International Association of Law Schools

2015 Annual Meeting

Award Papers

Developing Approaches and Standards for a Global Legal Education

Hosted by:
IE University, Law School

27th – 29th October 2015
Segovia, Spain

International Association of Law Schools
2015 Annual Meeting

Award Papers

Faculty Innovative Curriculum Awards

- Michele DeStefano, University of Miami School of Law: Law without walls
- Anne Kotonya, Strathmore University: Globalizing the Curriculum in Emerging African Law Schools
- Kate Offer and Natalie Skead, The University of Western Australia: Learning Law through a Lens: Using Visual Media to Support Student Learning and Skills Development in Law

Collaborative Research Award

- Camille Davidson and Kama Pierce, Charlotte School of Law: Are You on the Right Track?
- Francis Kariuki Kamau and Beatrice Kioko, Strathmore University: In Search for an Alternative Conceptual and Methodological Framework in Law School Teaching and Scholarship

Student Engagement Award

- Taylor Gissell, University of Houston Law Center: Lawyer Substance Abuse—Reducing the True Cost of an American Legal Education
- Olive Mumbo, Strathmore University: Legal Education in my Country, a Law Student's Perspective
- Clare Smyth, The University of Adelaide: Global Approaches to Legal Education

Faculty Innovative Curriculum Awards

LAWWITHOUTWALLS®
THE FUTURE OF LAW, TODAY

IALS: The Faculty Innovative Curriculum Awards Abstract Submission

LawWithoutWalls:
750+ Change Agents, 30 Law & Business Schools, 15 Countries, 6 Continents
Globalizing the Law School Curriculum and Creating the Future of Law Today

LawWithoutWalls is a global collaboratory of 750+ change agents dedicated to changing legal education and practice. LawWithoutWalls: 1) hones critical 21st-century professional services skills: cultural competency, teaming, project management, intrapreneurship, technology, problem-solving, communication, business acumen, networking, and leadership; 2) accelerates innovations at the intersection of business and law; and 3) creates a forum for thought leadership, breaking down walls between lawyers and clients, law and business, practitioners and educators, and academics and students.

We team 95+ students from 30 law and business schools around the world with mentors (academic, entrepreneur, and lawyer mentors). Over four months, student/mentor teams must identify a problem in legal education or practice and create a business plan for a legal start-up to solve the problem. We begin in person then meet weekly via cutting-edge technology. We conclude at an in-person event wherein teams present their solutions to a panel of multi-disciplinary judges, including venture capitalists.

Michele DeStefano
Program Founder & Director
Professor of Law, University of Miami

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LWOW ORIGINAL SYLLABUS: FALL 2014 – SPRING 2015		
DATE	**ACTION**	**DESCRIPTION**
30 September	Applications open (rolling)	Applications open for potential students
1 October	Interviews + info sessions	LWOW Team holds virtual and in-person information sessions and interviews finalists
30 November	All decisions announced	LWOW Team announces final admissions decisions
15 December	All teams announced (including mentors)	LWOW Team announces final team rosters
15 December	Due: Pre-program assessment	Participants complete a series of personality assessments (e.g., DISC) to measure working and communication style. In doing so, they learn about themselves individually and within a team dynamic.
Week of 12 January		
17–18 January	KickOff (University College Dublin, Ireland) (10 hours)	In-person intensive idea generation, teambuilding, personality assessments, improv, cultural competency development, and hackathon-style problem solving
Week of 19 January		
Weekly	Team meeting (1 hour)	Every week, each student team meets with their mentors for at least one hour. This is self-scheduled by the team and its mentors.
Week of 26 January		
26 January	Tech open house (2 hours)	Participants log in to test and troubleshoot the technology used for Virtual Dynamic Teaming (team meetings and LWOW Live sessions)
Weekly	Team meeting (1 hour)	Every week, each student team meets with their mentors for at least one hour. This is self-scheduled by the team and its mentors.
28 January	LWOW Live: 28 January OX (2 hours + reading required)	Start Me Up Part I: A Case Study on How To Source and Test Ideas & Bring Those Ideas to Life with Co-Founders
30 January	Student Progress Update Form #1	Students, on an individual basis, set goals, give feedback, ask questions, and assess their performance during the first few weeks of LWOW.
Week of 2 February		
Weekly	Team meeting (1 hour)	Every week, each student team meets with their mentors for at least one hour. This is self-scheduled by the team and its mentors.
2–3 February	Meeting: First 3 Steps (Background, Problem, Target Audience) (0.5 hours)	Student teams meet with the LWOW Professor to discuss the first three steps of the LWOW process, namely: the background of their topic, the narrow problem identified, and the target audience impacted by the problem.
4 February	LWOW Live: 4 February OX (2 hours + reading required)	Start Me Up Part II: The Specifics to a Business Plan, the Legal Issues, and Financials
Week of 9 February		
Weekly	Team meeting (1 hour)	Every week, each student team meets with their mentors for at least one hour. This is self-scheduled by the team and its mentors.
11 February	LWOW Live: 11 February OXC (2 hours + reading required)	Legal versus Business: Who Should Win the Turf War in the Compliance Department?
Week of 16 February		
Weekly	Team meeting (1 hour)	Every week, each student team meets with their mentors for at least one hour. This is self-scheduled by the team and its mentors.
Week of 23 February		
Weekly	Team meeting (1 hour)	Every week, each student team meets with their mentors for at least one hour. This is self-scheduled by the team and its mentors.
23–24 February	Meeting: Five Step Walkthrough (0.5 hours)	Each student team meets with the LWOW Professor to informally pitch the basics of their Project of Worth by discussing each of the five steps to a Project of Worth. They receive feedback on the concept, positioning, teaming, and research done.
25 February	LWOW Live: 25 February OX (2 hours + reading required)	The Art of Persuasion in International Arbitration: Selling Sand in the Desert

LWOW ORIGINAL SYLLABUS: FALL 2014 – SPRING 2015		
DATE	**ACTION**	**DESCRIPTION**
Week of 2 March		
Weekly	Team meeting (1 hour)	Every week, each student team meets with their mentors for at least one hour. This is self-scheduled by the team and its mentors.
4 March	LWOW Live: 4 March OXC (2 hours + reading required)	The Elements of Branding: How Are They Applicable to the Law Market?
6 March	Student Progress Update Form #2	Students, on an individual basis, reflect on the goals set, voice feedback, and assess their performance as individuals and team members.
Week of 9 March		
Weekly	Team meeting (1 hour)	Every week, each student team meets with their mentors for at least one hour. This is self-scheduled by the team and its mentors.
Week of 16 March		
Weekly	Team meeting (1 hour)	Every week, each student team meets with their mentors for at least one hour. This is self-scheduled by the team and its mentors.
17–20 March	Meeting: Startup Consultant Session (0.5 hours)	Student teams present their Project of Worth ideas to the LWOW Professor and a Startup Consultant (an experienced entrepreneur in law/tech) who assesses the viability and creativity of the Project's structure, branding, and financials.
18 March	LWOW Live: 18 March OXC (2 hours + reading required)	Don't Take it So Personally: The Importance of Networks & PR in the Professional World
Week of 23 March		
Weekly	Team meeting (1 hour)	Every week, each student team meets with their mentors for at least one hour. This is self-scheduled by the team and its mentors.
25 March	LWOW Live: 25 March OX (2 hours + reading required)	Insurance and Litigation Funding: Flip Sides of the Same Coin or Different Currency
Week of 30 March		
Weekly	Team meeting (1 hour)	Every week, each student team meets with their mentors for at least one hour. This is self-scheduled by the team and its mentors.
1 April	LWOW Live: 1 April O (2 hours + reading required)	Millennials vs. Gen Xers vs Baby Boomers: Who Are Our Future Lawyers?
Week of 6 April		
Weekly	Team meeting (1 hour)	Every week, each student team meets with their mentors for at least one hour. This is self-scheduled by the team and its mentors.
6–7 April	Meeting: Final mocks (1 hour)	Each student team has a dress rehearsal with the LWOW Professor, where last minute feedback is shared in preparation for the upcoming ConPosium.
Week of 13 April		
13 April	Final practice week w/teams and mentors (self-scheduled)	Student teams self-schedule a series of pre-ConPosium practices with their mentors.
15 April	Deliverable: All ConPosium materials	Student teams must turn in all presentation and media materials for the ConPosium.
17–18 April	ConPosium (Miami Law; Coral Gables, FL) (10 hours)	Student teams present their Projects of Worth to a multidisciplinary panel of judges (entrepreneur, venture capitalist, lawyer, academic) who rate each project on substance, creativity, and viability. An overall winner is chosen.
Week of 27 April		
1 May	Due: all participants must complete post-program assessment	Participants complete a second series of personality assessments to measure working and communication style changes after participation in LWOW.

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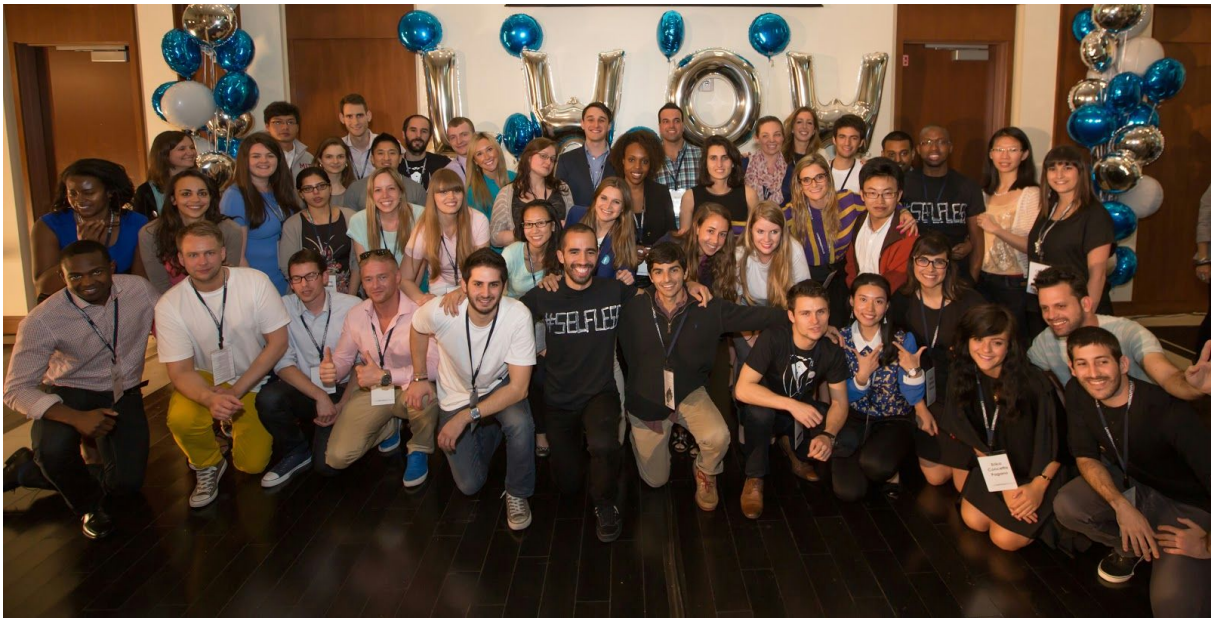

An introduction to:

LawWithoutWalls

The Future of Law, Today

by Michele DeStefano
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I. Impetus

The future of law requires a mentality of a world of law without walls. Given the current global, complex, multi-disciplinary legal marketplace, successful lawyers of tomorrow must be creative problem solvers and leaders with a higher risk tolerance and business mindset who can use technology, social media, and innovation and teaming skills to overcome the walls of law.

Further, solutions to the challenges of tomorrow call for more collaboration and permeability between legal practice and legal education (during and after law school) and more interaction between legal professionals and people of different disciplines and different cultures. It is through these types of interactions that critical 21st century skills are honed, true innovation occurs, and interdependent relationships are built.

These types of interactions, however, are stymied by current legal education and practice - both of which are ridden with hierarchies (based on rank, expertise, and title), barriers to entry, and staid ways of training and learning. Further, the skills needed by 21st century service providers are incapable of being sharpened in a traditional in-person or online law school, CLE, or executive education format. These skills take time and require a multi-disciplinary, multi-cultural, technologically-blended teaming experience to be nurtured. Thus, what is needed for the 21st century legal services provider is a completely new and fresh approach to training, innovating, and community building.

II. Mission

The mission of LawWithoutWalls is to accelerate innovation at the intersection of business, technology, and law through a dynamic, part virtual, collaborative experience that seeds a community of 21st century-ready global change agents and ultimately transforms the way law and business people partner to solve problems.

III. Definition

LawWithoutWalls (LWOW) is a part-virtual global collaboratory of 750+ professionals created and led by Michele DeStefano, University of Miami School of Law Professor and Harvard Law School Visiting Professor. Through a dynamic experience, LWOW accelerates innovation and seeds a global community of change agents that are transforming the way lawyers and business professionals partner to solve problems at the intersection of law, business, and technology.

LWOW teams 100 students from 30 law and business schools around the world with academic, business, entrepreneur, and legal mentors. Over four months, teams identify a problem related to law and create a business plan for a solution (often a legal startup). In the process, LWOW refines 21st professionals skills, recharges the law market with innovations across law, business, and technology, and revitalizes relationships with colleagues, clients, and future talent across the globe.

This blended (part virtual, part in-person) 4-month program is designed to equip experienced

and inexperienced talent with new skills and new contacts to make them more successful global business leaders - armed with the knowledge and expertise to meet the challenges of the economic pressures, technological advances, and globalization that have dramatically reshaped the legal market (and that will continue to do so in the years to come).

"LawWithoutWalls is an opportunity for lawyers to have direct access to and interact with the world of law, its academic and professional leaders (and pioneers) and students from all countries and cultures. This enables the lawyers to gain insight on the law industry, foresee and adapt in light of any potential changes shaping the industry, learn from other members in the community on how to innovate and create new opportunities in the world of law, face and overcome challenges relating to the legal profession and succeed as a an entrepreneur and as lawyer."
- Vicky Sfeir, In-house Lawyer, Yahoo!

IV. The Process & Innovative Features

LawWithoutWalls teams 100 students from 30 elite law and business schools around the world with academic, entrepreneur, lawyer, and business mentors. Over four months, teams identify a pressing issue in legal practice or education and create a business plan for a solution (often a legal startup). Although there are different LWOW offerings (focused on different aspects of the law market and that have slightly different formats), in all core offerings, there are three phases.

Phase 1: The KickOff

- LWOW begins with a 1- to 2-day KickOff: a collaborative, skills-intensive working session designed to challenge the way we think, the way we learn, and the way we communicate with each other. It is also designed to solve problems in law, technology, and business. Students along with business professionals, academics, entrepreneurs, venture capitalists, and lawyers from around the world learn how to innovate and affect change in daily life back at work or at school.
- At the KickOff, we engage in interactive exercises to foster idea generation, entrepreneurism, brainstorming, teaming, self-assessment, presentation, and networking skills. We build our law market and knowledge base and see firsthand how legal startups pitch and how venture capitalists respond. We learn from experts in improvisation how to communicate and network more effectively in a corporate, multicultural, and collaborative environment. And importantly, over two days, in hackathon-like style, teams create and present innovations: real solutions facing law, business, and technology.

"LWOW is dragging the legal profession into the 21st century through the use of technology and the enthusiasm of inspirational individuals."
- Rebecca Vaughan, In-house Lawyer, Bupa

Phase 2: Virtual Teaming: Thought Leadership Webinars & Business Plan Development

- *LWOW Live Thought Leadership Webinars*: Subsequent to the KickOff, utilizing cutting-edge video technology, the LawWithoutWalls Community gathers online each week to debate hot issues at the intersection of law, technology, and innovation. In these

LWOW Live webinars, thought leaders from different disciplines and cultures lead the sessions via video technology as participants chat or video conference in real-time.
  - For students, these sessions are considered part of weekly class time and count towards credits.
  - For other participants, these sessions are an opportunity to network, learn from Thought Leaders, and have a voice in the debate about the law market's future.
  - For lawyers specifically, these sessions are available for CLE credit.
- *Online Business Plan Development via Virtual Dynamic Teaming*: Simultaneously, teams meet online with mentors to investigate their topic, fine tune their problem, find a solution, develop a business plan, and co-create a prototype and presentation - what we call a Project of Worth.
  - Teams are required to meet one hour each week with one or more of their mentors. These meetings are considered part of weekly class time and count towards credits.
  - We call the final product a Project of Worth because it is is much more than a paper, presentation, or idea—it is a real solution to a real problem facing the legal marketplace. More than that, this Project is of Worth because, in the process of creation, the mentors and student creators alike bolster knowledge and hone those skills that are essential to being successful global business leaders and partners - and that are not normally (nor easily) taught in a traditional lecture or classroom format.

"Through LawWithoutWalls, I experienced firsthand the new and evolving technologies on the market and more effective ways to communicate with my team and clients, gained a better understanding of the current challenges facing the legal market, and generated ideas to help resolve some of the problems we face day to day in legal practice."
- Hena Ninan, Senior Associate, Eversheds

Phase 3: ConPosium: Final Presentations of Business Plans & Prototypes

- The LWOW experience concludes at the ConPosium, an interactive event wherein teams showcase their innovations to the LWOW Community and a panel of multidisciplinary judges, including venture capitalists, who assess the substance, viability, and creativity of the projects.
- As others have described it, the ConPosium "is the future." It is "a legal Ted talk show on steroids" with presentations that include "musical scores, documentary footage, and oral advocacy all while live chats are scrolled on a large screen," (Roy Black, Black's Law, May 13, 2015). Put simply, the ConPosium showcases LawWithoutWalls-built skills and executable innovations for the law market.
- More than that, this two-day event brings together the LWOW Community at large and represents an opportunity to reconnect and connect anew with people from all different ages, disciplines, and cultures that share a common charge: an interest in changing the way lawyers practice and the way that they partner with business professionals to solve problems.

"LWOW is unique in the marketplace: bringing together students, academics and professional

mentors from across the globe, looking to collaborate and develop new ideas in a genuinely innovative way. LWOW also gives unprecedented opportunity to network with a wide range of diverse people—I hope to build lasting relationships with many of those whom I met as part of LWOW. What an incredible experience!"
- Laura Bickerton, Senior Associate, Eversheds

V. Formats, Roles, and Target Audiences

LawWithoutWalls is offered in two formats and serves three main audiences:

Formats

LWOW Original:

- Blended Format (Part-Virtual Part-In person) in which the KickOff and ConPosium (phases 1 and 3) are conducted in-person while the webinars and business plan development are conducted virtually (phase 2).

LWOW X:

- All Virtual Format format in which all three phases are conducted online.
- This year we offered LWOW X and LWOW X Compliance (all topics created by the ECI Fellows group and dedicated solely to compliance and ethics)
- Thanks to its all-virtual platform, LWOW X enables more students from more places, irrespective of financial situation and school location to participate in LWOW.

LWOW Live Online Webinars:

- Both LWOW X and LWOW Original include LWOW Live Online Webinars featuring a panel of multidisciplinary Thought Leaders and available for CLE credit.

Target Audiences

Law & Business School Students & Schools

- Collaborate across time zones and cultures to creatively solve problems in legal education and practice and, in doing so, broaden their 21st century skillsets, build a transdisciplinary and diverse network, and bolster their job prospects.
- LWOW is approximately 3 credits in the U.S.; 30 Sessions or 6 ECTS in Europe.
- Students play the role of creator In LWOW offerings in which there are students.

Lawyers

- Forge closer and more collaborative relationships with clients, colleagues, and future talent from countries worldwide. They become part of a global, transdisciplinary think-tank around technology, innovation, and the business of law and, in the process, hone new skills.
- LWOW Live sessions are available for CLE credit.

Business Professionals

- Deepen cross-cultural competency and innovation skills, broaden their network, and gain a deeper understanding of the changing legal landscape. They become part of a

global, multi-disciplinary think-tank on technology, innovation, and the business of law.

Venture Capitalists

- VCs gain exposure to legal entrepreneurs and practicable innovations at the intersection of business, law, and technology—the legal startups of the future.

Entrepreneurs

- Entrepreneurs meet kindred spirits interested in the legal startup culture. They share their spirit, experience, and know-how as teams collaboratively problem solve, innovate, and build startups. They learn from the community about the changing legal landscape and how to better position their products and services.

Academics

- Work with transdisciplinary thought leaders and students from multiple schools worldwide. They learn about the innovations in the law market that are changing the challenges future lawyers face and the skills students need to be taught.

Corporations & Firms

- Bolster knowledge and equip experienced talent with new skills to make them more successful global business leaders and partners of the future.
- Forge closer and more collaborative relationships with internal clients and colleagues from around the globe.
- Cultivate practicable innovations at the intersection of business, law, policy, and technology.
- Differentiate themselves from the competition as innovative, open-minded, and growth-focused.
- Facilitate a reliable and efficient student recruitment process that provides access to students from some of best law and business schools around the world and importantly greatly reduces the probability of bad hires.
- LWOW offers firms and corporations different ways to get involved.
    - They can provide associates and/or clients to serve as mentors in our student offerings.
    - They can sponsor a topic that is related to an issue important to the corporation or firm.
    - Alternatively, LWOW offers executive education programs catered to corporations and firms needs in which the creators of the innovations are not students but instead professionals at the corporation or firm. (See XEd below)

<u>Roles</u>

Each member of our LWOW Community plays an important role. Roles can vary year to year, and, oftentimes, one member of the community will take on multiple roles. Read on to learn more about the different roles in our community.

Mentor

- All mentors in the LWOW Community serve as resources for our students in their research, Project of Worth development, and professional growth. Mentor roles include:

Academic Mentor, Business Mentor, Corporate Mentor, Practitioner Mentor, and Entrepreneur Mentor.

Advisor

- Alumni Advisor: Alumni Advisors are former LWOW students who give back to the Community by guiding teams through the LWOW process. Alumni Advisors lend expertise from their scholastic and professional experience, as well as provide invaluable support and encouragement.

- Subject Expert Advisor: Subject Expert Advisors provide support on a particular area of law, technology, or business. They are available to work with any and all teams throughout the entire LWOW process.

Thought Leader

- Thought Leaders come from a diverse array of legal and non-legal backgrounds. They play an integral role in our weekly LWOW Live sessions (debates on hot topics in legal education and practice). They bring knowledge from their professional and personal experiences to enrich the entire LWOW Community in our exploration and discussion of the future of law.

Teaming Coach

- Teaming Coach, works with all teams to promote individual emotional intelligence and a collective, cohesive, healthy group working dynamic. She serves as a resource and cultural compass for teams as they navigate the LWOW process.

Pitch Coach

- The Pitch Coach watches and critiques the teams' mock pitches before the final event in order to help improve the substance, viability, creativity, and presentation style.

VI. The Results

LawWithoutWalls is a global community of over 750 change agents dedicated to transforming the way law and business professionals partner to solve problems. Specifically, it:

1) **Creates a global, multi-disciplinary think-tank for thought leadership** around technology, innovation, and the business of law;

The 750+ people currently participating in LawWithoutWalls do so because they believe that legal education and practice should embrace the challenges posed by the globalization of our world, the development of new technologies, the introduction of new legal service providers, the necessity for increased access to justice, the multidisciplinary nature of clients' needs, and the disappearing distinction between business and law.

2) **Accelerates practicable innovations** at the intersection of business, law, and technology (generally in the form of legal start-ups);

3) **Hones critical twenty-first century professional services skills** (collaboration, cultural competency, project management, intrapreneurship, technology,

problem-solving, communication, business acumen, networking, and leadership); and LWOW develops professional skills not "teachable" in a traditional classroom or executive education format;

4) **Cultivates collaborative relationships** with clients, internal colleagues, and future talent from countries around the globe and builds job prospects.

- For students, LWOW represents a unique opportunity for law and business school students to interact, network, and build job prospects with the LawWithoutWalls community of over 750 change agents, including partners from law firms like Eversheds, Baker & McKenzie, and Skadden Arps, lawyers from corporations like Barclays, GlaxoSmithKline, Coca Cola, and Amex, venture capitalists from True Ventures, EPIC Ventures, and Atlas Ventures, and entrepreneurs from startups like LegalZoom, Clio, Solo Practice University, and LawDingo.
- For mentors, LWOW provides 1) relationship building on an intra-office basis amongst the disparate organizations locations globally, as well as relationship building between the organization's professionals and their clients; and 2) a reliable and efficient student recruitment process that facilitates access to students from some of best law and business schools around the world and importantly greatly reduces the probability of bad hires.

VII. Other LWOW Initiatives

LWOW Inc. Incubation services and events for legal startups and entrepreneurs

- Incubation Services:
  - New in 2015, LWOW Inc, offers part-virtual incubation services, courses, and new communication platforms for legal startups and entrepreneurs. Unlike traditional incubators, we provide a mix of physical and virtual resources. LWOW Inc.'s mission is to counsel, mentor, and accelerate the development of legal startups by providing them with the expertise, networks, workshops, and services needed to become successful.
  - In addition to helping connect legal startups with leading venture capitals and other investors to provide the resources to launch, LWOW Inc. offers technology, marketing, financial, human resources, legal, fund raising, and business development consulting. As LWOW Inc. grows, it will provide a menu of tailored business services. At present, we are providing incubation services to two legal startups.
- Events: In Fall 2015, Eversheds will host LWOW INC. Pitch-posium in London, a half-day, in-person event in which 7 legal startups pitch to angel and venture capitalist investors.

LWOW XEd Tailored executive education initiatives for firms, corporations, and organizations.

- These programs can be provided in a part-virtual or all virtual-model and in a three-month, two-month, or more condensed 5-week format. All of our LWOW Courses also include an XEd component and courses for CLE credit. All of our LWOW

Courses also include an XEd component. Our current main law firm sponsor, Eversheds, participates by providing one senior associate lawyer mentor and one client (in-house lawyer) mentor on each team. These mentors work side-by-side with the students to develop their Projects of Worth.

- Currently, Eversheds, participates in LWOW Original by providing one senior associate lawyer mentor and one client (in-house lawyer) mentor on each team. These mentors work side-by-side with the students to develop their Projects of Worth.
- The value is fourfold:
  - Executive Education: The experience hones 21st century lawyering skills not teachable in a traditional executive education format like project management, technology, social networking, cultural competency, and leadership.
  - Client Relationship Building: Law firm associate works with law firm client to lead a team of law and business school students from around the world to identify a unique problem for a discrete audience and create a practical solution to that problem. In the process, the law firm senior associate and client bond through challenging experiences and tasks and as a result create new platforms for collaboration and business.
  - Talent Recruitment: LawWithoutWalls attracts the top talent from law and business schools around the world. A LawWithoutWalls alumni is a vetted, no-risk hire for any law firm, corporation, or in-house department.
  - Continuing Legal Education: LawWithoutWalls LWOW Live sessions keeps the community of over 450 lawyers, entrepreneurs, students, regulators, academics, and business professionals up to date on recent changes and innovations in the law marketplace around the globe. These session provide a forum for collaborative problem solving to the challenges the new law marketplace presents. CLE credit is offered for some of these sessions. Click here to learn more about CLE and LWOW Live sessions.

VIII. History and Achievements

LawWithoutWalls, founded by Professor Michele DeStefano, began in January 2011 with twenty-three students from six law schools. Four of these original schools are located within the United States: University of Miami, Harvard, NYLS, and Fordham. Two institutions are located outside the United States: Peking University and University College London.

Today, after finishing our fifth year, we have quadrupled in size in terms of the number of students to approximately 100. We more than tripled the number of participating schools and increased the number of business schools involved. Nearly 30 law and business schools from around the world participated, including schools from India, China, Israel, Iceland, and South Africa. Our community now totals more than 750 people. And in addition to offering our original LawWithoutWalls, we launched LWOW X and LWOW X Compliance.

In Spring 2014, we explored expansion and scalability with the launch of LWOW X. LWOW X offers the same components and benefits as the original LWOW offering, only it does so completely online. It is an attempt to reach more students from more places, irrespective of

financial situation and school status. Further, LWOW X is an attempt to create an all-virtual, synchronous learning experience that applies rhizomatic education to develop a sense of community as robust as that achieved through in-person interaction.

The LWOW X pilot proved a success. As a result, January 2015 saw the launch of a second LWOW X cycle, as well as a sister program, LWOW X Compliance (all-virtual with a focus on ethics and compliance; developed in partnership with the Ethics Resource Center/Ethics and Compliance Initiative). In 2015, LWOW X grew from 7 law and business schools across 6 countries to 12 law and business schools across 9 countries. The inaugural session of LWOW X Compliance had 11 participating law and business schools across 6 countries with 22 students. New also for 2015, was the ability for lawyers to gain CLE credit for participating in LWOW live sessions.

Now beginning its sixth year, LWOW has grown from one collaboratory of 16 students across six schools to a variety of multidisciplinary offerings involving nearly thirty schools and hundreds of students, practitioners, academics, entrepreneurs, and venture capitalists around the world. Further, via our newly launched incubator, LWOW Inc, LawWithoutWalls offers part-virtual incubation services, courses, and new communication platforms for legal startups and entrepreneurs. Currently, we are helping two projects become legal startups. Further, as part of LWOW Inc, we will host our first Pitch-posium in London, a half-day, in-person event in which 7 legal startups pitch to angel and venture capitalist investors (sponsored by Eversheds).

While we have expanded in scope and form, our core values—cultural competency, project management, virtual technology, presentation, leadership, problem solving, and innovation skills—and primary mission—innovating the dynamics of legal education and practice and building a community of change agents —remain the same.

