

A Legal ‘Dweller On The Threshold’¹

Abstract

The framework of threshold concepts has been utilised extensively across a broad and diverse range of disciplines since its conception in 2003. Literature indicates use of the framework to identify threshold concepts in a given subject is valuable for helping to inform decisions about use of educational resources, teaching and assessment for what are particularly troublesome and valuable areas of curriculums. Despite the widely perceived value of the framework for educational development, there have been very few empirical studies conducted to seek to identify threshold concepts in legal education. Therefore, a case study was conducted at the Online Campus of one of the largest providers of legal education in the United Kingdom to seek to ascertain what, if any, threshold concepts there may be in legal education. A qualitative online survey was utilised to gather data from 212 students across a range of both undergraduate and postgraduate law programmes. Findings from the study indicated that there appeared to be two threshold concepts identified by participants. ‘Thinking like a lawyer’ was the first area, which was a possible threshold concept that had been discussed in legal education literature previously. A more unexpected development was what appears to be the idea of a contract being identified by participants as a possible threshold concept. This potential threshold concept had not been found in any previous empirical studies or even raised in speculation in literature previously. Possible developments posited in light of the findings in this study include increased use of legal skills activities and assessments in Contract Law studies across legal education. The practical and professional focus of such a step would hopefully assist with helping students ‘think like a lawyer’ as per the other apparent threshold concept identified in this study. In addition, such a step would hopefully serve to aid student understanding in this apparently particularly troublesome and valuable area of law, while also being consistent with increased use of more authentic assessment methods in legal training and across higher education generally. It could be argued efforts in this regard are particularly timely, given the recent, significant changes to the solicitor training regime in England and Wales in 2021.

¹ Morrison, V. (1982) Dweller on the Threshold. *Beautiful Vision* [Vinyl]. New York: Mercury Records.

Keywords: Legal education, threshold concepts, contract, contract law, thinking like a lawyer, authentic assessment, SQE, solicitors qualifying exams, legal teaching, legal training, law studies, legal education literature

1. Introduction

The initial study by Meyer & Land² suggests that characteristics of threshold concepts include that they can be transformative (causing a significant shift in how one views a topic), irreversible (unlikely to be forgotten), integrative (helping show how areas of a subject interrelate) and troublesome (in that they can involve novel and/or initially difficult to understand ways of thinking about or seeing things). The article describes threshold concepts as a core learning outcome that results in students seeing things in new ways and that threshold concepts can represent or lead to what was described by Perkins as 'troublesome knowledge' – knowledge that is conceptually difficult, counter-intuitive or alien³.

I am a programme lead for solicitor trainee programmes at the Online Campus of one of the largest providers of legal education and training in the United Kingdom (UK). If there are topics on the programmes that my institution delivers that are troublesome for students and once understood, are integrative, helping students understand how different areas interrelate, then I would suggest that this is something we as academics, and my university as a legal education institution, should seek to identify.

² Meyer, J. & Land, R. (2003). Threshold Concepts and Troublesome Knowledge 1 – Linkages to Ways of Thinking and Practising. *Improving Student Learning – Ten Years On*. C.Rust (Ed), OCSLD, Oxford.

³ Perkins, D. (1999). The Many Faces of Constructivism, *Educational Leadership*, Volume 57, Number 3, November. p.1.

There have been many studies conducted in relation to possible threshold concepts in a broad range of different disciplines, including theology⁴, finance⁵ and computer science⁶ to name just a few. However, there have been very few empirical studies conducted in relation to the possibility of threshold concepts in legal education and those that have taken place have been primarily limited to specific subject areas, for example the individual area / module of Criminal Law⁷. There have been very few empirical studies that have looked at the possibility of threshold concepts across legal studies generally and this has been specifically cited as an area that could and should be developed further within threshold concept literature⁸.

Therefore, a case study was conducted at my institution guided by the research question: What, if any, threshold concepts may exist in legal education? This study aimed at contributing to the discussion around possible threshold concepts in legal education and more broadly, possible developments in teaching and learning approaches in law in light of the same. A qualitative survey with open questions was utilised to seek the views of students on the possibility of threshold concepts within their studies. In total, 212 students took part in the survey across all legal programmes at the university including undergraduate LLB law programmes, postgraduate law conversion and solicitor trainee programmes.

This paper begins by reviewing relevant literature in relation to threshold concepts, followed by threshold concept literature related to legal education and training. The methodology utilised in the study is then outlined in relation to the qualitative survey adopted and analysis of the data from that survey. Findings from the study are then set out followed by a discussion of the potential significance of the same.

⁴ Chandler, Q. (2016). Cognition or Spiritual Disposition? Threshold Concepts in Theological Reflection[†]. *Journal of Adult Theological Education*, 13(2), 90–102.

⁵ Hoadley, S., Kyng, T., Tickle, L., & Wood, L. N. (2015). Threshold concepts in finance: student perspectives. *International Journal of Mathematical Education in Science and Technology*, 46(7), 1004–1020.

⁶ Rountree, J., Robins, A., & Rountree, N. (2013). Elaborating on threshold concepts. *Computer Science Education*, 23(3), 265–289.

⁷ Donson, F., & O'Sullivan, C. (2016). Building block or stumbling block? Teaching actus reus and mens rea in criminal law. In *The Teaching of Criminal Law* (pp. 21-33). Routledge.

⁸ Field, R. and Meyer, J. (2020). Threshold Concepts in Law: Intentional Curriculum Reform to Support Law Student Learning Success and Well-Being. Emma Jones and Fiona Cownie (eds), *Key Directions in Legal Education: National and International Perspectives*. P.142.

2. Literature Review

Threshold Concepts

The original paper from Meyer & Land⁹ on threshold concepts arose from research by an Economics team of the Economic and Social Research Council (ESRC) / Teaching and Learning Research Programme (TLRP) Project 'Enhancing Teaching and Learning Environments' that was seeking to identify factors that contribute to high quality teaching and learning environments across a range of disciplines and Higher Education Institutions (HEIs). A threshold concept is defined as being 'akin to a portal, opening up a new and previously inaccessible way of thinking about something' that leads to a transformed view of subject matter¹⁰. Meyer and Land¹¹ seek to define threshold concepts as transformative (changing how a person views a topic), irreversible (could only be reversed by considerable effort), integrative (exposes implicit interrelatedness) and troublesome (they can be counterintuitive and alien for the learner).

As referenced by Meyer & Land¹², a common example of a threshold concept is the topic of 'Opportunity Cost' in Economics. Every choice that is made has consequences – every economic decision has a knock-on effect, limiting future choices. This holds true at the level of Government spending - more funding for the National Health Service (NHS) means less is available for Education. It also holds true for individuals – if you go on a holiday, you will have less money for a new car, right down to buying a loaf of bread - there is a knock-on effect and that individual may not be able to afford other day to day essentials.

⁹ Meyer & Land (n 2)

¹⁰ Ibid 1

¹¹ Ibid

¹² Ibid 4

Economics students often struggle to properly understand the topic of Opportunity Cost, and when they finally ‘get it’, when the ‘penny drops’, there is no going back – it transforms and informs their view of the study of Economics and even impacts their personal lives irreversibly - every time they book a holiday, or even buy a loaf of bread, they are always considering the Opportunity Cost – what have they just prevented themselves from having later? As referenced by Meyer & Land “it fundamentally changes their way of thinking about their own choices, as well as serving as a tool to interpret the choices made by others”¹³.

