

PRACTICAL TRAINING

Training the next millennium's lawyers: is there a case for joint professional legal education?

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The issue of joint training for barristers and solicitors has been on the legal education agenda in the UK for a number of years. The 1996 Lord Chancellor's Advisory Committee on Legal Education and Conduct (ACLEC) Report on Legal Education favoured some form of common vocational legal education. The report considered a range of alternative models and proposed a common core course (of between 15 and 18 weeks) followed by more specialist Bar Vocational (BVC) and Legal Practice (LPC) courses of the same length. More recently joint training has come back under the spotlight by virtue of the government's commitment to allowing all solicitors and barristers to acquire equal rights of audience before the courts on qualification.

In the short term is there a case for the straightforward amalgamation of all or parts of the BVC and LPC to provide some form of joint training? The author concludes there is not. Admittedly, there is a degree of synergy between the overall aims and objectives of the courses, the range of skills taught and the ethical framework within which the legal profession operates. However, the knowledge content differs widely, as does the balance between knowledge and skills. Moreover, knowledge / skills / ethical components need to be integrated to achieve the greatest level and depth of learning. Currently the BVC and LPC are focused on their own particular professional requirements. The BVC is focused on the particular knowledge and skills required for an advocacy / specialist profession, aware that pupils will have full rights of audience within six months and may become independent practitioners after 12 months. Solicitors, on the other hand,

take a year longer to qualify and then require a further three years of supervision before they can practise independently. This means that trainee solicitors need a broader-based and more transactional approach to learning, as they will initially operate within a varied but more protected law firm environment.

The author concludes, therefore, that the BVC and LPC should each retain its own distinctive framework for the delivery of knowledge, skills and professional values in a practical context, which is relevant to the particular needs of prospective pupil barristers and trainee solicitors, while reflecting the functionally different roles of barristers and solicitors.

Joint training, in whatever form, is not the only option. One can also look at the prospect of some form of complementary training, with the two courses operating in parallel and developing links as appropriate (a possibility envisaged in the ACLEC Report). In this context it is significant that seven of the eight BVC providers also offer the LPC. Multi-use case studies can be adapted to the specific needs of BVC/LPC students. All courses might be based on the same or similar materials, but use different activities and their own teams of tutors. In the short term complementary training would be much easier to deliver than a joint course, and would provide a better platform for each course to develop and integrate its curriculum, linking where appropriate, but not compromising on the essentials. Entrants into each branch of the profession would continue to be prepared for their own particular professional needs, whilst developing a greater understanding of how the other operates.

Ultimately, the debate about joint training is about the point at which divergence in legal education or practice should take place. Currently the point of divergence is at the beginning of the vocational stage, following a common

academic stage. The proponents of joint training advocate that the divergence should be postponed until the fledgling lawyer enters the professional training period (contract or pupillage). At the other end of the spectrum is fusion, where no divergence takes place at all.

But there is another model, with a considerable track record in the common law world, that of the unified qualification. This model typically involves initial generic qualification as a lawyer. This is followed by specialisation and additional training (principally in advocacy in its widest sense) for those who wish on or after qualification to practise at the equivalent of the Bar. In England and Wales this would most readily translate into initial qualification as a solicitor. This could be coupled with a wider range of training opportunities to include one or a mixture consisting of solicitors' firms, barristers' chambers, solicitors' chambers, in-house legal departments and legal advice agencies.

One advantage of a single route to qualification would be to provide greater flexibility for students. The opportunity to qualify first as a lawyer, using a variety of training routes, and to postpone the final choice as to whether to practise as a solicitor or barrister until qualification or later, would allow many young lawyers to make a more informed and financially secure decision about their career direction. This flexibility would of course continue throughout one's career, developing the idea of portability envisaged by equal rights of audience, with greater numbers moving between one branch of the profession and the other in both directions.

The legal profession is in a major state of flux, arising from increasing consumer demands, rights of audience, conditional fees, multi-disciplinary partnerships and globalisation. Joint training looks increasingly anachronistic in such an environment where specialisation is becoming a necessity for survival in an increasingly competitive world. The most flexible, evolutionary

way forward in such an environment is complementarity. In the longer term, there may well be an inexorable move towards a fragmented series of specialist mini-professions, each with its own training and qualification routes. If such a scenario at some time seems likely, the best alternative would be to strengthen the concept of a single legal profession by devising a unified route to qualification that can promote diversity, flexibility and ultimate specialisation both for those entering and those already within the profession.

