

ASSESSMENT METHODS

Using the competence model for professional qualifications

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National Vocational Qualifications (NVQ) were established in the United Kingdom a decade ago. These are a system for vocational qualifications based on standards of competence and clear routes or progression to the higher levels of achievement. NVQs are now available for occupations representing nearly 90% of the workforce. Two main characteristics distinguish NVQs from traditional qualifications: first, they are defined by the outcome that must be achieved and not by any standard process of learning; second, the outcome to be achieved is expressed in terms of competence rather than knowledge alone. Competence is measured against occupational standards that reflect the needs of employment. Competence is not just knowledge but also being able to demonstrate the ability to perform to a standard that is fit for the purpose of the job.

A number of factors led the UK Law Society to make use of the model for redesigning legal qualifications. The existing qualifications for non-solicitor fee-earning staff are no longer relevant to many of those being recruited by firms. There are very real financial advantages: the direct development costs of a new qualification are met almost entirely by government. The combination of a pressing need to redesign paralegal qualifications so that they are relevant to the needs of firms and appropriate to the existing attainments of candidates, coupled with the availability of generous government funding, was likely to predispose any organisation

towards making use of the NVQ framework. However the overriding attraction is the production of qualifications based on robust standards that can be used not only to support qualifications but also more widely in human resource management.

The NVQ model is not without its critics. Much is still being learned from early experience. A recent government review of the operation of the 100 most frequently used NVQs has addressed some of the criticism of complexity of language and weight of paperwork involved in assessment. Further, as the NVQ system represents a radical shift away from qualifications defined by processes of teaching and assessment and structured around knowledge to one based on practical outcome, there is no shortage of critical voices from those whose comfortable teaching regimes were challenged. However, significantly there is no shortage of support from employers who are offered qualifications with a greater relevance to their needs.

Whether an occupation is professional or is one catered for by conventional vocational training, there is a common objective of ensuring that the learning processes are fit for purpose, that they do succeed in producing an individual who performs competently in the workplace. To different degrees, all occupations require a foundation of subject knowledge and a breadth and depth of understanding to provide a framework for solving problems and evaluating options. Know-how and practical skill to enable knowledge to be applied are of paramount importance.

As these common concerns are recognised, the competence-based NVQ model and the traditional professional model are thus moving closer together. From the NVQ model profes-

sional bodies are acknowledging the need to make competence in applying knowledge a specific outcome. At the same time, within the competence model there is an increasing recognition, not only that there is a body of knowledge that is likely to require assessment away from the workplace, but also that there is a need for a mastery of residual or foundation knowledge that may not be related to action but which provides context, the ability to identify problems and the capacity to deal with uncertain futures.

CLINICAL LEGAL EDUCATION

Teaching plumbing with Periclean ideals: Should it be done? Can it be done? Advocacy and courtroom scholarship

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There is divergence in aspirational goals of clinical legal educators and academic educators. In clinical skills teaching, especially in subjects teaching skills associated with lawyer/client interactions, such as interviewing, or lawyer/lawyer interaction, such as negotiation, there is a focus on technique or performance with insufficient regard to the intellectual mission of the law school. Law schools should incorporate within that teaching a depth and breadth of legal inquiry that is consistent with the essence of the law school mission. Clinical educators promote legal skills training as practically relevant and as a necessary counter-weight to traditional law studies, which tend to focus on theoretical matters and give insufficient regard to practical relevance. In order for legal education to be relevant, it should aim to produce lawyers who are able to evalu-

ate legal practice critically in a broad context and promote a direction of that practice beyond mere lawyer and/or client need and towards broader community needs.

Today, the vocational dimension of clinical legal education remains particularly controversial. The controversy is fed by statistics which indicate that a significant number of students may embark upon law with a view to practice but a diminished number of law graduates choose legal practice. These figures lend support to the case for reducing the dominance of vocational subjects in a law school curriculum. However, since the 1980s there have been pressures on law schools to offer subjects which enhance a new law graduate's usefulness to law firms. Clinical legal skill subjects tend to place far too much emphasis on performance and far too little on intellectual inquiry of a broad, conceptual kind. There needs to be convergence of the clinical and scholarly styles of legal education.

The teaching of technique can never be the law school's only goal. Law schools are above all academic institutions and the academy has two responsibilities: to teach the practices of the real world and to submit those practices to vigorous challenge and examination. In a law school there is no role for clinical education which fails to integrate scholarly goals and these goals should not be compromised because they are placed in a clinical or vocational context. Instead, a clinical environment can promote the intellectual engagement of the student by using its context as an analytical foil. Diversity in a law school curriculum which embraces a plurality of perspectives is desirable but sharpness and depth of the intellectual edge are not negotiable variables.

Placing legal skills in a theoretical framework (eg professional, ethical or social justice contexts) broadens the educational experience beyond the mere acquisition of mechanistic responses to particular scenarios. Where students' acquisition of clinical skills remains centre stage, the essential educational goal is technique-based. The greater breadth and depth of the theoretical framework in a clinical subject, the more powerful is its justification for a place in the law school.

Note: the balance of the article describes one university advocacy program as a case study of clinical teaching.

Life and death in the lawyer's office: the internship in capital punishment studies

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As the aims of clinical programs have become more concrete and diverse, the traditional conception of the clinical experience in law has expanded. The Internship in Capital Punishment Studies is a program which places students, for a brief period of their studies, in the teams of organisations struggling to save convicted prisoners from execution. Ethical issues are raised by the involvement of students in this kind of clinical program.

The internship program locates students in both the USA and Jamaica. The overriding aim of the program is that students are involved in the process of representation in capital cases. Through this involvement, they develop an understanding of the context in which the death penalty is used through exposure to the police, the courts, the prison system and the socio-political systems in the jurisdiction in which they are located.

The assessment method does not assess students' capacity to perform specific clinical tasks but rather their capacity for analysis and critical reflection. Students are expected to maintain a detailed log of their work and experiences. When they return from their internships, they attend fortnightly two-hour seminars, using the intervening weeks to complete their log or a project on an aspect of their internship.

Students often work in a setting where the tenets of ethical legal practice are abrogated in favour of a moral commitment on behalf of clients. Moreover, interns are often subject to heavy physical and psychological demands which may impede their ability to resist indoctrination into the value system of the 'cause lawyers' who are their hosts. Is this exposure, this risk, justified and how does it relate to the growing commitment to ethics in legal education in both the USA and UK?

It is argued that capital punishment lawyers may present a model of 'unethical lawyering' to interns. However, the risks that students will internalise a distorted view of the role of lawyers is balanced by the advantages of their exposure to this area of practice. Two principles which underpin the role morality of lawyers are neutrality and partisanship. As regards the principle of neutrality, capital punishment lawyers reject the notion that they are available to anyone able to pay for their services, in favour of a 'vision of the Good'. They refuse to fulfil the morally neutral role assigned to them by professional ethics and choose moral engagement over moral neutrality.

The second charge against death penalty lawyers is that their use of legal means, such as groundless applica-