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Developing Active Learning of Skills in Professional Legal Education in Hong Kong — From Theory to Ethnography

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Developing Active Learning of Skills in Professional Legal Education in Hong Kong — From Theory to Ethnography*

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Abstract

In Hong Kong, the Postgraduate Certificate in Laws is the normal prerequisite for practice. Following a comprehensive review in 2001, the programme was redesigned to emphasize problem-oriented learning and skills-based training. This discussion explains the principal features of the current curriculum and how it has worked out in practice. It calls for a systematic collection and study of feedback on the current programme, and announces a plan for that purpose.

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I. INTRODUCTION – A NEW PCLL

Hong Kong's Postgraduate Certificate in Laws (PCLL) is a one-year postgraduate professional programme. Except for practitioners eligible for admission based on professional qualifications obtained overseas and by examinations administered by the Hong Kong Law Society, successful completion of the PCLL is a prerequisite to becoming a solicitor in Hong Kong¹. For would-be barristers, the situation is similar; in most cases, students must successfully complete the PCLL².

The Law Faculty at the University of Hong Kong (HKU) ran the first PCLL course in 1972. In 1991, the City University of Hong Kong began to offer their own PCLL course through their Law School. In the last millennium year, the Hong Kong Government appointed two consultants from Australia to conduct a review of legal education in Hong Kong. The consultants released their report entitled "Legal Education and Training in Hong Kong: Preliminary Review" (RLET) in August 2001.³ The RLET recommended, *inter alia*, the abolition of the PCLL⁴. Instead, they proposed the establishment of a new Legal Practice Course conducted by an institution or an Academy of Law independent of the two university law schools⁵.

Despite the strengths and achievements of the PCLL, which the consultants acknowledged in the RLET, their main criticism was that the course was in fact an extension of the law degree, emphasising substantive law at the expense of practical training⁶. The consultants reported that the PCLL had an "unclear purpose", lacked "coherence" and had "inadequate teaching and assessment methods"⁷.

Of particular importance, the PCLL for vocational preparation should be based on "a conceptual framework of how legal work is done" rather than on legal "subjects"⁸. In a nutshell, the PCLL should be training students in know-how rather than in knowing, and it should do so systematically and coherently, through a problem-centred rather than a subject-centred programme. In doing so, it should use "innovative teaching methods" that include "learning by doing"⁹.

Whilst curriculum reform by a piecemeal approach has long been in progress, prompted by and in response to the consultants' visit, a curriculum re-design team was formed in June 2000 consisting experienced Hong Kong legal practitioners, and now full-time staff at the University of Hong Kong. The brief was to design a new PCLL with goals and methods that would be significantly different from those of the previous course. With the advice and assistance from a few international consultants who have had vast experience in the establishment

¹ Trainee Solicitor Rules (LHK Cap 159 sub leg J), Rule 7.

² Barristers (Qualification for Admission and Pupillage) Rules (LHK Cap 159 sub leg AC), Rule 4.

³ The Steering Committee on the Review of Legal Education and Training in Hong Kong, *Report of the Consultants, Legal Education and Training in Hong Kong: Preliminary Review* (Hong Kong: The Steering Committee on the Review of Legal Education and Training in Hong Kong, 2001).

⁴ RLET, p. 200.

⁵ RLET, pp. 201-202.

⁶ RLET, pp. 193-194.

⁷ RLET, p. 185.

⁸ RLET, p. 538.

⁹ RLET, p. 358.

and design of similar professional legal education programmes¹⁰, a reform proposal was drawn up which was considered and adopted by the Faculty in May 2001. A new full-year timetable was developed and many newly-devised learning activities were designed for the launch of the new PCLL in September 2002.

II. GOALS OF THE NEW PCLL

There are two basic goals for the new PCLL. The first is to produce students who are competent in specific legal practice skills. The second is to produce students who are able to learn new skills after they start legal practice. The first goal can be loosely referred to as “specific skills”; the second, future or “transferable skills”.

In declaring what it requires from the PCLL, the Law Society of Hong Kong has taken this idea of specific and transferable skills on board. In its Position Paper on Legal Education and Training¹¹, the Law Society proclaims that the PCLL should:

- (a) prepare students for general practice by equipping them with the basic skills to perform with competence legal work in specified fields; and
- (b) provide students with a general foundation for subsequent practice by equipping them with basic skills to develop new competencies in response to employer and client needs.

These goals are reminiscent of goals used around the English-speaking world. The aim of the English Legal Practice Course, for example, is to “prepare students for practice and to provide a general foundation for future practice”¹².

The Bar Council of England and Wales has professed a similar view. In announcing how it would evaluate institutions’ applications to validate the English Bar Vocational Course (BVC), it said:

The main criterion for the evaluation of a proposed BVC, offered by an institution seeking validation, is that a student who has successfully completed it should possess a framework of essential and transferable skills for competent practice in the first few years in private practice at the Bar. The BVC aims to produce people ready to undergo and take full advantage of the further training experiences offered by and during pupillage¹³.

What should the new PCLL programme actually do to achieve these goals? To answer this question, two concepts borrowed from educational research have been shown to be useful: problem-solving and transfer of learning.

¹⁰ As recommended by the RLET in relation to the proposed LPC, p. 358.

