

LAW STUDENTS' CLINIC EXPERIENCE: IS IT ALL HYPE IN RELATION TO PERFORMANCE ON BLACK-LETTER LAW EXAMS?

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ABSTRACT

Does legal clinic experience really have a positive contribution to students' performance on black-letter law examinations? This is the question we set out to answer by reference to data we collected from current law students at the University of East London (UEL). The sample is small and our findings are limited. However, we hope the results inform fellow legal education clinicians of the perceived and real benefits that law clinic students derive from their legal clinic experience and provide a basis for further research on this subject, such as the correlation between clinical legal education and black-letter law. It is important, now more than ever, that universities adapt to ensure that they are fit for purpose in equipping students with the skills they need for the workplace as well as sound theory and in-depth substantive contents of their subjects of study.

INTRODUCTION

This article contributes to the wider discussion of the role of law clinics in legal education. It is based on a small and time-constrained study conducted in June – July 2016. The study looked at law students' attitudes towards extracurricular activities, especially *pro bono* law clinic¹ experience. The study sought to ascertain whether such

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experience enhances or hinders students' performance on black-letter law examinations. We use the term black-letter law here to refer to doctrinal law or legal rules and principles which are often found in statutes and cases, and are taught to students pursuing a law degree or law related course. The term also refers to the "letter of the law", the commonly accepted technical rules of law or law as it *is* and not what it should be in context.²

Legal services provided for the public good or on a *pro bono* basis typically advance citizens' rights and promote access to justice. Often, those who seek such services have nowhere else to turn for help. *Pro bono* university law clinics therefore provide invaluable services to their communities. And as the law clinic experience forms part of students' legal education experience, a powerful case has been made about the role of legal education in promoting access to justice: "...law schools should more actively promote access to justice through research, teaching, and *pro bono* programs. Legal education plays an important role in socializing the next generation of lawyers, judges, scholars, and public policy makers to care about this issue and to carry on where current efforts fall short... As gatekeepers to the profession, legal educators

¹ Law clinic is used here as a synonym for clinical legal education as well as to refer to the place where students undertake clinical legal education activities. Clinical legal education has been defined as "a learning environment where students identify, research and apply knowledge in a setting which replicates, at least in part, the world where it is practised...It almost inevitably means that the student takes on some aspect of a case and conducts this as it would...be conducted in the real world." Grimes, R. (1996), *The Theory and Practice of Clinical Legal Education*, in Webb, J. and Maugham, C. (eds.) *Teaching Lawyers' Skills*, London: Butterworths (p. 138) cited by Lewis, R. (2000) *Clinical Legal Education Revisited*, *Dokkyo International Review*, Volume 13, pp. 149 -169.

² Pope, D. and Hill, D. (2015), *Mooting and Advocacy Skills*, 3rd ed., London, Sweet & Maxwell, p.20; see also Kennedy, D. (1994), *Politicizing the classroom*, *Review of Law and Women's Studies*, Vol. 4, 81-88 at pp81-82.

have a unique opportunity and obligation to continue conveying these messages."³ It should however be noted that "[t]he primary obligation to provide legal services to the poor resides with the government, and to a lesser extent, with the legal profession, not with law schools. Nevertheless, law schools do have some obligation to contribute to the solution of the crisis in access to justice, and it seems obvious that the obligation is best accomplished by law school clinics assisting low-income individuals and communities that are underserved or have particular difficulty obtaining lawyers because of the nature of their legal problems."⁴

From a pedagogical perspective, *pro bono* law clinic experience provides '...opportunities for connecting the "aspirations of law students with professional ideals (justice, service, fairness) and the goals of a university-based education"'.⁵ Law clinics are in essence a vehicle through which students learn by working in the role of a lawyer to provide legal advice, legal writing or drafting, advocacy or representation to clients in a live or simulation setting. Amongst other reasons, this experience is about the students' formation of a professional identity as a lawyer", enabling them to think like a lawyer and reflect on their practice to identify gaps in their knowledge of the law and other areas (e.g. skills, ethics, etc.) to be developed.⁶ For others, like the

³ Rhode, Deborah L. (2004), *Access to Justice: Again, Still*, *Fordham Law Review*, Vol 73, Issue 3, Article 12, 1013-1029 at p1028 & p1029.

⁴ Wizner, S. and Aiken, J. H. (2004), *Teaching and Doing: The role of law school clinics in enhancing access to justice*, *Fordham Law Review*, Vol 73, 997-1011 at p997.

⁵ Nicolson, D. (2016), *Problematizing Competence in Clinical Legal Education: What do we mean by competence and how do we assess non-skill competencies?* Special Issue: *Problematizing Assessment in Clinical Legal Education*, *Journal of International Clinical Legal Education*, Vol. 23, No. 1, p2.

⁶ Thomson, D. I. C. (2015), *Defining Experiential Legal Education*, *Journal of Experiential Learning*: Vol. 1: Issue 1, Article 3, pp7, 9, & 20. See also Kerrigan, K. and Murray, V. (eds.)(2011), *A student guide to*

Former President of the American Bar Association, Robert MacCrate and Chief Justice Warren Burger of the United States Supreme Court⁷, addressing the skills gap should first start with fundamental reform of legal education in law schools in order to produce people-oriented and problem-oriented counsellors and advocates.⁸

Involvement in university-based law clinic experiential learning⁹ programmes offers students the opportunity to reflect on their experience and increase their awareness of skills, knowledge and become more engaged.¹⁰ They consider their supervisor's feedback in the process and self-evaluate their learning. They ascribe value to their learning by describing what was learnt, how it was learnt and how it could be learnt better next time. Students' situated learning is evident through their participation in such *pro bono* clinical legal services.¹¹ Situated learning involves "participation as a way of learning – of both absorbing and being absorbed in – the 'culture of practice'"¹²

Clinical Legal Education and Pro Bono. Hampshire, UK: Palgrave Macmillan who defined clinical legal education at page 13 as "...essentially a method of learning as opposed to a subject or discipline in its own right."

⁷ Both writing in the 1950s and 1960-70s respectively.

⁸ Phant, Pamela N. (2005), *Clinical Legal Education in China: In Pursuit of a Culture of Law and a Mission of Social Justice*, *Yale Human Rights and Development Law Journal*, Vol. 8, 117 – 152 at p128 Fn 58..

⁹ We adopt the well-known definition of David Kolb of experiential learning being "...the process whereby knowledge is created through the transformation of experience". Kolb, D.A. (1984), *Experiential learning: Experience as the source of learning and development*. Upper Saddle River, NJ: Prentice-Hall, p 38.

¹⁰ Hall, E. (2015), *Locating clinic and ourselves within it*. *International Journal of Clinical Legal Education*, Vol. 22 No. 2, pp.142-146, p142.

¹¹ Lave, J. and Wenger, E. (1991), *Situated learning, Legitimate peripheral participation*, New York: Cambridge University Press, p.14.

¹² *Ibid*...p. 95.

It provides an authentic experience and prepares students to apply what they have learned in the real world of working practice.¹³

CONTEXTUAL RATIONALE FOR THIS STUDY

Going through the experience as described above often enables students and supervisors to claim to have seen improvements in law clinic students' skills such as client interviewing, practical legal research or letter writing. In short, both students and supervisors see clinics as a place to acquire, develop and enhance skills for the workplace. However, one area which appears to have been understudied is the impact of law clinic experience on students' performance on black-letter law examination.

