



Vol. 12, No. 1, Autumn 2017

ISSN 1476-0401

**Journal of  
Commonwealth Law and  
Legal Education**



The official  
Journal of the  
Commonwealth  
Legal Education  
Association

## **JOURNAL OF COMMONWEALTH LAW AND LEGAL EDUCATION**

**Vol. 12, No.1, Autumn 2017**

**Editors:**

**Emma Jones and Francine Ryan** - *The Open University, UK*

**Editorial Board:**

**Paul Catley** – *The Open University, UK*

**Professor Anton Cooray** – *City, University of London, UK*

**Professor Justice Samuel Kofi Date-Bah** – *University of Uganda, Legon, Ghana*

**Professor Jenny Hamilton** – *University of London, UK*

**Dr Lakshman Marasinghe** – *University of Windsor, Windsor, Canada*

**Professor David McQuoid-Mason** – *University of Natal, Durban, South Africa*

# Journal of Commonwealth Law and Legal Education

The official journal of the Commonwealth Legal Education Association In  
association with The Open University School of Law

## CONTENTS

<b>IN THIS ISSUE</b>	<b>1</b>
<b>PROFESSOR GARY SLAPPER: A TRIBUTE</b> <i>Carol Howells and Keren Lloyd Bright</i>	<b>3</b>
<b>ARTICLES</b>	
<b>Defining Legal Studies in Canada</b> <i>Susan Brophy and J. C. Blokhuis</i>	<b>7</b>
<b>Corruption and the Misuse of Public Office in the Commonwealth: The Preventative Role of Law Teachers in Nigeria and South Africa</b> <i>Awele Laurretta Ikobi-Anyali</i>	<b>19</b>
<b>Galvanizing the Wholesale Adoption of Clinical Legal Education by Establishing Law Clinics in Nigerian Universities' Law Faculties</b> <i>Kingsley Omote Mrabure</i>	<b>33</b>
<b>Reflections on Practice and Recent Research to Enable Future Practitioners to Learn About Working Collaboratively Across Disciplines to Better Help the Community</b> <i>Liz Curran</i>	<b>46</b>

<b>Towards Effective Legal Writing in Nigeria</b> <i>Ekokoi Solomon</i>	65
<b>A Tap Into the Relationship Between Law and Economics in Resolving the Problems Associated with Cattle Grazing in Nigeria</b> <i>J. O. Odin</i>	95
<b>RECENT DEVELOPMENTS</b>	
<b>OPINION PIECE: Parliamentary Cannibalism</b> <i>Ashit Kumar Srivastava</i>	106
<b>OPINION PIECE: The Mass of Law</b> <i>Ashit Kumar Srivastava</i>	108
<b>BOOK REVIEWS</b>	
<b>Legal Education at the Crossroads</b> <i>Francine Ryan</i>	110
<b>Law Student and Lawyer Well-Being in Australia and Beyond</b> <i>Emma Jones</i>	112
<b>INSTRUCTIONS FOR AUTHORS</b>	114
<b>ABOUT THE COMMONWEALTH LEGAL EDUCATION ASSOCIATION</b>	117

## IN THIS ISSUE

This edition of the Journal of Commonwealth Law and Legal Education includes an exciting range of articles, opinion pieces and book reviews from Australia, Canada, India, Nigeria and the UK. The majority of articles focus on the theme of legal education, but the content of these make it clear that legal education can and does interact with society much more widely, whether through clinical legal education or the actions of law teachers. A wider societal perspective is also offered through a consideration of law and economics, and its possible application to issues arising around cattle grazing in Nigeria.

This edition opens with a heartfelt and moving tribute to the late Professor Gary Slapper, a member of this Journal's Editorial Board and a dedicated supporter of the Commonwealth Legal Education Association. The tribute itself demonstrates both his immense influence within the law and his excellent personal qualities.

The edition's focus on legal education then begins with article by Susan Brophy and J. C. Blokhuis which provides a valuable insight into Canadian legal studies. This discusses the historical development of these studies as well as examining their distinctive objectives and research methods. The article concludes that each feature in its own way promotes student agency.

Awele Laurretta Ikobi-Anyali's article considers how law teachers in both Nigeria and South Africa can play a significant role in combatting corruption and misuse of public office through appropriate curriculum development, revised teaching methods and relevant research and publications. It argues that introducing the concept of anti-corruption mechanisms in universities has the potential to enable students to understand, accept and live up to the required standards of accountability and transparency when they move into public service

Kingsley Mrabure's article also considers the interaction between Law Schools and wider society, but this time through the use of clinical legal education. It argues for the inclusion of such programmes within all Nigerian Law Schools, to foster important legal skills required in the 21<sup>st</sup> century.

Continuing the theme of clinical legal education, but this time from an Australian perspective, Liz Curran reflects upon the introduction of Interdisciplinary Student Clinics, which bring together practitioners from different disciplines to improve social justice and health outcomes within communities.

The focus then moves on to legal writing, with Ekokoi Solomon providing a comprehensive guide to the conventions of legal writing. This offers not only a clear insight into the key requirements of such writing, but also valuable practical advice and exemplars for those seeking to develop their skills in this area.

The final article, by J. O. Odin, moves away from legal education and considers the tensions and conflicts arising from cattle grazing in Nigeria. It argues that applying insights obtained through the wider literature on law and economics could assist in alleviating these problems.

The last two sections of this edition provide both two opinion pieces and two book reviews. We continue to welcome submissions of case notes and comments on cases, new legislation and proposed law reforms, together with shorter opinion pieces and book reviews likely to be of interest throughout the Commonwealth.

We welcome feedback and enquiries from potential authors and peer reviewers by email at [JCLLE@open.ac.uk](mailto:JCLLE@open.ac.uk). Full author submission guidelines are given at the back of this edition.

Emma Jones and Francine Ryan  
Editors

**PROFESSOR GARY SLAPPER**

**A TRIBUTE**

**Carol Howells, Senior Lecturer in Law, The Open University Law School**

**Keren Lloyd Bright, Senior Lecturer in Law, The Open University Law School**

Many readers of this journal either knew or knew of Professor Gary Slapper, not least because he was the co-founder and first editor of *The Journal of Commonwealth Law and Legal Education*. He sadly passed away on Sunday, 4 December 2016, leaving behind his wife Suzanne and three daughters, Hannah, Emily and Charlotte. He was 57.

The obituary published in *The Times* on 8 December 2016 described Professor Gary Slapper as ‘the man who brought the law to life’. Gary had been a columnist for *The Times* since 1992 and used his columns to great effect – to inform, enlighten, amuse and entertain. He was able to reach a wider public audience in ways that other lawyers – academic and practising – could not.

Professor Slapper — academic, educationalist, writer and Times columnist — was a one-off. Equally at home discussing the constitutional niceties of Brexit or the law of corporate liability as with popular culture — from *The Simpsons* to *Making a Murderer* — he was passionate about knowledge and endlessly curious. Unlike many, he wore his learning lightly, with great modesty.

(Gibb and Ames, 2016)



### **PROFESSOR GARY SLAPPER: THE LAW**

Gary studied law at University College London (1980) before gaining a master's from UCL (1992) and a PhD in law from the London School of Economics (1995). His various roles included head of law at Elm Park Community College (1981-85), principal lecturer at Staffordshire University Law School (1990-1997), professor of law and head of law school at the Open University (1997-2011) and global professor and director of New York University in London (from 2011). He was a door tenant at 36 Bedford Row, as senior academic on the Bar Standards Board Training and Education Committee and visiting professor at the Chinese University of Hong Kong.

Gary had immeasurable talent and used his work, experience and expertise to fight against injustice and inequality. His passion for his subject was clear in all that he did. Challenging the traditional and pioneering new ways of engaging students and the wider public with the law he wrote both popular introductory texts (*How the Law Works* 2<sup>nd</sup> Edition, 2011), academic texts (*The English Legal System* with David Kelly; 17<sup>th</sup> Edition, 2016), specialist texts (*Blood in the Bank: Social and Legal Aspects of Death at Work* (1999) and *Organisational Prosecutions* (2001)) and, with his weird cases series, texts that engaged in looking at the law differently.

He acted as a consultant for television documentaries (Channel 4's History of English law and BBC's The Barristers) and drama series, was one of the first to adopt the combined approach



of a text book and companion website (*English Law* 3<sup>rd</sup> Edition, 2010) and had a regular column in The Times. His use of social media to question and engage is well known. Gary led the way where many followed.

One of his many stories he told about his work, life and career was that of the occasion when he wrote to the Open University (OU) to enquire about working there as a law lecturer. At the time the OU did not offer a law degree. When the university began to offer law some years later Gary applied and was appointed as the first law academic in the department. He subsequently became the OU's first professor of law and first head of the Law School.

His passion for law was clear for all to see and a conversation with Gary was always illuminating. He worked constantly to engage both students, colleagues and the wider public with law and was passionate about accessibility, social justice and public legal education. He enthused about the law

Although law is sometimes portrayed as a dull discipline pursued by ethically dubious practitioners, it is a spellbindingly vivid and varied subject which affects every part of human life [...] law permeates every cell of social life. Law governs everything from the embryo to exhumation. Law regulates the air we breathe, the food and drink that we consume, our travel, sexuality, family relationships, our property, sport, science, employment, education, and health, everything in fact from neighbour disputes to war....

(Slapper, 2012)

His passing leaves a large gap in academia, he informed, entertained, raised awareness of law (as 'a living instrument of instruction'), championed access to law and questioned ('if religious education is patched automatically into school timetables, why not law, rights and responsibilities') (Slapper, 2003). As one OU colleague wrote 'He was-and it still seems unbelievable to use the past tense – a public intellectual in the most genuine sense, instinctively living and breathing 'public engagement' and 'impact' (Tombs, 2016). His legacy will be the enduring impact of his work.

### **PROFESSOR GARY SLAPPER: THE MAN**

At the funeral in December 2016, Gary's brother read out a piece written by their father. In it, Gary was described as his 'sun' [*sic*]. This image is recognisable to all who knew Gary: whenever he entered a room, he brought a lightness of heart, life and laughter. There was always a joke or funny story waiting to be told – quickly followed by his distinctive laugh. Gary was a raconteur who skillfully combined humour, erudition and truly encyclopedic knowledge. In the course of a conversation, Gary was effortlessly able to conjure a perfectly

formed and fully referenced column on any subject – should the listener care to take dictation.

Gary cared passionately about unfairness, injustice, lack of access to opportunity and generally righting wrongs. He lived these concerns, rather than just voicing them. Those invited to the funeral were asked not to bring flowers, but to contribute to a charity of their choice – as ‘Gary was always helping people’. In particular, he was generous in his encouragement and support of colleagues and students alike in their application for advancement, scholarships, pupillages, training contracts and other roles.

At the memorial in March 2017, Gary was described in one of the eulogies as a deeply serious man who did not take himself seriously. The power of his intellect could so easily have intimidated others, but Gary was a wonderfully kind and humane man. He was long-practised in the art of self-deprecation – which he employed to great effect to put those around him at their ease. (Gary told many stories about his less than good sense of direction and ending up in places where he had not intended to be.)

At both the funeral and the memorial what was particularly striking was the extraordinary warmth, courage and dignity shown by Suzanne, Hannah, Emily and Charlotte. Our thoughts and best wishes remain with them. Gary is greatly missed: he was indeed a ‘one-off’ and ‘the man who brought the law to life’.

## References

Gibb, F. and Ames, J. (2016) “Gary Slapper: The man who brought law to life”, <https://www.thetimes.co.uk/article/the-man-who-brought-law-to-life-85q0h3pm8> (accessed 5th December 2017).

Slapper, G. (2003) “Why we need more lawyers”, *The Law Society Gazette*, <https://www.lawgazette.co.uk/news/why-we-need-more-lawyers/40739.article> (accessed 5th December 2017).

Slapper, G. (2012) “‘Is studying law boring?’”, *The Guardian*, <https://www.theguardian.com/law/2012/aug/06/studying-law-boring-gary-slapper> (accessed 5th December 2017)

Tombs, S. (2016) “Some personal reflections on the tragic loss of Gary Slapper , Gary Slapper, Global Professor at New York University”, *British Society of Criminology Newsletter*, No. 79, Winter 2016.

## DEFINING LEGAL STUDIES IN CANADA

**Susan Brophy, PhD, *Sociology and Legal Studies*,  
St. Jerome's University, University of Waterloo  
J.C. Blokhuis, JD, PhD, *Social Development Studies*,  
Renison University College, University of Waterloo**

### Abstract

Legal Studies programmes in Canada trace their origins to intellectual and ideological movements after WWII, including both the Law and Society movement and a more explicitly Marxist Critical Legal Studies movement. In keeping with the liberal arts tradition, Legal Studies programmes draw on the humanities and the social sciences in equal measure. Distinctive research methods and scholarly objectives, including interdisciplinarity, critical engagement and student-led inquiry, emerge as defining features.

### Introduction

The proliferation of Legal Studies programmes at Canadian universities reflects a trend toward more interdisciplinary and practical undergraduate education. However, law as an object of scholarly analysis has an ancient pedigree within the liberal arts, long predating law schools and the legal profession as such. This perspective is instructive, particularly for legal scholars tasked with differentiating Legal Studies programmes from law schools. Legal Studies should not be defined in terms of what it is *not* (i.e. not law school); it should be defined in terms of its distinctive scholarly aims and methods of inquiry. In this essay, we review the ancient, modern, and recent history of Legal Studies, identify its distinctive objectives and research methods, and argue that each feature in its own way promotes student agency.

### Legal Studies as a 'Gentlemanly Liberal Art'

Law schools for aspiring lawyers and **practitioners in the common law tradition** are a relatively recent addition to the University. Historically, aspiring lawyers in the United States served as apprentices or clerks with practitioners, or they studied at proprietary schools run by practitioners until (and for six decades after) Harvard University established its law school in 1817. In England, aspiring barristers were for centuries trained within the professional guilds and Inns of Court of London, not at Oxford or Cambridge. Oxford University did not offer a Bachelor of Jurisprudence degree until the mid-1870s. Dalhousie University subsequently established the first law school for aspiring common law practitioners in Canada in 1883.

Legal studies for aspiring priests and diplomats **in the civil law tradition**, by contrast, have a pedigree as ancient as the University itself. Indeed, the study of Roman law predates the

founding of the world's second-oldest university at Oxford, where Vacarius (c. 1115-c. 1200), likely a graduate of Bologna (founded in 1088), delivered lectures on Justinian's *Institutes* as early as 1149. 'By the founding of the American colonies, Roman and canon law had been taught at Oxford and Cambridge for five centuries,' note Daniel Coquillette and Bruce Kimball (2015: 22).

The body of knowledge comprising the liberal arts includes the work of Plato and Aristotle, Isocrates, Cicero and Quintilian. Much of this material was 'lost' after the fall of Rome in 476 BCE and 'rediscovered' in the course of the Crusades. The re-entry of this 'pagan' material into medieval university libraries posed a serious problem for the Catholic Church. Following in the footsteps of Augustine of Hippo, whose work served as a foundation for his *Summa Theologica*, Thomas Aquinas synthesized classical Greek thought and Catholic doctrine, convinced that the spiritual power of grace led a person educated in the liberal arts to seek higher truths (Gutek, 2005). The hierarchical curriculum associated with higher education in general and Catholic education in particular owes much to Aquinas, with liberal arts (theory) at the top and the development of practical skills (practice) at the bottom.

Legal studies as a course of study in the liberal arts for undergraduates not seeking to enter the priesthood can be traced to the Reformation and more specifically to Henry VIII, who for political reasons banned the teaching of canon law at Oxford and Cambridge. Canon law was then replaced with Roman (civil) law, which postulants for the priesthood were not permitted to study. Hence fellows in the Bachelor of Civil Law (BCL) programme at Oxford were atypical in that they were not required to take holy orders. This made the BCL particularly popular amongst 'younger sons of families of good estates' who took the degree 'purely to avoid going into the Orders,' and particularly for 'the undergraduate who desired to complete his statutory exercises with as little trouble as possible' (Barton, 1986: 595). 'The abolition of university lectures in canon law in the sixteenth century had already rendered the university course much less useful to the lawyer whose future practice would be largely in the ecclesiastical courts,' notes J.L. Barton (1986: 594). Moreover, after the Glorious Revolution in 1688, the ecclesiastical and admiralty courts were largely superseded by the Court of King's Bench, from which the common law as we know it is largely derived. 'Attempts were certainly made during the period to encourage the study of the civil law [at Oxford],' notes Barton (1986: 597), 'but they seem to have been intended primarily for the benefit of students in the faculty of arts.'

So it was that courses on English law were not offered at Oxford (or Cambridge) until William Blackstone began as the first Vinerian Chair in 1753, almost a half century after Thomas Wood had argued in *Some Thoughts Concerning the Study of the Laws of England in the Two Universities* (1708) that 'instruction in the elements of English law was a necessary part of the education of a gentlemen' (Barton, 1986: 600). Blackstone accordingly treated his subject 'as a gentlemanly liberal art that had little connection with the actual

complexities of legal practice' (Coquillette and Kimball, 2015: 23).

### **Legal Studies in Canada**

In Canada, it is customary to open a discussion about contemporary legal education with a reference to 'Law and Learning' (1983), the report of the Consultative Group on Research and Education in Law [CGREL] for the Social Science and Humanities Research Council of Canada. Named for Harry Arthurs, the Chair of the Consultative Group, the *Arthurs Report* assessed the limitations of formal legal education in terms of 'deal[ing] with the phenomenon of the law' in a more scholarly, and not exclusively technical or doctrinal, manner (CGREL, 1983: 4). Given the centrality of law to various facets of life, national consultations revealed an aversion for critical reflection in law schools and a disconcerting incapacity to understand and challenge law in a broader sense. From the perspective of formal training in law schools, this was a problem. From the perspective of growing legal studies programmes, this was an *opportunity*. In fact, the *Arthurs Report* strongly supported 'the development of a vigorous component of legal education identified with the humanities and social sciences', where scholarship would be free from 'professional goals' (CGREL, 1983: 59). While these were encouraging words, the debate continues regarding how Legal Studies programmes in Canada should define themselves in relation to law schools.

Twenty years later, Diana Majury, an original member of the Consultative Group, lamented the lack of focus on teaching in the *Arthurs Report*. 'Why do we not think and talk and write more about teaching and curriculum and course content?' (Majury, 2003: 55). By her account, if there had been any change in overall approaches, it had been more pronounced on the Legal Studies side, where there had been a growing trend toward professionalization.

Very simply put, Legal Studies programmes in Canada do not issue professional law degrees, and cannot pretend otherwise. The dilemma remains, however, about 'how much "law"' Legal Studies programs should teach' (Kazmierski, 2014: 297). At the core of this dilemma is the need to establish a clear vision of what Legal Studies scholarship is, rather than what it is *not*.

### **Law and Society, Critical Legal Studies, and Sociology of Law**

There are a number of overlapping fields of study with respect to law, hence a significant amount of confusion exists when it comes to differentiating these discrete areas of study. At minimum, there is a tension between more social and political theory-focused and more policy-driven social scientific approaches to the study of law. With this general tension in mind, we can develop a better working understanding of the evolutionary trajectory of the various fields, providing us with some vital context as we go on to position particular Legal Studies programmes within this landscape, and shape particular curricula accordingly.

As the larger umbrella term, 'Law and Society' [L&S] generally refers to the type of scholarship that queries both the social processes and social effects associated with the making, application, and enforcement of law. The L&S tradition took shape in the United States as a response to 'legal formalism' in the late 1950s (Garth and Sterling, 1998). With social welfare reforms, the emergent managerial corporate form, the war in Vietnam, and the Civil Rights movement, much stood to be gleaned from the study of law from a social science perspective (Friedman, 1986). Because this approach tends to begrudge the practice of meta-theorizing, one of the tenets that informs L&S scholarship is a perceived commitment to cultural relativism (Friedman, 1986). This is an extension of the premise that law emerges from different contexts toward different ends, depending on time and place, and it is the L&S scholar's job to measure the internal aims of the law against its external effects across social institutions and eras.

Other than an intriguing hush that accompanies any mention of the 'Law and Society Movement' between 1989 and 1996, proponents of this loosely conceived academic tradition are usually quite self-reflexive. This was particularly obvious when it came to defining L&S scholarship against the seemingly short-lived (at least in the US) 'Critical Legal Studies Movement' in the mid-to-late 1980s. Against the backdrop of the 1970s economic crisis and the cresting Civil Rights movement, a more law-focused sociological (and explicitly Marxist) tendency emerged (Cain and Hunt, 1979; Tushnet, 1978; Hunt, 1977). It is worth pausing here to point out that Alan Hunt, inaugural Chair of the Critical Legal Conference (UK) in 1984, played a prominent role in the establishment of the Legal Studies programme at Carleton University, Canada's oldest Legal Studies programme. It is not going too far to say that the British tradition of critical legal scholarship he helped establish has since had a significant impact in the development of Legal Studies programmes in Ontario universities. This is evident in the implicit tension within and between law-related programmes across the province, some wearing this critical/British inheritance more prominently (Carleton University, arguably), and others tending to adopt a more L&S/US-focused identity (York University, arguably).

In this era, Hunt and other early critical legal scholars dissected the connection between law and ideology to gain insights into the relation between law and the prevailing socio-economic order. The unifying force of critical legal studies at this time was its suspicion of key tenets in liberal legal theory. Tenets such as legal autonomy, procedural objectivity, and the promise of predictable outcomes were held up as the main mystifying ingredients in law (Hunt, 1986), all of which were assessed with the aim of understanding the ideological nature of legal authority. We can add to this mix the rediscovered works of Soviet legal scholar Evgeny Pashukanis (2007) and ground breaking legal contributions of E.P. Thompson (1993; 2013) to the history of capitalism in the United Kingdom. By 1981, 'Marxist theory in general and Marxist interpretations of law in particular' were considered 'central to the sociological enterprise' (Spitzer, 1983: 104).

Soon after, however, critical legal scholarship was marked by a 'shift of focus from economic relations to [a] focus upon political and cultural relations' (Hunt, 1986: 11). This is coeval with the more generalized move toward postmodernist theory in academia, which prominent scholars view as a complement to the rise of neoliberalism (Harvey, 2007; Jameson, 1991; Linebaugh, 2009). As Paddy Ireland (2002: 125) observes, with this change in critical legal circles, 'the fundamental constitutive practice of social life ceased to be material production and became discursive construction'. With the rise of Derrida and Foucault came the splintering of both L&S scholarship and critical legal studies over the last three decades, leading to the establishment of more overtly policy-oriented approaches in L&S, and the critical legal tradition, giving rise to such fields as Feminist Legal Theory, Critical Race Theory, Queer Theory, Critical Disabilities Studies, Critical Development Studies, and critical cosmopolitanism. While the traditions of critical scholarship have evolved differently in the US and Britain, in both instances there has been a sharp turn away from the Marxist foundation.

Lawrence Friedman (1986) discusses this shift in his oft-cited essay, 'The Law and Society Movement', in which he describes L&S membership as comprising more empirically minded scholars committed to the policymaking aims of the social sciences. This is meant to contrast to the 'crits' (as they were labeled), whom Friedman saw as seduced by a desire to 'expose ideology', more interested in 'trashing' liberal legalism and in the intellectual acrobatics of meta-theory than in 'show[ing] how anything actually works' (Friedman, 1986: 766). Hyperbole aside, L&S scholars take the law as it is and examine how it functions in society and to what ends, whereas the 'crits' question the very legitimacy of law from the outset and are more theoretically driven as a result (Silbey, 2002). Curiously, today, neither group rushes to claim any normative stakes and both distance themselves from the 'sociology of law' approach (Hunt, 1986), which arguably still has stronger roots in Britain. The critical legal approach in general still resonates in Britain, as evidenced by the fact that the Critical Legal Conference continues to this day. Its American counterpart has long been eclipsed by the Annual Conference of the Law and Society Association.

Despite this apparent shirking of normativity, however, L&S scholarship did start out with a clear political aim in view. This is evidenced by a sampling of the articles included in the inaugural issue of the *Law and Society Review*, which clearly depict the pivot between theory-driven sociological approaches to law, and more policy-focused social scientific approaches (Carlin, Howard & Messinger, 1966; Auerbach, 1966). L&S scholars saw themselves as capable of influencing the legislative direction of the State, and as such, as having a role to play in defining the identity of the nation and its citizens. Though a political revolution was not in their sights, L&S scholars did seek to occasion at least a disciplinary revolution within the legal profession and in social studies (which was the climate that produced the *Arthurs Report*), and scholars at that time consciously oriented themselves

toward that vision. This deliberate orientation emerged from the intuition that it was not enough to claim a gap exists between law in the books and law in action, but from the need to empirically demonstrate the bases and consequences of these gaps. Though more compelling radical theorizing was scarcely *en vogue* by the 1990s, there was a tendency for a conscious movement towards more self-implicating critique.

### **Defining ‘Legal Studies’ in Canada – Easier Said than Done**

What of ‘Legal Studies’ in Canada, then? Neither strictly social scientific nor sociological, ‘Legal Studies’ is definitively interdisciplinary in the tradition of ‘Religious Studies’, or even the discipline-flouting ‘Political Studies’ (as opposed to Political Science). While some see ‘Socio-legal Studies’ as more aligned with ‘Law and Society’ than with the ‘Sociology of Law’ (more theory-focused) tradition (Brockman, 2003), others use ‘Legal Studies’, ‘Socio-legal Studies’, and ‘Law and Society’ interchangeably. For examples of this, it is worthwhile to visit webpages of various offering majors in Legal Studies-type programmes, including Amherst College, home to a premiere programme in the interdisciplinary study of law. Amherst avoids both terms altogether. Although the fluidity with which various programmes use these identifying terms is confusing, the tie that binds each programme is the proclaimed interdisciplinarity of its approach. However, this identifier alone offers only minimal clarity; more needs to be done to distinguish how the individual Legal Studies programme conceives of and supports its interdisciplinarity, and how this serves broader intellectual and educational objectives.

Given this inherent interdisciplinarity, Legal Studies programmes in Canada face unique challenges, especially when it comes to identifying core competencies and associated research methodologies. In his essay describing the experiences of teaching legal research methods in the Department of Law and Legal Studies at Carleton University, Vincent Kazmierski (2014: 299) identifies two objectives for Legal Studies education. First, Legal Studies programmes promote critical and interdisciplinary understanding of law ‘as an integrated part of our larger political, social, economic, and cultural structures’; second, they ‘demystify’ law to encourage responsible citizenship. He finds that specific legal research methods courses are the cornerstone to achieving these twin objectives.

At Carleton University, there are two ‘methods’ courses, one at the second-year level, and another at the third-year level. The second-year course offers a foundation in research methods relevant to an interdisciplinary liberal arts degree in general, and law-related degree in particular. It instructs students on how to locate primary and secondary sources and understand the ‘interrelationship between theory, practice and research’ (Kazmierski, 2014: 302). Meanwhile the third-year course permits the individual instructor to focus on their particular area of interest, and then tackle this subject matter using a range of methods. These research methods courses encourage students to approach law from a variety of perspectives, rather than mistake legal research as strictly case-based (Kazmierski,



2014: 303). This exposure to a diversity of methods serves the interdisciplinary nature of the Legal Studies programme, and in doing so, anchors the two broader objectives stated above.

From the Kazmierski study, interdisciplinarity anchored in the instruction of assorted methods of inquiry is one significant way of distinguishing Legal Studies from law school. This approach offers a substantive basis for the differentiation by promoting curiosity regarding the intersections between law and a range of disciplines. However, it is still a fine line: Does this fundamental reliance on the instruction of doctrinal legal research simply end up perpetuating assumptions that Legal Studies aims to critique, including the idea of law as singularly authoritative and autonomous? (Sargent, 1991) What is the point of teaching doctrinal legal research if only to demystify or undermine it?

Neil Sargent, another professor in the Department of Law and Legal Studies at Carleton University, grapples with these questions in an effort to posit a different way of understanding Legal Studies. The case-centred nature of doctrinal analysis offers a degree of scientific predictability amplified by the comforts of a monopoly on technique, but this also operates as ‘a powerful brake’ on the ‘imagination of legal scholars’ (Sargent, 1991: 4), or what in other legal education contexts is referred to as ‘creativity’ (Gleason and Campbell, 2015: 6-7). The postmodernist or deconstructionist turn in critical legal scholarship helped resist this tendency, focusing instead on understanding law as ‘historically and political contingent’, rather than autonomous and objective (Sargent, 1991: 7). Sargent concludes that the tension between the doctrinal and critical is irresolvable, for as soon as Legal Studies tries to reject the doctrinal, it veers into an existential crisis.

### **Beyond Legal Studies as ‘Not Law School’**

Critical thinking is a long-standing learning objective in the liberal arts tradition, but the *Arthurs Report* points to four specific benefits of critical reflection specifically as it relates to legal education. The first speaks to the ‘intrinsic’ value of critical reflection as a hallmark of a well-rounded education. The remaining three have practical dimensions: Critical reflection (a) promotes creative ways of adapting to change; (b) encourages individuals to seek change; and (c) fosters inventive and resourceful ways to accomplish change (CGREL, 1983: 50). The *Arthurs Report* implies that these latter three benefits are lost in the landscape of formal legal education, although they are among the more important skills for successful lawyering. This is precisely where Legal Studies programmes can stand out. Perhaps a way of navigating the tension that Sargent raises is to recognize this critical approach as a specific, value-added element of Legal Studies programmes. The explicit goal, meanwhile, is not to operate as a recruitment vehicle for law schools by promising to produce better trained lawyers (Kazmierski, 2014), but rather to celebrate this unique feature of Legal Studies scholarship as an end in itself. Again, learning from the evidence in the Kazmierski study, this could be reinforced through a Legal Studies research methods course that addresses connections between theory, doctrine and practice.

Indeed, Legal Studies programmes in Canada dilute their own integrity if they tacitly uphold the false premise that law schools have a monopoly on 'skills' or 'the practical'. This premise was undermined in the *Arthurs Report*, which noted that 'surveys of lawyers in practice ... suggest that they regard law school education as even less useful than [bar admission courses and apprenticeship arrangements]', and that '... legal practice is so varied, the roles of lawyers so diverse, the needs of different clienteles so unconnected, that the articulation of a common core of required legal skills and knowledge is a daunting task indeed' (CGREL, 1983: 49). In the wake of such a finding, it is not surprising that some law school educators have championed more creative approaches that better reflect this variability (Gleason and Campbell, 2015:15-6).

Constance Backhouse (2003: 38), a law professor at the University of Ottawa, underscores the basis for this new approach, observing that '[t]wenty years later, the situation is, if anything, more complex', and noting how '[w]e don't know what lawyers do, but we do know that what they do is diverse and transforming daily'. Although questions swirl around the precise nature of the legal profession, the homogenising effect of formal legal education proves difficult to uproot in the North American context. Lesley Jacobs (2003: 64), a Law and Society professor at York University, remarks how '[l]aw schools admit individuals who hold outsider perspectives and over the course of their three years in law school come to "think like lawyers"'. This undercurrent of elitist exclusivity is not new, as Daniel Coquillette and Bruce Kimball (2015: 21) attest in their recent book on the history of the Harvard Law School: 'The language, literature, and cultural mores of early colonial elites were, in part driven by a denial of political facts and geographic reality'.

With respect to the Canadian context, increased concern about this stubborn undercurrent has been met with calls for a decolonisation approach in law schools. For Roderick Macdonald and Thomas McMorrow (2014: 729), 'decolonization' in the metaphorical sense means resisting, *inter alia*, the 'herd mentality', as they note by way of an example: 'the haste and the vigour with which common law schools in Canada have renounced the Bachelor of Laws (LL.B.) degree in favour of the Juris Doctor (J.D.) [...] reinforces the assumption that American standards and practices are superior to Canadian ones' (2014: 732). For these authors, combating this tendency involves promoting agency and a less instrumentalist vision of what law schools should become (2014: 738). Beyond metaphorical encounters with colonialism, Shiri Pasternak asserts the need to decolonise notions of legal authority in general, which involves interrogating the norms of legitimacy that underpin Canada's jurisdictional claims on Indigenous lands (Pasternak, 2014: 146-7). What links both articles is the shared emphasis on the necessity of resisting decadent habits of legal thinking, an undertaking Legal Studies programmes in particular are well-positioned to endorse. Indeed, Legal Studies programmes may be forthright in their commitment to building a diverse skill set and an adept mind. What could be more practical? Such is the

benefit of critical reflection, especially when anchored in interdisciplinarity and buttressed with sound training in methods that bridge the theory with the practical.