¹¹ The Law Society of Hong Kong’s Position Paper on Legal Education and Training, September 2001, online: http://www.hklawsoc.org.hk/pub_e/news/submissions.asp (25 April 2006).

¹² RLET, p. 429.

¹³ The General Council of the Bar Validation Steering Committee, Application Procedure To Be Validated To Offer The Bar Vocational Course, Course Specification Guidelines, London, 29 September 1995, p. 4.

III. PROBLEM-SOLVING AND TRANSFER OF LEARNING

Problem-Solving

Legal problem-solving has the same elements as problem-solving generally. This is evident in the description of problem-solving provided by French and Rhoder¹⁴ – solving a problem, they say, can mean identifying a way out of a difficulty, a way around a stumbling block, or attaining a goal that was not immediately understandable.

In problem-solving, the task is to resolve a known predicament. Decision-making is part of problem-solving. Many decisions are made in solving a problem. With decision-making, there is the recognition that the problem exists and there are alternatives to be considered. The task is to choose the best option, and the end result is a response or a solution to the problem. Described this way, problem-solving is very much the central task of a lawyer.

If effective problem-solving is what law students are required to be able to do, how problem-solving is analysed is critical to curriculum design. Problem-solving can, for example, be analysed as requiring interlocking prerequisites. Soden¹⁵ observes that like a pair of scissors, an effective approach to problem-solving needs two blades that work together – knowledge and skills.

First, problem-solving involves the application of relevant knowledge. The scope and complexity of the knowledge required vary from one problem to another. How knowledge is organised, analysed and represented in one's mind is a fundamental component of problem-solving¹⁶.

Second, problem-solving requires skills. Simon reminds us that although we may have the relevant knowledge to solve a problem in a given situation, this does not guarantee that the knowledge will be accessed and applied when needed¹⁷. Failure to use knowledge to solve problems may be the result of a lack of understanding of the conditions under which certain knowledge should be used. We need the skills to access appropriate knowledge and the skills to comprehend the conditions under which certain knowledge should be used.

Simon believes problem-solving skills can be learnt systematically. Although the knowledge and skills underlying problem solving may be thought to be distinct from one another, they are in fact inseparable in the course of problem-solving. Relevant skills and knowledge should be learnt in an integrated fashion. Designers should therefore take care not to overstate the teaching of generic skills segregated from context-specific knowledge in the expectation that those skills will almost automatically work in a variety of contexts.¹⁸

¹⁴ J. French and C. Rhoder, *Teaching Thinking Skills: Theory and Practice* (New York: Garland Publishing, 1992), p.152-153.

¹⁵ R. Soden, *Teaching Problem Solving in Vocational Education* (London: Routledge, 1994), pp. 33-44.

¹⁶ See R. Glaser, "Education and Thinking: the Role of Knowledge" (1984) 39 *American Psychologist* 93.

¹⁷ H. A. Simon, "Problem Solving and Education" in D. T. Tuma and F. Reif (eds), *Problem Solving and Education: Issues in Teaching and Research* (New Jersey: Lawrence Erlbaum Associates Publishers, 1980), pp. 81-96.

¹⁸ D. N. Perkins and G. Salomon, "Are Cognitive Skills Context-Bound?" (1989) *Jan-Feb Educational Researcher* 16, 23.

Transfer of Learning

Learning to solve specific problems in specific contexts such as civil and criminal litigation or commercial and property transactions is by no means the whole story. If it were, there would hardly be a need for professional legal education. Practical experience in a law office or chambers would arguably be superior to the PCLL as it would involve real, as opposed to merely realistic, problem-solving.

That is why PCLL needs to go beyond teaching specific skills to include “transferable skills”. Legal practice, like law, is constantly changing. Learning during one’s professional career takes many more years than does learning during formal legal education. Clients need lawyers who are adaptable enough to handle new types of problems. The essence of a good professional education – and its greatest challenge – is not only to train students in what is immediately relevant to their practice, but also to go beyond that and help them learn how to transfer their skills to new situations.

Bigge and Shermis¹⁹ note that “transfer of learning occurs when a person’s learning in one situation influences that person’s learning and performance in other situations”. If no transfer occurs at all, students would need to be taught each specific task that they are ever to carry out in any circumstance. Stevenson powerfully illustrates the importance of teaching transferable skills in vocational education:

In a changing world, people in most occupations are confronted with changes in their work. Accordingly, teachers and curriculum developers in vocational education are challenged to ensure that students learn to be adaptable... Adaptability is the ability to use existing knowledge in a new way. It consists in transferring knowledge from one situation to a new one... Evans has adduced evidence, in learning mathematics, that the more students learnt through discovery or discussion, the less they applied rules in an automatic and non-critical way, and the more they thought out the selection of the rule to apply.²⁰

In the context of professional legal education, Trail and Underwood²¹ believe that “the challenge for law schools is to develop a programme that exposes students to legal doctrine, teaches core lawyering skills of legal analysis and effective communication, and then gives students supervised experience in performing a reasonable range of lawyering tasks”.

While the role of transfer of learning cannot be overemphasised, the way in which a student acquires skills, knowledge and attitudes in a supervised and simulated learning environment at law school will almost for certain have a direct impact on his or her learning and performance outside at work. As C. H. Judd wrote more than 65 years ago in his classic text on educational psychology:

the most effective use of knowledge is assured not through the acquisition of any particular item of experience but through the establishment of associations which illuminate and expand an item of experience so that it has general value... the

¹⁹ M. L. Bigge and S. S. Shermis, *Learning Theories for Teachers* (New York: Harper Collins Publishers, 5th ed, 1992), p. 218.

