

*MA du Plessis*

---

# Clinical legal education: Identifying required pedagogical components

## Abstract

Clinical legal education is mainly a practical course, although it includes training in the substantive law. University law clinics generally have to satisfy two main objectives, namely teaching of students and service to the community. Clinical teaching methods can make distinctive contributions to student learning. Clinical pedagogy consists of three main categories, namely the clinic experience, classroom instruction and tutorial sessions. These, as well as specialised clinical units, are discussed. Clinic duties expose students to real consultations with live clients posing with real problems, ensuring a sustainable platform for teaching and learning. Classroom instructions are required for substantive law review and teaching in fields such as professionalism and ethics. Tutorials are the most focused form of instruction, where the clinical experiences and classroom instructions are transferred into legal practice.

## Kliniese regsopleiding: Identifikasie van die nodige pedagogiese komponente

Kliniese regsopleiding is hoofsaaklik 'n praktiese kursus alhoewel dit opleiding in die substantiewe reg insluit. Universiteitsregsklinieke moet in die algemeen aan twee hoofdoelstellings voldoen, naamlik die opleiding van studente en dienslewering aan die gemeenskap. Kliniese opleidingsmetodes kan aansienlike bydraes tot studente se studies maak. Kliniese pedagogie omvat drie hoofafdelings, naamlik die kliniekondervinding, formele lesings en tutoriale instruksie. Hierdie, sowel as gespesialiseerde klinieke word bespreek. Dienslewering in die kliniek stel studente bloot aan ware konsultasies met lewende kliënte met regte probleme wat 'n volhoubare platform vir leer verseker. Formele lesings is nodig om die substantiewe reg te hersien asook vir instruksies in onderwerpe soos professionele en etiese praktyke. Tutoriale is die mees gefokusde vorm van instruksie waar die kliniekondervindings en formele lesings tot regspraktyk oorgedra word.

*MA du Plessis, Associate Professor, School of Law, University of the Witwatersrand, Johannesburg.*

*This article emanates from a PhD study undertaken by the author, comprising a review of four South African university law clinics and comparing those to data collected from international jurisdictions. Empirical studies reflect those done at the University of the Witwatersrand Law Clinic.*

## 1. Introduction

Clinical legal education (CLE) forms part of the LLB curriculum at the South African Universities that are members of the South African University Law Clinics Association (SAULCA),<sup>1</sup> as well as in many of the law-degree curricula in other countries.<sup>2</sup> There are many similarities in the approach to

- 1 SAULCA (formerly AULAI) is a voluntary association of all South African University Law Clinics, established to promote and protect the interests, values and goals of its members. The following university law clinics are members: Rhodes, Stellenbosch, Cape Town, Fort Hare (East London campus), Johannesburg, KwaZulu-Natal (Howard College and Pietermaritzburg), Limpopo, Pretoria, South Africa, Zululand, Venda, Witwatersrand, Nelson Mandela Metropolitan, Free State, North-West (Potchefstroom and Mafikeng campuses), Walter Sisulu, and Western Cape. SAULCA's vision includes its "dedicat[ion] to promoting excellence in clinical legal education ..." and its mission includes the "promot[ion] [of] high quality CLE programmes at universities in South Africa. <http://www.saulca.co.za/home> (accessed on 11 May 2014). CLE programmes, having an educational focus, do not stand alone and form part of the LLB curriculum in one form or another at the SAULCA member universities.
- 2 For Southeast Asia, see <https://www.babseacle.org/clinical-legal-education>, where, since 2003, Bridges Across Borders Southeast Asia Community Legal Education Initiative (BABSEA CLE) works collaboratively with universities, law students, law faculties, lawyers, members of the legal community, and justice-related organisational partners to develop CLE programmes throughout Southeast Asia. For the USA, see <http://law.fordham.edu/clinical-legal-education/clinics.htm>; <http://www.cleaweb.org/> and [web.law.columbia.edu/clinics](http://web.law.columbia.edu/clinics). For Europe, see <http://encle.org/>, stating that CLE is a rapidly growing form of legal education across much of Europe and that it is widely accepted as a powerful pedagogical model that engages students and universities in the life of the community. For India, see [www.gaje.org/wp-content/uploads/2012/09/Cor-JGLS-web\\_low.pdf](http://www.gaje.org/wp-content/uploads/2012/09/Cor-JGLS-web_low.pdf), and [www.lawyersclubindia.com/articles/print\\_this\\_page.asp?article\\_id...](http://www.lawyersclubindia.com/articles/print_this_page.asp?article_id...) For Canada, see [accle.ca/](http://accle.ca/) (Association for Canadian Clinical Legal Education). For the UK, see <https://www.northumbria.ac.uk/about-us/.../clinical-legal-education/>; [orca.cf.ac.uk/27655/1/CLINICED.pdf](http://orca.cf.ac.uk/27655/1/CLINICED.pdf), and [Clinical legal education at UKCLE 78.158.56.101/archive/law/...and.../clinical-legal-education/index.html](http://www.ukcle.org/). For Ireland, see [www.nuigalway.ie](http://www.nuigalway.ie) › ... › School of Law, Student Information. For the Middle East, see [Clinical legal education in Jordan - University of Michigan ... repository.law.umich.edu/cgi/viewcontent.cgi?article=1753&context...](http://www.law.umich.edu/cgi/viewcontent.cgi?article=1753&context...); for Israel, see [www.austlii.edu.au/Databases/](http://www.austlii.edu.au/Databases/); for Palestinian territory (Hebron university focusing on *CLE in Palestine*), see <https://www.linkedin.com/pub/dr-mutaz-m-qafisheh/57/624/256>. For Australia, see [Best Practices Australian Clinical Legal Education - Council ... at www.cald.asn.au/.../Best\\_Practices\\_Australian\\_Clinical\\_Legal\\_Education...](http://www.cald.asn.au/.../Best_Practices_Australian_Clinical_Legal_Education...) For South America, see *Clinical Legal Education in Argentina: Challenges and Opportunities*. Pepe Clarke and Developing Legal Clinics in Brazil: Remarks on the ... - IALS preview. [ialsnet.org/wp-content/uploads/2015/08/Lennertz.pdf](http://ialsnet.org/wp-content/uploads/2015/08/Lennertz.pdf). For Eastern Europe, see [Introducing Legal Clinics in Olomouc, Czech Republic, www.northumbria-journals.co.uk/index.php/ijcle/article/download/.../85](http://www.northumbria-journals.co.uk/index.php/ijcle/article/download/.../85); The Polish Legal Clinics Foundation [www.fupp.org.pl/en/](http://www.fupp.org.pl/en/) and [www.fupp.org.pl/download/legal\\_clinic.pdf](http://www.fupp.org.pl/download/legal_clinic.pdf); *Russia*: [wp.cedha.net/wp-content/uploads/2011/05/doc246-eng.pdf](http://wp.cedha.net/wp-content/uploads/2011/05/doc246-eng.pdf); [https://germanlawjournal.com/.../PDF\\_Vol\\_10\\_No\\_07\\_SI\\_823-846\\_Wil...](https://germanlawjournal.com/.../PDF_Vol_10_No_07_SI_823-846_Wil...) The Far East: for China, see *Clinical Legal Education in China: In Pursuit of a Culture of Law and a Mission of Social Justice*. Published by Yale Law School. [digitalcommons.law.yale.edu](http://digitalcommons.law.yale.edu) › YHRDLJ › Vol. 8 (2005) › Iss. 1; [digitalcommons.law.yale.edu/cgi/](http://digitalcommons.law.yale.edu/cgi/)

