

Curriculum Content of Legal Education

By:

By Mulela Margaret Munalula¹
University of Zambia School of Law, Zambia

Introduction

This paper presents very briefly, the content of the basic law degree curriculum and highlights the challenges of ensuring the high quality of the curriculum in a changing environment.

The challenges may be classified as contextual or content specific. Among the contextual challenges are the structure of the legal system that the law school is linked to; the impact of globalisation and other international /regional law developments; the specific development needs of the country; the state of the law school infrastructure such as the research environment and adequacy of academic staff; and the competition created when a state law school no longer enjoys a monopoly; the structure of the degree programme encapsulating the curriculum. The more specific challenges include the content, quantity and quality of courses on offer; the mode of delivery of the courses; and the mode of course assessment.

Curriculum Content

Law schools train lawyers in a formal and structured setting by offering a pre-set curriculum. Law school curricula in the form of law programmes are generally accredited by academic institutions such as universities or colleges or and /or national accreditation institutions set up to provide for and monitor the use of prescribed curricula. The objective of the curriculum of a law school in a particular country is to adequately train prospective lawyers on how to find the law, on the content of law² and to varying levels, on the practice of law. This paper limits itself to the law school curriculum at the heart of a basic qualification programme leading to recognition as a lawyer which is known in common law jurisdictions as the Bachelors degree in law (LLB) and in civil law jurisdictions as the Bachelor of Civil Law or Licentiate of Law. Despite the range and variety of law programmes and curricula, they do share certain commonalities.

The breadth and depth of the core curriculum content is one of the factors at issue in determining the quality of an LLB programme. The curriculum is expected to be of high quality. A typical LLB programme covers an eclectic combination of core/foundation courses/ modules that are generally compulsory and a number of electives chosen in order to fulfil a specific area of specialisation. Courses like legal process, law of contract, criminal law, law of torts (delict) and constitutional law are fairly standard as foundational and therefore are usually compulsory courses. The core curriculum is necessary to ensure that a lawyer is adequately trained whereas elective courses not only enable students to pursue their own areas of interest it also facilitates the development of specialised expertise in certain fields of law. More choice of courses may be

¹ Associate Professor of Law LLB, LLM (UNZA); MA (ISS/Erasmus); JSD (Notre Dame IN.). The Author is grateful to the contributors to the 'Colloquium on the Future of Legal Education in Zambia' which was held in Lusaka in April 2008, namely: Muna Ndulo, Mpaza Mvunga, Evance Kalula, Chuma Himonga, and Melvin Mbao among others, whose excellent presentations informed this short paper.

² Although the term 'law' generally refers to the law of a particular legal system the practice is to perceive this law within the context of a wider world.

preferable to students but the cost of mounting each course may limit the School's decision to offer a wide range of courses.

The number of courses constituting the core curriculum may vary from one law school to another. Each school must determine for itself within the limitations of national accreditation bodies the requisite core curriculum content. Middlesex University in England for instance offers a what I call a 'minimalist' three year LLB with honours which includes the following compulsory modules: Contract, Legal system & skills, property law, tort, public law, law & society, criminal law, and European Community law. Rhodes University in South Africa on the other hand has a 'comprehensive' four year LLB programme and prescribes: foundations of law, introduction to law, constitutional law A & B, law of contract A & B, law of persons, law of property A & B, legal interpretation, customary law, law of life partnerships, administrative law, business structures A & B, civil procedure A & B, criminal law A & B, criminal procedure A & B, public international law, legal skills, administrative law A & B, jurisprudence, law of evidence A & B, legal practice and forms of payment, law of delict A & B, law of lease & agency, jurisprudence, Individual labour law, law of insolvency and winding up of companies, law of sale & insurance, law of succession.

