

Reflective journals as an assessment method in clinical legal education

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OPSOMMING

Refleksiejoernale as 'n Asseseringsmetode in Kliniese Regsopleiding

Almal is dit eens dat die kliniese regsopleidingskursus nougeset geassesseer moet word indien dit kredietdraend is vir die verwerwing van die LLB-graad. Alhoewel verskeie vorme van assessering met welslae in kliniese regsopleiding toegepas kan word, konsentreer hierdie artikel bepaald op die gebruik van oordenkingsjoernale as assesseringsmetode. As agtergrond word daar eerstens in die breë tussen formatiewe en summatiwe assessering onderskei, waarna die riglyne vir assessering en puntetoekenning sowel as studente se ondervindings in dié verband bespreek en geëvalueer word. Oordenkingsjoernale word algemeen in buitelandse jurisdiksies as assesseringsmetode gebruik, maar die aanwending daarvan in Suid-Afrika is tot dusver nog beperk. Nadat regstudente aan die regslyn van die Universiteit van die Witwatersrand, Johannesburg, aan die einde van die akademiese jare 2009, 2010 en 2011 met behulp van vraelyste gevra is om hulle mening oor die moontlike ingebruikneming van sulke joernale te lug, is 'n proefprojek met oordenkingsjoernale dan ook in 2012 by dié instelling onderneem. Die terugvoering van die studente wat aan die proef deelgeneem het, word dus hier bespreek, en die beweegrede en metodes vir die gebruik van oordenkingsjoernale word voorts aangedui. Verdere kwessies wat aanboord kom, is terugvoering aan studente oor hul joernaalinskrywings, sowel as die vraag of hierdie inskrywings inderdaad geassesseer behoort te word. As 'n praktiese, waardebelaide element, wat ook as grondslag vir verdere ondersoek en ontwikkelingswerk kan dien, doen die navorsers boonop 'n konsepstruktuur vir 'n instruktiewe refleksiejoernaal aan die hand. Die outeurs kom uiteindelik tot die gevolgtrekking dat hierdie vorm van assessering gepas sou wees vir gebruik in Suid-Afrikaanse kliniese regsopleidingsprogramme, veral ook gedagtig aan die unieke omgewings waarbinne ons regslyn funksioneer.

1 Introduction

Although many different forms of assessment can be successfully applied in clinical legal education (CLE),¹ this article particularly focuses on the use of reflective journals as an assessment tool that, in the

1 Du Plessis "Assessment challenges in the clinical environment" 2009 *JJS* 91.

authors' view, is well placed for use in CLE courses. Prior to discussing this particular assessment tool, however, certain general parameters within which assessment takes place will be explored.

The general purposes of assessment are all too familiar to legal educators, and are, for example, set out in the University of the Witwatersrand, Johannesburg, Senate Policy on the Assessment of Student Learning. It prescribes that student assessment should be designed to achieve a number of listed purposes, including:²

“... to be an educational tool to teach appropriate skills and knowledge, ... to determine whether students are meeting, or have met, the educational aims and outcomes of a course (including qualification exit-level outcomes where appropriate) and to give students continuous feedback on their progress, ... to determine levels of competence and to inform students on their current competence, ... to provide a measure of student ability for future employers, ... to inform teachers about the quality of their instruction [and] ... to allow evaluation of a course.”

However, within these general purposes of assessment, specifics need to be established. The primary reason for administering assessments should be to ascertain whether students are indeed learning what their educators want them to learn. This necessitates the use of different assessment methods for the various components of the course,³ as well as giving due consideration to both formative and summative assessment tools from the outset.