CLE, both locally and abroad, but there seems to be as many, if not more, differences.<sup>3</sup> CLE can encompass a variety of courses and clinical methods. A recent definition of CLE reads:<sup>4</sup>

[c]linical legal education involves an intensive small group or solo learning experience in which each student takes responsibility for legal or law-related work for a client (whether real or simulated) in collaboration with a supervisor. Structures enable each student to learn from their experiences through reflecting on matters including their interactions with the client, their colleagues and their supervisor as well as the ethical dimensions of the issues raised and the impact of the law and legal processes.<sup>5</sup>

A general trend in legal education is an augmented focus on the practical application of the substantive law.<sup>6</sup> CLE is mainly a practical course although it includes training in the substantive law. CLE serves a two-fold purpose, namely practical legal training of students and providing free legal services to the (indigent) community.<sup>7</sup>

South African universities have identified their objectives as threefold, namely teaching, community service, and academic research.<sup>8</sup> University law clinics generally have to satisfy two main objectives, namely teaching of the students and service to the community.<sup>9</sup>

Clinical teaching methods can make distinctive contributions to student learning, and the most productive use of those methods requires an understanding of the objectives for which they can be deployed. South African university law clinics seek to meet dual objectives in relation to student learning and community service causing “dynamic tensions”<sup>10</sup> between these objectives.

Discussion of clinical pedagogy, in three categories, namely the clinic experience, classroom instruction and tutorial sessions, as well as specialised

---

viewcontent.cgi?article=1049.... See also [ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2045&context=ilj](http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2045&context=ilj); [www.palgrave.com/page/detail/Clinical-Legal-Education-in-Asia/?K...](http://www.palgrave.com/page/detail/Clinical-Legal-Education-in-Asia/?K...); Clinical Legal Education and Access to Justice in China at [www.jstor.org/stable/40042655](http://www.jstor.org/stable/40042655); 6 The “Chinese Characteristics” of Clinical Legal Education. For Japan, see <https://www.law.berkeley.edu/php-programs/.../facultyPubsPDF.php?...>; [www.palgrave.com/page/detail/Clinical-Legal-Education-in-Asia/?K...](http://www.palgrave.com/page/detail/Clinical-Legal-Education-in-Asia/?K...); Law Clinics in Taiwan: [scholarlycommons.law.hofstra.edu/cgi/viewcontent.cgi?article=1311...](http://scholarlycommons.law.hofstra.edu/cgi/viewcontent.cgi?article=1311...) (all accessed on 1 September 2015).

3 These differences were indicated in Du Plessis 2014a, where a review was conducted across four South African university law clinics, with references to multiple jurisdictions abroad.

4 Giddings 2013:14.

5 Prof. Jeff Giddings, Griffith University, Brisbane, Australia.

6 Du Plessis 2014a:9, 10.

7 Du Plessis 2014a:9, 10.

8 Wimpey & Mahomed 2006:17.

9 Du Plessis 2008a:2. In recent years, clinicians are labouring under increased pressure to publish academic research.

10 Gavigan 1997:443, 459.

clinical units, will serve to address the question of which components of CLE teaching will best contribute to advance the identified purposes of the objectives of the clinic.<sup>11</sup>

In this article, I shall draw on literature from a number of jurisdictions, both locally and globally. It should be noted that the clinical models of the comparative foreign jurisdictions are by no means superior; in fact, it is submitted that South African university law clinics, in both structure and practice, are under-recognised globally for their leading methodologies. It is nonetheless helpful to draw on foreign jurisdictions.