²⁰ J. C. Stevenson, “Cognitive Structures for the Teaching of Adaptability in Vocational Education” in G. Evans (ed), *Learning and Teaching Cognitive Skills* (Australia: The Australian Council for Education Research Limited, 1991), pp. 144-163, 150.

²¹ W. R. Trail and W. D. Underwood, “The Decline of Professional Legal Training and a Proposal for Its Revitalization in Professional Law Schools” (1996) *Baylor Law Review* 201, 227.

preventive for the narrowness of school teaching and for lack of transfer is to be sought in the organisation of instruction in such a way that the learner will constantly be made to see the broad relations of items of experience.²²

Achieving transfer of learning is, as Judd says, about the “organisation of instructions” and all the techniques that go with it. For example, some legal educators believe strongly in “frameworks for skills”. They believe that designers should construct carefully designed frameworks for transferable skills such as writing, advising, drafting, research, negotiation and advocacy.²³ It can be argued that the more effectively a professional programme develops these frameworks, the more likely it is that the learner’s progress will accelerate at a faster pace after completion of the programme. As Professor Gary Blasi, an eminent professional legal educator, says,

The central question for law teachers is how best the early years of formal training can affect the later growth of competence. The learning afforded by formalised law training may have a dramatic effect on the rate at which lawyering competence increases in subsequent years of practice.²⁴

How can formalised legal education achieve this accelerated-learning effect in a way that practical experience cannot? While practical experience is unpredictable, formalised legal education at its best must be systematic and coherent. Thus, much depends on how that legal education is designed. Unlike the learning that comes from practical experience, the learning that occurs in a well-designed curriculum is planned and pre-meditated to achieve predictable outcomes. Better design leads to better outcomes, and the best outcome is developing the transferable skills that lead to accelerated learning.

IV. CURRICULUM DESIGN FEATURES OF THE NEW PCLL

Problem-Oriented Learning

“Problem-oriented learning” is not something new. As Barrows and Tamblyn put it, “The problems, not a set syllabus, provide the stimulus and framework for learning. Knowledge is acquired through self-directed study and small group discussions rather than through lectures.”²⁵

The new PCLL curriculum reflects such an emphasis. The curriculum consists of two components. The first is called “contentious”, the other is “non-contentious”. Such a demarcation is based on the nature of the legal work undertaken by lawyers in Hong Kong. Generally, lawyers in Hong Kong undertake two types of legal work. The first type of legal work undertaken is “contentious” in nature. These mainly involve civil and criminal litigation. A series of legal problems are designed on the drafting of pleadings and affidavits for use in litigation, and many court advocacy practices. These legal problems facilitate students’

²² C. H. Judd, *Educational Psychology* (Boston: Houghton Mifflin, 1939), pp. 500, 509.

²³ See RLET, Appendix F, pp. 395-405.

²⁴ Gary Blasi, “Teaching Lawyering as an Intellectual Project” (1996) 14 *The Journal of Professional Legal Education* 6566.

²⁵ H. Barrows and R. Tamblyn, *Problem-Based Learning: An Approach to Medical Education* (New York: Springer, 1980) at 191.

learning of the law and practice of civil and criminal litigation in context to familiarise students with procedures and court documents in litigation practice.

The second type of legal work is “non-contentious” in nature and facilitates business transactions in Hong Kong such as property and commercial transactions. It includes a series of legal problems on drafting agreements for sale and purchase of land property, business joint ventures, share acquisitions and letters of advice on the effects of security documents. These legal problems facilitate student learning in practice areas such as conveyancing, probate and corporate in context.

The old PCLL followed an orthodox academic structure relying heavily on traditional lectures and tutorials. The RLET criticised such traditional methods because the small group sessions, in their view, can easily become “a review of the lectures rather than essentially an opportunity to acquire the skills of a practising lawyer.”²⁶

Whilst there are still lectures, at a reduced number, in the new PCLL, their functions are quite different from traditional ones. In the new PCLL, the lectures serve a variety of functions. Apart from equipping students with the core knowledge, legal and transactional, in different practice areas, lectures are being used to demonstrate how to apply such knowledge to solve practical legal problems and the necessary skills involved.

A mode of active learning is also encouraged. Students are expected to read cases and statutes assigned to them and conduct further legal research they consider necessary. Students learn the law and practice in context through those lectures and self-motivated studies with a view to solving legal problems presented to them in small group sessions.

In summary, the problem-oriented curriculum in the new PCLL should be able to strengthen students’ problem-solving skills which are crucial to their success in the legal profession. This deals with the criticism of “inadequate teaching and learning methods” in the RLET.

Skill-Learning

As HKU established the “old” PCLL at a time when Hong Kong was still a British colony, its curriculum largely mirrored the UK counterpart. It inherited the “knowledge-based” feature of the British professional legal education courses prevailing in the 1970s.

