

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

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OPSOMMING

Hierdie artikel bevat enkele gedagtes oor die assesseringsmetodes in die regs kliniese programme van die Universiteit van Pretoria en die Universiteit van die Witwatersrand se regs klinieke. Ten spyte van die toename en uitbreiding van kliniese regsopleiding deur middel van regs klinieke verbonde aan Regsfakulteite in Suid Afrika, is daar nog weinig gepubliseer rakende assesseringsmetodes in regs kliniese opleiding. In hierdie artikel word summatiewe assessering by die Regskliniek van die Universiteit van Pretoria en die Regskliniek van die Witwatersrandse Universiteit ontleed en vergelyk. Verskille in die struktuur en organisasie van die klinieke, sowel as in die aard en omvang van die programme deur hulle aangebied, word aangetoon. Die assesseringsmetodes van die klinieke word vervolgens vergelyk. Dit sluit in assessering van studenteportefeuljes, geskrewe toetse en werksopdragte en mondelinge eksamens sowel as self-, portuurgroep- en kliënte-assessering. Ten slotte word daar gepoog om die voor- en nadele van die verskillende assesseringsmetodes en -modelle aan te toon en te verduidelik hoe die assesseringsmetodes deur die struktuur van die kliniek beïnvloed word.

1 Introduction

The recent past has witnessed an increase in the publishing of academic articles on clinical legal education and its development. However, very little has been published about assessment methods used in clinical law programmes in South Africa (SA).¹

¹ Limited reference on assessment in Clinical Legal Education is cited in Haupt "Some aspects regarding the origin, development and present position of the University of Pretoria Law Clinic" 2006 *De Jure* 229-243; Osman "Meeting quality requirements: A qualitative review of the clinical law module at the Howard College Campus" 2006 *De Jure* 252-283; De Klerk and Mahomed "Specialisation at a university law clinic: The Wits experience" 2006 *De Jure* 306-318.

This problem is not unique to SA but is of international concern, as submitted by Stuckey:

“Unfortunately, the first generation of clinical law teachers did not clearly articulate our educational goals nor did we fully explore how to assess the effectiveness of our instruction. Subsequent generations of clinical teachers adopted the practices of their predecessors and mentors. Consequently, many issues related to assessments of clinical students remain unexplored, and current practices tend to be neither valid nor reliable.”²

The purpose of this article is to discuss and evaluate summative assessment methods used in clinical law programmes adopted at the University of Pretoria Law Clinic (UPLC) and the University of the Witwatersrand Law Clinic (WLC). Both law clinics are established clinics with many years of tried and tested experience. There are, however, marked differences in their structure and operations. This has influenced the development and implementation of the various assessment methods that are adopted at the respective law clinics. It is this sense of difference that has influenced the writers to reflect on the various assessment methods that are applied.

2 Clinical Legal Education Programmes in South Africa

Law clinics in SA were incepted in the early 1970s, mostly due to the political and social circumstances prevailing in the country at the time.³ It was only in the late 1980s and early 1990s that most universities began to recognise the academic value of the programmes and began to impose academic requirements for students participating in the course.⁴ Several leading university law clinics began designing academic curricula and implementing assessment methods that are in line with university requirements. Accreditation as a course within a law faculty curriculum depended on summative assessment processes having been implemented. For example, the UPLC was incepted in 1980 and an academic credit-bearing elective programme implemented in 1987. The WLC was formally established in 1973 and a compulsory credit-bearing course was implemented in the late 1990s. However, at some developing law clinics little or no thought at all is vested in exploring assessment methods appropriate for students participating in clinical legal education.⁵

2 Stuckey “Can we assess what we purport to teach in Clinical Law courses” 2006 9 *International Law of Clinical Legal Education* 9–28.

3 See McQuiod–Mason *Transforming South African Universities: Teaching Social Justice to Law Students through Community Services: The South African Experience* (1999) 90–91 where he submits: “In a developing country such as South Africa where there are vast economic and social differences between rich and poor, and where the majority of the population do not have access to proper legal services, law clinics take the form of legal aid clinics and deal predominantly with poverty law matters.” See De Klerk “University law clinics in South Africa” 2005 *SALJ* 929–950 and Haupt 2006 *De Jure* 229–243.

4 De Klerk 2005 *SALJ* 930.

5 As a direct response to this an Association of University Legal Aid Institutions (Aulai) workshop was hosted in Jan 2003 in Stellenbosch on assessment methodol-

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Clinical legal education is defined as “lawyer–client work by law students under law school supervision for credit towards the law degree”.⁶ It has commonly been cited that: “CLE therefore has three essential components: actual client involvement,⁷ close supervision of students by a university, and academic credit being awarded for work done.”⁸ There are several methods used to teach clinical legal education including the in-house live-client model, simulation exercises, plenary lectures and externship programmes.⁹ For the purposes of this paper assessment methods used to evaluate students’ performance and knowledge gained in simulation processes, plenary lectures and the in-house live-client environment will be discussed and evaluated.

As the method used to teach clinical legal education differs from traditional law school teaching methods, appropriate assessment methods must be implemented. As stated by Hyams:

“Traditional law school teaching methodology relies heavily on the Langdellian style of lectures, tutorials and then a form of summative evaluation. Clinical pedagogy is a radical departure from this style and as such assessment of clinical students necessitates a different approach. Clinicians have a duty to offer assessment regimes which complement the clinical technique of law teaching.”¹⁰

3 Defining “Assessment” and its Purpose in Clinical Legal Education

“Assessment” has essentially been defined as taking a sample of what students do, making inferences and estimating the worth of their actions.¹¹ Selecting an appropriate assessment method is a crucial part of

ogy. See Wimpey and Mahomed “The practise of freedom – The South African experience” 2005 unpublished paper presented at the International Journal of Clinical Legal Education Conference 12.