Based on these observations, Legal Studies students would benefit from an expanded notion of what it means to be a 'legal practitioner' rather than a mere consumer of law, as we are everyday producers and practitioners of law. This is to say that in the overt and covert ways that we interact with law on a daily basis, we are making and unmaking it, giving meaning to it and receiving meaning from it, reinforcing it and undermining it. In a variety of sometimes discrete or other times conspicuous social exchanges, we are defining ourselves in relation to law and legal norms. Perhaps, then, it is not strictly a matter of demystifying law itself, but demystifying our own (legal) agency in the everyday.

David Sandomierski, who has taught this type of an approach in a senior level 'Legal Inquiry' course at McMaster University for over four years, uses the term 'demystify' as part of the course that blended doctrinal law (formal) and everyday law (informal) as sources of instruction. The emphasis was on 'participatory agency', which, as Sandomierski (2014: 324) explains, 'is especially important because it helps undercut prevalent pathological perspectives about law', adding '[i]f, on the other hand, citizens learn that law is an amalgam of contingent responses to transversal problems of human governance, that law is not so difficult to understand, and that even formal law derives from human interaction, then many more people can participate in enhancing society through law'. Though admittedly 'ambitious' in scope, if these types of goals are integrated across the curriculum and enhanced by sound instruction in research methods, they could add significant dynamism to Legal Studies overall.

A commitment to student-led inquiry in the form of 'constructivist approach' could prove extremely beneficial in terms of reinforcing critical reflection, especially by encouraging students to 'build their own understanding, knowledge and learning' (Gleason and Campbell, 2015: 7). Furthermore, it could provide Legal Studies students with a chance to discover interdisciplinarity through practice. By making this commitment central to Legal Studies, we would not only support but also enrich what is generally understood to constitute 'experiential learning'. Taken a step further, with these conceptions of agency and inquiry reflected throughout the curriculum, experiential learning becomes an essential and less peripheral facet of the Legal Studies educational experience.

The most important lesson from the literature is that Legal Studies education should not be about doctrinal instruction to fan the flames of our students' desire to gain access to the privileged world of law. At the same time, unless we articulate a clear vision and identity, one that promotes integrity and agency in interdisciplinary scholarship, it will be difficult to avoid being regarded as a mere pathway to law school. It is therefore incumbent on all of us

who wish to be part of dynamic and relevant Legal Studies programmes in Canada to set aside worries about what Legal Studies is *not*, and think of what it is and what it could be.

### Summary

Legal Studies as a course of study in the liberal arts has an ancient pedigree. Vicarius (1115-1200) delivered lectures on Justinian's *Institutes* at Oxford as early as 1149. After the Reformation, civil law replaced canon law for undergraduates not seeking ordination, while the study of common law began in 1753 with William Blackstone's appointment.

Legal Studies programmes in Canada trace their origins to intellectual and ideological movements after WWII, including both the Law and Society movement and a more explicitly Marxist Critical Legal Studies movement. The latter movement later shifted from economic to postmodernist political and cultural relations, while the former movement drew empirically minded social scientists focused on policymaking and policy analysis. Legal Studies programs in Canada are inherently interdisciplinary, 'de-mystifying' law for engaged and effective citizenship while at the same time promoting a critical understanding of law as a political, social, economic, and/or cultural construct. In keeping with the liberal arts tradition, Legal Studies programmes draw on the humanities and the social sciences in equal measure. Distinctive research methods and scholarly objectives, including interdisciplinarity, critical engagement and student-led inquiry, emerge as defining features of Legal Studies programmes in Canada. Taken together, each feature in its own way promotes student agency in a manner consistent with the aims and purposes of higher education in general and the liberal arts tradition in particular.

### References

Auerbach, CA (1966) 'Legal tasks for the sociologist', *Law & Society Review*, 1(1): 91-104

Backhouse, C (2003) 'Revisiting the *Arthurs Report* twenty years later', *Canadian Journal of Law and Society*, 18(1): 33-44

Barton, JL (1986) 'Legal Studies', in LS Sutherland and LG Mitchell, eds, *The History of the University of Oxford: The Eighteenth Century*, Oxford: Clarendon Press

Brockman, J (2003) 'The impact of institutional structures and power on law and society: Is it time for Reawakening?' *Law & Society Review*, 37(2): 283-294

Cain, ME and Hunt, A (1979) *Marx and Engels on law*, Cambridge, MA: Academic Press

Carlin, JE, Howard, J and Messinger, SL (1966) 'Civil justice and the poor: Issues for sociological research', *Law & Society Review*, 1(1): 9-89

Coquillette, DR and Kimball, BA (2015) *On the battlefield of merit: Harvard Law School, the first century*, Cambridge, MA: Harvard University Press.

Friedman, LM (1986) 'The Law and Society Movement', *Stanford Law Review*, 38(3): 763-780

Garth, B and Sterling, J (1998) 'From legal realism to law and society: Reshaping law for the last stages of the social activist state', *Law & Society Review*, 32(2): 409-472

Gleason, V and Campbell, E (2015) 'Cultivating 21<sup>st</sup> century law graduates through creativity in the curriculum', *Journal of Commonwealth Law and Legal Education*, 10(1): 4-20

Consultative Group on Research and Education in Law (1983) *Law and learning: Report to the Social Sciences and Humanities Research Council of Canada*, Ottawa, ON: Social Sciences and Humanities Research Council

Guttek, G (2005) *Historical and philosophical foundations of education*, Upper Saddle River, NJ: Pearson

Harvey, D (2007) *A brief history of neoliberalism*, Oxford: Oxford University Press.

Hunt, A (1977) *Class and class structure*, London: Lawrence & Wishart

Hunt, A (1986) 'The theory of critical legal studies', *Oxford Journal of Legal Studies*, 6(1): 1-45

Ireland, P (2002) 'History, critical legal studies and the mysterious disappearance of capitalism', *The Modern Law Review*, 65(1): 120–140

Jacobs, LA (2003) 'Legal consciousness and its significance for law and society teaching outside Canadian law schools', *Canadian Journal of Law and Society*, 18(1): 61-65

Jameson, F (1991) *Postmodernism, or, the cultural logic of late capitalism*, Durham, NC: Duke University Press

Kazmierski, V (2014) 'How much "law" in Legal Studies? Approaches to teaching legal research and doctrinal analysis in a Legal Studies program', *Canadian Journal of Law and Society* 29(3): 297-310

Linebaugh, P (2009) *The Magna Carta manifesto: Liberties and commons for all*, Berkeley, CA:

University of California Press

Macdonald, RA and McMorrow, TB (2014) 'Decolonizing law school', *Alberta Law Review*, 51(4): 717-738

Majury, D (2003) 'Teaching is part of legal education', *Canadian Journal of Law and Society*, 18(1): 51-59

Pashukanis, EB (2007) *General theory of law and Marxism*, Piscataway, NJ: Transaction

Pasternak, S (2014) 'Jurisdiction and settler colonialism: Where do laws meet?' *Canadian Journal of Law and Society*, 29(2): 145-161

Sandomierski, D (2014) 'Legal inquiry: A liberal arts experiment in demystifying law', *Canadian Journal of Law and Society* 29(3): 311–325

Sargent, N (1991) 'The possibilities and perils of Legal Studies', *Canadian Journal of Law and Society*, 6: 1-26

Silbey, SS (2002) 'Law and Society Movement', in HM Kritzer (ed), *Legal Systems of the World: A Political, Social, and Cultural Encyclopedia*, Santa Barbara, CA: ABC-CLIO

Spitzer, S (1983) 'Marxist perspectives in the sociology of law', *Annual Review of Sociology* 9(1): 103–24

Thompson, EP (1993) *Customs in common: Studies in traditional popular culture*, New York: New Press

Thompson, EP (2013) *Whigs and hunters*, London: Breviary Stuff

Tushnet, M (1978) 'A Marxist analysis of American law', *Marxist Perspectives*, 1: 96

## **CORRUPTION AND THE MISUSE OF PUBLIC OFFICE IN THE COMMONWEALTH: THE PREVENTIVE ROLE OF LAW TEACHERS IN NIGERIA AND SOUTH AFRICA**

**Awele Laurretta Ikobi-Anyali, Research Fellow, Nigerian Institute of  
Advanced Legal Studies, Abuja, Nigeria**

### **Abstract**

There is a global concern about the scourge of corruption and misuse of public office which has ravaged and is still ravaging countries within the Commonwealth. The devastating effect of corruption has brought about increased public interest in the form of scholarly articles and public policy research on the subject, which needs to be continually appraised and taught thereby creating an avenue for the relevance of law teachers in the fight against corruption and misuse of public office. The paper observes that corruption undermines democratic institutions, affects economic growth and development. The paper focuses on Nigeria and South Africa and relies on these countries specific initiatives and experience to discuss the subject matter in the Commonwealth. In the bid to tackle the scourge of corruption, the paper posits that law teachers have a role to play; this can be achieved through curriculum development, revised teaching method, research and publications. By introducing the concept of anti-corruption mechanisms in universities, it is hoped that students will understand, accept and live up to the standard of the virtues of accountability and transparency in public service.

**Keywords:** Corruption, Misuse of Public office, Law Teachers and the Commonwealth

'In too many countries, people are deprived of their most basic needs and go to bed hungry every night because of corruption, while the powerful and corrupt enjoy lavish lifestyles with impunity.'

(Ugaz (2016))

### **Introduction**

There is a global concern about the scourge of corruption and misuse of public office which has ravaged and is still ravaging both developed and developing countries, public and private sectors, including non-profit and charitable organisations (Sewpersadh et al, (2017)) Globally, corruption and misuse of public office inhibit national and economic development, undermines the rule of law and good governance; brings about violation of economic and social rights leads to insecurity and dims the future of nations (Komalasari et al (2015)) .The plague is so widespread to the extent that the term corruption has become a cliché on every observer's list as a huge factor which inhibits sustainable development (Pillay (2004)) it is endemic in present-day South Africa (Robertson et al (2016)) and it is a clog in the wheel of progress in Nigeria (Ijewereme(2015)).

Corruption is universally disapproved yet universally prevalent. In private organisations, there are usually procedures to ensure that employees are not bribed, however, they use bribes in obtaining contracts from government (Hess et al (2000)).This paradox continues

even though the 1990s saw corruption become one of the most important policy issues in the international economy. This led to the establishment of Transparency International (TI) which was first launched in 1995. TI helps to put the issue of corruption on the international policy agenda through its Corruption Perception Index (CPI). Looking at the TI Corruption Perceptions Index 2016, out of 176 countries on the index, Nigeria ranks number 136 while South Africa ranks 63. Of the commonwealth countries on the Index, Uganda ranks lowest on 151 while New Zealand ranks highest on number one (1). (Transparency International, 2016). TI has led the way in attempting to determine which countries are the homes of bribe-takers, that is, which countries have public officials who are abusing their position for their own personal profit.

Nigeria and South Africa have signed and ratified international and regional anti-corruption instruments such as the United Nations Convention Against Corruption (UNCAC, 2015) Organisation for Economic Cooperation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD 1999, SA only) and the African Union Convention on Preventing and Combating Corruption (African union). These countries have also enacted anti-corruption legislation and policies as part of their domestic anti-corruption efforts. For instance, Nigeria's Economic and Financial Crimes Commission Establishment Act 2004, and the Corrupt Practices and other Related Offences Act 2000, established anti-corruption agencies and criminalises acts of corruption. There is also the Criminal Code Act, (CAP C38 LFN, 2004). In South Africa, there is the Prevention and Combating of Corrupt Activities Act (PCCAA) 12 of 2004 which is a principal legislation combating and criminalising acts of corruption. In addition, there exist campaigns, scholarly articles, and codes by governments, individuals, public and private sector, on the need to curb the corruption menace to the barest minimum. However, all these have proved unproductive in the face of the level of corruption especially in Nigeria.

Considering that Nigeria and South Africa are at par on economic development (worldbank.org) members of the Commonwealth, and both being common law jurisdictions, looking at South Africa's position as evidenced from the CP Index, (Transparency International, 2016) it therefore becomes necessary to focus on these two countries within the Commonwealth in determining the preventive role of law teachers in the fight against corruption.

The paper examines the causes and effects of corruption. It aims to bring to the fore, the preventive role of law teachers in the fight against corruption. The paper is therefore divided into three parts. Part one which is inclusive of this introduction, examines the concept of corruption and misuse of office by defining the terms corruption and misuse of public office, the causes and effects of corruption. Part two looks at combating corruption through education with focus on curriculum development and teaching methods. Part three proffers recommendation and concludes the paper.

## **Part One**

### **Definition of Terms**



## Corruption and Misuse of Public office

Although the concept of corruption cuts across geographical and political boundaries, the term is difficult to define to cover the broad range of human actions. However, corruption is generally not difficult to recognise when observed. The Black's Law Dictionary, sees corruption as:

“Depravity, perversion, or taint; an impairment of integrity, virtue, or moral principle; especially the impairment of a public official's duties by bribery, with intent to give some advantage inconsistent with official duty...”

(Garner2014: 422)

The World Bank sees corruption as the abuse of public office for private gains, as well as using public office for personal benefit even if no bribery occurs, through patronage and nepotism; it includes the theft of state assets or the diversion of state revenues ([worldbank.org](http://worldbank.org) 1997).

In Nigeria, the Criminal Code Act sees corruption as where any public official corruptly asks for, receives or obtains any property or benefit of any kind for himself or any other person; or on account of anything already done or omitted (section 98.) By focusing on public officers alone, this definition is not comprehensive as corruption also occurs in the private sector.

In South Africa, corruption is said to occur ‘where anybody directly or indirectly accepts, agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person’ (section 3 PCCA, 2004). This definition suggests that corruption can occur both in the public and private sector.

The paper argues that corruption is not restricted to only the exchange of money through bribery. For example corruption is identifiable when a public employee claims to be sick but goes on vacation. A student who sits for an exam for another student is also a form of corruption or a teacher who induces a student to have sex with him in exchange for a good grade, amounts to corruption. Furthermore, the abuse of public power may not necessarily be for personal benefit but for the advantage of one's party, class, tribe, friends, family, and so on as witnessed in the Petrobras scandal in Brazil (Financial times (2016)).

From the explored definitions, the paper sees corruption as dishonesty, exploitation or the misuse of a public office, malpractice, misconduct by a person in authority whether in a public or private sector, directly or indirectly for personal gain or unjust enrichment, without following due process, in other to make a private gain. Flowing from the definitions above, it can be seen that corruption cuts across various strata. Suffice to state that corruption and misuse of public office can be used interchangeably as both aim at making private gains occasioned by fraudulent practices or malpractice.

## **Causes of Corruption**

The causes of corruption are always contextual, systematic, rooted in a country's policies, bureaucratic traditions, political development, and social history. Corruption also tends to flourish when institutions are weak (World Bank 1997). One major area where corruption is manifest is in the area of procurement and execution of contracts (Ijewereme (2015), Mubangizi (2017)). The paper identifies the following as some of the causes of corruption:

### **(a) Dysfunctional Legal System**

Lack of a strong legal system encourages corruption. Where there are no clear avenues for the implementation of existing laws, accountability becomes difficult and this may lead to the misuse of public office and corruption (Ayua (2002)). It could be said that public and private sector rules that fail to curb corruption may provide impetus or even encouragement for unethical conduct including within the legal profession itself (Robertson et al (2016)). This makes a fortified legal system very vital as it will give rise to transparency and accountability. The more administrators are held accountable for their actions, the less likely it is for corruption to thrive. A system of checks and balances is essential in order to prevent corruption in the various arms of government.

Additionally, some of our laws are obsolete, such that when a person is found guilty of acts of corruption, the punishment does not usually serve its deterrent function as it is often disproportionate with the magnitude of the offence committed. In Nigeria for example, the punishment for acts of corruption is 7 years imprisonment (Section 92 (1) (b) of the Criminal Code Act) and the ICPC Act while in South Africa, the punishment ranges from imprisonment for life to imprisonment for a period not exceeding three years. (Section 26, PCCAA). The paper argues that the non-commensurate nature arguably encourages other people to engage in corrupt practices.

### **(b) Lack of ethics in the society**

Corruption becomes prevalent where there is lack of moral and ethical standard in the society or lack of rule following (Pailly (2017)); where procurement rules and regulations are scarcely adhered to (Section 217, Constitution of SA). For example, in South Africa, one of the charges against the president is allegation of impropriety and unethical conduct relating to the installation and implementation of the security measures by the department of public works at and in respect of the private residence of President Zuma at Nkandla. The key violation in this regard is the failure to follow the processes outlined in the Cabinet Policy of 2003, and laws relating to procurement in South-Africa such as section 217 of the Constitution of South Africa. (Nkandla Report, 2014). In Nigeria's Public Procurement Act, 2007, public servants are required to uphold ethical standard in procurement and award of contracts.

### **(c) Lack of political will to tackle corruption:**

In societies where public-sector corruption is endemic, it is reasonable to suspect that it touches the highest levels of government, and that many senior office-holders will not be motivated to work against it. (Shahet al (2004)). The private gains cause the benefitting government officials to pay lip service to the various anti-corruption crusades.

### **Effects of Corruption**

Non-adherence to ethical standards in dispensation of duty affects human development by lowering economic growth and incentives to invest (Akçay (2006)). According to the World Bank, corruption 'circumvents public policies' and affects human development as a core reflection of socio-economic growth in any society, adversely. This may also lead to an impediment to economic development as corruption reduces investment, and creates distorted composition of government expenditure (Ayua (2002)). All of these weaken and devastate the economy.

Non- accountability in public service brings about loss of government revenue which brings about deterioration of public infrastructure to the extent that it can hardly support any meaningful economic growth. Most times, funds obtained through corrupt practices are utilised in foreign countries. This led to the UK's Unexplained Wealth Order which aids law enforcement to investigate the source of money used in acquiring of expensive properties in the UK, and if it is found to be corrupt money it will be returned to the country or from those, from whom it has been stolen. ([www.transparency.org](http://www.transparency.org), 2017). The funds become inaccessible for use in the country's internal development causing the economy to deteriorate and become over-burdened with external debt while the stashed loot enriches the economy of countries where the funds are stashed.

Corruption generates political instability which may occur when the citizens mistrust the government of the day. Mistrust may arise as a result of several actions by the government. In adverse cases, this may lead to impeachment of the President or a Governor. For instance the Brazilian President was impeached for hiding the country's declining economic situation during an election year in order to win re-election in 2014. The non-adherence to ethical and moral standard on the part of the President brought about massive protest across the country leading to some citizens calling for the return of military rule ([businessinsider.com](http://businessinsider.com), August 31, 2016). This is clear evidence that acts of corruption bring about tension and political instability.

## **Part Two**

### **Combating Corruption: Through Education: Role of Law Teachers**

#### **The Law Teacher**

Corruption is more or less a learnt concept that is imbibed from the anomaly in the workings of systems coupled with ethical and moral failure. This conclusion is arrived at from the causes of corruption and the effect it has on the society as alluded to in the paper. To

ensure that the system is as near perfect as possible through unlearning the corrupt practice imbibed over the years, education becomes imperative.

Law teachers have a responsibility to remind law students that by studying law they have the power to transform thoughts, policies, lives, contribute to the betterment of society and ultimately to social change (Fourie (2016)). This may be achievable through the teaching of legal ethics as the values and philosophies that law lecturers instil in law students can contribute to the legal order of the future. If legal educationalists accept the responsibility to ensure that law students or law graduates learn about their legal ethical obligations, this implies a reasonable understanding of 'ethical legal practice' on the part of educators themselves (Robertson et al 2016: 348). However, in the faculties of law of countries in view, anti-corruption mechanisms such as the teaching of legal ethics are not included in the curriculum.

### **The Role of Law Teachers in Preventing Corruption**

#### ***Curriculum Development:***

##### *i) Teaching of legal ethics.*

Legal ethics can be defined as 'standards of professional conduct applicable to members of the legal profession within a given jurisdiction' and law students belong to the legal profession. (Garner, 2014: 1031)

In Nigeria, the rules of professional ethics for lawyers are provided for in the Rules of Professional conducts of Legal Practitioners (RPC 2007) made pursuant to Section 12(4) Legal Practitioners Act, while in South Africa, this is provided for under the Uniform Rules of Professional Conduct, 2012. These rules set out the ethics of the legal profession as applicable in both countries. However, in recent times, it has been observed that lawyers do not give heed to professional ethics (Agbabaku et al, (n.d)). This may be attributed to the non-teaching of legal ethics and non-familiarisation with legal etiquettes in the LLB degree level in both jurisdictions. The paper will now consider how legal ethics is being taught in both jurisdictions.

- *South Africa(SA)*

Suffice to state that the LL.B degree in South Africa is for a period of four (4) years which is thought now to be problematic and inadequate in its preparation for legal practice (Robertson et al, (2016)). Legal ethics is not traditionally taught in the LL.B degree, students who want to be admitted into legal practice after the degree are only exposed to further training in legal ethical practice during the vocational training (Van Zyl & et al (2016)). This is because only legal practitioners who must exhibit integrity, reliability and honesty are deemed fit and proper to be admitted to the bar. For one to be fit and proper, he must pay allegiance to the rules of professional ethics for lawyers (Van Zyl & et al 2016) However, according to Robinson et al (2016), some universities in SA have begun the incorporation of legal ethics into legal skills/practice courses, elective courses or clinical law courses while the distance learning institution and University of South Africa teach legal ethics as a compulsory stand- alone course.

Unfortunately, those who decide to become law lecturers after the LL.B degree in SA, are not trained in legal ethics; it raises the question on how they would impart the students on the need for ethical conduct (Van Zyl et al (2016)). Given this spate of concern, and the perception that improper or unethical lawyerly conduct is adversely impacting South Africa's democratic institutions, (Robertson et al (2016)) it is not surprising that calls are growing for a demonstrably improved legal ethics education in the preparatory stages for legal practice.

- *Nigeria*

In Nigeria, the LL.B degree is for a period of five (5) years. However, legal /professional ethics is not taught in the LL.B level (Nigerian Universities Commission NUC). The NUC benchmark is a minimum standard for Nigerian universities. Professional legal ethics is only taught and examined for aspirants to the Nigerian bar during the one year vocational training in the Nigerian Law School (NLS). In the NLS, professional ethics and legal practice are undertaken as a stand-alone course, employing the lecture based method whereby the focus is usually on the general responsibilities of a lawyer (Rule 1, RPC 2007) duties of the lawyer to the client, (Rules 14-25), to the court (Rules 30-38) in order to avoid conflict of interest and the lawyers relationship with general public.

The lecture based method requires, at the outset, the development of a statement of specific learning outcomes or standards to guide the kind and quality of teaching required (Robertson et al (2016)). Furthermore, the teacher may prepare suitable tutorial questions that allow the students ownership of their ethical development (Whitecross, (2016)). At the end of the academic year, students are examined on professional ethics and legal practice which must be passed before being admitted to practice in the courts of the land.

The paper posits that considering the place of ethical standard in the legal profession which seeks to imbibe in lawyers and law students' accountability, transparency and moral values, learning of the course in the NLS and during pupillage is not adequate. This was reiterated by the supreme court of Nigeria in *N.B.A v Mabawonku* (2013) NWLR 1378 that in reforming the compulsory subjects, it is suggested that legal ethics should be taught at the law faculties as a compulsory course as this will enhance integrity and accountability on the part of the lawyer when dealing with his clients. The court further held that a high pass mark threshold should be given to professional ethics as a sole core subject in NLS.

From the two jurisdictions, the paper observed that legal ethics is taught as a stand-alone course in Nigerian while in SA, schools that teach ethics, either teach it as a stand-alone course or include some in the legal skill courses. The paper posits that the teaching of legal ethics as a stand-alone course may not be adequate enough to give the student the required knowledge needed to enhance and apply professional etiquette in the various areas of law. Little wonder it has been noted "recently that professionalism/ethics was one of the two areas "often mentioned as lacking among new recruits" (Whitecross (2016:5)).

Considering that professionals engage in making complex decisions that draw on their technical knowledge, skills and informed judgement, adherence to ethical codes assure the client that the professional holds high ethical standards, therefore, the earlier students are exposed to ideas of professional conduct, ethics and values, the more beneficial it would be for them (Whitcross,(2016)). Hence, the paper seeks for the incorporation of legal ethics or themes as a unit into the various subjects of law taught during the LLB programme while legal ethics and practice may be taken as a sole course during the vocational training for those who want to go into legal practice.

If this method is implemented, it means that students who undertake an undergraduate law degree already have a fair idea of ethics and moral standard guiding them. This will prepare the student for any difficult ethical issue arising in the discharge of his duties either as a law teacher, compliance officer or in legal practice (Van Zyl (2016)). For an effective teaching of legal ethics, the following method of teaching may be employed.

(a) *Problem based learning(PBL)*

The 'PBL is a method or strategy in which the starting point for learning is a fact situation (the problem) that the learner needs to solve' (Martin, (2003)). This method seeks to provide the student with a real-world context where the study activities consist of tutorial meetings, self-study, practical courses, problem questions and a limited number of lectures which serves as a foundation for achieving a deeper knowledge and understanding of legal rules and the way they work in the real world (Wijnen et al(2017)) .

Applying PBL in the teaching of legal ethics may involve the use of case studies, moot and mock trials, role play, scenarios / problem questions arising from the provisions of the rules of legal ethics usually in the presence of a tutor who acts as a facilitator (Wijnen et al (2017)). This will enable the law student understand his duties towards the court, colleagues, client lawyer relationship, and duty to the general public to uphold the rule of law and maintain a high ethical standard in the discharge of his professional duties. Therefore to ensure future lawyers are conversant with legal ethics in Nigeria and in South Africa, it will require that the curriculum for the bachelor of laws degree programme at the university be carefully structured to allow for the inclusion of professional ethics theme or aspects in the various subjects as a core course in the LL.B level.

The paper observes that one of the problems with teaching professional ethics in the Nigerian universities which may also be applicable in SA is that legal ethics focuses on lawyers and not law student as these students are not yet lawyers to whom the ethics contemplate. Notwithstanding, the earlier students are taught legal ethics, the more they are equipped in upholding the standard required of a legal practitioner. For example, in Nigeria, there is a dress code for law students in the university and in the law school. This has been strictly adhered to as students who fail to abide by the dress code are not allowed to attend classes and are punished accordingly. Therefore, introducing and teaching of legal ethics in universities will no doubt help in the orientation of the student and instil values, morals, integrity, accountability and transparency as expected by members of the legal profession.

ii) *Introduction of Anti-Corruption Studies:*

Anti-corruption studies as a course had previously been absent from the traditional law school and universities curriculum. In introducing this course to students, 'the relevance and reasons for studying corruption will be outlined' (UNODC (2015)). This will include career paths in anti-corruption, such as criminal law, academic scholarship, policy development and implementation, training, technical assistance and advocacy. The purpose, learning outcomes, objectives and an outline of the topics to be covered by the course will also be set out (UNODC (2015)).

For law students, anti-corruption studies/elements could be integrated into other academic courses undertaken in the faculty of law with the law teacher preparing the module in relation to his given course. For example, a law teacher teaching Company Law and Practice should be able to dedicate a module to the teaching of anti-corruption laws and policies applicable to company law. This may include giving specific instruction to law students on how to advise clients on relevant anticorruption and anti-money laundering laws and penalties for different actors in order to ensure compliance under the Company Act or any other law and codes of governance relating to companies in the country in question. If the various anti-corruption measures are taught as a module in a particular subject this will expose the law student to what is and what is not corruption in a particular subject area.

***Teaching Methods:***

It has been observed that the classroom teaching method known as the pedagogic style based on formality, theory and lectures provided minimal opportunity for law students to learn and apply practical problem solving skill (Bamgbose (2015)). In developing countries where either a lecture and/or seminar discussion format is used to teach substantive law, students graduate with little or no practical experience (Maisel (2006)). The paper posits that pedagogy is therefore ineffective in tackling the scourge of corruption within the Commonwealth because under this teaching method, students are taught the theoretical aspect of existing laws and policy framework without recourse to their practical implementation.

However, there is a move away from the pedagogic style as students are encouraged to participate in moot and mock trials within the faculty and against other universities. Some encouragement is also seen in other countries within the commonwealth.

To witness a significant change in fighting corruption generally through education, the paper recommends the introduction of Clinical Legal Education (CLE) in all faculties of Law in countries within the commonwealth. CLE is a 'mode of instruction in various law school courses particularly courses that are described as 'clinical', (Du Plessis (2016)), such as simulation based courses where students assume professional roles in hypothetical and real life situations. Legal ethics is a good example of a simulation course. Under CLE, 'in-house clinics students represent clients or perform other professional roles under supervision of a member of the faculty, who is an attorney, and externships students represent clients or

perform other professional roles under supervision of an attorney who is not a member of the faculty'(Du Plessis,(2016)).)

Although in South Africa, CLE has been made compulsory as part of the legal curriculum in many faculties of law, (Du Plessis (2016) for example, the University of Johannesburg has a law clinic with branches on three campuses and all final-year LLB students are required to pass the module 'Applied Legal Studies', of which the law clinic forms a part of (Fourie, (2016), in Nigeria this is not the case. According to Bamgbose (2015), out of 50 faculties of law across Nigeria, only 18 have an established law clinic. This is not enough. In the law faculties that have adopted CLE, some do not grade their students on it while some do, (Faculty of Law University of Abuja, grade their students on it).

As a lawyer, the product of CLE would be able to contribute to national development and social change in a constructive manner when he graduates from the university. Considering that one of the causes of corruption and misuse of public office is a weak legal system as expressed in part one of the paper, CLE as a multi-disciplinary, multi-purpose education can help develop the human resources and idealism needed to strengthen the legal system (Bamgbose (2015)and may even rid the system of corruption by upcoming lawyers since CLE would enable the student understand from a practical perspectives how laws are to be applied as CLE serves a twofold purpose, namely practical legal training of students and providing free legal services to the (indigent) community. (Bamgbose (2015))

#### ***Creating Awareness of Legislation and Legal policy Framework:***

To enable the general public to understand existing legislation and policy frameworks on accountability and transparency, law teachers need to create an awareness of the existing international and domestic anti-corruption legal framework, national and professional anticorruption policies and best practices, as well as their responsibilities and liabilities in regards to specific international anti-corruption instruments, and national anti-corruption legislation. To achieve this, law teachers should take advantage of all of their information resources such as research, publications, symposia, trainings, teachings, websites, blogs, and social media pages in simplifying the laws. This may be achievable by each faculty of law having its anti-corruption newsletter distributed to people and web pages dedicated to anti-corruption measures; they can also carry out anti-corruption events as a form of corporate social responsibility of the university where they teach.

#### ***Enforcement Measures:***

Many people who are victims of corruption and misuse of public office especially in the public service do not know the appropriate measures to seek redress. Enforcement measures are very important in the prevention of corruption. Here, students will be taught on how to monitor levels of corruption, assess how robust corruption controls, governance procedures, and how to apply them. Such preventive measures include reporting suspicious transactions, record and document keeping, conformity controls, professional ethics and due diligence (unodc.org). Assessment is crucial to tracking changes and progress in addressing corruption. Law teachers should focus on teaching and sensitising the people on the various measures both international and local measures in the fight against corruption.



### Part Three

#### Recommendations

Having noted that the issue of corruption is a global phenomenon which needs to be curbed and prevented, with the aid of law teachers, the paper recommends the following.

- i. Considering that a well-rounded graduate should have the capacity to be accountable and take responsibility in an academic, professional and social context, (Fourie (2016)) there is a need for the teaching of legal ethics in the LLB degree levels of Nigerian and South African schools as this will help in developing law graduates who will be committed to social transformation and at the same time adhere to the norms and expectations of the profession. Furthermore, ethics should be in the front burner in continued professional development for lawyers.
- ii. Law teachers may partner/collaborate with relevant national, regional, international and civil society organisations to support the teaching of anti-corruption and the dissemination and promotion of academic materials to students. This can also be achievable through grants, therefore law teachers should engage in grant writing to fund anti-corruption training and research while introducing students to grant writing.
- iii. Introduction of anti-corruption studies as a course in the various faculties in the university especially faculties of law and the re-introduction of public administration as a course in faculties of law.
- iv. Students should be encouraged to engage in volunteering with the various local and international anti-graft agencies in their countries during holidays.
- v. Law teachers should collaborate with the various arms of government which are the legislature, judiciary and the executive arm or ministers to ensure the enactment of efficient anti-corruption legislation, quick dispensation of justice and the enforcement of laws.
- vi. Law faculties through the instrumentality of law teachers should introduce the evaluation of teaching through an anonymous student appraisal method indicating satisfaction in a particular subject and how the subject has helped in understanding what corruption and misuse of public office is, and the way to combat same.
- vii. The Anti-corruption Academic Initiative of the UNODC is commendable and the paper recommends that law teachers in Nigeria and South Africa should endeavour to be part of this initiative as it supports academics to teach and conduct research on corruption related issues. The initiative has developed a menu of academic resources, teaching modules, syllabi, case studies, educational tools and reference materials that can be used. It

affords those in academics to share knowledge and be exposed to best international practices in combating corruption through education. (UNODC Anti-Corruption Academic Initiative(2015))

viii. In developing a curriculum to meet best international practices in legal education, the paper recommends that a form of internship should be introduced whereby law students during holidays can engage in paid internships in anti-graft agencies , ministries, departments and agencies across the country which will be supervised by the faculty of law where the student studies.

ix. Law teachers should engage in law reforms through periodic evaluation of legal instruments and administrative measures to determine the relevance and adequacy of such legal instruments in the fight against corruption. There are situations whereby the punishment for corrupt charges are too minimal that it does not show any form of deterrence to the public. With law reform, the laws may be amended to reflect punishment that will serve as a deterrent to others.

x. CLE should be made compulsory in Nigerian universities and improved in South African schools so that any faculty of law that fails to meet up with this may lose its accreditation to admitting of law students in the university.

