

Developing Ethics, Professional Skills and Competencies Through Clinical Legal Education

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Abstract: Clinical Legal Education (CLE) is a significant teaching and learning method widely practised and implemented in America, United Kingdom and other countries but relatively new in Malaysia. This method will enable students to experience the law in action where knowledge gained inside the lecture hall is applied outside in real world and in simulation set up. Researches have shown that CLE increases commitment level as it engages full range of abilities, builds ethical awareness, improve the spirit of voluntariness, encourage students to become active learners and further develop other generic skills, professional skills and competencies and thus enhance their employability. This paper will explore this method; its theory and practice, its advantages and pitfalls, benefit and challenges of CLE. Discussion will focus on the model of clinical activities and student assessment. It will also come up with suggestion on how we should adopt CLE in Malaysian setting. To endeavour applying CLE will require extra costs and resources and demand full commitment from higher learning institution but the benefit is endless.

Keywords: Clinical Legal Education.

Ethics, Skills and Competencies of Legal Practitioners

It is the primary duty of a law school to ensure that law graduates have the knowledge, skills, values, ethics and competencies necessary to render legal services and obligation to clients. However, critics have often been made against new lawyers whom were said to be unprepared and less competent to practice law and there were evidence of lack of legal and professional ethics among law practitioners. Although there was no universal agreement on what a law school should teach, the high expectation of the society must be taken into account to improve legal education and hence, law graduates.

Issues of law graduate employability is a major concern that the Ministry of Higher Education, Malaysia directed a research to be conducted on the implementation and practice of legal education in Malaysia to identify the content and curriculum of law school and the expectation of the industry towards law graduates. Some quarters have often regarded university graduate as less competent and not up to standard as they do not meet the need of the industry.

Typically, a person intending to practice law in Malaysia is required to obtain a law degree plus a successful chambering period of nine months. Law graduates from foreign law school are

required to pass the additional Certificate of Legal Practice Examination. There are other channels of becoming practicing lawyer in Malaysia but that is not the focus of this paper.

Nobody could deny that a law school cannot do and provide everything for students but at least, law schools could do better in preparing students to become law practitioners. The academic setting of lectures and tutorials are insufficient to prepare student for law practice because practicing lawyer need a lot of training and hands- on experience. Lectures may reinforce listening skills but law students need more than just listening to lectures and taking their tutorials seriously. They need real experience on the working environment and emotional acquaintance of the job to get them indulged in legal world and the challenges awaiting them. They cannot simply have the knowledge but should be able to do and discharge what they know and their legal and other abilities must relate to ethics and responsibilities in professional services to the society in future.

Local newspapers have often published negative remarks made against local graduates; lacking in self confidence, communication and interpersonal skills, hands-on experience, positive attitude, enthusiasm, initiative, voluntariness, course taken is irrelevant with the need of job market and so on. Everyone is demanding higher learning institutions to produce graduates with good employability.

Cases of unethical lawyers have become more common, more legal needs are unmet, lawyers fee have made it impossible to some quarters to get legal services and lawyers are perceived as predator rather than officer of justice. In the wake of such phenomenon, we realized that something needs to be done. We need lawyers who are aware of social justice and the need of the unfortunate ones.

No single person or body could verify skills and competencies of an effective lawyer. However we could refer to a number of report and statement for an overview. The MacCrate report¹

¹ Robert MacCrate, ed.,. Legal Education and Professional Development- An Educational Continuum: The Report of the Task Force on Law Schools and the Profession: Narrowing the Gap in Clinical Legal Education Association. "Best Practices of Law Schools for Preparing Students to Practice Law",. at pg. A18
<http://professionalism.law.sc.edu>.

described fundamental lawyering skills as problem solving, legal analysis and reasoning, legal research, factual investigation, communication, counselling, negotiation, litigation and alternative dispute resolution procedures, organization and management of legal work, and recognizing and resolving ethical dilemmas. It further discussed that the fundamental values of the legal profession are provision of competent representation, striving to promote justice, fairness and morality, striving to improve the profession and professional self- development.

