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Closing the gap between the needs of students and the community they serve*

Summary

University law clinics, within the structures that are identified, must satisfy two main objectives, namely teaching of students and service to clients. The students' and clients' needs must be balanced in order to overcome the gap between their respective needs. The outcomes of research into these sometimes conflicting needs are reflected upon. Students' preparedness for practice, in view of the SAQA exit-level requirements for LLB is discussed. Teaching models are reviewed and curriculum planning methods are suggested. Accommodating the gap between the different needs can best be addressed by teaching in the live client model. Solutions in overcoming the shortcomings of this model are suggested.

Oorbrugging van die gaping tussen die behoeftes van studente en die gemeenskap wat hulle dien

Regsklinieke by universiteite moet twee hoofdoelwitte, binne die strukture wat hierin aangedui word, bevredig, naamlik die opleiding van studente en dienslewering aan kliënte. Die behoeftes van studente en kliënte moet gebalanseer word ten einde die konflik tussen die verskillende behoeftes te vul. Die resultate van navorsing ten opsigte van hierdie onderskeie behoeftes word aangedui. Studente se gereedheid vir praktyk, in die lig van die SAQA vereistes vir LLB word bespreek. 'n Oorsig word gegee van onderrig modelle en metodes van kurrikulum beplanning word voorgestel. Die akkomodasie van die verskillende behoeftes kan die beste bereik word deur onderrig te gee in die lewendige kliënt model. Oplossings word voorgestel vir die oorkoming van die tekortkominge van hierdie model.

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1. Introduction

University law clinics generally have to satisfy two main objectives, namely teaching of the students and service to the community. In order to close the gap between the varying needs of students and clients, they need to be researched and tested against the prescribed set of exit-level outcomes for the LLB degree. In planning the clinical legal education curriculum, an appropriate model needs to be implemented to accommodate the various needs.

2. The service structure of a university law clinic

South African universities have identified their objectives as three-fold,¹ namely teaching, community service and academic research. University law clinics contribute towards the attainment of the first two objectives through the teaching and training of students, whilst also rendering free legal services to the local communities where they are situated.²

All the university law schools in South Africa offer a clinical programme and completion thereof is compulsory for degree purposes at more than half of these law schools.³ The structure of the clinical services varies amongst the different universities.⁴ At some universities, clinic duty, and therefore the teaching of clinical legal education, is not compulsory.⁵ Some clinics are structured to allow for unrestricted access to the clinical services, where clients attend a so-called "walk-in" clinic, where they are served on a first-come-first-served basis during

1 Wimpey & Mahomed 2006:17.

2 Du Plessis 2007a:46. Some universities, for example the University of the Witwatersrand, require a specified amount of academic research publications in accredited journals. See also Du Plessis 2008:128.

3 The clinical legal education course is compulsory at the Universities of the Witwatersrand, Rhodes, Free State, North-West and the Nelson Mandela Metropolitan University. See also De Klerk 2007.

4 During 2004 the University of North-West merged with the Potchefstroom University for Christian Higher Education, to form the North-West University. The North-West University has two law faculties, one at the Mafikeng Campus and one at the Potchefstroom Campus. Currently all final year LLB students undergo their practical legal training at the Centre for Community Law and Development: Potchefstroom. Clinical law is a compulsory two-semester module at the Community Law Centre: Mafikeng. See Feldhaus 2007. At the University of the Free State law clinic, where clinical legal education is a compulsory course, a simple pre-evaluation of fourth year law students that enroll for the clinical course is conducted where their knowledge of theory, especially relating to the law of contract, the law of delict and the law of evidence are tested. See Swanepoel *et al* 2007. Swanepoel further indicates that "the results are often poor and suggest that law students think 'compartementalised' of law subjects".

5 At the University of Pretoria and the University of Johannesburg, the course is offered as a year long elective. Clinical legal education is not compulsory at the Universities of the Western Cape and Stellenbosch. The University of South Africa, a distance education university, has no student participation in the clinic.

clinic hours.⁶ At some clinics clients are consulted by appointment only,⁷ while the number of daily consultations is restricted at others.⁸

A balance needs to be achieved between the two main roles of the law clinics, namely teaching of students in clinics and service to the clients. The achievement of the right balance is a continuing challenge,⁹ that can place clinics in a constant state of tension.¹⁰ Clinic clients' needs do not follow a set pattern and the cases they present with may not necessarily be appropriate to meet the needs of the students in fulfilling the requirements for their degree. In order to address these conflicting interests, the respective needs of the clinic clients and students need to be considered, where after student training models must be devised to ensure proper practical training to students, whilst also assisting clients.

3. Students' needs

Not all students who enroll in the LLB degree wish to enter legal practice. A basic understanding of the operation of attorneys' practice needs to be accommodated, however.¹¹ Clinical programmes aim to assist in producing law graduates that are competent to engage in professional training with a view to admission, or to choose another career whilst having a firm grasp of substantive and procedural law and their application. It is not feasible to try and achieve this goal through pure academic legal education.¹² De Klerk argues that:

6 For example at the University of the Witwatersrand, Johannesburg, where the course is taught and services rendered at the Wits Law Clinic. This clinic operates exclusively in specialised units (family law, general litigation, evictions, labour, refugees, consumer affairs, criminal and delict) and each unit is allocated a specific day of the week for clinical consultations for such unit. Access to these units on clinic consultation days are however unrestricted. The Universities of Stellenbosch, Pretoria and Western Cape have specialised units, operating within a broader general clinic. The Universities of Rhodes, South Africa, the Western Cape, the North-West and the Nelson Mandela Metropolitan University also allow for unrestricted access.

7 The Universities of Pretoria, Johannesburg, Stellenbosch and the Nelson Mandela Metropolitan University prefer consultations by appointment only.

8 The Universities of Pretoria, Stellenbosch, Johannesburg and the Free State. Rhodes University does not normally restrict the number of daily consultations, but will do so when necessary.

