the partners tended to be defensive about the use of budgets as a measure of competence.

FRANK (Partner, Interview): I know it’s been said truly that the only way you can prove something is to measure it. I know there should be better measuring sticks of competence. Unfortunately most law firms deal with competence as in billable hours, bills written, costs written off, writing off is when you can’t justify a certain cost. Unfortunately, like most firms, this firm uses that as a performance measure.

STEPHEN (Partner, Interview): I suppose in terms of the formal measurement is one of billing is the bottom line. For me though, that’s again on the macro level for the firm and for the world to see is the easy one of, you know, the billable hour.

Several partners suggested that there should be or was more to competence than billing, yet they found it difficult to articulate what that ‘something’ was, except in the broadest of terms.

FRANK (Partner, Interview): It’s almost an instinctive thing with lawyers as to how competent someone else is...there is also an instinctive understanding of particularly younger lawyers, and I suppose you’re talking about younger lawyers here. But how competence is measured in senior lawyers, look, you just know.

PETER (Partner, Interview): Ok. I think we’re a medium sized firm with large overhead. I think that’s realistic, and a large part of how our management assesses competence is dollars really, and what your financial performance looks like. I think that’s only one factor. I think that competence is assessed by results, what you’re delivering to clients, really.

The junior lawyers drew upon social sources of assessment and often the lawyer’s own assessment of themselves to judge the competence of the lawyers around them.

INTERVIEWER: Can I just ask you, how do you judge that he’s a very, very good lawyer? MATT (Graduate, Interview) Just from the way that I suppose clients deal with him and the thing is when he provides his advice, he’s very, he’s somewhat direct but it’s still well received by the client. And also he’s, I think he’s about to receive an award. Please keep that quiet. He’s about to be named as one of the best [specialisation] lawyers in Australia. It hasn’t been announced just yet.
INTERVIEWER: I won’t say anything. So this is a very widely held opinion. MATT: Yep, so when you see that other people are holding him in that high regard then you certainly yeah, if he can hold you in the same regard that would be…

INTERVIEWER: What about assessing the competence of others? LISA (Graduate, Second Interview): How do you mean? INTERVIEWER: Well, you said about James, ‘Well I suppose he is good at what he does.’ How would you make an assessment like that? LISA: I know from some of the files that he has, things that have settled, or he would tell me or others would say that that was a good result. But James’ very private with his work and he only shares what he wants to share and when he needs help, so it’s really hard to tell. Whereas Stuart and Frank are a bit more open and they’ll say, you know, ‘We got this good result’ or ‘We could have done this better’ or ‘The client’s going to be upset with this.’

Samantha, a mid-level lawyer with a background in Human Resources, believed that

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Samantha, a mid-level lawyer with a background in Human Resources, believed that there was a political face to assessments of competence.

Assessments of competence, whether based on billing, intuition or politics, were shared socially. Lisa (Field Notes) repeated to me a story relating to the competence of James where, before she commenced at the firm, he had made two errors with respect to time limits relating to a Court case which errors had ended up costing the firm money and reputation. She suggested that the story was one reason that she was wary of James as a supervisor. The fact that Lisa heard the story and that she passed it on to me is an indication of the extent to which judgements of competence are shared and enduring. Partners were open about the sharing of judgements.

INTERVIEWER: How is competence assessed in this firm, both formally and informally?
STEPHEN (Partner, Interview): Informally, under the radar. People have views about skills, certainly at a partner level. You know we have a monthly partners’ meeting and comments are made from time to time about the capability and performance of staff and we do actually say is someone performing, not performing or whatever.

Lacking explicit measures of competence against which they could self-assess, the graduates depended upon the feedback that they received on their work to gauge their progress. In large part this came from the alterations and corrections to work which they submitted to their supervising partners. However, amendments to work were not the same as a tick or a cross on a multiple choice test. They required interpretation.

INTERVIEWER: How do you assess your competence?

HELEN (Graduate, First Interview): That’s a good question. I think at the moment I assess it on the feedback I get from Richard [supervising partner], not so much the oral feedback but also the red pen. And I don’t, not meaning, I could get a piece of work back from him smothered in red pen but I don’t look at that and say, “Ooh, I’ve done a bad job.” I read it because half the time he might just restructure a sentence because he liked the sound of it better or that’s his language that he uses, and [mid-level lawyer]’s discovered the same. “You know it’s the way he likes it done.” If there’s a fundamental issue with what I’ve done that’s when I sit back and go, “that’s the competency issue.”

The reputation and practices of the relevant partner also affected how the feedback was read. For example, one partner was notorious for amending work several times, even his own drafting, often in relation to preferred style rather than for technical reasons. Others were more accepting of graduates’ personal styles provided the meaning was clear.

LISA (Graduate, First Interview): Frank used to sort of write in the first person and Stuart would be the third person. At first I struggled and Frank would always change it. But now Frank’s sort of learned to adapt on the files that I work on, that he knows that that’s how I write with Stuart so he’s sort of allowed that change. And Stuart and Frank are both very sort of non-legalese rather than James likes to impress the client with all the big words and stuff, so I find it so much easier with Frank and Stuart. And as I said before, with James, James amends his own letters say three or four times so I just have to remember that when I see it all covered in red and not get too disheartened.
The fact that partners, particularly partners other than their supervisors, kept giving graduates tasks was commonly interpreted by them as positive feedback on competence. When asked in second interview how she assessed her own competence Kate (Graduate) responded, ‘You know, you can tell how other people treat you, the type of work, if they’ll give you any work.’ Lisa also alluded to being given work as a measure.

LISA (Graduate, First Interview): They sort of keep an eye on what we’re working on but I think it’s just individual feedback that you get from the partners. That and giving you the work. I don’t think there’re formal [measures], not that I’ve been made aware of. (Emphasis is mine.)

In order to avoid criticism and negative feedback it was common for the novice lawyers to emulate the style of their supervising partner in their work. Sometimes they were aware that the choices they were making were aesthetic. For example, Samantha, an older graduate who entered the law with years of management experience behind her, was able to reflect upon her experiences with several partners.

SAMANTHA (Mid-Level Lawyer, Interview): Say for example letters. I’ve been writing letters for you know 15 years. I know how to write a letter. A letter of advice is a different skill. I also know how to write an email, but each partner has different ways of doing their email, so you’ll spend a couple of months [with someone] who hammers you for ‘your appalling email skills’ and, you know, you learn how to write in their way and then you go to the next partner and they’ll say, ‘(sigh) I can’t believe they haven’t taught you how to do this yet.’ And you’ll do it all over again and that’s a process that repeats, so you’ll end up just learning different styles of doing. I reckon I’ve probably just got a mish-mash at the end that is pretty close to where I started. You know how to make each one happy.

Others of the young lawyers at Benefics, with less robust senses of self-confidence, appeared to be less aware that ‘corrections’ sometimes related to preferences of expression rather than legal niceties. Lisa, for example, used precedent documents
because they attracted fewer corrections, without seeking to understand the reasoning behind the form of words. Further, the graduates would all be aware from university of cases that hinged upon the use of one word over another (for example, ‘may’ or ‘shall’) or upon the inclusion or absence of a comma. It was also pertinent that partners had proven successful at attracting and keeping clients, a skill the graduates were aware was critical to their advancement. (There were, for example, many mentions during the induction of the need for training in networking (Field Notes)). Partners were proven experts in ‘playing the game’, which incorporates communicating with clients orally and in writing, and it is understandable that a graduate’s supervisor becomes their model for how to play. It appeared that early in their careers, before they become better versed in or more sensitive to the social cues and judgements about competence drawn upon by the more experienced practitioners, that the graduates used building successful careers as a global measure encompassing technical competence.

The pervasive influence of supervising partners as early role models is attested to by the fact that even Paul, who did not get along with his first supervisor, Gary, nevertheless valued his high opinion above all others during the time that he was his supervisor.

**INTERVIEWER:** Whose high opinion do you most value?
**PAUL (Graduate, First Interview):** Whose high opinion? Probably Gary’s.
**INTERVIEWER:** Why?
**PAUL:** Because he’s my supervising partner and because I think he has the highest expectations of people and that must be a really a hard thing to go through life with. You’d think if you had such high expectations of other people you’d have high expectations of yourself, and if you did have such high expectations of yourself you’d really beat yourself up if you ever made a mistake, you know, it’d go right to the kind of crux of, you know, what you are about and who you are, you know. I guess it’s a perfectionist mentality you know, I think. All of us have it to an extent, you know.
The persistence of the influence of initial supervisors is attested to in that three of the five partners interviewed identified their own supervising partners as the strongest influence upon their learning to be competent lawyer. It can therefore be seen that the nature of the law as a body of knowledge and private legal practice as an occupation, make it likely that newcomers to the profession will learn most from the partner-centred communities of practice into which they are initially placed, and that this learning will involve reproduction of both the technical aspects of the law practiced by the supervisors and also the partners’ aesthetic preferences.

It is worth noting at this point that not all the knowledge utilised within the firm becomes organisational knowledge. Some knowledge remains firmly with the individual. This occurs for three distinct reasons. First, some lawyers hoard their knowledge by delegating only small, discreet parts of matters so that the value of the knowledge in context is not clear. For example James was noted as being guarded and proprietary with his files. Second, when the lawyer’s competence is questioned so that the knowledge is not trusted, then it will not be emulated or incorporated in the work of the other lawyers with whom they work. Here too James provides an example. As mentioned previously, a story was circulating at Benefics of a matter that went awry at Benefics due to James overlooking time limits. Further, as he was notorious for correcting his own work several times (Lisa, Graduate, Second Interview), his amendments were often given little credence as feedback. Third, the lawyer is likely to have little influence when their behaviour and demeanour deters identification with them personally. From Paul’s report, his initial supervisor, Gary, was like this. Certainly, in cases where Philippa (HR Manager, Interview) reported that they were reluctant to place graduates with particular partners, and Dennis’s
name was mentioned specifically, it is less likely that the partner’s knowledge would be integrated into the firm’s practice. In all such cases, while the firm benefits from the knowledge while the particular lawyer is a member, when that lawyer leaves the firm the knowledge disappears from the firm’s practice, despite it being reified in files and databases. Such documents that do exist will fall into disuse due to each lawyer’s preference for his or her own precedents. It has material form, but no practice within which the material form has meaning and therefore cannot be considered as learned by a community of practice or the organisation (Nicolini 2012). The flip side of this is the lawyer who inspires respect and admiration among the junior lawyers as Frank appeared to do. Lisa, Jane, Paul and Kate all reported enjoying working with Frank. Lisa chose to replicate his writing style, and this was eventually accepted by Stuart. His precedents were taken and emulated by many with the result that the knowledge embedded in them became part of the practice of several young lawyers in the firm and survived in the firm after he had departed.

Despite the circumstances which favoured reproduction it does not follow that the graduates were doomed to become mere carbon copies of their supervising partners. Entry into a new community of practice offers newcomers the opportunity to negotiate the inclusion of knowledge, beliefs and values which they bring with them from membership of other communities (Wenger 1998). Where such new knowledge is compatible with the existing practice of the community it is possible that it will be integrated unproblematically or even unnoticed. Where the knowledge is incompatible with existing practice then the newcomer has five possible paths: 1) to abandon the knowledge that is incompatible with the new practice and wholeheartedly embrace the new practice and identity; 2) to negotiate the inclusion
in the practice of the new knowledge thereby bringing about a change in the practice of the community; 3) to compartmentalise whereby the individual accepts different knowledge regimes associated with different social identities; 4) to reject the new practice and remain on the periphery or withdraw altogether; or 5) to recognise the incompatible knowledge and live with the tension unless and until it can be resolved. This last option equates to Alvesson and Willmott’s (2002) ‘micro-emancipation’ where organisational control through identification is resisted. Three examples of resistance are informative.

Paul resisted the commitment of long hours that the other graduates seemed merely to accept as a given, insisting that if he was prevented from making football practice then he would have a real problem with the profession. He failed to ‘understand’ the importance of making budget that prompted Helen to seek work outside her preferred specialisation, instead reasoning that being paid to sit at his desk and do little was the firm’s problem. Time commitment and willingness to put in the hours were identified consistently as essential attributes of a competent lawyer (see Table 5.2, Approach to work) including by Paul himself in interview, yet his actions and other statements even in the same interview belie his commitment to this attribute. His resistance to these aspects of the identity of lawyer was so fundamental that he remained on the periphery throughout his time at Benefics, eventually withdrawing altogether, with the result that he had no opportunity to introduce his values and beliefs into the community.

In Helen’s case the inconsistent beliefs related to the identity of woman lawyer, and particularly how this related to motherhood. Helen felt uneasy about the espoused
‘truth’ that mixing motherhood\textsuperscript{22} with the practice of law was difficult but did not
actively take steps to challenge it as it was not immediately pressing.

HELEN (Graduate, First Interview): …look I have to admit at university, they
get a lot of people out there talking about the amount of women in law and that
it is a men’s, and it is, it’s a boys’ club. But then it’s quite funny. I got into
this firm and there’s so many women it’s ridiculous and it’s wonderful. And I
went up to SBS and it’s an all-female legal staff. And that’s really nice to see.
But then you do see the partner levels all being male. And you think, ‘What’s
going on there?’ And then, I actually discussed with one of the partners here
and I said, ‘Well what happened to all the female partners?’ He said, ‘It’s sort
of one of those things. I mean, we do have children. Law’s not something you
can really do part time, because you either work with your clients or you
don’t.’ So it’s very difficult to find a part time area, and why they don’t come
back I don’t know. But, yeah, I think at the high levels it’s men. But that’s
probably a barrier you see not at the level I’m at, at the moment, definitely not.
I’ve not experienced it.

Helen appears to have compartmentalised her identities as woman/potential mother
and lawyer at this stage, enabled to ignore the conflict in beliefs for the time being.

Motherhood was a more pressing issue for Samantha, who had moved to law from a
successful career in human resources.

SAMANTHA (Mid-Level Lawyer, Interview): I think it is a little bit of a boys’
club. I’ve probably seen worse, but I’ve had a partner lecturing me at a
Christmas function about how I’m never going to get married, you know,
which are not conversations, I mean, whether you’re a girl or a guy and
whether you’re married and whether you are going to have kids is all very
present, I think. And I’m certainly very cognisant of the fact that I’m [in my
mid 30s] this year. The expectation is that my boyfriend and I are going to get
married and I know already because my partner has already, David’s already
mentioned it, that having babies when you’re [in your mid 30s] clearly it’s
going to be in the next couple of years. I want to make associate so I don’t
want him thinking about whether or not I’m going to have a baby. I think
those issues are there. I don’t think that they would take on a male leg
dal. I can’t imagine them being open to that at all. There’s some gender
roles that really get played out. I mean, at the Christmas party Santa Claus is

\textsuperscript{22}Motherhood, rather than parenthood, was seen as problematic. Many of the male lawyers had
children including young children. Stephen, a partner, had four children between the ages of 2 and 8.
At the time of interviewing him his wife had recently ruptured her Achilles tendon and, following
surgery, was not allowed to walk or drive for several weeks. Stephen had to get his children to school
and crèche and they were in after-school care until he could pick them up. To make this possible, his
team pulled together and took any court appearances or meetings that were in the early mornings as
he could not be in until about 9.30 am. He also left the office earlier but worked at home once he had
picked up his children. It worked, admittedly not without some stress and compromise, yet it did not
appear to occur to the partnership that lawyers who were mothers could work the same way.
always a partner and Santa’s little helper is an attractive secretary, you know not an attractive lawyer or not one of the boys dressed up in the little short shorts and you know the braces or anything. It’s always a pretty little secretary in knee high boots and a tiny, tiny, tiny skirt.

Yet, despite being more imminently affected by the negative attitude towards the ability to combine motherhood and working as a lawyer, Samantha also chose not to openly challenge this ‘truth’. She felt politically powerless, choosing to wait until she was in a more powerful position, associate at least, before even thinking of rocking the boat. She was not able to compartmentalise as Helen had done but instead chose to live with the tension. Samantha differed from Helen in her alertness to strategies and opportunities to engage in negotiation.

Samantha also had issues with some of the human resources policies and practices of Benefics. For example, she had found her performance appraisal at Benefics to be a tick-the-box exercise without discussion and with negligible benefit to herself or the firm (Samantha, Mid-Level Lawyer, Interview). In her opinion, supervising partners were, on the whole, also poor at giving feedback in a form that encouraged effort to improve rather than just undermining self-confidence and self-esteem. Performance appraisal and development was an area she knew very well and in which she had extensive experience. She believed improvements in this area could assist the firm in the development of their staff. She struggled to share this knowledge. There was a general failure to acknowledge that graduates could have any knowledge of value (Samantha, Mid-Level Lawyer, Interview), despite the fact that Benefics valued second career graduates (Philippa, HR Manager, Interview). The characteristic they valued was self-confidence rather than any expertise they had developed elsewhere. Related to this, she had no avenue to feed her knowledge into the firm.
INTERVIEWER: Do you have any forum or way that you can feed your experience and knowledge into improving things here?
SAMANTHA (Mid-Level Lawyer, Interview): Not really, because despite what I’ve done in the past, to almost everyone in this firm, I am almost no different to a ‘freshy’ straight out of uni. So everything I’ve done before really has no value in their mind. So my partner is probably the exception because he wasn’t admitted until much later himself. So he knows that what you do before admission is actually quite important to how you perform as a lawyer and how you interact with clients and those kind of things, but for the most part the rest of the firm doesn’t see it that way. So, it would not occur to them to think that I have anything valuable to offer and there isn’t any forum for people who have experiences like that to feed in.