Meyer & Land¹⁴ built upon their initial ideas by drawing on perspectives of teachers in higher education with a view to establishing a conceptual framework to guide possible improvements in evaluating teaching strategies and learning outcomes. They posited that threshold concepts constitute an obvious, and possibly neglected, focus for evaluating teaching strategies and learning outcomes. Specifically, the authors sought to firstly examine the extent to which threshold concepts can be located within personal understandings of discipline-specific epistemological (knowledge theory) discourses. Secondly, to develop more extensively notions of liminality (the stage between leaving an old way of thinking and entering a new way of thinking following passing through / understanding a threshold concept). Finally, to propose a conceptual framework within which teachers may advance their own reflective practice. Meyer & Land reinforce within this follow-up work the four primary features of threshold concepts as being transformative, irreversible, integrative and troublesome¹⁵.

Meyer & Land’s proposals on threshold concepts were very well received and quickly became an established, valuable method of analysing the contents of a given curriculum and approaching design of higher education programmes of study¹⁶. The framework has been applied in lots of different disciplines and both quantitative and qualitative research methods have been successfully utilised in conjunction with the theory. In Cultural Studies ‘Otherness’ is considered a threshold concept on the basis

¹³ Ibid 4

¹⁴ Ibid

¹⁵ Meyer, J. & Land, R. (2005). Threshold concepts and troublesome knowledge (2): Epistemological considerations and a conceptual framework for teaching and learning. *Higher Education*. April 2005, Volume 49, Issue 3, pp 373–388.

¹⁶ Davies, P. (2006). Threshold Concepts: How can we recognise them?. In *Overcoming barriers to student understanding* (pp. 70-84). Routledge.

that it affects the way students understand their own positioning and their learning from differing perspectives¹⁷. A study of higher education level mathematics looked at student performance on in-course quizzes and utilised a student survey to explore possible threshold concepts in the respective programme. This study identified three different areas of the mathematics syllabus (ordinary differential equation, technique of substitution and multiple integration) as threshold concepts. These concepts, once grasped, caused students to see required calculations in a different light, gave them further insight into complex calculations, how they worked and enabled students to translate the threshold concepts to different, more difficult problems¹⁸. Qualitative methods of interviewing undergraduate business students have been utilised to explore possible threshold concepts, leading to identification of the political idea of Power as a threshold concept in business and commerce degree programmes¹⁹.

While it has been utilised widely, the framework of threshold concepts has not escaped criticism. The very existence of threshold concepts has been queried²⁰ as it can be argued the definition is very broad and is therefore open to overly subjective and even biased application. It has also been argued that the possibility of what could be a threshold concept for one individual, could not be at all for another, depending on the differing features of the concept and therefore the framework is too arbitrary for meaningful implementation²¹. Albeit, this latter criticism is perhaps negated somewhat by the more subjective, personal focus of later development of the framework²².

While these criticisms are and must be acknowledged, even recent critical studies of threshold concepts acknowledge the value of the framework at least for enabling

¹⁷ Cousin, G. (2006). Threshold concepts, troublesome knowledge and emotional capital. In *Overcoming barriers to student understanding: Threshold concepts and troublesome knowledge*, Edited by: Meyer, J. and Land, R. 134 – 147. Abingdon: Routledge. (2006)

¹⁸ Worsley, S., Bulmer, M. and O'Brien, M. (2008) Threshold concepts and troublesome knowledge in a second-level mathematics course. In A. Hugman and K. Placing (Eds) *Symposium Proceedings: Visualisation and Concept Development*, UniServe Science, The University of Sydney, 139–144.

¹⁹ Williams, P. (2014). What's politics got to do with it?'Power' as a 'threshold' concept for undergraduate business students. *Australian Journal of Adult Learning*, 54(1), 8-29.

²⁰ Rowbottom, D. (2007). Demystifying threshold concepts. *Journal of Philosophy of Education*, 41, 263–270.

²¹ O'Donnell, R. (2010). A critique of the threshold concepts hypothesis and an application in economics (Working Paper No. 164).

²² Meyer & Land (n 15).

pedagogical discussion and as a reflective prompt for learners and educators²³. Therefore, it is submitted that it can be properly argued that existing criticisms are reasons for approaching use of the framework with caution and as a means to help inform curriculum development as opposed to a one-stop-shop for decision-making when it comes to enhancing of programmes of study²⁴.

Threshold Concepts in Legal Education and Training

The initial stage of legal education and training in England & Wales (E&W) has historically primarily consisted of undergraduate law LLB degrees that cover the Legal System of E&W generally and what have been termed the seven foundational subjects of legal knowledge at the academic stage of training²⁵. These foundations of legal knowledge subjects are Criminal Law, Equity & Trusts, Law of the European Union, Contract Law, Tort Law, Land Law and Public Law (which includes Constitutional, Administrative & Human Rights Law)²⁶.

Prior to 2021, if an undergraduate law student wished to progress and complete training as a solicitor in E&W, they would then study a one year, full time postgraduate programme called the Legal Practice Course (LPC) which covered a series of further legal knowledge, skills and procedure modules that were relevant for legal practice as a solicitor²⁷. Following regulatory changes in 2021, it is no longer mandatory for individuals wishing to qualify as a solicitor in E&W to complete an undergraduate law LLB degree or postgraduate LPC qualification. Prospective solicitors must now undertake a new regime of centralised assessments overseen by the Solicitors Regulation Authority (SRA). The new regime, known as Solicitors Qualifying

²³ Brown, M. E. L., Whybrow, P., & Finn, G. M. (2021). Do We Need to Close the Door on Threshold Concepts? *Teaching and Learning in Medicine*, 34(3), 301–312.

²⁴ Nicola-Richmond, K., Pépin, G., Larkin, H., & Taylor, C. (2017). Threshold concepts in higher education: a synthesis of the literature relating to measurement of threshold crossing. *Higher Education Research & Development*, 37(1), 101–114.

²⁵ Waters, B. (2018). The Solicitors Qualification Examination: something for all? Some challenges facing law schools in England and Wales. *The Law Teacher*, 52(4), 519–527.

²⁶ Bar Standards Board. “Foundations of Legal Knowledge. The Bar Qualification Manual”. <<https://www.barstandardsboard.org.uk/training-qualification/bar-qualification-manual-new.html?part=CC6E51DC-0FF4-45C8-A0CE31EA825C4692&q=>> accessed 24th November 2024.

²⁷ Dunn, R., Roper, V., & Kennedy, V. (2018). Clinical legal education as qualifying work experience for solicitors. *The Law Teacher*, 52(4), 439–452.

Examinations (SQE) 1 & 2 continue to cover academic stage foundational legal knowledge subject areas of the kind included in traditional LLB degrees along with legal knowledge, skills and procedure content along the lines of traditional LPC programmes²⁸. The new SRA SQE assessments are extremely extensive, challenging and expensive for students to complete successfully. The SQE1 regime alone consists of 360 questions covering 14 different areas of academic law and legal practice subjects in over 10 hours of assessment split across two days at a cost of £1,934 simply for undertaking the assessments and not including the cost of any tuition or training. SQE2 assessments cost £2,974 and if students do not complete any of the assessments successfully, then full fees for any/all resit assessments must be paid again²⁹. Given these recent, significant changes in the means of entering the legal profession and the reduction in mandatory legal studies and training now required of prospective solicitors, it could be argued that further insight into critical areas and potential threshold concepts within legal education is even more important. Arguably one clear advantage of doing so is that identifying threshold concepts in legal education can help academics to understand potential barriers to effective student learning and assist in helping students to overcome the same while expanding scope for deeper learning and increased prospects of successfully completing SRA SQE assessments.