### **Conclusion**

Corruption is a global concern which cuts across public and private spheres. Despite the various scholarly articles, anti-corruption laws and measures in place globally, corruption remains endemic. The paper observes that the cause of corruption includes lack of ethical standard, dysfunctional legal system, institutional weakness and lack of awareness of existing laws and rules. The paper further observes that corruption affects national and economic development; it also brings about insecurity and instability in government. Therefore, it has become important for law teachers to fashion out ways to combating corruption and the misuse of public office in the commonwealth countries of Nigeria and South Africa.

Considering that unethical lawyer behaviour has a potentially corrosive effect on the rule of law and administration of justice, to ensure law teachers play a role in the prevention of corruption, there is a need for curriculum development to include the teaching of legal ethics in the LLB programme and the introduction of anti-corruption measures in the faculties of law and in other disciplines in universities, there should also be a combination of pedagogy and clinical legal education in the faculties of law. Although, the world may not be totally rid of corruption, with education, it can be reduced to the barest minimum.

### **REFERENCES**

- Agbebaku, C. A. and Omoregie, L.O. (n.d.) 'Teaching Ethics and Values in the Legal Profession: The Nigerian Perspective (Online) Available at <http://www.ialsnet.org/wp-content/uploads/2015/08/Agbebaku.pdf> (Accessed 3 August, 2017)
- Akçay, S. (2006) 'Corruption and Human Development' *Cato Journal*, vol. 26, no. 1, pp.33-34
- Ayua, I. A. (2002) *Overview of Corruption in Nigeria* in Ayua, I.A. and Owasanoye, B. 'Problems of Corruption in Nigeria' Nigerian Institute of Advanced Legal Studies, pp. 3
- Bamgbose, O. (2015) 'Access to justice through clinical legal education: A way forward for good governance and development' *African Human Rights Law Journal* vol. 15, pp. 378-396,
- Du Plessis, M. A. (2016) 'Designing an appropriate and assessable curriculum for clinical legal education' *Potchefstroom Electronic Law Journal* (Online) Available at <http://dx.doi.org/10.17159/2225-7160/2016/v49n1a1> (Accessed 3 August 2017)
- Garner, B.A. (2014) 'Black's law Dictionary' 10<sup>th</sup> Edition Thomson West
- Hess, D. and Dunfee, T.W. (2000) 'Fighting Corruption: A Principled Approach: The C Principles (Combating Corruption)' *Cornell International Law Journal* vol. 33, no. 3, pp.2000
- Idris, M. (2013) 'Corruption and Insecurity in Nigeria' *Public Administration Research; Canadian Center of Science and Education* vol.2
- Ijewereme, O.B. (2015) 'Anatomy of Corruption in the Nigerian Public Sector: Theoretical Perspectives and Some Empirical Explanations' (Online) Available at journals.sagepub.com (Accessed 3 August 2017)
- Maisel, P. (2006) 'Expanding and Sustaining Clinical Legal Education in Developing Countries: What We Can Learn From South Africa' *Fordham International Law Journal*, vol. 30, no 2, pp.374-375
- Martin, F. (2003-2004) "Teaching legal problem solving: A problem-based learning approach combined with a computerised generic problem" *Legal Education Review* vol.14 (1), pp. 77
- Myint, U. (2000) 'Corruption: Causes, Consequences, and Cures' *Asia-Pacific Development Journal* vol. 7, no. 2, pp.33
- Pillay, S. (2004) 'Corruption- The Challenge to Good Governance: a South African Perspectives' *The International Journal of Public Sector Management*; vol. 17, no. 6/7, pp.586
- Robertson, M., and Kruuse, H. (2016) Legal ethics education in South Africa: possibilities, challenges and opportunities, *South African Journal on Human Rights*, vol.32 no.2, pp. 344-374
- Shah, A. and Schacter, M. (2004) 'Combating Corruption: Look Before You Leap A lack of progress in eradicating corruption could be due to misguided strategies' *Finance and Development* 41(4), 40-43.
- Sewpersadh, P. and Mubangizi, J. C. (2017) 'Using the Law to Combat Public Procurement Corruption in South Africa: Lessons from Hong Kong' *Potchefstroom Electronic Law Journal* (Online) Available at - DOI <http://dx.doi.org/10.17159/1727-3781/2017/v20i0a1359> (Accessed 3 August, 2017)
- Tanzi, V. (1998) 'Corruption Around the World Causes, Consequences, Scope, and Cures' *IMF Staff Papers* vol. 45, no. 4 pp.564
- Wijnen, M., Loyens, S. M. M., Smeets, G., Kroeze, M. J., and Van der Molen, H. T. (2017) 'Students' and Teachers' Experiences With the Implementation of Problem-Based Learning at a University Law School' *Interdisciplinary Journal of Problem-Based Learning*, vol. 11, no. 2

- Wijnen, M., Loyens, S. M. M., Wijnia, L., Smeets, G. M., Kroeze, J., Van der Molen, H. T. (2017) 'Is problem-based learning associated with students' motivation? A quantitative and qualitative study'. (Online) Available at <https://link.springer.com/article/10.1007/s10984-017-9246-9> (Accessed 3 August 2017)
- Van Zyl, C.H., and Visser, J. (2016) 'Legal Ethics, Rules of Conduct and the Moral Compass - Considerations from a Law Student's Perspective' *Potchefstroom Electronic Law Journal* (Online) Available at DOI <http://dx.doi.org/10.17159/1727-3781/2016/v19ni0a795> (Accessed 3 August, 2017)
- World Bank (1997) 'Helping Countries Combat Corruption: the Role of the World Bank: Poverty Reduction and Economic Management' (Online) Available at [www.worldbank.org](http://www.worldbank.org) (Accessed 21 February, 2017)

## **GALVANIZING THE WHOLESACLE ADOPTION OF CLINICAL LEGAL EDUCATION BY ESTABLISHING LAW CLINICS IN NIGERIAN UNIVERSITIES' LAW FACULTIES.**

**Dr. Kingsley Omote Mrabure, Delta State University, Abraka, Faculty of Law, Oleh Campus,  
Delta State, Nigeria**

### **ABSTRACT**

The establishment of sixteen law clinics in Nigerian universities law faculties (NULF) by the pioneering efforts of Network of University Legal Aid Institutions (NULAI) though commendable is still a far cry from the desired expectation towards establishing more Governmental efforts, private initiatives and alumni endowments in the provision of resources are needed in galvanizing the establishing of law clinics in all NULF. The plausible reason being that clinical legal education (CLE) gears towards the inculcation of practical legal skills, a needed virtue in this 21st century to achieving a virile and an impactful legal education that is relevant to society.

**KEY WORDS:** Nigerian universities law faculties (NULF), clinical legal education (CLE), law clinics, pedagogy, establishing.

### **INTRODUCTION**

The emergence of clinical legal education began in the United States (Winkler (2012)). When looking at the development historically it seems clear that it was two major forces that drove the development: an increasing need for legal aid and a need to reform legal education and bring in a more practical approach to law practice (Bloch et al, (2011)). Succinctly, the original aim of CLE from time immemorial is to assist the indigent in the resolution of any problem they may encounter in society.

### **WHAT IS A LAW CLINIC?**

The term clinical legal education (CLE) or law clinic, traditionally refers to a nonprofit law practice usually serving a public interest or group in the society that are in a underprivileged or exposed situation and for various reasons lack access to the legal system (Winkler (2012)).

The use of the word 'clinic' prompts the analogy of trainee doctors meeting real patients in their medical clinics (Lewis (1998)). In the academic context, these clinics provide hands-on experience to law school students and services to various typically indigent clients. Many legal clinics offer pro bono work in one or more particular areas, providing free legal services to clients.

A law clinic is defined as;

a learning environment where students identify, research and apply knowledge in a setting which replicates, at least in part, the world where it is practiced.... It

almost inevitably means that the student takes on some aspect of a case and conducts this as it would ... be conducted in the real world.

(Grimes (1996:138))

CLE is defined<sup>1</sup>in the context of this article;

as widely acceptable theoretical and practical methods in the teaching and learning of the study of law for the ultimate benefit of self<sup>2</sup>,the state and humanity in tandem with the peculiar needs of that environment or society.

(Mrabur  
e (2017:2))

CLE must involve a transition from doctrinal mode of learning to experiential mode that is by learning by experience in the Nigerian curriculum of legal education. Law faculties must make known their vision, mission goals to their students in order for a pragmatic synergy geared towards solving legal problems affecting society effectively and responsibly which is one of the hallmarks of CLE.NULF should help students acquire the necessary effective lifelong learning skills, intellectual and analytical skills, core knowledge and understanding of the law ,professional skills and professionalism in order to be relevant to the society in seeking social justice for all.

### **PEDAGOGY OF TEACHING**

Two methods of teaching which are case and experiential based method used in legal education will be adumbrated on.

#### **Case Method**

The case method in legal education was invented by Christopher Columbus Langdell<sup>3</sup>. He conceived of a way to systematize and simplify legal education by focusing on previous case law that furthered principles or doctrines.

Students were called on to interpret and apply principles they had uncovered by reading primary legal texts (constitutions, statutes, regulations, and, most often, judicial opinions). Law students were pulled out of their passive silence. They could not become professionals by sitting and listening. They would learn to be professionals by doing one of the most important kinds of work that legal professionals do: constructing and

---

<sup>1</sup>The attempt is made by the Author of this article as contribution to knowledge.

<sup>2</sup>Particular reference is to clinical legal education as it pertains to the pedagogy applicable to law students transcending to Lawyers.

<sup>3</sup>Dean of Harvard Law School from 1870 to 1895.

arguing, interpreting existing legal texts in response to new questions or situations. Students were not told what the law became after an opinion was announced or a legal rule was enacted; they were invited to interpret the law in light of questions the opinion-writer did not confront or situations that legislators may not have contemplated. Students learned through their ability to reason and recognize the science of the law.

The Langdell method of teaching is still very prevalent in NULF. It is time that CLE is adopted fully by the law faculties as this will be tandem with the necessary requisite skills to groom a law student in this 21<sup>st</sup> century.

### Experiential Method

Experience-based learning found its roots in the work of the early 20th Century philosopher John Dewey (1938), who addressed himself in some of his work to extolling the benefits of experience-based learning. He believed that the central dilemma of education is to acquaint the young 'with the past in such a way that the acquaintance is a potent agent in appreciation of a living present,' (Dewey (1938:23)) and that one of the best ways to do this was to expose students to the experience of the working world of which they were soon going to be a part. He noted that the central problem of an education based upon experience is to select the kind of present experiences that live fruitfully and creatively in subsequent experiences.

Experiential learning are the methods of instruction that regularly or primarily place students in the role of Attorneys, whether through simulations, clinics, or externships. Such forms of instruction integrate theory and practice by providing numerous opportunities for students to learn and apply lawyering skills as they are used in legal practice. These learning opportunities are also designed to encourage students to begin to form their professional identities as lawyers, through experience or role-playing with guided self-reflection, so that they can become skilled, ethical, and professional life-long learners of the law.

On our part, this is so because as students put themselves to work, their teachers being their facilitators discover solutions on their own thereby gaining insights into their own performance and acquiring life-long practical applicable skills and knowledge as they solve problems. We are of the view also that the more practical problems<sup>4</sup> they encounter and solve, the more they are embolden to confront difficult problems which they may ultimately also solve. This leads to assurance and self-confidence which are core parts of CLE.

---

<sup>4</sup>This could be likened to some situations which we all are accustomed to. Someone who has undergone teaching on the theoretical aspect of driving but refuses to drive on the road. A person who has undergone theoretical swimming classes but refuses to go into the water to swim. Further, a science student that is not willing to carry-out experiments on the theories he has been taught. These three instances amount to exercises in futility if no practical tests are undertaken. We wonder why clinical legal education should be different.

NULF should wholesomely embrace and adopt this method fully. A situation where only few law faculties have keyed into this method is alarming, calamitous, disturbing and calls for urgency for a wholesale change and adoption.

This method of learning and teaching is a core aspect of CLE and has gained prominence in some law faculties in Nigeria. Precisely, sixteen law faculties have adopted it as a form of acquiring knowledge and needed skills in this era and beyond. This innovation in the law faculties became possible through the efforts of Network of University Legal Aid Institutions (NULAI).

### **LEGAL EDUCATION IN NIGERIA.**

History of legal profession and legal education dates back to the advent of colonialism in 1860s (Okonkwo (2000)). An intending legal practitioner may attend a Nigerian University or an accredited foreign University. The first faculty of law in Nigeria was established in 1961 at the University of Nigeria Nsukka. From the 1970s, several Universities were established by both the Federal and State Governments with most of the Universities having law faculties (Onalaja (2010)).

A uniform curriculum designed by the Nigerian Universities Commission (NUC) and approved by the Council of Legal Education is taught by all the Nigerian Universities in order to maintain the benchmark minimum academic standard. The subjects are divided into two categories: compulsory and optional. All law faculties must teach the compulsory subjects. Some optional subjects should also be taught. The compulsory law subjects are: legal methods, constitutional law, law of contract, criminal law, commercial law, equity and trusts, law of evidence, land law, Nigerian legal system, law of torts, jurisprudence, legal research, and methodology, and company law.

Following the NUC report on the minimum standard of academic legal education from 1990/1991, the period of academic legal education has been put at five years for those possessing senior secondary school certificates and four years for direct entry students with a Higher National Diploma or a First Degree. Most of the 1<sup>st</sup> year and some part of the 2<sup>nd</sup> year is devoted to studying non-law subjects while the remaining four years are spent on the law courses. This stage of legal education in Nigerian is undertaken at the Nigerian Law School established and run by the Council of Legal Education in accordance with the Legal Education Act.

After a successful completion of the course, a person is issued with a qualifying certificate by the Council of Legal Education. The certificate qualifies the person for Call to the Nigerian Bar by the Body of Benchers, which is a body of the highest distinction in the legal profession, comprising of eminent judges as well as distinguished members of the Bar. However, a person will not be called to the Bar by the Body of Benchers, regardless of the class of his degree in the University or his certificate at the Nigerian Law School, unless he has been screened by the Body of Benchers and he is found to be fit and proper to be called



to the Nigerian Bar. The emphasis here is on the moral character and integrity of the aspirant to the Bar. After Call to the Bar, the new entrant enrolls at the Supreme Court. Thereafter, he becomes entitled to practice as both a Barrister and Solicitor.

Before the students produced by a University can be admitted into the Nigerian Law School, the University must have been accredited by the Council of Legal Education. For this purpose, the University must comply with both the NUC requirements as to minimum academic standard<sup>31</sup> and the Council of Legal Education guidelines.

The present state of legal education though plausible but a lot still needs to be done in the wholesale adoption of CLE by all law faculties in Nigerian Universities. Acquisition of knowledge must go side by side with the acquisition of necessary practical skills needed. This in a nutshell is the whole essence of CLE. Making law students to be real professionals before they are called to the bar.

### **CLINICAL LEGAL EDUCATION.**

Prior to the emergence of CLE in Nigeria, the legal education curriculum had been very rigid and confined to theoretical methods of teaching. This theoretical approach in the Universities did not present law students with the platform for developing practical skills which caused them to be ignorant of the professional skills that are important to the profession. These skills include, research skills, communication skills, interviewing of clients and witnesses, counseling, drafting, negotiating and problem solving skills.

The objectives of CLE curriculum was put by Ojukwu (2008) thus:

a law clinic provides the platform for the academic and service components of the goal of legal education. The Clinic... does provide an opportunity of addressing both what is taught at law schools (faculties) and, most importantly, how to achieve many of the teaching and learning goals implicit in educating lawyers.

(Ojukwu (2008:8-9))

CLE is also believed to promote reflection and self-examination since it gives students the opportunity to explain why they are taking certain actions and they are able to discuss and reconsider their actions. Legal practitioners themselves rarely have the time or opportunity to do this. Students, by contrast, can examine the legal and social issues in some depth, and they can form the basis for looking at the lawyer's role and at legal ethics within a practical context. The result is that what is learned is far more likely to remain with the student than the knowledge crammed for an extremely artificial examination paper.

CLE embraces a skills-based approach which means that students to a larger extent will be educated in the processes associated with legal practice e.g. the structure of a letter, the interview with the client, face to face negotiation as to the legal content of the rules forming the background to the work done.

Many students who work in a legal clinic are enthusiastic about their experience. They are self-motivated and often highly committed to the work. The students show more responsibility for what they do and how they do it. In theory, the teacher's role becomes more facilitative, helping students discover solutions for themselves (Lewis (1998)).

### **Clinical Model Programmes in NULF**

#### **Faculty-supervised clinics**

This is CLE model programme that is internship in nature. They are common in NULF. Delta State University law faculty has such a law clinic. Students are made to interview clients and take notes in the course of the interview under the supervision of the teacher attached to the law clinic. Credits or points are given or awarded to students based on their performance as they are made to write their legal opinions based on the interview conducted with clients.

In some instances in some NULF, when such matters are instituted in the court for adjudication, the teacher take some students with him at the hearing pendency of the case in court. The teacher conducts the proceedings and the students take notes in the course of the trial.

Students are required to ask their teachers questions on their observations(s) if any on their return from court. The essence is to ascertain whether the students are abreast with the nuances of practical knowledge based on theories that they have been taught.

#### **Simulations**

This is also a common CLE model programme in NULF through the moot courts located in law faculty. Kogi State University, Ambrose Alli University, University of Benin amongst others have moot courts. Simulations are not real life situations but are arranged or make-belief real life situations in CLE to ascertain the ability, capability of law students to react in dealing appropriately with such problems when they occur. This helps law students in practicing law principles enshrined in theories. It helps makes learning easier and not in the abstract. This further helps in reducing the complexity of such problems. Law students become active and more involve in solving daily legal problems by applying practically legal principles.

#### **Externship**

This form of model of CLE is not common in NULF as it involves lots of resources financially that is funding to accomplish. This form of model CLE programme is evident at Afe Babalola University. Law students are sent out to various law offices and courts for attachment during vacations with their log book to take notes in day to day legal issues they encounter in the courts and law firms where they are attached. This is called chambers attachment and court attachment. The purpose is for students to learn the practical rudiments of legal principles in theories.

Teachers are sent to monitor these students in the various law firms and courts they are assigned to in order to ascertain their progress. Credits that is points are awarded to students on submission of log books. Assessments are also administered on students where marks are also awarded.

#### Community Model

This is common in NULF as this model of CLE renders social responsibility to meet social justice. This form of law clinic finds out the needs of the community by interacting with the indigenes.

The law student begins to initiate and play roles as a student cum legal practitioner. He becomes fully exposed to the role of law as social engineering to society based on the legal services he will be offering to the community. The student balances his background with those of other members of the community. This helps in shaping the mind of the student in their training to become lawyers. It transforms their minds greatly.

Services are usually rendered pro bono to such communities. The community model of law clinic places the community in vantage or priority position. This helps in offering solutions to myriad of problems be deviling the community. This goes a long way in fostering a cordial and harmonious relationship between the faculty, University on one hand and the community on the other.

#### **THE EFFORTS OF NIGERIAN NETWORK OF UNIVERSITY LEGAL AID INSTITUTIONS (NULAI)**

The introduction of CLE in Nigeria was the brainchild of the Network of University Legal Aid Institutions (NULAI)<sup>5</sup> as part of its efforts to reform legal education and expand access to justice for the poor. NULAI was established in 2003. Its vision is to promote and sustain the development of CLE reform of legal education and enhance legal aid and access to justice.

Its mission is to build a network of cohesive university-based law clinics providing pro-bono legal services to the indigent and underserved; while training a new generation of skilled law students committed to public service and justice. Its objectives are to generate sufficient interest in the legal education sector to encourage universities and law schools to set up law clinics and reform legal education. Further to provide technical and institutional support to university/law school law clinics, a medium for exchange of ideas and peer review among law clinics, a link between and among law clinics and relevant institutions in Nigeria and similar organizations, and access to training for law teachers. It will assist law clinics to develop and sustain human rights based programmes such as human rights education, legal aid and access to justice that impacts on community development and promote a culture of

---

<sup>5</sup> NULAI is a non-profit, non-political and non-governmental organization established in 2003 and dedicated to promoting clinical legal education, reform of legal education, legal aid and access to justice. Its membership is open to law clinics/legal aid institutions in Nigeria's universities/law schools.

public/community service in budding lawyers.

Some of its most significant efforts with respect to clinical education were the setting up of four (4) pilot clinics in 2004<sup>6</sup> and producing a model CLE curriculum for Nigerian Universities in 2006 which was reviewed in 2012. From the introduction of CLE in 2003 that clinical education has been introduced in Nigeria. From four clinics in 2004, a total of sixteen (16) law clinics have so far been established at law faculties through NULAI efforts. This is far cry considering the number of NULF<sup>7</sup>.

NULAI Nigeria in its bid to improve legal education and legal capacity in Nigeria has developed and institutionalized CLE. This feat was achieved through the undertaking of expository and intellectual seminars and workshops which yielded tremendous results. The overall objective of the colloquium was the integration of CLE into the Nigerian legal education.

NULAI Nigeria also participated in the 1st African CLE teacher training at Durban South Africa 4th-9th October, 2004 with 4 Nigerian teachers trained.

In January 2006, to promote a standard for CLE curriculum for Nigerian universities law clinics and NULAI Nigeria constituted a CLE curriculum development committee with members drawn from NULAI and University Law clinics. The committee embarked on a study tour to the University of Kwa-Zulu Natal law clinic and the University of Johannesburg law clinic from the 29th January - 3rd February, 2006. Committee members also facilitated a curriculum development workshop leading to the publication of CLE during this period. NULAI also organized the 1st Nigerian client interviewing and counseling skills competition, which was held at Maiduguri in Borno State of Nigeria, on the 17th-18th February 2006.

The summary of the report of the Council of Legal Education committee on the review of legal education in Nigeria submitted on 29th July 2004 was to the effect that law faculties and the Nigerian Law School should 'as a matter of urgency' introduce CLE and that 'the faculties are required to provide appropriate facilities, such as clinical consultation rooms' and that 'for purposes of achieving interactive teaching, proper training will have to be given to lecturers at the various law faculties.'

NULAI also participated in the stakeholders meeting on the Nigerian draft Legal Aid Bill to fine-tune the draft bill which has provisions for supporting legal clinics in the universities.

---

<sup>6</sup>At Abia State University, University of Maiduguri, University of Uyo, and AdekunleAjasin University, Akungba, Ondo State.

<sup>7</sup>There are 49 approved NULF.15 in Federal Universities, 19 in State Universities and 15 in Private Universities.

Consequently, in 2011, the Legal Aid Act by its section 17 recognizes law clinics as legal aid providers.

Due to the advocacy efforts of NULAI Nigeria on the subject of integration of CLE into the Nigerian Legal Education, the National Universities Commission's draft benchmarks and minimum academic standards in the law programme released in August 2004 has identified cognitive and skills competencies as a learning outcome and also introduced a community based course: community legal assistance to the poor, minority and the under privileged in the 4th year class. Benchmark was reviewed in 2010/2011 CLE curriculum compulsory for new faculties to have law clinic.

The laudable efforts of NULAI since 2003 must be commended in the establishment of law clinics. Much still needs to be done as there are forty nine approved NULF.

### **AFFIRMATION OF CLE IN NIGERIA**

The Council of Legal Education which is one of the bodies regulating legal education in Nigeria, in its revised accreditation guidelines now requires the introduction of clinical education and the setting up of law clinics in law faculties as one of the best paths to the development of the faculties of law in Nigeria. Legal Aid Council now recognises law clinics as providers of legal aid.

The NUC benchmark minimum academic standards for undergraduate programmes in NULF now recognises clinical work, amongst other means of determining students' academic competence for the award of bachelor's degree, apart from script/examination assessment. The NUC has now introduced in its minimum benchmarks, community service, as a compulsory course, an ideal already encapsulated by clinical education (Ojukwu (2006)).

The capacity of legal aid in Nigeria has been expanded by an additional 2,000 law students working in the clinics offering pro bono services throughout the country. Law graduates with clinical experience are more skilled in problem solving in law practice than their non-clinical colleagues. At the 2013 Freedom of Information Teacher Training workshop for clinical law Teachers, staff clinicians attest to the quality of clinical law graduates, in terms of their communication, critical thinking and problem solving skills, etc.

Establishment of law clinics improves the ratings of faculties during accreditation exercises by NUC and Council of Legal Education. The affirmation is a clear signal that CLE has been recognized in Nigeria via its introduction into NULF.

### **CHALLENGES OF CLE**

The challenges facing CLE in NULF will be discussed under the following headings.

Resources:

The major challenge is that of resources or funding. Apart from the commendable efforts of

NULAI, a non-government organization in carrying out pioneering work in the establishment of law clinics in NULF. No other private organization has undertaken this initiative. The few number of law clinics in NULF is attributable to lack of resources needed for the eventual running of such law clinics. There is great need for the involvement of more private non-governmental organizations (NGOS) in the establishing of clinics. Government needs to inject colossal funds towards the establishment and overall success in the manning of such clinics in order to accomplish the aim for which they are established by such law faculties. Government's role should go more than just the payment of salaries.

Resources that is monetary consideration is needed particularly in these areas:

a. Remuneration:

Teaching and supporting staff manning the law clinics need to be properly remunerated in the payment of allowances or any sum of monies that they may be entitled to. Adequate provisions should be made for prompt remuneration when due. However, in most cases, funds are not made available at all or when made too meagre to take care of the requisite needs of such staff. Where this is not done, it leads to lack of motivation and the needed synergy on the part of the staff in making the law clinic to function maximally will be reduced. The resultant effect of this is that the needed enthusiasm to impart knowledge on the law student is lost.

b. Assessment and Supervision:

Connected to the issue of funding is assessment and supervision of students in law clinics. This is usually noticeable in clinics of externships where students are placed on attachments to law firms or courts usually far away from the location of such clinics. In such cases, effective supervision and assessment of such students may not be possible as the needed funds to make such trips by the law teachers maybe too meagre and sometimes it may not be available at all. This greatly affects the psyche, morale and productivity of the staff and the students of such clinics.

The roles of alumni of such law faculties need to be emphasised. There should be synergy and collaboration between law faculties and their alumni as alumni can provide the needed funds in the form of donations and endowments which will help a lot in the provision of the funds in establishing and running of such law clinics.

c. Non-challenge attitude to CLE:

The reason for apathy to CLE by some staff in NULF is that persons are usually reluctant to change. Most law teachers still prefer the doctrinal method of teaching as some still find it difficult to adopt to new approaches of learning through CLE.

In a nut shell, some law teachers' pay lip service to the adoption of clinical methodology, while in actual fact, they still continue with traditional habits and practices, making legal education business as usual (Adekoya (2014)).

d. Incessant disruption in academic calendar:

Most law clinics in Nigeria are situated within faculty premises in the campuses. When there

is a strike action, especially by the Academic Staff Union of Universities (ASUU) whether at national or local level, to press governments and university authorities for various demands, clinical services/projects in public universities are disrupted. Some of the strike actions can last for several months.<sup>8</sup>

This often does not augur well for sound CLE as most often, most practical skills that have been impacted on such students will be forgotten by them as a result of such long strikes resulting in irreparable damage to the educational system.

Government should play her role effectively by providing adequate funds to ensure stability in the university system to make room for proper planning for the right impacting of practical skills in making learning to be experiential and meaningful to law students in NULF in this 21<sup>st</sup> century.

Most importantly, a healthy, harmonious and beneficial relationship between law clinics and the local legal profession that is the Bar should exist. Although, some may fear that a legal clinic offering free legal work will upset the law school's relationship with the local legal profession.

#### **GAINS FOR ADOPTION OF CLINICAL LEGAL EDUCATION**

Adequate funding should be prioritized by the Nigerian government by extending some to NULF. This will go a long way in ensuring law students have the necessary skills to meet the challenging global demands they will encounter in the profession in their service to their clients and society.

This is obvious as they will face in the real world the stark reality that the theories of law taught to them in school is at totally variance with the practical aspect of law. They will realize that more energy will be needed to be expended by them in gaining more skills in the pursuit of their practice of law in solving practical life situations. Doing this and succeeding in it gives utmost satisfaction and joy.

Law students need to see law as social engineering and its inter-relationship with other disciplines of human endeavors and offering efficient and qualitative legal services to solving the needs of society adequately.

This experiential based method of learning will impact the necessary practice skills needed in solving myriads of societal injustice especially deliberate infringement of fundamental rights issues prevalent among the vulnerable, the indigent and the poor in the society.

---

<sup>8</sup>The nationwide strike declared on 2nd of June, 2013 by ASUU, for instance, to compel the Federal Government to honor an agreement reached with the Union in 2009 on adequate funding of universities and provision of infrastructure lasted for almost six months. ASUU embarked on yet another strike in August 2017.

Clinical students are expected to learn how to respond to various problems in the Nigerian societal setting at a lower stage of their legal training and to sharpen their skills to evaluate the basic needs of their clientele as well as the community within broader paradigm of social justice, conciliation and humanism.

Law students have a greater awareness of their role in society as this is necessary for a healthy society. NULF have a responsibility to remind law students that by studying law they have the power to transform thoughts, policies and lives and that law is not just about financial rewards but the ultimate reward of contributing to the betterment of the society.

The cure is a standard educational practice which reflects in the training and development of would be lawyers with the requisite skill to render services optimally at local and international levels. Well-rounded law graduates are needed who will engage with legal concepts and contribute to the legal profession and society.

## CONCLUSION

The genuine and laudable efforts of NULAI should be complemented greatly by other relevant stakeholders to seeing to the wholesale adoption of CLE in NULF through the establishing of law clinics in all NULF. The set time to do it is now as the future is now. It is time NULF law students hit the ground walking by solving society's problems by the practical application of applicable legal principles practically as a result of their early exposure and training on CLE.

## REFERENCES

Adekoya, C. (2014) 'Meeting the Required Reforms in Legal Education in Nigeria: Clinical Legal Education -Ten Years After' *International Journal of Clinical Legal Education* [Online] Available at <http://www.northumbriajournals.co.uk/index.php/ijcle/article/viewFile/25/30> (Accessed 5 August 2017)

Bloch F. (2011) *The Global Clinical Movement: Educating Lawyers for Social Justice* Oxford University Press

Dewey, J. (1938) *Experience and Education* United States, Kappa Delta Pi.

Grimes R. (1996) 'The Theory and Practice of Clinical Legal Education' in J. Webb and C. Maugham (eds.) *Teaching Lawyers' Skills* (London: Butterworths)

Harvard Law School (2017) *The Case Study Teaching Method* [Online] Available at <http://casestudies.law.harvard.edu/the-case-study-teaching-method/> (Accessed 11 June 2017)

Lewis, R. (2000) 'Clinical Legal Education Revisited' *Dokkyo International Review*, Volume 13, 149-169



Network of University Legal Aid Institutions, (2004 – 2006) *Activities Report* [Online] Available at <http://www.nulai.org> (Accessed 10 August 2017)

Network of University Legal Aid Institutions (2012) *Annual Report*, [Online] Available at <http://www.nulai.org> (Accessed 10 August 2017)

Network of University Legal Aid Institutions et al (2006) '*Clinical Legal Education Curriculum for Nigerian Universities*' Law Faculties/Clinics' [Online] Available at [http://fupp.org.pl/download/Nigerian\\_Universities\\_Law\\_Faculties\\_Clinics.doc](http://fupp.org.pl/download/Nigerian_Universities_Law_Faculties_Clinics.doc) (Accessed 27 August 2017)

Ojukwu, E. (2013) 'Moving From Red to Green: Sharing the Nigerian Experience of Transforming Legal Education', Keynote address presented at the *11th International Journal of Clinical Legal Education Conference*, Griffith University, Brisbane, Australia on 16-18 July, 2013.