The difficulty faced by Samantha was that the knowledge she possessed and wished to impart to the benefit of the firm related to human resources practice. The knowledge had no place within the communities of practice where she found herself, the nested communities that encompassed the lawyers in the firm. In the community of practice where the knowledge was relevant she had no legitimacy. Samantha was struggling to reconcile her past identity as human resource manager with her present identity as lawyer and will continue to feel a tension between the two unless and until she abandons the identity of human resource manager (from which she draws considerable self-esteem) or abandons the law (a career into which she has invested a great deal of time and effort and with high status).

What is Learned within Communities of Practice?
Research question 2 requires that both what is learned by newcomers within communities of practice (reproduction of knowledge) and what is learned by communities of practice (production of knowledge) be addressed. In this, the partner-centred communities of practice are critical to Benefics’ performance, both as cauldrons within which newcomers are formed in the shape of the firm and as units within which new knowledge is discovered and integrated into practice.
However, the experiences and learning of the graduates under supervision differed significantly due to three major factors. The first was the shape of the supervisor’s practice. This formed the backbone of the situated curriculum and, while it broadly reflected the specialism of the partner, it was also dependent upon matters serendipitously under the partner’s control at the time.

The second factor related to the style and strategies of the graduates themselves. Depth of learning came from a willingness to exert effort within a specific specialism, usually the specialism of the supervisor as demonstrated by Lisa and Helen. Breadth of knowledge comes from an eagerness to seek and understand work from outside a single specialism and at Benefics arose where the graduate, Kate, had a strong desire to be a lawyer but was not within her preferred specialism. The third factor which affected what was learned by newcomers is the relationship between supervisor and graduate. Where there was a mismatch between the personality and intellectual approach of the graduate and supervisor, as in Paul’s case, the result was a failure to move from the periphery of the practice. Yet, despite the powerful position of the supervising partner, it was possible for such barriers to be overcome by actively courting other work, as demonstrated by Kate, or assertively seeking a deeper involvement in the practice, as demonstrated by Helen.

Within the partner-centred communities of practice, the graduates were learning technical legal knowledge and ‘how to play the game’. The graduates tended to reproduce the technical and aesthetic practice of their supervisor, due to the inherent ambiguity of the work in the knowledge-intensive firm. The degree to which the newcomers were aware that the knowledge they were reproducing was aesthetic
varied with each graduate’s willingness to question why things were done in certain ways. Even fully aware that certain choices were aesthetic, graduates often still chose to emulate particular practice where they believed that the exponent was good at ‘playing the game’.

New knowledge discovered during research by graduates once employed by Benefics was indistinguishable by the graduates from knowledge that the community of practice already possessed, due to the gatekeeping role of the partners who had the right to accept or reject knowledge. If validated by the partner, such new knowledge was seamlessly integrated into the knowledge and practice of the partner-centred community of practice enabling Benefics to adapt rapidly to the frequent changes in the law which impact specialist areas. However, the new knowledge did not affect the power dynamics of the firm.

Knowledge that the novice lawyers brought with them was unlikely to be integrated into the practice of the firm, either within the partner-centred community of practice or more widely. There was a general failure to recognise that newcomers might have expertise of value and no forum by which such knowledge could be heard. As newcomers, they lack the power to assert the value and validity of the knowledge within their own community of practice. Where the knowledge related to the practice of other, non-legal communities of practice, such as the relevance of Samantha’s knowledge on performance appraisal to the human resources department, she had no legitimacy in the relevant community to negotiate the inclusion of the knowledge.
To incorporate such new knowledge into the firm, the knowledge would need to cross community of practice boundaries. The next chapter will look at the factors that affect whether knowledge will successfully be integrated across community of practice boundaries (Research Question 6).
CHAPTER 6 RESULTS: LEARNING ACROSS BOUNDARIES

Chapter 4 established that a number of distinct communities of practice existed at Benefics, communities of professionals, of administrative assistants and of partners among them. The communities of practice of the professional staff were nested, as was their organisational identity. The strongest identification, the identity most likely to be salient, was the identification with the partner-centred group in which the lawyers undertook most of their work. Chapter 5 then explored what was being learned within the partner-centred communities of practice and demonstrated that while most of the learning was reproductive, new knowledge was frequently discovered within these communities and seamlessly integrated into the practice of the group.

Working with the professional communities of practice to achieve organisational outcomes are other communities of practice and individuals. In this chapter I will describe how day-to-day work involving several communities of practice is coordinated at Benefics through the development of boundary objects and a pool of common knowledge. I will then consider three situations where a decision was made or external circumstances required a change in the way that work was undertaken, necessitating the transfer of knowledge across community of practice boundaries. I will explore factors which impact upon if and how the new knowledge will be accepted and integrated into the practices of the various communities (Research Question 6).
Coordinating Work at Benefics

Carlile (2004) suggests that how coordination is achieved and maintained depends upon three factors: difference (which defines boundaries and determines the effort needed for knowledge to be integrated across the boundary between the two communities); dependence (the level of which determines how much knowledge needs to be shared); and novelty (which affects the sufficiency of the common knowledge that has built up over periods of stable interaction). Where there is no dependence between groups there is no need to coordinate activities. Organisationally, the groups display pooled interdependence (Thompson 1967) and contribute to the overall output and profitability of the firm.

I have already discussed in Chapter 4 how the partner-centred groups display pooled interdependence (Lemak & Reed 2000; Thompson 1967). Other partner-centred communities within the firm are therefore unlikely to have a need for the knowledge and there is no benefit to the firm of it circulating more freely. Indeed, it would be inefficient to insist that partner-centred groups assimilate theoretical knowledge that they would not need to incorporate in their practice.

At Benefics, even when overlap existed between the practices of partner-centred groups, as was the case for some in Dispute Resolution at least, each partner’s preference for his own precedents, remarked upon by all of the graduates and several partners, means that the partner-centred groups operated in isolation in respect to their specialism-specific knowledge. There was de facto pooled interdependence, even if a different mind-set on the part of the partners who controlled what was
considered good knowledge within their own group could have perceived of the interdependence of the partner-centred communities of practice differently.

Though they may not need (or chose not) to coordinate their activities with other legal specialists, the partner-centred communities of practice did need to coordinate their activities with other individuals and communities in the day-to-day activities of the firm. Yet the level of dependence and hence the degree of common knowledge that needed to exist for co-ordination to be achieved differed. For example, accounts staff generate bills from information entered onto the computer system at Benefics by various members of staff including lawyers and admins. The account staff have no need to understand anything about the law or the specific matter to which the bill relates in order to generate an account in the appropriate form. On their part, the lawyers do not need to know how to generate a bill using the firm software. The bill may go through several iterations as partners consider whether all the time clocked to the matter can be included in view of the required estimates letter that is sent at the commencement of a matter and taking into account the desire to retain clients for the firm. Nevertheless, the interdependence is essentially sequential (Lemak & Reed 2000; Thompson 1967) and all the information needed to co-ordinate the activities of professional and accounts staff is contained within the bill itself as boundary object (Star & Griesemer 1989; Wenger 1998). Carlile (2002, 2004) would identify the boundary between accounts and professional staff as a semantic boundary, requiring a minimum of common knowledge and shared understanding.

In contrast, admins and professional staff work together intensively (Lemak & Reed 2000; Thompson 1967) producing documents and letters and maintaining the file.
Sometimes the contents of documents will be dictated by the lawyer, but at other times the admin will draw upon precedents or their own experience to produce the first draft. To achieve this the admin must have a greater understanding of the work of the lawyers than is necessary for the accounts staff. Depending upon the specialist area of the lawyers for whom they work they may need to know the names and general appearance of different types of Court documents, the structure of common contracts such as a sale of business, or the requirements for a transfer of land. As they gain experience they may acquire the capacity to take over some tasks that would normally be seen as legal, such as knowing which documents need attaching to particular forms. Mandy, an admin who had been at Benefics for only three weeks at the time of her interview, was aware that the relevant knowledge was probably not universal or even firm wide, but restricted to the lawyers for whom she worked directly.

MANDY (Admin, Interview): …I think it’s also important to keep your own precedents and keep a record just for yourself. I mean I know companies have their own precedent system. But you see I try to make a lot of notes when I first start and I always keep those, but I also keep my own precedent system so I can always refer to later as well.

INTERVIEWER: So did you bring documents with you?

MANDY: No, no. It’s just that if I’m ever doing something for the first time in a company and it is the first time then I would just quickly open a folder and put that document, a copy of that document in that precedent folder as well. Just for ease of reference basically.

In Carlile’s (2004) terminology the boundary between the admins and professional staff was syntactic which depend for coordination upon common knowledge built up over a history of coordinated activity (Carlile 2002, 2004). Newcomers must be initiated into this common knowledge through participation in practice to the same extent as they need to develop competence in the unique practice of their community.
The common knowledge so developed can sustain ongoing interaction between
groups unless and until novelty potentially disrupts the coordination (Carlile 2004;
Henderson & Clark 1990). The next section will look at three examples of novelty
that were proposed or took place during my field work that affected more than a
single community of practice. They were rare during this time. The first relates to
the introduction of the Personal Property Securities Act 2009 (Commonwealth) (the
PPSA). The second is the proposed introduction of the Benefics’ competency
framework and the third relates to the introduction of new software related to file
management and time recording (the file management system).

Novelty and Knowledge Flow at Benefics

The **PPSA**

The PPSA, a Commonwealth statute affecting the form and enforceability of
agreements relating to the pledging of personal property as security for a debt, was
enacted in 2009 and due to take effect upon receiving royal assent which was
expected later that year. Unlike many changes to statute or case law, which effect a
single specialisation alone (in which case knowledge transfer across boundaries is
not needed) or all lawyers alike (in which case a single community of practice exists
bounded by identity as a lawyer), this statute touched the practice of all
specialisations in the firm but in different ways. Corporate specialists drafted
security documents and agreements and were concerned to ensure that the securities
were enforceable in the case of default. The statute rendered inoperative some
provisions that had previously been common, such as retention of title clauses, and
required registration in a particular form for any and all personal securities in order
for them to be valid. Corporate lawyers would therefore be most concerned with
drafting an effective form of words and developing a protocol to ensure registration occurred in a timely fashion. Dispute resolution lawyers most commonly confronted personal securities when it was necessary to sue on them to enforce the payment of a debt. Their primary concern was in uncovering the potential pitfalls and loopholes that might invalidate securities. Property specialists would have the least exposure to personal securities but needed to be aware of the changed requirements in case they encountered them as ancillary to real property (land) transactions. To some of the lawyers, the changes in the law would be central to their practice and in others it would be peripheral, but all the lawyers in the firm, from graduate to partner needed to know when and how it applied.

As noted in chapter 5, while knowledge discovered within a partner-centred community of practice was rapidly integrated into practice once validated by partner, knowledge originating outside the community of practice and brought in by novice newcomers was less readily accepted. In addition, partners tended to put greater trust in their own understanding and practice than in the practice of other lawyers in the firm as evidenced by the strong preference for their own precedents. Benefics was therefore concerned that left to their own devices specialist groups might develop patchy or inconsistent understandings of the new legislation, or worse, fail to integrate an understanding of it into their practice at all. To avoid this, Benefics mandated that all fee earners must attend a seminar, run Australia wide using video links between all four offices (Field Notes). All the lawyers were told that after the seminar they would need to complete an examination to demonstrate their knowledge of the new legislation. An outside consultant was hired to prepare materials and conduct the seminar. I was permitted to observe the seminar in the
course of my field work. The knowledge flow involved in this change at the Melbourne office is illustrated in Figure 6.1.
Figure 6.1 Knowledge Flow to Introduce the PPSA

Figure 6.1 illustrates that the required knowledge flow was one way, from the expert to the receiving communities of practice, which were only the professional staff rather than all the members of Benefics. These communities of practice, although separate for the purposes of the knowledge being communicated, shared a significant amount of common knowledge as all belonged to the same profession in the same firm. There were therefore already a common lexicon and related values and beliefs. This, in turn meant that less technical effort needed to be expended to make the knowledge intelligible than if the knowledge needed to be integrated across communities with greater difference between them.
While the new knowledge affected all the professional communities of practice, it
did not amount to architectural change (Carlile 2004; Henderson & Clark 1990) as it
did not impact upon the common knowledge through which the work of Benefics
was coordinated. Nevertheless there was a cost to integrating the new knowledge in
that old competence in the drafting and enforcement of personal securities became
obsolete. Artefacts, such as precedent documents, which incorporated the old law
were superseded. Carlile (2004) would identify this as creating a pragmatic
boundary which would give rise to resistance to the new knowledge and the need for
political effort to ensure the integration of the knowledge in practice. However,
there was also potential cost to not learning the new knowledge and it was high, both
to the individual and to the firm.

Individually, the examination mandated at the end of the training would make
obvious who had gained the necessary competence in this important area. Also
individually, to make an error in relation to the law would potentially open a lawyer
to an action for negligence, affecting his or her personal reputation. In addition to
the responsibility of each lawyer, partners of a firm are jointly and severally liable
for the conduct of the firm (Partnership Act 1958) so each partner in the firm would
suffer financially and in reputation should any lawyer in the firm fail to take account
of the changes to the detriment of a client. The high cost of not learning produced a
shared interest in integrating the new knowledge and negotiating a modified practice,
eliminating the need for additional political action such as brokering.
The Competency Framework

The impetus for the implementation of the competency framework came jointly from the HR Managers at the two largest offices. The aim of the framework was to inform all staff, not just lawyers, of the competencies they were expected to have or develop for their job. For shared services staff and administrative assistants there was a single framework, but for lawyers there were levels, from graduate to partner, describing the skills and attitudes that they needed to develop as they advanced up the professional hierarchy (see Appendix D). For the more junior staff, especially the lawyers, it provided the spine for a situated curriculum (Carlile & Rebentisch 2003; Gherardi, Nicolini & Odella 1998). It was also intended to provide guidance to the partnership with respect to hiring and promotion decisions by the firm (Philippa, HR Manager, email correspondence).

Like the PPSA, which being a federal statute affected all states, the competency framework was to be rolled out across all Benefics’ offices. Unlike the PPSA, which affected only professional staff, the competency framework impacted upon all workers at Benefics. It therefore seemed at first glance to be more complex than learning about the PPSA. The knowledge flow associated with the introduction of the competency framework is represented in Figure 6.2.
Knowledge flow is illustrated as two way. Before the HR managers could articulate a competency framework they needed to determine what those competencies were or should be. This knowledge was collected by them as boundary spanners granted legitimate peripheral access to all the practices within various communities in the firm. This is consistent with the suggestion of Wenger (1998) that some groups may form in organisations whose role it is to act as conduits of knowledge between other communities. The HR managers then reified the knowledge in the form of the written framework. It was inevitable in this process of attempting to capture the tacit, that the knowledge would be transformed (see, Contu & Willmott 2003; Duguid 2005) as HR pulled together cues from different communities of practice from different states and hierarchical levels, mixing aspects of expectation and aspiration.
The knowledge thus captured and transformed then needed to be communicated back to the constituent communities and integrated into practice. What this will mean to each of the communities is unclear and it is necessary to establish some common meanings in relation to the expressed competencies, a semantic boundary in Carlile’s (2004) terms. (The semantic boundary exists between HR, who are communicating the framework, and each of the communities to which the framework is communicated. The knowledge in the framework does not affect the efficacy of the common knowledge that exists between other communities, such as admins and the lawyers for whom they work. Hence there is no need for knowledge flow between these communities, illustrated through an absence of arrows between them in Figure 6.2.) Carlile (2004) suggests that a technique through which common meanings may be established is the use of boundary spanners, a position that HR already holds and utilised to generate the framework in the first place.

Despite the fact that the framework was conceived of and advocated by members of a support function who had little line authority within the firm, the framework encountered relatively smooth progress towards integration into practice. One reason may be that the costs in ‘at stake’ knowledge and power appeared negligible, minimising resistance. The competency framework was not perceived as superseding any knowledge or practice but was presented as codifying existing practice. I say ‘perceived’ as I believe there were costs and interests affected by the framework, yet these were subtle and emergent, rather than obvious and immediate. The framework can be expected to have a normalising effect upon as newcomers conform to explicit expectations. In formulating the competencies, HR would have needed to draw a middle line in the face of variations arising between different
communities, likely to be most noticeable between the different state offices but possible also between different partner-centred communities of practice in the same state. The framework makes no distinction between specialisations, yet there was a belief by partners and more junior lawyers that different attributes suited different specialisms and different paths to the top of the profession.