6 As defined by the Council on Legal Education for Professional Responsibility (CLEPR), the leading clinical organisation in the US which was established in 1968.

7 The actual client involvement refers to the in-house teaching model which is used to teach clinical studies.

8 De Klerk 2005 *SALJ* 929.

9 The in-house teaching model provides students the opportunity to learn through practice in a live-client environment. Externship programmes involve placing law students at law offices outside the law school where they work under the supervision of attorneys who are not employed at the universities. Simulation processes are exercises that resemble real situations. Students assume the role of a lawyer and role-play these exercises. Plenary lectures consist of group lectures covering a variety of clinical topics. See Mahomed “United in our challenges – Should the model used to teach clinical legal education in South Africa be reviewed?” 2007 unpublished paper copy with author 3–5.

10 Hyams “Students assessments in the clinical environment – What can we learn from the US experience?” 2006 *International Journal of Clinical Legal Education* 77. See Menon *Clinical Legal Education* (1998) 277–278 where he submits: “Gauging the progress and evaluating the work of students enrolled in live-client clinical legal education courses can provide challenges for clinic teachers.”

11 Brown, Bull and Pendlebury *Assessing Student Learning in Higher Education* (1997) 8.

the students' learning process and inextricably linked to what the desired outcomes of a programme are stated to be.¹²

Assessment methods must be valid and reliable.¹³ "Validity refers to the fact that assessment tasks should measure what they intend to measure."¹⁴ We need to determine what the outcomes of the programme are and then ask ourselves if the assessment determined can actually measure the achievement of the objectives.

Reliability refers to the accuracy with which the test measures the skill or attainment it is designed to measure.¹⁵ Consistency in assessing student performance is fundamental and thus the method used in assessment processes must be reliable.

Assessment purposes can be categorised as summative and formative.¹⁶ Summative assessment is used to measure the extent of learning and for grading purposes after completion of a piece of work or module.¹⁷ Formative assessment is used during the learning experience to provide feedback to students so that they have the opportunity to improve.¹⁸ Formative assessment methods are "purely educational, and while they may be scored, they are not used to assign grades or rank students".¹⁹

Determining objective assessment methods within a clinical setting continues to prove challenging. This is mostly due to the fact that students learn by doing – they actively participate in the course, thus requiring assessment methods that are able to grade the skills learnt. There is no single method that can be applied but rather a series of methods:

"The assessment methods used in experiential learning are as diverse as the activities. Personal development tends to use informal self-assessment and peer feedback. Where formal assessment is required, academics sometimes resort to setting conventional assignments (such as a literature review), which may be unrelated to the affective learning that forms the major part of the course."²⁰

12 See Brown, Bull and Pendlebury 5 where it is submitted: "If you want to change student learning then change the methods of assessment."

13 *Assessment of Written Items Guide* (2002) Education Innovation University of Pretoria 1–2. Other factors have also been stated, including fairness, equitability, formative, timely, incremental, redeemable, demanding, efficient and acceptability. However, for the purposes of this paper emphasis is placed on validity and reliability.

14 Button, Chamberlain, De Groot and Hadingham *Assessment to Promote Student Learning: A Wits Resource Guide for Lectures* (2006) 9.

15 Button, Chamberlain, De Groot and Hadingham 9.

16 *Assessment of Written Items Guide* 3. For the purposes of this paper we have limited the purposes of assessment to summative and formative. However, other purposes include: diagnostic – diagnostic assessment is used to identify learning difficulties; evaluative – evaluative assessment is used "to evaluate strengths and weaknesses of teaching and learning within a programme and to assist curriculum development".

17 Lockett and Sutherland *Assessment Practices that Improve Teaching and Learning* (2000) 101. See Stuckey 2006 *International Journal of Clinical Legal Education* 9–28.

18 Lockett and Sutherland 101.

19 Stuckey 2006 9 *International Journal of Clinical Legal Education* 9–28.

20 Weil and McGill *Making Sense of Experiential Learning* (1990) 34.

As a result of the complex nature of assessment many propose that students simply receive grades on a pass/fail model rather than receiving an actual mark for the course:

“The lack of sufficient and reliable information, and the difficulty in formulating appropriate assessment criteria and of applying criteria objectively in a one-one relationship may have led to the wide use (and acceptance) of the pass/fail grading system in clinical programmes.”²¹

This system is criticised for several reason including:

- (a) Students may be less motivated, devoting less time and energy while participating in a course that simply provides a grade of pass or fail;²²
- (b) adopting different assessment criteria to those of other mainstream courses may undermine the credibility of the course;²³
- (c) this form of assessment may not conform with university requirements.

It is submitted that summative assessment processes can be determined if actual outcomes for the programmes are set.²⁴ The challenge, however, is that actual outcomes cannot always be determined for all elements of the clinical programme. For example, how does one determine the outcomes and assessment process for evaluating student commitment to access to justice?²⁵

A description of the clinical legal education teaching models at the UPLC and the WLC will now be provided, followed by an evaluation of their assessment methods.

