

MA du Plessis

Clinical legal education: The challenge of large student numbers

Summary

Clinician:student ratios in clinical courses at South African university law clinics were found to be, in some instances, more than three times the ratio recommended at other international jurisdictions. Whether clinical legal education should be a mandatory course in the LLB curriculum and whether the focus of the clinicians should be on student training will be probed. In considering the challenge of large student numbers, the solution of grouping students into student law firms for collaborative work will be proposed. The student firm sizes will be discussed and it will be suggested that students work in pairs within student firms. The firm set-up, its operations and the possibility of social loafing will be discussed. It will be shown that the advantages of collaboration far outweigh any disadvantages. Recommendations will be made and it will be shown that the grouping of students in firms will ensure less contact time with clinicians, which will address their workloads and time constraints.

Kliniese regsopleiding: Die uitdaging van groot studentegetalle

Daar is gevind dat die getalleverhouding tussen kliniese dosente en studente in Suid-Afrikaanse regsopleiding soms so veel as drie keer meer is as die internasionale aanbevole verhouding. Daar sal ondersoek gedoen word na die vraag of die kliniese kursus verpligtend moet wees, asook of die kliniese dosent se fokus op studenteopleiding moet wees. In die aanspreek van die uitdaging van groot studentegetalle, word 'n oplossing gevind in die groepering van studente in afsonderlike studente-regsfirmas. Die firmas se daarstelling, hul werking en die moontlikheid van sosiale 'lyfwegsteek' sal bespreek word. Daar sal aangetoon word dat die voordele van hierdie samewerking baie meer is as enige nadele. Aanbevelings sal gemaak word en daar sal aangedui word dat die groepering van studente in firmas tot minder kontakure met die kliniese dosente sal lei, wat weer hulle werksladings en tydsdruk sal aanspreek.

MA du Plessis, Associate Professor, School of Law, Faculty of Commerce, Law and Management, University of the Witwatersrand. This article emanated from a paper delivered at the 11th International Journal of Clinical Legal Education Conference and the 12th Australian Clinical Legal Education Conference, 16-18 July 2013, Griffith University, Brisbane, Australia.

1. Introduction

As background, the following needs to be noted. A general trend in legal education is an increased focus on the practical application of the substantive law.¹ Clinical legal education (CLE) is mainly a practical course, although it includes training in the substantive law.²

At the University of the Witwatersrand's Law Clinic (WLC), students work in pairs as a result of large student numbers.³ Students interview clients in their allocated specialised units.⁴ Clients have to qualify for legal aid in terms of a means test.⁵ In the clinic, the cases presented by clients to the students are screened by the attending clinician for suitability, as a clinical programme must consider distinguishable types of cases that will serve as good learning vehicles for their students. Simple service cases, which students can see from initial interview to resolution, make for the best learning tools.⁶ After the screening process, appropriate legal matters are taken on – many for litigation through the courts. Apart from the compulsory two-hour clinic duty per week, students have a compulsory weekly tutorial with their clinicians where cases are discussed and students are instructed.⁷ Each student pair is responsible for a number of cases during the academic year. During the week, students are expected to work on their case files, which will then be discussed during the weekly tutorials.⁸

A challenge in CLE is accommodating and teaching large student numbers, often across a number of specialised clinical units. South African university law clinics often exceed more than three times the maximum clinician:student ratio, suggested by various foreign jurisdictions. This article will consider the challenge of accommodating large student numbers and will propose solutions to this challenge.

1 Du Plessis 2014:3.

2 Du Plessis 2014:3.

3 The ideal ratio between clinician and students in clinical courses has been suggested to be between 1:7 and 1:12. See Shrag 1996:175. The United Kingdom model proposes a maximum of 1:12 and the United States of America models advocate 1:8. See Grimes & Brayne 2004:9. The University of the Witwatersrand ratio over the past number of years ranged between 1:38 and 1:46. See Du Plessis 2009:92.

4 The WLC currently operates in the following specialised units: family law; consumer law; labour law; refugee law; evictions, housing and land; delict, and a general unit.

5 Du Plessis 2008a:5.

6 Du Plessis 2008b:25; Tarr 1993:33, 34. When cases are presented that have the potential to lead to impact litigation, factors other than suitability for student teaching may be considered.

