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### **Changing Perceptions and Needs of Legal Education and The Usefulness of *Iolis* in these Changing Times.**

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*" Every practitioner of the art of legal education moves in a landscape which has already been mapped by his predecessors but it is almost impossible for him to hit upon a trail here or an obstacle there which others had not noticed before."*

( O Kahn Freund)

#### **INTRODUCTION**

Since the publication of the ACLEC Report much debate has ensued over the perceived need for legal education to keep pace with the general educational developments in Higher Education. ACLEC itself recognized that these developments in higher education will have:

" An even greater impact on the education and training of lawyers than will changes in the legal system." (page 21).

Legal education does not exist in a vacuum and therefore developments within higher education have necessitated, at least, a response by legal educationalists, and at most, a recognition and a putting into practice of this perceived need for change. Why such changes are necessary can be explained by a number of reasons but perhaps the two interrelated reasons that have acted as a catalyst for change are the:

\* increase in student numbers

and

\* dwindling finances and financial cut backs.

Thus ACLEC recognised that the :

" demand for tertiary education in general is likely to continue to grow." (page 21)

This has been highlighted by the recent promises of the Labour government to increase access to university life. Unfortunately the attendant problem of dwindling finances appears not to have been addressed and the educationalist is as ever faced with what has become a familiar problem of fitting "quarts into pint pots". (Widdison, Schulte 1998)

Together with the above two interrelated problems the legal educationalist is also faced with the demands of maintaining standards. Indeed it could be argued that the push is not merely to maintain standards but to improve standards. Expectations by government, by the general public and by students themselves (Jones, Randall 2000) is that now education, and legal education specifically, has become part of the consumer culture that educationalists will raise students' achievements. Indeed the Dearing Report recognised that the challenge faced by those in higher education will be to "maintain the distinctiveness of learning...and to enhance teaching to improve students' learning."

If one looks at these trends within our own educational system we can see that they are paralleled within other educational systems. For example it has been recognised in the Netherlands that higher education is too under a certain amount of pressure.

(Renijtjes and Valcke). Again, this pressure is seen to be mostly driven by economic forces "rising costs and falling budgets".

## **RESPONSE TO THE CALL TO CHANGE**

How standards are to be maintained and student learning enhanced particularly within legal education has been met by a number of responses. It is arguable that a conflict exists between legal educationalists and educational policy makers. This conflict revolves around the manner in which both groups perceive how the challenges and the call to change in the 21<sup>st</sup> Century should be met.

The policy making bodies such as ACLEC and the QAA appear to concentrate on a skills orientated approach to legal education. Although perhaps not always couched in such language it would appear that the main thrust of legal educational policy is that legal education needs to prepare students not just for a career in law but should equip students to:

"Extend the range of careers leading on from legal education beyond the narrow choice of becoming a barrister or solicitor." (ACLEC page 22). Therefore legal education should be an: "all round preparation for a wide range of occupational destinations." (page 22)

In order to achieve this students must be encouraged to engage in active as opposed to passive learning. They must be equipped also with certain skills; transferable skills and key skills. It is hoped that such skills will enable the law student to make that quantum leap from specialist to generalist. Thus to these ends the QAA have adopted as part of the bench-marking process for law degrees a list of general transferable skills and key skills all of which should become part of the learning outcomes for all law degrees. Such transferable skills include, analysis, synthesis, critical judgement and evaluation, autonomy and the ability to learn. Whereas key skills include communication and literacy, numeracy, information technology and team work. Such skills accord with the Report of the Committee on Legal Education, (Ormrod Report 1971) which stated that the:

"Professional lawyer requires a sufficiently general and broad based education to enable him to adapt himself successfully to new and different situations as to his career developments."

Although the Ormrod Report discussed the skills needed by a lawyer in the legal profession, such skills have been recognised, taken on board and in these economic times been broadened to encompass the notion that law degrees should be generic. It is perceived that law students need skills that enable them to move to a number of different "exit points". (ACLEC page 22).

