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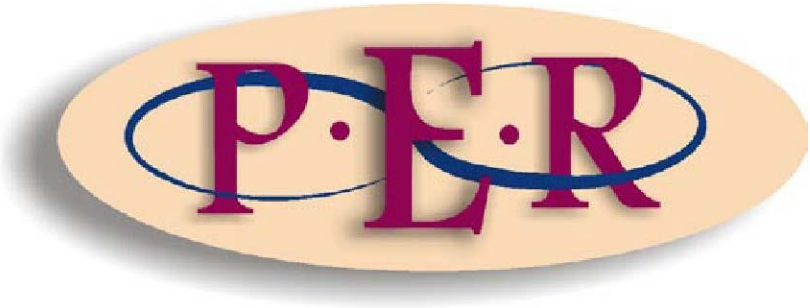

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CLINICAL LEGAL EDUCATION MODELS: RECOMMENDED ASSESSMENT REGIMES

MA du Plessis*

Success is not final, failure is not fatal: it is the courage to continue that counts. Winston Churchill.

1 Introduction

Clinical legal education (CLE) forms part of the LLB curriculum at most South African Universities,[1] as well as in many of the LLB curricula in other countries.[2] There are

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1 The following South African university law clinics, are listed members of SAULCA (South African University Law Clinics Association), which describes part of its mission as being to promote high-quality CLE programmes at universities in South Africa: Rhodes University Law Clinic, University of Stellenbosch Legal Aid Clinic, University of Cape Town Law Clinic, University of Fort Hare, University of Johannesburg Law Clinic, University of KwaZulu-Natal, University of Limpopo Law Clinic, University of Pretoria Law Clinic, University of South Africa Legal Aid Clinic, University of Venda, University of the Witwatersrand Law Clinic, Nelson Mandela Metropolitan University Law Clinic, University of the Free State Law Clinic, North West University Law Clinic, Walter Sisulu University Law Clinic, University of the Western Cape Legal Aid Clinic, and University of Zululand Law Clinic. SAULCA 2014 http://www.saulca.co.za/home.

2 For Southeast Asia, see BABSEA CLE 2015 https://www.babseacle.org/clinical-legal-education, where the Bridges Across Borders Southeast Asia Community Legal Education Initiative (BABSEA CLE) has worked collaboratively with universities, law students, law faculties, lawyers, members of the legal community, and justice related organisational partners since 2003 to develop CLE programmes throughout Southeast Asia. For the USA, see Fordham University School of Law 2015 http://law.fordham.edu/clinical-legal-education/clinics.htm; CLEA 2015 http://www.cleaweb.org/; and Columbia Law School 2015 http://web.law.columbia.edu/clinics. For Europe, see ENCLE 2015 http://encle.org/, stating that CLE is a rapidly growing form of legal education across much of Europe and that it is widely accepted as a powerful pedagogical model which engages students and universities in the life of the community. For India, see Cornell University Law School and Jindal Global Law School 2015 http://www.gaje.org/wp-content/uploads/2012/09/Cor-JGLS-web_low.pdf; For Canada see ACCLE 2015 http://accle.ca/ (Association for Canadian Clinical Legal Education). For the UK see Lewis Date Unknown http://orca.cf.ac.uk/27655/1/CLINICED.pdf. For Ireland see NUI Galway 2015 http://www.nuigalway.ie/business-public-policy-law/school-of-law/students/cle/. For the Middle East see Thomas and Mahasneh 2012 http://repository.law.umich.edu/cgi/viewcontent.cgi?article=1753&context=articles; Qafisheh 2012 http://www.austlii.edu.au/au/journals/LegEdRev/2012/8.html. For Australia see Evans *et al* 2012 http://www.cald.asn.au/assets/lists/Resources/Best_Practices_Australian_Clinical_Legal_Education_Sept_2012.pdf. For South America see http://wp.cedha.net/wp-content/uploads/2011/05/International-Developments-in-Clinical-Legal-Education.pdf and Lennertz Date Unknown http://preview.ialsnet.org/wp-content/uploads/2015/08/Lennertz.pdf. For Eastern Europe see Bryxova, Tomoszek and Vlckova 2006 *JCLE;* Polish Legal Clinics Foundation 2005 http://www.fupp.org.pl/down/legal_clinic.pdf; Ogilvy and Czapanskiy 2004 http://wp.cedha.net/wp-content/uploads/2011/05/doc246-eng.pdf*;* http://www.germanlawjournal.net/current-issue. The Far East: for China, see Phan 2005

many similarities in the approach to CLE, both locally and abroad, but there seem to be as many if not more differences in the approach, particularly relating to student assessment. CLE is continuously evolving in the South African university law clinic environment. Experimentation with clinical models and assessment regimes may result in successes and failures in varying degrees, providing valuable experiences for future progress.[3]

