

## **LEGAL EDUCATION AND TRAINING REVIEW**

### **Evidence in Response to Discussion Paper 01/2012**

#### **from Kent Law School**

##### **Introduction**

1. The Discussion Paper calls for evidence in relation to a range of issues in the regulation of legal education and training. This response focuses on our area of expertise, that is, regulation of the Qualifying Law Degree (QLD).
2. We note at the outset that there is a danger in linking 'education' and 'training' together under one rubric that the former will be read through the latter. As providers of education, we do not understand ourselves to be primarily focused on preparing students for training and professional work. Rather, it is our strongly-held view that the purpose of the LLB is to provide a critical legal education, whether or not any individual student subsequently goes on to practise as a lawyer. As such, we believe it is important to maximise the options available within a QLD, so that students are able to obtain the broadest possible legal education. This is in the interests of all students, whether they ultimately proceed to legal practice, go on to work in a law-related field, or use the broad knowledge and skills they have acquired in the course of their degree in an unrelated area. In the case of those who do practise law, is also in the interests of the legal profession.

##### **The Standard of Writing**

3. We share the concern expressed by some respondents, as noted in para 63 of the Discussion Paper, about the poor standard of writing of many undergraduates. We agree that matters such as the use of formal language, letter writing and note taking should be specifically addressed during lawyers' professional training. However we are also of the view that the academic stage should provide students with opportunities to develop their writing skills through a variety of forms of coursework assessment. Students who have the opportunity to write in a sustained way and to receive detailed feedback on their writing (including their written expression) are likely to emerge with more advanced writing skills than those who are assessed solely by means of examination.

##### **Legal Ethics**

4. The Discussion Paper devotes three of the seven paragraphs under the heading of 'Knowledge and skills gaps' to discussion of the place of ethics in undergraduate studies (paras 65-67). We take the view that it is not appropriate to teach codes or rules of professional ethics as a compulsory part of an academic degree course. Specific professional codes and rules are more appropriately taught at the professional training stage, although in some instances knowledge of and compliance with ethical rules may be required where this is appropriate to the nature of the law student's study, such as where the student is undertaking a clinical module or otherwise engaged with clients.

5. Para 66 the Discussion Paper refers to the Australian Learning and Teaching Academic Standards (LTAS) project in law and the set of six Threshold Learning Outcomes that has come out of it with TLO2 being the statement on 'Ethics and Professional Responsibility'. While we agree that some of what is suggested under TLO2 represents a 'sophisticated view of the content' of potential learning outcomes in this area, it also contains some proposals and language we would not wish to support for undergraduate legal education in England and Wales. For example, TLO2(d) – 'a developing ability to exercise professional judgement' – sounds more appropriate to the professional training stage than to the undergraduate law degree, as opposed, for example, to 'a developing ability to exercise judgement' more generally, which is an important generic skill which the academic stage should promote. Similarly, TLO1(c) includes 'an understanding of the professional codes of conduct, and the ethical rules and responsibilities of the legal profession', which we would again consider inappropriate for the undergraduate law degree. The Australian position must be interpreted in light of the fact that the undergraduate LLB in Australia is a four-year degree and the separate professional training stage is much shorter than in England and Wales, resulting in rather different requirements for the QLD there than in this jurisdiction.
6. This is not to say, however, that the only alternative at the academic stage is what the Discussion Paper terms 'the ethics and values of law as such'. There is a third alternative, which would include discussion of the moral principles that must be presupposed by any account of legal ethics and debate about whether and how such principles should be adhered to by lawyers. It could also include discussion of topics that are usually taken to form the subject of legal ethics, such as conflicts of interest, integrity, confidentiality, honesty, protection of a client's interests, upholding of the rule of law and human rights, etc. All of these subjects can be discussed in an informed and critical way, taking into account various academic arguments about how and which principles should form part of professional legal ethics. In the course of such discussion, students would be developing their moral reasoning skills and the transferrable skills of argumentation and analytic reasoning and discussion, as well as extending their knowledge of a particular subject matter, namely the (academic) subject of legal ethics. Kent Law School (KLS) is about to introduce an optional module titled 'Legal Ethics: Exploring the Ethics of Lawyers and Lawyering', which covers these topics, and will be taught by Dr Eleanor Curran. Dr Curran would be more than happy to discuss this module further with members of the research team (email [E.A.Curran@kent.ac.uk](mailto:E.A.Curran@kent.ac.uk)).
7. We also note that subjects including the relationship of morality to law, the relationship of justice to law, theories of justice, moral theory and many other relevant, related subjects and issues, are currently taught in a wide variety of courses offered within the LLB curriculum at KLS.