Okonkwo, C. (2000) 'A Historical Review of Legal Education in Nigeria' in Guobadia, A (ed) *Legal Education for Twenty First Century Nigeria* (NIALS).

Onolaja M. (2004) '*Problem of Legal Education in Nigeria*' [Online] Available at [http://www.alimiandco.com//ACCR EDUCATION%20AND% 20LE GAL%20EDUCATION](http://www.alimiandco.com//ACCR%20EDUCATION%20AND%20LEGAL%20EDUCATION)> (Accessed 15 July 2017)

The Nigeria Lawyer (2017) *Updated: List of Accredited/Approved Faculties of Law in Nigeria* [Online] Available at <https://thenigerialawyer.com/updated-list-of-accreditedapproved-faculties-of-law-in-nigeria> (Accessed 4 August 2017)

Winkler, E. (2012) () '*Clinical Legal Education: A Report on the Concept of Legal Clinics*' [Online] Available at [http://www.law.handels.gu.se/digital/Assets/1500/1500268\\_law-clinic-rapport](http://www.law.handels.gu.se/digital/Assets/1500/1500268_law-clinic-rapport) (Accessed 12 June 2017)

## **REFLECTIONS ON PRACTICE AND RECENT RESEARCH TO ENABLE FUTURE PRACTITIONERS TO LEARN ABOUT WORKING COLLABORATIVELY ACROSS DISCIPLINES TO BETTER HELP THE COMMUNITY**

**Dr Liz Curran, Australian National University, School of Legal Practice  
Associate Director, Centre for Profession, Education and Regulation in  
Law**

### **ABSTRACT**

This article uses reflective practice and the author's recent research to explain why there is a need for such an approach to break down barriers between professionals to improve social justice and health outcomes for the community they will serve. This article is exploratory only and contains reflections on the author's research (including findings) and own experience in clinical teaching and some opportunities that could be explored to deepen student learning, understanding of the nature of problems, client contexts and holistic problem solving, especially skills in collaboration, interpersonal skills including working with other professions, problem solving, contexts that cause and exacerbate problems and interviewing skills. It suggests the idea for joint student learning across professional fields to enhance such skills and break down professional stereotypes and barriers as well as the development of an interdisciplinary student clinic as an important way of building better and more responsive future practitioners in health, law and allied health disciplines.

Key words: clinical legal education, interdisciplinary practice, social determinants of health, holistic services, access to justice.

### **INTRODUCTION**

My recent research and practical experience as a clinical legal education supervising solicitor within a health service has led to the idea for the development of an interdisciplinary student clinic (IDSC) as an important way of building better and more responsive future practitioners in health, law and allied health disciplines. Such an idea is not new, but much of the literature examined looks at interdisciplinary clinics narrowly as lawyers and law students working in non-legal settings. My IDSC envisages law students in joint learning at undergraduate level with students undertaking courses in different fields such as doctors, nurses, psychology, law social worker, dentists, pharmacists and so on.

This article uses reflective practice and my recent research to explain why there is a need for such an approach to break down barriers between professionals to improve social justice and health outcomes for the community they will serve. This article is mainly based on reflective practice in that it draws on my own practice experience as a clinical legal education supervisor, director of a legal practice that was co-located in a community health service, as a teacher of a practical legal training course of graduate lawyers seeking admission to practice, and on my own recent research findings and those in other jurisdictions which have reinforced my view. These will be briefly examined in this article. This article is exploratory only and contains reflections on my own experience in clinical teaching and some opportunities that could be explored to deepen student learning,

understanding of the nature of problems, client contexts and holistic problem solving especially skills in collaboration, interpersonal skills including working with other professions, problem solving, contexts that cause and exacerbate problems and interviewing skills. The aim of this IDSC and joint learning interdisciplinary program at university would be, in the first instance, to have joint learning opportunities in the early years of student courses, and then, if students elect to, an IDSC. The IDSC will assist students directly and the clinical supervisors and academic staff to teach context and skills in a framework where they can all gain an awareness of problems and the broader contexts not just limited to the legal dimensions that law students tend to be taught. This aligns with the recent research findings, discussed briefly in this article, on advice seeking behaviour of disadvantaged clients which suggests innovations are needed for more effective reach. The article finishes by flagging a new pilot IDSC I have been invited to advise on that is being established by Portsmouth University in the United Kingdom. Together with my cross-jurisdictional and cross-disciplinary colleagues, I intend to further explore this initiative in future articles which will scope, plan, operationalise and examine the impact of IDSC and interdisciplinary learning.

### **WHAT IS AN INTERDISCIPLINARY STUDENT CLINIC (IDSC)?**

Terms such as interdisciplinary, inter-professional, multi-professional, and multidisciplinary are often used interchangeably in the literature to refer to both different types of teams and different processes within them (Nancarrow et al, 2013).

The term interdisciplinary in the context of this article, is one more common in health, primary allied health and educational parlance, often in university settings, and has not been so common in legal language. I suggest that much can be learned from the use of such a term in legal circles and am keen to utilise it as a framework for this article and in future discussion (Maharg, 2007). IDSC, in this article, refers to the learning that emerges from interdisciplinary cross fertilisation and expanding opportunities. Such opportunities include giving advice in student clinics that look holistically at problems, rather than seeing problems in silos of law and health, seeing issues as contextual, overlapping and interconnected both in causes and solutions. It involves students jointly learning from different disciplines. In this case, it is applied within education and training pedagogies to describe studies that use methods and insights of several established disciplines or traditional fields of study.

The model I am advocating involves researchers, students, and teachers/clinical supervisors in the goals of connecting and integrating several academic schools of thought in joint skills development (e.g. skills including interviewing, interpersonal, problem solving, collaboration, holistic client care, problem identification and assessment and triage) and understandings of differing professional ethical responsibilities and roles of professions or technologies—along with their specific perspectives—in the pursuit of a common task. After skill attainments are put into practice, the idea is for student to provide an advice service with ‘real-clients’ or ‘simulated client situations’ to reach vulnerable/ disadvantaged clients in places and settings where the research suggests such clients, are most likely to turn for help (Buck, Tam and Fisher, 2007; Buck and Curran, 2009; Buck et al, 2010; Clarke and Forell

2007; Coumarelos et al, 2012; Curran, 2005; Mulherin and Coumarelos, 2007; Noone, 2012). As well as these skills, IDSC can also see students from different disciplines providing community education, professional development for practitioners about the different disciplines, and policy reform to address the structural inequities or poor policies or laws that can create or exacerbate problems (Curran, 2004, 2008; Curran, Dixon and Noone, 2005; Tobin-Tyler, 2012).

Xyrichis and Ream (2008) have noted that interdisciplinary health care teams face a set of challenges that are not necessarily encountered by other types of teams such as uni-disciplinary or non-health care teams. Lawyers also face challenges as they are not encouraged often at law school to learn how to work with other disciplines or recognise their value in solving a person's problems that may have broader dimensions than just the legal problems. These challenges include the contentious nature of sharing professional roles and expertise, planning and decision-making, while delivering quality patient/client care within complex contexts (Nancarrow et al, 2013).

A recent action research study by Harris et al (2016) explores the complexity of inter-professional dynamics in primary health care settings in three jurisdictions, namely Australia, Canada and the United States. Harris et al note that such studies of the dynamic processes of teamwork and interdisciplinary practice have not been studied in depth in the literature and that their article seeks to explore this. They conclude that 'interprofessional team based care' has been demonstrated to improve quality of care outcomes in patients with chronic disease in primary care. The article notes that, based on their study, such interdisciplinary care, if done well, can improve client outcomes including health, the quality of care, lead to earlier interventions, and reduce duplication and hard navigability through improved co-ordination and referral and planning. Harris et al also note that interdisciplinary practice can lead to improved relationships, changes in practice and increased job satisfaction and greater opportunity for collaboration. The article notes that in Australia, for example, the role of effective triage and advocacy played by nurses had been undervalued and under-explored and new opportunities can emerge. They suggest inter-practice communications and specific interventions thus enable greater opportunities for collaboration and improvement and role shifts and can reduce role confusion and tension in some practices between professionals. These are reasons I believe an IDSC and joint learning opportunities at university level are desirable, if not imperative, to better position future practitioners in law, health, allied health and social work and improve client care. Harris et al go into detail about the barriers and challenges of such practice and underline the importance of acknowledging that it takes, time, resources, thorough planning, space – both physical and in terms of creative responses – organisational buy-in, systems support, attitudes and cultures that are prepared to work differently, be flexible and adaptable and prepared-to-have-a-go leadership.

### **WHAT IS MEANT BY MULTIDISCIPLINARY PRACTICE?**

The term multidisciplinary practice (MDP) is one used in legal circles. It is often used to describe commercial models of practice where, for instance, lawyers work with accountants or financial advisers. MDP tends to be the term used in service delivery that is

multidisciplinary. Given inherent conflicts in the role of a lawyer, their duties to the court and client and the differing ethical obligations in financial and corporate settings for accountant and others, MDP has had some criticism in this context and is often wound up with perceptions of lawyers including their role in medical negligence cases, commercial transactions for profit, which is unhelpful when one is trying to establish cross-professional relationship building. In my earlier writing and empirical study, I adopted the term MDP as it is commonly known in legal circles. However given the criticism and the many misunderstandings encountered that are emerging from such nomenclature, my journey has led me to adopt the term 'interdisciplinary' based on the literature in health and primary health spheres and the negativity and resistance that has been met using the term MDP. For clarity, therefore, some of my studies use the term MDP when they refer to service delivery as opposed to joint educational learning setting. Given the number of definitions in the literature and differing meanings ascribed to it, I define my use of MDP in the context of this article and my own research and evaluation context.

MDPs are where different professionals work together as a team for a client. The use of the term in legal circles in a context of commercial enterprises that blend lawyers and accountants or financial advisers and other settings has been criticised in literature on MDP as problematic ethically (Castles, 2008). This can be confusing as in many MDP the focus can be about profit and financial advantage and so this can complicate legal professional obligations around confidentiality and conduct, whereas the situation under discussion in this article is about disciplines working together to improve clients' health, social service and well-being in contexts where there are significant barriers to accessing legal help in traditional legal settings, rather than for profit or competitive advantage. Traditional legal settings which are appointment based are predicated on clients and non-legal professionals being aware of the range of problems capable of having a legal solution and being able to navigate their way to and identify when they need legal help. This can be difficult where clients have barriers such as cost, poor information and/or experience social exclusion (Buck and Curran 2009; Clarke and Forell 2007; Coumarelos et al, 2012; Curran, 2005; Mulherin and Courmarelos, 2007).

Research suggests that skills of good client interviewing, triage, and peer-to-peer learning are skills that different professional disciplines can share even though their roles may differ (Curran and Foley, 2014; Harris et al, 2016; Tobin-Tyler, 2008,). New approaches to lawyering and health services provision are needed that work across silos to enable more seamless navigable service options for real-life clients of the clinic and new approaches in a work place (Harris et al, 2016). Pleasence et al (2014) highlight that vulnerable and disadvantaged clients are not gaining the legal help they need and are not seeking legal help and call for more integrated, connected service delivery.

#### **WHY AN IDSC?**

As noted above, this article and the suggestion for more IDSC as a model for enhancing the learning of skills in professional collaboration is informed by reflective practice on my experience of having run a clinical program with holistic client care in a co-located setting of

a legal service within a community health setting (Curran 2005, 2008) in a one of the poorest postcodes in Australia (Noone 2009).

Leering (2014) provides a framework for why this practice experience has informed my conviction that IDSC are a critical advance in the delivery of clinical education and of enhancing skills in students.

*I became persuaded that habitual reflection would benefit legal practitioners at every stage of their development, from understanding better how to learn and function more effectively at law school so that our capacity to learn improves and our knowledge base increases, to encouraging self-directed learning, to enhancing learning from experience during the articling practicum and our early practice years. It also offered new ways to think about skill acquisition as, for example, information technology transforms our conception of legal practice, and we are called upon to be mentors, supervisors, managers, executive directors, and leaders in the course of our professional roles. It is clear that even as seasoned or expert legal professionals, we need to continually reassess and re-evaluate our professional calling and practice to provide better services, learn how to collaborate, take risks and to be prepared to innovate (Susskind 2008), and keep abreast of developments and new knowledge to increase access to justice. (p. 87-88)*

This article is situated within a framework of reflective practice and seeks to suggest new possibilities to '*learn how to collaborate, take risks and to be prepared to innovate*' emerging from my practical experience in seeking to reduce barriers to accessing justice. Practical experience as a clinical legal education supervising solicitor within a health service has led me to seek to progress ideas for the development of IDSC/multidisciplinary student clinics as an important way of building better and more responsive future practitioners in health, law and allied health disciplines. Other research has also shaped and informed this view (Hyams and Gertner, 2014; Tobin-Tyler, 2008).

From my experience and my own recent research, IDSC may be designed to explore more effective service delivery to the most vulnerable and which simultaneously might better build student skills and collaborative learning opportunities. This is based on my reflections on ten years of co-located service delivery, my involvement as a teacher of clinical legal education, my recent involvement in supporting start-up multi-disciplinary services, and my research findings (Curran, 2015, 2016; Noone, 2012; Noone and Digney, 2010).

#### **A ROLE FOR LEGAL SECONDARY CONSULTATIONS AND POLICY INPUT BASED ON CASEWORK TRENDS IN AN IDSC**

Previous clinical courses I developed enabled law students to engage with health and allied health professionals to support them in identifying and seeking systemic changes to poor health and social well-being client outcomes (Curran, 2004, 2008) by undertaking law reform projects. During these projects, students sought the views of health and allied health professionals and their experiences with disadvantaged clients of the co-located health service from where the clinical program operated.

The joint student law reform projects saw law students work collaboratively with health and allied health professionals to identify recurring trends/problems for their clients/patients. In their projects (assessed) law students made many recommendations, and some were adopted by decision-makers around family violence, human rights around pharmacotherapy for drug users and alternatives to and limitations of the courts (Curran, 2004). For example, the students' policy reports saw them interview a range of professionals such as financial counsellors and gambling counsellors in producing reports on Youth Debt and Problem Gambling; and family counsellors and domestic violence and crisis workers for a report on family violence. These discussions by students with non-legal professionals broadened each report to consider the reasons behind the legal problems, their causes and solutions. The family violence report was used by government for the implementation of a specialist family violence court as recommended by the students and the other reports led to media coverage and a student appearing before a Parliamentary Inquiry into Gambling (Australian Broadcasting Corporation 2014; Curran 2004). On reflection, if each student had come from a different discipline and written different chapters from their professional vantage point, working side by side and developing the framework of their law reform project, this might have led them to have deeper discussions and a sharing of perspectives offering considered and lateral solutions through the cross-fertilisation of ideas. The reports might have had greater depth and broader recommendations for improvement.

The benefits of students being exposed to different professionals in the law clinic saw them all working together to provide holistic client/patient care. The law clinic students gained referrals from health and allied health professionals which might otherwise not have occurred, leaving many clients' legal problems unresolved. This occurred largely through their clinical supervisor (often supported by the students) undertaking what are called Legal Secondary Consultations (LSC) and or by their own engagement with service personnel, often through joint student law reform projects (as discussed above), where they got to know non-legal professional staff in the MDP.

LSC are defined as where a lawyer offers a non-legal professional (such as a doctor, nurse, youth worker, social worker or financial counsellor) legal information or advice on legal processes for their client through the non-legal professional as an intermediary, or assists the professional in their role (such as what happens at court, and how to give evidence or structure reports for a court to provide the required considerations), or on their professional and ethical obligations, or guides the non-legal professional through tricky situations involving their client or their work for clients. It is 'secondary' in that the legal information is provided to the professional intermediary who is already supporting a client and then this intermediary uses this information to assist their client or patient, as a basis for a referral or to enable the professional to better support the client.

Students received referrals for their work in the clinic on behalf of clients from the relationships and linkages they and their clinical supervisor made with health and allied health professionals who might otherwise not have realised the scope of client problems that might have a legal solution (Genn, 1999). Such preparedness to refer clients often

occurred through the LSC and/or by their engagement with service personnel, often via joint student law reform projects where they got to know non-legal professional staff in the MDP whom they would liaise with when developing their law reform and policy topics based on client work and trends emerging from such work.

LSC, systemic reform and social change that seeks to prevent problems, improve community outcomes or go to solve the core of problems or inequity will now be discussed.

In my view, the clinic was great but limited, as it was a 'law student clinic only setting' with the advantage of being in a MDP. It could have gone further had students and clinical supervisors in clinical settings come together to work from different interdisciplinary trainee practitioner spheres, thus complementing learning from each other's disciplines and supporting advice for clients, mindful and learning about professional ethical boundaries and how to accommodate these through clear communication and protocol development. Such IDSC and undergraduate joint learning opportunities might have also broken down the different university school silos and built understandings and opportunities for research collaborations emerging from the clinic.

#### **SCOPE FOR UNIVERSITY COLLABORATION ACROSS DISCIPLINES**

After some failed attempts at conversations to enable more cross disciplinary learning opportunities for students in the 2000s, it became clear to me that my efforts floundered because of academic funding conditions, regulatory and accountability settings and educational silos in Australia. Such initiatives were constrained and more facilitative cross disciplinary enterprises in course design so students from different schools (nursing, medicine, teaching, social work etc.) could be open to joint learning opportunities in the undergraduate courses and clinical opportunities for cross-fertilisation were difficult. Despite suggestions at the time, departments tended to be internally focussed and curriculum was perceived as too 'crowded', new ways of teaching were frowned upon (Enos and Kanter, 2002) and not seen as a priority. Clinics do exist in the United States, Australia and the United Kingdom that are delivering services on-site at health centres (Bliss, Caley and Pettignano, 2012) however most of these see law students as the key drivers delivering the advice service as a legal clinic (Hyams and Gertner, 2014) rather than being true IDSCs with, for example, students of nursing, dental care, pharmacy and social work delivering holistic services alongside law students as a team. Very few of these are interdisciplinary, in the sense that I am proposing, even though they sit in a health setting, they are still advice sessions provided by clinical law students, much like the model I worked with for ten years discussed earlier. The IDSC differs from these in the sense that the advice is from an array of students across different disciplines working together in an advice setting providing a holistic case managed service by students to clients/patients as a joint interdisciplinary clinic.<sup>1</sup>

---

<sup>1</sup> Hazel Genn is leading an evaluation of the University College London ('UCL') Advice Clinic. The UCL 'Integrated Legal Advice and Wellbeing Service' (iLAWS) centre offers free general advice and assistance for registered patients of the Liberty Bridge Road GP Practice in social welfare law issues. Based in the Guttmann Health and Wellbeing Centre in Stratford, the clinic offers users of the Liberty Bridge Road General Practice free face-to-face general legal advice on all aspects of social welfare law including welfare benefits and housing. The UCL Legal Advice Clinic also provides the basis for a wide-ranging research agenda seeking



My recent empirical research has reinvigorated my view that IDSC for all students to develop learning skills together first and then moving into an advice clinic setting once grounding is in place has a range of benefits, but clearly many challenges (Tobin-Tyler, 2008; Trubek and Farnham, 2000). In recent times, I have been trying to open conversations to start cross disciplinary opportunities within the health and allied health schools at universities that might include justice perspectives and have only just started to make some small headway.

I have reflected on how much better these policy and law reform projects of my clinical students would have been if the law students could have worked on these projects with other students from different disciplines and therefore through different lenses and with ancillary learning outcomes around learning of different roles and perspectives. In my view, this would have seen them critically examine the siloed barriers to systemic improvements. Law students having to work with students of other disciplines to consider an array of perspectives on health, social, legal and economic aspects to client/patient lives would also have to navigate group dynamics and learn about different professional roles and perspectives which would situate them better once they become practitioners to enable joined up services and lateral solution and problem solving skills in collaboration with future colleagues (Harris et al, 2016). Such IDSC will require hard work and educators stepping outside of comfort zones and having to forge and sustain new relationships with other facilities. This will take time, effort, hard work and resourcing, but I believe it will lead to improved practice and better outcomes for students, clients, universities and communities.

### **EVIDENCE-BASED RESEARCH TO INFORM NEW WAYS OF TEACHING FUTURE PRACTITIONERS**

My empirical research, outlined below, reveals there may be a role for secondary consultation in IDSC to bridge professional understanding and confidence and capacity and to enable greater client/patient reach given resource constraints. Perhaps now, with this empirical evidence base, there might be greater preparedness to see justice included in other cross-disciplinary enterprises at universities?

The landscape has now changed given recent research (Allen Consulting Group, 2014; Australian Productivity Commission, 2014; Buck and Curran, 2009; Buck et al, 2010, Buck, Tam and Fisher, 2007, Clarke and Forell, 2007; Coumarelos et al, 2012; Curran, 2005, 2016; Mulherin and Coumarelos, 2007; Noone, 2012). We now know that people most in need of legal help are not accessing it with traditional approaches to lawyering (Pleasant et al, 2014) and that working alongside the patients'/clients' trusted health and allied health professionals may lead to better access to legal assistance.

Many studies and public inquiries also highlight there is also a need for new lawyering paradigms as the adversarial system fails certain groups in the population, particularly

---

answers to fundamental questions about the nature of legal needs and the links between legal and health problems, <<https://www.ucl.ac.uk/laws/accesstojustice/legal-advice> > accessed 30 August 2017 2017.

victims of crime, family violence (Australian Productivity Commission, 2014; Victorian Royal Commission of Inquiry into Family Violence, 2015), family law and youth. We see the emergence of problem solving courts and therapeutic, restorative, conflict conferencing approaches (Burchardt, Le Grand and Piachaud, 2002) – for example, Aboriginal or Maori Courts, Youth Court, specialist mental health lists, neighbourhood justice centres and so on; calls for greater collaboration, mediation, negotiation, community development, integrated service delivery across legal and non-legal services (MDPs), professional and community empowerment.

### **WHY MY EMPIRICAL RESEARCH SUGGESTS IDSC AND JOINT STUDENT LEARNING ARE CRITICAL IF FUTURE PRACTITIONERS ARE TO BE ABLE TO BE EFFECTIVE**

In one longitudinal study in Bendigo in rural Victoria, it was shown that, because of an MDP (called Health Justice Partnerships (HJPs) as they situate a community lawyer in a health and allied health setting) clients' knowledge and confidence in engaging with the HJP increased by 90.9 per cent. Of the clients interviewed, 91 per cent indicated that they would not have seen a lawyer with their legal problem/s if they had not been connected to the community lawyer through the health or allied health worker from the HJP (Curran, 2016; Curran et al, 2016).

Prior to HJPs, 40 per cent of clients interviewed were deterred from seeking legal help due to poor experiences with lawyers or the legal system. Clients who have multiple and complex problems reported that they were previously anxious and frightened, as they did not know their rights. This impacted on their Social Determinant of Health ('SDH'). The intervention of the Bendigo HJP is reported as having a positive impact on clients' SDH and offering 'hope', as they now have someone to negotiate on their behalf, who knows their legal position. This allows clients to 'know where they stand'.

There were also positive responses from health staff. Levels of trust between health professionals and patients, responsiveness, and engagement all increased by 87.5 per cent. Clients in HJPs are getting 'better help' and there is a 'positive impact': for example, no drug relapse, reduced stress, and reductions in suicidal ideation have been reported. Such reports are consistent with findings in the United States on the impact of HJPs (Lawton and Sandel, 2014; Pettignano, Bliss and Caley, 2014; Roberts and Currie, 2012; Lawton and Tobin-Tyler, 2013). There are few peer reviewed or evaluation reports on the impact of LSC, a gap which I seek to address. For this reason, I have included it in my measurements to gauge its impact and have written elsewhere about it in more detail (Curran, 2017 forthcoming).

The Bendigo quantitative data (Curran, 2016) on LSC revealed:  
Health/allied health professional participants 81.9 per cent strongly agree and 18.2 per cent agree there is 'huge value' to them in LSC (100 per cent positive view on its value) (Curran, 2016).

An extract from the qualitative data highlights numerous data revealing the benefits of LSC:

*Secondary consults and an open door attitude helps me make effective referrals. If I'm unsure about a particular referral I ask [Lawyer] if referral is appropriate etc. – [Lawyer] then does a conflict check. Open door is important as I already have a relationship with the client. When I refer to [Lawyer], the client feels confident that I'm referring to a lawyer of the service. Our clients already have lots of barriers to seeking assistance. Clients come here for many different reasons.'* (Interview with nurse, Curran, 2016)

Although a small project, the Bendigo study revealed data from the longitudinal study over three years showing that LSC can break down poor stereotypes of lawyers and build professional trust. Once non-legal professionals found that trust they were more ready to refer their vulnerable clients thus enabling the lawyers in the HJP to reach clients who would otherwise not seek legal help (estimated to be 86 per cent of vulnerable and disadvantaged clients in the Australia-wide Law Survey, Coumarelos et al, 2012).

The data extracted from surveys and interviews with clients and non-legal and legal professionals revealed that LSC's were often used by non-lawyers to test out whether the lawyer was approachable and understanding and, if this was the case, they would then be prepared to refer their vulnerable client as they felt they had a duty of care. 41 per cent of clients and 75 per cent of non-legal professionals reported they had poor previous experiences of lawyers and/or the legal system prior to their contact with the HJP. This is consistent with the findings of Sandefur (2014) in the United States.

The Bendigo participants noted that were it not for the intervention of the HJP they would not have referred/or sought help for the legal problem/s at hand. LSC's were a critical way of breaking down silos, building trust and reaching clients. At times clients/patients were not ready to see the lawyer due to being overwhelmed or reticent and so the non-legal professional could use the LSC to assist the client/patient in such circumstances. Staff also noted that having the LSC at hand meant that they felt their decision making improved and that they felt more confident to assist clients in navigating the legal system. They also reported that not only did the clients' stress/anxiety levels reduce from the HJP intervention but also noted their own stress levels were also improved though the knowledge that they could easily ask a lawyer for quick and timely help.

In a further Australian study in 2016, the Consumer Action Law Centre (CALC) conducted an online survey and focus group with non-lawyers using their 'worker support line' for LSC. These responses indicated the value of CALC's LSC, its reach and importance in reaching clients who might otherwise not find their way to a lawyer through traditional means but gain legal help through either building capacity of the non-legal professional LSC or through a referral following it. The data so far also suggests that an LSC goes beyond one client and is used to assist other clients, thus extending the reach of CALC (Willcox, Williams and Curran, 2016). My other recent studies are measuring the extended reach to clients downstream of LSC.

In a further report by the Victorian Legal Services Board (LSB) and Commissioner (Curran et al, 2016) the following commonalities were found amongst the eight LSB-funded HJPs:

- HJPs do not work effectively unless they are designed and have input from all those who deliver the services and also have a client/patient perspective on what the barriers are and how to engage.
- HJPs take time and relationships of trust can be fragile.
- Common language between professionals that is clear and transparent is essential, professional roles need to be worked through and understood especially different ethical codes.
- Processes to maintain confidentiality, such as issues around information technology, need to be established but difficulties can be overcome through good communication and collaborative practice among the different professions.

This last point has also been noted in other studies on HJPs and the ability for professional differences that inhibit communication and create barriers to seamless service delivery and holistic client care to be overcome. The different professionals tend to focus on case managing the client and the outcomes to be achieved rather than their professional differences and find 'work arounds' to enable the problem at hand to be resolved (Curran, 2017 forthcoming; Gyorki, 2013; Noble, 2012; Tobin-Tyler, 2008).

#### **WHY THERE IS A NEED FOR SUCH AN APPROACH TO BREAK DOWN BARRIERS BETWEEN PROFESSIONALS TO IMPROVE SOCIAL JUSTICE AND HEALTH OUTCOMES**

New approaches to lawyering and health services provision are needed that work across silos to enable more seamless navigable service options for real-life clients. This cannot be assumed to be automatic on becoming a practitioner but rather ought to be examined earlier and throughout legal education. This will better prepare future practitioners as well as enabling an improved understanding of professional roles and preventing professional stereotypes from developing that can impede understanding and collaborative skills ought to be developed. Such legal education can include:

- teach early on before professional divides emerge and professional cultures become engrained
- learn about different professional roles and how they can complement each other
- share what is effective, and
- develop skills in working together.

Good client interviewing, triage, and peer-to-peer learning are skills that different professional disciplines can share even though their roles may differ. Developing and exploring and extracting good practice from across the health, social and legal spheres can enhance student growth and skills, and help break down professional stereotypes and professional cultural barriers early and would also see clinical supervisors and academics from different disciplines working together in course design and supervision, thus breaking down some of the university barriers discussed earlier (St Joan, 2001).

### **THE IMPETUS FOR INTERDISCIPLINARY LEARNING AND INTERDISCIPLINARY STUDENT CLINICS (IDSCs)**

This evidence-based research highlights how professionals who work together across different disciplines can enhance connections, referral pathways, access to legal advice and information and can extend trust and relationships which facilitate referral and engagement. There are now compelling empirical reasons for getting students earlier in their careers, and before they get set in their ways, to think about how other professionals have different things to offer and that collaboration is appropriate in many situations, and to encourage them to think laterally and holistically about their clients, mindful of different roles and expertise, and better aware of them.

I believe that earlier education, as would-be practitioners study at university might lead to better understandings and improved practice. IDSC and increased interdisciplinary learning opportunities could start in initial years of undergraduate university or the Juris Doctor (or JD) with joint learning opportunities in ethics, interviewing, triage, advocacy (in the broadest sense including with decision-makers in matters of housing, social support and so on, not just representation in court), multiple problem identification and context of clients. In later years, having developed these joint learning skills in the earlier years of their degree, law and health or welfare students, as they advance, could move onto to an IDSC, later in their degrees with offerings of advanced clinical opportunities in and advice service offering health and legal advice in community and health services to people that the research shows do not access services through traditional means. At the joint advice clinics, students (under joint clinical law and health supervision) would also be offering joint advice to professionals and client/patients, from different fields with student practitioners. A greater focus on communication and interpersonal skills would improve legal education too, as it is largely taught by case law and statute with minimal actual client-centred and problem solving practice that other professionals are exposed to in the undergraduate training (Enos and Kanter, 2002). In my experience, based on reflective practice in teaching junior graduate lawyers and in supervising and mentoring them in early years of practice, it comes as a shock to many law graduates when they are faced with their first client interview and realise that real-life clients do not fit within tight legal categories and that clients can be stressed, ill-informed and have multiple and complex issues.

The IDSC could also provide community education across legal and health fields conducted by the students jointly, community development and professional development for professionals about problem identification, LSC and possible holistic solutions where students work on research and policy projects jointly incorporating health, justice and social work paradigms, working on system projects emerging from the clinical advice giving and multidisciplinary discussions. This student work might also feed into student and academic clinical health and social research incorporating, but not dominated by, justice issues and intersecting with health, justice and social contexts and the broader causes and solutions would emerge.

There is a need for such an approach that goes beyond a law student clinic. My dream is to see an interdisciplinary clinic for different fields of professional training at graduate and

undergraduate level to break down barriers between professionals to improve social justice and health outcomes. In this model, mindful of professional ethical boundaries and under ID supervision, students of different fields would learn to work collaboratively to deliver holistic client care and reach those currently excluded and learn through working with different disciplines different and more efficient and effective ways of assisting clients that break down existing silos that have developed over time by professionals having little exposure to different ways of working (Tobin-Tyler, 2008).

Reflection on my practical experience as a clinical legal education supervising solicitor within a health service has led to the idea for the development of IDSC/multidisciplinary student clinic as an important way of building better and more responsive future practitioners in health, law and allied health disciplines.

### **A NEW CLINIC?**

I delivered a workshop in August 2016 at Portsmouth University in the United Kingdom on Multidisciplinary service practice and my research and findings on HJP. Emerging from this workshop, discussion participants decided to initiate a student/clinician and academic IDSC at Portsmouth University. I have been appointed advisor (pro bono) on the establishment of this IDSC and on its evaluation. We are working together on such a model as a pilot, initially with the schools of law and nursing, but with expressed interest into the future of schools of pharmacy, dentistry and social work at Portsmouth University. A joint further collaborative conference paper and journal article on this pilot is in progress.

It is hoped this pilot IDSC will develop and explore taking good practice from across the health, social and legal spheres to enhance student growth and skills. The upcoming papers will also discuss how interdisciplinary learning and advice clinics in university courses can occur with respect for differing ethical boundaries and duties through clarity, effective communication and transparency and can enhance student ethical awareness. The development of an IDSC will be an important way of building better and more responsive future practitioners in health, law and allied health disciplines.