4 The University of the Witwatersrand Law Clinic (WLC)

At the WLC, clinical legal education is taught using a combination of the in-house live-client teaching model, simulation exercises and plenary lectures. The programme is referred to as Practical Legal Studies and has

21 Menon 290, Hyams 2006 *International Journal of Clinical Legal Education* 87–88.

22 Hyams *idem* 88.

23 *Ibid.*

24 Grosberg “How should we assess interviewing and counselling skills?” 2006 *International Journal of Clinical Legal Education* 58 where it is stated: “A central aspect of assessment is the learning goal. What are we trying to teach? What is the ideal outcome we would like to achieve? It is critical that the method of assessment be directly correlated with those learning objectives.”

25 Stuckey 2006 *International Journal of Clinical Legal Education* 25–27 where he submits: “What assessment tools might produce any information about a student’s commitment to justice? I concede that I do not have very good answers. In clinical courses, especially real life clinics, we can observe students working on cases and listen to what they say about justice-related issues. This may be the best indicator of a student’s feelings and beliefs about justice.” See also Menon 282, where he illustrates that “determining whether a student acted ethically or deciding whether a student should have felt differently when handling a particularly type of client involves perception, interpretation, and judgment. These capacities may be difficult to describe and assess”.

best been described as a credit-bearing, compulsory, in-house specialised programme²⁶ for all law students in their final year of study. Students are paired²⁷ with a partner with whom they work together as a team for the duration of the course.²⁸

Student pairs are then allocated to one of seven clinicians²⁹ and work closely with that clinician for the duration of the course.³⁰ Individual clinicians are responsible for managing their weekly clinic intake sessions where duty students screen members of the public for suitable cases.³¹

Case loads are allocated to each student pair, and all professional activities on the files are closely monitored during the weekly tutorial sessions.³² Apart from clinical work, students also attend plenary lectures where matters relating to the drafting of documents, professional management, ethics, numeracy skills, interviewing skills and statement taking, trial skills and social justice are discussed. A simulation process is adopted when teaching trial advocacy.

Clinicians are also responsible for the training and mentoring of a candidate attorney completing apprenticeship at the clinic. Presently there are eleven candidate attorneys employed at the clinic.

Summative assessment of student grades is compiled as follows:

- (a) File assessment: 50 % which comprises of the following evaluation:
- | | |
|---------------------------------------|-------|
| • Quality of statements | 7,5 % |
| • Analysis of the problem | 7,5 % |
| • Ability to assess and plan strategy | 7,5 % |
| • Execution of strategy | 7,5 % |

26 The clinic offers several specialised units including Delict, Labour, Family, Refugee, Eviction and General units with specific emphasis on the law of Contract and Consumer Law. Each supervising attorney has developed specialised skills in specific areas of law.

27 There are several advantages and challenges relating to students working in firms or groups. See Hyams 2006 *International Journal on Clinical Legal Education* 89 where he notes that in “the US clinicians have argued that the major benefit of requiring students to collaborate in a clinical setting is bringing together the practical resources of students who have different skills and knowledge bases”. Hyams raises the following challenges relating to this process including questions on how to assess such students. Do these students in fact collaborate or do they simply divide the work and complete tasks individually?

28 The WLC accommodates on average 300 students per year. The UPLC accommodates on average 60 students per year.

29 For the purpose of the paper “clinician” is defined as an admitted attorney employed at a university either on an academic or contractual basis for the purpose of teaching clinical legal education.

30 The ratio of student to supervisor is on average 1:40. This ratio is not ideal. See De Klerk and Mahomed 2006 *De Jure* 308.

31 On average the clinics screens between 20 and 50 people on any given working day, including student vacations.

32 As a result of the large number of clients who are screened, student case loads average between 8 and 10 files per student pair. Although 45 minutes have been allocated for tutorials, this time may vary depending on the complexity of the files with which the students are dealing.

• Drafting skills	7,5 %
• Verbal communication skills	7,5 %
• Sense of responsibility/Attendance	5 %
(b) Written test	20 %
(c) Written assignment/case report	10 %
(d) Oral examination	20 %

5 The University of Pretoria Law Clinic (UPLC)

At the UPLC, clinical legal education is taught using a combination of the in-house live-client teaching model, simulations and plenary lectures. The programme is best described as a credit-bearing elective for final-year law students in a general practice setting. Students form small groups called firms consisting of five or six members called partners. These groups are composed to reflect cultural and gender diversity.

Initially six students work as a firm but as they progress they work in pairs and then individually. Two clinicians, working exclusively with the student firms and their case files, are allocated to these firms. Student firms report to the clinicians and work closely with the clinicians for the duration of the course. Clinicians, in consultation with the firms, determine the type and number of cases taken on by the firm, pair and individual student. Student firms are required to screen clients, consult with them, do the necessary research of fact and law and draft appropriate letters and pleadings during their two-hour weekly sessions. Prior to seeing clients all students are taken on an intensive off-campus two-day workshop where issues relating to consultation and negotiation are dealt with by way of simulations.

During the course of the year students attend weekly lectures where matters relating to file and office management, drafting of documents, numeracy skills and drafting of bills of costs as well as a number of procedural or substantive law topics are discussed.

It is not expected of clinicians to take on their own case loads or to assist in the training of the candidate attorneys serving articles at the clinic. The other seven attorneys in the clinic, not dealing with students and/or student files, save on a limited and *ad hoc* basis, are responsible for the bulk of client files and mentoring of candidate attorneys.