An essential component of any clinical legal education project is to have "learning at its heart"¹⁴. Clinical legal education therefore can be distinguished from clinical experience, as the former will depend on students' learning as opposed to just delivering services. However, it is our view that all clinical experience, whether confined to a legal education project or whether a student undertakes other legal

¹³ Hung, D. (2002), Situated Cognition and Problem-Based Learning: Implications for Learning and Instruction with Technology, *Journal of Interactive Learning Research*, Volume 13 (4), 393-414. See also Contu, A. and Willmott, H. (2003), Re-embedded situatedness: The importance of power relations in learning theory, *Organization Science*, Volume 14, 283-296; Lunce, L. M. (2006), Simulations: Bringing the benefits of situated learning to the traditional classroom, *Journal of Applied Educational Technology*, Volume 3, 37-45; Utlely, B. L. (2006), Effects of situated learning on knowledge gain of instructional strategies by students in a graduate level course, *Teacher Education and Special Education*, Volume 29, 69-82; Kimble, C. Hildreth, P. and Bourdon, I. (2008), *Communities of Practice: Creating Learning Environments for Educators*, (Vol. 2), United States: Information Age Publishing; Gardiner, L. R., Corbitt, G. and Adams, S. J. (2010), Program assessment: Getting to a practical how-to model, *Journal of Education for Business*, Vol. 85, 139-144.

¹⁴ Kerrigan, K. and Murray, V. (eds.) (2011), *A student guide to clinical legal education and pro bono*, Hampshire: Palgrave Macmillan, p.7.

Practice Report

extracurricular activities, will help with the development of practical skills and confidence within a legal setting. In addition, our central viewpoint is that this hands-on experience should also improve students' results in traditional black-letter law assessments. The premise for this is based on our contention that the skills and experience gained in clinics invariably broaden the students' cognitive ability and awareness of the application of the law in a practical setting, which are essential to doing well in black-letter law examinations.

Black-letter law examinations, to put simply, are assessments of doctrinal or substantive law. The black-letter law examinations often come in timed-constrained settings, where students must answer several questions on the topics of study e.g. contract law, land law, criminal law, etc. Students may have a mixture of problem-type questions and essay-type questions where they are to discuss, analyse or apply the black-letter law.

So if clinical experience within a clinical legal education project focuses on the practical elements of the law, how will this assist students with this type of examination, and to what extent? It is our view that by putting the law into a real world context, taking into account the commercial, ethical and social contexts in which practitioners operate, this can also develop the necessary skills for students to do well in black-letter law exams. This is primarily because some skills sets acquired in clinical work are directly relevant to performance in black-letter law examinations. According to Kerrigan and Murray, these skills sets include knowledge acquisition skills, problem-solving, written skills, research skills, etc. The clinical experience provides

students with the opportunity to learn about the legal systems and its legal concepts, values and rules. In doing so, Kerrigan and Murray argue that the students use the clinic experience as “an ideal vehicle for developing in-depth, contextualised knowledge because [the students] tend to work on a specific area of law on behalf of a client and need to understand the area in great detail in order to be able to advise or otherwise advance the client’s cause.”¹⁵ This experience in turn enriches the students’ knowledge of the law to be able to perform well in black-letter law examinations.

Furthermore, it has been suggested that whilst undertaking either live or simulated clients’ work, students develop problem-solving skills by application of the law to either a real or hypothetical case study. These are the precise skills that are needed for the traditional modes of black-letter law assessments. It may be that some aspects of the clinic work and advice students provide may relate to procedural matters, however, students still need knowledge of the substantive law. Another key skill that is built upon through clinical work is the ability to analyse cases, the law and various resources to determine whether there is merit in a client’s case. Sometimes, through research, wider policy issues will arise, and added complications of how the law applies in context may engage the students. These added contextual complexities could also assist students in developing a critical awareness and ability to analyse the law. These skills are relevant in traditional law assessments as well as in legal practice.

¹⁵ Kerrigan, K. and Murray, V. (eds.)(2011), *A student guide to Clinical Legal Education and Pro Bono*, Hampshire, UK: Palgrave Macmillan, p13.

Legal drafting and the ability to clearly present complex arguments in simple English language is another skill that is mastered through experience in a law clinic or extracurricular activities. Similarly, in any black-letter law assessment, the examiner will check whether the student has presented their answers in a coherent, well written and structured manner. As a law student, research and the use of legal databases are essential to exploring the black-letter law. Research and computer skills that students develop during their time at a law clinic or through other extracurricular activities will serve as valuable skills to help their preparation for black-letter law examinations as well as exploring the issues in a client's case.¹⁶ So the historic criticism that heralded changes in traditional legal education methodology and that regarded the apprenticeship system¹⁷ of law practice (which can arguably include the clinical legal education experience) as lacking legal theory and inherently inconsistent is debunked and largely unfounded.

Our experience at UEL is that students do obtain pedagogical benefits from volunteering in our law clinic. Like in UEL and elsewhere, there is abundant evidence that the benefits of clinical legal education experience are regarded as largely relating to employability skills and less about enhancing knowledge of and performance in black-letter law assessments. Perhaps this explains why this remains one area which appears to have been understudied *vis-a-vis* the impact of law clinic experience on

¹⁶ See generally Kerrigan, K. and Murray, V. (eds.)(2011), *A student guide to Clinical Legal Education and Pro Bono*, Hampshire, UK: Palgrave Macmillan, pp13-15

¹⁷ Sonsteng, John O.; Ward, Donna; Bruce, Colleen; and Petersen, Michael (2007), A Legal Education Renaissance: A Practical Approach for the Twenty-first Century, *William Mitchell Law Review*: Vol. 34: Issue 1, Article 7, 303-472 at p319.

students' performance on black-letter law examinations and hence our reasons for undertaking this small-scale study in one institution: UEL. It is not clear therefore whether the benefits of clinical legal education or clinical experience also enhance students' performance on black-letter law examinations. So our study sought to discover whether there is a correlation between students' engagement in law clinic/extracurricular activities and students' performance on black-letter law examinations.

METHODOLOGY

Our research design is exploratory and explanatory in nature. We devised and administered a questionnaire with 10 questions¹⁸ to gauge individual students' experience of undertaking legal work experience and/or extracurricular activities. The questions were also designed to ascertain whether students regarded such experience as helpful to passing their substantive law examinations. We employed a simple random sample approach in this study. Our primary sampling unit was the Royal Docks School of Business and Law and our law students were the secondary sampling units. We chose this sampling approach as it is a basic type of sampling selection and straightforward considering the timeframe available to conduct the study.¹⁹ After

¹⁸ You will find the questionnaire questions embedded in the charts we provide below.

¹⁹ Bachman, R. D. and Schutt, R. K. (2007) *The Practice of Research in Criminology and Criminal Justice*, 3rd ed., Los Angeles, Sage Publications, Inc.; Black, T.R. (2005) *Doing Qualitative Research in the Social Sciences, An Integrated Approach to Research Design, Measurement and Statistics*, London: Sage Publications; De Vaus, D.A. (1996) *Surveys in Social Research*, 4th ed., London: UCL Press; Maxfield, M.G. and Babbie, E. (2005) *Research Methods for Criminal Justice and Criminology*, 4th ed., United States: Thomson, Wadsworth; Sapsford, R. (2007) *Survey Research*, 2nd ed., London: Sage Publications;

securing approval from our school's research ethics committee, we opened an invitation to all law students in Levels 4, 5, and 6 to participate in the study.