There have been some empirical studies conducted in relation to possible threshold concepts within legal education and training. However, the number of empirical studies appear to be very limited and empirical consideration of threshold concepts in law have primarily focused on specific topics and/or specific subject areas as opposed to considering possible threshold concepts across legal education and training more broadly. Previous empirical studies have suggested that elements of the foundational legal knowledge subject area of Criminal Law constitute possible threshold concepts in legal studies³⁰.

²⁸ le Roux-Kemp, A. (2024). A critical analysis of the role of legal higher education and training in the institutionalisation of the English legal profession: quo vadis for English law schools? *The Law Teacher*, 58(3), 396–420.

²⁹ Solicitors Regulation Authority. "What is the SQE?". < <https://sqa.sra.org.uk/about-sqa/what-is-the-sqa> > accessed 10th May 2025.

³⁰ Donson & O'Sullivan (n 7) 21-33

While the number of empirical studies in legal education that have sought to identify threshold concepts in the discipline is small, there has been quite a lot of speculation and discussion within the literature on features of legal studies that could potentially constitute threshold concepts. One of the developers of the threshold concept framework, Ray Land has suggested that the topic of the doctrine of precedent that usually forms part of the study of the Legal System of E&W at undergraduate LLB stage as a possible threshold concept in legal education³¹.

The broader, less topic-specific idea of ‘thinking like a lawyer’ that applies more widely across legal education and practice has been identified on a number of occasions in the literature³² as a possible threshold concept in legal education. However, caution has been advised on the basis that too much focus in undergraduate programmes on this concept of ‘thinking like a lawyer’, which is perhaps skewed more towards legal professional practice, could lead to a lack of critical thinking in academic stage legal studies³³.

Another less subject-specific and possible threshold concept that has been cited across legal education literature is ‘malleability’. This is the idea that law students and lawyers have to be able to recognise and deal with malleability of legal principles³⁴. Legal systems by nature are dynamic, evolving entities. There may not be a right answer to every legal question and two reasonable individuals considering the same legal situation may disagree as to the proper application of the law to the scenario³⁵.

A further possible threshold concept in legal education cited in literature is the concept of a reasonable person³⁶. This concept refers to the application of an objective standard in a legal case, that is, the standard or hypothetical view of an ordinary and

³¹ Land, R. (2015). Facilitating the Academy through Threshold Concepts and Troublesome Knowledge. *Elias Westergaard and Joachim S Wiewiura (eds), On the Facilitation of the Academy*. Springer

³² Steel, A. & Fitzsimmon, D. [2013] UNSWLRS 44; James, N. (2014). Teaching first-year law students to think like (good) lawyers. In L. Wolff, & M. Nicolae (Eds.), *The first-year law experience: A new beginning* (pp. 32-45). Halstead Press.

³³ Ricketts, A. (2006). Threshold Concepts in Legal Education. *Directions: Journal of Educational Studies*. 26(2), 8.

³⁴ Weresh, M. (2014). Stargate: Malleability as a Threshold Concept in Legal Education. *Journal of Legal Education*. 63. 689.

³⁵ Meyer, L. (1996). When Reasonable Minds Differ. *H.Y.U. L. Review*. 71. 1467, 1468.

³⁶ Steel, A. (2019). Succeed, question, repeat: threshold concepts and variation theory in understanding how law students build competency. *The Law Teacher*, 53(3), 231–244.

reasonable person. This concept has been referred to in English case law historically as the standard of an ordinary reasonable man or what the view of an average person on the streets of London would be, the ‘man on the Clapham omnibus’³⁷. Two potential threshold concepts cited in the literature in specific subject areas are the more complicated features of the UK constitution and the idea of companies as ‘legal persons’ in Company Law³⁸.

While there has been quite a lot of discussion of what may be potential threshold concepts within legal education literature, there have been limited empirical studies carried out and ‘there is limited material to date that has identified and applied threshold concepts in legal studies generally’³⁹. There is a growing consensus in legal educational literature that efforts to identify threshold concepts within law curriculums and seeking to improve teaching and assessment in those areas in light of findings is necessary and likely to be effective⁴⁰. An example of this in practice is qualitative research conducted in an effort to identify threshold concepts in legal studies that were then utilised to inform the 2015 Quality Assurance Agency for Higher Education Law Subject Benchmark Statement⁴¹. ‘Thinking like a lawyer’ was one of the potential threshold concepts identified by Professor Huxley-Binns in preparing the Law Subject Benchmark Statement in 2015. Although qualitative data was collected for this study, it appears to have consisted of a small pool of experienced lawyers and legal academics, as opposed to current law programme students who have been grappling with their legal studies contemporaneously. In addition, this study took place prior to the largest changes in legal education and training since The Omrod Report more than 50 years ago⁴² with the introduction of the new SQE training regime in 2021. Therefore, it would appear that further enquiry into potential threshold concepts in legal education following these significant changes in legal education and training is particularly timely.

³⁷ Stern, S. (2023). From Clapham to Salina: Locating the Reasonable Man. *Law & Literature*, 36(3), 391–417. p.1.

³⁸ Ricketts (n 29)

³⁹ Yin, K., & De Maio, C. (2022). Transformative, troublesome and liminal: does the presentation of legal reasoning in the legal studies curricula in higher education institutions satisfy the characteristics of a threshold concept? *The Law Teacher*, 57(1), 1–14. p.4-5.

⁴⁰ Field & Meyer (n 8). Jones & Cowrie (n 8) 142.

⁴¹ Huxley-Binns, R. (2016). ‘Tripping over thresholds: a reflection on legal andragogy’ in *Learning/Technology in Legal Education*. Volume 50, 2016 - Issue 1.

⁴² Omrod, R. (1971). Report of the Committee on Legal Education. Cmnd. No. 4595.

3. Methodology

This study sought to explore threshold concept issues at one of the largest providers of legal education in the UK and the research question guiding the study was: What, if any, threshold concepts may exist in legal education? It is hoped that the study can make a contribution towards identifying, empirically, any possible threshold concepts in legal education and training to hopefully contribute to the discussion of these issues in legal education literature, and more widely teaching and learning approaches in law studies generally.

One of the challenges in relation to application of Meyer & Land's⁴³ conceptual framework has been the effective identification of which particular topics within a given course of study genuinely constitute a threshold concept. Effective identification is important as threshold concepts can have a significant impact on student learning experiences⁴⁴. A common method of seeking to identify threshold concepts has been through dialogue between lecturers and students utilising qualitative data collection methods that give students the opportunity to explain to lecturers in their own words particular topics that appear to contain respective features of threshold concepts⁴⁵. Qualitative data collection in this way is consistent with a social constructivist point of view that was adopted for this study and is underpinned by the position that learner knowledge and development of self is socially constructed⁴⁶.

Given that the study was guided by a social constructivist viewpoint, qualitative approaches to data collection were adopted. An exploratory, qualitative survey utilising

⁴³ Ibid (n 2)

⁴⁴ Barradell, S. (2013). The identification of threshold concepts: a review of theoretical complexities and methodological challenges. *High Education*. 65, 265–276 (2013).