The success of a CLE model or programme is determined when measured against an effective assessment regime.[4] The CLE model will be informed by the mission of the clinic and whether or not the CLE course is mandatory. The aim of this article is to provide guidance to university law clinics in the design or review of their clinical programmes incorporating CLE.

The curricula of four South African university law clinics will be reviewed, namely those of the universities of the Witwatersrand (WLC), Pretoria (UPLC), Johannesburg (UJLC) and the Free State (UFSLC).

2 Determining the mission of the clinic

In order to design assessable content to clinical programmes, it is imperative that the clinic has a clear mission. In most law schools, CLE is taught in a live-client environment. Hyams indicates that the

> [c]linic has a broader mandate than just the integration of practical legal skills with knowledge of the law.[5] Clinicians can (and should) take on the mantle of teaching for lifelong learning, which includes three additional requirements of a professional … autonomy, judgment and a commitment to lifelong education.[6]

http://digitalcommons.law.yale.edu/yhrdlj/vol8/iss1/; Also see Ling 2006 *Fordham Int'l LJ*; Anon 2007 *Harv L Rev*; Yanmin and Pottenger "Chinese Characteristics". For Japan see Martinez 2012 http://scholarlycommons.law.hofstra.edu/cgi/viewcontent.cgi?article=1311&context=faculty_scholarship.

3 See the discussion in para 4 below.

4 Du Plessis *Assessment Methods* 15.

5 Hyams 2008 *IJCLE* 25.

6 Hyams 2008 *IJCLE* 25.

The four South African universities under review formulated clear mission statements. The vision and mission statements of WLC read:[7]

> Vision: WLV aspires to be a leading ULC, nationally and regionally and globally recognized for its excellence in teaching, professional service, research and its innovative collaborative partnerships.
>
> Mission: To maintain the benchmark status amongst domestic law clinics whilst broadening our clinical footprint regionally and internationally;
>
> To develop and provide an effective and progressive clinical programme for students, encapsulating the fundamental tenets of experiential learning;
>
> To provide a professional and quality legal service to the community, as a teaching methodology;
>
> To promote, encourage and support published research by clinicians.

At UPLC the mission statement reads:[8]

> To use the practice of law (simulated and actual) as a context to teach and research substantive and procedural law, ethics, professional skills, effective interpersonal relations, appropriate dispute resolution techniques and the ability to integrate law, fact, procedure and values; to provide quality legal services to the indigent thereby increasing access to justice; to promote access to and transformation of the organised legal profession by providing opportunities and training to candidate attorneys especially those from previously disadvantaged groups; and to foster a commitment in staff and students to build a society based on democratic values, social justice and the rule of law.

UJLC states the aim/mission of Applied Legal Studies,[9] which is incorporated into their clinic, as two-fold, as being the:

> ...clinical legal education of final year LLB students, with the focus on analytical skills, the application of theory and an appreciation of the practical nature and consequences of theory; and the rendering of free legal services to the indigent

7 WLC *Vision and Mission*. Available from the Wits Law Clinic.
8 UPLC "Practical Law 410" 2013 *SG* 3.
9 UJ "ALG (TPR 0000)" 2012 *LG* 2.

> according to the guidelines of the Attorneys Act and the Law Society of the Northern Provinces.

The CLE project at the UFSLC is described as:[10]

> ...a venture conducted by the University's Faculty of Law, where primarily: a) members of the indigent society of the greater Mangaung area of the Free State Province, that qualify in terms of a means test, receive free legal services; and b) final year students of the Faculty receive practical legal training, are exposed to various aspects of legal practice and engage in community service learning projects.