With the above has come the academic discourse between legal academics as to:

1) The desirability of the above

and

2) If the above is desirable, or perhaps more of a necessity, how is it to be best achieved whilst maintaining the academic integrity of a law degree?

Thus legal educationalists appear to be facing a challenging era. Not only are funds dwindling, student numbers increasing, student population becoming more demanding (Jones, Randall 2000) but they are also being asked to review the manner in which law has been taught for a number of years.

Again it is possible to see that such developments are not alone being faced by academics and policy makers in the United Kingdom . If we look at developments in the Netherlands we can again see that similar problems are being encountered there. Such problems and the call for change are also being dealt with in a similar manner. For example the OUNL (Open University of the Netherlands) has recognised that :

" The traditional academic division between knowledge and application of knowledge will disappear: the need will arise to integrate knowledge and skills in the educational product."

### **I&CT AS THE ANSWER?**

Thus we can see that the above response to economic and the perceived changing needs of students is very similar to the response by for example ACLEC. The similarity does not end here for both OUNL and ACLEC, (as indeed Dearing) have pronounced, that the way forward , the knight in shining armour is to be I &CT. We saw that in 1997 the Dearing report placed much emphasis on the role of I &CT within higher education:

" We believe that the innovative exploitation of ICT holds out much promise for improving the quality, flexibility and effectiveness of higher education.." The report went on to state that:

" ...for the majority of students , over the next ten years the delivery of some course materials and much of the organisation and communications of course arrangements will be conducted by computer." ( ss.13.1 and 13.3)

ACLEC and QAA have taken up this baton and for example the law Bench Marks include the use of information technology. It is thus envisaged that students will be able to conduct efficient searches of websites, to locate relevant information, they will be able to exchange documents by e-mail and manage information exchanges by e-mail. Along with this ,if one considers the above reports and recommendations ,not only will students be expected to achieve this, but if as Dearing states "delivery" of courses will be made via I &CT ,then the net effect is that the onus will be on tutors to engender the correct environment whereby this can be achieved. Thus tutors are also to achieve a level of expertise in I &CT that hitherto perhaps has been accomplished not by the many but by the few I &CT "anoraks". Therefore it would appear that academics not only have to be proficient within their own field of expertise but must also now must become experts in I &CT and indeed more than this they must be able to "use" I &CT in a valuable educative manner in-order to enhance student learning.

### **THE NATURE OF LEGAL EDUCATION**

Thus we can see that not only do academics face changing times in terms of student numbers and the implications of economics on teaching but this has also led to it becoming policy that they embrace this new manner of teaching. This again has led to many academics questioning, and this must be seen as a positive step, the way forward in legal education. What is it that we wish to engender in our student population and how is this best to be achieved? It is perhaps wise that academics are discussing such issues, however as stated by O. Kahn Freund in the opening quote to this paper such issues have been discussed by legal academics since the inception of legal education itself. Has the

debate changed or are academics discussing the very same issues but couched in a different language?

If one discusses with legal academics the nature of legal education many I suggest would now use as a starting point ACLEC and the Law Benchmarks. However I suggest that legal education is firmly rooted in its history and that legal academics over the past number of years have been striving for one and the same thing and as O Kahn Freund states:

" In the first place it is, I think generally agreed that in our civilisation no process of education deserves its name unless it is designed to instil in the mind of the student the desire and the capacity for critical thought..." (page 123)

Compare this with the ACLEC report which when elucidating the necessary attributes of a legal education highlights that the modern law student should possess intellectual integrity and independence of mind. This the report goes on to state:

"..requires a high degree of self- motivation, an ability to think critically for oneself.....to be reflective...to be open to other viewpoints, to be able to formulate and evaluate alternative possibilities..." (paragraph 2.4)

As can be seen again, perhaps couched in different language, but expressing the same idea that :

"The will to academic knowledge is the will to enlighten and emancipate the mind.." (H.Roussouw, as cited in Reijntjes and Valcke). Therefore it could be argued that the aims and objectives of legal education have not changed dramatically perhaps what has changed is the debate which surrounds how these aims and objectives are to be realised. Thus as O Kahn Freund so aptly stated " Every practitioner of the art of legal education moves in a landscape which has already been mapped by his predecessors."

