

A CASE STUDY IN ADVOCATING FOR EXPANDED CLINICAL LEGAL EDUCATION: THE UNIVERSITY OF STELLENBOSCH MODULE*

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1 Introduction

“CLE is a law teaching methodology, and is based on an approach that integrates theory and practice through the infusion of practical and vocational skills. This differs from the traditional classroom method. Students receive practical legal training by assisting the qualified practitioners and candidate attorneys at Law Clinics by drafting letters, legal documents and by writing legal opinions and consulting with clients ... This pedagogical approach is usually classified as experiential learning, service learning and/or work-integrated learning, but usually linked to community engagement or community service ...”¹

Practical Legal Training 471 (“PLT”) is the only Clinical Legal Education (“CLE”)² module currently³ offered by the Faculty of Law at Stellenbosch University (“Faculty”). It has an important function in that it offers to final year law students the opportunity to acquire and develop skills in a clinical setting. As a capstone module⁴ of the LLB curriculum, it enables students to put the substantive theory to which they were introduced through their undergraduate studies, to practical use. However, at present only a limited

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¹ South African University Law Clinics Association (SAULCA) Discussion Document presented during the meeting between SAULCA and The Law Society of South Africa’s representatives on the National Forum on the Legal Profession, Johannesburg, 13-08-2015 (copy on file with author) [footnotes omitted].

² It is a challenging task to provide a definitive definition of CLE from available literature as many useful attempts have been made to describe it. See for example MM Combe “Selling intra-curricular clinical legal education” (2014) 48 *The Law Teacher* 281 283 and especially n 15; D Singo “The Role of South African University Law Clinics within the LLB Degree” (2016) 27 *Stell LR* 554 559. As indicated in the text to n 1 above CLE is closely associated with service learning. A useful definition of the latter concept is found in The Community Service Act of 1990 42 US Code 12511, which describes service learning as “a method under which students or participants learn and develop through active participation in thoughtfully organized service that is conducted in and meets the needs of a community; is coordinated with an ... institution of higher education, or community service program, and with the community; and helps foster civic responsibility; and that is integrated into and enhances the academic curriculum of the students, or the educational components of the community service program in which the participants are enrolled; and provides structured time for the students or participants to reflect on the service experience.” Cornell University Law School “42 U.S. Code § 12511 – Definitions” (undated) *Cornell University Law School* <<https://www.law.cornell.edu/uscode/text/42/12511>> (accessed 08-02-2017).

³ Up to and including the 2017 academic year.

⁴ See G Quinot & SP van Tonder “The Potential of Capstone Learning Experiences in Addressing Perceived Shortcomings in LLB Training in South Africa” (2014) 17 *PER/PELJ* 1350 1354 where the authors refer to Durel in describing a capstone course as “a crowning course or experience coming at the end of a sequence of courses with the specific objective of integrating a body of relatively fragmented knowledge into a unified whole. As a rite of passage, this course provides an experience through which undergraduate students both look back over their undergraduate curriculum in an effort to make sense of that experience and look forward to a life by building on that experience.”

number of students from the Faculty are allowed to enrol and participate in the module.⁵ From a pedagogical perspective, the role and function of the Law Clinic (“LC”) (formerly known as the Legal Aid Clinic) is integral to the Faculty’s efforts aimed at CLE teaching and learning.⁶

During 2015 to 2016, the Faculty was engaged in the Council on Higher Education’s LLB re-accreditation review.⁷ In preparing the required self-evaluation report that forms an integral part of this process, the Faculty was required to reflect upon the necessary attributes that its students should attain through their studies. These attributes were identified as knowledge and understanding of the values associated with the South African legal system and knowledge and understanding of the origins and dynamic nature of law, critical thinking skills, research skills, writing skills and applied competence.⁸

In this article it is argued that an expanded CLE programme, available to all students of the Faculty, would greatly benefit the ideal of producing graduates who are in possession of these skills.⁹ Expanding CLE will also assist in addressing criticism aimed at the current LLB curriculum.¹⁰ This article will accordingly present an argument favouring a dedicated and pro-active effort to increase CLE’s footprint within the Faculty by restructuring the current elective module into one that is mandatory for all law students.

There is strong support, both in South Africa and abroad, among those who are interested in higher education teaching and learning methodology, for the notion that CLE should be a mandatory module of any LLB programme.¹¹ Holness, for one, argues:

“There is no doubt that as a vocational qualification, an LLB degree should adequately prepare graduates for the world of legal practice. Any failure by the South African LLB curriculum to provide adequate exposure to practical legal skills would be a major shortcoming indeed.”¹²

The unfortunate reality that CLE modules are often labour-intensive and expensive to offer hamstrings this laudable ideal.¹³ They require hands-on training, low supervisor-student ratios, and student interaction which often requires one-on-one or at least small-group interaction.¹⁴ They require innovative and unfamiliar teaching methods that are presented in specialised

⁵ See the text to parts 3 and 4 below.

⁶ E Chemerinsky “Why Not Clinical Education?” (2009) 16 *Clinical L Rev* 35 37; Singo (2016) *Stell LR* 555.

⁷ For details see Council on Higher Education “Reviews and Projects” (undated) *Council on Higher Education* <http://www.che.ac.za/focus_areas/national_reviews/reviews_and_projects> (accessed 07-03-2017).

⁸ Faculty of Law, University of Stellenbosch *Self Evaluation Report* dated 16 May 2016 (copy on file with author).

⁹ For support of this assertion, see the text to part 2 below.

¹⁰ See the text to part 2 3 below.

¹¹ See for example authority quoted in nn 1-4 in MA du Plessis “Clinical Legal Education: The assessment of student collaboration and group work” (2014) 39 *JJS* 67 68; MA du Plessis *Assessment Methods in Clinical Legal Education* PhD thesis, University of the Witwatersrand (2014) 28-31.

¹² D Holness “Improving Access to Justice through Compulsory Student Work at University Law Clinics” (2013) 16 *PER/PELJ* 328 333.

¹³ AG Amsterdam “Clinical Legal Education – A 21st-Century Perspective” (1984) 34 *J Leg Ed* 612 617; Chemerinsky (2009) *Clinical L Rev* 38.

¹⁴ Du Plessis *Assessment Methods* 19-20; Singo (2016) *Stell LR* 572-573.

environments.¹⁵ They necessitate a paradigm shift away from the usual didactic, purely cognitive, approach to legal education with which teachers, in general, have grown comfortable during many hours of legal lecturing.¹⁶ These pragmatic reasons for limiting growth in CLE programmes are further bolstered by opposition from academic members of legal faculties who, generally as a matter of principle, hold restrained appreciation for CLE. According to Chemerinsky, these are often academics who have very limited practical experience and/or who question whether the most important purpose of the law school is to train lawyers.¹⁷ As a result CLE “still lacks sufficient support in most countries, including South Africa”.¹⁸

These considerations often drown out the idealistic pleas for active CLE reform in the LLB programmes offered by law faculties. The aim of this article is therefore to serve as motivation for the expansion of CLE modules at universities generally, in order to expose all LLB students to CLE and, where possible, the work of the local LC. In doing so, an argument for expanding the CLE module at the Faculty, will be considered as case study. This will be done by considering the pedagogical, institutional and access to justice arguments in support of effective CLE modules. These arguments will be followed by an overview of the current PLT module, which will allow for the identification of challenges and suggestions for consideration in expanding CLE.

2 The importance of an effective CLE module

2.1 The pedagogical argument

In his seminal article, *Transformative Legal Education*,¹⁹ Quinot refers to the “scant attention that is given to theory in teaching.”²⁰ He convincingly argues that Karl Klare’s notion of transformative constitutionalism not only implied a change in the material that students should be taught, but that such teaching should occur in a different manner.²¹ Such a transformation requires “a much greater interdisciplinary approach to legal education”²² where “the biggest challenge lies not in *what* we teach, either in substantive law or skills, but in *how* we teach: that is, our methodology in legal education”.²³ Discourse on the theory of legal education is not only important if we are to remain

¹⁵ Singo (2016) *Stell LR* 560. For an in-depth discussion of different forms of clinical legal education teaching see DR Barnhizer “The Clinical Method of Legal Instruction: Its Theory and Implementation” (1979) 30 *J Leg Ed* 67

¹⁶ See G Quinot “Transformative Legal Education” (2012) 129 *SALJ* 411 416 where the author states that changing the way we teach is the “most difficult” implication for transformative legal education.