⁴⁵ Cousin, G. (2009). *Researching learning in higher education*. New York: Routledge.

⁴⁶ Wenger, E. (1998). *Communities of Practice – Learning, Meaning and Identity*. Cambridge University Press, New York.

open questions was developed that consisted of a series of questions to explore with participants possible threshold concepts in their legal education and training. Using a survey in these circumstances enabled the gathering of qualitative data on student beliefs, opinions and views on possible threshold concepts across different modes of legal study in the hope of identifying useful general patterns⁴⁷ to aid in attempting to answer the research question guiding the study about whether there may be any threshold concepts in legal education. A survey of this kind provides the ability to tap into a wide field of people and programmes to ascertain general features⁴⁸. This is important for the current study because the Online Campus of the HEI in question where the data collection took place, contains a broad range of students based in many different locations, including many countries outside the UK. In addition, being the largest campus at the university, a wide range of programmes are in operation including law, business and psychology programmes.

An established approach to qualitative surveys in educational research is to utilise a mix of multiple choice and open-ended questions that give participants the opportunity to expand and elaborate in their own words on the issues at hand⁴⁹. The final survey instrument in this study contained 12 items, which consisted of an initial multiple-choice item, 10 open-ended question items and ended with a multiple-choice item. A copy of the full survey is attached at **Appendix 1**.

The initial multiple-choice item outlined seven concepts in law that have been alluded to in legal education literature as possible threshold concepts. This included the three broader ideas referenced in the literature review of thinking like a lawyer, malleability and the 'reasonable person'. Four topic specific concepts in Public Law, Company Law, Criminal Law and Legal Systems were also referenced along with the option of 'some other area'. Participants were asked to select any/all of the listed areas that caused them difficulty. Question two, the first open-ended question, asked why participants found those areas of study difficult. The next nine items were all open-

⁴⁷ Alridge, A. and Levine, K. (2001). *Surveying the Social World: Principles and Practice in Survey Research*. Buckingham, UK: Open University Press.

⁴⁸ Dillman, D. A., Smyth, J. D. and Christian, L. M. (2014). *Internet, Mail, and Mixed-Mode Surveys: The Tailored Design Method*. New York: Wiley.

⁴⁹ Harris, B., & Barton, E. E. (2016). Autism services in Mexico: A qualitative survey of education professionals. *International Journal of School & Educational Psychology*, 5(1), 1–13.

ended questions informed by the literature on and definition of threshold concepts that sought to elicit information from participants that could help identify any/all areas of their legal studies that may constitute threshold concepts. The final item in the survey, question twelve, was a multiple-choice item that asked participants to indicate their gender, age group, level of study and whether they had ever worked in the legal sector before. The purpose of the final item was to help identify groupings within the participants to facilitate potential comparisons within and between the different categories of participant.

I accept that the initial question in the survey that sets out seven concepts in law that have been alluded to as possible threshold concepts in literature previously could be perceived as somewhat leading and as such may have the potential to impact the reliability of the survey data⁵⁰. I also accept that I could have simply asked participants in the first item an open question about any areas of their studies that had been 'troublesome' instead of explicitly listing options to serve a similar purpose. I decided to use a multiple-choice item that listed the seven potentially existing threshold concepts as I think the whole idea of threshold concepts is quite subtle and some of the areas identified in pre-existing literature as potential threshold concepts in law are also subtle, to the extent they could be missed out completely if not identified to participants for free consideration or dismissal. For example, the potential threshold concepts of 'thinking like a lawyer' and 'malleability' are both commonly cited in legal education literature. Given my own experiences as a practicing lawyer and legal academic, I suspected that both these concepts definitely had the potential to be legitimate threshold concepts in legal studies. However, I also knew neither of the concepts are commonly explicitly cited as a module or constituent element of a module in legal studies. In some legal studies programmes they are not explicitly referred to at all, despite arguably being very common implicit features of legal training. Therefore, I decided to refer to those and all of the other potential threshold concepts in law identified in literature, in addition to an option to choose 'some other area' and give participants the complete freedom to choose some, or none of the items listed. I felt this approach was an appropriate middle ground between a potential perception of a degree of leading and the risk of participants misinterpreting the purpose of the

⁵⁰ Di Bella, J.: The Effects of Leading Questions (2009)

study and/or completely failing to consider what may be well-founded, legitimate potential contenders for threshold concepts in law due to what can be the very implicit nature of some of the concepts. I would also suggest that the way the item is structured, giving participants the opportunity to choose freely options that may or may not be relevant, in addition to 'some other area' helps ensure this is not a strongly leading question that manipulates a participant to give answers of the kind the surveyor seeks⁵¹. I would also suggest that the limited impact of any potentially leading effect of the initial survey item is supported by the fact that one of the two potential threshold concepts identified in this study (the concept of a contract) was not listed as an option in the first survey item at all.

Necessary ethics approval was sought and obtained before embarking on data collection. Purposive sampling was employed in order to seek to obtain participants who were most likely to have relevant experience of the issues covered by the study⁵². Therefore, participants to complete the survey online were sought via email from approximately 2000 current students on law programmes only at the Online Campus. While the sample was limited to law programmes, participants were sought from all current law programmes at the Online Campus to seek to achieve an empirical study on threshold concepts in law programmes that was as broad as possible. The sample consisted of undergraduate Law LLB degrees, postgraduate law conversion programmes, postgraduate Academic Masters in Law (AMIL) and postgraduate vocational solicitor trainee programmes. Therefore, the sample represented a broad spectrum of law programme students and all participants had relevant experience in respect of the issues being addressed in the study. In terms of disadvantages of a sample of this nature, students at the Online Campus have specifically chosen to study their programme online and attendance mode legal programmes are significantly more common and established in E&W. It is also right to say that, perhaps due to the convenience of online delivery, the Online Campus can have a higher percentage of international students than law programmes at attendance-only campuses in E&W. As such, it is possible that this sample being solely from the Online Campus may not be

⁵¹ Janatabadi, F., Ermagun, A.: Empirical evidence of bias in public acceptance of autonomous vehicles. *Transp. Res. Part F Traffic Psychol. Behav.* 84, 330–347 (2022).

⁵² Elo, S., M. Kääriäinen, O. Kanste, T. Pölkki, K. Utriainen, and H. Kyngäs. 2014. "Qualitative Content Analysis: A Focus on Trustworthiness." *SAGE Open* 4 (1): 1–10.

fully representative of students on law programmes throughout E&W. In light of the possible limitation of this study being focused only on students studying law programmes online, it would appear that a useful next step following this study could be similar type research being conducted with students studying law programmes solely at attendance-only campuses/universities to see if similar findings are observed.

Qualtrics software was utilised in order to host the survey online and enable participants to complete it in their own time over a four week period between 18th September 2024 – 16th October 2024. In total, 212 students completed the survey. Participants were not required to complete every item on the survey so there are some gaps in the data for particular questions from particular respondents. The survey was set up on an anonymous basis to prevent individual participants from being identified.

A deductive approach to analysis of data from the survey was adopted whereby the codes in the coding system consisted of the four defining features of threshold concepts⁵³ to enable classification of the data. However, I wanted to stay open to the possibility that additional, appropriate categories could become apparent during the analysis process⁵⁴. Therefore the codes set out in **Table 1** were utilised in working through and categorising data from the survey.