## 2. Pedagogy: The clinical experience and inclusion of a classroom and tutorial components

The pedagogy of CLE should ideally consist of three basic components, namely clinical duty, classroom teaching, and clinician/student tutorial sessions. In gauging the effectiveness of these components, student feedback serves as a valuable benchmark.

At the end of the 2009, 2010 and 2011 academic years, students at the University of the Witwatersrand Law Clinic, generally referred to as Wits Law Clinic (WLC), were requested to optionally and anonymously complete a questionnaire on assessment of the course Practical Legal Studies. For 2009, 27 students, for 2010, 17 students, and for 2011, 16 students completed the questionnaire.<sup>12</sup>

As part of the clinical course evaluations at WLC, students were asked:<sup>13</sup> “Please indicate how much knowledge and experience you gained from lectures, tutorials and clinic duty.” For 2009,<sup>14</sup> 13 students gave positive feedback, and 14 students gave negative feedback on lectures. For tutorials, 24 students gave positive feedback, with two students commenting that “during tutorials we also discuss other alternative matters that may arise from the same set of facts”, and one student gave negative feedback, commenting “I hate tutorials”. Two students left the answer blank. For clinic duty, 25 students gave positive feedback, and two students gave negative feedback, commenting that “we learnt nothing, the clients are not sophisticated”. For 2010,<sup>15</sup> seven students gave positive feedback on lectures, and 10 students gave negative feedback. For tutorials, 15 students gave positive feedback, and two students gave negative feedback. For clinic duty, 16 students gave positive feedback, and one student gave negative feedback.

---

11 For purposes of this article, the objectives are student learning and community service.

12 These surveys were optional and voluntary. See Du Plessis 2014a:37.

13 Du Plessis 2014a:37.

14 Du Plessis 2014a:37.

15 Du Plessis 2014a:37.

For 2011,<sup>16</sup> eight students gave positive feedback, and eight students gave negative feedback on lectures.<sup>17</sup> For tutorials, 15 students gave positive feedback, and one student gave negative feedback.<sup>18</sup> For clinic duty, 16 students gave positive feedback, and no students gave negative feedback.<sup>19</sup>

The results over the three-year survey show that students were less enthusiastic about the classroom instruction. The survey indicates very high levels of student satisfaction with clinic duties and tutorial instructions.<sup>20</sup>

The students' low satisfaction rate with the classroom instruction should be addressed. It is submitted that students may find classroom instruction at the beginning of the course, when practicalities relating to office procedures and legal aid are lectured, stale when compared to substantive law courses. However, these are necessary in practical courses. It is submitted that later classroom instructions should focus on implementing the substantive law in the practical environment when students will be more experienced in their clinic duties, and the applications will be real, making sense and, therefore, more interesting.

The three components of clinical pedagogy need to be reviewed when setting a curriculum.

### 3. The clinic experience

The most valuable clinical programmes prove to be those that place significant operational responsibility in the hands of students, because that level of trust encourages their learning more effectively than any other strategy.<sup>21</sup> In South Africa, the first university law clinics were established in the early 1970s.<sup>22</sup> A recent study, in which four South African university law clinics were reviewed, indicated that students were allowed to consult with clients within a few weeks (or often less than that) from the

---

16 Du Plessis 2014a:37.

17 For 2009, 48% of the students, for 2010, 41% of the students, and for 2011, 50% of the students indicated that they gained knowledge and experience from lectures.

18 For 2009, 89% of the students, for 2010, 88% of the students, and for 2011, 94% of the students indicated that they gained knowledge and experience from tutorial instructions.

19 For 2009, 93% of the students, for 2010, 94% of the students, and for 2011, 100% of the students indicated that they gained knowledge and experience from clinic duties.

20 Du Plessis 2014a:37.

21 Evans & Hyams 2008:60. Whilst agreeing that the operational responsibility must be in the hands of students, adequate student supervision should not be neglected. In this regard, Stuckey (2007:175, 176) indicates that "[t]he ideal is for all student activities to be observed by ... supervisors who have been trained to provide feedback and critique", stressing the fact that "[a] positive relationship between student and supervisor is of paramount importance".

22 De Klerk & Bodenstern 2006:264.

start of the clinical course.<sup>23</sup> At the Law Clinics of the Universities of the Witwatersrand and Johannesburg, students consult with clients from the second week of clinic duty and, at the University of the Free State Law Clinic, students already consult during their first clinical session.<sup>24</sup> “At the University of Pretoria Law Clinic students attend an intensive two-day workshop, whereafter they consult with clients, initially in groups, later in pairs and eventually as individuals”,<sup>25</sup> This approach is mirrored at Monash in Australia.<sup>26</sup> Within a few weeks from the start of their clinical course, students are trusted to see clients on their own and to provide advice to clients after consulting with the clinician.<sup>27</sup> This proved to be effective in developing respect for clients, increased student confidence and the educational outcome of rapid, but sustained and comprehensive student learning.<sup>28</sup>

Reflecting on the above, the earlier indication that clinical supervision by trained clinicians should be mandatory<sup>29</sup> will ensure client care, whilst allowing students some meaningful autonomy during their learning processes. This also serves to confirm the strength of the clinical pedagogy, ideally having to consist of the three mentioned components, as students are continuously instructed in clinical processes during classroom instructions. Any challenges encountered during clinical duties can be discussed in-depth during weekly tutorials. The combination of clinical supervision and the suggested clinical pedagogy will, therefore, ensure client care while students are being trained.