IX. Awards and Recognition

LawWithoutWalls has received a great deal of press since its inception, including features in *Time* Magazine, the *Financial Times*, the *Times*, the *ABA Journal*, and the *National Jurist*. Further, it won an InnovAction Award in 2011 from the College of Law Practice Management for outstanding innovation in the delivery of legal services. Additionally, LawWithoutWalls Founder Michele DeStefano, was recognized as one of the 10 ABA Legal Rebels in 2013. These awards and news articles have helped garner support and sponsorship for LawWithoutWalls. However, in this tight market, raising funds is more and more difficult. **To that end, we are applying for the IALS Faculty Innovation Curriculum Award in order to increase our international profile and help us raise funds to support our non-profit venture.**

X. Appendix

Winning Innovations

2015 LWOW Original
Winner Overall:

- Topic: *E-Discovery and Legal Process Outsourcing: Commoditization or Democratization?*
- Solution: CORE: For Lawyers, By Lawyers
- CORE facilitates seamless interaction with LPOs through a cloud-based, centralized workspace.
- Students: Romeen Sheth (Harvard), Maximilian Viski-Hanka (Miami Law)

Winner for Substance:

- Topic: *Bridge Over Troubled Waters: Finding an Interim Solution for Law Grads Without Jobs*
- Solution: Reach: Conquer Compliance, Enhance Yourself
- REACH bridges the gap between compliance and culture by training Chinese law graduates in US compliance laws and then facilitating placements with American companies and firms operating in China.
- Students: Naama Ben Dov (TAU), Christian Rioult (U of St. Gallen), Junqi Zhang (STL)

Winner for Creativity:

- Topic: *Running For Their Lives: How Can the Legal Profession Help Prevent Violent Crimes Against Minors So They Don't Have to Flee?*
- Solution: Advocat
- A revolutionary, multilingual interface for minor immigrant detainees and their advocates that uses gamification to build trust and explain and safeguard the best interests of the child.
- Students: Wiktor Los (Bucerius), Aisling Malone (UCL), Marie Santunione (École HEAD)

Winner for Viability:

- Topic: *In a Glocal World, How do Corporations Reduce the Dark Zone of Unknown Corporate Misconduct? There's Got to be a Solution for That*
- Solution: WhiteHatters: Creating Human Firewalls
- WhiteHatters increases cybersecurity protection and builds awareness against targeted phishing attacks through simulation and deconstruction learning.
- Students: Vincent Beyer (IHEID), David O'Donovan (UCD), Alexandra Marshakova (Bucerius)

2015 LWOW X
Winner for Creativity and Viability and Winner Overall:

- Topic: *Running For Their Lives: How Can the Legal Profession Help Prevent Violent Crimes Against Minors So They Don't Have to Flee?*
- Solution: AdvoCat – revolutionary, multilingual interface for minor immigrant detainees

and their advocates that uses gamification to build trust and explain and safeguard the best interests of the child.
- Students: Wiktor Los (Bucerius), Aisling Malone (UCL), Marie Santunione (École HEAD)

Winner for Substance:
- Topic: *Servicing the Lawyers to Service the Clients: How Can Technology, New Mediums, and Global Support Structures be Utilized to Help Lawyers Help their Clients?*
- Solution: StreamlineHousing Law, an online platform to help lawyers provide more efficient + effective service by empowering their housing clients.
- Students: Al Hounsell (York/Osgoode), James Mosley (UCL), Yuwei Zhang (STL)

2015 LWOW X Compliance
Winner Overall:
- Topic: *Anti-Trust Compliance Issues in an International Context*
- Solution: Athletips: the game that teaches you the rules
- A fun, trivia-based game that allows student athletes to learn the rules in the NCAA handbook while tracking the progress of athlete's right to compensation.
- Students: Ryuji Kato (UCL), Adrienne Scheffey (Miami Law), Alexandre Weber (École HEAD)

Winner for Substance:
- Topic: *Dealing with the Effects of Mental Health Issues on Ethics-Related Conduct*
- Solution: Firmind: Mindful Compliance
- Raises awareness of lawyer depression with an app promoting wellness by uncovering gaps in law firms' mental health services.
- Students: Danielle Coupet (Miami Law), Anna Charlotte Kempe (Leipzig), Brendan Monahan (York/Osgoode)

Winner for Creativity:
- Topic: *Managing Ethics and Compliance Risk Downstream through the Supply Chain*
- Solution: GoFairWork: Fair Play by Fair Work
- A platform for self-reporting to protect construction workers rights when building FIFA World Cup facilities.
- Students: Maria Pedrique (PUC), Karl-Erich Trisberg (Bucerius), Lisa Wiese (U of Leipzig)

Winner for Viability:
- Topic: *Ambiguous Legal Issues Associated with Investigations and Audits*
- Solution: Slam Dunk
- Play, learn, comply: an ap to teach players the NCAA rules and adverse implications from breaking them.
- Students: Claudia Dittmers (U of Leipzig), Chazz Chitwood (Miami Law), Stephanie Theodotou (UCL)

Student Success Stories

Many of our students have parlayed the LawWithoutWalls experience into employment, internships, and other opportunities. Here are a select few:

Lulia Hito (Miami Law) obtained an internship and subsequent employment at Eversheds in Dubai. A fluent Arabic speaker, Lulia is enriching her American legal education with international firm experience.

Amir Dhillon (UCL) is an attorney development coordinator at Axiom in London. Amir learned about Axiom through LWOW. Additionally, Amir also served as the LWOW Intern and Alumni Officer.

David O'Donovan (UCD) is completing an internship at Eversheds Agile/Eversheds Consulting, which he obtained through his participation in LWOW Original.

Marta Ottogalli (IE University) is interning at Taylor Vinters. She was introduced to the CEO of Taylor Vinters through LawWithoutWalls as he was a Thought Leader on one of our Virtual Thought Leader Sessions.

Matt Evans (UCL) has begun work at Eversheds, a job he received through LawWithoutWalls.

Erika Concetta Pagano (Miami Law) is the inaugural Eversheds Fellow and Associate Director for LawWithoutWalls.

Margaret Hagan (Stanford Law School; *Fellow, Hasso Plattner Institute of Design, Stanford University*) - Margaret was named a 2013 ABA Legal Rebel for her take on increasing accessibility to law through design. Before participating in LawWithoutWalls, she had not discovered yet how to merge her design skills with her legal focus. The 2012 Project of Worth winner is now fusing arts and the legal world at Stanford's D.School.

Rico Williams (Miami Law; *Legal Specialist/Corporate Counsel, Apple*) - "I have to strategically work through projects with varied-disciplined team members across Apple. I spoke about LWOW in my interviews, and employers were very interested in the non-traditional approach to legal education."

Bhargavi Raman (National Law School, Bangalore, India; Merry Go Learn) - "Having decided [after LWOW] that I did not want to take up my corporate law job in Mumbai, I wanted to work with a start-up and in the entrepreneurial space, and also wanted a short break from the law. I found this education start-up through a friend, and my experience with LWOW was instrumental in convincing the founder that I would be valuable to the organisation. Within a few weeks, I have started heading the business development side of the company."

Mike Williams (Sydney Law; *Linkedin*) - "LWOW helped shape my business planning and presentation skills. The program also deepened my understanding of how investors

think, and what's needed to successfully pitch for funding. Being able to say that I had successfully conceptualized and presented an online advice platform for prospective law students to investors, academics, and practitioners was of great interest to my employer. I have no doubt that the skills I learnt apply to my role at Linkedin."

Ashley Matthews (University of Miami School of Law; *Legal Tech Fellow, National Association for Law Placement*) Ashley, along with team members

Margaret Hagan (Stanford) and **Iqra Mussadaq** (UCL), created Traffick Junction, a website connecting volunteers and professionals fighting human trafficking worldwide. The project received recognition and funding from the United Nations. Currently, Traffick Junction combined forces with an organization called Chab Dai, to create the Freedom Collaborative (freedomcollaborative.org).

Summary of Surveys by Students

By the numbers:

100% of students agree that LawWithoutWalls **broadened their professional network**.

100% of students agree that LawWithoutWalls **enabled them to learn new technologies** more efficiently.

98.6% of students agree that LawWithoutWalls helped them **become more sensitive to other cultures and working styles**.

96% of students agree that LawWithoutWalls **measurably improved their presentation and communication skills**.

96% of students agree that LawWithoutWalls **built and sharpened their business skills**.

96% of students agree that LawWithoutWalls helped them **become more entrepreneurial**.

In their own words:

"Working with other students from around the world is one of the most **inspired and fulfilling** aspects of the experience."

"The LawWithoutWalls experience is **priceless**. The challenges of perspective, language, and culture are a source of joy for me. I learned from this experience what it will take to motivate diverse teams, and organize them more effectively."

"I can honestly say that LawWithoutWalls has been the best experience I have had in law school. I loved the ability to interact with a team of international attorneys and students

in order to develop a real-world solution to a legal issue. It has been **the most hands-on, applicable experience I've had in law school**."

"Upon entering law school, it is easy to lose sight of your creativity, which once seemed so clear and inseparable from your identity. LawWithoutWalls, for me, was the first time in my two years of legal scholarship that I finally felt like I could do more with my career than just joining a firm. I will never forget LawWithoutWalls as it **gave me the ability to recapture a part of myself that I had fear I had forgotten or lost**."

"LawWithoutWalls has been the **most personally fulfilling thing I have done in law school**. Hands down."

Summary of Surveys by Mentors

Our mentors—academic, practitioner, and entrepreneurial—play an equally vital role in the LawWithoutWalls experience. Here's what they have to say:

"We **feel highly valued**."

"I love seeing the creativity of the students' work, seeing them mix in cross-cultural groups, and **meeting a wide range of different people interested in creative 'legal' education**."

"I **enjoy building relationships with switched-on students**. It's a delight to witness their enthusiasm, ideas and growth and to contribute to their research and thinking."

"I love the **opportunity to share my experience and expertise** with the students, and to **make a difference in the future of law**."

"LawWithoutWalls **proves the mutual benefits** to both (in this case, all) parties in a mentoring relationship."

"I found the Virtual Thought Leader sessions very interesting. They **made me think about the legal market and my role within it**."

"LawWithoutWalls is a great learning experience for all participants. The **sense of community created** gave room to a more flexible interaction between mentors and students. Also, the spirit of the events fosters communication in a more relaxed way, thus letting people be **more confident and, at the end, more brilliant**."

"Participating in LawWithoutWalls has been **one of the best parts of being a professor**."

"**One of the best experiences of my career**."

Participating Law and Business Schools (2015):

97 students; 30 Law & Business Schools, 15 Countries, 6 Continents

- Bifröst University (Norðurárdalur, Iceland)
- Bucerius Law School (Hamburg, Germany)
- École HEAD / L'école des Hautes Etudes Appliquées du Droit (Paris, France)
- Fordham Law School (New York, NY)
- Harvard Law School (Cambridge, MA)
- IE Business School (Madrid, Spain)
- IE University (Segovia, Spain)
- IHEID / The Graduate Institute, Geneva (Geneva, Switzerland)
- Maurer School of Law, Indiana University (Bloomington, IN)
- Osgoode Hall Law School, York University (Toronto, Canada)
- Peking University School of Transnational Law / 北京大学国际法学院 (Shenzhen, China)
- Pontifical Catholic University of Chile / Pontificia Universidad Católica de Chile (Santiago, Chile)
- Stanford Law School (Palo Alto, CA)
- Schulich School of Business, York University (Toronto, Canada)
- Tel Aviv University /אוּנִיבֶרְסִיטַת תֵּל-אָבִיב (Tel Aviv, Israel)
- University College Dublin Sutherland School of Law (Dublin, Ireland)
- University College London Faculty of Laws (London, England)
- University of East London (London, England)
- University of Leipzig / Universität Leipzig (Leipzig, Germany)
- University of Miami School of Law (Coral Gables, FL)
- University of Montreal Faculty of Law / Université de Montréal Faculté de Droi (Montreal, Canada)
- Wharton School of Business, University of Pennsylvania (Philadelphia, Pennsylvania)
- University of St. Gallen Law School / Universität St. Gallen Law School (St. Gallen, Switzerland)
- University of Sydney Law School (Sydney, Australia)
- University of the Witwatersrand (Johannesburg, South Africa)

Project of Worth Topics (LWOW Original, LWOW X, and LWOW X Compliance):

(The following list is a sample of team topics from the past four years. For a complete list, please visit lawwithoutwalls.org.)

- Servicing the Lawyers to Service the Clients: How Can Technology, New Mediums, and Global Support Structures be Utilized to Help Lawyers Help their Clients?*
- Got Ethics? Making Use of Bar Organizations' Ethics Opinions*
- Legal Entrepreneurs and Venture Capital: Finding a Common Language in an Uncommon Ground*
- Training the Trainers: Which Skills Should Law Professors Have for 21st Century Professoring?*

- Breaking the Conviction Cycle: How Can We Empower Our At-Risk Youth After the First Offense*
- Dinosaurs in Sneakers: How Can Biglaw Innovate, Collaborate and Change to Avoid Extinction and Get Back in the Race?*
- The Wild Wild West of Arbitration: Are You Ready for What Really Happens Behind Closed Doors?
- In a Glocal World, How do Corporations Reduce the Dark Zone of Unknown Corporate Misconduct? There's Got to be a Solution for That
- There's No Access to Justice Without Access: How Can We Deal with Disabilities in the Courtroom?
- Harnessing The Power of Watson: Utilizing Cognitive Technology to Help the Law Firm Make Better Decisions and Build a Stronger Relationship with Clients
- E-Discovery and Legal Process Outsourcing: Commoditization or Democratization?
- Bridge Over Troubled Waters: Finding an Interim Solution for Law Grads Without Jobs
- Exits and Re-entries in the Law Market: Stop-Gaps? Or Potential For Innovation
- Running For Their Lives: How Can the Legal Profession Help Prevent Violent Crimes Against Minors So They Don't Have to Flee?^
- Managing Ethics and Compliance Risk Downstream through the Supply Chain†
- Building Effective Anti-Corruption Initiatives that Target Third Party Intermediaries†
- Anti-Trust Compliance Issues in an International Context†
- Developing Effective Communications Strategies for Ethics and Compliance Topics†
- It's Not Our Responsibility Or Is It?: Balancing the Commercial Goal of Making Money with the Moral Obligation to Protect Human Rights*
- MOOCs, DOCCs, and Avatars, Oh My: How Will We Educate Our Lawyers and Law School Students Tomorrow?*
- Robot Lawyers: The Future of On-Line Chat Attorneys*
- Introducing The New Shareholders: Designing The Optimal Law Firm Ownership Structure in an ABS World
- Targeting the Consumer Law Market with Predictive Data Analytics: Big Brother? or My Brother's Keeper?
- Coping Alone: How Should Legal Systems Cope With Self-Represented Litigants?
- A School for General Counsels? How Should Prospective GCs Develop Their Skill Set?
- Discovery in the Cloud: Can a Reasonable Expectation of Privacy Survive the Age of Technology?
- Cyber Justice: Using Technology to Provide Legal Services to Underserved Around the Globe
- Doing Well and Doing Good: New Models for Pro Bono in Legal Education and Practice
- Crowd Source and Open Source Lawyering: Good Job or Flash Mob?
- The New Face of Diversity: Supporting Minority Attorneys in the Local and Global Legal Marketplace
- The Disaggregation of Legal Services: A Service or Disservice to Clients?
- Trickle Down Justice? Evolution in Access to Justice for Low-Income and Vulnerable Client Populations
- Publicly Held Law Firms in the UK and Australia: The Big Bang or the Big Bust?

- Transparency in International Arbitration: What's Under the Invisibility Cloak?
- Ever-Increasing Law School Debt: Students Beware or Law Schools Take Action
- Lawyers Acting as Non-Lawyers and Non-Lawyers Acting as Lawyers: What is and What Should be Considered the Unauthorized Practice of Law?
- Women in the Law: Is the Glass Ceiling Cracked, Smashed, or Unbreakable?
- The Outsourcing of Legal Services: The Struggle Between Ethics and Efficiency
- Lawyers' Workspace in the Digital Age: Its Architecture, Design, and Aesthetic Impact
- Third Party Litigation Funding: Friend or Foe?
- Fallout from the Legal Services Act: Publicly Held Law Firms and Other New Models of Law Firm Structure and Ownership
- Judging 2.0: Embracing the Challenges and Benefits of Globalization and Technological Advances in the Courtroom

* *indicates topic for LWOW Original and LWOW X.*
ˆ *indicates topic for LWOW X only.*
† *indicates topic for LWOW X Compliance only.*
√ *indicates topic for LWOW Original and LWOW X Compliance.*

LWOW Original, LWOW X, and LWOW X Compliance LWOW Live Session Topics:

(The following list is a sample of Webinar Sessions from the past four years. For a complete list, please visit lawwithoutwalls.org.)

- Emotional Intelligence: How Do 21st Century Lawyers Measure Up?
- The New Metrics of Law: Procurement, Project Management, Six Sigma, and then Sum
- What is your Brand? Branding Yourself, Your Career, and the Legal Profession
- Finding Funding: Angels, Ventures, and Crowds
- The Future of Law Professors: Training, Development, and Tenure
- Ethics 20/20: Today's Ethical Landmines or Tomorrow's Future
- Female Legal Vanguards: Founding, Leading, and Changing Organizations Around the Globe
- Legal Entrepreneurship: Lawyers' Roles in Start-Ups
- Law Related Services: Legal Process Outsourcing, Legal Consulting, and Other Professional Services
- Professional Service Firms: Is Law A Professional Service or a Profession?
- Whistle Blowing System: What kinds of Whistle Blowing Systems are possible?
- Legal Compliance Programs and Departments: What are the basic elements of a Legal Compliance program?
- The Compliance Officer: What role does the Compliance Officer play, who should they be, how should they be trained, and which style of management works best?
- The Changing Role of Compliance Within Law Firms: How has the rise in importance of compliance departments in large organizations affected law firms?
- The Wild Wild West of Arbitration: What Really Happens in Arbitration—Are You ready?

Press

2015 Press:

- Closing Argument: Innovation, teamwork drive Romeen Sheth '15, HARVARD LAW TODAY (May 2015)
- Law Without Walls, Roy Black, BLACK'S LAW, A BLOG (May 2015)
- How Can Law Firms Innovate?, IBERIAN LAWYER (Apr. 2015)
- A Feel Good Story for Law?, Mark A. Cohen, LEGAL MOSAIC (Apr. 2015)
- Schulich-Osgoode JD/MBA Students Take Home LawWithoutWalls Awards, SCHULICH NEWS & EVENTS (Apr. 2015)
- LawWithoutWalls, SYDNEY LAW SCHOOL (March 2015)
- LawWithoutWalls, Ryuji Kato, ASAHI SHIMBUN (March 2015)
- Amir's Corner: LawWithoutWhatNow?, Amir Dhillon, AXIOM LONDON INTERNAL NEWSLETTER (March 2015)
- LawWithoutWalls Kicks Off its Fifth Year at University College Dublin, MIAMI LAW (Jan. 2015)
- Lawyers with solutions, Edward Fennell, THE TIMES (Jan. 2015)
- LawWithoutWalls, sponsored by Eversheds, EVERSHEDS (Jan. 2015)

2014 Press:

- Teaming up with law school students to pitch a social enterprise, Vasco Bilbao-Bastida, WHARTON SOCIAL IMPACT INITIATIVE (Dec. 2014)
- Fordham Law Grads Embracing Startup Culture, Patrick Verel, INSIDE FORDHAM (Nov. 2014)
- A changing market means additional skills are crucial for law students, Barney Thompson, FINANCIAL TIMES (Nov. 2014)
- Futures: Transforming the delivery of legal services in Canada, CANADIAN BAR ASSOCIATION LEGAL FUTURES INITIATIVE (Fall 2014)
- Innovating into the Future, MIAMI LAW MAGAZINE (Fall 2014)
- My View: Legal education needs to be a global, not local, issue, Carolyn Lamm, MIAMI HERALD (Sept. 2014)
- LawWithoutWalls 2014, Roberto Arribas, WEBLOG NEWS AT IE UNIVERSITY (Apr. 2014)
- An Interview with Miami Law Professor Michele DeStefano about LawWithoutWalls, MIAMI LAW HEADLINES (Apr. 2014)
- Bridging the Gap Between Law and Business, CANADIAN LAWYER MAGAZINE (Apr. 2014)
- Graduate Students Get Innovative with LawWithoutwalls, Joost Pauwelyn, THE GLOBE (March 2014)
- Great Minds Tackle Law, NATIONAL JURIST (Feb. 2014)

2013 Press:

- Greg Fontela, LawWithoutWalls: A Global Response to Legal Education Reform Rooted at Miami Law, MIAMI LAW REVIEW BLOG (Nov. 2013).

- Innovative Law School Report, FINANCIAL TIMES (Nov. 2013).
- Terry Carter, Stephanie Francis Ward, and Rachel Zahorsky, Legal Rebels, A Banner Year, ABA JOURNAL (Sept. 2013).
- A Global Part Virtual Law and Business Collaboration Platform, HIIL INNOVATING JUSTICE AWARDS (Sept. 2013).
- Andrew Clark, Tomorrow Law, NATIONAL JURIST (Sept. 2013).
- Leo P. Martinez, Legal Education and Change, AALS NEWSLETTER (Aug. 2013).
- The 2013 Peer Awards for Excellence in Customer Engagement Conference (June 2013); LawWithoutWalls partner firm Eversheds was recognized for its initiative in teaming client counsel with student teams from the program.
- Sarah Mui, Schools That Are Nailing Law Practice Technology; Prof Compares SLU to Pakistan, ABA JOURNAL (May 2013).
- Richard Granat, 13 Top Law Schools Teaching Law Practice Technology, ELAWYERING BLOG (May 2013).
- S. Salz, El Despacho en el que Suenan Trabajar Los Abogados do 2025, EXPANSION (Mar. 2013).
- Thinking Outside the Physical World, EVERSHEDS BLOG (Feb. 2013).
- P.B., Los Juristas del Futuro, EL ADELANTADO DE SEGOVIO (Jan. 2013).

2012 Press:

- Della Bradshaw, Breaking Down the Boundaries of Business and Law, FINANCIAL TIMES (Nov. 2012).
- Christian Metacalfe, Eversheds Lawyers Join Education Project, LAWYER 2B (Nov. 2012).
- Rachel M. Zahorsky, Law Students & Mentors Across the Globe Team Up to Develop New Approaches to the Legal Profession, ABA JOURNAL (Jun. 2012).
- Roxie Bacon, Creativity Is What You Make It, ARIZONA ATTORNEY (May 2012).
- Bill Henderson, What is LawWithoutWalls? Why Does it Matter?, LEGAL WHITEBOARD BLOG (Apr. 2012).
- Monica Goyal, Canada Moving Slowly on Innovation in Legal Services, LAW TIMES (Apr. 2012).
- Victoria Pynchon, Women Lawyers – We've Got an App for That, FORBES WOMEN (Mar. 2012).
- Victoria Pynchon, The Legal Revolution Brewing at LawWithoutWalls, FORBES WOMEN (Mar. 2012).
- John Flood, LWOW Kicks Off in Switzerland, RANDOM ACADEMIC THOUGHTS (Jan. 2012).
- Ruth Carter, LawWithoutWalls – Coolest Law School Program Ever, THE UNDENIABLE RUTH (Jan. 2012).

2011 Press:

- Legal Education Reform, BLOOMBERG LAW (Nov. 2011).
- Jordan Furlong, Innovation Pays, LAW21 (Aug. 2011).

- Jacqueline Kinghan, Education Without Walls – Opportunities In the Virtual Classroom, LEGAL WEEK (Jul. 2011).
- Tim Padgett, Amid Changes, Law School Tries to Get Real, TIME MAGAZINE (May 2011).
- Katherine Mangan, A Seminar Connects Law Students Around the World, THE CHRONICLE OF HIGHER EDUCATION (May 2011).
- John Flood, Looking Back on LWOW, RANDOM ACADEMIC THOUGHTS (Apr. 2011).
- Sarah Cunnane, This is an International Case: Legal Students Go Global, TIMES HIGHER EDUCATION (Feb. 2011).
- Laurel Terry, Laurel Terry Addresses LawWithoutWalls, PENN STATE LAW (Jan. 2011).
- UCL, LawWithoutWalls Launch, UCL NEWS (Jan. 2011).
- Deborah C. Espana, UM Law Program Links Students Across Globe, DAILY BUSINESS REVIEW (Jan. 2011).
- Legal Futures, UK Thought Leaders Join Groundbreaking International Legal Education Project, LEGAL FUTURES (Jan. 2011).
- The National Jurist, UM School of Law Launches Global Program, THE NATIONAL JURIST (Jan. 2011).

2010 Press:

- Andrew Evans, A Trend in Going to Law School, NEW ERA NEWS (Dec. 2010).
- Stephanie West Allen, LawWithoutWalls: Looking at the Future of Law Practices, IDEALAWG (Nov. 2010).

GLOBALIZING THE CURRICULUM IN EMERGING AFRICAN LAW SCHOOLS

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ABSTRACT:

This paper begins with a discussion of the impact of globalization on legal education generally. It then offers reflections of how an emerging law school in East Africa is incorporating innovative teaching techniques in the globalization of the law school curriculum. It provides an insight into the visiting lectureship program, experiential learning, academic trips and use of technology as techniques in globalization of the curriculum. In the same vein, it discusses the focus on ethics and the human person in the study of law, the presentation of language courses and international aspects of various courses, and the emphasis on linkages and collaborations with institutions in other countries. The paper concludes after a consideration of the challenges and opportunities experienced in the application of these techniques thus far.

I. Globalization

Students have traditionally practised law in the countries in which they have received their legal education. Given the supremacy of national law in every jurisdiction, law schools have also characteristically focused their teaching on national law. The resulting phenomenon is what authors have referred to as 'legal isolationism.' This they attribute to legal positivism, a school of thought which presents the sovereign as the only source of law.[1]

Presently, a number of developments are unfolding in legal practise which are influencing positivism's legal isolationism in a significant way. Legal practitioners are increasingly processing transactions involving laws from more than one jurisdiction and deciding which law to apply. They are also grappling with laws from different jurisdictions simultaneously or interacting with lawyers and legal issues from several jurisdictions in a single transaction. The more recent development is the emergence of legal issues and transactions which transcend national boundaries and can be more properly viewed as global issues such as those arising from internet usage. The phenomena creating these developments in legal practise are typically termed

[1] Nicolás Tévar Zambrana, 'Can Higher Legal Education Go Global? The University of Navarra School of Law Global Law Program' (2007), 2 <http://iated.org/resources_past_editions/inted2007/ConferenceProgrammeWeb.pdf page 11> acessed 28 May 2015.

as internationalization, transationalization, and globalization respectively.[2] The concept of globalization encompasses the integration of the world through movement of people, exchange of goods and services and information, communication and technology.[3] It is a reference to the proverbial global village that the world has become.

The arena of legal practise is shifting to reflect the presence of regional and international law firms. Several top tier law firms in African countries such as Kenya hold themselves out as being members of global or transnational alliances of law firms.[4] Corporate counsels in multinational corporations already interact with their stakeholders based in several jurisdictions in Africa and beyond.[5]

These developments in legal practise necessarily beg the question whether legal education is adequately preparing lawyers who are equipped to meet the demands of the changing practise environment.[6] Are law school curricula adequate in training lawyers who are responsive to the globalised practise environment? Although globalisation of legal education seems to have been going on in the developed world for some time,[7] African nations have not kept pace. It is likely that these nations may face marginalization should they continue to lag behind.[8]

Kenya's legal education regulator, The Council of Legal Education (CLE), is making a noteworthy attempt to keep pace with global trends. This is demonstrated by its aspiration

[2] Simon Chesterman, 'The Evolution of Legal Education: Internationalization, Tansnationalization, Globalization' (2009) 10 German Law Journal 878 <https://www.germanlawjournal.com/pdfs/Vol10No07/PDF_Vol_10_No_07_SI_877-888_Chesterman.pdf> accessed 2 May 2015.

[3] Muna Ndulo, 'Legal Education in Africa in the Era of Globalization and Structural Adjustment' (2002) 20 Penn State International Law Review 487 , 495 <http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1053&context=facpub> accessed 20 May 2015.

[4] See Coulson Harney and Bowman Gilfillan Africa Group < http://www.bgafricagroup.com/coulson-harney.asp>; IKM Advocates and DLA PIPER Africa < https://www.dlapiper.com/en/us/offices/nairobi/>; Kaplan and Stratton and LEX Africa < http://www.kaplanstratton.com/firm-profile/lex-africa/>; Anjarwalla and Khanna and Africa Legal Network < http://www.africalegalnetwork.com/locations/kenya/ > accessed 28 May 2015 among others.

[5] David Burgess, 'Corporate Counsel 100: Africa' (2015), 343<https://www.dlapiper.com/~/media/Files/News/2015/05/cc100_AFRICA.pdf> 1 June 2015.

[6] Chesterman, 879.

[7] American Law schools sought to globalize their curricula as far back as 1940's. See Andrew More, Cunningham Cara and Costello Margaret, 'Globalization of Legal Education' [2013] Michigan Bar Journal 40, 40 <http://www.michbar.org/file/journal/pdf/pdf4article2287.pdf>.

[8] Ndulo, 496.

towards achieving global competitiveness, worldwide excellence and an undisputed global status in the accreditation of legal education providers in Kenya.[9] Not every institution can be said to have a positive response towards the globalizing practise environment. This conclusion can be drawn from the rising tension within law societies who are grappling with the perceived need to protecting their 'practise territory' and livelihood from 'foreign practitioners' while simultaneously not remaining impervious to the dynamics of legal practise around the world.[10] Such tensions are inevitable after decades of legal isolationism and gate-keeping tendencies by bar associations and law societies in jurisdictions worldwide. These institutions must think about seeking progressive responses to globalization in the same way that law schools are attempting to do.

The response of law schools in developed economies to the process of globalization has been to rework their curriculum to include courses on international law, exchange programs, double degree programs across jurisdictions, hiring lecturers from other jurisdictions, the study of English and other international languages.[11] Evidently, these activities attract additional costs arising from travel and study across different jurisdictions. This significantly increases the overall cost of global law programs and renders them elitist and a preserve of the wealthy.[12]

The expensive nature of global law programs notwithstanding, such programs have also been criticised for being a mere 'Americanization' of legal education. The curriculum of law schools in some parts of China[13], Japan, Korea, Australia, Philippines, Hong Kong are said to have been remodelled to reflect American legal education and to prepare students for the practise of law in an American context.[14] This position is explained by the American dominance in legal practice generally, coupled with America's extensive cultural influence. Such 'Americanization' has similarly been extended to Africa where the influence extends beyond Americanization to

[9] Council of Legal Education (CLE), *Handbook for Legal Education Accreditation* (2011), 9.

[10] See Wahome Thuku, 'Foreign Lawyers to Work in Kenya' *Standard Digital News* (Nairobi, 3 February 2014) <http://www.standardmedia.co.ke/article/2000103789/foreign-lawyers-to-work-in-kenya>.

[11] Mortimer Sellers, 'The Internationalization of Law and Legal Education' in Jan Klabbers and Mortimer Sellers (eds), *The Internationalization of Law and Legal Education*, vol 2 (Springer 2008) <http://link.springer.com/10.1007/978-1-4020-9494-1> accessed 31 May 2015; More, Cara and Margaret.

[12] Chesterman, 886.

[13] 'Adopting and Adapting: Clinical Legal Education and Access to Justice in China' (2007) 120 Harvard Law Review 2134 <http://www.jstor.org/stable/40042655> accessed 1 June 2015.

