



The LLB

By **Angelo Pantazis**, Johannesburg Bar



There is no doubt that, generally, the quality of the LLB in South Africa is of an unacceptably low standard. The complaint is made mainly by academics and attorneys. Academics complain that the students that come to them from schools are mostly poorly-schooled, not being able to write and speak adequately and to think clearly and logically. Attorneys complain that the graduates who apply for positions in law firms do not have an adequate knowledge of the law and are poorly prepared for the practice of law, particularly the written part of it. The current thinking amongst legal practitioners and academic leaders is that the viable solution is to increase the legal curriculum by one year, although the purpose of the additional year means different things to different people.

Starting at the beginning of legal education, the at least tacit assumption is that poor primary and secondary education will be with us for a long time and the way forward is to do the best one can with what one has. One's duty is to meet the needs of the day. Decisions still have to be made about which law applicants to accept and in what number. The government determines the number of law students who must be taken in. Many universities put pressure on law schools to admit increasing numbers of law students because of government targets and because law schools are perceived as 'cheap' to run and therefore financially efficient. As to which applicants to accept, school results are not good indicators of good performance at university. University-run admission tests seem to be better predictors of success but the relatively recent nation-wide admission tests are in the early days of their administration and it is too soon to draw conclusions about their predictability. In the face of these pressures law schools do the best they can to admit the best students in the numbers required.

The curriculum of the LLB is largely similar across the universities. The LLB is a generalist degree with a ratio of compulsory to elective courses of approximately two to one. The content of a course is typically what one would see on the contents pages of a good textbook. The formal curriculum is unlikely to give one an indication of the quality of the learning that occurs. Some practitioners desire to see certain courses made compulsory (such as the more 'practical' courses, for example the law of insolvency) and to prescribe the minimum content of the compulsory courses. Such reform is unlikely to effect substantial change.

Within the academy there are various trends concerning the curriculum. One is to reduce the number of electives. The reasons for this trend include the perceived importance of the compulsory courses and the aim of reducing the amount of teaching done by academics in order to focus on the compulsory courses and on research. Another trend is to reduce the number of compulsory

courses in order to increase students' choice. The reasons for this trend include the desirability of exposing students to the variety of functions for which the law can be used. The greater choice of courses often goes with an ideological slant that challenges the uses to which law is put in our society. But the ideology of law is largely covert in South African universities, unlike the pronounced divisions which such ideologies create in certain Western universities. Elective courses also appeal to lecturers with their pet research interests. On the whole, though, academics would not differ from legal practitioners on the content of the curriculum.

What many academics do object to is their sense of their academic freedom being infringed by calls for change to the LLB from outside the university. It is not clear what academic freedom means when its invocation is a reaction of fear and defensiveness towards change and accountability. Academics are right to insist that legal education is an academic discipline – one of the very first disciplines, along with theology and rhetoric, in the history of the university. They are right to point out that statistics show that at least half of law graduates do not enter the legal profession or, having entered it, remain in it. The uses of a legal education are many. Dare I say that that self-improvement is a complete reason for legal education? Legal education is much more than a fitting out for legal practice. It is the practical training given by the legal profession which directs law graduates to practice.

It is necessary that universities monitor the quality of the learning they offer and that they be evaluated by external experts. My own experience is that many lecturers do as they wish and fight against their being evaluated. Government requires law schools state their desired outcomes but this is laughably unrealised in practice. Universities periodically run audits of their schools, and schools and courses within those schools have themselves evaluated by outside experts, with varying degrees of effectiveness for improvement. What is required is an academic-driven rigorous national system of accreditation of the law degrees at each university based on on-site evaluation. At the same time, the LLB must not be a one-size-fits-all for each law school: legal education benefits from law schools tailoring their degrees to their constituency and offering students a variety of choices among universities.

The main buzzword of curriculum reform amongst practitioners and academics alike is 'skills-teaching.' This term has a variety of meanings. At its most basic it refers to the ability to read, write, speak and do arithmetic at an acceptable level in any context. It is what we understand primary and secondary education to be for, among other things. Secondly, skills refer to academic skills – the ability to express oneself persuasively and correctly within a discipline-specific context. This is properly the province

of the university and is based on a prior mastery of the first level of skills. Thirdly, skills are vocational skills, typically taught in practical legal courses at university and in pupillage and articles. Fourthly, there are the life skills which all people require. The pressure on the universities is to 'do it all.' The widespread thinking is that an extra year of university will be the philosopher's stone.