7 Du Plessis 2009:93.

8 Du Plessis 2009:91-115.

2. Large student numbers

The ideal ratio between clinician and students in clinical courses has been suggested to be between 1:7 and 1:12.⁹ The UK model proposes a maximum of 1:12 and the US models advocate 1:8.¹⁰

2.1 Wits Law Clinic

CLE is a compulsory year course for all final-year LLB students. At the WLC, the ratio over the past number of years has ranged between 1:38 and 1:46.¹¹ As a result of the large student numbers in proportion to available clinicians, students are required to work in pairs,¹² thus reducing the contact time between clinician and student pairs to a ratio of, at least as far as clinical work is concerned, between 1:19 and 1:23. This clinician:student ratio may vary from one academic year to the next, depending on a number of factors, one of which is the number of students registered for a particular academic year.

Another factor is the availability of clinicians. Every year, since 2000 (except for 2008 and 2013), a different clinician was granted a year-long study leave ('sabbatical') by the University. The senior clinicians generally take on a full load of students, whereas some of the junior clinicians and the clinical director will only supervise a half load, or some lesser amount, of students. Eleven clinicians are employed at the WLC to serve 408 registered students during 2013.

A further factor is the possible restructuring within the specialised units where junior clinicians sometimes rotate within units.

The seniority of the clinicians, the effects of the lecturing timetables of clinicians who also teach academic courses at the Law School, the training and supervision of candidate attorneys and the requirements of specific funders are further factors impacting on the supervision of a large number of students.¹³

2.2 University of Pretoria Law Clinic

At the University of Pretoria Law Clinic (UPLC), the student numbers are controlled,¹⁴ mainly because CLE is an elective course, presented over

9 Shrag 1996:175.

10 Grimes & Brayne 2004:9.

11 Du Plessis 2009:92; Du Plessis 2008a:11. Student registration, excluding externs, for the course over the past number of years was as follows: for 2005, 250 students; for 2006, 280, for 2007 and 2008, 308; for 2009, 228; for 2010, 258; for 2011, 297; for 2012, 306, and for 2013, 408 students.

12 Du Plessis 2008a:11.

13 Du Plessis 2008a:11.

14 Haupt & Mahomed 2008:237-292.

two separate semesters. UPLC experienced a decline in second semester student numbers over the past number of years. Student registrations were, for 2010: first semester – 61, second semester – 54; for 2011: first semester – 97, second semester – 89; for 2012: first semester – 53, second semester – 40, and for 2013: first semester – 54. From 2014, CLE will be a year course, to ensure that student numbers will not decline in the second semester. Two senior clinicians supervise the CLE course. The clinicians at UPLC are appointed as support staff, not as academic staff; they, therefore, do not qualify for sabbatical leave.¹⁵

2.3 University of the Free State Law Clinic

The University of the Free State's Law Clinic's (UFLC) clinician:student ratio is, on average, 1:25; This also poses a challenge, particularly as CLE is a compulsory course.¹⁶ The seniority of the clinicians, the effects of the lecturing timetables of clinicians who also teach academic courses at the Law School, the compulsory training of candidate attorneys and the requirements of funders further impact on the supervision of a large number of students. The clinical director of the clinic is appointed as an academic staff member, whereas the other clinicians are appointed as support staff on a contract basis. This appointment structure places an undue burden on the clinic, as continuation is not guaranteed. In addition, clinicians are also required to focus on a personal intake of clients, which may distract their focus from CLE. The off-campus clinic creates interruptions in clinical work when students and clinicians have to commute for lectures. The clinical director also teaches at the Law Faculty, as do some of the clinicians.¹⁷

2.4 University of Johannesburg Law Clinic

The University of Johannesburg Law Clinic's (UJLC) clinician:student ratio is, on average, 1:48, spread over two semesters; this also poses a challenge, particularly as CLE is a compulsory course.¹⁸ UJLC operates three different clinics. The Kingsway and Soweto campuses each employ two full-time clinicians, as well as an additional attorney on a contract basis. At the Doornfontein campus, there is only one clinician. The clinicians, who all have senior status, are appointed as administrative staff, not as

15 Du Plessis 2014:206. Details were obtained during interviews between the author and the clinical director for purposes of a PhD study.

16 University of the Free State Law Clinic 2012:RPK412 course outline; Du Plessis 2014:206. Details were obtained during interviews between the author and the clinical director for purposes of a PhD study.

17 Du Plessis 2014:206. Details were obtained during interviews between the author and the clinical director for purposes of a PhD study.