[14] Chesterman, 886 . Michael William Dowdle, 'Preserving Indigenous Paradigms in an Age of Globalization: Pragmatic Strategies for the Development of Clinical Legal Aid in China' (2000) 24 Fordham International Law Journal 56 <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1779&context=ilj> accessed 31 May 2015.

include Europe and other countries in which lecturers receive their training and where law schools source their books and teaching material from. African lecturers who attend law schools abroad who return to their respective countries and institutions are known to perpetuate the teaching material and pedagogical methods they have received.[15]

Law schools in developing economies, on the other hand, generally lack the financial resources to mount global law programs similar to those in developed countries. Even in rare instances where subsidies are available, it is still the case that local and international financial partners have not considered legal education a priority area in the continent's competing financial needs.[16] This places these universities at the risk of being unresponsive and impervious to the globalization process. They may end up generating lawyers who are unprepared for legal practise in a globalised environment.

It is noteworthy that many African law schools already have international and comparative law programs. The irony, however, is that they experience a dearth of law books, law reports and course materials on local and national laws. As such, majority of the courses have a varying British common law and American influence arising from the use of law books sourced from and law teachers trained in these jurisdictions.

Arguably, the transplantation and adaptation of foreign systems and 'successful models' prevalent during the colonial times is still perpetuated in some development partnerships.[17] Given the social, political and economic disparities between the developed and developing countries, such adaptation may be beneficial only when local circumstances and realities are taken into account. This discussion raises the question about what Africa's local realities are and how African universities are responding to globalization.

Education of lawyers in Africa ought therefore to strike a balance between meeting the global demands and local needs if it is to be of any use to the continent. African countries grapple with political instability, weak governing institutions, inefficient resource allocation, food insecurity,

[15] Maurice Oduor, 'The Impact And Promise of American Legal Education In Transition Countries: The Kenyan Experience ; With Specific Reference To Moi University School Of Law' (2007) <http://www.law.pitt.edu/sites/default/files/cile/roundtablepapers/cileLLMOduor.pdf> accessed 4 May 2015.

[16] Thomas F Geraghty and Emmanuel K Quansah, 'Legal Education: A Missed Opportunity and Suggestions for Change: A Call for Renewed Attention to A Neglected Means of Securing Human Rights and Legal Predictability' (2007) 5 Loyola Univesity Chicago International Law Review, 92<http://lawecommons.luc.edu/cgi/viewcontent.cgi?article=1075&context=lucilr> accessed 22 May 2015.

[17] Michael William Dowdle, 'Preserving Indigenous Paradigms in an Age of Globalization: Pragmatic Strategies for the Development of Clinical Legal Aid in China' (2000) 24 Fordham International Law Journal 56 <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1779&context=ilj> accessed 28 May 2015.

environmental concerns and economic disempowerment among other issues. All these require legal and policy consideration. It is therefore inevitable that some tasks faced by African lawyers are unique to them or are not shared by lawyers from other continents to a similar degree.[18]

Africa needs lawyers who have good training which prepares them to be globally competitive and still meet local needs in alternative dispute resolution, health, environment, natural resources, joint ventures and project finance. There is a need for lawyers with high ethical principles, who embrace the use of technology and have capacity in specialized and emerging areas of practice such as oil and gas law.[19] They should be prepared to resolve corruption and dysfunctional institutions while simultaneously engage in a program of study that fits their individual interests, expertise and career plans. Lawyers have played a central role in the struggle for constitutional reform in countries such as Kenya and a strong legal profession is still needed for the creation and maintenance of efficient and fair administration of justice. All these are to be carried out through development of a curriculum which is rich in good variety of specialization options and clinics.[20]

As will be seen below, emerging law schools are developing new and innovative curricula. They have the advantage and opportunity of developing curricula that incorporate new ways of teaching law which are more responsive to current needs. They are, however, faced with the monumental challenge of developing law school curriculum which attempt to balance both national and global interests with little or no resources to work with.

Since legal education in Africa varies from country to country, a broad generalization may suggest a homogeneity that does not exist. This paper will therefore narrow down on Kenya and specifically on Strathmore Law School's approaches to introducing a more global curriculum.

[18] Muna Ndulo, 'Legal Education in Africa in the Era of Globalization and Structural Adjustment' (2002) 20 Penn State International Law Review 487, 492 <http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1053&context=facpub> accessed 20 May 2015.

[19] Apollo Mboya, 'The Bar: Challenges and Opportunities' in Yash P Ghai and Cottrell Jill Ghai (eds), *The Legal Profession and The New Constitutional Order in Kenya* (Strathmore University Press 2014).

[20] Samuel O Manteaw, 'Legal Education in Africa : What Type of Lawyer Does Africa Need ?' (2008) 39 McGeorge Law Review 903, 932, 939 <http://mcgeorge.edu/Documents/Publications/02_Manteaw_MasterMLR39.pdf> accessed 1 June 2015.

II. Legal Education in Kenya

Kenya is a country in East Africa with an estimated population of forty seven million (47,000,000) people.[21] According to the county's bar association, the Law Society of Kenya, there are twelve thousand advocates who serve the entire population.[22] This is no mean feat, given that there has been a steady increase in lawyers in the country due to the significant growth in the number universities and law schools in the last decade. Each of the emerging law schools has been subjected to a rigorous accreditation process and must continue to comply with set standards for legal education in order to remain in operation.

Universities in Kenya are governed by the Commission for University Education (CUE), a body established by the Universities Act.[23] New degree programmes must first obtain approval from the Commission before they can be mounted. This approval is obtained if the programme complies with quality standards set by the commission. Such standards include curriculum, faculty, library resources and physical space. The university offering the programme must demonstrate its need, relevance and uniqueness. Law programmes must also seek accreditation by the Council of Legal Education. The Council, established under the Legal Education Act,[24] also has standards and quality guidelines that law schools must adhere to with a vision towards enhancing legal education and training for global competiveness.[25]

The history of legal education for indigenous lawyers in East Africa can be traced to 1961 when the University college of Dar es salaam was established. This is because the colonial government was apprehensive about the potential political threat posed by providing legal education to Africans in these countries.[26] Upon the disintegration of the East African community, Kenya established its first Law school, the University of Nairobi Faculty of Law, in 1970. This was followed in 1994 by the establishment of the Moi University School of Law whose uniqueness

[21] Source: Population Division of the Department of Economic and Social Affairs of the United Nations Secretariat, *World Population Prospects: The 2012 Revision*,< http://esa.un.org/unpd/wpp/index.htm >accessed 18 May 2015.

[22] Law Society of Kenya Website < www.lsk.or.ke Advocates Search Engine > accessed 18 May 2015.

[23] Universities Act 2012.

[24] Legal Education Act 2012.

[25] Council of Legal Education (CLE), 7.

[26] Yash P Ghai, 'Law and Lawyers in Kenya and Tanzania: Some Political Economy' in C. Dias and others (eds), *Lawyers in the Third World: Comparative and Developmental Perspectives* (Scandinavian Institute of African Studies, Uppsala 1981) 144-173, 148.

lay in their clinical and practical pedagogical approach.[27] The country now boasts close to thirteen law schools, one of which is Strathmore Law School.[28]

III. Strathmore Law School

Strathmore University is a not-for profit private university based in Nairobi, Kenya. It started off as the first multi-racial college in the country in 1961 and now offers degree courses in business, commerce, hospitality and tourism, information technology and law.

Launched in April 2012, Strathmore Law School (SLS) is one of the youngest schools of the university. Its curriculum was developed through various stages, drawing extensively from local and international networks. It has made a great attempt at introducing a more global curriculum in legal education in order to prepare lawyers who are responsive to national and global practise needs.

Strathmore has several features that make it a unique law school in the country. The course was designed to have small classes which facilitate teaching methods which promote lecturer-student interaction. The curriculum is also designed to include a number of features which prepare lawyers who have a global world view. It offers a compulsory language course giving students a choice of Spanish, French, German or Mandarin. The students are provided with a laptop upon registration which gives them the tools to connect with the world from the first day at law school. In third year, the students are offered the possibility of participating in an academic trip abroad. The trip includes visits to universities, international tribunals and organisations which expose them to other legal jurisdictions. The school has networks and linkages with a number of law schools in other continents whose professors teach at the school for varied periods of time under the visiting professors programme. In addition, the students have the opportunity to participate in attachment, internship and exchange programs in at least four stages of their course.

Among the initial steps in the development of the curriculum was the feasibility study which was carried out to establish the need for another law school in the country.[29] This entailed interviews with academics, lawyers, judges and other stakeholders in the field of legal education. The interviews were conducted in order to find out what was considered necessary for an upcoming law school in a country such as Kenya. The output from the study was a proposed list of subjects

[27] TO Ojienda and M Oduor, 'Reflections on the Implementation of Clinical Legal Education in Moi University , Kenya,' 59 <http://journals.northumbria.ac.uk/index.php/ijcle/article/viewFile/123/122> accessed 20 May 2015.

[28] Patricia Kameri-Mbote, 'Legal Education and Lawyers' in Ghai Yash Pal and Ghai Jill Cottrell (eds), *The Legal Profession and The New Constitutional Order in Kenya* (Strathmore University Press 2014) 121-138, 122.

[29] This was carried out between November 2006 and February 2007.

which were deemed relevant for a law degree that would adequately prepare lawyers to work in Kenya and elsewhere. The courses were then developed and subjected to several work sessions. These sessions interrogated the objectives of the curriculum, target group, the course regulations, course descriptions and structure. The work sessions consisted of academics and practitioners drawn from local and international institutions and led by a law professor. Each work session resulted in an improved draft which was shared in a stakeholder's forum made up of participants from the feasibility study group, representatives from the judiciary, law firms, banks, other law schools and universities, non-governmental organisations and civil society. The input from these stakeholders was extremely useful in refining the curriculum before it was submitted for accreditation by the legal education regulator.

The need for the establishment of another law school was indisputable given the poor lawyer: population ratio in the country. Such a school would increases access to high quality legal education to those who sought it. The need for lawyers trained in new and emerging practise areas which are nationally relevant was also noted. These included courses in sports law, financial services law, and information technology law among others. Stakeholders felt that lawyers needed training on courses in ethics and humanities which the university was already offering in its other degree programmes.

Strathmore Law School offers a four year undergraduate law degree course. This is offered in English, one of the country's official languages. In order to qualify for graduation, a Strathmore Law School student is required to complete and pass a minimum of sixty five courses. These include courses in Ethics and Philosophical Anthropology which centre the learning process on the good of the human person. They are university core courses which are studied by all degree students who study at Strathmore. This is because the university strives to serve society through the provision of quality academic and professional training, as well as human and moral training. The law students have attachment programmes at three stages in the course. These enhance their experiential learning and put them in touch with the needs of the community in which they hope to work. The law school also offers forty seven core courses which are a complement of courses required by the Council of Legal Education and the law school's own additional niche courses. These are all compulsory and include Public International law and International Environmental Law and Policy. The courses are taught by faculty drawn from the school's full-time faculty, adjunct lecturers from legal practice and a good number of professors drawn from universities in Europe, America and South Africa.

a. The study of Ethics and the person in society

Strathmore university's mission is 'to provide all round quality education in an atmosphere of freedom and responsibility, excellence in teaching, research and scholarship, ethical and social development and service to the society.'[30] In perpetuation of this mission, all students are offered a course in ethics and the human person.

Coincidentally, a recurrent theme in during the law school's feasibility study was the need to prepare lawyers who valued professional ethics and inculcated these principles in their work and interaction with other professionals and clients. Strathmore's School of Humanities and Social Sciences takes all degree students through a course in ethics and philosophical anthropology. The course in philosophical anthropology develops students' knowledge and understanding of the human person and equips them to apply this knowledge in real life by acting according to the truth about the person. The course in Ethics endeavours to assist the students in developing their knowledge and understanding of the moral value of voluntary acts and encourage them to seek happiness in a virtuous life.

These courses prepare Strathmore University law graduates to work with people anywhere in the world. They will interact with people and the expectation is that they are equipped to conduct themselves in a professional and ethical manner and will treat themselves and all persons with dignity and respect.

b. Experiential Learning at SLS

The law school curriculum prepares its students to be responsive to the needs of the local and international community through experiential learning. The law degree schedules three compulsory attachment programmes which enable students to spend some time in work environments in Kenya and abroad.

Law students participate in the community based attachment programme at the end of their first year of study. They spend a minimum of two hundred hours carrying out community service in service institutions such as schools, hospitals, orphanages. The students volunteer to work in any position in these institutions. At the end of their second year of study, they participate in the judicial attachment programme. Here they are attached to a court of their choice in any part of the country and experience legal practise from the perspective of magistrates and judges. They assist the court clerks and magistrates in their work and learn the intricacies of the court system. They also observe how advocates interact with the courts and their clients. After completion of

[30] See Strathmore University Website < http://www.strathmore.edu/en/about-strathmore/mission-vision> accessed 13 July 2015.

their third year of study, the students take part in the legal practice attachment. This time they focus on the work of a lawyer as part of the bar. They work in law firms, non-governmental organisations, corporations and any other law-related institutions. Students are encouraged to secure these attachment positions and internships in law firms and tribunals abroad and a small number have done so. The school facilitates student participation in International exchange programmes, but these are limited to those students who can afford them.

These attachment programmes have a significant impact on the students. Many are awoken from their comfort zones and enlightened about the vast difference between life in a private university and the life of an ordinary Kenya citizen living below poverty line. They provide wake-up calls to the reality of injustice, corruption, poverty, lack of access to justice among other dysfunctions in the community. Judicial attachment has exposed many students to the gaps in access to justice in Kenya. This has inspired the research problems in dissertations by some fourth year students and a number of them have identified their dissertation research areas after this exposure.[31] Others have discovered their love for teaching in the schools they were attached to and decided to think seriously about the possibility of an academic career.[32]

More recently, Strathmore Law School has realized the need to develop a law clinic. This brings the experiential learning process closer home and ensures its continuity even outside the attachment periods. The clinic is already developing local and international linkages with like-minded institutions.[33]

c. Academic trip abroad, International Law courses and foreign languages

The Law School offers its students a wide variety of courses in order to build their competencies in national law, Public International Law and in emerging areas of law and legal practise. The course in Public International Law is offered in third year to all the law students. This course is complemented with a trip to universities, courts and Tribunals in European Countries.[34] This trip brings the students into contact with some of the institutions they have studied in class. It also has a pedagogical value in cross-cultural interaction. The cost of the trip is factored in the school so the entire class is able to participate. This international exposure opens their horizons in every respect.

[31] Two third year students researching on access to justice decided on their research topics after their court experience.

[32] A comment made by a second year law student who is a mentee of the author.

[33] The author is leading this process.

[34] The pioneer class visited The International Criminal Court, University of Cologne, International Criminal Tribunal for Yugoslavia, and the European Commission among other institutions.

In their fourth year, the students undertake a course in International Environmental Law and Policy. Among the electives are other courses with an international focus such as International Commercial Arbitration, International Criminal Law, International Economic Law and International Law on Foreign Investments.

In addition, the students choose one out of four foreign languages on offer. They take these courses in four levels spread through four semesters. This gives them sufficient proficiency to work in a country where the languages are spoken.

d. Research partnerships, visiting professor programme and collaborations with universities

The school has established research centres in fields relevant to Kenya and also internationally. These are in intellectual property, dispute resolution, tax, human rights and extractives.[35] These centres undertake collaborative research with institutions around the world and are also engaged in teaching related courses at the school as well as providing services to those who need them. The research centres are working towards building courses in these specialized areas thereby contributing to the training of legal experts in these fields.

The school has endeavoured to forge partnerships with other universities for collaboration in research and in exchange programs. This process began with the Strathmore Legal Executive Programme (SELEP) which was the forerunner of the law school. Through SELEP, the University hosted the training course to build African capacity in access and benefit sharing (ABS) and the ABS capacity development initiative for Africa in collaboration with the environmental evaluation unit of University of Cape Town. This drew participants from all over the continent.

The University also entered into a link agreement with other law faculties in the region under the Southern and Eastern Africa Regional Centre for Women's Law. This promoted cooperation in teaching exchanges, research and publishing and saw the training of the school's law librarian in law library protocols.

The law school has continued to forge partnerships especially for research and visiting professor agreements and has agreements with lecturers from universities in South Africa, Europe and America.[36] Lecturers from these jurisdictions co-teach courses for up to semester-long periods. They bring with them experience from their jurisdictions which enrich the learning experience at the school while contributing to the training and development of SLS staff with whom they co-teach. The school has a vibrant dean and management who foster visits and guest lectures from

[35] See <http://law.strathmore.edu/research/research-centres> accessed 5 June 2015.

[36] See Visiting Faculty profiles < http://law.strathmore.edu/faculty/faculty-profiles> accessed 5 June 2015.

leaders and institutional heads, renowned academics, judges, ambassadors and other accomplished personalities who share their life stories and inspire the school to greater heights.

e. Technology

The university has a laptop policy which ensures students are provided with laptops upon registration. This provides students with access to information from all over the world. Since a laptop would be of little use without internet services, it is meaningful that the University is a member of Kenya Educational Network (KENET). This is a not-for-profit operator serving educational and research institutions by providing internet services at affordable costs.[37] This connection has been explored to provide-learning facilities, subscription to e-journals and even teleconferencing services. Thus the learning process at Strathmore Law School strives to keep pace with developments around the globe.

The availability of online law reports is a fairly recent occurrence in the country. For a long time, law reports were not available and decisions from the courts were only available in the physical and files in various court registries and libraries. Strathmore's use of technology in the study of law therefore comes in at an opportune time when systematic and online law reporting has finally been established through the Kenya National Council for Law Reporting. This ensures students have information on the decisions from Kenyan courts and can keep abreast with developments locally. This introduction of free online law reporting partially fills the lacuna created by the dearth of local law materials that has been a perennial problem in legal education in Africa.

IV. Challenges and Opportunities

The attempt to build a robust curriculum which aim at offering a wide variety of courses meeting the requirements of the legal education regulators, the university's niche courses as well as emerging courses which are considered by stakeholders as relevant locally and internationally is not without its challenges.

The first of these is the resulting curriculum with a rather heavy course load. The students experience a course load with a large number of compulsory courses which attempts to mitigate several competing interests. Not all students appreciate the various factors taken into account in the development of their course load. Some of the students may resent the fact that they have to study so many courses yet students in other universities in the region seem to study the minimum number of sixteen courses required by the regulator.

[37] See Number 19 < https://www.kenet.or.ke/index.php?q=node/60 > accessed 5 June 2015.

At present, this challenge is mitigated by the admission of students who demonstrate the capacity to cope with such a course load. This is through selection of those who achieved excellent performance in their high school studies. Usually these are students who score A or A- grade, although the national minimum cut-off point for university entrance in Kenya is C+ grade in the national high school examinations. In view of the small size of the class, the admission process naturally tilts towards these top performers.

The second challenge is similar to that experienced by global law programs elsewhere; the cost attendant to the development of innovative curricula. The costing of the course at Strathmore takes into account the course load, the academic trip, laptops and visiting professors among other items. The law university is a private institution which does not receive government subsidies for its sustenance or operations. The students are therefore sponsored by their families, donors, various loan schemes and scholarships. As long as the school continues to be sustained by school fees, the cost is rendered very high and prohibitive to the average Kenyan. Such costs borne by the students and their sponsors render competitive legal education in Africa the preserve of students from wealthy backgrounds.

In this regard, the university's advancement office has made a sustained effort to source for scholarships and student loans in order to deal with this challenge.[38] The law school has also made concerted efforts to raise funds from law firms with which it has established linkages. Law school staff have also steered the fundraising effort to enable deserving but indigent student to join the school.[39] There is still a need to explore alternative sources of funding and scholarships which will expand the fiscal possibilities for the school.

Although the university laptop policy and course on fundamentals of computing contribute towards connecting the law students to the global village at the touch of a button, there is a drawback. This facility is limited to the time when students are on campus. This is a restricted duration bearing in mind that the university is a non-residential one and that the average Kenyan homes do not yet have access to internet connection. As such, there are constraints regarding the optimal utility of this facility.

Finally, the disparity of university calendars creates a logistical nightmare in the organisation of exchange programmes and visiting lectureship series. University calendars in Kenya are unique to each institution. Neither do they coincide with calendars in other continents. For instance, Strathmore's academic calendar runs from July to July with the long holidays falling between the months of April, May and June. This seems to clash with semesters in universities elsewhere

[38] See < http://www.strathmore.edu/en/financial-aid/types-of-financial-aid >.

[39] See < http://www.strathmore.edu/oldsite/News.php?NewsID=787 > Article on Strathmore Law School starts a scholarship fund, on scholarship started by Prof Patricia Kameri-Mbote and the author.

thereby affecting the timing of exchange programmes and visiting professorship series. It usually takes a lot of imagination, flexibility and a good number of adjustments in the course schedules in order to ensure that the exchanges go ahead as planned.

V. Conclusion

Legal education around the world is evolving to reflect the global trends in legal practice. This evolution is reflected in the development of law curricula which incorporate foreign or international elements such as exchange of students and faculty, as well as the introduction of courses from other jurisdictions. These global law programs have been criticized for being elitist and a mere Americanization of legal education. African universities that have developed and mounted similar programmes have also faced challenges in costing of the courses. Their programs have also had to respond to local and global needs resulting in bloated programs that pose further challenges to students and teaching staff. Nevertheless, they present bold steps in the face of globalization and are laudable for their courage, innovation and timeliness.

Learning Law through a Lens: Using Visual Media to Support Student Learning and Skills Development in Law

Dr N. Skead & Ms K. Offer

ABSTRACT

In 2010 and 2012 respectively, the Council of Australian Law Deans endorsed six threshold learning outcomes (TLOs) identified by the Australian government funded Learning and Teaching Academic Standards Project for Australian Bachelor of Law and Juris Doctor Law graduates. TLO5 relates to communication and collaboration. This paper examines two separate but related visual media projects aimed at facilitating and supporting the development of broad-based oral communication skills in the Juris Doctor at The University of Western Australia. The first project involved the use of short filmed courtroom scenes from a fictitious trial, loosely based on the Harry Potter books and films, for use in large lectures in the core unit, Evidence. The second related project developed a film created in the machinima Second Life for use in small group classes in the core unit, Equity and Trusts.

Learning Law through a Lens: Using Visual Media to Support Student Learning and Skills Development in Law

Dr N. Skead & Ms K. Offer*

1. INTRODUCTION

In 2009 the Australian government funded the Learning and Teaching Academic Standards (LTAS) project to coordinate the definition of academic standards and learning outcomes by discipline area, including law. The Council of Australian Law Deans has endorsed the sixthreshold learning outcomes (TLOs) identified by the LTAS project for Australian Bachelor of Law (LLB) and Juris Doctor (JD) graduates. These TLOs include written and oral communication skills. This paper explains and analyses two separate but related visual media projects that facilitate and support the development of this crucial learning outcome in the Juris Doctor (JD) at The University of Western Australia (UWA). The first project involved the use of short films of courtroom scenes from a fictitious trial, loosely based on the *Harry Potter* books, for use in large lectures in the core unit, Evidence. The second project developed a film created in the *machinima Second Life* for use in small group classes in the core unit Equity and Trusts.

2. BACKGROUND

2.1 Australian Higher Education

The Australian federal government requires universities to articulate clearly their generic graduate attributes. Compliance with this requirement is linked to national reporting, auditing and accreditation processes, which are in turn, of course, linked to federal funding. This requirement came about as a result of a protracted process following a review by a Federal Committee set up in 1997 and the recommendations contained in the Final Report of that Committee, 'Learning for Life: Review of the Higher Education Financing and Policy'. In particular, the Final Report recommended that 'the quality of education must be measured in terms of what students know, understand and can do at the end of their educational experience'.[1]

2.2 Australian Legal Education

Commensurate with the move towards a more explicit recognition of graduate attributes at the federal level, so too have Australian Law Schools moved towards incorporating graduate attributes and skills, and with them student learning outcomes, more explicitly into their

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[1] Roderick West, *Learning for Life: Review of Higher Education Financing and Policy: Final Report* (Research Report, Department of Employment, Education, Training and Youth Affairs, April 1998), p. 46, available at <http://www.voced.edu.au/content/ngv30787> (accessed 13 July 2015).

curricula. Specific impetus for this move came from the Australian Law Reform Commission's (ALRC) 2000 'Managing Justice' report recommendation that 'law schools should make explicit the nature and extent of their skills development programs … and how they examine these skills'.[2]

While at an individual level Law Schools, in accordance with the ALRC's recommendation, began to focus on 'graduate attributes beyond just content and knowledge as prescribed by the "Priestley 11"[3]',[4] it was only in 2009 that the issue was tackled at a national level when the Australian Government funded LTAS to coordinate the definition of academic standards and learning outcomes, for law as well as other disciplines. The project identified the six Threshold Learning Outcomes (TLOs) for law as, broadly: knowledge (TLO 1); ethics and professional responsibility (TLO 2); thinking skills (TLO 3); research skills (TLO 4); communication and collaboration (TLO 5); and self-management (TLO 6).[5] These TLOs are likely to form the basis for the evaluation and accreditation of higher education providers and law schools by the Tertiary Education Quality and Standards Agency.

2.3 Law at UWA

In 2012, UWA introduced a restructured degrees framework. Undergraduate offerings were reduced to five broad degrees with professional degrees, including law, only being offered at postgraduate level. One of the stated objectives of this course restructure reflects TLO 5 above that graduates are recognised as 'ELOQUENT: equipped with outstanding capability as clear, logical and powerful communicators who are highly articulate in oral and written forms of the English language'.[6] As a result of the restructure, law at UWA is now offered as a Master's level three-year professional JD degree. As a result of this change UWA Law School expects that it will be able to 'better prepare graduates for the challenges of contemporary practice'.[7]

The move to the postgraduate JD at UWA has had a significant impact on the nature of the student body. The 'new' law student at UWA is now older, more mature, more committed to the study of law and, most importantly, has already completed an undergraduate degree.

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[2] Australian Law Reform Commission, *Managing Justice, Report 89* (2000), Recommendation 2.2, p. 29, available at <http://www.alrc.gov.au/report-89> (accessed 13 July 2015).

[3] The "Priestley 11" is the list of prescribed areas of legal knowledge identified by the Law Council of Australia that a student must cover within his or her law degree in order to be admitted to legal practice; see <http://www1.lawcouncil.asn.au/LACC/images/pdfs/212390818_1_LACCUniformAdmissionRules2008.pdf > (accessed 13 July 2015).

[4] Australian Learning and Teaching Council and Council of Australian Law Deans, *Learning and Teaching in the Discipline of Law: Achieving and Sustaining Excellence in a Changed and Changing Environment, Project Final Report* 2009, available at <http://www.cald.asn.au/docs/altc_lawreport.pdf> p. 20 (accessed 12 July 2015); Natalie Skead, Sarah Murray and Penelope Carruthers, "Taking up the Challenge: Embedding, Mapping and Maintaining Threshold Learning Outcomes in the Transition to the JD – the UWA Experience" (2013) 47(2) *The Law Teacher* 130, p. 135.

[5] Sally Kift, Mark Israel and Rachael Field, *Learning and Teaching Academic Standards Project: Bachelor of Laws* (Learning and Teaching Academic Standards Statement, Australian Learning and Teaching Council, December 2010), p. 10, available at <http://www.olt.gov.au/resource-library?text=LTAS> (accessed 13 July 2015).

[6] See <http://www.staff.uwa.edu.au/procedures/new-courses/background/objectives> (accessed 13 July 2015).

[7] See <http://www.law.uwa.edu.au/the-school> accessed 13 July 2015).

While the JD students come from a wide range of disciplines and have different levels of tertiary education, [8] even those who enter law school with just a basic three-year undergraduate degree still possess some fundamental academic skills that would not generally be expected of an undergraduate law student. The effect of this demographic shift has been to allow staff to focus on developing in students more advanced academic and legal skills.

2.4 Skills development and learning outcomes in the JD

In designing the curriculum for the new JD, the UWA Law School adopted an integrated and progressive approach to skills development. The mandated TLOs are integrated in a coordinated way into the core units in each of the six semesters of the JD course and have been carefully aligned with assessments that measure their acquisition. In this way the Law School can be confident that on completion of the course a UWA law graduate has achieved each of the prescribed TLOs to the requisite standard.[9]

3. PEDAGOGICAL UNDERPINNINGS OF THE PROJECTS

3.1 The bilateral nature of communication

The LTAS project identified Communication as an essential learning outcome for all Australian law graduates and incorporated it into JD TLO 5: Communication and Collaboration, which provides as follows:

JD TLO 5: Communication and Collaboration

Graduates of the Juris Doctor will be able to:
(a) Communicate in ways that are effective, appropriate and persuasive for legal and non-legal audiences; [10]

Undoubtedly communication is crucial to the role of a lawyer. It is arguably one of the most important legal skills, particularly for a law graduate who intends to work as a legal practitioner. The work of a lawyer involves, among other things, accepting written and/or oral instructions from clients and advising them accordingly; negotiating contracts and settlements, either orally or in writing, or both; and making arguments and submissions in court. The ability to communicate clearly and effectively in giving and receiving information is central to how well a legal practitioner performs his or her role. It is for this reason that communication, both written and oral, has been identified nationally as an essential TLO for law graduates.[11]

[8] While entrants into the JD at UWA must have a Bachelors degree many JD students have postgraduate qualifications including Graduate Diplomas, Masters degrees and PhDs from a range of disciplines.
[9] Skead *et al*, above n 4.
[10] Kift *et al*, above n 5.
[11] Council of Australian Law Deans, *The CALD Standards for Australian Law Schools* (17 November 2009), available at

Much has been written on how communication can be integrated into the teaching of a law course. The emphasis in the existing literature, however, is on facilitating the development of written,[12] rather than oral[13] communication skills in law students. Those that have focused on oral communication skills, have largely limited their discussion to developing students' unilateral oral communication skills, that is; their ability to deliver and present information and argument through speaking.

Whilst speaking is, of course, a crucial aspect of effective oral communication, it forms only one component. Oral communication is, of necessity, a 'two way street'. It goes beyond simply delivering information, ideas and emotions;[14] it is a shared experience, a 'social interaction that involves two or more people'.[15] It follows that as important as the ability to speak 'effectively, appropriately and persuasively'[16] is the ability to listen carefully and critically and to observe and interpret verbal and non-verbal signals such as fluency, body language and eye contact. James and Field have noted that the bilateral nature of communication is served by '[a]ctive listening [which] is the key to achieving effective oral communications. In order to communicate effectively with a client, during a negotiation or in court, it is necessary to listen carefully to what is being said to and around you'.[17]

In a similar vein, Weinstein has suggested that 'the most important skill for a lawyer whose practice involves client contact, group work or oral advocacy' is interpersonal intelligence.[18] To a large extent a lawyer's interpersonal intelligence may be measured by his or her ability to communicate orally, not only by speaking but, perhaps more importantly, by listening;

<http://www.cald.asn.au/assets/lists/ALSSC%20Resources/CALD%20Standards%20As%20adopted%2017%20November%202009%20and%20Amended%20to%20March%202013.pdf> (accessed 13 July 2015).