Some of the students who participated in this study indicated that they had no prior involvement with the law clinic and/or any other extracurricular activities. All students were polled before they sat their black-letter law examinations. The purpose was to gauge students' perceptions about the benefits of participating or not participating in law clinic activities. Students were asked to voluntarily provide us with the results of their black-letter law examinations.

We intended to use this information to identify any correlation between law clinic experience and good/poor performance in black-letter law examination. We considered such correlation as helpful in postulating some generalisations about law clinic experience. We hasten to state that any generalisations of our findings will and should be understood from our narrow and homogenous sample (i.e. UEL law students in the School of Business and Law). In any case, our findings should be helpful to future researchers who may want to look at another single institution or embark on a comparative study involving multiple institutions. That in fact is an opportunity we are prepared to explore with readers of this article who may be interested in such collaboration across multiple institutions.

Sarantakos, S. (1998) *Social Research*, 2nd ed., London: Macmillan Press Ltd; Bourque, L.B. and Fielder, E.P. (2003) *How to Conduct Self-Administered and Mail Surveys*, 2nd ed., Volume 3, London: Sage Publications.

RESULTS

We had 46 student respondents. Whilst this is a relatively small number, it provides an example of whether legal clinical experience can impact students' performance on substantive law examinations.

Our study showed that 67% of student respondents had undertaken legal work experience (Chart 1), and that the majority of these students (i.e. 79%) found that this was a valuable experience (see Chart 2 with values 1 – 5: 1 represents “not at all valuable” and Value 5: “extremely valuable”).

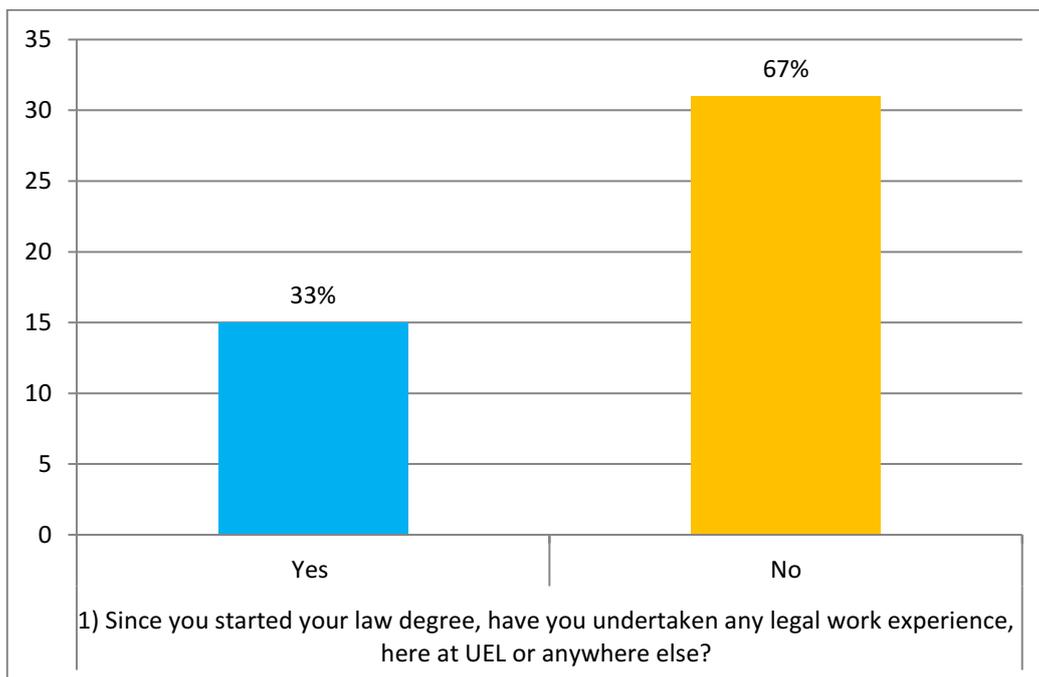


Chart 1

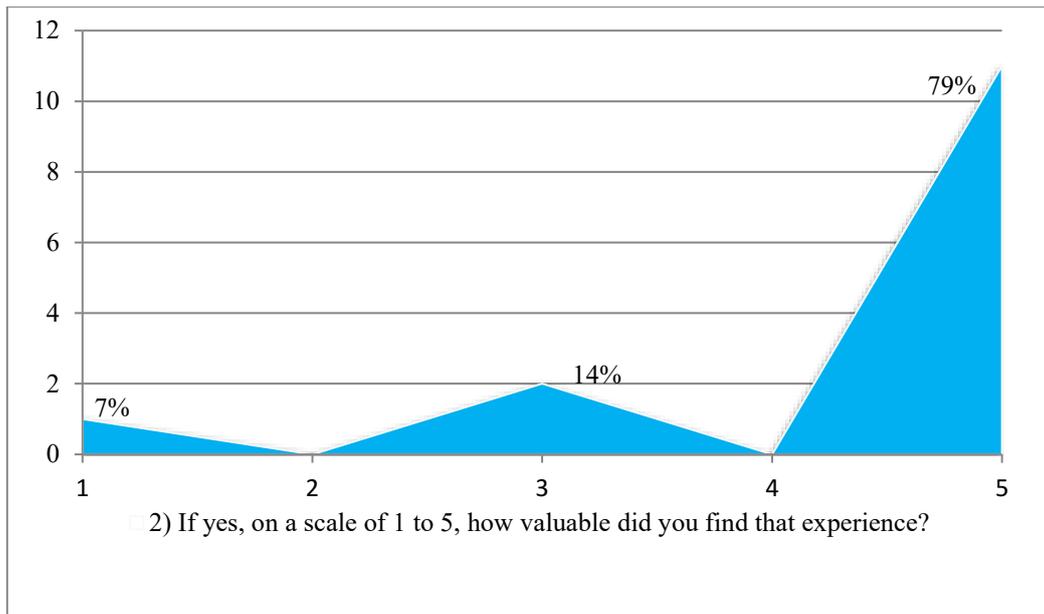


Chart 2

We discovered that 85% of the student respondents volunteered at our law clinic (Chart 3) and the majority of these students (i.e. 86%) found this experience helpful in their study of substantive law subjects (see Chart 4 with values 1 – 5: 1 represents “not at all helpful” and Value 5: “extremely helpful”).