Summative student assessment comprises:

First semester:

(a) Written test	25 %
(b) Practical assignment	10 %
(c) Attendance and participation	10 %

Practical work done in the clinic is made up as follows:

(a) File assessment and fees written ³³	30 %
(b) Peer assessment	5 %

³³ Students are expected to draft *pro forma* bills of costs in every case handled by them. The total amount of fees will give an indication to the student and clinician of the billable hours spent on a matter, very much like in a private practice.

- | | |
|---------------------------|-----|
| (c) Client assessment | 5% |
| (d) Drafting of documents | 15% |

The second semester follows a similar pattern, save that peer and client assessment and the practical assignment are substituted with comprehensive research and a written assignment counting twenty percent.

The first and second semester marks make up the year mark counting fifty percent. A final oral examination provides a further fifty percent.

6 Differences in the Two Teaching Models

The two teaching models above reveal the following differences:

6.1 Elective Versus Compulsory

At the UPLC the programme is an elective course for final-year law students, attracting a limited number of students. Students need to apply to participate in the clinical programme and are interviewed. Students who fail to demonstrate an understanding of the responsibility or time involved in enrolling for the clinical course or who are carrying over subjects from previous years of study are discouraged. In 2007 sixty-two students were enrolled for the course.

The advantages associated with an elective model are numerous. Students wanting “to do clinic” as opposed to “having to do clinic” are generally those planning to enter the legal profession and/or having strong feelings on social justice issues such as access to justice for the indigent. The limited number of students ensures a lower student per supervisor ratio and thus more time for personal contact, mentorship and assessment practices that may be too complex or time consuming when dealing with large groups or high student-clinician ratios.

The disadvantages of the elective module are that a relatively small percentage of final-year law students are exposed to learning the law in a social justice setting and to skills and values associated with clinical legal education. The course is also perceived to be elitist in the sense that it is exclusive to the academically strong students.

At the WLC the programme is a compulsory final year course involving large numbers of students. For example, in 2005 the clinic accommodated approximately 250 students, in 2006 the student numbers increased to 280 and in 2007 the clinic hosted 308 students.

6.2 General Clinic Versus Specialisation Clinic³⁴

Although the UPLC consists of various units dealing respectively with civil litigation, debt relief, criminal litigation and labour law, the attorneys and candidate attorneys manning these units have only *ad hoc* and limited responsibilities for students and their files. Clinicians dedicated to student teaching and supervision do not generally attend to their own caseloads or mentoring of candidate attorneys.

³⁴ For a discussion on the development of these models see Haupt 2006 *De Jure* 229–243 and De Klerk and Mahomed 2006 *De Jure* 306–318.

Cases from the various units, identified as suitable for student learning and fair assessment, are allocated to students. This ensures that every student, or at the very least every student firm, will handle a divorce case, a labour matter, a claim based on contract or delict, and sit in on a criminal case and debt restructuring. This makes assessment of student files or portfolios less difficult as they all handle similar types of cases and comparisons are easier to make.

In 2000 the WLC adopted a specialised form of clinical practice. This has resulted in the creation of specialised units including delict, labour, family, refugee, eviction and a general unit which deals with consumer and contractual matters. Although this has helped individual clinicians in developing their area of expertise, this model has not succeeded in limiting the number of client consultations that take place daily.³⁵ “Large numbers of clients dictates [*sic*] excessive caseloads. Dealing with a large number of matters results in excessive strain been [*sic*] placed on both supervisor and student.”³⁶

In relation to the assessment of students in specialised units, a number of advantages and challenges present themselves. The fundamental advantages are that student development in their specialised units can be closely monitored, tests, portfolios and oral examinations are unit specific, thus making it easier for clinicians to grade. However, as students are exposed to different areas of specialisation, some students may find learning in certain units easier than in other units, “so for example students in the Family Law Unit might find it easier to conceptualise matters of procedure than [*sic*] those students in the Refugee Law Unit dealing more in advocacy and policy issues, thus making the understanding of client needs more challenging for these students”.³⁷

6.3 Appointments with Clients

At the UPLC students consult with clients on an appointment basis; this helps to limit the number of consultations and assists in limiting the selection of matters litigated on.³⁸

The WLC operates on a walk-in system – clients consult with specialised clinicians daily. On average between twenty and fifty clients are screened daily and a number of matters taken on.

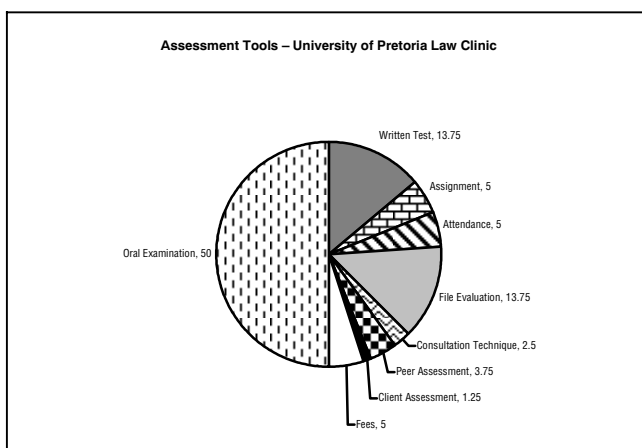
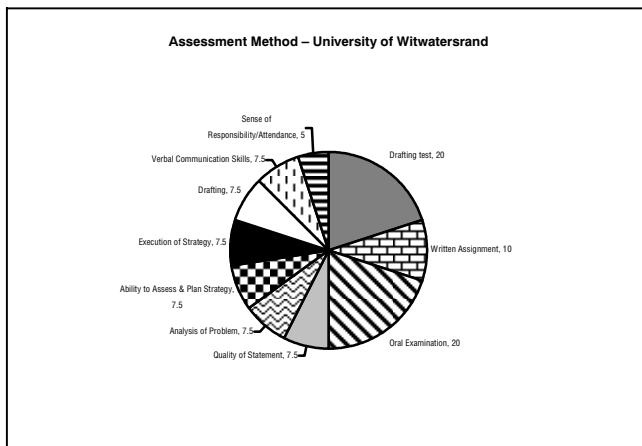
35 De Klerk and Mahomed 306–318.