It could be said therefore that what the legal academic of the 21<sup>st</sup> century is doing is not so much discovering new lands but discovering a new route to get him/her to the same destination.

## **THE NEW ROUTE**

When one embarks on a journey part of the excitement, the challenge, is to arrive at your destination via the most efficient route for your purposes. What these purposes may be will depend on what you hope to obtain from the journey. If time is of the essence the most direct route will be preferred, not for you the ambling along long and winding country roads. If you have time to spare and the journey is to be part of the whole experience the country route may be chosen, stopping and admiring the views will be part of the pleasure of the journey not merely the end destination. Thus it can be said of the legal educational route. The destination of a law degree is as already recognised to inculcate students with a desire to understand and critically analyse the law. To become thinking lawyers. To be independent and active learners. How this destination is to be reached is varied and also as we have seen will be affected by societal needs. As noted these changes in society and in education have led to an increased student body but the resources to help these students on their legal journey are dwindling. Thus legal academics are faced with reviewing the legal educational journey how best to reach journeys end? Perhaps no longer will we be able to amble along the country route, exploring, taking our time. Perhaps a more direct route is needed the M62 of legal education.

There are various vehicles in which we can cruise along this M62 of legal education and some of these we will now discuss.

## **I & CT AS A VEHICLE FOR LEARNING**

As recognised earlier in this discussion the use of I &CT as a vehicle for arriving at the destination of a law graduate has been officially recognised. We saw that both the Dearing Report and ACLEC have promoted the use of I &CT and resourced based learning as a mechanism by which students will be able to achieve "graduateness" .( On what this enthusiasm for the use of I &CT is based upon, sound educational principles or motivated by economics, is not the subject of this paper however it is something that we need to bear in mind when discussing the use of I &CT in legal education)

It can be argued that the use of I &CT in education generally and legal education specifically is educationally valid. This can be argued for a number of reasons:

- \* The use of I &CT in education is building upon skills and using a medium that the modern student is already very familiar with.
- \* I &CT can promote and inculcate active and independent learning.
- \* I &CT can also enable students to be reflective lawyers.
- \* I &CT has now become part of modern life and impinges on our daily working life.

Thus educationalists have recognised the potential in harnessing this rather powerful tool. (Laurillard 1997). It has been said that the use of I &CT in education has "redefined teaching and learning" (Alldridge and Mumford 1998). This has been achieved through a variety of ways. I &CT can be seen to be an umbrella term for a number of quite different but interrelated mechanisms and it can be seen that each of these mechanisms provide different advantages in terms of teaching and learning . Thus the use of electronic databases has quite a different educational impact than does for example the use of electronic mail. The former enables the student unlimited access to vast amounts of legal information whilst the latter enables the student(s) and the tutor to engage in interactive discussion forums. Both of these vehicles thus helping to promote some of the main aims of legal education which we have seen include self motivation, self directed learning, reflective learning and a critical awareness.(ACLEC paragraph 2.4)

However it has also been recognised that: "Information technology in teaching is a wonderful thing, but so is chocolate. There are times when it is simply not a good idea". (Gareth Davies). Fears that I &CT promotes surface as opposed to deep learning have been voiced by legal academics (Jones and Scully 1996). Thus the web it has been argued can encourage students to believe that information gathering is indeed learning. However it has been recognised that whilst the web does enable students to gather information it does not enable them to better assimilate, or indeed to use that knowledge.(Wan and Johnson 1994). We have all experienced the comments of disappointed students when on collection of their work they express the view that they thought they would have achieved a much higher grade. " I spent so long researching this. Look at the sources I found. I spent ages on the Internet." Unfortunately what such disappointed students lacked was the utilization of that information .Yes, evidence of research but no application of that knowledge to the task set.

Thus whilst the virtues of I &CT can be seen there is a clear danger that such "bright eyed evangelism" (Davies) could lead to students being over-reliant on I &CT to the detriment of their educational development. What we are encouraging is not independent learning but dependency. What we could be encouraging is "wet nursing"(Davies) and actually limiting students educational horizons.