Using different explanation, Russel Cort and Jack L. Sammons² described a model of lawyering competencies; oral competency- the ability to assess, control and vary verbal and non- verbal communications with an audience(s) in a given situation to maximize the accomplishment of objectives, written competency- the ability to control and vary written communications with an audience(s) in a given situation to maximize the accomplishment of objectives, legal analysis competency- the ability to combine law and facts in a given situation to generate, justify and assess the relative merits of alternative legal positions, problem- solving competency- the ability to use legal analysis and other information to identify and diagnose problems in terms of client's objectives and to generate strategies and tactics to achieve those objectives, professional responsibility competency- the ability to recognize the ethical considerations in a situation, analyze and evaluate their implications for present and future actions, and behave in a manner that facilitates timely assertion of rights, and practice management competency- the ability to manage time, effort, available resources and competing priorities in a manner which generate the maximum output of quality legal services.

What a solicitor should be able to do once he is qualified to practice has been stated in a proposal by the Law Society of England and Wales to include:

- Identify the legal principles and issues presented by a set of facts, diligently conduct legal, factual, and other appropriate research, and evaluate and implement legal and non-legal options as appropriate;
- Communicate effectively with members of a diverse society and identify and confirm with clients the action they can take on their behalf;

² H. Russel Cort & Jack L. Sammons, The Search for Good Lawyering: A Concept and Model of Lawyering Competencies, 29 Clev. St. L. Rev. 397, 439- 44 (1980) in Clinical Legal Education Association. "Best Practices of Law Schools for Preparing Students to Practice Law",. at pg. A19 <http://professionalism.law.sc.edu>.

- Work with clients to progress their cases or transactions expeditiously and with propriety, informing them of, and consulting with them on, all options and proposals;
- Organize their work efficiently so as to meet their professional responsibilities and undertake the preparation necessary for competent representation;
- Build on and develop their legal knowledge and professional skills; and
- Preserve their own integrity, act consistently with professional and ethical requirements and defend and promote the reputation of their profession.

There were also six general competencies³ for law graduates identified by researcher and they are; legal knowledge, lawyering skills which encompasses research analysis of laws and facts, interpersonal and communication skills, client services, practice- based learning and improvement and contexts- and system based practice and professional values.

The big question that remain is, does law school capable of producing competent lawyers if we stick to the traditional method of teaching and learning where teachers are at the centre of the process? We need to change. Certain skills and competencies can only be mastered with special method and approach. Today, various teaching and learning method have been practiced and implemented; some have been proved to be student centred and effective in developing and enhancing ethics, skills and competencies and instill ethics and character required of a legal practitioner and one of them is Clinical Legal Education.

The Theory and Practice of Clinical Legal Education

The purpose of CLE is to teach practical legal skill in a social justice setting. Other goals of CLE are to provide a progressive education method focusing on students learning and improvement of skills needed to become lawyers and to apply experiential learning so that students can learn better and apply their knowledge to real situations⁴. It is also the mission of CLE to provide alternative legal services for marginalized members of the community who may have less or no

³ This is actually a conversion of the general competencies of medical graduate endorsed by the Accreditation Council of Graduate Medical Education of the United States of America.

⁴ Bruce A. Lasky. Striving Towards Social Justice Through the Use of Clinical Legal Education: The Pannasastra University of Cambodia Experience. Malaysian legal Education Conference. 16 June 2006

access at all to the legal system and to nurture and inculcate the idea of public interest service among students⁵.

Although the concept of CLE is still contested, it has been a major component of legal education in America, United Kingdom, Australia, Africa and South America and becoming more popular in Asia. Throughout the years, the term CLE is used to cover learning that is experiential in design and focusing on enabling students to understand how the law works in real situation/ life through casework although there are purists who described the term CLE as the 'live client casework' only⁶. CLE has also been defined as teaching law through exposure to real clients and their problems and the model of clinics practiced worldwide is a law centre with representation, advice service, referral service, placement service, Street Law and other community projects and simulated clinical activity⁷. A simple definition of CLE is experiential learning where students gain practical skills and deliver legal services in a social justices environment⁸. CLE will provide students with the tool necessary for legal practice as it promotes "thinking outside the box" and will nurture professional ethics and values.

In CLE, there is a mixture of indoor academic activities with the practical outdoor reality where laws students are exposed and showed with clients handling, legal advice, case management, office management, cost of proceedings, ethical issues and even collection of facts.

