

The Challenges of Teaching and Learning the LLB Programme through ODL

Phazha Jimmy Ngandwe

e-mail: ngandpj@unisa.ac.za

Abstract

“The Challenges of the Teaching and Learning of the LLB Programme through ODL”, as the title suggests, interrogates the pedagogical as well as the epistemological challenges facing the LLB programme in Open Distance Learning institutions in general and at the University of South Africa in particular. The paper does so by juxtaposing the teaching and learning environment of ODL to the physical environment available to residential Universities or institutions. The centrality of the LLB programme to the legal discipline cannot be overemphasised, as it is a prerequisite for entry into the legal practice, academia and various other social professions and fields that require legal acumen. The gravamen of this paper is that, because some of the modules within the programme are procedural and the skills practical, they are best learnt gradually and constantly in an everyday physical contact environment such as a residential university or institution. This is because in the latter environment there is ample platform for students to learn the skills from the facilitators and among themselves. By this physical interaction, the students also amass other incidental traits, such as emotional intelligence and maturity, which are instructive in the legal discipline. The paper concludes by acknowledging the shortcomings of the ODL environment and suggesting alternatives to counteract them, especially in the teaching and learning of the LLB programme. The biggest concession that the paper makes is that currently there are no practical alternatives that equal the advantage of the physical teaching and learning environment, although there are a few alternatives within the virtual teaching and learning space that can be explored to complement and enhance the gains already made in ODL.

INTRODUCTION

The teaching and learning of the LLB programme in the ODL environment is hampered by the fact that both learners and facilitators lack the advantage of physical and immediate contact. It is a truism that physical contact helps the facilitator to impart the imperative oratory and advocacy skills to the learner through physical presence, passively and actively demonstrating the verbal know-how. The LLB programme is intrinsic to the legal profession and forms the nucleus of any given legal training, which includes legal drafting and advocacy.

The legal discipline as a whole is one of the important social disciplines in a developing society such as South Africa, even more so given South Africa’s history of social injustice and inequality. The legal discipline plays an important role in aiding social transformation and democratic governance. It is for these reasons, among others that cannot be mentioned in this article for practical reasons, that the teaching and learning of the core qualification of the legal discipline (LLB), attracts so much attention.

THE BACHELOR OF LAWS (LLB)

The Bachelor of Laws (abbreviated LL. B., LL.B., LLB, or rarely, LI.B.) is an undergraduate, or bachelor degree in law, or a first professional degree in law, depending on jurisdiction. It originated from England and is offered in most common law countries as the primary law degree. In some jurisdictions, such as English-speaking Canada, it is sometimes referred to as a post-graduate degree because previous university education is usually required for admission. It is also argued to be a post-graduate degree, because it is a four-year degree, which makes its duration a year longer than most undergraduate degrees. The "LL." of the abbreviation for the degree is from the genitive plural *legum* (of *lex, legis f., law*), thus "LL.B." stands for *Legum Baccalaureus* in Latin (Langbein 1996).

The importance of the degree is articulated by different faculties of law. In South Africa the LLB is offered at both the undergraduate and postgraduate levels (see the prospectuses of the different SA Universities in this regard). As of 1996 it is the universal and only legal qualification for legal practice, replacing the existing BLuris and BProc degrees. The undergraduate programme, offered since 1998, requires four years of study. At the postgraduate level, the programme generally requires three years. Several South African universities offer BA and BCom degrees with a major in "Law", and these graduates then undertake a two-year postgraduate programme. Some universities also offer a one-year programme for holders of the BProc degree.

The centrality of the LLB programme to the legal discipline can never be overemphasised. It forms the bedrock and prerequisite for entry into the different careers in the legal discipline including the academia, legal advisory services, professional legal practice and various other fields that require legal acumen. For instance, for one to be admitted into professional legal practice, either as an attorney or an advocate, one should have completed the LLB degree. The degree is also a prerequisite for admission to postgraduate studies such as Master of Laws (LLM) at universities and other institutions of higher learning.

THE ATTORNEYS' PROFESSION

The Attorneys Act provides for educational prerequisites or academic qualifications over and above practical qualifications known as articles of clerkship, before one can make an application to be admitted into the attorneys' profession as follows:

- 2 (1) Any person intending to be admitted as an attorney, shall serve under articles of clerkship for a period of,
 - (a) Two years after he or she has satisfied all the requirements for the degree of *baccalaureus legume* of any university in the Republic after pursuing for that degree a course of study of not less than four years;
 - (a A) Two years if he or she has satisfied all the requirements for the degree of bachelor other than the degree of *baccalaureus legum*, of any university in the Republic or after he or she has been admitted to the status of any such degree

by any such university and has satisfied all the requirements for the degree of *baccalaureus legum* of any such university after completing a period of study for such degree of not less than five years in the aggregate; (Attorneys Act 1979: Ch1, s2 as amended)

THE ADVOCATES' PROFESSION

Section 3 of the Admission of Advocates Act makes provision for the academic prerequisite for admission into the profession as follows;

(a) Any person who-

(i) (aa) has satisfied all the requirements for the degree of *baccalaureus legum* of any university in the Republic after completing a period of study of not less than four years for that degree; or