36 Mahomed 2007 (Unpublished) 15–16.

37 *Idem* 19.

38 Clients presenting themselves at the clinic without an appointment are either attended to by the candidate attorneys; alternatively, an appointment is made for a later date.

6 3 1 Assessment Methods at UPLC and WLC as Illustrated by Pie Charts



The pie charts illustrate the following:

- (a) The WLC attaches a higher percentage of the grade to portfolio assessment than the UPLC, where a higher percentage of the grade is allocated to the oral examination.
- (b) The UPLC has included a peer assessment component, a client assessment component and a fees drafting exercise into their assessment process. The fact that extensive use is made of firms, where students work together intimately, lends itself to peer assessment. Assessment by clients, by way of clients completing satisfaction questionnaires, as well as allocation of marks based on “fees” written is possible because of the limited number of students and consequently fewer clients seen by students.

It is submitted that the differences in teaching models have an influence on the assessment methods adopted. The UPLC submits that while objective

assessment might be impossible to achieve, a variety of assessment methods catering for all individual learning styles, carried out by a variety of assessors and addressing as many competencies as possible could in some way reflect objectivity. However, implementing a wide variety of methods is only possible because of the limited number of students and clients. At the same time, these assessment methods seem to be rather complex and time consuming and students not used to such assessment processes have, in the past, shown some resistance towards the process.

The WLC model appears to be more simplified as a consequence of having to deal with a large number of students and clients. It is submitted that the most fundamental challenges that the WLC assessment model experiences are influenced by the fact that at the WLC students are assessed on their development in the respective specialised units to which they are allocated “so, for example, students in the Family Law Unit might find it easier to conceptualise matters of procedure than those students in the Refugee Law Unit dealing more in advocacy and policy issues, thus making the understanding of clients’ needs more challenging for these students”.³⁹

The various methods of assessments implemented at the respective university law clinics will now be critically discussed and evaluated against the following submission:

“The process of assessment of student performance should have educational value, in that assessment should support the achievement of a number of goals: it should guide, help and form the learner by providing appropriate feedback, but should also be a way of determining whether a student has acquired the necessary competencies.”⁴⁰

7 Portfolios/ File Evaluations

A portfolio is a collection of papers and other forms of evidence, demonstrating to others the learning and progress of the student that has taken place.⁴¹ Kemp and Toperoff have submitted that “the greatest value of portfolios is that, in building them, students become active participants in the learning process and its assessments”.⁴²

In a clinical environment the portfolio could consist of:

- (a) A student’s diary in which the student recorded all his or her activities in the clinic;⁴³ and

39 Mahomed 2007 unpublished 19.

40 *Assessment of Written Items Guide* 2002 4 Also see University of Witwatersrand Senate Policy on the Assessment of Student Learning (2006) 2.

41 Davis “Portfolio assessment in medical students’ final examinations” 2001 *Medical Teacher* 12–19.

42 Kemp and Toperoff *Guidelines for Portfolio Assessments in Teaching English* (1998) 2.

43 See Webb *Portfolio-based Learning and Assessment in Law* UK Centre for Legal Education (2002) 2, where it is submitted that: “Portfolios and student journals (also called learning logs or sometimes diaries) can perform similar functions, but journals tend to rely exclusively on student report and reflection on activities . . . A

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- (b) a collection of the clients' files that the student has worked on, containing examples of completed application and indemnity forms, consultation notes, correspondences, pleadings and research material.

At the UPLC and the WLC portfolios consist of a collection of client files which students undertake either in their firms or in pairs.

At the UPLC student portfolios are evaluated for summative purposes in the following ways:

- (a) Clinicians are paired and together facilitate a grade on a biannual basis. It is submitted that by having two clinicians applying the same or similar criteria the allocation of a summative grade is considered objective and reliable. The criteria employed are, amongst others, the correct opening of files, neatness, evidence of an understanding of the diary system, correct application of the means test, and quality of the statement taken from the client; and
- (b) an oral examination on the activities within the portfolio is conducted by a clinician and an external examiner drawn from the ranks of practising attorneys.

At the WLC summative assessment of the portfolios are conducted annually. This done in the following way:

- (a) Individual clinicians assess their respective student portfolios by reflecting on the following criteria:
- Quality of the statement taken from the client;
 - analysis of the problem;
 - ability to assess and plan strategy;
 - execution of strategy;
 - drafting;
 - verbal communication skills; and
 - sense of responsibility/attendance.
- (b) At the WLC oral examinations are conducted annually by two clinicians sitting together assessing the knowledge gained by students on work done on the portfolios.

The authors submit that the criteria employed by the UPLC are limited as the focus is on testing the development of specific skills whereas at the WLC clinicians are required to reflect, not only on skills development, but also on the ability of students to analyse and act upon their matters.