[12] Dean Bell and Penelope Pether, "Re/writing Skills Training in Law Schools – Legal Literacy Revisited" (1998) *Legal Education Review* 113; Samantha Hardy, "Improving Law Students' Written Skills", unpublished paper for *University of Tasmania EDGE programme* (2005); Tonya Kowalski, "Toward a Pedagogy for Teaching Legal Writing in Law School Clinics" (2010) 17 *Clinical Law Review* 285; Bryan A. Garner, *Legal Writing in Plain English: A Text With Exercises* (Chicago, University of Chicago Press, 2001); Justin Gleeson and Ruth Higgins (eds), *Rediscovering Rhetoric, Law Language and the Practice of Persuasion* (The Federation Press, 2008); Mark P. Painter, *The Legal Write: 40 Rules for the Art of Legal Writing* (3rd ed., Cincinnati, Casemaker Print Publishing and Jarndyce & Jarndyce Press, 2005).

[13] James C. McCroskey, *An Introduction to Rhetorical Communication* (4th ed., Englewood Cliffs, NJ, Prentice Hall, 1982); Jane Summers and Brett Smith, *Communication Skills Handbook* (Milton, Qld, John Wiley & Sons, 2006); Stephen E. Lucas, *The Art of Public Speaking* (10th ed., McGraw-Hill, 2008); Adrienne Hancock and Matthew Stone, "Public Speaking Attitudes: Does Curriculum Make a Difference?" (2010) 24(3) *Journal of Voice* 302; Matthew McKay, Martha Davis and Patrick Fanning, *Messages* (3rd ed., Oakland, CA, New Harbinger, 2009).

[14] Joseph A. Bolarinwa and Doreen Y. Olorunfemi, "Organizational Communication for Organizational Climate and Quality Service in Academic Libraries" (2009) *e Journal: Library Philosophy and Practice*, available at <http://www.webpages.uidaho.edu/~mbolin/bolarinwa-olorunfemi.htm> (accessed 13 July 2015); Saundra Hybels and H.R. Weaver, *Communicate Effectively* (6th ed., New York, NY, McGraw-Hill, 2001).

[15] Natalie Skead, "Uncle Jack, Jaycee and the equitable doctrine of estoppel: using Second Life to support the development of advanced oral communication skills in law students" (2015) *The Law Teacher*, DOI: 10.1080/03069400.2015.1035577 available at <http://dx.doi.org/10.1080/03069400.2015.1035577> (accessed 13 July 2015).

[16] Kift *et al*, above n 5.

[17] Nikolas James and Rachel Field, *The New Lawyer* (John SWiley & Sons Australia, 2013), p. 325.

[18] Ian Weinstein, "Testing Multiple Intelligences: Comparing Evaluation by Simulation and Written Exams" (2001) 8 *Clinical Law Review* 247, p. 257.

'[t]he lawyer relies on interpersonal intelligence to be an effective counselor who communicates, listens, and empathizes with a client. A lawyer then uses interpersonal intelligence to negotiate, mediate, persuade and otherwise advocate her client's interests'.[19]

Despite the importance of bilateral oral communication skills in legal education, there is little focus on the development of critical listening and observation in law curricula in Australia. The authors sought to address this gap in skills acquisition in the JD at UWA through the two separate but related visual media projects discussed below. Both projects encourage the development and acquisition of broad-based oral communication skills, by focussing on active listening and observing and the interactive bilateral nature of communication.

4. THE PROJECTS

4.1 Teaching context

The authors both coordinate and teach compulsory units in the JD. Natalie Skead teaches a second year unit, Equity and Trusts. This is a unit with an expected enrolment of approximately 280 students, once the numbers in the JD are at their full capacity. Kate Offer teaches a third year unit, Evidence, with a similar expected enrolment once the JD is fully subscribed.[20] The projects were undertaken in relation to these units respectively.

4.2 Aim

The identified learning outcomes for both Equity and Trusts and Evidence include TLO 3 (Thinking Skills)[21] and TLO 5 (Communication and Collaboration). The principal aim of both projects was to facilitate the attainment of the outcomes stated in both TLOs but particularly communication skills.

4.3 The pedagogical challenges in teaching communication skills in law

While there are other methods for developing and assessing the skills contained in TLO 3 and TLO 5 including research essays, oral and written presentations, moots and class participation (which may or may not be assessed),[22] the principal method adopted for teaching thinking and communication skills in the JD at UWA, as indeed is the case in most other Australian

[19] Andrea Kayne Kaufman, "The Logician Versus the Linguist – An Empirical Tale of Functional Discrimination in the Legal Academy" (2002) 8 *Michigan Journal of Gender & Law* 247, pp. 255–256. See also Howard Gardner, *Frames of Mind: The Theory of Multiple* Intelligences (New York, NY, Basic Books, 1983), p. 239.

[20] Both these units are 'Priestley 11' units. See above n 3 for a discussion on the 'Priestley 11'. The JD commenced in 2013. The enrolments have been increasing each year since then and it is expected that the course will be fully subscribed by 2017.

[21] JD TLO 3 provides as follows:

'Graduates of the JD will be able to:

(a) Identify and articulate complex legal issues;
(b) Apply legal reasoning and research to generate appropriate jurisprudential and practical responses to legal issues;
(c) Engage in critical analysis and make reasoned and appropriate choices among alternatives; …'

Kift *et al*, above n 5.

[22] Fiona Martin, "Integration of Legal Skills into the Curriculum of the Undergraduate Law Degree: The Queensland University of Technology Perspective" (1995) 13(1) *Journal of Professional Legal Education* 45, pp. 56–57.

law schools, is through the use of the written hypothetical fact scenario as part of a tutorial exercise, an assignment or examination question. These scenarios are problem-solving exercises; the student is given a written problem and from that, is expected to identify the legal issues contained therein and provide legal advice to the hypothetical client.

Although there is certainly a role for the written hypothetical fact scenario in the law school classroom, it has a number of limitations. The primary limitation is that in practice, a client rarely delivers their legal problem in the neat and concise manner in which it is presented in a well-written (or even not-so-well-written) hypothetical; consequently, this dominant mode of learning essential communication skills does not truly prepare the law student for what he or she will ultimately do, or the skills he or she will ultimately need, in practice. The reality of advising a client is much more difficult; it can involve asking questions in order to establish the true complexity of the facts. In addition to this, the 'facts' are often open to interpretation – there are two sides to every story and facts are seldom undisputed. Getting to the bottom of a client's situation is often not as simple as is portrayed by the use of a written hypothetical fact scenario. As noted by Slapper and Kelly:

> It is impossible to give good advice without having first listened to your client. Listening is actually quite difficult to do effectively as it involves deep mental analysis of what you have heard. Effective listening therefore involves not only hearing what is being said, but noting the way in which things are said, and the body language displayed while it is being said.[23]

In addition to client interviewing, taking instructions and giving advice, law graduates need advanced oral communication skills for the negotiating table and the courtroom both of which entail far more than well-honed advocacy skills. Lawyers must listen carefully and critically to what is being said in a negotiation or in court in order to interpret, evaluate and respond accordingly (and usually very quickly). A written scenario does not easily replicate the pressured environment in which this is done nor the speed with which it all takes place. Similarly in all these work contexts, lawyers must pick up not just what is being said but how it is being said – they must respond to tone, fluency and silences.

The importance of actively and critically listening so as to truly hear and understand what is actually being said by a client or witness, opponent or judge cannot be overstated. In order to give appropriate, accurate and proper advice; to examine, cross-examine or argue persuasively; and negotiate effectively, the legal practitioner must be able to listen carefully, hear accurately and evaluate what is being said. Teaching this skill is difficult, arguably even impossible, to achieve with a written fact scenario.

Moreover, as noted, communication involves more than mere words. It encompasses many non-verbal signals, such as body language (including eye contact or lack thereof, posture and gestures) and facial expressions. Perhaps counter-intuitively, silence can also constitute a communication; much can be said, for example, by a failure to respond when an answer

[23] Gary Slapper and David Kelly, *The English Legal System* (14th ed., Abingdon, Routledge, 2013), p. 72.

would be expected: *Qui tacet consentire videtur, ubi loqui debuit ac potuit.* [24] It follows that, in addition to the ability to listen actively and critically to verbal communications, an awareness of and sensitivity towards non-verbal communications and an ability to critically observe and interpret these cues, is a crucial skill for legal practice.

4.4 The resources

4.4.1. The '*Harry Potter*' films

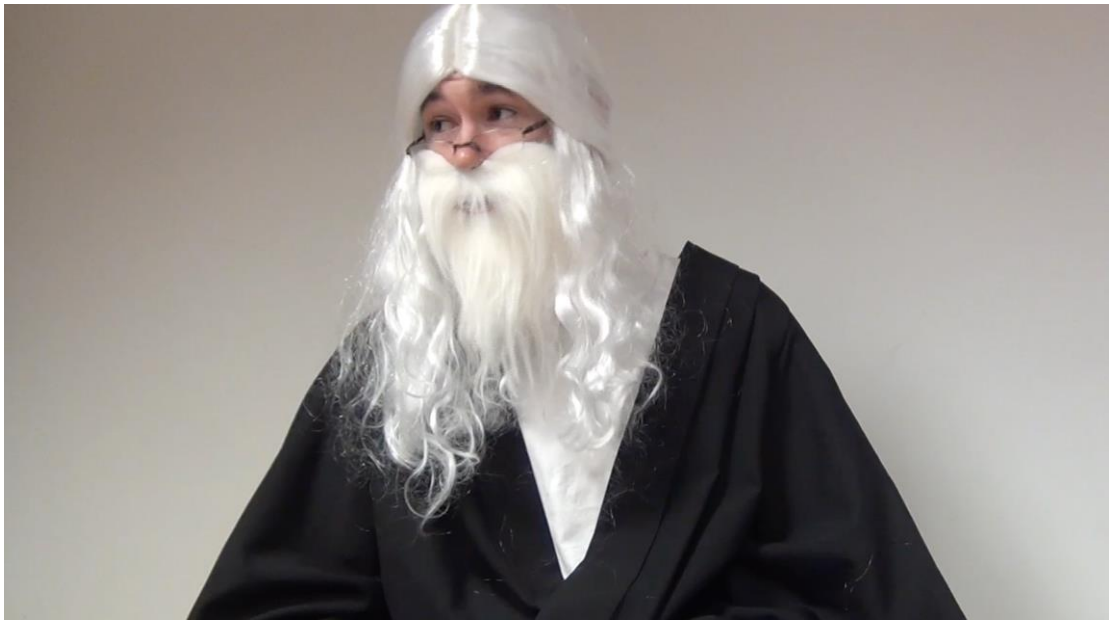
In 2012, Kate Offer was awarded an internal grant to create short, filmed courtroom scenarios to facilitate her teaching in Evidence. The films are based on a fictitious trial of Harry Potter from a scene in the first book and film *Harry Potter and the Philosopher's Stone*. Each film raises a particular legal issue relating to Evidence such as hearsay, opinion evidence and cross-examination. Watching the films allows students to consolidate their understanding of the legal principles and gives them guidance and enhances their familiarity with the peculiar language of a courtroom, something that can be very unnerving for junior practitioners. Each short scenario has an accompanying set of questions that require the students to listen carefully to the dialogue between the characters (the judge, prosecution barrister, defence barrister and witness) and analyse the legal issues raised by that dialogue.

In total, six short 10-minute videos were created. The scripts were written by Kate in conjunction with a senior criminal barrister. The videos were filmed over the course of a couple of weekends. Law and Communications students from UWA were hired to take charge of direction, lighting, sound and editing; friends and family members were prevailed upon to appear as actors. Despite the fantastical scenario and characters (deliberately chosen so as to make the resources appealing to students, the vast majority of whom are familiar with the *Harry Potter* books and films), the films are accurate representations of the evidentiary issues that might be raised in a murder trial in Western Australia.

The films were used in large lectures. Upon entering the lecture theatre students were handed a sheet with the questions they would be answering and discussing with respect to the film shown in that class. After a brief whole-of-class discussion about the main issues that can arise with respect to the issue of law at the core of the film, the film was then played to the class. The Professor Dumbledore filmed scenario is used as an example in this paper. This film involves the Professor being called as an expert witness and raises a number of issues relating to the giving of expert opinion evidence. Appendix A is an extract from the Unit Outline for Evidence dealing with opinion evidence. The Professor Dumbledore film can be viewed at http://youtu.be/pD33rZGu3N0.

[24] He who is silent, when he ought to have spoken and was able to, is taken to agree—Latin proverb

Figure 1: A screen shot from the Professor Dumbledore scenario



The hand-out instructed students to consider the following questions:

1. How does the Prosecution establish that Professor Dumbledore is qualified to give evidence?
2. What is the factual foundation upon which his evidence is based?
3. What is Professor Dumbledore's expert opinion based on the evidence before him? Is he commenting on the 'ultimate issue?'
4. How does the Prosecution undermine the evidence of Professor Dumbledore's evidence?
5. In your opinion is this an effective cross-examination? Why/why not?

After the first viewing of the film, students worked together in groups of two or three to discuss the film and formulate answers to the questions in collaboration with each other. Students were given ten minutes in those groups. The film was then reshown to enable the students to fill in any 'gaps', with Kate adding some commentary. The exercise then finished with a whole-of-class comparison of answers, facilitated by Kate.

4.4.2. The *Second Life* film[25]

Natalie Skead's film was created in the *machinima*, *Second Life*, an online virtual world created by Linden Lab in 2003 and in which UWA has an active international presence. As a result, technical and creative support was readily and freely available on campus.

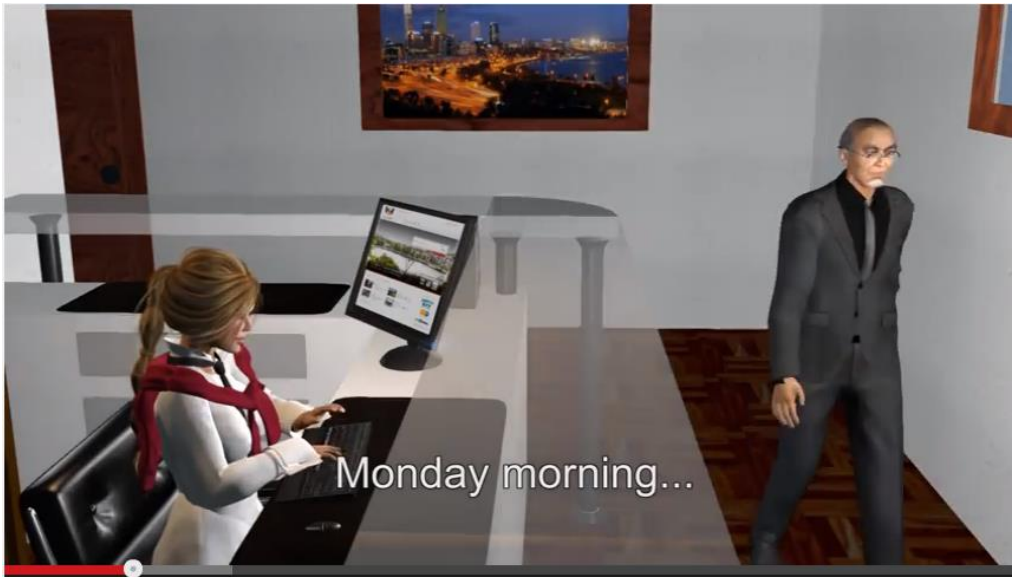
Natalie wrote the script and screenplay. Laurin Hawks of Berlin, Germany undertook the direction and production of the film. The film is available at http://goo.gl/rdhn4w.

The film has two main digital characters (or avatars), Uncle Jack an ageing solicitor, and Jaycee his niece and part-time law clerk. There is also a range of extras. The film takes places

[25] This project forms the subject matter of article by Skead, above n 15.

in the virtual environments of Uncle Jack's law office, Jaycee's home and a law school campus at a fictional private university in regional Australia. The storyline raises issues relating to estoppel, including representation, reliance, detriment and remedies and is used as the basis for a problem-solving tutorial on estoppel in a flipped classroom format in Equity and Trusts. Appendix B is an extract from the Unit Outline for Equity and Trusts dealing with estoppel as well as the tutorial question.

Figure 1: A screen shot from the *Second Life* film



The tutorial question directed students to:

1. Watch the film;
2. Prepare legal advice for Jaycee; and
3. Identify any further information they may need in order to provide accurate and comprehensive advice.

At the outset of the tutorial, Natalie explained to the students the purpose of presenting the problem as a film rather than a written hypothetical scenario. In an open forum under Natalie's guidance and supervision, students then discussed the legal issues and advice they would give. During the course of the discussion students also indicated the additional information they would seek from their "client", giving reasons why this information was necessary and was not accessible simply by watching the film.

4.5 Evaluation

4.5.1 Teacher evaluation

Using these visual media resources to develop thinking and communication skills in the respective units has a number of significant positive learning outcomes for students. Firstly, both resources provide a more accurate reflection of what students can expect to encounter in "real-life" in their future careers as legal practitioners, whether in the office or in the

courtroom. In this way, the use of films rather than written hypothetical problem scenarios is more effective in providing law students with the 'skills needed for success in practice'.[26]

Secondly, by presenting the problem scenarios visually, through the *Second Life* film and the *Harry Potter* videos, students' critical thinking and listening skills are extended beyond simply reading a summary of the facts or a transcript of a courtroom scene. In using both resources, students are required to:

- Listen carefully and critically to, and carefully analyse, the dialogue between the characters, both in terms of the substance of the spoken words but the way the words were delivered, tone and fluency; and
- Use cognitive skills to critically analyse the non-verbal actions of the characters, their expressions, body language and any silences.

Ultimately it is both hoped and anticipated that, by using these films as the basis for problem-solving exercises, students will develop the broader range of analytical and communication skills required for legal practice. As Equity and Trusts and Evidence are second and third year compulsory JD units respectively, this development is both coordinated and progressive: students begin to develop the skills in the second year of their law degree in Equity and Trusts and then build on those initial skills in their third and final year in Evidence, so that on completion of the JD they have developed these skills to a sufficiently advanced level.

Of course, a third (and intended) outcome of both projects, is that they introduce variety and fun into the teaching of, what are often considered to be, difficult and dense law units. They help to engage students in the content and foster increased interaction in both the large lecture and small tutorial or seminar.

4.5.2 Student evaluation

Student evaluation of the films was undertaken at the end of the classes in both units by way of a simple questionnaire asking the following questions:

1. Did you enjoy this exercise? If so, why? If not, why not?
2. Did you find this exercise worthwhile? If so, why? If not, why not?
3. Would you suggest I use films to present fact scenarios in the other problem-solving exercises in this unit?
4. What changes would you suggest I make next time?

In relation to the *Second Life* film used in Equity and Trusts tutorials, the student responses to the first three questions were unanimously "yes". Reasons given for students enjoying the exercise and finding it worthwhile included:

[26] David Weisbrot, "What Lawyers Need to Know, What Lawyers Need to Be Able to Do: An Australian Experience" (2002) 1 *Journal of the Association of Legal Writing Directors* 21, p. 20, available at <http://www.alwd.org/wp-content/uploads/2013/03/pdf/Weisbrot.pdf> (accessed 13 July 2015).

- It showed how many small aspects of situations are important
- Facts were gradually exposed over time
- Couldn't refer back to fact sheet – more challenging
- I'm a fan. It was something different, excellent to be able to examine the circumstances and allow for further "client interview questions"
- The interpretation of statement and the hunt for facts
- It allowed me to assess the situation more fully – nuanced!
- Taught me to listen exactly to what is being said

A concern with the film expressed by some students was the inappropriate stereotyping of the avatars. The solicitor, Uncle Jack, was an older Caucasian distinguished looking man; the law office manager and Jaycee were both attractive younger females who, in some scenes, wear inappropriate clothing. This criticism is legitimate and is, unfortunately a feature of *Second Life*. It will be taken into account in selecting a platform for the expansion of the project. Whilst *Second Life* was used because of the institutional support available, there are other online animation and *machinima* platforms available that do not have the same issues.

The responses to the *Harry Potter* films used in Evidence lectures were similarly enthusiastic and were also unanimous in their responses of 'yes' to the first three questions. The responses to the questions as to why they found the films enjoyable and worthwhile in this unit included the following:

- I think it's always beneficial to be involved in a 'real-life example' instead of just reading about it.
- Had to listen hard!
- It really got discussion going and for quite a while which is always good
- So much work, energy and thought went into this! Makes one see in 'real life' the theory we are studying.
- The exercise was a unique approach to help students understand the application of the law
- So good to see and think about and talk about the court process in action

The only suggested change was to provide more background information for those students who are not familiar with the *Harry Potter* series. One student suggested a background document for those students, giving a brief outline of the story, the characters and connections between them. This is an excellent suggestion by a self-identified "older" student. The point is well made and this briefing document will be created for use in Evidence when the unit is next taught.

4.6 Final reflections

From a teaching perspective both the *Second Life* film and the *Harry Potter* videos are an effective way to encourage the development of broad-based bilateral oral communication skills in law students.

The *Second Life* film resulted in students gaining a much more thorough understanding of the facts and, consequently a more accurate and precise application of the law in advising the client. As an example, the halting and stammering speech of the older character was construed as being indicative of diminished mental capacity. It is hard to imagine how this could have been conveyed in a written scenario, without explicitly saying as much. The *Harry Potter* videos also resulted in a more thorough understanding of the legal issues and how they might arise in a real courtroom. The students had to listen very carefully a number of times to what was being said and also how it was being said; the tone of voice as well as the way in which the words were delivered by the character. They had to look beyond the words themselves to establish their meaning.

The response to both projects was overwhelmingly positive. It should be noted, however, that these postgraduate JD students already have a significant grasp of foundational communication skills. That said, there is no particular reason visual media can not be used in this way with success with undergraduate law students, although the process may need to be modified slightly, such as by giving the students more time or repeated viewings of the films.

Despite the success of the projects there are a number of potential drawbacks. The *Harry Potter* films were time-consuming and costly to film and edit. Money was saved by using family and friends as actors although that did result in a lower quality product; the quality of the acting was varied and it was not always possible to direct the actors to elicit the full range of emotions and nuance required in both verbal and non-verbal language. Using more skilled and experienced actors could have averted this, of course, but the grant budget did not provide for such an expense. Even with inexperienced actors there is an advantage to using real people in a 'real life' filmed scenario. Even inexperienced actors can show some emotion thus overcoming some of the difficulties experienced with the *Second Life* film, where the 'actors' are avatars and therefore limited in the gestures, facial expressions and body language they are capable of conveying. As a result, the interpretation of non-verbal communication was not as multifaceted as would be the case in real-life. This necessarily has an inhibiting effect on the development of communication skills. As Yule, McNamara and Thomas note, 'the comparatively crude gestures available to avatars in a virtual court in *Second Life* are a poor substitute for the subtleties of human faces and bodies.'[27]

On the other hand, *Second Life* can be easily updated whereas the *Harry Potter* films cannot. Using a digital platform does allow for a more viable resource, that is sustainable over the longer term as it is possible to modify and adapt the resource more easily in future years if necessary.

Although there are a number of teacher and student concerns with both the visual media resources created, the use of these filmed scenarios in problem-solving exercises has been

[27] Jennifer Yule, Judith McNamara and Mark Thomas, "Mooting and Technology: To What Extent Does Using Technology Improve the Mooting Experience for Students?" (2010) 20 *Legal Education Review* 138, p. 142. See also Jennifer Ireland, Michelle Sanson and Paul Rogers, "Virtual Moot Court: A Pilot Study" (2010) 3 *Journal of the Australasian Law Teachers Association* 1, p. 10.

extremely successful in emphasising to students the multifaceted nature of communication and has contributed to the development and enhancement of students' broader communication skills. Overall both projects were a success and both authors plan to continue to incorporate the resources created into future classes.

Importantly, although these scenarios were used in Equity and Trusts and Evidence these teaching resources could be used in any law unit. Given that Evidence is essentially about the rules of a courtroom, however, it lends itself particularly well to a courtroom scenario. Moreover, since problem-solving is used as a teaching method in other disciplines such as psychology, medicine and nursing, disciplines in which effective communication is also a crucial graduate learning outcome, the visual presentation of problem scenarios in these discipline areas would be equally effective in encouraging the development of broad-based communication skills.

5. CONCLUSION

By using films as an alternative medium for presenting hypothetical problem scenarios in their two compulsory JD unit, the authors have reconceptualised and enhanced the development of oral communication skills in these units. The students who undertook these exercises report they now appreciate more fully the multifaceted nature of oral communication involving speaking, listening and observing. These students can expect to demonstrate a more advanced development of this essential learning outcome.

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LAW SCHOOL

Evidence
LAWS5107
6 credit points

Learning Guide
(Schedule of lectures and tutorials, assessment details and reading list)

Semester 1 – 2015

Unit Coordinator: Kate Offer
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6488 4635

UNIT DESCRIPTION

Unit aims

Welcome to LAWS5107 Evidence.

Evidence is all about the adversarial trial: our society's primary, ultimate mechanism for determining disputed facts. At a trial two stories are told and after hearing the stories a jury (or other fact-finder, a magistrate or judge) must say "yes" or "no" to the prosecution's/plaintiff's case. It will matter a lot in determining that "yes" or "no", what information the fact-finder is allowed to hear and how. The rules of evidence determine these things: what kinds of information a jury/fact-finder can hear; how and by whom it can be conveyed; what use the jury/fact-finder can make of information they are allowed to hear (whether they can use it to determine the truth of a matter or just to determine whether the witness is a liar!); and even *how sure* the fact-finder must be of the prosecution's/plaintiff's story in order to say "yes" to it.

This unit examines the law of evidence of Western Australia. It covers the functions of the judge and jury; the principles and rules relating to the burden of proof, the means of proof and the admissibility of evidence. Relevant comparisons are drawn with the law of evidence in other Australian states and abroad.

Unit learning outcomes

On the completion of this unit, you should be able to:

(1) appreciate the role played by the rules of evidence in litigation;

(2) identify the statutory provisions and discuss the relevance of those cases to this unit;

(3) identify evidence needed to prove a client's case or disprove an opponent's case, according to the rules of evidence;

(4) acquire good working knowledge of the most important rules of evidence and apply those rules to diverse factual scenarios;

(5) understand the main sources, principles, techniques, terminology and concepts of the law of evidence in WA;

(6) develop skills in the analysis of evidence;

(7) communicate effectively, in writing and orally.

LECTURE HANDOUT: OPINION EVIDENCE

Week beginning 23rd March 2015

"Why couldn't you have got here before that big, bad, stupid-looking piece of sewage stole my white wedding dress?

Just the facts, Ma'am." Detective Joe Friday, Dragnet (1987)

Prescribed reading:

Textbook:

- **Field & Offer; Chapter 11 [paras 11.1 – 11.54], Chapter 2 [paras 2.29-2.104]**

Cases:

- ***Christie v R [2005] WASCA 55***
- ***Runjanjic and Kontinnen* (1991) 53 A Crim R 362; (1991) 56 SASR 114**
- ***Koushappis v State of Western Australia* [2007] WASCA 26**
- ***Weal v Bottom* (1966) 40 ALJR 436**

The rule

"Any fact that he can prove is relevant, but his opinion is not."

Goddard LJ in *Hollington v F Hewthorn and Co Ltd* [1943] 1 KB 587, at 595.

But …. "the assumption that 'fact' and 'opinion' stand in contrast and hence are readily distinguishable, proved to be the clumsiest of all the tools furnished the judge for regulating the examination of witnesses. It is clumsy because its basic assumption is an illusion … There is no conceivable statement however specific, detailed and 'factual', that is not in some measure the product of inference and reflection as well as observation and memory."

McCormick on Evidence 4th ed (West Publishing Co, Minnesota, 1992), 18, quoted in Arenson, K and Bagaric, M, Rules of Evidence in Australia 2nd ed (LexisNexis Butterworths, Australia, 2007), 504.

The exceptions

Expert witnesses

When Is Expert Evidence Required?

Clark v Ryan (1960) 108 CLR 486 c.f. *Oblak v State of Western Australia* [2007]

WASCA 176

Christie v R [2005] WASCA 55

Runjanjic and Kontinnen (1991) 53 A Crim R 362; (1991) 56 SASR 114

Murphy v R (1989) 167 CLR 94

Weal v Bottom (1966) 40 ALJR 436

US jurisprudence: the Frye test; and the Daubert test.

Establishing the Expertise

R v Parenzee [2007] SASC 143

Williams v Public Trustee of New South Wales [2007] NSWSC 921

Pownall v Conlan Management Pty Ltd (1995) 12 WAR 370

Koushappis v State of Western Australia [2007] WASCA 26

R v Court [2003] WASCA 308

R v Fazio (1997) 69 SASR 54 *c.f. Keller v R* [2006] NSWCCA 204

NB: s50B Evidence Act 1906 (WA)

s98(2)(a) *Criminal Procedure Act* 2004 (WA)

The Basis of the Expert Opinion

R v Abadom [1983] 1 WLR 126; [1983] 1 All ER 364

PQ v Australian Red Cross Society [1992] 1 VR 19

Woods v Director of Public Prosecutions (WA) (2008) 38 WAR 217; [2008] WASCA 188

The 'ultimate issue'

Murphy v R (1989) 167 CLR 94

R v Mason (1911) 7 Cr App R 67

Farrell v R (1998) 194 CLR 286

NB: s80 EA 1995 (Cth)

s36BE Evidence Act 1906 (WA)

Lay witnesses

Where the opinion is a fact in issue

Where it is impractical to do otherwise

Sherrard v Jacob [1965] NI 151

Non-Experts

Weal v Bottom (1966) 40 ALJR 436

Muldoon v R (2008) 192 A Crim R 105

Dodds v R (2009) 194 A Crim R 408

LECTURE HANDOUT: OPINION EVIDENCE

Week beginning 23rd March 2015

Questions for Discussion

In today's seminar class, we'll be viewing Professor Dumbledore's evidence again and answering the following questions:

1. How does the Prosecution establish that Professor Dumbledore is qualified to give evidence?

2. What is the factual foundation upon which his evidence is based?

3. What is Professor Dumbledore's expert opinion based on the evidence before him? Is he commenting on the 'ultimate issue?'

4. How does the Prosecution undermine the evidence of Professor Dumbledore's evidence?

5. In your opinion is this an effective cross-examination? Why/why not?

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Equity and Trusts

LAWS5103

6 credit points

Learning Guide
(Schedule of lectures and tutorials, assessment details and reading list)

Semester 1 – 2015

Unit Coordinator: Natalie Skead
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UNIT DESCRIPTION

Unit aims

Welcome to Equity and Trusts!

