

FIRST SOUTHEAST ASIAN CLINICAL LEGAL EDUCATION TEACHERS' TRAINING
JANUARY 30 – FEBRUARY 3, 2007
MANILA, PHILIPPINES

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ATENEO LAW SCHOOL

**FIRST SOUTHEAST ASIA
CLINICAL LEGAL EDUCATION
TEACHER TRAINING**

M A T E R I A L S

Days 1 & 2 (*January 30 and 31, 2007*)

MANILA, PHILIPPINES
JANUARY 30 – FEBRUARY 3, 2007

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Training Programme/Agenda

DAY 29th Jan	Arrival
DAY 1 30th Jan	Teaching CLE Skills – Interviewing and Counseling Day Coordinator: Bruce Lasky
08:30 09:00	Session I: Introduction to Training and CLE General Overview (Mariana Berbec-Rostas)
09:00 09:45	Session II: Introduction into CLE Methodology (Bruce Lasky and David McQuoid-Mason) Learning Pyramid Structure Clinical Teaching Methods Preparation of a Lesson Plan: Elements of Effective Clinical Law Lesson Clinical Education Lesson Template CLE Lesson Plan Focuser Activity
09:45 10:00	Coffee Break
10:00 11:30	Session III: Demonstrative CLE Interview Lesson (Bruce Lasky) Demonstration Case Study: Domestic Violence and Child Abuse Interview – Exercise: Client Interview Role Play (Case of the Improper Interview) Active and Non-active listening Steps in the Interview Process Checklist on Statement-Taking Debriefing
11:30 11:45	Coffee Break

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11:45 13:00	<p>Session IV: Group Work on Developing a CLE Interview Lesson Plan</p> <p>Group Work on Developing a CLE Lesson Plan</p> <p>Participant Case Study: Child Neglect</p> <p>Interview Lesson Plan Template</p>
13:00 14:00	Lunch
14:00 14:45	<p>Session V: Group Presentation of a CLE Interview Lesson (Bruce Lasky)</p>
14:45 15:05	<p>Session VI: Groups' Presentations of CLE Interview Lesson Plans (Bruce Lasky)</p>
15:05 15:15	Coffee Break
15:15 16:30	<p>Session VII: Demonstrative CLE Counseling/Advice-Giving Lesson (Carlos Medina, Marlon Manuel)</p> <p>Counseling/Advice-Giving Skills Lesson Plan</p> <p>Demonstration Case Study: Domestic Violence and Child Abuse</p> <p>Types of Blockages Which Occur During Counseling Sessions</p> <p>Debriefing</p>
16:30 18:00	<p>Session VIII: Group Work on Developing a Counseling/Advice-Giving Lesson Plan</p> <p>Participant Case Study: Child Neglect</p> <p>Counseling/Advice-Giving Lesson Plan Template</p>
18:00 18:15	Coffee Break
18:15 19:00	<p>Session IX: Group Presentation Of A CLE Counseling/Advice-Giving Lesson (Carlos Medina, Marlon Manuel)</p>



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19:00 19:30	Session X: Groups' Presentations Of A CLE Counseling/Advice-Giving Lesson Plan (Carlos Medina, Marlon Manuel)
19:30 19:45	Wrap-up for Day 1
20:00	Welcome dinner

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DAY 2 31st Jan	Teaching CLE Skills – Alternative Dispute Resolution and Referral Day Coordinator: David McQuoid-Mason
8:30 9:00	Session I: Introduction into Alternative Dispute Resolution (David McQuoid-Mason)
9:00 10:15	Session II: Demonstrative CLE Negotiation Lesson (David McQuoid-Mason) Negotiation Demonstrative case study: Domestic Violence and Child Abuse Debriefing
10:15 11:45	Session III: Group Work on Developing a Negotiation Lesson Plan Participants Case Study: Child Neglect Negotiation Lesson Plan
11:45 12:00	Coffee Break
12:00 12:45	Session IV. Group Presentation of Negotiation Lesson (David McQuoid-Mason)
12:45 13:10	Session V: Group's Presentations of Negotiation Lesson Plans (David McQuoid-Mason)
13:10 14:00	Lunch
14:00 15:00	Session VI.: Demonstrative CLE Mediation Lesson (David McQuoid-Mason) Mediation Demonstrative case study: Domestic Violence and Child Abuse Debriefing
15:00 15:15	Coffee Break
15:15 16:45	Session VII.: Group Work on Developing a Mediation Lesson Plan Participant Case Study: Child Neglect



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	Mediation Lesson Plan
16:45 17:30	Session VIII: Group Presentation of Mediation Lesson (David McQuoid-Mason)
17:30 18:00	Session IX: Group's Presentations of Mediation Lesson Plans (David McQuoid-Mason)
18:00 18:15	Coffee Break
18:15 19:00	Session X: Referral (Bruce Lasky)
19:00 19:15	Wrap-up for Day 2

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DAY 3 1st Feb	Visits Day Coordinator: Carlos Medina
9:30 10:30	Introduction into CLE Practice and Evolution in Philippines, CLE Experience from other Southeast Asian Countries (Carlos Medina)
10:30 12:00	Visit I: to Ateneo Human Rights Center and Ateneo Law Centre and meeting with law students - interns
12:00 13:00	Lunch
13:00 14:00	Transfer from Ateneo (Rockwell, Makati) to the Office of the Legal Aid of the University of Philippines (Quezon City)
14:00 16:00	Visit II: Visit to the Office of the Legal Aid of the University of Philippines
16:30 18:00	Visit III : Visit to the SALIGAN (an alternative law group) and the Office of the Alternative Law Groups (ALG)
18:00 18:45	Visits Debriefing
19:00	Dinner
DAY 4 2 nd Feb	Street Law Day Coordinator: Marlon Manuel
9:00 9:45	Session I: General Introduction into Street Law and Street Law Teaching Methods (David McQuoid- Mason)
9:45 10:30	Session II: Street law Experience in South East Asia (Bruce Lasky)
10:30 11:00	Session III: Ice-breakers (Carlos Medina)
11:00 11:45	Session IV: Demonstration: Small Group Work – Introduction Human Rights (David McQuoid- Mason)
11:45 12:00	Coffee Break
12:00	Session V: Demonstration: Game - Why We Need Laws



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12:15	(David McQuoid- Mason)
12:15 13:00	Session VI: Demonstration: Taking A Stand Using Pres Formula: Capital Punishment (David McQuoid- Mason)
13:00 14:00	Lunch
14:00 14:45	Session VII: Group Work on Developing a Street Law Lesson Plan (Choosing a topic) (David McQuoid- Mason)
14:45 15:00	Coffee Break
15:00 16:30	Session VIII: Group Work on Developing a Street Law Lesson Plan
16:30 17:00	Wrap-up for Day 4



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DAY 5	Street Law
3rd Feb	Day Coordinator: Mariana Berbec-Rostas
8:30 9:15	Session I: Group I Presentation of Street Law Lesson (David McQuoid- Mason)
9:15 10:00	Session II: Group II Presentation of Street Law Lesson (David McQuoid- Mason)
10:00 10:15	Coffee Break
10:15 11:00	Session III: Group III Presentation of Street Law Lesson (David McQuoid- Mason)
11:00 11:45	Session IV: Group IV Presentation of Street Law Lesson (David McQuoid- Mason)
11:45 12:00	Coffee Break
12:00 12:45	Session V: Group V. Presentation of Street Law Lesson (David McQuoid- Mason)
12:45 13:00	Session VI: Debriefing (David McQuoid- Mason)
13:00 14:00	Lunch
14:00 14:45	Session VII. Practical Tips for Implementing Street Law Curriculum (Bruce Lasky)
14:45 15:00	Coffee Break
15:00 15:45	Session VIII. Establishing and Running Sustainable Clinic (Mariana Berbec-Rostas)
15:45 16:30	Wrap-up for Day 5 Training Wrap-up Certificates Evaluation forms
18:00	Farewell dinner
4th Feb	Departure

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About the Organizers

The Ateneo Human Rights Center

The Ateneo Human Rights Center of the Ateneo Law School, established in 1986, today pursues its mandate of protecting and promoting human rights through various programs and services. The AHRC is engaged in providing legal assistance, research and publication, law and policy reform advocacy, education and training, institution building, law school curriculum development and values formation and has a fully-developed desk on children's rights and special desks on the rights of women, migrant workers, and indigenous peoples.

The AHRC's internship program aims to form law students to be human rights advocates and to open them to the option of alternative law practice through exposure to grassroots life and human rights issues. At present more than 600 students from Ateneo law school and other partner law schools had joined the internship program. Most of the interns subsequently become volunteers to the other programs of AHRC including litigation of cases consistent with AHRC's objective of making justice accessible to human rights victims. A number of alumni interns are also in the field of alternative law practice.

Consistent with the AHRC's objective of providing access to justice, it maintains its strong ties with the Ateneo Legal Service Center (ALSC), the legal aid program of Ateneo Law School. The ALSC Cases involving human rights issues are handled by lawyers from AHRC assisted by volunteer students including those who have undergone the internship program. The ALSC is the successor of the then litigation program of the AHRC. ALSC seeks to strengthen further the involvement of student body in legal aid.

For more information please see <http://www.ateneo.edu/index.php?p=1126>

The Open Society Justice Initiative (the Justice Initiative)

The Open Society Justice Initiative, an operational program of the Open Society Institute (OSI), pursues law reform activities grounded in the protection of human rights, and contributes to the development of legal capacity for open societies worldwide. The Justice Initiative combines litigation, legal advocacy, technical assistance, and the dissemination of knowledge to secure advances in the following priority areas: national criminal justice, international justice, freedom of information and expression, and equality and citizenship. Its offices are in Abuja, Budapest, and New York.

Justice Initiative's *Legal Capacity Development* program is a cross-cutting program that aims to build legal capacity for open societies. It does so through the promotion of university-based legal aid clinics (clinical legal education - CLE) and community empowerment programs, as well as human rights fellowships worldwide within Justice Initiative's priority areas.

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Within the *legal aid clinics and community empowerment component*, the Justice Initiative – and its predecessor Constitutional and Legal Policy Institute (COLPI) - has directly supported the development, establishment, and sustainability of more than 75 university legal clinics in Central and Eastern Europe and former Soviet Union countries since 1997. Starting 2003, the Justice Initiative has been providing technical assistance and support to new legal clinics in Africa, Central America, South and Southeast Asia.

For more information, please contact Mariana Berbec-Rostas at mberbec@osi.hu or visit our webpage: www.justiceinitiative.org

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About the Facilitators/Trainers

Carlos P. Medina, JR.

(Ateneo Human Rights Center, Ateneo Law School, Manila, Philippines)

Carlos P. Medina, Jr. is the Executive Director of the Ateneo Human Rights Center (AHRC), which is based at the School of Law of the Ateneo de Manila University. AHRC is involved in efforts to set up law school-based human rights centers in the Philippines. He is also the Secretary General of the non-governmental Working Group for an ASEAN Human Rights Mechanism, a regional coalition of human rights advocates working for the establishment of an inter-governmental human rights system in Southeast Asia. He teaches Constitutional Law and International Humanitarian Law at the Ateneo Law School, and International Relations and Public Dispute Resolution at the Ateneo School of Government. He is also the Vice-Chairperson of the Department of International Law and Human Rights of the Philippine Judicial Academy of the Supreme Court, and previously served as defense counsel for detainees at the Manila City Jail. Carlos is a graduate of the Ateneo Law School, the London School of Economics and Political Science (University of London), and the Kennedy School of Government (Harvard University).

Marlon Manuel

(SALIGAN, Manila, The Philippines)

Marlon Manuel is the Executive Director of Alternative Legal Assistance Center, (SALIGAN). SALIGAN is a legal resource non-governmental organization doing developmental legal work with farmers, workers, the urban poor, women, and local communities. Founded in 1987, SALIGAN is one of the oldest and biggest members of the Alternative Law Groups, Inc. (ALG), a coalition of eighteen (18) law groups in the Philippines engaged in the practice of alternative or developmental law. SALIGAN is currently the convenor of the Alternative Law Groups and Marlon Manuel sits as Chairperson of the ALG Council. He is a Professor of Law at Ateneo de Manila University School of Law, a Professor at the College of Law, Pamantasan ng Lungsod ng Maynila (2004-2006) and a Professor at Ateneo de Manila University, Department of Development Studies (2002-2003). He received his Juris Doctor of Law from Ateneo de Manila University School of Law and a Bachelor of Science with a degree in Legal Management from Ateneo de Manila University, College of Arts and Sciences.

He has been an active member of the Philippine Bar since 1995.

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Bruce A. Lasky
(Bridges Across Borders, Chiang Mai, Thailand)

Bruce A. Lasky is a Founder and Director of the International Organization Bridges Across Borders (Bridges) and is the SE Asia Regional Director for Bridge's Community Legal Education Initiatives, which focuses on the development of university based clinical legal education programs. He is responsible for development and the initial implementation of the Pannasastra University of Cambodia Clinical Legal Education Program where he was based as an Open Society Justice Initiative Resident Legal Fellow in Phnom Penh, Cambodia. He has recently relocated to Chiang Mai, Thailand where he will be working as an Adjunct Professor of Law with Chiang Mai University to assist in the further development of their Clinical Legal Education program. As well, he has also been appointed an Adjunct Professor of Law at the Universiti Teknologi MARA in Malaysia to aid in the initiation of their Clinical Legal Education program. He is a graduate, of the Central European University Human Rights LLM program (Honors) and the University of Florida J.D. and BA Programs. He is a licensed member of the Florida Bar Association and a member of the Northern, Middle and Southern District of Florida Federal Bar Association. He was a criminal legal aid practitioner for the 8th Judicial Circuit Public Defenders Office, Gainesville/Starke/McClenney, Florida, from 1991-1999 where he was engaged in felony, misdemeanor, appeals and juvenile work, as well as supervising students from the University of Florida College of Law Clinical Legal Education Program.

Prof. David McQuoid-Mason
(Howard College, University of KwaZulu-Natal, Durban, South Africa)

David McQuoid-Mason is a James S. Wylie Professor of Law at the Univ. of KwaZulu-Natal, Durban and President of the Commonwealth Legal Education Association. He holds degrees of B Comm LLB (Natal), LL.M. (London), Ph.D. (Natal) and is a fellow of the Univ. of KwaZulu-Natal. He was a founder of the street-law programme in South Africa. He teaches in the fields of delict law, medical practice, HIV/AIDS and law, ADR and street law. He has published extensively in journals and co-authored several books in the fields of consumer law, medical law, legal aid, trial advocacy, women and children issues, and Street law. He also runs workshops for the development of legal skills teaching methods for clinical teachers across the continent and elsewhere and is on the editorial boards of several national and international law journals. He is director of Street Law South Africa.

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Mariana Berbec-Rostas
(The Open Society Justice Initiative, Budapest, Hungary)

Mariana Berbec-Rostas is the Junior Legal Officer for Legal Capacity Development program with the Justice Initiative. She coordinates the clinical legal education/community empowerment sub-program and focuses on human rights education, law teaching methodology, litigation skills development and non-discrimination. She holds a pedagogical degree from Cahul Pedagogical College (Moldova), a law degree from the State University of Moldova and an LL.M. in Comparative Constitutional Law/Human Rights from the Central European University (Hungary). Mariana Berbec completed an intensive course on teaching methods at the American University Washington College of Law (USA) and a practical training on anti-discrimination litigation organized by the INTERIGHTS and Netherlands Helsinki Committee. She has participated in and conducted teacher training workshops in the field of CLE since 2003.

DAY 1

Materials

Day Coordinator: Bruce Lasky

Session I: Introduction to Training and CLE General Overview

1. Clinical Legal Education: General Overview

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Legal Capacity Development Program Documents¹

INTRODUCTION

This paper intends to provide a general overview of clinical legal education (hereinafter also mentioned as "CLE"), as a concept of teaching law and social justice, is intended to introduce the reader into the aspects of defining CLE as a legal education methodology; it then identifies major goals of CLE programs in general and analyses rationale for establishing such programs; it also analyses major needs and challenges of running CLE initiatives at a law school; and the approaches and methodologies for establishing CLE programs. It concludes with pointing out the main elements of CLE concept and the benefits of such programs for law faculties, legal profession, and the society in general.

What is Clinical Legal Education?

Clinical legal education (CLE) is defined in many different ways throughout the world, and sometimes is defined differently at different law schools in the same country. As used here, the term "**clinical legal education**" is defined as an educational program grounded in an interactive

¹ Paper drafted by Mariana Berbec-Rostas, junior legal officer for CLE, with substantive contribution from Zaza Namoradze, Budapest office director and CLE program manager.

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and reflective teaching methodology with the main aim of providing law students with practical knowledge, skills, and values for the delivery of legal services and social justice.

Clinical legal education is a dynamic style of learning also described as "**experiential learning**" or "**learning by doing**". Students in clinical courses engage in actual lawyering experiences to understand first-hand what it means to be a lawyer. Learning occurs by working with real legal problems and experiences, either through direct client representation or through collaborating with various government or community agencies and organizations. Typically clinical courses consist of three components:

- A. **Planning Component:** students plan and prepare for actual experiences. This involves studying and learning theories of lawyering to understand what kind of techniques are used in providing legal services and what kinds of issues to consider when lawyering. It involves developing written case or project plans and simulating real life situations.
- B. **Experiential Component:** students perform lawyering skills or other practical activities (e.g. teach law to laypersons) in real circumstances under the guidance and supervision of a practicing lawyer or teacher.
- C. **Reflection Component:** students reflect upon their experiences and evaluate their performance. This process includes written reflection and self-evaluation exercises, peer review and critique, evaluation by supervisor.

The objectives of CLE are multiple – it aims at teaching theories of law, practical lawyering skills and professional responsibility, as well as introducing student to issues of social justice through their experience of lawyering for the disadvantaged groups. It lays a foundation for law students to carry with them throughout their professional careers as attorneys a greater sense of professional commitment to the ethics and values of public service. It provides needed legal services to the community outside of the law school in an almost limitless array of doctrinal areas of the law. It immerses the legal academy – both students and teachers – in the world as actors, not merely observers.

The key element to the implementation of CLE is to create a **legal clinic**, a law office run by students and their supervisors that is regulated by the same rules as those outside the law school. Legal clinics are usually linked to the law school as the base of operations. In some countries in



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Africa and Latin America, law offices based in the community providing free legal services are sometimes called "legal clinics". These offices are not included in the definition given above. A law school, on the other hand, may maintain an office in the community where students, teachers, alumni and other local volunteers provide legal aid. That office, because of its linkage to a law school, is included in our definition.

There is a multitude of university legal clinics based at and/or run by law schools. Their variety depends on multiple factors – both internal and external – that determine the model chosen. Depending on the location of practice provision, there are clinics that are based within the law school facilities - "*in-house*" clinics and clinics that are based elsewhere – *external* or "*out-house*" clinics. Some of the latter programs consist of (a) "externships", in which students work in a law office or in a government office under the supervision of a practicing attorney or public official, (b) "community" clinics, where student work directly in the communities, or (c) "mobile" clinics – when students visit the communities to provide legal advise to individual clients and/or to inform the community on a particular area of rights or to advice on certain type of legal problems and ways how to handle them.

If done within a law school, a clinical program may be based on real or hypothetical cases. In case the clinic provides legal services directly to clients, it is called "*life-client*" or *real-client clinic*. The provision of services in a "life-client" clinic ranges from education to legal counseling to legal representation. There are also "*simulation*" clinics – focused on role-playing and simulating real life situations to train students lawyering skills. In the latter clinics, real cases are used to conduct trainings, but students do not engage in client work themselves. In some clinics, even if students do not engage in direct client representation, they may provide other services – e.g. teaching in public schools and the community. One popular model of legal clinic, often referred to as *Street Law Clinic*, provides education on law and rights to secondary and high-school students and citizens outside of the law school. Some other clinics engage in citizenship teaching in a community setting – usually vulnerable/disadvantaged - while other clinics provide basic legal services with regards to every-day transactional rights - sale of land, the writing of wills, or the creation of a small business or non-for-profit NGO.

In all cases, the clinic will have (1) a component of teaching skills and values about lawyering and social justice (referred above as **planning component**); (2) a component of applying those

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skills in a practical setting (**practice component**), and (3) a part of reflecting and evaluating the practical experiences (**reflection component**).

In the most sophisticated clinical programs, students enroll in a clinical course of study for credit. They represent real clients while attending a simultaneous course of study within the law school that parallels their field experience. A similar structure of field work and parallel seminar is used in the best externship programs. Clinical teachers from the law school closely supervise students' work on a limited number of cases, which are as important for learning purposes as for service to the clients. Those faculty members will oversee their students' activities, whether in litigation or in other types of legal service.

Only through the careful planning and balance of all the components that CLE's main objective of educating future lawyers in a spirit of client-centered approach and social justice will be achieved.

Goals and Benefits of CLE Programs

The goals of clinical legal education are many. **First**, however, clinics seek to provide a structured educational opportunity for students *to observe or experience actual or simulated client representation* and to extract appropriate knowledge, skills, and values from that experience. **Second**, clinics *aim to provide* an important supplement for the provision of *needed legal services* to persons who would otherwise not have access to these services. **Third**, clinics try to inculcate in students a spirit of public service and social justice and *to build a base for the creation of a responsible legal profession*. **Fourth**, clinical professors make important contributions to the *development of scholarship on skills and theories* of legal practice that can provide closer links between the bar and the academy. **Fifth**, the use of interactive and reflective teaching methods animates students to *perform and engage with the law* in ways that theoretical lectures or readings often cannot. This reflective learning, moreover, has been shown to be one of the most effective means of lasting adult learning. **Last**, clinics seek *to strengthen civil society itself, through nurturing lawyers' professional responsibility* and through provision of much-needed legal services *to build and protect underserved and vulnerable populations*.

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Background and Rationale

Clinical legal education is one of the most successful innovations in legal education in the last thirty years. Throughout the world, clinics have emerged through student and faculty activism, usually as a response to the failure of the legal academy to engage fully in the legal and political life of the community outside of the law school. Students simply demand a role in carrying out the ideals and vision of law practice that normally draws them to become lawyers in the first place.

Clinics began in the United States in the activist decade of the 1960s, and practical training in the law has now become a requisite component of legal education in the US. In addition to service to the community, however, clinical teachers in law schools throughout the US began to develop a body of scholarship not only on the skills – interviewing, case theory, counseling, negotiation, trial and appellate advocacy, alternative dispute resolution – but on theories of law practice and legal institutions, as well as on the ethics of law practice. Those scholars have also been primary contributors to the body of work on public interest law practice and pro bono service.

In Latin America, legal clinics are sometimes a required component of legal education. Students in mandatory clinical programs may be required to finish work on a certain required number of cases before they are permitted to graduate. Clinics may also be linked to periods of mandatory social or public service that are graduation requirements for all schools in the country. Clinics may also be volunteer programs for student participation without credit. In many countries of Latin America such as Chile, Argentina and Brazil clinical programs in law schools have their genesis in the same social movements of the 1960s that gave rise to clinics in the United States. In general, clinical legal education is known to the law school academic community, although it may be resisted by traditional law school faculty, who see it as a threat to the role of law schools in teaching legal theory, and by the profession as a potential threat to legal business.

In Africa, most successful clinical legal education programs have been established early 1970s in South Africa and slowly extended to other countries in the Southern Africa. There are few programs running in East Africa since early 1990s, and a new wave of creating university-based clinics began in 2003 with the First All-Africa CLE Colloquium organized by the Justice Initiative and Association of University Legal Aid Institutions of South Africa (AULAI).

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Also, CLE programs have developed in some countries in East and Southeast Asia. Legal clinics are currently operating at universities in China, Bangladesh, Philippines and Cambodia. Efforts are also taken to set up legal clinics in other countries in the region.

Starting 1997 the Constitutional and Legal Policy Institute (COLPI)² launched an initiative to support the development of clinical legal education in Central and Eastern Europe, Central Asia and Mongolia. The results have been remarkable. To date, more than 75 university-based clinical legal education programs have been established in more than fifteen countries throughout the region, and the numbers continue to increase. The majority of these clinics has university accreditation and maintains in-house clinics providing free legal aid to vulnerable groups in society.

Needs and Challenges for Clinical Legal Education

Listed below are the most common needs and challenges faced by the CLE programs when they are launched and during their development. These challenges were driven from the Justice Initiative's institutional experience in supporting the launch and development of such programs and from other clinical programs' experience.

Balance between Education and Service Goals

Perhaps the greatest single challenge for clinical legal education is the maintenance of balance between its goals of education and service provision. In countries where there are few or no government-funded legal aid programs, or where there is little concept of pro bono service in the legal profession and private legal NGOs are overstretched, clinical programs become the primary focus of efforts to fulfill the need for provision of needed legal services to the poor. However, the goal of access to justice, while laudable, cannot be expected to be achieved by legal clinics alone. There are great risks in putting students in charge of large numbers of cases without adequate guidance or supervision. Students carrying excessive caseloads without adequate supervision are neither learning how to practice law, nor providing effective service to their clients. Clinics should always be seen as part of an overall strategy of access to justice, not the primary component.

² COLPI was the legal and human rights reform program of the Open Society Institute-Budapest that focused on Central and Eastern Europe and ex-Soviet Union countries. Since 2003, COLPI's mandate to promote CLE programs was expanded worldwide by its successor Open Society Justice Initiative.

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Resistance from legal profession and law schools

When clinics are first introduced, there is often resistance from law schools and from the legal profession. Often law school faculty and academia see clinics as a threat to the traditional teaching of law as a set of objective principles, norms, and standards. This traditional teaching usually involves transmission of theoretical knowledge about legal system, legislation, and jurisprudence. Also, law school administration and management may see clinics as a costly, labor-intensive venture that reduces potential income to the school by requiring close supervision of student work instead of large and efficient lectures to a high number of students at once. Clinical teachers themselves sometimes raise pragmatic questions about what the relationship will be between a law school and a the clinical law office, and what will happen with clients' cases during those months in which the law school is closed. The legal profession often has theoretical and pragmatic concerns. Rules on the practice of law are normally rigid about prohibiting non-lawyers from assuming legal roles, and both lawyers and law professors sometimes find it difficult to imagine that students can provide competent legal representation, even (or especially) with faculty supervision.

Nonetheless, bar associations are not always resistant to the creation of effective legal clinics. In some countries, bar associations can play a leadership role in supporting legislation, rules or practices that permit students limited access to the courts for client representation under close faculty supervision, without compromising professionalism or taking bread off the table of lawyers. Bar associations can be important allies in the search for effective and innovative legal clinics and other means of building effective legal capacity.

Development of teaching materials

A third major challenge to clinical legal education is the shortage of teaching materials on clinical subjects – specialized knowledge, skills, ethics and values. In many of the countries where the Justice Initiative operates, there is a general shortage of law books, but there is even a larger vacuum – almost no professional writing on the concrete methodological and operational questions which could help to shape clinical programs within the particular legal systems. While the literature

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on that range of subjects in English is rich and varied, very few materials were translated into local languages.³

Financial support

A fourth major challenge to clinics is their relatively high cost. Clinics usually need minimum financial support for rent, equipment, development of materials, involvement of practicing attorneys, mailing and communication costs with clients, payment for teachers, access to legal databases, etc. Clinics are usually run as law offices, and the costs for office maintenance are sometimes high. Moreover, clinics do not charge clients for the provision of their services, given their educational focus, and thus financial resources are often scarce.

However, if clinics succeed in making a strong case as a highly effective tool of legal education, and if they inspire the academic staff and students, then law schools will find academic and financial resources to cover the costs of clinic operation. Another factor in their favor is a growing competition among law schools. If clinics become indicators of excellence for legal education, then law school administrators would be more likely to opt to support them financially.

Human Resources Development

Academic faculty has to realize that the teaching methods and the workload of these programs are much more demanding than traditional teaching. A good clinical class requires a full-time professor with strong experience as a practicing lawyer, substantive knowledge in the relevant legal area, experience with clinical teaching methods, and the time and willingness to work closely with students in an interactive manner.

There are many professors with the substantive knowledge and an increasing number with practical experience, but developing the unique clinical teaching skills and putting them into practice on a regular basis requires a great deal of time and devotion. Many law faculties do not have the necessary teaching staff to conduct the clinic on a full-time basis; most clinical instructors still conduct their programs in addition to their regular teaching workload. Moreover, interactive

³ The Justice Initiative has assisted Polish CLE Foundation in 2004 to compile and publish a Clinical Manual in Polish language; additional efforts were made to translate CLE materials into French for Francophone Africa in 2004. From 1999 – 2004, COLPI/JI was actively involved in developing CLE materials in Russian for the ex-SU region through compilation and support for manuals on clinics and organization of teacher training workshops. Currently, efforts are oriented toward developing a CLE manual for Africa in English and preparing materials for community training programs implemented by clinics.



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and experiential teaching methods are usually a novelty when the first clinical program is launched. As a result, clinical teachers become overloaded and sometimes not credited for the work they do in the clinic.

Establishing New Clinical Programs

The best approach to the establishment of new clinical programs is to identify an appropriate law school setting for setting up the new program. This involves finding a location where there is a combination of strong student interest in clinics, with an established member of a law school faculty who is interested in taking the time and effort to create a program and convince colleagues of its importance.

Because clinics introduce new methods of teaching, and because they involve complex logistical issues of case management and student supervision, the best methods for creating support for clinical education often involve modeling of a successful program for those who contemplate creation of a program on their own. Modeling can come from writings on the issues in creation of clinics, which does exist in English in some clinical scholarship. However, the best teacher, as in clinical education itself, is experience. Observation of a clinical program in action provides a useful means for learning about solutions suitable for clinical approach.

Because student participation levels are very high in successful clinical programs, the students themselves can be a source of energy and inspiration in the creation of successful clinics. Students who have participated in a clinical program provide a critical pool of potential teachers and pro bono supervisors in clinical programs after graduation.

Given that successful clinical programs now exist in North and South America, as well as throughout Central and Eastern Europe (CEE) and ex-Soviet Union countries/Central Asia, the Justice Initiative continues to provide support to identified legal clinics from CEE in development of teaching materials, development of human capacity, and more narrowly defined public interest orientation of clinics.

A very successful network of clinical programs has developed in South Africa as well. This network provides support to Justice Initiative's efforts to create a similar network of CLE programs across Africa. To explore new frontiers, Justice Initiative also provides substantive and technical support to pioneer initiatives in Ethiopia, Mozambique, Nigeria, Sierra Leone, and Uganda.

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In South East Asia, Philippines and China seem to be at the forefront of CLE movement, although considerable and promising developments are taking place in Cambodia, Indonesia, and Thailand. Justice Initiative is currently exploring the possibilities for creating legal clinics and cooperation opportunities within SE Asian region in the field of CLE.

Clinics can also link themselves to the existing legal aid or legal NGO programs. When these programs are already well established, the clinical program can rather than establishing anew at a law school establish a partnership with the legal aid program or NGO allowing students to gain clinical opportunities in their offices. That linkage provides students with a meaningful learning experience while providing important supplementary sources of support for legal services in the community.