Once the clinic's mission is determined, it will be the foundation upon which the subsequent student and institutional outcomes, curriculum, teaching methods and assessment will be constructed.[11]

3 Should CLE be a mandatory/core course in the LLB curriculum?

The integration of CLE into the core curriculum of a law school will reveal its value as a teaching methodology,[12] whilst when it:

> ...remains a separate enterprise from the core teaching of law it is vulnerable to being undermined due to ideological opposition, changing educational fashions or resource cuts.

Pedagogic aims can be set and achieved, as CLE has intellectual worth in that it enables students to better understand concepts and principles of law and the context within which these operate.[13]

De Klerk supports this position and posits that no law school can claim to produce competent graduates without clinical experience,[14] as "(t)here is no substitute for the real thing." He is critical of curricula which offer CLE as an elective, as students will be allowed "to enter the practice of law without ever having seen a client, been

10 UFSLC *Mission and Vision*.
11 Munro 2002 *JALWD* 231-232.
12 Hall & Kerrigan 2011 *IJCLE* 30.
13 CLEO 2007 http://www.ukcle.ac.uk/resources/teaching-and-learning-practices/clinical-legal-education/.
14 De Klerk *Clinical Law* 246-250.

inside a courtroom or interviewed a witness." These sentiments are echoed by many South African scholars and practitioners,[15] as:

> [t]he ability to handle facts … must be developed in an environment in which the presentation of facts resembles that in the real world.[16]

It is therefore recommended that CLE be incorporated as a mandatory course in the LLB curriculum.

CLE is offered as an elective course at UPLC.[17] In discussing the advantages of CLE, the Director states that [s]tudents wanting "to do clinic"[18] as opposed to "having to do clinic" are generally those planning to enter the legal profession and/or having strong feelings about the need to promote social justice for the indigent.[19] The limited number of students in the programme ensures a lower student per supervisor ratio and thus more time for personal contact,[20] mentorship and assessment practices that may be too complex or time consuming for application to large groups of students.[21] However, he recognises the disadvantages of the elective module as being that a relatively small percentage of final-year law students are exposed to learning the law in a social justice setting, and master the skills and values associated with clinical legal education.[22]

CLE is a mandatory course in the final year of LLB studies at WLC, UJLC and UFSLC. It is my contention that the pedagogy of CLE should ideally consist of three basic components, namely clinical duty, classroom teaching and clinician/student tutorial sessions.[23] It has been said that the most valuable clinical programmes are those which place significant operational responsibility in the hands of students, because that level of trust encourages their learning more effectively than any other st

15 For example: Vawda 2004 *JJS* 124; Parmanand 2003 *Stell L Rev* 202-204; McQuoid-Mason 1982 *JJS* 162.
16 McQuoid-Mason 1982 *JJS* 162.
17 Advised by the Director in an interview with the author in 2013.
18 Advised by the Director in an interview with the author in 2013.
19 For a discussion on the social justice component of CLE, see Barry et al 2012 *Clin L Rev* 401-458; Levy-Pounds and Tyner 2008 *IJCLE* 12.
20 Advised by the Director in an interview with the author in 2013.
21 Advised by the Director in an interview with the author in 2013.
22 Advised by the Director in an interview with the author in 2013.
23 Du Plessis *Assessment Methods* 37-43.

4 Review of the CLE models of the Universities of the Witwatersrand, Pretoria, Johannesburg and Free State

All these university law clinics follow the in-house live-client model and students are required to perform weekly clinic duties, supervised by clinicians.

At the WLC students are paired with partners with whom they work together as teams for the duration of the course.[24] Student pairs are allocated to a clinician, who is responsible for managing their weekly clinic intake of cases. Students on duty, in consultation with their clinician(s) (who attend the clinics) consult with the clients and identify suitable cases.[25] No appointments are made for consultations, as the WLC operates on a "walk-in" and "first-come-first-served" basis. Each student pair has to attend weekly designated and compulsory clinic sessions for two hours. Student pairs also have to attend compulsory 45-minute tutorials weekly with their supervising clinicians, where the cases are discussed in depth, strategies are planned, instructions are given, and student progress is monitored.[26]

At the UPLC students form small groups called firms consisting of five or six members called partners. They report to two clinicians do not attend the clinic but are available. Student firms consult with clients, by appointment only, during their two-hour weekly clinic sessions.[27] No formal tutorials are scheduled, but clinicians monitor students' activities through messages placed in "pigeon holes" in clinicians' offices. Students may also approach clinicians for consultations.[28]