9 Wimpey & Mohamed 2006:18.

10 Bodenstein 2005:318. Bodenstein further indicates that "Clinics have to do justice to teaching and training, regarded as core function by their faculties. In providing a legal service, clinics are, on the other hand, operated along similar lines as firms of attorneys, with the focus on client satisfaction and effective file and case management. The provision of legal aid to the indigent constitutes a further dimension, with the additional focus on impact and efficiency, fundraising and project management".

11 Legal advisor practitioners regularly need to refer matters to attorneys for purposes of litigation. Knowledge of the processes and the general operation of attorneys' practice may prove to be beneficial.

12 De Klerk 2007.

(t)he financial interest that a lawyer in commercial practice has in his or her legal matter is absent in a clinical setting, but is replaced by the educational interest of students ... (t)he teaching that takes place in a clinic should therefore never be incidental or secondary to the practice of law.¹³

During 2005 a survey was done amongst third and fourth year law students at the University of KwaZulu-Natal (UKZN) and the Nelson Mandela Metropolitan University,¹⁴ Port Elizabeth (NMMU),¹⁵ to establish their expectations of their law degree.¹⁶ The seven most important courses identified by the aforementioned students were the same as the core courses recommended by the law deans in 1997,¹⁷ as were the five most important skills.¹⁸ The need to inculcate respect for ethical rules, as identified by the law deans,¹⁹ formed one of the five most important values identified by the students.²⁰

A survey conducted amongst final year LLB students at the University of the Witwatersrand, who enrolled in the clinical legal education course,²¹ identified the following needs and expectations: 79% of the students indicated their most valuable experience as being the ability to assist clients and learn attorneys' practice in the process. The same percentage of students further indicated a need to include training in trial advocacy, drafting of court pleadings, interviewing and assisting clients, refining research skills and visiting courts to observe cases being heard. 87% of the students indicated a need to be instructed in smaller, rather than large groups. 92% of the students found the clinical course to be successful in providing a bridge between legal theory and practice.

13 De Klerk 2007.

14 See McQuoid-Mason 2006a for the questionnaire.

15 McQuoid-Mason 2006b. The author indicates that the findings need to be treated with caution, because "whether or not law students were in fact being taught the desired skills and values at their institutions was not clear".

16 The views of about 25% of the students were reflected.

17 UKZN students listed, in order of priority, the seven most important courses as: contract, delict (tort), commercial law, family law, constitutional law, criminal procedure and civil procedure. NMMU students listed, in order of priority: contract, commercial law, property, criminal law, family law, delict (tort) and civil procedure.

18 UKZN students listed trial advocacy, research and problem solving, legal writing, dealing with ethical issues and litigation skills as the five most important skills they would like to learn during LLB. NMMU students listed trial advocacy, research and problem solving, legal writing, interviewing and counselling, and litigation as the most important skills they wanted to acquire.

19 See discussion of law deans in paragraph 5.

20 UKZN students listed, in order of priority, the five most important values as respect for human rights, respect for ethical rules, respect for the rule of law, respect for other people and personal honesty and integrity. NMMU students listed, in order of priority, respect for legal ethics, respect for human rights, respect for the rule of law, respect for other people and personal honesty and integrity.

21 The Statistical data quoted represents 80 students registered in the clinical legal education course at the Wits Law Clinic: data was gathered from 2004 to 2007.

4. The needs of clients

Law clinics generally apply a means test in order to establish whether a client qualifies for legal aid. It follows that clients at South African law clinics are generally poor, uneducated, unemployed and marginalised from mainstream society.²² Many of these clients live in communities where the rule of law demands little respect.²³

Apart from statistical data compiled by law clinics on the typical matters clients present,²⁴ a client profile can also be established through perusing the problems posed by “the man in the street” to advice and service columns in newspapers, particularly those circulating in the communities forming the catchment area of a law clinic’s client base. A substantial number of the types of problems identified through advertised services offered in the print media,²⁵

22 The International Panel on Growth’s report to the South African National Treasury states that only 42% of working-age South Africans are employed. In other countries at a similar stage of development this figure stands at more than 60%. If South Africa were to have this employment level, 6 million more people, mostly young and African, would be off the streets and in work. The report further indicates that less than 35% of people without matric are employed. See *Business Report* 2008:1.

23 See De Klerk 2007.

24 Statistics gathered by the Wits Law Clinic during the first six months of 2008 indicate that clients generally present students with the following problems: evictions, labour-related matters, refugees and asylum seekers, debt, deceased estates, breach of contract, pension queries, property and housing matters, wrongful arrest and detention by the South African Police Services, damages claims arising from motor vehicle accidents, medical negligence, divorce, maintenance and custody and/or guardianship of minor children.

25 The following services were advertised by herbalists, also known as sangomas: financial problems can be solved by the use of special water; muthi known as Chidima and Nganga; real magic and/or Sandwane oil or a magic stick (which can be rented for between two to five days) can be used to bring money in your account or into your house; you can be made rich in 30 minutes, only by using Yakali short boys Amagumdwane; a muthi called Magumdwane is also available for two days hire to get rich; business problems and family problems can be fixed in from 15 minutes to two hours; help is offered to ensure you get paid twice your salary and to get a job promotion; unfinished jobs will be finished by using Sendwana oil; people can be empowered to be millionaires through the empowerment of ancestors; a ‘binding’ can be put on houses, shops, cars and kraals for protection against eviction or other loss; customers can be called to your small business; protect and boost your business; ensuring you pass exams and get a job through a successful interview; you can order a muthi called Chalima magic via the internet — with assurance that it will work within three minutes to bring back a lost lover; to recover goods stolen from you; a TV magic consultation is available to help you to see your enemies; to get more change when you buy for less; to finish your job for you; Mkulu Kalipinde can be bought to bring back your lost lover and unite your family; Chikanga oil will be used to remove bad luck, bring back stolen properties no matter how far or how long; bring back people who have disappeared long ago; Rainbow water will ensure that you get rich in 24 hours; all unsolved family matters, no matter how serious, will be fixed in two hours; the use of Likwinys will ensure that someone will wake up from doubtful death; offers to do revenge; become a tycoon; use Cahmwambe (dream water) for winning at the casino, the lottery, horse races — winning at other kinds of gambling is an added advantage; obtain special powers for customer attraction; Chisamya is available for all those who