Law academics are not competent to teach the first level of skills and most of them are not interested in doing so, nor is it fair to expect them to be so competent or interested. Despite the heroic, creative and self-sacrificing efforts of a few individuals at law schools and in the departments of language and education, efforts to teach the first level of skills have achieved mixed results and have often lasted only as long as the individuals concerned were involved. If an extra year of legal education is to address the lack at this level, then there has to be a radical conceptualisation of how such teaching would be done effectively. Thought has to go into how students who do not require such teaching will be dealt with so that their legal education is not dumbed-down. And there has to be a massive allocation of resources to such labour-intensive, one-on-one teaching.

I am agnostic about the possibility of teaching these basic skills at university in a relatively short period of time. The word 'skills' is a gross misnomer for language, which is a basic part of our humanity. Nor is it the task of a law school to teach such skills.

On academic skills, the sad truth is that many lecturers should not be lecturing. Legal education no longer attracts more than a few of the best legal minds. This is due to many factors. Academics are poorly paid and their prestige has declined. Much of the exciting intellectual work occurs in practice, whether professional or otherwise. Under the influence of the government funding scheme, the universities communicate the message that quantity of research output is more important than quality and promotion is seen accordingly. Government funds legal education in a much lower band of funding than the sciences. Law schools cross-subsidise other schools within the university because they are perceived to require only lecturers, and not equipment, to do the job. But law schools require good libraries, both electronic and, still important, in hard copy, and many law schools are woefully under-resourced, including at the privileged universities. This stifles research and therefore good teaching. Staff-student ratios in law schools are amongst the highest within their universities, which reduces the effectiveness of the teaching. Certain universities are less committed to having good law schools than having good science schools. Many law students should not be in university because they are inadequately prepared by their schooling for it. There is, further, a failure of a culture at law schools for students to work hard and for the highest standards to be expected of them and their lecturers. In light of this, an extra year of legal education seems unnecessary since the current four years are not used to their capacity. Life can be dispiriting for a legal academic.

The teaching of academic skills would be hugely facilitated if students studied for a prior bachelor degree before their LLB, as was the only way in the past. The arguments have been well-rehearsed that students who have studied for a BA, BCom or BSc first are better able to cope with an LLB. They are more mature, more familiar with academic discourse and more well-rounded in knowledge and understanding. Prospective employers often choose applicants who have followed this route rather than

that of the undergraduate LLB. Many advocates of an extra year of legal education mean the return to the previous compulsory dispensation of a bachelor degree based in another discipline followed by the LLB.

Academics are least averse to teaching academic skills in an explicit fashion. In the past one was taught such skills by 'osmosis' or one learned them oneself, by painful trial and error. Now there is a fashion to teach students how to write a legal article or how to read a case and so on. Students balk at such methods because they find them boring and patronising. They also do not see the point of such skills taught in isolation. What students most benefit from is detailed feedback on their work submitted in the ordinary course of assessment. Lecturers say they do not have sufficient time in which to provide such feedback.

Vocational skills are taught by some universities in their law clinics. Certain universities cannot afford law clinics and if they are to be expected to provide clinical education, their resourcing must be improved. Vocational skills are taught effectively at universities abroad so there is no reason why we should not be able to do so. It is questionable whether it is necessary for universities to teach vocational skills given that there is pupillage and articles. Sight should not be lost of the fact that a large percentage of students do not enter the legal profession. An overlap of vocational skills-teaching between universities and the profession is a waste of time. I am adamant that vocational skills do not belong in the classroom. What students or pupils or candidate attorneys require is hands-on experience, not more time in the classroom.

Life skills come down to how to run a practice or business. Like the other skills and to a greater extent, such skills are best learnt by doing rather than by being taught. If they are to be taught, this should be done by the profession as it does so effectively in its ethics courses.

In conclusion, I am of the view that a law school cannot and should not be doing the job of primary and secondary education. A law school should be open to all with potential but it should require the highest standards of its students, otherwise it is not a law school. Students who do not deserve to pass should not pass. The curriculum should consist of the standard courses of a law degree with a degree of flexibility exercised by the particular law school as to its offerings, whether conservative or challenging of current legal practice. Detailed feedback should be given to students on all their work. Students should be required to study for another degree before they enter the LLB because they will be better law students for their wider world-view. The quality of the education at a law school should be regularly evaluated by outside experts, including members of the profession, with incentives for maintaining good standards. Vocational skills-teaching should be seen as properly the prerogative of the legal profession. What would be of the greatest value to the profession would be the graduation of law students solidly grounded in the learning of law and effective in communicating their knowledge of the law. Universities and the government would need to make the decision to rate the importance of legal education highly and to demonstrate this by proper funding of their law schools.

These are mostly conservative views. I fail to see how more teaching, especially skills-based teaching, will improve the quality of law graduates. It is better to have fewer and good lawyers than more and bad lawyers. The law school as a place of excellence must be defended. 