¹⁷ Chemerinsky (2009) *Clinical L Rev* 39. These academics maintain that the faculty is not a “trade school” and “preferred to hire more faculty who would do scholarship that would enhance the school’s academic reputation rather than clinical faculty.”

¹⁸ Holness (2013) *PER/PELJ* 335.

¹⁹ Quinot (2012) *SALJ* 411.

²⁰ 411.

²¹ 414-415.

²² 415.

²³ 416.

relevant as a discipline, but it is also crucial if we are to take ownership of our role as proponents in the process of constitutional transformation.²⁴

A detailed academic analysis of contemporary theory on higher education teaching and learning falls outside the scope of this article.²⁵ It is, however, important to briefly note the modern pedagogical tendency which advocates for a teaching approach to student learning which can be characterised by the following attributes:

2 1 1 *It is based on sound theory*

In advocating radical changes in the way we think about legal education, Quinot cautions that, “as responsible intellectuals, it is also our duty to drive that change in terms of proper theoretical frameworks”.²⁶ He proposes changes which “must be grounded in theory”.²⁷ This suggestion is especially sensible in light of the fact that higher education teaching and learning has long since been established as a social science requiring a sound theoretical basis. An enormous amount of research has been done, and much has been written on the topic of these learning theories.²⁸

In contemporary writing, many advocate student-learning theories primarily following a social constructivist approach through collaborative activities by means of social interaction.²⁹ Anderson and Dron define this learning theory as follows:

“Social-constructivist pedagogy acknowledges the social nature of knowledge and of its creation in the minds of individual learners. Teachers do not merely transmit knowledge to be passively consumed by learners; rather, each learner constructs means by which new knowledge is both created and integrated with existing knowledge.”³⁰

Constructivism challenges the traditional student-teacher roles, viewing the role of the teacher as that of the guide or tour-leader, and not the “sage on the stage” who simply imparts or transmits words of wisdom which have

²⁴ 412.

²⁵ There are numerous excellent resources in the literature on the issue, some of which will be quoted and referenced in what follows.

²⁶ Quinot (2012) *SALJ* 432.

²⁷ 432.

²⁸ See, for example, J Biggs & C Tang *Teaching for Quality Learning at University* 4 ed (2011).

²⁹ See, for example, J Biggs “What the student does: teaching for enhanced learning” (2012) 31 *Higher Education Research and Development* 39. Quinot (2012) *SALJ* 418 states: “One of the most significant developments in theoretical perspectives on learning over the last half century has been the influence of constructivism” and he goes on to suggest that constructivism is the basis upon which teaching in terms of his theory of constitutional legal education is realised. Another related learning theory that is also popular is connectivism. G Siemens “Connectivism: A Learning Theory for the Digital Age” (2005) 2 *International Journal of Instructional Technology and Distance Learning* 3 defines connectivism as:

“[T]he integration of principles explored by chaos, network, and complexity and self-organization theories. Learning is a process that occurs within nebulous environments of shifting core elements – not entirely under the control of the individual. Learning (defined as actionable knowledge) can reside outside of ourselves (within an organization or a database), is focused on connecting specialized information sets, and the connections that enable us to learn more are more important than our current state of knowing. Connectivism is driven by the understanding that decisions are based on rapidly altering foundations. New information is continually being acquired. The ability to draw distinctions between important and unimportant information is vital.”

³⁰ T Anderson & J Dron “Three Generations of Distance Education Pedagogy” (2011) 12 *International Review of Research in Open and Distance Learning* 80 84-85.

to be absorbed by the student.³¹ This learning through a process of social construction of knowledge implies “engagement with contextually relevant problems using the tools of the profession that enables the student to move from a legitimate peripheral participant to a practising member of the community”.³² Teachers should teach students more than simply “*what* to know” and even “*what* to do”. They should also be taught “*how* to think”.³³ The aim is to develop “critical thinking within students”.³⁴ Constructivist learning theory requires students to approach problems from a holistic point of view, to consider all possible alternatives and to make connections between different concepts, as opposed to viewing legal problems in separate silos.³⁵ It stands to reason that if contemporary students are expected (and are in fact predisposed) to learn in this manner, teachers should be required to teach accordingly.

2 1 2 *It is student-focused and student-centred*

Various studies indicate that student rates of retention of information increased significantly with methods that were “student-centred, interactive and reflective”.³⁶ Prominent educators in diverse fields of study agree that good teaching is teaching which caters to the needs of the student, and not the lecturer.³⁷ It acknowledges the student and the student’s context as the central features in the learning process and it facilitates the use of a blended learning environment,³⁸ one that employs any and all methods and tools that assist in the goal of effective student learning. It enables the knowledge construction process of different students with divergent learning aptitudes and styles.³⁹ The focus is on the student’s development, on what *they* gain and become as a result of *their* learning.

2 1 3 *It encourages active learning*

Students should be involved in their own learning and to this end co-operate with teachers and one another. According to Ralph W Tyler “[l]earning takes

³¹ As advocated by M Rowe, V Bozalek & J Frantz “Using Google Drive to facilitate a blended approach to authentic learning” (2013) 44 *British Journal of Educational Technology* 594 602-604.

³² Rowe et al (2013) *British Journal of Educational Technology* 595.

³³ 595.

³⁴ 605.

³⁵ Quinot (2012) *SALJ* 415.

³⁶ For discussion hereof see, for example, D McQuoid-Mason “Introduction to clinical law” in SH Mahomed (ed) *Clinical Law in South Africa* 3 ed (2016) 1 2.

³⁷ The attainment of true student-centred learning is a commonly accepted goal of tertiary education with many learning theories geared specifically with this in mind. See for example Biggs & Tang *Teaching for Quality Learning* 9 who state that “perhaps the most important ways of improving teaching are... shifting the focus from the teacher to the learner...”. Also see P Wells, P de Lange & P Fieger “Integrating a virtual learning environment into a second-year accounting course: determinants of overall student perception” (2008) 48 *Accounting and Finance* 503 504-505.

³⁸ As supported by among others M Kelly, C Lyng, M McGrath & G Cannon “A multi-method study to determine the effectiveness of, and student attitudes to, online instructional videos for teaching clinical nursing skills” (2009) 29 *Nurse Education Today* 292 299.

³⁹ See Combe (2014) *The Law Teacher* 287 where the author refers to different learning styles, including “Kolb’s convergers, divergers, assimilators and accommodators or Honey and Mumford’s activists, reflectors, theorists and pragmatists.” (footnotes omitted). Also see Quinot (2012) *SALJ* 421.

place through the active behavior of the student: it is what *he* does that he learns, not what the teacher does”.⁴⁰ Stetsenko agrees, stating that we “learn by doing”.⁴¹ The focus should therefore be on the effort to train students, rather than simply the content of what is taught.⁴² Effective teaching distinguishes between “*knowing that*” (“inert” knowledge) and “*knowing how*”.⁴³

In relation to the legal field, Quinot opines that the theory of transformative constitutionalism commands a teaching methodology which is conducive to active student participation in evolving their own appreciation of rules and laws as social constructs.⁴⁴ He argues that the interactive nature of the “new” type of knowledge produced by digital platforms “greatly enhances activity on the part of the user”.⁴⁵

2 1 4 *It encourages authentic learning*

Authentic learning has its roots in the theory of situated learning, which is described as “the notion of learning knowledge and skills in contexts that reflect the way the knowledge will be useful in real life”.⁴⁶ This theory arose out of studies of “highly successful learning situations”,⁴⁷ and encourages teachers to employ authentic activities that include appropriate physical and online platforms that are supported by sound theoretical views.⁴⁸ The growing pedagogical case in support of a push for “more diverse learning environments”,⁴⁹ in facilitating authentic learning, is also relevant to legal education. Much has been said and written in advocating the benefits of work-based or work-integrated learning as a form of authentic student learning.⁵⁰ The potential benefits to be gained from employing the work-based learning approach enable students to experience highly authentic learning with all of its associated benefits.⁵¹

It does however mean that students and teachers have to be adaptable enough to identify knowledge offered in unfamiliar ways and to “develop the skills of meta-cognition in order to recognize and learn from the knowledge and

⁴⁰ As quoted in the introduction to Biggs & Tang *Teaching for Quality Learning*.

⁴¹ A Stetsenko “From relational ontology to transformative activist stance on development and learning: expanding Vygotsky’s (CHAT) project” (2008) 3 *Cult Stud of Sci Educ* 471-479.