At both universities assessment of student portfolios for formative purposes is continuously conducted throughout the year. Students are required to discuss progress within the portfolios almost daily.⁴⁴

journal can be integrated into portfolio-based learning and assessment as part of the evidence base.”

⁴⁴ As both clinical programmes have adopted the in-house live-client teaching model, the responsibility on the clinician to supervise the development in the client's matter is onerous. As stated by Mahomed 2007 unpublished 13: “Once a client has

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The authors have identified the following advantages and challenges relating to the assessment of portfolios.

(a) Advantages include:

- (i) Clear goals relating to the criteria for assessment can be determined at the inception of the programme. These goals will allow both student and clinician the advantage of developing an objective assessment base. For example, if one of the goals is to ensure that all clients' documents are completed, students should ensure that this is complied with or face the possibility of receiving lower grades.⁴⁵
- (ii) The assessment is linked to teaching. Students are assessed on what they have learnt in the classroom.
- (iii) Portfolios can be assessed in various ways, for example, in written format and/or oral evaluation.

(b) Challenges include:

- (i) As the content in the portfolios will differ from student to student, determining an objective grade may be difficult as students dealing with more complex matters may be perceived to have worked harder.
- (ii) Assessing portfolios is very time consuming.
- (iii) To obtain effective results the assessment must be continuous.
- (iv) Portfolios assessed by an individual clinician may be subjectively graded.
- (v) When students work in firms or pairs on their portfolios, determining an objective individual summative grade proves extremely challenging.⁴⁶ Peer assessment discussed hereunder may, if properly utilised, go some way towards mitigating this problem.

8 Student Diary⁴⁷

A student diary allows a student to record his or her work and experiences in the clinic. The diary functions as a means of examining and improving one's learning by allowing a student to reflect on his or her

been screened and their file opened, matters of professional responsibilities set in for both the clinician and the student."

45 This example relates to students ensuring that client details are recorded, proper file notes are kept, clients statements are accurately written up, etc.

46 Hyams 2006 *International Journal of Clinical Legal Education* 90, notes the following: "For the clinician, there are a range of problems associated with how to correlate clients outcomes with group participation and how to attribute marks to members of the group who are variously lazy, domineering, less intelligent than other members, inhibited or apathetic."

47 Student diaries are often referred to as reflective journals. In Australia a number of clinics consider these journals as a compulsory element in the assessment process. See Hyams *idem* 84.

experiences.⁴⁸ Student growth within the programme could be monitored through reference to the records in the diary.

Student diaries were used for assessment purposes at the UPLC from 2003 to 2006. Student diaries have not been used as an assessment method at the WLC.

It is submitted that diaries should not be used for summative purposes so as to avoid students censoring their entries or reporting only on those experiences where they are shown in a good light or to best advantage. Diaries do, however, contribute towards self-assessment and allow students to reflect on what and how they have learnt.⁴⁹

The advantages of a properly maintained student diary include:

- (a) If done correctly students could learn valuable lessons through a process of reflection.
- (b) Student growth can be monitored.
- (c) Gaps in student knowledge can be identified.

The challenges associated with student diaries include:

- (a) Students are not always clear on what to record in the diaries; in fact, the UPLC has experienced that students completing the diaries often record activities rather than noting their actual experiences. It was noted that students would rather discuss their emotional issues verbally than reduce them to writing.
- (b) Assessment processes are limited or unreliable.

9 Written Tests

“Written tests refer to a general group of assessment tools that either require students to select an answer (true/false, multiple-choice, matching) or that require students to supply an answer (completion, short-answer and essay).”⁵⁰

Generally, clinical programmes implementing written tests do so with the object of assessing students’ knowledge acquired in plenary lectures and drafting skills. This method proves appropriate in determining summative assessments.

At the UPLC students take two written tests per year. The tests aim to assess students’ knowledge acquired during plenary lectures and the students’ drafting skills.

48 A student’s diary could form part of the portfolio development. A student could reflect in the diary on what he or she has learnt in a particular matter, define his or her strategic plan for the matter or even just reflect on how a particular matter has had an impact on him or her.

49 Menon 289: “The use of journals as an assessment tool can be risky, though. As Tarr (1990:992) notes, since students can guess that teachers are unlikely to fail students for not being conscientious journal writers, the attention given to journal entries may be mechanical. Moreover, a student may be willing to be too revealing if the teacher is expected to read and assess what has been written.”

50 *Assessment of Written Items Guide* 2002 5.

At the WLC one written test per year is conducted with an emphasis on the drafting of legal documents and legal ethics.

The authors have identified the following advantages and challenges relating to this assessment method:

The advantages include:

- (a) The assessment method is considered objective as a set of stated outcomes are determined and students are assessed against these outcomes.
- (b) This method encourages students to learn and engage in intensive study.
- (c) Marking is relatively straightforward as answers are already, to a large extent, determined.

The challenges include:

- (a) The marking of large numbers of test papers is resource intensive.⁵¹
- (b) Students in one specialist unit may find their drafting questions more difficult than those asked in other specialist units.⁵²
- (c) As different clinicians are responsible for marking, the danger of subjectivity comes into play. This in turn necessitates exhaustive and time consuming comprehensive marking memoranda.
- (d) This method may result in the overemphasis of memorisation of facts.⁵³

10 Oral Examinations

Oral examinations are aimed at assessing the ability of students to verbally express the knowledge gained in the programme.