The implementation of CLE in academic setting can take various form, it can be integrated in the curriculum where credits are given or simply made as pro bono activities where students get involved voluntarily. Apart from that, CLE can be applied as interactive teaching method in which role play, simulations, moots, mock trials, case studies, debates and taking stand can be used. In short, the component of CLE is the academic, method of teaching that involves legal practice and the clinic set up in manned by students but must supervised by a qualified clinical professor or practitioner.

⁵ Ibid. pg 3

⁶ UKCLE. Enhancing Learning and Teaching in Law. Julian Webb. Designing and Delivering Clinical Legal Education. <http://www.ukcle.ac.uk/resources/trns/clinic/index.html>

⁷ Ibid.

⁸ David Mc Quoid. The Mission of Clinical Legal Education and its Main Components- Academic and Legal Service- And the Difference Between CLE and Legal Aid and NGO Initiatives. Pg. 1

There are a great variety of 'clinic type' or service delivery in CLE and the standard models are but not limited to the following ; on campus clinics, off campus clinic, mobile clinics, community clinics, community legal education or the Street Law clinics and Alternative dispute resolution clinics⁹. The on campus clinics can take the form of simulated or live client clinic while the other models involve live and real client only.

In simulated clinic, student will experience live practice through a simulated learning environment where a client is not real but the simulation casework given will really give an impact and experience of the law in action. A good simulation clinic will provide realistic and adequately complex problems. Students can get a feel of legal practice while developing technical knowledge and skills and may experience conflict of values and uncertainty that usually escorts the profession.

Simulation clinics are simpler to set up than a live client clinic. It needs less resources in term of monies, supervision and time and provide a more managed and predictable learning environment for students because there are less uncertainties. Its set up is in the institution itself (in-house).

A live client clinic is more complex because it involves real client with real case. It can fully practice or provide limited representation, give general advice and assistance to clients or be a specialist for example a family law clinic. It can charge the client minimal or normal fee or could provide services and work on pro bono basis. Live client clinic requires more resources and supervision by professional clinician/ practitioner.

Certain universities set up Student Law Office as part of their CLE¹⁰. Students will undergo a two-stage programme; a simulated client programme in the third year that introduce them to office procedures and develop legal skills through simulated cases. Later in the final year, students will undertake live client; taking cases for the public and offering a full range of legal services. Works performed varies including initial fact finding interview, basic research and

⁹ Bruce Lasky. Pg. 4

¹⁰ For example Northumbria University, UK

preparation of research report, advice interview, written follow up advice, drafting of correspondence with other parties and any relevant documentation, negotiations with other parties and liaison with the court or tribunal, representation at the court or tribunal and advice on appeals or future action.

Another very popular type of CLE clinic is Street Law Clinic which is a legal literacy programmes aimed at special and specific target group. Students involved in the programme will organize a legal talk or teach law on a subject related to a group for example, teaching human rights to prisoners or sexual harassment to school students.

Involvement and active participation in CLE will enable students to learn many skills that are important for legal practice such as client interviewing and counselling, advocacy, negotiation, critical thinking, problem solving, drafting, communication skills and professional ethics. These skill when polished and practiced will enhance their competency.

CLE as a teaching and learning method is advocated by many body/ group/ association. Research on the best practice of CLE were also conducted to help institutions ensure the standard and quality of CLE programme implemented in the university. In United Kingdom for instance, a research on “Mapping the Best Practice In Clinical Legal Education”¹¹ was conducted in March 2003 to August 2004 to identify and chart good professional and education practice, and, in America “Best Practices of Law Schools for Preparing Students to Practice Law” was conducted to identify best practices for preparing students for law practice¹². CLE was identified as one of the practice. The research in UK was conducted on five universities and colleges and they identified four basic clinical activities; in- house advice and representative services, outreach services run by the institution but based in an external setting, placement in organisations external to the institution and legal literacy programmes focusing on awareness rights and responsibility.

¹¹ UK Centre for Legal Education. “Mapping the Best Practice In Clinical Legal Education”.
<http://www.ukcle.ac.uk/research/projects/clinic.html>. 2 February 2006

¹² Clinical Legal Education Association. “Best Practices of Law Schools for Preparing Students to Practice Law”,
<http://professionalism.law.sc.edu>.