The range of electives varies from school to school. Middlesex University for instance offers: Business law, civil liberties, consumer law, intellectual property, family law, company law, employment law, environmental law, banking law and education law. Two additional electives taken at Rhodes in the final year of study are chosen from: copyright and trademarks, international trade law, introduction to conveyancing, legal accounting, tax and estate planning, negotiation and mediation, arbitration, collective labour law, ethics and professional conduct, environmental law, constitutional litigation, information systems and the law, law of patents and design, and research paper.

The legal system

The content of LLB programmes and curricula is derived mainly from a country's laws and legal system operating within the context of international law and comparative legal systems. In general most countries either apply a common law system or a civil law system or a mixture of both. These systems are based on common laws such as the English common law or the Roman-Dutch common law or on civil law, often supplemented by international/ regional systems, religious systems, and customary law systems. The infusion of religious or customary law principles has varying levels of influence on the structure and content of different legal systems. For instance in many commonwealth African countries the legal system is a dual system of law under which customary law is recognised separately from the general law which is made up of the constitution, English Common Law and Equity, Local Legislation and local Judgments. With increasing globalisation, the identification of a particular country as a civil law or common law country or even a religion based system is in practice likely to become increasingly blurred. Thus law schools are facing more nuanced challenges in preparing their curricula.

A further challenge to the quality of the curriculum is whether it can accommodate contradictory factors such as responding to international developments in addition to local peculiarities occasioned by a continuously growing legal system. To illustrate, for many countries whose legal systems are based on the English common law, the United Kingdom's alignment with Europe under the European Community can lead to indirect importation of European Union rules and decisions. Thus the adversarial system peculiar to the common law will be impacted by the inquisitorial approach without necessarily importing the relevant support structures and institutions. Furthermore, curriculum development needs to respond to the impact of globalisation and the exponential growth of general international and region specific laws that may vary from continent to

continent. Increasingly, graduates need to have some understanding of foreign legal systems and even to some degree, their content, due to disputes that transcend national boundaries arising in both the public and private arenas. In such situations, are international or comparative law courses adequate to handle these developments; should they become a part of the core curriculum or even mainstreamed into all courses? Access to and systematic organisation of domestic, foreign and international laws so they can be logically taught to students is a key challenge for curriculum development.

Social development concerns

In determining the content of its curriculum a school will often take into account the needs of the domestic legal system that it is intended to service. The objectives of a law school particularly a public school, may go beyond that of providing a purely educational service or gaining a monetary benefit. They may include a role in the development of the country. The objectives of the School of Law at the University of Zambia for instance are to participate in the development of the Zambian legal system; to produce lawyers that can compete globally but are particularly equipped to meet the needs of a developing country like Zambia; and to offer law teaching facilities for other institutions in the country. Responding to factors like the public/ private 'divide', legal dualism, etc., will influence the curriculum content and consequently the development of the law. To illustrate, in Zambia customary law is excluded from the law school curriculum. This has not only stifled the growth and development of customary law but also disadvantaged the majority of the population. Instituting and maintaining a curriculum that meets social needs as well as ensuring the profitability and prominence of the school can necessitate some juggling of priorities. In addition to socio-political factors, the economic orientation of the country may come into play. For instance where countries move from command to liberal economies, the curriculum needs to accommodate the changing needs of government and the private sector/ industry and impart to its law students suitable academic and practical skills that will enable them to serve the new economy.

Approaches to curriculum delivery

While teaching law in the past did in many schools take a non critical approach this is no longer the case. For African law schools in particular, the issues of good governance and constitutionalism that constantly dominate the continent's development agendas have spawned a huge area of law and human rights studies. Economic liberalisation, environmental degradation, and gender equality, all necessitate new more critical approaches to the study of law. The sheer size of law and law studies means that formalism - the traditional approach of having students memorise certain key principles in a set core of foundation courses and equipping them with the tools of where and how to find the answers to more complex and specific legal problems can do no more than give students a rather fragmented sampling of everything that the law has to offer. Furthermore graduating large numbers of general practitioners may no longer be good enough. What may now be required is specialists to work in certain areas and even rise to the bench and become adjudicators in their areas of specialisation. Specialisation however may be limited in under-resourced law schools by inadequate academic staff, (especially senior staff), poor research culture/ infrastructure and inadequate numbers of students. The curriculum also has to concern itself with the quality of its consumers - that is the quality of the students entering law school; since this has a direct bearing on the delivery of the curriculum and the students' ability to understand course materials. Formal English which is a pre-requisite for entry into many law schools is often inadequate and many schools now include legal writing courses among their skills oriented course clusters; however a single course cannot remedy years of poor English.