At the UPLC oral examinations are hosted annually by one clinician and two external examiners sitting together.⁵⁴ Clinicians draft ten sets of questionnaires, each questionnaire has a series of questions that are similar in nature and degree of difficulty. Students are then requested to select a questionnaire and respond to it. This allows for some sort of

51 Eg, at the WLC there are presently 308 students. Fortunately, the drafting component of the test is assessed by individual clinicians, responsible only for those students allocated to their specialised unit. On average the clinician to student ratio is 1:40. However, all 308 students are required to answer a common set of ethics questions. In order to provide some consistency in marking, an individual clinician is requested to assess the question.

52 Eg, some students may find it easier to draft particulars of claim for a divorce matter than for a delictual matter. So those students in the Family Unit may find the test easier than those in the Delict Unit.

53 *Assessment of Written Items Guide* 2002 12.

54 Members of the profession who are not linked to the clinic are invited to help assess the students. There are a number of advantages associated with external examiners. The comments from these external examiners regarding the effectiveness and efficiency of the clinic's teaching methods and students' learning are of great value to staff.

standardised process. The questions asked all relate to work covered during the lectures; thereafter the panellists ask students questions relating to the files they worked on during the year. Knowledge of the facts of the case, relevant law, strategy and ethics are tested.

Prior to 2007, written records of all the answers given were kept in order to deal with students' queries regarding mark allocations. This, however, proved time consuming and so, for the first time in 2007, the clinicians decided to video record the examinations. Again the purpose of this has been that on those rare occasions when students raise queries these examinations can be replayed and discussed.

At the WLC oral examinations are conducted once a year by two clinicians sitting together.⁵⁵ Students are assessed on their portfolios and the development therein. They are also assessed on the rules of ethics that govern attorneys' practice. Most clinicians record the questions and answers in writing, so as to be able to motivate the grade allocated to the student. Standardised questions are not drafted and each clinician will raise questions they deem appropriate.

The advantages of using this method include:

- (a) Several aspects of the students' knowledge can be assessed; for example, communication skills, capacity to think quickly under pressure and the knowledge of procedures.
- (b) Marking for grading purposes is quicker.
- (c) It is possible for students to receive immediate feedback.
- (d) It could be objective if questions posed to students are standardised.
- (e) Students who may be penalised because of a lack of writing skills are afforded the opportunity to present their knowledge verbally.

The challenges include:

- (a) Standardised questions could result in students who are assessed last having the advantage of knowing what the questions in the examination may possibly be.
- (b) There is always the temptation to assess student on previous performances.
- (c) Clinicians need to be aware of the fact that some students may not be able to express themselves as eloquently as others.⁵⁶ A diverse teaching staff may assist in addressing some of these barriers.

11 Assignments/Case Reports

The assignment or case report aims at assessing the ability of the student to understand, evaluate and synthesise matters.

⁵⁵ One of the clinicians would be the student's "supervising attorney" while the other acts as an external examiner.

⁵⁶ Language barriers may make it difficult for some students to express themselves clearly. It is submitted that clinicians must be conscious of this and not allow it to prejudice the students.

At the UPLC an assignment question is set and the students are requested to draft an appropriate response. Before setting the question the purpose of the assignment is determined and a relevant question on a particular case or cases being handled at the clinic is asked. While grading the assignments, factors such as the layout, language, information collected and evaluated are considered. Assignments that display insight and present a coherent argument are more highly valued than superficial answers.

At the WLC a case report is requested of the students.⁵⁷ The students are required to attend any court, witness a case, preferably from start to finish, and thereafter produce a report on the matter. In the report students are required to identify the court, the parties involved, the case number, the facts of the case, witness submissions and final judgment and an analysis thereof.⁵⁸

The advantages of using this method include:

- (a) The assignment question is relatively easy to set.
- (b) Students could score good grades as they have control over the outcome.
- (c) This method could be easy to grade if the number of students participating in the programme is not excessive.

The challenges include:

- (a) Marking large numbers of assignments or case reports can be time consuming.
- (b) If assignments or case reports are graded by various clinicians this could potentially be problematic in terms of the fairness of assessment.
- (c) There exists a danger that the work presented may not be that of the student, that is, lack of authenticity.

12 Self-assessment

Self-assessment provides an opportunity for students to assess themselves against a set of given or negotiated criteria. This method is generally used for formative purposes; however, it is possible that a student and clinician could negotiate summative results based on a given set of criteria.

Self-assessment is generally conducted privately between clinician and student. This process could result in increased motivation and students gaining confidence in finding that they are “doing all right” long before they need to prove so publicly or formally.

At the UPLC self-assessment is conducted by the student, perhaps against a given set of criteria or model answers, and generally only discussed privately between clinician and student. During the process of

⁵⁷ They could witness a trial or application proceeding.

⁵⁸ This form of assessment is motivated by the fact that final-year law students must have at least attended a court and be aware of what occurs in a court.

teaching interviewing skills, students are required to participate in a self-assessment process. The purpose of this is to make students aware of their own development.⁵⁹

At the WLC self assessment is conducted informally during student tutorials, when students are asked to reflect on their experiences in the clinic.

The advantages of using this method include:

- (a) Student motivation and confidence can be improved.
- (b) Problems of student development can be addressed.
- (c) Student strengths and weakness can be identified.
- (d) It allows for a process of reflection.

However, using this method for summative purposes could prove challenging. Students could potentially not be honest in the assessment, thus resulting in the process being flawed.