18 University of Johannesburg 2012: Applied legal studies (TPR 0000), Learning Guide:2-30; Du Plessis 2014:207. Details were obtained during interviews between the author and the clinical director for purposes of a PhD study.

academics. Student numbers for 2013 are 254. UJLC does not employ candidate attorneys to assist them.¹⁹

3. The Law Clinic and clinical legal education in the LLB degree

Before the challenge of large student numbers can be probed and solutions proposed, it will be necessary to answer two questions, as they impact directly on the challenge posed. The first question relates to the focus of the clinic. If the focus of the clinic is not on student training, large student numbers may not be a challenge. The second question is whether CLE should be a mandatory course. If CLE is an elective, large student numbers will not be a challenge.

3.1 The focus of the clinic, clinical legal education and the role of the clinician

The focus of university law clinics was already a topic of investigation during the 1980s. Iya explains:

The critical issue is that many of the clinical programmes are said to focus their emphasis only on the perspectives of service rather than education ... A team of professors that visited the University of the Witwatersrand in 1986 argued that ... a new structure be devised for the clinic ... to guarantee the pedagogical goals which justify the clinic's prominence in the new curriculum.²⁰

In 1990, Bamberger noted that the primary function of a teaching law clinic is teaching and that it can, therefore, not be an efficient provider of proper service to clients.²¹

Although tension exists between the teaching of students and client services,²² the general view across a number of jurisdictions is that the main focus of a university law clinic should be CLE, i.e., the teaching of students by the clinicians and not the provision of free legal services.²³ The Clinical Legal Education Organisation (CLEO) holds the view that the principal aim of clinical programmes is educational. Student needs and supervisor competence should dictate client assistance.²⁴ In the United States of

19 Du Plessis 2014:207. Details were obtained during interviews between the author and the clinical director for purposes of a PhD study.

20 Iya 1995:270.

21 Bamberger 1990:1.

22 Stuckey 2007:197 (United States of America); Giddings 2008:7 (Australia).

23 For a full discussion on defining the role of the university law clinician, see Du Plessis & Dass 2013:390-406.

24 CLEO 2007:3, 4; MacFarlane & McKeown 2008:65.

America and the United Kingdom, CLE is about the student experience; therefore, the student should conduct a case, not the clinician.²⁵

The South African view was set out by Du Plessis as follows:

Where clinical legal education is compulsory, the role of law clinics in the academic environment becomes more pronounced and a stronger emphasis is placed on the academic training of students in the clinical environment. Access to justice for the indigent is no longer the main or only focus of the law clinic, but will remain a strong component, as client service is inseparable from the clinical methodology.²⁶

De Klerk echoed this view:

Students pay good money to complete clinical courses and have legitimate expectations of the benefits they should receive in return. The teaching that takes place in a clinic should therefore never be incidental or secondary to the practice of law. Teaching students remains the core business of (university) law clinics.²⁷

The focus of the clinic and CLE furthermore determines the role of clinicians in academia and where they fit into the university system. Findley puts to rest the misconception that clinicians may not be fully fledged academics merely because they teach in a clinical and practical environment. He supports the argument that

[r]eferencing the academic program to lawyer performance does not imply the slightest narrowing of legal education to a form of technical training. On the contrary, it demands a broadening which few law schools could presently achieve ... it is terribly demanding precisely because it is so rich in both conceptual and practical elements.²⁸

The academic role of the clinician is further acknowledged when the focus of CLE, as a core and fully assessed compulsory subject in the LLB curriculum, is on student training.²⁹

3.2 Should CLE be a mandatory/core course in the LLB curriculum?

The viewpoint taken in the United Kingdom is voiced by Hall and Kerrigan who hold that the integration of CLE into the core curriculum of the law school will reveal its value as a teaching methodology. They further

25 Macfarlane & McKeown 2008:65, Wizner 2001/2002:13, Stuckey 2007:195-197.

26 Du Plessis 2007:46.

27 De Klerk 2007:98. Mahomed & Haupt held a similar view. De Klerk & Mahomed 2006:31; Haupt 2006:237.

28 Findley 2006/2007:310, 311.

29 Giddings 2010:301.

state that, if CLE is not a core course in the LLB curriculum, ideological opposition, changing educational fashions or resource cuts may undermine its relevance and importance.³⁰ CLEO (UK) holds that pedagogic aims can be set and achieved.³¹ This is possible as CLE has intellectual worth in the extent to which it enables students to better understand concepts and principles of law and the context within which these operate.³²

In discussing the United States perspective, Ortiz agrees that CLE should be a mandatory course. Up to 95% of students' time in law school is spent on reading and discussing law and cases, whereas, in practice, they will go days or weeks doing none of that. They will instead be drafting, reviewing, negotiating and composing memorandums, emails and letters which are skills that are acquired when CLE is made mandatory. CLE allows students to learn to formulate an action plan, which they enact through structured experiences upon which they can reflect and modify for future action.³³