Clinical supervisors can work across professional boundaries facilitating student learning so they can do the same with IDSC, as well as fostering 'peer-to-peer learning'.

The assessment framework for the IDSC will utilise my previous experience as a clinical supervisor and include students working together on community and professional development and separately on a joint project which will emerge out of their course experience and a 'guided reflective professional journal' which will be graded against key assessment criteria set by the supervisors and teachers liaising on key skills and attributes required from different disciplines. These criteria will be made available to students in a clear and transparent way. In addition, teaching pedagogy for different disciplines will also inform the development of course and curriculum to enable learning using the best from different disciplines.

Engaging students earlier in their careers in interdisciplinary practice before they get set in their ways and exposing them to thinking about how other professionals have different

things to offer and that collaboration is appropriate in many situations. Encouraging them to think laterally and holistically about their clients and be mindful of different roles and expertise, engage in reflective practice as an integrated part of their learning and providing research and policy opportunities will also help to make them better aware of barriers to access to justice.

My work as a former director of a human rights agency and leader in an advocacy team of a humanitarian agency with work in Asia, India and Africa, identified a shortage of legal assistance services. There might also be a role for IDSC and MDP services in these countries too, situating them in the existing services, for example, in maternal and child health clinics in remote villages. Hopefully the empirical research and this article will inspire other start-ups on IDSC elsewhere.

## REFERENCES

- Allen Consulting Group (2014) Review for the Commonwealth Attorney General's Department, Available at <http://www.acilallen.com.au/projects/23/justice/126/review-of-the-national-partnership-agreement-on-legal-assistance-services/> (accessed 17 February 2017).
- Australian Broadcasting Corporation (2014) Mobile phone debt a big problem for young Australians', 7.30 Report [transcript], 28 January. Available at <http://www.abc.net.au/7.30/content/2004/s1033543.htm> (accessed 29 May 2017).
- Australian Productivity Commission (2014) Full Final Report (Vol 1 and 2) on Access to Justice Arrangements. Available at <http://www.pc.gov.au/inquiries/completed/access-justice/report> (accessed 17 February 2017).
- Bliss, L., Caley, S. and Pettignano, R.A. (2012) A model for interdisciplinary clinical education: medical and legal professionals learning and working together to promote public health, *International Journal of Clinical Legal Education*, 18: 149–164; Georgia State University College of Law, Legal Studies Research Paper No. 2013-03. Available at <https://ssrn.com/abstract=2208076>
- Buck, A. and Curran, L. (2009) Delivery of advice to marginalised and vulnerable groups: the need for innovative approaches, *Public Space: The Journal of Law and Social Justice*, 3: 1–29.
- Buck, A., Smith, M., Sidaway, J. and Scanlan, L. (2010) Piecing it together: exploring one-stop-shop legal service delivery in community legal advice centres, Legal Services Commission, London.
- Buck, A., Tam, T. and Fisher, C. (2007) Putting money advice where the need is: evaluating the potential for advice provision in different outreach locations, Legal Services Research Centre, London, 30–43.
- Burchardt, T., Le Grand, J. and Piachaud, D. (2002) Degrees of exclusion: developing a dynamic, multidimensional measure. In Hills, J., Le Grand, J. and Piachaud, D. (eds), *Understanding social exclusion*, Oxford University Press, Oxford.
- Castles, M. (2008) Possibilities for MD collaboration in clinical practice: practical ethical implications for lawyers and clients, *Monash Law Review*, 34(1).
- Clarke, S. and Forell, S. (2007) Pathways to justice: the role of non-legal services, Justice issues paper, no. 1, Law and Justice Foundation of NSW, Sydney.
- Coumarelos, C., Maccourt, D., People, J., McDonald, H. M., Wei, Z., Iriana, R. and Ramsey, S. (2012) Legal Australia-wide survey: legal need in Australia (Access to justice and legal needs, vol. 7), Law and Justice Foundation of NSW, Sydney. Available at [http://www.lawfoundation.net.au/ljf/site/templates/LAW\\_AUS/\\$file/LAW\\_Survey\\_Australia.pdf](http://www.lawfoundation.net.au/ljf/site/templates/LAW_AUS/$file/LAW_Survey_Australia.pdf) (accessed 30 August 2017).



- Curran, L. (2004) Innovations in an Australian Clinical Legal Education Program: students making a difference in generating positive change, *International Journal of Clinical Legal Education*, December, 162–177. Available at <https://openresearch-repository.anu.edu.au/bitstream/1885/16796/1/Curran%20Innovations%20in%20an%20Australian%20Clinical%20Legal%20Education%20Program%202004.pdf> (accessed 16 April 2017).
- Curran, L. (2004) Responsive law reform initiatives by students on clinical placement at La Trobe Law, *The Flinders Journal of Law Reform*, 7(2): 287–301.
- Curran, L. (2005) Making connections: the benefits of working holistically to resolve people's legal problems, *Murdoch University Electronic Journal of Law*, 12.
- Curran, L. (2008) University law clinics and their value in undertaking client-centred law reform to provide a voice for clients' experiences, *International Journal of Clinical Legal Education*, December: 105–129.
- Curran, L. (2008) Relieving some of the legal burdens on clients: Legal Aid services working alongside psychologists and other health and social service professionals', *Australian Community Psychologist*, 20(1): 47–56.
- Curran, L. (2015) Final evaluation report for the Legal Services Board Victoria - 'Why Didn't You Ask?' - evaluation of the Family Violence Project of the Loddon Campaspe Community Legal Centre April 16. Available at <http://ssrn.com/abstract=2631378> (accessed 29 August 2017).
- Curran, L. (2016) Draft working paper for a research and evaluation report for the Bendigo Health–Justice Partnership: a partnership between ARC Justice Ltd and Bendigo Community Health Services, December. Available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2887846](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2887846) (accessed 7 February 2017).
- Curran, L. (2017) *Multidisciplinary practice Health Justice Partnerships: working ethically to ensure reach to the most in need*, 26 *Nottingham Law Journal*.
- Curran, L. (2017) Lawyer secondary consultations: improving access to justice: reaching clients otherwise excluded through professional support in a multidisciplinary practice, 8 (1) *Journal of Social Inclusion*, <https://josi.journals.griffith.edu.au/index.php/inclusion/article/view/817> (accessed 4 October 2017)
- Curran, L., Ball, S., Wong, C and Victorian Legal Service Board (LSB) (2016) Health Justice Partnerships for LSB, Health Justice Partnerships Development Report. Available at [http://www.lsbc.vic.gov.au/documents/Report-Health Justice Partnership Development-2016.PDF](http://www.lsbc.vic.gov.au/documents/Report-Health%20Justice%20Partnership%20Development-2016.PDF) (accessed 7 February 2017).

- Curran, L, Dickson, J and Noone, M.A. (2005) Pushing the boundaries or preserving the status quo? Designing clinical programs to teach law students a deep understanding of ethical practice, *International Journal of Clinical Legal Education*, December: 104–122.
- Curran, L., and Foley, T. (2014) Integrating two measures of quality practice into clinical and practical legal education assessment: good client interviewing and effective community legal education, *International Journal of Clinical Legal Education*, 21(1): 69–92.
- Enos, V.P. and Kanter, L.H. (2002) Who's listening? Introducing students to client-centered, client-empowering, and multidisciplinary problem-solving in a clinical setting, *Clinical Law Review*, 9(1): 83–133.
- Genn, H. (1999) *Paths to justice: what people do and think about going to law*, Hart Publishing, Oxford.
- Gyorki, L. (2013) Breaking down the silos: overcoming the practical and ethical barriers of integrating legal assistance into a healthcare setting, Inner Melbourne Community Legal Centre and The Churchill Trust Fellowship. Available at [https://www.churchilltrust.com.au/media/fellows/Breaking\\_down\\_the\\_silos\\_L\\_Gyorki\\_2013.pdf](https://www.churchilltrust.com.au/media/fellows/Breaking_down_the_silos_L_Gyorki_2013.pdf) (accessed 17 February 2017).
- Harris, M.F., Advocat, J., Crabtree, B.F., Levesque, J-F., Miller, W.L., Gunn, J.M., Hogg, W., Scott, C.M., Chase, S.M., Halma, L. and Russell, G.M.(2016) Interprofessional teamwork innovations for primary health care practices and practitioners: evidence from a comparison of reform in three countries, *Journal of Multidisciplinary Healthcare*, 9: 35–46.
- Hyams, R. and Gertner, F (2014) Multidisciplinary clinics: broadening the outlook of clinical learning, *International Journal of Clinical Legal Education*, 17: 23–36.
- Lawton, E.M. and Sandel, M. (2014) Medical-Legal partnerships: collaborating to transform healthcare for vulnerable patients – a symposium introduction and overview, *The Journal of Legal Medicine*, 35(1): 1–6.
- Lawton, E. and Tobin-Tyler, E. (2013) Optimizing the health impacts of civil Legal Aid interventions: the public health framework of medical-legal partnerships, *Rhode Island Medical Journal*, 96(7): 22–26.
- Leering, M. (2014) Conceptualizing reflective practice for legal professionals, *Journal of Law and Social Policy* 23: 83–106. Available at <http://digitalcommons.osgoode.yorku.ca/ilsp/vol23/iss1/5> (accessed 14 April 2017).
- Maharg, P. (2007) *Transforming legal education: learning and teaching the law in the early twenty-first century*, Ashgate Publishing, Aldershot, Chapter 2, 47–65.

- Mulherin, G. and Coumarelos, C. (2007) Access to justice and disadvantaged communities. In Pleasence, P., Buck, A. and Balmer, N. (eds), *Transforming lives: law and social process*, Stationery Office, Norwich, 9–44.
- Nancarrow, S. A., Booth, A., Ariss, S., Smith, T., Enderby, P. and Roots, A. (2013). Ten principles of good interdisciplinary team work. *Human Resources for Health*, 11, 19.
- Noble, P. (2012) *Advocacy-Health Alliances - Better Health through Medical-Legal Partnership*, Loddon Campaspe Community Legal Centre & The Clayton Utz Foundation, p. 22. Available at [https://advocacyhealthalliances.files.wordpress.com/2012/08/aha-report\\_general1.pdf](https://advocacyhealthalliances.files.wordpress.com/2012/08/aha-report_general1.pdf) (accessed 26 May 2016).
- Noone, M.A. (2009) Towards an integrated service response to the link between legal and health issues, *Journal of Primary Health*, 15: 203–2011.
- Noone, M.A. (2012) Integrated legal services: lessons from West Heidelberg CLS, *Alternative Law Journal*, 3(1): 26.
- Noone, M.A. and Digney, K., (2010). 'It's Hard to Open up to Strangers' – Improving Access to Justice: The Key Features of an Integrated Legal Services Delivery Model, Research Report, La Trobe University Rights and Justice Program. Available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1799648](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1799648) (accessed 28 August 2017)
- Pettignano, R., Bliss, L. and Caley, S. (2014) The health law partnership: a medical-legal partnership strategically designed to provide a coordinated approach to public health legal services, education, advocacy, evaluation, research, and scholarship, *Journal of Legal Medicine*, 35(1).
- Pleasence, P., Coumarelos, C., Forell, S., McDonald, H.M. and Mulherin, G. (2014) Reshaping legal assistance services: building on the evidence base, Law and Justice Foundation of NSW, Sydney. Available at <http://www.lawfoundation.net.au/ljf/app/&id=D76E53BB842CB7B1CA257D7B000D5173> (accessed 30 May 2017).
- Roberts, T. and Currie, J. (2012) PBLO at SickKids: A Phase II Evaluation of the Medical Legal Partnership between Pro Bono Law Ontario and SickKids Hospital Toronto, Final Report, Focus Consultants, Canada.
- Sandefur, R. (2014) Bridging the gap: rethinking outreach for greater access to justice, *University of Arkansas at Little Rock Law Review*, 37(4): 722–727.
- St Joan, J. (2001) Building bridges, building walls: collaboration between lawyers and social workers in a domestic violence clinic and issues of client confidentiality, *Clinical Law Review*, 7:403–467.
- Susskind, R.E. (2008) *The end of lawyers? rethinking the nature of legal services*, Oxford University Press, Oxford, pp. 99–146.

- Tobin-Tyler, E (2008) Allies not adversaries: teaching collaboration to the next generation of doctors and lawyers to address social inequality, *Journal of Health Care Law and Policy*, 11:249–294.
- Tobin-Tyler, E. (2012) Aligning Public Health, Health Care, Law and Policy: Medical-Legal Partnership as a Multilevel Response to the Social Determinants of Health *Journal of Health & Biomedical Law*, 8: 211–247.
- Trubek, L.G. and Farnham, J.J. (2000) Social justice collaboratives: multidisciplinary practices for people, *Clinical Law Review*, 7: 227.
- Victorian Royal Commission of Inquiry into Family Violence (2015). Available at <http://www.rcfv.com.au/Report-Recommendations> (accessed 29 August 2017).
- Willcox, T. Williams, J. and Curran, L. (2016) Evaluating Consumer Action's Worker Advice Service, June. Available at <https://ssrn.com/abstract=2835377> (accessed 17 February 2017).
- Xyrichis, A. and Ream, E. (2008) Teamwork: a concept analysis, *Journal of Advanced Nursing*, 61(2): 232–241.

## **TOWARDS EFFECTIVE LEGAL WRITING IN NIGERIA**

**Ekokoi Solomon, Lecturer in Law, University of Uyo, Nigeria, and  
Ph.D candidate at the University of Calabar, Nigeria**

### **ABSTRACT**

This article examines legal writing – an important module in legal training in law faculties of Nigerian universities, albeit the teaching of legal research and writing have not been accorded the high priority they deserve. It examines how to write an effective legal research report, with the general assumption that prior legal research has been effectively and methodologically conducted. It identifies the lack of teaching of legal research methods/methodology, especially at the undergraduate level, as a major impediment to effective legal academic writing in Nigeria. The article argues that the inadequacy in the teaching of legal research methods and methodology in the faculties of law of Nigerian universities, to a large extent, has negative impact on the aptitude and quality of legal writing by the country's legal academics, as well as judges, legal draftsmen and law advocates. The article puts forward three recommendations that are aimed at addressing the impediments to effective legal writing in Nigeria.

Keywords: Legal research, legal academic writing, legal education, Nigeria

### **1. INTRODUCTION**

Knowledge is usually equated with the power to excel. Thus, there is the need to acquire knowledge as a fundamental requirement of every enterprise. It is also essential that knowledge acquired should be adequately transferred and prudently applied for the sustenance and stability of any system. This underscores the need for quality research to enable the discovery of knowledge. Yet, for knowledge to be meaningful, it should not only be transferrable, it must be capable of being applied to find solutions to problems. Herein lies the efficacy, or the lack of it, of research. Legal knowledge is transferred and acquired through legal education – the education based on the principles, practices and theory of law which provides the knowledge necessary for the acquisition of specialised skills by aspiring lawyers, or the update of lawyers. There are two stages of legal education in Nigeria: (i) academic legal education and (ii) vocational or practical legal education. While the law faculties of Nigerian universities have the responsibility for the former, the Council of Legal Education, through the Nigerian Law School, is vested with the latter responsibility of training persons who wish to become members of the legal profession (Legal Education (Consolidation, etc) Act, 2004, ss. 1(2) and 5(b)). In recent years, the system of legal education in Nigeria has, rightly so, come under intense and constructive criticisms. These criticisms have been particularly directed at academic legal education (Ojukwu, 1998; Muhammad, 2015: 223-224), which is often criticised for its inefficient pedagogy, focusing more on pure theories of 'substantive law without the [sufficient] application of skills'

(Muhammad, 2015: 224), as well as the deficit in teaching and research facilities in the law faculties of Nigerian universities (Worika, 2004: 362). These factors, among others, have been identified as major reasons for the continuous decline in the standard of academic legal education in Nigeria (Ojukwu, 2015: 24-7, 33-4), including the dearth in research and quality research output.

Legal research and writing are important modules in the curriculum of academic legal education in Nigeria. Legal research involves the systematic investigation towards ascertaining the state of the law, and in the words of Vibhute and Anynalem (2009: 22), 'with a view to making advancement in the law'. Legal writing, on the other hand, comprises the methods of synthesising authorities or research resources to produce a research output or report (Garner, 2004: 913). Legal writing is the last stage in the legal research process, as any research endeavour is incomplete without the report (Vibhute and Anynalem, 2009: 49-60). This is where the knowledge acquired from the teaching of research methods and methodology is put to practical use. It is this stage of the legal research process that is the focus of this article. Legal research and legal writing are important skills especially required by members of the legal academy (law teachers and law students) to enable them, first and foremost, to find solutions to legal problems, as part of their professional/academic commitment (Vibhute and Anynalem, 2009: 40). Secondly, legal research and writing skills equip members of the legal academy with the requisite capacity to discharge their obligations to the society. The failure to acquire these skills make certain the fact that members of the legal academia will suffer serious disabilities in their professional/academic lives, 'for they will not be able to get some vital information that they [are] require[d] to have and of which they will not possess' (Arwa, 1998: 16). This is an unfortunate situation for any member of the legal academy to find herself, because among all the categories of legal researchers – legislators, judges, law advocates, and legal academics – who are involved in legal research and legal writing, legal academics have the greatest comparative aptitude and reasons for undertaking legal research and legal writing (Vibhute and Anynalem, 2009: 34-43). This is the case because in their professional endeavours, legislators, judges and law advocates write in law, whereas legal academics write about law in order to develop doctrines through the application of doctrinal and non-doctrinal legal research methods (Jovanović); to clarify the state of the law; to take a position on the state of the law; to provide alternatives where there is a conflict in the law; to make recommendations where there are gaps in the law; and to proffer solutions on how to improve the law (Vibhute and Anynalem, 2009: 97-8), in ways that will be beneficial to policy makers and the society at large.

Both language and structure are brought to bear when engaging in legal academic writing. Therefore, legal academic writers must have excellent grasp of the stylistic and mechanical aspects of legal writing, as well as the fundamentals of the English grammar and its usage. Legal academic writers must also be able to express ideas in a clear, organised, concise, and

logical manner, as any writing, according to Dernbach and Singleton (1981:91), 'that interferes with the communication of your thoughts, no matter how good it sounds, is wrong.' By the time law students in the law faculties of Nigerian universities are in their penultimate semester, they are considered to be almost ready for the award of the bachelor of laws (LL.B) degree. At this point, they are expected to know how to read and write 'in law'. And for this reason, they are required to undertake a mini-legal research project and produce research reports otherwise referred to as long essays. Postgraduate law students are required to undertake more comprehensive legal research and produce research reports in the form of dissertations/theses. The research reports are required to be written in English which is the official language in Nigeria (*Ojengbede v Esan* [2001] 18 N.W.L.R (pt. 746) 771, 790; *Lawson v Afani Construction Co. Ltd.* [2002] 2 N.W.L.R (pt. 752) 585).

Before writing the legal research report, law students are expected to have gone through the research planning and research implementation phases. The major challenges confronting many in the legal academy in Nigeria, especially law students, in relation to their chosen research, the research process, as well as how to write the research report, stem from the lack of critical/practical thinking and effective written communication skills (Worika, 2004: 353). One consolation is that these skills can be learned. A final year undergraduate law student who was supposed to be in the planning/implementation stage of her research once asked the present writer the following questions: What is the difference between the problem statement of a research and purpose of the study? Are they not one and the same thing? It is obvious that many law students are not able to write fairly good legal research reports. This problem is not only applicable to undergraduate students, as many postgraduate students have great difficulty preparing their research plans, as well as writing their dissertations/theses. This situation is troubling and continues to worsen to the extent that many law students now expect to graduate as a matter of course, whether or not they are able to carry out satisfactory legal research and write a research report. It should be noted that this problem is not limited to the Nigerian legal academy; it permeates every field of academic learning in Nigeria as effective research planning, implementation, and writing of research reports have been replaced with the despicable act of plagiarism (a practice referred to in Nigerian parlance as 'copy and paste'). Plagiarism is the, intentional and unintentional, use of other people's words or ideas without attributing the credit to them (Collins, 2010). It should also be emphasised that the issue of plagiarism is a major problem in tertiary institutions of learning in Nigeria.

The question might be asked: Why do many law students find their last year of studies in particular, and perhaps the first few years of their professional career as legal academics, so difficult in terms of satisfactorily discharging the requirement to engage in legal research and writing? The combination of the following three factors are, to a large extent, responsible. First, the educational foundation with which many Nigerian students come into the law faculties is flawed, especially in relation to the English grammar and writing skills.

Secondly, many law students are lazy and not willing to engage in serious academic legal research and legal writing (The Nation Newspaper, 2016: 17). Thirdly, law students are 'given insufficient guidance regarding how to demonstrate their knowledge of the law' through legal research and writing (Strong, 2014: 2). Who is responsible for providing this legal research guidance? It is the law faculties of Nigerian universities that should train and inculcate the skills of legal research and legal writing in the law students who will in the future become legislators, judges, law advocates and law teachers. However, it will be impossible to effectively transfer the requisite legal research and writing skills to law students, as long as Nigerian universities are unable to attract law teachers who are themselves, according to the Canadian Committee on Legal Research (1956: 1022-23):

Well trained, dedicated to work, and sufficiently relieved from drudgery to be free to think and write, and to [be able to] give individual attention to their students. This means that the teaching load must reasonably be low and the salary sufficiently high, to attract the best minds.

Otherwise, the inept cycle will continue unabated. Regrettably, the situation in Nigeria appears to be unencouraging and shows no immediate signs of improvement, as universities (mostly the public universities) lack adequate teaching and learning facilities because they are poorly funded (Ibijola, 2014; Onwudinjo, Nwosu and Ugwu, 2014), and seldom attract the best legal academics. To add to the problem, and make matters even worse, the universities are weighed down by nepotism and other corrupt practices in the staffing and administrative processes. It should be noted that corruption is a national phenomenon that continues to plague every facet of the Nigerian society with all the negative consequences for the country, and the education sector is not immune from it.

The underlying assumption of this article is that the law student/legal academic researcher has completed the first two stages in the research process, and is ready to move on to the next phase – writing the legal research report. This stage is as important as the planning and implementation of legal research itself, because it makes no sense to carry out research without making its findings known to the reading audience who may be interested in the research output. The undergraduate long essay is usually delineated into five chapters. In the case of the postgraduate dissertation or thesis, the number of chapters may vary according to the preference of the postgraduate school. This article is segmented into seven parts including this part being the first. Part 2 examines the structural layout of the research report. In part 3, the article explores how to cite sources – authorities which the researcher relies on in building or rejecting the theory or idea she has put forward – referred to in the research report. Part 4 examines the application of punctuation, ranges of years and foreign words used in the research report. In part 5, the article reflects on the use of quotations in the research report. Part 6 addresses the important issue of research ethics, and the article concludes and makes recommendations in part 7.



## 2. STRUCTURAL DESIGN OF THE RESEARCH REPORT

### 2.1 Preliminary Parts of the Research Report

The preliminaries of the research report are as follows:

*Title Page*

*Declaration*

*Certification*

*Acknowledgements*

**Abstract:** The abstract of a research report is the conceptual synopsis of the study. The abstract should capture the title of the research, objectives or purpose of the study, the research methodology, research findings, as well as recommendations of the study. It should be written in the active voice. Instructively, voice and language are important aspects of the research report. While there should be a mix of both the active and passive voices (it is advisable that the passive voice should be more dominant), it is important to ensure clarity in the language of the report. Therefore, the language of the report should be simple, and verbose words should be avoided as much as possible. The abstract of a research report should not be unnecessarily long. The abstract should not be more than two hundred and fifty words for a long essay, and not more than three hundred words for a dissertation/thesis. It should be written in a single block format without paragraphs, and must be written after the research has been concluded even though it appears in the preliminary part of the research report. The researcher is not required to refer to sources in the abstract, hence, there is no need for citations (footnotes).

Table of Contents

List of Tables (if any)

List of Charts (if any)

Table of Statutes

List of Treaties (if any)

Table of Cases

Abbreviations

### 2.2 Main Parts of the Research Report

The main text of the report should contain the following:

#### **The Introductory Chapter**

**Background of the Study:** The background of the study introduces the research. It entails the laying of the necessary foundation for the research. It sets out the facts in relation to the state of affairs on the subject of study. It helps situate the research problem within the context of the study. Therefore, the essence of the background of the study is to enable the research problem to be derived from it. Both the problem statement and the research

questions should logically flow from the background of the study. In academic legal research, the background of the study is a representation of the issues identified from extensive literature survey or assessment of the theory and/or practice of the law.

The background of the study lays the foundation for the research problem or problems. And since the statement of the research problem is required to be very direct to the point, it is necessary to clearly and extensively provide an analysis of the issues which give rise to the problem. Therefore, the area of concern of the research, as well as its justification should be stated in the background of the study. Also, all the information that will vividly highlight the research problem should be provided in this section, including why the researcher believes the problem is researchable.

**Statement of the Research Problem:** Research is a problem-centred endeavour. Therefore, the identification and formulation of the research problem(s) are considered to be the heart of the research, and constitute the 'why' of the study. The ability to identify and formulate robust and apt research problem or problems is central to the success of the research endeavour (Vibhute and Anynalem, 2009: 52-3). Equally important to any research are the assumptions which the researcher is expected to put forward in order to support the research problem or problems, as '[a]ssumptions are so basic that, without them, the research problem itself could not exist' (Leedy and Ormrod, 2010: 62). The writer is required to identify, in clear terms, the problem or problems which their research will find solutions to, as well as the knowledge gaps which the findings of her research will help fill. It is important to support the problem statement with previous research findings. The problem statement is different from the research questions, even though there is a nexus between the two, as will be seen below. Many legal researchers have difficulty in describing the research problem. This is because (i) they fail to focus on the problem, and (ii) they fail to allow the objectives of the study to determine their thinking and writing process. As a result, researchers often engage in writing 'jargon, which seems to obscure rather than explain what the research problem is.' (National Research Foundation cited in Bayat, 2008:47).

**Purpose/Objective of the Study:** The purpose or objective of legal research is to bring about change in the theory and/or practice of the law. The purpose of the study should describe what the research will add to the already existing body of knowledge in terms of new insights in the law, with the capacity to fill the gaps where they exist. The research may also seek to establish a new legal order, or body of laws where none existed. Therefore, the purpose of the study should specifically explain what the research seeks to bring forth, which is different from the status quo in the chosen subject of the law. The purpose of the study should be itemised or outlined, and the writer should demonstrate a linkage between the purpose of the study and the research questions. The purpose or objective of the study is what drives the research.

**Significance of the Study:** The significance of legal research, like the purpose or objective of the study, involves the ‘what’ of the research. Generally, the significance of research is determined by its relevance to society – in providing solution to problems. This is also true for legal research. The benefits and implications of the chosen legal research should be clearly stated under the significance of the study. It, therefore, follows that if the problem that necessitated the research, in the first place, is significant, the implication of the research will equally be significant. For instance, where there is the problem of conflicting or divergent judgments by courts of equal jurisdiction on an issue, the significance of the study may lie in the solution which the research proffers in resolving the confusion and conflict that will arise in the course of implementation of the law. The significance may also lie in how to overcome the identified problems that are necessitated by badly designed legal and institutional frameworks. In a nutshell, the essence of this part of the research report is to state the importance of the chosen legal research (Steytler and de Visser, 2012: 2).

**Research Questions:** The research questions or assumptions are very important to legal research. They should be framed in a manner that will enable the issues or the research problem or problems to be squarely addressed. The issues or research problems are addressed in the main part of the research where the arguments are substantiated, by formulating sub-topics that will effectively capture and highlight the research problem or problems which is/are honed into one or more questions. In science-based research, the research questions are known as hypothesis. These are propositions, the validity of which are unknown to the researcher until proved or disproved by the research findings. In legal research, the research questions are akin to the issues which are raised in a legal brief for determination by the court. Research questions are the cardinal questions which the study seeks to find answers to. And since the researcher does not know, for certain, the outcome of the research, she is, however, expected to provide some general assumptions which will be confirmed or disproved in the substantiating chapters of the research. It is advisable to outline the important research questions or underlying assumptions. The research questions should be original, novel and unique to the study. Research questions are not required in all types of legal research. For example, where the research is an exploratory or declaratory legal research, there is no need for research questions as the problem statement will suffice in such a situation (Vibhute and Anynalem, 2009: 56). Most legal academics engage in exploratory legal research, and commonly make the mistake of raising research questions in the process.

**Scope and Limitations of the Study:** To effectively determine the scope of legal research, the researcher has to consider the delimitations of the study. The scope of the study involves the area or areas which the study will examine. It is the extent to which the research will go in relation to the stated research problems and questions. Those variables that limit the scope of the research are the delimitations of the study. The principle here may be likened to the preparation of a meal which is determined by the number of people

to be served, and which in turn determines the quantum of vegetables to be used (Simon, 2011: 2). The limitations of the study, on the other hand, are the constraints, challenges or shortcomings which confront the research/researcher. They are factors that are usually out of the researcher's control. The ability to recognise these limitations empowers the researcher, in a manner that enables her to adjust in the best way possible (Simon, 2011: 1). The constraints or challenges to research may be as a result of the nature of the research or the time allotted to it. The limitations which are likely to affect the research should be clearly stated so as not to negatively affect the outcome of the research (Simon, 2011: 2).

It may be argued that in writing the research report, the scope of the study should be separate from the limitations of the study. It should be noted that the structural design of the research report, to a large extent, depends on the requirements of the law faculty or the postgraduate school, as the case may be. However, both scope and limitations of the study may be merged into one heading, but discussed in separate paragraphs.

**Research Methodology:** The research methodology constitutes the 'how' of the research – how the research was carried out. It is the scientific manner by which the researcher conducted the research. It is the process used in the collection of data and gives rise to the research findings. The legal researcher must state, in concise terms, how the research data was collected. There are three basic methodologies in collecting legal research data, which fall into either the doctrinal or non-doctrinal legal research. They are interview, observation, and examination of existing primary and secondary sources. The second and third methodologies are mostly adopted in legal scholarship, although there is a growing movement which calls for contextual and interdisciplinary approach, and the application of social science and scientific research methodologies (Cownie, 2004: 72, 197; Emiri and Eimunjeze, 2012: 89-127; Emiri, 2016: 1-34). The type or nature of the research, as well as the area of research are factors that may determine the research methodology. Legal research is mainly library-based research and for this reason it is sometimes referred to as desktop research. This means that data will be drawn basically from primary and secondary sources, namely, legislation, case law, books, scholarly journal articles, internet resources, newsletters, and unpublished dissertations or theses which are easily accessible in the library.

It is important to note that research methodology is different from research method. Research method involves the approach adopted in putting together the research report. A researcher may adopt the analytical, comparative, descriptive, prescriptive or exploratory approach, or a combination of some of these approaches, in the writing of the legal research report.

**Definition of Terms/Concepts:** At this point, the definition of key terms or concepts in the context of the research are provided. The key terms or concepts to be defined or clarified

should not be too many. And they are to be defined in such a manner that will avoid ambiguity and enable the readers to understand how the term/concepts are applied in the research report.

**Literature Review:** It should be noted right away that in writing an advanced legal research report such as a dissertation/thesis for the master (LL.M)/doctoral (Ph.D) degree, it is recommended that the literature review should stand alone as a separate chapter – specifically in chapter two of the report. This will ensure a thorough review of related literature. At this stage, the researcher is required to review literature that are related to the research, drawing on key theories and concepts that relate, directly or indirectly, to the study at hand. The literature review should identify the areas of divergence of the current research with the existing literature. This is only possible when the researcher undertakes extensive reading and study of existing literature. By so doing, original arguments can be highlighted in the undertaken research, and the standard of the research contribution to knowledge can be properly measured. For a legal research that involves the assessment or evaluation of legislation, this is not the place to undertake review of legislation or pieces of legislation. Such analysis is to be done in succeeding chapter(s). Many students (both at the undergraduate and postgraduate levels) make the error of analysing legislation under the literature review. This is not correct as what is expected of the researcher is the review of scholarly works such as journal articles, books, conference papers and other secondary materials. The literature review ‘is not the place to describe the Constitution, legislation or court cases [as] the academic enterprise is about challenging accepted views and doctrines’ (Steytler and de Visser, 2012: 3), neither is it the place to establish new doctrines. Thus, Gall, Borg and Gall have, among other things, outlined the following as commonly made errors in the course of undertaking literature review:

the inability to clearly relate the findings of the reviewed literature to the  
researcher’s own study,  
failure to apply the best description and best sources in the review of literature  
related to the researcher’s topic,  
failure to critically examine all aspects of the research approach and analysis,  
analysing isolated findings rather than synthesised analysis, and  
failure to consider contrary findings and alternative findings contained in the  
literature (Gall, Borg, and Gall. 1996: 161-2).