RICHARD (Partner, Interview): ...You get different types of lawyers I suppose. For some they can be exceptionally good business development, you know, type lawyers. The fact is they’re bringing in the work. They don’t actually do very much or any of it. But they would be very successful in their own right just as being. So there’s that type of lawyer. Well it’s kind of a spectrum, because you want a bit of that in every good lawyer. You need to identify what are issues for business, identify what sorts of business are going to have those issues and approaching them and making contact with them, is a good business development sort of skill. And probably really it’s a bit of salesmanship, you know, being able to work out you need a new car and I know exactly the type of car I’m going to sell you, which we don’t learn in law school but good lawyers do that. But then there are others who are at the other end of the spectrum who are very good technical lawyers who are sought out. They don’t go find the clients. The clients find them because of a deep sort of knowledge in particular areas of specialisation that that client seeks. So there’s very different models…

INTERVIEWER: Are some people better suited to being solicitors than others?...
KATE (Graduate, First Interview): I think you need to multi task, people that can’t multi task and, I think you need, yeah you have to deal with procedural problems, like forms and that kind of thing are quite, well some people just have a real aversion to it. And perhaps are better suited to, I don’t know, advocacy, like a barrister, than, you know that type of work. And yeah, or some people prefer to do one project in depth rather than having lots of little things that you handle at various stages. They might be better suited to policy. But a lot of lawyers would be crap at policy or advocacy, so I think they are quite distinct skills.
INTERVIEWER: And are there within different areas of law, distinct skills for different areas?
KATE: Yeah, well yeah, litigations quite a different kind of beast to say transaction work...

The implementation of the framework would also impact upon the power structures of the firm. It diminishes the ambiguity faced by the graduates when they first enter the firm, shifting, even if only slightly, the power-balance away from their
supervising partner. Further, the very acceptance of the framework as valid grants HR some legitimacy in defining legal competence where they previously had little. My field work ended at around the same time as the roll out of the competency framework began so I am unable to comment upon the processes by which the HR managers attempted to ensure consistency of meaning, nor do I have any observations of its impact upon actual practice in the firm. Nevertheless, its acceptance and communication across community of practice boundaries offers some insight into organisational learning at Benefics. I regret being unable to follow the consequences of the introduction of the framework, particularly in relation to the power shifts it would potentially produce, both between new graduates and their supervisors within a specialist community of practice and between the partnership and HR. Further research here would be beneficial.

The File Management System
A third change that affected multiple communities within the firm related to the software used for file management and time recording. Such software is critical to the business of a private legal firm. It affects productivity, profitability, ease of compliance with external and internal requirements for standards and accountability and, indirectly, promotion prospects and career progression. The easier the system is to use and the more comprehensive its collection and collation of relevant detail the more efficient and effective the firm can be. The file management software at Benefics at the time I commenced field work, known as CMS, controlled the daily work of the admins to a significant extent as it affected the opening and closing of files, creating and storing documents, entering disbursements, such as photocopying, and often entering time for billing on behalf of the lawyers for whom they worked.
(more often for partners than for younger lawyers). Mandy (Admin, Interview) had only been with the firm a short time but found the existing system ‘a bit of a tedious situation’. Robyn, who had been with the firm for several years was more expansive in her negative review of the system.

ROBYN (Admin, Interview): And the systems they’ve got, they don’t give the admins a lot of free rein. It’s very tight and very controlled what you can do so it’s very back and fro, that’s a frustration, but I think their precedents are quite good. I think their Court precedents are fantastic. But I know the corporate stuff probably wasn’t as good. It does take a long time. You plug all the stuff in but it doesn’t save it, it doesn’t marry into the system so then you’ve got to go and save it. But, they’re bringing something in to do that. They’re bringing in a system where you open up a document and then you save it and it puts it into the document management system. Because at the moment it’s separate. Everything’s separate.

The CMS was also the source of monthly activity reports that were generated for all fee earners and distributed to the fee earner, HR and the partner under whom the fee earner worked in the organisational structure (William, COO, Interview). HR reviewed the activity reports and used them to inform staff development decisions. The monthly reports were also significant documents in performance appraisals and affected prospects of promotion for junior staff and standing in the partnership for the partners. The ease and accuracy of capturing time worked was therefore of interest to all fee earners. Any time worked on matters that was not recorded represented potential lost earnings for the firm, a matter of significance to those who shared in the firm’s profits, the equity partners.

Before the commencement of my field work, the partners at Benefics made the decision that a new file management and time recording system was desirable and its ‘imminent’ introduction was mentioned during day 1 of the induction (Field Notes). The IT department was charged with implementing the decision of the partners by
selecting and rolling out relevant new software. However, over a year later when I completed my fieldwork the new software had not yet been implemented. The information flow to introduce the new file management system is shown in Figure 6.3.

**Figure 6.3 Knowledge Flow to Introduce the File Management System**

In order to implement a better computerised file management system, the IT department needed to translate *from* each community of practice what they needed from the system (dotted arrows to the IT Group), combine the knowledge thus gained with their own expertise in the selection of a better file management and time recording system, and then translate *to* each of the communities of practice how the
new system could and should be used (the solid arrows from the IT group to each of the communities of practice within the firm)\textsuperscript{23}. I refer here to translation rather than transmission because the file management system meant different things to different communities. In understanding the demands of various communities of practice upon the system and in communicating the use and meaning of the new system, the IT group therefore needed to be sensitive to the different meanings and shape their communications accordingly. A complicating factor not found in relation to the PPSA or competency framework was that the new system would inevitably interrupt the common knowledge that allowed coordination of the work between the different communities of practice and adequate understanding would need to be re-established (the double headed arrows).

The IT department was a boundary group (Wenger 1998) (as was the HR Department in the implementation of the competency framework), acting as a communication conduit between multiple communities of practice. The process would need to be replicated within each office across Australia. The goal of selecting and implementing a new file management system could be frustrated at three points: 1) consultation could fail to produce an adequate understanding by the boundary group (IT) of what each specialist group needed in the new system; 2) the boundary group could fail to combine the knowledge obtained into a useful tool; and 3) the boundary group could fail to adequately translate the knowledge embedded in the system to each specialist group to enable them to use it effectively. A fourth possibility exists by which the roll out of the new system could fail, which does not

\textsuperscript{23} While Carlile (2004) himself describes a similar process in relation to the development of a design tool for use in the car design process, he does so before detailing his typology of boundaries, and unfortunately does not himself apply the typology to the exercise of the development of the communication tool itself, even though this process too required the crossing of boundaries.
entail the IT group. Even if the new system were implemented so that it served the purposes of and was understood by each of the communities, the role out of the system could nevertheless fail if the communities failed to effectively re-establish working common knowledge between them.

The process involved translation of knowledge at two points. While translation is more nuanced than mere transmission of information, it is possible to objectively determine if a translation is correct or incorrect (Carlile 2004). It is a technical process and the process could fail if, at any point, the IT group failed to demonstrate the necessary technical skill. Clearly, the higher the number of different communities from and to which IT needed to translate knowledge and the greater the differences between them, the more complex was the process of translation-combination-translation. The technical complexity of the roll out alone could account for the failure to implement.

However, political considerations were also evident at Benefics. Carlile (2004) suggests that politics is relevant to the flow of knowledge across boundaries only where a pragmatic boundary exists, that is where novelty creates different interests between the parties where previously the interests had been aligned. Yet, if the effort required to integrate knowledge is considered, then interests will almost always be at stake even at the simplest of boundaries. To develop a shared lexicon at a syntactic boundary requires effort, to create shared meaning at semantic boundaries requires effort, and effort requires motivation. The mutual benefit in the product design scenarios of Carlile’s (2002, 2004) work, where everyone’s goals are met and interests served by the achievement of a successful new design, masks the political
aspects in those cases, yet they stand out clearly in relation to the implementation of the new file management system at Benefics.

To implement the new system the IT department needed to expend considerable effort – to gain knowledge of the requirements of each of the communities of practice that would need to employ the system, to combine the knowledge to select or design the new system and to communicate the knowledge about the new system to each of the other communities of practice. Effort may be offset by gains resulting from the new knowledge. The IT group derived power from the dependence of the firm (Hickson et al. 1971) upon the technology which they understood at the deepest technical level and which they maintained. The power of IT would be temporarily magnified when the new system was introduced, as IT would be the only group with the knowledge of how the new system worked and what it could do. However, this power would dissipate rapidly as people became familiar with the system. Ironically, the better job IT did in selecting a system that was intuitive and powerful, the more quickly their power would dissipate.

Implementation of the new system also carried some risk for the IT department. Should the new system not be experienced as an improvement over the old system, or if it was prohibitively difficult to learn or to use, the IT department’s reputation would suffer, and trust in its ability to handle the uncertainty and complexity of ICT would erode, reducing its long term power in the firm. The group’s interests were therefore not strongly served by the introduction of the new system.
The lawyers, administrative staff and shared services staff all faced loss of
competence as their knowledge of the old system was superseded by the need to
learn the new system and their everyday interactions with other communities, such
as assistants and accounts staff, would be disrupted. Non-partners stood to gain little
from the effort needed to incorporate the knowledge and re-establish effective
working relations around the new system. In that it was intended to increase the
billable hours recorded, it could potentially help lawyers reach their budgets,
increasing their value to the firm. This in turn could improve their chances of being
kept on and promoted, but such benefits were not immediate and many other factors
could intervene to frustrate ambitions. Further, promotion prospects hinged on
standing out and any benefits would likely accrue to all professional staff, rather than
advantaging a few. It is even harder to identify advantage in the new system for
administrative assistants. Any increased productivity would not accrue as increased
income or reduced hours.

While the partners also needed to expend effort to master the new system, their
exposure to the system tended to be minimal as their administrative assistants took
most of this burden from them. The technical cost to them of the new system was
therefore less than for many others in the firm. Further, the partners, as owners of
the business and recipients of profits, most clearly stood to gain from the new system
through increased efficiency and minimising lost billable hours.

Where other than mutual interest motivates the effort needed for knowledge to cross

The job of brokering…involves processes of translation, coordination, and
alignment between perspectives. It requires enough legitimacy to influence the
development of a practice, mobilize attention, and address conflicting interests. It also requires the ability to link practices by facilitating transactions between them, and to cause learning by introducing into a practice elements of another.

Partners are clearly in a good position to broker new knowledge due to their position of power within the firm. Where interests are threatened, they hold positions of trust and respect that should enable negotiation of common interests and if all else fails the partners have the authority to compel compliance. However, brokering of a new IT system by the partners was not evident in the day-to-day operations of the firm throughout the time of my field work. They did not appear to use their position within the specialist communities of practice or as owners of the firm to negotiate progress with this project. Failure to implement a new computerised file management system therefore was a failure of brokerage, a political failure, at least as much as a technical failure.

Factors which Affect the Flow of Knowledge across Boundaries

From the three examples it is possible to see that integration of new knowledge into the firm requiring the movement of knowledge across boundaries of communities of practice was dependent upon the interplay of several factors. As suggested by Carlile (2004) the level of interdependence and degree of difference between the communities was relevant to the amount of effort and strategies necessary for the successful integration. The greater the interdependence, the deeper the understanding and the richer the flow of knowledge between the communities needed to be. The greater the difference between the groups the higher the technical challenge to re-establish coordination in the face of novelty.
However, the scenarios explored by Carlile (2002, 2004) and Carlile and Rebentisch (2003) involved product development and the transfer of knowledge to a joint venture, where common interests were created through the need to cooperate to achieve a single end goal or product. The common interest in a single final product masked any resistance that arose from the need to expend effort to assimilate new knowledge, even where that new knowledge did not supersede existing knowledge. In contrast Benefics was a professional partnership where the dominant unit of production was the partner-centred group which operates largely independently of other partner-centred groups. Interests were not so readily aligned and the need for motivation to overcome resistance to the integration of new knowledge was more evident. Such motivation could emerge from the exercise of power and politics or from an assessment of benefits that flowed from the new knowledge offsetting the costs of its integration. The factors are summarised in Table 6.1.
Table 6.1 Factors Affecting Flow of Knowledge across Boundaries

<table>
<thead>
<tr>
<th>Costs of integrating new knowledge</th>
<th>Effort to integrate new knowledge</th>
<th>Interests enhanced by new knowledge</th>
</tr>
</thead>
<tbody>
<tr>
<td>Technical</td>
<td>Technical</td>
<td>Technical</td>
</tr>
<tr>
<td>• Loss of competence</td>
<td>• Syntactic boundary – develop common lexicon</td>
<td>• Achievement of goals</td>
</tr>
<tr>
<td>Political</td>
<td>• Semantic boundary – develop common meaning</td>
<td>• Avoidance of negative consequences of not learning</td>
</tr>
<tr>
<td>• Loss of power, control or autonomy</td>
<td>• Pragmatic boundary – develop common interest</td>
<td>• Power, status, control and autonomy</td>
</tr>
<tr>
<td></td>
<td>• Use of power and/or authority to mandate learning</td>
<td>Subtle shifts in power may not be easily predicted or may be overlooked in the face of technical benefit. The confluence of interest and knowledge may enhance the likelihood of successful integration.</td>
</tr>
</tbody>
</table>

The higher the cost, the greater the resistance to the new knowledge. Loss of power, control or autonomy may be a factor even when there is little or no technical cost. The political cost of new knowledge may not be clear, where power shifts are subtle.

The greater the effort required the greater the likely resistance. As technical difficulty increases effort increases. More than two parties may be involved including boundary groups and brokers adding complexity to the required effort.

The relationship between the cost of integrating the knowledge (C), the effort required to integrate the knowledge (E), and the enhancement to the interests of the parties (I) from the integration of thee knowledge may be expressed as follows.

Successful integration occurs when:

\[ I > E + C \]

From Table 6.1, a source of resistance to the integration of new knowledge is the technical and political cost of old knowledge being superseded by new knowledge. In the PPSA example the main cost to the integration of the new knowledge was technical as experts in personal securities found their precedents and past practices rendered ineffective through the new legislation. The PPSA did not affect the power structures or dynamics of the firm. The costs of the competency framework were more subtle. There were no technical costs as no staff member’s knowledge was
rendered obsolete by the introduction. The political costs were likely to be emergent rather than immediate and the partners were unlikely to realise the shifts in power – to HR who had established legitimacy in defining competence of legal staff for the first time and to the law graduates as the competency framework diminished the ambiguity with respect to what they needed to learn. The costs of the new file management system were comparatively large. All staff members in every community of practice stood to find some of their knowledge rendered obsolete, this being most impactful upon the admins. Shifts in power would occur, if only temporarily, while the new system was learned.

Another source of resistance to the integration of new knowledge is the effort that is required to integrate the new knowledge into practice. Only the lawyers needed to exert any effort to integrate knowledge of the PPSA and lawyers were used to adapting to changes in the law. Resistance was therefore likely to be less in the case of professional staff than would be the case for communities more used to stable knowledge bases. There appeared to be little effort required at all to integrate the competency framework. In neither of these examples did there appear to be political effort required. The file management system on the other hand would require extensive technical effort in the form of training for all staff. Old habits would need to be discarded and new habits developed. Where common knowledge was disrupted between interdependent communities of practice, such as between the professional communities and the admins, then effort would be needed to re-establish the common knowledge.
The costs and effort of integrating new knowledge may be balanced or offset by the gains from the integration of new knowledge. The gain from the new knowledge may be in avoiding negative consequences of not integrating the new knowledge as was the case with the PPSA. In relation to the competency framework, the political gains were most apparent for the members of the HR department and recognition of this may have motivated the necessary political effort to push through for the frameworks acceptance, the potential gain driving political effort. The partners would potentially lose some power and control, yet they may not have realised this, and as the costs and effort required of them were minimal they appeared to offer no barrier. In relation to the file management system the IT department was faced with weighing up short term gains in power against the political risks of failure and the effort involved on their behalf. Given this equation is it unlikely that they would expend effort without the exercise of power on the part of the partners, the main recipients of benefit from a new system. The partners, for whatever reason, did not appear to be pressing for the change, explaining its very slow progress.

Conclusion

Carlile (2002, 2004) deals well with the challenges of integrating knowledge across community of practice boundaries where common interest balances out the effort needed. This would commonly be the case in machine bureaucracies and adhocracies (Mintzberg 1980, 1981) where achieving organisational goals involves the successful collaboration of several communities of practice, but was not the case at Benefics, a professional bureaucracy. As noted by Nicolini (2012) there is a dearth of empirical research on how communities of practice within organisations interact to create organisational learning, and while this research highlights in
particular the political aspects of the movement of knowledge within firms, further research is needed.

The last three chapters have explored the research questions as follows: Chapter 4 considered what communities of practice exist in Benefics’ Melbourne office (Research Question 1), how they are related to each other (Research Question 5) and how the communities of practice are bounded (Research Question 3). Chapter 5 looked at what is learned within them (Research Question 2). This chapter explored how knowledge moves between them (Research Question 6). In the process, the effects of power have been noted (Research Question 4) most notably in relation to the balance of production and reproduction within communities of practice and in relation to the movement of knowledge between communities of practice. The next chapter will discuss the practical implications of these conclusions highlighting significant findings and unexpected conclusions.
CHAPTER 7 DISCUSSION

As set out in the Introduction, Chapter 1, this research aimed to explore how organisational learning occurs in legal firms utilising the concept of communities of practice. The Literature Review, Chapter 2, identified that the framework of communities of practice dissolved several dichotomies evident in the cognitive models of organisational learning, notably that between individual and collective learning. However, Chapter 2 also showed how the conceptual and empirical literature tended to look at either the learning of the individual, in the guise of the novice newcomer (in which case the emphasis tends to be on the reproduction of the communities knowledge over generations) or the production of new knowledge by the collective (typically as the collective solves novel problems in its day-to-day activities). Chapter 2 also discussed that, while the relationship between communities of practice within organisations has been raised in a small number of conceptual articles, there is little consensus on how the relationship should be conceptualised and even less empirical work from which the theory may be elaborated. This research contributes to the literature by addressing both these gaps: considering the tensions between individual learning and collective learning; and conceptualising how knowledge flows within and among communities of practice in the firm as a whole in order for the day-to-day work of the firm to be accomplished.