⁴² Biggs & Tang *Teaching for Quality Learning* 81–82 draw the distinction between “declarative knowledge and functioning knowledge”. Teaching should aim to encourage the students to develop their own functioning knowledge.

⁴³ Ryle as quoted and discussed in J Muller *Every picture tells a story: Epistemological access and knowledge* (2012) Keynote presentation to the *Knowledge & Curriculum in Higher Education Symposium* at UCT on 7 & 8 November 2012 (copy on file with author).

⁴⁴ Quinot (2012) *SALJ* 417-418.

⁴⁵ 427.

⁴⁶ Collins as quoted in J Herrington, TC Reeves & R Oliver *A Guide to Authentic E-learning* (2010) 14.

⁴⁷ 14.

⁴⁸ Rowe et al (2013) *British Journal of Educational Technology* 605.

⁴⁹ H Fry, S Ketteridge & S Marshall *A handbook for teaching and learning in higher education* 3 ed (2009) 366.

⁵⁰ See for example A Walsh “An exploration of Biggs’ constructive alignment in the context of work-based learning” (2007) 32 *Assessment & Evaluation in Higher Education* 79; S Billet “Realising the educational worth of integrating work experiences in higher education” (2009) 34 *Studies in Higher Education* 827-828.

⁵¹ Walsh (2007) *Assessment & Evaluation in Higher Education* 82.

experiences encountered”.⁵² Teachers need to be courageous and flexible to engage students in learning in environments and contexts with which they are neither familiar nor comfortable in order to develop new skills associated with authentic learning.⁵³ This challenges teachers to be creative in developing new ways in dealing with authentic learning situations.⁵⁴

2 1 5 It is constructively aligned to the learning activity and the intended learning outcomes

The principle of constructive alignment, which was developed from the constructivist theory,⁵⁵ recognises the importance of allowing students to construct knowledge through their own activities and experiences. One of the base requirements for successful curriculum development includes clearly identifying the intended module outcomes.⁵⁶ These intended learning outcomes should dictate what activities students should be engaged in. For their part, these activities which are performed by the students, in turn direct the teaching and learning strategies of the teacher.⁵⁷

2 1 6 It strives to align with students' intrinsic motivations for learning

Research has shown that there is a direct link between deep or shallow approaches to reading and learning and the extent to which relational learning occurs through intrinsic motivation.⁵⁸ All students are motivated to achieve something.⁵⁹ Good teaching strives to have students properly motivated and interested in their learning and the stated learning outcomes.⁶⁰

⁵² P Brodie & K Irving “Assessment in work-based learning: investigating a pedagogical approach to enhance student learning” (2007) 32 *Assessment & Evaluation in Higher Education* 11 12.

⁵³ Fry et al *Handbook for teaching and learning* 370-371.

⁵⁴ Quinot (2012) *SALJ* 416.

⁵⁵ Biggs & Tang *Teaching for Quality Learning* 97.

⁵⁶ 9.

⁵⁷ 97.

⁵⁸ PL Maki *Assessing for Learning: Building a Sustainable Commitment Across the Institution* (2004) 67.

⁵⁹ Biggs & Tang *Teaching for Quality Learning* 34.

⁶⁰ S Kvale “Contradictions of assessment for learning in institutions of higher learning” in D Boud & N Falchikov (eds) *Rethinking assessment in higher education* (2007) 58. Student motivation is no simple matter, as evident from the discussion in Fry et al *Handbook for teaching and learning* 27-39. Ramsden’s five subscales measures which serve to enhance student motivation are “good teaching (providing useful and timely feedback, clear explanations, making the course interesting and understanding students); clear goals and standards (clear aims, objectives and expectations regarding standard of work); appropriate assessment (extent to which assessment measures thinking and understanding rather than factual recall); appropriate workload (the extent to which workloads interfere with student learning); and generic skills (extent to which studies have supported the development of generic skills)” as quoted on 34.

2 1 7 *It recognises the importance of assessment and acknowledges the difference between formative and summative assessments and assessments as, of and for learning*

Few would argue that assessment is vital in directing student learning.⁶¹ Effective teaching aims to encourage deeper,⁶² relational and extended-abstract level learning through criterion-referenced assessment.⁶³ It recognises the important role that innovative types or forms of assessment play in furthering learning when it is guided by the various purposes and principles of assessment. It also acknowledges the crucial role of feedback and reflection as assessment tools.⁶⁴

A great deal of research has been produced regarding these principles of assessment and different authors have added to this volume of scholarship through the years.⁶⁵ Bloxham and Boyd, for example, list and discuss what they suggest to be the most important eight principles, namely validity, reliability, effectiveness, comparability and consistency, equity, practicability, transparency and attribution.⁶⁶

2 2 CLE as teaching methodology

“It has been noted that students who participate in the clinical experience find ‘it is the most meaningful experience they have in law school.’ To ensure that is in fact the case, clinicians have a key role to play as stewards of programmes that can inspire and educate students whilst making a difference to their community.”⁶⁷

CLE is ideally suited to cater to all of these modern learning and teaching expectations.⁶⁸ As a teaching methodology, its strengths have been lauded in literature for almost a century.⁶⁹ Chemerinsky goes so far as to argue that “[t]here is no better way to prepare students to be lawyers than for them to

⁶¹ Combe (2014) *The Law Teacher* 292.

⁶² Singo (2016) *Stell LR* 566 refers to Nicholson in describing deep learning as “instilling a culture of abandoning information memorisation in favour of gaining a personal understanding of completed tasks.”

⁶³ P Knight *A Briefing on Key Concepts Formative and summative, criterion & norm-referenced assessment (HEA Assessment Series No.7)* (2001) (copy on file with author).

⁶⁴ D Boud & E Molloy “Rethinking models of feedback for learning: the challenge of design” (2013) 38 *Assessment & Evaluation in Higher Education* 698 700 emphasise “a more robust view of feedback: one that focuses primarily on the needs of learning rather than the capacities of the teacher.” Combe (2014) *The Law Teacher* 287: “The place of reflection in pedagogy goes without saying. Given its well documented and recognised benefits ...”

⁶⁵ Universities and other institutions of higher learning often develop their own assessment guidelines in which they emphasise the importance of these principles. See for example Stellenbosch University “Assessment policy and practices at Stellenbosch University” (01-12-2004) *Stellenbosch University* <<http://www.sun.ac.za/english/policy/Documents/Institutional%20assessment%20policy.pdf>> (accessed 07-03-2017).

⁶⁶ S Bloxham & P Boyd *Developing effective assessment in higher education: A practical guide* (2007) 34-44.

⁶⁷ Combe (2014) *The Law Teacher* 295. Chemerinsky (2009) *Clinical L Rev* 36 agrees:

“As a law student at Harvard Law School in the mid-1970s, by far the most valuable part of my legal education was participating in the Harvard Legal Aid Bureau... I learned more law and more about being a lawyer from my clinical experience than from anything else in law school.”

It is worth noting that Chemerinsky was still strongly influenced by this opinion when, many years later, in 2007, he was appointed as dean of the law school at the University of California, Irvine (“UCI”).

⁶⁸ For more detail about the aims and content of the PLT module see the text to part 4 below.

⁶⁹ See for example F Bloch “The Andragogical Basis of Clinical Legal Education” (1982) 35 *Vand L Rev* 321.

participate in clinical education”.⁷⁰ Reacting to this statement, Combe notes that “[w]hilst this is towards the more proselytising end of the literature, there is not much dissent to the claim that CLE is effective”.⁷¹

Detractors will note that Chemerinsky’s comment is focussed on the preparation of students “to be lawyers”, and that entering into practice is certainly not the aim of all law students.⁷² Singo quotes Pantazis who states that “legal education is an academic discipline ... and much more than a fitting out for legal practice”.⁷³ In response, however, he argues that “the principal purpose of the LLB degree is to teach students how legal principles apply in a practical setting”.⁷⁴ He also argues that the practical skills that are gained by exposure to CLE are transferable to other situations.⁷⁵ While producing legal practitioners is not the only aim of law schools, many argue that it is “the preeminent purpose”.⁷⁶ At the very least, one could reason that even those students with futures as staunch academics or in other vocations, could only benefit by the practical experience gained through exposure to CLE during their studies.