Table 1 – Codes utilised in survey data analysis

Code	
A. Troublesome	Can involve novel and/or initially difficult to understand ways of thinking about or seeing things

⁵³ Meyer & Land (n 15)

⁵⁴ Creswell, J. (2013). *Qualitative inquiry and research design: Choosing among five approaches*. Los Angeles, CA: SAGE. 185.

B. Transformative	Causing a significant shift in how one view a topic
C. Irreversible	Unlikely to be forgotten
D. Integrative	Helping show how areas of a subject interrelate
E. Additional Code/s	

4. Findings

A. Troublesome

The first question in the survey asked respondents to identify which, if any of the seven most commonly cited possible threshold concepts in legal education literature caused them difficulty, including ‘Some other area/s’. This was a convenient way to ease participants in, get them thinking about their own study experiences and it is one of the four key features of threshold concepts in that the topics are ‘troublesome’ for students⁵⁵. A breakdown of the numerical values is set out in **Table 2**.

It was interesting to note the second highest number, 60, identified ‘Some other area/s’. Question two asked respondents to say why they found the area/s selected difficult. For ‘Some other area/s’, there was very little commonality among responses. An exception was that five respondents referred to contracts and/or Contract Law as a particularly difficult area of study. As per Respondents 89 (R89) and 204 (R204):

⁵⁵ Meyer & Land (n 15)

I struggled with quite a few of the principles/doctrines etc within the contract law module. Although I passed the course I still haven't quite understood some of these (R89)

I found all of contract law extremely difficult (R204)

Table 2 – Numerical values for Question 1

<u>Category</u>	<u>Number of Selections</u>
1. 'Malleability' – managing uncertainty in law	62
2. Some other area/s	60
3. Having to 'think like a lawyer'	52
4. The 'unwritten' constitution of the UK	49
5. Hearsay in Criminal Law	44
6. Companies as 'legal persons'	31
7. The concept of a 'reasonable person'	28
8. The doctrine of 'Precedent'	19

Malleability and Thinking Like a Lawyer

From the seven specified possible threshold concepts in legal education literature, the two most commonly selected items were both broad ideas that apply across legal education as opposed to being a specific topic. 'Malleability' with 62 selections, followed by 'Having to think like a lawyer' with 52.

A common thread for 'Having to think like a lawyer' was what could be termed as cultural issues of the legal profession as a barrier and difficulty for students. 18 participants made some reference to this point in question two responses. Respondent 10 and 23 respectively stated:

Until recently I had never made personal connections with any lawyers so found the concept of thinking like one as quite abstract. (R10)

Being expected to 'think like a lawyer' is difficult when you do not have a lot of legal experience yet. (R23)

B. Transformative

Question four sought to elicit possible 'transformative' areas of legal education.

Thinking Like a Lawyer

When asked if any areas of legal studies really changed the way participants saw or understood law / legal practice / other things, some reference to the idea of 'thinking like a lawyer' and related cultural issues was the most common response with 21 participants alluding to this. As per Respondent 59:

To think like a lawyer... it is hard not to apply former knowledge or personal opinion or morals. (R59)

Contracts

Nine participants referred to contracts in answering question four. Some responses indicated the transformative nature of this topic generally and formation of contracts specifically. As per Respondents 32 and 53:

Contract - very hard at first - now that relationship is at the core of everything. (R32)

Contract law; I struggled in studies initially however the formulaic approach to establishing contract has assisted me in other areas where it is more procedural. (R53)

C. Irreversible

Survey question five was utilised to try and ascertain any areas of legal studies that were 'Irreversible'.

Contract

Contracts featured heavily again with 11 participants referring to the subject generally and formation of contracts specifically when asked if there were any areas of their studies they would never forget. As per respondents 45, 53 and 67:

I will never forget contract law. For years I did this so wrong and I really had a wonderful experience understanding the right way to form a contract. (R45)

Contract law, we see them all the time in real life. (R53)

Contract law - comes into everything. (R67)

Thinking Like a Lawyer

There was quite a lot of reference to legal industry cultural issues and having to 'think like a lawyer' with nine responses on this point. As per Respondent 24:

Approaches to legal issues... subjects chosen were also challenging us to look at issues from both sides and I found that enjoyable. (R24)

Criminal

Criminal Law featured a lot for this question with some reference in 28 responses. The concepts of Actus Reus and Mens Rea (i.e. the conduct and mental state requirements of criminal offences) were specifically cited as per Respondents 70 and 80:

Criminal Law and the definitions of mens rea and actus reus. It is an interesting area of law because it is referred to often in the mainstream media. (R70)

Criminal law - mens rea and actus reus. (R80)

D. Integrative

Question six sought to explore any areas that were 'Integrative'.

Contract

Contracts featured heavily again, being cited on 25 occasions. Formation of contracts was also specifically referenced on a number of occasions. When asked if any areas of legal studies really helped participants to understand how different areas of law relate to each other, verbatim responses included:

Contract law, formation of contracts. (R25)

Contract law has been useful in providing a foundation for other areas of law, because there is so much memorable case law and because it governs so many daily interactions. (R64)

Contract law is everywhere, it's the web going through various areas of law. (R185)

Thinking Like a Lawyer

Professional cultural issues related to the idea of 'thinking like a lawyer' was referenced on 11 occasions. As per respondent 71:

I think the SRA [Solicitors Regulation Authority] did a great job in distinguishing between FLK and black letter law to get us to understand how different areas of law relate to one another. (R71)

E. Additional Code/s

Question seven, eight and nine asked participants if any areas of legal studies helped them feel like a lawyer (Q7), assisted in their professional (Q8) or personal (Q9) lives. These questions were intended to explore further areas that may have been 'transformative' as per the original definition of threshold concepts⁵⁶ and/or ideas of passing through liminal states as per subsequent work by the developers of the framework⁵⁷.

Contract

Contracts and the formation of contracts featured heavily throughout responses to questions seven, eight and nine with 38 references in total. For example:

⁵⁶ Meyer & Land (n 2).

⁵⁷ Meyer & Land (n 15) 373–388.

There is a contract for absolutely everything and once you understand contract law it's easy to provide assistance to others even when you're not fully qualified yet. (R8 – Q7)

Contract law has made me feel like a lawyer. It is so essential in day to day life and its more realistic that each individual would definitely encounter no matter how simple or complex it is as contracts happen everyday! (R169 – Q7)

Contract law is incredibly useful in everyday life... Knowing how contracts are formed... and how to enforce rights can prevent misunderstandings and help navigate common situations like disputes with landlords, service providers, or even negotiating purchases and sales (R49 – Q9)

Thinking Like a Lawyer

Cultural issues around the profession and/or 'thinking like a lawyer' also arose in responses to questions seven, eight and nine:

I have major imposter syndrome (R79 – Q7)

Studying law is the best thing anyone can do for self-development. It gives you grounding and overall understanding of how things work in life (R185 – Q8)

Participant Suggestions for Change

Question 10 provided the opportunity to add anything further about law teaching and question 11 about anything generally. Some respondents provided constructive feedback. For example:

I found any topic that could be contextualised in real life with stories to illustrate the point / theory was always far more helpful and impactful than topics that were just facts laid out with vague references to precedent. Being able to picture events and apply the law to those events helped me see how they apply to real life and how the complexities differed in various scenarios (R33 – Q11)

5. Discussion

As outlined in the Literature Review for this study, there has been quite a lot of speculation and discussion in legal education literature about areas that may amount to threshold concepts in the discipline. However, there are very few empirical studies that have been undertaken in relation to this issue. One of the few studies that refers to empirical data collected posits that the topic of Actus Reus and Mens Rea in Criminal Law may amount to a threshold concept in legal education⁵⁸. There was some support for this in the data collected in this study. The topic of Hearsay in Criminal Law was included in options for possible 'troublesome' areas in question one and this was one of the more popular choices with 44 selections. Question five in the survey on possible 'Irreversible' topics also resulted in 28 participants referencing Criminal Law, including the topic of Actus Reus and Mens Rea as identified by Donson & O'Sullivan⁵⁹. However, the areas of 'thinking like a lawyer' and the concept of a contract were much more prevalent in the data across all categories.