can be accommodated in the clinic.²⁶ Often clients merely approach the clinic for assistance as a result of bad debt they had accumulated by accepting and paying for such services. The clinic clients, when consulting at the clinic,

tend to present to the clinic lawyer a rather large package of problems, half of which have nothing to do with the law and the other half so intertwined with poverty that their actual legal problems are often very hard to extract

and “(f)ormulating the mandate is only half the battle won”.²⁷ This is not a uniquely South African experience. In the United States, 60% or more of the client base for law clinics consists of indigents with ... cultural and economic backgrounds, education levels, view points, and sensibilities different from the student-lawyer.²⁸

In view of the often dire needs of clients, who may view the student counsellors, as a general panacea for their problems, the challenge for the clinic lawyer is to ‘fashion effective relief for clients whose lives and legal problems are so saturated with poverty, illiteracy and general disadvantage, that the law as a tool to fight injustice is often not very effective.’²⁹ Bearing in mind the students’ need for education, clients’ often “unbearable mandate of simply ‘putting right what is wrong’, irrespective of legal complexities or the duration it might take”,³⁰ must be aligned to afford proper educational value to the students.

want a divorce; chase away the tokoloshe and bad luck; protection from witchcraft; get married quickly; “come hurry and see miracles — how to get rich within 1 hour”; powerful Muthi that has proven 100% good will assist in removing unwanted people, enemies and revenge evil spirits; fresh Amagundwane will provide you money; stop misunderstanding; bewitch people; win court cases and remove bad luck; be out of debt and have your name cleared — within one day; specials for financial problems are the use of Wanada oil, rats, tortoises, snakes, Bafana and the short boys that bring money in your house; bind your partner by using Chipula so that he/she does not cheat on you; healing people with HIV; a variety of assistance of a sexual nature and safe abortions within 15 minutes are offered. Mail orders are generally accepted. Some of the herbalists advertise their abilities as “He stayed in the jungle for 15 years, he can tell you problems through a mirror” and “Mussa spent 13 years with his old grandfather in mountains sorting out all types of herbs”. In the newspaper *The Daily Sun* 2008, 97 such advertisements by herbalists and sangomas were found, 69 such offerings in *The Daily Sun* 2008, 35 in *The Star* 2008, 41 in *The Star* 2008 and 12 Afrikaans-speaking sangomas in the Afrikaans newspaper *Die Beeld* 2008. Other types of services typically advertised in the print media, often resulting in financial misery for clinic clients, are ‘instant loans’, ‘cash loans’, ‘bridging finance’ and ‘consolidation of debt ensuring that the client may (eventually) be cleared from blacklisting’. See *Die Beeld* 2008, *The Sowetan* 2008, *The Sowetan* 2008, *The Sowetan* 2008 and *The Daily Sun* 2008.

26 In a general clinic or in the following specialised units: evictions, delict, debt counselling, consumer, general litigation, housing, family and labour.

27 De Klerk 2007.

28 Joy <http://clrn.law.cunmy.edu/clea/clea.html> (date accessed 20 May 2008).

29 De Klerk 2007.

30 De Klerk 2007.

5. Student preparedness for practice

The role of a lawyer in a democratic South Africa has been described as a “sacred duty to contribute towards the preservation and strengthening of the rule of law in South Africa.”³¹ Mr. Justice Navsa has warned that, unless the Constitution “has meaning in the lives of all our citizens, it is not inconceivable that it will wither and die”.³² Students should be trained to see themselves as “trustees of justice with a fiduciary responsibility to ensure that the legal system provides justice for all citizens, not only for the rich and powerful”.³³

In bridging the gap between students’ and clients’ needs, sight must not be lost of the demands of fulfilling the requirements for the LLB degree. For it is only through the obtaining the law degree, that students can come close to any form of preparedness for practice.

After the 1994 democratic elections, a number of legal forums (which included the law deans of South Africa’s twenty one law faculties) were convened by the Ministry of Justice to re-examine legal qualifications and legal education.³⁴ By 1997 it was agreed that the three year postgraduate LLB degree be changed to a four year undergraduate LLB. Although there was no mandatory uniform curriculum requirement for law schools, the deans reached consensus on what the new law degree should take into account and made suggestions relating to skills courses.³⁵

The South African Qualifications Authority (SAQA) prescribed a set of exit-level outcomes for the revised LLB degree,³⁶ which include the supporting of

31 Navsa in De Klerk 2006c:6.

32 *Ibid.* De Klerk correctly argues that “(r)eflecting on these issues during university study is very important, and the clinic is the ideal place to do so, for it is only once confronted with an actual client with an actual problem that the importance of concepts such as ‘justice’ and ‘equity’ becomes real. A good clinical lawyer should therefore practice law in a manner that is conducive to reflection on the values and obligations of legal practitioners in society”. See De Klerk 2007.

33 Wizner 2002:1933.

34 McQuoid-Mason 2006b.

35 The law deans reached consensus that the new law degree should take into account that “South African law exists in and applies to a pluralistic society; students should acquire skills appropriate to the practice of law during the course of their degree and; law schools should strive to inculcate ethical values into their students”. The law deans suggested that a number of skills courses should be introduced. namely “analytical skills to understand the relationship between law and society, language skills (including indigenous languages), communication and writing skills, legal ethics, cultural, race and gender sensitivity, practice management skills, accounting skills, research skills, trial advocacy skills, and computer skills”. See McQuoid-Mason 2006b.