This chapter will follow the structure developed in the results chapters to discuss the outcomes of the research. It will first discuss the answers to the following research questions which were explored in Chapter 4. I will pay particular attention here to
the discovery of nested communities of practice and the implications that flow from that discovery.

*What communities of practice can be identified within the subject law firm?* 
(Research question 1)

*Where are the boundaries of the communities of practice in the legal firm?* 
(Research question 3)

*How are communities of practice within the legal firm related to each other?* 
(Research question 5)

I will then discuss the results with respect to research Question 2, covered in Chapter 5, which looks at the balance of reproduction and production within communities of practice at Benefics.

*What is being learned in the communities of practice? (Research question 2)*

Following this I will discuss the movement of knowledge across community of practice boundaries, covered in Chapter 6. The theorising in Chapter 6 took as its starting proposition Carlile’s (2004) typology relating to types of boundaries and how this impacts upon knowledge transfer across the boundary and I will discuss here the findings in relation to the applicability of that typology to knowledge transfer problems in the law firm.

*How is new knowledge integrated across the boundaries of communities of practice in the law firm? (Research question 6)*
Last I will draw together from Chapters 4, 5 and 6 issues of power as they affect learning within the law firm and draw attention to some implications of the power structures evident at Benefics.

How does power affect learning in the legal firm? (Research question 4)

Communities of Practice at Benefics: Nested Communities of Practice

As I discussed in Chapter 1, my initial expectation of the configuration of communities of practice which I expected to find in law firms, was that they would be centred around specialist divisions and contain both professional and administrative members of the firm who worked in that area. I also anticipated that the boundaries of communities would be relatively stable. The dominant question on my mind was how to determine who was outside and who was inside the community. This was consistent with conceptual and empirical literature much of which discussed only single communities (Araujo 1998; Orr 1996; Wenger 1998) or compared between communities of practice (Donaldson, Lank & Maher 2005; Gongla & Rizzuto 2001; Lave & Wenger 1991). Even literature that purported to discuss knowledge flow across community of practice boundaries represented communities of practice as having relatively stable boundaries (Araujo 1998; Assimakopulos & Yan 2006; Gherardi, Nicolini & Odella 1998). I was therefore surprised to find that the professional communities of practice are nested; partner-based communities of practice sit within specialist communities of practice which sit within a single community of practice that encompasses all professional staff at Benefics’ Melbourne office. However, I probably should not have been surprised given the strong emphasis upon identity in relation to learning in communities of practice in Wenger’s (1998) work and the well-established literature in relation to the
necing of organisational identity (Ashforth, Harrison & Corley 2008; Ashforth, Rogers & Corley 2011).

Identification is clearly not enough on its own to delineate a community of practice. For example, Brown and Duguid (2001) distinguish professional or occupational affiliations from communities of practice and Wenger (1998) acknowledges that some groups with which an individual might identify have too tenuous a practical connection to amount to a community of practice. However, without identification there is no community of practice even if, as an external observer, you might be able to identify a shared practice. This has implications in practice.

A necessary implication of the finding is that the informal organisation composed of communities of practice is subjective. At Benefics this meant in effect that the partner-centred communities tended to act in isolation because the partners saw themselves that way. I have already noted that the partner-centred communities of practice are likely to be the strongest identification (Ashforth, Rogers & Corley 2011) and therefore most likely to be the salient community of practice from day-to-day. Barriers arise in relation to knowledge originating outside the salient community, even where epistemic similarity would suggest knowledge should flow easily (Brown & Duguid 2001). As a result of this taken for granted identification, knowledge flow within Benefics was more restricted that it needs to be.

However, the mutability of boundaries may also offer advantages and opportunities. Brown and Duguid (2001) point out that within a community of practice knowledge is rapidly shared. Therefore, if broader identifications can be engaged, the nesting of
communities of practice within Benefics has the benefit of allowing the wide and rapid dissemination of knowledge within the broader community of practice. Consequently, I observed near universal agreement in relation to the necessary work ethic, grooming and deportment, and the level of commitment needed to be a competent lawyer. The rapid dissemination of this knowledge, relating to what a lawyer looks like and the attitude a good lawyer has towards their work, is attested to by the finding that a mere two weeks after commencing work at Benefics, the graduates produced in interview a list of attributes of a competent lawyer that was surprisingly consistent with the list given by interviewed partners.

While I have focused on the professional staff within Benefics, it is possible that there was nesting in relation to other communities of practice within Benefics, notably the admins. In the same way that particular technical knowledge was specific to particular specialisms for lawyers, what admins did varied depending upon the specialisms of the lawyers for whom they worked. For example, while all admins needed to know how to open and close files, use the word processing system, photocopy and file, it is unlikely that an admin working in Dispute Resolution would need to be able to complete a transfer of land form or an admin in Property complete a subpoena. However, the possible nesting of communities in relation to admins was clouded by the fact that admins often worked for more than one lawyer and sometimes across specialisations making it less likely that they would identify as property law admins, litigation admins or corporate law admins. In addition, as pointed out in Chapter 3, I interviewed only two admins and my periods of observation were focused on professional staff and particularly the graduates.
Artefacts may reinforce the boundaries between communities (Wenger 1998) and therefore affect the nesting of communities of practice. For example, the practice of physically clustering the specialisms reinforced the identification and bolstered the boundary between specialisms at Benefics. Graduates were located in the corridor outside their supervisor’s office, and members of specialist divisions were located adjacent to each other. The reinforcing nature of the layout of the firm suggests that different layouts would result in different configurations of communities of practice. In particular, Benefics was located on a single floor of the building. Larger firms often occupy several floors of a building, locating different specialist divisions on different floors. As a consequence, communication between lawyers in different specialisations and issues and events which cue professional, as distinct from specialist, identities are likely to be rarer. That is, the size of the firm affects the layout of the firm which, in turn, affects the likelihood that a broader salient identification will be engaged.

William (COO, Benefics) suggested that size might have another, more direct, impact upon the configuration of nested communities of practice within Benefics. He suggested that, in larger firms, specialists tend to work in larger teams comprising a number of partners with a pool of more junior lawyers who work with several partners. In contrast, at Benefics there may be only one partner who has expertise in a particular specialism, removing opportunities for junior lawyers to work with other partners equally qualified in their area. It follows that the ‘micro-communities’ encountered at Benefics might not exist at larger law firms.
Reproduction and Production

The literature on communities of practice is divided between that which looks at how newcomers learn to be competent practitioners, the focus of which is reproduction, and that which looks at how communities of practice generate new knowledge in their day-to-day functioning (Osterlund & Carlile 2005). The seminal work of Lave and Wenger (1991) is the prime exemplar of the first and Brown and Duguid (1991) a prime exemplar of the second. While the literature focused upon reproduction often acknowledges the possibility of new knowledge being integrated into the practice of communities of practice, it typically suggests that this is slow and incremental, associated with generational change (see, for example, Wenger 1998).

Nicolini (2012) laments that one of the main criticisms of Lave and Wenger’s (1991) legitimate peripheral participation is the poor way that it deals with change. Much of the writing about new knowledge, whether one looks within the literature on communities of practice or more widely at literature relating to learning, innovation and change, tends to present the creation or discovery of new knowledge as challenging, even rare (see, for example, Argyris 1994; Brown & Duguid 2000).

In this research I attempted to hold both aspects of production and reproduction in focus, which led to an interesting conclusion. As expected, legitimate peripheral participation operating within the power structures of Benefics strongly encouraged newcomers to reproduce the technical and aesthetic elements of the practice of their supervising partner. At the same time, and without disturbing those power structures, new knowledge was being discovered within the partner-centred communities of practice on an almost daily basis, often by the very same newcomers. Taken together the processes of learning within the communities of
practice at Benefics illuminated how law firms could be experienced as extremely traditional while at the same time adapting rapidly and easily to changes in the law and the unique problems of clients.

The rapid integration of new knowledge takes place within the partner-centred communities of practice with which Ashforth, Rogers and Corley (2011) suggest members of the professional staff at Benefics are likely to have the strongest identification. The very strength of the identification with this partner-centred group acts to discourage the flow of knowledge beyond its boundaries.

One area in which slow change in law firms has been identified as problematic is in relation to a lack of diversity in the top ranks of the profession. In particular, despite the increased diversity of entrants into the law which has occurred over several decades (Bagust 2012; Larcombe & Malkin 2011) the senior ranks are still stubbornly dominated by men. Diversity, in theory, allows for resistance to the identity control strategies which Alvesson and Willmott (2002) identify as a means of control in organisations such as law firms where more bureaucratic controls are difficult to impose. Resistance is likely to be strong particularly in relation to the enduring beliefs and values that are associated with early socialisation, which Bourdieu (1977, 1990) named habitus (Gherardi, Nicolini & Odella 1998; Handley et al. 2006; Mutch 2003). This research suggests that the different values and beliefs brought into communities of practice through habitus may impact upon the intuitive assessments of competence made by senior lawyers. As a result unless the diverse entrants internalise the values of the community they have entered into, they may be
judged as less competent than their peers in ways that the assessors are unable to articulate.

While it is possible to adopt behaviours without internalising values (Ashforth 1993), to do so creates dissonance. Dissonance creates tension and is difficult to sustain over time, so workers experiencing dissonance may either choose to change their values in line with the values of the group or to leave. This is particularly problematic in law firms such as Benefics where the values relate to aspects of identity, for example, gender. This research suggests that, while it may be possible for the tension of dissonance to be avoided by compartmentalising aspects of personal identity (Wenger 1998), issues such as a desire for motherhood may make it impossible to maintain the separation of spheres necessary. The likelihood of change such as increased diversity in senior ranks of law firms therefore depends, at least in part, upon whether diverse entrants can maintain ‘micro-emancipations’ (Alvesson & Willmott 2002) until they achieve positions of sufficient seniority and power through which to introduce wider social change within the firm.

A final point about what was being learned in the communities of practice relates to the efforts of the profession to ensure a minimum level of competence in common legal work through post-graduate formal practical education. Both in relation to initial law degrees and postgraduate training, knowledge gained as a student was accorded little value. The graduates were told that they basically had everything to learn, both technically and in relation to how to ‘play the game’. Their lack of competence was reinforced by corrective feedback, as the supervising partner’s way was drilled into the graduate as the right way. A consequence of the devaluing of
what was learned in formal settings was that the formal practical training through the
College of Law, which each of the graduates was required to undertake before
admission, was not integrated into the graduates’ practice. It was seen as outside and
additional to the real work that the graduates undertook at Benefics. Simulations are
not experienced as real practice but as artificial. This casts doubt upon the efficacy
of the current style of practical training, at least as experienced by the graduates in
this research at the College of Law, and suggests more effort needs to be made to
incorporate the actual work of the graduates into the curriculum of formal practical
training.

**Crossing Boundaries**

As mentioned above, law firms such as Benefics are able to adapt rapidly to changes
in the law and client demands due to the dominance of the partner-centred
communities of practice. However, the knowledge that allows this rapid adaptation
rarely moves beyond that partner-centred community, nor does it usually need to.
Situations where it was desirable or required that knowledge cross community of
practice boundaries were rare during the period of the field work. At Benefics the
need for such knowledge flow might be triggered by external change, for example
the enactment of the Personal Property Securities Act 2009 (Commonwealth), or
instigated internally, for example the new file management system and the
competency framework.

The literature relating to knowledge flow across community of practice boundaries is
under-developed. Within the communities of practice literature it is predominantly
found within the structuralist-functionalist stream (see, for example Roberts 2006;
Wenger, McDermott & Snyder (2002) or, within the interpretive stream, as depending upon factors such as epistemic similarity between the communities of practice (Brown & Duguid 2001). Work, such as Carlile’s (2002, 2004) from outside the communities of practice literature, discussed how knowledge may cross boundaries where there is not an epistemic similarity and provided possible avenues to explore in relation to knowledge flow within Benefics. From Carlile (2004) I anticipated that the type of boundary between two communities, affected by the degree of dependence and difference between groups, would affect how knowledge flowed between them. In particular, Carlile (2004) suggested that political effort would only be needed in situations where the integration of the new knowledge would lead to a loss of hard won competence in the receiving group.

This research suggests that in professional service firms such as Benefics, the process is potentially much more complex than Carlile’s (2004) typology suggests as, even when competence is not threatened, integration of new knowledge requires effort. In design and manufacturing scenarios in relation to which the issue has typically been discussed in the past, the resistance generated by this call upon effort is often masked by the common interest of all parties in generating a successful outcome from the integration of the knowledge. In firms displaying structures similar to Benefics, a common interest does not necessarily emerge. This research suggests that, in the absence of a common interest the new knowledge is unlikely to be integrated into practice unless either 1) benefits flowing from the new knowledge offset the effort required to integrate the new knowledge; or 2) political action persuades or compels the integration of the new knowledge. Political action by the partners, as the most powerful community within the firm, either coercive use of
authority or persuasive through brokering, is most likely to be effective. Brokering by other communities of practice is possible, for example HR in relation to the competency framework, but is more likely to be successful if there is little or no cost in lost competency and minimal effort required to integrate the new knowledge.

The data upon which these conclusions have been reached is not as strong as that relating to learning within single communities of practice at Benefics. I therefore present these conclusions as raising possible directions for fruitful future research.

**Issues of Power**

Issues of power in communities of practice, while raised as significant by Lave and Wenger (1991), are under-developed in the literature (Contu & Willmott 2003; Fox 2000). Sensitised by these criticisms I was alert to explore ways in which power affected learning within and between communities of practice at Benefics. Three instances are noteworthy. The first relates to the gatekeeping role of partners, the second to the power of the graduate to shape their own learning and the third to the role of power in the flow of knowledge across community of practice boundaries.

I anticipated that reproduction of existing knowledge would support the status quo, bolstering the existing power dynamics of the firm, while new knowledge, particularly that originating with relatively junior members of the firm, would disrupt the power dynamics offering the junior lawyer leverage to negotiate their position within the community (Fox 2000). However, while reproduction did flow from and reproduce the relatively powerful position of the partners at the centre of their specialist communities of practice, new knowledge did not disrupt the power
dynamics as expected. Graduates were unable to distinguish whether the results of
their research produced new knowledge or reinforced existing knowledge due to the
gatekeeping role of the partner, who in either case, had the discretion to accept or
reject the knowledge. The graduates were therefore unable to use the new
knowledge to leverage their position within the community of practice.

New knowledge brought into the professional communities of practice by novice
newcomers through multi-membership, including knowledge gained through prior
careers, also did not enable the graduate to negotiate a more prominent position.
There was an assumption that newcomers had no relevant knowledge to contribute to
the community of practice. There were therefore no forums or other avenues by
which the graduate could raise awareness of any expertise that they did possess.
This was particularly frustrating for second career graduates who may well have
decided to study law in the first place because of their exposure to legal issues in
their work, as had both Helen (entertainment law) and Samantha (industrial relations
law). Where the knowledge was not legal but related to other functions performed
within the firm, the knowledge was even less likely to be integrated. In the
communities of practice, where newcomers enjoyed legitimate peripheral
participation, the knowledge was not relevant and in the communities where the
knowledge was relevant, the newcomer had no legitimacy. This was the case with
respect to the knowledge of performance appraisal which Samantha had developed
in her previous role as a manager in human resources in a large insurance
organisation.
There was one area in which the newcomer surprisingly did not appear powerless. They had significant capacity to influence their own learning trajectory through the situated curriculum. Gherardi, Nicolini and Odella (1998) suggest that situated curricula are shaped largely by the expert practitioner who assimilates the contents of his or her own early learning experiences as a taken-for-granted map of how training should occur. The situated nature of the curriculum is also impacted by the circumstantial mix of work available in which the novice newcomer may participate. Gherardi, Nicolini and Odella (1998) acknowledge that the style and strategy of the novice and interpersonal relationships will also have an impact on what is learned, but suggest that there will be an overarching similarity between the curricula experienced by different novices in the same organisation.

The findings of this research suggest, to the contrary, that the situated curricula experienced by different novices at Benefics are extremely varied. The first factor that impacts the variation is that graduates are assigned within specialisations to a particular partner. Within Benefics few partners had overlapping practices and the work available for the graduates was therefore going to vary considerably depending upon the specialism and practice mix of their supervising partner. This lack of overlap was, according to William (COO, Interview), common to firms of mid-size.

Size had a second impact upon the situated curricula of the novices unexpectedly allowing them greater agency. Unlike in larger firms where specialisms generated sufficient work to keep novices fully occupied within them (William, COO, Interview), at Benefics it was common for graduates to be asked to undertake work for partners outside their assigned specialism. In fact, graduates had the power to
pursue work outside their assigned specialism if they desired it. Depending upon how they went about this, and their motivation for doing so, pursuing work outside their assigned specialism could result in both deep and wide learning in relation to several specialisms. Breadth and depth of knowledge were promoted by a desire to work in a different specialism as this motivated the seeking of work in that other specialism and attention to the knowledge important to undertake that work. Unless the desire to work in the other specialism was present, accepting work from other specialisms did not appear to lead to breadth of knowledge. Where such other work was sought or accepted only to maintain budgets, less attention was paid to the knowledge available through participation in the other community of practice and the graduate stayed on the periphery of that practice. Breadth of knowledge was also not acquired where the work outside the appointed specialism was sought at the expense of the work inside the specialism. The risk in this case, as illustrated by Paul’s experience, was that neither breadth nor depth would be achieved in either specialism.