2 Formative and Summative Assessments

Stuckey maintains that there are at least three types of assessments in CLE – “evaluating overall competency, helping students understand what they learn from individual, unique experiences, and determining whether students are learning what we are trying to teach”.⁴ He illustrates this by posing three questions, namely how well the student performed as a lawyer, what the student learned (which is established by using the student's reflection journal, among other things), and whether the student learned that which the educator had intended. (Of course, this implies that the CLE programme has clear educational outcomes, with which both the educator and student are familiar).⁵ Stuckey goes on to emphasise the importance of credible assessments for the institution

2 See <http://share.ds.wits.ac.za/DeptRegistrarsIntranetPublished/SenatePolicyOnAssessmentOfStudentLearning.doc> (accessed 2014-03-12) 2.

3 Haupt & Mahomed “Some thoughts on assessment methods used in clinical legal education programmes at the University of Pretoria Law Clinic and the University of the Witwatersrand Law Clinic” 2008 *De Jure* 276.

4 Stuckey “Can we assess what we purport to teach in Clinical Law courses” 2006 *Int'l J. Clinical Legal Educ.* 9-10.

5 *Idem* 10, 11.

as well as the student. He stresses the importance of specificity, fairness, reliability, articulation and communication of assessment criteria.⁶

Formative assessments should be conducted throughout the semester to enable students to understand and monitor their own learning and to develop, for example, classroom assessment techniques such as general or pertinent class questions. Several summative assessments should also be administered in the course of the semester. This will increase the accuracy of the final grade. Summative assessments must be both valid (evaluating what was taught) and reliable (accurately measuring who has learned and who has not). Students should be evaluated on how well they achieved the outcomes (criteria-referenced assessments) rather than on their own performance in relation to other students (norm-referenced assessments). Summative assessment results should be returned to students accompanied by appropriate comments to enable students to understand how to improve their performance. In this way, a summative assessment also serves a formative purpose. The use of rubrics can assist in informing students. The current revisions of the American Bar Association (ABA) Standards for Approval of Law Schools, for example, require law schools to provide “a variety of formative and summative assessment methods across the curriculum to provide meaningful feedback to students”.⁷

3 Laying Down the Parameters for Assessment and Mark Allocation, and Students’ Experience of these

Two aspects of CLE assessment that this article will be dealing with are the composition of the predicate in CLE programmes and – based on empirical data gained from the University of the Witwatersrand, Johannesburg, Law Clinic (WLC) – students’ experience of the composition of the predicate mark.

In planning the following academic year, cognisance must be taken of written feedback received from students by means of questionnaires or “course evaluations” as they are sometimes called. As a result of this feedback, there may be slight differences in the structure of the curriculum and, specifically, the make-up of assessments from one year to the next. The authors’ experience has however always been that the course evaluation information obtained in this manner provides continued credibility to clinical programmes.

6 *Idem* 28.

7 Fisher “Putting students at the center (sic) of legal education: how an emphasis on outcome measures in the ABA standards for approval of law schools might transform the educational experience of law students” 2001 *S. Ill. U. L. J.* 225; Stuckey *et al Best practices for legal education* (2007) 239, 241, 243–245, 255–261.

Apart from using course evaluations to plan and structure assessments, though, the weighted percentage associated with each of the components of the CLE programme in composing the predicate is also vital to consider.

3 1 Predicate Composition and Empirical Results of Student Feedback for the Period 2009–2011 at the WLC

3 1 1 Composition of the Predicate Mark

In 2007, the WLC CLE programme assessment structure was made up of a file assessment constituting 50%, a written test accounting for 20%, a written assignment/case report contributing 10%, and an oral examination representing 20%. In the following year, the assessment structure changed to a file assessment constituting 50%, a written test accounting for 10%, a second written test accounting for 20%, a written assignment/case report contributing 10%, and an oral examination representing 10%. For the period 2009 to 2011, the following composition of the predicate was adopted: file work constituting 50%, written test 1 accounting for 10%, a written assignment on the attendance and review of a court case contributing 10%, written test 2 on the drafting of court pleadings counting 10%, an oral examination representing 15%, and trial advocacy skills constituting 5%.⁸ This assessment structure remained the same for 2012, save for the introduction of spot tests, which counted 10% towards the year mark, while file work assessments were reduced to 40%.