The literature review may be segmented in sub-themes or written in chronological fashion, in a manner that allows the arguments to flow. It is not sufficient to merely survey other literature, as the researcher is expected to identify the areas of divergence between other studies and the present research, and the justification for carrying out the research. The literature review provides the reader with a roadmap or direction with which to navigate the report. The following key points must be reflected in a good literature review:

- it should be relevant,
- it should be important,
- it should be presented in a logical manner,
- the reviewed literature should be current,
- it should distinguish between premises from theory and research findings,
- it should distinguish between opinions and research findings,
- it should provide a critical analysis,
- it should be comprehensive and appropriate,
- it should facilitate coherence in the introduction and literature review, and use of logical transitions.

For the long essay, there is no need for a separate heading to deal with the theoretical framework of the research. This is subsumed in the literature review. However, in more advanced research, the theoretical framework should not be incorporated in the literature review. It should be placed in the introductory chapter, while the literature review should take the whole of the second chapter. The theoretical framework limits the extent of relevant data to be analysed, by focusing on specific subject areas and determining what the researcher will apply in the analysis and interpretation of the data which have been gathered in the course of the research. It is used to build new knowledge by either validating or challenging existing theoretical propositions. Its purpose is to understand the conceptual basis for the researcher's analysis and designing ways to investigate relationships within social systems (University of South Carolina, 2016). In order to have a clear theoretical framework, the researcher must review pertinent research studies for theories that are relevant to the research problem that is being investigated, and provide a thesis sentence that state the basic conclusion(s) of the research. While the thesis statement helps to guide the reader by letting him know where the writer is heading (Dernbach and Singleton, 1981:93), the identified theory should be capable of accomplishing the following:

- explain the research problem,
- provide a clear statement of theoretical assumptions,
- connect the research to existing knowledge,
- address questions of why and how,
- identify the limit to generalisations, and specify how the key subject areas apply to the central phenomenon of interest, and how these variables are different in certain circumstances (University of South Carolina, 2016).

### **The Substantiating Chapters**

The substantiating chapters are essential to the main part of the research report. For the long essay, three chapters make up the substantiating chapters – chapters two, three and four of the research report. A dissertation or thesis may contain as many as six, seven or more substantiating chapters depending on the issues or research questions. Since the bulk of the research report is devoted to substantiating the arguments, which are a direct function of the issues or research questions, it is important to divide the arguments into segments or chapters, in a manner that provide answers to the issues or research questions. It therefore means that the chapters are not to be done in a haphazard fashion, but in a manner that demonstrates purpose. This entails a logical flow of the arguments marshalled in the various chapters (Steytler and de Visser, 2012: 3).

### **The Concluding Chapter**

The concluding part of a legal research report should contain the summary, conclusion, and recommendations. This chapter is appropriately headed 'Summary, Conclusion, and Recommendations'. This chapter is further divided into three sub-sections as follows:

**Summary:** In the summary, the researcher should summarise the research problem or problems, the methodology adopted in implementing the research, as well as the substantiating chapters of the research. This provides an overview or general idea of the research to the readers.

**Conclusion:** Following the summary, the conclusion should recapitulate the main findings of the research, which either confirmed or rejected the research questions stated in the introductory chapter. It should be noted that where each substantiating chapter contains a concluding sub-section, this final conclusion should merely abridge the various conclusions in the substantiating chapters. The conclusion in the concluding chapter should also contain the implications of the various findings as they affect the state of the law or practice. The implications are obvious inferences which are drawn from the research findings, as well as unanswered issues which may remain unresolved by the research (Steytler and de Visser, 2012: 220).

**Recommendations:** The recommendations should contain the plausible future direction of the law, as well as research endeavours on the subject area. It should provide recommendations for action, specifically directed to, for example, the legislature, the courts, government agencies, civil society organisations, or other institutions.

## **2.3 The End Part of the Research Report**

### **Bibliography**

The end part of the research report contains the bibliography. In academic legal research reports, the bibliography is a chronological listing of all secondary materials referred to in the report. Each entry should begin with the author's surname, followed by initials and a

comma. If there are two or more sources by the same author, they should be arranged according to the first in time of publication. The subsequent bibliographical entry of an author whose work is immediately stated should be provided without the author's surname and initial(s), they are to be replaced with the double 'em-dash'. For example:

Nwabueze, B., *Constitutional Democracy in Africa Vol. 1: Structures, Powers and Organising Principles of Government*, 1st edn (Ibadan: Spectrum Books, 2003)

\_\_\_\_\_, *Constitutional Democracy in Africa Vol. 3: Structures, Powers and Organising Principles of Government*, 1st edn (Ibadan: Spectrum Books, 2003)

Note that in legal academic research reports, the primary sources are listed in the preliminary pages under the Table of Statutes, List of Treaties (if any), and Table of Cases in that order, and not under the bibliography. This means that only the secondary sources are listed under the bibliography. Just like the primary sources in the preliminary pages, the secondary sources in the bibliography are listed in the order of their importance, without the pinpoint (page number) and full stop. The bibliographical entries should be stated under headings. For example:

Books

Edited Books

Journal Articles

Command Papers

Conference/Workshop Papers

Newspaper Articles

Radio/Television Programmes

Unpublished Dissertations/Theses

Internet Resources

Interviews

### 3. CITATIONS

In the enterprise of legal academic writing, the writer is required to provide evidence for the claims made in the report by citing their sources in a consistent and familiar manner which enables the reader to identify the author's source and follow the argument (Meredith and Nolan, 2012: 1). There is no universally acceptable method of citation in legal writing. In jurisdictions such as Canada and South Africa, the footnote method, as prescribed and used by the *Canadian Guide to Uniform Legal Citation*, 2014 and the *South African Law Journal* respectively, is the mode of citation that is widely used. In the United States both the in-text and footnote methods are widely used (Columbia Law Review *et al*, 2015; University of Canberra Library & Academic Skills Program, 2010). In the United Kingdom, the Faculty of



Law, University of Oxford, for example, adopts a somewhat different citation style based on the footnote method for referencing of sources (University of Oxford, 2012).

In Nigeria, there appears to be no uniform style of referencing research materials when engaging in legal academic writing. However, the footnote method, as opposed to the in-text and endnote methods, is the mostly applied in citing sources in legal research reports. In doing so, references are made to both primary sources (statutes or legislation, cases) and secondary sources (books, journal articles, newspaper articles, websites, policy statements, etc) in the footnote rather than in the text or at the end of the report. In this regard, the method of citation in the *Oxford Standard Citation of Legal Authorities* (OSCOLA) appears to have been adopted (Nigerian Association of Law Teachers, 2016). This is opposed to the Harvard referencing system which requires the use of in-text citations otherwise known as the 'author-date style', which allows for the source of information to be stated in the text, for example, Nwabueze (2003: 42); Ebeku (2009). Therefore, when citing any source, either directly (as a quotation) or indirectly (by paraphrasing or referring to an idea in a source), it should be cited in a footnote. Each citation is represented by an Arabic numeral which is indicated immediately after the quotation or idea and referenced at bottom of the text.

A footnote must end with a full stop. When more than one citation is provided in a single footnote, they should be separated by semi-colons. Ensure that the footnote marker appears after the relevant punctuation in the text (if any), and normally at the end of a sentence. However, it may sometimes be necessary, for the purpose of clarity, to put the footnote after the word or phrase to which it relates. A separate footnote need not be provided for quotations from the text from which they are derived if they appear in the same sentence. If this is not the case, separate footnotes should be provided.

### 3.1 Citing Cases

When citing a case, the writer should include the name of the parties involved in the action in italics, the year the decision was handed down should be stated in square brackets, followed by specific information as to where the case was published, for example in a law report, and the page are also provided. The abbreviation of the court which gave the decision is also stated. If the case can be found in a data base or online other than in a law report, a neutral citation should be provided (Queens University Library, 2016). Foreign cases should be cited in the manner cited in the home jurisdiction (University of Oxford, 2012: 32). Where a case name is given in the text, it is not necessary to repeat it in the footnote. For example, assuming the following to be a passage in a text:

The basic structure doctrine was first applied in 1973 by the Indian Supreme Court in the case of *Kesavananda Bharati v State of Kerala*,<sup>1</sup> when the Court struck down an amendment to the Constitution by the Indian Parliament. The Court viewed that constitution amendment as an attempt to restrict property rights, asserting that the

Indian Constitution possesses a basic structure of constitutional principles which must not be destroyed by Parliament despite its wide powers under the Constitution.<sup>2</sup> As distilled from the law report, the Indian Supreme Court identified the following as forming the basic features of the Indian Constitution, namely, the supremacy of the Constitution, separation of powers between the legislature, executive and the judiciary, free and independent judiciary, republican and democratic form of government, parliamentary democracy, secular character of the Constitution, federal character of the Constitution, unity and integrity of the country, sovereignty of India, individual freedoms secured to the citizens, and the mandate to build a welfare state as contained in the Directive Principles of State Policy.<sup>3</sup>

Similarly, the basic structure constitutionalism has been alluded to by the Nigerian Supreme Court in the following cases of *Lakanmi & Ors v Attorney General (West) & Ors*, wherein it was held that the Nigerian government, as well as the Constitution are based and structured on the principle of separation of powers;<sup>4</sup> *Senator Abraham Adesanya v President of the Federal Republic of Nigeria & Anor.*, in which the Court held that in circumstances where the civil rights and obligations of citizens are affected, the courts can exercise its judicial powers with regard to an act of the legislature or executive;<sup>5</sup> *Attorney General of Bendel State v Attorney General of the Federation & 22 Ors.*, in which it was restated that by virtue of the provisions of the Nigerian Constitution, courts of law have the power and duty to ensure that there is no infraction in the course of the exercise of legislative powers, as contemplated or expressly set out in the Constitution, and that where such infraction exists, the courts are empowered to declare such legislative action as unconstitutional and invalid;<sup>6</sup> and that federalism is recognised as a general principle upon which the Nigerian Constitution is based.<sup>7</sup>

The footnotes for the above citations would appear as follows:

<sup>1</sup> [1973] 4 SCC 225 (SC).

<sup>2</sup> Ibid, 229.

<sup>3</sup> *Kesavananda* (n 1) 241-252.

<sup>4</sup> [1970] LPELR-SC.58/69 (SC).

<sup>5</sup> [1981] ANLR 1, 58, (SC) para. 5.

<sup>6</sup> [1981] ANLR 85, 133, (SC) para. 2.

<sup>7</sup> *Attorney General of Ogun State & Ors. v Attorney General of the Federation & Ors.* [1982] 3 NCLR 168, 179, 189, 194 & 201-202; *Attorney General of Bendel State v Attorney General of the Federation & Ors.* [1983] ANLR 208, 222 (SC) para. 4.

The numbers at the end of footnotes 2, 3, 5, 6 and 7 are called 'pinpoints'. They give the exact page and paragraph in which the idea or quotation can be found (University of Oxford, 2012: 19). It is also acceptable to include the full case reference in the footnote, where only

the idea or quotation was provided in the text, as depicted in footnote 7 in the example above.

### 3.2 Citing Statutes or Legislation

No footnote is required where all the information about a piece of legislation is provided in the text, as in the following sentence:

**The case of *Fawenhimi v Akilu* provided a restatement of the constitutional doctrine of incorporation of treaties as provided in section 12 of the Constitution of the Federal Republic 1999 (as amended).**

However, where the text does not include the name of the statute or legislation, or the relevant section, this information should be provided in a footnote. *For example:*

**In Nigeria, while civil and political rights have been accorded affirmative and justiceable recognition under the Constitution, socio-economic rights remain subject to non-justiceable directive principles which serve as policy guides for the government.<sup>1</sup>**

In representing the above idea in the footnote, it would appear as follows (if the legislation or statute is cited for the first time):

<sup>1</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended) Cap. C23 Laws of the Federation of Nigeria, 2004, s. 16(2)(d).

It is wrong to cite a Nigerian legislation or statute by referring to the year in which it was enacted or published, as there is a standard way of citing Nigerian legislation or statutes according to the chapters (which are arranged in alphabetical order) and edition in which the legislation is published. The current edition of the Laws of the Federation of Nigeria was published in 2004 and it should be cited as such. Many law students/legal academics often make the error of citing Nigerian statutes according to the year of enactment. If this is necessary at all, year of enactment should be placed in brackets after the proper citation has been provided. Foreign statutes or legislation should be cited as they are cited in their home jurisdictions. Another common error which is often made by law students/legal academics is to place the section(s) of the statute or legislation before the name of the statute. This is permissible in the text, but when citing the legislation in the footnote, the name of the statute should come before the section(s).

### 3.3 Citing Secondary Sources

If the writer makes reference to a secondary source, for example, a book, journal article, edited work, conference paper, workshop paper, command paper, newspaper article, internet resource, unpublished dissertation/thesis, radio/television programme or

interview, the writer should also provide a citation of the work in a footnote. If the initial(s) and surname or the forename and surname are preferred, they should be written in a consistent manner all through the report. Where the resource to be cited is authored by more than three persons, the forename or initials and the surname of the first author should be stated followed by *et al* (and others) (University of Oxford, 2012: 1). The book title should be written immediately after the name or names of the author or authors in italics, and followed by other publication information inside a pair of brackets. The page number (pinpoint) where the quotation or idea can be found should be provided after the closing bracket. Citing edited works and journal articles is slightly different from citing of books. In the case of edited materials, the title of the edited paper should be stated immediately after the name or names of the author or authors with inverted commas ' & ' used to enclose the title of the paper or article, followed by the word 'in' and the name or names of the editor or editors of the book. The remainder of the citation follows the pattern of citing a book source. For journal articles, the year of publication, volume and issue number, the name of the journal (in italics), the page where the article begins, and the specific page or pages where the quotation or idea can be found (pinpoint), in that order, should immediately follow the title of the article.

As a general rule, when citing secondary sources accessed in electronic form, the traditional citation should be provided for the particular type of secondary source being cited, whether it is a book, a journal article, a government document, or a newspaper. This should be followed by a comma, and the phrase 'available at' followed by the name of the Uniform Resource Locator (URL) or website address. The URL should not be underlined, but it should be enclosed with the signs < & > (Queens University Library, 2016). Finally, the date on which the material was accessed via the internet should be indicated at the end of the citation.

As earlier noted, there are many styles of citing sources. And because of the differences in the styles, there is the need to eliminate confusion. In view of this, some jurisdictions and institutions (including law faculties) have adopted specific citation styles for the citing of sources in legal academic writing. The differences are mainly noticeable in the citation of books and edited works. For example, the eight edition of the *Canadian Guide to Uniform Legal Citation*, 2014 (a.k.a *McGill Guide*) prescribes that the edition number (publication other than the first edition), place of publication, publisher, and year of publication should be provided in that order; the Harvard referencing style prescribes that the year of publication should be provided immediately after the name or names of the author or authors, and the place of publication should be stated after all other publication information have been provided; the OSCOLA style does not require the place of publication in the citation; and similarly the citation style widely prescribed for use in legal academic writing in South Africa does not require publication details to be stated, except for the year of publication. The examples provided below takes into consideration some of these

differences. What is important is for the researcher/writer to be consistent in the citation style she has elected to adopt.

Examples of how to cite secondary sources in footnotes:

### **Books**

NS Okogbule (2012) *Globalization and Human Rights in Africa* (Sibon Books Limited) p. 45.

Timothy Ojo, *The Nigerian Legislature: Its Origin, Organisation, Processes, Procedures, and Practices* (Lagos: ASCON Press, 1997) p. 44.

Ben Nwabueze, *Constitutional Democracy in Africa Vol. 1: Structures, Powers and Organising Principles of Government*, 1st edn, Ibadan: Spectrum Books, 2003, at 50.

M.D.A. Freeman, *Lloyd's Introduction to Jurisprudence* (8th edn, Thomson Reuters (Legal) Limited, London 2008) 48.

### **Edited Books**

Donald Kommers, 'Germany: Balancing Rights and Duties' in Jeffrey Goldsworthy, (ed), *Interpreting Constitutions: A Comparative Study* (New York: Oxford University Press, 2006) p. 163.

M. Loughlin, 'Reflections on the Idea of Public Law' in E. Christodoulidis and S. Tierney (eds), *Public Law and Politics: The Scope and Limits of Constitutionalism* (Hampshire: Ashgate Publishing Limited, 2008) 35.

R. Ako and N. Uddin, 'Good Governance and Resource Management in Africa' in F. N. Botchway (ed), *Natural Resource Investment and Africa's Development* (Edward Elgar Publishing Ltd., Cheltenham 2011) 37.

Kaniye S.A. Ebeku, 'Limited Applicability of Shari'ah under the Constitution of Nigeria' in Rainer Grote and Tilmann Röder (eds), *Constitutionalism in Islamic Countries: Between Upheaval and Continuity* (Oxford University Press, Inc., New York 2012) 89.

### **Journal Articles**

Nsongurua Udombana, 'Life, Dignity and the Pursuit of Happiness: Human Rights and Living Standards in Africa' (2008) 28(1) *The University of Tasmania Law Review* 47, 48-9.

Ekokoi Solomon, 'Sustainable Management of Nigeria's Oil Wealth: Legal Challenges and Future Directions' (2016) 7(2) *Journal of Sustainable Development Law and Policy* 135, 140.

E Solomon, 'Rediscovering the Essence of Federalism in Nigeria' (2016) 1 *Journal of International Law and Strategic Studies* 55, 63-6.

### **Command Papers**

The World Bank, 'Nigeria: Overview' (30 September 2015), available at <[www.worldbank.org/en/country/nigeria/overview](http://www.worldbank.org/en/country/nigeria/overview)> accessed 21 August 2016.

The National Conference, *Main Report* (August 2014) Abuja, 197.

Central Bank of Nigeria, 'Improving the Revenue Generating Capacity of the Three Tiers of Government' (31st December 1996) Annual Report, 22.

### **Working Papers**

L.N. Chete *et al*, 'Industrial Development and Growth in Nigeria: Lessons and Challenges' (2016) Learning to Compete, Working Paper No. 8, Nigerian Institute of Social and Economic Research (NISER), Ibadan, 1, available at <[www.brookings.edu/wp-content/uploads/2016/07/L2C\\_WP8\\_Chete-et-al-1-pdf](http://www.brookings.edu/wp-content/uploads/2016/07/L2C_WP8_Chete-et-al-1-pdf)> accessed 20 August 2016.

T. Baunsgaard *et al*, 'Fiscal Frameworks for Resource Rich, Developing Countries' (16 May 2012) IMF Staff Discussion Note, International Monetary Fund, 12.

J.O. Adesina, 'Social Policy and the Quest for Inclusive Development: Research Findings from Sub-Saharan Africa' (May 2007) Social Policy and Development Programme Paper No. 33, United Nations Research Institute for Social Development, 10.

C.U. Uche and O.C. Uche, 'Oil and the Politics of Revenue Allocation in Nigeria' (2004) African Studies Centre Working Paper No. 54, 7.

### **Conference/Workshop Papers**

S. Griffith-Jones and J. A. Ocampo, 'Sovereign Wealth Funds: A Developing Country Perspective' (February 2008) (paper presented at the workshop on Sovereign Wealth Funds, London, 8.

### **Newspaper Articles**

T. Odiadi, 'The Constitution and Sovereign Wealth Fund: Matters Arising' *The Guardian* (Lagos, 7 August 2012) p. 33.

Kingsley Moghalu, 'Do Economists Matter?' *This Day* (Lagos, 20 September 2016) 48.

### **Radio/Television Programmes**

*African Start-Up*, Television Broadcast, Interview with Muda Yusuf, Director General, Lagos Chamber of Commerce and Industry *CNN International* (Lagos, 14 May 2016).

### **Unpublished Dissertations/Theses**

Nsongurua Udombana, 'Shifting Institutional Paradigm to Advance Socio-economic Rights in Africa' (LL.D thesis, University of South Africa 2007) 41.

K. Ekwere, *Sustainable Development of Oil and Gas in the Niger Delta: Legal and Political Issues* (Ph. D dissertation, Law of the Sea and Maritime Law Institute, University of Hamburg 2009) p. 66.

### **Internet Resources**

Central Intelligence Agency, 'Nigeria – Economy' in *The World Factbook*, available at <[www.cia.gov/library/publications/the-world-factbook/geos/ni.html](http://www.cia.gov/library/publications/the-world-factbook/geos/ni.html)> accessed 22 January 2016.

BBC News, 'Nigerians Living in Poverty rise to 61 %' (13 February 2012), available at <[www.bbc.com/news/world-africa-17015873](http://www.bbc.com/news/world-africa-17015873)> accessed 24 March 2014.

The Nigerian Voice, 'Counting the Gains of the Amnesty Programme' (15 February 2012), available at <<http://www.thenigerianvoice.com/nvnews/82773/1/counting-the-gains-of-the-amnesty-programme.html>> accessed 17 July 2015.

## **3.4 Order of Sources in Footnotes**

When citing more than one source of the same kind for a single proposition, the sources should be listed in chronological order, beginning with the latest in time. Separate the citation with semi-colons, and do not use 'and' to separate the final citation with the others. Where one or more of the sources are more directly relevant than others in respect of the idea or proposition being put forward, the more relevant sources should be cited first, followed by the less relevant sources in a new sentence beginning with the phrase 'see also'. When both legislation and case law are relevant to the point being made, legislation should be cited before case law. Also, when citing secondary sources in respect of a particular idea or proposition, the secondary sources should be provided in order of their importance. Primary sources should always be provided before the secondary sources, except where it is a direct quote taken from a secondary source.

## **3.5 Subsequent Citation, Cross-references and Latin 'Gadgets'**

### **3.5.1 Subsequent citation**

In a subsequent citation of a material, the source should be briefly identified and a cross-citation provided in brackets to the footnote in which the full citation can be found. If the subsequent citation is in the footnote immediately following the full citation, use 'Ibid'

instead of repeating the citation. When citing a case which had previously been cited, it is sufficient to use a short form of the case name to identify the source. In the case of legislation, abbreviations or other short forms may be used. For secondary sources, subsequent citations require the use of only the surname of the author. However, where several works by the same author had been previously cited, the surname and title of the work should be provided to avoid confusion.

Examples of subsequent citation of a case (the ellipsis depicts the omission of previous footnotes):

Subsequent citation for *Dangana & Anor. v Usman & 4 Ors.* is provided in footnote 1 below:

<sup>1</sup> [2012] 2 SC (Pt. III) 103.

<sup>2</sup> Ibid, 130 (Adekeye, JSC).

...

<sup>5</sup> *Dangana* (n 1) 133.

Examples of subsequent citation of legislation:

The examples provided below show legislation or statutes for which a short form could be used in subsequent citations. The short form is indicated in brackets after the full citation. In such a case, the short form can be used without cross-referencing the full citation (but only if it will not confuse the reader). Always state the title of the legislation followed by other particulars before the section. Many legal academic writers make the error of beginning the citation with the section. This is wrong. The following are examples of subsequent citation of previously cited legislation:

<sup>6</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended) Cap. C23 Laws of the Federation of Nigeria 2004 (CFRN, 1999) s. 4.

...

<sup>8</sup> Interpretation Act Cap. I23 Laws of the Federation of Nigeria 2004 (Interpretation Act) s. 34.

<sup>9</sup> CFRN, 1999, s. 12(1).

<sup>10</sup> Interpretation Act, s. 2.

Examples of subsequent citations of a book:

The examples depict citations of a book which is first cited in full at footnote 11 and cited again in footnote 15 with a cross-citation to footnote 11, and a further citation at footnote 16.

<sup>11</sup> Inyang Ekwo, *Incorporated Trustees: Law and Practice in Nigeria* (LexisNexis, Durban



2007) 16.

...

<sup>15</sup> Ekwo (n 11) 113.

<sup>16</sup> Ibid, 115-16.

Examples of subsequent citation of two works by the same author:

In the following example, two different works by the same author are cited. The subsequent citation provides the author's surname and title of the work, or a short form of the title.

<sup>17</sup> John Asein, *Introduction to Nigerian Legal System* (Ababa Press Ltd., Surulere 2005) 55.

<sup>18</sup> John Asein, *Nigerian Copyright Law & Practice* (2nd edn, Books and Gavel Ltd., Abuja 2012) 130.

...

<sup>38</sup> Asein, *Nigerian Copyright Law & Practice* (n 18) 135.

...

<sup>40</sup> Asein, *Introduction to Nigerian Legal System* (n 17) 60.

### 3.5.2 Cross-references and Latin 'gadgets'

Cross-references direct the reader to points of substantive discussion elsewhere in the research report. However, the writer should avoid sending the reader off to another part of the text when a point could briefly and easily be restated. The writer should never make a cross-reference that will make it difficult for the reader to find. For example, by referencing as follows: 'see above', 'supra', 'infra', 'ante', 'id', 'op cit', 'loc cit', and 'contra' (University of Oxford, 2012: 7). These words are capable of confusing the reader, as they are archaic words and not widely understood. A good cross-reference should take the reader straight to the very place which is being referenced. For example: n 95, Ibid, 90, etc. The abbreviation 'n 95' (which should be placed in brackets) signifies cross-reference to footnote 95, while 'Ibid' is the short for *ibidem* which means 'in the same place'. When used alone, 'Ibid' means 'in the very same place', and when it is accompanied by Arabic numeral(s), it means 'in the same work, but this time at the page number stated. When citing a material after one or more citations have come in-between, it is acceptable to cite the material by the use of only the surname of the author followed by a reference to the first full citation and a pinpoint. The following are examples for cross references:

<sup>41</sup> B.O. Nwebueze, *A Constitutional History of Nigeria* (London: C. Hurst & Co. (Publishers) Ltd., 1982) p. 137.

<sup>42</sup> Ibid, p. 20.

...

<sup>49</sup> Nwabueze (n 41) pp. 138-9.

or

<sup>41</sup> BO Nwebueze, *A Constitutional History of Nigeria* (C. Hurst & Co. (Publishers) Ltd., London 1982) 137.

<sup>42</sup> Ibid, 20

...

<sup>49</sup> Nwabueze (n 41) 138-9.

#### **4. PUNCTUATION, RANGE OF YEARS AND FOREIGN WORDS**

##### **4.1 Punctuation**

Every citation in the footnote must end with a full stop. This is not the case with the bibliography. Commas should be used to separate items that may otherwise run together and cause confusion. Besides the use of appropriate punctuations in the footnote, punctuations are generally very important in legal academic writing. This is because a punctuation forms part of a sentence, and is used in construing the correct meaning of the sentence (Interpretation Act, Cap 123 Laws of the Federation of Nigeria, 2004, s. 3(1); *Shell-BP v Federal Board of Internal Revenue* (1976) 1 F.N.L.R. 200). Therefore, care must be taken to ensure that punctuations are correctly used where and when they are necessary.

##### **4.2 Range of Years**

Where the range of numbers indicate years, and the years span across centuries, the final year should be given in full. For example: 1848–1905, 1980–2015. Otherwise, it should be written in part. For example: 1970–81, 1975–85.

##### **4.3 Foreign Words**

Foreign words and phrases used in the text which are not commonly used or which have not become part of the English lexicon should be italicised. Words such as *ultra vires*, *stare decisis*, *obiter dicta*, *ratio decidendi*, *a priori*, and *a fortiori*, that are in common usage in legal English should not be italicised (University of Oxford, 2012) The writer should provide a translation of any foreign word and phrases immediately afterwards in brackets. If common abbreviations such as ‘i.e.’ and ‘e.g.’ (which mean ‘that is’ and ‘for example’) are used, their meaning should also be provided immediately afterwards.

#### **5. QUOTATIONS**

Even though quotations are important and sometimes necessary when writing the research report, they should be used sparingly (Vibhute and Anynalem, 2009: 218). When quoting from primary and secondary materials, the writer must be faithful to the original texts, except where it is necessary to change them. If it is necessary to make changes, it must be indicated by the use of square brackets to indicate that changes have been made to the original texts. When quoting directly from the text of a work which states, for example:

*The Court reasoned that, whereas, in the former scenario the legislature may fundamentally restructure a law to suit the political preference of the legislative body, in the case of the latter, the legislature could not restructure the constitution according to its whims and caprices, as such act would amount to changing the constitution in the exercise of its legislative powers rather than through the exercise of constituent powers.*

The writer may elect to make a direct quotation of the above statement, while also deciding to leave out certain words or phrases that may not be relevant to the point being made. For example:

‘The Court reasoned that ... the legislature may fundamentally restructure a law to suit the political preference of the legislative body ... [but noted that] the legislature could not restructure the constitution according to its whims and caprices’.

The square brackets are indications that changes have been made to the original text in the present quotation. The ‘ellipsis’ in the quotation indicates that some words in the original text are missing or have been dropped in the present quotation. The position of the closing inverted comma is important. Where it is placed before the full stop, it indicates that the writer has ended the quotation before the point where the original text ended. Where the closing inverted comma is placed after the full stop, it means that the quotation has ended at the same place where the original text ended with a full stop. The writer must ensure to incorporate quotations with maximum of forty words within the text, with open and close inverted commas (quotation marks) to mark off the beginning and the end of the quote. In cases where the quotation is more than 40 words, it should be indented, preferably, in a single line spacing format, without quotation marks, and must not be italicised. Either way, there should be a logical flow of idea or ideas between the rest of text and the quote.

## **6. ETHICS IN LEGAL ACADEMIC WRITING**

Ethics connote what is morally right and what is not. They relate to moral action and conduct. In the context of legal academic writing, ethics signifies what is professionally expected of a legal researcher/writer (Garner, 2004: 913). It is about conforming to standards of the legal academy which include acceptable best practices in legal academic writing. Ethics in legal academic writing, therefore, means the acceptable best practices required in the legal academic research process, which, of course, entails the observance of certain obligations which are placed upon the legal researcher/writer (Garner, 2004: 913).

As earlier noted, legal academic research may achieve the following objectives to wit: breaking new grounds in the law or its applicability, advancement of the law beyond its existing frontiers, and/or reemphasising, reasserting or restating the existing law. The utility of the third objective therefore lies in the justification or acceptance of an existing

conclusion in respect of theory or theories. It is important to note that certain characteristics are common to every authentic legal academic research report. They include:

Originality: Legal originality does not imply one hundred percent new research report. In legal academic research/writing, what is required is 'some original idea how law is to be understood or applied' (Seims, 2008:148) by adopting any or a combination of the micro-legal, macro-legal, scientific legal, or socio-legal method of legal research (Seims, 2008: 148-163). In writing a legal research report, it is permissible and required of a researcher/writer to consult existing literature on the subject matter of the research, as, according to the University of KwaZulu-Natal Library (2009:1), '[i]t is academic courtesy to acknowledge the work of others [since no one person] know[s] everything.' However, the sources (existing literature) consulted or referred to must be clearly cited. This is because, besides the need not to pass-off someone else's words, consulting previous research reports can help to stimulate new ideas and thus expand the frontiers of legal knowledge. It is also permissible to consult existing literature in order to give validity to the effort of the latter researcher/writer. However, the level of usage of previous materials must be within the limits which the law allows – this implies the fair use of the existing work (*Hubbard v Vasper* [1972] 2 Q.B. 84; *Ashdown v Telegraph Group Ltd.* [2002] Ch. 149; Asein, 2012: 250-63).

Usage of acceptable research methods: Every legal research must aspire to be acceptable to the legal academic community, as well as the society for which it seeks to provide solutions. And one way of realising this is by the usage of acceptable legal research methodology and methods in the legal research and writing processes.

Functionality to the legal community: Legal academics have the obligation of equipping law students with legal knowledge and preparing them to find answers to legal problems confronting society. More importantly, they have to pursue legal research which, as Seims (2008: 148) notes, goes 'beyond the mere solving of practical legal problems' to establishing broad legal doctrines that will be useful to the legal community – law advocates, judges, legislators and the legal academia (Seims, 2008: 163).

## **7. CONCLUDING REMARKS AND RECOMMENDATIONS**

The importance of legal academic research/writing and the role of law faculties of Nigerian universities in promoting these very important activities underscore the necessity for creating appropriate infrastructure for effective legal research and writing. The object of such an academic infrastructural framework should be to ensure that legal research studies are problem solving tools for the society. This can only be realised if legal research is properly conducted and documented in a methodological manner. Therefore, the imperative of effective and efficient legal research and writing cannot be overemphasised.

Accordingly, this article provides three recommendations that will encourage the development of legal academic research studies in Nigeria. The first relates to the need to treat legal research and writing with the measure of importance it deserves. From the analysis in previous parts of this article, it is obvious that the importance of legal academic research, as well as the effective documentation of the research output, cannot be overemphasised. Therefore, law faculties of Nigerian universities must begin to place greater emphasis on promoting and developing appropriate legal research/writing skills of law students, through the effective teaching of legal research and writing. This will, no doubt, produce positive impact in the nature and quality of legal research and long essays, dissertations and theses written by undergraduate and postgraduate law students in law faculties of Nigerian universities.