The infrastructure for an in-house live-client model is well established in South Africa.<sup>30</sup> In-house live-client courses can be used to achieve clearly articulated educational goals.<sup>31</sup> It is important to have a clear understanding about what students are required to learn, especially in light of the high cost of operating these clinics. Therefore, students need to be taught about their relationships with the clinicians and the restrictions placed on their freedom to act as lawyers.<sup>32</sup>

---

23 Du Plessis 2014a:25, 26.

24 Du Plessis 2014a:25, 26.

25 Haupt 2006:234, 235.

26 Hyams 2008:25.

27 Hyams 2008:25.

28 Hyams 2008:25; Evans & Hyams 2008:69.

29 Stuckey 2007:175, 176.

30 For more on this model (also sometimes referred to as an ‘in-house clinic’), see Du Plessis 2008a:13.

31 In South Africa, seven main goals, each with their own subgoals, have been identified: professional responsibility; judgement 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 2006:266-279.

32 Stuckey 2007:189.

Although acknowledging that a substantial part of traditional or doctrinal law teaching incorporates problem-solving,<sup>33</sup> practice-oriented clinical experiences teach students a different, but equally important as traditional teaching, kind of reasoning.<sup>34</sup> These are “ends-means thinking”, or problem-solving – described as “the process by which one starts with a factual situation presenting a problem or an opportunity and figures out the ways in which the problem might be solved or the opportunity might be realised”.<sup>35</sup> Vawda describes “problem-solving as a highly interactive methodology whereby students and clinicians work together in solving clients’ problems”.<sup>36</sup> He identifies a number of steps involved in the problem-solving approach, such as problem definition, option identification, decision-making, and implementation.<sup>37</sup> The process involving these steps is applied in the clinical setting initially,<sup>38</sup> with continuous re-enforcement during tutorial sessions. A live-client clinic enables students “to scratch beneath the surface of the legal system and explore the hinterland of expectations, promises and goals engendered by the legal process.”<sup>39</sup>

The clinical experience, where students explore legal practice under supervision, is thus a valuable platform, where they can, from their first client interview, conducted with much uncertainty and often with apprehension, hone their skills while gaining confidence. Empirical data collected for PhD research studies in CLE<sup>40</sup> revealed the following impact of clinical duties on students during the first weeks.<sup>41</sup> A student commented on her first two weeks in the clinic:<sup>42</sup>

If I had to describe my first two weeks in the law clinic in a word, that word would be INTENSE. I walked in on day one with my nerves forcing my heart somewhere in the vicinity of my shoes, and was already taken aback by the number of people still in the waiting area at 10 am. It struck me that these people either had to wake up early, take a day off work (if they had any), or make transport arrangements so that they could get to the clinic on time. All that effort, just to get to a bunch of nervous fourth years with minimal real-world experience? They really think we can help them? Wow. The thought of that alone is enough to make me want to turn tail and run! But, I didn't. [My partner] and I met with our first client, and initially my confidence failed me. I tried to remember what we'd been taught in lectures about interviewing skills. Don't ask too many questions at first. Listen actively. Try not to interrupt. All of that went

---

33 Findley 2006-2007:311.

34 Findley 2006-2007:311.

35 Findley 2006-2007:311.

36 Vawda 2004:121. Problem-solving typically occurs during tutorial sessions where clients' cases are discussed in-depth, as will be indicated in section 5.

37 Vawda 2004:121.

38 Vawda 2004:121.

39 Hall & Kerrigan 2011:34.

40 Du Plessis 2014a:132-135.

41 The data was collected from students serving at the University of the Witwatersrand Law Clinic.

42 Du Plessis 2014a:132.

out of the window pretty quickly, as instinct kicked in. Our client didn't need prompting to tell his story. I've noticed that many of them are so desperate for help that you barely get to sit down before they start giving you details of their situation.<sup>43</sup>

Students also commented on the emotional aspects of clinic duty:<sup>44</sup>

I also had a bit of difficulty with having to inform clients that we cannot take on their cases. It's hard not to get a bit emotional when clients detail how badly they've been treated by someone who owes them money, or by the legal system itself. Even though you know you have to be objective and focus on the issues, these are still real people, with real problems. I feel like we owe them a duty to do as much as we can for them. Having to tell them that we can't help them has hit me hard.<sup>45</sup>

Two further comments:

The emotional aspect is giving me the greatest difficulty at the moment. I know that a sense of detachment will be developed with experience and exposure to more clients over the weeks. I just hope that I don't become too detached – focused so much on getting a good mark that I forget that we're dealing with real lives here.<sup>46</sup>

Our clients come stressed, scared, worried, desperately seeking for someone to help. ... We really get heartsore, listening to all and hearing their problems. Yet, as students, we realize there is only so much we can do.<sup>47</sup>

Part of the learning process will entail identifying problems and challenges in the practice of law. Students were not shy to comment on mistakes that were made:<sup>48</sup>

Mr X's' (a candidate attorney) nonchalance concerned me a bit. He didn't seem bothered that he had in his hands a closed file that was missing an important piece of documentation. We've had quite a few clients who had had bad experiences with legal representatives before they came to the clinic. ... To think that the law clinic could be guilty of similar crimes frustrates me just as much.<sup>49</sup>

---

43 Du Plessis 2014a:132. This paragraph can alternatively be summarised as follows: A student described her first two weeks in the law clinic, commenting that she was overwhelmed by the number of clients who attended. She felt nervous and initially lacked confidence, but found that the clients were very cooperative, ensuring positive consultations.