As always therefore the benefits of new advances and new techniques must be weighed against the relative burdens. It is surely how we use I &CT in the educational environment that will dictate whether we will arrive at the journeys end of legal "graduateness" with some degree of success.

It can therefore be recognised that I &CT is not an answer in itself it does "provide opportunities" but also "makes threats" (Tunney) . Tunney recognises that unless law teachers engage with the philosophical underpinnings of the use of technology in legal education then we will "be short changing our students." This is perhaps not as daunting a task as it might first appear, however what it does require is the willingness of law teachers to not only use and promote technology but also to think why they are using it. What is the desired end result? What is journey's end? Clearly therefore it is imperative that law teachers engage with underlying educational principles. Will the use of I &CT in this particular situation promote the desired learning outcomes is a question that the users of I &CT must constantly ask themselves?

## **PROBLEM BASED LEARNING AS A VEHICLE FOR EFFECTIVE TEACHING**

This section of the paper will explore problem based learning as a vehicle for effective teaching and learning in the 21<sup>st</sup> century. A discussion will take place of the pedagogy between subject based learning and problem based learning in Higher Education. The development of specialisation and the inherent drawbacks of this approach in terms of student learning will be contrasted with the move towards generic and problem based learning . The question will then be posed as to whether by marrying I &CT and problem based learning we can have, as it were, the perfect vehicle for this journey on the M62 of legal education.

I think it true to say that most law schools use a subject centred approach to teaching law. Thus law is classified and organised into certain subject areas in order, it is argued, to make law more manageable for us as teachers to teach and for our students to learn. However there are several perceived problems with this approach. It can be seen that this subject centred approach "reflects an orthodox concern to transmit knowledge of the `canon', or received body of ideas and practices associated with a particular discipline." ( Edwards 2000). This approach can lead the student to merely become connected with the absorption of knowledge as opposed to the realisation that law is more about the whole, rather than its parts. We are all familiar with the student(s) who is unable to see the picture but focuses on the minute detail. The student who cannot place the legal issue within its broader legal context. As law tutors our response is normally one of dismay. The cry goes up that today students cannot carry with them the subject knowledge they received last semester let alone last years work. However, in justification of such students, I would argue that this is hardly surprising. If we teach law in such a specialised and subject based way how, and more to the point why do we expect students to make such connections? We ourselves in our specialised teaching fail to make these connections. Thus it is argued specialisation has led to the deconstruction of the law. Whilst students and ourselves appreciate the details of a particular subject, this specialisation and subject based learning has failed to place such knowledge in to a wider framework. Thus:

" We seem to know more about the parts and less about the whole; and the trouble is that we risk knowing very little even about the parts because their context and conditions of existence in the whole are eclipsed from view." (Held & Leftwich,1984)

This danger was recognised by O Kahn Freund as early as 1966 when he discussed the importance of a "general legal education". He stated that although students should be given a "detailed map of a few selected areas" the law student should also obtain a "general survey". This will hopefully lead to not only a transmission of knowledge but will inculcate a method of thinking. This inculcation will then hopefully lead to students being able to use their critical skills and knowledge not merely within the specialised area but also in a broader more contextual way. As Edwards stated:

"The real challenge of higher education is to equip students with skills that enable them to renew their knowledge of particular problems, and supplement this with knowledge of other problems, through self-directed or `active' learning." (Edwards, 2000)

It is argued that the subject based approach to learning will not enable students to achieve this

desired outcome. We are encouraging students to be passive consumers of knowledge rather than students who are active learners and who can use and transfer their skills to meet the demands of learning in other situations .

It is argued that one approach to achieve this active and self directed learner is by adopting problem based learning in our law schools.( Moust 1998, Tzannes 1997, Edwards 2000).