At the UFSLC students are required to do only one semester of clinical sessions. They are allowed to choose from the following specialities: Labour, Evictions, Civil, Family and Appeals.[29] Students, each of whom has a student partner, have to attend clinical sessions once a week, totalling approximately 20 hours of contact sessions per student per year. The student consultation sessions are pre-arranged with

24 The method described here was followed until the end of 2014. Student firms were introduced during 2015. Their success will be measured over time.
25 Haupt and Mahomed 2008 *De Jure* 278.
26 Du Plessis *Assessment Methods* 62.
27 Haupt and Mahomed 2008 *De Jure* 278.
28 Du Plessis *Assessment Methods* 63.
29 Research done by the author, see Du Plessis *Assessment Methods* 62.

clients.[30] In the Appeals unit, students do not consult with clients but are taught by way of simulation.[31] Regular tutorials are arranged with the clinicians.[32]

At the UJLC students are required to do only one semester of clinical sessions. Students do not work in pairs or firms but consult on their own. Clients consult by appointment only. Student assistants and secretaries pre-screen the clients telephonically. Clients that may walk in are also pre-screened and appointments are made. Students are allocated specific days for clinic duty, and a daily session lasts from 08h00 until 13h00. No formal tutorials are scheduled and students consult with clinicians as needed. The clinicians evaluate the students' work regularly and provide them with written feedback.[33]

In comparing the above four models the following is evident: at WLC, UJLC and UFSLC, CLE is a compulsory course, which would seem to be preferable,[34] whereas CLE is an elective course at UPLC. At WLC and UPLC, CLE is taught as a year course, whilst CLE is a semester course at UFSLC and UJLC. The advantage of making it an elective semester course is the reduction in student numbers in the course.[35] However, limiting CLE to a semester course makes it doubtful that students will reap the full benefits that a CLE can offer.[36] It is also more beneficial to clients when the same student counsellors are available for a longer duration to attend to their cases.[37]

Tutorials are compulsory only at WLC and USFLC. It is suggested that the other two clinics under review should consider tutorials where cases can be discussed and students be instructed in a formal and structured setting.[38]

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30 Research done by the author, see Du Plessis *Assessment Methods* 62.

31 The UFSLC is situated in Bloemfontein, which is also the seat of the South African Supreme Court of Appeals.

32 Du Plessis *Assessment Methods* 63.

33 Du Plessis *Assessment Methods* 63.

34 Du Plessis *Assessment Methods* 28-31.

35 A semester course allows for the division of the students into two groups, each group being allocated to a different semester, resulting in there being fewer students per semester. Student numbers may be limited in elective courses, as such courses will not be regarded as foundational courses for the LLB degree.

36 Du Plessis *Assessment Methods* 28-31, 63.

37 Du Plessis *Assessment Methods* 28-31, 63.

38 Du Plessis *Assessment Methods* 39-42.

5 Classroom components of CLE models

5.1 University of the Witwatersrand

WLC teaches CLE to final year LLB students in the full-year course, "Practical Legal Studies". This experiential learning is taught in specialised units,[39] where the clinicians specialise in different fields of law.[40] They use a combination of the live-client teaching model, plenary lectures, tutorials and simulations. Students are required to consult in the clinic for two hours each week, to attend a weekly double lecture of 90 minutes, to attend a 45-minute tutorial, and to work on their case files for at least one to two hours per week.[41] The students' minimum required notional learning hours per week will amount to approximately five-and-a-half hours, which amounts to approximately 30 hours per month.[42] Students are advised, during registration for the course, that they will consult with actual clients, open files, draft legal documents, attend court and generally litigate actual cases, all under the close supervision of qualified attorneys, the clinicians at the law clinic.[43] In this process students receive personal tuition and guidance from their clinicians. Students' performances in the course are assessed through tests, assignments, oral examinations and file work.[44]

The aims of the course are to teach students how to apply the law in practice.[45] Solving actual legal problems involves a combination of knowledge, skills and values and the course therefore aims to refresh students' knowledge of selected substantial law and procedure and to teach them certain skills.[46] These skills, including interviewing, drafting, legal analysis and reasoning, problem solving, file

39 "Experiential courses … rely on experiential education as a significant or primary method of instruction. … [T]his involves using students' experiences in the roles of lawyers or their observations of practising lawyers … to guide their learning". Stuckey *Best Practices for Legal Education* 165.