This unit is an introduction to the principles of Equity, which supplement and complement the common law, and the law of Trusts. It begins with a description of Equity, its development in the Courts of Chancery and its role today as well as the nature and history of Trusts. The unit then examines equitable vitiating factors before moving onto a detailed discussion of various aspects of trusts including creation, formalities and constitution, essential characteristics, trustees' duties and powers and remedies. The unit will conclude with an examination of fiduciary duties, confidence and estoppel.

Unit learning outcomes

On the completion of this unit, you should be able to:

1) Identify, state accurately, and explain relevant equitable doctrines and principles of Trusts law.
2) Apply these doctrines and principles to solve hypothetical legal problems.
3) Demonstrate, in particular contexts, the relationship between Equity and the common law.
4) Critically read, analyse and evaluate cases by reference to specified equitable doctrines and remedies.
5) Use effective oral communication skills.
6) Demonstrate the ability to work collaboratively and professionally with other students.
7) Critically reflect on and assess performance in group self-learning exercise against stated criteria.

READING LIST AND OUTLINE

Denotes essential reading

4. ESTOPPEL (Natalie Skead)

Chapter 10, Dal Pont

(a) **Introduction and overview**

(b) **Estoppel at common law**

Grundt v Great Boulder Pty Gold Mines (1937) 59 CLR 641

Jorden v Money (1854) 10 ER 868

Yovich v Collyer [1972] WAR 143

Avon County Council v Howlett [1983] 1 All ER 1073

(c) **Estoppel in equity**

Proprietary estoppel – by representation or acquiescence

Dillwyn v Llewellyn (1862) 45 ER 1285

Ramsden v Dyson (1866) LR 1 HL 129

Promissory estoppel

Central London Property Trust Ltd v High Trees House Ltd [1947] KB 130

* *Waltons Stores (Interstate) Ltd v Maher* (1988) 164 CLR 387

Foran v Wright (1989) 168 CLR 385

* *Commonwealth v Verwayen* (1990) 170 CLR 394

(d) **Relief and Remedies**

* *Commonwealth v Verwayen* (1990) 170 CLR 394

***** *Giumelli v Giumelli* (1999) 196 CLR 101

Donis v Donis [2007] VSCA 89

Delaforce v Simpson-Cook [2010] NSWCA 84

Thorner v Major [2009] 1 WLR 776

(e) **A unified doctrine of estoppel?**

***** *Waltons Stores (Interstate) Ltd v Maher* (1988) 164 CLR 387

* *Commonwealth v Verwayen* (1990) 170 CLR 394

***** *Giumelli v Giumelli* (1999) 161 ALR 473

National Westminster Bank Plc v Somer International (UK) Ltd [2002] QB 1286

TUTORIAL QUESTION 13

Watch the video at http://goo.gl/rdhn4w

Jaycee consults you. She seeks your advice to whether she has an equitable claim against Uncle Jack and, if so, what equitable remedies might be available to her.

Identify any further information you may need to get from Jaycee in order to provide accurate and comprehensive advice

Collaborative Research Award

Are You on the Right Track?
A New Approach to Faculty Status in the Changing Legal Environment*

INTRODUCTION

Our law school charged us with the creation of a unique approach to faculty security of position and academic freedom in response to the cry for reform in legal education. We implemented the changes at our School in the fall of 2013. This article will address the institutional concerns that led to our revisions, a detailed look at our model, and how our faculty has responded after the first year of implementation.

Legal education is in a crisis.[1] Accordingly, for purposes of survival, law schools may need to consider changes to how faculty are defined and utilized.[2] In response to the need for change, our institution opted to re-think the traditional model of tenure and contract faculty. As we restructured our faculty, our goals were to encourage faculty members to enhance their strengths while remaining engaged in the culture of the institution. Also, we sought to promote equity across the different types of faculty members and provide what our students and institution needed to excel in the changing legal environment.

After a year of research and feedback, we implemented a Track system to address the concerns raised by the faculty, administration, and legal community. Prior to the Track system, doctrinal faculty were hired as tenure-track faculty where the teaching obligation was approximately twelve credit hours per year with a scholarship requirement. The faculty member was eligible to apply for tenure during his or her sixth year of teaching. Additionally, we had legal writing and skills faculty[3] who, after probationary period, were eligible to apply for extended term contracts. Some pursued scholarship even though it was not a requirement.

All faculty participated in faculty meetings, committees, and governance issues of the institution. However, salaries were not comparable between the different types of faculty. As a result of the pay disparity, there were feelings of inequity that jeopardized the culture of the institution. Additionally, there was concern among the faculty that individual faculty members were able to make "side-deals" with the administration that resulted in continued employment when they could not meet their contractual obligations. As we contemplated changes to our faculty structure, we realized that not all doctrinal faculty excelled at scholarship. Many who struggled with scholarly output excelled at teaching. So, we gave all faculty a choice under the new system -tenure track, teaching track, or alternative track.

The faculty members on each track continue to serve on school committees, have full voting rights, participate in faculty governance issues and are eligible for rank promotion on each particular track. However, under the new system, faculty are allowed to play to their strengths (i.e. opting for more teaching time rather than focusing on scholarship) and maintain job security

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*Kama B. Pierce, Associate Dean and Associate Professor, Charlotte School of Law; Camille M. Davidson, Associate Dean and Professor of Law, Charlotte School of Law

[1] James B. Stewart, *A Bold Bid to Combat a Crisis in Legal Education*, N.Y. Times, April 4, 2014.

[2] Katherine Mangan, *Panel Suggests Dropping Tenure Requirement to Reform Legal Education*, The Chronicle of Higher Education, Sept. 20, 2013 (http://chronicle.com/article/Panels-Idea-for-Reforming/141763).

[3] Clinicians were primarily out of the scope of this article.

and eligibility for promotion. Those on the teaching and alternative tracks are eligible for extended term five year contracts rather than tenure.

Our goal was to keep the number of faculty on teaching track and tenure track as even as possible so that one track was not considered more advantageous than another track. With faculty on each track, we believe that we have balanced the security of position concerns of faculty and financial concerns of the institution. We believe that our alternative provides our students with a healthy balance of research scholars, practitioners, and teaching scholars.

We do not advocate eliminating tenure. In fact, we believe that it should and will continue to remain an important part of the academy. However we believe that our new model is a viable alternative in the "quest for a different, and possibly even better, way of protecting academic freedom and free inquiry."[4]

In Part I, we discuss the Track system, including the faculty obligations and how we amended our handbook and promotion criteria; in Part II, we consider the impact of the Track system on both doctrinal and the legal writing/skills/clinical faculty; and, in Part III, we discuss the faculty survey post-implementation and look forward at how to improve the model.

PART I. The Track System

A. Defining the Tracks

The Track system consists of three tracks, namely, tenure track, teaching track, and alternative track. Prior to the Track system, our faculty was similar to most schools in the Legal Academy. We had rank faculty who were either on a tenure track doctrinal path or a contractual clinical/skills/legal writing path.

The tenure track under this new system does not alter the traditional tenure track seen throughout the Academy. Our institution does require post-tenure review every four years. A faculty member on tenure track must teach approximately 12-14 credit hours per year[5], and complete at least three (3) quality law review articles within the seven (7) year probationary period in order to be considered for tenure.

Faculty members on the teaching track, in lieu of a scholarship requirement, teach an additional four (4) to six (6) credits each academic year. In return, teaching track faculty receives the same base salary as tenure track faculty.

Under the alternative track, a faculty member may opt for 12 -14 credit hours per year without a scholarship requirement. However, given the reduced obligations in comparison to the

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[4] Robert M. O'Neil, *Alternatives to Tenure*, 27 J.C. & U.L. 573, 582-83 (2001).

[5] Ideally, we would like to keep our faculty at 12 credits for tenure and alternative track and 16 for teaching track but we implemented a new curriculum, Charlotte Law Edge that included requisite practice ready simulated courses in the 1L year. As with any typical 1L year course, the faculty wanted these courses taught by fulltime faculty. But, these courses are not typical 12-week courses but only meet three times a semester.

other two tracks, a faculty member on the alternative track receives a base salary that is approximately one-third (1/3rd) less than the base salary of the other two tracks.[6]

All faculty members attend and vote at faculty meetings; serve on school committees; and participate in faculty governance issues such as handbook changes, and faculty hiring, to name a few. Additionally, all faculty go through the same faculty hiring process which requires an on-campus interview and a job talk.

B. The Process

The process to develop a comprehensive and equitable system for the faculty was an intense and timely one. To our advantage, as a member of a consortium comprised of three schools, there were many faculty members from different school environments who were a part of the process for input and discussion. The restructuring of the faculty was actually part of a larger initiative called Legal Ed 2.0.

After independent research and regular discussions with faculty representatives from each consortium school, we began a process of restructuring our faculty. We posed the question on the LWI listserv and researched the ALWD/LWI Report of the Annual Legal Writing Survey to determine exactly how many schools have offered tenure for every faculty member in the school. In addition, we looked at the discussions surrounding the ABA Task Force on Legal Education that considered eliminating tenure as a requirement for law school accreditation.[7] We also considered a lot of research, including research on how students learn from adjunct faculty as opposed to full-time faculty.[8] Finally, we considered discussions by and alternative structures implemented in different types of educational institutions.[9]

Faculty and administration input and buy-in was vital to the process. So, we frequently conducted straw polls and surveys with our faculty. We led focus groups to address specific aspects of the proposal. And, we regularly met with the school's administration for their input and to provide updates. This process was mirrored in the other schools in the consortium.

Our surveys and meetings revealed that the legal writing faculty was most concerned about equal compensation and teaching load. The doctrinal faculty was most concerned with

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[6] Basically, this is not a salary reduction but represented the status quo for a typical legal writing or skills faculty at our institution.

[7] Am. Bar Ass'n Task Force on the Future of Legal Education, Report and Recommendations 1 (2014), available at http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf, archived at http://perma.cc/373L-FW83.

[8] David N. Figlio, Morton O. Schapiro, & Kevin B. Soter, *Are Tenure Track Professors Better Teachers*?, National Bureau of Economic Research, September 2013, available at http://www.nber.org/papers/w19406.

[9] Peter Schmidt, *Business School Offers Case Study for Tenure Debate*, The Chronicle of Higher Education, Nov. 15, 2013, at A10; David Newbart, *Academic Staff at UW Seek Respect*, The Capital Times, October 11, 1996, at 1A; Daniel Feldman and William Turnley, *A field study of Adjunct Faculty: The Impact of Career Stage On Reactions to Non-Tenure Track Jobs*, 28 Journal of Career Development 1, Fall 2001; Nicole Friedman, *Department of Education: National trend favors untenured faculty*, Brown Daily Herald, Feb. 18, 2009 (via U-Wire); Stephen Kiehl, *Teachers seek Job Security at Tenure-Free University* Palm Beach Post, June 10, 2000, at A1; and Ellen Willis, *Why Professors Turn to Organized Labor*, N.Y. Times, May 28, 2001, at A11.

losing academic freedom that is often associated with tenure. The clinical faculty was most concerned with how to balance their teaching and administrative duties. The administration was most concerned about the costs associated with the new system and wanting to make sure that there were real benefits to the institution. And, everyone was concerned with the increase in credit hour obligations under the new system.

The drafts were multiple as we addressed the concerns of the faculty and administration. Once we had a final draft, we presented it to the full faculty at a faculty meeting. To gauge whether the faculty supported the final draft, we conducted an anonymous survey that asked whether they would support the proposal, and if so, what track would they choose.[10] Based on the results, we found there was faculty support for the proposal. About half of the faculty reported that they wanted tenure track and half reported they wanted teaching track. A small percentage (around 10%) preferred the alternative track.

After all the feedback and the process, we felt confident to move forward with the new structure. At the end of the academic year, the Dean asked faculty to select a track. If a faculty member was already on tenure track, he or she could opt to remain on tenure, or opt for teaching or alternative track. The same held true for the legal writing, skills, and clinical faculty. New faculty contracts were issued with the new tracks but honored any prior years of teaching for purposes of salary, eligibility for rank promotion, and eligibility for extended contracts and tenure.

After implementing the new structure, we had to amend our Faculty Handbook, which required a majority of the faculty vote.

PART II.

A. Doctrinal and Tenure

Even though our School's mission is to deliver practice ready lawyers, we were holding on to a traditional law school faculty structure that had been around since the early part of the twentieth century.[11] Although we recruited faculty who had practice experience, each doctrinal faculty member was hired on the tenure track.[12] They were required to engage in scholarship, in addition to their teaching and service responsibilities. Since some faculty were not interested or engaged in scholarship, our subcommittee questioned whether this model best served our students and the individual faculty members.

Around the time of our first meeting, the media were discussing Brian Tamanaha's book, Failing Law Schools, where he criticized law school at its core.[13] Also in mid-2012, the

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[10] 10.64% choose Alternative Track, 31.91% choose Teaching Track, 12.77% choose Teaching Track with clinic/experiential, 31.91% choose Tenure Track, and 12.77% choose Professional Track. - Survey on file with author.

[11] Catherine Dunham & Steven I. Friedland, *Portable Learning For The 21st Century Law School: Designing A New Pedagogy For The Modern Global Context*, 26 J. Marshall J. Computer & Info. L. 371 (2009).

[12] Brent E. Newton, *Preaching What They Don't Practice: Why Law Faculties' Preoccupation With Impractical Scholarship And Devaluation Of Practical Competencies Obstruct Reform In The Legal Academy*, 62 S.C. L. Rev. 105 (2010).

[13] Brian Z. Tamanaha, *Failing Law Schools* (2012); *see also,* James Fishman*, Tenure and Its Discontents: The Worst Form of Employment Relationship save All of the Others*, 21 Pace L Rev. 159, 170 (2000)("The attacks on academic

American Bar Association's Task Force on Legal Education was created and charged with addressing issues related to the current law school crisis.[14] Both Tamanaha and the ABA Taskforce looked at the issue of tenure. Tamanaha claimed that the high cost of law was used to fund irrelevant faculty scholarship.[15] He argued for radical changes.[16] The ABA Task Force made several recommendations to address the legal education crisis. One of the many proposals from the Task Force was to eliminate tenure as a requirement for law school accreditation.[17] The proposal was ultimately not adopted.[18] However, as we restructured our faculty, we evaluated comments related to Tamanaha's proposals and those associated with the ABA Taskforce proposal.[19]

As we looked at changes to our faculty structure, we knew that tenure was valuable to many faculty. We did not want to eliminate it. However, it was not perfect.[20] At our school, like most other schools, it was not an option for all types of faculty. Our goal was to restructure our faculty in a way that was financially sound, eliminated issues of status, and recognized the strengths of each faculty member.

We framed our discussions in terms of what worked best for our students. We initially looked at tenure for all faculty. Research led us in a different direction. We considered research that suggested that undergraduate students learn more from adjuncts who were focused on teaching rather than research.[21] We were also aware of those who argued that tenure was expensive and contributed to the high cost of law school.[22] We wanted to strike a balance somewhere in between the two schools of thought.

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tenure fall into several categories, including the financial cost and resulting inflexibility to the institution, the creation of inappropriate incentives for faculty, and the problems the result from lifetime employment. Admittedly, some of the criticisms are deserved. Almost all institutions in higher education are financially hard-pressed.").

[14] Task Force on the Future of Legal Education, A.B.A, http://www.americanbar.org/groups/professional_responsibility/taskforceonthe futurelegaleducation.html, archived at http://perma.cc/P3TK-CTYN (last visited 10/12/14).

[15] Tanamaha, *supra* note 13.

[16] Id.

[17] Task Force on the Future of Legal Education, A.B.A, http://www.americanbar.org/groups/professional_responsibility/taskforceonthe futurelegaleducation.html, archived at http://perma.cc/P3TK-CTYN (last visited 10/12/14).

[18] Id.

[19] James R. Holbrook, *Reflections on the Future of Legal Education*, Utah L. Rev. 53 (2013).

[20] O'Neil, supra note 3, at 579. ("if one concedes that tenure is not perfect – and to claim imperfection, even for an unrequited defender, would be myopic – it is fair to ask how it could be made better.").

[21] Figilo, supra note 7.

[22] "Law schools devote excessive resources to faculty scholarship, which unnecessarily increases the cost of legal education and the related amount of law student debt." Am. Bar Ass'n Task Force on the Future of Legal Education, Report and Recommendations 1 (2014), available at http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf, archived at http://perma.cc/373L-FW83.

1. What is Wrong with Tenure? The Big Bang Theory[23]

An episode of the Big Bang Theory highlights the issues that we discussed as we evaluated the benefits of tenure and looked at viable alternatives. Although a comedy, an episode of The Big Bang Theory highlighted many of the concerns of tenure critics.[24] Does tenure diminish faculty productivity?[25] Does tenure mean a job for life?[26] Is tenure merely a popularity contest where members of the tenure committee need to be schmoozed or does one's work speak for itself?[27]

The story line began with the death of a tenured professor.[28] As the main characters began to think about applying for the open position, they explained tenure to their significant others. The first couple's dialogue was as follows: the girlfriend asked her professor boyfriend, "So tenure means a job for life?" her boyfriend responds, "Yep"[29] She continues with, "You can't get fired even if you're bad at it?"[30] He responds, "Not really."[31] The canned laughter began right after she deadpans with "Sounds a lot like a pretty waitress at the Cheesecake factory."[32]

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[23] *Big Bang Theory*: *The Tenure Turbulence* (CBS television broadcast Apr.4, 2013).

[24] James J. Fishman, *Tenure and its Discontents: The Worst Form of Employment Relationship Save All Of The Others*, 21 Pace L. Rev. 159, 170 (2000).

[25] Mark L. Adams, *The Quest for Tenure: Job Security and Academic Freedom,* 56 Cath. U. L. Rev. 67 (2006). "A common refrain against tenure is that it perpetuates mediocrity and results in deadwood faculty members. The first argument is that deadwood flourishes as mediocre faculty members are awarded tenure and perpetuates a culture of bad teaching, little or no scholarship, and lack of productive service." Id. at 78.; "Tenure has come under increasing attack in recent decades, both in the United States and abroad, with the main argument against tenure being that it removes incentives for productivity and unfairly relieves professors of the economic uncertainty suffered by other workers." Id. at 71.

[26] *Id.* at 71 (" A precise definition of tenure has been stated by Professor William Van Alstyne, former president of the American Association of University Professors (AAUP) and a faculty member at Duke Law School: "Tenure, accurately and unequivocally defined, lays no claim whatever to a guarantee of lifetime employment. Rather, tenure provides only that no person continuously retained as a full-time faculty member beyond a specified lengthy period of probationary service may thereafter be dismissed without adequate cause.") *Id.* at 69-70. Fishman, *supra* note 24, at 170 ("The attacks on academic tenure fall into several categories, including the financial cost and resulting inflexibility to the institution, the creation of inappropriate incentives for faculty, and the problems the result from lifetime employment. Constance Hawke, *Tenure's Tenacity in Higher Education*, 120 Ed. Law Rep. 621 (1997). Admittedly, some of the criticisms are deserved. Almost all institutions in higher education are financially hard-pressed.") ("Tenure guarantees lifetime employment for faculty at an exorbitant cost to the institution that eventually results in increased tuition for students and their families."). Dr. Robert B. Conrad & Dr. Louis A. Trosch, *Renewable Tenure*, 27 J.L. & Educ. 551, 552 (1998)("The meaning of tenure as discussed in this article was best defined by Matthew W. Finkin, 'Tenure, accurately and unequivocally defined, lays no claim whatever to a guarantee of lifetime employment. Rather, tenure provides that no person continuously retained as a full-time faculty member beyond a specified lengthy period of probationary service may thereafter be dismissed 'without adequate cause'.").

[27] Adams, *supra* note 25, at 69. "…. the tenure process has been criticized for denying opportunities to women and other underrepresented groups due to the application of collegiality as a criterion for selection."

[28] *Big Bang Theory*: *The Tenure Turbulence* (CBS television broadcast Apr.4, 2013).

[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] *Id.*

The next couple's conversation was as follows: The boyfriend who was a professor stated, "While I disagree with the premise of tenure, it wouldn't diminish my output if they give it to me. I'm like the sun, I can't turn this off."[33]

In a humorous way, the show captured the arguments of tenure critics. Critics of tenure argue that the "hired for life" tenure imposes undue restrictions on an institution's flexibility in meeting financial demands, recruiting and hiring a younger and more diverse faculty, and making programming changes to address demands and innovations. [34]

Critics of tenure see it as a mechanism for protecting the "lazy and incompetent."[35] Their perception is "you can't be fired even if you are bad."[36] Many argue that faculty productivity dissipates after the achievement of tenure.[37] At the extreme end of criticism are those who blame tenure for much of what is wrong with American education—the results of boundless self-indulgence that results when people have guaranteed jobs.[38] As for those who "can't turn it off" and continue to produce scholarship and remain in the engagement of the institution. Tenure critics suggest that these individuals do not need tenure status because their employment would not be in jeopardy.[39]

As discussed in Part I, we believed that there was still room for scholarship even as we reorganized our curriculum. But, we also agreed that tenure should not be the only measure of success. We made sure under our new structure that our full-time faculty contract options provided each faculty member with the ability to use his or her strengths to meet the needs of a diverse population of law students.

Under our new structure, nine tenured or tenure-track faculty opted for the new Teaching track, an option that eliminated traditional scholarship and required faculty to teach more credits each Academic year. A renewable extended five year contract replaced tenure. In our initial year, tenure track faculty with more than four years of teaching experience were awarded a three year contract and the opportunity to apply for an extended-term five year contract. In other words, they were able to count their tenure track years for purposes of teaching credit. A tenured faculty member who gave up tenure was automatically granted such five year contract. Arguably, since one reaches the time period for an extended contract quicker than one reaches the end of the probationary period for tenure, the teaching track may provide security of position quicker than tenure. Some have even called it term tenure.[40]

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[33] *Id.*

[34] Adams, *supra* note 25, at 92. ; Holbrook, *supra* note 19, at 56 (2013).

[35] *Id.* at 77.

[36] O'Neil, *supra* note 4, at 580 ("Thus the assertion that tenure represents an immutable guarantee of academic employment, regardless of the gravity of personal transgression or institutional need, is not only untrue but is also irresponsible.").

[37] Adams, *supra* note 25, at 92.

[38] Ira P. Robbins, *Exploring the Concept of Post-Tenure Review in Law Schools*, 9 Stan. L. & Pol'y Rev. 387, 388 (1998).

[39] Adams, *supra* note 25, at 92.

[40] Fishman, *supra* note 24, at 194 ("Most frequently offered as an alternative to traditional tenure, are long-term or rolling contracts, sometimes referred to as 'term tenure'. The faculty member is initially appointed for one to three years, with terms of reappointment eventually extended to seven or…ten years.").

We believe that our students have benefited from the diversity of our strengths as faculty. Also, the institution has the flexibility to make and implement programming changes and address demands and innovations that are necessary to succeed in the changing environment of legal education. [41]

2. Security of Position and Academic Freedom

In order to devise alternatives to tenure, we needed to define the term and look at its history. We asked ourselves whether faculty elevated the protections that tenure provides and whether the protections could be achieved in other ways.

Tenure is "a permanent contract of employment for university professors after a probationary period (usually six years) intended to guarantee intellectual freedom and independence and to shield the faculty members from the treat of termination for arbitrary or doctrinal reasons."[42] While tenure in this country has been around for almost one hundred and fifty years, it has evolved over time.[43] Today the term is often used in the context of job security and academic freedom.[44] When a faculty member is awarded tenure, his or her at-will employment arrangement where "an employee can be terminated for any reason" is replaced with the two specific protections: first, job security by requiring cause for termination; and second, academic freedom.[45]

a. Security of position

As faculty contemplated whether to remove themselves from tenure track (or even a tenured position) they wanted to make sure that they had job security. We wanted all faculty, regardless of the chosen track, to have security of position. Proponents of tenure believe that tenure provides security of position and security of position guarantees academic freedom.[46] They rarely mention that "tenure is revocable and therefore not absolute."[47] Most faculty were vocal about how much more money they could earn in the private sector. It was job security that provided them with the comfort of foregoing the higher salaries.[48] The flip side of the coin was the administration's need to ensure accountability.

While faculty wanted security, the administration wanted to ensure that each faculty member pulled his weight in the institution. While security of position benefits faculty, it can also produce "disincentives for teaching and scholarly productivity."[49] A working definition that we used in our discussions was one put forth by Matthew W. Finkin that states, "Tenure, accurately and unequivocally defined, lays no claim whatever to a guarantee of lifetime employment. Rather, tenure provides that no person continuously retained as a full-time faculty

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[41] Adams, *supra* note 25, at 92.
[42] *Id.* at 73.
[43] *Id.* at 67.
[44] *Id.*
[45] *Id.* at 74.
[46] *Id.* at 79-80.
[47] Robert B. Conrad & Louis A. Trosch, *Renewable Tenure*, 27 J.L. & Educ. 551, 552 (1998).
[48] Adams, *supra* note 25, at 70("offsets the salary difference between those who choose an academic, as opposed to a professional or business, career.").
[49] *Id.* at 67.

member beyond a specified lengthy period of probationary service may thereafter be dismissed 'without adequate cause.'" [50]

The strength of our model is faculty accountability. When individuals who were not engaged in scholarship were able to keep their salary and have job security, they were more inclined to remove themselves from tenure track (or even tenure). Their decision to teach an increased course load was student outcome centered.[51] As we added more skills classes to the curriculum, we needed faculty to teach the classes. As we reduced class sizes, this increased a need for faculty to teach the additional sections.

"[T]hroughout higher education there has been a movement away from tenured faculty slots through the use of non-tenure track positions."[52] "As faculty members do retire, many of them are being replaced by a rising number of part and full-time, non-tenure track employees."[53] "These temporary part-timers generally receive a quarterly or semester appointment at a flat rate of pay per course taught, receive no benefits, and have no assurance of any future appointments."[54]

It is not student outcome centered when an individual divides his or her time between several part time appointments in an attempt to piece together a teaching career.[55] It is not student outcome centered when faculty do not have the opportunity to participate in governance issues. Students suffer when the faculty do not have a "long-term investment in an institution"[56] In 1970, adjuncts accounted for 22 percent of faculty.[57] Today that percentage is approximately 42 percent.[58] "[A] continuously changing cadre of temporary and part-time faces compromises collegiality, department operations, and the quality of education."[59]

Finally, our approach provides balance. While the long term contracts provide administrative flexibly, we were aware that if we completely eliminated tenure, we would lose the ability to attract and keep certain faculty.[60]

b. Academic freedom

Tenured faculty who teach, research, and write about cutting edge or controversial issues often state that they would not have a job without the protection that tenure provides.[61] Such tenure supporters are the living embodiment of the belief that tenure is the safeguard of academic

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[50] Conrad, *supra* note 47, at 552.
[51] *http://www.charlottelaw.edu/about* (last visited 11/9/14)
[52] Fishman, *supra* note 52, at 160-61.
[53] Adams, *supra* note 25, at 96.
[54] Constance Hawke, *Tenure's Tenacity in Higher Education*, 120 Educ. L. Rep. 621, 633 (1997).
[55] Adams, *supra* note 25, at 96.
[56] *Id.*
[57] Marina Angel, *The Glass Ceiling for Women in Legal Education: Contract Positions and the Death of Tenure*, 50 J. Legal Educ. 1, 11(2000).
[58] *Id.*
[59] Hawke, *supra* note 54, at 633.
[60] Hawke, *supra* note 54, at 632.
[61] Comments from American Bar Association Section of Legal Education and Admissions to the Bar Program Session, on January 4, 2014 at 4 P.M., at The Association of American Law Schools Annual Meeting 2014: Looking Forward Legal Education in the 21st Century.

freedom.[62] Academic freedom allows for "professional autonomy and collegial self-governance."[63] Faculty are free to "investigate, teach, and publish in their various areas of competence without fear of retaliation in pursuit of the truth in the realm of ideas."[64] Without tenure, the faculty member who is "diligent in teaching and brilliant in publication, yet who expresses controversial opinions in class or supports unpopular causes which are troublesome to the administration; whose contract, absent the protection of tenure, is simply not renewed at its expiration, forcing the professor to seek other employment because he exercised academic freedom."[65] Tenure supporters believe that tenure removes the fear that "McCarthy-esque harassment of academicians could occur subtly under the guise of one evaluation scheme or another." [66]

We agree that Academic freedom is important. It allows faculty to benefit society with opinions and ideas that they might withhold "because of fear of offending a dominant social group or a transient social attitude."[67] We believe that all faculty should have a "certain level of autonomy" when it comes to teaching materials, teaching methods and scholarship agendas.[68]

Our model works because the choice is with the faculty member. We asked our colleagues whether academic freedom was possible without tenure. Some faculty believed that it was possible, while others were a steadfast "no". Ideally, the institutional environment should be built on trust and faculty should work together to ensure academic freedom for all types of faculty members.[69] But, the scholar who engages in controversial topics may opt for tenure. Others who do not want the burden of scholarship may opt for a different track. In each instance, the faculty member does not forgo governance and full participation in the institution. [70]

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[62] Robbins, *supra* note 38, at 389.
[63] Adams, *supra* note 25, at 72.
[64] *Id*. at 73.
[65] Hawke, *supra* note 54, at 621.
[66] Robbins, *supra* note 38, at 389.
[67] Adams, *supra* note 25, at 73.
[68] Robbins, *supra* note 38, at 389.
[69] O'Neil, *supra* note 4, at 579 (the schools that don't have tenure Hampshire thus remains the shining example – perhaps, indeed, the only example – of an institution at which academic freedom and due process appear to have been respected despite the absence of a formal system of faculty tenure. To understand better this anomaly, it would be helpful to know more than we do about the unique conditions under which Hampshire was founded – through a consortium of the four existing baccalaureate institutions in the central Connecticut River Valley, all of which retain traditional tenure systems while sharing faculty time and other academic resources with their new neighbor.)
[70] Susan P. Liemer, *The Hierarchy of Law School Faculty Meetings: Who Votes?,* 73 UMKC L. Rev. 351 (2004)("The general practice in law schools in the United States is for professors who have traditional tenure or are on the traditional tenure track to vote on all matter at faculty meetings. Non-tenure track visitors and adjuncts generally do not attend faculty meetings and do not vote. Fellows who teach some classes while working on graduate law degrees and students who serve as teaching assistants also usually do not attend faculty meetings and do not vote. It is much more difficult, however, to generalize about full-time faculty who teach in the law school clinics, legal writing programs, and libraries.").

B. Additional Considerations for Legal Writing and Skills Faculty[71]

The debate concerning the benefits and pitfalls of tenure and non-tenure positions in higher education is not a new subject by any stretch of the imagination. Similarly, a law faculty member's status as a legal writing or skills professor, and the effect this status has on his or her career and experiences in the Academy has been equally addressed for many years.[72] So, it should be of no surprise that at our legal writing and skills faculty also had specific concerns that needed to be addressed by our new Track system.