A third area where power was visible in its affect upon learning related to knowledge flow across community of practice boundaries. The research suggested, as discussed above, that power greases the flow of knowledge across community of practice boundaries. The power may flow from hierarchical position, such as the authority possessed by partners and their legitimate power to reward or punish other members of the firm. However, the use of legitimate power and authority may not always be desired or even available to communities that have interests vested in the flow of new knowledge in the firm. In such cases political strategies are likely to be employed to persuade other communities to integrate new knowledge. The lower the
competency costs and effort to integrate the knowledge the easier such political persuasion is likely to be.

**Conclusion**

The case of Benefics has offered several interesting insights into how learning occurs in legal firms in relation to: the shape and relationship of communities of practice in professional service firms; the balance of production and reproduction; into how knowledge may flow across boundaries between communities of practice in such organisations; and in relation to the effects of power on knowledge and learning. The next and final chapter is the Conclusion. In the concluding chapter I will summarise the findings, demonstrate the achievement of the research objectives, present the limitations of the study and suggest areas for future research.
CHAPTER 8 CONCLUSION

This thesis evolved from curiosity about my own learning as a lawyer into an exploration of organisational learning in legal firms through communities of practice. I use the term ‘evolution’ rather than ‘change’ because, as I became more familiar with the literature in relation to communities of practice, it became clear that the dichotomy of individual and collective dissolves under this lens. Uncertain whether I would empirically encounter several, one or no communities of practice in a law firm the objective required me to look at the knowledge flow in whole organisation to explore learning through communities of practice. This chapter will draw together the elements of this study. It will demonstrate how the aim of the research has been achieved and summarising the findings. It will then discuss the limitations of the research and will end by suggesting some areas for future research which flow from the research.

The Research Objective and Findings

The objective of the research, as set out in Chapter 1, was to explore situated learning in legal firms with the aim of better understanding knowledge reproduction and production within the firm. The primary research question which drove this research was:

*How does organisational learning occur through communities of practice in legal firms?*

The literature review identified six subsidiary questions that needed to be addressed in order to answer the primary research question. Together, the answers to these
subsidiary questions present a complex picture of learning in legal firms. Some of the findings of this research are consistent with existing conceptualisations and findings of other research and other findings add to the literature on communities of practice.

*What Communities of Practice Can Be Identified in the Legal Firm? (Research Question 1)*

Cox (2005) suggested that, in modern organisations, communities of practice might be rare as opportunities to interact over an extended period of time, which is a necessary condition for communities of practice to develop, are diminished under modern management practices. Perhaps reflecting the persistence of a traditional organisational form in private legal practices (the professional partnership (Greenwood & Empson 2003)), I found to the contrary at Benefics. There were several communities of practice. In fact there were more than I had anticipated given the size of the firm. Wenger’s (2005) indicators that a community of practice has formed suggested that the professional staff at Benefics were a separate community of practice to their administrative assistants. Human resources and IT were similarly separate communities of practice. (It is likely that most, if not all of the support functions within the firm contained within them informal groups operating as communities of practice, but I have insufficient data on these groups to claim it definitively.)

An insight from this research is that nested communities of practice exist in relation to the professional staff. The partner-centred groups in which most of the day-to-day work of the firm is carried out form communities of practice. Several of the partner-
centred groups are nested within the broader specialisations which share several practices, beliefs and values which separate them from other specialist groups. The widest grouping, separated clearly from other groups in the firm by what they do and know, is that of the professional practitioners as a whole. The boundaries between the professional communities form or dissolve depending upon the salient identification of the practitioner. The strongest organisational identification tends to be that of the lowest level (Ashforth, Rogers & Corley 2011), in Benefics’ case the partner-centred group, making this community of practice the most influential in a newcomer’s learning. However, when wider identifications, such as relating to a wider specialism or the profession as a whole, are engaged knowledge flows freely in the wider community.

What is Being Learned in the Communities of Practice? (Research Question 2)
The existing literature tends to look at communities of practice as either the place where the newcomer learns the practice of the community (predominantly reproductive) or as a resource for the solving of problems through knowledge sharing (productive). This research kept both these outcomes in focus. It found that in the partner-centred communities of practice at Benefics, in relation to knowledge discovered by the graduate in the course of their work, the distinction between knowledge new to the community of practice and knowledge already within the community’s practice was not evident to the novice due to the gatekeeping role of the partner. In this way, valuable new technical knowledge, discovered by the novice, is introduced into the community of practice without disturbing the power dynamic between novice and master. This is contrary to the suggestion of Lave and Wenger (1991) and Wenger (1998) that valuable new knowledge provides the
newcomer with leverage through which to establish their place in the community and by which they may eventually supplant their master.

Also contrary to the suggestion of Wenger (1998), knowledge brought into the community of practice by novice newcomers, was not readily integrated into the practice of the community or the firm. Although they had legitimacy within the group, the newcomer was perceived as incompetent and their knowledge therefore was not valued, even where it was relevant to the community. Where the knowledge was relevant to the practice of the wider organisation but not the nested professional communities of practice, the newcomer had no legitimate access to the practice of the relevant communities and therefore the knowledge remained uncommunicated. This leaves open the question of the impact of non-novice newcomers to the firm and their potential influence upon the practices of the firm, an area of potential future research.

My research also demonstrated that the ambiguity of knowledge at Benefics (Alvesson 2001) creates strong incentives for the novice to reproduce both the technical and aesthetic aspects of the knowledge and practice of their supervising partner. Nevertheless, as mentioned above, new knowledge discovered by the novice is easily integrated without disturbing the power dynamics of the group. The partner-centred communities of practice at Benefics were therefore simultaneously strongly bound to doing things as they had been done before, while rapidly adaptable to novel problems presented in the practice of law.
Further, it was found that the learning of the newcomer at Benefics varied greatly between individuals. This variation occurred in part due to the structure of the firm, where partners maintained essentially separate specialisms within the larger firm, with the result that the work in which newcomers had the opportunity to participate differed significantly depending upon to which partner the newcomer was assigned. In this respect, professional partnerships vary from more functionally structured organisations such as the construction firms studied by Gherardi and Nicolini (2000) where newcomers tend to have wider access to the organisation’s practice.

As suggested by Gherardi, Nicolini and Odella (1998) the content of the situated curriculum is also significantly impacted by the interpersonal relationships within the community of practice and by the style and strategy of the novice him or herself. This research found that the style and strategy of the newcomer was particularly impactful on the content of the situated curriculum. The finding of substantial variation in the content of learning is significant in the face of attempts over decades (see, for example, Ormrod Report 1971) to ensure that all law graduates consistently achieve at least a minimum competence in a wide range of practice areas, through stating compulsory areas of practice to be covered (Legal Profession (Admission) Rules 2008). The breadth and depth of knowledge gained during a period of supervised practice in the law is inevitably going to vary due to the circumstantial variations: in the practice to which they have access; in the quality of the interpersonal relationships experienced; and in the style and strategies adopted by the novice themselves.
Where are the Boundaries of the Communities of Practice in the Legal Firm?  
(Research Question 3)

In the existing literature the boundary of the community of practice has been seen, if it has been considered at all, as extending only so far as the shared practice. This research has shown that delineating communities of practice by practice alone is inadequate to explain the nesting of communities of practice observed. It is necessary also to consider identity. This thesis proposes that a community of practice extends only so far as the mutually defining identification of members. It follows that the boundaries of communities of practice have an objective element (common practice) and a subjective element (identification). A corollary of this finding is that knowledge flow may be interrupted even where epistemic similarity would suggest knowledge would flow freely (see further, Brown & Duguid 2001), in the event that members identify themselves as belonging to separate communities of practice.

How Does Power Affect Learning in the Legal Firm? (Research Question 4)

Much of the literature which has adopted communities of practice, particularly that from the functionalist stream, has ignored or underplayed the role of power in communities of practice (Contu & Willmott 2003). This research has identified three significant aspects of power in relation to learning in legal firms. First, and contrary to the suggestions of Lave and Wenger (1991) and Wenger (1998), new knowledge introduced into the practice of the partner-centred communities of practice did not disturb the power dynamics of the community by providing leverage by which the newcomer could eventually replace the old master. Instead, the gatekeeping role of the partner pursuant to which no knowledge was accepted as
good knowledge unless and until sanctioned as such by the partner, means that the
novice is unaware that what they have produced is new knowledge. It is, in effect,
attributed as knowledge of the master not the novice.

A second notable instance of power in communities of practice at Benefics is that the
graduates were revealed as quite powerful in the shaping of their own learning
trajectory. This is consistent with the suggestion of Gherardi, Nicolini and Odella
(1998) but surprising in the degree to which the individual style and strategy of the
graduate impacts both the breadth and depth of their learning.

Power was also noteworthy in its impact upon the flow of knowledge across
community of practice boundaries. Due to the structural idiosyncrasies of
professional partnerships, mutual interest rarely arises to drive the effort needed to
assimilate new knowledge into practice. Power, most obviously in the form of the
authority possessed by the partners of the firm, was engaged (or should have been
engaged for the knowledge flow to be successful) in all examples of cross-
community of practice learning observed at Benefics.

*How are Communities of Practice within the Firm Related to Each Other?*

*Research Question 5*

Benefics, as a professional partnership, varied structurally both formally and
informally, from many of the other organisations in which communities of practice
have been observed, and the differences in power and interdependence explain
several of the phenomena observed there. Unlike many manufacturing firms where
there is sequential interdependence and the success of the enterprise is dependent

276
upon the collaboration of all core units in the creation of the final product, at Benefics the partner-centred groups contributed to the success of the organisation through pooled interdependence (see, Lemak & Reed 2000; Thompson 1967). There was no benefit to the firm for knowledge discovered in one partner-centred group flowing to another where the practices were completely independent and insisting upon such knowledge flow would in fact be inefficient.

However, this research found that the independence of the partner-centred group was to a significant extent subjective, and therefore open to re-imagining, a finding consistent with the re-imagining that occurred at Xerox which brought the repair technicians into a core position in the organisation (Brown & Duguid 2000). That is, the separation of the partner-centred practices reflected more a belief in the distinctiveness coupled with a distrust of precedents generated outside the partner-centred group, rather than an objective lack of overlap.

Between the professional communities of practice and the support communities around them the interdependence differs but is most intense between the partner-centred groups and their admins. Coordination between these communities is achieved through common knowledge built up over long periods of interaction (Carlile 2004). Most changes that impact upon the practice of one of the communities do not invalidate the common knowledge. That is, most changes in practice do not amount to architectural change (Carlile 2004; Henderson & Clark 1990), but when change does amount to architectural change, as with the introduction of the new file management system, the common knowledge must be
rebuilt. Rebuilding adequate common knowledge requires that knowledge flow between communities of practice.

How is New Knowledge Integrated across the Boundaries of Communities of Practice in the Legal Firm? (Research Question 6)

Carlile (2002, 2004) presents a typology which suggests that different strategies are necessary to move knowledge across boundaries depending upon the nature of the boundary between them. He suggests that, depending upon the need of each community to understand the meaning of the knowledge to the other, and the cost in loss of competence when new knowledge supersedes old knowledge, different strategies must be employed. In machine bureaucracies and adhocracies (Mintzberg 1980, 1981) where achieving organisational goals involves the successful collaboration of several communities of practice, Carlile’s (2004) typology is sufficient. However, this research found that, while attention to the type of boundary is still important in understanding knowledge flow, it does not sufficiently explain the integration of knowledge across boundaries at Benefics. Given the pooled interdependence between partner-centred communities of practice, common interest does not offset the effort needed to integrate new knowledge, with the result that the technical and political effort (E) needed to integrate the new knowledge and the cost in loss of competence or of power (C) must always be offset against the enhancement of the interests (I) of the communities involved. This raises the proposition that, at Benefics:

\[ I > E + C \]
Limitations of the Study

This research involves a single case study. A single case study allows in depth investigation where time is limited and may be used to build or test theory.

However, the findings of a single case study are not generalisable across populations (Creswell 1998; Silverman 2005; Yin 2003). While statistical generalisability is not available from a single case, the findings of this research may provide insights into analogous organisations. In addition the case study adds to the pool of case studies relating to professional service firms from which broader generalisations may be drawn.

A further limitation relates to access to the subject firm. While I was granted generous access by Benefics, it had been mutually agreed that I would end my field work following the period of extended observation of Lisa. Being aware of the cost to Benefics in time and space from the access already granted I did not feel comfortable in requesting further time following the agreed conclusion. I feel this limitation most acutely in relation to observations of knowledge flow across community of practice boundaries. The occurrence of such knowledge flow during the case study was rare and, in the examples of both the competency framework and the new file management system, involved a protracted process. I was therefore unable to observe the application of the competency framework nor the full implementation of the file management system. My conclusions relating to knowledge flow across boundaries must therefore be with reservation due to the inability to observe the processes through to an end.
While I was able to collect substantial data over the duration of my field work, particularly in relation to the new graduates and other professional staff, I was not able to interview all staff. In several cases this related to the potential interviewee declining to be interviewed, for example, Paul’s first supervising partner, Gary. In others, I believed at the time that I had interviewed an adequate number of a particular group within the firm to have reached saturation but, upon more in-depth analysis, found that a greater number of interviews would have been enlightening. This is the case with respect to admins, with the result that I am unable to speculate in more detail as to the processes and possible nesting of communities of practice within this group. Also, while I interviewed the COO, Office Manager and HR Manager, I have insufficient data to theorise as to the place of non-lawyer managers in organisational learning at Benefics.

Future Research Directions

Arising from the limitations to this study, additional research into the flow of knowledge across community of practice boundaries would be desirable in order to achieve a higher level of confidence in my conclusions. Also arising from the limitations to access I suggest that further research into the roles of non-lawyer managers and second career new entrants would usefully supplement this research. The ability of non-novice newcomers to influence the practices within individual communities of practice and the firm as a whole is also an area for potential future research.

An issue that emerged as potentially significant in relation to the configuration of communities of practice and the learning within and between them related to the
impact of the size of the firm. The size of the firm impacts the number of lawyers and the amount of work in any given specialism and thereby potentially impacts the situated curriculum directly through the type of work to which the newcomer might be exposed. Indirectly, size will affect the layout of the firm which was seen in this research as affecting the amount of interaction between individuals and groups and as an artefact reinforcing identification with specific groups. An interesting question here is whether it is size or layout that has the greater impact.

This research also raised the question of whether size might impact upon the nesting of communities. In larger firms, the specialisms of several partners often overlap substantially, in contrast to mid-tier firms such as Benefics where many of the partners practice in areas with limited or no overlap with other partners’ practices. It would be interesting to explore whether the greater overlap in larger firms affects the smallest communities, and in particular whether communities of practice centred upon a single partners are still evident. This would lead to greater insight into whether the objective or subjective element of boundary definition is dominant.

This research involved a mid-tier legal firm yet much of the literature relates to professional service firms more generally. Further research is necessary to explore the extent to which the findings in this research may apply to other professional service firms, such as accounting firms.

As mentioned in the introduction, the choice of conceptual framework, while informed by the research question is, to an extent, arbitrary. A theoretical frame draws attention to some aspects of the subject and obscures others which would
emerge from a different choice. In particular, communities of practice keep one’s eyes focused upon the micro, obscuring the impact of larger social forces upon what is known or knowable. Institutional theory on the other hand addresses squarely these larger social forces. It would be interesting to extend the exploration of situated learning at Benefics to consider the institutional logics within which the firm operates, and particularly how these logics act to constrain the partners with respect to what is known or knowable, in contrast to the community of practice frame which may give the appearance that they are largely unfettered in their discretion. The resistance offered by newcomers to the knowledge of the community, giving rise to the possibility of change in practice could also be explored from the perspective of institutional work.

**Epilogue**

Professional service organisations, such as legal firms, are important because of their economic importance, directly as employers and profit centres and indirectly due to their involvement in most of the significant business transactions of the world. Understanding learning in legal firms is important as maintaining competence is critical to maintaining the privileged position which the profession holds in relation to the performance of legal work and because on-the-job learning is significant in learning to be a competent lawyer (see Chapter 1). However, much of the existing literature on learning to be competent lawyers is focused upon formal education at university and in post-graduate practical training courses. There is therefore a gap in the literature relating to the learning that occurs in and by legal firms.
This research contributes to filling that gap by exploring learning in legal firms. It adopted the concept of the community of practice as the theoretical framework that shaped the study (see Chapter 2). The concept of community of practice employed in this research is interpretive, making qualitative methods appropriate (Chapter 3). The data collection methods of semi-structured interview, observation and document analysis were employed.

The results were set out in three chapters. In Chapter 4 I explored the existence of communities of practice at Benefics, where boundaries were located and how they were delineated and how the various communities of practice were related to each other within the larger organisation (Research questions 1, 3 and 5). Chapter 5 explored what was being learned in and by the communities of practice, addressing the balance of production and reproduction of knowledge within them (Research question 2). In the final results chapter, Chapter 6, I addressed how knowledge moves between communities of practice within Benefics, a rare occurrence as it turned out (Research question 6). Throughout these three chapters the effects of power upon learning in the firm were noted (Research question 4).