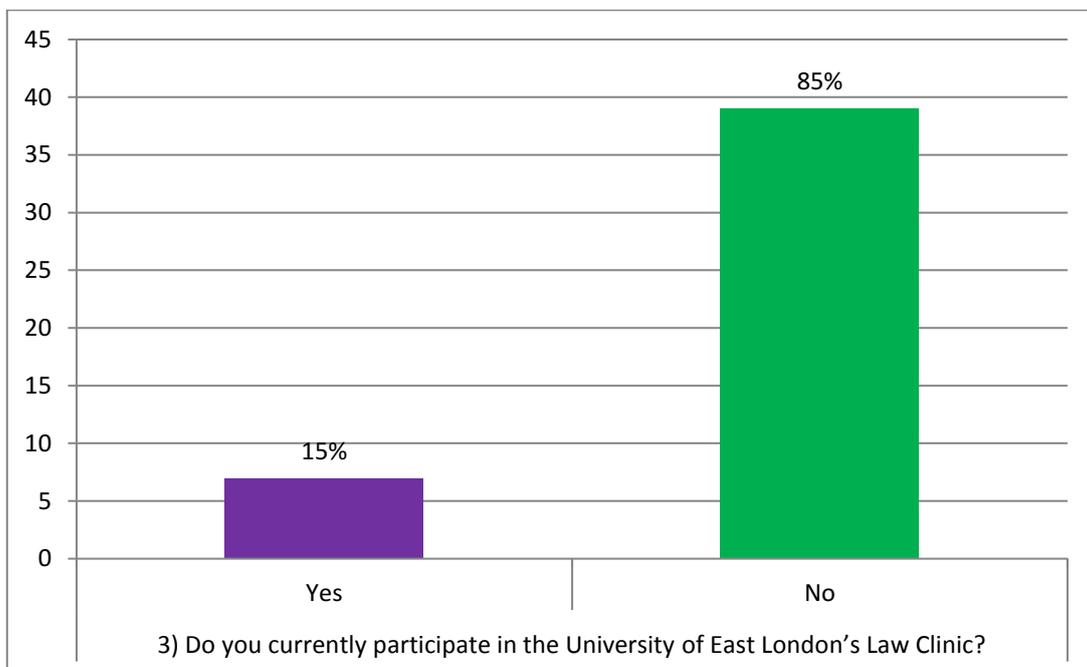


Chart 3

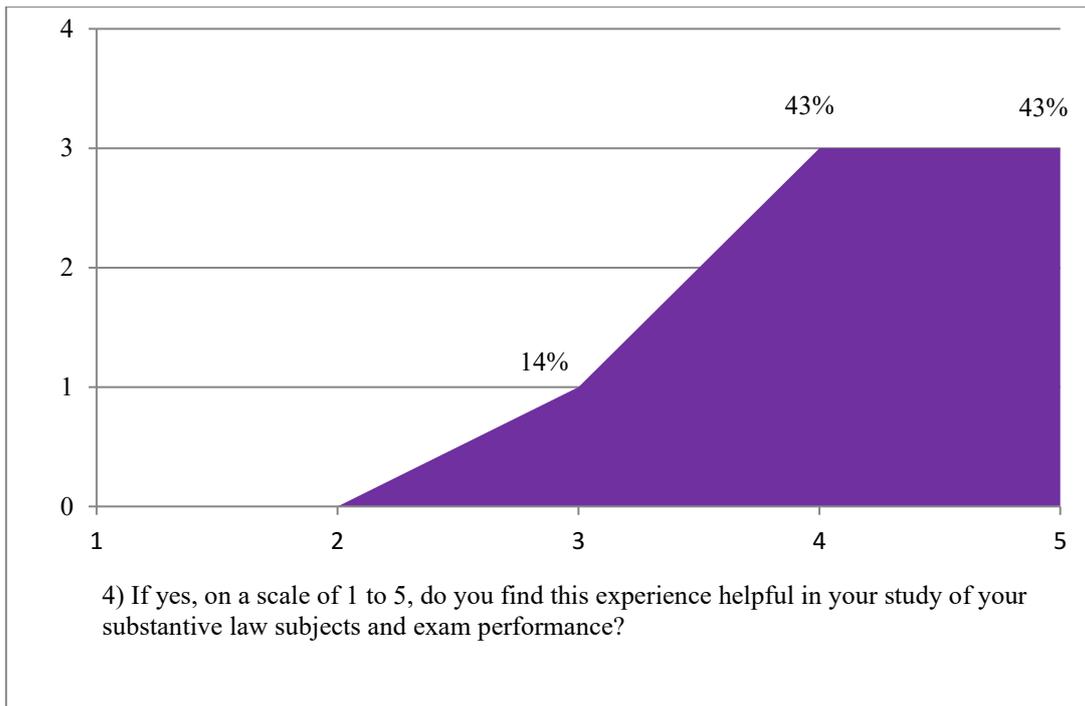


Chart 4

It was surprising to learn that 65% of our students did not participate in any type of extracurricular activities within the University (see Chart 5).

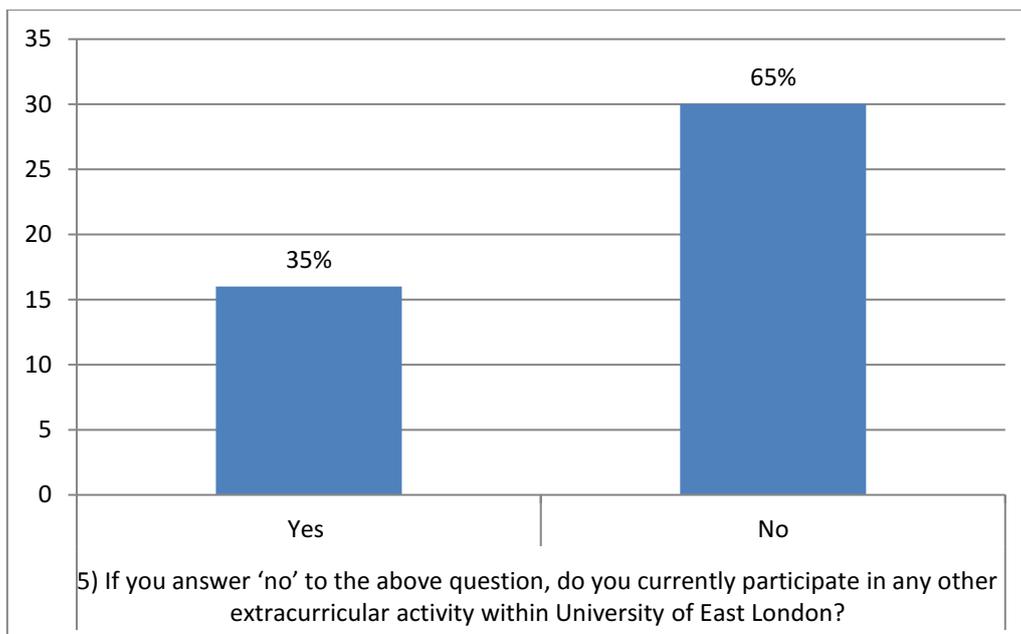


Chart 5

Practice Report

Of those students who answered 'yes' to participating in any other extracurricular activities, three students did not provide a mark of how useful they found this experience. Therefore, the results are somewhat limited in this respect. However, of the students who did respond, all indicated that they found this experience helpful, ranging from scale 3 to 5 out of 5 (Chart 6), with 77% finding that the experience was either very or extremely helpful in their studies and exam performance.