Radical changes have taken place in the UK professional legal education since HKU introduced the old PCLL in 1972.²⁷ For example, the UK Bar introduced a “skill-based” Bar Vocational Course in 1989. Similarly, the UK Law Society adopted a “skill-based” Legal Practice Course to replace the “knowledge-based” Law Society Finals in 1993. These represented developments of the so-called Legal Skills

²⁶ RLET, p. 179.

²⁷ For a historical account of gradual adoption of a “skill-based” educational philosophy by the professional education courses in Britain from 1970 to 1990, see N. Saunders, “From Cramming to Skills – The Development of Solicitors’ Education and Training Since Ormrod” (1996) 30 *The Law Teacher*, pp. 168-186.

Movement in the UK.²⁸ In other common law countries such as the United States, Canada and Australia, skills training in professional legal education took place much earlier.²⁹

Following the trend of “skill-learning” in professional legal educational courses in the UK and other common law countries, the new PCLL emphasises teaching of various legal and lawyering skills. The “non-contentious” practice areas focus on teaching such skills as document analysis, document drafting, letter-writing and negotiation. These skills are taught in the context of different practice areas such as conveyancing, probate and commercial practice. The “contentious” practice areas focus on teaching court advocacy, drafting of court pleadings, and opinion writing. The new PCLL teaches these skills in the context of civil and criminal litigation. These skills are largely the same as those recommended in the Marre Report (1988) of UK. The emphasis on skill-teaching is also a response to the RLET’s criticism of “unclear focus” in the old PCLL.

Programmed Instructions

In response to the RLET’s criticism of “lack of coherence”, the new PCLL adopted an approach of “programmed instructions” in its teaching methods. In the new PCLL, the HKU Law Faculty uses a significant number of “activity plans” (APs) as tools for teaching and learning. These activity plans comprise legal problems, instructions to students and notes to teachers. All APs are identical in their format. The activity plans lay down clear objectives so that students can know in advance what knowledge and skills they are expected to learn and practise before they come to class. Appendix A is a template for all APs currently in use in the new PCLL.

To facilitate and promote skill transfer in the APs, the new PCLL also prepares “skills guides” in different practice areas so that students know the objective standards and criteria of the different skills expected of them. “Skills guides” are widely used in “skill-based” professional legal education courses in other common law countries and have proven to be useful tools for teaching legal skills.³⁰ Appendix B is the guide adopted for the skill of letter-writing.

The APs also integrate legal knowledge and legal skills. This “integrated” approach reinforces students’ skills in solving realistic legal problems, promoting more effective learning and retention of legal knowledge. For instance, students will learn joint venture laws more effectively if they have had the experience of drafting a joint venture agreement. However, they cannot draft a joint venture agreement properly if they do not acquire the skills of document drafting. By designing an activity plan on drafting of a joint venture agreement, the new PCLL “kills two birds with one stone”, teaching the students the legal knowledge in

²⁸ For an evaluation of the Legal Skills Movement in England, see J. Macfarlane, “The Legal Skills Movement Ten Years On: Triumph or Compromise” (1997) 24 *Journal of Law and Society* 440.

²⁹ For an overview of skill training in common law countries prior to 1990s, see S. G. Gullickson, “The Evolution of Skills Training” (1985) 3 *Journal of Professional Legal Education* 161.

³⁰ For example, the Legal Practice Course at Nottingham Law School, England use skills guides in their teaching. For more details on use of “skill guides” in that course, see S. Slorach and S. Nathanson, “Design and Build The Legal Practice Course at Nottingham Law School” (1996) 30 *The Law Teacher* 187 at 196.

joint venture laws and the legal skills of document drafting. The students should retain more legal knowledge by such an integrated approach, rather than learning through traditional lectures and tutorials.³¹

The activity plans also adopt a “building block” approach. For example, a series of activity plans is designed on preparation of loan documents, advising clients on the terms of specific loan documents, and enforcement of such documents to teach students the law of credit and security in context.

In the same activity plans, students learn the skills of document drafting, document analysis and letter-writing. In this way, students can build upon and integrate their knowledge and skills in one activity plan with what they learnt in preceding activity plans. Moreover, students can make attempts to transfer the skills and knowledge that they learn from one factual context to another. Such a “building block” approach creates a more “realistic” learning environment for students, building their legal knowledge and skills incrementally.

Finally, the new PCLL emphasises a feedback culture.³² In small group sessions, teachers give feedback to students either on their written work or oral presentations. This motivates students to learn and improve their performance. Students are also encouraged to give peer feedback on each other’s work in small group sessions.

Training Groups

The idea of the “training group” is another important design feature of the new PCLL. Traditionally, lawyers work as individual legal experts, but they are increasingly expected to work in teams, either with other lawyers or other professionals such as accountants. Moreover, they must communicate effectively with their colleagues, clients and judges in their legal practice.

The new PCLL divides students into groups of 16 (or less) based on different mixes of age, gender, education and working backgrounds. All students remain in the same group throughout the course. In other words, they meet the same group of students on a daily basis and work closely with one another. These training groups promote peer feedback, establish mutual support among students throughout the course, as well as enhance their interpersonal skills of teamwork and communication skills.³³

Similar training groups are used in professional legal education courses in other common law countries. They have proved to be effective in promoting group learning skills and building strong friendships within the training groups.

³¹ This argument is supported by research in the discipline of education. See P. Ramsden, *Learning to Teach in Higher Education* (London: Routledge, 1992) 148.