Concluding Remarks

CLE programs often serve as a tool to reform legal education system with the main goals of improving the quality of future legal profession and creation and support of pro bono and socially aware lawyers in a given society. CLE as a concept encompasses multi-dimensional elements: development of lawyering skills and values together with pro bono and public interest culture; using a specific reflective and interactive teaching methodology focused on active participation of students in "learning by doing"; application of acquired lawyering skills in practice by testing the knowledge, skills and values; reflection and self-assessment of performance; and identification of needs for further improvement. This concept, or rather the methodology utilized, is grounded in adult pedagogy theory - andragogy.⁴

In addition, CLE programs provide an opportunity to assess the system of legal education and the way law is taught in a given country; raise the general standards for legal practice and client representation by shifting the focus on client interests; establish a systematic relationship between

⁴ Andragogy – a theory of adult pedagogy developed by M. Knowles in 1970s. Knowles' theory of andragogy is an attempt to develop a theory specifically for adult learning. Knowles emphasizes that adults are self-directed and expect to take responsibility for decisions. Adult learning programs must accommodate this fundamental aspect. Andragogy focuses on the following principles: 1. Adults need to be involved in the planning and evaluation of their instruction; 2. Experience (including mistakes) provides the basis for learning activities; 3. Adults are most interested in learning subjects that have immediate relevance to their job or personal life; 4. Adult learning is problem-centered rather than content-oriented. For more details, see: Knowles, M. (1984). *The Adult Learner: A Neglected Species* (3rd Ed.). Houston, TX: Gulf Publishing.

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universities and civil society and population in general; strengthen the role played by law faculties in promoting public interest and pro bono culture within legal profession; and promote access to justice for most vulnerable and underrepresented in a society.

Although the benefits of CLE for the legal profession and society are multiple and most valued by the beneficiaries, one has to keep in mind the need to balance between academic/educational and practice components and the tremendous planning work and efforts that are necessary for a CLE program to succeed – become accredited and sustained by universities, as well as the financial implications of maintaining the success of such a program.

Session II: Introduction into CLE Methodology

2. Brainstorming

(Before proceeding with the Session I exercise, the participants will be introduced to the outcomes of the workshop and the methods that will be used in the workshop during the 3 days.)

During the Brainstorming exercise, try to identify the following:

1. What do we mean by *legal* or "*lawyering*" skills? Why are they needed? What kind of legal/lawyering skills should be acquired before practice?

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2. *Teaching Methods:* What are teaching methods? What methods we use to teach/develop legal skills? What does “interactive” mean? What kind of interactive teaching methods can we use for teaching legal skills?

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- 3. *Assessment Methods*: What does “assessment” mean in the academic process? What do we “assess” as teachers? What is an “assessment method”? What types of assessment methods are there? When and how is each type of assessment used?

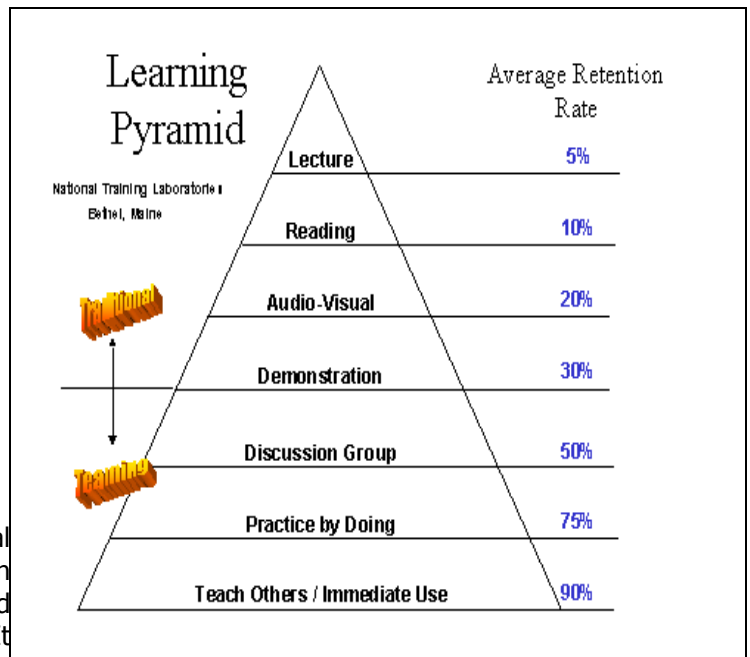
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4. *Clinical Legal Education Social Justice Lesson Plan*: What makes up and how do we develop a CLE Social Justice Lesson Plan?

NOTES:

3. Learning Pyramid Structure⁵



⁵ *Learning Pyramid* was created by the National Training Laboratories in Maine (USA) based on Edgar Dale's research and Cone of Learning and after additional studies were performed. It illustrates the average retention rate for different teaching methods used by the instructor. The least effective method of instruction given is shown to be for "lectures" with a retention rate of 5%. This finding alone is alarming because of "the lecture" being the most common teaching method in today's colleges.

4. Clinical Teaching Methods

Professor David McQuoid-Mason
Faculty of Law, University of Kwa-ZuluNatal

Durban, South Africa

1995

A number of interactive teaching strategies can be used when teaching human rights to a wide variety of people. Not all methods are appropriate for all types of audience, and instructors should be flexible and adapt their teaching methods appropriately where necessary.

In this paper it is intended to briefly describe the following **teaching methods**:

- brainstorming,
- case studies,
- the use of community resource persons,
- debates,
- field trips,
- games,
- group discussions,
- hypotheticals,
- lectures,
- mock trials,
- open-ended stimulus,
- opinion polls,
- question and answer,
- ranking exercises,
- role plays,
- simulations,
- small group discussions,
- participant presentations,
- values clarification,
- visual aids,
- puppets,
- folk stories and songs,
- exhibitions,
- theatre, and
- printed and electronic media.

1. BRAINSTORMING

During brainstorming the instructor invites participants to think of as many different suggestions as they can, and records all suggestions even if some of them might appear to be wrong or inappropriate. If the answers seem to indicate that the question is not clear, it should be rephrased. Instructors should not worry about ideological conflicts and should accept everything that is suggested. Thereafter, key areas can be selected and prioritised.

arguments or solutions. A variation might be

Democracy for All Example: Choose Your Rights

Your country is electing a new democratic government for the first time. You have been asked to draft a bill of rights for the new constitution which will guarantee democracy in the country. When rights are included in a bill of rights they are enforceable by law. Rights can also be used to limit the power of the government. For example, a provision in a bill of rights might state: 'The government may not execute people who commit crimes'.

List six rights which you would include in the bill of rights to ensure that your country is democratic.⁶

2. CASE STUDIES

During case studies instructors should invite different participants to read the facts, and then to recognise the problem or issue involved. Participants should be asked to prepare arguments for both sides concerning the particular problem or issue, and then to reach a decision or to make a judgement on the merits of the arguments.

Case studies can usually be conducted by dividing participants into two or three groups and inviting the groups to consider suitable

for one group or set of groups to argue for one side, another group or set of groups to argue for the other side, and a third group or set of groups to give a decision or judgement on the arguments.

Case studies are often based on real incidents or cases, but can also be based on hypotheticals. The advantages of case studies are that they help to develop logic, critical thinking skills and decision-making.

Disadvantages are that sometimes it is difficult for participants to separate important facts from those that are less important, and to separate fact from opinion.

⁶David McQuoid-Mason, Mandla Mchunu, Karthy Govender, Edward L O'Brien and Mary Curd Larkin Democracy For All (1994) 65. For instructions on how to conduct the exercise see David McQuoid-Mason, Karthy Govender, Edward L O'Brien and Mary Curd Larkin Democracy for All: Instructor's Manual (1995) 44-5.

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Human Rights for All Example: The Case of the President and the Civil War

The country is at war because people in one half of the nation said they were withdrawing to set up their own new nation. The war began when the original nation would not let part of the country become independent. During this war, the President makes a rule that if any person discourages someone from enlisting in the national army or engages in any other 'disloyal practice', that person may be arrested and imprisoned without being charged with a crime. In doing so he suspends the right of people to be 'charged or released'. As a result, over 13 000 citizens of this country are being held in jail without criminal charges against them. The President has decided to re-unify the country at any price, and announces that he 'regretfully sees no alternative to making this right less important than victory while the battle rages.'

1. Do you agree or disagree with the President's actions in this case? Explain your thinking.
2. What could happen as a result of these actions?⁷

organisations or members of religious communities, women's and youth groups.

3. USE OF COMMUNITY RESOURCE PERSONS

The use of community resource persons provides a realistic and relevant experience for participants. Instructors should identify people trained or expert in the particular field under discussion (e.g. judges, lawyers, community leaders, politicians, police-persons, priests, prison officials etc). People who are victims of power (e.g. people who have been abused by the system or voters) can also be used as resource persons and can usually be identified by non-governmental

Before their presentation, resource persons should be briefed on what to do, and participants on what to ask and observe. The resource person can co-teach with the instructor and this is valuable because as experts in their field they are more likely to be listened to than the instructors. A useful method is to ask participants to role play somebody interviewing the resource person in his or her role (e.g. a judge during a radio interview). Another method is to invite the resource person to play his or her own role in a simulation, or to ask participants to play the role of the resource person and then for the

⁷David McQuoid-Mason, Edward L O'Brien and Eleanor Greene Human Rights for All (1991) 47-8. For instructions on how to conduct the exercise see Human Rights for All (Instructor's Manual) (1995) 37.

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resource person to comment on their performance. An example might be, for instance, to allow a police officer to observe students simulating an arrest and thereafter ask the officer to debrief the exercise. Resource persons are very valuable because they can provide experience and knowledge that is not found in text books.⁸

4. DEBATES

For a debate the instructor should choose a controversial issue such as abortion, prostitution, capital punishment etc. The participants could be divided into two groups, or small groups for discussion. The groups can then be used to assist the persons on each side who are chosen to lead the debate. The debate should be conducted in such a manner that the participants have an opportunity to listen to the debate, and thereafter to vote in favour of or against the particular proposition.

forthcoming elections. Some people in your country believe that the President and her party members must be tried for their crimes and not allowed to participate in the elections. Others believe that peace is more important for the future of Pacem.

Divide into two groups and prepare to conduct a debate. One group will argue in favour of the amnesty, and the other group will argue against it. The following:

1. Was the transitional government justified in granting amnesty for political crimes?
2. Does the declaration of the amnesty limit the government's ability to prosecute?
3. If you were in the transitional government, what recommendations should be taken concerning the President and her party members?

Give reasons for your answers.⁹

5. FIELD TRIPS

Field trips are useful because instructors can choose both interesting and relevant places for participants to visit (e.g. prisons, old-age homes, police stations, hospitals, urban poor communities and rural communities).

Participants should be prepared before the trip. They should be asked to prepare a list of questions to ask the officials.

Democracy for All Example: Should the Government Limit Accountability?
Your country, Pacem, changes from a single party authoritarian government to a multi-party democracy. The President of the outgoing authoritarian government and her party members are arrested because during their rule they committed political crimes. The transitional government grants an amnesty to the President and her party members. They are released and allowed to participate in the

⁸See David McQuoid-Mason Street Law: Introduction to South African Law and the Legal System (Teacher's Manual) (1994) 8-10.

⁹McQuoid-Mason et al Democracy for All 45. For how to conduct the exercise see McQuoid-Mason et al Democracy for All (Instructor's Manual) 34-5.



when they return from the field trip.¹⁰

6. GAMES

Games are a fun way for people to learn because most people, whether they are adults or children, enjoy playing games. For example, the "paper clip" game (to illustrate why we need laws in society, and what sort of laws) is used in Street Law,¹¹ while the democracy game is used in the Democracy for All programme to introduce students to the 'signposts' of democracy.¹² Games involve participants in experiential learning and can often be used to explain complicated principles of law in simple terms. At the end of each game participants should be debriefed so that the principles can be clearly explained.¹³

7. GROUP DISCUSSIONS

A discussion is a planned interaction amongst participants, and should be conducted in

order to ensure that some participants do not dominate and everyone has a fair opportunity to express themselves. One method of doing this is to use the technique of "token talk", where, for instance, each participant is given three tokens (e.g. a matchstick or paper clip) and requested to hand in their token to the chairperson each time they speak. Once they have handed in all their tokens they are no longer able to contribute to the discussion.

A method of warming up a discussion session is to ask participants to engage in "buzz-group discussions". This involves asking students to discuss the issue with the person next to them for about five minutes until it seems appropriate to begin a general discussion of the topic. Thereafter participants should be divided into discussion groups.

When conducting a discussion the instructor should link the main points together to extract the necessary principles, and then draw the discussion to an end by emphasising the main points. One method of doing this is to frame key questions which should then be answered during the discussion.

¹⁰See McQuoid-Mason Street Law: Introduction to South African Law and the Legal System (Teacher's Manual) 10.

¹¹See McQuoid-Mason Street Law: Introduction to South African Law and the Legal System (Teacher's Manual) 36-8.

¹²See McQuoid-Mason et al Democracy for All 13-15. For how to play the game see McQuoid-Mason et al Democracy for All (Instructor's Manual) 18.

¹³See, for example, McQuoid-Mason Street Law: Introduction to South African Law (Teacher's Manual) 37-8.



<p>Human Rights for All Example: Is the Cultural Practice a Violation of Human Rights?</p> <p>Human rights documents often protect people's rights to take part in the purposes of the culture. However, sometimes family practices in certain cultures are criticized as violations of human rights. Read the following situations and decide whether you actually think that rights are being violated and, if so, whether the appropriate course of action should be taken.</p> <ol style="list-style-type: none"> 1. In the rural areas of a country, most marriages are arranged by the parents, and the two people getting married do not usually have a say in choosing when they want to marry. 2. In some State-run schools of a country, some of the cultural traditions they have inherited from their parents to the host country, example, the practice of consulting traditional healers instead of going to a hospital is discouraged. 3. The cultural tradition in another country is that boys and girls are not allowed to go to school. Therefore the parents must provide money on schools for boys. In addition, parents of both sides of the case usually send one child to school usually send a son and not a daughter. 4. In one country many married woman are physically punished by their husbands. Some are beaten. Husbands often have the right to discipline their wives according to family custom to allow them to discipline their wives if they think that they are not fulfilling their duties. 5. In one country boys are circumcised, in another country girls are circumcised. These are cultural traditions that are required for doing so. 6. In a country, it is part of the culture that women do not hold jobs outside the home and do not drive automobiles. Law prohibits them from getting a driver's license. 	<p>Is this a problem for the purposes of the culture? Are they often criticized as violations of human rights? Read the following situations and decide whether you actually think that rights are being violated and, if so, whether the appropriate course of action should be taken.</p> <p>1. In the rural areas of a country, most marriages are arranged by the parents, and the two people getting married do not usually have a say in choosing when they want to marry.</p> <p>2. In some State-run schools of a country, some of the cultural traditions they have inherited from their parents to the host country, example, the practice of consulting traditional healers instead of going to a hospital is discouraged.</p> <p>3. The cultural tradition in another country is that boys and girls are not allowed to go to school. Therefore the parents must provide money on schools for boys. In addition, parents of both sides of the case usually send one child to school usually send a son and not a daughter.</p> <p>4. In one country many married woman are physically punished by their husbands. Some are beaten. Husbands often have the right to discipline their wives according to family custom to allow them to discipline their wives if they think that they are not fulfilling their duties.</p> <p>5. In one country boys are circumcised, in another country girls are circumcised. These are cultural traditions that are required for doing so.</p> <p>6. In a country, it is part of the culture that women do not hold jobs outside the home and do not drive automobiles. Law prohibits them from getting a driver's license.</p>
<p>8. <u>HYPOTHETICALS</u></p> <p>Hypotheticals are similar to <u>case studies</u>, except that they are often based on fictitious situations. They are more useful than <u>case</u></p>	<p><u>Claim to Rights for Attorneys: The Case of the Bomb</u></p> <p>A person has been told that the government has a bomb somewhere in your community. The bomb may be used to kill people. The person has been told that the government has a bomb somewhere in your community. The bomb may be used to kill people. The person has been told that the government has a bomb somewhere in your community. The bomb may be used to kill people.</p> <p>1. What would you do? If the bomber would go outside the home, would you go outside the home? If yes, why? If not, why not?</p> <p>2. If there is a law against torture and a person is being tortured, what penalty should be imposed on the person who is torturing?</p>

¹⁴McQuoid-Mason et al Human Rights for All 70-1. OPEN SOCIETY

¹⁵See McQuoid-Mason et al Human Rights for All 52. For how to conduct the exercise see McQuoid-Mason et al Human Rights for All (Instructor's Manual) 40-1.



9. LECTURES

Lectures enable instructors to cover a great deal of information, but usually provide very little feed-back for participants. In most cases lectures should be kept to a minimum, particularly when dealing with community-based organisations. Ideally, lectures should not last for more than 15 or 20 minutes, and thereafter participants should be engaged in some or other activity. Participants are more likely to remember information if it is learned experientially rather than simply by listening to lectures.

10. MOCK TRIALS

Mock trials are an experiential way of learning, which enables participants to lose their fear of the courts and presiding officers, and to understand court procedures. Mock trials can be designed to involve, for example, 24 participants, 12 for the plaintiff or prosecution, and 12 for the defence. Participants can be taught how to make an opening statement, how to lead evidence, how to cross-examine, and how to make a closing statement. Participants can play the role of witnesses, court officials and lawyers.

Mock trials provide an opportunity to expose participants to live judges who can be involved as presiding officers. In countries where human rights have been at risk, the

use of the judiciary in mock trials, conducted by non-governmental organisations, has provided the latter with the necessary status and protection to ensure that their programmes have not been banned by anti-human rights authorities.¹⁶

11. OPEN-ENDED STIMULUS

Open-ended stimulus exercises require participants to complete unfinished sentences such as: "If I were the President I would ...", or "My advice to the Minister of Justice would be ...", or "When I think of a dictator I think of ...".

Another method of using an open-ended stimulus is to provide participants with an untitled photograph or cartoon and require them to write a caption. Another method would be to provide participants with an unfinished story and to ask them to act out its conclusion.

Street Law Example: A Case of Spouse Abuse

Late one night you hear screams, bangs and crash of a door. You hear a woman shouting for help. You see a neighbour Mrs Swart being slapped and punched by a man and thrown out of the door. Before she can run away Mr Swart slams the door. You hear breaking glass, more screams...

¹⁶For how to conduct a mock trial see McQuoid-Mason Street Law: Introduction to South African Law and the Legal System (Teacher's Manual) 14-25. For an actual mock trial human rights case example (corporal punishment) see McQuoid-Mason Street Law: Criminal Law and Juvenile Justice (Teacher's Manual) (1994) 91-101.



know that Mr Swart has a drinking problem and that participants might be asked who are in favour of beating up his wife. and who are against the death penalty.

1. If you were the neighbour what would you do? Would you participate? Express your opinion? Would you participate? If you would, what would you tell them? their values, beliefs and attitudes about the topic of study. They should then be asked to explain why not.

2. Suppose you are a police officer and you have to justify their actions. Mrs Swart is beating up his wife. When you and a fellow police officer arrive at the Swarts' home you find that Mrs Swart is cut, bruised and battered. Write a case study or group discussion. colleague talking to the Swarts.

3. Acting as the police, decide what you would do in this situation. Would you question the couple? Would you arrest Mr Swart? Would you take Mrs Swart out of the house?

4. Acting as Mr Swart, decide how you would react to the police in this situation. Acting as Mrs Swart decide how you would react. Would you lay charges against your husband? Would you stay in the house? Would you do something else?

5. Suppose you are the Magistrate dealing with the Swarts. Would you send Mr Swart to gaol? Would you take some other action?

6. What programmes are available in your community to help abused women? Are there places where abused women can go if they need help?

Some Questions on

1. Taking a stand

Where do you stand on this question? Locate your view on the scale below.

[a] Strongly in favour of the death penalty

[b] In favour.

[c] Undecided

[d] Opposed.

[e] Strongly opposed to death penalty for

2. Think about reasons on both sides.

What are two reasons you can give to support your view?

your group can suggest under the headings `in favour of` and `against`.

3. Clarify your position.

Decide if the stand you took in question 1 above was the best one for the people and situations were involved:

- A person who has committed 20 brutal robberies.
- A 15-year-old mentally-retarded person who committed a robbery.
- A member of a religious minority which the government, who has blown up a church where the majority were worshipping.
- A 16-year-old political activist who threatened to blow up a government building.

12. OPINION POLLS

Opinion polls provide participants with an opportunity to record their private views. After the participants have recorded their views they can be asked to share them with the rest of the group, and the instructor can draw up a class composite indicating the views of the group as a whole. For example,

¹⁷David McQuoid-Mason Street Law: Family Law (1994) 32. For how to conduct the exercise see McQuoid-Mason Street Law: Family Law (Teacher's Manual) 41-2.
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<p>was unfairly beating up his brother. e. A corrupt leader who has ordered the killing of many people who have criticized him and his government. f. A man who murdered his unfaithful wife's lover when he found them together, after she had left him and their children.</p>	<p>2. Can you think of a legal right that ma 3. Give an example of a moral right that</p>	
<p>g. A woman who was part of a mob that angrily accused of being an informer for an oppres didn't herself hurt the informer but encouraged others to do so.</p>	<p>RANKING EXERCISES The instructor should give participants a list of items to rank. For example, 5 to 10 different items. Participants should be</p>	

13. QUESTION AND ANSWER

When using a question and answer technique instructors should wait for at least about 5 seconds after asking the question in order to give participants an opportunity to think before answering. The questions should be planned to elicit the information necessary for the lesson or workshop. The question and answer technique can be used instead of lecturing, and a checklist of questions should be prepared to ensure that all aspects of the topic have been covered by the end of the lesson. Instructors should be careful to ensure that more confident participants do not dominate the question and answer session.

required to rank competing alternatives, and to : (a) justify their ranking, (b) listen to people who disagree, and (c) re-evaluate their ranking in the light of the views of the other participants. Thus, in teaching human rights participants might be asked to make a list of what they think are the most important human rights, and thereafter to rank them.

Human Rights for All Example: Some Questions on Legal and Moral Rights
 1. What is the difference between a legal and moral right?

¹⁸McQuoid-Mason et al Human Rights for All 57-8. For how to conduct the exercise see McQuoid-Mason et al Human Rights for All (Instructor's Manual) 44-5.
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¹⁹McQuoid-Mason et al Human Rights for All 15. For how to conduct the exercise see McQuoid-Mason et al Human Rights for All (Instructor's Manual) 6-7.



<p>Human Rights for All Example: Choosing Rights for a New Country</p> <p>1. You have decided to leave the country which you have been living in order to go with others, to a new country and people have themselves before. In order to set up the best possible society, you must first decide to make a list of the rights which everyone in the new country will be guaranteed.</p> <p>1. On your own list at least three rights from the list should be guaranteed.</p> <p>2. Next, working in small groups, share your list with other individuals. Then select no more than ten rights you think should be required.</p> <p>3. List your group's choices on newsprint or play board. Discuss what happened in the group can see them. Read the rights selected by other groups.</p> <p>Which rights do all groups have? Which ones do only some groups have? Why?</p> <p>4. Can some of the rights be put together under the same heading of law, which?</p> <p>5. Do any rights on the combined lists clash with each other? If so, which?²⁰</p>	<p>Democracy for All Example: Making Choices for a New Village</p> <p>The same heading of law, the communities of Kwafunda and Funamanzi have inherited schools with few resources and no water taps. Its residents pay higher rates than Funamanzi schools.</p>
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15. ROLE PLAYS

During role plays participants are asked to act as themselves in a particular situation (e.g as a police officer arresting somebody). Usually role plays take the form of requesting participants to make a decision, resolve a conflict or act out a conclusion.

Participants should act out the role as they understand it, and can make it up as they

<p>b) Funamanzi has also inherited schools with few resources and no water taps. Its residents pay less rates than Kwafunda. They must instal electricity and water taps.</p> <ol style="list-style-type: none"> 1. Role play the spokesperson of Kwafunda Village Finance Committee to allocate more money to Kwafunda schools. 2. Role play the spokesperson of Funamanzi Village Finance Committee to allocate more money to Funamanzi schools. 3. Role play the members of the Village Finance Committee to make a decision. <p>Give reasons for your decision.²¹</p>

²⁰McQuoid-Mason et al Human Rights for All 9. For how to conduct the exercise see Human Rights for All (Instructor's Manual) 3-4.
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²¹McQuoid-Mason et al Democracy for All 81. For how to conduct the exercise see Democracy for All (Instructor's Manual) 59.



16. SIMULATIONS

During simulations participants are asked to act out the role of somebody else by following a given script. Simulations are generally not open-ended like role plays, and are tightly controlled in order to ensure that the instructor's objectives are achieved.

Simulations encourage participants to understand other points of view, particularly if they have to act out a person they do not like, or who has principles with which they disagree. Simulations often require more preparation by instructors because it is necessary to ensure that participants follow the script. Difficulties arise if participants have different reading skills, and it may be necessary to ensure that the role play is audible, visible and situated in a space where everybody can see.

Often it is useful for the instructor to tell participants about the person they are simulating before they act out the scenario, so that they can correctly interpret the actions of the person concerned. This may require a short rehearsal before the simulation is presented. Simulations can be conducted so that they involve everyone (for example, where the simulation takes the form of a mock trial up to 24 participants can be involved, or, if there is a large group of

participants, they can be divided into small groups and each small group can carry out the simulation).

How the simulation is conducted will depend upon the type of participants. For example, rural elders may be reluctant to participate in certain role plays that make them feel uncomfortable.

Human Rights for All Example: Some Questions

Assume you have just arrived in a newly-formed country that has just started, to get to work building a new society. Think about the kinds of possibilities to create good government. Share your conversation among a group of your fellow new citizens.

Citizen 1: `Where I came from, no one wanted a good government. We were always too busy with our own lives. Probably won't want to bother with politics here.

Citizen 2: `That's the way it is in our country. We didn't understand what was going on among the leaders. It was so complicated and made it very easy for us to be misled.

Citizen 3: `Well, it was different in our country. The leaders who had power wouldn't let us get involved and we were afraid. So finally we gave up trying to participate in our own government.

Citizen 4: `In my country we had elected leaders who promised good government. But it never turned out as we expected. The government to get rich. All leaders are corrupt.

1. Role-play the above conversation.
2. What are the four main views expressed about citizen participation? Do you agree? Why or why not?
3. What will the four citizens lose by not participating? What do you think individuals will receive from participating?

4. What benefits do you think the new country (circle response) from individuals participating? of the group is invited to contribute
5. What are the possible risks or losses involved when by these contributions move around in a clock-wise direction.
6. Weighing benefits and risks, do you think it is worthwhile participating?²² has an opportunity to respond and at the

17. SMALL GROUP DISCUSSIONS

Small group discussions enable all students to become involved in the discussions. Often students will speak more freely in small groups than large ones. The ideal size of a small group is 5 persons or less. The responsibility of the instructor is to set tasks and manage the activity in the group so that all participants have an opportunity to make a contribution. This can be done by using the following methods:

- (a) Brainstorming : This enables everybody who wishes to contribute to have a say.
- (b) Buzz-Groups : Here participants discuss issues or problems in pairs and every member of the group will have an opportunity to speak. Thereafter, a record will be kept for the responses by the group as a whole.

- (d) Speedy Memo : This is similar to the circle response, except that everybody writes down his or her contribution. These are then collected, shuffled and then commented on, one at a time, by the group.
- (e) Token Talk : Here, as mentioned before, each member of the group is given, say, 3 tokens which have to be handed in each time the person speaks. Once everyone has had an opportunity to speak there can be a group response and thereafter the suggestions of the smaller groups can be discussed by the large group.

Democracy for All Example: The Case of Inadequate
Assume a girl attends an all female public school. She goes to a school competition at a nearby school. Her school loses the competition. The hosts take the girls on a tour of the nearby school. The girls realise that, in comparison, the facilities at their school are inadequate and in some cases non-existent.

²²McQuoid-Mason et al Human Rights for All 22-3. For how to conduct the exercise see McQuoid-Mason et al Human Rights for All (Instructor's Manual) 15-6.



facilities at their school are upgraded they give not going to get any educational equal their to the boys at the other school. attitudes and beliefs. At the same time they

1. Divide into small groups and design a size to participate in their points of view. to change the situation. This exercise promotes communication skills
2. Is it necessary to form an organization to help others? Participants should be asked to: (a) express and clarify their organizations assist? opinions, (b) give reasons for their opinions,
3. Should the effort be local or should it (c) be evaluated on a regional, after national or international basis? Give reasons for your answer. ²³ hearing the opinions of others.

18. PARTICIPANT PRESENTATIONS

Participants can be given a topic to prepare for presentation. They can be asked to research the topic formally (eg by consulting book, magazine or journal articles on the subject), or informally (eg by asking their parents what they did during the struggle for liberation in a particular country). Participants can then be called upon to make a presentation to the group as a whole, and thereafter the presentations can be discussed.

19. VALUES CLARIFICATION

Values clarification exercises encourage expression and examination of one's own values, attitudes and opinions as well as those held by others. Thus, participants are

Street Law Example: Crimes Against Morals

1. Should society protect people from 'hardcore' drugs? Should they be allowed to do what they like with their bodies?
2. What is the difference between people who use drugs like alcohol and cigarettes and using drugs like heroin and cocaine?
3. Should people be punished for having sex with a minor if they do it in the privacy of their homes?
4. Should prostitution be a crime? If so should the person who is prostituted be punished for being accomplices? Why?
5. Should children who sell sexual favours be punished? Should 'hardcore' drinks, videos or 'a good time' be prosecuted?

20. VISUAL AIDS

Visual aids take the form of photographs, cartoons, pictures, posters, videos and films. Very often they can be found in text books, newspapers, magazines etc. Videos and films are usually available in libraries and resource centres.

²³McQuoid-Mason et al Democracy for All 112. For how to conduct the exercise see McQuoid-Mason et al Democracy for All (Instructor's Manual) 78.

²⁴ McQuoid-Mason Street Law: Criminal Law and Juvenile Justice 36-7. For how to conduct the exercise see McQuoid-Mason Street Law: Criminal Law and Juvenile Justice (Teacher's Manual) 48-50.



Visual aids can be used to arouse interest, recall early experiences, reinforce learning, enrich reading skills, develop powers of observation, stimulate critical thinking and encourage values clarification. Participants can be required to describe and analyse what they see, and to apply the visual aid to other situations through questioning.

Visual aids help to clarify beliefs when students are asked to deal with such issues as: "Do you agree or disagree with the artist's point of view?" or "What should be done about the problem in the picture?"²⁵

21. PUPPETS

Puppets have been used very successfully in some countries to illustrate aspects of human rights. For example, in South Africa they have been used in respect of AIDS education, and in India to illustrate the exploitation of women by the dowry system. Puppet shows can be constructed around a particular human rights theme and provide both education and entertainment for participants.

22. FOLK STORIES AND SONGS

²⁵A good example of a visual aid is the cover of McQuoid-Mason Street Law: Criminal Law and Juvenile Justice which is a cartoon illustrating 10 different crimes. Students can be asked to see how many crimes they can find in the picture and to describe the elements of the crimes identified by them.

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Folk stories and songs are ideal vehicles for teaching human rights especially if they are well known to most members of civil society. They are particularly useful when teaching children about human rights.