36 They are: “A coherent understanding of, and ability to analyse fundamental concepts; an understanding of relevant methods, techniques and strategies involved in legal research and problem solving in the theoretical and applied situations; the ability to collect, organise, analyse and critically evaluate information and evidence from a legal perspective; the ability to communicate effectively in a legal environment by means of written, oral, persuasive methods and sustained discourse; to solve complex and diverse legal problems creatively, critically, ethically and innovatively; the ability to work effectively with colleagues and other role players in the legal process

specific outcomes and associated assessment criteria for each outcome.³⁷ Of the ten SAQA outcome levels, clinical legal education has direct application in at least five and possibly a sixth outcome level.³⁸ In referring to the SAQA outcomes, De Klerk uses the illustration of clinical legal education and academic legal education being two sides of a coin — without the one, the other cannot profess to achieve the stated outcomes of the LLB degree.³⁹ Without clinical legal education, there is nothing to compare academic education to, and nothing to contextualise the theory of law.

In recent years the South African Law Deans Association (SALDA) has been critical of the four year undergraduate LLB programme.⁴⁰ During the SALDA meeting at the University of Cape Town on 22 and 23 May 2008,⁴¹ the state of legal education was discussed and major challenges were identified as “the lack of educational preparedness for the study of law of most new university entrants”,⁴² “the funding of legal education”⁴³ and “the changing nature of the context in which law is both studied and practised”.⁴⁴ SALDA expressed the view that “the support to legal education by both government and the legal professions needs urgent review in order at least to alleviate and at best to remedy such pressing problems”.

as a team or group and contribute significantly to the group output; the learner will have acquired computer literacy to effectively communicate, retrieve and process relevant data in a legal environment; the learner is able to manage and organise her or his life and professional activities in the legal field responsibly and effectively; the learner can participate as a responsible citizen in the promotion of a just society and a democratic and constitutional state under the rule of law; and the learner is able to understand the different employment and income generating opportunities in the legal field, including outside the legal profession”. See McQuoid-Mason 2006.

37 Law students should be assessed, *inter alia*, by performance tasks such as written oral assignments, projects, case studies, moot courts, role plays, mock trial, client counselling exercises, observation and assessment of work in live client clinics — all with the emphasis on problem solving. See McQuoid-Mason 2006b.

38 De Klerk 2006a:939.

39 De Klerk 2007.

40 The criticism was largely on the grounds that unlike in other Commonwealth countries the majority of South African secondary school students who qualify for university entrance are under-prepared for legal studies. See McQuoid-Mason 2006b. The author is of the opinion that there seems to be some support for a return to the three-year postgraduate LLB programme.

41 SALDA 2008.

42 The SALDA statement further indicated on this issue: “As a consequence, questions must be asked about the truncated duration of the LLB degree (4 instead of 5 years) which was introduced in 1998.”

43 The SALDA statement further indicated on this issue: “(L)aw as a discipline is included at the lowest level of state subsidy. This creates great difficulty for the teaching of law to the increasing numbers of law students, for the recruitment and retention both of law teachers with specialist skills, as well as for the achievement of demographic transformation of the staff working in tertiary legal education.”

44 The SALDA statement further indicated on this issue: “... in particular the pressures under which judges (and the justice system) have to work, the rapid and as yet undefined changes in legal practice, and socio-economic factors such as the rising levels of fraud, corruption, criminality, social instability and poverty.”

Unpreparedness for clinical law is not unique to South Africa, as can be deduced from the following observation:

The Australian reality appears to be that students come to the clinic with a very small bag of useful equipment for practice — if they have any practice implements at all. Traditional law teaching does little to equip them to 'jump the chasm' between law and fact. They cannot understand why, in their clinical work, the law always appears reasonably clear and consistent, but the facts as presented to them by clients are a mishmash of events, recollections, half-truths and opinion all presented without chronology or, often, much coherence. Nothing they have learned in law school has equipped them to be fact-gatherers and to sort through this mass of information. Often they cannot even begin to conceive where information provided by a client fits into the knowledge they have acquired during their law studies.⁴⁵

5.1 Identification of the unpreparedness of students to enter legal practice

In discussions about the quality of law graduates, there are two general areas of skills deficit that practitioners mention most, namely numeracy and literacy. During March 2007, at a Provincial workshop on the Legal Services Charter, concerns regarding poor quality of law graduates and their inability to draw affidavits and pleadings were raised. These concerns included the poor quality of essays, where it was indicated that writing is an essential professional skill in almost every branch of legal practice.⁴⁶ About 50% of the Legal Aid Board's candidate attorneys, serving at their legal aid clinics (known as justice centres), failed their board examinations during 2007. The subjects they failed are crucial to the interests of the poor and unsophisticated people they represent in court, i.e. court procedure, ethics and accounting.⁴⁷

As clinical legal education is mostly taught in the final year of LLB studies, sound clinical training has the potential to provide a solid foundation from which law graduates can proceed with their practical training as candidate attorneys.⁴⁸ A distinguishing feature of clinical legal education is the one-on-one interaction between teacher and student. This places the clinical law teacher in South Africa in an ideal position to recognise the shortcomings in students' learning skills.⁴⁹

45 Hyams 2006:79.

46 Van der Merwe 2007:2.

47 http://www.news24.com/City_Press/News/0,,186-187_2127389,00.html (accessed on 20 May 2008).

48 Du Plessis 2007b.

49 Swanepoel 2007. The author however cautions that: "This often leads to trying to do too much in too short a space of time."