In the South African landscape, O'Regan J stated that the lives of law graduates "are determined in a real sense by the skills and habits that they have acquired at law school" and that "much of the test of what constitutes a competent lawyer is skills-based rather than content-based".³⁴ De Klerk agrees and posits that no law school can claim to produce competent graduates without clinical experience, as "(t)here is no substitute for the real thing". He is critical of curricula that offer CLE as an elective, as students will be allowed "to enter the practice of law without ever having seen a client, been inside a courtroom or interviewed a witness".³⁵ These sentiments are echoed by many South African scholars and practitioners,³⁶ as "[t]he ability to handle facts ... must be developed in an environment in which the presentation of facts resembles that in the real world."³⁷ Vawda, from the University of KwaZulu-Natal, is also of the opinion that CLE should be a compulsory course with academic credit points, as scarce resources are committed to CLE.³⁸ Student motivation will increase if CLE is a compulsory course.³⁹

Both the above questions were answered in the affirmative, namely that the focus of the clinic must be on student training and that CLE should be a mandatory course in the LLB degree. Large student numbers,

30 Hall & Kerrigan 2011:30.

31 CLEO 2007.

32 CLEO 2007.

33 Ortiz 2011:6.

34 O'Regan 2002:247.

35 De Klerk 2006:246-250.

36 For example, Vawda 2004:124, Parmasand 2003:202-204; McQuoid-Mason 1982:162.

37 McQuoid-Mason 1982:162.

38 Vawda 2004:124.

39 Vawda 2004:124.

therefore, remain a challenge. Solutions to this challenge will be sought and proposed.

4. Seeking solutions to the challenge of large student numbers in clinical courses

Initial solutions that come to mind are either the increase in clinician numbers or to make the CLE course an elective. As indicated earlier, the overwhelming view is that CLE courses should be mandatory.

Although an increase in clinician numbers will be advantageous, it may not be feasible for a number of factors, such as availability of space – relating to both office space and consultations space to ensure attorney/client confidentiality – and the additional costs to the Law Schools, which may, in turn, impact on student fees for the course.

5. Proposed solution to large student numbers in clinical courses: Collaboration in student law firms

As indicated earlier,⁴⁰ CLE should be a mandatory/core course in the LLB curriculum. The focus of the clinic and the clinicians should be on student training. A solution to accommodate large student numbers in a mandatory course, with often limited clinician availability, will be proposed.

A solution for large student numbers can be found in grouping students together for collaborative work.⁴¹ Legal clinics in a variety of disciplines in the United States of America are poised to teach collaboration.⁴² Collaborative learning is a philosophy of education making the assumption that knowledge is not something given from one to another, but rather that knowledge is gained through a process of consensus. In collaborative learning, students learn to depend on one another rather than exclusively on the authority figure or teacher/clinician.⁴³ The teacher/clinician's role becomes one of facilitator.⁴⁴ Knowledge as consensus acknowledges that there are different views and mandates. Dissent must be heard and incorporated into the final consensus that becomes the gained knowledge. Through collaborative learning, students who face a world in which diversity is increasingly evident, tenacious and threatening are taught the craft of interdependence.⁴⁵

40 See paragraph 3.2.

41 Du Plessis & Dass 2013.

42 Lerner & Talati 2006:111.

43 Blumenfeld 2010:119.

44 Blumenfeld 2010:126.

45 Blumenfeld 2010:121.

An alternative model, when clinicians have to work with large student numbers, and to incorporate collaboration, is to allocate students to different teams which will operate as student law firms. In South Africa, this model is already applied by UPLC.⁴⁶

5.1 Advantages⁴⁷

Advantages of this model abound. Researchers into collaborative learning consistently found that students engage in the learning process, and that they display high levels of motivation and involvement in the learning experience.⁴⁸ Groups are known to conduct activities at a relatively high level of intellectual functioning, higher than that displayed by students in non-groups.⁴⁹ Cooperative learning groups also promote more cross-race relationships than might otherwise be the case.⁵⁰ A non-academic benefit is socialisation – cognitive theories of collaborative learning emphasise the effects of working together as an end in itself.⁵¹

By providing students with the opportunity to work in firms, student attorneys can filter client life experiences through multiple personal life experiences, thereby potentially developing richer and more accurate understandings of their clients. Although there is no guarantee that students will possess the relevant life experiences, the pairing does increase the potential for more accurate understandings and thereby more sensitive and appropriate representation of clients.⁵² A varied student combination in firms will address these challenges, due to their different and multiple life experiences.