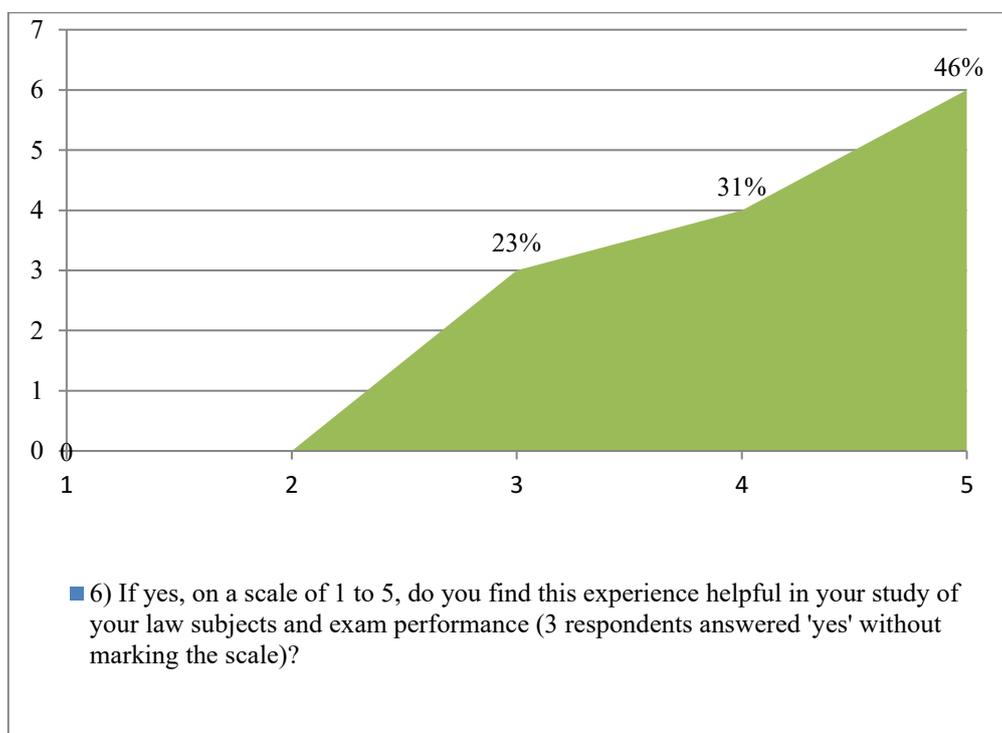


Chart 6

Overwhelmingly, the majority of our students did not provide us with consent to contact their module leaders to obtain their module results for this academic year. This meant that we were unable to carry out specific module analysis for our students (Chart 7).

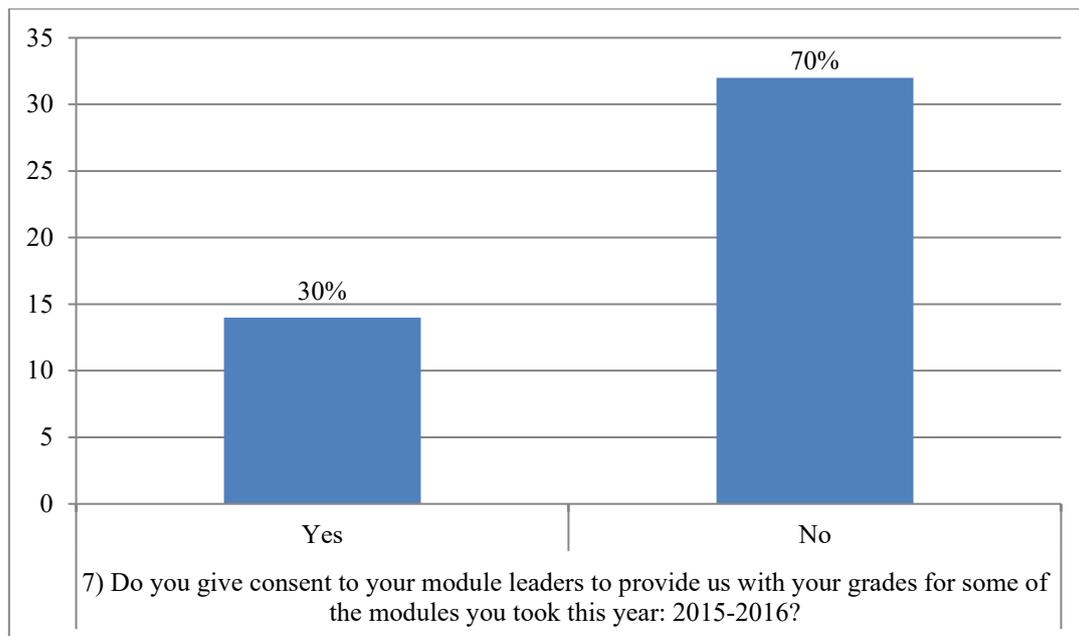


Chart 7

All students who participated in the survey agreed that a credit bearing Clinical Legal Education module would be an appropriate step for our University and 100% of students stated that they would choose to do such a module (Charts 8 and 9). This was an emphatic result, which indicated that students did see the potential benefits of integrating practical legal skills within the curriculum.

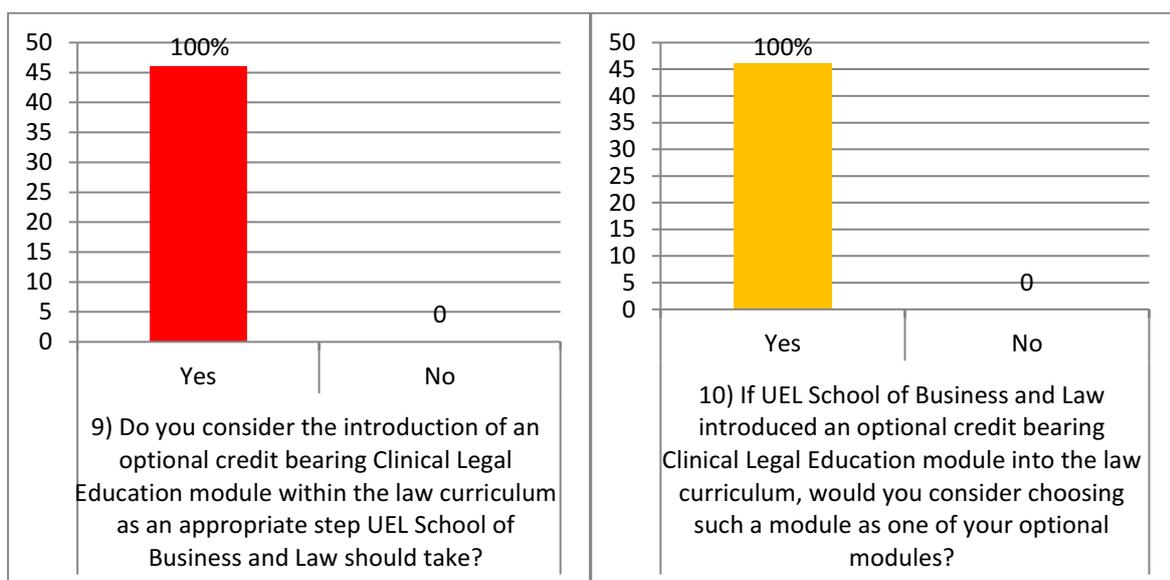


Chart 8

Chart 9

Practice Report

We paid particular attention to Level 6 (i.e. final year) students and wanted to know what impact, if any, legal work experience and/or extracurricular activities had on their current law subject assessments. The results indicated that there were only three final year students with legal clinic experience (Chart 10 below) and eight other final year students had experience of extracurricular activities (Chart 11). The three students with legal clinic experience indicated that their actual or predicted degree classification was 2:1. Seven of the eight students with experience of extracurricular activities indicated that their actual or predicted degree classification was 2:1 and the remaining one student was predicted to achieve a first class degree.