This article recommends that research methodology should be taught as a compulsory or required course both at the undergraduate and postgraduate levels. The law faculties should ensure that only academics who are competent and have the requisite skills/knowledge in legal research methodology/methods are assigned to teach the course. Importantly law students should be made to earn credits for the course. The current system whereby legal research/writing is incorporated into the legal method course module at the undergraduate level has not helped in the effective teaching and learning of academic legal writing, as the academic legal writing part of the course is simply glossed over due to the elaborate nature of the course. The result is the poor quality of law essays, dissertations and theses, as well as the unethical practices demonstrated by law students in relation to legal writing. This is because the skills that are required for effective academic legal writing go beyond the peripheral tutorials given to law students in the legal method course. They include, but are not limited to (i) a thorough grasp of grammatical and style conventions, (ii) exceptionally strong writing and legal citation skills, (iii) close attention to detail, (iv) logical reasoning skills, and (v) persuasive abilities (Harvard Law School, 2017).

The second recommendation speaks to the need for uniformity in the style of citation when undertaking legal academic writing in Nigeria. Even though there appears to be a standard legal research report design, and an accepted footnote method of referencing sources in Nigerian legal institutions, no uniformly acceptable citation style exists for citing of sources in the Nigerian legal academy. To this extent, this article recommends that a standard and comprehensive legal citation manual, which should adopt a uniform style of citing legal authorities in Nigeria, be developed through the collaborative efforts of the faculties of law of Nigerian universities, the Institute of Advanced Legal Studies and the Nigerian Law School. This manual will serve as a guide to legal academics writers and other legal scholars who engage in legal academic writing in Nigeria. This will discourage the practice of adopting different legal citation styles.

The third recommendation is in relation to tackling plagiarism. Plagiarism is a major problem in institutions of higher learning in Nigeria, and the law faculties are not immune from this problem. This problem should be taken more seriously in Nigeria by treating it as academic fraud which may constitute grounds for serious disciplinary sanctions including a fail grade in the long essay, dissertation or thesis and suspension or dismissal from the university (University of California Berkeley, 2012; Boston University, 2011:2,6). This requires adequate investment in technology to detect and prevent plagiarism, as well as deter students from engaging in the practice. Many faculties of law of Nigerian universities have increased the fight against cheating in examination or examination misconduct, however, very little is done to discourage students from engaging in plagiarism. The fight against plagiarism must begin at the stage of training law students in the law faculties, even as efforts to criminalise the practice are channelled into passing effective legislation. In addition, external examiners must, more than is currently the case, critically examine the final year long essay (research projects) during their assignment in a view to determining their relevance and academic worth (Osimiri *et al*, 2009: 65-81). Nevertheless, a more sustainable solution to the problem of plagiarism in Nigeria lies in the level of success recorded in the effective teaching of research methodology/methods in Nigerian universities (including the law faculties) – which takes us back to the first recommendation above.

## REFERENCES

### **Statute**

Interpretation Act, Cap I23 Laws of the Federation of Nigeria, 2004

Legal Education (Consolidation, etc) Act, Cap L10 Laws of the Federation of Nigeria 2004

### **Cases**

*Ashodown v Telegraph Group Ltd.* [2002] Ch. 149

*Hubbard v Vasper* [1972] 2 Q.B. 84

*Lawson v Afani Construction Co. Ltd.* [2002] 2 N.W.L.R (pt. 752) 585

*Ojengbede v Esan* [2001] 18 N.W.L.R (pt. 746) 771, 790

*Shell-BP v Federal Board of Internal Revenue* (1976) 1 F.N.L.R. 200

### **Books**

Asein, J (2012) *Nigerian Copyright Law & Practice*, 2nd edn, Abuja: Books and Gavel Ltd.

*Canadian Guide to Uniform Legal Citation* (2014) 8th edn, Toronto: Thomson Carswell

Cownie, F (2004) *Legal Academics: Culture and Identities*, Oxford and Portland: Hart Publishing

Dernbach, JC and Singleton II, RV (1981) *A Practical Guide to Legal Writing and Legal Method*, Littleton; Fred B. Rothman & Co.

Gall, MD, Borg, WR and Gall, JP (1996) *Educational Research: An Introduction*, 6th edn, Pearson

Garner, B (ed) (2004) *Black's Law Dictionary*, 8th edn, West Publishing Co.

Leedy, PD and Ormrod, JE (2010) *Practical Research: Planning and Design*, 9th edn, Harlow: Pearson

Columbia Law Review, Harvard Law Review, University of Pennsylvania Law Review, and Yale Law Review (2015) *The Bluebook: A Uniform System of Citation*, 20th edn, Claitors Pub Div.

Vibhute, K and Anynalem, F (2009) *Legal Research Methods: Teaching Materials*, Justice and Legal System Research Institute

### **Chapter in books**

Emiri, F and Eimunjeze, F (2012) 'Economics and the Problems of Jurisprudence' in Essien, E. (ed), *Law: All-Round Excellence*, Accra: Toplaw Publishments Ltd.

Meredith, S and Nolan, D (2012) 'Introduction' in *Oxford Standard for the Citation of Legal Authorities* 4th edn, Oxford: Faculty of Law, University of Oxford

Strong, SI (2014) 'An Introduction to Writing Law Essays and Exams' in Strong, SI *How to Write Law Essays and Exams* 4th edn, Oxford: Oxford University Press

Worika, IL (2004) 'Writing Research Papers, Dissertations and Thesis: From Choice of Topic to Final Work' in Nwosu, KN (ed) *Legal Practice Skills and Ethics in Nigeria*, DCON Consulting 362

### **Journal articles**

Arwa, JO (1998) 'Towards a Better Legal Education for the New Century: A Student's Perspective' 77, *Commonwealth Legal Education (Newsletter)* 16

Bayat, MS (2008) 'A Brief Taxonomy of Academic Research with Special Reference to the Research to the Proposal at the Cape Peninsula University of Technology of Technology (CPUT)' *Journal of Business and Management Dynamics* 45

Canadian Committee on Legal Research (1956) 34 *Canadian Bar Review* 999

Emiri, OF (2016) 'The Place of Economics in the Legal Academy and Law Faculty Curriculum' 9(1) *Nigerian Law Journal* 1

Randolph, J (2009) 'A Guide to Writing the Dissertation Literature Review' 14(13) *Practical Assessment, Research & Evaluation* 1

Ibijola, EY (2014) 'Accreditation Role of the National Universities Commission and the Quality of the Educational Inputs into Nigerian University System' 2(9) *Universal Journal of Educational Research* 684

Muhamm ad, I (2015) 'That this Profession May Not Die: The Need to Flush out Miscreants from the Nigerian Legal Profession' 5(1) *Journal of Sustainable Development Law and Policy* (Afe Babalola University) 219

Ojukwu, E (1998) 'Revisiting Legal Training in Nigeria: Wanted a Mandatory Continuing Legal Education Programme' 1 *Journal of Commercial Private and Property Law* 19

Onwudinjo, OT, Nwosu, CO and Ugwu, CI (2014) 'Accreditation Issues in Faculty of Law of Nigerian Universities: Imperatives for Law Libraries, Laws and Statutes' *Library Philosophy and Practice (e-journal)*, available at  
<<http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=3037&context=libphilprac>>  
1172

Osimiri, J, O'Sullivan, M, Okogbule, N and Okene, OVC (March 2009) 'External Examiners as Quality Assurance Mechanism in Legal Education' Volume 5 Number 1 *European Journal of Legal Education* 57

Seims, MM (2008) 'Legal Originality' 28 *Oxford Journal of Legal Studies* 147

### **Newspaper articles**

Collins, N (8 June 2010) 'New Plagiarism Penalties for Cheating Students' *The Telegraph*, London

*The Nation*, (20 September 2016) 'Bar Racket' Lagos



***Institutional/other sources***

Boston University (1 September 2011) *Boston University Academic Conduct Code*, available at <<http://www.bu.edu/academics/files/2011/08/AcademicConductCode.pdf>> and <<https://www.bu.edu/academics/policies/academic-conduct-code/>>

Harvard Law School (2017) 'Legal Writing' available at <<http://hls.harvard.edu/dept/opia/what-is-public-interest-law/public-interest-work-types/legal-writing/>>

Harvard University (2017) 'Harvard Guide to Using Sources' *Harvard Plagiarism Policy* Harvard College Writing Program, available at <<http://isites.harvard.edu/icb/icb.do?keyword=k70847&pageid=icb.page355322>>

Jovanović, M 'Legal Methodology & Legal Research and Writing: A Very Short Introduction' 1, available at <<http://pogestei.ius.bg.ac.rs/docs/Legal%20methodology%20and%20legal%20research%20and%20writing.pdf>>

Nigerian Association of Law Teachers (2016) *Uniform Citation Guide-Style of Referencing*

Queens University Library (3 October 2016) *Legal Citation*, available at <<http://guides.library.queensu.ca/legal-citation/cases>> and <<http://guides.library.queensu.ca/legal-citation/secondarysources-electronic>>

Simon, M (2011) 'Assumptions, Limitations and Delimitations', available at <<http://dissertationrecipes.com/wp-content/uploads/2011/04/AssumptionslimitationsdelimitationsX.pdf>> excerpt from Simon, M. K. *Dissertation and Scholarly Research: Recipes for Success* 2011 edn, Dissertation Success LLC

Steytler, N and de Visser, J (August 2012) 'Guidelines for Proposal and Dissertation Writing' University of the Western Cape

University of California Berkeley (January 2012) *Berkeley Campus Code of Student Conduct* s. V.102.01, available at <[http://sa.berkeley.edu/sites/default/files/UCB-Code-of-Conduct-new%20Jan2012\\_0.pdf](http://sa.berkeley.edu/sites/default/files/UCB-Code-of-Conduct-new%20Jan2012_0.pdf)>

University of Canberra Library & Academic Skills Program (2010) *A Guide to Referencing with Examples in the APA & Harvard Style*, 6th edn, University of Canberra Library available at <<http://www.canberra.edu.au/library/attachments/pdf/referencing-guide.pdf>>

University of KwaZulu-Natal Library (January 2009) 'Guide to Footnoting in Law', 1, available at <[http://library.ukzn.ac.za/pdfs/Law/Law\\_Guideto\\_footnoting.pdf](http://library.ukzn.ac.za/pdfs/Law/Law_Guideto_footnoting.pdf)>

University of Oxford (2012) 4th edn, *Oxford Standard Citation of Legal Authorities* (Faculty of Law, University of Oxford)

University of South Carolina (13 December 2016) 'Organizing Your Social Sciences Research Paper: Theoretical Framework' *Research Guides* available at <<http://libguides.usc.edu/writingguide/theoreticalframework>>

## **A TAP INTO THE RELATIONSHIP BETWEEN LAW AND ECONOMICS IN RESOLVING THE PROBLEMS ASSOCIATED WITH CATTLE GRAZING IN NIGERIA**

**Dr.J.O.Odion, Associate Professor & Ag. Head, Department of Business Law, University of  
Benin, Nigeria, [job.odion@uniben.edu](mailto:job.odion@uniben.edu)**

### **ABSTRACT**

The problems associated with cattle grazing by cattle farmers in Nigeria have become multi-furious and hydra headed. In recent times, there has been an upsurge in conflicts and strife between cattle grazers and owners of farmlands across the length and breadth of the country. These conflicts have led to the monumental loss of lives and properties and presently challenge the peace and unity that hitherto existed in the country. This essay proposes that these conflicts are avoidable or at least manageable through negotiated consensus between the affected parties. This we posit can be done on the basis of an exploitation of the emerging discipline in law now focused on the relationship between law and economics.

Key Words: Cattle, Grazing, Law, Economics and Dispute

### **INTRODUCTION**

The recurrent decimal of conflict between cattle farmers or rearers and farmers across the length and breadth of the country has become intractable (Aidaghese, 2016). There are documented incidents of conflicts and skirmishes between most farming communities in the country and the herders who assist these cattle farmers in grazing the flock. The usual scenario is that the cattle grazer in search of arable land filled with green field for the feeding of the cattle often wander into individual or communal farms with the attendant result of the destruction of the crops and other farm produce of the farmers. In most cases either the farmer challenges the cattle grazers and a confrontation results or the farmer in exasperation attacks and kills a cow in the flock. This is followed by well-planned and coordinated attacks by the cattle grazers in which people are killed and properties worth millions of naira are destroyed. In most cases as a result of such reprisal attacks, an entire village could be sacked or almost wiped out.<sup>1</sup>These attacks have taken place in virtually all the states in what is often described as Southern Nigeria made up of predominantly Christian communities. When this is juxtaposed with the fact that most of the cattle grazers in the country are of the Fulani extraction in Northern Nigeria, who are largely Muslims, then it is apparent that these skirmishes have the potential for precipitating inter-tribal, inter-religious as well as regional conflicts and possibly wars that could threaten the peace and tranquillity in the country and ultimately the sovereignty and corporate existence of all the nationalities and religions that make up the country.<sup>2</sup>

---

<sup>1</sup> The attack of Agatu Community in Benue State is perhaps one of the worst in recent times. The entire community consisting of more than three villages was wiped out by the invading cattle grazers. The next place of call was a community in Anambra State where a similar attack led to the loss of lives and millions of properties. The same sordid scenario of destruction was replicated at the Federal Polytechnic Ado-Ekiti where the institution's farmland was destroyed by the marauding herd of cattle(Vanguard, 2016).

<sup>2</sup>On the 8<sup>th</sup> of October 2015 Elders of the South-West Region in reaction to the kidnap of their foremost leader and politician, Chief Olu Falae, threatened to banish all Fulani herders from their communities. In reaction Alhaji

Incidentally, the tribal and religious coloration to this seeming economic conflict is not helped by the decades of mistrust and suspicion between these two sides of the divide which is largely influenced by regional or ethnic considerations. This mutual suspicion is even more now, given the fact that the current president of the country is from the Northern region of the country and is often perceived as sympathetic to these cattle grazers. In the same vein, there are rumors that the frequency and intensity of these attacks by the cattle grazers is influenced by the feeling and display of impunity by the cattle grazers, palpably because their “man” is at the helm of affairs in the country (Aidagheze 2016)

Strangely, very few have paused for a while to consider the fact that the cattle grazer and the farmer are both engaged in farming, the all-important sector that is now key to economic survival in view of the dwindling fortunes in the oil sector, the country’s mainstay). In the same vein, not many people realize that both parties are businessmen whose modus operandi is to invest in their separate genre of farming for the purposes of making a profit.

It is even more revealing that in the concerted attempts to resolve these conflicts and probably resolve the problem at hand, the approach of policy makers and the legislature in the country, both state and federal, has been to engineer policies or make laws that would make it possible for farm ranches to be established specifically for cattle grazing in the respective states.<sup>3</sup> Whereas some states in the North readily latched at the prospect of establishing these cattle ranches, most states in the South are antithetical to the idea.<sup>4</sup> This is even more disturbing in view of the fact that the policy of the federal government as epitomized by the Minister of Agriculture is to establish these ranches and import special green grasses to be cultivated for the purposes on establishing and sustaining these ranches.<sup>5</sup>

Therefore, consistent with government’s interventions through direct regulation through policy thrusts and law, the persuasive and negotiating powers of the affected parties, i.e., the cattle grazer and the farmer to come together and agree on the best way to do their business devoid of economic losses and the devastating effects of the resulting conflicts outlined earlier is often ignored.<sup>6</sup> As is often the case, the state subrogates itself to the

---

Rabiu Kwankwaso a former Governor of Kano State asked these leaders of the South-West to “shut up” See the (Punch, 2015).

<sup>3</sup>Some states of Northern Nigeria, e.g Niger and Kano States have commenced the process of acquiring large expanse of land in the state for cattle grazing purpose. There is presently the National Grazing Bill before the National Assembly for the purposes of enabling the Federal Government to acquire lands in the states of the federation for cattle grazing purposes.

<sup>4</sup>Presently Ekiti State Government has just passed the Anti-Cattle Grazing Law. It criminalizes cattle grazing on un-authorized places and imposes penalty on defaulters (Vanguard, 2016).

<sup>5</sup>The Minister of Agriculture gave this hint at the end of the Federal Executive Council meeting of 1<sup>st</sup> March 2016. As a matter of fact the push for the importation of this special grass is causing ripples in the polity (Punch, 2016).

<sup>6</sup>There has been this debate as to whether the Government should directly regulate private business or it should adopt a more flexible indirect regulatory measure (Posner, 1992, p.151).

rights of these parties and attempts to fix a deal for them without a whiff about their impute. This is because there is a presumption of freedom of contract between the parties, therefore the resolution of any conflict between the parties ought to be done within the confines of the terms and conditions of the contract.

This is why it has become necessary to propose that the State avoids getting involved in a direct regulation of the business relationship between the cattle grazer and the farmer. It will be demonstrated that a better approach is that based on an indirect regulation which focuses on harnessing the positives from a relationship between law and economics. It will be argued that the state instead of prescribing laws that prohibit or criminalize open cattle grazing or the farmer and the cattle grazers getting involved in endless litigation, both of them can negotiate and arrive at a reasonable compromise.

### **CIRCUMSCRIBING THE RELATIONSHIP BETWEEN LAW AND ECONOMICS**

The relationship between law and economics has attracted a lot of attention in recent times. This is because there is a lot of benefit to be derived from a convergence of law and economics in the resolution of the problems confronting the world (Emiri, 2013). Most advocates of the relationship between law and economics justify their push on the basis that in the distribution of the scarce economic resources available, law plays a pivotal role in striking a balance between the competing ends (Leary, 2005). They also argue that in the resolution of the conflict of interest between state intervention in business and contractual obligations economic considerations ought to play a leading role (Posner, 1983; see also Coase, 1960; Calabresi, 1961 and Markovits, 1998).

As a starter, the term “law and economics” is used to circumscribe the relationship between law and economics, where economic values pre-supposedly plays a domineering role. In this symbiotic relationship the method of economics is used to rationalize legal problems and vice-versa (Friedman, 1987). This is because, as shall be revealed soon, the efficiency of a law is measured in the economic terms by the limited financial implications of its enforcement. A law is also measured by the level of equilibrium it strikes between the citizenry in the allocation of resources. Accordingly, a law is efficacious if does not cost the state so much to enforce. In this regard, tax laws are deemed efficacious only if the return from their strict enforcement is the increase of government revenue through increased payments. Whereas laws that are enacted to regulate business undertakings by individuals and corporations may be regarded as ineffective if so much of the tax payers monies are expended in enforcing them without getting the commensurate financial benefits (Cooter and Ulen, 2016, p.2). On the other hand, the law is relevant in the streamlining of economic policies of countries to ensure that they are geared towards the overall benefit of the citizenry. In practical terms, law is a useful tool in the regulation of business and other commercial undertakings in order to ensure that the rights of the parties thereunder are protected. Accordingly, because of this overlap between legal systems and political systems some of the contending issues are often resolved on the basis of studies in political economy and constitutional economy as well as political science. The practical effect of such considerations are often felt when laws are enforced and the desired results are not attained. Often, lawyers ask, “How will a sanction affect behaviour?” For example, if

punitive damages are imposed upon the maker of a defective product, what will happen to the safety and price of the product in future? Accordingly, the impact of law on the economic and political policies of a country becomes a central issue (Cooter and Ulen, 2016, p.3).

Historically, study in law and economics is traced to Adam Smith, who as early as the eighteenth century discussed the economic effect of Mercantile Legislation. However, the more in-depth analyses involving the use of principles of economics to regulate non-market activities are traceable to the works of the leading lights like Coase (1960) and Calabresi (1961).

There are two schools of thought on the relationship between law and economics. These are the positive law and economics school as well as the normative law and economics school (Calabresi, 1972). Positive law uses economic analysis to predict the effects of the various legal rules. The positive theorist believes that common law, that is case law, is sufficient so long as it recognizes the relevance of market forces in its enforcement. They urge that the legal system should as much as possible force transactions into a market model (Emiri, 2013; see also Rubin, 1977; Epstein, 1982). In effect, this school of thought believes that the efficacy of law is determined by the economic benefits derivable from it. Accordingly, a positive economic analysis of tort law would predict the effects of strict liability rule as opposed to the effect of the rule of negligence (Attanasio, 1988). The dividing line is that whereas strict liability is imposed to reduce the burden of proof placed on a consumer plaintiff in a product liability suit, a positive economist view point is that the error or mistake complained about is part and parcel of the business for which blameworthiness need not be ascribed to anybody (Shadwell, 1987, p.235). This explains the initial reluctance by the courts, even in Europe, to impute a strict liability standard in product liability law. The reason was that such a high standard would discourage enterprise and in the long run lead to economic losses for the state. In the words of Grubb:

There is a divide between those who believe negligence provides the best balancing mechanism and those who feel strict liability provides better incentives for producers to prevent harm and better internalizes the cost of the activity. (Grubb, 2000, p.18)

However, on the part of the normative school of thought, they argue that there is the need to go beyond the economic cost, but to look into the long term economic consequences of various governmental policies and laws. They believe that efficiency is a desirable goal that the law ought to pursue. Whereas, the Normative school of thought emphasize the “ought” requirement in expected efficacy of the law, the Positive school of thought argue that every effort should be made to make a law effective even if it involves infractions on the rights of others. In their view, it is primarily the interest of economic scholars concerned about legal reforms to canvass for an “ought to” position in this regard.<sup>7</sup> The emphasis is on

the economic analysis of efficiency, more often expressed as allocative efficiency.<sup>8</sup> It is furtherance of the aforesaid, that the *pareto efficiency* concept in the analysis of the economic efficiency of legal rules was propounded. In the opinion of proponents of this concept, a legal rule is efficient if it could not be changed so as to make one person better off without making another worse off. Veritable examples in this regard are some of the proposed anti-grazing laws in Nigeria. Such laws if enacted and enforced in the manner they were conceived originally, it would mean the displacement of some persons engaged in a type of farming (Cattle grazing) for the benefit of another farmer (Crop farmer).<sup>9</sup> This was certainly a ground breaking concept with far reaching implications for product liability law and in the long basis for consumer protection. Fundamentally, it underscores the basis for the state evolving protectionist laws in favour of the consumer as against the manufacturers and suppliers of goods and services. To what extent would consumer protection laws be assessed as efficient in the protection of the consumer? Will it be better to protect the consumers who are more in number than to consider the economic interest of few manufacturers? What should be the basis of ascertaining the efficiency of the institutions put in place for the articulation and protection of consumer rights? Whilst, a *pareto efficiency* analysis, would determine the efficiency of consumer laws and institutions put in place for its enforcement on this narrow confines.<sup>10</sup> It has been criticized as not totally reflective of the indices for ascertaining efficiency of public institutions.<sup>11</sup>

One of the criticisms often labeled against the *pareto efficiency* concept and by extension normative economics is that the use of the concept in economic analysis is so abstract and classical that it often undermine human rights and the concerns for distributive justice.<sup>12</sup> It is argued that it concentrates so much on the economic variables that the basic rights of the individual that the law is aimed at protecting is ignored. Accordingly, in the context of consumer protection, economic considerations cannot be placed in the front burner far and above the basic rights of the consumer. Whatever, economic considerations to be examined should be in the context of protecting the economic interest of the consumer as well as ensuring that less public funds are wasted in that regard. It is in the light of the aforesaid that it has been argued that the assumed benefits of law and policy should now be assessed on the *theory of second best*. The proposal is that, "if the fulfilment of subset of optimal conditions cannot be met under any circumstances, it is incorrect to conclude that the fulfilment of any subsequent subset of optimal conditions will necessarily result in an increase in allocative efficiency"<sup>13</sup> Accordingly, any expression of public policy, whose desired purpose is undefined in area of allocative efficiency, is viewed with suspicion. Thus, otherwise economic concepts like mergers and acquisition have been viewed from that

perspective. The relevance of law and economics can be appreciated even without focusing on the division between the normative school of economics and the positive school.

### **A PEEP INTO THE COESEAN THEORY AS A PARADIGM OF THE RELATIONSHIP**

Ronald Coase was one of the primogeniture of the relationship between law and economics. It was his view that economic parameters could be used to resolve complex legal problems with maximum effect. Coase (1960) in his in depth analysis of the problem associated with the cost of enforcing state sponsored regulatory measures in business, opined that business people should be given the leverage to negotiate and settle their way out of problems associated with the production and distribution of their goods or services. In his view, the risk of injury or damage to a potential buyer or consumer of goods is a *transaction cost* which should be built into the cost of production by the business person, albeit a manufacturer. Accordingly, where the transaction cost is insignificant when compared to the expected profit from the business, then the risk is worth it, as such a risk can be effectively taken care of by the market mechanism. His analogy of the farmer and their farm, the meat supplier and their cows was instructive. It is his argument that instead of litigation between the farmer and the meat supplier over the destruction of the former's crops by the latter's cows, a negotiated settlement that would factor that risk into the cost of production by the farmer and the seller will be less expensive and more effective. A negotiated settlement in this context could involve both parties either deciding amongst themselves who should build the wall around the farm or, amongst themselves, who should undertake the expenses of doing so. The argument by the proponents of the synergy between these two disciplines is that it is better and more pragmatic for the business people themselves to fix the cost of redressing this extra cost of doing their business than for the courts to do so for them. Becker in his classic analysis also cited the following example: *Eddie's Electric Company* emits smoke that dirties the washing hangers at *Lucille's Laundry*. *Eddie's* can completely abate the pollution by installing scrubbers on its stacks, and *Lucille's* can completely exclude the smoke by installing filters on its ventilation system. Installing filters is cheaper than installing scrubbers. No one else is affected by this pollution because *Eddie's* and *Lucille's* are near to each other and far from anyone else. *Lucille's* initiates court proceedings to have *Eddie's* declared to be a "nuisance." If the action succeeds, the court will order *Eddie's* to abate its pollution. Otherwise, the court will not intervene in the dispute. What is the appropriate resolution of this dispute? (Cooter and Ulen, 2016, p.5). As it was resolved between the farmer and the owners of the cows, since it is cheaper for *Lucille* to install the filters to protect her clothes from the effect of *Eddie's* pollution, an efficient intervention of the law ought to be one that would encourage her to install the filters rather than compelling *Eddie* to install the scrubbers on its rack. This is because ultimately the burden of the extra cost of installing it will be passed on to the ultimate consumer by way of increased prices (Cooter and Ulen, 2016, p.5 Calabresi (1961, p.275) points out that the costs of an accident include (a) the cost of preventing the accident; (b) the cost of the harm done to the victim; and (c) the transaction cost of enforcing the law to redress the harm. In his view, where the cost of preventing an accident will outweigh the cost of redressing the injury resulting from the injury, it is more financially prudent to treat the accident as part of the production process. This is because, from an economic point of view, the manufacturer should factor in the likelihood of paying



compensation for injuries arising from its errors in the production process as part of its cost of production. Accordingly, they should be prepared to pay for such an accident without waiting for the law to intervene or going through the rigours of litigation.

However, the Coasean theory is premised on an assumption of a perfect market situation. This has been criticized as in practice, there is no perfect market (Breyer, 1982, p.32). Players in the market are often tempted to manipulate the market to suit their peculiar goals. The distortion in the interplay of market forces can be understood from two perspectives. First, the consumer is assumed to be a rational and careful person who can readily make informed choices. This is far from the truth as most consumers are ignorant, gullible and at times often blinded by haste and sheer desires, that they often make the wrong choices (Cranston, 1984, pp.23-28). Second, there is the assumption that businessmen will compete freely and fairly for the patronage of consumers. However, in practice there is a lot of business stratagem used by business to out fox their rivals as well as entrap the consumer. These business antics include advertisements, sales promotions, price fixing and syndicating amongst others. For example, through advertisement manufacturers distort the information about the goods and services offered to the consumer, thus ultimately denying him the much needed information to make informed choices (Cranston, 1984, p.24).

This is where competition law will come into play to address these incidences of market imperfection and failure. Competition policy and law will work in the area of laying the blue print for manufacturers and producers of goods and services to compete freely and attract patronage from the consumer. In this regard, monopolies or the dominant position of companies or other business organizations are outlawed. Competition law is essentially anchored on a free market system (Taylor; Cambridge, 2006). The goals of competition legislation include the following: The encouragement of free and open markets, the provision of fair and equal competitive opportunities to all market participants, the promotion of allocative efficiency, the maximization of consumer welfare and the establishment of transparency and fairness in the regulatory process (Dimgba, 2016 ). In driving home, these set objectives, competition is expected to create four distinguishable parameters for measuring efficiency in the market place, the *productive efficiency* which is aimed at ensuring that goods and services are produced at minimal cost, *allocative efficiency* which ensures that available resources are used efficiently, *dynamic efficiency* encourages firms to be innovative in their production methods to reduce production risks and cost, *inter-temporal efficiency* which emphasizes the utilization of available resources for the long term benefits of the citizenry (Dimgba, 2016 ).

### **THE COASEAN THEORY AND THE RESOLUTION OF THE CONFLICT**

It is apparent from the foregoing that, just as Coase had decades ago proposed that the farmer and the cattle rancher could come together and negotiate a resolution of the conflict of interest arising from the latter's cows coming to destroy the former's crops, it is not out of place for farmers in Nigeria and their cattle grazers to come to such peaceable resolution without the resort to violence and the resultant loss of lives and properties.

In practical terms, the cattle grazer should see the likelihood of his flock straying into the farmer's farm and destroying his crops as a transaction cost that must be borne by the business. He could either chose the option of constant payment of agreed compensation for the quantum of crops destroyed by his cattle or he could negotiate with the farmer to acquire the farm ostensibly for feeding his cattle. Since the farmer is in the business of farming for profit purpose, it is possible that he could give up his farm and relocate elsewhere if the price is good. Conversely, the farmer could negotiate with the cattle grazer to acquire his flock as part of his farm, in which case he ceases to see the cattle as the enemy destroying his farm nut rather as part of his farm. What follows may be the likelihood of the farmer ceding a part of his farm for the purposes of feeding his cows whilst maintaining the other portion as his farm for his crops. A high fence that will prevent the cows from straying into the crop farm is a possibility though, as imperfect as the coasean theory is, this burden of expenses on the farm may be passed on to the buyer in the form of high costs for the farm produce.

Similarly, owners of vast expanse of yet to be cultivated land can, subject to negotiations and proper pricing, cede the same to the owners and cattle herders for their cattle grazing purposes. In this way, communities and individuals alike can maximize the economic benefits of the business and live together in peace and harmony.

This is where government intervention becomes veritable. Through a policy thrust anchored on subsidy, government at whatever level could subsidize the expenses of either party, i.e., the farmer or the cattle grazer so that the economic cost of resolving their differences will be mitigated and ultimately there will be no basis to pass the buck to the hapless consumers.<sup>14</sup> Government need not intervene directly by churning out laws to either prohibit or permitting grazing. There already exist in our criminal laws abundant provisions dealing with the reckless or negligent use of animals to either disturb public peace and order or to cause nuisance to members of the public.<sup>15</sup> As observed earlier, the relevance of competition law in this context is best appreciated from the angle that the farmer and the owner of the cows will not suffer the disadvantage of direct government intervention in their business with the attendant nuances of over-regulation which often stifle business. Since they are both involved in the business of farming, albeit different types of farming, what is expected is that indirect regulation by way of preventing underhand dealings or sharp business practices amongst them ought to be the emphasis of any legislation. One of these two shades of farming business should not be allowed to dominate or subrogate the other, they can co-exist. This is best achieved through a negotiated settlement. As noted earlier, direct regulations in the manner of fines and penalties would only end up driving the prices of the goods in question upward. Accordingly, if the owner of the cows is forced to build the wall when it is more expensive for them to do that compared to the farmer, then the owner would try to reduce their "transaction cost" by passing same to the ultimate consumer (Cayne and Trebilock, 1973, p.396).

---

<sup>14</sup>This is what is recommended to the states in the Northern Region of the country that are focused on acquiring and funding grazing fields for cattle rearing.

<sup>15</sup> In Edo State of Nigeria, sections 7-10 of the Animal (Disease) Law Criminal Code Cap 8 Laws of Bendel State of Nigeria, make elaborate provisions for the safe and sanitary transportation of cattle in the State.