1. The Legal Writing and Skills Professor in the Academia Hierarchy

There are many similarities between the circumstance of the teacher in elementary school and the legal writing and skills faculty in the law school setting. In the elementary school area, there has been a long term struggle to attract male teachers.[73] This struggle to attract male teachers arguably further contributes to a pay disparity between the elementary teaching salary and the middle or high school teaching salaries. "A change in the gender imbalance could sway the way teaching is regarded. Jobs dominated by women pay less on average than those with higher proportions of men, and studies have shown that these careers tend to enjoy less prestige as well."[74]

A similar concern about attracting male legal writing faculty and pay differential of legal writing faculty exists in the legal academy.[75]

> [T]he legal academic hierarchy is clearly gender based and accomplishes a stark gender segregation and division of labor within the academy. Women dominate the lower ranked legal writing positions, and men dominate the highly ranked doctrinal positions. In this hierarchy, the relationship between the categories (and sexes) is one of exploitation, with legal writing presumed to be uninteresting, unintellectual 'women's work' and doctrinal teaching presumed to be highly intellectual, challenging and, therefore, masculine.[76]

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[71] Clinical faculty will not be a focus during this discussion because, under the original more traditional model, that faculty did not have the same concerns as the legal writing and skills faculty at our institution because they had more equitable pay, full rank faculty status, and tenure option.

[72] Susan P. Liemer and Hollee S. Temple, *Did Your Legal Writing Professor Go To Harvard?: The Credentials of Legal Writing Faculty at Hiring Time*, 46 U. Louisville L. Rev. 383, 385 (2008) ("Nonetheless, it is no secret that most law school faculties in the United States have well-defined hierarchies and that legal writing professors often are relegated to low positions within those hierarchies." (Footnotes omitted)).

[73] William Gormley, *What our Schools need? A Few Good Men,* USA Today, Aug. 13, 2013 ("Higher wages for teachers could help. But higher pay could be a consequence, not a cause, of more male teachers. As Stanford professor Paula England has found, wages tend to be lower, on average, in female-dominated professions. With more males in teaching, wages for men and women might rise.")

[74] Motoko Rich, *Why Don't More Men go Into Teaching*?, N.Y. Times, Sept. 6, 2014.

[75] ALWD/LWI Report of the Annual Legal Writing Survey, 2014, finds in its survey highlights that 72% of legal writing faculty were female and 28% were male.(Questions 71a and 71b)

[76] Kathryn Stanchi, *"Who Next, The Janitors? A Socio-Feminist Critique Of The Status Hierarchy Of Law Professors",* 73 UMKC L. Rev. 467, 477-78 (2004)(This pay differential is entirely based on membership in the group labeled "legal writing professors.").

What followed, like in the elementary school sphere, has been less pay and, in many cases with the absence of tenure or long term contracts, less job security and respect for the legal writing professors. We were no different from the national trend in this area.

2. The Impetus to Change

Our administration and faculty had begun to make positive changes for legal writing and skills faculty prior to our charge in 2013. As such, by 2013, the ground was fertile for change. First, in 2010, after the abrupt departure of the Director of Legal Writing, the administration supported the legal writing faculty when they opted to develop a collaborative operation model, rather than hire a new Director. Under the collaborative model, there was no longer a "boss" over the faculty whom students could run to or the administration would rely on to be the sole voice of the legal writing faculty. Students and the administration had to communicate with each individual faculty member. This empowered the faculty to find their voice and become more engaged in the institution. The collaborative model is still in place after nearly five years and it is well-regarded by the administration and faculty as a whole. In fact, the faculty and legal writing program have thrived under this structure of equal collaboration, self-governance and creativity.

Secondly, because curricular needs, several members of the legal writing faculty began to teach courses outside of the legal writing sphere and proved to be very competent. Accordingly, it was only logical that their colleagues would begin to value and respect the input of the legal writing faculty, and that the legal writing faculty would fully appreciate their value and have an expectation to be treated equally. As Susan Liemer and Jan Levine noted

> [s]chools that do commit the necessary resources [toward legal writing] receive a significant return on their investment. Writing professionals dedicate their careers to the future quality of legal writing. They gain experience and expertise in teaching legal writing. They discover new ways to teach key lawyering skills . . . . They teach courses at the law school, work on faculty committees, and provide service to the bench and bar. Of course, they are able to better train tomorrow's attorneys, judges, and legislators [77]

In addition to the collaborative organizational structure and teaching opportunities outside of legal writing, there were other beneficial processes and circumstances already in place that further supported the transition to the new Track system. As a young law school, we have had the benefit of knowledge about the struggles and concerns of faculty that occur in other law schools. Accordingly, in contemplating the role of our faculty, our founders and inaugural faculty members attempted to eliminate any injustice or feelings of inequality by any one group by instituting several practices. All rank faculty, regardless of status as tenure or contract faculty, have the faculty vote and governance of the institution. Additionally, all faculty have the opportunity to seek a summer stipend or a research assistant regardless of whether he or she was contractually obligated to publish.

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[77] Susan P. Liemer & Jan M. Levine, *Legal Research and Writing: What Schools Are Doing, and Who Is Doing The Teaching (Three Years Later)*, 9 Scribes J. Legal Writing 113, 126-27 (2003).

A few years ago, the faculty decided to combine the search and hiring process for legal writing/skills/clinical faculty with the doctrinal process so that doctrinal had a vote on the hiring of clinical/skills/legal writing faculty and vice versa. We were also cognizant of the fact that without the possibility of tenure, the skills and legal writing faculty needed some job security; accordingly, skills and legal writing faculty[78], after a one-year probationary period, were eligible to seek a 3-year and then a 5-year long-term contract.

Yet, despite all these efforts, there still existed a feeling of inequity among many of the skills and legal writing faculty[79] because their take-home salary was significantly less than that of the tenure track faculty. As Kathryn Stanchi recognized,

> [n]o evaluation of merit occurs beyond the presumption of merit based on group membership. Much like in other institutionalized systems of dominance and discrimination, no external "objective" evidence of merit—teaching excellence, scholarship, years, or quality of law practice—can overcome the stigma of membership in the low status group. Even the primary credentials that purportedly carry so much weight in the legal academy, prestige of law school and participation on the law review, cannot overcome the presumptive lower status of legal writing. A legal writing professor who graduated from a top tier law school and served on the law review would still make less money ($30,000 less) than a torts professor who went to a third tier law school and had no law review experience.[80]

The legal writing faculty's morale was still adversely affected by the perceived illogicalness of lesser pay despite the efforts of our institution to address the traditional "pitfalls" of inequity. Although it was beneficial that the legal writing faculty were furnished with the opportunity to teach outside of the legal writing realm, the practical result of taking on this third course actually highlighted the pay disparity. When the legal writing faculty took on another class, it was usually as an overload and he or she was paid the rate of overload pay. The overload pay still did not come close to closing the gap between legal writing and doctrinal faculty take home pay despite the extra course load.

Furthermore, although combining the hiring process yielded many positive results, the process also highlighted a few negatives with the position of a skills and legal writing faculty at our institution. For example, a combined process fostered a greater understanding of and respect for each other's teaching area. And, there was an increase feeling of ownership for both the direction of the school and in the development of new faculty members. However, the combined process also showed that the quality and quantity of experience of the legal writing and skills faculty applicants were equivalent with that of the doctrinal faculty applicants. This realization further caused some skills and legal writing faculty to feel resentful for not receiving, or offering to a faculty applicant, equal yearly compensation.

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[78] A few clinical were originally hired under the doctrinal model because they also taught podium courses, but opted to switch to teaching track once the new model was instituted.

[79] Clinical faculty's salary is more commiserate with tenure track faculty; however, the clinical faculty worked under a 12- month as opposed to the 10- month contract for tenure track.

[80] Stanchi, *supra* note 76.

Legal writing and skills faculty were also expected to and sought to actively participate in the service to the institution with the same amount of time and energy as the doctrinal faculty by: serving on multiple faculty committees (even chairing several of them); actively participating in student-run organizations and competitions; and attending all faculty meetings. Again, given their time commitment and leadership, legal writing and skills faculty felt the disparity in pay was unjustified.

As a result of the above understandings and realizations, the legal writing and skills faculty members believed that the only difference between them and the doctrinal faculty was the publishing obligation under their contracts. And, as discussed previously, the doctrinal faculty were not publishing at a consistent rate or volume as would be expected given the pay disparity. In fact, some members of the legal writing faculty had successfully published without contractual obligation or the compensation. So, if that was the reason for the disparity, it was not a good one. This dissatisfaction was the impetus for many of the changes reflected in the new model. Accordingly, the Track system needed to address the continued feelings of inequity and disparity amongst this sector of faculty in order to be successfully embraced by the entire faculty.

We believe our Track system is a win for the administration, faculty and students. We have reduced the number of adjuncts that we need by allowing doctrinal faculty who were not engaged in scholarship to teach more courses. We have improved collegiality because we have reduced "back door deals," removed issues of status by providing pay equity, and given all faculty the ability to receive rank promotion and ability to have security of position. Additionally, the long term renewable contracts are "an incentive to good performance, and will eliminate deadwood. They permit institutional flexibility in planning, budgeting and program development, and enable the college to terminate those who do not respond to current needs, and reappoint those that do."[81] "Routine reappointments make term contracts resemble the institution of tenure. In fact, the term contract approach, in the words of a president of an institution with such a system, is a really instant tenure."[82]

[81] Fishman, *supra* note 24, at 194.

[82] *Id.* at 195("There are doubtless other examples of alternatives to tenure. One that seems to have worked reasonably well for three decades is that of Hampshire College, which has never offered tenure but has relied entirely on long-term renewable faculty contracts. Hampshire is reputed to have denied reappointment or renewal beyond the seven-year period that would require an "up or out" decision at most tenure-track institutions. Yet there is no evidence that abridgment of academic freedom, or denial of due process, has ever been validly charged against Hampshire, and there has been no formal AAUP investigation, much less censure. Such a non-reappointment beyond the seventh year is not vulnerable, under AAUP standards, at Hampshire so long as the process comports with the College's own regulations, and so long as the basis for such adverse action would not be deemed violative of academic freedom within the conventional tenure system.)"); O'Neil, *supra* note 3, at 578-79 ("We do know at least two highly significant things. First, from the very start, faculty members joined Hampshire without any expectation of tenure, so that those for whom formal protection of academic freedom would have seemed essential may simply have chosen not to teach there. Second, we also know that a generation of Hampshire presidents and governing boards has insisted on protecting academic freedom as fully without tenure as have their colleagues and counterparts at Amherst, Mount Holyoke, Smith, and the University of Massachusetts."); and *Id.* at 579.

PART III. Survey Results and Moving Forward

A. The Results

A year after faculty selected a track and worked on that track, we conducted another anonymous survey. We sought feedback on each individual faculty member's understanding of the track system and his or her satisfaction with the system and their choice. Accordingly, we inquired about the strengths of the chosen track; the weaknesses of the chosen track; their opinions on whether they were in a better position this year on their track; and whether they would change tracks now if they could do so.

At the time of our survey we had 50 rank faculty, and 41 rank faculty filled out the survey.[83] The survey revealed that a majority of the faculty understood the responsibilities and obligations under his or her chosen track.[84] The survey further revealed that 85% of our faculty were either "very satisfied" or "satisfied" with their choice of track. [85] Next we inquired whether or not they would change their track if they could, and more than half our faculty responded "no" to this question.[86] Finally, we asked whether the individual faculty member felt they were in a better position, and this is where the survey had mixed results[87] because a majority felt there was no difference.[88]

The survey also provided an opportunity for the faculty member to write specific comments. Some of the positive comments were:

"I was able to teach the classes I was hired to and able to teach."

"Not feeling pressure to find time to research and write."

"It allows me to teach a greater variety of courses."

"I have to pull my weight in terms of teaching load, but I can also progress as a traditional legal academic."

"I like teaching and that is where I naturally spend more time, so it makes sense for that to be the focus of my employment."

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[83] In the survey, we also had six Bar Prep and Academic Success Professional Track respondents.

[84] 72.34% (34 faculty) responded "yes"; 27.665 (13) responded "for the most part, but I still have some confusion"; no one responded "no."

[85] 42.55% (20) responded "very satisfied"; 42.55% (20) responded "satisfied"; and 14.89% (7) responded "unsatisfied."

[86] 10.64% (5) responded "yes, they would change"; 55.32% (26) responded "no, they would not change"; and 34.04% (16) responded "maybe."

[87] We surmised that this unexpected result was because 2/3rd of the doctrinal faculty remained tenure track, a few legal writing professors opted for alternative track to remain status quo, and the clinicians already were on a year-long teaching track with equitable compensation so for many of our faculty, there was no change.

[88] 21.28% (10) responded "yes, in a better position"; 17.02% (8) responded "not in a better position"; and 61.70% (29) responded "they felt no difference."

"Allows all faculty members the same opportunities for teaching/compensation, in terms of doctrinal/LP (legal writing) and allows faculty who are passionate about teaching, but perhaps not scholarship, to just pursue teaching."

"Alternative track allows me to keep some sanity – stay fulfilled professionally but not at the sacrifice of taking care of my family. This track also allows me to be more available to my students and stay energized for my students, less burnout."

"The clinic/teaching track allows clinicians to focus on their experiential work without worrying about traditional scholarship."

"The freedom to incorporate scholarship at my convenience. The ability to focus on what I really enjoy doing – teaching."

"Lends credibility to the institution and allow us to be creative and competitive in the academic world."

Included in what we considered more critical or negative comments were:

"Teaching 16-18 credit hours can be overwhelming."

"It is easy to tack on an extra hour or two onto those on the teaching track (which may equate to an additional course, in addition to large section 4 hour course); this can lead to feeling as if you are always teaching an overload without additional compensation."

"Still working out what the details of the steps to promotion are going to look like."

"The combo of Edge (new curriculum) has increased the teaching load for tenure track faculty, which will make it harder for our scholarship obligations to be promoted."

"14 credit hours is a lot, 12 is reasonable."

"I believe it is difficult to actually measure the work I do by credits taught/earned, due to the heavy administrative obligation."

The comments helped us to "zero in" on the areas that we needed to address, and we recognize that as with any change there is need for improvement.

B. Going Forward

Although the data suggests that the faculty are satisfied overall with the Track system, in practice we recognize that there are several areas where there is room for improvement. For example, faculty were asked to elect a track; however, in attempting to maintain the balance between the tracks, not all faculty were put on the track they elected. Specifically, we had nine faculty who were either tenured or on tenure track switch to teaching track. But, this number was not enough to allow openings on the tenure track for clinical, skills and legal writing faculty.

As a result, clinical, skills and legal writing faculty either opted for alternative track (status quo for legal writing and skills) or choose teaching track. However, we recognize that some faculty enjoy scholarship; and, although we offer summer research stipends to all faculty to encourage scholarship on all tracks, we want to place each faculty member where he or she is

happy and productive. Accordingly, we would like to offer clinicians, skills and legal writing faculty the option to switch to tenure track.

Although we have some faculty who are producing scholarship who wanted to switch to tenure track, we have some tenure track faculty who opted to remain on tenure track but are not producing at an appropriate rate. The danger is they will try to use the track system as a last minute escape to their contractual obligation under tenure track. After benefiting from a lighter teaching load than the teaching track, a non-producing tenure track faculty may attempt to use his or her years of teaching to solicit rank promotion and extended contract on a different track. Currently the Dean has the discretion to grant transfers between tracks. However, in order to maintain the even distribution of faculty on each track and to ensure that one track is not perceived as a scapegoat when contractual obligations are not met, the Dean is advised to approve such requests sparingly.

Another area that deserves close attention is the workload. The track system required the buy-in of the faculty and the administration. While the faculty pushed for increased pay, the administration was concerned about the inability to hire additional full time faculty in the current legal climate. After adopting the new curriculum, there were more core courses that needed full-time faculty coverage. As a result, faculty on each of the tracks are required to teach more credit hours per year. With the constraints on legal education today, we, like most schools, are not in a position to hire additional full-time faculty.

Another one of the concerns raised by the increase in the teaching load is overburdening inexperienced or less gifted teachers who cannot handle the additional teaching responsibilities. Student engagement and outcomes remain a core responsibility for each of us, so we want to make sure that our faculty is delivering quality instruction to the students. Our faculty mentoring and development committee observes and provides formative feedback to each faculty member. In addition, the committee offers best practice sessions that focus on issues related to teaching and delivery. Some sessions have included how to provide feedback; how to integrate writing in podium classes; how to fairly grade and create rubrics; and faculty accountability, to name a few.

The final area that needs fuller development is hybrid faculty. These faculty, clinicians and experiential faculty, carry both administrative and teaching responsibilities. Credit hours under the current track system are difficult to calculate for this group of faculty. As a result, in close consultation with the clinicians and experiential faculty we had to create a specific clinical teaching and tenure track system. [89] In addition, unlike other faculty, the clinical and experiential faculty are employed year-round. This makes calculating yearly teaching credits difficult when we want to ensure equity for all types of faculty. We also recognize that litigation clinics require more administrative responsibilities due to obligations to the court that may not conform to an academic calendar. We continue to work with administration and faculty.

Despite the areas that need to be fine-tuned, the Track system has benefited our faculty, administration and students.

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[89] We currently have no clinicians or experiential faculty on tenure track. But, a tenure model would encompass teaching their clinical program, producing scholarship and perform administrative duties throughout the calendar year. The clinicians on teaching track teach 1 clinical program plus another podium course and perform administrative duties throughout the calendar year.

In Search for an Alternative Conceptual and Methodological Framework in Law School Teaching and Scholarship: A Case Study of Strathmore Law School

Francis Kariuki,* Linet Muthoni** & Beatrice Kioko***

Abstract

Legal education in Kenya is a product of colonial influence. With colonialism, Africa 'received' an education system informed by an Anglo-American socio-cultural and political context. The reception of foreign laws, also meant that a Western conceptual framework was necessary in describing and analyzing law in Kenya. Consequently, legal training has not been properly predicated on the African social foundations. Nevertheless, treaties, statutes, law reports and foreign textbooks, are being used in Kenyan law schools as authoritative data sources in research and training.

Using examples from Strathmore University Law School, it is argued that there is need for alternative conceptual and methodological approaches in legal training, to complement the 'received' approaches. It is, further urged, that law schools can provide students with a broader and wider orientation, incorporating the socio-cultural, economic and political dynamics, through which legal phenomena is manifested in Africa.

1.0 Introduction

One of the lasting legacies of colonialism in Africa, is its influence on the legal system generally, and legal education and scholarship in particular. With colonialism, Africa 'received' an education system, significantly informed by an Anglo-American socio-cultural and political context. As a result, the jurisprudence applied in legal training and scholarship in Africa, and Kenya in particular, has been greatly informed by the Anglo-American context. The curricula adopted in post-colonial Africa, is today experiencing challenges owing to the fact that its current state is largely a replica of the colonial structure.[1]

In pre-colonial Africa, and contrary to the belief of colonialists, education existed albeit informally. This form of education involved the passing on of knowledge and sharing of experiences from the elderly to the young ones in the community. Girls became apprentices of their grandmothers, mothers and aunts, while boys learnt from their grandfathers, fathers and uncles. Although the education had no formal structure, the children learnt the lessons relevant to their social context and that was applicable to their lives. At the onset of colonialism, the colonial masters disregarded this informal education system and introduced formal education.[2]

Some have argued that education has been as a means of neo-colonialism in present day Africa. They argue that European nations used their powers to introduce a system of

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[1] Shizha, E. 'Reclaiming our Indigenous Voices: The Problem with Post-Colonial Sub-Saharan African School Curriculum,' *Journal of Indigenous Social Development, Vol. 2 (1),* (2013), 4.
[2] *Ibid*, 4.

education that was completely foreign to the African context.[3] Education is a great agent of social change and unless a society is receiving education that is relevant to its realities, then social change will either be very slow or non-existent.[4] It, therefore, follows that education ought to be contextualised and subsequently the learning process would reflect the working patterns of the society. The paper interrogates the viability of creating a hybrid system of education by drawing from both local circumstances and foreign experiences. It is argued, that legal training and scholarship needs to be informed by social phenomena in Africa. It goes on to explain why africanization of legal education is not only possible but is a panacea.

2.0 Theoretical Framework

The paper uses the third world approach to international law (TWAIL) and the sociological schools of thought, to make a case for the contextualization of African legal education so as to be in line with existing social foundations and realities. It also borrows from the new legal realism scholars. According to Luckett before the age of reason, both European and African worldviews accepted that both the inner and outer truths were related.[5] The happenings on the external world were viewed as a reflection of the spiritual.[6] However, with modernity, the outer truth (science) was completely alienated from the inner truth presenting a problem where people view their actions as not affecting their person. The existing education system disconnects the inner and outer happenings. Luckett's proposition is vital in this work, as the introduction of African indigenous knowledge into legal education can correct this disconnect. When legal education curricula is based on the social context of the recipients and the things they can directly relate to, the application of the knowledge received goes beyond just replicating it in an exam context.

Proponents of TWAIL stresses that decolonization is not only the rerouting of political powers, but also the reconstruction of the African society in order to reinstall its traditions, cultures and worldviews.[7] The received academic tradition, which went on, long after political independence would probably suggest that we are yet to achieve intellectual independence.

Whereas western legal education has given Africa many lawyers, judges, magistrates and trainers of law, it has failed to develop an appropriate framework that is relevant and appropriate in explaining social phenomena in Africa. Ngugi wa Thiong'o, a Kenyan and one of the renowned proponents of TWAIL, asserts that the war of the minds construed through education has by far more effect than the street war of guns and bullets.[8] Supporters of

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[3] Nwanosike, O. Onyinje, L. 'Colonialism and education,' Proceedings of the International Conference on Teaching, Learning and Change, (2011), 36.

[4] Nwanosike, O. Onyinje,L. 'Colonialism and education,' Proceedings of the International Conference on Teaching, Learning and Change, 36.

[5] According to Luckett, the wold revolves around inner and outer truths. The inner truths are reflected in the outer truths. Such that whatever someone's believes and personal convictions are, are reflected by the kind of life they lead and how they interact with people and do their thing. This is outer truth

[6] Luckett K, 'Knowledge and codes of legitimation: Implications for curriculum' *Re-contextualization in South African Higher Education*, 3.

[7] Attar M and Tava V, 'Third World Approach to International Law Pedagogy,' *Legal Education for emancipation. (*2009), 17.

[8] Ngugi Wa Thiongo', *Decolonising the Mind: the politics of language in African Literature*, East African Educational Publishers, Nairobi, 1986, 9.

TWAIL have come up with what they call co-intentional teaching. [9] Freire explains how students are like empty bank accounts that constantly expect deposits from the teacher.[10] His argument is that mode of education delivered in Africa is one where the teacher enters the classroom and "banks" knowledge onto the students mind and where the teacher is superior to the student and room for discussion is minimal or non-existent. On its part and as a pedagogy, TWAIL advocates parity, moral equivalency and contextual validity. [11]

Attar advocates for an approach of education that treats people as incomplete instead of empty.[12] In legal education in Africa today for instance, students gather a lot of knowledge before they join schools for formal training on law. Law is among the aspects of any community that is widely discussed even during informal gatherings. It suffices to say therefore that by the time they join law school, students are not devoid of knowledge but are rather incomplete. This gives foundation or adds substance to the argument advanced by Paolo Friere. Attar stresses that whereas Mainstream International Legal Scholarship (MILS) and banking education are united in their legitimating rationale of hierarchy and domination, TWAIL and Co-intentional learning are motivated by equality and emancipation.[13]

The ideas advanced by proponents of TWAIL on matters education go a long way in informing our study and the outcome and recommendations given thereof. New age legal realists opine that the way legal education and scholarship have been conducted over the years ought to change. In a proposal to set up a law school at Holmes University, Rubinson is reported to have proposed the creation of a curriculum that would be alive to legal realism,[14] saying that a curriculum based on legal realism would focus on educating students about "law in fact." This translates to an attempt at helping the students understand how the law is experienced.[15] Rubinson, therefore, rejects the idea that the premise of legal education should be studying case law and statutes arguing that the decisions and opinions in cases are often a product of personal biases and beliefs of judges and do not necessarily amount to facts.[16] As such, law students subjected to studying these cases are made to adapt people's opinions as facts, presenting the problem that TWAIL scholars call a "bank approach" to education as opposed to a more involving and inclusive system.

3.0 History and Development of Legal Education in Kenya

(a) Nature of Education in Pre-Colonial Africa

Education has existed since human beings started living in communities and societies. Indigenous education in Africa has been defined, as a lifelong process in which the older generation impart skills, values and knowledge into the young ones for their own survival.[17]

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[9] Attar M, Tava V, 'Third World Approach to International Law Pedagogy' 19.
[10] Freire P. *Pedagogy of the oppressed,* Bloomsbury Publishing, 1968, 47.
[11] Attar and Tava,' Third World Approach to International Law Pedagogy', 17.
[12] Attar and Tava,' Third World Approach to International Law Pedagogy', 19.
[13] Attar and Tava,' Third World Approach to International Law Pedagogy.'
[14] Rubinson R, 'The Holmes School of Law: A Proposal to Reform Legal Education Through Realism', University of Baltimore Law School Journal, (2015), 33.
[15] Rubinson, R, 'The Holmes School of Law: A Proposal to Reform Legal Education Through Realism', 35.
[16] Legal education thus ignores law as experienced which, in the end, is what law is.
[17] Mosweunyane, S. 'The African Educational Evolution; From Traditional Training to Formal Education', *Journal of Higher Education Studies, Vol 3*, (2013), 112. See also Sitwe, M. 'Indigenous Africa Education', sitwe.wordpress.com, 2011, 1.

Long before colonization, and before missionaries came, African had its own system of education that offered what is termed as a "survivalist" education.[18] This kind of education equipped younger generation with the necessary skill set. They were taught how to be self-reliant and about their role in society and what society expected of and from them.[19] In its content, African indigenous education attempted to inculcate laws, morals, principles and obligation to ancestral spirits, to relatives and to other groups or tribes.[20]

In addition to this, it is reported that pre-colonial education systems in Africa were in the best interests of its people largely because African children learnt what they lived,[21] because each individual's action, attitudes and behaviours affected the entire community.[22] Essentially, people looked out for each other and education ensured that children were moulded into straight forward members of society.[23] Clearly, the education Africans received in pre-colonial Africa was all rounded.

However, the coming of missionaries disrupted and changed African education by introducing a western system of education. They focused on the disadvantages of the African education system and did not concede to any of its positive effects. They neglected all the benefits Africans had accrued from this system as they were keen on making them learn how to read and write, so that they could convert them to Christianity.[24]

(b) Legal Education in Colonial Africa

The rise of the legal profession and in turn legal education in Kenya pre-dates independence. The first batch of lawyers who came to Kenya, had accompanied settlers[25] who needed someone to protect their economic interests. At the time they were not being trained in Kenya. They would be admitted to the bar in England, then come and practice law in Kenya.[26] As the country developed both economically and politically, Asians began to take their children to study law in England and India.[27] A majority of the first Africans to study law did it in India.[28] They, however, had to wait a long time before being admitted to the Kenyan bar. To be allowed to practise law in Kenya, one had to be accepted as a member of the Law Society of Kenya.[29]

There were no schools offering legal education in Kenya. The only place that African natives could get legal education was either London or India. However, due to the high fees involved, a majority of Africans could not afford and as a result, the legal profession was thronged with foreigners.[30] The training offered in England was at the Inns of Court in

[18] Muntwe, K. 'Origin and Development of Schools in Zambia, Lusaka: Image Publishers Limited, 1998, 39.
[19] Survivalist education taught the younger generation how to survive life through experiences and instructions from the elders.
[20] Mwanakatwe, J, 'The Growth of Education in Zambia, since Independence', Oxford UNZA Press, 1974, 113.
[21] Mwanakatwe, J, 'The Growth of Education in Zambia, since Independence', 113.
[22] Ocitti, J, 'African Indigenous Education' East Africa Literature Bureau' 1973, 77.
[23] Ocitti, J, 'African Indigenous Education,'79.
[24] Muntwe, K, 'Origin and Development of Schools in Zambia, Lusaka : Image Publishers Limited, 1998, 39
[25] Okoth G, 'The Legal-Education in Kenya; A Historical Analysis', Academia.Edu, 2015, 24.
[26] The Task Force on the Development of a Policy and Legal Framework for Legal Education in Kenya, 2005, 2.
[27] The Task Force on the Development of a Policy and Legal Framework for Legal Education in Kenya, 2005, 2.
[28] Okoth G, 'The Legal-Education in Kenya: A Historical Analysis,' 13.
[29] Okoth G, 'The Legal-Education in Kenya: A Historical Analysis,'17.
[30] Report of the Committee on Legal Education for Students from Africa (1961) (herein referred to as the (Denning Report). Para 6 of the report revealed that as of that time, of the hundred lawyers in Tanganyika only

London and one would be awarded English qualifications upon completion.[31] With time it began to emerge that the training that lawyers were receiving in London was inadequate for the African scenario, as it did not pay attention to the challenges facing the practice of law in Africa. Further, the training had no regard to Africa Customary law and the role it played before the coming of the colonialists.

According to the Lord Denning Committee formed in 1960 with the aim of coming up with the best models for training law in Africa, it was recommended that Africans should not be admitted to practise law based solely on the British qualifications. They recommended the introduction of training in local law and procedure. This led to the establishment of the two-tier legal education system in countries like Kenya, Tanzania, Uganda and Nigeria that were British colonies. This comprises the undergraduate program then the post graduate diploma in schools like the Kenya School of Kenya.[32] As a result of the Denning Report, the Advocates Ordinance was promulgated establishing both the Council for Legal Education and the Kenya School of Law.[33] The development of institutions that offered legal education in Africa developed steadily.[34]

(c) Post-Independence Developments in Legal Education

Immediately after independence, legal education in Africa and Kenya in particular was greatly influenced by the Denning Report.[35] The most significant reform in post-independence Kenya was by the "Muigai Task Force of 2005" whose main recommendation was the delinking of the Council of Legal Education and the Kenya School of Law to make them independent entities. The confusion and over-lapping of the functions of these two bodies had been created by the recommendations of the Akiwumi report of 1995.[36] The Muigai Task Force of 2005 recommended each of these two bodies to run as separate entities, each with its own set of statutory roles that would be distinct. This saw the enactment of the Kenya School of Law Act and the Legal education Act in 2012.[37]

Despite all the reforms undertaken in legal education, the influence of foreign content in legal education curricula remains a huge challenge. One of the suggestions of the Denning report was that legal education centres, ought to focus more on incorporating relevant material to their curriculum, in the sense that it is relevant to the social set up of the African

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one was an African. In addition to this, there were less than ten Africans out of the over three hundred qualified lawyers in Kenya.