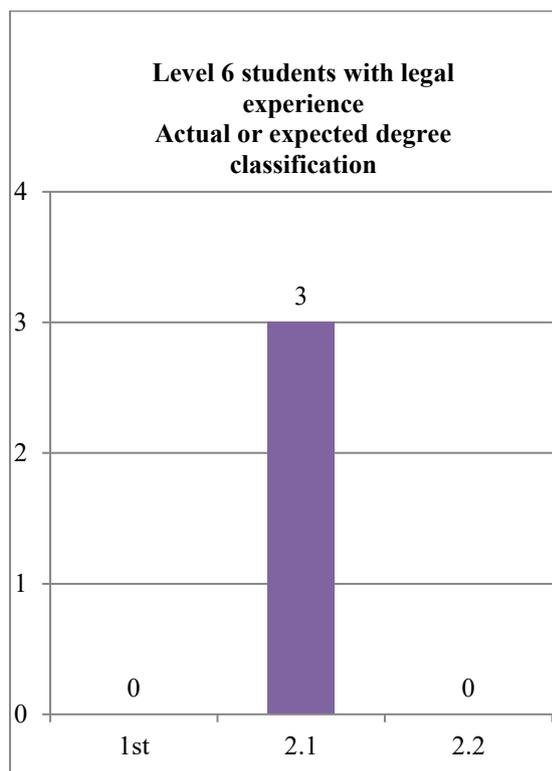


Chart 10

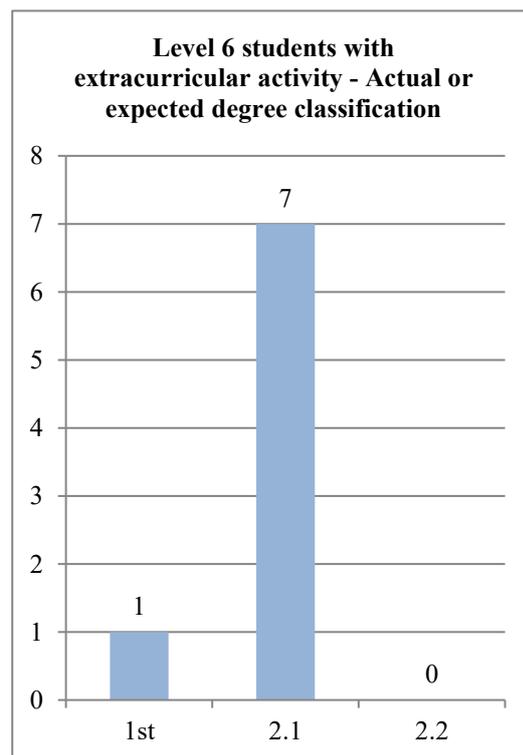


Chart 11

There were 22 final year student respondents without any legal clinic or extracurricular activities experience. Of these students, one indicated a predicted first

class degree; 19 were predicted 2:1 degrees; and two were predicted 2:2 degrees.

(Chart 12).

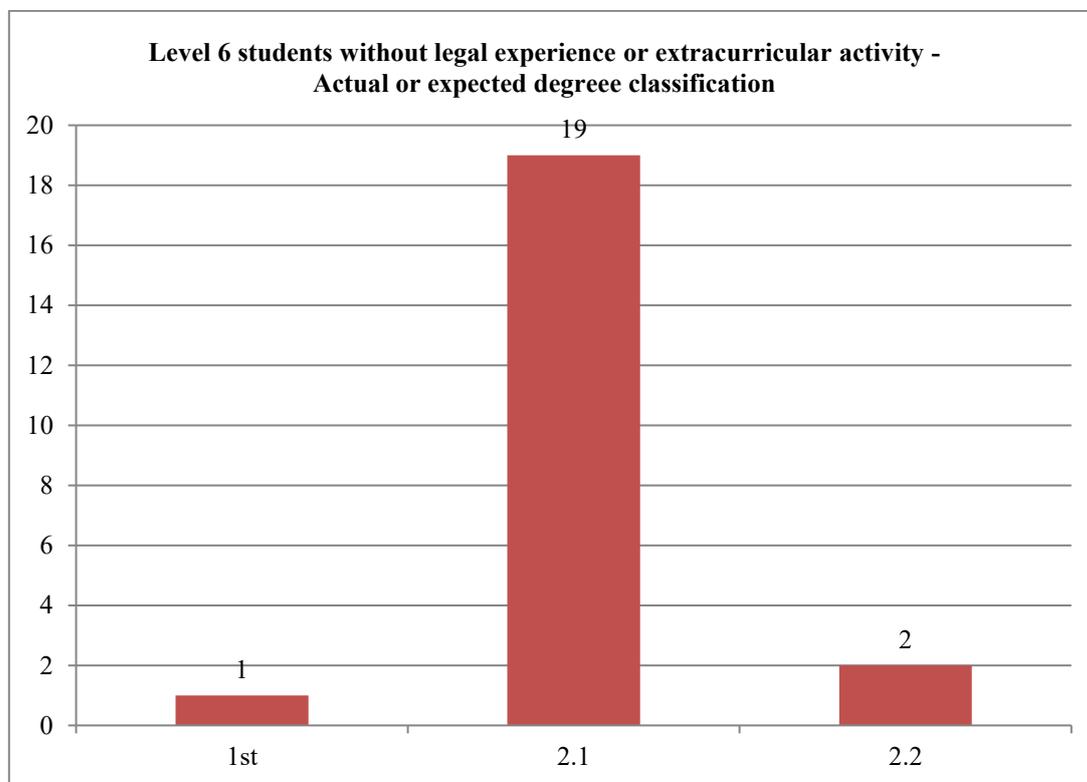


Chart 12

We therefore found that those students who had no experience of legal work and/or extracurricular activities appeared not to have been affected because they were predicted to perform as well as those with experience of legal work and/or extracurricular activities. Although, we note that by way of comparison, there were no actual or predicted 2.2 grades for those students who did engage in legal experience and/or extracurricular activities

Overall, from these results, it appears that having legal experience and/or extracurricular activities does not necessarily enhance grades on black-letter law examinations; however, neither does this extra experience hinder students' grades.

Practice Report

We could only postulate that this unclear finding may be down to the small sample size or responses we received.

We also asked our students whether they would provide us with their reasons for performing well or badly (as the case may be) in their predicted or actual final grades.

The majority of student respondents (i.e. 63%) attributed their good grades to support from their lecturers, followed by their own commitment and motivation. The reasons for poor performance were attributed to personal circumstances.

DISCUSSION

The results above, although may be limited in terms of their reliability and scope, serve as an example that clinical legal experience or extracurricular activities do not necessarily have a positive contribution to the traditional models of black-letter law assessments. The results seemed to indicate that those who did not take part in any extracurricular activities or legal work experience were just as likely to do well in their substantive law assessments. The traditional black-letter law examinations do not necessarily examine students on their practical legal skills, and so the experience gained during clinical legal work may not be best reflected in those types of black-letter law examinations.