³² Feedback is widely recognised as an important component of professional educational courses in other common law countries. See, S. Slorach and P. Knott, “The Development of Skills Teaching and Assessment on the English Legal Practice Course – A Nottingham Law School Perspective” (1998) Vol. 14 (2) *Journal of Professional Legal Education* 189, 192.

³³ The abilities to communicate effectively and work cooperatively are generally regarded as “interpersonal skills” that lawyers should learn and acquire in their professional legal education. See *The Law Society of England and Wales, Training Tomorrow’s Solicitors* (London: Law Society, 1990) 11.

V. PROGRESS AND IMPLEMENTATION ISSUES

Involvement and Collaboration with Legal Profession

The effectiveness of legal education in Hong Kong will clearly be better ensured through mutual trust and understanding between HKU and the legal profession. Throughout the history of HKU's PCLL, the local legal profession has played an important role. In the old PCLL, members of the legal profession were mainly involved as honorary lecturers and external examiners through which standards were monitored. As the new PCLL represents the most important reform in postgraduate legal education in HKU since its inception in 1972, the legal profession is understandably concerned with the design and quality of the new course. To ensure the smooth running of and success in the reform, the HKU Law Faculty needs to work closely with the local profession on both the form and the content of the new PCLL.

The most important involvement of the legal profession in the new PCLL has been the establishment of an Academic Board. In early 2002, the HKU Law Faculty established an Academic Board to oversee the reform work of the new PCLL. Under the Academic Board, there are three sub-committees: the Admissions Sub-Committee, the Curriculum Sub-Committee and the Human Resources Sub-Committee, each overseeing an aspect of concerns.

The Board and the three sub-committees are widely represented. Apart from representatives of the HKU Law Faculty and two lay members, other members are all senior and respected members of the Judiciary, the Department of Justice and the two branches of the profession. Through this structure, the legal profession can give their input and participate more directly in the PCLL reform. To this end, the Academic Board plays an important role in promoting mutual trust and understanding among all stakeholders, without which the reform initiatives would inevitably have failed.

At this juncture, it may be worth noting that the two branches of the profession have set out their respective benchmarks for the new PCLL. The Law Society focuses more on skills, including problem-solving, applied legal research (including computer-aided), communication (including writing, drafting, interviewing, counselling, plain English), fact investigation and analysis, advocacy, litigation management and strategies, negotiation, legal analysis, organisation and management of legal work, recognising and resolving ethical dilemmas and ethical formation.³⁴

In addition to a focus on a different set of skills including legal research, fact management, opinion writing, conferencing, drafting, negotiation and advocacy, the Bar Association also emphasises knowledge of the law of evidence, civil remedies, criminal litigation and sentencing, professional ethics and conduct.³⁵

³⁴ The Law Society of Hong Kong, *Benchmarks for the PCLL*, 23 April 2002, available on authors' file.

³⁵ The Hong Kong Bar Association, *The Bar's Submission to the Academic Board on PCLL Curriculum Reform*, 27 March 2002, available on authors' file.

To resolve this, we have drawn on the English experience and introduced two specialist streams in the non-contentious module. In this module, whilst there will be some common small group sessions, there will also be streamed ones so that those opting for the Litigation Stream will gain further practice and experience in skills more pertinent to litigation practice.

On the front-line, practitioners now play a more active role in the new PCLL. They have been heavily involved in the design and delivery of the course. For instance, the small group exercises were designed jointly by the academic staff of HKU Law Faculty and outside practitioners in the courses of Civil Procedures and Civil Advocacy. In addition to full-time teachers, many experienced practitioners also participate in the new PCLL as part-time tutors in various subjects or as external assessors in the Civil and Criminal Advocacy courses.

Reform of Assessment Methods

As the new PCLL is developing into a more skill-based course, the HKU Law Faculty needs to reform its examining methods to reflect such change. As the Marre Report correctly asserts, practical skills need to be taught by using modern examining methods.

In terms of assessments, the new PCLL is moving towards an open-book format in most courses to reflect the change in course emphasis from one which is knowledge-based to one which is skill-oriented. A system is also now in place whereby some courses will be assessed not just by way of formal examinations, but also by continuous assessment.

However, with the strong emphasis on feedback – in particular, written feedback on coursework – and the increase in the number of continuous assessments, concerns on the ever-increasing workload on the full-time teachers have been repeatedly raised. How to strike the appropriate balance remains to be resolved. Moreover, there has been considerable debate over the most appropriate form of continuous assessments. Whether these should be performed under supervised conditions is far from settled.

Changing the Learning Culture of PCLL Students

In the years to come, the HKU Law Faculty needs to significantly change the learning culture of its PCLL students. There was criticism that Hong Kong law students could not learn law “pro-actively” and adapt to a “non-lecture-based approach to learning and teaching”.³⁷

Moreover, it was felt that “Hong Kong’s law graduates had for too long been ‘spoon-fed’ and could only acquire information by rote learning”.³⁸ As the new PCLL is based on students’ active learning, the HKU Law Faculty needs to effect a change in the learning culture of its PCLL students. In fact, active learning is one

³⁷ N. Gold, “Professional Legal Education For Tomorrow’s Lawyers: The Evolution of the Postgraduate Certificate in Laws at the City Polytechnic of Hong Kong” (1991) Vol. 9 (1), *Journal of Professional Legal Education* 45, at 53.