23. EXHIBITIONS

Exhibitions can be used to provide a visual display of aspects of human rights. They can also be used to convey a large amount of information about human rights by being supplemented by books, pamphlets and speakers.

24. THEATRE

Both conventional and street theatre can be used to teach human rights. Theatre festivals can be held which present plays with a human rights theme. Theatre has been used extensively to promote AIDS education in South Africa.

Street theatre takes place in public places and commentators can be used to involve the public in the plays and to relate what is happening to certain human rights themes.

25. PRINTED AND ELECTRONIC MEDIA

Newspapers and magazines can be used to educate the public about human rights. In such cases, however, it is usually necessary to ensure that there is some newsworthy

element attached to the information.

Newspapers in South Africa have been used to encourage people to become involved in the debate about the new Constitution and to submit suggestions for consideration by the Constitutional Assembly.²⁶ Likewise they have published extracts from the Street Law books to make people aware of their legal rights.

Radio has been used very successfully in Kenya to teach rural people in their local languages about their legal rights using a "soap opera" format. It was used in South Africa to encourage members of the public to participate in the constitution making process.

Television has been used in South Africa to popularise the interim South African Bill of Rights and to make viewers aware of the constitutional issues involved by programmes such as 'Future Imperfect' and 'Constitutional Talk'.

CONCLUSION

There are a wide variety of teaching methods available to human rights educators apart from the usual lecture method. The lecture is most effective where it is combined with a

²⁶For example four million copies of Constitutional Talk: Working Draft Edition (1995) was published as a supplement to all major newspapers in the country by the Constitutional Assembly, as well as being distributed by the South African Communication Services.

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visual presentation. The most successful teaching techniques however involve interactive exercises, especially those that rely on experiential learning.

The best way to teach human rights is to draw on the experiences of the participants and to relate their experiences to the national, regional and international human rights instruments available to protect them. This will not only assist them to remember the importance of the human rights taught but will also enable them to understand their practical application.

5. Preparation of a Lesson Plan

Elements of an Effective Clinical Law Lesson:²⁷

1. HUMAN RIGHTS/LAW/ETHICS/ PRACTICE AND PROCEDURE

²⁷ Prepared by Prof. David McQuoid-Mason, University of KwaZulu-Natal, South Africa

2. POLICY CONSIDERATIONS

3. CONFLICTING VALUES

4. INTERACTIVE TEACHING STRATEGY

5. PRACTICAL ADVICE

Thorough, timely preparation is critical to the success of the teaching of practical skills, preferably completed one week before the lesson.

TOPIC: DRAFTING A STATEMENT OF CLAIM GOAL

To equip students with the knowledge and skills necessary to be able to draft a statement of claim that initiates civil action proceedings in court.

LEARNING OUTCOMES

At the end of this lesson, students will be able to achieve the following outcome:

- To draft a statement of claim that initiates a civil action.

ASSUMPTIONS OF PRIOR LEARNING

It is assumed that students have a working knowledge of:

- The law of civil procedure
- The law of delict (torts)

READING LIST

In order to ensure prior learning, it is essential that students be given a reading list at least one week before the lecture, and be told to revise the relevant procedural and substantive law. If not done, one can end up focusing on the teaching of this law (e.g. what is a POC) rather than the drafting of a POC.

METHODOLOGY

The topic will be taught in the following manner:

- A question and answer session in which students are tested on their prior learning
- A lecture with reference to power point slides, and notes and precedents handed out
- An exercise in which students are required to draft a statement of claim
- As assignment in which students are required to draft a statement of claim (to be assessed)

MATERIALS

Power point slides/overheads

Notes on drafting of pleadings

Precedents:

- Vindictory action
- Motor vehicle accident POC – damage to property
- Personal injure POC

For Exercise:

- Statement by client involved in MVA and sketch of scene of accident
- POC:MVA

For assessment:

- Instructions from client with personal injury
- POC: personal injury

PRACTICAL PREPARATION STEPS



- Identify clear outcomes
- Read relevant works and materials on the subject
- Prepare the content/subject matter of the topic
- What teaching methods will be used?
- What teaching aids will be used?
- What assessment methods will be used?
- Prepare teaching materials in good time – eg. handouts have to be printed early etc.
- What students need to know before the lecture?

ASSESSMENT

- An exercise in which students are required to draft a statement of claim.
- An assignment in which students are required to draft a statement of claim.
- A test questions requiring e.g. drafting of POC or explanation of purpose of POC
- Evaluation of drafting skills by way of examination of students' files at law clinic.

Particulars of claim

Should set out "who", "from whom", and "why".

Content of POC dictated by 3 principles:

- All material facts upon which the claim is based, have to be set out in the POC.
- Sufficient particulars of the substance of the case against the defendant must be pleaded to enable the defendant to reply to the POC.

- Certain formal and conventional/customary matters must be covered in the POC.

POC gives details of:

- The parties
- Their locus standi
- The jurisdiction of the court
- The material facts of the claim (the cause of action)
- Compliance with any special procedural requirements
- Conclusion
- The relief of orders claimed.

Jurisdiction

- Does the court have jurisdiction over the particular defendant?
- Does the court have jurisdiction over the cause of action?
- Is the claim subject to special jurisdiction?

CAUSE OF ACTION

Material facts (facta probanda) in MBA POC (damage of car)

- Plaintiff's interest in the car (eg ownership)
- Defendant's act (driving)
- Which was performed negligently
- And caused
- Damage to plaintiff's car
- And a diminution in plaintiff's patrimony (loss)

6. Clinical Legal Education Lesson Plan Template

THE ACTIVITY:
20 MINUTES
4.5 EG
DEBRIEF: 5 MINUTES

- TOPIC: THE SUBJECT TO BE TAUGHT
- OUTCOMES: AT THE END OF THIS LESSON YOU WILL BE ABLE TO:
 - KNOWLEDGE TO BE LEARNED
 - SKILLS TO BE APPRECIATED
 - VALUES TO BE APPRECIATED
- CONTENT: WHAT WILL BE TAUGHT?
 - KNOWLEDGE WILL BE TAUGHT
 - SKILLS WILL BE TAUGHT
 - VALUES WILL BE TAUGHT
- ACTIVITIES: ACTIVITES TO ACHIEVE OUTCOMES:
 - FOCUSER ACTIVITY: 5 MINUTES
 - EXPLANATION OF STEPS IN ACTIVITIES: 5 MINUTES
 - PREPARATION FOR ACTIVITY: 10 MINUTES
 - CONDUCTING

- RESOURCES: WHAT IS NEEDED TO TEACH THE LESSON
 - STUDY HANDOUTS ON PROBLEM
 - LEARNER'S MANUAL
 - OVERHEAD PROJECTOR AND SLIDES
 - CHART AND PENS
- EVALUATION: QUESTIONS TO CHECK IF THE STUDENTS HAVE LEARNED ANYTHING

Notes:



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SESSION III.

**7. CLE Lesson Plan Focuser
 Activity**

**DEMONSTRATIVE CLE
 INTERVIEW LESSON**

**8. Interview Skills – Active
 Listening Lesson Plan**

		<p>1. <u>TOPIC:</u> INTRODUCTION TO ACTIVE LISTENING TECHNIQUES</p> <p>2. <u>OUTCOMES:</u> AT THE END OF THIS LESSON, LEARNERS WILL BE ABLE TO:</p>	
			<p>2.1 UNDERSTAND WHY ACTIVE LISTENING IS AN EFFECTIVE TOOL IN A CLIENT INTERVIEW</p> <p>2.2 IDENTIFY THE DIFFERENCE BETWEEN</p>
			<p>CONTENT AND FEELINGS DURING THE INTERVIEW PROCESS</p> <p>2.3 EXPLAIN THE BASIC PASSIVE AND ACTIVE LISTENING</p>
			<p>RESPONSES IN A CLIENT INTERVIEW</p> <p>2.4 IDENTIFY PROBLEMATIC ACTIVE LISTENING ISSUES WHEN CONDUCTING A CLIENT INTERVIEW</p> <p>2.5 UTILIZE CORRECT AND IDENTIFY</p>

INCORRECT
METHODS OF
ACTIVE
LISTENING
WHEN
CONDUCTING A
CLIENT
INTERVIEW
2.6 IDENTIFY AND
OVERCOME SOME
OF THE
DIFFICULTIES
EXPERIENCED
WHEN APPLYING
ACTIVE
LISTENING
TECHNIQUES

3. CONTENT:

AT THE END OF THIS
LESSON
LEARNERS WILL
BE TAUGHT:
3.1 PASSIVE AND
ACTIVE
LISTENING
SKILLS ARE A
NECESSARY PART
OF
INTERVIEWING
TECHNIQUES
3.2 HOW TO
EFFECTIVELY USE
PASSIVE AND
ACTIVE
LISTENING
SKILLS DURING
AN INTERVIEW
3.3 THE
IMPORTANCE OF
LISTENING TO A
CLIENT DURING
THE
INTERVIEWING
PROCESS WHEN
TAKING A
CLIENT-
CENTERED

- 4. PREPARATION:**
- 4.1 LEARNERS NEED TO READ THE SCENARIO "CASE OF MAYUMI PRIOR TO CLASS" (DOMESTIC VIOLENCE AND CHILD ABUSE)
 - 4.2 THE INSTRUCTOR NEEDS TO KNOW THE BASIC TECHNIQUES OF A CLIENT INTERVIEW, ESPECIALLY RELATED TO PASSIVE AND ACTIVE LISTENING SKILLS
 - 4.3 THE INSTRUCTOR NEEDS TO BE ABLE TO IDENTIFY CORRECT AND INCORRECT ACTIVE LISTENING RESPONSES IN A CLIENT INTERVIEW
- 5. ACTIVITIES:** TOTAL (1 HOUR 35 MINUTES)
- 5.1 FOCUSER: 5 MIN
 - 5.2 BRAIN STORM OF THE VARIOUS INTERVIEWING TECHNIQUES: 10 MIN
 - 5.3 PRESENT ACTIVE LISTENING PP'T/LECTURE PRESENTATION: 50 MIN
 - 5.3.1 CASE STUDY ACTIVITY (CONTENT /FEELINGS) – 5 MIN
 - 5.3.2 ROLE PLAY (VAGUELY EXPRESSED FEELINGS)– 10 MIN
 - 5.3.3 ROLE PLAY (UNSTATED FEELINGS) – 10 MIN
 - 5.3.4 DRAWING EXERCISE (NON-VERBAL RESPONSES) – 5 MIN
 - 5.3.5 ROLE PLAY (CLEARLY ARTICULATED FEELINGS) – 10 MIN
 - 5.3.6 QUESTION/ANSWER DISCUSSION (UN-EMPATHETIC (JUDGMENTAL) RESPONSES)– 5 MIN
 - 5.4 DEBRIEF ACTIVE LISTENING LESSON-5 MIN
 - 5.5 DISTRIBUTE HANDOUTS OF CHECKLIST ON TECHNIQUES OF CLIENT INTERVIEWING: 5 MIN

- 5.6 DEBRIEF
BREAKDOWN OF
THE
INTERVIEWING
SKILLS LESSON
PLAN: 15 MIN
- 5.7 AFTER LESSON
DISPLAY NON-
VERBAL
RESPONSE
DRAWINGS ON
THE WALL OF
THE
CLASSROOM:
(N/A)



6. TEACHING METHODS:

- 6.1 FOCUSER
- 6.2 DRAWING
- 6.3 GROUP DISCUSSION
- 6.4 ROLE PLAY
- 6.5 CASE STUDY
- 6.6 QUESTION AND ANSWER
- 6.7 LECTURE
- 6.8 BRAINSTORMING
- 6.9 POWERPOINT PRESENTATION
- 6.10 HANDOUTS

7. RESOURCES:

- 7.1 DEMONSTRATION CASE STUDY: CASE OF MAYUMI (DOMESTIC VIOLENCE AND CHILD ABUSE)
- 7.2 WHITE BOARD
- 7.3 POWER POINT PROJECTOR
- 7.4 COMPUTER FOR POWER POINT PRESENTATION
- 7.5 INTERVIEW CHECKLIST HANDOUTS
- 7.6 DRAWING PAPER
- 7.7 COLORED PENCILS
- 7.8 MARKERS
- 7.9 PENS
- 7.10 TAPE

8. EVALUATION:

- 8.1 WHAT ARE THE BENEFITS OF USING ACTIVE LISTENING TECHNIQUES IN

- A CLIENT INTERVIEW
- 8.2 WHAT ARE SOME OBSTACLES AND CHALLENGES INHERENT WITH ACTIVE LISTENING TECHNIQUES IN A CLIENT INTERVIEW
- 8.3 WHAT ARE SOME OF THE VALUE ISSUES THAT NEED TO BE CONSIDERED DURING A CLIENT INTERVIEW

9. SUGGESTIVE INTERVIEW AND CONSULTATION TOPICS TO BE INCLUDED IN A CLE PROGRAM

1. The Initial Telephone Conversation
2. The Preparation of the Initial Meeting
3. The Interview Reception Area
4. The Interview Room Physical Environment
5. The Exterior Elements-Avoiding Outside Interruptions
6. Meet and Greet Stage of the Initial Interview
7. Icebreaking Techniques during the Initial Interview
8. Establishing Clinic Limitations and Confidentiality Issues During an Initial Interview
9. Establishing Client Financial Means/Ability During and Initial Interview
10. The Level and Type of Speech Used During an Initial Interview
11. Active and Passive Listening During an Interview
12. Gathering the Main Facts During an Interview
13. Theory Development Questioning-Pursuing Helpful Evidence
14. The Environment
15. Length of the Interview
16. Taking Notes
17. Clarifying Client's Objectives And Expectations
18. Questioning Techniques During an Interview
19. Open Questions
20. Closed Questions
21. Yes/No Questions
22. Leading Questions
23. Eliciting Time Lines
24. Handling the Difficult, Atypical Clients and Difficult Cases
25. Concluding Client Initial and Subsequent Interviews
26. Establishing Next Steps
27. Follow Up Matters after an Interview
28. Interview File Reports and Checklists
29. Interview Evaluations
30. The Advising Stage
31. Counseling Clients about "Deals"
32. Identifying Alternatives
33. Identifying Consequences
34. The Taking of Instruction Stage
35. Final Decision-Making
36. Client Referrals
37. Client-Centered Lawyering During Interviews and Consultation: Purpose and Techniques

10. **Interview Skills – Active Listening**
PowerPoint Presentation

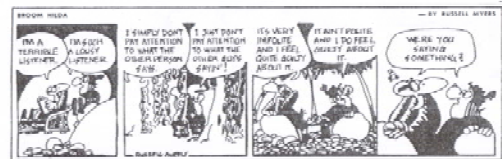
INTERVIEWING AND CONSULTATION SKILLS LESSONS

- INTERVIEWING AND CONSULTATION TOPICS TO BE TAUGHT IN A CLE PROGRAM

Brainstorm!

- What interview and consultation topics would you teach in your CLE program?

FOCUSER



ACTIVE LISTENING

Active listening is the “most effective talk tool that exists for demonstrating understanding and reducing misunderstanding”

IDENTIFYING CONTENT AND FEELINGS

Content – **information** that affects the clients’ legal interests and the likely effectiveness of potential solutions

Feelings – the client’s **internal reactions** to their problems and possible solutions

INTRODUCTION

In addition to “advice giving” your ability to **effectively listen** to your client will

- gain the client’s trust
- develop good back and forth conversation and comfort with your client
- Get full descriptions of your clients’ problems and
- help your client develop effective solutions

IDENTIFYING CONTENT AND FEELINGS

Mayumi

“I am so angry at Ramil and I hate him. I will never go back with him. He beats me and I am afraid of him. He was never a good husband. I must get Alma back from him. I am a much better mother than he is a father and she will be better off with me. I will not be forced to be with him.”

Content?

Feeling?

OBSTACLES TO GOOD LISTENING ?

OBSTACLES TO GOOD LISTENING

- Your focusing on what you are doing and not on what the client is saying
- You are preoccupied with your personal worries and not on what the client is saying
- Your reactions to the client's characteristics – the client is attractive or not attractive or the client's morals and behavior is different to yours
- You are busy mentally working out if you have enough time to take on this client

PASSIVE LISTENING TECHNIQUES

Passive listening techniques encourage clients to talk with little activity or encouragement on the interviewer's part.

PASSIVE LISTENING TECHNIQUES

The function of Passive Listening is to give clients the space to freely communicate their thoughts and feelings.

- SILENCE – silence gives the client the space they need to think carefully and respond in a way that makes them comfortable
- OPEN-ENDED QUESTIONS – asks the client to discuss subjects in his/her own words
- MINIMAL PROMPTS – make brief expressions. Encourages the client to continue

PASSIVE LISTENING TECHNIQUES

Some Minimal Prompt Examples may be?

ACTIVE LISTENING

- GENERALLY-WHAT IS ACTIVE LISTENING
- RESPONDING TO VAGUELY EXPRESSED FEELINGS
- RESPONDING TO UNSTATED FEELINGS
- BEING AWARE OF NON-VERBAL EXPRESSIONS OF FEELINGS
- NON-EMPATHIC (JUDGMENTAL) RESPONSES

PASSIVE LISTENING TECHNIQUES

Some Minimal Prompt Examples may be

"Oh", "I see", "Mm-hmm",
"Interesting", "Really", "Ok", "Yes",
"Go on", "Sure", *Nodding Your Head*

ACTIVE LISTENING IS:

Active Listening is understanding clients' messages and sending them back in "**reflective**" statements that mirror what you have heard.

Your reply reflects the *essence* of the content of the client's remarks as well as your perception.

This is based on the statement and on the clients *non-verbal clues* that indicate the client's feelings.

ACTIVE LISTENING
Responding to vaguely expressed feelings

Q. What should I do? My Client is trying to express his/her feelings but is using vague or not easy to understand terms and words.

A. By using a reflective responses that identifies and recognizes the feelings will help bring the feelings out into the open.

Example of response phrase may begin with
"That must have made you very...."
"It sounds like felt...."

ACTIVE LISTENING
Responding to vaguely expressed feelings

Hypothetical Exercise:

Scenario 1

Mayumi:

“Ramil wants me to go and live with him and Alma like a normal family, but he hits me and suspects me of sleeping around on him. When I say No I’m not coming back he looks at me in a mean way.”

Interviewer:

Scenario 2

Mayumi:

“I feel out of it since Ramil got custody of Alma. I don’t want to go back with him but I would like to have her back with me.”

Interviewer:

Scenario 3

Mayumi:

“The CPA took a statement from Alma saying that I hurt her and put bruises all over her body. I would never do that, to her. She falls down a lot but the CPA said my baby was not allowed to live me.”

Interviewer:

ACTIVE LISTENING
Responding to unstated feelings

Q. What do I do. My Client is discussing a situation that in my everyday experience I would expect it to be an emotional or stressful situation, but my Client is not showing any emotion?

A.

- 1) Identify and label the client’s unstated feelings by placing yourself “in the Client’s shoes”. And then:
- 2) Mirror the feelings with a reflective response.

Example of response phrase may be
“You sound very aggravated”
“You must be heartbroken”

ACTIVE LISTENING
Responding to unstated feelings

Hypothetical Exercise:

*bruises on her body. Some people say that I am
beating her but that is not how she gets her
injuries.”*

Interviewer:

Scenario 1

Mayumi:

*“Six months ago I moved away from my husband.
I originally took my daughter with me and I have
been working since then. Eventually there was an
investigation and after the investigation Ramil got
Alma back and she is no longer living with me.”*

Interviewer:

Scenario 2

Mayumi:

*“I use to come home a lot and Ramil would kick
me and beat me. He is a very jealous person.
After awhile I decided to move out and that is what
I did. I now live in a different place from Ramil and
he wants me to return. I like where I live.”*

Interviewer:

Scenario 3

Mayumi:

*“Alma has cerebral palsy and has had it since she
was born. She falls down a lot and this causes*

ACTIVE LISTENING
Being aware of non-verbal expressions of feelings

FUN AND ARTISTIC TIME! 

1. Draw an example of a person who is expressing a non-verbal expression or feeling
2. On the back of the drawing please label what the non-verbal expression or feeling is

ACTIVE LISTENING
Being aware of non-verbal expressions of feelings

Non-verbal cues tend to appear **spontaneously**, the Client may not be aware of these actions.

Q. If my Client is not aware of these non-verbal clues, should I make an active listening response when I sense them?

A. Be cautious as your Client may be attempting to conceal that emotion from you and by you saying "This subject seems to worry you", your Client may think you are attempting to probe feelings.

ACTIVE LISTENING
Being aware of non-verbal expressions of feelings

Look and listen for your Client's non-verbal cues.

Auditory - voice tones, pitch, rate of speech and pauses in conversation

Visual - posture, gestures, facial expressions, body movements such as wringing his/her hands, constantly shifting position, sweating, blushing

ACTIVE LISTENING
Responding to clearly articulated feelings

Q. My Client is expressing his/her feelings very clearly. How can I show I am empathic and understanding without parroting responses?

A. You can empathize by directly expressing your **understanding** of the Client's reaction.

Example of response phrase may begin with
"I can understand how upset you'd be after...."
"I know just how humiliating that is"

ACTIVE LISTENING
Responding to clearly articulated feelings

Hypothetical Exercise:

Mayumi:

“Ramil took Alma to the hospital, where they photographed her bruises. I am so angry, how can the doctors not be able to tell the difference between bruises from Alma’s cerebral palsy and someone hitting her. They must be stupid and incompetent. If that isn’t enough the Child Protection Authority interviewed my daughter without the presence of one of her parents. I am angry with the hospital, angry with the CPA and angry with Ramil. I am angry because the truth is not important.”

Interviewer:

Scenario 1

Mayumi:

“I am very afraid of what Ramil will do. He is promising Alma that he will buy her a bike if she tells lies about me. He will not buy her the bike, he is black mailing me to go back with him by making her tell lies about me and I will never see her again. He is evil and cruel and I am afraid that he will hurt me again if I go near him or Alma. No-one cares that he is cruel to me.”

Interviewer:

Scenario 2

Mayumi:

“I miss Alma, not having her near me or being able to hold her makes me so sad. I feel like my heart has been ripped from my chest. He is turning her against me. I am so sad, it hurts me to hear my baby say that I caused her bruises. I would never hurt her. He made her say that I kicked Alma and hit her over and over, but it is not true.” (sobbing)

Interviewer:

Scenario 3

OPEN SOCIETY

JUSTICE INITIATIVE

NEW YORK – BUDAPEST- ABUJA



HUMAN RIGHTS CENTER
ATENEO LAW SCHOOL

MANILA, PHILIPPINES

ACTIVE LISTENING
Non-empathetic (judgmental) Responses

- Generally, out of a genuine desire to be of help, we give advice and search for underlying causes of emotions.
- Judgmental responses may actually reflect our own discomfort in dealing with feelings.
- Your responses should be empathetic.

ACTIVE LISTENING
Non-empathetic (judgmental) Responses

Interviewer:

CPA workers are professional persons. Are you telling me that a professional CPA worker is not telling the truth? Why would that be?

I don't understand Ramil, by taking out a criminal complaint against you how could he possibly think you would go back to him.

I don't blame you for being upset with Ramil's actions.

ACTIVE LISTENING
Non-empathetic (judgmental) Responses

Mayumi –

"When I heard the CPA worker testify that during the interview with Alma, she said she wanted to live with her father, I was disgusted. Ramil has promised to buy Alma a bike if she says I caused her bruises and now I have a criminal complaint against me. He is the one who does the hitting. He has hit me many times, sometimes I had to go to the hospital to get treatment. Now I am the one who has is being blamed for hurting Alma. He is doing all this to force me to go back to him"

DIFFICULTIES IN MASTERING
ACTIVE LISTENING

COMMON PROBLEMS AND OBJECTIONS TO APPLYING ACTIVE LISTENING TECHNIQUES

"FEELINGS ARE FOR PSYCHOLOGIST AND PSYCHIATRISTS AND NOT LAWYERS"

Your role is not to analyze feelings, but to acknowledge problems' emotional aspects when a client raises them.

Reflections simply show that meaning has been registered. They reveal an act of empathy. They tell the listener that he or she has been heard.

DIFFICULTIES IN MASTERING ACTIVE LISTENING

"I FEEL EMPATHIC, BUT I JUST CAN'T FIND THE RIGHT WORDS"

Your comfort and ability with active listening will get better once you recognize that there is no one "right" way to phrase active listening responses. Empathy results from a reflection of feelings, not from a magical combination of words.

DIFFICULTIES IN MASTERING ACTIVE LISTENING

"TALKING ABOUT FEELINGS MAKES IT DIFFICULT FOR ME TO GET BACK ON TRACK"

To smooth the transition, try to summarize the client's situation, including their emotional reactions, and then to ask if they are ready to move to other topics.

DIFFICULTIES IN MASTERING ACTIVE LISTENING

"THERE'S NO WAY I CAN EMPATHIZE WITH THAT CLIENT"

Unless you totally lack empathy for your client, you probably will be able to make some active listening responses to the emotional aspects of their problems. On the other hand, if you feel no empathy at all for your client, recognize that you may not be able to adequately represent them and consider referring them to other lawyers and withdrawing.

DIFFICULTIES IN MASTERING ACTIVE LISTENING

ACTIVE LISTENING IS MANIPULATIVE

"I DON'T THINK LAWYERS SHOULD MANIPULATE PEOPLE TO EXPOSE THEIR FEELING. IT'S AN INVASION OF THEIR PRIVACY."

The use of active listening skills is in part the use of a technique to gain information.

Active listening is one among many techniques you employ in order to assist clients to find satisfactory solutions to problems.

Active listening, which provides non-judgmental understanding, is an essential technique for gaining full client participation.



HOW MUCH ACTIVE LISTENING?

- Depends! Case by case basis

YOU WILL GET BETTER AT IT!

I PROMISE 😊

11. Demonstration case study: Case of Mayumi and Alma

I. FACTS:

1. Mayumi (28) and Ramil (30) have been married for 9 years and have daughter called Alma (9 years old). Alma suffers from child cerebral palsy, her disease is currently under control, but it affects her movement abilities – she is clumsy and falls down often etc.
2. Ramil is a very jealous person. There are many times that he suspects that Mayumi is having an extra marital affair. When he suspects she is doing this Ramil beats Mayumi and locks her in the flat. Over past 2 years these beatings have become more and more serious. Mayumi has never told anyone about the beatings, because she feels very ashamed and guilty and thinks she would not be trusted.
3. On September 5th 2006 after one of the serious beating Mayumi decided to leave Ramil. She took Alma and moved to another city. She is living now in a shelter with confidential address.
4. Mayumi filed a petition for divorce. Mayumi was awarded custody of Alma by preliminary ruling.
5. Ramil got very angry when he found out that Mayumi had left him. He had searched for Mayumi and found out, which school his daughter Alma is now attending.
6. Although Ramil had beaten Mayumi many times, he was never violent towards their daughter Alma. Because Ramil has never been violent toward his Alma, Mayumi did not prevent Alma from seeing Ramil and allowed Alma to visit her father every second weekend.
7. When Alma came back from the third visit with Ramil, Alma told her mother Mayumi that her father Ramil had taken her to several doctors and that he had been taking photos of her, and had promised her to buy her a bike.
8. After another weekend visit, Ramil picked up Alma from the school and refused to return her back to Mayumi. Ramil claimed that Mayumi had excessively punished Alma - kicked and hit her causing her several bruises.
9. Following this action of picking up Alma, Ramil filled a criminal complaint against Mayumi alleging physical abuse of their daughter Alma. During the criminal investigation Ramil claimed that during the last visit he had realized that Alma had had many bruises over her body. When he had asked about the cause Alma had said that her mother had kicked her and hit her repeatedly. He had taken Alma into a hospital, where the doctor had documented several bruises around knees and the lower back area.
10. Based on this medical report, Ramil took Alma to the local Child Protection Authority (CPA) office.

The CPA worker testified that during the interview of Alma, which was done outside the presence of Ramil, Alma had spontaneously told her that she wanted to live with father, she did not like to stay with her mother because her mother had kicked her, hit her and offended her verbally without reason and she had showed the CPA worker the bruises. Both the CPA worker and the police took digital photos of the bruises.

11. During the investigation Alma's school teacher testified, that she had never seen bruises on Alma's body and she had never observed any signals of her abuse by mother. She had never observed anxiety, problems with communications, unwillingness to return home or fear from mother. Alma seemed disturbed only after two visits of her father in school. The staff of the shelter also testified that the relationship between Mayumi and Alma was affectionate, Alma had never complained about her mother and they had never observed any bruises.

12. Mayumi gave testimony to the police and said that Ramil had made up most of the evidence. Mayumi did admit that Alma had bruises around the knees but said these were due to Alma's cerebral palsy illness, which caused her to sometimes fall down, especially when climbing stairs. When showed the photographs taken by Ramil of the injuries, Mayumi said that the bruises of Alma in the lower back area were not believable. She

pointed out that the bruises were pink, which was not usual for bruises several days old. Mayumi said that the digital photos could be easily digitally altered and therefore they can not be considered as relevant evidence. She also claimed that Alma's testimony during the interview with the CPA worker was manipulated by Ramil. She said that this testimony was only given after spent 4 days with her father. Mayumi said that during that time Ramil could have inflicted psychological pressure and influenced Alma to give the testimony that she did. Mayumi stated that Ramil had raised this false allegation to deprive her of Alma's custody and force Mayumi to return back to Ramil. This was something she did not want to do, especially after all the long term psychological and physical abuse.

13. While questioned by police Alma testified the same as when asked by CPA worker but the police seemed to feel that Alma's testimony seemed to have been a bit coached. Alma stated that her mother had kicked her and hit her several times without reason. She stated that she liked more being with her father than with her mother. Her father bought her a lot of clothes and toys. Her father promised her to buy her a bike. When asked for what she will get the bike she refused to answer. She said she had never seen her father Ramil beating her mother Mayumi. During the interview it appeared that Alma was very hostile and aggressive towards her mother stating that

she hated her, that it would have been better if she did not see her anymore. When asked why she hated her mother, she was reluctant to answer for long finally she stated that it was because her mother had beaten her. She denied that her mother would ever be nice with her, treat her nicely or pay attention to her. On the other hand she described her father only positively – like “he is the nicest person, he buys me nice things; he is my most beloved person.”

14. After the criminal complaint was filled and the investigation was complete the Family court gave a preliminary ruling, which granted Ramil custody of Alma.

Mayumi does not know how to solve the situation and has come to the University Clinic for advice and assistance.



II. Mayumi (Interview at the University Legal Clinic)

1. During the interview Mayumi said that she had left her husband 6 month ago and took with her their daughter Alma because of long-term psychological abuse and physical violence against Mayumi. Mayumi stated her husband Ramil never harmed Alma. She stated that Alma suffered from child cerebral palsy, which made it difficult for her to walk, and Alma often fell down and because of that had bruises on her knees.

2. After she had left Ramil, she moved to another city, but Ramil found out which school Alma attended. About two month ago Ramil approached her, when she went to school to pick up Alma. He tried to persuade her to return back to him. He promised to change his behavior. He threatened her that if she had not return back he would have taken Alma away from her. She refused and he attacked her in front of the school. The police were called.