3 1 2 Results of Student Feedback

At the end of the 2009, 2010 and 2011 academic years, students at WLC were requested to voluntarily and anonymously complete a questionnaire on the composition of the predicate of the CLE programme at the clinic. Altogether 27 students completed the questionnaire in 2009, seventeen students in 2010, and sixteen students in 2011.⁹

In respect of 2009, fifteen students (55,5%) found the allocation of marks for the different components to be fair, while twelve students (44,5%) indicated that the allocation was not fair. Some of the reasons cited for these respondents' dissatisfaction were: "We study for tests and they count for so little" (three students); "Going to court for the case report is time-consuming, for little marks" (four students); "We put a lot of time, effort and organisation into preparation and execution for trial advocacy, for very small group marks" (fourteen students), and "The file

8 Haupt & Mahomed 2008 *De Jure* 279; *WLC Manuals 2007–2013*; Mahomed "United in our challenges – Should the model used in clinical legal education be reviewed?" 2008 *JJS Special Issue* 59, 60.

9 2009, 2010 & 2011 WLC data developed, compiled and reviewed by Riëtte du Plessis from the University of the Witwatersrand, Johannesburg, for purposes of a PhD study.

work assessment should count less, as it does not reflect what we know” (three students).

For 2010, eight students (47%) found the allocation of marks for the different components to be fair, while nine (53%) students indicated that the allocation was not fair. Again, their reasons cited were: “We study for tests and they count for so little” (four students); “Going to court for the case report is time-consuming, for little marks” (two students); “We put a lot of time, effort and organisation into preparation and execution for trial advocacy, for very small group marks” (six students); “The unit-based test is irrelevant” (one student); “The court report is irrelevant” (two students); “File work should count more than 50%” (two students); “The oral should count 10%” (one student), and “The drafting test is too late in the year” (two students).

With regard to 2011, nine students (56%) found the allocation of marks for the different components to be fair, while seven students (44%) indicated that the allocation was not fair. The latter seven cited the following reasons for their dissatisfaction: “We study for tests and they count for so little” (two students); “Going to court for the case report is time-consuming, for little marks and we missed some other lectures” (three students); “We put a lot of time, effort and organisation into preparation and execution for trial advocacy, for very small group marks” (ten students); “The unit-based test is irrelevant” (one student), and “The file work assessment should count less, as it does not reflect what we know” (one student).

3.2 What do these Results Tell Us?

For the period under review, the average satisfaction rate with the composition of the predicate mark was 52% and the dissatisfaction rate 47%. Considering that the various components constituting the predicate mark form part of the summative assessment efforts at the WLC, the results can hardly be described as an overall student endorsement of this part of the assessment practice. Two possible interpretations of the survey results above may be offered.

Firstly, the reasons cited by students for their dissatisfaction reveal that they are generally unaccustomed to a summative assessment of substantial weighting other than the formal test. This may be taken as confirmation that apart from CLE programmes, few (if any) other modules in the South African undergraduate LLB programme make use of any alternative summative assessment methods besides the formal test. However, keeping in mind the tendency among students to “cram” information for mere “regurgitation” during tests, there are very real concerns about the overall sensibility of attaching too much weight to formal tests in terms of predicate composition.

Secondly, the objection to the weighting of the court report assignment and the trial advocacy mark obtained at moot and mock court assignments required by this particular CLE programme – apart

from further validating the abovementioned first interpretation of the survey results – makes one ponder the desirability of cramming vast amounts of course content into CLE programmes, instead of having less content but ensuring a greater-quality learning experience.