## CONCLUSION

The author has in the course of this essay examined the possibility of a private and contractual resolution of the conflict between owners of farmlands and the owners of cows with respect to the cattle grazing in the country. It is the author's view that the problem has become intractable, volatile and now threatens peace, tranquillity and the sovereignty of this country. Government has done well to intervene in order to stop the tide of the violence and the consequences that has resulted from the conflict between these set of "farmers". However, the author's treatise is that the Government need not intervene through direct and prescriptive legislation as it is trying to do presently through the proposed National Grazing Law.<sup>16</sup> Government cannot effectively use this piece of legislation to force communities or state to donate or cede their farmlands to the cattle herders for grazing period. As a matter of fact Government ought not to be directly involved in the acquisition, setting up of grazing lands or the importation of the so-called special grass for feeding the cattle.

The author has argued that the crop farmer and the cattle herders are both farmers and business people who are in it for profit. All that government needs to do is to provide the enabling environment through proactive policies anchored on agricultural subsidies to make the cost of these two vital categories of farming less expensive and hazardous for them. This will ultimately engender huge potentials for the agricultural sector in the country with increased food production at reasonable and affordable prices.

Once this is done, it will be easy for these two set of farmers and business people to negotiate amongst themselves and using the scale of preferences and opportunity cost, determine amongst themselves which of the genre of farming should prevail in a particular community or state and at which particular time. Each set of farmer will readily be prepared and able to make financial sacrifices in the nature of a "transaction cost" to settle the other and remain in business without endangering the other one's business nor resorting to the crude and barbaric option of violence and senseless killings as means of emasculating and annihilating the other. This is where the relationship between law and economics has been propounded as the necessary tool and driving force for this new orientation.

Accordingly, given that these set of farmers are largely illiterate and un-informed, it becomes the duty of policy makers and those charged with the implementation of these policies to engage these farmers on this issue and guide them appropriately. In this regard, community leaders, local politicians, Agriculture Extension Officers, the religious ministers amongst other stake holders have a lot of jobs on their hands.

## REFERENCES

Aidaghese, A(2016). *"The Agatu Siege and the Sins of illiteracy: Balancing Cattle Rustling with Malicious Destruction of Commercial Farmlands by Cattle Herders"*, [www.naijanews.org](http://www.naijanews.org) (accessed 8<sup>th</sup> August 2016).

---

<sup>16</sup>Supra footnote 3.

- Attanasio, C. (1988) "The Principle of Aggregate Autonomy and the Calabresian Approach to Product Liability", *Vancouver Law Review* 32(4), : 677.
- Breyer, S. (1982) "Typical Justifications for Regulations for Regulation" in Breyer, S. (eds.), *Regulation and its Reform*, Cambridge, Harvard University Press.
- Calabresi, G. (1961) "Some Thoughts on Risk Distribution and the Law of Torts", *Yale Law Journal*, :500-552
- Calabresi, G. (1972) "Towards a Test for Strict Liability in Torts" *Yale Law Review*, 81: 1054.
- Cayne, D. and Trebilock, M. J. (1973) "Market Considerations in the Formulation of Consumer Protection Policy" *University of Toronto Law Journal*, 23: 396.
- Coase, R. (1960) "The Problem of Social Cost" *The Journal of Law and Economics*, 1: 1-44.
- Cooter, R. and Ulen, T. (2016) *Law & Economics*, 6<sup>th</sup> edn, Boston, Berkley Books.
- Cranston, R. (1984) *Consumers and the Law*, 2<sup>nd</sup> edn, London, Weidenfeld and Nicolson.
- Dimgba, N. (2005) "The Need and the Challenges to the Establishment of a Competition Regime Nigeria" available at [www.academia.edu/8822080/The\\_Need\\_and\\_the\\_Challenges\\_to\\_the\\_Establishment\\_of\\_a\\_Competition\\_Law\\_Regime\\_in\\_Nigeria?auto=download](http://www.academia.edu/8822080/The_Need_and_the_Challenges_to_the_Establishment_of_a_Competition_Law_Regime_in_Nigeria?auto=download) 1-32. (accessed on 16/07/2017)
- Duncan, K. (1998) "Law and Economics from the Perspective of Critical Legal Studies", *The New Palgrave Dictionary of Economics and the Law*, ( Peter Newman(ed) Macmillan Reference Limited, London).
- Duxbury, N. (1991) "Is there a Dissenting Tradition in Law and Economics?" *Modern Law Review*, 54: 301-311.
- Easterbrook, F. (1984) "The Limits of Antitrust", *Texas Law Review*, 63: 1.
- Emiri, F. (2013) "The Place of Economics in Law: A Synergy Plea" in O. Onadeko(ed), *Fifty Years of Legal Education in Nigeria: Challenges and Next Steps* (Lagos, Nigerian Institute of Advanced Legal Studies: 363-378.
- Epstein, R. (1982) "The Social Consequences of Common Law Rules", *Harvard Law Review*, 95: 1717.
- Friedman, D. (1987) "Law and Economics" *The New Palgrave: A Dictionary of Economics*, [www.file://localhost:/Law\\_and\\_economics.htm](http://www.file://localhost:/Law_and_economics.htm) (accessed 16/04/2016).
- Grubb, A. (2000) *The Law of Product Liability*, 2<sup>nd</sup> edn, London, Butterworths Publishers.
- Leary, T. (2005) "Competition Law and Consumer Protection Law; Two Wings of the Same House", *Antitrust Law Journal*, 72: 1148-1151.
- Markowitz, R. (1998) "Second-Best Theory and Law of Economics: An introduction" *Chicago-Kent Law Review*, 73: 65.
- Posner, R. (2006): "A Review of Steven Shadwell's Foundation of Economic Analysis of Law" *Journal of Economic Literature*, : 44(2): PP405-414.
- Posner, R. (1992) *Economic Analysis of Law*, 4<sup>th</sup> edn, Boston, little Brown as quoted in Campbell, D. and Piccioto S. (1998) "Exploring the Interaction Between Law and Economics: The Limits of Formalism" *Legal Studies*, 18: 249.
- Posner, R. (1983) *The Economics of Justice*, Cambridge Havard University Press: 12, Richards Markovits "Second-Best Theory and Law of Economics" *Chicago-Kent Law Review*, 75 (1978): 265.

Punch, 2015) (Online edition) of 26<sup>th</sup> October 2015 available at [https://www.thenigerianvoice.com/NigeriaHome/NewsArchive/today\\_news.asp?menu\\_id=1](https://www.thenigerianvoice.com/NigeriaHome/NewsArchive/today_news.asp?menu_id=1) accessed on 09/06/2017

Punch newspapers of 2<sup>nd</sup> March 2016 available at [https://www.thenigerianvoice.com/NigeriaHome/NewsArchive/today\\_news.asp?menu\\_id=1](https://www.thenigerianvoice.com/NigeriaHome/NewsArchive/today_news.asp?menu_id=1) accessed on 09/06/2017

Rubin, P. H. (1977) "Why is Common Law Efficient" *Journal of Legal Studies*, 6: 51.

Shadwell, S. (2004) *Foundations of Economic Analysis of Law*, London, Harvard University Press, 2004.

Shadwell, S. (1987) *Economic Analysis of Accident Law*, Cambridge, Harvard University Press.

Taylor, M. ( ) *International Competition Law: A new Dimension for WTO* (Cambridge, Cambridge University Press, 2006)

"The Face of the Nigerian Economy" The Tide (Online Version) (accessed 31<sup>st</sup> August 2016).

Vanguard Newspaper, February 28, 2016 available at <https://www.google.com.ng/search?q=Vanguard+Newspaper> accessed on 12/06/2017

See Vanguard Newspaper, 30<sup>th</sup> August 2016 <https://www.google.com.ng/search?q=Vanguard+Newspaper> accessed on 12/06/2017

## **PARLIAMENTARY CANNIBALISM**

**Ashit Kumar Srivastava, Assistant Professor-Law, Amity Law School,  
Amity University, Lucknow, India**

The intriguing story of Eve eating the fruit of the forbidden tree against the several and severe advice of her counterpart was an act of irreversible sorrow and doom brought upon the Garden of Eden. An act which introduced 'Death' onto the World and took away the merriment to which all the beings were acquainted with; it was Adam who had known the unbecoming effect which the taste of that apple could bring upon and had extensively exhorted Eve to not to savour its taste.

Interestingly, Eve too knew the misery she was unravelling upon this world. But it was her strong disposition which un-hurdled each impediment that came in her way –let alone the advice of his counterpart, the towering height of the tree and the command of their Father. The same can be reiterated for the Indian Constitution, which was a generous gift of the Constituent Assembly to the people of India. It has gone through, several changes but, the Indian Constitution has endeavoured to safeguard its pristine quality, which took more than two years in the making. In order to safeguard this pristine qualities of the Indian constitution, the Indian Supreme Court came up with the principle of basic structure, in which basic qualities, such as federalism, rule of law, secularism and many more were regarded as the fundamentals of the constitution and therefore they cannot be taken away by any legislative power. Rather than inviting death in, the Indian Parliamentarian is forced to adapt to a changing scenario to prevent their precious document from becoming moribund. The contrast between the stories lies in the fact that the eating of the forbidden fruit brought in death, whereas, amending the constitution blew life into the lifeless document and gave it to an organic growth.

The Author compares two acts guided by necessity and inclination, however, both draw criticism and both are necessary. If the apple was not eaten by Eve there would not have been any control on the population as death becomes the only measure to control it; it was arguably introduced as a cleanser.

Similarly, making an amendment may seem an act of sovereignty and one which cannot be regarded as cherishing the pristine nature of the constitution. Steadily the Indian Parliament is

eating its original work and supplementing it with that of a new phenomenon, it is the substitution of a new constitution for the old one. This is why the concept of Parliamentary Cannibalism befits modern day democracy; the argument seems in line with the thought process of late U.S Supreme Court judge Antonio Scalia, who favored original text of the Constitution and was ardently against giving liberal interpretation to the text of the constitution, this is what he called as the principle of Dead Constitution.<sup>1</sup> However, the very concept that the Parliament; an offspring of the Constitution was amending its own architect and almost changing its original character is nothing short than cannibalism by Parliament. The most appropriate example that can be quoted is that of Latin American Countries; wherein an average 41 new constitutions has been introduced hitherto with the Dominican Republic heading the list with 32 constitutions being replaced until now, with Venezuela coming into second position with its 26th Constitution drafted in 1999.<sup>2</sup>

However, the other side of the boundary; the American Constitution has not been changed ever since the inception in the 1776's but has gone through major constitutional amendment so that the text of the constitution can stay in harmony with the sentiments of the people of America.<sup>3</sup> Further, the text of it has been seen in different hues with the help of the judicial interpretation; which has worked in the favor of the American Constitution which is changing without changing its text but rather its context as per society's demands.

The same cannot truly be regarded as the case with the Indian Constitution wherein almost two new constitutions have been generated with more than 100 amendments taking place. Additionally with the use of judicial interpretation, the state of Indian progress is witness to a tussle between the Judiciary and the Legislation rather than meeting of the demand of the society.

---

<sup>1</sup> Richard A. Brisbin Jr., *The Conservatism of Antonin Scalia*, Political Science Quarterly, Vol. 105, No. 1 spring 1990

<sup>2</sup> Planchart Manrique, Gustavo. "Constituciones de Venezuela" in *Diccionario de Historia de Venezuela*. Caracas: Fundación Polar, 1997. [ISBN 980-6397-37-1](#)

<sup>3</sup> The first ten amendment of the American Constitution are popularly known as the 'Bill of rights', most of which are the ingenuity of James Madison, who was inspired by the essay "The Rights of Men" written by Thomas Paine in 1789. The Bill of Rights was impressed in American constitution to recognize the basic human rights of the American Citizens.

### THE 'MASS' OF LAW

**Ashit Kumar Srivastava, Assistant Professor-Law, Amity Law School,  
Amity University, Lucknow, India**

Under Newton's theory of Gravitation, the gravity of a substance is directly proportionate to the mass of the substance. As far as the legends go, it was one afternoon when Sir Isaac Newton was sitting under the shade of an apple tree, when suddenly an apple befell upon him, pushing him to contemplate the phenomenon to its logically reasoning. Sir Isaac came up with a hypothesis that there is force working upon the apple which forced it to fall upon the land similarly, there is a force compelling the earth to move towards the apple, however as the mass of the earth is far superior to that of apple; therefore the apple falls upon the land. Sir Isaac comes up with a formula to diagnosis the force working upon; which he calls 'gravity'

- F is the force between the masses;
- G is the gravitational constant ( $6.674 \times 10^{-11} \text{ N} \cdot (\text{m}/\text{kg})^2$ );
- m1 is the first mass;
- m2 is the second mass;
- r is the distance between the centres of the masses.<sup>1</sup>

On the basis of the aforesaid principle, Newton deduced that anything that has mass is capable of and is generating, gravitational pull towards each other, whether it is the moon revolving around the earth or the milky-way revolving around the Universe. Every bit of mass is generating a gravitational pull.

#### • KANTIAN IDEA OF FREE WILL

Immanuel Kant in his most celebrated work 'Groundwork for the Metaphysics of Moral' introduces the idea of 'free will', though he alone cannot be credited for this idea. As in 1759, anterior to Kant's work, Adam Smith had introduced an idea quite similar to it; the idea was known as the 'Impartial Spectator'.<sup>2</sup> However, for the matter of the paper, we shall concentrate on Kant's idea of free will alone. Kant writes that apart from instinct and emotions namely fear, love, hatred, envy and others, the human being is also endowed with a free will, which helps an individual in controlling his instinct and emotions. And writes that it is not that an emotion is good or bad but it is rather the 'will' which guides an emotion for doing anything good or bad, therefore, there is no bad anger or good anger all that is matter is whether 'will' is good or not. Kant succinctly says:

"Understanding, wit, the power of judgment and like talents of the mind, is without doubt in some respects good and to be wished for; but they can also become extremely evil and harmful, if the 'Will' that is to make use of these gifts of nature is not good"<sup>3</sup>

---

<sup>1</sup> Sir Isaac Newton came up the theorem in his book *The Principia* in 1687, wherein he deduced the relation between mass of the body and gravity of the Earth

<sup>2</sup> Adam Smith, *Theory of Moral Sentiments*, 1759

<sup>3</sup> Immanuel Kant, *Groundwork of Metaphysics of Moral*, Yale University Press, New Haven and London, 2002, p 4



- **FREE WILL, LIBERTY AND THE GRAVITATION PULL OF LAW**

As Kant put forward it is the 'Will' which guides the human emotions, however, it is of utmost necessity to be able to make an unbiased use of the 'Will' that we are able to come over the passions of nature, which we normally style as instinct as most often that which controls us is the instinct but it is only through the ability to overcome and use 'Will' uninfluenced by instinct that we are able to have a 'Free Will' and with free will we are able to govern our emotions and desires to a full pinnacle. Kant and his fellow German philosophers call it a state of full liberty, where the 'will' is uninfluenced by carnal passions and is able to govern faculties to its summit.

However, although the will of the individual is absolute in the state of nature; where there is no recognized authority to bar his limbs or thoughts, the same does not stand in a civilized world, where there are social constructions, the most powerful of which is 'Law'. So just like the gravity of apple from Newton's story gets dwarfed by the gravity of earth, due to its sheer mass; similarly, the will of an individual is dwarfed by the will of the law; provided the law which dwarfs the will of the individual has enough mass to command sufficient respect of the individual.

- **GRAVITY OF WILL vs. MASS OF THE LAW**

The analogy comes down to the gravity of will which is like gravity of the apple which had to fall down on the earth as the gravity of the earth due to its sheer mass was much larger, similarly, the individual would have to follow the law, due to the sheer mass of the law, the gravity of the law is far superior to that of the gravity of an individual will. But the final phase of analogy comes down to as to what constitutes the mass of the law. The answer lies in the realm of legal positivism and historical analysis, namely: the social recognition, sanctions behind the law, the customary practice, habit of obedience, moral duty, the divine scriptures and the fear of the Leviathan.<sup>4</sup>

## REFERENCES

- Sir Isaac Newton's "*Philosophiae Naturalis Principia Mathematica*"
- Immanuel Kant's "*Groundwork of Metaphysics of Morals*"
- Adam Smith's "*The Theory of Moral Sentiments*"
- Thomas Hobbes' "*Leviathan*"

---

<sup>4</sup> Thomas Hobbes, *Leviathan*, 1651

**BOOK REVIEW****Francine Ryan, Lecturer in Law, The Open University****Sherr, A., Moorhead, R. and Sommerlad, H. (eds) (2017) *Legal Education at the Crossroads*, London and New York, Routledge, ISBN 978-1-138-22037-9**

Forces of change are bearing down on the legal profession in many jurisdictions, technology, globalisation and changes in legal markets are all contributing to feelings of de-stabilization and uncertainty. The impact felt by the profession naturally transfers into legal education, the introduction to this edited collection identifies the United Kingdom (UK) as illustrating how this is unfolding with the changes proposed by the Solicitors Regulation Authority (SRA) to the legal education and training of Solicitors. Unfortunately, this collection was published prior to the announcement by the SRA confirming the introduction of the Solicitors Qualification Exam (SQE) but a number of chapters highlight the tension between delivering a liberal law degree and the requirement of Universities to ensure students are practice ready.

This edited collection is an eclectic mix of articles considering the state of legal education, the role of the liberal law degree and highlighting how aspects of clinical legal education can impact on the curriculum. It draws on examples from different jurisdictions including the UK, US, Australia, Hong Kong and China and argues uncertainty and change is being felt across the globe. These articles were originally published in a special edition of the *International Journal of Legal education* in March 2015.

There are seven chapters to this book, each chapter does not obviously follow from the next but that does not in any way detract from the reader's enjoyment. It is a varied collection covering a range of issues. In chapter one, Richard Abel begins with a consideration of the 'crisis' within US legal education and then widens the scope of the discussion to the UK and Australia. This chapter illuminates a key theme of the book, which is the impact of market forces on legal education and the legal profession. It raises challenging questions such as how many lawyers should we have, how much should legal education cost (p.14) and ultimately that legal education and the profession must "anticipate change at a pace and in a direction previously unimaginable" (p.15).

Then in chapter 2, Maureen Spencer looks back at a specific time in higher education- 1963 to 1983 to broaden the scope of the discussion to consider the ideology that underpinned post- compulsory education in the UK. Importantly the book examines historical developments to contextualise the current debates.

Chapter 3 focuses on advocating the inclusion of access to justice within the law curriculum. Donald Nicolson argues that encouraging law students to be involved in law clinics gives them an opportunity to see first-hand the issues associated with unmet legal need. His hope is that this will inspire a commitment to addressing access to justice that will extend beyond their time at University. The theme of change is continued by Kathy Douglas in chapter 4 in her exploration of the role of ADR in legal education in Australia. She argues that the growth of ADR in many jurisdictions across the world merits its inclusion within legal education. She discusses some of the challenges that may arise when trying to

incorporate ADR into the curriculum. The chapter picks up one of the themes that underpin this book the dichotomy of being innovative in times of increasing pressure on higher education funding.

Chapter 5 is particularly interesting because it considers the historical perspective of the law degree, Patricia Leighton examines some of the historical data to discuss why legal education in the nineteenth century is impinging on our ability to liberalize the current law degree. Knowledge of the historical development of the law degree is critical to getting a proper understanding of the current debates in legal education. The final two chapters draw on the experiences of Hong Kong and China, chapter 6 examines how simulated clients can be used to assess interview skills and demonstrates the innovation that is taking place in law schools across the world. The final chapter discusses the establishment in 2012 of the National Lawyers College of the People's Republic of China and highlights the growth of legal education in China which is firmly controlled by the Chinese Communist Party.

Overall this book is an interesting read and gives a flavour of the developments within legal education, reflecting on the eternal nature of these issues and posing serious questions that need to be considered when responding to the rapidly changing environment. Perhaps one of the limitations of the book is a lack of exploration of legal education in civil law jurisdictions arguably because of globalization the impacts noted here apply in similar ways but it would be interesting for the reader to gain an insight into what is happening in both common and civil law jurisdictions.

The collection touches on a number of interesting themes that are impacting on legal education it is not a fully cohesive discussion but it will be of interest to academics, students and practitioners because it does provide an accessible insight into the current debates. Changes to training and education of law students is not just happening in the UK but the introduction of SQE is arguably going to be significant and legal education in the UK is certainly at a 'crossroads'.

**BOOK REVIEW****POSITIVITY AND PRACTICALITY: DEVELOPING THE DEBATE ON WELL-BEING IN LAW****Dr Emma Jones, Lecturer in Law, The Open University, UK****Field, R., Duffy, J. and James, C. (eds) (2016) *Promoting Law Student and Lawyer Well-Being in Australia and Beyond*, London and New York, Routledge**

If Law School were to come with a health warning, it would probably read “Danger. Proceed with caution: Law School may seriously damage your well-being”. It is well established within both the United States of America (“US”) and Australia that a significant minority of law students suffer from decreased levels of well-being during their time studying law. Despite the differences involved in the two educational systems, the findings have proved surprisingly consistent between jurisdictions (see, for example, Sheldon and Krieger, 2004 and 2007 in the US context and Kelk et al, 2009, in the Australian context). These findings have also generated a lively discussion on the possible causes of such well-being issues, with the competitive, pressurised nature of legal studies, the emphasis on a particular form of “thinking like a lawyer”, a diminished sense of autonomy and a lack of social connectedness all being identified as potential factors (all issues touched upon within this edited collection).

Whereas other countries (such as the UK) are only slowly developing an empirical evidence base on this issue, the body of work which already exists within Australia allows the authors in this edited collection to move beyond presenting this evidence and analysing the possible causes and to begin to explore positive and practical ways to tackle the problems. Although many of the chapters do start with a brief summary of the existing evidence, this is then developed in innovative and exciting ways. Many of these draw, explicitly, on principles of positive psychology, with a good summary of the evolution of this movement provided by Duffy (p. 146). His focus is on the concepts of optimism and hope (p.151) whilst other authors discuss self-determination theory (Stallman and Duffy, p.193), resilience (James, p.108 and Watson, p.122) and the importance of a positive professional identity (Field, p.184). A central theme, itself drawing on the tenets of positive psychology, is that the Law School should be proactive in fostering greater well-being amongst all its students, rather than focusing solely on ameliorating the specific problems suffered by the minority (see, for example, Marychurch, p.85 and Duffy, p.147).

The discussion around this is well-crafted and nuanced, with a clear appreciation of the tensions involved and balance required. For example, Tang discussed the need to avoid simply requiring students to take personal responsibility for their own well-being, whilst at the same time avoiding “homogenising our students and lawyers” (p.10). Larcombe (p.27) discusses the need for well-being to be embedded within the curriculum in a way which encompasses both prevention and intervention but also emphasises the need for high level

institutional buy-in and resources to achieve this in a sustained way (p.31). Whilst the type of factors that may impact on well-being within the Law School are explored, there is also a recognition that many students also experience stresses and strains in other parts of their lives which impact on their mental health overall (Steel and Huggins, p.64).

Although the over-riding focus of the collection is on law students, there are nods towards the well-being of lawyers. In particular, James' welcome suggestion that "A personal, virtuous and flourishing legal practice is possible if we relate well to significant others, work colleagues and clients, and most importantly ourselves" (p.115). Perhaps there is something of an underlying assumption that most law students will proceed into the legal profession, thus bringing with them both the problems, but also the potential solutions, they have experienced in Law School (see, for example, Foley and Tang's challenge to the traditional notion of "thinking like a lawyer" (p.141). However, there remains much in the collection that acknowledges the wider impact of well-being issues on both law students and lawyers, in terms of their ideals, values and role as citizens.

Overall, this is an insightful and important edited collection that provides a marker on the long, uneven, challenging but crucial path towards acknowledging and improving well-being in law. Despite its Australian focus, the commonalities with other jurisdictions are clear, giving it global appeal and significance.

## References

- Kelk, N., Luscombe, G., Medlow, S. and Hickie, I. (2009) *Courting the Blues: Attitudes Towards Depression in Australian Law Students and Lawyers*, Sydney, Brain & Mind Research Institute.
- Sheldon, K. M. and Krieger, L. S. (2004) "Does law school undermine law students? Examining changes in goals, values, and well-being", *Behavioral Sciences and the Law*, Vol. 22, pp. 261-286.
- Sheldon, K. S. and Krieger, L. S. (2007) "Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Study of Self-Determination Theory", *Personality and Social Psychology Bulletin*, Vol. 33(6), pp. 883-897.

## **Journal of Commonwealth Law and Legal Education**

### **Instructions for authors**

The Journal of Commonwealth Law and Legal Education (JCLLE) is an open access, online, peer-reviewed journal.

Articles submitted to the JCLLE that do not conform to the following guidance will be returned to the author(s) for revision.

### **Submission**

- Articles should be between 4,000 and 6,000 words in length and an accurate word count should be included with each article submitted. An abstract of between 100 and 150 words should also be included.
- JCLLE welcomes case notes of up to 800 words and comments on cases, new legislation and proposed law reforms likely to be of interest throughout the Commonwealth of up to 2,000 words.
- Book reviews of recent publications up to 2,000 words are also invited.
- Authors are requested to ensure that articles are written in appropriate language and that they follow the editorial style and format adopted by JCLLE (see below).
- The whole text, including references and abstracts, should be double spaced throughout.
- Articles are published in English and should follow British spelling convention.

### **Mode of submission**

- Only electronic submissions will be accepted, unless the author has previously had agreement from the editorial team for another method of submission. Submissions should be sent via email to JCLLE@open.ac.uk.
- Together with a covering letter providing details of the author(s), contact details and a brief statement of how the authors believe that the article fits within the scope of JCLLE.
- Authors are responsible for ensuring that their submissions are virus free, and are grammatically and typographically accurate.

## References

References have to follow the following guidance and authors are asked to pay particular attention to the accuracy and presentation of references.

- References should be incorporated into the text using the Harvard system showing author and date of publication (e.g. Bloggs (2000)) and page numbers where a direct quote has been used (e.g. Bloggs (2000: 26)).
- A list of references cited should appear at the end of the text arranged alphabetically by author and in chronological order for each author.
- Two or more publications by an author appearing in the same year should be distinguished by an alphabetical suffix (e.g. Bloggs (2000a) and Bloggs (2000b)).
- Books should be listed as follows: Bloggs, J (2000) *Law in the Commonwealth*, London: Smith and Jones.
- Articles should be listed as follows: Bloggs, J (2002) 'Law in the Commonwealth', *Commonwealth Law and Legal Education* 1: 1–10.
- Multi-author publications with more than two authors should be cited within the text as Bloggs *et al*, but the names of all the authors should be included in the reference list.
- Cases cited should also be incorporated into the text thus: (*Re Bloggs* [2002] 1 All ER 1). Where quotations from judgments are given the page from the judgment should also be cited (e.g. *Re Bloggs* [2002] 1 All ER 1 at 3).
- Only references cited in the text should be included in the reference list.

## Footnotes and appendices

Footnotes and appendices that expand on content are discouraged, but if included references within them should follow the journal style as outlined above.

## Decisions

The editorial team will inform the authors of the decision regarding their papers within three months of the receipt of an article.

## Rights

Articles are considered on the understanding that they are not being considered concurrently by any other journal, nor have they been published elsewhere. Exceptionally, JCLLE will consider publication of articles previously published elsewhere. In such cases it will be the responsibility of the author to confirm that she or he retains the copyright in that article and has the right to reproduce it elsewhere.

Authors submitting a paper retain the copyright in their work. They agree to grant JCLLE the right to publish the work in print or electronic form and to hold the submission in archive form (either electronic or print) once it has been published. The copyright in the style and nature of the published work rests with JCLLE. Authors remain free to use the material contained in the paper in other works.

### **Open Access**

Authors are encouraged to place their articles in institutional open access repositories. Permission from JCLLE prior to doing this is not necessary, so long as there is a reference to the work being published in JCLLE along with the correct article citation.

The Editorial Board and the Editors do not hold themselves responsible for the views expressed by contributors.

### **Queries**

Any queries regarding the submission of articles should be emailed to [JCLLE@open.ac.uk](mailto:JCLLE@open.ac.uk).





### **The Commonwealth Legal Education Association**

**The CLEA fosters and promotes high standards of legal education in the Commonwealth. Founded in 1971, it is a Commonwealth-wide body with regional Chapters in South Asia, Southern Africa, West Africa, the Caribbean and Europe and numerous country committees. Its work is overseen by an Executive Committee whose members represent: Australasia, Europe, The Caribbean, East Africa, West Africa, North America, Southern Africa, South Asia (Bangladesh, Pakistan and Sri Lanka), South Asia (India), and South East Asia.**

Membership is open to individuals, schools of law and other institutions concerned with legal education and research.

The Association's *Programme of Action* is based on the need to make legal education socially relevant and professionally useful, particularly through:

- the development of law curricula and teaching methodology;
- assisting law schools to prepare themselves for the demands of the profession in the context of the information revolution and other global challenges; and
- supporting continuing legal education and distance learning programmes.

### **PUBLICATIONS**

- *Commonwealth Legal Education*, the Newsletter of the Association, is published three times per year

- The *Journal of Commonwealth Law and Legal Education* is the official journal of CLEA and is published in association with the Open University School of Law. It is published online twice a year and is subscription free.

The Association's website [www.clea-web.com](http://www.clea-web.com) provides access to a wide range of Commonwealth legal materials, model curricula and some publications.

### CONFERENCES

The Association organises regular international and regional conferences and seminars. Recently, it has organised/co-sponsored conferences on topics such as law and development, human rights and just and honest government, as well as on legal education. Venues have included Canada, Sri Lanka, Hong Kong, Kenya, India, South Africa and UK.

Details about all past and forthcoming CLEA events can be found on the Association's website: [www.clea-web.com](http://www.clea-web.com)

### CURRICULUM DEVELOPMENT

The Association is committed to developing new curricula that reflect both the importance of Commonwealth jurisprudence and the need for law schools in the Commonwealth (and beyond) to equip their students to meet the demands of the 21<sup>st</sup> century lawyer.

Two curricula are currently available:

- Model human rights curriculum for the Commonwealth;
- International co-operation in criminal matters

Two further curricula are in preparation

- Tackling corruption and the misuse of public office
- Islamic law

### ACTIVITIES FOR LAW STUDENTS

The Association organises a number of activities of law students. These include

- The Commonwealth Law Moot (held biennially)
- The Commonwealth Students' Essay Competition
- Local Workshops and Conferences held regionally

### LINKS WITH THE COMMONWEALTH

The CLEA is a partner organisation with the Commonwealth Secretariat and has observer status at Commonwealth ministerial meetings.

**For further information on the work of the Association and details of membership, please contact:**

The General Secretary, Commonwealth Legal Education Association c/o LCAD,  
Commonwealth Secretariat, Marlborough House Pall Mall, London SW1Y 5HX, UK.

Tel: +44 (0)20 7747 6415

Fax: +44 (0)20 7004 3649

E-mail: [clea@commonwealth.int](mailto:clea@commonwealth.int)

Website: [www.clea-web.com](http://www.clea-web.com)



**The Commonwealth Legal Education Association  
Membership Form**

The Commonwealth Legal Education Association fosters and promotes high standards of legal education in the Commonwealth. Membership is open to individuals, schools of law and other institutions concerned with legal education and research. The Association is a Commonwealth-wide body with regional Chapters in South Asia, India, Southern Africa, West Africa, East Africa, Australasia and the Caribbean together with several national chapters and committees. Its affairs are managed by an Executive Committee representing all parts of the Commonwealth whilst the Secretary-General is responsible for the day to day running of the Association.

The Association has an online open access peer reviewed journal and newsletter as well as learning and teaching resources which can be adapted for use in law teaching. We run a very successful Biennial Conference which links with the Commonwealth Lawyers Association (CLA) Conference. We are responsible for the Commonwealth Moot, a prestigious competition for law students, with regional heats and a final which takes place at the CLA conference and is decided by Judges from the Commonwealth. We also provide a focal point for a network work of law teachers throughout the Commonwealth who have a shared interest in the teaching of law.

Please visit our web site at <http://www.clea-web.com/> for more information.

---

**MEMBERSHIP APPLICATION FORM**

Annual Subscription:

Individual membership (£50) .....

Institutional membership (£150) ..... (all members of a department will be members)

Title: ..... First name: ..... Surname: .....

Institution: .....

Address: .....

.....

.....

Country:

.....

e-mail: .....

**For Bank transfer:** HSBC Bank plc, Pall Mall, London SW1

A/c Name: Commonwealth Legal Education Association

A/c: 01007130    Sort Code: 40-05-20    IBA: GB10MIDL40052001007130

**Cheques** payable to CLEA and return the completed form and cheque to:

CLEA, c/o Legal and Constitutional Affairs Division, Commonwealth Secretariat, Marlborough House, Pall Mall, London SW1Y 5HX, United Kingdom.

Tel: +44 (0)20 7747 6415 Fax: +44 (0)20 7004 3649

Please email [clea@commonwealth.int](mailto:clea@commonwealth.int) for all enquires about membership.