This view has been canvassed and debated in the literature on legal education. The concern has been that for a long time, traditional legal education modes of instruction and assessments heavily "...place too much emphasis on theoretical learning and not enough on practical learning.... [so that university graduate] students who could *think*

like a lawyer ... were unprepared to *be* a lawyer. The skills gap is often filled during the period of vocational training and the early years of practice as a trainee solicitor or pupil barrister".²⁰ The Carnegie Report makes the following criticism of this approach of legal education: "[O]ne of the less happy legacies of the inherited academic ideology has been a history of unfortunate misunderstandings and even conflict between defenders of theoretical legal learning and champions of a legal education that includes introduction to the practice of law."²¹

We share this view and the results from our study confirm our conviction. We may not have seen discernible evidence of the positive contribution of law clinic experience in students' performance on black-letter law examinations because such examinations do not primarily focus on lawyering skills and values but on doctrinal law.²² The literature on this point is also telling. It is acknowledged that some achievements have been made by legal education providers to equip students with skills and legal knowledge for life after university. However, "...the legal education system does not

²⁰ Thomson, D.I.C. (2015) Defining Experiential Legal Education, *Journal of Experiential Learning*: Vol. 1: Issue 1, Article 3, p2.

²¹ The Carnegie Report (William M. Sullivan et al., (2007) *Educating Lawyers: Preparation for the Profession of Law* 8 (2007)) and David Segal (2011), *What They Don't Teach Law Students: Lawyering*, N.Y. Times, Nov. 20, at A1 cited by Thomson, D.I.C. (2015) Defining Experiential Legal Education, *Journal of Experiential Learning*: Vol. 1: Issue 1, Article 3, p2 at footnote 6 &7,

²² One set of lawyering skills and values as listed and endorsed by the MacCrate Report 1992 commissioned by the American Bar Association includes the 10 fundamental lawyering skills: 1) Problem Solving; 2) Legal Analysis and Reasoning; 3) Legal Research; 4) Factual Investigation; 5) Communications (in writing, and orally); 6) Counselling (a client); 7) Negotiation (with opposing counsel); 8) Litigation and Alternative Dispute-Resolution Procedures; 9) Organization and Management of Legal Work; 10) Recognizing and Resolving Ethical Dilemmas. The four Fundamental Values of the Profession: 1) Provision of Competent Representation 2) Striving to Promote Justice, Fairness, and Morality 3) Striving to Improve the Profession 4) Professional Self-Development. See the American Bar Association Section of Legal Education and Admissions to the Bar, *Legal Education and Professional Development – An Educational Continuum* (1992), cited in Thomson, D.I.C. (2015) Defining Experiential Legal Education, *Journal of Experiential Learning*: Vol. 1: Issue 1, Article 3, p7.

Practice Report

provide a significant source of training in nine legal practice skill areas: (1) understanding and conducting litigation; (2) drafting legal documents; (3) oral communications; (4) negotiations; (5) fact gathering; (6) counselling; (7) organizing and managing legal work; (8) instilling others' confidence in the students; and (9) providing the ability to obtain and keep clients. Nor does the legal education system provide training in eight important legal practice management skills areas: (1) project and time management; (2) efficiency, planning, resource allocation, and budgeting; (3) interpersonal communications and staff relations; (4) fee arrangements, pricing, and billing; (5) governance, decision-making, and long-range strategic planning; (6) marketing and client development; (7) capitalization and investment; or (8) human resources, hiring, and support staff."²³ We argue that until these skills are routinely taught and assessed as part of the mainstream legal education system, there will remain very limited evidence of a clear impact of the benefits of clinical legal education or extracurricular activities on students' performance on black-letter law assessments.

A student may enquire what can be gained from the legal practical experience, if it does not necessarily improve students' grades in black-letter law assessments. Should we simply view "engagement with practice in purely vocational or technocratic terms", or as Donald Nicolson suggests this is about providing opportunities for

²³ Sonsteng, John O.; Ward, Donna; Bruce, Colleen; and Petersen, Michael (2007), A Legal Education Renaissance: A Practical Approach for the Twenty-first Century, *William Mitchell Law Review*: Vol. 34: Issue 1, Article 7, 303-472 at p318.

connecting the “aspirations of law students with professional ideals (justice, service, fairness)...”?²⁴

Our view is that clinical legal education programmes in the curriculum can supplement (not substitute) traditional law instruction and assessment methods. This is because such programmes integrate theory and practice, by providing numerous opportunities for students to learn and apply lawyering skills, just as they are used in legal practice (or similar professional settings).²⁵ In addition, clinical legal education programmes equip students for future employment with practical skills that are not purposefully taught or assessed in traditional law degree courses.

As discussed above, our findings indicate that there was no positive or negative contribution law clinic experience had on performance in traditional black-letter law assessments from among the students who participated in this study. However, we hasten to clarify that we do not in any way doubt the practical benefits and employability skills students derive from the law clinic experience. Kevin Kerrigan and Victoria Murray outline a number of professional awareness and legal skills which the law clinic experience offers students: development of broad knowledge of the legal system, its concepts, values, principles and rules; application and problem-solving skills; development of factual and legal research skills; development of intellectual skills such as analysis, synthesis, critical judgement and evaluation;

²⁴ Nicolson, D. (2016), *Problematizing Competence in Clinical Legal Education: What do we mean by competence and how do we assess non-skill competencies?* Special Issue: *Problematizing Assessment in Clinical Legal Education*, *Journal of International Clinical Legal Education*, Vol. 23, No. 1, p2.

²⁵ Thomson, D.I.C. (2015) *Defining Experiential Legal Education*, *Journal of Experiential Learning*: Vol. 1: Issue 1, Article 3, p12.

professional autonomy and the ability to plan and undertake tasks independently; communication and team work; and the ability to use, present and evaluate numeracy, and information technology.²⁶

Robert Dinerstein also puts forward nine purposes of clinical legal education: developing modes of planning and analysis for dealing with unstructured situations; providing professional skills instruction; teaching means of learning from experience; instructing students in professional responsibility; exposing students to the demands and methods of acting in role; providing opportunities for collaborative learning; imparting the obligation for service to indigent clients; providing the opportunity for examining the impact of doctrine in real life and providing a laboratory in which students and faculty study particular areas of the law; and critiquing the capacities and limitations of lawyers and the legal system.²⁷

We believe the impact of law clinic experience on students' performance on black-letter law assessments has not been studied or scrutinised to a sufficient degree. The relationship and the impact these two areas have on each other remained understudied while other aspects of law clinic experience have been subject to examination.²⁸ We argue that the very nature of the law clinic experience itself does

²⁶ Kerrigan, K. and Murray, V. (eds)(2011), *A student guide to Clinical Legal Education and Pro Bono*, (Hampshire, UK: Palgrave Macmillan), pp13-15.

²⁷ Dinerstein, R. (1992), Report of the Committee on the Future of the In-House Clinic, *Journal of Legal Education*, Vol. 42, No. 4, pp. 508-574 at 512-517.