[31] Gower LCB. 'Independent Africa: The Challenge to Legal Profession,' 1968.

[32] Okoth G. 'The Legal-Education in Kenya; A Historical Analysis', 20.

[33] Jessup G, 'Symbiotic Relations: Clinical Methodology- Fostering New Paradigms in African Legal Education', 2002.

[34] By 1972, there were 43 African universities with a law faculty. Twelve of them were in South Africa, nine in the arab countries and twenty two distributed in the rest of Africa.

[35] The key aspects of the Denning Committee was to consider and report as soon as possible what faculties ought to be made available to provide any additional instructions and training. In addition to this, the committee had the task of giving suggestions as to how to make it possible to make acquire more of practical experience as opposed to theoretical knowledge while at school.

[36] Manteaw S, 'Legal Education in Africa: What Type of Lawyer Does Africa Need,' 2008, 923.

[37] Okoth G, 'The Legal-Education in Kenya; A Historical Analysis,' 25.

society.[38] The justification given for this suggestion was the concern raised in the committee's report that there is a lot of irrelevant content in the curricula, as is currently.[39] However, this is yet to be fully achieved. A good example, is on the focus of most law schools on litigation as the main aspect of teaching, with little or no regard to Alternative Dispute Resolution Mechanisms, in spite of the fact that the dominate dispute resolution mechanisms in most African contexts were a variation of present day ADR.

4.0 The Tension between African Customary Law and Formal Law

Article 2 of Kenyan Constitution, sets out the supremacy of the Constitution.[40] The Constitution further provides that any law, including customary law that is inconsistent with the Constitution is void to the extent of the inconsistency.[41] The Judicature Act, [42] provides for the hierarchy of sources of law in Kenya.[43] The Act points out customary law as a source of law in Kenya. However, the application of African customary law is not without a limitation clause. The Act stipulates that customary law is only applicable to the extent that it is not repugnant to justice and morality.[44]The question that then follows would be justice and morality as defined by who or as measured by what standards. Among the most prominent cases that illustrate this argument is the SM Otieno case in Kenya.[45]

This was a case involving the widow of a prominent city lawyer and the deceased's clan leaders on where the lawyer would be buried. The widow indicated that it had been the wish of her departed husband to be buried in their city farm while the clan elders argued that the Luo culture required that the deceased is buried in his upcountry home. The tussle therefore was between customary practice and the wishes of the deceased, which were deemed to be against his community's customs. The court of first instance authorised that the deceased, Mr. S.M. Otieno, be buried by his wife at their Matasia farm in Ngong. His city farm. However, the Umira Kager clan, from which the deceased hailed, appealed this decision and the Court of Appeal issued an injunction barring the wife to proceed with the burial and constituted a three judge bench at the high court to give a full trial. The court eventually found for the Umira Kager clan and ordered for him to be buried by the clan. An appeal by the widow failed and the judgment of the High Court was upheld. The court stated, in part that:

> "…..*there is no way an African citizen of Kenya can divest himself of the association with the tribe of his father if those customs are patrilineal. It is thus clear that Mr*

[38] The justification for this suggestion was that the curricula as was highly theoretical. This was predominantly because the curricula had just been imported from England and other colonial powers and was not in any way tailored to fit the needs of the African society.

[39] Okoth G. 'The Legal-Education In Kenya; A Historical Analysis', 26.

[40] Article 2(1), Constitution of Kenya, (2010). 'This constitution is the supreme law of the Republic and binds all persons and all state organs at both levels of government.'

[41] Article 2 (4), Constitution of Kenya, (2010). 'Any law, including customary law that is inconsistent with this constitution is void to the extent of its inconsistency, and any act or omission in contravention of this constitution is invalid.

[42] CAP 13 laws of Kenya

[43] Sec 3, *Judicature Act,* (CAP 13 Laws of Kenya)

[44] Sec 3 (2) of CAP 13, states that "the High Court, the Court of Appeal and all subordinate courts shall be guided by African customary law in civil cases in which one or more of the parties is subject to or affected by it, so far as it is applicable and is not repugnant to justice and morality or inconsistent with any written law

[45] *Virginia Edith Wambui v Joash Ochieng Ougo and Omolo Siranga* (1982-1988) 1KAR

Otieno having been born and bred a Luo remained a member of the Luo tribe and subject to the customary law of the Luo people."[46]

In *Pauline Ndete Kinyota Maingi v. Rael Kinyota Maingi*,[47] the court dismissed provisions of a will and upheld the Kamba customary law, the deceased's custom. The court ruled that:

> *"…before wishes of an African citizen of Kenya who has made a will directing where his mortal remains should be interred could be given effect to, the executor of his will must prove that the African custom was repugnant to justice and morality or inconsistent with written law, otherwise, such wishes would not be given effect to."* [48]

These two cases demonstrate a struggle between formal and customary law. They create a scenario in which judges have given meaning to the repugnancy clause and upheld African customary law. The lack of a concrete definition of the repugnancy clause has given judges and magistrates wide discretion during interpretation.[49]

The recognition that ADR and traditional justice systems have been accorded in the new Constitution is a positive step in acknowledging our heritage, contextualizing the definition of justice and acceptance that a one-size-fits-all approach does not augur well in matters of justice, law and morality. In more recent days, the High Court of Kenya in 2013 discharged a murder suspect on the grounds that the victim's families and the suspect's families had reached a settlement by resort to ADR Methods.[50] This led to an outcry from the public as the majority opined that the use of ADR was repugnant to justice and morality. On the day the trial was set to begin, the counsel watching brief for the suspect presented a letter to the learned judge asking for the case to be discharged on grounds that the dispute had been resolved. The letter read in part:

> "*…The two families have sat and some form of compensation has taken place wherein camels, goats and other traditional ornaments were paid to the aggrieved family. Actually one of the rituals that have been performed is said to have paid for blood of the deceased to his family as provided for under the Islamic Law and customs. These two families have performed the said rituals, the family of the deceased is satisfied that the offence committed has been fully compensated to them under the Islamic Laws and Customs applicable in such matters and in the foregoing circumstances, they do not wish to pursue the matter any further be it in court or any other forum…"*[51]

When delivering his judgment, Justice Lagat Korir cited Article 159(1) of the Constitution that allows courts and tribunals to be guided by alternative dispute resolution methods including the application of Traditional Dispute Resolution Methods.[52] The judged pointed out to the fact that both factions seemed to be contented with the outcome a sign that justice

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[46] Mukaindo, P. 'Revisiting the S.M. Otieno Case; Awakening the Ghosts in the S.M', Kenya Law Reports, 2013, 1.
[47] Civil Appeal No. 66 of 1984.
[48] Mukaindo, P. 'Revisiting the S.M. Otieno Case; Awakening the Ghosts of the SM Otieno case, 2013, 1.
[49] Kariuki, F,' Customary Law Jurisprudence from Kenyan Courts : Implications for Traditional Justice Systems,' 2015, 7.
[50] *R v Mohammed Abdow Mohammed*, [2011] eKLR.
[51] *Ibid.*
[52] *Ibid.*

had been served. Whereas a number of people did not agree with the logic of justice Korir, justice was at the end done to both parties.

5.0 Making a Case for the Africanization of Legal Education

The challenge today for African legal scholars, is how to implement the propositions advanced by thinkers from the TWAIL and legal realism schools of thought (amongst other theorists), against the backdrop of lingering colonial influence over five decades after attaining independence. With the advent of colonization, indigenous education as was known to Africans took back seat.[53] Most critics of the Africanization process tend to allude to the fact that before the coming of missionaries and colonialists Africans did not have any form of education. That notion is not only misguided but absolutely untrue. Africans had an indigenous form of education, as discussed above that was contextual and that evolved to meet the needs of the society. This system was informed by certain values such as sharing, communalism, reciprocity, respect for elders and fellow men, humanness, social cohesion among others. However, with the onset of the colonial period, indigenous education took a back seat. Over the years, many have come to think of it as an inferior type of education as compared to the formal education.[54]

The question of educational reforms in Africa is nothing new. In Kenya, for example, educational reforms have been proposed by numerous commissions as early as the 1960s, when the first post-independence education commission was formed in 1964. [55] Some scholars have opined that Kenya has adopted a "power coercive" strategy in implementing education reform. [56] This is where the changes are made by those high up in the hierarchy and communicated to those who are supposed to implement them. Owing to the fact that those tasked with the implementing are not involved with the decision-making, they are not as enthusiastic to implement the proposed changes. [57]

In addition to poor policy development strategies, there has been a myriad of other challenges that the process of inclusion of indigenous knowledge in Kenyan education system has faced.[58] Some of these include, western-based schooling system that recognizes teachers as central in classroom knowledge construction and homogenization of Kenyan diverse ways of knowing into a monolithic category of indigenous knowledge.[59] Legal education as we know it today in Africa, has adapted the western-based system and as a result, the structure has no room for classroom dialogue in which the experience of local communities and/or elders can be incorporated in formal class work. [60] As early as 1964, Kenya formed the first

[53] Okoth G. 'The Legal-Education in Kenya; A Historical Analysis', 27.
[54] Okoth G. 'The Legal-Education in Kenya; A Historical Analysis', 27.
[55] Ominde S, Kenya Education Commission Report, 1964, Nairobi, Government Printers.
[56] Haverloc and Hubberman, 'Theory and Reality of Education Reforms in the Developing Countries and in Kenya', 1993, 3.
[57] Wanyama P, Koskey J, 'Education Reforms in Kenya for Innovation, Moi University School of Education Journal, 2013, 11.
[58] Owuor J A, 'Integrating African Indigenous Knowledge in Kenya's Formal Education System: The Potential for Sustainable Development', University of British Columbia, 2008, 12.
[59] 'Report of the National Committee on Educational Objectives, Republic of Kenya, Nairobi, Government Printers.
[60] 'Report of the National Committee on Educational Objectives, Republic of Kenya, Nairobi, Government Printers.

commission to interrogate matters education and propose education reforms. The Kenya Education Commission report, generated from the 1964 commission, indicated that the government recognized the importance of integrating indigenous knowledge into formal education.[61]

Which particular aspects of indigenous knowledge did they suggest for incorporation? Indigenous knowledge has been defined differently by various scholars world over. UNESCO for example has defined indigenous knowledge as, local knowledge that is unique to a culture or a society.[62] Hassan O. Kaya from the University of Kwazulu Natal in South Africa defines it as, effort among the various African scholars to provide their own clear understanding of the concept "knowledge" based on Africa's own history of ideas and intellectual development.[63] The commonality in both of these definitions is the fact that they both point out that indigenous knowledge involves offering education that includes things from the social perspective of those being taught.

Therefore, by stating that indigenous knowledge should be incorporated into the legal education system is Africa, is simply stating that what is taught in law campuses across the continent ought to reflect the realities of Africa as society. The domination of western content in the curriculum ought to be revised in order to create a curriculum that is inclusive of indigenous knowledge and teaches practical things that African students of law can relate to. An example to inform this discussion would be, currently the text books that are used as core books in majority of the units are not written by Africans. A common example, would be the law of torts. The bulk of the textbooks on the subject are English text books. Consequently, the examples and illustrations given within the book, are not relatable to the African context. The words and illustrations used are perhaps of things and objects that cannot be seen or used in the African context. Some of the terms used in explaining phenomena are terms like an 'omnibus' and 'subways' in explaining the legal principle of 'reasonableness' in negligence.[64] Such examples are drawn from a purely common law perspective. Instead of using such illustrations, African teachers should be using more familiar examples such as 'matatus and bus stations' which students can easily relate with. In as much as this may to some, sound trivial, it is indeed a concern. Predominantly because human beings better understand things that they can relate to, or things that they can conceptualize. With this regard to this, if we therefore teach law for instance with books full of totally foreign concepts, then it becomes indeed very difficult to understand, because it is impossible to relate to the things being referred to.

Scholars have criticized the imported western system of education that separates theory from practise. [65] Some question the intelligence of using a system that has no regard for the practical aspect but insists on theories. The first president of Tanzania, Julius Nyerere,

[61]Kenya Education Commission Report, 1964, Nairobi, Government Printer.
[62] UNSECO, Indigenous knowledge and sustainability, www.unseco.org/education/tlsf/mods/themes.c/modll.html, 2010.
[63] Kaya H, Yohan, S, 'African indigenous Knowledge Systems and Relevance of Higher Education in South Africa', The International Educational Journal: Comparative Perspectives, 2013, 30.
[64] Healthcare at Home Limited v The Common Services Agency [2014] UKSC 49
[65] Chavanduka R. The Missing Links. Keynote address to the workshop on the study and promotion of indigenous knowledge systems and Sustainable Natural Resources Management in Southern Africa, Kwazulu Natal, 1998.

had for instance proposed Chavanduka's line of thought earlier.[66] Nyerere's concern was how the mode of education helps a country like Tanzania that is faced with poverty and inequality. Mwalimu Nyerere further argued that the education imported by the colonial masters had no way of helping graduates relate to their social situations. As a result, graduates end up being intellectually separated from their realities and as a result are of little help to their societies. [67]

6.0 Case Studies from Strathmore University Law School

Strathmore law school was established in April 2012, and has since its inception endeavoured to be a leader in the field of providing legal education in Kenya, Africa and the world at large.[68] The school aims at providing the best possible legal education and has embraced various ways of achieving this. In a bid to produce all rounded graduates who are able to compete at the international level, and at the same time grounded in the social and legal reality in which they learn, Strathmore Law School has adopted a number of learning strategies and participated in projects which go a long way towards achieving the contextualization of legal education. These are discussed in the section below:

(a) 'Mukuru Project'[69]

This is a project, which was spearheaded by legal and finance professors at Strathmore University, city planners at the University of Nairobi, pro-poor financial strategists at Akiba Mashinani Trust (AMT), and lawyers at the Katiba Institute. The setting was Mukuru slums in Nairobi, which is an informal settlement, and where people face challenges in accessing basic services from formal legal infrastructures.[70] The study was carried out in conjunction with residents of the slum and revealed key links between meagre services, insecure land tenure, and unjust governance institutions in the informal settlements. The project was supposed to help the residents of this area solve their legal and economic issues by giving them access to basic services that they have been unable to access due to formal legal infrastructural arrangements that deny informal settlements legitimacy. [71] The main aim of the project was to create more awareness as well as a campaign to increase the access to justice and basic necessities to people leaving in the slums in Kenya. In addition, to exploring alternative models of service delivery, the research examined the complex relations between settlement types and service provision in Mukuru.

Using extensive surveys, focus groups and spatial data, the team subsequently developed a set of proposals to benefit households in Mukuru. The final report explored the potential of applying public interest-oriented legal, planning, and financial tools to tackle

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[66] Nyerere, J, Education for self-reliance. Nairobi: Oxford University Press, 1967.

[67] Kinyanjui S, 'Restorative Justice in Traditional Pre-Colonial Criminal Justice Systems in Kenya', Tribal Law Journal 1, 2009, 29

[68] www.law.strathmore.edu/about-sls/about

[69] This was a project under taken in one of the informal settlements within the city of Nairobi, known as Mukuru, hence the name the 'Mukuru Project'.

[70] The slum is based on mostly private land meaning that the slum-dwellers do not have secure land rights and cannot put up permanent structures for housing, toilets, water supply, electricity, et cetera. In addition, the government does not extend formal services to the slum because of government policies on planning have excluded such areas from planning arrangements.

[71] Improving Access to Justice and Basic Services in the Informal Settlements of Nairobi, available at, www.akibmashinani.org/index.php/projects/justice.basic-services, accessed on 10th May 2015.

governance challenges in Mukuru, while strengthening the legitimacy and accountability of public authorities in the process. Strathmore Law School spearheaded the legal component of the project by providing legal services and especially explaining the pertinent issue of land tenure. Unlike many other slums that are situated on government land, the Mukuru slums are on what appears to be private land. The wrangles revolving around the ownership of this land revolve between the slum dwellers, the title deed holders, structure owners and the tenants. All these people claim that this land is 'theirs by right'. As a result of these wrangles, the residents cannot even upgrade their housing because real ownership is not known. The consent of the owner would be required for an upgrade process to take place, and this has been impossible as the real owner is yet to be established. As the power struggle continues, the truth is that the people of Mukuru are in dire need of improving their conditions of life. The conflict here then becomes between the proprietary rights of the 'paper owner' and the human rights of the slum dwellers that should be respected. It is the fire a struggle of balance between the financial repercussions and human rights, because none of the persons involved have lesser rights than the others. [72]

In the end, the research found that there is a staggering 'poverty penalty' that people of Mukuru slums have to pay because they can only access more expensive yet lower-quality services that in Nairobi's formal estates.[73] Such inequitable burdens are compounded, in Mukuru, by the exclusion of the slum-dwellers from formal finance, lack of access to justice, and chronic land tenure insecurity. Further, the research found that the residents must also cope with entrenched poverty, gender inequality, and frequent threats to their dignity that stems from their paltry housing and services. It is our submission, that such innovative and contextual research, informed by realities on the ground is the way to go in Africa in developing relevant jurisprudence that speaks to and meets the daily and local needs of the people. It is also vital in legal training and scholarship, as it also provides opportunities for professors to introduce students to legal and social research early on in their legal studies. Such findings cannot be attained using the Anglo-American framework to legal training and research.

(b) Banking Industry Mediation Pilot Project

This was a six-month pilot project conducted by Strathmore Dispute Resolution Centre, (SDRC) in collaboration with the Kenya Bankers Association (KBA). SDRC is a Mediation Centre under Strathmore Law School focused on facilitating and promoting mediation and other forms of Alternative Dispute Resolution between individuals, within groups and in organizations. KBA is the representative body of all the banks operational in Kenya.

The project kicked off with the training of 70 bankers on mediation skills. Subsequently, KBA tested the suitability of mediation to the resolution of banking disputes by submitting a limited number of matters to SDRC for mediation. The program ran from

[72] Although people may be tempted to regard the proprietary rights of the 'paper owner' as lesser rights as compared to the human rights of the slum owners, this is not the case. Both sets of people have their rights that must be respected.

[73] Some of the services are electricity, education, health, water, sanitation, banking services, roads, security, housing, *et cetera.*

15th April 2014 to 15th October 2014. Five of the forty-four banks operational in Kenya took part in the pilot. Participation was voluntary by the banks.[74] Initially, each bank was to submit 20 cases, which would be resolved at an average time of 3 hours.

At the close of the project 37 cases had been processed 37. Of this, 4 reached a final settlement, 6 were settled prior to mediation on advise to the parties by SDRC, 11 were not viable for mediation and 16 cases were pending action by either the bank concerned or the client. Cases handled in the pilot project were classified as transaction or credit cases. Credit cases, were those in which a credit facility extended to a client was in dispute. Transaction cases covered all other issues falling beyond the scope of credit cases except for fraud matters. Given the limited scope of the project, fraud cases were excluded from the pilot.

Once a bank submitted a matter to the Centre, SDRC took over communication with the client(s). A preliminary meeting to sensitize parties on mediation and on the process was a precursor to the actual mediation. The mediation date was set at the parties' agreement, after the preliminary meeting. SDRC maintains a panel of accredited mediators who are appointed on a roster basis. The appointments under the pilot project followed the same process.

The uptake of the project was lower than anticipated, attributable to a number of factors. First, there was lack of proper sensitization among bank officials on ADR in maintaining long term relations. Second, there was lack of proper and sustained public sensitization on mediation throughout the pilot.

In spite of the low uptake, the project hypothesis was successfully tested against the 37 cases received, in that whereas most disputes in the banking industry were credit-related, mediation is better suited for transaction cases. This is because transaction cases are straightforward usually involving an omission (or commission) attributable to one of the disputing parties. For credit-related matters it was found that mediation was not suitable all where;

(a) The bank had already exercised all statutory mechanisms at its disposal;
(b) In case of unsecured loans, where the dispute has not been previously negotiated between the two parties; and,
(c) Where the client is anticipating an inability to repay the credit facility.

SDRC, therefore, recommended the reconceptualization of dispute resolution in the banking industry. Because the banking industry is relationship-based, maintaining that relationship should be one of the measures against which performance is measured in the industry. This would entail sensitization of officers working in banks on how to handle and manage disputes with clients before they escalate. In the event that matters escalate, banks should have in-house dispute councils which would resolve the matter before it escalates to court. Consequently, it was found that since KBA draws its funding from banks, it could not leverage the banks as aggressively whenever they were non-cooperative. It was therefore thought that involving the Central Bank of Kenya through its prudential guidelines on the use of ADR would be a way around this challenge. Alternatively, KBA could involve the

[74] These were Family Bank, Equity Bank, Barclays Bank, Housing Finance Corporation of Kenya and Gulf Africa.

judiciary, where the latter would suggest mediation as the first port of call before resorting to court.

The Pilot Project illustrates, how contextual and needs-driven research can be harnessed in solving social and legal problems in Africa. KBA and SDRC cooperated by going beyond the law, to identify ways in which banking disputes could be resolved in an expeditious and cost-effective manner. What is clear from this project is that it offered solutions to a problem of the formal courts informed by the common law thinking, thus justifying the complementary model propounded in this work.

(c) Co- Teaching and Academic Trip To Europe

Strathmore law school has since its inception given its students the best possible legal education in different ways. Some of these are co-teaching and academic trips to Europe. The co-teaching model, was born out of the desire to create a hybrid system, where students can benefit from the experiences and wisdom of a Kenyan lecturer and an expert in the same field from a different country. This allows students to get different perspectives on a subject from different parts of the world. It opens up the students mind to the fact that there is a bigger world outside their own and gives them a chance to see and experience what happens to this bigger world.

The academic trip to Europe, on the other hand, is a trip organized to students in their second year of study to have a chance to visit different countries and cities in Europe and other parts of the world to experience different cultures.[75] During this trip, the students visit various cities and places with both academic and cultural significance. Again, this helps students to view phenomena and appreciate law both from a local and a global perspective.

7.0 Recommendations

Based on the above, the study makes the following recommendations: First, African universities can indeed be centres of production of knowledge. However, they will only succeed in this noble cause if they produce knowledge that are needed, relevant and that provides solutions to the African peoples. Such knowledge is again, useful in the classroom, as it helps the professors and lecturers deliver their courses in a manner that students can relate with.

Second, the study does not recommend the abandoning of the 'received' analytical frameworks in legal research and scholarship, but proposes a complementary model where existing teaching and methodological frameworks can benefit from new innovative and contextual models as applied in Strathmore Law School. Indeed, the co-teaching and blending models of teaching, as applied in Strathmore, again justify a complementary model.

Third, indigenous knowledge as a source of knowledge needs to be harnessed going forward. With their recognition in the Constitution of Kenya 2010, what needs to be done is sensitization and training on its efficacy and appropriateness. A good example, is the use of traditional dispute resolution mechanisms as explained above. Kenyan universities can carry out research among local communities to try and document such mechanisms, to find areas of convergence and complementarity with formal justice systems.

[75] The academic trip is organized for students of SLS when in their third year. It is a trip designed to give them exposure as well as give them a chance to interact with other parts of the world first hand. Things that they may have only read in text books come alive and they can interact with them.

Fourthly, African customary law, which is the normative framework amongst most rural African communities needs to be given its rightful place in the juridical order. There are certain values from African communities that explain social phenomena in Africa in a manner that western norms cannot. Being the embodiment of the norms, values, beliefs and traditions of the African society, African customary law and the communal social set up needs to be recognised in law and policy. This way, legal research, training and wider scholarship, will take into account the peculiarities of the African society that existing legal education, laws and policies do not address.

8.0 Conclusion

Social phenomena in Africa must be analysed using a different analytical lens. In the Kenyan context, legal phenomena has been conceptualised using a foreign analytical framework with serious ramifications to legal education and scholarship. Law and its training and research have thus not been contextual but detached from the lived realities of the people. As a consequence, the practice of law has similarly been affected. The case studies from Strathmore Law School illustrate that, indeed African universities can be centres of production and dissemination of knowledge, by carrying out research, projects and programmes that are relevant, contextual and that speak to the problems facing the African people. They show that intellectual independence in Africa universities is ripe, is a reality and can indeed contribute to sustainable development. Although, there will be many challenges along the way, the reality is that it is possible to achieve it. Indeed, there are alternative conceptual and methodological approaches that can be learnt from Africa.

Student Engagement Award

Lawyer Substance Abuse—Reducing the True Cost of an American Legal Education

By: Taylor Elyse Gissell

Abstract

In the United States, lawyers are listed as having the fifth highest suicide rate among professions. In Texas, 27% of lawyers have a drug or alcohol dependency, a problem many scholars attribute to the high stress and demanding nature of the legal profession. Law students are exposed to this type of environment the first day they begin law school and continue to experience it throughout their legal careers. This essay proposes possible solutions to this issue by giving students the tools to improve their mental health from the very beginning of their law school careers. This essay also proposes regulation of law student recruitment by law firms by prohibiting the firms from providing alcohol to potential recruits.

Part I: Introduction

In 2012, the average cost of attending one year at an American law school ranged from $23,600 to $40,500.[1] Over the course of three years, students paid $70,800 to $121,500 in tuition alone. However, with 25% of American lawyers struggling with substance abuse[2], the true cost of a legal education may end up being much higher.

Why are so many American lawyers suffering from substance abuse? Some scholars believe that the inherent stress of the profession causes many lawyers to seek quick relief in the form of drugs and alcohol.[3] Others believe that the legal profession attracts the type of people who have a predisposition to abuse drugs and alcohol. Finally, many believe that the party culture of the law firm environment encourages drug and alcohol abuse.[4] Recognizing that drug and alcohol abuse is an issue in the American legal community, many states have established a Lawyer's Assistance Program and created Continuing Legal Education ("CLE") classes to educate and help lawyers who may have a problem.

This essay first discusses the gravity of the substance abuse issues and the factors contributing to substance abuse among American lawyers and law students. It then discusses the current solutions available to help law students, lawyers, and

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[1] Ethan Bronner, *Law Schools' Applications Fall as Costs Rise and Jobs are Cut*, THE NEW YORK TIMES, (Jan. 30,2013), http://www.nytimes.com/2013/01/31/education/law-schools-applications-fall-as-costs-rise-and-jobs-are-cut.html?_r=0.

[2] R. Judson Scaggs Jr., Drugs and Lawyers: A Match Made in Hell, 33 SPG DEL. LAW. 18 (2015), at 18.

[3] *Id.*

[4] Rob Abruzzese, Lawyers Struggle With Substance Abuse at Nearly Twice the Rate of General Population, Brookly Daily Eagle, http://www.brooklyneagle.com/articles/lawyers-struggle-substance-abuse-nearly-twice-rate-general-population-2013-03-28-190800 (last visited Jul. 11, 2015).

judges struggling with substance abuse. Finally, this essay proposes ways in which we can prevent the perpetuation of this problem as well as ways in which law students may be better prepared to enter into the legal profession.

Part II: Lawyer Substance Abuse: The Gravity of the Problem

Research has shown that lawyers and law students are at a greater risk for developing alcohol and drug problems than the general population.[5] In fact, research has also confirmed that law students tend to increase their alcohol and drug consumption while in law school.[6] One factor causing this could be the high incidence of depression among lawyers and law students. In 1996, lawyers became the profession with the highest suicide rate, surpassing dentists.[7] Currently, this number is lower, making lawyers the profession with the fifth highest suicide rate.[8] However, this does not mean that depression amongst lawyers and law students does not remain a significant factor. In fact, attending law school could contribute significantly to depression. American law schools are designed to foster competition, forcing students to compete with each other to obtain the coveted "A". This competition creates a high-stress environment for many law students. Additionally, the long hours of required studying means most students are forced to

[5] Professor Gerald Boston, "Chemical Dependency in Legal Education: Problems and Strategies," MICHIGAN BAR JOURNAL, p 298 (March, 1997).

[6] Larry Dubin, The Legal Profession's Hidden Secret: Substance Abuse, 83 SEP- MICH. B.J. 44. ("Research further demonstrates that law students tend to increase their use of alcohol and drugs during their law school careers.")

[7] *Id*.
[8] *Id*.

lead a solitary life so they may focus on their studies. With this in mind, it becomes easy to see how students would feel compelled to turn to drugs or alcohol in order to unwind. But a competitive and solitary lifestyle isn't the only obstacle law students face.

After a grueling year of law school, many students earn summer internships at law firms. These internships are designed to show students what attorney life is like, as well as to enable firms to recruit prospective employees. During these summer internship programs, firms are constantly observing interns to evaluate their performance both professionally and socially. Along with providing interns legal projects to complete, firms often organize social events focused on heavy drinking. In fact, a classmate has admitted that an associate at her summer firm informed the interns that they were expected to get "completely obliterated" at a bar social in order to impress the hiring partner.

Because of the competitive employment environment, many interns succumb to the pressure to drink excessively to increase their chances of a full-time employment offer. In fact, in a blog offering law students admittedly horrible advice on securing full-time jobs through summer internships, one lawyer advises students to "[g]et obscenely wasted at every firm event".[9] Likening the events to eating meals at home as a child, the lawyer states that leaving a drink on the table is as offensive as not finishing your plate.[10] The lawyer concludes his advice by encouraging interns to "[d]isplay your loyalty and gratitude by imbibing an unhealthy amount of

[9] *9 Ways to Ace a Big Law Internship…I think*, NON-BILLABLE ADVICE, (Jan 3, 2013), http://biglawrebel.com/2014/01/03/9-ways-to-ace-a-big-law-internship-i-think/.
[10] *Id*.

liquor at each and every event."[11] Although this column was clearly intended to be a parody[12], it sheds light on the real world expectations placed on interns in their summer internships.

Substance abuse can cause serious physical and psychological damage to the abuser as well as their family and friends. Addiction to these substances can cause a person to lose their job, their personal relationships, and in extreme cases—their lives. Law students who struggle with substance abuse may even be prohibited from sitting for the bar exam.[13] However substance abuse also affects the legal profession as a whole. Wide-spread substance abuse can damage the legal community's reputation and can adversely affect the quality of representation of clients. In fact, approximately 60% of lawyer disciplinary actions involve alcoholism.[14] Substance abuse not only damages a lawyer's or law student's personal life but damages the integrity of the legal profession as a whole. This issue is something that the legal community must address. And we are beginning to.