The authors' experience of the LLB curriculum in the South African context is that too much is expected from CLE programmes, both institutionally and from students' perspective. The large student numbers¹⁰ experienced in South Africa and the general unpreparedness of learners who enrol for legal studies without any academic background other than a Grade 12 National Senior Certificate are but a few of the valid reasons why a CLE programme cannot hope to achieve its objectives within one academic semester, or even an academic year. Clearly, CLE programmes need to be "staggered" and implemented over a number of years to achieve optimum results.¹¹ In addition, students often struggle to de-compartmentalise the different subjects of the substantive law as taught to them in their first three years of study.¹²

Against this backdrop, it seems apt to explore the use of an alternative assessment tool that is not currently employed at scale or at all in CLE in the South African context, and which may serve not only to address the many challenges briefly alluded to before, but ultimately also to cement "deeper" learning of the law as well as the skills required by lawyers. Therefore, the following section is devoted to a study of the use of reflective journals as such an alternative assessment tool that should be considered in the South African setting.

4 Reflective Journals

It has been stated that "educational theory supports the notion that the formula for learning begins with experience plus reflection".¹³ Reflection allows students to discover methods for merging their personal and professional identities, without the need to compartmentalise views and perspectives.¹⁴

10 On the issue of large student numbers, see Du Plessis "Closing the gap between the needs of students and the community they serve" 2008 *JJS* 11. Student registration, excluding externs, for the CLE course at WLC was 250 for 2005, 280 for 2006, and 308 for both 2007 and 2008. For the years 2009 to 2013, registration numbers were respectively 228, 258, 297, 306 and 408.

11 Swanepoel, Karels & Bezuidenhout "Integrating theory and practice in the LLB curriculum: Some reflections" 2008 *JJS Special Issue* 99.

12 Du Plessis "Access to justice outside the conventional mould: creating a model for alternative clinical legal training" 2007 *JJS* 59.

13 Levy-Pounds & Tyner "The principles of Ubuntu: using the legal clinical model to train agents of social change" 2008 *Int'l J. Clinical Legal Educ.* 18.

14 *Ibid.*

In addition to these sentiments, reflection is an effective learning tool, as it enables students to identify any problems and to think of ways of how to improve. Macfarlane and McKeown¹⁵ maintain that even though students often say that they struggle with reflection, their experience shows that most students are indeed able to demonstrate deep learning in their reflective papers, showing maturity and insight.

Reflection is the intentional consideration of an experience in light of particular learning objectives.¹⁶ Outside the South African context, the use of reflective journals by students has been widely adopted as an assessment tool.¹⁷ Australia, for example, has widely embraced reflective journals as assessment tool in CLE.¹⁸ At Deakin University in Geelong, the student journal constitutes 30% of the clinical assessment.¹⁹ At the Queensland University of Technology in Brisbane, a professional journal and essay constitutes 40% of students' total mark.²⁰ At Sydney's Macquarie University, the reflective report also accounts for 40%,²¹ and at the University of Western Sydney, 50% of students' marks is made up of the reflective journal, which is described as "a reflective diary which requires students to critically consider his or her actions, experiences and responses in light of the objectives of the unit".²² At Monash University in Melbourne, students are offered the