44 Du Plessis 2014a:133-135.

45 Du Plessis 2014a:133-135.

46 Du Plessis 2014a:133-135.

47 Du Plessis 2014a:133-135. These quotes indicate that the emotional aspects were the most challenging. The clients' problems and needs, however, prompted students to render their best assistance.

48 Du Plessis 2014a:133-135.

49 Du Plessis 2014a:133-135. In other words, they were critical of previous mistakes made by attorneys.



Students also showed appreciation:<sup>50</sup>

The best part of being in the consumer [clinic] unit is that we are open to a lot of scenarios and learn more than average about cases. We are taught by our Professor to see more into cases, to cross question and most importantly to read in between the lines and not only go on the initial word of the client. ... We learnt that life is practical, not a textbook, and facing day-to-day problems, no book can teach you how to solve.<sup>51</sup>

Students' hands-on learning during their clinical experiences arguably makes this the most valuable component in clinical pedagogy.

#### 4. The classroom component

In a live-client clinic a 'problem-first' approach is often used as pedagogy.<sup>52</sup> This leads to clinicians labouring under "an intrinsic belief that students will learn certain skills ... simply by seeing a real client with a legal problem".<sup>53</sup> The assumption is then that they will develop further skills from having to find a solution to that problem "on the run".<sup>54</sup> I am in agreement with Evans and Hyams<sup>55</sup> who argue that, although "[t]here is evidence that many things are learned in this manner ... this 'osmotic' exposure model may not ... be the best way in which to learn lawyering skills". It is, therefore, advisable to run a seminar and tutorial programme alongside the live-client work.<sup>56</sup> This will support and expand the legal skills learnt in the clinical environment. The classroom component is also essential, because the clinician often has to "teach things students should have learned before enrolling in client representation courses, such as the rules of evidence and professional conduct and basic lessons about lawyering skills".<sup>57</sup> LLB curricula vary across universities. The importance of classroom instruction is accentuated in instances where some substantive and procedural law courses are taught during the same academic year as the CLE course.

The classroom component, whether in smaller groups or by means of seminars, is also regarded as important in the South African teaching of CLE.<sup>58</sup> Classroom content can support a focus on professionalism and ethics,<sup>59</sup> and is also essential for the teaching of certain types of work done by practitioners that may be substantial and that students are unable

---

50 Du Plessis 2014a:133-135.

51 Du Plessis 2014a:133-135. In other words, they acknowledged the multitude of skills they learnt and commented that those cannot be found in text books, only by way of practical experience.

52 Evans & Hyams 2008:62; Hyams 2008:29.

53 Hyams 2008:29.

54 Hyams 2008:29.

55 Evans & Hyams 2008:63.

56 Evans & Hyams 2008:63.

57 Stuckey 2007:189.

58 Osman 2006:276; Haupt 2006:234; McQuoid-Mason 1982:165; Vawda 2008:89.

59 For ethical skills exercises, see Albert & Gundlach 2011:1-10.

to be taught in a clinical setting only.<sup>60</sup> This will require a concomitant reduction in casework load.<sup>61</sup> Vawda suggests a classroom component of two hours per week when clinicians meet with all the students and offer instruction in the theory of clinical law, skills, ethics and values,<sup>62</sup> as the focus of CLE is rather on training students than (uncontrolled) client services. Hyams holds that “[a]dequate time must be allowed in the formal clinical classroom curriculum and in the supervisor/student relationship to allow both formal (classroom) instruction and informal discussion to take place.”<sup>63</sup> “At its most basic, the emphasis of the clinic may need to be restructured so that the number of clients that are seen in a given week is reduced, or the seminar/classroom component of the units undergoes a renewal and change of focus”.<sup>64</sup> Grouping together students who attend to the same clinical duties as per their schedule can renew classroom instruction. Each group receives classroom instruction from the clinician supervising them during their clinic duties. Apart from the set curricular instruction, the clinician will have the opportunity to focus on specific challenges encountered by students during clinic duties.

There is value in integrating practising lawyers and judges into the classroom component as guest lecturers. They can give students a realistic view of the practice of law and bring diversity to CLE.<sup>65</sup>

## 5. The tutorial component

Tutorial sessions are geared towards guiding students through the stages of learning.<sup>66</sup> The proper implementation of CLE requires close and direct supervision of students, which will satisfy the goal/outcome aimed at ensuring that the student is working effectively, efficiently and ethically for the client.<sup>67</sup> Clinicians should enforce regular tutorial meetings.<sup>68</sup> CLE, of which tutorials form a large component, “is an active pedagogy in which students are required to perform certain tasks and draw lessons from those experiences”.<sup>69</sup> The learning process is enhanced through action, verbalisation of thoughts and an active engagement with ideas through

---

60 Styles & Zariski 2001:65; Giddings 2008:12; Hyams 2008:31, 32.

61 Hyams 2008:31, 32.

62 Vawda 2004:119. The clinical programmes at the University of KwaZulu-Natal are described in McQuoid-Mason 2008(b):43.

63 Hyams 2008:31, 32.

64 Hyams 2008:31, 32.

65 Stuckey 2007:157, 158.

66 Colon-Navarro 2011:1-10.

67 Vawda 2004:122. See also the goals/outcomes later in this chapter. Cody & Schatz 2010:174.

68 Although the tutorial method of teaching, which can also be referred to as reflection sessions that students have with their clinical supervisors, has been used since the inception of clinics in the USA, UK and South Africa, such method was recommended as a method for imparting legal education in India only since 1994. See Bloch & Prasad 2006:178, 179; Lerner & Talati 2006:121.