This collaboration may have a direct impact on student motivation. Some students are of the opinion that they may be more efficient when working at their own pace without the hassle of having to coordinate schedules with other students.⁵³ However, others report increased motivation, such as “I think I have been more motivated because my responsibility now is not just to a client but also to another [student] attorney”.⁵⁴ Having student partners helps keep student anxieties within creative limits, as they do not have to take sole responsibility for the impact of their acts on another person(s). Performance anxiety is lessened and unproductive levels are avoided.⁵⁵

46 Haupt & Mahomed 2008 : 279.

47 Hyams 2006:77-95 and Chavkin 1994/1995:199-244 discuss the advantages of ‘student teaming’ and the pairing of students.

48 Cohen *et al.* 2004:3.

49 Shlomo & Shachar 1995:285.

50 Slavin & Cooper 1999:662.

51 Blumenfeld 2010:127.

52 Chavkin 1994/1995:213.

53 Chavkin 1994/1995:213.

54 Chavkin 1994/1995:214.

55 Chavkin 1994/1995:215.

Clinicians are not directly involved with the clients and, therefore, do not always have a sense of what is really going on in a case. Everything is filtered through the students; this can result in preconceptions, biases and other factors that affect the accuracy of the details of the cases that are relayed to the clinicians. These uncertainties are lessened when information is filtered through more than one student in a firm. When working in firms, students can be exposed to a greater number of clients and issues in a smaller overall workload for individual students. Students may also feel responsible for a smaller portion of the cases, easing the clinician's supervision responsibilities.⁵⁶ Students working in firms can also alleviate the work loads and time constraints that clinicians may experience.

At the Phoenix School of Law, Arizona, working in student law firms is regarded as a hallmark of their General Practice Skills course.⁵⁷

Associating into law firms allows the students to learn through small group discussion, planning, sharing ideas, and division of labor. Additionally, the students learn, just as in actual law firm practice, that there are differences between them in strengths and weaknesses, work ethic and accountability. One of the most valuable lessons students learn is that their individual reputations can be affected by the work product of their law firm.⁵⁸

Students should be encouraged to become involved in group work in order to foster support and to share responsibility.⁵⁹

It is submitted that the following additional advantages will emerge: tutorials will be more structured, as members of the firm will prepare for the tutorials in advance; there will be less student:clinician contact time, freeing up the clinician for other activities such as research; students will learn to work in a group with a larger diversity of the student population, as the shy student will be drawn to participate and the stronger students will learn to be firm with idle and inactive students, and language and cultural diversity will be advanced. This model has the added advantages of promoting reflection, peer assessment and self-assessment. When students work in pairs with a partner, decisions taken in their cases can be tested against other members of the firm. This can create healthy competition and teach practice management.

At the WLC, students are currently not trained in time-keeping and fee recovery. It is submitted that it would be prudent to do so when students operate in firms, creating healthy competition among the firms. Although no actual fees will be recovered, the exercises of fee recovery will foster good file maintenance and practice management. Students will have to peruse their files regularly, as they will be entitled to 'charge fees', thus ensuring that client files are not neglected.

56 Chavkin 1994/1995:216, 217.

57 Gerst & Hess 2009:532.

58 Gerst & Hess 2009:532.

59 CLEO 2007:14.

It is further submitted that, following the competitions between firms to 'generate fees' students will be eager to assist more clients, even if only administratively. Whereas students currently turn clients away after a consultation where it transpires that no assistance can be rendered, they may now write an opinion or a report to the client, where reasons will be provided. The same principle can be applied when clients are referred to another agency for assistance. Instead of merely sending clients to another agency, students will draft an analysis and a report accompanying the reference. This approach will enhance the clinical experience for both client assistance and student learning.

It is submitted that, when students are compelled to treat all consultations in the above manner, it will prevent good client files 'slipping through the cracks', as the clinician will be able to recall the client, should it become clear during the tutorial following the consultation that students can, indeed, assist clients. Clinicians will also be in a better position to assess whether a specific case, although it has merits, is suitable for student training. These will be in instances where the case proves to be too complicated for student training and/or will place too high a demand on clinicians' personal attention. These matters can be referred to other *pro bono* agencies. Should the matter be of interest for student learning, the facts can be used by the clinician to simulate the case, allowing students the benefits of the procedure without causing the clinician to be too busy with the actual case to attend to the students. Students will have the benefit of learning the intricacies of the case while the client remains protected.