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- 15 "10 lessons for new clinicians" 2008 *Int'l J. Clinical Legal Educ.* 69.
- 16 Bender, Daniel, Lazarus, Naude & Sattar *Service-Learning in the Curriculum. A resource for Higher Education Institutions* (2006) 58, see <http://www.che.ac.za/documents/d000121/> (accessed 2009-10-06).
- 17 For an in-depth discussion on reflection and assessment, see Hyams "Student assessment in the clinical environment – what can we learn from the US experience?" 2006 *Int'l J. Clinical Legal Educ.* 85; Ledvinka "Reflection and assessment in clinical legal education: Do you see what I see?" 2006 *Int'l J. Clinical Legal Educ.* 29–56.
- 18 Hyams 2006 *Int'l J. Clinical Legal Educ.* 84; UNSW Kingsford Legal Centre *Clinical Legal Education Guide* (2011), see http://www.klc.unsw.edu.au/sites/klc.unsw.edu.au/files/doc/eBulletins/CLE_GUIDE_2011_12.pdf (accessed 2013-08-12).
- 19 The remaining 70% is made up of clinical performance in the course Law Clinic MLL351, which is a unit taken by approximately 20 students each trimester. UNSW Kingsford Legal Centre *Clinical Legal Education Guide* (2009), see http://www.law.unsw.edu.au/centres/klc/doc/CLE_GUIDE_09_10.pdf (accessed 2013-08-07) 9.
- 20 Seminar attendance accounts for 5%, clinical performance represents 15%, while the remaining 40% is made up of a further item of assessment to be negotiated between the facilitators and each student. Their legal clinic (organised programme) runs over a standard semester. See UNSW Kingsford Legal Centre (2009) 25.
- 21 An assignment makes up the remaining 60%. The additional components are assessed on a scale of "satisfactory" to "fail". The legal centre programme runs for a period of ten weeks during a semester, with attendance required on a designated day. See UNSW Kingsford Legal Centre (2012).
- 22 A seminar presentation accounts for a further 20%, while a research paper represents the remaining 30%. The clinical legal education programme is undertaken in partnership with the Macquarie Legal Centre. See UNSW Kingsford Legal Centre (2009) 41.

option of writing a reflective journal instead of an assignment, contributing 20% towards the assessment mark.²³

Law students must ask themselves the following questions as part of the reflective process: How and why does the client find him/herself in this situation? What is the policy rationale that might explain it? How can the effects be mitigated? What can I do to ensure that the injustice does not happen again? From whose perspective is it unjust? How did this affect me? Why did it affect me so much, or why did it not affect me at all?²⁴

Although the benefits are plenty, especially for aspiring lawyers, the risk remains that students may end up manipulating entries in pre-empting what they believe the clinician would want to hear,²⁵ or making entries in a mechanical fashion. The main challenge may therefore be the difficulty in establishing how to assess true insight.²⁶ In this regard, a short (ten-minute) oral may prove useful to reveal whether the reflections in reflective diaries are feigned or genuine. In the Australian setting, these journals have to be updated and submitted either weekly or fortnightly. The students submit their reflections of about 500 words per entry via e-mail, and the clinicians generally also respond in that way.²⁷

4 1 South African Student Feedback

The WLC never used reflective journals prior to 2013. At the end of the 2009, 2010 and 2011 academic years, students at the clinic were however requested to voluntarily and anonymously complete a questionnaire on the assessment of the CLE course called Practical Legal Studies, which was rigorously assessed.

As mentioned earlier, the questionnaire was completed by 27 students in 2009, seventeen students in 2010, and sixteen students in 2011.²⁸ Students were inter alia asked: "Do you feel that a reflective journal, in which you, for example, set out your strategies for cases or note how a

23 Hyams 2006 *Int'l J. Clinical Legal Educ.* 85.

24 *Ibid.*

25 According to Mennon, when substantive knowledge is assessed, "exams follow fairly standard formats that are not dependent upon the sort of 'insider', tacit or inchoate knowledge that the legal practitioner possesses". These exams are usually administered anonymously, cushioning teachers from subjectivity. "This protection", he points out, "is absent in a clinical setting". See *Clinical Legal Education* (1998) 286–287. Students may therefore strive to please the clinician with their entries, instead of conveying their true experiences.

26 Hyams 2006 *Int'l J. Clinical Legal Educ.* 85.

27 *Ibid.* In an e-mail to the authors dated 2009-10-07, Hyams confirmed this as still correct in respect of 2009/2010, and it was subsequently also confirmed as still valid during a discussion with the authors in Brisbane during July 2013.

28 2009, 2010 & 2011 WLC data developed, compiled and reviewed by Riëtte du Plessis from the University of the Witwatersrand, Johannesburg, for purposes of a PhD study.

specific case affected you, will merit the allocation of marks towards your year mark?" In 2009, seven students (26%) replied "yes" and 20 (64%) replied "no". In 2010, six students (35%) replied "yes" and eleven (65%) replied "no". In 2011, seven students (43%) replied "yes" and an equal number replied "no". Two students left the answering space blank.