Part III: The Current Solutions

Recognizing the gravity of the substance abuse problem within the legal community, state bars have implemented Lawyer Assistance Programs ("LAPs[15]") to provide a resource to law students, lawyers, and judges who have, or know of

[11] *Id*.
[12] The author later advises students to physically fight the highest ranking partner at the firm and take on more work then they can ever handle. *Id*.
[13] Supra, note 4.
[14] *Supra*, note 2.

someone within the legal community who may have a substance abuse problem. LAPs allow anonymous reporting of substance abuse concerns and offer assistance to those in need. Some states allow the reporting of substance abuse concerns to fulfill any obligation to report attorney misconduct under the Rules of Professional Conduct. Currently, every state bar has a LAP that offers support to lawyers, law students, and judges, including counseling and rehabilitation options.[16] The Delaware Lawyer's Assistance Program also provides a Lawyer's Assistance Committee that consists of volunteer attorneys that are available to assist lawyers in distress. [17]Many of these programs proclaim an increase in utilization of services,[18] however, there are no statistics to show that substance abuse in the legal community is decreasing.

In another attempt to rectify the problem, some states are providing Continuing Legal Education ("CLE") classes to attorneys that focus on substance abuse prevention and support.[19] Recently, the Brooklyn Bar Association acknowledged the need to provide these classes and stated that their CLE on substance abuse was the most important of the year.[20] But CLE classes are generally only held for practicing attorneys, and don't provide support for law students. In an effort to cater to law students specifically, professors are spending class time to educate students on the dangers or substance abuse by bringing in guest speakers

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[16] Directory of Lawyer Assistance Programs, AMERICAN BAR ASSOCIATION, http://www.americanbar.org/groups/lawyer_assistance/resources/lap_programs_by_state.html (last visited Jul. 11, 2015).
[17] *Supra*, note 2.
[18] Naseem Stecker, "What Ails Thee?" MICHIGAN BAR JOURNAL, p 28 (March, 2002).
[19] *Supra*, note 4.

[20] *Id*.

with personal experience. To give students tools to combat this issue, at least one professor at the University of Houston has required students to complete a daily journal in which students must write three positive things that happened to them that day in exchange for 10% of their final grade. This journal, dubbed the "three good things" journal has been scientifically shown to increase happiness and optimism.[21] Although there are efforts being made, a comprehensive and uniform solution needs to be implemented across the country to affect real change.

Part IV: A Proposal for Change

In order to change the trend of substance abuse in the legal profession, we need to instill good habits in law students as soon as they enter law school. Every American law school requires first year law students to take a legal writing class. This writing class is generally small, with only around twelve students, and can last two or three semesters. Because of the small size and more permanent nature of the class, these legal writing classes are often treated as "homerooms" for first year law students. These classes can be used to implement good behaviors in first year law students before the immense pressure of a legal education begins to set in. During this class time, law schools should require legal writing professors to include a three good things journal as part of the syllabus. Included in this three good things journal should be evidence of students implementing stress relief activities or techniques.

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[21] Andrew W. Fleming, *Positive Psychology "Three Good Things in Life" and Measuring Happiness, Positive and Negative Affectivity, Optimism/Hope, and Well-Being*, COUNSELOR EDUCATION MASTER'S THESES, 2006, at 4.

This will encourage students to seek healthy, productive stress relief habits such as painting or yoga instead of destructive practices like drinking or drugs. Instilling these habits early will help students deal with the inherent pressures of the legal profession in a healthy way from the very beginning of their legal careers. By making these practices part of a student's grade, law schools can ensure that students are actually participating in the program.

Additionally, law schools should mandate that law students attend a substance abuse prevention class each year as a requirement of graduation. This will help educate law students on the dangers of substance abuse and make them aware of their increased statistical chance of suffering from substance abuse issues. By making this a requirement to graduation, students will have no choice but to attend and receive the message of the dangers of substance abuse.

Finally, law firm recruitment of law students should be highly regulated, like recruitment in other arenas. Because excessive alcohol consumption is an integral part of many summer internships, the American Bar Association should regulate these programs, prohibiting law firms or lawyers on behalf of law firms from providing alcohol to interns. This prohibition will decrease alcohol consumption and remove the additional pressure of impressing a potential employer through drug abuse. Eventually, this prohibition may help to change the culture of drinking in the legal profession in general.

Part V: Conclusion

Many 12-step programs that are used to help those who struggle with substance abuse define insanity as "repeating the same mistakes and expecting different results".[22] It is time we stop perpetuating the same system of education and expecting the substance abuse situation to improve. Substance abuse can ruin careers, families, and lives. It can prevent a law student from ever being eligible to pass the bar and can damage the reputation and integrity of the legal profession. In order to prevent substance abuse, we must educate members of the legal profession before the substance abuse begins. The most effective way to do this is to educate first year law students and provide them with the tools to cope with the stress and pressures of the legal profession in a healthy, productive way. By regulating the way in which law firms recruit law students for employment we can remove the pressure to abuse alcohol in order to obtain a job. By removing this expectation, the overarching party culture of the legal profession could eventually dissipate. It is time we take substantial steps to address this serious problem and help reduce the real cost of an American legal education.

[22] Narcotics Anonymous, Narcotics Anonymous 11 (World Service Conference Literature Sub-Committee, 1981).

International Law School: The Student Engagement Awards

INSTRUCTIONS

All submissions must be an original academic paper, written in English, and be no more than 3,000 words (including footnotes and bibliography). All submissions must be accompanied by an abstract of no more than 150 words, accompanied by a proof of enrolment at a member school certified by the school administration, and a signed declaration that the paper is the student's original work.

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International Law School: The Student Engagement Awards

TOPIC: Legal Education in my Country, a Law Student's Perspective.

ABSTRACT

The purpose of this paper is to present the impact that legal education has brought to students from their legal careers. On the basis of an investigative model drawn from regulatory literature. Each type is illustrated with a number of everyday examples on the legal education provided in different public and private legal institutions. It does have to be taken into account that governments worldwide have taken into consideration the need to provide for a proper legal education to citizens at large. On an abstract level, this initiative has taken a significant influence on the society at large. Even with the diverse qualifications of acknowledgment as practicing lawyers the end goal is one and the same. The paper type is of a general view.

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1. INTRODUCTION AND BACKGROUND

1.1 BRIEF OUTLINE

Here's an interesting question to pose to alumni who are five, ten, or fifteen years out of law school: how many would want a refund on their legal education? Very few. How many investments do we measure just one year out? Legal education does not only entail getting an undergraduate degree, as many may perceive it, it includes vocational courses to which legal representatives need to pass a bar examination etc. Have we really tried in law school to determine what skills, what quality of mind are required of lawyers? Are we adequately educating students through the content and methodology of our present law school curriculums to perform effectively as lawyers after graduation?[1]

1.2 HISTORY OF LEGAL EDUCATION

In the era immediately following independence,[2] there was significant scholarship on the need, processes, and character of legal education in Africa.[3] Policymakers, politicians, and academics all saw the need for training legal professionals who could assist in the transformation of African legal systems and aid in the development of Africa.[4] They made various inquiries into the state of African legal education.[5] More importantly, they recognized the pressing need for adequate

[1] "Legal Education in Kenya in Crisis - African Woman & Child Feature Service." Http://Awcfs.Org

[2] The Post-Colonial Or Independence Era Loosely Refers To The Period Following The Late 1950s And Early 1960s When The British Government Withdrew From Africa. G. Pascal Zachary, Black Star: Ghana, Information Technology and Development in Africa, Monday, Mar. 2004, At 131, 135-36.

[3] A Bibliography Of The Early Scholarship On Legal Education In Africa During The Independence A. B. Weston, Legal Education In East Africa, 15 U. TORONTO L.J. 187 (1963).

[4] See Seidman, On Teaching Of Jurisprudence In Africa, Supra Note 2, At 146 (Identifying Three Central And Novel Characteristics Of Independent African States, Including The Use Of Law In New And Radical Ways To Help Achieve Planned Rapid Development).

[5] See Generally Addis Ababa Conference On Legal Education, Supra Note 2; Denning Committee Report, Supra Note 2; Hughes Parry Committee Report, Supra Note 2; Unsworth Committee Report, Supra Note 2; Memorandum From The Republic Of Uganda, Report Of A Committee Appointed To Study And Make Recommendations Concerning Legal Education (Sess. Paper No. 3, 1969); Symposium, African Legal Education, 6 J. Afr. L. (1962).

legal training.[6] Many viewed law as a critical instrument in Africa's development, and the training of legal professionals formed a cornerstone in the scholarship on Africa.[7]

Legal education in Kenya pre-dates independence.[8] The first feature of the legal profession entrenching roots in Kenya was vide in the 1897 Order in Council that was enacted to create a law society whose formation was largely necessitated by the need for a small group of professionals.[9] This feature, though closely knitted to the English one, created a fused profession whereby the barristers and solicitors did not play distinct roles.[10]

1.3 STRATHMORE UNIVERSITY'S FORM OF LEGAL EDUCATION

Strathmore Law School is a faculty within Strathmore University which provides legal education to the young and qualified individuals. As per its vision and mission it aims to achieve legal excellence through providing an environment by which each of its members will turn out to be guided by the values of excellence, justice, societal leadership and innovation. The aroma of legal education for the past four years has been roaming the lecture rooms, corridors and environment at large. Thus, come this ensuing year, the first alumni class will be graduating, going into the world ready to face civilization. I am of the opinion that come the opportunity they would choose to continue their expedition here; as would I if given the opportunity. In addition to the legal education provided it has to be noted that there is the manifestation of an "invincible hand" which strives to make one the best at what they are capable of doing. Be it academically, physical traits such as sports, talents such as writing etc. I wish not to sound like an advertisement magazine. However, where lies the truth so must it be unearthed. The legal education provided at Strathmore Law School does go beyond the four walls of a classroom. This should be among the major aims of providing legal education, as opposed to just gaining knowledge and that being the expiration of the learning process.

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[6] Twining, The English Law Teacher In Africa, Supra Note 2, At 80 ("One Of The Common Results Of Independence Is A Dramatic Increase In The Importance Attached By Governments To Education. Since Legal Education Was Particularly Neglected Under Colonial Rule, It Has Been Legal Education That Has Recently Received The Greatest Push Forward." (Emphasis Added)).

[7] See Gower, Supra Note 2, At 102-04; See Also Seidman, Law And Economic Development, Supra Note 3, At 999 ("[T] He Rule Of Law Is A Dynamic Concept . . . Which Should Be Employed Not Only To Safeguard And Advance The Civil And Political Right Of The Individual In A Free Society, But Also To Establish Social, Economic, Educational And Cultural Conditions Under Which His Legitimate Aspirations And Dignity May Be Realized . . . ." (Quoting Declaration Of Delhi Of The International Congress Of Jurists (1959))).

[8] "The Legal Education In Kenya: A Historical Analysis | Okere G Okoth - Academia.Edu."

[9] Ibid.

[10] Task Force on the Development of a Policy and Legal Framework for Legal Education in Kenya, 2005. P. 2.

2. OBJECTIVES OF THE RESEARCH

i. To conduct a general research on the Legal Education provided in Kenya.
ii. To provide suggestions to better the Legal Education in Kenya.

3. RESEARCH QUESTIONS

i. What specific challenges do students confront in your jurisdiction in their legal education and what suggestions do you have to overcome them?
ii. What suggestions do you have to improve this process for implementation of student suggestions and evaluations?
iii. What ideas do you have for engaging the students in legal education?

4. FINDINGS OR CHALLENGES

Currently, Kenya has six law programmes, four in public universities and another two in private universities.[11] There are close to over seven others going through the Commission for Higher Education approval processes and many more being hatched in public and private universities.[12] Of all these programmes, only one has a graduate programme with the rest providing undergraduate studies.[13] In the fifty two years since legal education has been provided in Kenya, only three people have earned doctoral degrees in law from a Kenyan university. [14] In the entire country, we have three professors of law and less than ten associate professors.[15] Moreover, not all these professors are engaged in law teaching.[16]

4.1 Liberalization effects: quantity versus quality

[11] "Accredited Law Campuses in Kenya | Lets Talk Law, Shall We." Https://Swazicreatives.Wordpress.Com/2013/04/02/Accredited-Law-Campuses-In-Kenya/
[12] Ibid.
[13] "Legal Education in Kenya in Crisis - African Woman & Child Feature Service."
[14] Ibid.
[15] Ibid.
[16] Ibid.

The Legal Education Act, 2012 came into effect and the Act embellishes the Council of Legal Education (Accreditation of Legal Education Institutions) Regulations, 2009 formally promulgated under the Council of Legal Education Act, (1995), Cap.16A which is now repealed. Under Section 18 of the said Act, any person or institution offering or intending to offer legal education in Kenya for the award of a Degree, Post-Graduate Diploma, Diploma in Law or certificate as a professional qualification must apply to Council of Legal Education for accreditation of its Programmes. A programme that has not been accredited in accordance with this law shall not have any legal status in Kenya.[17]

This is just the foundation of the challenges that institutions that provide legal education face.[18] Although the intent of liberalization was to allow access to higher education, the increasing number of law schools and large admissions of law students has brought with it a number of problems regarding the quality of legal education and legal services offered to community by these professionals.[19] Liberalization means that many students who would not have qualified before are now admitted into higher education. Consequences of liberalization[20] has been that quality of law graduates has deteriorated due to a number of factors including; lack of training facilities such as equipped libraries and lack of proper monitoring on the standards of quality among those engaged in legal education and training. [21] Law schools that have not received full accreditation status are still in operation despite lacking the required qualifications which compromises on quality of legal education.[22]

4.2 Over-emphasis on foreign Curriculum

One of the recommendations in the past has been that law schools should take consideration of special conditions of their countries and resonate with the needs of the local people in offering

[17] "Accreditation of Legal Education Institutions in Kenya | Riara University."
[18] "Council of Legal Education | Regulate | License | Supervise."
[19] Strathmore University School Of Law, Challenges Facing Legal Education In Kenya And East Africa, <Http://Www.Strathmorefoundation.Org/2012/02.
[20] Following Independence In The Early 1960, The Legal Systems Of The Three East African Countries; Kenya, Uganda And Tanzania Were Brought Together With A Single Appellate Court That Is The East African Court Of Appeal .The Three Countries Share A History In The Establishment Of Law Faculties And Face Similar Problems And Challenges.
[21] Opinion of an Employee at the Malindi Law Court, Kenya.
[22] Celebrating the Re-Establishment of the Council for Legal Education', the Standard Newspaper, 30 November 2012, A.

legal education.[23] Most of the law taught in Kenya is fundamentally British-oriented a fact that is attributable to the colonial past and unavoidable.[24] It should be noted that there is in existence an assumption that people the United Kingdom common law is the major external influence in Kenya's law.[25] That the assumption is correct despite the fact that Privy Council decisions are no longer binding.[26]

However, there are elements of Kenyan culture and heritage that have been overlooked. For example, lawyers are mostly taught litigation and little on alternative dispute resolution mechanisms which form the basis of African dispute resolution which are fundamental and practiced in the rural settings.[27] This is despite the promulgation of the Constitution.[28]

4.3 Inadequate Legal Training

Legal training in Kenya has not been sufficiently provided, since there is little or no response to the changing times and society. The legal training offered in Kenya's tertiary institutions is little suited to impart the competences required to face the many challenges of the 21st century.[29] There is therefore an urgent need to develop new strategies and to invest in the development of institutional infrastructure and human resources in this regard.[30]

At Strathmore Law School, it is compulsory that students conduct a Community Based Attachment, Judicial Attachment and an Industrial Attachment. As opposed to other universities that only specify in their curriculum for only a Judicial Attachment and an Industrial Attachment. This does have a significant impact on the student, who mostly receives a theoretical aspect of the law. It ought to be noted that the practical experience is most nourishing especially in the instance that one intends to venture into legal practice.

4.4 Insufficient Full time Staff

[23] Denning Report of 1961.
[24] "The Legal Education In Kenya: A Historical Analysis | Okere G Okoth - Academia.Edu."
[25] Sir Anthony Mason, Geoffrey Lindell, Book: "The Masons Paper", Federation Press, 2007.
[26] Cook V Cook (1986) 162 Clr 376.
[27] Pravin Bowry, The Changing Face Of The Legal Profession, <Http://Www.Standardmedia.Co.Ke>
[28] Article 189 (4), the Constitution of Kenya, 2010.
[29] "Jurist - Digitizing Legal Education in Kenya."
[30] Strathmore University School Of Law, Challenges Facing Legal Education In Kenya And East Africa, <Http://Www.Strathmorefoundation.Org/2012/02>

The current legal education policy allows legal trainers to operate a part time schedule in the teaching of law or even in the instance when they are supposed to performing it full time. They are either unavailable or performing other jobs such as private legal practice. This often eats into their time and has a result of producing tired and drained teachers who lack adequate preparation, arrive late and are often unavailable for consultation.[31] This is particularly in reference to public institutions that provide legal education.

4.5 Faculties within a main University

This is in reference to faculties that provide legal education within the branch of the main University. Even with their own legal opinion and culture as a whole these faculties are obligated to adhere to the main University's standards. To departure from the main University's ideologies does tend to give an incorrect impression. Hence, in such an instance, it is for the interest of the faculty to adhere to the outlined regulations lest face the ramifications.

6. RECOMMENDATIONS

6.1 Regular notification of accredited legal institutions: since we are currently an upcoming digitized era. Notification through the media will be a worthy start. Overcrowding and disproportionate student-faculty ratios might impede effective teaching.[32] Dysfunctional institutions, lack of a broad-based continental administrative structure to enhance the legal education process, corruption, poverty, lack of facilities, and scarce resources are all challenges confronting most African legal education curricula reform, including Kenya.[33] To remedy this, the CLE should intervene to ensure that the set standards are strictly adhered to for any institution for receive accreditation.[34]

6.2 Partnerships with fellow Universities within and outside of Africa: it has been noted that most of the Universities in Africa even with accreditation lack partnerships with fellow universities. By doing so, there will be a forum by which students can attend exchange programs, and obtain exposure. By attending a year abroad they will be able to

[31] Dr Morris Kiwinda Mbondenyi, 'New Dawn for Kenya's Legal Profession', Daily Nation, 23 May 2013, 11.
[32] Ibid at Page. 497.
[33] Opinion of an Employee at the Malindi Law Court, Kenya.
[34] The Legal Education Act, No 27 of 2012.

acquire skills which can account upon return to their home country. Meanwhile before finalizing on the exchange program details, students can also be shown the importance using alternative dispute resolution methods in their curriculum as a means of instigating legal proceedings. An atmosphere of appreciation for one's culture will be fostered through such incentives.

6.3 Legal training sessions: this should not just target those who want to conduct their internships, but at the earliest convenient time, also interested parties who want an opportunity to be given some sense of legal know-how. Thus, enable them to reach their fathom of success.

6.4 Logbook recordings: since there is a minimum number of hours that lecturers have to have in contact with the students. By giving a monthly capture through regularly recorded and duly signed logbooks, can there be transparency, integrity and ingenuity. This will eliminate the notion that students may have concerning lecturer's that are constantly absent.

6.5 Incorporation: this is in reference to the faculties that are a branches to the main Universities. Consideration of the other party's norms needs to be taken into account. A consensus needs to be reached through continuous deliberations. Alternative solutions which will benefit both parties is a possibility an example being regulations and stipulations concerning such religious conformity.

6.6 Upgrade of in terms of technology and library stocks: a key problem ailing the legal education in Kenyan institutions is the lack of adequate learning resources such as well stocked libraries, electronic information retrieval databases, information and communications technology and computers.[35]

6.7 The adoption of research and development-oriented courses: This will enable graduates to conduct independent research on the tasks they face in practice and write meaningful and informative papers.[36] Almost all the universities in Kenya have research

[35] This Has Been A Prominent Predominant Problem That Only Recently Caught The Attention Of The CLE And Willed It Into Supervisory Motion Of Demanding That The Schools Either Meet These Needs Or Close Shop; See Also Ndulo, Legal Education In Africa, Supra Note 9 At 499.

[36] Ndulo M., Legal Education in Africa in the Era of Globalization and Structural Adjustment (2002), At 490.

courses save for some that either offer as elective course[37] or others which do not offer it at all.

7. CONCLUSION

With the consistent changes and strict demand for adherence legal education in Kenya is forging its path to success. In the historical sense, it was depicted that the legal practioner was deemed to be a knowledgeable individual. Currently, the question is whether, in Kenya, an advocate, as is depicted meaning that any person whose name is duly entered upon the Roll of Advocates or upon the Roll of Advocates having the rank of Senior Counsel.[38] Or is an advocate just presumed to be anyone who having gone through a long course of legal education, finally graduating unscathed? To whom general public can just view as a fellow ley man.

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[37] The University Of Nairobi Law Faculty Offers The Research On An Elective Basis Encouraging Those Who Hate Research To Graduate Without Earning The Skills.
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GLOBAL APPROACHES TO LEGAL EDUCATION

DEVELOPING STANDARDS FOR A GLOBAL LEGAL EDUCATION
"*Students as Stakeholders in Legal Education"*

ABSTRACT (150 words)
Globalization has led to not only an increase in methods of global legal education, but also an increased need for law schools to educate competent transnational lawyers. This requires students, to be equipped with interchangeable skills that facilitate intellectual and cultural flexibility. Such flexibility in legal thinking requires a move from the modern clinical based teaching techniques back toward a traditional focus on legal critique, alongside increased encouragement toward double degree programs which enable a more rounded and relatable frame of social thinking. Moreover, law students as stakeholders, have the right to high quality, scholarly education, which theoretically challenges them to understand the common basis of legal systems in various jurisdictions, allowing flexible application of legal principles purposively. The following discussion will focus on the ways such skills can be transferred via global legal education in order to maintain prestige and coherence in the global legal system in the future.

INTRODUCTION:
The paramount complexity of legal education is the nebulous distinction between law as a practical qualification and law as an area of philosophical study.[1] The impossibility of categorizing law as neither a wholly practical nor theoretical degree necessitates the practice of both clinical and critical based approaches to legal education. Whilst a majority of law schools, to different extents, have managed to incorporate this dualistic system, this discussion will explore how an imbalanced focus on clinical based teaching fails to provide the theoretical capacity that the increasingly globalized legal system demands of future professionals.[2] Moreover, globalization almost guarantees exposure to multiple jurisdictions throughout a legal career, as well as leading to the convergence of law with separate academic disciplines, particularly the social sciences.[3] Therefore, law is no longer an isolated discipline, and the emergence of legal qualifications as a commodity, highly valuable in gaining employment in an ever-growing list of areas, means that law schools responsible for training procedure in their own respective jurisdictions, are now required to facilitate a legal education that transcends the borders of their own legal systems and disciplines. Paradoxically, the shift from traditional to clinical based teaching methods has in many cases, such as Australia, led to an unnecessary influx of procedurally trained lawyers specializing in applying the law robotically. The problem for law schools is that their duty to their own specific jurisdictions now needs to be balanced against their duty to students as stakeholders, and the

[1] Simon Chesterman, 'The Globalisation of Legal Education' (2008) *Singapore Journal of Legal Studies* 58, 59.
[2] David Sugarman & Avrom Sherr, 'Globalisation and legal education' (2001) 8 *International Journal of the Legal Professio*n 5, 6.
[3] Ibid.

requirement to pass on legal skills that are suited for the wider range of places and opportunities globalization has enabled. In seeking a way to satisfy these duties, this discussion suggests a move toward the graduate style law school as seen in the United States.[4] Limiting an undergraduate legal certification to the teaching of general legal principles and jurisprudence would allow for the large scale general legal education, meeting the increased demands arising in different jurisdictions and disciplines. Furthermore, the establishment of legal certification only through a highly exclusive clinically based graduate program would ensure specific jurisdictions then have the opportunity to meet their duty to provide sufficient legal officers within their own jurisdictions. By being forced to begin with a general theoretical diploma, these students will also benefit from a further engagement with the law, developing crucial critical thinking skills that cater for a deeper awareness of what the law is and why it is so, rather than just a narrow understanding of it's application. This will in turn nurture respect for the complexity of the law, allowing invaluable intuition within a societies legal professionals.

LAW AS A MULTIDISCIPLINARY DEGREE

As aforementioned, the study of law is becoming increasingly entangled with issues in a number of different academic disciplines.[5] Subsequently, employers from realms outside of the legal world are attracted to the critical thinking associated with law degrees, and legal graduates are therefore continuing to enter employment in a growing number of areas. As stakeholders, students therefore have an interest in attaining legal skills throughout their education, which do not just prepare them for a lifetime of applying specific procedure, but nurture contemplation of a variety of disciplines, focusing on the importance of jurisprudence and enabling a broad frame of legal thinking that will allow flexibility in employment opportunities. Such broad thinking is reliant on a strong introduction to basic legal principles, the very principles that intertwine with the philosophy of basic social science and politics and transcend cultural borders.

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Moreover, law students as stakeholders in legal education must now also be concerned not only with gaining skills applicable in various disciplines, but skills which will allow them to move and work in different jurisdictions and parts of the world.[6] In the words of one scholar, "we need to educate lawyers to be "residents" rather than "tourists" in new jurisdictions".[7] In other words, as future legal professionals in a globalized world, students need the analytical skills that

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[4] Anil Kalhan, 'Thinking Critically about International And Transnational Legal Education' (2013) 1 *Drexel Law Review 285,* 296.

[5] Goldsmith, Andrew, 'Why should Law Matter? Towards a Clinical Model of Legal Education' (2002) 25 University of New South Wales Law Journal 721, 722.

[6] See eg, Claudio Grossman, *Building the World Community Through Legal Education, in* THE INTERNATIONALIZATION OF LAW AND LEGAL EDUCATION 21, 30 (Jan Klabbers & Morimer N.S.Sellers eds., 2008) (arguing that "virtually every lawyer practicing in the twenty-first century, regardless of his or her practice area, will encounter issues of international law").

[7] Mary C Daly, 'Tourist or Resident?:Educating Students for Transnational Legal Practice (2005) 23 *Penn Street International Law Review* 785, 785.

allow a general understanding of universal legal principles. Law students need to be equipped not with stringent skills practical only in specific legal systems, but with a broad analytical understanding of legal systems and their existence as a whole, in order to potentially adapt to the subtle differences between jurisdictions. Such universal understanding is embedded in the philosophy of the law, in the teachings of the most important of legal thinkers such as Kant, Hobbes and Aquinas. Therefore, it is this legal basis in which law schools should primarily aim to provide to students to avoid constricting their legal futures to specific jurisdictions.

WHAT CAN LAW SCHOOLS DO?

Moreover, meeting the demand for skills that are both jurisdictionally and disciplinary flexible compels an initial focus on the principles of basic jurisprudence. This stage of education could be incorporated at a global standard, at least between liberal democracies, in a way that utilizes the philosophical similarities between legal systems worldwide, enabling coherence and co-operation between jurisdictions. Furthermore, if law schools looked toward the United States system of law as a graduate program, whilst offering a pre-requisite undergraduate legal theory course, which incorporates theories at a multi-disciplinary level, they will subsequently meet the demand for professionals with basic legal skills who do not wish to completely pursue legal careers per se. Additionally, students as stakeholders will benefit from a deeper engagement with the law, an outcome that will hopefully nurture a greater respect for the complexity of the law and it's existence within society. In the words of Nikolas James "critique placed the law into a context, and connected the law to a higher reality",[8] this connection with the law and the greater society untangles the integral purpose of the law within students minds, aiding them in being able to apply principles in a consistent and respectful manner.

TECHNOLOGY

The development of technology such as the Internet has acted as a huge force toward globalization, subsequently affecting both the availability and need for law schools to look toward more innovative forms of teaching. The internet in general is undoubtedly an invaluable tool in providing a stronger connection between different jurisdictions, and the adoption of online learning programs has aided legal education to certain degrees. At the same time, it must be reiterated that students are stakeholders in education, and furthermore, have a right to a high quality education that allows face-to-face contact with highly intelligent academics and professionals. Whilst the internet is often a far more convenient and flexible tool in communicating and learning, it is only through the development of this face-to-face relationship with students and professionals that the sharing of ideas and student engagement will really flourish[9]. This in turn fosters crucial communication skills not attainable through communication via a computer screen. Students also benefit from the capacity to converse with the legal elite, potentially building a professional network before entering the

[8] Nickolas J James, 'CRITIQUE AND COMMENT: A Brief History of Critique in Australian Legal Education' (2000) 24 *Melbourne University Law Review* 965, 965.
[9] Gabrielle Appleby, Peter Burdon & Alexander Reilly, 'Critical Thinking in Legal Education: Our Journey' (2013) 23 *Legal Education Review* 345, 346.

work force, aiding the transition from academic to professional life. Moreover, law schools need to be cautious about how far they resort to technology as a method of education. To maintain integrity and high intellectual standards within the legal system, early exposure and relationships with professionals is not only beneficial but a right of all students anticipating a career in the law.

FINDING EMPLOYMENT: SUPPLY AND DEMAND

Following from this, if students are stakeholders in education, a crucial consideration for law schools is ensuring that their investment in a legal education will pay sufficient dividends in employment opportunities at the conclusion of their degree. In today's world, it seems that in many environments employment is becoming scarcer, and whilst the potential areas of employment open to graduates of law is growing, traditional positions within reputable law firms are increasingly competitive. Through restricting the clinical aspect of legal education which is relevant only to students committed to become lawyers per se, law schools can ensure that a suitable flow of select students to meet the relative demand. This would in turn benefit employers and the society as a whole, ensuring that only the highest standard of students are given the opportunity to train as lawyers. Moreover, it would benefit students in securing their investment in their legal education by increasing the likelihood of a smooth transition into professional life on the completion of their degree. A pre-existing knowledge and engagement with legal principles through the completion of the pre-requisite undergraduate legal theory course will allow a greater focus on pure legal application. The selectivity of the program would also make possible a stronger relationship between law schools, and students with law firms.

CONCLUSION

Legal systems are one of the most beautifully complex, man made institutions in existence, to confine their educational worth to pure reiteration of rules and procedural application would be a great tragedy. For the continuation of a reputable and respectable legal system, where sufficient returns on the investment of time, money and effort are ensured to both students, educators and the society as a whole, a move toward a graduate style law school seems appealing. A global level of legal education can only coherently exist through a focus on the aspects of legal systems, which are universal – principles of jurisprudence. The existence of a primary undergraduate legal course, specializing in engaging students with these very principles which correlate with important theories from alternative disciplines, would create professionals equipped with legal skills demanded in a growing areas of society. Additionally, for those who wish to pursue a traditional legal career, engagement in legal theory before acceptance in a graduate program of legal procedure ensures the future lawyers will develop a greater respect for the law as a system, fostering critical thinking skills which will potentially take them beyond their own jurisdictions during their legal careers. As educators, law schools have a duty to provide the highest quality of legal professionals with the specific skills necessary to apply the law within their jurisdictions. At the same time, they have a duty to students to equip them to enter a globalized world, where exposure to work outside of the law, and outside of their primary jurisdiction is a reality. The

only way to ensure the fulfillment of both of these duties is through a heavier focus on universal philosophical principles which enliven the law and illuminate the pivotal connection of the law with the broader society.

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