The Bar Vocational Course at the College of Law: a study in curriculum coherence

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If all elements of a course can be organised in a way that enhances motivation, the course can have its own power source. In designing a course to accommodate the numerous and complex requirements of the Bar Council for the Bar Vocational Course (BVC), the College of Law designers focused on creating a special kind of coherence¹ based on concepts drawn from other practical legal training programs. They term the effect of this brand of coherence the 'coherence driver', because they believe that it powers the program forward, motivating students to work hard, learn deeply, take responsibility for their learning, and acquire skills needed for professional work.

What the Bar Council was seeking in proposals by institutions for validation of a BVC was the most ambitious educational goal professional education can espouse: to teach people job-spe-

cific tasks, yet prepare them generally for professional life. How were educators working with limited resources to achieve this?

The College of Law team's solution was to put theory and planned experience together in a coherent way. This means, on one hand, creating realistic and relevant problems in transactional contexts, while on the other, using design concepts such as skills theories to help students transfer skills from one transaction to another. At the same time the designers needed to bring the program together with a unifying theory of legal practice that keeps the purposes of practice and the goals of the client in focus, and provides continuing signals that solving legal problems is both a linear and a flexible exercise. In addition to these design concepts, the College of Law designers chose to adopt certain features derived from other PLT programs, that they believed would produce a curriculum with its own 'driver'. In analysing the now completed BVC they identify eight such interrelated features: theory reflected in course structure; coherent sequencing; systematic skills teaching; feedback culture; training groups; guest instructors; programmed instruction and end-of-term assessment.

Theory is reflected in the course structure of the BVC in that the curriculum is not carved into subjects, but rather unfolds as a succession of skills. Barristers' problem solving, which is one of the two course goals, is divided into two stages, one for each term. In the first term the focus is mainly on pre-trial matters and the theme of *advising on, and resolving, conflicts*. The skills taught include drafting, particularly pleadings, opinion writing, conference skills and negotiation. These skills are assessed at the end of the first term. In the second term the course deals mainly, though not exclusively, with trial-related skills and the theme of *competing in conflicts*. The skills taught include opinion writing, draft-

ing and advocacy. These skills are assessed at the end of the second term, including two oral assessments of advocacy. Knowledge areas are assessed by multiple-choice examinations at the beginning of the third term.

Coherent sequencing, given that the BVC is skills based, means that the curriculum design is problem-generated, not topic-generated. Problems were strung together according to principles that would result in a coherent sequence, moving, generally speaking, from simpler to more complex skills — from pre-trial to trial tasks; from conferencing, to negotiation to advocacy; from interlocutory to trial advocacy; and from uncontested to contested advocacy. Often, however, competing principles need to be reconciled with this skills-building model, and this can be done without sacrificing coherence, for instance by sequencing according to the dictates of 'transactional flow'. A more basic principle in sequencing is timing tasks so that intensive work is not bunched together.

Systematic skills teaching is achieved largely through adherence to a basic model adapted from British Columbia's Practical Legal Training Course (PLTC). The model is described as a series of five stages: teaching the theory of the skill; demonstrating the skill; analysing the skill; practising the skill; and feedback. The model helps students to reflect on their performance and those of others by encouraging them to abstract their observations, in part, by using the easy-to-understand vocabulary of skills guides. Students use the same or similar guides in a variety of contexts. In this way, they are prompted to transfer skills and to learn the self-monitoring skills that are an important aspect of a professional approach to learning.

Feedback culture fosters openness to new learning and new ways of seeing things. At the beginning of the course, all students are trained in feedback skills. The habitual use of peer

¹ In *Designing a powerful PLT program* 16 *J Prof L Educ* 2 1998 pp 229-245 (digested in 8 *Legal Education Digest* 1, 1999, pp7-8), Stephen Nathanson, one of the authors, advances very similar arguments in support of the principle of curriculum coherence in PLT design.