Consequently, in 2012, two of the WLC clinicians introduced reflective journals informally and voluntarily within their respective specialised units.²⁹ These were not assessed. Still, this informal introduction of reflective journals revealed more than expected. One student commented as follows on her first two weeks in the clinic consulting with real-life clients:³⁰

"If I had to describe my first two weeks in the law clinic in a word, that word would be INTENSE. I walked in on day one with my nerves forcing my heart somewhere in the vicinity of my shoes, and was already taken aback by the number of people still in the waiting area at 10 am.³¹ It struck me that these people had either had to wake up early, take a day off work (if they had any) or make transport arrangements so that they could get to the clinic on time. All that effort, just to get to a bunch of nervous fourth-years with minimal real-world experience? They really think we can help them? Wow. The thought of that alone is enough to make me want to turn tail and run! But, I didn't. [My partner] and I met with our first client, and initially, my confidence failed me. I tried to remember what we'd been taught in lectures about interviewing skills. Don't ask too many questions at first. Listen actively. Try not to interrupt. All of that went out of the window pretty quickly, as instinct kicked in. Our client didn't need prompting to tell his story. I've noticed that many of them are so desperate for help that you barely get to sit down before they start giving you details of their situation".

Students also commented on the emotional aspects of clinic duty:

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

Other comments from students included:

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

29 The WLC currently operates through the specialised units of family law, refugee law, consumer law, labour law, land and urban evictions, delict ("tort") as well as a general law unit.

30 See Du Plessis 2009 *JJS* 96 for a full discussion on the nature of the clinic's client pool.

31 *Idem* 96–98.

and:

“Our clients come stressed, scared, worried and desperately seeking for someone to help. We really get heart sore, listening to all and hearing their problems. Yet, as students, we realise there is only so much we can do”.

Students did not hesitate to comment on blatant mistakes made by legal representatives:

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

They also showed appreciation:

“The best part of being in the consumer unit³² is that we are open to a lot of scenarios and learn more than average about cases. We are taught by our professor to see more ‘into’ cases, to cross-question and, most importantly, to read in between the lines and not only go on the initial word of the client. We learnt that life is practical, not a textbook, and facing day-to-day problems no book can teach you how to solve”.

Even though an attempt was made to introduce reflective journals at the WLC during 2013 as part of the course work assessment, it proved to be unsuccessful and therefore, such journals still do not form part of the 2014 assessment regime. However, at that time, the introduction of reflective journals was not properly structured, which is why it is hoped that the suggestions below will inspire the reintroduction of this assessment method.

4 2 Probing the Essence Behind the Use of a Reflective Journal

Reflection can assist in supplementing mediated learning (i.e. teacher-aided learning) by helping individuals to make connections with the theory and constructs they have formally learned.³³ Prompt questions in a personal development journal help students to reflect on and make sense of their understanding.

At the University of Gloucestershire Business School, the following three simple questions are used to prompt students to reflect: (a) Describe the event/experience. (b) How did it make you feel/how did you respond to the event or the experience? (c) How would you respond

32 One of the specialised units within the broader clinical structure. Also see Du Plessis “A consumer clinic as a specialised unit” 2006 *De Jure* 284–294 on the establishment of a specialised unit.

33 Laurillard *Rethinking university teaching: a framework for the effective use of educational technology* (1993) 5-10

to a similar event in the future/what would you do differently?³⁴ Such prompts generally comprise four types of questions, mainly focusing on: (a) The development of supposition and hypothesis; (b) The development of personal feelings; (c) Future action or projection; and (d) The development of critical assessment or value judgments.³⁵

Dewey, Kolb and Boud³⁶ developed a model of experiential learning following the four basic stages of: (a) Taking stock of existing knowledge (what do I know?); (b) Identifying any gaps in learning (what do I need to know?); (c) Feedback and evaluation (how does what I now know contribute to what I already knew?); and (d) Evaluation of the integration of new knowledge with existing knowledge (how well and how much do I now understand?).