Several insights not previously noted in the literature relating to communities of practice were revealed, including: the nesting of communities among the professional members of Benefics; the delineation of community of practice boundaries by a combination of the objective (practice) and subjective (identification); identifying that the power dynamics of the community of practice were not disrupted by the discovery of knowledge by the novice newcomer; and the proposal of factors affecting the flow of knowledge across community of practice.
boundaries in addition to the typology proposed by Carlile (2004). The research confirmed that the content of situated curriculum is affected by factors identified by Gherardi, Nicolini and Odella (1998) and found that in the context of Benefics the newcomer had significant power to influence the content of their curriculum, both positively and negatively. This is important as it suggests that attempts to produce a minimum competence level in lawyers before admission through mandating a formal curriculum is complicated by the individual style and strategy of the graduate. This study therefore contributes to the body of knowledge relating to communities of practice and to the literature relating to professional service firms.
References


Cooksey, R & McDonald, G 2011, Surviving and Thriving in Postgraduate Research, Tilde University Press, Prahran, Australia.


Cunliffe, AL 2010a, 'Crafting qualitative research: Morgan and Smireich 30 years on', Organizational Research Methods, pp. 1-26, retrieved 4 April 2011, database.
Cunliffe, AL 2010b, 'Retelling Tales of the Field In Search of Organizational Ethnography 20 Years On', *Organizational Research Methods*, vol. 13, no. 2, pp. 224-39.


Empson, L 2013, 'Top leaders are secret politicians', *Lawyer*, vol. 27, no. 30, pp. 9-.


Ormrod Report 1971, *Report of the the Committee on Legal Education CMND No 4595*


APPENDIX A.1

Interview Protocol: Graduates

Explain the research briefly. If the participant has not already received the plain language statement provide a copy and allow time for it to be read. Collect signed consent form. Ask for permission to record the interview. Outline the general things that will be addressed in the questions.

1. Demographic and background
   1.1. Name should be noted.
   1.2. Age.
   1.3. What formal legal qualifications do you have and when did you complete them?
   1.4. When did you join the firm and in what position?
   1.5. What is your current position in the firm?
   1.6. What other work experience do you have?

2. Becoming a Solicitor
   2.1. Describe the attributes of a competent solicitor.
   2.2. How are these learned (formal/informal learning; innate abilities)?
   2.3. What additional or different attributes does it take to rise to the top of the profession (such as a partner in a legal firm)?
   2.4. To what extent and how can these be learned?
   2.5. What are the major challenges faced graduates as they seek to become competent solicitors?
   2.6. Does the profession prepare graduates to meet these challenges? How?
   2.7. Are there any barriers or constraints that exist to better learning in the profession? Explain.
   2.8. Are some people better suited to being solicitors than others? If so, why?
   2.9. Do lawyers need to be adaptive to change? In what ways?

3. Your Experience
   3.1. Describe how you are learning to be a solicitor.
   3.2. What is most influential in your learning at this time?
   3.3. What is most challenging in your learning to be a competent solicitor? How are you meeting the challenges?
   3.4. What factors – personal, professional, organisational or environmental – are facilitating your learning to be a solicitor? How are they facilitating?
   3.5. Are there any barriers or constraints that you have experienced or been warned about that might inhibited your learning to be a lawyer? Explain.
   3.6. How is competence assessed in this firm (formally/informally)?
   3.7. By whom is competence assessed?
   3.8. [If the participant has practiced elsewhere – How does working as a lawyer at this firm differ from where you previously worked? How did you learn about these differences?]
   3.9. How important is the history of the firm to the way law is practiced at this firm? How did you learn the history?
4. Artefacts
4.1. How important is the physical setting to your practice as a lawyer, including the look and layout of the premises and the facilities available (library, position of office/work station, cafe, equipment etc.)?
4.2. How does the technology of the firm affect your learning and practice as a lawyer?
4.3. How do precedent documents impact on your learning and practice as a solicitor?
4.4. What impact does the existence of administrative forms (time sheets, accounting forms, memo forms, performance appraisal forms, feedback forms, etc.) have on your practice?

5. Relationships and networks
5.1. Who has been most influential in your learning journey? How?
5.2. Are there certain ‘go to’ people if you have a problem? How did you learn who they are?
5.3. How important is it to you to have the respect of your fellow workers as a solicitor; as a person?
5.4. Whose high opinion do you most value? Why?

6. Final question
6.1. Are there any other issues that affect learning, that you feel have not been covered in these questions?

Thank you for your participation in this interview.
APPENDIX A.2
Interview Protocol: Partners and Mid-Level Lawyers

Explain the research briefly. If the participant has not already received the plain language statement provide a copy and allow time for it to be read. Collect signed consent form. Ask for permission to record the interview. Outline the general things that will be addressed in the questions.

7. Demographic and background
7.1. Name should be noted.
7.2. What formal legal qualifications do you have and when did you complete them?
7.3. When did you join the firm and in what position?
7.4. Have you always been a lawyer, and if not what other positions have you held?

8. General Questions about Becoming a Lawyer
8.1. Describe the attributes of a competent lawyer.
8.2. How are these learned (formal/informal learning; innate abilities)?
8.3. What additional or different attributes does it take to rise to the top of the profession?
8.4. To what extent can these be learned? How?
8.5. Are there any barriers or constraints that exist to better learning in the profession? Explain.
8.6. Are some people better suited to being lawyers than others? If so, why?
8.7. How important is being adaptive to change?
8.8. How important is being able to work in a team?

9. Your Experience
9.1. What do you consider to have been important in your learning to be a competent lawyer?
9.2. What do you consider to be your role as a senior lawyer and supervisor in the learning of less experienced lawyers?
9.3. What factors – personal, professional, organisational or environmental – facilitate your learning? How?
9.4. What was most challenging in your learning to be a competent lawyer? How did you meet the challenges?
9.5. How is competence assessed in this firm (formally/informally)?
9.6. By who is competence assessed?
9.7. [If the participant has practiced elsewhere – How does working as a lawyer at this firm differ from where you previously worked? How did you learn about these differences?]
9.8. How important is the history of the firm to the way law is practiced at this firm?

10. Artefacts
10.1. How important is the physical setting to your practice as a lawyer, including the look and layout of the premises and the facilities available (library, position of office/work station, cafe, equipment etc.)?
10.2. How does the technology of the firm affect the sharing of knowledge and know how in the firm?

10.3. How do precedent documents affect the sharing of knowledge and know-how in the firm?

10.4. What impact does the existence of administrative forms (time sheets, accounting forms, memo forms, performance appraisal forms, feedback forms, etc.) have on your practice?

10.5. Have you experienced any changes in these physical attributes of the firm? Why were these changes implemented? How did they affect what you do as a lawyer?

11. Relationships and networks

11.1. Who has been most influential in your learning journey? How?

11.2. Are there certain ‘go to’ people if you have a problem? How did you learn who they are?

11.3. Whose high opinion do you most value? Why? Does this ever affect your behaviour?

11.4. How do teams and groups operate in the firm, if at all? How important are they to learning?

11.5. How does specialisation affect learning in the firm? In particular, does it create barriers to learning?

11.6. Is there learning between the different state offices? How does this take place?

12. Final question

12.1. Are there any other issues that affect learning, that you feel have not been covered in these questions?

Thank you for your participation in this interview.
APPENDIX A.3

Interview Protocol: Graduates’ Second Interview

Reintroductions and general conversation to establish rapport.
1. Who have you mostly worked with and for over the last year?
   1.1. Tell me about their strengths and weaknesses.
   1.2. Who have you learned most from and why?
   1.3. How influential was your managing partner?
2. Tell me about your experiences with the College of law. How important was that to your professional competence?
3. How confident do you feel now in tackling problems that you have not encountered before? Why?
4. Does it have any impact upon how you feel or how you are treated that there are now people lower in the pecking order than yourselves?
5. How do you assess your own competence and the competence of others? [Billing?]
6. Do you feel comfortable in this firm?
7. What are your ambitions from here? Do you have any plans to achieve them?
8. What would you change if you could? [What’s stopping you?]
9. Has the resourcing changed over the last year? (For example, is everyone in an office? Are there any new IT related systems?)
10. Are there any stories you can tell me about your journey over the last year?

Thank you for your participation in this interview.

Specific issues that arose in interview 1:
- Graduate 1 – Casual Friday
- Graduate 2 - Has left for an associateship. Animal rights.
- Graduate 3 – Workload and self-confidence.
- Graduate 4 – Assessing progress; work-life balance.
- Graduate 5 – Gender; IT
APPENDIX A.4
Interview Protocol: Law Clerk

Explain the research briefly. If the participant has not already received the plain language statement provide a copy and allow time for it to be read. Collect signed consent form. Ask for permission to record the interview. Outline the general things that will be addressed in the questions.

1. Describe your background – what course, what university, what year etc.
2. How did you get the job at this firm? How long ago?
3. Why did you choose this firm?
4. Who do you work with and what sort of work do you do with them? How many days a week? Did you have a choice?
5. Have you worked anywhere else?
6. What do you think you have learned:
   a. About doing the law?
   b. About being a lawyer?
7. How have you learned this?
8. What do you think you still have to learn?
9. From your observations, what attributes do you think a good lawyer needs?

Thank you for participating in this interview.
APPENDIX A.5
Interview Protocol: Administrative Assistants

Explain the research briefly. If the participant has not already received the plain language statement provide a copy and allow time for it to be read. Collect signed consent form. Ask for permission to record the interview. Outline the general things that will be addressed in the questions.

In particular, interviews with admin/support staff need to address the whole work of a legal firm, including the opening of files, the tracking of work, the preparation and filing of documents, the creation of bills, the undertaking of research, etc.

1. Demographic and Background
   a. Name.
   b. Who do you work for?
   c. When did you join the firm?
   d. Have you always done this sort of work? If not what other work have you done?
   e. How would you describe Benefics as a place to work?

2. General Learning Questions
   a. In your opinion, what attributes does a good admin need? How do you learn them?
   b. In your opinion, what characteristics does a good lawyer possess? What would you look for in a solicitor you work with?
   c. How do your skills complement the skills of the lawyer you work with? How easily, if at all, could they do the job without you?
   d. What would you like lawyers to know/understand about your job?
   e. Do you work with any junior lawyers? If so, what do you think they can learn from you?
   f. Do you think that they are open to learning from administrative staff? Do you or other admin staff you know of get consulted by legal staff?
   g. How important to getting the work done well is the quality of the relationship between professional and support staff?
   h. How much, if at all, do you mix with professional staff on a social basis (e.g. lunch times, Friday drinks etc.)? Does this impact on the way work gets done?
   i. To what extent do you think the forms and equipment help or restrict how the work gets done at Benefics?
   j. How open is Benefics to different ways of doing things? Any examples?

3. Any Other Matters
   a. Are there any other matters about how the firm does work that you would like to mention?

Thank you for participating in this interview.
APPENDIX A.6
Interview Protocol: Office Manager/COO

Explain the research briefly. If the participant has not already received the plain language statement provide a copy and allow time for it to be read. Collect signed consent form. Ask for permission to record the interview. Outline the general things that will be addressed in the questions.

In particular, interviews with non-professional staff need to address the whole work of a legal firm, including the administrative work around client matters, interfacing with clients and other firms, maintaining the human resources, dealing with any personnel issues that arise, etc.

4. Demographic and Background
   a. Name.
   b. When did you join the firm?
   c. What does your job entail?
   d. Have you always done this sort of work? If not, what else have you done?

5. The Nature of Work and Learning
   a. How does work get done here and how does your job facilitate this? (Focus on what it is the firm sells and how support staff enable this to be done.)
   b. What skills and abilities do you need to do this job? How did you learn them?
   c. Do you work in a team? If so, who is your team and how does it function?
   d. In your opinion, what characteristics does a good lawyer possess? Do you think they are born with these or they are learned? If learned, how?
   e. How easily, if at all, could fee earners do their job without you?
   f. What would you like lawyers to know/understand about your job, (especially if there are some aspects that they often do not seem to appreciate)?
   g. What do you think the fee earners could learn from you, especially the more junior lawyers?
   h. How open do you think the fee earners are to learning from the support staff?
   i. How important to getting the work done well is the quality of the relationship between fee earners and support staff? Why?
   j. How are good working relationships developed and maintained?
   k. What works really well here and what would you change if you could?

6. Any Other Matters
   a. Are there any other matters about how the firm does work that you would like to mention?

Thank you for participating in this interview.
APPENDIX A.7
Interview Protocol: HR Manager

Preamble establishing rapport, explaining research if needed and outlining interview protocol.

1. **Demographic and Background**
   a. Name.
   b. When did you join the firm?
   c. Have you always done this sort of work? If not, what else have you done?

2. **HR’s Impact on Learning**
   a. Could you walk me through the process involved in selection of law clerks? (N.B. This interview followed immediately after a couple of interviews held to select law clerks.)
   b. Why does the firm employ law clerks? (Possibilities include as a method to help select graduates, as cheap labour, as a service to the graduates and the profession.)
   c. Are law clerks assigned to a partner or to a section of the firm? How is this selected?
   d. Now walk me through the process for selecting law graduates? (What proportion of graduates has done clerkships? What attributes are you looking for here?)
   e. How are graduates allocated to supervising partners?
   f. What training and/or guidance do you have for the supervising partners?
   g. What other processes and/or programs do you have to help the law graduates settle in professionally and socially? (Examples might include formal mentoring programs; rotations between practice groups.)
   h. What formal education and learning opportunities are offered by the firm (for all staff, not just junior staff)? (Examples might include formal training lunches or after work programs, support for further study as university or other institution such as the Law Institute and College of Law.)
   i. What do you think the firm does really well in relation to selection and development?
   j. What do you feel could be improved?
   k. Can you recall any selection failures – where the candidate appeared to fit the requirements but failed to deliver once employed? To what do you attribute these failures?

3. **Any Other Matters**
   a. Are there any other matters relating to the role of HR in the firm and its effect on learning in and by the firm that you would like to discuss?

Thank you for participating in this interview.
APPENDIX B

LOG OF CONTACTS

Instructions: The table below is to be used to record interpersonal communication which takes place in connection with your work. The communication may be face-to-face, by telephone, email or any other means of interpersonal communication, and may be task related or social in nature. This research is not concerned, at this point, with the medium of the communication. When completing ‘Reason for Communication’ it is enough to put either ‘T’ (task related communication) when the communication is primarily for the purpose of gathering facts or information to advance a task that you are undertaking as part of your job, or ‘S’ (social interaction) if the primary purpose of the communication is social rather than task related. If the communication involves both social and task related aspects in fairly equal measure, you should include both codes in the ‘Reason’ column. Duration may be recorded in general terms, for example, less than 15 minutes, about 1 hour, more than 2 hours. Purely personal communications, such as telephone conversations with family members, need not be recorded.

When completed, the names of contacts will be removed and replaced with a code. This will maintain the confidentiality of the information while allowing identification of communication networks within the firm.

<table>
<thead>
<tr>
<th>Date</th>
<th>Name</th>
<th>Reason for Communication</th>
<th>Approximate Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table continued for a second page to allow for 45 entries. Extra pages could be added.
## APPENDIX C