6. Curriculum planning

In order to address the challenge of bridging the gap between students' and clients' needs, whilst adhering to the stated SAQA outcomes for the LLB degree, intensive planning of the clinical legal course curriculum is required. It has been said that:

(c)linical courses have become stale, following essentially the same formula since their inception. It appears that these courses are trapped in a certain mould with little growth or innovation being apparent over the past number of years.⁵⁰

When clinicians reflect on their role within academia, and wish to add teaching value to the clinical course, the seven main goals of clinical legal education need to be considered when defining their goals and developing a curriculum which includes teaching methods and effective assessment criteria.⁵¹

7. Implementing a model to accommodate these needs

The skills that law school graduates will require in practice, have been described as follows:

(T)he lawyer of the next century will need to be able to diagnose and analyze problems, to talk and listen to people, to facilitate conversations, to negotiate effectively, to resolve disputes, to understand and present complex material, to use ever-changing technologies, to plan, to evaluate both economic and emotional components and consequences of human decision-making, and to be creative — to use tried and true methods when they are appropriate, but not to fear new and category-smashing ideas or solutions.⁵²

It has also been said that “clinical legal education is not a course or a subject, as it is typically ‘packaged’ in the law degree, but is in fact a teaching methodology”.⁵³ De Klerk, in a keynote address, expanded thereon, stating that “clinical legal education is a methodology that transcends the artificial boundaries imposed by academic training. It is essential in demonstrating to students the difficulties in applying theory to practice”.⁵⁴ Although clinical methodology differs from pure academic training because of its practical nature, the ultimate goal of both is to produce well-rounded and competent law graduates.⁵⁵ When considering a clinical model, McQuoid-Mason suggests that the most successful

50 De Klerk 2006b:245.

51 The goals were compiled after consulting sources from South Africa, the United States, the United Kingdom and Australia. These goals are: the goal relating to professional responsibility; judgment and analytical abilities; substantive law; applied practice skills; legal services to the community; learning and working in groups; and integration of all or some of these goals. See Steenhuisen in De Klerk 2006:266.

52 Stuckey 2007:21.

53 Stuckey 2000:49.

54 De Klerk 2007.

55 O'Regan 2002:243.

programmes combine community service work, with low case loads and close supervision backed up by carefully structured classroom instruction.⁵⁶

In devising a clinical model which will accommodate the various needs and requirements as set out earlier, a number of challenges need to be overcome.

7.1 Student numbers

Large student numbers is a major challenge to credible clinical legal education courses, especially when the course is compulsory.⁵⁷ At the Wits Law Clinic, where the clinical course is compulsory, statistics indicate an average of between 280-300 students per year,⁵⁸ with an average consultation rate of 900 clients per month.⁵⁹ Students are paired in a team for the duration of the one-year course. Several student pairs are allocated to a supervising attorney (clinician). The ratio between students and supervisor has been between 19 to 23 pairs of students per supervisor for the past three years. This translates to a supervisor : student statistic of between 1:38 and 1:46. This ratio is hardly ideal. The ideal ratio between supervisor and students in clinical courses has been proposed to be between 1:7 and 1:12.⁶⁰ The ratio of a maximum of 1:12 was proposed by the United Kingdom Clinical Legal Education Organisation.⁶¹

7.2 Demands on clinicians

Partly due to the student numbers, which may attribute to higher case loads, time demands on clinicians are severe. The average contact hours of law school academics at the University of the Witwatersrand Law School are eight to twelve hours per week. The average contact hours of clinical teachers during 2007 were 23 hours per week, in addition to which candidate attorneys must be supervised and client files must be dealt with and maintained throughout the year.⁶²

56 McQuoid-Mason 1977:343-348.

57 The Director of the University of the Free State clinic indicates that clinical courses are further hampered by the little available academic teaching time during the academic year. At that clinic, students are excused from duty at the clinic during "test weeks" and examination preparation and examination time. In the process 12 "academic available weeks" are lost. See Swanepoel 2008. The same problem occurs at the Wits Law Clinic.

58 In 2005 there were 250 registered students, in 2006 there were 280, in 2007 there were 308 and in 2008 there are 308. These numbers exclude externs. Throughout this period, the number of clinicians remained the same.

59 Mahomed 2007.

60 Shrag 1996:175 as quoted by De Klerk 2006c:309.

61 www.ukcle.ac.uk/resources/cleo/practice.html.

62 De Klerk 2007. Note that clinical teachers at the Wits Law Clinic are academics.

8. Teaching models

In order to accommodate the needs of students and clients, attaining the stated SAQA outcomes, and to overcome the added challenges of large student numbers, overburdened clinicians, and to satisfy the needs of the legal community by addressing their complaints relating to the quality of graduates, one needs to examine the models available for clinical teaching. The appropriate model, or a combination thereof, can then be applied to address the above.

8.1 The live client model

The “live client model” is regarded as the best learning model when it comes to the integration of the goals identified for law clinics.⁶³ Vawda describes the experience of the live client model as that “((s)tudents) are typically confronted with real life problem situations which are not discreet, pre-packaged legal problems, but messy, raw life experiences in all their concreteness and complexity”.⁶⁴ The live client model has been described as encompassing everything about being a lawyer, the learning is more intensive and meaningful when a student is learning as a lawyer, rather than as an observer or in a simulation situation.⁶⁵ This model presents opportunities for students to test, at a personal level, a number of abilities that are essential for lawyers, to learn the extent to which they are able to conduct themselves professionally and test their intellectual and analytical skills.⁶⁶ Students also learn how well they are able to apply practical judgment in the situations they face.⁶⁷

The main shortcoming of such a model is that if the clinic is too service-orientated, it may be reluctant to limit its case-load which then leads to “repetition, low-level work, heavy case loads, strain on students’ time, failure to focus on underlying legal concepts and loose supervision”.⁶⁸ A further disadvantage is the high cost.⁶⁹

8.2 Simulation

Simulation has been described as “an exercise in which the students assume the role of a lawyer confronted with a problem which resembles as closely as possible a real situation”.⁷⁰

There are clear advantages in applying the simulation model. One such advantage is that the teacher can control the process, ensuring completion of a

63 See discussion of these goals in paragraph 6.

64 Vawda 2003:4.

65 Stuckey 2007:189-191.

66 Stuckey 2007:189-191.

67 Stuckey 2007:189-191.

68 McQuoid-Mason 1977:343-347.

69 Stuckey 2007:189.

70 Report of the Association of American Law Schools — American Bar Association Committee on the Guidelines for Clinical Legal Education 1980:12.

caseload before the end of the academic year and enabling students to participate in and observe the workings of the legal process.⁷¹ Further advantages include cost-efficiency in that clinical premises and accompanying overheads are limited, matters relating to professional responsibility are reduced and this process is less time consuming. Standardised simulation exercises can often be repeated from year to year.⁷² A natural consequence of simulation is the less complicated assessment of students.