An often-used comparison referred to by proponents of CLE is the training of medical students.⁷⁷ All medical students are required to undergo clinical training and see patients before they graduate with medical degrees. It is terrifying to imagine being treated by a doctor who graduated from a medical school that was satisfied to only teach its students “to think like doctors”.⁷⁸ It is absurd to suggest putting one’s life at risk in the hands of a person graduating from medical school without clinical training, yet it seems to be quite in order for legal professionals, who could be expected to be entrusted with one’s assets, reputation and liberties. It is also unreasonable to expect that the duty of preparing law graduates for practice should rest solely on the profession.⁷⁹ Responsible tertiary legal education cannot merely shirk this duty.

Quinot has emphasised the “central role of context in learning” in terms of the constructivist approach.⁸⁰ He is of the opinion that the student’s quality of learning is strongly reliant on the context of the “knowledge community” with which they are engaged.⁸¹ He supports the notion that concepts must not be taught disjointedly in isolation, but in their relational context.⁸² One of the basic and most widely recognised benefits of CLE is that, by its very nature,

⁷⁰ Chemerinsky (2009) *Clinical L Rev* 35.

⁷¹ 286.

⁷² See Singo (2016) *Stell LR* 562 n 64 where the author refers to research indicating that approximately 50% - 55% of LLB graduates enter practice.

⁷³ 562.

⁷⁴ 562.

⁷⁵ 562.

⁷⁶ Chemerinsky (2009) *Clinical L Rev* 41 states that: “the preeminent purpose of law schools is educating our students to be lawyers. There is simply no better way to do this than through clinical education. Indeed, there is no way to do this without clinical education.”

⁷⁷ M Stetz “Best Schools for Practical Training” (2015) 24 *The National Jurist* 28 31; Chemerinsky (2009) *Clinical L Rev* 36.

⁷⁸ Chemerinsky (2009) *Clinical L Rev* 38.

⁷⁹ 35.

⁸⁰ Quinot (2012) *SALJ* 420.

⁸¹ 420.

⁸² 421-422.

it puts the theory and study of law into context.⁸³ In this sense, CLE offers an injection of authenticity into the traditional classroom approach to teaching law, which is normally very abstract and only becomes “real” when students engage in activities associated with legal practice.⁸⁴ Contemporary students can often relate more securely to this degree of realism, of genuineness, than with the traditional text-based knowledge archetype.⁸⁵ There are even some who argue that the traditional classroom approach could be harmful to a student’s development.⁸⁶

Within the context of CLE, the concept of connecting various sources of information is also very relevant. Students are presented with often incoherent real-life sets of facts that require various legal and non-legal interventions. These problems are “neither neatly packaged nor have a single solution”.⁸⁷ The solutions to these problems require the utilisation of innovative and diverse sources of authority. This teaching methodology fits with Quinot’s view that:

“[A]dherence to transformative constitutionalism ensures that the knowledge field, law, is not viewed as stable, fixed or one-dimensional, thus keeping open the possibility for radically different constructions.... Rather than attempting to present students with a coherent, contained body of rules that constitute the law, our methodology should present them with the fragmented, pluralist, inconsistent and often conflicting claims to authority that in aggregate constitute the law.”⁸⁸

CLE at the LC is an authentic, work-place learning programme which focusses on the development of students’ know-how and skills. It is a form of situated learning, meaning that it presents the opportunity to train students to become proficient in practical skills they will require to put in practice immediately, as opposed to abstract knowledge which may only become important when it is memorised at a time, months into the future.⁸⁹ This leads to improved knowledge construction on the part of the student and plays into their intrinsic motivation for learning. They are better motivated to learn because they realise that a failure to understand concepts today will lead to an inability to perform tasks tomorrow, literally.

CLE uses scaffolding to build on prior learning (attained before entering the module) as well as learning obtained earlier in the module itself. The one-on-one, hands-on teaching methodology of CLE, along with the (preferred) lower student-supervisor ratio, makes it possible to establish a student’s level of prior learning to assist such student to attain the intended learning outcomes. These learning outcomes are formulated to guide student activities at the LC and advancement in CLE requires the student to actively demonstrate their subjective mastery of the necessary skills and knowledge required by the set

⁸³ Singo (2016) *Stell LR* 563.

⁸⁴ Chemerinsky (2009) *Clinical L Rev* 35.

⁸⁵ Quinot (2012) *SALJ* 429.

⁸⁶ Combe (2014) *The Law Teacher* 286-287.

⁸⁷ W de Klerk “University Law Clinics in South Africa” (2005) *SALJ* 929 937.

⁸⁸ Quinot (2012) *SALJ* 417-418, 424.

⁸⁹ Combe (2014) *The Law Teacher* 286.

outcomes.⁹⁰ Students are encouraged to solve problems by using the skills and knowledge which they have acquired during their earlier studies. This reliance on prior learning has meant that the PLT module is only presented as an advanced capstone module to final year law students.

In realising the module's objectives, various forms of authentic teaching and blended learning are employed, including the use of narrative storytelling⁹¹ and problem-based learning,⁹² which is ideally suited to legal education.⁹³ This exposure to real-life legal problems greatly assists in the effort to train students for legal practice.⁹⁴ There is even support in the literature for the idea that live-client work "provides the optimum means of student learning".⁹⁵ This emphasis on real-life work means that CLE also encourages "ends-means thinking",⁹⁶ which is an essential skill of any legal practitioner. CLE has a strong student-focus as students learn by what they, themselves, are doing through their work at the LC. They must be able to apply their substantive knowledge and procedural skills in a clinical legal context.

CLE modules are also conducive to varied forms of innovative and effective student assessments.⁹⁷ Among the other assessment methods which can be used to great effect, reflection exercises which lead to deeper learning are especially well suited to CLE, where students can reflect on their actual experiences, good and bad, during their clinical work.⁹⁸

It is by no means argued that CLE and PLT have a perfect or exclusive claim to catering for the contemporary teaching and learning requirements discussed above. It would be naïve and simplistic to suggest that CLE has all the answers to some of the ongoing and complex criticisms of the LLB curriculum.⁹⁹ There are various other modules presented at the Faculty which are (or should be) sensitive to these needs. CLE, however, presents the ideal opportunity for the Faculty to strengthen its pedagogical offering to current and prospective students.

⁹⁰ This application of the knowledge and skills in the CLE environment serves as an antidote to the one caveat with regard to the constructivism method mentioned by Quinot (2012) *SALJ* 423:

"[D]anger lies in the possibility that constructivist pedagogy may not pay sufficient attention to those skills that students need to participate in the knowledge community, and which are thus necessary for them to be able to learn."

⁹¹ As advocated by H McLellan "Digital Storytelling in Higher Education" (2006) 19 *Journal of Computing in Higher Education* 65 72.

⁹² See B Hoffman & D Ritchie "Using multimedia to overcome the problems with problem based learning" (1997) 25 *Instructional Science* 97.

⁹³ Fry et al *Handbook for teaching and learning* 367.

⁹⁴ Holness (2013) *PER/PELJ* 338: "From the perspective of a holistic legal education it is strongly argued that exposure to real life legal problems has great potential to improve the readiness for legal practice of any graduate from the University."

⁹⁵ Combe (2014) *The Law Teacher* 283.

⁹⁶ Amsterdam (1984) *J Leg Ed* 614.

⁹⁷ See, for example, Du Plessis *Assessment Methods*.

⁹⁸ Singo (2016) *Stell LR* 566.

⁹⁹ Quinot (2012) *SALJ* 431 n 105 refers to Webb to show that there are seldom easy answers for some of the more difficult questions in legal education.