(bb) after he or she has satisfied all the requirements for the degree of bachelor other than the degree of *baccalaureus legum*, of any university in the Republic or after he or she has been admitted to the status of any such degree by any such university, has satisfied all the requirements for the degree of *baccalaureus legum* of any such university after completing a period of study for such degrees of not less than five years in the aggregate;

(ii) has satisfied all the requirements for a degree or degrees of a university in a country which has been designated by the Minister, after consultation with the General Council of the Bar of South Africa, by notice in the Gazette, and in respect of which a university in the Republic with a faculty of law has certified that the syllabus and standard of instruction are equal or superior to those required for the degree of *baccalaureus legum* of a university in the Republic. (Admission of Advocates Act 74 of 1964 s3 as amended ii)

The above dealt with the meaning of the LLB degree and what it means to both the law schools or law faculties and the various stakeholders. It also shows that the LLB is a prerequisite for admission to the legal practice and for admission to institutions of higher learning for post graduate studies.

OPEN DISTANCE LEARNING

The University of South Africa's Open Distance Learning Policy defines ODL as follows:

Open Distance Learning is a multi-dimensional concept aimed at bridging the time, geographical, economic, social, educational and communication distance between student and institution, student and academics, student and courseware and student and peers. Open distance learning focuses on removing barriers to access learning, flexibility of learning provision, student-centeredness, support students and constructing learning programmes with the expectation that students can succeed. (Unisa's ODL Policy 2008:2)

The Draft Policy Framework for the Provision of Distance Higher Education in South Africa differentiates between Distance education and Open learning and defines them separately as follows:

Distance learning is a set of teaching and learning strategies (or educational methods) that can be used to overcome spatial and /or separation between educator and students. However, it is not a single mode of delivery. It is a collection of methods for the provision of structured learning. It avoids the need for students to discover the curriculum by attending classes frequently and for long periods. Rather, it aims to create a quality learning environment using an appropriate combination of different media, tutorial support, peer group discussion, and practical sessions. For funding purposes only, it may become necessary to develop a more quantifiable definition.

Open learning is an approach which combines the principles of learner centeredness, lifelong learning, flexibility of learning provision, the removal of barriers to access learning, the recognition for credit of prior learning experience, the provision of learner support, construction of learning programmes in the expectation that learners can succeed, and the maintenance of rigorous quality assurance over the design of learning materials and support systems. (Draft Policy Framework 2011:4)

The University of South Africa follows the mode of delivery described above (ODL) in its teaching and learning processes. This means that the LLB programme is taught and learnt through a virtual environment that affords the students flexibility while there is a temporal separation between the educator and the student.

CHALLENGES

Nicholson (2012) argues that courses, including those offered by universities, must teach skills, not simply ideas. Due to the gap or separation of the educator and the learner/student in the ODL mode of delivery, it is difficult to teach the practical skills necessary and required in the legal discipline such as oratorical or public-speaking skills and legal drafting skills. The gravamen of this paper is that, because some of the modules within the programme are procedural and the skills practical, they are best learnt gradually and constantly in an everyday physical contact environment, such as a residential university or institution.

This is because in the latter environment there is ample platform for students to learn the skills from the facilitators and among themselves. By this physical interaction, the students also amass other incidental traits such as emotional intelligence and maturity, which are instructive in the legal discipline. The importance of oratory is best summed by Justice Antonin Scalia (one of the Supreme Court of America's wittiest and most outspoken Justices) who said that it is not enough for a lawyer to know what to say, as

that he or she most importantly, has to know how to say it (Ring 2004). The ODL environment is well placed, therefore, to equip the learner with the knowledge of what to say. This is the knowledge of where to find the law and what it actually is. It includes knowledge of the law applicable to a given legal matter, statutes and other relevant legal instruments. This knowledge can be gained through reading the relevant course materials and usage of courseware and consulting with the relevant lecturer or tutor. The second part of Scalia's thesis is the most difficult to achieve through ODL. Learners can best learn the art of persuasion or "how to say it" or "advocacy" through the more interactive physical environment of residential institutions. A former judge of the Constitutional Court of the Republic of South Africa, Justice Albie Sachs, approvingly terms it the logic of persuasion or rhetoric and opines that beyond this, judges especially have to see the human element in the cases before them in considering their decisions (Sachs 2009). Every legal mind needs both these skills in written and spoken form.

Even though there are efforts to counteract these challenges by introducing moot courts as a means of nurturing advocacy skills, this is not enough as these skills require to be developed gradually on a daily basis either actively or passively.

RECOMMENDATIONS AND CONCLUDING REMARKS

Unisa as an institution of higher learning has to take stock of the challenges it faces and acknowledge the shortcomings inherent in ODL, before it can find solutions to such challenges or ways of mitigating them. Secondly, the institution and the college of law in particular should capitalise on the advantages of a broad reach, and utilise the available technological tools to further bridge the gap between educator and learner/student. This will, without any doubt, require capital investment in the development of the electronic infrastructure such as e-learning and more interactive courseware.

On their own, ODL institutions have to leverage the advantage of removing barriers to learning access and to enhance their technological capacity in teaching and learning. The ODL graduate should be among the most technologically advanced if ODL is to retain its legitimacy among institutions of higher learning.

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