'Thinking Like a Lawyer'

The four original and most common defining features of threshold concepts are that they include the features of being 'troublesome', 'transformative', 'irreversible' and 'integrative'⁶⁰. In the survey for this study, questions one and two sought to ascertain 'troublesome' areas, question four alluded to possibly 'transformative' topics, question five 'irreversible' and question six 'integrative' aspects of legal studies. 'Thinking like a lawyer' was one of only two areas of legal education that was clearly identified by

⁵⁸ Donson & O'Sullivan (n 7) 21-33.

⁵⁹ Ibid

⁶⁰ Timmermans, J. A. (2014). Identifying threshold concepts in the careers of educational developers. *International Journal for Academic Development*, 19(4), 305–317.

respondents in all four of these areas of the survey covering the defining features of threshold concepts⁶¹.

This was not the more surprising of the two areas that was present across all four categories of the definition. In 2015, the Chair of the Law Subject Benchmark Statement committee Professor Rebecca Huxley-Binns used an appearance at the Association of Law Teachers Lord Upjohn Lecture to outline development of the Law Subject Benchmark Statement including specific reference to threshold concepts⁶². The publication of this lecture is one of the few pieces of legal education literature that utilise empirical data to support contentions of what may constitute threshold concepts in legal education. A survey of a range of senior legal academics and practitioners led to Professor Huxley-Binns positing that ‘thinking like a lawyer’ may be a threshold concept in law that involves the ability to “absorb complex data, consider approaches to the problem, seek furthers and betters... consider... options and advise... relevant to... circumstances”⁶³.

‘Thinking like a lawyer’ is quite a broad concept in legal education and it is not neatly contained within one of what have been coined as the seven foundational subjects of legal knowledge⁶⁴. The concept itself does not have a widely accepted, clear definition⁶⁵ and it has been argued that the concept of ‘thinking like a lawyer’ can lead to a lack of academic, critical rigour and even be detrimental to student well-being⁶⁶.

Given these potential limitations of the concept and the fact that the idea of ‘thinking like a lawyer’ does not fall neatly within particular legal subject areas, it is difficult to think of practical steps that could be taken to improve coverage of this area in legal education. However, an interesting and potentially constructive future for ‘thinking like a lawyer’ within legal education could be through the use of Lave and Wenger’s

⁶¹ Land, R., Meyer, J. H. F., & Flanagan, M. T. (Eds.). (2016). *Threshold concepts in practice*. Sense Publishers.

⁶² Ashford, C. (2024). The Quality Assurance Agency Law Subject Benchmark Statement 2023. *The Law Teacher*, 58(3), 421–427.

⁶³ Huxley-Binns (n 41) 12.

⁶⁴ Waters, B. (2013). Widening participation in higher education: the legacy for legal education. *The Law Teacher*, 47(2), 261–269.

⁶⁵ Jones, E. (2015). One size fits all? Multiple intelligences and legal education. *The Law Teacher*, 51(1), 56–68.

⁶⁶ Bradney, A. (1998). Law as a Parasitic Discipline. *Journal of Law and Society*. 25(1), 71–84; Cotterrell, R. (2002). “Subverting Orthodoxy, Making Law Central: A View of Sociolegal Studies” 29(4) *Journal of Law and Society* 632–644.

community of practice framework⁶⁷. An individual entering a community of practice moves from peripheral participation to become a core participant of the practice community⁶⁸. It has been argued that the idea of ‘thinking like a lawyer’ can and should be framed in this way, in that legal students should bear in mind they are entering the law profession community of practice and as such “all aspects of their conduct relevant to professionalism... relate to this transition into a legal professional community”⁶⁹. Such an approach, it is hoped would not only assist in helping law students to ‘think like a lawyer’, but also contribute towards them feeling a sense of identity and belonging within the legal professional community⁷⁰.

The Concept of a Contract

The only other area that was referred to by participants in all four areas of the survey that sought to elicit the defining characteristics of threshold concepts appeared to be the concept of a contract. This was the more surprising of the two areas that were referred to within all four features of threshold concepts. This is not a topic that has been the focus of a published empirical study, or even speculative piece of literature referring to it as a threshold concept in legal education. Despite the lack of reference to it in literature, in this empirical study, contracts were repeatedly referred to in all four areas of the survey that were specifically aimed at identifying the defining features of threshold concepts.

A contract is sometimes referred to as a promise or agreement by respective parties to do certain things and are often thought about as only being “lengthy documents with lots of small print” signed by consumers⁷¹. However, “‘promises’ or ‘agreements’ are not ‘things’ that exist outside the law... [or] physical objects which can be perceived

⁶⁷ Lave, Jean and Wenger, Etienne (1991) *Situated Learning: Legitimate Peripheral Participation*. New York: Cambridge University Press, 97-98

⁶⁸ Wenger, E. (2000). Communities of Practice and Social Learning Systems. *Organization*, 7(2), 225–246.

⁶⁹ Baron, P., & Corbin, L. (2012). Student engagement: rhetoric and reality. *Higher Education Research & Development*, 31(6), 759–772. p.1.

⁷⁰ Moore, I., Drisceoil, V.N. (2023). Wellbeing and Transition to Law School: The Complexities of Confidence, Community, and Belonging. In: Jones, E., Strevens, C. (eds) *Wellbeing and Transitions in Law*. Palgrave Macmillan, Cham; Moriarty, A., O’Boyle, R. (2023). The Law School and the Psychology of Belonging. In: Jones, E., Strevens, C. (eds) *Wellbeing and Transitions in Law*. Palgrave Macmillan, Cham.

⁷¹ Taylor, R., & Taylor, D. (2023). *Contract Law Directions*. Oxford: Oxford University Press. p.11.

by the senses. They are themselves abstract concepts, just as much as the concept of contract itself"⁷². The abstract nature of a contract and the fact it is not a physical object which can be perceived by the senses allows for Courts to determine a contract to be in existence, even if the agreement in question has not been reduced to writing. In fact, contracts can be deemed to be in existence through speech alone, non-verbal conduct or even silence and omissions⁷³.