3. Two weeks ago, when Alma came back from her father's visit she said that she had had to say various things to several doctors and that father had promised her to buy her a bike if she had said certain things. Father also had taken photos of her and she had seen that she had had bruises on her back on the pictures although she had not had any. She said that the father had done something with the photos at computer.

4. Mayumi stated that she had not seen Alma since Ramil had taken her from school. She tried to call Alma, but Ramil refused let Alma speak to her on the telephone. Mayumi stated that she sometimes (once of twice pro months) hit Alma by hand over her buttocks, but

never excessively, and she had never kicked her in anyway.

5. Mayumi asked the CPA worker whether they could arrange for her meeting Alma in their office, but they told her that Ramil refused. They said that Ramil told them that Mayumi could only see Alma if she came home to Ramil's flat. Mayumi said that she refused to go there, because she fears further attack. She says that Ramil is very jealous, and she is afraid that he will lock her in the flat, because he has done this in the past.

6. Mayumi states that Ramil keeps calling her and asking her to come back. Mayumi said that Ramil told her that if she came back he would ask that the criminal complaint be withdrawn and he would testify at the court that he had lied. Mayumi also said that Ramil told her that if she did not come back within two weeks Ramil would raise further allegations against her and try to prove that Mayumi is an alcoholic.

7. Mayumi says that returning back to Ramil is unacceptable for her. She can not stand the abuse from Ramil anymore, but she does not want to lose Alma.

8. During the interview Mayumi appears that she can not think clearly about the questions given to her, she can hardly concentrate on the questions, she appears to be anxious, very depressed, with very low self-esteem. She constantly says that she sees no solution to her situation

The University Legal Clinic staff called Ramil, who agreed to meet with the clinic staff member:

III. Ramil (interview at the University Legal Clinic)

1. During the interview at the University Legal Clinic Ramil alleged that the assault of Mayumi had been the only isolated incident of physical assault. He loves Mayumi very much and had never beaten her before. But that day he got very angry, because his friend had told him that he had seen Mayumi with another man. He had had several drinks before he came home. When he asked Mayumi about it, she kept denying it. He became crazy with anger and hit her several times.
2. After this incident Mayumi took Alma and moved to the shelter with a confidential address. When Mayumi first left Ramil wanted to contact her to show her how sorry he is but because he did not know where she was living, this was difficult to do. Therefore he searched for them and found out, which school Alma attends now. It is true that he approached Mayumi in front of the school to persuade her to come back home, but he did not attack her. He does not want to lose Mayumi and regrets the attack. Ramil wants Mayumi with Alma to return back home and to live together as a family again..
3. Concerning issues of Mayumi abusing Alma, Ramil stated that during her visits with him, Alma

has shown a very bad attitude towards her mother. She has repeatedly said that she wanted to live with Ramil and has often wanted to refuse to return back to Mayumi at the end of the visits.

4. When Ramil asked Alma why she did not want to return back to her mother she said that Mayumi often yelled at her and kicked her and hit her without reason. Ramil did not trust what Alma was saying, because he had never realized before that Mayumi would have hit or kicked Alma. But during the last visit he saw that Alma had bruises around her knees and on her back. When he had asked about the cause Alma had said that her mother had kicked her and hit her repeatedly. He then took Alma to the hospital, where the doctor documented several bruises around Alma's knees and lower back area.
5. As a result of the medical examination Ramil took Alma to the CPA office. Immediately after visiting the CPA office Ramil applied for the primary custody of Alma because he believed that Mayumi was physically abusing Alma. He believes that this may have been caused by Mayumi's inability to bear the stress caused by the marriage breakdown. He also suspects that Mayumi is now having problems with alcohol. He believes that if Mayumi were to come back into the marriage this stress and alcohol problem would stop and so would the abuse against Alma.

6. In addition to filing for primary custody Ramil has also filed a criminal complaint against Mayumi for the abuse of Alma. However, although he believes the abuse did happen he is willing to change his testimony if Mayumi returns back to him and withdraws the application for a divorce.
7. Ramil rejects any accusations that he physically abused Mayumi except for the one isolated incident that he discussed above. He would not like to meet with Alma and Mayumi in the presence of a CPA officer and would find it very humbling if Mayumi would agree to this. He also would like to have Alma visit with Mayumi but to protect Alma he would like to supervise the visits. He promises that he will in no way harm Mayumi. He also would like Mayumi to return home because he feels that the shelter that Mayumi is living in is not a suitable place for child visitations. He feels that Mayumi should return home and she can see Alma freely there.



IV. First scenario

During the interview with Mayumi the staff of the University Legal Clinic realized that the police in the course of criminal investigation had failed to question Alma's pediatrician, in whose care Alma has been since early childhood when she was diagnosed with the child cerebral palsy. After the intervention of the Clinic the police requested a report from the Alma's pediatrician. The pediatrician certified that Alma has been having such bruises over her body since early childhood and it is typical for children with cerebral palsy. The pediatrician further stated that he as a medical expert can testify that Alma's bruises and injuries would be consistent with her falling down and other child injuries.

V. Second scenario

The police requested in the course of the criminal investigation medical expert opinion regarding Alma's bruises. The medical expert after examining Alma came to conclusion that although it is common for the children suffering from child cerebral palsy to have bruises from the falls down, the seriousness and types of injuries are more consistent with being caused intentionally as opposed to being caused by accident.

12. Interview Skills Check List 1

(Excerpt from : Clinical Law in South Africa,
Lexis/Nexis, A Project of the Association of
University Legal Aid Institutions, 2004, p. 51-57)



4.4 After the consultation

Once the attorney and his/her client have devised a strategy, it is standing of the procedure to implement it. At the earliest possible time, the attorney should advise his/her client with a letter that outlines and summarises the decision to be adopted. The attorney should set out the approach to his/her client, the attorney should point out to the client which aspect of the offer by the other party if, for example, an offer is not accepted. If the client has discussed a secondary plan that should also be confirmed in his/her letter.

During the course of representation, the lawyer's prognosis and the facts considered may come into light which may affect the outcome as the case progresses, the predicted outcome might change.²⁷

In many situations, it is appropriate to give the client tasks that are under the control of the matter to the lawyer. The lawyer should not accept clients that resolution of their matters require a co-operative partner.²⁸

One needs to convince the client that the two parties are in it together as players on the same team. One also needs to explain that, for identical, excluding any other interests. One must also tell him/her the relationship, as one is assisting him/her in his/her fight against the other party.

It is also important for the client to know what one expects will happen. Lawyers and clients often fail to communicate on this point, and the lawyer's last comments to the client should set out the happenings to follow. If the attorney should point out that he/she is unable to proceed until the necessary conditions are met. If the attorney has agreed with the client to make an offer, the client understands that he/she will not hear from one until the offer is accepted.

Throughout the course of representation, a lawyer should frequently advise the lawyer who must identify issues which require control should not be allowed to become overly dependent on the lawyer's control in the relationship. Clients who are kept informed throughout the representation are the clients who are the most satisfied.

Advising clients on the law and helping them to make decisions are some of the most onerous responsibilities undertaken by a practitioner.

4.5 Utilising checklists or client instruction sheets

This section is concluded by providing a number of checklists or instruction sheets.

A word of caution: these checklists are for guidance purposes only and should not be used in a mechanical way. They are merely intended to prevent one from overlooking important details.

27 Hyams Campbell and Evans 1998 *Practical Legal Skills* 51.
28 Mahern *Professional Skills Courses: Interviewing Counsellors* professional_skills_courses.htm.
29 Hyams-Campbell and Evans 1998 56.
30 Vilardo 2001 "Communicating with Clients" 27 *Litigation* 45.
31 Hyams Campbell and Evans 1998 *Practical Legal Skills* 56.
32 Mahern *Professional Skills Courses: Interviewing Counsellors* professional_skills_courses.htm.
33 Hyams Campbell and Evans 1998 64.

important basic details; to assist in providing a logical sequence; and to ensure that the interview. Properly used, they can help to assure the client that the lawyer has considered the problems of clients often cover a large range of issues that are covered by the checklist. However, if the checklist is followed slavishly, the problems may be overlooked. This may lead one to believe that completing a checklist replaces the lawyer's attention. Clients may also interpret the use of a checklist as just another statistic on a pre-printed form.³⁴

4.5.1 Checklist: taking delict instructions³⁵

- On what date and at what time did the wrongful act occur?
- Who caused the harm?
- Was such person an employee or agent of another person/body/corporation acting in the course and scope of his/her employment of mandate? (This includes vicarious liability.)
- Where did the wrongful act occur?
- Provide full details of the wrongful act.

These particulars should account for the greater portion of the statement. If the wrongful act is an assault, provide full details as to:

- the manner in which the client was assaulted, on what part of the body?
- the number of people involved in the assault, their detailed descriptions, and each of them assaulted the client;
- the number of blows that were inflicted, and the period of time over which they were inflicted;
- generally, a full narrative of the events.

- If, for instance, the wrongful act is negligent driving, giving rise to a motor accident, such as:

- the directions in which the vehicles were travelling and their estimated speeds;
- whether any rules of the road were disobeyed;
- in what respects the drivers were negligent;
- the weather and traffic conditions;
- the events occurring immediately after the accident, with particular reference to the drivers and the passengers; and
- generally, a full narrative of how the collision occurred.

It is important that a sketch plan be drawn of the accident.

These are by no means exhaustive lists of particulars to be obtained, but are merely indicative of what is required.

- Was the wrongful act committed intentionally or negligently? Provide particulars.
- Provide full particulars of any person who witnessed the wrongful act.
- Was the wrongful act reported to the police? If so:
 - at which police station;
 - who is the investigating officer;
 - has any person been charged criminally;

34 Brayne and Grimes 1994 *Professional Skills for Lawyers, a Student's Guide* 148; 149-150.

35 Acknowledgement to Wits Law Clinic.

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- what is the charge;
- has any person appeared in court? If so, provide full particulars when and in which court such person appeared;
- if the matter is still proceeding, to what date has it been re
- if the matter has been finalised, what was the outcome?

Injury to Property

If the client's property was damaged as a result of the wrongful a

- Describe fully the property damaged;
- Provide full particulars of the damage;
- Provide full particulars of the cost of repair and provide supp
- What was the market value of the property immediately prior documentation;
- What was the market value of the property immediately at documentation;
- What was the registration, make and model of the car. Proof c

It is important that in all motor collision cases, one will require sketch plan.

Bodily Injuries

- Provide full particulars of any *bodily injuries* suffered by the
- Has the client suffered *permanent physical disability*?
- *Where* did the client receive treatment as an in-patient and an
- Which *medical practitioners* treated the client? What is client medical consent form.
- For what *period* did the client receive treatment?
- What are the client's *medical expenses* to date?
- Has the client been *unable to work* as a consequence of the in
- Provide full particulars of the client's *likely future loss of ear*
- Provide full particulars of the client's state of health before an
- Earnings of the client before and after the accident:
 - occupation immediately before the accident;
 - details of the employer;
 - total earnings in the 12 months preceding the accident;
 - monthly earnings at the time of the accident;
 - if applicable, attach a copy of income and expenditure acc last three years;
 - if an employee, attach a letter from the employer which cates future expected earnings;
 - name of pension fund;
 - date of joining the pension fund; and
 - expected retirement age.
- Other information:
 - one has to establish if a Workmen's Compensation claim b
 - whether particulars of compensation has already been rece Compensation Act); and
 - a copy of other actuarial report(s), if available, has to be at

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4.5.2 Checklist: divorces³⁶

The following information must be obtained:

- Plaintiff's full names and surnames.
- Defendant's full names and surname.
- Wife's maiden name and/or previous names.
- Identity number of the plaintiff.
- Identity number of the defendant.
- Residential and postal address of the plaintiff.
- Residential and postal address of the defendant.
- Work address of the plaintiff.
- Work address of the defendant.
- Occupation of the plaintiff.
- Occupation of the defendant.
- Date of the marriage.
- Place where they were married.
- How the parties are married.
 - in community of property
 - out of community of property
 - with accrual
 - without accrual
- How long have the parties resided within the jurisdictional area of the Hi
- Number of children born from the marriage.
- Names, ages and gender of all minor/dependant children born out of the m
- Who gets supervision and control of the children? Reasons.
- How much maintenance is needed per child?
- If the party (defendant) from which maintenance is claimed is unempl afford to pay the maintenance claimed.
- Have any arrangements been made regarding access to the children. If ri provide the reasons for this.
- How will the children be cared for if the person wanting supervision and co
- Who is responsible for the medical, dental and scholastic expenses of the c
- The reasons for wanting the divorce.
- If any party left the communal home.
- What attempts have been made to save the marriage?
- Have any arrangements been made regarding the division of the movable a commercial estate?
- Who is to pay the outstanding debt of the communal estate?
- Forfeiture (marriage in community of property). Reasons.
- Does the plaintiff (wife) want maintenance for herself, or is the plaintiff maintenance to the wife?
- Does the plaintiff/defendant want to share in the pension or policy interest of
- Does the plaintiff have the original marriage certificate in her possession marriage certificate.

36 Acknowledgement to University of Pretoria Law Clinic.

- If children are involved, complete "Annexure A" and let the commissioner of oaths.
- Marriage out of community of property: Did the husband/wife the other party during the marriage?
- Costs: In a divorce action, the court shall not be bound to successful party. However, the court may, having regard to the so far as it may be relevant, make such order as it considers just of the proceedings be apportioned between the parties.
- Instructions to the client:
 - Fill in "Annexure A" and sign it at the Police station, in the
 - Obtain the original marriage certificate or a copy from Home
 - Draw up a complete list of all assets and expenses of one defendant.

4.5.3 Checklist: microlending³⁷

- Obtain the name, address and telephone number of the lender.
- Find out if the lender is registered with the MFRC. This can be done by calling the MFRC at Number 0860-100-406 or by visiting the MFRC website at www.mfrc.co.za
- Contact the lender and obtain a complete statement of account. Should the lender refuse, they would be in violation of the MFRC regulations.
- If the lender is registered with the MFRC, find out if they follow the MFRC regulations. If the lender did not provide the client with a copy of the signed sign blank documents; or if the lender kept the client's bank account in violation of the regulations. Also, the lender may not make attachment order *at the time of the loan*, as it is illegal and invalid.
- If the lender failed to comply with the Regulations, they are in breach of the Usury Act. This means that the lender is bound by the Usury Act. This means that the interest rate charged is higher than the prescribed maximum rate prescribed in the Act.
 - Write to the lender stating that they are in breach of the Act and that the prescribed interest rates will apply to the loan. Make an attachment order in terms of the Usury Act.
 - Sue for the return of any interest illegally recovered overpaid.
 - Register a complaint with the MFRC at 0860-100-406.
- If the lender is not registered with the MFRC, make sure all interest rates are in compliance with the Usury Act. If not:
 - Write to the lender stating that they have failed to register and that the maximum interest rates as prescribed by the Usury Act are applicable.
 - Sue for the return of any interest illegally recovered by the lender.
- If the client cannot afford the monthly or missed payments as agreed:
 - Contact the lender and negotiate a new payment schedule.
 - Accept a reasonable offer.
 - Advise the client not to miss a payment after the new agreement.
 - Confirm the new agreement in writing.

37 Acknowledgement to Rhodes University Law Clinic.

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- If the lender has handed the case over for collection:
 - Find out what is the balance due.
 - Find out what the client can pay.
 - Negotiate new payment terms.
 - Confirm in writing.
- If the client signed a consent to salary deductions without a court order:
 - Apply to court for the dismissal of the order.
 - Notify the client's employer once the order has been granted.

4.6 Assessing consultation skills

The student in the law clinic must be able to show that he/she has conducted a thorough consultation; regarded the relevant information available before the interview; used appropriate communication techniques; obtained all the information which was needed from the interview in a timely, effective and efficient way; ensured that the client understood the instructions, if any, and that the client left the interview with a common understanding of the instructions, if any, and that the client is to take; and make a record of the interview that satisfies the requirements of the practice.³⁸

4.6.1 Interviewing checklist³⁹

4.6.1.1 Attitude towards the client

How well does the attorney:

- Introduce him/herself to the client?
- Make the client feel at ease?
- Listen attentively?
- Notice any problems of understanding?
- Give opportunities to ask questions?
- Explain clearly?
- Allow the client to make decisions?

4.6.1.2 Evidence of preparation

How well does the attorney:

- Demonstrate that he/she had prepared a structure for the interview?
- Understand any documents produced?
- Show appropriate familiarity with law/procedure?

4.6.1.3 Obtaining information

How well does the attorney:

- Allow the client to explain the problem in his/her own way?
- Ask questions at the appropriate time which were:
 - open?
 - focused?

38 University of Pretoria Law Clinic 2003 *Practical Law Study Guide 3*.

39 Brayne Duncan and Grimes 1998 *Clinical Legal Education: Active Learning in your*

- Accurately obtain available details of:
 - the factual situation?
 - the client's main concerns and wishes?
- Obtain/ask for relevant documents?
- Identify where further information was needed and how to obtain it?
- Use time efficiently?

4.6.1.4 Important information

How well does the attorney:

- Explain legal terms and procedures (where necessary)?
- Avoid giving premature or wrong advice?
- Summarise the main points?
- Explain the next steps to be taken by the solicitor and the client?

4.6.1.5 Documenting the interview

How well does the attorney:

- Summarise factual issues?
- Identify legal issues?
- Summarise accurately the advice given and instructions received?
- Clearly identify the next steps for the adviser and client (including dates)?



**13. LITIGATION
INTERVIEWING AND
ADVISING GUIDE
(CANADIAN BAR
ASSOCIATION)**



Date: _____ Comple

Client Role: _____ Comple

LITIGATION INTERVIEW]

ORGANIZATION

1. **Introduction: Preliminary Problems Identification**
 - a. Begins interview appropriately.
 - b. Allows client to explain problems, concern and goals
 - c. Summarizes lawyer's understanding of client problem, concerns and goals
 - d. Explains preliminary matters and structure of the interview.

2. **History: Chronological Order**
 - a. Encourages client to relate history of problem using appropriate techniques.
 - b. Avoids interrupting client with questions except:
 - (i) to clarify;
 - (ii) to keep client on track; and
 - (iii) to avoid chronological gaps.

3. **Questioning: Theory Development and Verification**
 - a. Identifies potentially relevant topics.
 - b. Questions client thoroughly and systematically on each topic to obtain relevant facts.
 - c. Uses appropriate questioning techniques to motivate and exhaust client's recall of relevant facts.
 - d. Identifies further facts required.
 - e. Avoids giving premature legal advice.

4. **Advising**
 - a. Gives a brief introduction to the advising process.
 - b. Briefly outlines the relevant law.
 - c. Applies the law to the client's problem by:
 - (i) explaining the client's legal rights or obligations;
 - (ii) outlining the available legal and non-legal options;
 - (iii) working with the client to identify and assess the advantages and disadvantages of each option.

- d. If necessary, qualifies advice.
- e. Encourages client to make decision (if appropriate, lawyer makes recommendation).

5. Adjourning

- a. Explains fees (including disbursements, taxes and retainer).
- b. Determines if the lawyer is retained, and agrees on terms of payment.
- c. If appropriate, refers client to other source of assistance.
- d. Confirms a plan which specifies:
 - (i) steps to be taken;
 - (ii) time frames;
 - (iii) methods of obtaining further facts; and
 - (iv) lawyer and client responsibilities.
- e. Adjourns interview.

PRESENTATION

- 6. Establishes and maintains rapport with client.
- 7. Demonstrates effective listening skills.
- 8. Uses language which:
 - (a) is clear and concise;
 - (b) avoids legal jargon; and
 - (c) explains legal terms.
- 9. Demonstrates courteous and professional attitude.
- 10. Provides smooth transition between interview stages.

CONTENT

- 11. Accurately explains the substantive law and procedural steps relevant to client problem.
- 12. Gives legal advice which addresses client problem realistically, and which does not seriously prejudice client interests.
- 13. Deals appropriately with ethical issues, if any.

14. Tenant Interview Checklist

**Appendix I, Chapter 9 – University of
Ottawa Community Legal Clinic Manual
2006-2007**

A. DOCUMENT

- 2) Lease
- 3) Rent cheques/receipts, if applicable
- 4) Property Standards Work orders, Health Department orders or other orders
- 5) All correspondence between the parties
- 6) Termination notice given
- 7) Rent increase notice
- 8) Sub-lease documents, if applicable
- 9) Photographs were applicable (e.g., if state of repair is an issue)

B. FACTS

Does the *Tenant Protection Act* apply?

- 10) Is the client a roomer, tenant, other? We never act for landlords; we do not act for co-tenants
- 11) Is there a lease? Oral or written? Does the client have a copy?
- 12) Who is the landlord or tenant (company, individual, etc.)?
- 13) Is there a joint tenancy or a co-tenancy?
- 14) Are they all on the lease?
- 15) What are the terms of the lease?
- 16) On what day is rent paid? How often? Where is it paid?
- 17) When does the lease begin? Terminate?
- 18) When was possession taken?
- 19) Is tenancy month-to-month? Another period?
- 20) Do clauses in the lease cover the complaint?
- 21) Is the tenant still occupying the premises?
- 22) If tenants have not moved in yet, have they signed any documents (offer to lease, lease, rental application, etc.)?
- 23) Have post-dated cheques been requested? Given?
- 24) Is there a security deposit, or key money or any other money paid to landlord?
- 25) Do they have a receipt for any deposits made?

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- 26) Has last month's rent been paid in advance?
- 27) Has notice been given by the landlord or tenant?
- 28) What remedy is sought?
 - damages
 - return of goods
 - rent abatement
 - termination of tenancy
 - eviction
 - repairs
 - other

C. ENTRIES

- 29) Has the landlord given notice in writing prior to entry? 24 hours?
- 30) When has the landlord entered? How often? (give dates)
- 31) Is it an emergency? For what purpose did the landlord enter?
- 32) Did the tenant consent to the entry? Allow landlord to enter?
- 33) Does the lease provide a right of entry?

D. REPAIRS

- 1) Has notice been given to the tenant/landlord?
- 2) If it was written, does the tenant or landlord have a copy?
- 3) Have repairs been made?
- 4) Are other tenants affected?
- 5) Are there estimates?
- 6) Were repairs required at the start of the tenancy?
- 7) Who did the damage? Was it reasonable wear and tear? Is there proof?
- 8) Has the tenant made repairs?
- 9) Are there receipts?
- 10) Has rent been withheld? For how long? How much?
- 11) Have City Inspectors seen the premises?
- 12) Are there work orders outstanding?
- 13) How old is the building? In what general



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ATENEO LAW SCHOOL

MANILA, PHILIPPINES

- 53) Is the tenancy period over? Overholding tenant? f
54) Has a sublet or assignment occurred?
55) Is the tenant still in possession?
56) Has the landlord attempted to find a new tenant? How? Successfully?
57) Has there been an agreement to terminate (or surrender)? Are any City by-laws being violated?
58) Is the landlord responsible for these conditions? Is the tenant?
59) Are there grounds for termination or eviction? These may include the following:

- Tenant:
- rent arrears
 - persistent late payment of rent
 - damage to property
 - illegal activities
 - interference with the reasonable enjoyment of other tenants
 - impairing the safety or interfering with the lawful rights
 - violations of health, safety or housing standards (e.g., overcrowding)
 - misrepresentation of income (public housing)
 - end of enjoyment for superintendent
 - landlord refuses assignment or sublet

Landlord:

- personal use by the landlord or immediate family
- renovations/repairs, so extensive as to require vacant possession (tenant has right of first refusal)
- premises related to employment or included in the terms of employment (e.g., caretaker's premises)
- conversion (change of use)

E. SUBLET

- 34) Has the landlord withheld consent?
35) For what reason?
36) Can it be proved?
37) Are there any rights remaining with the head tenant? (sublease or assignment)
38) Is there a new tenancy agreement?
39) Who holds the last month's rent deposit?
40) Was a fee charged to sublet or assign?
41) What expenses are there for the landlord (credit checks, advertising, etc.)?
42) Is there a written agreement as to sublet rights?
43) How much is the rent? How is it paid?
44) Are there receipts or cancelled cheques?
45) Has the rent been late regularly?
46) Is it paid directly to the landlord?
47) Has the rent been withheld?
48) In arrears?
49) Was the rent raised over *Tenant Protection Act* guideline? When was it last raised?
50) For what reason? What notice was given?

F. TERMINATION

- 51) Has there been a notice? Date served? Date of termination?
52) What is the reason given for the termination?

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MANILA, PHILIPPINES

15. Interview Check-list

(University Of Ottawa Community Legal
 Clinic, Introductory Legal Aid Clinic Course,
 Fall 2006, Prof. Lisa Sidoli)

.....

PURPOSE OF THE INTERVIEW

- fact finding
- identify problem(s) / issue(s)
- determine what client wants
- create a good relationship with the client
- assess credibility
- obtain documents, if applicable

- periodically summarize what the client has said to clarify or correct any misunderstandings

3. Finishing the interview:

- ask if the client has anything else to add, including whether this situation raises any other problems for the client
- ask about relevant documentation and make copies
- summarize your understanding, including deadlines, but do not give legal advice
- confirm that you will contact the client within 48 hours

Barriers to effective comm

Steps to follow in a Clinic intake interview:

1. Introductions:

- Introduce yourself
- Inform the client that you are a law student supervised by a lawyer
- Assure the client of confidentiality

2. The interview:

- Begin with an open ended question such as: "What can I help you with today?"

- client is stressed, angry, afraid or defensive
- client may be in an abusive situation
- language, cultural or racial barrier
- client has a mental health issue
- caseworker may be anxious or nervous
- client mistrusts the legal system and caseworker is seen as part of that system
- caseworker uses legal jargon



that client does not understand

- caseworker is stereotyping or judging the client

does not speak fluent English or Tagalog, the language of the Philippines. Jovelyn and Rahmat were not married and their relationship broke down before the baby, Ferdinand, was born.

INTERVIEW DON'TS

- ⊗ don't use legalese
- ⊗ don't be judgmental
- ⊗ don't interrupt the client
- ⊗ don't assume facts before the client has related them to you
- ⊗ don't talk - rather listen
- ⊗ don't provide legal advice!

After they broke up they had a court hearing and the court awarded Jovelyn the custody of Ferdinand. Rahmat was awarded visitations rights - two weekends per month.

3. About a year ago Ferdinand was diagnosed to be totally deaf. He needs urgently an operation to put an electronic device put in his ear which can significantly improve his hearing abilities and enable him to learn to speak. The implantation this device is provided only to carefully selected children of very low age (the recommended is the age of 2) and requires subsequent intensive long-term rehabilitation and cooperation of the parents with medical specialists. With intensive rehabilitation most of the children are able to talk within 5 years after the operation.
4. The medical expert commission considering the applications for the operation of the device gave approval for Ferdinand to be provided the device, but Jovelyn has refused give her consent to the operation. The consent of both parents is needed for the operation. Without the operation Ferdinand will never learn to speak and his intellectual and psychosocial development will be seriously impaired. Rahmat is desperate, because time is passing and Ferdinand. Rahmat is afraid of the long term handicap this will cause Ferdinand. He also might become disqualified for the operation as the operation is provided only to very

Session: IV. Group Work on Developing a CLE Lesson Plan

In your group, start designing the Lesson Plan (for a 30-min. class) for teaching interviewing. Please choose the skill/-s, lesson outcomes, activities & timing for each, methods used, resources/teaching materials needed, and evaluation of outcomes. Please complete the lesson template below after the discussions and decisions in the group. Please hand over a copy of your group lesson to the organizers. Thank you!

13. Participant Case Study

Case of Rahmat and Ferdinand (child neglect)

I. Facts

1. Jovelyn ([F] 28, Filipino) and Rahmat ([M] 30, Indonesian) have a son called Ferdinand (3). Rahmat has been living in Manila for 5 years. He

small children, whose mental abilities and family environment ensure successful utilization of the implant.

Rahmat came to clinic to seek advice in the matter

II. Interview of Rahmat at the clinic

1. Rahmat is employed in a restaurant, washing dishes. He works eight-hour shifts – morning and/or evenings. He lives in the lodging house provided by the employer company to the foreign workers. Rahmat earns 6,000 pesos pro month.
2. Rahmat stated that he and Jovelyn had separated during Jovelyn's pregnancy. Jovelyn was denying his paternity of Ferdinand. Therefore he had to apply for determination of paternity to the court and his paternity was established by medical test. At that time his visitation rights were also established and he is permitted visitation every other weekend. His relationship with Jovelyn is very bad and it is very difficult to talk to her about anything concerning their son.
3. About a year ago Ferdinand became ill with some form of infection. He had very high fever, but Jovelyn did not take him to the doctor and did not give him any conventional medicines. According to Rahmat Jovelyn lives a type of alternative life style and rejects conventional medicines and believes only in homeopathic and natural medicines. As a consequence of not providing Ferdinand with adequate medication during the illness, Ferdinand became deaf. Rahmat is sure that Ferdinand had perfect hearing before the illness. Ferdinand does not talk, he only gives

off inarticulate sounds and he also has fallen behind in intellectual and psychosocial development comparing to other children of his age.

4. Jovelyn was unable for very long time to accept that Ferdinand is deaf. Probably because it was too difficult for her to admit her responsibility for causing this situation. She keeps saying that Ferdinand hears and she even refused to take Ferdinand to medical specialists. Finally Ferdinand's pediatrician diagnosed him being deaf and recommended Jovelyn to visit the specialists. Jovelyn failed to visit the specialists. Finally Rahmat took him to the hearing specialist himself. The specialist confirmed the diagnosis and suggested that Ferdinand needed as soon as possible the operation of the implant device.
5. The operation might significantly improve his hearing abilities and make possible for Ferdinand to learn to speak and develop intellectually and socially as a non-handicapped child. After the operation Ferdinand would require intense rehabilitation for at least three years. Specialists also recommend that Ferdinand attends special nursery school for children with hearing handicap at least 3 times per week, where specialized trained staff will rehabilitate with him and teach him to speak. Before the operation Ferdinand needs several medical examinations by various medical specialists. However, Jovelyn failed repeatedly to come to see the specialists and so Ferdinand could receive the required examinations. Rahmat tried to take Ferdinand to the doctors, when he had Ferdinand during weekend. But most of the times this was impossible because it was weekend and doctors refused to

examine Ferdinand without the consent of the custodial parent.