69 Vawda 2004:120.

consultation, discussion and feedback involving peers and clinicians. Vawda suggests that clinical teaching,<sup>70</sup> and I submit specifically the intensity of such teaching through tutorials, is arguably a superior pedagogy to that of presenting lectures to large numbers of students in a lecture-hall setting, as it attempts to integrate all the processes of learning in a holistic approach.<sup>71</sup> The relationship between clinicians and their students is about managing the expectations of the students, clients and clinicians. Clinicians need to be consistent in dealing with these expectations, which become clear during tutorial sessions. Student feedback norms are a critical expectation control issue,<sup>72</sup> as this can serve as an examination of the clinical curriculum.<sup>73</sup>

South African university law clinics face an often daunting challenge of large student numbers. These may impact on the quality of tutorial sessions. These may be overcome when students are allocated to student firms and tutorial sessions are conducted with each such student firm.<sup>74</sup> Apart from easing tutorials, the assessment of large student numbers will also be less challenging.<sup>75</sup> At the end of the 2009, 2010 and 2011 academic years, students at WLC were requested to optionally and anonymously complete a questionnaire on assessment of the course Practical Legal Studies. For 2009, 27 students, for 2010, 17 students and for 2011, 16 students completed the questionnaire.<sup>76</sup> Students were asked: "Please comment on whether your performance during tutorials should be specifically assessed on a continuous basis". For 2009, 18 students responded "yes", and nine students responded "no" to the continuous assessment of performance during tutorials. For 2010, 13 students responded "yes", and four students responded "no". For 2011, nine students responded "yes", and seven students responded "no" to the continuous assessment of performance during tutorials. The average student responses over the three years of the survey indicate a 66% majority in favour of continuous assessment during tutorials.<sup>77</sup> It is submitted that students view the tutorials, where they receive practical instructions to do real legal work, as a focus of the course. Students also view the assessment of their efforts as validation

---

70 Vawda 2004:120.

71 Vawda 2004:120.

72 Evans & Hyams 2008:73.

73 Towards the end of the academic year, students are requested to complete an evaluation of the clinical course. This evaluation form can be designed to cover students' evaluation of their experiences of the various components of the curriculum, their supervision, their views on the assessment procedures, and their contact with other members of the clinic staff. These student evaluations proved to be valuable to the clinicians at the WLC over the years, as these students' inputs influenced the curriculum planning for subsequent years. See Du Plessis 2014a:37.

74 Discussed in detail in Du Plessis 2013.

75 Discussed in detail in Du Plessis 2014b.

76 WITS LAW CLINIC 2009, 2010 and 2011. See Du Plessis 2014a:37.

77 For 2009, 67% of the students, for 2010, 76% of the students, and for 2011, 56% of the students were positive about continuous assessments during tutorials.

for the work they have done.<sup>78</sup> Tutorials are suitable *fora* for continuous assessments, whether formative or summative.

Student assessment must be continuous, as the clinician will, during the tutorials, approve students' work in advance and observe or record student performances. Consistent discussion and feedback during tutorial sessions not only inform the students about the work they are learning and what is expected of them, but also serve as constant formative assessments of the students' progress. Giddings emphasises that the assessment process should be linked very closely to the provision of useful feedback to students, which is of central importance in a clinical programme.<sup>79</sup> These can be conducted during tutorial sessions.

Tutorials also provide for appropriate fora, where student autonomy can be balanced with client protection.<sup>80</sup> Under the guidance of the clinician, the student must develop a reflective and critical approach to his/her own experience without risking harm to the client. The highest quality experience comes from a clinician who can strike the appropriate balance between allowing the student the freedom to explore, while protecting the client from harm.<sup>81</sup> Swanepoel *et al.* describe the tutorial component in CLE as a forum, where students are more relaxed and exert more effort into thinking than they would do when their immediate goal was simply to memorise material in order to pass an imminent examination.<sup>82</sup> Tutorials were also identified as *fora*, where the clinician's responsibility to provide a pedagogical basis for tackling ethical issues can manifest.<sup>83</sup>

Neglecting tutorials, where students are trained in professional practice, effectively prolongs and reinforces the habits of thinking like a student rather than as a practitioner.<sup>84</sup> Tutorials serve as a forum, where the clinician and students can discuss the merits of cases, as well as the reasons why certain cases may be discontinued.<sup>85</sup> These cases can serve as models for the teaching of "hypothesis formulation and testing in information acquisition" and "decision making in situations where options involve differing and often uncertain degrees of risks and promises of different sorts".<sup>86</sup> Tutorials in CLE should, therefore, be compulsory.<sup>87</sup>

---

78 Watson 2003:30. For a discussion on assessment challenges in the clinical environment, see Du Plessis 2009. For a PhD thesis discussion on assessments in CLE, see Du Plessis 2014a.