2.3 The institutional argument

The broader legal profession's continued dissatisfaction about the quality of law graduates produced by universities has become a well-known refrain.¹⁰⁰ The launch of the "new" 4-year LLB, with all of its perceived shortcomings, has only served to increase the criticism from the ranks of the profession.¹⁰¹ The judiciary, law societies, bar councils and the profession in general have often voiced alarm regarding the growing law graduates' skills gap.¹⁰² CLE as a pedagogical approach to combat this concern is frequently suggested.¹⁰³

A study of the available literature shows that this is not a complaint that is unique to South African legal education. Referring to the state of legal education in the United States of America during 2009, Chemerinsky wrote that "[t]here is a growing recognition that law schools must do a better job of preparing students for the practice of law".¹⁰⁴ He stressed the importance of law schools imparting "greater practical knowledge and skills".¹⁰⁵

In South Africa, the effort to place more emphasis on CLE has also been identified as an important objective by academic stakeholders. In setting out their stated purpose for the LLB degree, the South African Qualifications Authority ("SAQA") highlighted the importance of concepts like "skills", "practical application", and "applying knowledge through ... practice".¹⁰⁶ As argued above,¹⁰⁷ CLE and the activities of the LC are ideally placed to cater to these requirements. At Stellenbosch, an expanded CLE module would also benefit the Faculty from the perspective of producing students who display the graduate attributes listed in the self-evaluation report drafted as part of the LLB re-accreditation process.¹⁰⁸ Expanded CLE was clearly supported in the report of the re-accreditation review panel:

"Clinical legal education is provided for in the programme. It is a component of the elective final-year module, *Practical Legal Training 471*. We were told that between 30-40 students register for this module per year. The facilities of the Law Clinic are excellent. The Clinic is also well-staffed, having four attorneys and a number of candidate attorneys in residence It is the panel's view that the Faculty should re-consider their approach to clinical legal education as a final-year elective. *Students we interviewed were of the view that all students should be exposed to clinical legal education.*

¹⁰⁰ For support see for example S van der Merwe "Cautioning the careless writer: The importance of accurate and ethical legal writing" (2014) 39 *JJS* 23 24; Singo (2016) *Stell LR* 554; PM Mojapelo "Transformation, independence and poor 'products' of the LLB" (2012) *De Rebus* 54.

¹⁰¹ Mojapelo (2012) *De Rebus* 54.

¹⁰² See for example P de Vos "Society bemoans lack of basic skills of law graduates" (23-11-2010) *Constitutionally Speaking* <<http://constitutionallyspeaking.co.za/law-society-bemoans-lack-of-basic-skills-of-law-graduates/>> (accessed 07-03-2017); L Jansen "Lack of skill in law graduates, says judge" (30-07-2012) *IOL* <<http://www.iol.co.za/news/crime-courts/lack-of-skill-in-law-graduates-says-judge-1351806>> (accessed 7-3-2017).

¹⁰³ See for example Holness (2013) *PER/PELJ* 342:

"Other possible advantages are that by taking part in the programme the graduated student will develop the skills necessary to be an efficient practitioner and in this way, supplement the shortcomings of the LLB degree, which according to many law firms are obvious."

Also see Chemerinsky (2009) *Clinical L Rev* 37.

¹⁰⁴ 35.

¹⁰⁵ 35.

¹⁰⁶ South African Qualifications Authority "Bachelor of Laws" (undated) *SAQA* <<http://regqs.saqa.org.za/viewQualification.php?id=22993>> (accessed 07-03-2017).

¹⁰⁷ See the text to part 2.2 above.

¹⁰⁸ As mentioned in the text to part 1 above.

*The panel recommends that the Faculty should seriously consider making provision in a revised curriculum for compulsory clinical legal education for all final-year students...*¹⁰⁹ [own emphasis]

Earlier, during 2014 and 2015, the Stellenbosch LC was subject to evaluation by an external evaluation panel consisting of the experienced directors of the Law Clinics of the Universities of the Western Cape and Pretoria. This evaluation forced the staff of the LC to do extensive introspection which led to detailed evaluation reports. In the external panel's final report, they specifically mentioned the regretful deficiency in student numbers of the CLE module, given its undeniable strengths. The report states:

"In this, its 40th year of existence, the US LAC is well established and well known, not only throughout the Western Cape but across South Africa. It has a strong clinical legal education programme and students rated both the theoretical (classroom) component and the experiential training very high. This was the case in both 2013 and 2014. The desired outcomes of the course are well defined and properly aligned with the teaching methodology and assessment methods employed. It is therefore a pity that not more students are / can be exposed to the clinical legal education programme that develops the legal knowledge, skills and values required of legal practitioners. [The LAC receives commendations for a]n excellent clinical legal education programme with clearly defined outcomes properly aligned with teaching methodology and assessment methods employed."¹¹⁰

Alumni of the PLT module have consistently given overwhelming positive feedback when evaluating the module and endorsed the call to give more attention to this aspect of the Faculty's curriculum.¹¹¹ Recent feedback received from a broader range of *alumni* of the Faculty also supports a development towards improved CLE, with comments like:

"I certainly think US graduates might be shocked at how little practical information they were taught at the Faculty, especially if they never did the Law Clinic module, and then retrospectively might think the Faculty should have done more."¹¹²

Current students are also aware of the importance of gaining experience that assists in bridging the gap between academic work and professional practice. In a recent letter addressed to the LC and Faculty, the management of the 2016 Juridical Society ("JV")¹¹³ expressed a desire for a "broadening" of student participation in PLT. They wrote:

"We are considering working towards an increased form of student participation through a broadening of the Practical Legal Training 471 module. If greater access to this module or similar programmes could be opened to include more students, then we believe it could strengthen the Stellenbosch law degree significantly. The JV stands by its motto '*Non scholae, sed vitae discimus*' meaning 'We do not learn for school, but for life'.¹¹⁴

Student feedback from the 2016 final year law group also strongly supports CLE.¹¹⁵ Feedback from the 2016 PLT class, in remaining consistent with

¹⁰⁹ Council on Higher Education National Review of Bachelor of Law (LLB) Programmes 2016 -2017 HEQC Draft Report by LLB re-accreditation review panel (copy on file with author).

¹¹⁰ External Evaluation Report for the purpose of the Quality Assurance Evaluation of The Legal Aid Clinic, University of Stellenbosch: December 2014 (copy on file with author).

¹¹¹ See the text to part 3 below.

¹¹² *Alumni* feedback on file with author.

¹¹³ The student body representing law students at the Faculty

¹¹⁴ Letter from Juridical Society dated 24 October 2016 (copy on file with author).

¹¹⁵ Student feedback in the Administrative law module (copy on file with author).

previous years, also encourages LC efforts to promote CLE.¹¹⁶ Student feedback in support of increased attention to CLE is also echoed in the American context.¹¹⁷

This push for increased attention to CLE, and specifically for the introduction of mandatory CLE modules, is also supported in literature.¹¹⁸ Du Plessis¹¹⁹ refers to international research¹²⁰ but also to various South African authors, like McQuoid-Mason and Vawda, the latter being of the opinion that:

“Without question, clinical law should be offered as a compulsory course ... [t]he option of a voluntary clinical course is not desirable”.¹²¹

2.4 The improved access to justice argument

Much has been written on CLE’s role in providing increased access to justice,¹²² and the topic is not the salient point of this article. For present purposes it would suffice to state that mandatory CLE, using the popular real-life model, would allow more students to receive exposure to social justice issues and increase access to justice for the marginalised and poor in society.¹²³ Although it is not, or should not, be the first priority of CLE,¹²⁴ providing access to justice is an extremely important positive spin-off of the LC model.¹²⁵ Given the inequalities that remain as a result of South Africa’s legacy of apartheid, CLE provides abundant opportunities for universities to demonstrate their commitment to making a positive social impact.¹²⁶ Requiring all law students to engage in this (granted somewhat artificial)¹²⁷ form of community service through mandatory CLE, lends more credence to this sentiment than when CLE is offered as an elective to only a limited number of students. These students are typically the ones who are already

¹¹⁶ Student feedback on file with author.

¹¹⁷ Chemerinsky (2009) *Clinical L Rev* 40: “I constantly hear lawyers lament how they were not taught to practice law when they were in law school and how law schools still do a poor job of this.” Also see Stetz (2015) *The National Jurist* 33.

¹¹⁸ As mentioned in the text to part 2.2 above.

¹¹⁹ MA du Plessis (2014) *JJS*.

¹²⁰ 69.

¹²¹ As quoted at 69.

¹²² See for example P Maisel, S Mahomed & M Jain “Clinical Legal Education’s Contribution to Building Constitutionalism and Democracy in South Africa: Past, Present, and Future” (2015-2016) 60 *NYL SCHL REV* 433; N Duncan “Jeff Giddings, Promoting Justice through Clinical Legal Education” (2016) 50 *The Law Teacher* 390.

¹²³ See Holness (2013) *PER/PELJ* 334-335, where the author refers to P Maisel “Expanding and Sustaining Clinical Legal Education in Developing Countries: What We Can Learn From South Africa” (2006) 30 *Fordham Int LJ* 374, in arguing that involving more students in CLE serves to “expand the pool of resources for legal representation accessible to the indigent.” Involving more students in CLE also raises awareness of social justice and access to justice needs among a bigger group of future legal practitioners.