According to the report, a good CLE programme should have clear objectives, operational procedures and statement of learning outcomes and there must be evidence that, students and partners of CLE share and understand the same objectives, procedure and outcomes.

Benefit, Pitfalls and Challenges of CLE and Suitable Malaysia Model

As it involves experiential learning, the design of CLE and its model of clinics will enable students to understand the working of the law or how the law works in practice, enhance knowledge and understanding of a particular area of law as they might be handling certain law in specialist clinic, facilitate and empower students to take a more active and reflective role in learning since they are involved in their own assessment, provide a realistic context in which students can practice their communication skills and integrate professional ethics and values into the curriculum¹³.

With live client clinics students will experience of the task of advice giving agencies and delivering legal services, issues of 'access to justice', offer a service to the community on pro bono basis and provide a channel to meet legal needs.

In many countries where CLE (live and simulated client) is seriously adopted students have proved that they are able to demonstrate the capability to plan a client conference on known facts based on available case materials, accurately identify a client's objectives during a client interview, write a letter before action that is accurate, clear, and concise, using appropriate grammar, assess what material should be included in a particulars of claim, use the legal formalities required in drafting statements of case, demonstrate a capacity to construct a logical and appropriate theory of the case in criminal case, conduct a negotiation with a principled strategy, define steps to be taken to remedy any weaknesses observed in casework skills, contribute to determining individual roles and functions in completing group tasks, demonstrate an ability to work to deadlines in managing clinical casework.¹⁴

¹³ Robin Palmer, Angela Crocker and Michael Kidd. 2003. *Becoming a Lawyer: Fundamental Skills for Law Students*. P. 3- 10

¹⁴ Ibid

CLE has enabled students to become active learners, who own the learning experience. When students work in pairs, they develop multitude of positive attitude; sharing of experience and knowledge, responsibility and taking charge and mutual assistance.

Students also experience and learn to deal with emotion of winning and losing a case. They get the taste of dealing with variety of clients; nice, nasty, hopeless, over expecting and dealing with numerous pressures.

Many skills can be developed and enhanced throughout the learning process in CLE, not only the lawyering and advocating skills, interpersonal skills and communication skills but also office and management skills.

Cost is another challenge. It affects the kind of clinic that we may set up and operate and may also affect the degree of assistance a clinic may want to render. Cost include the choice of office and location or site, office maintenance such as telephone and fax bills, utility bills and service fee to related authorities.

Placement programme especially where students are placed at external office/ firm/ department needs good collaboration level between the law school and the employer (place of placement) so that the programme is carried out as planned, providing good work experience both in substantive and procedural legal aspects. Any misconception and communication problem will affect the students and the amount and extent of experience they might endeavour. Clashes of the clinician and the field supervisor will definitely cause difficulties.

As CLE will demand more time and involvement of academicians, it is a challenge to maintain their commitment. If we are planning to set up a live client clinic we must expect consistency in services and delivery or else, it will tarnish the image of the institution.

Student assessment is also a challenge and may posed problems if not properly carried out because student have more autonomy in assessing their work.

The challenges of adopting CLE in local legal education is to decide which clinic that we might want to operate. If we expect student to do representation in court, it is futile as Malaysian law does not allow students to represent client in court. Therefore we have options either for the law to be amended so that final year student taking CLE in their course could represent client in court or to be left with the option of simulated client clinic or live client clinic that could provide advice only.

Street law clinic is also suitable as we have various target groups that may benefit from the programme. The component of community service in Street Law clinic will give students the opportunity to learn the need of the community and how to relay the message of rights, responsibilities and legality to them. Issues such as migrant workers, single parent, child abuse and consumerism are among topics that can be discussed and highlighted.

Concluding Remarks

The implementation of CLE and the setting up of clinic needs good collaboration and strong commitment from the law school, the government as policy maker and the employer who will take in student for externships. As we move towards producing more ethical and competent lawyers, CLE is one of the tools to strengthen the role of law schools, employers and the industry. Learning by doing as advocated in CLE also incorporate the importance of ethics and values and may contribute to a better environment of legal practice. CLE is not merely a teaching and learning method but also a mechanism to increase the awareness lawyers on issues of social justice, community services and social problems. Our aspiration is to produce students who are more capable, armed with myriad of skills and highly competent to practice law and to achieve this, we must reform the way we deliver substance and the way students apply practice it.

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