Legal Education in the 21st Century

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Empirical research shows that modern law students, at least at post-graduate level, wish to have some options to learn something about the skills of 'lawyering'. Students often say that they want to have more than just the letters 'LLM' after their names. They pay substantial tuition fees to obtain these post-graduate degrees, and they wish at least to make a start on learning how to be a practising lawyer. This is especially true for students who intend to become dispute resolution lawyers.

Conventionally, legal education has been confined to the classroom. In England it was left to the Inns of Court and the Law Society, and in the civil law systems to the Bar authorities, for bridging the gap between 'legal education' and learning the science (or art) of 'lawyering'.

The concept of compulsory continuing legal education (CLE) after qualification came about as a result of a number of elements that indicated an increasing need to ensure that practitioners keep themselves up-to-date with changes in the law. It is surprising that this was not introduced earlier, as (for example) the medical profession has been doing it for many decades, if not centuries. One of the results of this development is that practitioners and post-graduate/pre-qualification lawyers feel the pressure of increasing tuition costs.

The full effects of this have yet to be seen and analysed. However, it can be

predicted with some confidence that increasing student demands, together with the requirements for compulsory continuing post-qualification legal education, will witness a corresponding rise in the need for modern 'skills-learning' methods – such as the use of 'mock' scenarios for dispute resolution and negotiation, rather than the classical model of classroom teaching. By analogy, when you learn to drive a car you may start by learning the rules of the road in a classroom, but you do not get your licence without spending time 'behind the wheel' with an instructor sitting in the passenger's seat. Thus, teaching substantive law in a classroom is not be enough; students must learn 'lawyering skills' as well.

The compulsory CLE system was designed to ensure that practising lawyers would be up-dated with latest developments in their specialised fields (and more widely for the few remaining general practitioners). However it confused newly qualified lawyers and employers alike – especially the latter because they could not fathom the need for new recruits to waste precious billing hours in a classroom. Skills learning was introduced partly in order to avoid the potential problem of qualified lawyers being mere wallflowers at lectures. For instance, dispute resolution techniques were taught by using mock cases supervised by career practitioners. Course leaders would brief the students on the mock case before the action began, and would 'de-brief' them afterwards to help them analyse what they did right, and what they did wrong. While the longer established universities experienced difficulty in creating faculties for this purpose, comprised primarily of individuals who had not acquired the required academic qualifications and/or a suitable publications list, the new universities found it relatively easy to conform to this method of instruction as a result of the flexibility contained in their statutes to award chairs to suitably qualified retired or semi-retired practitioners). Commercial providers also took advantage of this 'gap' in the market.

Another development of the 'learning-by-doing' process was in the field of mooting. Mooting is an age old skills learning tool. The Willem C. Vis International Arbitration Moot, for example, is presented in the form of a 'file' rather than a narrative so, as lend to the competition the feeling of a real live dispute. What adds to the value of mooting is the fact that, as well as knowledge of substantive law gained from the problem scenario itself, participants gain confidence and generally improve their 'soft skills' during the exercise. Rapport building is a large component of this, and engaging in a moot makes a student privy to a number of verbal and non-verbal tools that are of great importance to legal practitioners.

However, the mooting scenario does not progress beyond argument and counter argument. There is no scope for presentation of evidence by cross-examination or other confrontational methods. The National Institute of Trial Advocacy (NITA), which is at the forefront of advocacy training in the USA has introduced this element in workshop format. However, the NITA experience is, in general, restricted to jury trial techniques, which is an entirely different ball game from international arbitration, or even a civil trial before a judge alone. In the international scenario, a number of institutions have embarked on advocacy training exercises, for example the Foundation for Advocacy in International Arbitration (FIAA) and the Dubai International Arbitration Centre (DIAC).

Learning-by-doing is by no means the only way to train lawyers, and prospective lawyers, to acquire advocacy skills. However, it is an important element for those infected with a mission to become advocates in the international arbitration context, and – as a later step – to become international arbitrators. Other educational techniques also exist, which due to constraints of space and time must wait for another day. These include mentoring, pupillage and so forth.

The overwhelming conclusion is that the skills needed to become an effective lawyer in the field of advocacy cannot be learned solely in a classroom or lecture theatre. There is an undeniable role for the ‘learning-by-doing’ experience.

Your contributor would welcome debate on the topic in this forum; the international arbitration community needs to examine the ways in which the system can be made to operate better in the medium-to-long term.