5.2 Firm size

The team or firm size is important, as researchers have found that it can have a significant impact on collaborative learning. It was found that student learning, satisfaction and work product may be maximised in teams larger than two.⁶⁰ At the Phoenix School of Law, Arizona, students form themselves into law firms of four or five students at the beginning of the course and the law firms are maintained throughout the course.⁶¹ CLEO recommends a minimum of two students to be responsible for each client/case. This offers protection to the student and provides continuity. CLEO found that firms of about six students can share a caseload.⁶² However, although firms can comprise a number of students, students need to pair within the firm and attend to cases in student pairs. Chavkin correctly holds that clients cannot cope with active listening to more than two students. More than two students are also potentially destructive of the goal of forming an appropriate attorney-client relationship.⁶³ It is recommended that student partners work in pairs within a larger firm structure, despite a possible perception from other firm members that it

60 Chavkin 1994/1995:241.

61 Gerst & Hess 2009:532.

62 CLEO 2007:15.

63 Chavkin 1994/1995:241.

will be unfair to deprive some of them from interaction with a client to avoid the intimidation effect.

It is submitted that the solution will be to have three pairs of students forming different firms of six students each. Cases are allocated to firms; however, within the firms, a set of partners (student pair) work on specific cases which they will discuss with other members of the firm.

5.3 Firm set-up

At the Phoenix School of Law, Arizona, students rapidly move into professional skills instruction.⁶⁴ For law office organisation and management, the student law firms produce a law firm business plan, which includes their decision regarding the firm's area of practice, location, office equipment needs, marketing, insurance coverage, staff, systems for checking conflicts, case management, billing, and the allocation of income and expenses. The firm drafts documents that are essential to the attorney-client relationship: retention letters, fee agreements, client intake forms, a client conflicts checking procedure, a declination letter, a mail-processing procedure, a closing letter on a client's case, a trust account three-way reconciliation, a billing statement, and time sheets. In addition, students must discuss file retention policies, withdrawal from representation and the strict rules that apply to the handling of client funds and trust accounts. Students may also demonstrate an electronic case management system.⁶⁵

It is submitted that the above represents an ideal scenario. However, setting up a firm with these details needs to be viewed in a United States of America context where the JD degree is postgraduate and no articles of clerkship are required before writing the bar examination.⁶⁶ In the South African context, students will have to organise their firms with at least some of the components, such as organisation and practice management,⁶⁷ case management, fee structures and the drafting of certain documents such as client intake forms, a client conflicts checking procedure,⁶⁸ a declination letter, a closing letter, and time sheets. It is further submitted that these should not take precedence to, or interfere with the skills training components of CLE. Only components that can be assessed as part of practice management should be enforced.

64 Gerst & Hess 2009:532.

65 Gerst & Hess 2009:533.

66 Du Plessis 2014:211.

67 Ethics and practice management can be assessed. Of interest when assessing is "the five C's of Law Office Ethics" – communication/confidentiality, conflicts checking, calendaring, competence, and cash. See Gerst & Hess 2009:536, 537.

68 Gerst & Hess 2009:536, 537.

5.4 Firm operation

Firms' meetings should be held weekly, in addition to the meetings of student pairs in the conduct of their cases. The students' knowledge, skills and expertise are expected to be shared within the team or firm. Although students can and ought to rely on the clinician's judgement and control over cases, the initial responsibility should be the students. This fosters a sense of professionalism and adds to the nature of the learning experience.⁶⁹ Firms can have management conferences, enter into negotiations with the assistance of a candidate attorney, do witness interviews, and prepare settlements, all of which can be assessed.⁷⁰

At WLC, student pairs currently attend weekly 45-minute tutorials with their clinician. With the alternative model of students working in firms, tutorials, for which the time can be increased, will be with the student firms and the clinician. Advantages are that the clinician:student contact time will be reduced. All the students in the firm will have the benefit of the discussions of all the cases.

The firm (or different firms falling under the supervision of a specific clinician) may also meet with their clinician for reflection on the work done, in a conference-type setting. The firms can exchange ideas about their experiences. The clinician may pose either general or narrowly focused questions for discussion.⁷¹

5.5 Disadvantages

Disadvantages with this model were identified.⁷² It is submitted that these disadvantages can be overcome, as will be indicated below.

Clients may prefer a specific student and ignore the other, or they may prefer a male student, whereas the female student has more experience. Many of these types of scenarios may play themselves out. These problems may complicate or detract from the experience for the student. It is submitted that, in the clinical context, the learning alerts the student to the context in which s/he may have to practise once qualified.