In probing reflection as a method to enable deeper learning, Moon³⁷ highlights that, in itself, the language involved in reflection already implies a deep approach. In her “map of learning”, she identifies the following five stages: noticing, making sense, making meaning, working with meaning, and transformative learning. Students are aided in clarifying and making sense of what has been learned and to locate it within an individual framework, forcing them to be self-sufficient and to rely on their own investigative powers. Through reflection, what may have appeared to be acceptable situations are transformed into problems requiring further investigation and finding an answer to a question.³⁸ In addition, reflection supports deep learning by promoting independent thought, as students are required to provide evidence of their reflection, forcing them to focus their thoughts and articulate the results of their reflection.³⁹

4.3 Designing a Workable and Progressive Structure for a Student Reflection and Progress Journal in CLE

The manner in which the student is guided or instructed in his/her reflection is of the utmost importance. The following represents a proposed draft of an instructive reflective journal:⁴⁰

34 See <http://www.glos.ac.uk/uogabout/content.asp?rid=1> (accessed 2014-03-03). These are very similar to the types of questions used by a number of personal development schemes (see <http://www.ltsn.ac.uk/genericcentre/index.asp?id=16911> for more details (accessed 2014-03-03)).

35 Morgan & Saxon *Teaching Questioning and Learning* (1991).

36 See <http://www.infed.org/biblio/b-reflect.htm> (accessed 2014-09-03).

37 *Reflection in Learning and Professional Development, Theory and Practice* (1999). 15 “In its use of words and phrases such as ‘relating ideas’, ‘looking for patterns’, ‘checking’ and ‘examining cautiously and critically’, it implies the involvement of reflective activity in the process of learning.”

38 *Ibid.*

39 Hinett “Improving learning through reflection – part one”, see www.heacademy.ac.uk/.../id485_improving_learning_part_one.pdf (accessed 2014-02-14).

STUDENT NAME **STUDENT NUMBER** **DATE**

Dear student

Your reflective journal serves as a regular, written communication with your clinician regarding your clinical and other experiences in clinical legal education (CLE). Your clinician will also respond in writing. The purpose of your journal is to record observations and reflections, and to encourage deeper, more critical thought about the work and cases that you deal with at the clinic. Your reflections in this journal should help you to take more responsibility for your own learning and should offer you an environment in which to raise your questions and concerns. Your clinician will provide you with periodic feedback. You will be dealing with a number of cases. Please make journal entries to address the following five questions in respect of each case you deal with every week: What did you do? Why did you do it? How did you respond? What did you learn? What goals have you set for the future?

CLE PROGRESS AND REFLECTIVE JOURNAL

For your consideration	Case number & details	Case number & details	Case number & details
WHAT Make brief notes of what you did: the consultations you had with your client or any of the other parties involved in the case; letters you wrote; telephone calls you made; documents and correspondence you perused; research and reading you have done, and/or any other attendances pertaining to the specific case.	Student reply	Student reply	Student reply

40 For further reference, see Balsam *Reflecting well: guided journaling to improve transfer of learning* (conference paper delivered at the Institute for Law Teaching and Learning's summer conference 2011 NY) 1–10. Also see Burns & Sinfield *Essential Study Skills* (2012) 3rd ed.