### **What is problem based learning?**

As law teachers we are all familiar with the 'legal problem' set for tutorial questions and examination purposes. Thus a hypothetical legal problem is set on a particular legal issue (s) in order that students can explore the law and the boundaries of the law in that given area. Prior to students attempting to answer or deal with this problem they have normally attended lectures on this topic, been given guided reading and perhaps have attended tutorials on this topic. However, this is not problem based learning. PBL is something quite different. Although problem scenarios are used in PBL the learning that surrounds the solving of the problem is quite a different technique. Whereas the problem used in tutorials is very much tutor led and directed PBL is more about student learning and self directed study, active learning as opposed to passive learning. As Moust states PBL encourages "authentic learning" which can be defined as "an in-depth understanding of the field of study, the ability to transfer knowledge to other domains and the ability of students to reflect on their learning processes." (Moust, p6).

Therefore what is PBL? PBL " is a method of learning in which learners first encounter a problem, followed by a systematic, student-centred enquiry process" Schwartz,Mennin& Webb, 2001)

Students, normally, in small groups between 10-12, are given a collection of carefully constructed problems. A tutor is assigned to the group as a 'facilitator' rather than as a source of information and direction. These groups meet regularly and their task is to discuss the problem in terms of "the underlying theory, their legal definition, the applicable legal rules and relevant case law and they (students) elaborate on tentative explanations for the phenomena or events described." (Moust p 17)

Thus it is the problem that acts as the focus or "catalyst" for the acquisition of knowledge. ( Tzannes) . It can therefore be seen that the difference between PBL and the traditional hypothetical problem question is that problem solving in PBL is not seen as an adjunct to the learning process. PBL starts with "problems rather than the exposition of disciplinary knowledge." (Boud & Felletti 1991) It is important to realise that it is essential that the problem set for students to solve is one that they have no, or very little prior knowledge of. The process of PBL will enable the students to acquire the necessary knowledge to solve the problem. Due to the fact that the students knowledge is limited questions and dilemmas will arise during the process such questions and dilemmas can then be used as part of the learning process. If PBL is to be effective and to achieve its desired learning outcomes it can be seen that there needs to be a definite progression in the learning process. If this is not in place then the student meeting could become a very confused talking shop. In order to achieve the desired outcomes certain 'steps' in the process have been identified ( Schwartz, Stewart & Webb 2001, Tzannes 1997, Moust 1998)

1. The problem is first encountered 'cold' without any prior preparation or study has occurred.
2. Student group to interact with each other to explore their existing knowledge as it relates to the problem.
3. The student works with the problem in a way that permits his ability to reason and apply knowledge to be challenged and evaluated appropriate to his level of learning.
4. Students identify further learning needs in order to make progress with the problem.

5. Undertake self study between group meetings to satisfy the identified learning needs.
6. Return to the group to integrate the newly gained knowledge and apply it to the problem.
7. Repeat steps 3 to 6 if necessary.
8. Reflect on the process and on the content that has been learnt.

It has perhaps not gone unnoticed that the role of the tutor in PBL is significantly different than the traditional role that he/she is used to fulfilling. No longer large group lectures and tutor led tutorial groups. These have been replaced by the tutor assuming the role:

- \* of designer (of the problem)
- \* of providing resources for the students
- \* of providing support in the learning process

The theoretical underpinning of PBL can be seen to be in the works of Dewey(1929), Piaget (1965) and educationalists such as Bruner (1961). Dewey for example argued that in order for students to "master" their subject the learner must actively participate in the process. He further argued that there can be no effective "transfer" of knowledge from teacher to student. Thus it can be postulated that PBL provides:

- \* the necessary learning environment for the student to actively engage in the learning process .
- \* It creates learning environments which encourage co-operative reciprocal processes (Moust 1998)
- \* It helps students contextualise their knowledge.
- \* It makes students the "masters" of their own learning .

Thus PBL allows the student to develop into the independent learner that Dearing and ACLEC wish to promote.

## **I & C T AND PROBLEM BASED LEARNING**

The advantages of the use of I&CT in higher education and legal education specifically were discussed above. We saw that if legal educationalists "used" I&CT effectively within the learning environment then the advantages are many. If we study these advantages we see that they are not dissimilar to the advantages put forward by the proponents of PBL. Both inculcate active learning, both encourage reflective thinking, both encourage and promote transferable skills and both methods prepare students for the world at large.