Students may not want to take responsibility for someone else in their team. It has been noted that "although lawyers are clearly responsible for their own acts, teamwork adds subtle shades of meaning to the obligation".⁷³

Ethical issues may not be solely within the control of a specific student, as all students in a team cannot directly receive each piece of relevant information, such as when one of the team makes a telephone call. The by-product is a high level of discomfort for the student who perceives

69 CLEO 2007:14, 15.

70 Gerst & Hess 2009:533-536.

71 Bender *et al.* 2006:65.

72 Chavkin 1994/1995:220-222.

73 Chavkin 1994/1995:221.

an unresolved or inadequately resolved ethical problem. To lessen the discomfort, one student may assume a greater role in the case in order to be better able to control information flow and to mould the responses to ethical issues to that student's vision of that responsibility.⁷⁴ This can also be applied when discomfort arises due to language barriers.

There can be disagreement with substantial decision-making issues. Even with the most effective tutorials, ensuring a full discussion of the issues and identifying and weighing the various factors supporting or undercutting each option, a conflict may exist between students over the weight that should be given to specific factors, or even the applicability of certain factors to a particular case. The clinician must weigh the various factors in light of his/her dependence on information provided by the students. Chavkin poses the following questions.⁷⁵ Should the clinician simply break the tie and come in on one side or another? Who should decide? Must students just knock heads? For these, clinicians can be an independent outside voice in identifying and questioning problematic resolutions of difficult issues. The mere presence of the clinician may counteract some of the worst tendencies that can result from collaboration. This presence can maximise the potential benefits.⁷⁶ It is submitted that these disagreements and conflicts will also make suitable material for student journal reflection.

There are logistical problems in the process of working with someone else. Schedules must be coordinated, information must be shared, and duplication of effort may unintentionally result. These are, however, not uncommon in practice. Ultimately, the aim should be that the final product must be something that the students most probably would not have achieved singlehandedly, or at least within an efficient time frame.⁷⁷

Another identified disadvantage is that the complexity of the tutorials may be increased.⁷⁸ It is submitted that, as far as the complexity of cases presented is concerned, no real difference would be noticed, as these would have had to be worked through despite students working in a team. More time consuming will be the "intra-team issues that must be identified, considered and addressed".⁷⁹ Students may be reluctant to raise certain issues in firm tutorials, as they might reflect badly on the others. It is submitted that students need to learn to speak up, as they will be confronted with these in practice. Students need to appreciate the benefits of cooperative learning, as it has been found to be of value for all students, including those identified as at risk, bilingual, gifted, and 'normal'.⁸⁰ The clinician may also invite suggestions or comments to be

74 Chavkin 1994/1995:221, 222.

75 Chavkin 1994/1995:221, 222.

76 Chavkin 1994/1995:224-226.

77 Chavkin 1994/1995:226.

78 Chavkin 1994/1995:228.

79 Chavkin 1994/1995:228, 229.

80 Blumenfeld 2010:127.

placed with his/her mail, or meet with student(s) by appointment outside formally scheduled tutorials. The most efficient way of managing these intra-team issues is by reflection, which can also be assessed.

5.6 Social loafing

Research shows that some individuals tend to reduce their effort when working with others.⁸¹ To overcome the impact of social loafing, students identified the need to create tasks where individual effort could be measured and individual marks awarded. The research further suggests that social loafing occurs when there is a perception that the benefit of loafing is greater than the net benefit of contributing fully to the group. One way to address this is to change the net benefits that attach to loafing behaviour.⁸² Suggestions are to allow students the right to refuse to share a grade with one of their team members. The group can submit a form when a task is to be assessed, indicating their willingness to share a grade, as they all participated. Those students who fail to sign the declaration will be entitled to an automatic review process, based on mandatory work programmes dividing up responsibility for tasks each week, and to log individual student participation.⁸³

Students refusing to share a group mark with a loafing member can be controlled by peer assessment schemes. Consistent poor peer assessment can have the effect of reducing rewards to the loafing team members. Advance awareness that peer assessment will be made part of the course assessment should be advantageous and encourage full group participation. Despite criticism against peer assessment,⁸⁴ there are educational benefits, such as process orientation, students' initiative, self-regulation, and self-reflection.⁸⁵ Confidential peer assessment can be done at the end of the teaching period by using either closed or open questions. Although criticised, assessing someone else's work encourages peers to evaluate and benchmark their own performances.⁸⁶ A peer assessment rubric is illustrated below.⁸⁷