### Emergent Themes Coded in NVivo

<table>
<thead>
<tr>
<th>Theme and Description</th>
<th>Sub-Theme and Description</th>
</tr>
</thead>
</table>
| Administrative versus Partner:  
*Instances where the way the professional managers and administrators want to run things is different to the way newcomers are told to do things by partners or different to the models that the partners themselves provide.* | None |
| Aspirations:  
*Statements as to where the interviewees see their future as being.* | None |
| Attributes of a Lawyer*:  
*Identification of abstract characteristics which distinguish good lawyers from others.* | Attitude:  
*A required characteristic is the right attitude.*  
Communication-Oral:  
*A required skill is oral communication.*  
Communication-Written:  
*A required skill is good written communication.*  
Creativity:  
*Reference to the need to be creative and/or innovative to be a good lawyer.*  
Integrity:  
*Reference to ethical standards as a necessary attribute of lawyers or a distinguishing characteristic of good lawyers.*  
Interpersonal Skills:  
*A required attribute is the ability to get along with people including clients and team members.*  
Networking:  
*A required skill is the ability to network particularly with clients and potential clients.*  
Other Attributes:  
*Catch all category for attributes not otherwise covered.* |
<table>
<thead>
<tr>
<th>Theme and Description</th>
<th>Sub-Theme and Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><em><em>Attributes of a Lawyer</em> (cont.):</em>* Identification of abstract characteristics which distinguish good lawyers from others.</td>
<td><strong>Personality:</strong> Some people have personalities or temperaments better suited to the practice of law or perhaps to different practice areas within the profession.</td>
</tr>
<tr>
<td><strong>Problem Solving:</strong> Identification of problem solving as an attribute needed by a lawyer. This is problem solving as distinct from technical aptitude/knowledge of the law. It is a skill of application.</td>
<td><strong>Research Skill:</strong> A required skill is the ability to discover the correct law.</td>
</tr>
<tr>
<td><strong>Technical Aptitude:</strong> A required skill is a good grasp of the technical aspects of the law.</td>
<td><strong>Time Management:</strong> A required skill is the ability to work efficiently and achieve a high level of output for time expended.</td>
</tr>
<tr>
<td><strong>Work Ethic:</strong> As an attribute to become a successful lawyer, reference to the need to be willing to work hard or for long hours.</td>
<td><strong>Billing:</strong> Any reference to billing, whether as a measure of competence, a way to advance, as a control mechanism or otherwise. None</td>
</tr>
<tr>
<td><strong>First Career:</strong> Interviewee indicates that has always worked as a lawyer (excluding jobs while studying).</td>
<td><strong>Second Career:</strong> Interviewee indicates that this is not their first career.</td>
</tr>
<tr>
<td><strong>Legal career Orientation:</strong> Whether a legal career is one option that was considered, the only thing they ever wanted to do or perhaps even an accidental circumstance.</td>
<td></td>
</tr>
<tr>
<td>Theme and Description</td>
<td>Sub-Theme and Description</td>
</tr>
<tr>
<td>------------------------------------------------------</td>
<td>---------------------------------------------------------------------</td>
</tr>
<tr>
<td>Challenges of the Profession:</td>
<td>None</td>
</tr>
<tr>
<td>Aspects that interviewees identify about why the profession is difficult.</td>
<td></td>
</tr>
<tr>
<td>Context*:</td>
<td>Social:</td>
</tr>
<tr>
<td>All those issues to do with the physical, social and historical setting that impact upon doing the job or doing it well.</td>
<td>Any reference to events outside the firm that amount to context for learning.</td>
</tr>
<tr>
<td>Culture:</td>
<td>None</td>
</tr>
<tr>
<td>Relating to the culture of Benefics.</td>
<td></td>
</tr>
<tr>
<td>Forms of Communication:</td>
<td>None</td>
</tr>
<tr>
<td>Reference to dominant forms of communication within the firm and between the firm and clients.</td>
<td></td>
</tr>
<tr>
<td>Gender:</td>
<td>None</td>
</tr>
<tr>
<td>Comments relating to gender, whether perceptions of gender bias or otherwise.</td>
<td></td>
</tr>
<tr>
<td>Hierarchy:</td>
<td>None</td>
</tr>
<tr>
<td>Any comments, rules or processes that suggest and reinforce hierarchy, but not including references to different designations such as partner, associate and graduate.</td>
<td></td>
</tr>
<tr>
<td>Hours:</td>
<td>None</td>
</tr>
<tr>
<td>Reference to the hours worked within a legal firm.</td>
<td></td>
</tr>
<tr>
<td>Identity:</td>
<td>None</td>
</tr>
<tr>
<td>Issues relating to how interviewees identify themselves.</td>
<td></td>
</tr>
<tr>
<td>Knowledge:</td>
<td>Relational Knowledge:</td>
</tr>
<tr>
<td>Relating to what people in law firms need to know to be considered competent.</td>
<td>Reference to the importance of establishing relationships.</td>
</tr>
<tr>
<td></td>
<td>Technical Knowledge:</td>
</tr>
<tr>
<td></td>
<td>Relating to the need to develop technical competence in law.</td>
</tr>
<tr>
<td></td>
<td>Other Knowledge:</td>
</tr>
<tr>
<td></td>
<td>Important knowledge that is neither relational nor technical.</td>
</tr>
<tr>
<td></td>
<td>Ambiguity of Knowledge:</td>
</tr>
<tr>
<td></td>
<td>Relating to the extent to which it is easy to judge what is important knowledge or good knowledge.</td>
</tr>
<tr>
<td>Theme and Description</td>
<td>Sub-Theme and Description</td>
</tr>
<tr>
<td>-----------------------</td>
<td>---------------------------</td>
</tr>
<tr>
<td>Language:</td>
<td></td>
</tr>
<tr>
<td>Relating to specific words or use of language that carries values and meaning.</td>
<td></td>
</tr>
<tr>
<td>Learning*:</td>
<td>College of Law and others:</td>
</tr>
<tr>
<td>All issues to do with how the individuals, groups or organisation learn.</td>
<td>Reference to postgraduate vocational training including College of Law and other external courses.</td>
</tr>
<tr>
<td>Feedback:</td>
<td></td>
</tr>
<tr>
<td>The frequency and importance of feedback to learning.</td>
<td></td>
</tr>
<tr>
<td>Formal Internal Instruction:</td>
<td></td>
</tr>
<tr>
<td>Sessions, classes or seminars run internally to develop skills or knowledge useful to the firm.</td>
<td></td>
</tr>
<tr>
<td>Inherent Ability:</td>
<td></td>
</tr>
<tr>
<td>Learning emerging from aptitude rather than teaching.</td>
<td></td>
</tr>
<tr>
<td>On the Job:</td>
<td></td>
</tr>
<tr>
<td>Learning from doing.</td>
<td></td>
</tr>
<tr>
<td>Other Lawyers in the Practice Group:</td>
<td></td>
</tr>
<tr>
<td>The influence of other lawyers in the practice group upon the learning of new lawyers.</td>
<td></td>
</tr>
<tr>
<td>Other Learning:</td>
<td>Catch all category for other ways or sources of learning.</td>
</tr>
<tr>
<td>Other partners:</td>
<td>The influence of partners other than the designated supervising partner. A particular question of interest is whether some partners have a wider influence than others.</td>
</tr>
<tr>
<td>Other Relationships:</td>
<td>The affect upon learning of other relationships within the firm and outside it, including administrative staff, friends and peers.</td>
</tr>
<tr>
<td>Partner:</td>
<td>The influence on learning of the supervising partner.</td>
</tr>
<tr>
<td>Personality Attributes:</td>
<td>References to aspects of personality that facilitate learning. These are distinct from aptitude and may involve abilities to handle stress, manage time, ask for work and/or feedback on work etc.</td>
</tr>
<tr>
<td>University:</td>
<td>Reference to the value of formal education at university.</td>
</tr>
<tr>
<td>Theme and Description</td>
<td>Sub-Theme and Description</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>----------------------------</td>
</tr>
<tr>
<td>Mentoring:</td>
<td>None</td>
</tr>
<tr>
<td><em>Mention of mentoring or mentors, other than the supervising partner or where the exact identity of the mentor is not specified.</em></td>
<td></td>
</tr>
<tr>
<td>Personal Judgements:</td>
<td>None</td>
</tr>
<tr>
<td><em>References to the impact of personal judgements on assessments of competence and worth.</em></td>
<td></td>
</tr>
<tr>
<td>Selection:</td>
<td>None</td>
</tr>
<tr>
<td><em>Criteria for selection and difficulty of finding places.</em></td>
<td></td>
</tr>
<tr>
<td>Self-Confidence:</td>
<td>None</td>
</tr>
<tr>
<td><em>References to the self-confidence lawyers need, or particular people have. It may be seen as an attribute related to success. Also references to the effects of training methods on self-confidence.</em></td>
<td></td>
</tr>
<tr>
<td>Self-Esteem:</td>
<td>None</td>
</tr>
<tr>
<td><em>References to feelings of worth (as distinct from feelings of confidence).</em></td>
<td></td>
</tr>
<tr>
<td>Size of the Firm:</td>
<td>None</td>
</tr>
<tr>
<td><em>Any mention of how the size of the firm affects learning or functioning of the firm.</em></td>
<td></td>
</tr>
</tbody>
</table>

*Indicates an a priori theme with emergent sub-themes.
APPENDIX D
Attributes of a Competent Lawyer V2
Method of Modification of Table

This table is derived from version 1.

It was considered that the number of columns was still too large, practically for display across a single page and in relation to the concepts as some columns had few entries and similarities existed in entries in different columns. Work Ethic and Attitude both included aspects relating to the approach to work and these were combined under a single column, Approach to Work. Creativity, legal research and problem solving also all appeared related in that they involved skills of definition, analysis and identification of possible solutions and these three codes were therefore combined in a single column headed ‘Problem Solving’. Interpersonal skills included getting on with people you worked with and with those outside the firm including clients and other lawyers. There was considerable overlap between the external category and networking. Therefore interpersonal skills were divided up into internal and external and networking was combined with external.

The resulting table has significantly fewer empty cells suggesting that there is greater acceptance across all levels of the organization that this list includes the important attributes. While integrity is not widely mentioned as an attribute I have left it in the list because of the importance of ethical standards in the literature on professions. The fact that it is so little mentioned is interesting but may be because of this professional emphasis which means it is taken for granted to such an extent that it is not consciously considered as an attribute. Another possible explanation is that sanctions exist for failures in professional ethics, so that it is not seen so much as an attribute as it is a legal requirement.

<table>
<thead>
<tr>
<th>Name</th>
<th>Communication</th>
<th>Integrity</th>
<th>Interpersonal-internal</th>
<th>Interpersonal-external (client and others)</th>
<th>Problem Solving</th>
<th>Technical skills</th>
<th>Time mgmt</th>
<th>Approach to Work</th>
<th>Personality</th>
</tr>
</thead>
<tbody>
<tr>
<td>G1</td>
<td>Drafting, letters, eliciting clear instructions (1)</td>
<td>Balance between social skills; generally and distinct skills relating to legal practice; bringing in clients (1)</td>
<td>Networking and bringing in large clients to move up (1)</td>
<td>Research and computer skills; clarifying instructions to avoid wasting time (1)</td>
<td>Research and computer skills i.e. finding the right law (1)</td>
<td>Organizational and time management skills; prioritizing; tension between turn around and thoroughness (1); being ‘more pointed’ (2)</td>
<td>Keeping in hours; Difficult auto (1)</td>
<td>Aggression, direct to earth personality; different preferences suit different areas of law (1)</td>
<td></td>
</tr>
<tr>
<td>G2</td>
<td>Drafting clear instructions, professional setting (1)</td>
<td></td>
<td></td>
<td>Here you argue; finding loopholes; the antics of the Court room (2)</td>
<td></td>
<td>Billing and time recording; delivering in a timely fashion (1)</td>
<td></td>
<td>Takes a lot of discipline and a lot of time (1); lazy lawyers, lack attention to detail and reflection (2)</td>
<td>Communication and self-discipline as personality traits (1)</td>
</tr>
<tr>
<td>G3</td>
<td>Giving and receiving instructions (1); adaptable to the team</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Seek criticism; persistent (1)</td>
<td></td>
<td>Self-confidence as a personality trait (1); opposite still successful (2)</td>
<td></td>
</tr>
</tbody>
</table>

<p>| G1   | Drafting, letters, eliciting clear instructions (1) | Balance between social skills; generally and distinct skills relating to legal practice; bringing in clients (1) | Networking and bringing in large clients to move up (1) | Research and computer skills; clarifying instructions to avoid wasting time (1) | Research and computer skills i.e. finding the right law (1) | Organizational and time management skills; prioritizing; tension between turn around and thoroughness (1); being ‘more pointed’ (2) | Keeping in hours; Difficult auto (1) | Aggression, direct to earth personality; different preferences suit different areas of law (1) |
| G2   | Drafting clear instructions, professional setting (1) | | | Here you argue; finding loopholes; the antics of the Court room (2) | | Billing and time recording; delivering in a timely fashion (1) | | Takes a lot of discipline and a lot of time (1); lazy lawyers, lack attention to detail and reflection (2) | Communication and self-discipline as personality traits (1) |
| G3   | Giving and receiving instructions (1); adaptable to the team | | | | | Seek criticism; persistent (1) | | Self-confidence as a personality trait (1); opposite still successful (2) | |</p>
<table>
<thead>
<tr>
<th>G4</th>
<th>Verbal communication; written clarity (1); giving clear instruction (2)</th>
<th>“we should all just get along” not useful? (1)</th>
<th>To rise to the top, networking or technical brilliance (1)</th>
<th>Through knowledge of the law; brilliance as a way to the top (1); legal technical excellence (2)</th>
<th>Organized (1)</th>
<th>Careful not to become lazy; politically difficult to seek work if not busy (2)</th>
<th>Matching personality to the firm (1); internally personality matches within teams counts (2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>G5</td>
<td>Written client and other professionals; oral; social (1)</td>
<td>Communicating with everyone from admin to partners (1); conflict management; EI (2)</td>
<td>Networking essential to rise to the top (1)</td>
<td>Managerial knowledge; knowledgeable (1)</td>
<td>Organized (1); billing; taxation between learning and time taken; making budget (2)</td>
<td>Willing to put in the hours (1); being clever about what work you’re getting and earning out the work; budget (2)</td>
<td>Different personalities and different areas of law (1)</td>
</tr>
<tr>
<td>G6</td>
<td>Discuss with your team; speak your client’s language; social (1)</td>
<td>Honesty; good sense of morals; integrity</td>
<td>Personable; not all about self; speak your client’s language; relationship not just working relationship; easy to talk to.</td>
<td>Intellectual; good awareness across areas of law rather than just specialist area</td>
<td>Hard working and diligent; dedicated to an area of law; speed and detail; willing to put in the extra work; setting high standards for myself; caring about your work; personable; passionate; diplomatic</td>
<td>Patience; desire to learn</td>
<td>Different personalities and different areas of law (1)</td>
</tr>
<tr>
<td>P1</td>
<td>Good listeners</td>
<td>Within the confines of the law; ethical; play within the professional rules (may be unwritten)</td>
<td>Team work and delegation; treat everyone with respect</td>
<td>In a nutshell it’s a problem solver; always two ways to skin a cat; tactics</td>
<td>Using the law ethically, professionally and tactically; staying on top of the law; seeing technology (computers) as an advantage; lawyers are smart but desire to learn is more important</td>
<td>Avoiding “the comfort zone”; tough just keeping up with the law, a desire to learn and a desire to work; being very smart or from privileged background can be a work ethic negative</td>
<td>Patience, desire to learn</td>
</tr>
<tr>
<td>P2</td>
<td>Client communication; level to pitch communication</td>
<td>No cutting corners or short shives, take responsibility</td>
<td>Acquire the confidence of your client; be empathetic with clients and opposition; reading people</td>
<td>A clear understanding of the principles; courses can rectify technical deficiencies</td>
<td>Ability to identify core problems, consider alternative solutions and advise on the optimal one</td>
<td>A clear understanding of the principles; courses can rectify technical deficiencies</td>
<td>Work bloody hard; put your client first</td>
</tr>
<tr>
<td>P3</td>
<td>Analyse and understand client’s needs; speaking and writing</td>
<td>EE, business developers managing people because “we’re selling people’s intellectual work”</td>
<td>Analyse what the client cares about; business development as one route to the top</td>
<td>Analytical skills; understanding a client’s situation, making recommendations; a different client and problems every day</td>
<td>Technical knowledge of the law; technical brilliance as a way to rise to the top</td>
<td>Technical knowledge of the law; technical brilliance as a way to rise to the top</td>
<td>Different personalities and different areas of law (1)</td>
</tr>
<tr>
<td>Page</td>
<td>Area</td>
<td>Skill/Attribute</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>------</td>
<td>------</td>
<td>-----------------</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>P4</td>
<td>Writing and advocacy</td>
<td>Rising to the top needs good networking skills</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>P5</td>
<td>Drafting and advocacy</td>
<td>Empathy, like working with people</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>L1</td>
<td>Analytical skills, drafting and advocacy</td>
<td>Self-aware as essential for working in a team</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>L2</td>
<td>Effective communication, listening</td>
<td>Getting along with everyone, face to face people</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>LC</td>
<td>Distil information and explain to different audiences</td>
<td>Being able to use these information will play out</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Admin</td>
<td>Client communication, rapport, listening</td>
<td>Making your clients feel comfortable, explaining the firm not just yourself</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Magen</td>
<td>Internal personality matches important in selection</td>
<td>Some lawyers are difficult so we try to match them with mature, strong characters</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Legend

- For graduates G1 to G5 where there were two interviews, the relevant interview is indicated by (1) or (2) after the quote.
- P4 declined to be taped. All entries for P4 are therefore drawn from extensive notes taken during the interview but are not verbatim transcripts.
- Admin includes identification by the two interviewed administrative assistants or the office manager. The identity of the informant for each quote will be identified by A1, A2 or OM as the case may be.
- Exec indicates this attribute was identified by the COO or HR Manager. Identity of quote will be indicated by COO or HR as the case may be.
- Communication groups oral and written communication.
- A category of ‘Other Attributes’ was coded. These will be summarized in another table.
- N.B. Technical skills may need to be divided up into ‘knowledge of the law’ and ‘ICT competence’.
- Table is too large for quotes. As an initial run through the table will include indicative words from quotes and indicate source.

* Indicates the attribute was mentioned in the negative e.g. ‘good communication is necessary but many practicing lawyers are bad communicators’.
^ Maybe leave this out as I think I put these words into his mouth.

Drawing Conclusions

- Combine attitude and work ethic.
- Combine creativity and problem solving.
- Research skills involve communication (getting clear instruction); computer skills (using online resources to find answers) and problem solving (?). Delete this category and move ideas to these other categories.