6. The consent of both parents is needed for the operation, but Jovelyn refuses to give consent to the operation, because she believes it could be harmful to Ferdinand. She also refuses that Ferdinand attends a special nursery school for children with hearing disabilities. She also does not take proper care that Ferdinand wears the hearing aid, which is one of the pre-conditions for the operation. Rahmat often sees Ferdinand without Ferdinand wearing a hearing aid, although he is supposed to wear it constantly during 6 months before the operation.
7. Besides his hearing problem. Ferdinand also suffers from other health problems, including a possible heart problem and anemia. Rahmat thinks that it is a consequence of strict vegetarian diet.
8. Rahmat is desperate and seeks advice whether it is possible to overcome Jovelyn's disagreement with the operation. He wants to apply for the custody of Ferdinand. He says that he knows that Ferdinand is in the age when he needs his mother and that Ferdinand loves his mother very much, but he thinks that Jovelyn's alternative life style is very dangerous for Ferdinand's well- being as Jovelyn neglects Ferdinand's medical needs and refuses conventional medical treatment. He wants to be awarded custody of Ferdinand to ensure that Ferdinand receives the necessary rehabilitation after the operation and attends the special nursery school. Furthermore he wants to ensure that adequate medical attention is given to Ferdinand's problems with heart and

anemia and he receives appropriate medical care whenever needed. Finally he wants to prevent further harm to Ferdinand's health as he supposes that Jovelyn will harm Ferdinand further in the future considering her strong opposition against conventional medicine, her alternative life-style and strict adherence to a vegetarian diet Rahmat is aware that he does not speak fluent Tagalog and English and therefore he may have difficulties helping with Ferdinand's rehabilitation, but he says he will learn tagalo and English as soon as possible. He also understands that his work would not allow him to take full-time care of Ferdinand, but he is willing to change his job and find better accommodations.

9. During the interview with the lawyer at the clinic Rahmat seems to be very emotionally disturbed by his son's handicap and Jovelyn's rejection to give consent to the operation. He starts to cry several times during the interview and he says repeatedly to the lawyer that he has to help him to be awarded custody of Ferdinand and accept his case otherwise he would be responsible for Ferdinand's deafness and harm to his health if Ferdinand remains in the custody of Jovelyn.

The staff clinic called Jovelyn, who agreed to the meeting.

III. Interview of Jovelyn at the clinic

1. Jovelyn works part-time as a shop-assistant in a grocery store for 3 hours pro day. She earns 2,500 pesos pro month. She and her new partner live in very small but fully furnished

- apartment. Her new partner works as construction building worker and financially supports the household and also Jovelyn and Ferdinand if needed.
2. Jovelyn affirmed that her relationship with Rahmat broke down about 3 years ago and that their relationship is very bad because they cannot agree on bringing up and education of Ferdinand. Rahmat constantly accuses her of neglecting Ferdinand and therefore she has limited contact with Rahmat. The contact is limited to that which is only to the necessary to allow him to visit Ferdinand.
 3. She states repeatedly during the interview that she is persuaded that Ferdinand hears some sounds although she does admit that it is possible his hearing abilities might be impaired. Regarding the cause of Ferdinand's deafness she stated that it is probably hereditary as Rahmat is partially deaf in his left ear.
 4. She has not reached conclusion yet whether Ferdinand should undergo the operation of implant device or not. First she thinks that it is not necessary, because Ferdinand can hear something and secondly she fears that the device, which uses electronic waves, might damage Ferdinand's brain. She is currently studying all available medical information about the implant and she knows that there are not any reliable data regarding the effect of the implant device on the brain. She explained her failure to visit medical specialists and undergo the pre-operation medical examinations because she has not reached the decision about the necessity of the operation yet.
 5. Regarding Ferdinand's attending a special nursery school for children with hearing disabilities Jovelyn states that she does not want Ferdinand to attend this school, because Ferdinand would not receive enough attention and she can rehabilitate and exercise with him more intensely and effectively at home. She also does not want Ferdinand to learn sign language in the nursery school as she believes that it would slow down Ferdinand's process of learning to speak. She is persuaded that Ferdinand should continue to live on a vegetarian diet as it is best for his health and should not be given conventional medications if it is not strictly necessary in emergency medical cases.

SESSION V. GROUP PRESENTATION OF A CLE INTERVIEW LESSON

Group 1: Interviewing Skills Lesson

NOTES:

First Southeast Asian Clinical Legal Education Teacher Training
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**Group 3: A CLE INTERVIEW
LESSON PLAN**

NOTES:

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Session VII: Demonstrative CLE Counseling/Advice- Giving Lesson

15. COUNSELING/ADVICE- GIVING SKILLS LESSON PLAN

Lesson Plan:

1. TOPIC: OVERCOMING
BLOCKAGES WHICH
CAN OCCUR DURING
COUNSELING/ADVICE-
GIVING SESSIONS

2. OUTCOMES: AT THE END OF THIS
LESSON, LEARNERS WILL BE ABLE TO:

- 2.1 IDENTIFY AT LEAST 3
OF THE MOST
COMMON
PROBLEMATIC
BLOCKAGE
SITUATIONS THAT
CAN OCCUR DURING
COUNSELING/ADVICE-
GIVING SESSIONS
- 2.2 LEARN STRATEGIES
AND METHODS TO
SUCCESSFULLY
OVERCOME THESE
BLOCKAGES
- 2.3 DEMONSTRATE AND
APPLY THESE
STRATEGIES AND
METHODS TO
OVERCOME
BLOCKAGES THAT CAN
OCCUR DURING
COUNSELING/ADVICE-
GIVING SESSIONS

3. CONTENT:

- 3.1 THE INSTRUCTOR
NEEDS TO KNOW THE
BASIC BLOCKAGES
WHICH CAN OCCUR
DURING
COUNSELING/ADVICE-
GIVING SESSIONS.
- 3.2 THE INSTRUCTOR
MUST BRIEF THE TWO
PERSONS
CONDUCTING THE
COUNSELING/ADVICE-
GIVING
SIMULATION/ROLE
PLAY AND GIVE THEM
HANDOUTS OF THEIR
SCENARIOS PRIOR TO
THE CLASS. EACH
SCENARIO
DEMONSTRATES A
BLOCKAGE THAT CAN
OCCUR DURING
COUNSELING/ADVICE-
GIVING SESSIONS.
- 3.3 THE INSTRUCTOR
WILL PRESENT THE
FIRST POWERPOINT
PRESENTATION
EXAMPLE ON COMMON
BLOCKAGE
SITUATIONS AND
STRATEGIES TO
OVERCOME THESE
BLOCKAGES. AFTER
EACH POWERPOINT
BLOCKAGE EXAMPLE, A
SIMULATED CLIENT
COUNSELING/ADVICE-
GIVING SESSION WILL
OCCUR, WHICH WILL
BE FOLLOWED BY A
ROLE PLAY INVOLVING
1-2 SELECTED
STUDENTS AND THE
SIMULATORS. THE
STUDENTS WILL
DEMONSTRATE HOW
THEY WOULD

- 3.4 OVERCOME THE BLOCKAGE SITUATION. THE INSTRUCTOR WILL CONDUCT A CLASS DISCUSSION AFTER EACH STUDENT DEMONSTRATION.
- 3.5 THE INSTRUCTOR SHOULD DEBRIEF THE LESSON.

- 4.9 OVERCOMING TYPE 2 BLOCKAGE: 5 MIN CONDUCT SIMULATED CLIENT COUNSELING/ADVICE-GIVING BLOCKAGE SITUATION: 5 MIN
- 4.10 CONDUCT STUDENT DEMONSTRATION OF OVERCOMING TYPE 2 BLOCKAGE: 10 MIN
- 4.11 CLASS DISCUSSION ON STUDENT DEMONSTRATION: 5 MIN
- 4.12 POWERPOINT PRESENTATION ON STRATEGIES FOR OVERCOMING TYPE 3 BLOCKAGE: 5 MIN
- 4.13 CONDUCT SIMULATED CLIENT COUNSELING/ADVICE-GIVING BLOCKAGE SITUATION: 5 MIN
- 4.14 CONDUCT STUDENT DEMONSTRATION ON OVERCOMING TYPE 3 BLOCKAGE: 10 MIN
- 4.15 CLASS DISCUSSION ON STUDENT DEMONSTRATION: 5 MIN
- 4.16 DEBRIEF: 15 MIN

4. ACTIVITIES: TOTAL (1 HOUR, FORTY FIVE MINUTES)

- 4.1 FOCUSER: 5 MIN
- 4.2 PREPARE FOR ACTIVITY (STUDENTS WILL BE DIVIDED INTO GROUPS OF 5-7 MEMBERS): 5 MIN
- 4.3 EXPLANATION OF STEPS FOR THE ACTIVITY: 5 MIN
- 4.4 POWERPOINT PRESENTATION ON STRATEGIES FOR OVERCOMING TYPE 1 BLOCKAGE: 5 MIN
- 4.5 CONDUCT SIMULATED CLIENT COUNSELING/ADVICE-GIVING BLOCKAGE SITUATION: 5 MIN
- 4.6 CONDUCT STUDENT DEMONSTRATION OF OVERCOMING TYPE 1 BLOCKAGE (SELECT PARTICIPANTS FROM 1-2 GROUPS): 10 MIN
- 4.7 CLASS DISCUSSION ON STUDENT DEMONSTRATION: 5 MIN
- 4.8 POWERPOINT PRESENTATION ON STRATEGIES FOR

5. RESOURCES:

- 5.1 CASE STUDY HANDOUTS
- 5.2 LCD PROJECTOR
- 5.3 WHITE BOARD

6. CHECKLIST QUESTIONS:

- 6.1 WHAT ARE SOME OF THE COMMON BLOCKAGES WHICH OCCUR DURING A

- COUNSELING/ADVICE-
GIVING SESSION
- 6.2 WHAT ARE SOME OF
THE STRATEGIES TO
OVERCOME THE
BLOCKAGES WHICH
CAN OCCUR DURING A
COUNSELING/ADVICE-
GIVING SESSION
- 6.3 WHAT ARE SOME OF
THE CLIENT AND
COUNSELING/ADVICE
GIVER VALUE ISSUES
THAT NEED TO BE
CONSIDERED WHEN
BLOCKAGES OCCUR.



16. Demonstration Case Study:

The Case of Mayumi (domestic violence and child abuse) Counseling/Advice Exercise

Exercise 1: Client Counseling/Advice Role Play (Overcoming Blockages)

Roles:

Mayumi = Client

Bobby = Legal Clinic Student Advisor

Narrator

Narrator (Reads to the Participants the investigative information gathered since the initial interview)

Investigative Information Gathered Since the Initial Interview of Mayumi:

During the interview with Mayumi the staff of the University Legal Clinic realized that, in the course of criminal investigation, the police had failed to question Alma's pediatrician, in whose care Alma has been since early childhood when she was diagnosed with the child cerebral palsy. After the intervention of the Clinic the police requested a report from Alma's pediatrician. The pediatrician certified that Alma has been having such bruises over her body since early childhood and it is typical for children with cerebral palsy. The pediatrician further stated that he as a medical expert can testify that Alma's bruises and injuries would be consistent with her falling down and other child injuries.

The University Legal Clinic staff called Mayumi's husband, Ramil, who agreed to meet with the clinic staff member. During the interview at the University

Legal Clinic Ramil alleged that the assault of Mayumi had been the only isolated incident of physical assault. He said he loved Mayumi very much and had never beaten her before. But that day he got very angry, because his friend had told him that he had seen Mayumi with another man. He had had several drinks before he came home. When he asked Mayumi about it, she kept denying it. He became crazy with anger and hit her several times.

Ramil said that he applied for the primary custody of Alma because he believed that Mayumi was physically abusing Alma. He believed that this may have been caused by Mayumi's inability to bear the stress caused by the marriage breakdown. He also suspected that Mayumi was having problems with alcohol. He believed that if Mayumi were to come back into the marriage this stress and alcohol problem would stop and so would the abuse against Alma. Although he believed the abuse of Alma did happen, he would be willing to change his testimony if Mayumi would return back to him and withdraw the application for a divorce.

He also would like Mayumi to return home because he felt that the shelter that Mayumi was living in was not a suitable place for child visitations. He felt that Mayumi should return home and she can then see Alma freely there.

17. Types of Blockages Which Occur During Counseling Sessions

Type 1 Blockage- Client has a problem (such as fear, hesitancy, guilt, hostility, etc) which prevents his/her cooperation or blocks the flow of information.

5 Strategy Steps to Reduce Negative Effects of a Type 1 Blockage

1. Listen to the CLIENT's Words & Body Language
2. Determine the CLIENT's Meaning & Feeling
3. Reflect the CLIENT's Meaning and Feeling
4. Listen again to the CLIENT's Total Response
5. Re-focus and Re-direct the Interview

Narrator: In this first scenario, Mayumi turns angry at Bobby and does not want to discuss her case with him. Bobby was attempting to advise Mayumi on some possible options.

Mayumi: (Knocks at door of Clinic Office)

Bobby: (Bobby walks over to the door and greets Mayumi in a friendly way) Please come and have a seat. I have some things to talk to you about.

(Mayumi sits down and silently waits for Bobby to speak.)

Bobby: After our meeting a few weeks ago, we were able to contact your daughter's pediatrician. We also contacted your husband Ramil.

(Upon hearing Ramil's name, Mayumi becomes hostile.)

Mayumi: (Shouting) What? Why did you contact my husband? I never asked you to do this. I can not believe you did this. I came here for help because I was running away from my abusive husband. I did not expect that you will contact him. I don't want to talk to you anymore. (Mayumi stands up to leave and begins to walk toward the door)

Narrator: Bobby wants to continue the counseling session so he can explain to Mayumi her options. If you were Bobby how would you handle this *client problem* situation? Please demonstrate.

Type 2 Blockage- The Counselor/Advice-Giver has a problem with something the client is doing or failing to do, and their reaction reduces their effectiveness.

5 Strategy Steps to Help COUNSELOR/ADVICE GIVER Handle Their Problems with a Type 2 Blockage

1. Become aware that you are troubled by some CLIENT behavior
2. Focus on the problem behavior & your feelings about it

3. Decide if there is a direct & tangible effect
4. Describe your problem to the CLIENT
5. Evaluate the response

Bobby: (Bobby continues talking but cannot avoid observing Mayumi, who continues to cry.) Dr. Reyes said that he would be willing to testify on this. This is good for you since it will refute your husband's allegations that you have been abusing Alma.

Narrator: In this second scenario Mayumi cries while Bobby was explaining her case and her options to her. Bobby is deeply affected by Mayumi's crying and could not concentrate on the counseling.

(Mayumi cries even louder.)

Mayumi: (Knocks at door of Clinic Office)

Bobby: (Bobby walks over to the door and greets Mayumi in a friendly way.) Please come and have a seat. I have some things to talk to you about.

Bobby: (Bobby appears to be affected by Mayumi's crying. He tries not to look at her and turns his attention to some documents on the table.) If you want, we can reschedule this meeting for another time. It appears that you cannot concentrate on our discussion.

Mayumi: Please help me. I have not seen my daughter for almost two months.

Bobby: Yes, we are here to discuss your case and how we can help you.

Narrator: Bobby wants to explain to Mayumi the information that he has obtained and the relevance of this to Mayumi's case. But because of Mayumi's crying, Bobby's concentration was affected and he could not continue the counseling session. If you were Bobby, how would you handle this *Counselor/Advice Giver problem* situation? Please demonstrate.

(Mayumi sits quietly and looks down while listening to Bobby.)

Bobby: (Bobby looks at Mayumi and observes her actions.) After our meeting a few weeks ago, we were able to contact your daughter's pediatrician. Dr. Reyes said that Alma had been having bruises since early childhood and that it is typical for children with cerebral palsy to have those bruises as a result of falling down from stairs and other injuries.

Mayumi: (Mayumi starts crying.) My poor daughter.

(Bobby gets some tissue and gives them to Mayumi.)

Type 3 Blockage- The

Counselor/Advice-Giver and the Client

are in conflict.

3 Strategy Steps to Resolve Conflict which Avoids a Win/Lose Contest in a Type 3 Blockage

1. Distinguish Needs from Actions
2. State NEEDS as a Mutual Problem
3. Involving the CLIENT in Mutual Problem Solving



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Narrator: In this third scenario Mayumi expresses lack of confidence in Bobby's competence. Bobby becomes personally offended by this.

Mayumi: (Knocks at door of Clinic Office)

Bobby: (Bobby walks over to the door and greets Mayumi in a friendly way.) Please come and have a seat. I have some things to talk to you about.

Mayumi: Please help me. I have not seen my daughter for almost two months.

Bobby: Yes, we are here to discuss your case and how we can help you. After our meeting a few weeks ago, we were able to contact your daughter's pediatrician. We also contacted your husband Ramil.

Mayumi: (Shouting) What? Why did you contact my husband? I never asked you to do this. I can not believe you did this.

Bobby: We did that to gather additional data. And also to verify information.

Mayumi: So you don't believe what I have told you. You now, I am not sure if you are the right person who can help me. I know that you are only a student, does your professor know about my case? Did you ask him for advice or are you doing things on your own?

Bobby: I am trying to help you.

Mayumi: Maybe you should study more before you can help me.

Bobby: (Bobby begins to show visible signs of personal anger) Listen, I am really busy and I have many other persons who both need my help and appreciate my help.

Narrator: Bobby and Mayumi are very angry at each other now and visibly show signs of this. If you were Bobby how would you handle this *client/counselor conflict problem* situation? Please demonstrate.

**Session VIII: Group Work
on Developing a
Counseling/Advice-Giving
Lesson Plan**

**Counseling/Advice-Giving
Lesson Plan Template**

1. Topic:

2. Outcomes:

3. Content:

4. Activities:

5. Resources:

6. Evaluation:

Notes:

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**Session IX: Group
Presentation Of A CLE
Counseling/Advice-Giving
Lesson**

**Group 1: Counseling/Advice-
Giving Skills Lesson**

NOTES:

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SESSION X. GROUPS'
PRESENTATIONS OF A CLE
COUNSELING/ADVICE-
GIVING LESSON PLANS

**Group 2: Counseling/Advice-
Giving Skills Lesson Plan**

NOTES:

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**Group 3: Counseling/Advice-
Giving Skills Lesson Plan**

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Wrap-Up for Day 1:

DAY 2

Materials

Day Coordinator: David McQuoid-Mason



Session I: Introduction into Alternative Dispute Resolution

22. TEACHING ASPECTS OF ALTERNATIVE DISPUTE RESOLUTION

TO CANDIDATE ATTORNEYS IN SOUTH
AFRICA

By

Prof. David McQuoid-Mason

Introduction

For the past 13 years the present writer has been teaching aspects of alternative dispute resolution (ADR) to candidate attorneys in South Africa.²⁸ It has been taught since the early 1990s during the part-time Practical Legal Training courses and at the Durban School for Legal Practice since the mid-1990s. Both the Practical Legal Training courses and the School for Legal Practice are run under the auspices of the Law Society of South Africa. The ADR programme is a two-day course, which deals with negotiation and mediation skills.

1. Negotiation skills

The first day negotiation skills component consists of a perception exercise; a psychological test; an introductory negotiation exercise; a discussion of the negotiation process; a listening skills exercise involving paraphrasing; how to plan a

²⁸ *The course is based on that developed by Richard A Salem of Conflict Management Initiatives, Chicago, and the present writer, during a nationwide series of workshops presented for the Continuing Legal Education division of the then Association of Law Societies of South Africa in 1991.*



negotiation; a negotiating values exercise; a two-on-two negotiation exercise; a discussion of principled negotiation; and, a final negotiation to test that students have internalised the concept of interest-based as opposed to position-based negotiation.

1.1 *Perception exercise*

The negotiation skills section begins with a perception exercise where students are shown a picture of the 'Old woman/Young woman' drawing²⁹ and then asked to record the age of the person they see. This inevitably results in the students recording a variety of ages from 17 years to 70 years. The exercise serves to show the students the importance of clarifying the issues before engaging in any negotiations - otherwise the parties will misinterpret the issues and talk past each other. A similar exercise can be used in which students are shown a grid of 16 squares and asked how many squares they can see. Answers vary from 16 to over 30.

1.2 *Psychological make-up of students*

The second part of the negotiation skills programme seeks to assist students to

identify their personal psychological make-up when dealing with conflict. This can be done by using a tool such as the Thomas-Kilmann³⁰ or some similar instrument. The Thomas Kilmann instrument presents respondents with 30 closed questions as to how they would react under situations where they experience the most conflict in their life.³¹ The respondents then total up their scores under different profile headings: competing (forcing), collaborating (problem solving), compromising (sharing), avoiding (withdrawal) or accommodating (smoothing).³² The different psychological characteristics can then be explained in the context of a simple example. For instance, students may be told that two people go on a picnic in a drought-stricken part of the country and have only one bucket of water to wash some wild fruits and a pair of very dirty boot soles. How would they deal with the situation using each characteristic? How would a competitor, collaborator, compromiser, avoider or accommodator each

²⁹ *In the public domain and commonly used by ADR facilitators.*

³⁰ See Kenneth W Thomas and Ralph H Kilmann *Thomas-Kilmann Conflict Mode Instrument* (1974).

³¹ *Thomas-Kilmann Conflict Mode Instrument* 1-4.

³² *Thomas-Kilmann Conflict Mode Instrument* 6.

react in such circumstances?

1.3 Introductory negotiation exercise

The next part of the negotiation programme requires students to engage in an one-on-one negotiation exercise involving the buying and selling of a mattress in circumstances under which one party urgently requires to buy a mattress and the other needs to urgently sell it.³³ During debriefing the exercise is used to lay the foundation for some of the issues that arise during negotiations such as: Were the negotiators satisfied with their negotiation? Was the negotiation fair? Was 'small talk' used? What were the opening positions? How is information about the different negotiators gathered? How much should be disclosed during a negotiation? How were concessions made? Was 'bracketing' used?³⁴ Was the buyer given credit to pay over time? Was either party operating against a

³³ 'The Mattress Negotiation' was created by Richard A Salem, Conflict Management Initiatives (1987).

³⁴ 'Bracketing' involves, for example, a seller saying 'I am prepared to sell this mattress for between \$100 and \$200', or a buyer saying 'I am prepared to buy this mattress for between \$100 and \$200'. In the first instance the buyer will only hear the lower price, in the second the seller will only hear the second price - so the bracketing is pointless.

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deadline? What happens if you are an 'accommodator' negotiating with a 'competitor'? What are the ethics and legal implications of withholding the truth?

1.4 The negotiating process

The negotiating process is then discussed: Students are informed what negotiation is; what happens during the process; what should be achieved during a negotiation; what sort of information parties usually have about each other; what parties may be able to anticipate about each other's needs; the need to maintain flexibility and not to be locked into a bottom line; how information is exchanged - verbally and non-verbally; the fact that knowledge is power; that usually the more information that is surfaced the better the agreement; the tensions that arise between retaining and sharing information; the dangers of releasing information if 'under attack' from the other side; the use of small talk and silences to obtain information; and the need to adopt an interest-based approach rather than a position-based approach to negotiation.³⁵

1.5 Listening skills - paraphrasing

An important aspect of the

³⁵ See below Roger Fisher and William Ury *Getting to Yes: Negotiating Agreement Without Giving In* (1983).



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negotiation process is the ability of the parties to listen to each other. Therefore, an exercise is done to teach students listening skills by using 'paraphrasing'. Students brainstorm a list of highly controversial topics and are then required to team up with a colleague who genuinely takes the opposite view from them on a subject. The parties are then required to discuss the topic using the following format: One student will begin the discussion by making an important point. The other student will then paraphrase what the first student said, to the satisfaction of the first student, before he or she can respond with their argument. After the second student has made his or her point the first student may not respond until he or she has correctly paraphrased the second student's argument etc. The students are then debriefed concerning what they felt during the paraphrasing exercise and when paraphrasing can be used in legal practice.

1.6 *Planning the negotiation*

The students are given a checklist of what they should do when planning a negotiation. The list includes the following: What are the issues at stake? What information do you need from the other party? What are your sources of negotiating power? What negotiating strategy will you use? What will you say in your opening

presentation? What response is the other party likely to make? How will you reply? What is the most you want? What is the least you can settle for? What is the likely result? What information do you have? What information do you need to get from others? What is your authority to settle? What alternatives do you have if you fail to settle? ³⁶ The students are subsequently asked to use these criteria when planning for 'The Tax Book Negotiation'.³⁷

1.7 *Negotiating values*

The students are required to consider a number of scenarios involving ethical issues that may arise during a negotiation. These include questions such as: Is a lawyer obliged to answer a fellow lawyer's question about whether he or she has a mandate from an incommunicado client if confirmation thereof will prejudice the client? If a lawyer has heard that his or her client has had a heart by-pass operation and is asked by another lawyer whether the client is 'in good health' what should he or she reply to avoid prejudicing the client? Where a lawyer is winding up a deceased estate and suspects

³⁶ Richard A Salem 'Considerations when Planning and Preparing for a Negotiation' (1991) Conflict Management Initiatives, Chicago.

³⁷ See below para 1.8.

that a car that needs to be sold is defective, is he or she obliged to warn certain categories of potential buyers (eg a car dealer, a respondent to a newspaper advertisement, another lawyer, a parent) about the suspected condition of the car - if not asked by the person concerned? What would be the position if the lawyer was asked by any of the above list of potential buyers whether the car was 'in good condition'?³⁸

1.8 *The Tax Book Negotiation*

The 'Tax Book Negotiation' is a two-on-two negotiation between a team of two candidate attorneys, (who have been mandated by the principals in their law firm to sell a set of tax books), and a team of potential buyers consisting of two young lawyers, (who are partners in the process of setting up a tax law firm). The candidate attorneys face certain pressures that require them to sell the law books and have them delivered expeditiously while the young lawyers face certain constraints that prevent them from taking immediate delivery.³⁹ The students are given sufficient time to prepare

for the negotiation using the checklist set out above.⁴⁰ The results of the negotiation are debriefed to the issues arising from the principles that emerged from 'The Mattress Negotiation'.⁴¹

1.9 *Principled negotiation*

The elements of 'principled negotiation' as propagated by Fisher and Ury⁴² are discussed with the students. These include deciding issues on the merits; looking for mutual gains; basing results on fair standards; being 'hard on the merits' and 'soft on the people'; not employing 'tricks'; and not arguing over positions. Fisher and Ury state that the four points of principled negotiation involve the following: people, interests, options and criteria.⁴³

1.9.1 *People*

In respect of people negotiators must deal not only with the issue at hand and their relationship with each other, but must also take into account their perceptions, emotions and ability of communicate. To this end they should separate people from the problem and

³⁸ See Richard A Salem 'Negotiating Values' Conflict Management Initiatives (1990).

³⁹ 'The Tax Book Negotiation' was adapted from a similar role-play in Gerald Williams *Legal Negotiations* (1989).

⁴⁰ See para 1.6 above.

⁴¹ See para 1.3 above.

⁴² Fisher and Ury *Getting to Yes* (1983).

⁴³ Fisher and Ury chapter 2.

attack the problem not each other.⁴⁴

1.9.2 Interests

Regarding interests the parties should identify and talk about their interests and focus on such interests not their positions. They need to reconcile their interests not their positions as the latter may obscure their real interests.⁴⁵

1.9.3 Options

It is necessary for negotiating parties to generate a variety of options before making a decision. This can be done by setting aside time for brainstorming in order to come up with ways of ensuring mutual gains. A failure to generate options by way of brainstorming may result in obstacles to creative thinking.⁴⁶

1.9.4 Criteria

When choosing criteria the parties should insist that they are objective and do not simply consist of the other side's 'say so'. Both parties should be open to reason on criteria. Neither should yield to pressure by the other - all decisions should be made on

the basis of principle.⁴⁷

1.10 *The Moroccan Sweet Treat Negotiation*

'The Moroccan Sweet Treat Negotiation'⁴⁸ is a one-on-one negotiation to demonstrate whether the students have learned anything about interest-based negotiation at the end of the first day. Two rival mineral water manufacturers require the only available box of 'Moroccan Sweet Treats' in order to solve their production problems otherwise they will be out of business. There is only one satisfactory solution, which can result in a win-win situation if the negotiators adopt an interest-based approach to the negotiation.

2. Mediation skills

The second day mediation skills component consists of an introductory activity illustrating what mediators do; a discussion of the characteristics of mediation; a presentation on empathic listening; a description of the steps in a mediation; a discussion of the

⁴⁴ Fisher and Ury 17-40.

⁴⁵ Fisher and Ury 41 -57.

⁴⁶ Fisher and Ury 58-83.

⁴⁷ Fisher and Ury 84-98.

⁴⁸ 'The Moroccan Sweet Treat Negotiation' was devised by Richard A Salem, Conflict Management Initiatives, Chicago (1990).



mediation process; a mediation exercise involving an employment contract; a description of when mediation works and does not work; a discussion of the universe of alternative dispute resolution; a mediation exercise involving a business contract; and, a mediation exercise involving a divorce.

2.1 *What mediators do*

Students are asked to volunteer for a short role-play, which illustrates the difference between how lawyers tend to approach clients during an interview and how mediators do. Three role-players are required: a client, a lawyer and a mediator.

2.1.1 Lawyer-client interview⁴⁹

The interaction between the client and the lawyer is as follows:

Client: My neighbour's son got into my garage when I was away. He got on my bike and crashed into a tree at the bottom of the hill. He wrote the damn thing off.

Lawyer: Were there any witnesses?

Client: Not that I know about.

Lawyer: Was it a forced entry?

Client: No, I left the garage open.

Lawyer: Was there any other damage?

Client: No, that was all.

Lawyer: What were the damages?

Client: The bike cost me \$100 in 1990.

Lawyer: Was it insured?

Client: No.

2.1.2 Mediator-client interview

The interaction between the client and the mediator is as follows:

Client: My neighbour's son got into my garage when I was away. He got on my bike and crashed into a tree at the bottom of the hill. He wrote the damn thing off.

Mediator: Is there

⁴⁹ Devised by Richard A Salem, Conflict Management Initiatives, Chicago (1991).

anything else?

Client: No, that was enough. What a cheek!

Mediator: How would you like to see this thing settled?

Client: What I want is an apology. And I want the boy to do it when his parents are present.

Mediator: Is there anything else?

Client: Yeh, I want him to promise not to do it again.

Mediator: What about the bike?

Client: I do not care about the bike. It has not been used for five years since my kids moved out.

used by the mediator. Only after the wishes of the client have been established may they begin 'funneling' the information with closed questions in order to determine whether the elements of any proposed legal action have been satisfied.

Finally, students are told that mediators: understand and appreciate the problems confronting the parties; impart the fact that they know and appreciate the problems of the parties; create doubts in the minds of the parties about the validity of the positions they have assumed with respect to the problems; suggest alternative approaches to the parties which may facilitate trust; build trust because they have no authority and depend upon acceptance by the parties; and, that mediators are good listeners.

2.2 *Characteristics of mediation*

Students are reminded that: mediation is an extension of negotiation; mediators are third parties with no stake in the outcome; mediators must gain trust; mediators have no authority; mediators control the process - not the outcome; the parties control the dispute and the outcome; mediation is voluntary - the parties can walk away at any time; all information disclosed at a mediation is private and confidential; mediation is future-oriented and does not

The role-play is then debriefed to point out the difference between open and closed questions and the dangers involved in prejudging issues. Students are advised that lawyers should always use client-centred interviewing techniques and begin their consultations with open questions like those

dwell on the past; mediation is solution-oriented and does not apportion blame, guilt or punishment; mediators make suggestions - they do not give legal advice or tell the parties what to do⁵⁰; and, mediators respect the parties' ability to resolve their own disputes.

2.3 *Empathic listening*⁵¹

As a follow-up to the paraphrasing exercise done during the negotiation component the concept of 'empathic listening' is discussed. Empathic listening involves the mediator:

2. Being attentive, alert and non-distracted. He or she should create a positive atmosphere with their non-verbal behaviour (e.g. not looking out of the window when the parties are telling their stories).
3. Being interested in the other person's needs, by listening with understanding

⁵⁰ They may however suggest that the parties should consult a lawyer if it is clear that they require legal advice. The moment a mediator gives legal advice that favours one or other party the mediator's neutrality is compromised.