40 These specialised units are: family law; refugee law; consumer law; labour law; land, housing and evictions; the law of delict; and a general unit to accommodate cases that cannot be allocated to any of the other units.

41 Du Plessis *Assessment Methods* 63-65.

42 Du Plessis *Assessment Methods* 63-65.

43 Du Plessis *Assessment Methods* 63-65.

44 Du Plessis *Assessment Methods* 63-65.

45 WLC *Vision and Mission.*

46 WLC *Vision and Mission.*

management and trial skills are described in detail in the annual Wits Law Clinic Manuals, of which students receive an issue. In the process of assisting the poor and marginalised in society,[47] it is hoped that through this course the students will be infused with the values required of well-rounded practitioners.

The course consists of three components, namely plenary sessions, tutorials and clinic duty.[48] This review will focus on the plenary sessions of the course. The plenary sessions comprise of group lectures for all the students and small group sessions where students are taught in their specialised units. These lectures continue throughout the academic year and are taught weekly during a double lecture (90 minutes). Students receive a clinic manual which contains summaries of the law and procedure relating to the various specialised units, handy hints and some precedents. Students are also presented with prescribed reading lists.[49]

The curriculum for the classroom component of the CLE course, "Practical Legal Studies", is as follows:[50] interviewing skills, file management, court report, basic drafting – letters and statements, professional negligence and insurance, legal research and problem solving, drafting court documents, attorneys' numeracy skills and costs, professional conduct and ethics, organisation of the legal profession, social justice, trial skills: analysis of pleadings and evidence, preparation for trial, a plenary session dealing with pre-trial procedures, analysis of pleadings and evidence, trial skills: a plenary session dealing with court demeanour, opening statements and examination-in-chief, cross-examination and closing address, courtroom skills and a number of weeks conducting trial advocacy exercises. WLC operates in specialised units and each specialised unit will attend a workshop on courtroom skills through demonstrations, simulations and group exercises. In the specialised units,[51] students also attend unit-based sessions where the law and procedure applicable to the various units will be discussed.

47 WLC *Vision and Mission.*
48 WLC 2015 *PLS Course Outline*.
49 WLC 2015 *PLS Course Outline*.
50 WLC 2015 *PLS Course Outline*.
51 These specialised units are: family law; refugee law; consumer law; labour law; land, housing and evictions; the law of delict ("tort"); and a general unit to accommodate cases that cannot be allocated to any of the other units.

5.2 University of Pretoria

UPLC teaches CLE in the course "Practical Law 410 and 420" to final-year LLB students as an elective. They use a combination of the live-client teaching model, simulations and plenary lectures.[52] Students form small groups called firms consisting of five or six partners. As the students progress, they start to work in pairs, and towards the end of the course students work individually. Students are reminded that there are five principal ways in which they should learn from the clinical experience: working on "live-client" cases; discussions with staff and at firm meetings; developing skills in lectures, workshops and working on client files; visiting courts, shadowing candidate attorneys, participating in mock trials; and reflecting on and evaluating their experiences.[53]

The curriculum for the classroom component is referred to as Study Themes.[54] The lectures are presented over the course of a semester. The curriculum for the classroom component comprises of an introduction to the course and the law clinic, which includes the "shadowing" of a candidate attorney;[55] consultation skills; filing, firm duty, the clinic manual, the rules of the clinic and the means test; court procedures, which include an overview of pleadings, notices, process, issuing and service aspects of substantive and procedural law and divorce litigation; a workshop on diversity issues; a workshop on negotiations; legal writing and numeracy skills.[56]

5.3 University of Johannesburg

UJLC teaches CLE in the compulsory year course "Applied Legal Studies" as a compulsory year course to final- year LLB students.[57] They use a combination of the live-client teaching model, simulations and plenary lectures. There are three law clinics, the Auckland Park - Kingsway Campus Clinic, the Soweto Campus Clinic and the Doornfontein Campus Clinic, each headed by a Clinical Principal. Compulsory

52 UPLC "Practical Law 410" 2013 *SG* 7-16.
53 Du Plessis *Assessment Methods* 71.
54 UPLC "Practical Law 410" 2013 *SG* 7-16.
55 Students have prescribed reading materials for every Study Theme. Du Plessis *Assessment Methods* 71-74.
56 Du Plessis *Assessment Methods* 71-74.
57 UJ "ALS" 2013 *LG* 2-30.

lectures are scheduled for every week throughout the year. All lecture contents find application in clinical sessions. Skills are taught which enable students to deal with work, cases and problems at the clinic. Students are assessed weekly in the clinics on work done. In-depth knowledge on six cognitive levels (knowledge, understanding, application, analysis, synthesis and evaluation) is expected.