Memorandums

- Note that time management is a particular concern for the junior lawyers (L1 is a first year lawyer at the time of interview).
- Few mention ethics or integrity. Is this because it is taken for granted in this profession? (In regard to ethics consider the story of grad 1 in relation to admission and parking fines. Is this seen as a genuine reason to be concerned about ethics or merely an administrative hoop to be jumped through?
- Interviewees were unclear about the distinction between personality (relatively stable preferences that influence behaviour) and attitudes (judgements about something, e.g. work, that carry behavioural intentions). For example, self-disciplined/hard working was
presented as personality and as attitude. Unclear how to unpack this aspect. Review interview of new grads notes to see how this might be assessed in the selection process.
# APPENDIX E.1 COMPETENCY FRAMEWORK

## Graduate Lawyer

<table>
<thead>
<tr>
<th>Core</th>
<th>Value</th>
<th>Excellence</th>
<th>Teamwork</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Our People</strong></td>
<td><strong>Clients &amp; Market Reputation</strong></td>
<td><strong>Financial Success</strong></td>
<td><strong>Technical Expertise</strong></td>
</tr>
<tr>
<td>Our people competencies will attract and retain the best people.</td>
<td>Our client competencies will attract and retain the right clients.</td>
<td>Our financial competencies will drive resilience and profitability.</td>
<td>Our technical expertise competencies builds expertise and maintains efficiencies.</td>
</tr>
<tr>
<td>Graduate Lawyers are valued contributors to their team. They willingly accept responsibility and help others when required. They start to develop clarity about career goals and areas of professional focus.</td>
<td>Graduate Lawyers seek to learn about clients across their practice and the firm, their business, the industry in which they operate, and the specific needs and expectations of individual clients for whom they work.</td>
<td>Graduate Lawyers support the firm by complying with its systems and processes. They focus on developing personal financial accountability, efficient work management and risk and file management procedures.</td>
<td>Graduate Lawyers focus on developing expert technical ability and knowledge in focus areas and transitioning their legal skills from theory to practice. They learn from others on the job and by active participation in learning and knowledge sharing activities.</td>
</tr>
<tr>
<td>Models the firm values. Has an insight into self and understands own personality and style. Understands own strengths and opportunities. Seeks regular feedback from other team members and acts on feedback to improve performance. Contributes positively to the firm culture and encourages others to do so.</td>
<td>Develops an awareness of client wants and what is required to exceed their expectations. Undertakes internal and external client's work in a timely and responsive manner within agreed deadlines and costs. With Partner, regularly reviews performance against client expectations.</td>
<td>Meets financial targets. Achieves an average of 6.5 billable hours per day. Complies with finance policies and procedures, particularly in relation to time recording, billing, debtors and WIP. Ensures all billable and non-billable time is recorded on a daily basis. Bills WIP monthly as directed by Supervising Partner.</td>
<td>Enhances expertise in their field of law and commercial awareness by keeping up to date with changes. Continues to develop and improve drafting skills and technical expertise. Developing Plain English skills and learns from corrections provided from Partner or practice team member. Gathers and analyses facts, identifies legal issues and effectively assesses risk. Problem solves by generating legally and commercially sound solutions. Starts to develop negotiation and influencing skills.</td>
</tr>
<tr>
<td><strong>Value</strong></td>
<td><strong>EXCELLENCE</strong></td>
<td><strong>TEAMWORK</strong></td>
<td></td>
</tr>
<tr>
<td>Develops and maintains effective working relationship with team members, including legal administrative assistant.</td>
<td>Enthusiastically offers assistance to industry focus groups and firm marketing activities. Starts to develop relationships with decision makers and influencers.</td>
<td>Completes delegated tasks to agreed deadlines and costs and prioritises work effectively in line with team objectives.</td>
<td>Actively contributes to team resources by sharing knowledge with others.</td>
</tr>
<tr>
<td>Value</td>
<td>RESPECT</td>
<td>Knowledge</td>
<td>Practices work-life balance whilst ensuring client and firm needs are met.</td>
</tr>
<tr>
<td>-------</td>
<td>----------</td>
<td>-----------</td>
<td>---------------------------------------------------------------------</td>
</tr>
<tr>
<td></td>
<td>Seeks and accepts work enthusiastically.</td>
<td>Actively participates in client functions and ongoing relationship management.</td>
<td>Enthusiastically participates in firm marketing activities by regularly producing relevant legal updates.</td>
</tr>
<tr>
<td></td>
<td>Has an awareness into other team members and understands their personality and style. Show ability to understand team dynamics including individual strength and opportunities.</td>
<td>Seeks out information and works within team business development plan and strategy.</td>
<td>Liaises with Supervising Partner to understand the team strategy and business plan.</td>
</tr>
<tr>
<td></td>
<td>Contributes to the success of the group with a positive presence and through open and honest communication.</td>
<td>Prioritises multiple tasks and competing demands.</td>
<td>Is able to interpret financial reports in relation to own budget.</td>
</tr>
<tr>
<td></td>
<td>Actively participates in all team activities.</td>
<td>Meets internal and external deadlines and communicates difficulties with meeting deadlines as soon as possible.</td>
<td>Is committed to continuous learning and models an openness to learning.</td>
</tr>
<tr>
<td></td>
<td>Actively participates in client functions and ongoing relationship management.</td>
<td>Seeks out information and works within team business development plan and strategy.</td>
<td>Liaises with Supervising Partner in relation to financial performance, discussing a plan of action for budget shortcomings.</td>
</tr>
<tr>
<td></td>
<td>Acknowledges the contribution of others.</td>
<td>Accepts responsibility for correcting problems.</td>
<td>Understands the firm’s three year plan.</td>
</tr>
<tr>
<td></td>
<td>Shares information and works collaboratively across the firm and supports Partners and colleagues to achieve business goals. Recognises and manages own stress levels.</td>
<td>Builds loyalty by consistently delivering a service that meets and exceeds client expectations.</td>
<td>Protects the reputation of the firm by understanding and complying with ethical and legal requirements.</td>
</tr>
<tr>
<td></td>
<td>Identifies own knowledge and skill gaps and works with Partner to make improvements as required. Successfully completes requirements for admission.</td>
<td>Communicates effectively, targeting the structure and content of the communication to the specific audience.</td>
<td>Raises concerns about risk management with Supervising Partner.</td>
</tr>
<tr>
<td></td>
<td>Actively seeks information about clients, particularly information about the client industry, client growth and development. Starts to develop an understanding of the industry and market condition in which the client operates.</td>
<td>Listens to clients attentively. Is an advocate for the firm.</td>
<td>Works with Partner and other senior lawyers to learn and continue to grow and develop professional and technical skills. Takes responsibility for receiving clear instructions, clarifying any ambiguity and seeking feedback.</td>
</tr>
<tr>
<td></td>
<td>Successfully completes requirements for admission.</td>
<td>Supports Partners and colleagues to achieve business goals.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Participates in the firm’s CLE program, ensuring minimum standards are met as stipulated by Law Society. Participates in the firm’s Learning &amp; Development program.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Participates in the firm’s knowledge database and library by sharing knowledge and precedents.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Value</td>
<td>KNOWLEDGE</td>
<td>Value</td>
<td>Practices work-life balance whilst ensuring client and firm needs are met.</td>
</tr>
<tr>
<td>-------</td>
<td>-----------</td>
<td>-------</td>
<td>---------------------------------------------------------------------</td>
</tr>
<tr>
<td></td>
<td>Identifies own knowledge and skill gaps and works with Partner to make improvements as required. Successfully completes requirements for admission.</td>
<td>Actively seeks information about clients, particularly information about the client industry, client growth and development. Starts to develop an understanding of the industry and market condition in which the client operates.</td>
<td>Enthusiastically participates in firm marketing activities by regularly producing relevant legal updates.</td>
</tr>
<tr>
<td></td>
<td>Actively seeks information about clients, particularly information about the client industry, client growth and development. Starts to develop an understanding of the industry and market condition in which the client operates.</td>
<td>Is able to interpret financial reports in relation to own budget.</td>
<td>Liaises with Supervising Partner to understand the team strategy and business plan.</td>
</tr>
<tr>
<td></td>
<td>Successfully completes requirements for admission.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Value</td>
<td>KNOWLEDGE</td>
<td>Value</td>
<td>Practices work-life balance whilst ensuring client and firm needs are met.</td>
</tr>
<tr>
<td>-------</td>
<td>-----------</td>
<td>-------</td>
<td>---------------------------------------------------------------------</td>
</tr>
<tr>
<td></td>
<td>Identifies own knowledge and skill gaps and works with Partner to make improvements as required. Successfully completes requirements for admission.</td>
<td>Actively seeks information about clients, particularly information about the client industry, client growth and development. Starts to develop an understanding of the industry and market condition in which the client operates.</td>
<td>Enthusiastically participates in firm marketing activities by regularly producing relevant legal updates.</td>
</tr>
<tr>
<td></td>
<td>Actively seeks information about clients, particularly information about the client industry, client growth and development. Starts to develop an understanding of the industry and market condition in which the client operates.</td>
<td>Is able to interpret financial reports in relation to own budget.</td>
<td>Liaises with Supervising Partner to understand the team strategy and business plan.</td>
</tr>
<tr>
<td></td>
<td>Successfully completes requirements for admission.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Creates own development plan to aid personal development and succession and attends to any development needs. Supports the firm and their endeavours in becoming an Employer of Choice, and an Employer of Choice for Women.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>newsletter articles and being members of relevant internal and external committees. Assists practice with providing innovative legal solutions for our clients. Starts to build network through attendance at relevant events.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Has a good understanding of electronic applications and research tools available and a willingness to share skills with others.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
**APPENDIX E.2 COMPETENCY FRAMEWORK**

**Lawyer/Associate**

<table>
<thead>
<tr>
<th>Our People</th>
<th>Clients &amp; Market Reputation</th>
<th>Financial Success</th>
<th>Technical Expertise</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>CORE</strong></td>
<td>Our people competencies will attract and retain the best people. <strong>Lawyers &amp; Associates</strong> are highly valued contributors to their team. They willingly accept responsibility and help others when required. They start to develop clarity about career goals and areas of professional focus.</td>
<td>Our client competencies will attract and retain the right clients. <strong>Lawyers &amp; Associates</strong> seek to learn about clients, their business, the industry in which they operate, and the specific needs and expectations of individual clients for whom they work. They develop their own network of clients.</td>
<td>Our financial competencies will drive resilience and profitability. <strong>Lawyers &amp; Associates</strong> support the firm by complying with its systems and processes. They focus on personal financial accountability, efficient work management and supporting risk and file management procedures.</td>
</tr>
<tr>
<td><strong>Value EXCELLENCE</strong></td>
<td>Models the firm values. Has an insight into self and understands own personality and style. Understands own strengths and opportunities. Seeks regular feedback from Partner and Senior Associate and acts on feedback to improve performance. Contributes positively to the firm culture and encourages others to do so.</td>
<td>Understands what clients want and what will exceed their expectations. Undertakes client's work in a timely and responsive manner within agreed deadlines and costs. With Partner, regularly reviews performance against client expectations.</td>
<td>Meets financial targets. Achieves an average of 6.5 billable hours per day. Complies with finance policies and procedures, particularly in relation to time recording, billing, debtors and WIP. Ensures all billable and non-billable time is recorded on a daily basis. Bills WIP monthly as directed by Supervising Partner.</td>
</tr>
<tr>
<td><strong>Value TEAMWORK</strong></td>
<td>Develops and maintains an effective working relationship with team members, including legal administrative assistant. Seeks and accepts work enthusiastically.</td>
<td>Enthusiastically participates in industry focus groups and firm marketing activities. Develops relationships with decision makers and influencers.</td>
<td>Manages matters to agreed deadlines and costs and prioritises work effectively in line with team objectives. Prioritises multiple tasks and competing demands.</td>
</tr>
<tr>
<td>Value</td>
<td>Respect</td>
<td>Knowledge</td>
<td></td>
</tr>
<tr>
<td>-------</td>
<td>---------</td>
<td>-----------</td>
<td></td>
</tr>
<tr>
<td>Understands what to delegate and who to delegate to. Takes responsibility for accurate instructions and providing feedback. Has an insight into other team members and understands their personality and style. Understands their strength and opportunities. Contributes to the success of the group with a positive presence and through open and honest communication. Actively participates in team activities.</td>
<td>Actively participates in client functions and ongoing relationship management. Understands and works within team business development plan and strategy.</td>
<td>Meets internal and external deadlines and communicates difficulties with meeting deadlines as soon as possible.</td>
<td></td>
</tr>
<tr>
<td>Acknowledges the contribution of others. Shares information and works collaboratively across the firm, and supports Partners and colleagues to achieve business goals. Recognises and manages own stress levels.</td>
<td>Accepts responsibility for correcting problems. Builds loyalty by consistently delivering a service that meets and exceeds client expectations. Communicates effectively, targeting the structure and content of the communication to the specific audience. Listens to clients attentively. Is an advocate for the firm.</td>
<td>Liaises with Partner in relation to financial performance, discussing a plan of action for budget shortcomings. Protects the reputation of the firm by understanding and complying with ethical and legal requirements. Raises concerns about risk management with Supervising Partner. Understands the firm’s three year plan.</td>
<td></td>
</tr>
<tr>
<td>Identifies own knowledge and skill gaps and works with Partner to make improvements as required.</td>
<td>Shares information about clients, particularly information about the client industry, client growth and development. Understands the industry and market condition in which the client operates.</td>
<td>Is able to interpret financial reports in relation to own budget.</td>
<td>Works with Partner and other senior lawyers to learn and continue to grow and develop professional and technical skills. Takes responsibility for receiving clear instructions, clarifying any ambiguity and seeking feedback.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Participates in the firm’s CLE program, ensuring minimum standards are met as stipulated by Law Society.</td>
<td></td>
</tr>
<tr>
<td>Value</td>
<td>Practices work-life balance whilst ensuring client and firm needs are met. Creates own development plan to aid personal development and succession and attends to any development needs. Supports the firm and their endeavours in becoming an Employer of Choice, and an Employer of Choice for Women.</td>
<td>Enthusiastically participates in firm marketing activities. Provides innovative legal solutions for our clients. Starts to build network of potential clients and referral sources.</td>
<td>Participates in the firm’s Learning &amp; Development program. Liaises with Supervising Partner to understand the team strategy and business plan. Is committed to continuous learning and models an openness to learning. Has a good understanding of electronic applications and research tools available.</td>
</tr>
</tbody>
</table>
## APPENDIX E.3 COMPETENCY FRAMEWORK

### Partner

<table>
<thead>
<tr>
<th>Core</th>
<th>Value Excellence</th>
<th>Value Teamwork</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Our People</strong></td>
<td><strong>Clients &amp; Market Reputation</strong></td>
<td><strong>Financial Success</strong></td>
</tr>
<tr>
<td>Our people competencies will attract and retain the best people.</td>
<td>Our client competencies will attract and retain the right clients.</td>
<td>Our financial competencies will drive resilience and profitability.</td>
</tr>
<tr>
<td><strong>Partners</strong> are leaders and live the values of the firm. They develop others through coaching, mentoring and effective performance management. They seek to understand the unique contribution that each member of the team can make and help align team members, division and firm goals.</td>
<td><strong>Partners</strong> build loyalty from our target client base. They collaborate with peers and others to ensure the firm understands our client's businesses and delivers service that consistently meets and exceeds expectations. They build the business through cross-selling and new client acquisition and actively raise the profile of themselves and the firm.</td>
<td><strong>Partners</strong> plan for the firm's future and engage colleagues in their thinking. By managing financial performance and risks, they contribute to the long-term resilience, profitability and reputation of the firm. They comply with firm processes and systems to drive consistency and ensure that others comply.</td>
</tr>
<tr>
<td><strong>Value EXCELLENCE</strong></td>
<td><strong>Value TEAMWORK</strong></td>
<td></td>
</tr>
<tr>
<td>Models the firm values and acts as a role model. Has an insight into self and understands own personality and style. Understands own strengths and opportunities. Provides regular constructive feedback to team to ensure continued professional development. Plays an active role in the performance review process, ensuring feedback is honest and open and provides insight into goal setting and ongoing professional development. Contributes positively to the firm culture and encourages others to do so.</td>
<td>Has an insight into other team members and understands their personality and style. Understands their strength and opportunities. Enthusiastically participates in industry focus groups and firm marketing activities. Develops relationships with key decision makers and influencers in the business and legal community.</td>
<td>Meets financial targets and assists other team members to understand financial targets and performance. Complies with finance policies and procedures, particularly in relation to time recording, billing, debtors and WIP. Takes responsibility for all debtors on their matters. Works toward reducing debtor days to less than 30. Recognises and celebrates excellence and creates an environment where this can happen. Is acknowledged externally as an expert in focus areas. Gathers and analyses facts and identifies legal issues and effectively assesses risk. Problem solves by generating legally and commercially sound solutions. Negotiates and influences effectively. Enhance expertise in their field of law by keeping up to date with changes.</td>
</tr>
<tr>
<td>Understands what clients want, exceeds their expectations and communicates effectively and regularly. Undertakes client's work in a timely and responsive manner within agreed deadlines and costs. Regularly reviews performance against client expectations. Presents persuasively and professionally to groups. Is proactive in confidently discussing fees, performance and future work with clients and targets.</td>
<td>Supports team members in understanding and achieving their respective budgets. Aligns themselves with a strategic client group relevant to their area of practice. Actively contributes to team resources by sharing knowledge with others.</td>
<td></td>
</tr>
<tr>
<td>Value</td>
<td>RESPECT</td>
<td>Facilitates team meetings effectively and shares information about clients and the firm. Contributes to the success of the group with a positive presence and through open and honest communication. Actively participates in team activities. Instigates and actively participates in client functions and ongoing relationship management activities and programs. Tailors resources to best meet individual client needs. Feeds sufficient work to team members to ensure minimum average billable hours are met. Manages matters to agreed deadlines and costs and prioritises work effectively in line with team objectives. Coaches others in improving drafting styles and technical expertise. Understands roles of key resources (employees) in the firm and uses them efficiently. Shares information and works collaboratively across the firm, and supports other Partners to achieve business goals. Recognises and manages own stress levels. Liaise with Division Head in relation to financial performance, discussing a plan of action for budget shortcomings. Protects the reputation of the firm by understanding and complying with ethical and legal requirements. Raises concerns about risk management with Division Head.</td>
</tr>
<tr>
<td>Develops annual business plan, actively following them through and updating them during the year.</td>
<td>Develops team to provide succession / hand over of own practice.</td>
<td></td>
</tr>
</tbody>
</table>