

ticular case is trivial and would not be undertaken by a responsible attorney. The incorrect approach is to dismiss the point on its face as being impractical.

A red herring is an irrelevant fact. The purpose of such facts is to distract the student either by providing superfluous facts which should be ignored or by misleading the student by appealing to the student's emotions.

The law is a sufficient challenge in and of itself. The process of becoming an attorney need not be unnecessarily complicated by legal sleight of hand by drafters of examination questions. An understanding by exam drafters of the technique of presenting fact patterns in an orderly and logical method should enable students to be better equipped to demonstrate their legal skills.

## CLINICAL LEGAL EDUCATION

### **On your feet in the industrial tribunal: a live clinical course for a referral profession**

N Duncan

14 *J Prof L Educ* 2, 1996, pp 169–187

For four years now students studying the Bar Vocational Course (BVC) in the UK have been able to choose an option which involves working with the Free Representation Unit (FRU). This enables students who have experienced a variety of simulated clinical activities to translate what they have learnt to representing the interests of real clients.

The BVC addresses seven skills: Legal Research, Fact Management, Conference Skills, Negotiation, Advocacy, Opinion Writing and Drafting. In spite of its differences from the more conventional options, the

FRU option is designed to achieve the same learning objectives, although in a very different way. It has the scope to do so more effectively. In addition it can address other objectives as a result of students' exposure to real cases. This enables them to put what they have learnt in both their undergraduate and vocational courses into context, to develop a more critical view of the system within which they will operate and to reflect more effectively on their experience.

To become a FRU representative it is necessary to undertake two weekend training courses in social security and employment law and to undertake seconding. This requires the writing of two opinions in each area on cases being undertaken by an experienced representative. On completing seconding, they may start to take out cases. When they undertake the case on which they will be assessed, assessors do not sit in on their activities. Instead students are asked to produce a file containing the documents in the case and notes relating to their preparation of activities.

Students are expected to carry out legal research themselves and to answer any questions which are readily answerable from the main sources and practitioner texts. However, in areas such as tactics and dealing with awkward procedural matters, seeking permissible advice from tutors is seen as appropriate. Assessment is based on the same criteria as the assessment of skills on other parts of the BVC. This involves a criterion-referenced, rather than a norm-referenced system of assessment, with established assessment criteria.

There is no doubt that being responsible for real client work is a most powerful motivating factor. Undertaking a real case produces a further boost in motivation and often surpris-

ing levels of work and commitment from students. The FRU also allows integration of skills and the opportunity to take a particular case from start to finish, to the extent appropriate for a referral profession. The task then requires not only factual analysis and legal research but also one or more conferences with the client, and some or all of the following: drafting of requests for discovery or further particulars, dealing with other interlocutory matters, negotiation with the opponent and advocacy in the industrial tribunal. This has a profound effect on students' understanding of how the various components of their course fit together in practice. Thus the inherent characteristics of the FRU option enhance the effectiveness of the remainder of the course.

A characteristic of UK legal education has been the growth of live client courses in undergraduate LLB degrees. More than half of the law graduates produced each year do not go on to enter the legal profession. For this reason, clinics are directed towards educational rather than vocational objectives. Most undergraduate clinics operate with a high degree of supervision which is also tutor-led. On the FRU option, however, supervision has a much lower profile, being available if the student seeks it but not imposed.

A common criticism of live clinical courses is their cost. They do tend to be resource intensive, particularly in terms of staff time and staff flexibility. However, the existence of FRU, geographically very close, and providing all the expertise that could be wished for, made the step of setting up an internal clinic unnecessary. The advice of a caseworker and other FRU representatives, who are experienced in the day-by-day work of preparing cases, dealing with interlocutory matters, and representing clients in the



tribunal, is an invaluable addition to the input of academic staff who spend more time in the classroom than in the tribunal. A real partnership has evolved in helping the development of these students.

The need to ensure that legal education includes active learning methods which will encourage students to take responsibility for their learning and to become life-long learners has been recognised by the ACLEC. It is now well established that reflection on what has been experienced plays an essential part in that process. The experience of the FRU option could contribute towards this. However, there has been increasing concern that the structure of the course does not positively encourage reflection, as do some of the examples of clinical work cited elsewhere. It has been proposed that students in the FRU option keep a reflective journal. However, this raises further questions. We are all familiar with the problem that it is hard to get students to undertake work seriously unless it is to be assessed and it would not currently be appropriate to assess students' reflective journal on the FRU option. It has been recommended, rather than required, that a reflective journal be prepared. As a longer-term goal the possibility of developing the assessment approach in this option to address the desirability of reflection will be pursued.

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## CONTINUING EDUCATION REVIEW ARTICLE

### Continuing professional development for solicitors and barristers: a second report on legal education and training

The Lord Chancellor's Advisory Committee on Legal Education and Conduct  
July, 1997  
105pp.

It will be recalled that the Lord Chancellor's Advisory Committee published its long-anticipated first report<sup>1</sup> in April, 1997. This dealt with both the academic and vocational aspects of the initial legal education of barristers and solicitors and therefore effectively covered all stages leading up to the point of admission. Over the intervening 15 months it has concentrated its efforts on the production of this second report demanded by its statutory remit, containing its recommendations with respect to the continuing professional development of barristers and solicitors in the UK. Although this is designed to be the final report, the Committee acknowledges that it also has a duty to examine specialist accreditation schemes, which it appears to identify as a separate issue and outside the scope of a general report on CPD, despite the general acceptance that they are interlinked.

Once again, the report, which is remarkably succinct, has been written after extensive further consultation, building upon the investigative work done in support of the first report. Hence the Committee has profited from a series of study visits to universities and colleges, firms and chambers within the UK, as well as

from a range of responses to a widely distributed consultative paper. It has also drawn on overseas experiences, notably the United States and Australia, which are reflected in the final shape of its recommendations.

In some respects, this report is an anticlimax. It fails to break any new ground in the analysis it proffers of the need for CPD, the case for which is probably unassailable anyway in the late 1990s, nor of the arguments for and against making CPD participation compulsory. Indeed, the main body of the report excluding the appendices consists of less than half its length of 105 pages, which militates against both tough intellectual dissection of the issues and close examination of the empirical evidence.

On the one hand, it endeavours 'to encourage the legal profession to accept planned and structured CPD as a natural and positive element throughout the professional life of every practising barrister and solicitor', while on the other, seeing 'no objection in principle to CPD being made compulsory throughout the practitioner's career.' And yet, the Committee just cannot bring itself to throw its weight behind the introduction of formal mandatory CPD schemes for both branches of the profession to be administered respectively by the Law Society and the Bar Council. Therefore, despite the wealth of precedent with respect both to the lawyers overseas and to other professions within the UK, it shies away from facing up to the most critical decision about CPD to which it could have made its most powerful contribution.

Chapter one reviews the history of proposals for systematic CPD provision, trawling through the relevant pronouncements in the Ormrod, Benson and Marre Reports. It also provides an encompassing definition

<sup>1</sup> Reviewed by the Editor in *4 Legal Education Digest* 4, April 1996, pp 8-11.