⁵¹ See generally, Madelyn Burley-Allen *Listening: The Forgotten Skill* (1982).



and letting the other person know that the mediator cares about what is being said.

4. Listening from the 'okay mode' by being a sounding board, non-judgmental and non-criticising; not asking a lot of questions or 'grilling'; acting like a mirror by reflecting what the mediator thinks is being said or felt; and, not using stock phrases like 'it's not that bad', 'you'll feel better tomorrow', 'don't be so upset', and 'you're making a mountain out of a mole hill'.

5. Not becoming emotionally 'hooked'. The mediator should not become angry, upset or argumentative, nor should he or she jump to conclusions or judgments.

6. Indicating that he or she is listening by: giving encouraging non-committal acknowledgments (eg 'hum', 'uh huh', 'I see', 'right' etc); giving non-verbal acknowledgments (eg nods, matching facial expressions, presenting an open and relaxed body posture, using

eye contact, and, if appropriate, touching); and, inviting more (eg 'tell me more' or 'I'd like to hear about it').⁵²

Students are reminded that if they want to be empathic listeners they ought to observe the following ground rules: They should not interrupt; not change the subject or move in a new direction; not rehearse in their head; not interrogate; not teach; and, not give advice. However, they should reflect back to the sender what they observe and how they believe the speaker feels.⁵³

2.4 *Steps in a mediation*

The students are taken through the steps in a mediation from the initial introduction until the making of the agreement. They are informed that there are six basic steps involved:

Step 1:
Introduction

The mediator makes the parties relax and explains the rules. The

⁵² Adopted by Richard A Salem, Conflict Initiatives, Chicago from Madelyn Burley-Allen *Listening: The Forgotten Skill* (1982).

⁵³ Ibid.

mediator's role is not to make a decision but to help the parties reach an agreement. The mediator explains that he or she will not take sides.

Step 2: Telling the story

Each party tells what happened. The person bringing the complaint tells his or her side of the story first. No interruptions are allowed. Then the other party explains his or her version of the facts.

Step 3: Identifying the facts and issues

The mediator attempts to identify the facts and issues agreed upon by the parties. This is done by listening to each side, summarizing each party's views, and asking if these are the facts and issues as each party understands them.

Step 4: Identifying alternative solutions

Everyone thinks of possible solutions to the problem. The mediator makes a list and asks each party to explain his or her feelings about each solution.

Step 5: Revising and

discussing solutions

Based on the expressed feelings of the parties, the mediator revises possible solutions and helps the parties to identify a solution to which both parties can agree.

Step 6: Reaching agreement

The mediator helps the parties reach an agreement with which both can live. The agreement should be written down. The parties should also discuss what will happen if either of them breaks the agreement.⁵⁴

2.5 *The mediation process*

The mediation process is explained to the students. They are told that the mediation begins with the mediator welcoming the parties and getting them to introduce themselves. The mediator will make them feel as comfortable as possible. Thereafter the mediator will explain that his or her role is to assist the parties to reach a voluntary agreement through good faith negotiations, and that he or she has no authority to decide the matter - the parties must make their own decision. The mediator also explains that he or she is impartial and

has no stake in the outcome. If the mediator has had any prior relationship with any of the parties beforehand he or she clarifies this with the parties to ensure that there are no objections to the person proceeding as the mediator.⁵⁵

The mediator then explains the mediation process to the parties:

- (a) The parties will each have an opportunity to describe the unresolved issues and must address their comments to the mediator.
- (b) When one party speaks there should be no interruptions by the other party. Each party should take notes and respond later.
- (c) After their presentations the mediator will help the parties to identify the issues and possible solutions through discussion and negotiation.
- (d) Sometimes during the process it may be necessary for the mediator to meet separately (caucus) with one

⁵⁴ See David McQuoid-Mason *Street Law: An Introduction to South African Law and the Legal System* 6th impression (1992) 32.

⁵⁵ Adapted by the present writer from Richard A Salem, Conflict Management Initiatives, Chicago 'Procedure for Opening the Mediation' (1990).



of the parties at their request or in order to make progress. When this happens the mediator should not be seen as taking sides as this opportunity is afforded to both parties. Furthermore, anything said to the mediator during a caucus will not be disclosed to the other party unless permission is given by the caucusing party.

(e) The procedure that will be followed after the parties reach agreement will be explained to them (e.g. the agreement will be in writing and will include a clause stating what will happen if either party breaches the agreement).

(f) The mediation proceedings will be regarded as confidential. The mediator will throw away his or her notes after the mediation is concluded. The mediator will not reveal what transpired what happened during the mediation without the consent of both parties or unless ordered to do so by a court of

law.

(g) The mediator checks whether the parties have any questions and whether they agree to the procedures as set out in the description of the process. Both parties should audibly state that they agree to the process.

(h) The mediator congratulates the parties on choosing mediation, and tells them that he or she is confident that if they follow the procedures agreed to and negotiate in good faith they should be able to resolve the matter.⁵⁶

2.6

The 'Famous Cape Malay Restaurant Mediation'⁵⁷ involves a chef who works in a restaurant and is promised a 10 % share of the profits. The agreement was sealed with a handshake between the chef and one of the partners but never reduced to writing. Although the chef received a handsome

⁵⁶ Ibid.

⁵⁷ The 'Famous Cape Malay Restaurant Mediation' was devised by Richard A Salem and David McQuoid-Mason.

bonus at the end of the year, nothing further was said about the 10% share. When she queried this several months later she was told that the lawyers had been slow in preparing the paperwork. The restaurant continued to do well and she received a further sum of money, which she was told was her 'dividend from the profits'. The chef feels insecure because she has nothing in writing. As the success of the restaurant is due to her culinary skills she threatens to leave and set up her own restaurant nearby if she is not given an immediate 30% of the profits. She is then told that she cannot do so because her 10% share is subject to a restraint of trade agreement. The agreement prevents her from competing with the 'Famous Cape Malay Restaurant' for five years within a radius of 10 kilometers. She does not remember agreeing to this and wants to consult a lawyer. Instead it is suggested that the parties try mediation and she agrees - although she still wants legal advice on her position (and will press the mediator to advise her on the law).

The students are divided into groups of three: one to play the part of the chef, one to play the part of the partner who promised the 10% share, and one to be the mediator. This means that each student in the class is involved either as a client or a mediator. The Durban School for Legal Practice class usually

has about 60 students so that 20 mediations can take place. The Practical Legal Training class is larger, with about 90 students, so that 30 mediations can take place. While the clients learn their scenarios the mediators are taken aside by the instructor and briefed on the mediation process. Once the mediators are comfortable with their roles as mediators they link up with their clients and commence their mediations.

The mediation process usually takes about 40 minutes and once the mediations are complete the students give feedback on their settlements and the mediation process itself. Those students who complete their mediation before the others are requested to give their mediators feedback on the process within their small groups before sharing it with the whole class.

2.7 When mediation works and does not work

Students are informed that mediation is not a panacea for all disputes and that sometimes it is appropriate and other times it is not.

For instance, mediation works when:

- (a) The court cannot provide relief.
- (b) The client wishes to

- settle promptly.
- (c) The client wishes to minimize costs.
- (d) Voluntary compliance is desirable.
- (e) The client wishes to avoid a court precedent.
- (f) The parties have difficulty negotiating.
- (g) The parties lack negotiating skills.
- (h) The parties assess the facts differently.
- (i) The parties assess the law differently.
- (j) The parties have a continuing relationship.
- (k) Complex trade-offs are required.
- (l) The client wants confidentiality.⁵⁸
- parties is unwilling to mediate.
- (d) One party adamantly denies liability.
- (e) One party is likely to go insolvent.
- (f) A favourable court judgment is likely for one of the parties.
- (g) It is not possible to conduct the mediation without discovery of documents which one of the parties is not prepared to disclose.⁵⁹

However, mediation does not work when:

- (a) The client cannot represent his or her best interests.
- (b) The client wants a court precedent.
- (c) One of the major

2.8 *The universe of mediation and arbitration*

Students are provided with an understanding of the universe of mediation and arbitration. They are shown that negotiation and mediation fall under interests-based or consensual methods of resolving disputes, whereas arbitration (and litigation) fall under rights-based or adjudicative methods of dispute resolution.

Interest-based methods include mediation, in respect of disputes involving such issues as labour, communities, commercial transactions, the family, neighbourhood matters, public policy

⁵⁸ Adapted from Nancy H Rogers & Richard A Salem *A Student's Guide to Mediation and the Law* (1987) 44-51.

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⁵⁹ Adapted from Nancy H Rogers & Richard A Salem *A Student's Guide to Mediation and the Law* (1987) 51-58.

decisions and court affiliated processes. Other interests-based dispute resolution mechanisms include regulation-negotiation (where, for instance, a government department wishes to involve all the role-players in getting them to agree to new regulations), and settlement weeks (where court rolls are cleared by requiring all matters set down for trial to be referred to a panel of mediators for a week or more in an attempt to get them settled).

The rights-based model uses litigation and arbitration but may also use variations of this. For instance, arbitration-mediation may be used whereby an arbitration award is sealed in an envelope and not disclosed to the parties and the latter are encouraged to engage in a mediation process. Only if the mediation fails will the arbitration award be made public. Similarly, 'private judging' may be used whereby a private judge is hired (eg a retired judge or senior lawyer) who hears all the evidence and then gives a judgment which may or may not be binding. Alternatively, 'mini-trials' may also be conducted whereby all the evidence is presented and the parties have an opportunity to see how well their case is likely to fare in the real court case. The harsh reality of the likely outcome may well result in the parties agreeing to settle out of

court.

There are also methods that are a combination of the interests-based and rights-based approaches to dispute resolution. For instance, non-binding arbitration may be used instead of the usual practice of binding arbitration. Likewise, a mediation-arbitration procedure might be followed whereby the parties agree to first try mediation and, if that does not work, to resort to arbitration.

2.9 *The Missing Machine Mediation*

The 'Missing Machine Mediation'⁶⁰ involves a trucking company that delivers a machine for a machine manufacturer, who has a cash flow problem, to a third party. The buyers of the machine pay the transport costs to the trucking company's driver - but instead of paying \$2 200 they mistakenly only pay \$200. The mistake is discovered and the remaining \$2 000 is paid directly to the machine manufacturer - not the trucking company. Instead of paying the money to the trucking company, the machine manufacturer gets his daughter, who is also his secretary, to 'stonewall' all enquiries by the trucking company for the next month, so that he can use the money to solve his cash flow

⁶⁰ Devised by Richard A Salem, Conflict Management Initiatives, Chicago (1990), based on an actual case.

problem. In the process the daughter is sexually harassed on the telephone by the trucking company's employees who become frustrated by her evasion of their enquiries. When the trucking company is asked to make another delivery on behalf of the machine manufacturer instead of delivering the machinery worth \$430 000, the company keeps it as security for the \$2 000 owed to it.

In the past the parties have had a good working relationship. The machine manufacturer was the trucking company's first customer and received a 30% discount because of its good record of prompt payment. When the cash flow problem arose, and the manufacturer held back the \$2 000, he tried to compensate the trucking company by giving it more work with another delivery. The trucking company had repaid the manufacturer's generosity by seizing machinery worth \$430 000 and refusing to release it until the \$2 000 had been paid. In addition the trucking company's clerks had sexually harassed the manufacturer's daughter who had done such a good job in protecting his interests. Because of their previous business record the parties agree to mediation rather than resorting to litigation.

As in the 'Famous Cape Malay Restaurant Mediation', the students are divided into

groups of three: one to play the part of the manager of the trucking company, one to play the part of the manager of the machine manufacturer, and one to be the mediator. Once again each student in the class is involved either as a client or a mediator and, while the clients learn their scenarios, the mediators are taken aside by the instructor and briefed on the mediation process. The mediators are then linked up with their clients and commence their mediations. The mediation process again takes about 40 minutes. Once the mediations are complete the students share information about the results of the negotiations and the mediation process.

2.10 *The Blom Divorce Mediation*

The 'Blom Divorce Mediation'⁶¹ involves a threatened divorce between a doctor and a former teacher who runs a small arts and craft gallery. They have been married for nine years and have an eight-year-old boy and six-year-old girl. The doctor has a low-income job with a medical clinic in a poor community that requires him to work 10 hours a day six days a week. He also serves on the boards of several non-governmental organisations and is seldom at

⁶¹ Devised by Richard A Salem, Conflict Management Initiatives, Chicago and David McQuoid-Mason (1991).



home so there is no family social life. The wife is a qualified teacher of literature. She had previously worked as a teacher and later as a book store manager, but during the past three years, with financial help from her father, she and a neighbour had opened the gallery. The gallery has been losing money during the past three years although business has been slowly improving. As a result the wife's father pays out money each year to cover the losses.

The couple has a town house registered in both their names, but the husband makes all the bond payments. They also have cash in savings, some insurance policies and a four-year-old car owned by the husband. The wife is unhappy that the husband earns such a low salary as a doctor that the family is always strapped for cash. In addition because of his long working hours and other activities the husband spends no time with her and the children. The husband loves his children and wife. However, he is not happy that his wife, who is a qualified teacher, is involved in a gallery, which makes an annual loss that has to be paid for by her father. Before proceeding with the divorce the parties agree to mediation.

The students are divided into groups of three: one to play the part of the husband, one to play the part of the wife, and one to

be the mediator. All the students in the class are involved either as clients or mediators. The clients learn their scenarios while the mediators are taken aside and briefed on how to mediate. The mediators join their clients and commence their mediations. The mediations often last longer than 40 minutes - because simulated matrimonial matters, as in the real world, seem to take longer to settle than other forms of mediation. The students report back on the results of their negotiations and how the mediators handled the process.

Conclusion

When teaching alternative dispute resolution skills such as negotiation and mediation it is necessary to engage the students in an active learning process. This is particularly true of law students and law graduates who tend to become encrusted with the objective, unemotional, and at times, somewhat cold, clinical approach to human problems that lawyers usually adopt. Part of the learning process, particularly in the mediation training, is to make them more empathic in the manner in which they deal with clients. This requires the students to drop their lawyers' masks and to demonstrate to the parties that they really care about their concerns. It also shows the students how



important it is to become good listeners.

Even though the programme only lasts two days, provided creative, interactive teaching methods are used, all the students can be given an opportunity to experience the type of behaviour modification that may be required to be a good negotiator or mediator. The feedback from the students who attend the candidate attorneys' alternative dispute resolution classes at the Durban School for Legal Practice and the Practical Training Course is always very positive. Evaluations regularly indicate that the course is highly rated in the student assessments for the amount of 'learning through doing' that occurs. Its success lies in that it is a practical, not academic course.

Session II: Demonstrative CLE Negotiation Lesson

23. Negotiation Guidelines

1. PREPARING FOR THE NEGOTIATION

- \$ UNDERSTAND THE
FACTS AND ISSUES
- \$ DECIDE WHAT IS THE
LEAST AND MOST YOU
CAN EXPECT
- \$ WHAT IS NOT
NEGOTIABLE?
- \$ WHAT DOES THE OTHER
SIDE CARE ABOUT?
- \$ WHAT IS IN BOTH YOUR

2. THE NEGOTIATION PROCESS

- \$ TRY TO BUILD A GOOD
RELATIONSHIP WITH
THE OTHER SIDE
- \$ BE FRIENDLY AND
CORDIAL
- \$ SPEAK ABOUT WHAT
YOU WOULD LIKE (EG I
THINK, I FEEL)
- \$ FIND OUT WHAT THE
OTHER SIDE WOULD
LIKE
- \$ BRAINSTORM
SOLUTIONS OR OPTIONS
TO SOLVE THE
PROBLEM
- \$ DO NOT MAKE UNFAIR
OR UNREALISTIC
DEMANDS
- \$ DO NOT BECOME
ABUSIVE, OVER-
EMOTIONAL OR
THREATENING
- \$ OFFER TO GIVE
SOMETHING AWAY IN
EXCHANGE FOR
SOMETHING FROM THE
OTHER SIDE

3. MOVING AND REACHING AN AGREEMENT

- \$ IDENTIFY YOUR
COMMON INTERESTS
- \$ TRY TO MOVE THE
PROCESS IF THE OTHER
SIDE DOES NOT
- \$ CONSIDER OFFERING A
COMPROMISE
- \$ TRY TO MAKE THE
AGREEMENT AS FAIR AS
POSSIBLE

§ **USE OBJECTIVE
CRITERIA TO MEASURE
COMPLIANCE WITH THE
AGREEMENT**

negotiation guidelines.wpd



24. Negotiation Lesson Plan

			5 MINUTES
			4.2 THE INSTRUC TOR EXPLAIN S THE NEGOTIA TION GUIDELI NES: 10 MINUTES
1.	<u>TOPIC:</u>	INTRODUCTIO N TO NEGOTIATION	
			4.3
2.	<u>OUTCOMES:</u>	AT THE END OF THIS LESSON YOU WILL BE ABLE TO: 2.1 EXPLAIN THE GUIDELINES FOR NEGOTIATION 2.2 CONDUCT A NEGOTIATION VALUE OF NEGOTIATION	4.4 P ARTICIPANTS PREPARE FOR THE NEGOTIA TION: 10 MINUTES
			4.5
3.	<u>CONTENT:</u>	3.1 AN EXPLANATION OF THE GUIDELINES FOR NEGOTIATION IS GIVEN 3.2 PARTICIPANTS CONDUCT A NEGOTIATION USING THE MAYUMI AND RAMIL SCENARIOS	4.5 P ARTICIPANTS CONDUCT THE NEGOTIA TION IN PAIRS: 15 MINUTES THE INSTRUC TOR DEBRIEF S THE PARTICIP ANTS: 5 MINUTES
			5.1
4.	<u>ACTIVITIES:</u>	4.1 F OCUSER: OLD WOMAN- YOUNG WOMAN:	5.1 MAYUM I AND RAMIL SCENAR IOS
			5.2
			5.2 OVERH EAD PROJEC
		5.	<u>RESOURCES:</u>

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ATION
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INES

5.3 FLIP

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6. EVALUATION: CHECKING
QUESTIONS:

.1 WHAT IS NEGOTIATION?

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5. Resources:

Notes:

6. Evaluation:

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SESSION V. Groups'
Presentation of Negotiation
Lesson Plans

Group 2: Negotiation Lesson
Plan

NOTES:

A series of horizontal lines on the right side of the page, serving as a template for writing notes.

**Group 3: Negotiation Lesson
Plan**

NOTES:

**Group 4: Negotiation Lesson
Plan**

NOTES:

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**Session VI.: Demonstrative
 CLE Mediation Lesson**

IDENTIFIED

26. Steps in Mediation

6. REACHING AN AGREEMENT

- § AGREEMENT IS WRITTEN DOWN
- § A CLAUSE IS INCLUDED TO COVER A BREACH BY EITHER PARTY

1. INTRODUCTION

- § PUT PARTIES AT EASE
- § EXPLAIN GROUND RULES
 - S PARTIES REACH OWN AGREEMENT
 - S MEDIATOR DOES NOT TAKE SIDES

mediation steps.wpd

2. TELLING THE STORY

- § EACH PARTY TELLS THEIR STORY
- § NO INTERRUPTIONS

27. Mediation Lesson Plan

1. TOPIC:
 INTRODUCTION TO MEDIATION

3. IDENTIFYING THE FACTS AND ISSUES

- § MEDIATOR HELPS TO IDENTIFY FACTS AND ISSUES
- § CLARIFIES FACTS AND ISSUES WITH PARTIES

2. OUTCOMES:
 AT THE END OF THIS LESSON YOU WILL BE ABLE TO:
 2.1 EXPLAIN THE STEPS IN A MEDIATION
 2.2 CONDUCT A

4. IDENTIFYING ALTERNATIVE SOLUTIONS

- § EVERYONE THINKS OF SOLUTIONS
- § SOLUTIONS ARE LISTED

MEDIATION
 THE VALUE OF MEDIATION
 2.3 APPRECIATE

5. REVISING AND DISCUSSING SOLUTIONS

- § MEDIATOR HELPS PARTIES REVIEW SOLUTIONS
- § SOLUTIONS AGREEABLE TO BOTH SIDES ARE

3. CONTENT:
 3.1 THE STEPS IN A MEDIATION ARE EXPLAINED
 3.2 MEDIATIONS ARE CONDUCTED USING THE MAYUMI AND RAMIL SCENARIOS AND THE STEPS IN A MEDIATION



4. ACTIVITIES:

4.1 FOCUSER:
 PARTICIPANTS
 ROLEPLAY A
 LAWYER AND A
 MEDIATOR
 INTERVIEWING A
 CLIENT: 5 MINS

4.2
 PARTICIPANTS
 ARE DIVIDED
 INTO TRIADS
 (GROUPS OF
 THREE) WITH
 TWO
 PARTICIPANTS
 PLAYING THE
 ROLES OF
 MAYUMI AND
 RAMIL AND THE
 THIRD THE ROLE
 OF THE
 MEDIATOR: 5
 MINUTES

4.3 MAYUMI AND
 RAMIL GROUPS
 PREPARE FOR
 THEIR ROLES
 WHILE THE
 INSTRUCTOR
 TAKES THE
 MEDIATORS
 OUTSIDE TO
 BRIEF THEM ON
 THEIR ROLES BY
 CHECKING THAT
 THEY
 UNDERSTAND
 THE STEPS IN A
 MEDIATION: 10
 MINUTES

4.5 THE
 PARTICIPANTS
 CONDUCT THE
 MEDIATION: 20
 MINUTES

4.6 THE
 INSTRUCTOR
 DEBRIEFS THE
 MEDIATION: 5
 MINUTES

5.1 MAYUMI AND
 RAMIL SCENARIOS
 5.2 OVERHEAD
 PROJECTOR FOR STEPS
 IN A MEDIATION
 5.3 FLIP CHART

AND PENS FOR DEBRIEF

6. EVALUATION: CHECKING
 QUESTIONS:

.1 WHAT IS MEDIATION?

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.3 WHAT IS THE VALUE OF MEDIATION?

5. RESOURCES:

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6. Evaluation:

5. Resources:

Notes:



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**Session VIII: Group
Presentation of Mediation
Lesson**

**Group 1: Mediation Lesson
Presentation**

NOTES:

Horizontal lines for notes and presentation content.



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**SESSION IX. Groups'
Presentation of Mediation
Lesson Plan**

Group 2: Mediation Lesson Plan

NOTES:

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Group 5: Mediation Lesson Plan

NOTES:



Session X: Referral

29. Case Intake, Acceptance, Refusals and Referral Procedures⁶²

The following are suggestive procedures and strategies when dealing with case intake, acceptance, refusals and referrals.

A) The Client Interview/Intake

When a client arrives, the student at the Clinic should mark him/her "IN" in the appointment book, and give the client a Waiver form to read through.

Doing An Initial Client Interview/Intake

a) Read The Waiver Form

Students should ask the client to sign the Waiver and then sign as the witness.

b) Follow the Client Intake Checklist

For the first few intakes (until you are familiar with the interview) students should follow a Client Intake Checklist. This is a checklist that ensures that you cover all components of the interview.

1. The Interview Process

a) Students should fill in their name as the interviewer in the appointment book.

b) Students should introduce themselves to the client and show them to interview room - seating yourself closest to the door.

c) Students should ensure that client understands the Waiver form. They should be able to answer any of those questions since they have read it themselves.

d) Students should identify the problem:

- seek a "nutshell" explanation (i.e. ask them "what brings you here today?")
- find out clients goals (before you give any advice)
- communicate understanding of the problem, concerns & goals
- explain the balance of interview steps

e) Students should determine whether they should be filling out an intake form or a summary advice form, or both. They should be able to determine that as they are taking a brief synopsis of the matter at hand. Factors to consider are the legal matter, the jurisdiction in which the problem arose, and the financial situation of the client.

f) When doing both summary advice or an intake students should REMEMBER THESE TIPS:

- Use 'closed questions' and 'active listening techniques'
- Get detailed chronology
- Confirm with client the facts understood by yourself
- Seek any clarification
- Ask for any other facts/info that is relevant such as dates and \$ amounts. If the matter is criminal, ensure you include the section of the Criminal Code to which the person was charged and a description of the charge (i.e. theft under, assault, etc.) This is needed because you may need to call the courthouse to confirm the next appearance and the nature of the appearance. Then write "confirmed" in the court date section once you have done so.a
- If the client brings in a Plaintiff's Claim, be sure to write down the date it was

⁶² This information is taken from an excerpt of the Canadian Bar Association and All China Clinics Association Criminal Justice Reform and Advocacy Project Training Session Manual: Interviewing Skills, March 2005 as well as the book: Clinics as Counselors- A Client Centered Approach, 2nd Edition, American Casebook Series, West Publishing, 1991 and the University of Western Ontario Community Legal Services Training Manual for Case Workers, 2003/2004.

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served and the method of service used.

2. Fill out Summary Advice Form

When filling out Summary Advice Forms student interviewers should:

- Receive Supervisor approval if summary advice is given to the client and the student interviewer should make sure to get the Supervisor's signature of approval. Sometimes it may not always be possible to have a Supervisor sign the form while the client is in the office. In these cases the student may have to follow up later with a phone call.
- Give any additional information to client as instructed by Supervisor and write that on the form.
- Give a **referral** to other organization(s) as necessary. Give client a "**Referral Form**" if needed.
- Photocopy summary advice form for client - keep the original.
- Make copies of any documents which they have reviewed in the process of giving summary advice.
- Ensure that they give the client a copy of the waiver form.
- End the interview and a properly file summary advice and waiver form in the intake bin.

Note: Clients should sign Waiver prior to the student giving any summary advice.

a) Checklist for Summary Advice

- Is the Waiver form(s) signed?
- Is the Summary Advice filled out in full?
- Did the student's Supervisor approve the information on the Summary Advice form and sign the form?
- Did the student copy the completed Summary Advice form and give the COPY TO THE CLIENT?
- Did the student advise the client of any relevant limitation periods?

- Did the student make sure that the relevant dates and \$ amounts were included on the form?
- Did the student take down alternate phone numbers to which the person can be reached in the event that he/she is instructed to do a follow-up at a later date?
- Did you properly file the form in the intake bin?

3. Steps to Filling out Summary Advice Form Steps For Filling Out An Intake Application Form

- Students should fill in the Intake form with potential client.
- Students should have the client sign the Waiver form and the financial information in the appropriate place (stating that the given information is true) - then sign as witness. NOTE: If there are more than two people, students should have them each read and sign a waiver form and do separate Intake forms.
- Students should make copies of any documents.
- Students should follow Clinic procedures regarding who has the official authorization to accept or reject a client's case. These procedures may allow the client's case to be referred to immediately or deferred. If the decision is deferred, then tell the potential client that the decision will be made within the next few days and how he/she will be notified.
- Students should give the client a copy of the signed Waiver form and staple the original signed & witnessed copy to the Intake form along with their summary of facts and any relevant photocopies.
- Students should file the intake form.

a) Checklist For Client Intakes

There should be checklists in the intake rooms in the bin where the intake forms are found and until student interviewers are completely familiar with the intake process, they should refer to this to ensure they don't miss anything.

Most Commonly Asked Questions about Intake And/or Summary Advice

Q. What does one do if no Supervisor is there to give you direction to decide if a case should be taken?

A. Do the best you can to complete the intake. You may be able to get another Supervisor to advise you and have them initial your form - or - you may have to advise the client that you will follow-up with a phone call. In this case the client should give one or more numbers where they can be readily available.

Q. What does one tell the client when they are asking how long it will take to be approved?

A. Try to give an answer while they are in our office. Sometimes that is not always possible. If it is a RUSH application, they may call in within a few days to find out if they have been accepted.

Q. What should be photocopied and attached with the intake form and summary advice form?

A. It is important to attach to the intake, photocopies of anything that may be necessary in helping the Supervisor make a decision as to whether or not a person should be accepted as a client. Exercise your discretion, particularly where representation may be doubtful. Furthermore, remember that unless you have cleared it through your Supervisor, never take original documents from a client - photocopy. In this regard, caution the client about keeping all originals in a safe place.

Q. Are there any pamphlets that can be given to the client for the area of their

concern?

A. You may give clients any of the pamphlets that the Clinic may have. Clinics should regularly make sure they have informational pamphlets to give to clients.

Q. Do we have a business card that the client can have with our number on it?

A. Clinic should have business cards to provide to clients with Clinic contact information, the identity of the person handling the case (if possible this can be filled in) and the next appointment date.

B) Acceptance or Refusal of the Difficult Client and Case

The Situation

1. For various reasons a Clinic may sometimes not want to take on a case or a client. The wrong case can result in a number of unpleasant consequences: it can distract a Clinic from the enjoyment of helping others, cause frustration or anxiety, lack of time for other files, and disappointment by the Clinic and client over the results.

2. Although a Clinic has the right not to take a case, the Clinic may want to be slow to exercise that right if the probable result would make it difficult for the person to obtain legal advice or representation. Even a person who is unreasonable, unpopular, or disreputable is entitled to be represented by a Clinic.

3. A Clinic's sense of duty may sometimes get in the way of the Clinic's judgment about its ability to give that help. It is unlikely that a bad case at the outset will look better after the other side of the story is heard. If a case has merit, there will be another person or Clinic who will accept it - it need not be your Clinic.

4. It is unlikely that a poor client relationship will improve as time goes on. Another lawyer

or Clinic may be able to get along better with the client than yours. If that is the case, communicate with the client and inform him that you are not taking his case. In this case, it is best to write a polite non-engagement letter. However, if the Clinic informs the client by telephone, the Clinic should write a detail memo to this file indicating the date.

5. If the Clinic decides not to take on a difficult client or case, or in the process of representing a client, the Clinic realizes it must withdraw and refer the client to another lawyer or Clinic, the Clinic should fully explain this to the client, including explaining that issues of confidentiality will continue even after the withdrawal and referral. In the case of a referral the Clinic should fully and adequately inform that client who the client is being referred to.

5. If the Clinic decides to take on a difficult client or case, the Clinic should ensure that it maintains a good relationship with the client and that it protects itself by keeping good records of all steps you take on the file.

Red Flag Warnings About The Difficult Client

a) Some Red Flag Warnings Which May Cause a Clinic to Consider Rejecting a Client

- the client has had more than one lawyer or Clinic for this matter;
- the client's expectations are unrealistic;
- the client has already contacted different authorities to plead the case;
- the client wants to proceed with the case because of principle and regardless of cost;
- the client expresses distrust of the Clinic or persons at the Clinic;

b) Some Red Flag Warnings Which May Cause the Clinic to Consider Rejecting a Case

- the case has already been rejected by other lawyers or Clinics;
- the case has an element of avoidable urgency;
- the case requires more fees and costs than the Clinic is able to handle;
- the case is outside the Clinic's expertise;
- the case has a potential conflict of interest;
- the case requires significant disbursements which the client cannot cover without winning, and the outcome is doubtful;
- the case will over-extend the Clinic's time and resources;
- the case does not give the Clinic adequate time to prepare.