The most crucial disadvantage of simulation has been described as it having:

limited value and do not begin to teach a fraction of what is taught in live-client clinic. Simulation does not create experiences upon which students can draw to learn and develop their skills. Only real cases create the challenge of interviewing a person who is both similar and different from the students.⁷³

Simulation does not reflect the needs of either students or clients.

8.3 Selecting a model

It is generally accepted that university law clinics render an invaluable service to the South African indigent community and the infrastructure for the live client model is well established. Students' needs and expectations overwhelmingly indicate favour towards such a model.⁷⁴ The live client model meets the goals set for law clinics and is well geared to meet the outcomes prescribed by SAQA. The main disadvantage, i.e. of the clinic being too service orientated, resulting in case-overload with the consequences described above,⁷⁵ can be overcome by either operating in specialised clinical units or limiting the scope of matters to those that will have educational value, whilst assisting clients. A combination of the models can be implemented where it will result in adding educational value for the students. Simulation may be applied fruitfully in matters where clients' cases cannot, for a variety of reasons,⁷⁶ be accepted or proceeded with, but evidence collected in investigating the merits of the matter can lend itself to the teaching of students.⁷⁷

71 McQuoid-Mason 1977:343-348.

72 Brayne, Duncan & Grimes 1998:15. See also Tarr 1993:15.

73 Brayne, Duncan & Grimes 1998:15. See also Tarr 1993:15.

74 See paragraph 3.

75 See paragraph 8.1.

76 For example: the client does not qualify for legal aid assistance, although the case has merits; the client presents with interesting facts, but evidence is lacking; the client presents facts, falling outside the scope of matters the clinic is mandated to do; or the matter falls outside the jurisdiction of the courts from which the clinic operates.

77 To get to the stage where it must be decided whether the clinic will take on a specific matter, the students already had the experience of consulting with the client and took a comprehensive statement. Should the clinician decide not to proceed with the matter on behalf of the client, for any of the reasons mentioned as an example earlier, the statement taken down by the students during the consultation can be used for teaching purposes. Any outstanding evidence can be simulated and

9. Overcoming the disadvantages of the live client model

9.1 Limiting the types and volume of cases

Judging from the statistics mentioned earlier, there seems to be no lack of clients for South African law clinics. University law clinics have to overcome the challenge presented by overly large student numbers and an unacceptable high supervisor: student ratio, when measured against the set ideal.⁷⁸ In planning the clinical curriculum, clinicians have to define the parameters within which the clinic should operate. Only types of cases that will satisfy the goals of clinical legal education should be considered,⁷⁹ and clinical supervisors should limit the volume of cases taken on. To ensure that students derive the best possible training, case loads should preferably consist of a representative spread of cases,⁸⁰ or alternatively, one strong case that affords training across a broad spectrum of exposure to the law and applied legal skills, rather than an overload of cases constituting merely “more of the same”.⁸¹ The test should be whether assistance to a specific client or the acceptance of his/her case, will add educational value to the student curriculum.⁸² When a clinic becomes too service-orientated, it will not meet the students’ requirements for legal education.⁸³

9.2 Specialised units

Developing specialised units within clinics may assist to reduce the volumes of cases.⁸⁴ Once such units are established,⁸⁵ parameters defining the specific cases accepted within such units are set and caseloads become easier to manage. In a specific specialised unit, for example a family law unit, the case presented by the client has to fall within the ambit of family law. The clinician then has to assess the educational value of each case. The merits of the case should satisfy certain criteria, such as whether it will afford the students exposure to skills such as interviewing, statement taking, counselling of clients, negotiation, drafting of letters and documents such as settlements, drafting of court pleadings, telephone

pleadings can be drafted as if the clinic was mandated to do the specific case, or as if the clinic has jurisdiction in a specific court. Although the client will be referred elsewhere for assistance, students will benefit, in that they can be trained on facts collected by them during the consultation process.

78 See paragraph 7.1.

79 See paragraph 6 for the seven goals of clinical legal education.

80 This will relate to clinics that do not operate in specialised units.

81 For example: huge case loads of unopposed divorce matters, maintenance claims, administrative labour procedures or other types of administrative assistance.

82 The nature of a university law clinic differs from other legal aid institutions, as the component of student training is absent in the latter and they are by nature service orientated.

83 De Klerk 2007. He correctly argues that “(s)tudents pay good money to complete clinical courses and have legitimate expectations of the benefits they should receive in return”.

84 McQuoid-Mason 1986:189-194.

85 For the establishment of specialised units within clinics, see Du Plessis 2006:284; Du Plessis 2007a:44; and De Klerk & Mohamed 2006:306.

skills, file and practice management and legal ethics. These criteria should satisfy the goals set for clinical legal education, the outcomes requirements set by SAQA, the needs of students and service delivery to the needs of clients, whilst curtailing case loads at the same time.