¹²⁴ Singo (2016) *Stell LR* 558.

¹²⁵ Combe (2014) *The Law Teacher* 283: “Whatever the form of initiative, it is clear that without such activity people could have their rights overlooked or be forced into representing themselves in court.” Also see D Nicolson “Our roots began in (South) Africa: Modelling law clinics to maximize social justice ends” (2016) 23 *IJCLE* 87-92.

¹²⁶ Holness (2013) *PER/PELJ* 334 refers to universities’ “ethical obligation to meaningfully contribute to the social upliftment of the areas in which they exist.”

¹²⁷ As students are rewarded for their work by earning marks.

invested in social justice, and allowing the others to opt out of CLE does a disservice to the community and themselves.¹²⁸

3 Overview of current module

PLT is a CLE, two-semester, elective, service-learning module presented to final year law students. The module objective is “to equip final year law students with the necessary skills, knowledge and techniques to prepare them for legal practice”.¹²⁹

The PLT module has received positive feedback from students who have been involved with it over the course of the last fourteen years.¹³⁰ Student feedback has been received through the normal means of student-evaluation forms at the end of the module, but several students have also sent unsolicited correspondence voicing their appreciation to the LC.¹³¹ Importantly, the PLT module of the LC has also received glowing reviews from the expert external moderators tasked with the external evaluation of the LC during 2014.¹³²

3 1 Important role-players

In presenting the Stellenbosch CLE module as a case study to draw conclusions of general application, it is important to consider the context within which the module is presented. The scope and influence of the current module could best be understood with reference to the inputs and expectations of the most important role-players, detailed below.

3 1 1 Stellenbosch University Law Clinic (the “Institution”) and the indigent community in and around Stellenbosch

The PLT module is closely linked to the operations and functions of the LC. The LC was founded with the backing of the Faculty in 1975¹³³ with the aim of providing free legal services to indigent members of the surrounding community. Initially law students of the University were utilised to provide these legal services. Although this led to an increase in available resources to provide access to justice, the system was not without its problems and

¹²⁸ In the LLB re-accreditation review panel’s report they remark:

“In the opinion of the panel, though, the LLB curriculum can and should do more to create an awareness among its students of the important role law plays in responding (or failing to respond) to social injustice. Apart from the final-year elective module, *Practical Legal Training*, in which students participate in the Law Clinic (around 30-40 students register for this module per year), students are not exposed in the curriculum to law-in-action studies.” Combe on 291 agrees: “[C]ould even be more important for law schools to get such students involved, as it would expose them to social justice issues which they would be otherwise oblivious to.”

¹²⁹ PLT module framework on file with author. The teaching philosophy which is followed in PLT might be best described by the following quote from E Morris *Technique in Litigation* 6 ed (2010) 1, which is also included in page 2 of the module framework:

“However, no book will produce a genius; no tome is a substitute for hard work and no words will ever convey all that can be learned from personal experience.”

¹³⁰ PLT was first offered in 2002 when it was known as Advanced Civil Procedure.

¹³¹ Copies of student feedback and various letters from students (copies on file with author).

¹³² See the text to part 2 3 above.

¹³³ D McQuoid-Mason “Law clinics at African universities: An overview of the service delivery component with passing references to experiences in South and South-East Asia” (2008) *JJS* 1 9.

challenges. Students, some of whom were not really committed to their client's cause, would open files and leave them unattended. It thus became clear that student activities at the LC would need to be managed and monitored. This was done by employing professional attorneys and lecturers to guide and assist students in the provision of these legal services.

This continued social responsibility toward the destitute community has greatly impacted the teaching and learning in the module. It has guided the module content and outcomes toward a decidedly service-learning approach. The LC has developed a well-deserved reputation as the foremost provider of civil legal services to the poor and marginalised members of communities in the Stellenbosch and wider Boland area.¹³⁴ The community depends on the students and staff of the LC to protect their rights by effective legal intervention. Legal practitioners and students involved with the LC are privileged to practice law in a social justice environment. They are able to assist those in need, those indigent and marginalised members of society who have no other recourse. This presents the opportunity to influence the legal minds of tomorrow to be sensitive to their duty to practice law in a socially responsible way.

3 1 2 Students

Students who register for the PLT course come from a wide variety of backgrounds.¹³⁵ Some of them are from privileged families and schooling, while others study with the aid of bursaries and come from previously disadvantaged segments of the community. The class is thus multicultural and diverse, an aspect to be considered in approaching teaching and learning in the module. This is also an important consideration when students have to be selected to limit student numbers in this elective module, as the composition of students needs to reflect the community where they will practice their service learning. Other factors in selecting students include the applicant's history of community service and his or her proficiency in procedural law.¹³⁶

Student numbers in PLT are currently limited to 64 per annum to ensure a reasonable student-supervisor ratio. However, only about 40 students have elected to register for the module in recent years.¹³⁷ When final year law students are presented with the opportunity of selecting PLT as a module, they are made aware of the fact that the module will require a certain level of

¹³⁴ As evidenced by, for example, the well-publicised work of the LAC regarding emoluments attachment orders and opposing illegal evictions. See *University of Stellenbosch Legal Aid Clinic v Minister of Justice and Correctional Services*; *Association of Debt Recovery Agents NPC v University of Stellenbosch Legal Aid Clinic*; *Mavava Trading 279 (Pty) Ltd v University of Stellenbosch Legal Aid Clinic* 2016 6 SA 596 (CC).

¹³⁵ As evidenced by student registration records for PLT (copy on file with author).

¹³⁶ These selection criteria are set out in the yearbook.

¹³⁷ Below follows a table indicating the year, number of registered final year students and number of students registered for PLT:

Year: 2013, Total 188, PLT 48.

Year: 2014, Total 157, PLT 33.

Year: 2015, Total 173, PLT 22.

Year: 2016, Total 169, PLT 38.

Year: 2017, Total 157, PLT 41.

commitment and dedication on their behalf. A more mature and responsible outlook is expected as students have to work on a continuous basis¹³⁸ to meet the required outcomes. Failing to appreciate the potential benefits of CLE, many students simply choose less challenging modules in the final year of studies. Others have no interest in flexing their social impact muscles. The PLT elective also competes for student interest with other electives. As a result of how the various LLB degree courses are structured, students in certain courses¹³⁹ may not register for PLT as a result of specified entry-level requirements.¹⁴⁰ Students, who complete their studies through exchange programmes with universities abroad, are also precluded from registering for PLT.

In teaching the module, it is important to be mindful of student limitations and the challenges faced by the students in meeting the module outcomes. While the LC and the plight of its hundreds of clients place a heavy burden on students, one has to bear in mind that they also have other modules and commitments to meet. It is therefore a constant challenge not to exasperate CLE students with an excessive workload.

The various activities of the CLE module work in harmony to introduce the PLT student to the practical nature of clinical law. From the beginning students are informed that the emphasis is on the development of skills, and not the acquisition or inculcation of “static” (in the sense that it is not applied) knowledge. The theoretical underpinnings of these skills are taught in lecture and small-group tutorial format before students are required to put them to use at the LC in actual and simulated problems. During the early stages of the PLT-course, students receive valuable training in the skills required to enable them to contribute to the access to justice aims of the LC. In so doing, the students gradually become involved in consultations with indigent clients. Students are thus empowered to be active change-agents in assisting LC clients in resolving a wide variety of legal and non-legal problems. They are exposed to real-life legal problems and trained to be sensitive to the needs and circumstances of the indigent community in and around Stellenbosch.

PLT students experience first-hand how the application of the law contributes to the lives of individuals and society as a whole. Through the student-learning achieved during the rendering of community service at the LC, students are able to influence the lives of indigent clients for the better. The practical skills and experience gained through this process serve as an invaluable cornerstone for their future legal careers.

Student learning is monitored and supported through close trainee-mentor relationships with the attorneys and candidate attorneys at the LC. A student assistant is also appointed to be readily available to address any student concerns. Clinical educators have to cater to the expectations of

¹³⁸ Continuous assessment methodology is applied in the module.

¹³⁹ For example, BAcc LLB.

¹⁴⁰ One of the requirements to register for PLT is to have passed the module in Civil Procedure 371. Students in BAcc LLB are however required to register for both these modules in the same year, making entry into PLT impossible.