The curriculum for the classroom component is arranged into five modules to be taught over 15 one-hour lectures. Students are directed to prescribed reading materials. The curriculum for the classroom component comprises of oral and written communication, divorces, Magistrate's Court procedure, legal ethics, numeracy skills, legal costs, the legal profession in South Africa, practice management, and trial advocacy.[58]

5.4 University of the Free State

UFSLC teaches CLE as a compulsory course to final-year LLB students.[59] They use a combination of the live-client teaching model, simulations and plenary lectures.[60] Students are furthermore required to attend a two-hour practical session in a criminal court, or to take part in a community service project, where they work in groups. The classroom component is taught by way of compulsory one-hour plenary lectures once a week. There are also six practice-orientated guest lectures by senior private practitioners. This process is repeated each semester.[61]

The curriculum for the classroom component comprises the following.[62] During the first week of each semester students undergo clinic training in the opening of a client file, how to complete the means test, how to take client and witness statements, how to complete the prescribed action sheet, and the completion of the client indemnification.[63] A text-book is prescribed, on which all lectures are based.[64] The formal course content of the lectures consists of the following topics, which are

58 Du Plessis *Assessment Methods* 74-80.
59 UFSLC "RPK 412" 2013 *Course Outline*.
60 UFSLC "RPK 412" 2013 *Course Outline*.
61 UFSLC "RPK 412" 2013 *Course Outline*.
62 UFSLC "RPK 412" 2013 *Course Outline*.
63 UFSLC "RPK 412" 2013 *Course Outline*.
64 De Klerk *Clinical Law*.

divided into five units:[65] consultation skills, file and case management, practice management, writing letters, drafting pleadings, notices and applications, and legal costs".[66]

5.5 Jurisdictional comparison

The classroom components of the CLE models used by the university law clinics reviewed compare favourably with the three different models of practice used in CLE programmes, as identified by Australian authors Bloch and Noone. These are: a) a relatively open-ended individual service model (as used by WLC);[67] b) a specialisation model addressing a particular area of law with a specifically targeted group of clients (integrated by all the university law clinics under review);[68] and c) a community model concerned with a local community and utilising a range of approaches (as employed by UFSLC).[69]

6 Assessment methods applicable to the various CLE models

The assessment methods applied are necessarily adapted to advance the range of objectives set for each individual CLE programme. Giddings is in support of this view, stating that "[t]he flexibility of clinical (assessment) methodologies means they can be adapted to support student learning of different kinds".[70] Giddings refers to an interview with Hyams[71] as part of his review of the Monash clinical programme, where Hyams "notes the problematic nature of assessment if it is "handed down like a decision without any constructive comment" … as assessment is "a vehicle of learning rather than just a handing down. The assessment assists students to do better".[72]

65 UFSLC "RPK 412" 2013 *Course Outline*.
66 The topic of legal costs is discussed in a study guide handed to the students.
67 Bloch and Noone "Legal Aid Origins" 158-162.
68 Bloch and Noone "Legal Aid Origins" 158-162.
69 Bloch and Noone "Legal Aid Origins" 158-162.
70 Giddings *Promoting Justice* 39.
71 Giddings *Promoting Justice* 175.
72 Giddings *Promoting Justice* 175.

Regardless of the forms of assessment or combinations thereof chosen by clinics for their CLE courses, cognisance should be taken of the principles of assessment stated by Stuckey.[73] These principles are:

a) Be clear about the goals of each assessment;[74]
b) Assess whether students learn what is taught (validity);[75]
c) Conduct criteria-referenced assessments, not norm-referenced (reliability);[76]
d) Use assessments to inform students of their level of professional development;[77]
e) Be sure assessment is feasible;[78]
f) Use multiple methods of assessing student learning;[79]
g) Distinguish between formative and summative assessments;[80]
h) Conduct formative assessments throughout the term;[81]
i) Conduct multiple summative assessments throughout the term, when possible;[82]
j) Ensure that summative assessments are also formative assessments;[83] and
k) Require students to complete educational portfolios.[84]

6.1 Forms of assessment

The clinical assessment models already used by some South African university law clinics as well as those used in foreign jurisdictions were probed and compared in a recent study.[85] These assessment methods will be discussed briefly in an effort to establish the assessment methods best suited for CLE courses in South Africa.