9.3 Establishing new practice opportunities: considering needs, new legislation and law development

In establishing specialised units or new practice opportunities within a general clinic, a combination of students' needs, clients' needs and law development should be considered. Students typically do not envisage themselves as future practitioners in debt collection and administration, such disciplines not being perceived as being on the glamorous side of legal practice. However, when the above stated combination is considered, a unit in debt control may prove to be a viable opportunity to satisfy all the requirements stated earlier.

By way of illustration: debt proves to be a major problem in South African society,⁸⁶ which highlights the clients' needs. Clinic clients, who often are poorly educated,⁸⁷ regularly present as victims of unscrupulous moneylenders⁸⁸ and/or dishonest debt collectors.⁸⁹

Clinicians need to be aware of new legislation or developments in the law which can assist clients. The *National Credit Act*⁹⁰ came into effect on 1 June 2007. The Act makes provision for the protection of over-indebted consumers and the intervention on behalf of such consumers by debt counsellors,⁹¹ who are able to force creditors into consultation regarding the debt before approaching a court⁹² and for renegotiations of debt.⁹³ The provisions of this Act can now typically be applied to students' needs. A number of clinicians at some of the South African universities, qualified as debt counselors in terms of the Act.⁹⁴

86 In the first quarter of 2007 alone, 60 826 judgments for debt with a total value of R519,8 million were granted by our courts. 121 986 summonses were issued for debt during this period. See <http://www.statssa.gov.za/publications/statskeyfindings.asp?PPN=P0041&SCH=3918> (accessed on 9 June 2008).

87 De Klerk 2007.

88 Bodenstein 2005:304-308.

89 Summit Financial Partners (<http://www.summitfin.co.za>) who conducted an audit of 70 000 out of 1,75 million garnishee orders granted by South African courts indicated that the system is riddled with abuse. They commented that "if we had to extrapolate our audit findings there must be over a billion rand being over-deducted from already distressed borrowers and going into the pockets of unscrupulous lenders and collectors alike". See also <http://www.cartelblanche.co.za/Display/Display.asp?Id=3316> (accessed on 9 June 2008).

90 Act 34/2005.

91 Sec 44 and reg 10.

92 Sec 88(3) and sec 129.

93 Sec 86.

94 For example at the Universities of Pretoria, Stellenbosch and Witwatersrand. The University of Pretoria Law Clinic, in co-operation with the Association of University Legal Aid Institutions, developed and present courses and examinations countrywide on a continuous basis, for the qualification of debt counsellors in terms of the Act.

Their knowledge and skills as debt counselors can be transferred to students to be used during their clinic consultations.⁹⁵ However, these procedures cannot be followed where judgment has already been entered against the debtor.⁹⁶ In these instances, students have the opportunity to be trained in litigation skills in the form of rescissions of judgment and claims for unjustified enrichment. During this process, skills and basic competencies required in legal practice will be covered, such as interviewing, statement taking, consultation and counselling, telephone skills, file and practice management, numeracy, negotiation skills, research, legal ethics and the drafting of letters, documents (such as settlements) and court pleadings.

These types of practices are already applied successfully at some university law clinics.⁹⁷ As this type of practice is to a large extent based on new legislation, a law clinic may have the opportunity to test such legislation by way of impact litigation.

9.4 Quality control

Care should be taken to ensure that all students are exposed to the same quality of material on which they are to be assessed.⁹⁸ However, quality and quantity of cases can to a large extent be regulated, if the parameters within which a clinic operates are clearly defined when the clinical curriculum is planned.⁹⁹ The clinical director should ensure that each supervising clinician, whether operating in a specialised unit or not, have clear guidelines on the requirements for the clinical course. Should the clinician find that a specific student, or group of students, lack exposure to certain components of the set guidelines or curriculum, simulation may be applied to ensure that all students are exposed to the full curriculum.¹⁰⁰ Further checks and balances can be built in, in the form of short assignments, tests and case reports throughout the year,¹⁰¹ for all students, to determine not only their exposure, but also the quality of their understanding of the legal process at the time of such an examination. Case and file management can be monitored continuously through weekly tutorials with the students. Part of student assessments may take the form of oral examinations on the cases managed by them. These oral examinations should ideally not be conducted by the clinician supervising that particular

95 The calculations required for this type of assistance will assist students in developing their numeracy skills. Students will also be required to do research in every matter, particularly relating to the application of the "in duplum" rule, now codified in terms of the Act. See Kelly-Louw 2007:141.

96 Sec 86(2).

97 For example the Universities of Stellenbosch and Pretoria.

98 See also Brayne, Duncan & Grimes 1998:19.

99 See paragraph 6 for discussion on curriculum planning.

100 See paragraph 8.3.

101 These interim testing measures of the students need only make up a small percentage of their overall year mark.

student,¹⁰² but by another clinician.¹⁰³ This method not only guarantees objectivity, but also affords clinicians a form of peer review.¹⁰⁴

10. Conclusion

The two main roles of university law clinics, namely teaching and service to clients are attainable within the framework set by SAQA. Researching into the needs of students indicate a favour towards the live client model, whilst the needs of the clients can to a large extent be accommodated. In planning a curriculum for clinical legal education, weaknesses that have been identified in students' preparedness for practice must be addressed.

Disadvantages of the live client model can be overcome when parameters within which a clinic operates are clearly defined, and the curriculum is planned within set guidelines of the requirements for the clinical course, ensuring a bridging of the gap between the respective needs of students and clients.

102 This method has been used successfully by the Wits Law Clinic for many years. The clinician supervising that particular student is normally present, to *inter alia* ensure that the standard of testing is uniform for all the students so examined. These oral examinations on case work are extended to include assessment of students on legal ethics.

103 And *vice versa* for the students of such clinician.

104 This will ensure not only the maintaining of set standards across the board for all clinicians attached to the clinic, but also form a basis for discussion of curriculum planning.