81 Hewitt 2008:109, who also developed the concept of social loafing.

82 Hewitt 2008:109.

83 Hewitt 2008:109.

84 Sergienko 2001:480.

85 Hewitt 2008:110.

86 Hewitt 2008:110, 111.

87 UPLC uses this peer assessment rubric.

PEER ASSESSMENT: EFFECTIVENESS OF TEAM MEMBERS

Firm _____

Date _____

Please rate the team effectiveness of your team member by placing an 'x' in the appropriate block:

	Name of team member to be rated	Seldom	Some of the time	Most of the time	All the time
1	Attended all group activities and meetings				
2	Participated in all group activities and meetings				
3	Shared responsibilities for assigned tasks				
4	Provided effective and efficient assistance				
5	Provided constructive feedback during projects				
6	Exerted a significant effort to achieve project goals				
7	Acted in a trustworthy manner				
8	Motivated other group members				
9	Controlled temper during group activities				
10	Criticised ideas, not people				

In the context of social loafing, another method is to allow teams to 'divorce' a team member, thereby expelling a non-contributing, or 'loafing' member. The team can draft a code of ethics which can be used to regulate contributions to group work and formalise the process of expulsion of members from the group, as well as clarify exactly when this should occur.⁸⁸ It is submitted that this process may be somewhat advanced at student level, although it reflects what can be expected in a partnership contract in practice.

88 Hewitt 2008:110, 111.

5.7 Recommendation

When students are working in firms, student feedback norms are a critical quality control issue. The clinic must decide how, what kind of, and in what setting feedback will be provided. The benefits of this group supervision and feedback must be weighed against the lack of individual attention, as well as whether clinicians can continue to provide a specific level of individual attention to every student during the course. It is deemed to be appropriate for students to be progressively 'cut loose' from their reliance on their clinicians.⁸⁹

Students working in firms may perform better in representing their clients than students who represent clients on their own. Students working in firms may learn more from the clinical experience than do students working alone. Evidence suggests that benefits of pairing will not accrue automatically, and that steps must be taken in order to increase the likelihood that these benefits will be realised.⁹⁰ To benefit from working in firms, students need to be informed that collaboration is one of the goals of the clinical programme. Only then can students begin to give it the weight it deserves in their clinical work. It is important to ensure that joint work in the clinic is truly collaborative, as opposed to parallel work.⁹¹ It is submitted that students should discuss all aspects of a case, even if the work is divided. When work is divided and partners work parallel to each other, mistakes can occur when parallel work is merely put together towards the end of building a case. Therefore, even parallel tasks must be discussed at joint meetings.

Clinicians will need to inquire about students' collaboration during tutorials in order to try and identify problems that may be interfering with true collaboration. This may mean providing some time at the beginning or at the end of each tutorial during which the clinician meets with individual team members for a few minutes. This will provide some regular setting in which potentially awkward issues can be comfortably discussed. These meetings need not be weekly and need not be long. As indicated earlier,⁹² clinicians have additional time when the alternative model where students work in firms is used. Clinicians may alternatively provide for generally available consultation times during which students may consult by appointment. Clinicians should, in any event, allow for a 15-minute 'free time' between the various tutorials for quick discussions or to allow for tutorials to run overtime.

89 Evans & Hyams 2008:73.

90 Chavkin 1994/1995:232.

91 Chavkin 1994/1995:232, 233. Parallel work differs from collaborative work. With the latter, students work together on specific components of a case. With parallel work, students work together on a case, but each student works on a different component of the case.

92 See paragraph 5.1. See also Chavkin 1994/1995:213.

When operating in student firms, explicit inclusion of collaboration in evaluation criteria is required for fairness, to ensure that students pay it the appropriate degree of attention.⁹³

When this alternative model is considered, one needs to ensure that the aims of employing such a model are met, namely to address the workloads and time constraints of clinicians and to teach large numbers of students in an assessable curriculum and environment.

6. Conclusion

Large student numbers at four South African university law clinics were considered. The clinician:student ratios were found to be, in some instances, more than three times the ratio recommended at other international jurisdictions. It was also confirmed that CLE should be a mandatory course in the LLB curriculum and that the focus of the clinicians should be on student training.

The solution for training and teaching large student numbers in CLE courses was found in grouping students into student law firms for collaborative work. The student firm size was discussed and it was suggested that students work in pairs within student firms. The firm set-up and operations were also discussed. The possibility of social loafing with collaborative work was considered, challenges identified and solutions proposed.

Upon consideration, it was shown that the advantages of collaboration far outweigh any disadvantages.

Some of the recommendations included that student feedback norms be regarded as a critical control issue and that joint firm tutorials and workshops be held. The grouping of students in firms will ensure less contact time with clinicians, which will address their workloads and time constraints.

93 Chavkin 1994/1995:236.

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