73 Stuckey *Best Practices for Legal Education* 240-263.
74 Stuckey *Best Practices for Legal Education* 240, 241.
75 Stuckey *Best Practices for Legal Education* 241-243.
76 Stuckey *Best Practices for Legal Education* 243-245.
77 Stuckey *Best Practices for Legal Education* 245-253.
78 Stuckey *Best Practices for Legal Education* 253.
79 Stuckey *Best Practices for Legal Education* 253-255.
80 Stuckey *Best Practices for Legal Education* 255.
81 Stuckey *Best Practices for Legal Education* 255-259.
82 Stuckey *Best Practices for Legal Education* 259, 260.
83 Stuckey *Best Practices for Legal Education* 260, 261.
84 Stuckey *Best Practices for Legal Education* 261-263.
85 Du Plessis *Assessment Methods* 111-192.

6.1.1 Written tests

Written tests are capable of application to the specific South African context.[86] It is submitted that assessment rubrics be designed and used to allow for an even-handed assessment of all the students, specifically where clinics operate across a number of different specialised units.[87]

6.1.2 Spot tests, minute papers and short essay quizzes

Spot tests and minute papers can be applied successfully during student tutorials,[88] but the use of short essay quizzes is discouraged due to the large student numbers clinics generally have to accommodate in South Africa.[89]

6.1.3 Multiple-choice quizzes

Multiple-choice quizzes can be used to assess students' understanding of foundational doctrine.[90] These can be used either before or after plenary instruction when students' knowledge and understanding of the substantive law learnt in previous years are re-enforced for application in the clinical context.

6.1.4 In-class short-answer tests

In-class short-answer tests may be applied successfully as a revision exercise of the history on a case file during tutorials. Large student numbers and limited lecture time make this form of assessment less than convenient for application during classroom instruction or plenary sessions.[91]

6.1.5 Written assignments

Written assignments are useful assessment tools when students' understanding of legal practice and court processes is tested.[92] The use of assessment rubrics is recommended.[93]

86 Du Plessis *Assessment Methods* 112, 113.
87 Du Plessis *Assessment Methods* 112, 113.
88 Du Plessis *Assessment Methods* 112, 113.
89 See Klein "Engaging and Assessing our Students"; Krause-Phelan "Connecting the Dots".
90 Sparrow 2011 *Elon L Rev* 4-9.
91 Du Plessis *Assessment Methods* 119.
92 Du Plessis *Assessment Methods* 111-124.

6.1.6 Essay examination

The open-ended nature of essay examination often leads to a failure to test the skills taught in a clinical course, and grading is likely to be inconsistent.[94]

6.1.7 Oral examination

Oral examination is an ideal form of assessment, as clinicians can test what students have learnt across a wider scope and in more detail.[95]

6.1.8 Reflective journals

Reflective journals can be successfully required in the South African clinical context, but clinical directors should heed the challenges of having to deal with large student numbers and the time constraints clinicians often experience.[96]

6.1.9 Self-evaluation and peer evaluation

Self-evaluations are useful formative assessment tools for both students and clinicians,[97] specifically where students work with a partner. These evaluations can form part of a tutorial session where clinicians will be able to distinguishing between the approaches of the student partners.[98] Peer evaluations are particularly useful when students do group work or operate in student firms.[99]

6.1.10 Client evaluation

Chavkin states that "clients have enough to deal with in their lives"[100] and they might view participation in reviews "as a condition of future service by the clinic". Clients may therefore complete questionnaires in a manner that is not intended to

93 Du Plessis *Assessment Methods* 111-124.
94 Du Plessis *Assessment Methods* 111-124; Sergienko 2001 *San Diego L Rev* 469-474.
95 Du Plessis *Assessment Methods* 126-128.
96 Du Plessis *Assessment Methods* 130-140. See Du Plessis and Swanepoel 2014 *De Jure* 283-297 for a full discussion.
97 Du Plessis *Assessment Methods* 140-148.
98 Du Plessis *Assessment Methods* 140-148.
99 Du Plessis *Assessment Methods* 140-148.
100 Chavkin 1994 *Clin L Rev* 203.

offend the student counselors to whom they entrust their legal problems.[101] Client evaluations are not recommended.