CLE students,¹⁴¹ who have registered for the module in order to receive the necessary training and guidance to develop skills that will enable them to make a smooth and successful transition into practice. Students have to feel that the module has added value to their studies, while also having a legitimate expectation that the module makes fair demands on their time and effort for the credits involved.¹⁴²

CLE aims for a blended teaching and learning pedagogy to achieve effective student-centred teaching where students feel motivated to be involved and responsible for their own learning. CLE also aims to encourage students to develop skills as opposed to simply accumulating more “static” knowledge.¹⁴³

3 1 3 *The Faculty of Law*

The Faculty assists the LC in its teaching task by contributing financial, infrastructural and administrative student support; for example, through the provision of a module assistant. The Faculty also employs writing consultants who offer a valuable service to PLT-students with their writing prowess.¹⁴⁴

A challenge in presenting the module is the very hands-on mentoring required in training students to develop the necessary skills. This requires a smaller student-supervisor ratio, which is conducive to this type of learning. However, appointing more mentors has serious financial implications for the Faculty and is seldom a realistic option. The diversity of the module’s student composition presents challenges regarding the language of tuition. Stellenbosch University has recently been under public scrutiny with regard to its language policy and the university has introduced a language policy which supports both Afrikaans and English as tuition languages.¹⁴⁵

The Faculty will expect the module to support their efforts to enhance student learning by serving as a resource for inculcating a culture, value system, vision and mission that is client (student) centred. PLT should contribute to the broad aims of teaching and learning, research and social interaction. This demands an approach which fosters constructive alignment of intended learning outcomes, assessment and instructional activities.¹⁴⁶

¹⁴¹ Acknowledging the fact that “[e]ffective teaching involves acquiring relevant knowledge about students and using that knowledge to inform our course design and classroom teaching”. See Carnegie Mellon University “Principles of teaching” (2016) *Carnegie Mellon University* <<https://www.cmu.edu/teaching/principles/teaching.html>> (accessed 07-03-2017).

¹⁴² These expectations are evidenced from the student feedback evaluations conducted on an annual basis. Copies of evaluation forms on file with author.

¹⁴³ In support of Gonzalez’s identification of the challenge of “rapidly diminishing knowledge life”, or the “shrinking half-life of knowledge” as discussed in Siemens (2005) *International Journal of Instructional Technology and Distance Learning*.

¹⁴⁴ See T Broodryk & CH Louw “Teaching Legal Writing Skills in the South African LLB Curriculum: The Role of the Writing Consultant” (2016) 27 *Stell LR* 535.

¹⁴⁵ Stellenbosch University “Language Policy of Stellenbosch University” (01-01-2017) *Stellenbosch University* <<http://www.sun.ac.za/english/Documents/Language/Final%20June%20Language%20Policy%20November%202016.pdf>> (accessed 07-03-2017).

¹⁴⁶ In accordance with widely accepted principles of effective teaching. See for example paragraph 2 of Carnegie Mellon University “Principles of teaching” (2016) *Carnegie Mellon University*.

3 1 4 The profession

During the early 2000's the professional body for attorneys, the Law Society, also became more involved in CLE by provided funding to support CLE,¹⁴⁷ which aided in the development and implementation of the first structured course presented to law students at the LC during 2002. At that stage it was clear that, while service to the community had always been the primary objective of the LC, CLE now became, along with access to justice, an important outcome of the LC's activities.

The profession has broad expectations of students who complete the PLT module. These students should have a workable knowledge of ethics, writing, numeracy, research and advocacy skills.¹⁴⁸ As "employees" of a fully operational attorney's office, students who work at the LC are expected to operate within the ethical guidelines of the profession. Integrity and confidentiality are two of the main considerations in this regard. PLT students are fortunate that they have the opportunity to practically demonstrate their ability to discharge the professional and social ethical duties associated with the practice of law which they were taught during the classroom component of the course.

The profession will continue to expect those involved with the training of law students to produce competent and responsible young practitioners who are ready to face the various challenges of a professional vocation. This requires the teaching of theoretical knowledge but also practical skills.¹⁴⁹

4 Challenges and suggestions for consideration

It should be noted that the call for improved focus on CLE is by no means a new one. Internationally, efforts to reform legal education into a more practical experience have been made since at least 1921.¹⁵⁰ It seems that despite all the discourse and large existing body of scholarship on the matter, the battle is far from over.¹⁵¹ If the arguments in favour of mandatory CLE are so convincing, why are there still universities, like Stellenbosch, that fail to offer CLE as a compulsory module in their LLB curriculum?

¹⁴⁷ De Klerk (2005) *SALJ* 931-932.

¹⁴⁸ Mojapelo (2012) *De Rebus* 54.

¹⁴⁹ There is a very vigorous ongoing debate in law faculties about the extent to which Universities should cater to the needs of the profession. Fry et al *Handbook for teaching and learning* 364 summarises this debate as follows:

"Specifically, to what extent should the curriculum cater to the needs of the professional bodies? Many law academics feel strongly that it is not the place of the law school to prepare students for practice and that law is an academic subject in its own right which can be studied in isolation from any vocational concerns or influences. Others feel equally strongly that law cannot be properly understood without an appreciation of how it is applied and practised in the real world."

¹⁵⁰ Chemerinsky (2009) *Clinical L Rev* 37.

¹⁵¹ As evidenced by the consistent calls for legal reform in literature and practice.

The most obvious reason is that presenting CLE is expensive.¹⁵² Unlike conventional lecture-hall legal teaching, it often relies on small student-supervisor ratios, which raises the issue of salaries for these increased number of supervisors. CLE also requires unconventional teaching facilities, like consultation rooms and mock trial venues.¹⁵³ Chemerinsky suggests another, “more subtle”¹⁵⁴ reason for the lack of support for CLE. He opines that law faculty academic staff are increasingly removed from the practice of law, meaning that they are less sympathetic to CLE’s pleas for increased funding than for similar requests where more conventional scholarly pursuits are concerned.¹⁵⁵ A third reality that hinders the expansion of CLE is the congested curriculum of most law degrees, not to mention the precarious balancing act involved in planning and maintaining the cross-section of various LLB programmes.¹⁵⁶ Expanding the existing PLT module to make it a compulsory module for all law students would hold significant implications for a Faculty, as it would no doubt influence the existing programme framework. Any amendment to the faculty programme and yearbook would have to be effected through the proper channels.

How then, is CLE to flourish in the face of these daunting obstacles? These challenges could potentially be addressed in many possible ways. It is, however, clear that there is no simple “one size fits all” answer. The purpose of this article is not to be prescriptive or simplistic in its approach to presenting solutions to what is clearly a complicated issue. No final solution will be on offer. The goal is to make some suggestions that could serve as a starting point in considering how to tackle the obstacles in the way of a mandatory CLE module. If CLE is to become a compulsory module, as suggested, several role-players would have to be involved in the process.

Innovative, strategic planning is required to increase student numbers while making best use of the current resources available to the LC and CLE programme, thus being sensitive to the Faculty’s financial constraints. These financial limitations restrict the available options to increase student numbers in a module where close co-operation between students and mentors is often a prerequisite to effective skills training. The harsh reality is that employing more staff to mentor more students is, in most cases, simply not a financially viable option.

There are, of course, other ways to increase the number of CLE student supervisors without necessarily incurring an increased financial burden for the faculty. The first would be actively to involve more academic staff in

¹⁵² Chemerinsky (2009) *Clinical L Rev* 38. N Swanepoel & I Bezuidenhout “The institutionalisation of community service and community service learning at South African tertiary institutions: with specific reference to the role of university law clinics” (2012) 45 *De Jure* 46 47-48 suggests challenges facing university law clinics are financial sustainability, large student numbers and limited training time in a student’s curriculum.

¹⁵³ See, for example, Du Plessis *Assessment Methods* 58.

¹⁵⁴ Chemerinsky (2009) *Clinical L Rev* 39.

¹⁵⁵ 39.

¹⁵⁶ Combe (2014) *The Law Teacher* 288.

CLE.¹⁵⁷ Although this may not necessarily be a popular suggestion, increased involvement in supporting students who assist legal aid clients will allow faculty staff to increase their own social impact profiles. Faculties could investigate the possibility of including CLE “service hours” in their staff’s employee agreements. For this to be successful CLE involvement will have to be incentivised, not only for academics but also the clinicians at the LC, who should be treated on equal footing with their academic colleagues, at least in this endeavour.¹⁵⁸ Getting academics to commit to CLE and the LC would go a long way to alleviating the concern raised by Chemerinsky about their lack of sympathy for the cause of CLE.