C) Some Strategies for Making Referrals

- Discuss the need for the referral with the client
- Explain, when applicable, the benefits to the client in referring the case to another person or office.
- Refer clients when possible to specific persons (or offices) who are immediately available.
- Provide the client with complete information on how to get to the referred person or office.(Maps and contact numbers, including email, would be helpful)
- Make a complete copy of the client's file and keep the copied file in your office. Explain to the client that you will be providing the referred person or office the file or you can provide the client a copy of the file to bring to the referred person or office.
- Explain that all confidentiality issues will remain even after the referral.
- Be polite, considerate and when possible empathetic to the client.
- Fill out and complete an Referral Form and have the client sign the form and acknowledging that he/she has been made aware of the referral.

DAY 2

Materials



First Southeast Asian Clinical Legal Education Teacher Training
Jan 30- Feb 3, 2007,
Manila, Philippines

Day Coordinator: David McQuoid-Mason



Session I: Introduction into Alternative Dispute Resolution

22. TEACHING ASPECTS OF ALTERNATIVE DISPUTE RESOLUTION

TO CANDIDATE ATTORNEYS IN SOUTH
AFRICA

By

Prof. David McQuoid-Mason

Introduction

For the past 13 years the present writer has been teaching aspects of alternative dispute resolution (ADR) to candidate attorneys in South Africa.⁶³ It has been taught since the early 1990s during the part-time Practical Legal Training courses and at the Durban School for Legal Practice since the mid-1990s. Both the Practical Legal Training courses and the School for Legal Practice are run under the auspices of the Law Society of South Africa. The ADR programme is a two-day course, which deals with negotiation and mediation skills.

2. Negotiation skills

The first day negotiation skills component consists of a perception exercise; a psychological test; an introductory negotiation exercise; a discussion of the negotiation process; a listening skills exercise involving paraphrasing; how to plan a

⁶³ *The course is based on that developed by Richard A Salem of Conflict Management Initiatives, Chicago, and the present writer, during a nationwide series of workshops presented for the Continuing Legal Education division of the then Association of Law Societies of South Africa in 1991.*



negotiation; a negotiating values exercise; a two-on-two negotiation exercise; a discussion of principled negotiation; and, a final negotiation to test that students have internalised the concept of interest-based as opposed to position-based negotiation.

1.1 *Perception exercise*

The negotiation skills section begins with a perception exercise where students are shown a picture of the 'Old woman/Young woman' drawing⁶⁴ and then asked to record the age of the person they see. This inevitably results in the students recording a variety of ages from 17 years to 70 years. The exercise serves to show the students the importance of clarifying the issues before engaging in any negotiations - otherwise the parties will misinterpret the issues and talk past each other. A similar exercise can be used in which students are shown a grid of 16 squares and asked how many squares they can see. Answers vary from 16 to over 30.

1.2 *Psychological make-up of students*

The second part of the negotiation skills programme seeks to assist students to

identify their personal psychological make-up when dealing with conflict. This can be done by using a tool such as the Thomas-Kilmann⁶⁵ or some similar instrument. The Thomas Kilmann instrument presents respondents with 30 closed questions as to how they would react under situations where they experience the most conflict in their life.⁶⁶ The respondents then total up their scores under different profile headings: competing (forcing), collaborating (problem solving), compromising (sharing), avoiding (withdrawal) or accommodating (smoothing).⁶⁷ The different psychological characteristics can then be explained in the context of a simple example. For instance, students may be told that two people go on a picnic in a drought-stricken part of the country and have only one bucket of water to wash some wild fruits and a pair of very dirty boot soles. How would they deal with the situation using each characteristic? How would a competitor, collaborator, compromiser, avoider or accommodator each

⁶⁴ *In the public domain and commonly used by ADR facilitators.*



⁶⁵ See Kenneth W Thomas and Ralph H Kilmann *Thomas-Kilmann Conflict Mode Instrument* (1974).

⁶⁶ *Thomas-Kilmann Conflict Mode Instrument* 1-4.

⁶⁷ *Thomas-Kilmann Conflict Mode Instrument* 6.

react in such circumstances?

1.3 Introductory negotiation exercise

The next part of the negotiation programme requires students to engage in an one-on-one negotiation exercise involving the buying and selling of a mattress in circumstances under which one party urgently requires to buy a mattress and the other needs to urgently sell it.⁶⁸ During debriefing the exercise is used to lay the foundation for some of the issues that arise during negotiations such as: Were the negotiators satisfied with their negotiation? Was the negotiation fair? Was 'small talk' used? What were the opening positions? How is information about the different negotiators gathered? How much should be disclosed during a negotiation? How were concessions made? Was 'bracketing' used?⁶⁹ Was the buyer given credit to pay over time? Was either party operating against a

⁶⁸ 'The Mattress Negotiation' was created by Richard A Salem, Conflict Management Initiatives (1987).

⁶⁹ 'Bracketing' involves, for example, a seller saying 'I am prepared to sell this mattress for between \$100 and \$200', or a buyer saying 'I am prepared to buy this mattress for between \$100 and \$200'. In the first instance the buyer will only hear the lower price, in the second the seller will only hear the second price - so the bracketing is pointless.

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deadline? What happens if you are an 'accommodator' negotiating with a 'competitor'? What are the ethics and legal implications of withholding the truth?

1.4 The negotiating process

The negotiating process is then discussed: Students are informed what negotiation is; what happens during the process; what should be achieved during a negotiation; what sort of information parties usually have about each other; what parties may be able to anticipate about each other's needs; the need to maintain flexibility and not to be locked into a bottom line; how information is exchanged - verbally and non-verbally; the fact that knowledge is power; that usually the more information that is surfaced the better the agreement; the tensions that arise between retaining and sharing information; the dangers of releasing information if 'under attack' from the other side; the use of small talk and silences to obtain information; and the need to adopt an interest-based approach rather than a position-based approach to negotiation.⁷⁰

1.5 Listening skills - paraphrasing

An important aspect of the

⁷⁰ See below Roger Fisher and William Ury *Getting to Yes: Negotiating Agreement Without Giving In* (1983).



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negotiation process is the ability of the parties to listen to each other. Therefore, an exercise is done to teach students listening skills by using 'paraphrasing'. Students brainstorm a list of highly controversial topics and are then required to team up with a colleague who genuinely takes the opposite view from them on a subject. The parties are then required to discuss the topic using the following format: One student will begin the discussion by making an important point. The other student will then paraphrase what the first student said, to the satisfaction of the first student, before he or she can respond with their argument. After the second student has made his or her point the first student may not respond until he or she has correctly paraphrased the second student's argument etc. The students are then debriefed concerning what they felt during the paraphrasing exercise and when paraphrasing can be used in legal practice.

1.6 *Planning the negotiation*

The students are given a checklist of what they should do when planning a negotiation. The list includes the following: What are the issues at stake? What information do you need from the other party? What are your sources of negotiating power? What negotiating strategy will you use? What will you say in your opening

presentation? What response is the other party likely to make? How will you reply? What is the most you want? What is the least you can settle for? What is the likely result? What information do you have? What information do you need to get from others? What is your authority to settle? What alternatives do you have if you fail to settle? ⁷¹ The students are subsequently asked to use these criteria when planning for 'The Tax Book Negotiation'.⁷²

1.7 *Negotiating values*

The students are required to consider a number of scenarios involving ethical issues that may arise during a negotiation. These include questions such as: Is a lawyer obliged to answer a fellow lawyer's question about whether he or she has a mandate from an incommunicado client if confirmation thereof will prejudice the client? If a lawyer has heard that his or her client has had a heart by-pass operation and is asked by another lawyer whether the client is 'in good health' what should he or she reply to avoid prejudicing the client? Where a lawyer is winding up a deceased estate and suspects

⁷¹ Richard A Salem 'Considerations when Planning and Preparing for a Negotiation' (1991) Conflict Management Initiatives, Chicago.

⁷² See below para 1.8.

that a car that needs to be sold is defective, is he or she obliged to warn certain categories of potential buyers (eg a car dealer, a respondent to a newspaper advertisement, another lawyer, a parent) about the suspected condition of the car - if not asked by the person concerned? What would be the position if the lawyer was asked by any of the above list of potential buyers whether the car was 'in good condition'? ⁷³

1.8 *The Tax Book Negotiation*

The 'Tax Book Negotiation' is a two-on-two negotiation between a team of two candidate attorneys, (who have been mandated by the principals in their law firm to sell a set of tax books), and a team of potential buyers consisting of two young lawyers, (who are partners in the process of setting up a tax law firm). The candidate attorneys face certain pressures that require them to sell the law books and have them delivered expeditiously while the young lawyers face certain constraints that prevent them from taking immediate delivery.⁷⁴ The students are given sufficient time to prepare

for the negotiation using the checklist set out above.⁷⁵ The results of the negotiation are debriefed to the issues arising from the principles that emerged from 'The Mattress Negotiation'.⁷⁶

1.9 *Principled negotiation*

The elements of 'principled negotiation' as propagated by Fisher and Ury⁷⁷ are discussed with the students. These include deciding issues on the merits; looking for mutual gains; basing results on fair standards; being 'hard on the merits' and 'soft on the people'; not employing 'tricks'; and not arguing over positions. Fisher and Ury state that the four points of principled negotiation involve the following: people, interests, options and criteria.⁷⁸

1.9.1 *People*

In respect of people negotiators must deal not only with the issue at hand and their relationship with each other, but must also take into account their perceptions, emotions and ability of communicate. To this end they should separate people from the problem and

⁷³ See Richard A Salem 'Negotiating Values' Conflict Management Initiatives (1990).

⁷⁴ 'The Tax Book Negotiation' was adapted from a similar role-play in Gerald Williams *Legal Negotiations* (1989).

⁷⁵ See para 1.6 above.

⁷⁶ See para 1.3 above.

⁷⁷ Fisher and Ury *Getting to Yes* (1983).

⁷⁸ Fisher and Ury chapter 2.

attack the problem not each other.⁷⁹

1.9.2 Interests

Regarding interests the parties should identify and talk about their interests and focus on such interests not their positions. They need to reconcile their interests not their positions as the latter may obscure their real interests.⁸⁰

1.9.3 Options

It is necessary for negotiating parties to generate a variety of options before making a decision. This can be done by setting aside time for brainstorming in order to come up with ways of ensuring mutual gains. A failure to generate options by way of brainstorming may result in obstacles to creative thinking.⁸¹

1.9.4 Criteria

When choosing criteria the parties should insist that they are objective and do not simply consist of the other side's 'say so'. Both parties should be open to reason on criteria. Neither should yield to pressure by the other - all decisions should be made on

the basis of principle.⁸²

1.10 *The Moroccan Sweet Treat Negotiation*

'The Moroccan Sweet Treat Negotiation'⁸³ is a one-on-one negotiation to demonstrate whether the students have learned anything about interest-based negotiation at the end of the first day. Two rival mineral water manufacturers require the only available box of 'Moroccan Sweet Treats' in order to solve their production problems otherwise they will be out of business. There is only one satisfactory solution, which can result in a win-win situation if the negotiators adopt an interest-based approach to the negotiation.

2. Mediation skills

The second day mediation skills component consists of an introductory activity illustrating what mediators do; a discussion of the characteristics of mediation; a presentation on empathic listening; a description of the steps in a mediation; a discussion of the

⁷⁹ Fisher and Ury 17-40.

⁸⁰ Fisher and Ury 41 -57.

⁸¹ Fisher and Ury 58-83.

⁸² Fisher and Ury 84-98.

⁸³ 'The Moroccan Sweet Treat Negotiation' was devised by Richard A Salem, Conflict Management Initiatives, Chicago (1990).

mediation process; a mediation exercise involving an employment contract; a description of when mediation works and does not work; a discussion of the universe of alternative dispute resolution; a mediation exercise involving a business contract; and, a mediation exercise involving a divorce.

2.1 *What mediators do*

Students are asked to volunteer for a short role-play, which illustrates the difference between how lawyers tend to approach clients during an interview and how mediators do. Three role-players are required: a client, a lawyer and a mediator.

2.1.1 Lawyer-client interview⁸⁴

The interaction between the client and the lawyer is as follows:

Client: My neighbour's son got into my garage when I was away. He got on my bike and crashed into a tree at the bottom of the hill. He wrote the damn thing off.

Lawyer: Were there any witnesses?

Client: Not that I know about.

Lawyer: Was it a forced entry?

Client: No, I left the garage open.

Lawyer: Was there any other damage?

Client: No, that was all.

Lawyer: What were the damages?

Client: The bike cost me \$100 in 1990.

Lawyer: Was it insured?

Client: No.

2.1.2 Mediator-client interview

The interaction between the client and the mediator is as follows:

Client: My neighbour's son got into my garage when I was away. He got on my bike and crashed into a tree at the bottom of the hill. He wrote the damn thing off.

Mediator: Is there

⁸⁴ Devised by Richard A Salem, Conflict Management Initiatives, Chicago (1991).

anything else?

Client: No, that was enough. What a cheek!

Mediator: How would you like to see this thing settled?

Client: What I want is an apology. And I want the boy to do it when his parents are present.

Mediator: Is there anything else?

Client: Yeh, I want him to promise not to do it again.

Mediator: What about the bike?

Client: I do not care about the bike. It has not been used for five years since my kids moved out.

The role-play is then debriefed to point out the difference between open and closed questions and the dangers involved in prejudging issues. Students are advised that lawyers should always use client-centred interviewing techniques and begin their consultations with open questions like those

used by the mediator. Only after the wishes of the client have been established may they begin 'funneling' the information with closed questions in order to determine whether the elements of any proposed legal action have been satisfied.

Finally, students are told that mediators: understand and appreciate the problems confronting the parties; impart the fact that they know and appreciate the problems of the parties; create doubts in the minds of the parties about the validity of the positions they have assumed with respect to the problems; suggest alternative approaches to the parties which may facilitate trust; build trust because they have no authority and depend upon acceptance by the parties; and, that mediators are good listeners.

2.2 *Characteristics of mediation*

Students are reminded that: mediation is an extension of negotiation; mediators are third parties with no stake in the outcome; mediators must gain trust; mediators have no authority; mediators control the process - not the outcome; the parties control the dispute and the outcome; mediation is voluntary - the parties can walk away at any time; all information disclosed at a mediation is private and confidential; mediation is future-oriented and does not

dwell on the past; mediation is solution-oriented and does not apportion blame, guilt or punishment; mediators make suggestions - they do not give legal advice or tell the parties what to do⁸⁵; and, mediators respect the parties' ability to resolve their own disputes.

2.4 *Empathic listening*⁸⁶

As a follow-up to the paraphrasing exercise done during the negotiation component the concept of 'empathic listening' is discussed. Empathic listening involves the mediator:

2. Being attentive, alert and non-distracted. He or she should create a positive atmosphere with their non-verbal behaviour (e.g. not looking out of the window when the parties are telling their stories).
3. Being interested in the other person's needs, by listening with understanding

⁸⁵ They may however suggest that the parties should consult a lawyer if it is clear that they require legal advice. The moment a mediator gives legal advice that favours one or other party the mediator's neutrality is compromised.

⁸⁶ See generally, Madelyn Burley-Allen *Listening: The Forgotten Skill* (1982).



and letting the other person know that the mediator cares about what is being said.

4. Listening from the 'okay mode' by being a sounding board, non-judgmental and non-criticising; not asking a lot of questions or 'grilling'; acting like a mirror by reflecting what the mediator thinks is being said or felt; and, not using stock phrases like 'it's not that bad', 'you'll feel better tomorrow', 'don't be so upset', and 'you're making a mountain out of a mole hill'.

5. Not becoming emotionally 'hooked'. The mediator should not become angry, upset or argumentative, nor should he or she jump to conclusions or judgments.

6. Indicating that he or she is listening by: giving encouraging non-committal acknowledgments (eg 'hum', 'uh huh', 'I see', 'right' etc); giving non-verbal acknowledgments (eg nods, matching facial expressions, presenting an open and relaxed body posture, using

eye contact, and, if appropriate, touching); and, inviting more (eg 'tell me more' or 'I'd like to hear about it').⁸⁷

Students are reminded that if they want to be empathic listeners they ought to observe the following ground rules: They should not interrupt; not change the subject or move in a new direction; not rehearse in their head; not interrogate; not teach; and, not give advice. However, they should reflect back to the sender what they observe and how they believe the speaker feels.⁸⁸

2.4 *Steps in a mediation*

The students are taken through the steps in a mediation from the initial introduction until the making of the agreement. They are informed that there are six basic steps involved:

Step 1:
Introduction

The mediator makes the parties relax and explains the rules. The

⁸⁷ Adopted by Richard A Salem, Conflict Initiatives, Chicago from Madelyn Burley-Allen *Listening: The Forgotten Skill* (1982).

⁸⁸ Ibid.

mediator's role is not to make a decision but to help the parties reach an agreement. The mediator explains that he or she will not take sides.

Step 2: Telling the story

Each party tells what happened. The person bringing the complaint tells his or her side of the story first. No interruptions are allowed. Then the other party explains his or her version of the facts.

Step 3: Identifying the facts and issues

The mediator attempts to identify the facts and issues agreed upon by the parties. This is done by listening to each side, summarizing each party's views, and asking if these are the facts and issues as each party understands them.

Step 4: Identifying alternative solutions

Everyone thinks of possible solutions to the problem. The mediator makes a list and asks each party to explain his or her feelings about each solution.

Step 5: Revising and

discussing solutions

Based on the expressed feelings of the parties, the mediator revises possible solutions and helps the parties to identify a solution to which both parties can agree.

Step 6: Reaching agreement

The mediator helps the parties reach an agreement with which both can live. The agreement should be written down. The parties should also discuss what will happen if either of them breaks the agreement.⁸⁹

2.5 *The mediation process*

The mediation process is explained to the students. They are told that the mediation begins with the mediator welcoming the parties and getting them to introduce themselves. The mediator will make them feel as comfortable as possible. Thereafter the mediator will explain that his or her role is to assist the parties to reach a voluntary agreement through good faith negotiations, and that he or she has no authority to decide the matter - the parties must make their own decision. The mediator also explains that he or she is impartial and

has no stake in the outcome. If the mediator has had any prior relationship with any of the parties beforehand he or she clarifies this with the parties to ensure that there are no objections to the person proceeding as the mediator.⁹⁰

The mediator then explains the mediation process to the parties:

- (i) The parties will each have an opportunity to describe the unresolved issues and must address their comments to the mediator.
- (j) When one party speaks there should be no interruptions by the other party. Each party should take notes and respond later.
- (k) After their presentations the mediator will help the parties to identify the issues and possible solutions through discussion and negotiation.
- (l) Sometimes during the process it may be necessary for the mediator to meet separately (caucus) with one

⁸⁹ See David McQuoid-Mason *Street Law: An Introduction to South African Law and the Legal System* 6th impression (1992) 32.

⁹⁰ Adapted by the present writer from Richard A Salem, Conflict Management Initiatives, Chicago 'Procedure for Opening the Mediation' (1990).



of the parties at their request or in order to make progress. When this happens the mediator should not be seen as taking sides as this opportunity is afforded to both parties. Furthermore, anything said to the mediator during a caucus will not be disclosed to the other party unless permission is given by the caucusing party.

(m) The procedure that will be followed after the parties reach agreement will be explained to them (e.g. the agreement will be in writing and will include a clause stating what will happen if either party breaches the agreement).

(n) The mediation proceedings will be regarded as confidential. The mediator will throw away his or her notes after the mediation is concluded. The mediator will not reveal what transpired what happened during the mediation without the consent of both parties or unless ordered to do so by a court of

law.

(o) The mediator checks whether the parties have any questions and whether they agree to the procedures as set out in the description of the process. Both parties should audibly state that they agree to the process.

(p) The mediator congratulates the parties on choosing mediation, and tells them that he or she is confident that if they follow the procedures agreed to and negotiate in good faith they should be able to resolve the matter.⁹¹

2.6

The 'Famous Cape Malay Restaurant Mediation'⁹² involves a chef who works in a restaurant and is promised a 10 % share of the profits. The agreement was sealed with a handshake between the chef and one of the partners but never reduced to writing. Although the chef received a handsome

⁹¹ Ibid.

⁹² The 'Famous Cape Malay Restaurant Mediation' was devised by Richard A Salem and David McQuoid-Mason.

bonus at the end of the year, nothing further was said about the 10% share. When she queried this several months later she was told that the lawyers had been slow in preparing the paperwork. The restaurant continued to do well and she received a further sum of money, which she was told was her 'dividend from the profits'. The chef feels insecure because she has nothing in writing. As the success of the restaurant is due to her culinary skills she threatens to leave and set up her own restaurant nearby if she is not given an immediate 30% of the profits. She is then told that she cannot do so because her 10% share is subject to a restraint of trade agreement. The agreement prevents her from competing with the 'Famous Cape Malay Restaurant' for five years within a radius of 10 kilometers. She does not remember agreeing to this and wants to consult a lawyer. Instead it is suggested that the parties try mediation and she agrees - although she still wants legal advice on her position (and will press the mediator to advise her on the law).

The students are divided into groups of three: one to play the part of the chef, one to play the part of the partner who promised the 10% share, and one to be the mediator. This means that each student in the class is involved either as a client or a mediator. The Durban School for Legal Practice class usually

has about 60 students so that 20 mediations can take place. The Practical Legal Training class is larger, with about 90 students, so that 30 mediations can take place. While the clients learn their scenarios the mediators are taken aside by the instructor and briefed on the mediation process. Once the mediators are comfortable with their roles as mediators they link up with their clients and commence their mediations.

The mediation process usually takes about 40 minutes and once the mediations are complete the students give feedback on their settlements and the mediation process itself. Those students who complete their mediation before the others are requested to give their mediators feedback on the process within their small groups before sharing it with the whole class.

2.7 *When mediation works and does not work*

Students are informed that mediation is not a panacea for all disputes and that sometimes it is appropriate and other times it is not.

For instance, mediation works when:

- (m) The court cannot provide relief.
- (n) The client wishes to

- settle promptly.
- (o) The client wishes to minimize costs.
- (p) Voluntary compliance is desirable.
- (q) The client wishes to avoid a court precedent.
- (r) The parties have difficulty negotiating.
- (s) The parties lack negotiating skills.
- (t) The parties assess the facts differently.
- (u) The parties assess the law differently.
- (v) The parties have a continuing relationship.
- (w) Complex trade-offs are required.
- (x) The client wants confidentiality.⁹³
- parties is unwilling to mediate.
- (k) One party adamantly denies liability.
- (l) One party is likely to go insolvent.
- (m) A favourable court judgment is likely for one of the parties.
- (n) It is not possible to conduct the mediation without discovery of documents which one of the parties is not prepared to disclose.⁹⁴

However, mediation does not work when:

- (h) The client cannot represent his or her best interests.
- (i) The client wants a court precedent.
- (j) One of the major

2.8 *The universe of mediation and arbitration*

Students are provided with an understanding of the universe of mediation and arbitration. They are shown that negotiation and mediation fall under interests-based or consensual methods of resolving disputes, whereas arbitration (and litigation) fall under rights-based or adjudicative methods of dispute resolution.

Interest-based methods include mediation, in respect of disputes involving such issues as labour, communities, commercial transactions, the family, neighbourhood matters, public policy

⁹³ Adapted from Nancy H Rogers & Richard A Salem *A Student's Guide to Mediation and the Law* (1987) 44-51.

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⁹⁴ Adapted from Nancy H Rogers & Richard A Salem *A Student's Guide to Mediation and the Law* (1987) 51-58.

decisions and court affiliated processes. Other interests-based dispute resolution mechanisms include regulation-negotiation (where, for instance, a government department wishes to involve all the role-players in getting them to agree to new regulations), and settlement weeks (where court rolls are cleared by requiring all matters set down for trial to be referred to a panel of mediators for a week or more in an attempt to get them settled).

The rights-based model uses litigation and arbitration but may also use variations of this. For instance, arbitration-mediation may be used whereby an arbitration award is sealed in an envelope and not disclosed to the parties and the latter are encouraged to engage in a mediation process. Only if the mediation fails will the arbitration award be made public. Similarly, 'private judging' may be used whereby a private judge is hired (eg a retired judge or senior lawyer) who hears all the evidence and then gives a judgment which may or may not be binding. Alternatively, 'mini-trials' may also be conducted whereby all the evidence is presented and the parties have an opportunity to see how well their case is likely to fare in the real court case. The harsh reality of the likely outcome may well result in the parties agreeing to settle out of

court.

There are also methods that are a combination of the interests-based and rights-based approaches to dispute resolution. For instance, non-binding arbitration may be used instead of the usual practice of binding arbitration. Likewise, a mediation-arbitration procedure might be followed whereby the parties agree to first try mediation and, if that does not work, to resort to arbitration.

2.10 *The Missing Machine Mediation*

The 'Missing Machine Mediation'⁹⁵ involves a trucking company that delivers a machine for a machine manufacturer, who has a cash flow problem, to a third party. The buyers of the machine pay the transport costs to the trucking company's driver - but instead of paying \$2 200 they mistakenly only pay \$200. The mistake is discovered and the remaining \$2 000 is paid directly to the machine manufacturer - not the trucking company. Instead of paying the money to the trucking company, the machine manufacturer gets his daughter, who is also his secretary, to 'stonewall' all enquiries by the trucking company for the next month, so that he can use the money to solve his cash flow

⁹⁵ Devised by Richard A Salem, Conflict Management Initiatives, Chicago (1990), based on an actual case.

problem. In the process the daughter is sexually harassed on the telephone by the trucking company's employees who become frustrated by her evasion of their enquiries. When the trucking company is asked to make another delivery on behalf of the machine manufacturer instead of delivering the machinery worth \$430 000, the company keeps it as security for the \$2 000 owed to it.

In the past the parties have had a good working relationship. The machine manufacturer was the trucking company's first customer and received a 30% discount because of its good record of prompt payment. When the cash flow problem arose, and the manufacturer held back the \$2 000, he tried to compensate the trucking company by giving it more work with another delivery. The trucking company had repaid the manufacturer's generosity by seizing machinery worth \$430 000 and refusing to release it until the \$2 000 had been paid. In addition the trucking company's clerks had sexually harassed the manufacturer's daughter who had done such a good job in protecting his interests. Because of their previous business record the parties agree to mediation rather than resorting to litigation.

As in the 'Famous Cape Malay Restaurant Mediation', the students are divided into

groups of three: one to play the part of the manager of the trucking company, one to play the part of the manager of the machine manufacturer, and one to be the mediator. Once again each student in the class is involved either as a client or a mediator and, while the clients learn their scenarios, the mediators are taken aside by the instructor and briefed on the mediation process. The mediators are then linked up with their clients and commence their mediations. The mediation process again takes about 40 minutes. Once the mediations are complete the students share information about the results of the negotiations and the mediation process.

2.10 *The Blom Divorce Mediation*

The 'Blom Divorce Mediation'⁹⁶ involves a threatened divorce between a doctor and a former teacher who runs a small arts and craft gallery. They have been married for nine years and have an eight-year-old boy and six-year-old girl. The doctor has a low-income job with a medical clinic in a poor community that requires him to work 10 hours a day six days a week. He also serves on the boards of several non-governmental organisations and is seldom at

⁹⁶ Devised by Richard A Salem, Conflict Management Initiatives, Chicago and David McQuoid-Mason (1991).



home so there is no family social life. The wife is a qualified teacher of literature. She had previously worked as a teacher and later as a book store manager, but during the past three years, with financial help from her father, she and a neighbour had opened the gallery. The gallery has been losing money during the past three years although business has been slowly improving. As a result the wife's father pays out money each year to cover the losses.

The couple has a town house registered in both their names, but the husband makes all the bond payments. They also have cash in savings, some insurance policies and a four-year-old car owned by the husband. The wife is unhappy that the husband earns such a low salary as a doctor that the family is always strapped for cash. In addition because of his long working hours and other activities the husband spends no time with her and the children. The husband loves his children and wife. However, he is not happy that his wife, who is a qualified teacher, is involved in a gallery, which makes an annual loss that has to be paid for by her father. Before proceeding with the divorce the parties agree to mediation.

The students are divided into groups of three: one to play the part of the husband, one to play the part of the wife, and one to

be the mediator. All the students in the class are involved either as clients or mediators. The clients learn their scenarios while the mediators are taken aside and briefed on how to mediate. The mediators join their clients and commence their mediations. The mediations often last longer than 40 minutes - because simulated matrimonial matters, as in the real world, seem to take longer to settle than other forms of mediation. The students report back on the results of their negotiations and how the mediators handled the process.

Conclusion

When teaching alternative dispute resolution skills such as negotiation and mediation it is necessary to engage the students in an active learning process. This is particularly true of law students and law graduates who tend to become encrusted with the objective, unemotional, and at times, somewhat cold, clinical approach to human problems that lawyers usually adopt. Part of the learning process, particularly in the mediation training, is to make them more empathic in the manner in which they deal with clients. This requires the students to drop their lawyers' masks and to demonstrate to the parties that they really care about their concerns. It also shows the students how



important it is to become good listeners.

Even though the programme only lasts two days, provided creative, interactive teaching methods are used, all the students can be given an opportunity to experience the type of behaviour modification that may be required to be a good negotiator or mediator. The feedback from the students who attend the candidate attorneys' alternative dispute resolution classes at the Durban School for Legal Practice and the Practical Training Course is always very positive. Evaluations regularly indicate that the course is highly rated in the student assessments for the amount of 'learning through doing' that occurs. Its success lies in that it is a practical, not academic course.

Session II: Demonstrative CLE Negotiation Lesson

23. Negotiation Guidelines

1. PREPARING FOR THE NEGOTIATION

- \$ UNDERSTAND THE
FACTS AND ISSUES
- \$ DECIDE WHAT IS THE
LEAST AND MOST YOU
CAN EXPECT
- \$ WHAT IS NOT
NEGOTIABLE?
- \$ WHAT DOES THE OTHER
SIDE CARE ABOUT?
- \$ WHAT IS IN BOTH YOUR

2. THE NEGOTIATION PROCESS

- \$ TRY TO BUILD A GOOD
RELATIONSHIP WITH
THE OTHER SIDE
- \$ BE FRIENDLY AND
CORDIAL
- \$ SPEAK ABOUT WHAT
YOU WOULD LIKE (EG I
THINK, I FEEL)
- \$ FIND OUT WHAT THE
OTHER SIDE WOULD
LIKE
- \$ BRAINSTORM
SOLUTIONS OR OPTIONS
TO SOLVE THE
PROBLEM
- \$ DO NOT MAKE UNFAIR
OR UNREALISTIC
DEMANDS
- \$ DO NOT BECOME
ABUSIVE, OVER-
EMOTIONAL OR
THREATENING
- \$ OFFER TO GIVE
SOMETHING AWAY IN
EXCHANGE FOR
SOMETHING FROM THE
OTHER SIDE

3. MOVING AND REACHING AN AGREEMENT

- \$ IDENTIFY YOUR
COMMON INTERESTS
- \$ TRY TO MOVE THE
PROCESS IF THE OTHER
SIDE DOES NOT
- \$ CONSIDER OFFERING A
COMPROMISE
- \$ TRY TO MAKE THE
AGREEMENT AS FAIR AS
POSSIBLE

§ **USE OBJECTIVE
CRITERIA TO MEASURE
COMPLIANCE WITH THE
AGREEMENT**

negotiation guidelines.wpd



24. Negotiation Lesson Plan

			5 MINUTES
			4.2 THE INSTRUCTOR EXPLAINS THE NEGOTIATION GUIDELINES: 10 MINUTES
1.	<u>TOPIC:</u>	INTRODUCTION TO NEGOTIATION	
			4.3
2.	<u>OUTCOMES:</u>	AT THE END OF THIS LESSON YOU WILL BE ABLE TO:	PARTICIPANTS PREPARE FOR THE NEGOTIATION: 10 MINUTES
		2.1 EXPLAIN THE GUIDELINES FOR NEGOTIATION	
		2.2 CONDUCT A NEGOTIATION	4.4
		VALUE OF NEGOTIATION	PARTICIPANTS CONDUCT THE NEGOTIATION IN PAIRS: 15 MINUTES
3.	<u>CONTENT:</u>	3.1 AN EXPLANATION OF THE GUIDELINES FOR NEGOTIATION IS GIVEN	4.5 THE INSTRUCTOR DEBRIEF S THE PARTICIPANTS: 5 MINUTES
		3.2 PARTICIPANTS CONDUCT A NEGOTIATION USING THE MAYUMI AND RAMIL SCENARIOS	
			5. <u>RESOURCES:</u>
4.	<u>ACTIVITIES:</u>	4.1	5.3 MAYUMI AND RAMIL SCENARIOS
		FACILITATOR: OLD WOMAN-YOUNG WOMAN:	5.4 OVERHEAD PROJECT

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5.3 FLIP

CHART AND PENS FOR DEBRIEF

6. EVALUATION: CHECKING
QUESTIONS:

.1 WHAT IS NEGOTIATION?