³⁸ *Ibid.*, at 47.

of the essential skills that students must acquire for their success in the “new” PCLL and for their future legal careers. As the RLET rightly pointed out,

... if the legal education and training system is to meet the challenges of legal practice and the needs of Hong Kong society into the 21st century, and is to be one which equals best international practice, the aim of learning and learning in law should be to have students engage actively with the course material so that the learning experience is one of active and not passive learning.³⁹

In this regards, the reform experience of the Commercial Law and Practice course of the old PCLL gives reasons for optimism. The Commercial Law and Practice course was re-designed in the late 1980s based on principles of problem-solving and skill-learning. It was well received by students and has remained one of the most popular courses over the years.⁴⁰

The new PCLL curriculum is centred on realistic legal problems and the use of training groups which serve as catalysts in effecting a change of the learning culture from passive to active learning. In fact, the experience of the new PCLL in the past two years confirms that such a change of learning culture is attainable. As Professor Michael Wilkinson, the former Head of Professional Legal Education Department of HKU, recently pointed out, students are generally receptive to the new style of teaching. Most of the students are keen to participate in classes and class atmosphere has become livelier. These trends reflect that the new teaching methods introduced by the new PCLL are successful in inducing a change in student learning culture.⁴¹

Training of PCLL teachers

In order to enhance teaching skills of tutors for the new PCLL, the HKU Law Faculty has organised a number of “train the trainers” workshops. In these “learning-by-doing” workshops, new skills required of teachers in the new PCLL and the techniques of leading small group discussions were shared and practised. For example, the HKU Law Faculty invited Professor Philip Knott, Department Head of Professional Legal Studies, Nottingham Law School, England, to conduct training sessions for its teachers on skill-based teaching in October 2003. Similarly, Professor Judith Smith, former Director of Professional Legal Education and Training programme at University of Queensland, Australia, conducted training sessions on skill-teaching for PCLL teachers a year before Professor Knott’s visit. The most recent series was conducted by Professor Sarah Nield of the University of Southampton in November 2005.

In some workshops, specific teaching skills were demonstrated by expert trainers. For instance, a team of specialist advocacy trainers from the Australian Advocacy Institute conducted a series of workshops in April 2004 for local practitioners who acted as tutors in the PCLL advocacy course. The series have been repeated earlier this year, not only for the PCLL tutors but also for officials

³⁹ RLET, p. 162.

⁴⁰ For more details of the design of the Commercial Law and Practice course, and survey of students’ responses to the course, see N. Nathanson, “Developing Legal Problem-solving Skills” (1994) Vol. 44 (2), *Journal of Legal Education*, 215, at 220-231.

⁴¹ M. Wilkinson, Updates on the PCLL Reform, *Faculty of Law Newsletter* (2004 Spring), p. 3-4.

of a few government departments. The attendance at these “train the trainers” workshops has been consistently high, demonstrating the tutors’ commitments to the new PCLL and their perceived usefulness of the training. Constant and up-to-date training for PCLL teachers will remain a priority in the years ahead.

VI. SETTING THE RESEARCH AGENDA ON STRUCTURED FEEDBACK – COLLECTION OF QUALITATIVE, QUANTITATIVE & ETHNOGRAPHIC DATA

The new problem-oriented and skill-based teaching methodology has been practised in the PCLL for about four years. The HKU Law Faculty believes that now the time is ripe to conduct a more in-depth study of its implementation issues, challenges and implications. The broad aim of this research is to reflect on the four-year experience in problem-oriented learning from legal and pedagogical perspectives, and to provide guidelines to shape future reform directions. The objectives of this research are:

- (a) To investigate whether and how problem-based learning helps students acquire practical legal skills more effectively than traditional knowledge-based method;
- (b) To evaluate whether and how the students employ the framework of legal skills towards a more holistic and coherent understanding of the problems presented;
- (c) To assess whether, and to what degree, students’ individual level of commitment and involvement increased as compared to traditional knowledge-based format; and
- (d) To explore whether, and to what degree, the continuous and end-of-semester skills assessments (which count towards students’ final mark) are consistent with both the course objectives and the activities new trainees or pupil-barristers need to be able to perform.

To effectively integrate problem-oriented learning into professional legal education, the teachers must be familiar with both the content (ie. the legal knowledge and practical legal skills regarding various practice areas) as well as pedagogical knowledge. Hence, the teachers must acquire an in-depth understanding of the method of designing a problem-based curriculum. From the students’ perspective, they are being involved and exposed to various advantages, challenges as well as barriers put in place by the new method.

Much time and effort must be invested by both teachers and students in order to cope with the new learning methodology. The new learning environment is neither structured nor organised in line with the students’ pedagogical experiences in the undergraduate LLB degree, as the LLB is still taught using traditional teaching methods, which are very much knowledge-based and subject-oriented rather than skills-based.

In light of these issues, the following research plan and methodology have been designed in the context of the salient and unique features of professional legal education in Hong Kong.

Sampling Method

To adequately cover both the teachers' and students' perspectives, and to compare and contrast their experiences at different stages of the learning process, the sample for this study comprises:

- PCLL teachers (full-time faculty and part-time tutors);
- current PCLL students;
- new trainee solicitors and pupil-barristers who had recently completed the PCLL; and
- employers of the trainee solicitors and masters of the pupil-barristers.