6.1.11 Case file work assessment

Case file work assessment is essential in CLE courses.[102] It covers the complete range of skills students need to enable them to assist clients and proceed with their cases.[103] It is suggested that assessment rubrics be used when assessing case file work.

7 Conclusion

It has been shown that CLE forms part of the LLB curriculum at most South African Universities. There are many similarities in the approach to CLE, but often also many differences. The clinical models of four South African university law clinics have been reviewed in an effort to find suitable models. Formulating a mission for the law clinic will have a direct impact on the clinical model chosen.

CLE courses are taught at university law clinics and it has been shown that the integration of CLE into the core curriculum of the law school will reveal its value as a teaching methodology. Pedagogic aims can be set and achieved, as CLE has intellectual worth in that it enables students to better understand the concepts and principles of law and the application thereof in practice. It is recommended that CLE courses be mandatory.

The pedagogy of CLE comprise of three basic components, namely the clinical experience, tutorial sessions and the classroom instruction. The extent to which these three components find application in the four South African university law clinics under review has been indicated.

The principles informing assessment have been described. Assessment methods appropriate for application in CLE courses, as indicated in a comprehensive study of

101 Haupt and Mahomed 2008 *De Jure* 292.
102 Du Plessis *Assessment Methods* 154-167.
103 Du Plessis *Assessment Methods* 154-167.

the topic,[104] have been discussed as to their applicability to CLE courses in the South African environment.

104 Du Plessis *Assessment Methods*.

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LIST OF ABBREVIATIONS

ACCLE	Association for Canadian Clinical Legal Education
ALS	Applied Legal Studies
BABSEA CLE	Bridges Across Borders Southeast Asia Community Legal Education Initiative
CLE	Clinical Legal Education
CLEA	Clinical Legal Education Association
CLEO	Clinical Legal Education Organisation
Clin L Rev	Clinical Law Review
Elon L Rev	Elon Law Review
ENCLE	European Network for Clinical Legal Education
Fordham Int'l LJ	Fordham International Law Journal
GLR	Griffith Law Review
IJCLE	International Journal of Clinical Legal Education
JALWD	Journal of the Association of Legal Writing Directors
JCLE	Journal of Clinical Legal Education

JJS	Journal for Juridical Science
LG	Learning Guide
PLS	Practical Legal Studies
San Diego L Rev	San Diego Law Review
SAULCA	South African University Law Clinics Association
SG	Study Guide
Stell L Rev	Stellenbosch Law Review
UFSLC	University of the Free State Law Clinic
UJ	University of Johannesburg
UJLC	University of Johannesburg Law Clinic
UPLC	University of Pretoria Law Clinic
WLC	Wits Law Clinic

CLINICAL LEGAL EDUCATION MODELS: RECOMMENDED ASSESSMENT REGIMES

MA du Plessis*

SUMMARY

Clinical legal education (CLE) forms part of the LLB curriculum at most South African Universities. There are many similarities in the approach to CLE, but often also many differences. The clinical models of four South African university law clinics are reviewed in an effort to find suitable models. It is indicated that formulating a mission for the law clinic will have a direct impact on the clinical model chosen. The integration of CLE courses into the core curriculum of the law school will reveal CLE's value as a teaching methodology. Pedagogic aims can be set and achieved as CLE has intellectual worth in that it enables students to better understand concepts and principles of law and the application thereof in practice. It is therefore recommended that CLE courses be mandatory. The pedagogy of CLE is comprised of three basic components, namely clinical experience, tutorial sessions, and classroom instruction. The extent to which these three components find application in the four South African university law clinics under review is indicated. The principles of assessment are stated. Assessment methods appropriate for application in CLE courses, as indicated in a comprehensive study of the topic,[1] are discussed as to their applicability to CLE courses in the South African environment.

KEYWORDS: CLE; clinical legal education; curriculum; assessment; law clinic; CLE model; clinic mission; CLE pedagogy.

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