Bibliography

- ASSOCIATION OF AMERICAN LAW SCHOOLS
1980. Report of the Association of American Law Schools — American Bar Association Committee on the Guidelines for Clinical Legal Education. *Clinical Legal Education*: 1-12.
- BODENSTEIN J
2005. Access to legal aid in rural South Africa: In seeking a coordinated approach. *Obiter* 26(2):304-320.
- BRAYNE H, DUNCAN N AND GRIMES R
1988. *Clinical legal education*. 1st ed. Blackstone Press Limited: 1-278.
- BUSINESS REPORT
2008. Manuel's policy gambit. May 9: 1.
- DE KLERK W
2006a. University law clinics in South Africa. *South African Law Journal* 123 (4):929-950.
2006b. Integrating clinical education into the law degree: Thoughts on an alternative model. *De Jure* 39(2):244-251.
2006c. De Klerk W (ed). *Clinical law in South Africa*. 2nd ed. Lexis Nexis Butterworths.
2007. Unity in adversity: Reflections on the clinical movement in South Africa. Paper delivered at the 5th International Journal of Clinical Legal Education Conference, Johannesburg. (Unpublished – copy on file with author).
- DE KLERK W AND MOHAMED S
2006. Specialisation at a university law clinic: The Wits experience. *De Jure* 39(2):306-318.
- DIE BEELD
2008. Sake 24, May 8: 12.
- DU PLESSIS MA
2006. A consumer clinic as a specialised unit. *De Jure* 39(2):284-294.
2007a. Access to justice outside the conventional mould: Creating a model for alternative clinical legal training. *Journal for Juridical Science* 32(1):44-63.
2007b. Divorce: Achieving social justice through clinical legal education. Paper delivered at the 5th International Journal of Clinical Legal Education Conference, Johannesburg. (Unpublished – copy on file with author).
2008. University law clinics meeting particular student and community needs. A South African perspective. *Griffith Law Review* (Australia) 17(1):128.
- FELDDHAUS C
2007. Unity in diversity when law clinics unite: An investigation into the North-West University's consolidated clinical legal education curriculum. Paper delivered at the 5th International Journal of Clinical Legal Education Conference, Johannesburg. (Unpublished – copy on file with author).
- HYAMS R
2006. Student assessment in the clinical environment — what can we learn from the US experience? *International Journal of Clinical Legal Education* 10: 77-95.
- KELLY-LOUW M
2007. The common-law versus the statutory in duplum rule. *Journal for Business Law* 14(3):141-144.
- MCQUOID-MASON DJ
1986. The organisation, administration and funding of legal aid clinics in South Africa. *Natal University Law and Society Review* 1(2):189-194.
1977. Clinical legal education: Its future in South Africa. *Tydskrif vir Hedendaagse Romeins Hollandse Reg* 40:343-348.
2006a. Questionnaire. What UKZN/NMMU students want from the LLB degree. *Obiter* 27:166-173.
2006b. Using your imagination to light up knowledge, skills and values for LLB students: Lessons from South Africa. Keynote address delivered at LILI. <http://www.ekcle.ac.uk/interact/lili/2006/papers/keynote2.html>.

MAHOMED S

2007. United in our challenges — Should the model used to teach clinical legal education in South Africa be reviewed? Paper delivered at the 5th International Journal of Clinical Legal Education Conference, Johannesburg. (Unpublished – copy on file with author).

NAVSA M

2006. Introduction. In De Klerk *et al*, *Clinical law in South Africa*. 2nd ed. Durban: Butterworths: 1-6.

O'REGAN K

2002. Producing competent graduates: The primary social responsibility of law schools. *South African Law Journal* 119(2): 242-250.

SALDA

2008. Statement by SALDA: Challenges for legal education, issued by Prof Rob Midgley, r.midgley@ru.ac.za, President: SALDA, May 23.

STEENHUISEN E

2004. The goals of clinical legal education. In Stilwell P (ed) *Clinical law in South Africa*. 1st ed. Durban: Butterworths: 1-14.

STUCKEY R

2000. Ensuring basic quality in clinical courses. *International Journal of Clinical Legal Education* 47:1-49.

2007. Best practices for experiential courses. In Stuckey R *et al*, *Best practices for legal education*. 1st ed. University of South Carolina Publications Columbia: 165-206.

SWANEPOEL CF, KARELS M AND

BEZUIDENHOUT I

2007. Integrating theory and practice in the LLB curriculum. Some reflections. Paper delivered at the 5th International Journal of Clinical Legal Education Conference, Johannesburg. (Unpublished – copy on file with author).

TARR NW

1993. Current issues in clinical legal education. *Howard Law Journal* 37:1-19. http://us.f904.mail.com/ym/ShowLetter.box=Inbox&MsgId=5990_3998913_69479_.

THE DAILY SUN

2008a. February: 3-5.

2008b. May 13: 3-4.

THE SOWETAN

2008a. May 7: 25.

2008b. May 8: 25.

2008c. May 9: 21.

THE STAR (CLASSIFIEDS)

2008a. May 7: 2.

2008b. May 9: 2.

VAN DER MERWE P

2007. The trouble with LLB graduates ... April *De Rebus* 2.

VAWDA YA

2003. Best clinical teaching practices in South Africa (unpublished) 4.

WIMPEY D AND MAHOMED S

2006. The practice of freedom — the South African experience. Paper delivered at the 4th International Journal of Clinical Legal Education Conference, London. (Unpublished – copy on file with author).

WIZNER S

2002. The law school clinic: Legal education in the interests of justice. *Fordham Law Review* 70:1929-1933.

http://www.news24.com/City_Press/News/0,,186-187_2127389,00.html.

www.ukcle.ac.uk/resources/cleo/practice.html.

<http://www.statssa.gov.za/publications/stat-keyfindings.asp?PPN=P0041&SCH=3918>.

<http://www.summitfin.co.za>

<http://www.cartelblanche.co.za/Display/Display.asp?Id=3316>.

<http://clrn.law.cunmy.edu/clea/clea.html>.