Questionnaires, Focus Groups and In-depth Interviews

Questionnaires based on the characteristics of skill-based and problem-oriented learning will be sent to all the current PCLL students at different stages. A template of the questionnaire is annexed to this paper as Appendix C.

In addition, different types of data from five focus groups (each focus group comprises four to five recent PCLL graduates) will be collected and analysed. We will carefully select a balanced sample of PCLL graduates coming from different jurisdictions. The focus groups will be conducted within six months of the commencement of their traineeship or pupillage. The impact, benefits and challenges of skill-based learning, the students' attitude towards the modes of assessment (in particular the mid-term assessment of skills), and the effectiveness of the programme in equipping them for traineeship and pupillage will be explored.

In-depth interviews with the employers of our PCLL graduates will also be conducted. In addition, the PCLL teachers will participate in this research by observing and documenting the students' performance and behavioural pattern, as they engage the students in the learning process and interact with them in classes. As Gill and Johnson⁴² put it succinctly:

In ethnography, the focus is on the manner in which people interact and collaborate in observable and regular ways... So, while a wide portfolio of data collection methods may be used, ethnographers usually place more emphasis on observation and semi-structured interviewing than on documentary and survey data, although both have frequently been used in ethnographic studies generally as supplementary material.

Hence, it is very hard to define ethnography as a single mode of gathering information, since it usually "entails the varying application of a battery of techniques so as to elucidate the subjective basis of the behaviour of people".⁴³

Combining the quantitative, qualitative and ethnographic methodologies, the design of this study is shaped by the literature.⁴⁴ We have consulted the key

⁴² J. Gill and P. Johnson, "Ethnography: Its Origins and Practice" in *Research Methods for Managers* (2nd ed), p. 97.

⁴³ J. Gill and P. Johnson, "Issues in Ethnographic Research" in *Research Methods for Managers* (2nd ed), p. 113.

⁴⁴ M. Hammersley and P. Atkinson (1995) *Ethnography: Principles in Practice* (2nd ed); S. Hannabus (2000), "Being there: ethnographic research and autobiography", *Library Management*, Vol. 21 (2), pp. 99-106; C. Glesne and A. Peshkin (1992) *Becoming Qualitative Researchers: An Introduction*; R.L. Kahn and C.F. Cannell (1967), *The dynamics of interviewing: Theory, Technique and Cases*; D.

literature on the research methodologies to be adopted in the present study. Hopefully, the analysis of the findings in this study will generate significant insights and discoveries.

On one hand, we will review the PCLL's benchmarks with regard to students' learning, teaching and assessment methods in response to the findings. On the other hand, we will report the research results in the form of conference papers and journal articles in order to contribute to the development of the international trends and practices of professional legal education.

VII. CONCLUSION

Changes in the legal profession are creating the demand for a significant re-examination of our current practices in professional legal education. One vital factor in guiding changes along the continuum of professional legal education is the development of new pedagogical devices based on a general framework for legal practice to achieve a skill-based programme. In the past decades, legal education has formulated a well-developed pattern of training activities created to produce competent lawyers. The system begins with a law degree (LLB, JD or CPE), followed by the PCLL, continuing with pupillage or solicitor traineeship, and merging into a lifetime of continuous professional development. Demands on the legal education system, which have been accelerating in recent years, create the present opportunity to conduct empirical research and reflect on substantive issues about current practices of professional legal education.

It is hoped that solid empirical work will help articulate principles that will guide our efforts and process of reform. The innovative approaches to reform must cover a wide range of essential legal skills, have a direct relationship to legal practice, and produce effective results in a reasonable period of time. In this respect, the legal profession's participation in both the design and the delivery of the programme is fundamental. The greater its participation, the more likely it is that the programme will be successful.

Shaffer, J. Gordon and N. Bennett (2004), "Learning, Testing, and the Evaluation of Learning Environments in Medicine: Global Performance Assessment in Medical Education", *Interactive Learning Environments*, Vol. 12 (2), pp. 167-178.

APPENDIX A – AP Template

Time [eg 9:30am to 10:30am]

Week [1/2/3..]

Day [1/2/3..]

Module [C/NC]

Group Format [LG, SG, SGx2, SG/2, 1t1]

Skill [Writing/problem-solving]

Context [Conveyance/Commercial/Joint Venture ...]

Objective(s)

- 1.
2. a
 b
 i

Preparation

1. [Read...] [with links]
2. [Prepare exercise below]

Activity

- 1.
- 2.

Notes and Exercises:

From here to the end of plan for teachers only

Preparation

[same as for students/read and prepare instruction below]

Resources

[book video camera / make transparencies from student assignments as described below /bring pink handouts – secret instructions for X and Y]

Instructions

[time allocation and tasks to be completed]

Notes

[on legal/procedural knowledge/skills/ethical issues; reminders]

Primary Author(s)

Contributing Author(s)

APPENDIX B – Sample Skills Guide

1. Meets the client's goals and carries out the client's instructions
2. Addresses all relevant facts.
3. Addresses all relevant legal issues.
4. Analyses options with a view to recommending the most effective option(s).
5. If necessary, recommends a solution and outlines an action plan.
6. The letter is organised logically.
7. Each paragraph is organised logically
8. Uses smooth transitions between paragraphs.
9. Uses correct grammar.
10. Uses correct spelling.
11. Is succinct.
12. Is precise.
13. Is clear.
14. Uses language appropriate to the reader.
15. Adheres to formal and informal conventions.
16. Overall, maintains a standard of care which does not prejudice or potentially prejudice client's interests.

