

unlikely to produce the best outcome. Each stage must realise that there is no clear dividing line and inform the others. It is difficult to quarrel with the proposition that any educational institution must have final control over the content of the courses offered by it and the prerequisites for any award made by it. At the same time, however, no educational institution can claim an entitlement to determine the prerequisites for a person to be admitted to a particular profession. Nonetheless, the incorporation of PLT courses into the university curriculum ought to have the potential for a change for the better in the content of such courses.

This approach requires that pressures from the practising profession to add to a curriculum by teaching more should be resisted if they are aimed at no more than seeking to make students familiar with the performance of more routine tasks, often with the emphasis on detailed minutiae. An emphasis on the acquisition of merely mechanical knowledge of this type will tend towards the lowest common denominator of legal practice and is unlikely to lead to the production of practitioners who have the facility of applying particular skills to other areas. (p. 217)

The development of curriculum ought to occur in the context of a healthy interaction between the scholarly traditions of a university which endeavours to achieve the teaching of those skills which will fit the student for actual practice. If it does, students will grasp the concept of law as a learned profession; members of staff will grasp the reality of being engaged in a scholarly pursuit; and students will not feel that a practice course is an anti-climax and of little benefit.

The expression 'curriculum development' conjures up a number of distinct concepts. A lawyer's work is a mixture of the mundane and the intellectual. There should be real

endeavour to design tasks to be performed in legal practice courses so that the relevance of the application of intellectual skills to the mundane and the continuing relevance of practical matters to the intellectual are part of the ongoing learning process.

All this must be done in the context of a proper set of aims. Putting aside matters of honesty and professional conduct, the writer suggests that most of the failings of lawyers have their origin in the lack of ability to think and express themselves clearly and logically. Every task performed by a lawyer contains these elements. It is not suggested that the emphasis on performing tasks in a course of practical instruction is inappropriate, but that is essential that such courses be concerned with ensuring that students acquire the ability to perform those tasks which they will be required to perform in practice. The emphasis should not be on the task qua task but rather on how the teaching of such a task may be made the vehicle for teaching wider skills.

Task orientated instruction must be a learning experience relevant to a wide range of situations. Each task can be used as a vehicle to teach an understanding of the legal landscape; an understanding of the needs of the client; an ability to determine what is to be done to satisfy those needs; an appreciation of proper professional standards; an ability to comprehend written materials; and an ability to express him or herself clearly.

Direct teaching of the substantive law is not something which is advocated by the author. Inevitably it will be taught as being incidental to the tasks. The substantive law changes from day to day. The interests of students are better served by equipping them to cope with and absorb changes in the law as they occur rather than by teaching them the minutiae of law as it may presently be in force. They should know how to find the law and have the skill to appreciate its

significance and apply it when they have found it.

LEGAL EDUCATION GENERALLY

Practice makes perfect

C Sherrin

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The role of legal education is two-fold: to provide a liberal intellectual experience for students who are not necessarily intending to qualify as lawyers and to provide specific professional education for those who are. This duality has created conflicts in legal education so that at worst, the liberal confronts the practical, theory is contrasted with practice, the cognitive with skills, the pedagogical with the clinical. The plurality of objectives can be accommodated by a sophisticated educational progression which provides choices and enables students to diverge from a common path at critical stages.

The pedagogical objectives of all legal education should be to inculcate an understanding of pervasive theoretical concepts and fundamental principle. In addition, legal educators have to equip their students for the intellectually and morally strenuous professional life that lies before them. Like all university teachers, legal educators strive for academic excellence and intellectual integrity. The professions demand high standards, which involve consideration of curricula and examination papers but which is often reduced to a jealous scrutiny of the pass mark.

The specific educational objectives of modern legal practices courses are first, to enable the student to adapt the knowledge of the law and the intellectual skills acquired in the academic stage to the problems that arise in legal practice and secondly to lay the foundations for the continuing development of professional skills

and techniques throughout his or her career.

The current debate on legal education takes place in the context of an increasing recognition of the importance of transferable skills. These include the ability to analyse, research, argue, select, synthesise and theorise, as well as personal skills, such as communication skills, analytical reasoning, lateral thinking, interpersonal skills, planning skills and decision-making. Today, the emphasis on the ability to transfer techniques learnt in one context to another and thus the ability to problem solve over a wide range of different applications pervades all aspects of legal education.

The problem of selection, the question of choice and the futility of trying to teach comprehensive knowledge have had a profound effect on the educational objectives of all our courses. One view is that a degree of knowledge should be regarded merely as an essential pre-requisite to the acquisition of transferable intellectual and professional skills. The better view is that the development of skills is not an alternative to a traditional acquisition of knowledge but that skills operate within a minimum core of essential fundamental principle and are thus rooted in knowledge. Each complements the other.

There should be a greater unity and integration of the various stages of legal education. The case that universities are the proper forum to conduct the professional stage of legal education can be made. A legal practice course requires sophisticated educational skills and considerable academic resources. Vocational or professionally oriented courses can offer research opportunities, intellectual demands and educational challenges analogous to other areas of academic study and such courses are demonstrably consistent with the academic freedom of universities.

The ethical conduct of lawyers is a legitimate area of public concern and inquiry and an area legal educators must prioritise. The competence and integrity of lawyers is vital to the rights of the individual, to the balance of powers of the organs that control our society and to the foundation of the rule of law that underpins our fundamental values. The public has a legitimate interest in the standard of professional competence and in the ethical standards of the individual practitioner. Professional bodies have an interest in seeking to control their profession and its membership, but the training and qualification of lawyers is not simply the concern of professional bodies. To ensure that the system of entry is fair and open, a partnership is needed between regulation by the professions and the involvement of independent and publicly accountable bodies and institutions. The combination will ensure that lawyers are educated and trained to the highest degree of competence and that they practise the strict standards of integrity and ethical conduct implicit in their profession.

The profession should be potentially open to all with the required character and ability and such persons should have access to the proper education and training. Professional status as a barrister or solicitor today in Hong Kong is the culmination of a four stage process of qualification consisting of a degree, a compulsory one year legal practice course, a period of training as a trainee solicitor or a pupil barrister and a period of restricted practice and compulsory continuing education, sometimes summarised as 'AVAC': academic, vocational, apprenticeship and continuing. The dilution of the old professional monopoly of legal education into three provides an opportunity for the universities, as publicly accountable institutions, to mitigate some of the defects of exclusive monopolistic professional control.

However, the AVAC model may have outlived its usefulness. The acronym tends to reinforce four discrete stages and the divisiveness is emphasised by the fact that the first two stages necessarily take place in an educational institution and the second two years, the clinical years, are based in practice. The result of this sequential progression is that the stages become separate and students focus on the current stage without regard to the previous one or to the future. This structure tends to reinforce the conservatism of the institutional and professional bodies involved and favours the children of middle class ethnic majority parents who follow a conventional educational path.

We should be aiming for a more unified and fluid single educational process which would introduce more cohesion by breaking down the compartments. The first report Lord Chancellor's Committee on Legal Education and Conduct (1995) has identified a number of alternative models for consideration. These include the American law school model, the Continental European model, the Scottish model, the Northumbria University model and the 'free market' model, all of which contain varying degrees of integration and choice.

Rather than trying to cater for the competing interest by giving each an exclusive priority at discrete stages, a more integrated progression of education may emerge from these alternative approaches with a much more fluid flow between the so-called academic, professional, vocational and continuing stages.