Some of the participant responses in this study in relation to contracts were very compelling. A lot of the literature argues that the most important defining feature of a threshold concept is the transformative nature of the topic, "new understandings are assimilated into our biography, becoming part of who we are, how we see and how we feel"⁷⁴. In the context of legal education, this could perhaps be considered to relate to the liminal state a law student may experience before their understanding and even their identity is transformed such that they start to actually feel like a lawyer themselves, rather than an outsider attempting to understand and looking into the legal community from the outside. Question 7 in the survey in this study was specifically designed to explore this phenomenon and asked participants if there were any areas of their legal studies that helped make them feel like a lawyer. Responses to that question appear to indicate that successfully getting to grips with the idea of an enforceable contract helped enable a transformation for these individuals where they went from feeling like students on the periphery of a professional community, to actually feeling like a member of that community who was equipped with skills and knowledge that could be used to help other people.

The data in this study indicates that the concept of a contract is troublesome for students. It would seem students initially struggle with the idea that in a course of interactions between people and legal entities, when certain, specific, constituent elements are present, a new, separate legal entity (a contract) comes into being. This new entity is independent of the parties involved and there can be significant consequences as a result of its creation, such that the new legal entity / contract can

⁷² Atiyah, P. S. (1986). 'Contracts, Promises and the Law of Obligations' in P S Atiyah (ed), *Essays on Contract* (Clarendon Press, 1986) 19. p.38.

⁷³ Chen-Wishart, M. (2022). *Contract Law*. Oxford: Oxford University Press. p.49.

⁷⁴ Cousin, G. (2006). "An Introduction to Threshold Concepts." *Planet*. 4–5. p.4.

include obligations on the parties and can actually be enforced through the courts if those obligations are breached / not fulfilled.

It would appear that the abstract concept of a contract itself is initially troublesome for students, then when they ‘get it’, when the ‘penny drops’, it can be like a lightbulb or ‘eureka’ moment. It is irreversible, they will never forget that when the necessary elements are present, a binding agreement with consequences for breaching it comes into being. It is integrative, because it can and does help understanding across other areas of law. For example, consequences flow from breaching other legal requirements, like a duty of care in Tort Law or a regulatory requirement in Criminal Law in the same way consequences flow from breaching the terms of a contract. It is also transformative, because the new knowledge that comes from really understanding the concept of a binding contract is not just academic understanding for its own sake. It has real world, tangible, valuable utility for the learner and they can employ it immediately to assist themselves and even other people in personal and professional dealings. Like the Economics student considering ‘Opportunity Cost’ every time they buy a new car or a loaf of bread, the transformed law student will now consider the concept and consequences of contracts every time they speak with their landlord or mobile phone provider.

The only other area, other than the concept of contracts that was repeatedly identified in answer to questions in all four areas of the survey in this study covering the defining features of threshold concepts was ‘thinking like a lawyer’. However, ‘thinking like a lawyer’ is not a concept that is taught or assessed exclusively within one of the seven foundational subject areas of legal knowledge. The concept of a contract on the other hand is normally taught and assessed as part of a specific Contract Law module, which is one of the seven legal knowledge foundational subjects on most undergraduate law degree programmes⁷⁵. Formation of a contract, which was explicitly referred to by participants in this study, is also usually a fundamental, early and mandatory part of any Contract Law module⁷⁶. Therefore, the concept of a contract may well be a threshold concept, but also a practical area that could be one of the “jewels” in the

⁷⁵ Pywell, S. M. (2017). Bridging the gap: online materials to equip graduate entrants to a law degree with essential subject knowledge and skills. *The Law Teacher*, 52(2), 154–170.

⁷⁶ Cressey, J. (2014). Ewan McKendrick, *Contract Law*. *The Law Teacher*, 48(1), 115–117.

legal education curriculum that allow for “richer and more complex insights into aspects of subjects”⁷⁷.

If the idea of a contract is a threshold concept in legal education, it begs the question, what, if any steps should be taken in light of that information. Literature indicates that the identification of threshold concepts in a course of study enables educators to understand where students are likely to encounter difficulty and helps inform decisions about the best use of resources and different types of tasks to best support learners⁷⁸. This approach has been effectively utilised in a wide range of disciplines, including professional practice areas⁷⁹.

As outlined in the Findings section of this paper, survey questions 10 and 11 in this study invited participants to add anything further about teaching in legal education or generally. Participant 33 as quoted in the Findings section called for more ‘real life’ examples and opportunities to apply law in ‘real life’ scenarios. In addition, participant 74 added the following in response to question 10:

Offer more practical modules for students to practice public speaking, interviewing skills, legal writing and client care... More practical modules would put students in a more advantageous position post graduation.

In light of the data in this study, one step that could be considered is utilising more practical legal skills activities in curriculums and assessments for Contract Law modules. This would potentially stand to offer a number of benefits. It is likely to help with the wider issue of ‘thinking like a lawyer’ identified as a potential threshold concept in this study because it would require law students to engage in more of the kind of activities that are required of lawyers in professional practice (presenting legal arguments orally, interviewing clients and negotiating with other lawyers for example). Such a step would be consistent with wider educational literature that advocates in

⁷⁷ Meyer, J.H.F. Land, R. and Davies, P. (2006). Implications of threshold concepts for course design and evaluation, in Meyer, J.H.F. and Land, R. (eds.), *Overcoming Barriers to Student Understanding: threshold concepts and troublesome knowledge*, London and New York: Routledge. p.198.

⁷⁸ Cousin (n 74) 4–5.

⁷⁹ Neve, H., Lloyd, H., & Collett, T. (2016). Understanding students’ experiences of professionalism learning: a ‘threshold’ approach. *Teaching in Higher Education*, 22(1), 92–108.

favour of increased use of more practical and authentic assessment methods⁸⁰. This is on the basis that authentic methods are a more realistic, effective and fairer way of assessing students than simply through more traditional knowledge based, unseen examinations⁸¹. The argument for increased use of practical, authentic assessment methods is also seen as particularly effective for helping to prepare students for professional roles, including in law⁸².

There are already an increasing number of studies generally advocating for increased use of skills-based approaches in legal education involving more practical activities for law students as part of their learning⁸³. It was interesting that participant 74 (above) in this study specifically suggested more use of practical activities in law programmes, including public speaking and interviewing. Recent empirical studies and legal education literature have called for more use of client interviewing and mooting (the practical activity of making legal arguments/public speaking), along with other practical legal skills including negotiation to increase the amount of experiential learning within the law curriculum⁸⁴. Where more authentic assessment methods have been utilised in Contract Law modules, “the majority each year believed that it was a useful exercise, of value for their future careers and of more practical relevance than other forms of assessment”⁸⁵. Therefore, it would appear that increased use of practical legal skills activities in Contract Law teaching and assessment would be a positive development

⁸⁰ Bearman, M., Dawson, P., Boud, D., Bennett, S., Hall, M., & Molloy, E. (2016). ‘Support for assessment practice: Developing the assessment design decisions framework.’ *Teaching in Higher Education*, 21(5), 545–556; Sokhanvar, Z. Salehi, K., and Sokhanvar, F. (2021). ‘Advantages of authentic assessment for improving the learning experience and employability skills of higher education students: A systematic literature review.’ *Studies in Educational Evaluation*, 70. P.101030.

⁸¹ Brown, S. (2019). Using assessment and feedback to empower students and enhance their learning. In *Innovative Assessment in Higher Education* (1st ed., Vol. 1, pp. 50–63). Routledge; Bourke, R. (2023). Normalising Alternative Assessment Approaches for Inclusion. In *Assessment for Inclusion in Higher Education* (1st ed., Vol. 1, pp. 189–198). Routledge.