The Faculty and LC could also reach out to interested parties, including private practice (and especially *alumni*), government and other public interest and legal aid organisations to source appropriate supervisors to be involved in its CLE module. Partnerships with these entities could add valuable, but inexpensive, external resources in terms of experience, practical and technical know-how, mentoring availability and even, possibly, funding.¹⁵⁹

A further option would be for faculties to reconsider the structure of their existing CLE modules. For example, at the Faculty, the content of the current two-semester module could be reworked with the goal of shortening the module to one semester. It would then be possible to repeat the semester module during the two semesters. The final-year LLB class could be divided in two groups, with approximately 90 students registering for the module during each semester. Although this amount represents a significant increase in the current student intake, the LC should be able to accommodate this number with appropriate support from Faculty and some creative manoeuvring of its resources. It may be preferable for Legal Skills 411, which is currently included in the module content for the PLT students, to be completely separated from PLT. Law students would thus be required to register for both Legal Skills 411 (with its strong research, writing and ethics focus) and the newly reworked semester module in PLT. This separation would bring about a considerable reduction in the remaining PLT content, and would allow the course to focus on the training of practical skills. There are other options: In reviewing the CLE module at the University of KwaZulu-Natal, Holness suggests considering an approach where CLE is presented over two years.¹⁶⁰

Although there are undoubtedly advantages to be gained, relying on indiscriminate comparisons with how other universities present CLE is not necessarily sensible. Every university LC in the country has unique challenges, structure, student numbers and approach to CLE. Some clinics, for example,

¹⁵⁷ Chemerinsky (2009) *Clinical L Rev* 40. As to the type of involvement he suggests:

“Some might be consultants to the clinics in the areas of their subject matter expertise. Some, if they have the experience and requisite credentials (such as bar membership), might actually supervise students.”

¹⁵⁸ 40. Chemerinsky opines that “the ABA needs to go even further in ensuring equality for clinical faculty. Although the ABA now requires some form of tenure or long-term contracts for clinical faculty, this does not go far enough in ensuring parity. At most law schools, clinical faculty cannot vote on faculty appointments. This inherently relegates clinical faculty to second class citizenship.”

¹⁵⁹ 41. Chemerinsky suggests that “new models for funding legal clinics need to be explored.”

¹⁶⁰ Holness (2013) *PER/PELJ* 339.

approach CLE as a purely simulated experience and do not involve students in real-life clients and cases.¹⁶¹ Statistics in this regard are available on the South African University Law Clinics Association (“SAULCA”) website, but are outdated.¹⁶²

The difficulty of simply “transplanting” the CLE programme of another university into the local CLE environment can be illustrated by briefly considering the CLE programme of the University of the Witwatersrand (“Wits”).¹⁶³ At Wits, all final-year LLB students are required to register for the mandatory full-year CLE module, Practical Legal Studies. The large student numbers that have to be catered for are managed through the Wits LC’s nine sub-units, each co-ordinated by its own attorney. However, there is a substantial difference in the staff composition of Wits and the Stellenbosch LC.

A suitable compulsory CLE module will have to be developed to cater to the specific needs of the identified role-players. This development will likely involve challenges, and some birthing pains are to be expected. The CLE module will not achieve instantaneous perfection, and it will likely never be without its concerns and problems.¹⁶⁴ It is, however, suggested that the proposals above would provide a workable starting point from which future development and improvements can advance. Investing in effective CLE will no doubt be challenging, but the resulting benefits will merit the sacrifices made along the way.¹⁶⁵ The Stellenbosch LLB review panel agrees:

“We appreciate the not insignificant resource and logistical constraints involved and the concern of the Faculty to provide a quality - rather than a merely superficial - clinical legal education. We believe, though, that much might be gained from an interrogation of an innovative approach, as adopted by many other law faculties, to clinical legal education for all final years.”¹⁶⁶

5 Conclusion

Undoubtedly, the most important role-player in a LC’s effort to offer a compulsory CLE module is the relevant faculty of law which it supports. Faculties should be strongly invested in the quality of the CLE module which has been developed and is offered by their LC. Despite its imperfections,

¹⁶¹ South African University Law Clinics Association <http://www.saulca.co.za/file/84def0077b459972d44e43dda5e85f39/4%20SAULCA%202013%20Student%20Training_Clinical%20Programme%20rpt%204_5%20until%204_7.pdf> (accessed 07-03-2017).

¹⁶² See South African University Law Clinics Association <<http://www.saulca.co.za/statistics>> (accessed 07-03-2017) where the latest available statistics are for 2013. The website contains brief summaries regarding the CLE modules of thirteen universities, including Stellenbosch. This information, in as far as it is relevant to this article, can briefly be stated as follows:

- eight CLE modules are compulsory, five are electives.
- one module is offered over one semester, eleven over two semesters and one for a period of more than two semesters.
- three modules have real-client interaction only, two simulation only and eight a combination of real-client and simulation.

¹⁶³ University of the Witwatersrand Practical Legal Studies course outline 2016 (copy on file with author).

¹⁶⁴ Combe (2014) *The Law Teacher* 294 warns “perhaps the promised land of constructive alignment from the outset of a clinical programme is one that should in fact be approached with caution.”

¹⁶⁵ 288.

¹⁶⁶ Council on Higher Education National Review of Bachelor of Law (LLB) Programmes 2016 -2017 HEQC Draft Report by LLB re-accreditation review panel (copy on file with author).

both students and clients involved at the LC undoubtedly benefit from the programme. The LC needs the continued support of the Faculty to realise the full potential of CLE by considering a mandatory module as a necessary intervention.¹⁶⁷ This can only be achieved if the significant value that an extended CLE module has to offer, is fully appreciated by all those concerned.¹⁶⁸

CLE is conducted in an environment sensitive to social justice considerations. The institution, faculty and broad profession in which the LC operates should support this important instrument in the process of constructing a free and fair post-apartheid South Africa. This context necessarily impacts the learning of the diverse student body associated with the module. In this way, CLE students are not only trained as accountable legal practitioners, but as responsible citizens. Their learning context contributes to students' development as human beings, and specifically in becoming jurists who are invested in the protection and upliftment of the rights and dignities of those less fortunate members of society.¹⁶⁹ Perhaps Quinot states this principle best:

"We must acknowledge that the way we go about teaching law will shape the next generation's perception of law and its role in this country".¹⁷⁰

If only for this one reason, it is important that all law students in South Africa should be afforded the opportunity to receive this type of training.

SUMMARY

Practical Legal Training 471 ("PLT") is the only Clinical Legal Education ("CLE") module currently offered by the Faculty of Law at the University of Stellenbosch ("Faculty"). It has an important function in that it offers to final year law students the opportunity to acquire and develop skills in a clinical setting. Despite overwhelming international support for CLE as a teaching methodology, it has a limited role in the current LLB curriculum where it is offered as an elective to a relatively small number of final year law students. In this respect, Stellenbosch reflects the position of many other University law faculties. This article presents an argument favouring a dedicated and pro-active effort to increase CLE's footprint within the Faculty by restructuring the current elective module into one that is mandatory for all law students. This is done by considering the pedagogical, institutional and access to justice arguments in support of effective CLE modules. This is then followed by an overview of the current PLT module, emphasising the role and expectations of the Law Clinic ("LC"), impacted community, students, faculty and profession. The article then identifies some of the challenges which deter universities, like Stellenbosch, from offering CLE as a compulsory module in their LLB curriculum. With due regard to the complexity of the issues at stake, some suggestions are offered that could serve as a starting point for law faculties in considering how to deal with the obstacles in the way of offering a mandatory CLE module. Ultimately, any efforts to expand CLE remain contingent on the relevant faculty's support and its ability to realise the full potential of CLE by considering a mandatory module as a necessary intervention in its LLB programme offering.

¹⁶⁷ Singo (2016) *Stell LR* 569.

¹⁶⁸ Combe (2014) *The Law Teacher* 294: "[F]urther development of such clinics may be impeded by a lack of structure and insufficient recognition of the contribution clinics can make."

¹⁶⁹ Holness (2013) *PER/PELJ* 338 states "compulsory community service through work of a law clinic has the added advantage of opening students' eyes to the considerable role which the law may play as a vehicle for improved social change amongst the poorest and most marginalised members of society; in essence fanning the social conscience of the lawyers of the future."

¹⁷⁰ 432-433.