Therefore it would seem that both methods could be effectively harnessed or "married" to provide the perfect route to journey's end. This marrying I suggest would not be difficult to achieve. For example perhaps some of the discussions could actually take place effectively by using electronic mail. It has been recognised that the use of e-mail amongst students "presents a paradigm of student-initiated learning".(Alldridge and Mumford, p119). Thus this mechanism could be justifiably used as part of the PBL process.

It perhaps goes without saying that in any kind of research electronic databases provide access to unlimited knowledge. This is perhaps, albeit a simplistic way, of marrying I &CT and PBL.

Therefore it can be seen that the possibility of harnessing and joining together these two methods of teaching and learning could indeed provide the answer to the problems and challenges of teaching and learning in Higher Education in the 21<sup>st</sup> century.

### **PROBLEM BASED LEARNING, I&CT AND IOLIS**

The aim of this section of the paper is to consider the use of *IOLIS* in teaching and learning in the light of the above discussion and to evaluate whether *IOLIS* could be used in this "marrying" of PBL and I&CT.

The history of the development of *IOLIS* is well documented see for example (Jones & Scully 1998, Paliwala 1998, Widdison & Schulte 1998). Briefly, *IOLIS* is a CD Rom which was designed by the Law Courseware Consortium as a learning aid for students. As a package it contains various components and facilities. It provides for example, electronic workbooks, a hypertext resource book, a comment facility for tutors, a scrap book facility for students. *IOLIS* has been adopted by numerous law schools as a learning package and to this end it can be seen to have been successful. The authors of *IOLIS* it is argued never saw it as replacing the teaching element of a law degree, rather it was seen as acting as a "supplement" to teaching and learning. (Paliwala 1998).

Whether *IOLIS* has been embraced as an effective tool for teaching and learning throughout the institutions that use the package, is perhaps debatable. Certainly it has been recognised that *IOLIS* is viewed with a certain amount of suspicion by law tutors. (Jones & Randall 2000). It is perhaps true to say that rather than law tutors "using" *IOLIS* the majority are aware of its existence and perhaps will direct students to a particular work book. However, the potential of *IOLIS* as a teaching and learning tool, I would suggest is vastly under rated and under used. However the question that I wish to pose is that although the advantages of *IOLIS* are many and the potential of it as a teaching tool is a distinct possibility, have the *IOLIS* developers kept abreast of the changing needs in legal education?

We saw in the earlier discussion that the impact of ACLEC, Dearing and the Law Benchmarks seem to be pointing to a new route in legal education. Although the role for I&CT has been clearly encouraged this is not sufficient. I &CT must be used to enhance the student learning process and must be underpinned in sound psychological and educational principles. As can be seen a possibility for ensuring that students reach their full potential and achieve this status of becoming an independent learner is by adopting PBL as an approach to teaching and learning. I also postulated that PBL and the use of I &CT could be "married" in order to achieve this well rounded learner. The next question is whether *IOLIS* could be used as part of this marrying process?

*IOLIS* as it presently stands I would argue encourages the traditional method of teaching and learning. Work books are very much organised in a subject based , specialist way. Although there are inter active exercises for students to undertake, the authoring of the work books have I suggest been designed on the traditional text book classifications of law. Thus law is pigeon holed in to subject specific areas such as Property, Criminal law etc. This has the attendant problems of students then classifying law in particular areas and not being encouraged to see law in its context. Rather it could be argued that *IOLIS* although dressed in the clothes of the 20<sup>th</sup> Century is actually not very different in terms of its educational and philosophical underpinnings as the traditional approach taken in text books. Thus if one wishes to adopt the problem based approach to teaching and learning *IOLIS* is perhaps not the tool to use.

### **CONCLUSION**

It is hoped that this paper has addressed some of the perceived changing needs in education and legal educational specifically. That we as educationalists are being urged to change there is no doubt. However this paper has suggested that it is the manner in which we teach law that perhaps needs

addressing rather than the aims that we are hoping to achieve. How we achieve journeys end could be by combining the route of PBL and I & CT.

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