### **Critical Reasoning Skills**

8. With reference to para 68 of the Discussion Paper, we consider that the development of critical reasoning skills should form part of the requirements for the QLD. At KLS, the aims of the LLB programme include: 'To develop general critical, analytical and problem-solving skills which can be applied to a wide range of different legal and non-legal settings'. Specified programme outcomes include:

*General transferrable intellectual skills*

Demonstrate an independence of mind and an ability to critically challenge received understandings and conclusions.

*Subject specific skills*

Critically evaluate an area of law both doctrinally and in terms of its socio-economic and other consequences.

**Business and Commercial Awareness**

9. The perceived need to develop basic business and commercial awareness at various stages in training is referred to in para 69 of the Discussion Paper. Again, we would take the view that it would be inappropriate to make this a compulsory component of the academic stage, as it unjustifiably presupposes one possible trajectory for a student's future career which may in fact follow a wide range of options. Business and commercial awareness will, of course, be addressed in particular modules where it is necessary, and may also be acquired by students through extra-curricular activities, but this should be something available to students as appropriate rather than uniformly required for all.

**The Numbers Game**

10. Para 70 of the Discussion Paper refers to increasing competition for traineeships and pupillages, and the existence of 'few effective limits on the numbers of students admitted to undergraduate law courses, GDLs, LPCs or BPTCs'. In line with our view of the LLB degree outlined above, we are strongly of the view that no limitations should be placed on the numbers of students admitted to undergraduate law courses. Graduates of these courses do not necessarily go on to practise law, and it would be unfair and inappropriate to restrict numbers at this level based on the needs of a profession which students may not ultimately wish to join. Indeed, students who intend to enter a law-related field, or one in which a law degree is considered to be a desirable qualification, would be severely disadvantaged by restrictions on the number of entrants. On the other hand, any attempt to restrict the number of QLDs while leaving non-qualifying LLBs open would present major administrative difficulties for universities. Presumably, too, any restrictions could only apply to home/EU students. In a global education market, this may have the perverse effect of making UK LLB degrees more accessible to overseas than to local students.

**Study Abroad Options**

11. It is our view that students gain enormously from the opportunity to study abroad as part of their undergraduate degree programme, and also that graduates with a broader undergraduate education incorporating culturally diverse experiences are of benefit to the legal profession. We are concerned, however, that such programmes, usually involving an additional year of study, will be at risk in the new, high fees environment in higher education. Accordingly, we would very much welcome as an outcome of the review any regulatory proposals that would serve to encourage and support this form of experience as part of the undergraduate law degree.

**Conclusion**

12. In summary, paying attention to outcomes and skills rather than simply the prescription of content seems to us to be appropriate in the 21<sup>st</sup> century educational context, although this requires careful development, and avoidance of the substitution of prescribed content coverage by a long list of prescribed skills coverage. We think it is right that regulation of the QLD should remain 'light touch', in recognition that our purpose is education rather than training, and precisely because many, of not most law graduates will not become professional lawyers. There is a wide continuum of graduate destinations from legal practice through to employment that draws entirely upon the skills and competencies rather than the content gained from a law degree. We need to cater to the breadth of this continuum rather than directing our concerns exclusively towards one end of it.

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