²⁸ For example, see studies like Krieger, S.H. (2008), The effect of clinical education on law student reasoning: an empirical study, *William Mitchell Law Review*, Vol. 35 Number 1, pp 359 – 400; Nicolson, D. (2016), Problematizing Competence in Clinical Legal Education: What do we mean by competence and how do we assess non-skill competencies? Special Issue: Problematizing Assessment in Clinical Legal Education, *Journal of International Clinical Legal Education*, Vol. 23, No. 1.

not emphasise black-letter law as a priority in its delivery or assessments. However, where the clinic experience is at undergraduate level, it should be imperative that this experience, at the very least, should have regard to its impacts on students' ability to learn or performance well on black-letter law examination if they are to be effective advice-givers, excellent legal drafters, etc. Knowledge of, and the ability to do well in substantive law examination, should also be given attention within the clinic setting. This is to avoid claims that the clinic experience is largely practice-heavy but light on doctrinal law and legal reasoning.

The traditional modes of instruction and assessment in undergraduate legal education do not prioritise the assessment of practical legal skills. This in itself does not mean clinical legal education is inferior or less effective in the training of future lawyers; nor does the teaching and writing on social injustice issues is any inferior. In fact this will be regarded as the "prevailing conceptions of legal education and scholarship than the *perceived* dumbed-down nature of teaching skills and writing about clinical legal education."²⁹ What we do know is that the failure of traditional modes of instruction and assessment in undergraduate legal education to produce work-ready graduates contributed to the emergence and growth of clinical legal education.

Both theoretical legal educationists³⁰ and legal clinicians³¹ could borrow something from John Dewey who really loathes the labels of 'traditional' or 'old' education and

²⁹ Nicolson, Donald (2016) "Our roots began in (South) Africa": Modelling law clinics to maximize social justice ends, *International Journal of Clinical Legal Education*, Vol. 23, No. 3, 87-136 at p135.

³⁰ Some of whom have often been labelled as perusing 'traditional' or 'old' education.

³¹ Some of whom have often been regarded as pursuing 'progressive' or 'new' education.

'progressive' or 'new' education.³² Dewey acknowledges that in traditional methods of instructions like in new methods of instructions, experience is gained. So what is really paramount is the quality of the experience. Dewey writes: "Just as no man lives or dies to himself, so no experience lives and dies to itself. Wholly independent of desire or intent every experience lives on in further experiences. Hence the central problem of an education based upon experience is to select the kind of present experiences that live fruitfully and creatively in subsequent experiences."³³ Students' learning experience should be one that equips and prepares them sufficiently enough for the future and to influence their later experiences. The clinic experience like that from studying black-letter law should both contribute to providing students with a rich experience for future use.

Students at UEL do obtain pedagogical benefits from volunteering in our law clinic as they are able to apply their theoretical knowledge of the law when providing services to clients. There is evidence that our law clinic students also benefit from this experience by acquiring and developing legal practice and employability skills. Although our study does not establish a definite nexus between law clinic experience and good grades in substantive law assessments, it is still an experience which our law clinic students believe has put them in a better stead for the future. This is evident from the views of our law clinic student advisers, Maria Samuel and Sharanjit Pal, as follows:

³² Dewey, J. (1938) *Experience and Education*, 23, New York, Kappa Delta Pi Publications, p10.

³³ Dewey, J. (1938) *Experience and Education*, 23, New York, Kappa Delta Pi Publications, pp27-28.

Maria: *“I began my volunteering experience in the law clinic in my second year of the LLB. I can safely say that it was one of the best experiences I had whilst studying. I was able to gain an insight into legal practice. As student advisors we were able to write client letters and interview clients which is a surreal experience for anyone who has not been in a legal environment before. The breadth of knowledge of the lecturers and supervising solicitors was invaluable and has also firmly cemented my future career aspirations of studying the LPC. The law clinic helped me realise my potential and greatly improved my research and analytical skills. It also enhanced my employability skills. It has been lovely working with so many talented people”.*

Sharanjit: *“The law clinic has been a very valuable experience for me. I have been lucky enough to provide advice to individuals who need help in resolving their legal problems. From the outset I was made to feel supported in my work and this gave me confidence. I needed to ensure I was able to work to the best of my ability. Working at the law clinic under the supervision of practising solicitors has been extremely rewarding, and has provided me with the best possible start to pursue my legal profession. My time at the law clinic has provided me with real legal work experience - this is something employers will value highly. I have also been lucky enough to have met Lord Neuberger through the lectures that the law clinic holds, and that was an experience I'll never forget. My plans now are to qualify as a solicitor and the law clinic has given me an excellent introduction to what it will be like to work in a legal environment”.*

CONCLUSION

From the results of our study, it appears that clinical legal experience may not, as an independent variable, contribute to the students' successful performance on black-letter law assessments. For students who participated in clinical legal work, despite

the extra time that they spent undertaking law clinic work experience, they did just as well as those students who did not undertake law clinic work / extracurricular work, and who perhaps dedicated more of their time studying. The added advantage that students derive from the clinical legal experience is that they may find themselves in a stronger position when it comes to acquiring employability skills. Graduate employers want "...real-life evidence and examples that back up what you say. That means: [1] which skills you've used, where you've applied them and how effective they were[;][2] what you've done that demonstrates your interest and enthusiasm for this area of work – internships, experience, volunteering, extra qualifications..."³⁴ The 2016 Government White Paper on transforming higher education in England also highlights this point that "Employers report a growing mismatch between the skills they need and the skills that graduates offer...." The White Paper also focuses on "the importance of students having access to a wide array of work experience opportunities, employers and [higher education] providers working together on curriculum design, and graduates having the 'soft skills' they need to thrive in the work environment."³⁵

We are therefore convinced that clinical legal education approaches and traditional substantive law instructions and assessments are essential in the training of students as future legal professionals or preparing students with employability skills for other

³⁴ Sharp, G. (2012) What do employers look for in graduates?, *Which? University*, available at <http://university.which.co.uk/advice/career-prospects/what-do-employers-look-for-in-graduates> (last accessed 01/10/2012).

³⁵ Department for Business, Innovation and Skills (May 2016), *Success as a Knowledge Economy: Teaching Excellence, Social Mobility and Student Choice*, p42.

walks of life. We are supported in this view by reference to the emerging changes in legal education with the introduction of the Teaching Excellence Framework. The need for students to showcase more than just an understanding of the substantive law, will become the responsibility of law schools if law schools or universities are to remain relevant and viable entities. The UK Government expresses a desire “to ensure that our higher education system continues to provide the best possible outcomes [based on] informed choice and competition. We must provide incentives for all institutions to improve and to focus on what matters to students, society and the economy....”³⁶ The variety of clinical legal education programmes available now will go a long way to meeting these objectives. “The Small Business and Enterprise Act 2015 enables the Government, for the first time, to link higher education and tax data together to chart the transition of graduates from higher education into the workplace better.”³⁷ It will be imperative on higher education providers to adequately equip their students to enter the workplace with the maximum skills and experience to compete for well paid jobs. We believe clinical legal education programmes will provide significant assistance to universities in this regards.

So what does the future hold for traditional black-letter law examinations? It is our view that there should be a blend of both traditional doctrinal and practical skills modes of assessment. As with emerging changes in the Teaching Excellence

³⁶ Department for Business, Innovation and Skills (May 2016), *Success as a Knowledge Economy: Teaching Excellence, Social Mobility and Student Choice*, p43.

³⁷ Department for Business, Innovation and Skills (May 2016), *Success as a Knowledge Economy: Teaching Excellence, Social Mobility and Student Choice*, p58.

Framework and the need for students to showcase more than just an understanding of the substantive law, more of the clinical legal education could be embedded in all areas of law.

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