APPENDIX C – Questionnaire Template

**(For the Contentious Semester)
SURVEY OF HKU PCLL GRADUATES
THE QUESTIONNAIRE**

Section 1: Substantive law

Indicate by putting a cross [X] in one of the options whether you can apply the following aspects of substantive law.

I can apply ... (the first aspect of substantive law):

Strongly disagree	Disagree	Not sure	Agree	Strongly agree
-------------------	----------	----------	-------	----------------

I can apply ... (the second aspect of substantive law):

Strongly disagree	Disagree	Not sure	Agree	Strongly agree
-------------------	----------	----------	-------	----------------

Section 2: Procedural law

Indicate by putting a cross [X] in one of the options whether you can apply the following aspects of procedural law.

I can apply ... (the first aspect of procedural law):

Strongly disagree	Disagree	Not sure	Agree	Strongly agree
-------------------	----------	----------	-------	----------------

I can apply ... (the second aspect of procedural law):

Strongly disagree	Disagree	Not sure	Agree	Strongly agree
-------------------	----------	----------	-------	----------------

Section 3: Basic skills required of legal practitioners

Indicate by putting a cross [X] in one of the options whether you can perform the following basic skills required of legal practitioners.

I can apply ... (the first basic skill):

Strongly disagree	Disagree	Not sure	Agree	Strongly agree
-------------------	----------	----------	-------	----------------

I can apply ... (the second basic skill):

Strongly disagree	Disagree	Not sure	Agree	Strongly agree
-------------------	----------	----------	-------	----------------

Overall, the PCLL course equips me with sufficient basic drafting skills for traineeship or pupillage.

Strongly disagree	Disagree	Not sure	Agree	Strongly agree
-------------------	----------	----------	-------	----------------

Section 4: Legal ethics

Indicate by putting a cross [X] in one of the options whether you can apply the following principles of legal ethics to problems in legal practice.

I can apply the relevant provisions of the Bar Code, Solicitors' Guide and common law related to an advocate's duties to the lay client and the public.

Strongly disagree	Disagree	Not sure	Agree	Strongly agree
-------------------	----------	----------	-------	----------------

I can apply the relevant provisions of the Bar Code, Solicitors' Guide and common law related to an advocate's conduct before trial.

Strongly disagree	Disagree	Not sure	Agree	Strongly agree
-------------------	----------	----------	-------	----------------

I can apply the relevant provisions of the Bar Code, Solicitors' Guide and common law related to an advocate's conduct in court.

Strongly disagree	Disagree	Not sure	Agree	Strongly agree
-------------------	----------	----------	-------	----------------

I can apply the relevant provisions of the Bar Code, Solicitors' Guide and common law related to an instructing solicitor's relationship with the Bar, other solicitors and third parties.

Strongly disagree	Disagree	Not sure	Agree	Strongly agree
-------------------	----------	----------	-------	----------------

Professional Conduct should be taught as a discrete subject, not as part of all other PCLL courses.

Strongly disagree	Disagree	Not sure	Agree	Strongly agree
-------------------	----------	----------	-------	----------------

Professional Conduct should be taught as part of all other PCLL courses, not as a discrete subject.

Strongly disagree	Disagree	Not sure	Agree	Strongly agree
-------------------	----------	----------	-------	----------------

Professional Conduct should be taught both as a discrete subject and as part of all other PCLL courses.

Strongly disagree	Disagree	Not sure	Agree	Strongly agree
-------------------	----------	----------	-------	----------------

Section 5: The value of problem-oriented learning

Indicate by putting a cross [X] in one of the options whether you think problem-oriented learning (as practiced in the PCLL) helped you to acquire practical legal skills more effectively than the learning you experienced in other law courses.

Problem-oriented learning helped me acquire practical legal skills more effectively than the learning I experienced in other law courses.

Strongly disagree	Disagree	Not sure	Agree	Strongly agree
-------------------	----------	----------	-------	----------------

The framework of legal skills presented in the PCLL has helped me to solve practical legal problems better than knowledge and information from other law courses.

Strongly disagree	Disagree	Not sure	Agree	Strongly agree
-------------------	----------	----------	-------	----------------

My level of commitment in the PCLL was greater than my level of commitment in other law courses.

Strongly disagree	Disagree	Not sure	Agree	Strongly agree
-------------------	----------	----------	-------	----------------

My level of involvement in the PCLL was greater than my level of involvement in other law courses.

Strongly disagree	Disagree	Not sure	Agree	Strongly agree
-------------------	----------	----------	-------	----------------

The various assessments for the PCLL were consistent with the objectives of the course.

Strongly disagree	Disagree	Not sure	Agree	Strongly agree
-------------------	----------	----------	-------	----------------

The various assessments for the PCLL were consistent with activities which new trainees or pupil-barristers are expected to perform.

Strongly disagree	Disagree	Not sure	Agree	Strongly agree
-------------------	----------	----------	-------	----------------