⁸² Burton, K. (2011). A Framework for Determining the Authenticity of Assessment Tasks: Applied to an Example in Law. 4(2) *Journal of Learning Design* 20, pp. 20–21.

⁸³ Knox, J., & Stone, M. (2018). Embedding employability skills for the legal professionals of the future. *The Law Teacher*, 53(1), 90–101; Cantatore, F., McQuoid-Mason, D., Geldres-Weiss, V., & Guajardo-Puga, J. C. (2020). A comparative study into legal education and graduate employability skills in law students through pro bono law clinics. *The Law Teacher*, 55(3), 314–336.

⁸⁴ Turner, J., Bone, A., & Ashton, J. (2016). Reasons why law students should have access to learning law through a skills-based approach. *The Law Teacher*, 52(1), 1–16.

⁸⁵ McNamara, N. (2016). Authentic assessment in contract law: legal drafting. *The Law Teacher*, 51(4), 486–498. p.1.

in light of the findings in this study, while also being consistent with wider literature and research in relation to legal training and higher education generally.

6. Conclusion

The conceptual framework of threshold concepts developed by Jan Meyer and Ray Land has been utilised extensively across various disciplines since its conception in 2003⁸⁶. It is a commonly held view in the literature that the effective identification of threshold concepts within a given subject is particularly important⁸⁷. To do so gives educators the opportunity to more effectively prioritise resources, design teaching and assessments in such a way as to help students most effectively with these particularly troubling and beneficial parts of a given syllabus⁸⁸.

Despite the apparent importance and value of effective identification of threshold concepts and much speculation in literature, there have been very few empirical studies conducted to attempt to ascertain possible threshold concepts in legal education.

Therefore, this study sought to explore what, if any, threshold concepts there may be in legal education. A survey was conducted to this end with 212 students on a range of undergraduate and postgraduate law programmes at one of the largest providers of legal education in the UK.

The data gathered in the study and related literature indicates that ‘thinking like a lawyer’ is a threshold concept in legal education. A further and more surprising possible threshold concept from the study is the idea of a contract. Contracts and

⁸⁶ Meyer & Land (n 2)

⁸⁷ Loertscher, J., Green, D., Lewis, J. E., Lin, S., & Minderhout, V. (2014). Identification of threshold concepts for biochemistry. *CBE—Life Sciences Education*, 13(3), 516-528.

⁸⁸ Male, S. A., & Baillie, C. A. (2014). Research guided teaching practices: Engineering thresholds; an approach to curriculum renewal. *Cambridge handbook of engineering education research*, 393-408.

formation of contracts featured heavily across all parts of the survey covering defining features of threshold concepts despite this not being an area posited in literature previously.

Possible developments in light of findings in this study include increased use of legal skills activities and assessments throughout Contract Law studies. The professional and practical focus of such a step could help with the broader apparent threshold concept of helping students 'think like a lawyer'. Developments of this nature would also hopefully help with student learning on what appears to be a particularly troubling and valuable topic, while also being consistent with increased adoption of authentic assessment methods across legal training and higher education generally⁸⁹.

It could also be argued that UK legal education and training is in a transitional, pivotal period following the introduction of mandatory, centralised Solicitors Qualifying Examinations (SQE) for all prospective solicitors in 2021. This new regime no longer mandates specified undergraduate and postgraduate academic legal study and training. Therefore, it could be argued there is now an increased impetus to seek greater understanding of potential threshold concepts and possible 'jewels'⁹⁰ in the legal education curriculum. The findings in this study indicate that to do so will aid in supporting students to overcome these potential barriers to their learning, assist in their preparation for SRA SQE assessments and further the effective education and training generally of the next generation of UK lawyers qualifying under this new regime.

Appendix 1 – Full Copy of the Survey Utilised in the Study

⁸⁹ James, L. T. and Casidy, R. (2018). 'Authentic Assessment in Business Education: Its Effects on Student Satisfaction and Promoting Behaviour', *Studies in Higher Education*, 43(3)

⁹⁰ Meyer, Land & Davies (n 77) 198.

Consent Form

Title of Project: "A Legal Dweller On The Threshold"

1. I confirm that I have read and understand the information sheet / Explanatory Statement for the above study. I have had the opportunity to consider the information, ask questions and have had these answered satisfactorily.
2. I understand that my participation is completely voluntary, I am free to withdraw at any time up to submission of the questionnaire without giving any reason and without being penalised or disadvantaged in any way.
3. I agree to take part in the above study.
4. I understand that any information I provide is confidential, and that no information that could lead to the identification of any individual will be disclosed in any reports on the study, or to any other party. No identifiable personal data will be published.

☐ Yes

☐ No

Q1. Please click any / all of the following areas of legal studies that caused you difficulty.

☐ The doctrine of 'Precedent' – previous Court decisions binding future Courts and precedent generally

- ☐ Having to 'think like a lawyer'
- ☐ Hearsay in Criminal Law
- ☐ 'Malleability' – as in needing to having to manage uncertainty with changing legal rules
- ☐ The concept of a 'reasonable person'
- ☐ The 'unwritten' constitution of the United Kingdom
- ☐ Companies as 'legal persons'
- ☐ Some other area/s

Q2. Are you able to say why you found those areas of study difficult?

Please elaborate if possible.

Q3. Are there any areas of legal studies that you initially struggled to understand but are now important to your understanding of law / legal practice / other things?
If so, which one/s and why? Please elaborate if possible.

Q4. Are there any areas of legal studies that have really changed the way you see or understand law / legal practice / other things?
If so, which one/s and why? Please elaborate if possible.

Q5. Are there any areas of legal studies that you will never forget?
If so, which one/s and why? Please elaborate if possible.

Q6. Are there any areas of legal studies that really helped you understand how different areas of law relate to each other?

If so, which one/s and why? Please elaborate if possible.

Q7. Of the different areas of legal studies, are there any that have helped make you feel like a lawyer?

If so, which one/s and why? Please elaborate if possible.

Q8. Have any areas of legal studies helped with your professional / work experiences / development? If so, which one/s and why?

Please elaborate if possible.

Q9. Have any areas of legal studies helped in your personal life? If so, which one/s and why?

Please elaborate if possible.

Q10. Were you happy with how the areas of legal studies discussed in this survey were taught and assessed?

Do you have any suggestions about how teaching or assessment of them could be improved?

Q11. Is there anything further you would like to add?

I am particularly interested in any areas of your legal studies that may have been difficult initially, but when you got to grips with them, really helped you in your studies, work and/or even your personal life...

Q12. Please click the boxes to confirm all the categories below that apply to you. Survey responses are anonymous and I am simply asking for categories to help in analysis.

- | | |
|--|--|
| <input type="checkbox"/> Male | <input type="checkbox"/> Age 18-25 |
| <input type="checkbox"/> Female | <input type="checkbox"/> Age 25-40 |
| <input type="checkbox"/> Non-binary | <input type="checkbox"/> Over 40 |
| <input type="checkbox"/> Prefer not to say | <input type="checkbox"/> Prefer not to say |

-

- | | |
|--|--|
| <input type="checkbox"/> Undergraduate | <input type="checkbox"/> Worked in the legal sector before |
| <input type="checkbox"/> Postgraduate | <input type="checkbox"/> Never worked in the legal sector |
| <input type="checkbox"/> Prefer not to say | <input type="checkbox"/> Prefer not to say |