<p>WHY Make brief analytical notes, answering the following questions: Why did you perform the actions described above? How was it useful? What learning outcomes did it cover? With which part of the case is it helping/has it helped you? NB: Knowing why you did something helps you move from being a passive to an active student.</p>	<p><u>Student reply</u></p>	<p><u>Student reply</u></p>	<p><u>Student reply</u></p>
<p>REACTION Make brief notes on your emotional response to the activity. This sensitises you to the affective dimension of your learning. It allows you to build a picture of yourself as a learner and as a student. NB: This reflection allows you to identify what and how you like to learn – the aspects of the case and the topics that you enjoy, and those you do not; whether you like clinic duty, case file work, lectures, or research and reading; whether you enjoy group work or independent study.</p>	<p><u>Student reply</u></p>	<p><u>Student reply</u></p>	<p><u>Student reply</u></p>

<p>LEARNED Make brief notes on all that you think you learned from clinical experience, the lecture, consultation, or research and reading and/or anything related to the case on which you worked. NB: Through these notes, you will be making your learning a conscious process, which improves both learning quantity and quality. When we fail to do this, we run the risk of leaving all learning behind as soon as we walk away from that clinical consultation or lecture or close that book. Feel free to make this section of your review as detailed and/or concise as you wish.</p>	<u>Student reply</u>	<u>Student reply</u>	<u>Student reply</u>
<p>GOAL SETTING Make brief notes about what you will do next. As no exercise will ever teach you all there is to know on a subject, you should always be thinking: What next?</p>	<u>Student reply</u>	<u>Student reply</u>	<u>Student reply</u>
<u>Clinician's response</u>			

4 4 Feedback on Reflection

It is essential to provide students with feedback on the assessment of their reflective journals, irrespective of whether such assessment is formative or summative, as this will increase their understanding of professionalism, which is a valuable pedagogical tool in itself. Hyams insists that reflective work should be assessed, as graded assessment provides a structure for feedback, which builds and improves students' skills as insightful learners.⁴¹

Puga⁴² in turn states that "the aim of adding a [c]linical component to legal education is to offer a true reflective training academy on th[e] [legal] practice, in a structured legal education laboratory, with *academic*

41 Hyams "On teaching students to 'act like a lawyer': What sort of a lawyer?" 2008 *Int'l J. Clinical Legal Educ.* 30.

42 "Challenges for legal clinics in Argentina" 2003 *Law Teacher* 245, 246.

supervision of students' reflective practice" (own emphasis), which also implies a certain measure of feedback.

4.5 Should Reflection Indeed be Assessed?

The authors agree with Ledvinka's view⁴³ that for many students, learning is driven largely by assessment and that students will view reflection as less important and potentially expendable if not assessed. Her explanation is sensible and well-founded:

"[N]ot only are we assessing the student's substantive knowledge and skills, but also the learning journey he or she has taken from the beginning to the end of the course. In order to assess the learning journey, we must have some evidence that it took place and what it encompassed. [Written] reflection provides this evidence".⁴⁴

Thus, where students are required to keep regular reflective journals, these journals need to be assessed rigorously in order to ensure academic integrity.⁴⁵

5 Conclusion

It is common cause that rigorous assessment of the CLE course is mandatory if it bears credits towards the LLB degree.

This article started out by indicating the difference between summative and formative assessment, as well as its appropriate application, followed by a discussion of the parameters for assessment and mark allocation, and students' experience of these. Against that backdrop, an alternative form of assessment not widely used in South Africa at present, namely reflective journals, was proposed. Considering that this is a fairly new concept in the South African context, the authors set out to explore students' views on the use of reflective journals, and to determine the essence behind and methods for their application. Further issues touched on included feedback to students on their journal entries and the question of whether reflective journal entries should indeed be assessed. As a practical value-added element of the research, a suggested draft of an instructive reflective journal was also proposed.

Therefore, after diligent scrutiny of the applicability of reflective journals as a form of assessment, and being mindful of the unique environments within which our legal clinics operate, it is submitted that reflective journals can be successfully introduced in South African CLE courses. It is hoped that this research will motivate and inspire action in this regard.

43 2006 *Int'l J. Clinical Legal Educ.* 39, 40.

44 *Ibid.*

45 Bender *et al* 78.