79 Giddings 1999:9.

80 Stuckey 2007:195.

81 Stuckey 2007:195.

82 Swanepoel, Karels & Bezuidenhout 2008:108, 109.

83 Evans & Hyams 2008:64.

84 Ortiz 2011:3.

85 This may be due to factors such as lack of merits or the impossibility to obtain relevant evidence.

86 Findley 2006-2007:311.

87 For a discussion on the disadvantages of tutorials when they are not compulsory, see McQuoid-Mason 1982:163.

## 6. Specialisation

When planning and setting a curriculum, the possibility of operating the clinic in specialised units needs to be considered.<sup>88</sup> Stuckey agrees that it is impossible to prepare students to practise competently in every field of law.<sup>89</sup> He suggests that clinics could prepare students either in a limited range of legal services or for very specific areas of practice. When selecting an area of specialisation, clinicians have to ensure that it will be conducive to good teaching.<sup>90</sup> Guidelines are: beneficial to the students (the full spectrum of the curriculum must be covered, intensive teaching, in smaller groups, by a specialist in that area of the law); benefit to the clients (an identified need in the indigent community), and benefit to the clinicians (the availability and/or enhancement of specialised skills).<sup>91</sup> To prevent undue exclusivity in specialisation, a general clinical unit may be retained alongside specialist clinics.

Specialised units within the larger clinical setting are becoming the norm at more South African university law clinics.<sup>92</sup> Parameters for case specifics and student learning criteria will ensure manageable caseloads.<sup>93</sup> Strict guidelines for assessment are essential to ensure “that students are assessed in an even-handed manner across the different specialised units.”<sup>94</sup>

Similar to Stuckey, who voiced the perspective in the USA, Australians Evans, Hyams and Giddings believe that specialist clinical units may provide students with “a richer skill set and a deeper and more comprehensive milieu in which to practice those skills”, which will benefit the law school and serves as a valuable resource for the community.<sup>95</sup> Such specialised clinical units must conform to the pedagogical aims of the CLE programme. In South Africa, upon measuring the impact of specialisation, a number of successes were noted.<sup>96</sup> Among these are intensified clinician skills leading to publication output; students benefitting through focused training in smaller groups; assessments conducted by experts, and improved networking and funding opportunities.

---

88 For specialisation within a South African university law clinic, see De Klerk & Mahomed 2006:306-318; Du Plessis 2007:44-63. Examples of specialised clinical units are in family law, consumer law, delict, refugee law, labour law, and housing and evictions. A criminal unit is not advisable, as the pedagogical aims of CLE may not be met, due to the lack of drafting experience. A criminal unit is advised for the training of candidate attorneys.

89 Stuckey 2007:41.

90 De Klerk & Mahomed 2006:314.

91 De Klerk & Mahomed 2006:312, 313.

92 De Klerk 2006:250; Du Plessis 2006:284, 285; De Klerk & Mahomed 2006:306-318; McQuoid-Mason 2008a:10; Haupt 2006:238-241. See also <http://www.saulca.co.za>.

93 Du Plessis 2008b:14.

94 Du Plessis 2009:97, 98.

95 Evans & Hyams 2008:66, 67; Giddings 2008:4.

96 De Klerk & Mahomed 2006:312-314.

## 7. Conclusion

In discussing the recommended pedagogy for CLE courses, value was found in the three recommended modes of instruction, namely the clinical component, classroom instruction and tutorials.

Clinic duties expose students to real consultations with live clients posing with real problems. When students are confronted in this live-client situation, they necessarily have to draw on more than simply consultation skills. Students have to delve into their knowledge of the substantive law, be professional in their conduct, and maintain high ethical standards.

During the classroom instructions, professionalism and ethics are taught, substantive law reviewed, with practical illustrations of the application of substantive law in the clinical scenario. During classroom instructions, clinicians may use practical examples that emanated from student tutorials and clinical duties, thereby sharing experiences of small pockets of students with the larger group.

Tutorials are the most focused form of instruction. Students relay their clinical experiences, apply what was learnt in the classroom, and proceed with the practical drafting of legal process under supervision of their clinicians.

It is submitted that the three pedagogical components identified synchronise, thereby ensuring an optimum learning experience in CLE courses.

## Bibliography

### ALBERT M AND GUNDLACH C

2011. Bridging the gap: Introducing ethical skills exercises to enrich learning in first-year courses. Institute for Law Teaching and Learning. Summer Conference, New York Law School, New York, NY. Engaging and assessing our students. Conference paper:1-10.

### BLOCH FS AND PRASAD MRK

2006. Institutionalizing a social justice mission for clinical legal education: Cross-national currents from India and the United States. *Clinical Law Review* 13:165-212.

### BRÜCKER A AND WOODRUFF WA

2008. The Bologna process and German legal education: Developing professional competence through clinical experiences. *German Law Journal* 9(5):575-618.

### CODY A AND SCHATZ B

2010. Community law clinics: Teaching students, working with disadvantaged communities. *The Global Clinical Movement: Educating Lawyers for Social Justice*. Oxford University Press:167-182.

### COLON-NAVARRO F

2011. Technology and assessment in the legal classroom: An empirical study. Institute for Law Teaching and Learning. Summer Conference, New York Law School, New York, NY. Engaging and assessing our students. Conference paper, INTED 2011 Proceedings ISBN 978-614-7423-3 (2011):1-10.