13 Peer Assessment

Group work or, alternatively, working in pairs is an important element in the learning process at the clinic and is used to enhance student understanding of both substantive and procedural law through peer support, discussion and the exchanging of ideas. Working in small groups provides an excellent opportunity for implementing peer assessment.

Peer assessment serves as a process for teaching interactive working techniques, learning about the values and cultures of other group members and fosters integration and nation building.

“Peer assessment can be used similarly to develop the techniques of feedback, reflection, and evaluation as well as respect for the deliberative judgments of one’s peers. Peer assessment can help a teacher validate a judgment about student achievement, and it can indicate to students the role that collegial decision-making plays in professional life.”⁶⁰

At the UPLC students initially work in groups and a summative grade is allocated to peer assessment. Peers are often required to assess each other at various stages in the programme. For example, students are required to score their group members’ participation on a particular task and students are requested to assess their peers’ ability in drafting specific documents.

At the WLC students work in pairs. There is no formal process of peer assessment simply due to time constraints and the large number of students participating in the course. Although sometimes when student pairs find it difficult to work together, clinicians step in and informally assess the students.

59 Eg, after students have completed the interviewing skills component of the course they are required to reflect on the following set of questions: How well did I document the client’s personal information, eg, full names, occupation, addresses, telephone and fax numbers, summarise the factual issues, identify legal issues, summarise advice given and instructions received, clearly identify the next step for adviser and client?

60 Menon 289.

The advantages of peer assessment include:

- (a) Peer assessment helps to develop evaluative thinking skills on the part of the students.
- (b) It motivates students as students “own the process”.
- (c) It provides students with greater personal ability to judge their work and thus improve their own performance because of raised self-awareness of how an assessment is undertaken and what is assessed.

The challenges include:

- (a) This method could raise issues of personal anxiety and exposure and this could have a negative effect on the process.
- (b) Determining an objective summative result is very difficult because students may tend to grade the more easily measurable or tend to grade towards the middle to avoid obvious offence.

14 Assessment by Clients

The purpose of this assessment is to reflect on the student’s ability to communicate and assess the legal problems of the clients appropriately. In addition, by constantly monitoring client satisfaction, clinics are able to ensure that quality services are rendered.

At the UPLC students receive summative grades in respect of client assessment. Drawing on the example from the Effective Lawyer–Client Communication (ELCC) project,⁶¹ the UPLC selected the first meeting or initial interview between student and client for assessment purposes.⁶² A questionnaire based on the ELCC project model is completed by the client privately or, in the case of the client having difficulty with English, Afrikaans or Tswana, the document is completed with the assistance of a member of staff.⁶³ The interviewing student is asked to complete a similar questionnaire which generally parallels the client questionnaire, to anticipate how the client will respond on each item.⁶⁴

61 Initiated in 1998 by Washington University and the Centre for Legal Education in Australia.

62 Cunningham “The client’s perspective on the initial interview: A social science approach” (2001) Paper presented at the WG Hart Legal Workshop 26–28, states that: “[T]he initial interview, shapes client perspective of the lawyer, defines the service to be provided in terms of both problem and goal and is an important opportunity for client education.” It is submitted that it may be extremely useful to monitor client satisfaction at the conclusion of a case for quality control purposes; however, certain practical difficulties could be foreseen, eg, it may be difficult to contact the client, clients may be influenced by the outcome of the case rather than the student’s performance.

63 Clients, eg, are asked the following questions pertaining to the student: Did he or she make me feel comfortable? Did he or she treat me with respect? Did he or she listen to me? Other questions relating to the quality of communication are asked, eg, the student said something that the client did not understand; the student did not understand what was important to the client or did not explain how the clinic works etc.

64 At the UPLC feedback from both clients and students regarding the idea of an assessment by clients was very positive. The statement by some students that as a

continued on next page

At the WLC client assessment is not conducted simply because of the high volume of client consultations that are required on a daily basis.

The advantages of this method include:

- (a) It assists the clinic in having some sort of quality control measure in place.
- (b) It allows clinicians the opportunity to provide feedback to students and thus also an opportunity for students to reflect on their developmental skills.

The challenges include:

- (a) Clients could possibly be confused or even deceitful in the response to the questionnaire.
- (b) Clients may be illiterate thus defeating the purpose of the exercise.
- (c) Clients may be intimidated by the process.

15 Conclusion

As the clinical pedagogy demands that a variety of skills be taught in clinical legal education programmes, there is no one assessment method that can be implemented to evaluate the skills learnt but rather a series of methods.

The authors submit that when considering which assessment methods to adopt the following should be reflected upon:

- (a) The goal and outcome design of each programme;
- (b) the teaching methodology implemented;
- (c) student numbers; and
- (d) the organisational structure of the clinic and its programme.

In the case of both the UPLC and the WLC it is clear that their assessment methods have developed to suit their respective programmes. The authors have benefited from critically looking at their clinics' assessment strategies, comparing the methods employed and trying to explain the rationale, or lack of it, underlying the different assessment methods employed. It is trusted that these preliminary observations may serve to stimulate thought and debate amongst clinicians and other law teachers and also to promote increased involvement of assessors in other fields of study and assessment specialists to contribute to developing valid, reliable, consistent, fair and authentic assessment practices in clinics and beyond.

result of knowing that they were going to be assessed by clients, they put in extra effort, left one with mixed feelings. Whilst assessment can be seen as a handy tool in performance management it is also a sad reflection on the mindset of some of our students in that: "I will only do my best when I know it counts towards my grade."