Constraints created by regulatory factors

The quality of the curriculum is also subject to programming factors such as the regulations intended to ensure it and the adequacy of resources to support its development and implementation. The LLB programmes approved by the school and the University's governing bodies may broaden or limit the curriculum due to standardisation of certain factors such as prescribed contact hours, assessment procedures and teaching methodologies. At the University of Zambia for instance it is three hours of lectures supplemented by one tutorial hour weekly over a fourteen-week semester. As the volume and complexity of law grows such University wide standards are becoming as they impact the competitiveness of the curriculum offered. Curricula are generally structured to fit an LLB programme that is tiered so that the foundation courses are taken at the lower levels of the programme. Students that successfully complete their foundation courses are allowed to proceed to the higher levels. Progression rules that promote timely and hassle free, completion of the curriculum, are vital. For instance the availability of pre-requisites when required and the possibility of immediately repeating a failed course must be taken into account in designing the curriculum. Additionally the size of individual course content must fit into the semester and each course should preferably be self-contained and freestanding. The curriculum may also confine itself to the academic aspects of the curriculum leaving the teaching of the practice of law to a postgraduate institution.

The cost of a good curriculum

Substantial resources are required for a good curriculum. Law library facilities including on-line library access must be of adequate standard. Adequacy of library materials will for instance determine whether new courses can be offered or old courses modernised to match legal developments. It will even determine the mode of teaching the courses on offer. For instance using the case oriented Socratic Method is only possible where comprehensive case books and law reporters are available to law students and the courts are active in interpreting legislation and foreign judgments for local application systematically and logically. Since a rigid curriculum may also be unattractive to students, flexibility maybe built into the curriculum though clinical courses; part-time/ evening classes; internships and other innovative teaching and assessment methods.

Achieving even minimal library facilities is difficult for poorly resourced law schools such as those found in developing countries resulting in too few or too dated courses on the curriculum. In many poor universities, development of both existing courses and introduction of new ones may become sporadic. Although legal systems and law curricula are based on western legal systems, access to imported textbooks is constrained. Books and materials in local libraries are depleted, vandalised or out dated. Even direct access to local legislation, case law and other teaching materials maybe problematic; because the institution where the materials are sourced from face similar constraints in compiling and making available new statutes and court judgments. Publication of local textbooks is affected by the lack of research facilities and researchers.

Under such a constrained environment choices have to made as to the courses that can be offered. Questions arise as to whether the courses relating to lucrative areas of study such as commercial and property law should be accorded more prominence and time than public law and criminal law whose job market is generally in the less lucrative public sector. In other words what will attract students to a particular law school? Issues of competition come into play, regardless of whether the competition is from other local schools or schools abroad. Students' perception of a quality curriculum is one that makes them as attractive as possible in the job market. Market research to guide curriculum review is therefore necessary.

Conclusion

This paper examined some of the challenges facing a law school in its attempt to maintain a high standard of legal education as it develops its curriculum in a competitive and rapidly evolving environment. A number of preliminary discussion points arise. First, what is a suitable curriculum in terms of course content, course coverage, cost, delivery, and fitness for purpose? Secondly, should the curriculum primarily respond to the country's social/ political/ economic needs? Thirdly, to what extent should the curriculum reflect international and comparative law aspects? And finally, how can the curriculum benefit from as opposed to being constrained by regulatory factors?