### DE KLERK W

2006. Integrating clinical education into the law degree: Thoughts on an alternative model. *De Jure* 39(2):244-251.

### DE KLERK W AND MAHOMED S

2006. Specialisation at a university law clinic: The Wits experience. *De Jure* 39(2):306-318.

### DE KLERK W, BODENSTEIN J, BONIFACE A, GROVE LB, HAUPT F, KOK A, MAHOMED SH, OSMAN-HYDER M, STEENHUISEN E, STILWELL P, SWANEPOEL N AND WIMPEY D

2006. *Clinical law in South Africa*. 2<sup>nd</sup> ed. Durban: LexisNexis Butterworth.

### DU PLESSIS M A

2007. Access to justice outside the conventional mould: Creating a model for alternative clinical legal training. *Journal for Juridical Science* 32(1):44-63.

2008a. Closing the gap between the needs of students and the community they serve. *Journal for Juridical Science* 33(2):1-19.

2008b. Divorce: Achieving social justice through clinical legal education. *Journal for Juridical Science Special Issue*:24-33.

2009. Assessment challenges in the clinical environment. *Journal for Juridical Science* 34(2):91-117.

2013. Clinical legal education: The challenge of large student numbers. *Journal for Juridical Science* 38(2):17-37.

2014a. Assessment methods in clinical legal education. PhD Thesis, University of the Witwatersrand, Johannesburg:1-341.

2014b. Clinical legal education: The assessment of student collaboration and group work. *Journal for Juridical Science* 39(2):67-91.

### DU PLESSIS R

2006. A consumer clinic as a specialised unit. *De Jure* 39(2):284-294.

### EVANS A AND HYAMS R

2008. Independent valuations of clinical education programs. *Griffith Law Review* 17(1):52-86.

**FINDLEY KA**

2006-2007. Rediscovering the lawyer school: Curriculum reform in Wisconsin. *Wisconsin International Law Journal* 24(1):295-333.

**GAVIGAN S**

1997. Twenty-five years of dynamic tension: The Parkdale Community Legal Services experience. *Osgoode Hall Law Journal* 35(3):443-459.

**GIDDINGS J**

1999. A circle game: Issues in Australian clinical legal education. *Legal Education Review* 10(1):1-18.

2013. *Promoting justice through clinical legal education*. Victoria, Australia: Justice Press.

**HALL J AND KERRIGAN K**

2011. Clinic and the wider law curriculum. *International Journal of Clinical Legal Education* 15:25-37. <http://www.ukcle.ac.uk/resources/teaching-and-learning-practices/clinical-legal-education/> (accessed on 14 June 2011).

**HAUPT FS**

2006. Some aspects regarding the origin, development and present position of the University of Pretoria Law Clinic. *De Jure* 39(2):229-243.

**HYAMS R**

2008. On teaching students to 'act like a lawyer': What sort of a lawyer? *International Journal of Clinical Legal Education* 13:21-32.

**LERNER AM & TALATI E**

2006. Teaching law and educating lawyers: Closing the gap through multidisciplinary experiential learning. *Journal of Clinical Legal Education*:96-133.

**MACCRATE R**

1992. Legal education and professional development: An educational continuum, report of the task force on law schools and the profession: Narrowing the gap. <http://www.abanet.org/legaled/publications/onlinepubs/maccrate.html#B> (accessed on 14 June 2011).

**MCQUOID-MASON DJ**

1982. Methods of teaching civil procedure. *Journal for Juridical Science* (7):160-171.

2008a. Law clinics at African universities: An overview of the service delivery component with passing references to experiences in South and South-East Asia. *Journal for Juridical Science Special Issue*:1-23.

2008b. Street law as a clinical program. The South African experience with particular reference to the University of KwaZulu-Natal. *Griffith Law Review* 17(1):27-51.

**ORTIZ JD**

2011. Going back to basics: Changing the law school curriculum by implementing experiential methods in teaching students the practice of law. [http://works.bepress.com/damian\\_ortiz/1](http://works.bepress.com/damian_ortiz/1) (accessed on 20 June 2011).

**OSMAN M**

2006. Meeting quality requirements: A qualitative review of the clinical law module at the Howard College Campus. *De Jure* 39:252-283.

**SMYTH G & LIDDLE M**

2012. Lulling ourselves into a false sense of competence: Learning outcomes and clinical legal education in Canada, the United States and Australia. *Canadian Legal Education Annual Review* 6:15-34.

**STEENHUISEN E**

2006. Goals of clinical legal education. In De Klerk *et al.* 2006:263-280.

**STUCKEY R**

2007. *Best practices for legal education*. 1st ed. Columbia: University of South Carolina Publications.

**STYLES I AND ZARISKI A**

2001. Law clinics and the promotion of public interest lawyering. *Law in Context* 19:65-88.



**SWANEPOEL CF, KARELS M &  
BEZUIDENHOUT I**

2008. Integrating theory and practice in the LLB curriculum: Some reflections. *Journal for Juridical Science Special Issue*:99-111.

**VAWDA YA**

2004. Learning from experience: The art and science of clinical law. *Journal for Juridical Science* 29(1):116-134.

2008. 'But where is the halaal food?' An appraisal of diversity teaching in clinical law programmes in South African clinics. *Journal for Juridical Science Special Issue*: 87-98.

**WATSON P**

2003. Examining failure: A case study in law learning. *South African Law Journal* 120:27-41.

**WIMPEY D & MAHOMED S**

2006. The practice of freedom – the South African experience. Unpublished. Copy on file with author:1-17.