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Group 5: Negotiation Lesson Plan

NOTES:

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**Session VI.: Demonstrative
 CLE Mediation Lesson**

26. Steps in Mediation

- 7. INTRODUCTION
 - § PUT PARTIES AT EASE
 - § EXPLAIN GROUND RULES
 - § PARTIES REACH OWN AGREEMENT
 - § MEDIATOR DOES NOT TAKE SIDES
- 2. TELLING THE STORY
 - § EACH PARTY TELLS THEIR STORY
 - § NO INTERRUPTIONS
- 3. IDENTIFYING THE FACTS AND ISSUES
 - § MEDIATOR HELPS TO IDENTIFY FACTS AND ISSUES
 - § CLARIFIES FACTS AND ISSUES WITH PARTIES
- 4. IDENTIFYING ALTERNATIVE SOLUTIONS
 - § EVERYONE THINKS OF SOLUTIONS
 - § SOLUTIONS ARE LISTED
- 5. REVISING AND DISCUSSING SOLUTIONS
 - § MEDIATOR HELPS PARTIES REVIEW SOLUTIONS
 - § SOLUTIONS AGREEABLE TO BOTH SIDES ARE

IDENTIFIED

6. REACHING AN AGREEMENT

- § AGREEMENT IS WRITTEN DOWN
- § A CLAUSE IS INCLUDED TO COVER A BREACH BY EITHER PARTY

mediation steps.wpd

27. Mediation Lesson Plan

- 4. TOPIC:
 INTRODUCTION TO MEDIATION
- 5. OUTCOMES:
 - AT THE END OF THIS LESSON YOU WILL BE ABLE TO:
 - 2.1 EXPLAIN THE STEPS IN A MEDIATION
 - 2.2 CONDUCT A MEDIATION
 - 2.3 APPRECIATE THE VALUE OF MEDIATION
- 6. CONTENT:
 - 3.1 THE STEPS IN A MEDIATION ARE EXPLAINED
 - 3.2 MEDIATIONS ARE CONDUCTED USING THE MAYUMI AND RAMIL SCENARIOS AND THE STEPS IN A MEDIATION



4. ACTIVITIES:

4.1 FOCUSER:
 PARTICIPANTS
 ROLEPLAY A
 LAWYER AND A
 MEDIATOR
 INTERVIEWING A
 CLIENT: 5 MINS

4.2
 PARTICIPANTS
 ARE DIVIDED
 INTO TRIADS
 (GROUPS OF
 THREE) WITH
 TWO
 PARTICIPANTS
 PLAYING THE
 ROLES OF
 MAYUMI AND
 RAMIL AND THE
 THIRD THE ROLE
 OF THE
 MEDIATOR: 5
 MINUTES

4.3 MAYUMI AND
 RAMIL GROUPS
 PREPARE FOR
 THEIR ROLES
 WHILE THE
 INSTRUCTOR
 TAKES THE
 MEDIATORS
 OUTSIDE TO
 BRIEF THEM ON
 THEIR ROLES BY
 CHECKING THAT
 THEY
 UNDERSTAND
 THE STEPS IN A
 MEDIATION: 10
 MINUTES

4.5 THE
 PARTICIPANTS
 CONDUCT THE
 MEDIATION: 20
 MINUTES

4.6 THE
 INSTRUCTOR
 DEBRIEFS THE
 MEDIATION: 5
 MINUTES

5.1 MAYUMI AND
 RAMIL SCENARIOS
 5.2 OVERHEAD
 PROJECTOR FOR STEPS
 IN A MEDIATION
 5.3 FLIP CHART

AND PENS FOR DEBRIEF

6. EVALUATION: CHECKING
 QUESTIONS:

.1 WHAT IS MEDIATION?

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.3 WHAT IS THE VALUE OF MEDIATION?

5. RESOURCES:

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Session VII: Group Work on Developing a Mediation Lesson Plan

28. Mediation Lesson Plan Template

1. Topic:

2. Outcomes:

3. Content:

4. Activities:



5. Resources:

6. Evaluation:

Notes:

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**Group 3: Mediation Lesson
Plan**

NOTES:

Group 5: Mediation Lesson Plan

NOTES:

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Session X: Referral

29. Case Intake, Acceptance, Refusals and Referral Procedures⁹⁷

The following are suggestive procedures and strategies when dealing with case intake, acceptance, refusals and referrals.

A) The Client Interview/Intake

When a client arrives, the student at the Clinic should mark him/her "IN" in the appointment book, and give the client a Waiver form to read through.

Doing An Initial Client Interview/Intake

a) Read The Waiver Form

Students should ask the client to sign the Waiver and then sign as the witness.

b) Follow the Client Intake Checklist

For the first few intakes (until you are familiar with the interview) students should follow a Client Intake Checklist. This is a checklist that ensures that you cover all components of the interview.

4. The Interview Process

a) Students should fill in their name as the interviewer in the appointment book.

b) Students should introduce themselves to the client and show them to interview room - seating yourself closest to the door.

c) Students should ensure that client understands the Waiver form. They should be able to answer any of those questions since they have read it themselves.

d) Students should identify the problem:

- seek a "nutshell" explanation (i.e. ask them "what brings you here today?")
- find out clients goals (before you give any advice)
- communicate understanding of the problem, concerns & goals
- explain the balance of interview steps

e) Students should determine whether they should be filling out an intake form or a summary advice form, or both. They should be able to determine that as they are taking a brief synopsis of the matter at hand. Factors to consider are the legal matter, the jurisdiction in which the problem arose, and the financial situation of the client.

f) When doing both summary advice or an intake students should REMEMBER THESE TIPS:

- Use 'closed questions' and 'active listening techniques'
- Get detailed chronology
- Confirm with client the facts understood by yourself
- Seek any clarification
- Ask for any other facts/info that is relevant such as dates and \$ amounts. If the matter is criminal, ensure you include the section of the Criminal Code to which the person was charged and a description of the charge (i.e. theft under, assault, etc.) This is needed because you may need to call the courthouse to confirm the next appearance and the nature of the appearance. Then write "confirmed" in the court date section once you have done so.a
- If the client brings in a Plaintiff's Claim, be sure to write down the date it was

⁹⁷ This information is taken from an excerpt of the Canadian Bar Association and All China Clinics Association Criminal Justice Reform and Advocacy Project Training Session Manual: Interviewing Skills, March 2005 as well as the book: Clinics as Counselors- A Client Centered Approach, 2nd Edition, American Casebook Series, West Publishing, 1991 and the University of Western Ontario Community Legal Services Training Manual for Case Workers, 2003/2004.

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served and the method of service used.

5. Fill out Summary Advice Form

When filling out Summary Advice Forms student interviewers should:

- Receive Supervisor approval if summary advice is given to the client and the student interviewer should make sure to get the Supervisor's signature of approval. Sometimes it may not always be possible to have a Supervisor sign the form while the client is in the office. In these cases the student may have to follow up later with a phone call.
- Give any additional information to client as instructed by Supervisor and write that on the form.
- Give a **referral** to other organization(s) as necessary. Give client a "**Referral Form**" if needed.
- Photocopy summary advice form for client - keep the original.
- Make copies of any documents which they have reviewed in the process of giving summary advice.
- Ensure that they give the client a copy of the waiver form.
- End the interview and a properly file summary advice and waiver form in the intake bin.

Note: Clients should sign Waiver prior to the student giving any summary advice.

a) Checklist for Summary Advice

- Is the Waiver form(s) signed?
- Is the Summary Advice filled out in full?
- Did the student's Supervisor approve the information on the Summary Advice form and sign the form?
- Did the student copy the completed Summary Advice form and give the COPY TO THE CLIENT?
- Did the student advise the client of any relevant limitation periods?

- Did the student make sure that the relevant dates and \$ amounts were included on the form?
- Did the student take down alternate phone numbers to which the person can be reached in the event that he/she is instructed to do a follow-up at a later date?
- Did you properly file the form in the intake bin?

6. Steps to Filling out Summary Advice Form Steps For Filling Out An Intake Application Form

- Students should fill in the Intake form with potential client.
- Students should have the client sign the Waiver form and the financial information in the appropriate place (stating that the given information is true) - then sign as witness. NOTE: If there are more than two people, students should have them each read and sign a waiver form and do separate Intake forms.
- Students should make copies of any documents.
- Students should follow Clinic procedures regarding who has the official authorization to accept or reject a client's case. These procedures may allow the client's case to be referred to immediately or deferred. If the decision is deferred, then tell the potential client that the decision will be made within the next few days and how he/she will be notified.
- Students should give the client a copy of the signed Waiver form and staple the original signed & witnessed copy to the Intake form along with their summary of facts and any relevant photocopies.
- Students should file the intake form.

a) Checklist For Client Intakes

There should be checklists in the intake rooms in the bin where the intake forms are found and until student interviewers are completely familiar with the intake process, they should refer to this to ensure they don't miss anything.

Most Commonly Asked Questions about Intake And/or Summary Advice

Q. What does one do if no Supervisor is there to give you direction to decide if a case should be taken?

A. Do the best you can to complete the intake. You may be able to get another Supervisor to advise you and have them initial your form - or - you may have to advise the client that

you will follow-up with a phone call. In this case the client should give one or more numbers where they can be readily available.

Q. What does one tell the client when they are asking how long it will take to be approved?

A. Try to give an answer while they are in our office. Sometimes that is not always possible. If it is a RUSH application, they may call in within a few days to find out if they have been accepted.

Q. What should be photocopied and attached with the intake form and summary advice form?

A. It is important to attach to the intake, photocopies of anything that may be necessary in helping the Supervisor make a decision as to whether or not a person should be accepted as a client. Exercise your discretion, particularly where representation may be doubtful. Furthermore, remember that unless you have cleared it through your Supervisor, never take original documents from a client - photocopy. In this regard, caution the client about keeping all originals in a safe place.

Q. Are there any pamphlets that can be given to the client for the area of their

concern?

A. You may give clients any of the pamphlets that the Clinic may have. Clinics should regularly make sure they have informational pamphlets to give to clients.

Q. Do we have a business card that the client can have with our number on it?

A. Clinic should have business cards to provide to clients with Clinic contact information, the identity of the person handling the case (if possible this can be filled in) and the next appointment date.

B) Acceptance or Refusal of the Difficult Client and Case

The Situation

1. For various reasons a Clinic may sometimes not want to take on a case or a client. The wrong case can result in a number of unpleasant consequences: it can distract a Clinic from the enjoyment of helping others, cause frustration or anxiety, lack of time for other files, and disappointment by the Clinic and client over the results.

2. Although a Clinic has the right not to take a case, the Clinic may want to be slow to exercise that right if the probable result would make it difficult for the person to obtain legal advice or representation. Even a person who is unreasonable, unpopular, or disreputable is entitled to be represented by a Clinic.

3. A Clinic's sense of duty may sometimes get in the way of the Clinic's judgment about its ability to give that help. It is unlikely that a bad case at the outset will look better after the other side of the story is heard. If a case has merit, there will be another person or Clinic who will accept it - it need not be your Clinic.

4. It is unlikely that a poor client relationship will improve as time goes on. Another lawyer

or Clinic may be able to get along better with the client than yours. If that is the case, communicate with the client and inform him that you are not taking his case. In this case, it is best to write a polite non-engagement letter. However, if the Clinic informs the client by telephone, the Clinic should write a detail memo to this file indicating the date.

5. If the Clinic decides not to take on a difficult client or case, or in the process of representing a client, the Clinic realizes it must withdraw and refer the client to another lawyer or Clinic, the Clinic should fully explain this to the client, including explaining that issues of confidentiality will continue even after the withdrawal and referral. In the case of a referral the Clinic should fully and adequately inform that client who the client is being referred to.

5. If the Clinic decides to take on a difficult client or case, the Clinic should ensure that it maintains a good relationship with the client and that it protects itself by keeping good records of all steps you take on the file.

Red Flag Warnings About The Difficult Client

a) Some Red Flag Warnings Which May Cause a Clinic to Consider Rejecting a Client

- the client has had more than one lawyer or Clinic for this matter;
- the client's expectations are unrealistic;
- the client has already contacted different authorities to plead the case;
- the client wants to proceed with the case because of principle and regardless of cost;
- the client expresses distrust of the Clinic or persons at the Clinic;

b) Some Red Flag Warnings Which May Cause the Clinic to Consider Rejecting a Case

- the case has already been rejected by other lawyers or Clinics;
- the case has an element of avoidable urgency;
- the case requires more fees and costs than the Clinic is able to handle;
- the case is outside the Clinic's expertise;
- the case has a potential conflict of interest;
- the case requires significant disbursements which the client cannot cover without winning, and the outcome is doubtful;
- the case will over-extend the Clinic's time and resources;
- the case does not give the Clinic adequate time to prepare.

C) Some Strategies for Making Referrals

- Discuss the need for the referral with the client
- Explain, when applicable, the benefits to the client in referring the case to another person or office.
- Refer clients when possible to specific persons (or offices) who are immediately available.
- Provide the client with complete information on how to get to the referred person or office.(Maps and contact numbers, including email, would be helpful)
- Make a complete copy of the client's file and keep the copied file in your office. Explain to the client that you will be providing the referred person or office the file or you can provide the client a copy of the file to bring to the referred person or office.
- Explain that all confidentiality issues will remain even after the referral.
- Be polite, considerate and when possible empathetic to the client.
- Fill out and complete an Referral Form and have the client sign the form and acknowledging that he/she has been made aware of the referral.

DAY 2

Materials

Day Coordinator: David McQuoid-Mason



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Session I: Introduction into Alternative Dispute Resolution

22. TEACHING ASPECTS OF ALTERNATIVE DISPUTE RESOLUTION

TO CANDIDATE ATTORNEYS IN SOUTH AFRICA

By

Prof. David McQuoid-Mason

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Introduction

For the past 13 years the present writer has been teaching aspects of alternative dispute resolution (ADR) to candidate attorneys in South Africa.⁹⁸ It has been taught since the early 1990s during the part-time Practical Legal Training courses and at the Durban School for Legal Practice since the mid-1990s. Both the Practical Legal Training courses and the School for Legal Practice are run under the auspices of the Law Society of South Africa. The ADR programme is a two-day course, which deals with negotiation and mediation skills.

3. Negotiation skills

The first day negotiation skills component consists of a perception exercise; a psychological test; an introductory negotiation exercise; a discussion of the negotiation process; a listening skills exercise involving paraphrasing; how to plan a negotiation; a negotiating values exercise; a two-on-two negotiation exercise; a discussion of principled negotiation; and, a final negotiation to test that students have internalised the concept of interest-based as opposed to position-based negotiation.

1.1 *Perception exercise*

The negotiation skills section begins with a perception exercise where students are shown a picture of the 'Old woman/Young woman' drawing⁹⁹ and then asked to record the age of the person they see. This inevitably results in the students recording a variety of ages from 17 years to 70 years. The exercise serves to show the students the importance of clarifying the issues before engaging in any negotiations - otherwise the parties will misinterpret the issues and talk past each other. A similar exercise can be used in which students are shown a grid of 16 squares

⁹⁸ *The course is based on that developed by Richard A Salem of Conflict Management Initiatives, Chicago, and the present writer, during a nationwide series of workshops presented for the Continuing Legal Education division of the then Association of Law Societies of South Africa in 1991.*

⁹⁹ *In the public domain and commonly used by ADR facilitators.*

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and asked how many squares they can see. Answers vary from 16 to over 30.

1.2 *Psychological make-up of students*

The second part of the negotiation skills programme seeks to assist students to identify their personal psychological make-up when dealing with conflict. This can be done by using a tool such as the Thomas-Kilmann¹⁰⁰ or some similar instrument. The Thomas Kilmann instrument presents respondents with 30 closed questions as to how they would react under situations where they experience the most conflict in their life.¹⁰¹ The respondents then total up their scores under different profile headings: competing (forcing), collaborating (problem solving), compromising (sharing), avoiding (withdrawal) or accommodating (smoothing).¹⁰² The different psychological characteristics can then be explained in the context of a simple example. For instance, students may be told that two people go on a picnic in a drought-stricken part of the country and have only one bucket of water to wash some wild fruits and a pair of very dirty boot soles. How would they deal with the situation using each characteristic? How would a competitor, collaborator, compromiser, avoider or accommodator each react in such circumstances?

1.3 *Introductory negotiation exercise*

The next part of the negotiation programme requires students to engage in an one-on-one negotiation exercise involving the buying and selling of a mattress in circumstances under which one party urgently requires to buy a mattress and the other needs to urgently sell it.¹⁰³ During debriefing the exercise is used to lay the foundation for some of the issues that arise during negotiations such as: Were the negotiators satisfied with their negotiation? Was the negotiation fair? Was 'small talk' used? What were the opening positions? How is information about the different negotiators gathered? How much should be disclosed during a negotiation? How were

¹⁰⁰ See Kenneth W Thomas and Ralph H Kilmann *Thomas-Kilmann Conflict Mode Instrument* (1974).

¹⁰¹ *Thomas-Kilmann Conflict Mode Instrument* 1-4.

¹⁰² *Thomas-Kilmann Conflict Mode Instrument* 6.

¹⁰³ 'The Mattress Negotiation' was created by Richard A Salem, Conflict Management Initiatives (1987).



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concessions made? Was 'bracketing' used?¹⁰⁴ Was the buyer given credit to pay over time? Was either party operating against a deadline? What happens if you are an 'accommodator' negotiating with a 'competitor'? What are the ethics and legal implications of withholding the truth?

1.4 *The negotiating process*

The negotiating process is then discussed: Students are informed what negotiation is; what happens during the process; what should be achieved during a negotiation; what sort of information parties usually have about each other; what parties may be able to anticipate about each other's needs; the need to maintain flexibility and not to be locked into a bottom line; how information is exchanged - verbally and non-verbally; the fact that knowledge is power; that usually the more information that is surfaced the better the agreement; the tensions that arise between retaining and sharing information; the dangers of releasing information if 'under attack' from the other side; the use of small talk and silences to obtain information; and the need to adopt an interest-based approach rather than a position-based approach to negotiation.¹⁰⁵

1.5 *Listening skills - paraphrasing*

An important aspect of the negotiation process is the ability of the parties to listen to each other. Therefore, an exercise is done to teach students listening skills by using 'paraphrasing'. Students brainstorm a list of highly controversial topics and are then required to team up with a colleague who genuinely takes the opposite view from them on a subject. The parties are then required to discuss the topic using the following format: One student will begin the discussion by making an important point. The other student will then paraphrase what the first student said, to the satisfaction of the first student, before he or she can respond with their argument. After the second student has made his or her point the first student may not respond until he or she has

¹⁰⁴ 'Bracketing' involves, for example, a seller saying 'I am prepared to sell this mattress for between \$100 and \$200', or a buyer saying 'I am prepared to buy this mattress for between \$100 and \$200'. In the first instance the buyer will only hear the lower price, in the second the seller will only hear the second price - so the bracketing is pointless.

¹⁰⁵ See below Roger Fisher and William Ury *Getting to Yes: Negotiating Agreement Without Giving In* (1983).

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correctly paraphrased the second student's argument etc. The students are then debriefed concerning what they felt during the paraphrasing exercise and when paraphrasing can be used in legal practice.

1.6 *Planning the negotiation*

The students are given a checklist of what they should do when planning a negotiation. The list includes the following: What are the issues at stake? What information do you need from the other party? What are your sources of negotiating power? What negotiating strategy will you use? What will you say in your opening presentation? What response is the other party likely to make? How will you reply? What is the most you want? What is the least you can settle for? What is the likely result? What information do you have? What information do you need to get from others? What is your authority to settle? What alternatives do you have if you fail to settle?

¹⁰⁶ The students are subsequently asked to use these criteria when planning for 'The Tax Book Negotiation'.¹⁰⁷

1.7 *Negotiating values*

The students are required to consider a number of scenarios involving ethical issues that may arise during a negotiation. These include questions such as: Is a lawyer obliged to answer a fellow lawyer's question about whether he or she has a mandate from an incommunicado client if confirmation thereof will prejudice the client? If a lawyer has heard that his or her client has had a heart by-pass operation and is asked by another lawyer whether the client is 'in good health' what should he or she reply to avoid prejudicing the client? Where a lawyer is winding up a deceased estate and suspects that a car that needs to be sold is defective, is he or she obliged to warn certain categories of potential buyers (eg a car dealer, a respondent to a newspaper advertisement, another lawyer, a parent) about the suspected condition of the car - if not asked by the person concerned? What would be the position if the lawyer was asked by any of the

¹⁰⁶ Richard A Salem 'Considerations when Planning and Preparing for a Negotiation' (1991) Conflict Management Initiatives, Chicago.

¹⁰⁷ See below para 1.8.

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above list of potential buyers whether the car was 'in good condition'? ¹⁰⁸

1.8 *The Tax Book Negotiation*

The 'Tax Book Negotiation' is a two-on-two negotiation between a team of two candidate attorneys, (who have been mandated by the principals in their law firm to sell a set of tax books), and a team of potential buyers consisting of two young lawyers, (who are partners in the process of setting up a tax law firm). The candidate attorneys face certain pressures that require them to sell the law books and have them delivered expeditiously while the young lawyers face certain constraints that prevent them from taking immediate delivery.¹⁰⁹ The students are given sufficient time to prepare for the negotiation using the checklist set out above.¹¹⁰ The results of the negotiation are debriefed to the issues arising from the principles that emerged from 'The Mattress Negotiation'.¹¹¹

1.9 *Principled negotiation*

The elements of 'principled negotiation' as propagated by Fisher and Ury¹¹² are discussed with the students. These include deciding issues on the merits; looking for mutual gains; basing results on fair standards; being 'hard on the merits' and 'soft on the people'; not employing 'tricks'; and not arguing over positions. Fisher and Ury state that the four points of principled negotiation involve the following: people, interests, options and criteria.¹¹³

1.9.1 People

¹⁰⁸ See Richard A Salem 'Negotiating Values' Conflict Management Initiatives (1990).

¹⁰⁹ 'The Tax Book Negotiation' was adapted from a similar role-play in Gerald Williams *Legal Negotiations* (1989).

¹¹⁰ See para 1.6 above.

¹¹¹ See para 1.3 above.

¹¹² Fisher and Ury *Getting to Yes* (1983).

¹¹³ Fisher and Ury chapter 2.

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In respect of people negotiators must deal not only with the issue at hand and their relationship with each other, but must also take into account their perceptions, emotions and ability of communicate. To this end they should separate people from the problem and attack the problem not each other.¹¹⁴

1.9.2 Interests

Regarding interests the parties should identify and talk about their interests and focus on such interests not their positions. They need to reconcile their interests not their positions as the latter may obscure their real interests.¹¹⁵

1.9.3 Options

It is necessary for negotiating parties to generate a variety of options before making a decision. This can be done by setting aside time for brainstorming in order to come up with ways of ensuring mutual gains. A failure to generate options by way of brainstorming may result in obstacles to creative thinking.¹¹⁶

1.9.4 Criteria

When choosing criteria the parties should insist that they are objective and do not simply consist of the other side's 'say so'. Both parties should be open to reason on criteria. Neither should yield to pressure by the other - all decisions should be made on the basis of principle.¹¹⁷

1.10 *The Moroccan Sweet Treat Negotiation*

'The Moroccan Sweet Treat Negotiation'¹¹⁸ is a one-on-one negotiation to demonstrate

¹¹⁴ Fisher and Ury 17-40.

¹¹⁵ Fisher and Ury 41 -57.

¹¹⁶ Fisher and Ury 58-83.

¹¹⁷ Fisher and Ury 84-98.

¹¹⁸ 'The Moroccan Sweet Treat Negotiation' was devised by Richard A Salem, Conflict Management Initiatives, Chicago (1990).

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whether the students have learned anything about interest-based negotiation at the end of the first day. Two rival mineral water manufacturers require the only available box of 'Moroccan Sweet Treats' in order to solve their production problems otherwise they will be out of business. There is only one satisfactory solution, which can result in a win-win situation if the negotiators adopt an interest-based approach to the negotiation.

2. Mediation skills

The second day mediation skills component consists of an introductory activity illustrating what mediators do; a discussion of the characteristics of mediation; a presentation on empathic listening; a description of the steps in a mediation; a discussion of the mediation process; a mediation exercise involving an employment contract; a description of when mediation works and does not work; a discussion of the universe of alternative dispute resolution; a mediation exercise involving a business contract; and, a mediation exercise involving a divorce.

2.1 *What mediators do*

Students are asked to volunteer for a short role-play, which illustrates the difference between how lawyers tend to approach clients during an interview and how mediators do. Three role-players are required: a client, a lawyer and a mediator.

2.1.1 Lawyer-client interview¹¹⁹

The interaction between the client and the lawyer is as follows:

Client: My neighbour's son got into my garage when I was away. He got on my bike and crashed into a tree at the bottom of the hill. He wrote the damn thing off.

Lawyer: Were there any witnesses?

Client: Not that I know about.

Lawyer: Was it a forced entry?

¹¹⁹ Devised by Richard A Salem, Conflict Management Initiatives, Chicago (1991).

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Client: No, I left the garage open.
Lawyer: Was there any other damage?
Client: No, that was all.
Lawyer: What were the damages?
Client: The bike cost me \$100 in 1990.
Lawyer: Was it insured?
Client: No.

2.1.2 Mediator-client interview

The interaction between the client and the mediator is as follows:

Client: My neighbour's son got into my garage when I was away. He got on my bike and crashed into a tree at the bottom of the hill. He wrote the damn thing off.
Mediator: Is there anything else?
Client: No, that was enough. What a cheek!
Mediator: How would you like to see this thing settled?
Client: What I want is an apology. And I want the boy to do it when his parents are present.
Mediator: Is there anything else?
Client: Yeh, I want him to promise not to do it again.
Mediator: What about the bike?
Client: I do not care about the bike. It has not been used for five years since my kids moved out.

The role-play is then debriefed to point out the difference between open and closed questions and the dangers involved in prejudging issues. Students are advised that lawyers should always use client-centred interviewing techniques and begin their consultations with open questions like those used by the mediator. Only after the wishes of the client have been established may they begin 'funneling' the information with closed questions in order to determine whether the elements of any proposed legal action have been satisfied.

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Finally, students are told that mediators: understand and appreciate the problems confronting the parties; impart the fact that they know and appreciate the problems of the parties; create doubts in the minds of the parties about the validity of the positions they have assumed with respect to the problems; suggest alternative approaches to the parties which may facilitate trust; build trust because they have no authority and depend upon acceptance by the parties; and, that mediators are good listeners.

2.2 *Characteristics of mediation*

Students are reminded that: mediation is an extension of negotiation; mediators are third parties with no stake in the outcome; mediators must gain trust; mediators have no authority; mediators control the process - not the outcome; the parties control the dispute and the outcome; mediation is voluntary - the parties can walk away at any time; all information disclosed at a mediation is private and confidential; mediation is future-oriented and does not dwell on the past; mediation is solution-oriented and does not apportion blame, guilt or punishment; mediators make suggestions - they do not give legal advice or tell the parties what to do¹²⁰; and, mediators respect the parties' ability to resolve their own disputes.

2.5 *Empathic listening*¹²¹

As a follow-up to the paraphrasing exercise done during the negotiation component the concept of 'empathic listening' is discussed. Empathic listening involves the mediator:

8. Being attentive, alert and non-distracted. He or she should create a positive atmosphere with their non-verbal behaviour (e.g. not looking out of the window when the parties are telling their stories).
9. Being interested in the other person's needs, by listening with understanding and letting the other person know that the mediator cares about what is being said.
10. Listening from the 'okay mode' by being a sounding board, non-judgmental

¹²⁰ They may however suggest that the parties should consult a lawyer if it is clear that they require legal advice. The moment a mediator gives legal advice that favours one or other party the mediator's neutrality is compromised.

¹²¹ See generally, Madelyn Burley-Allen *Listening: The Forgotten Skill* (1982).



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and non-criticising; not asking a lot of questions or 'grilling'; acting like a mirror by reflecting what the mediator thinks is being said or felt; and, not using stock phrases like 'it's not that bad', 'you'll feel better tomorrow', 'don't be so upset', and 'you're making a mountain out of a mole hill'.

11. Not becoming emotionally 'hooked'. The mediator should not become angry, upset or argumentative, nor should he or she jump to conclusions or judgments.
12. Indicating that he or she is listening by: giving encouraging non-committal acknowledgments (eg 'hum', 'uh huh', 'I see', 'right' etc); giving non-verbal acknowledgments (eg nods, matching facial expressions, presenting an open and relaxed body posture, using eye contact, and, if appropriate, touching); and, inviting more (eg 'tell me more' or 'I'd like to hear about it').¹²²

Students are reminded that if they want to be empathic listeners they ought to observe the following ground rules: They should not interrupt; not change the subject or move in a new direction; not rehearse in their head; not interrogate; not teach; and, not give advice. However, they should reflect back to the sender what they observe and how they believe the speaker feels.¹²³

2.4 Steps in a mediation

The students are taken through the steps in a mediation from the initial introduction until the making of the agreement. They are informed that there are six basic steps involved:

Step 1: Introduction

The mediator makes the parties relax and explains the rules. The mediator's role is not to make a decision but to help the parties reach an agreement. The mediator explains that he or she will not take sides.

¹²² Adopted by Richard A Salem, Conflict Initiatives, Chicago from Madelyn Burley-Allen *Listening: The Forgotten Skill* (1982).

¹²³ Ibid.

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Step 2: Telling the story

Each party tells what happened. The person bringing the complaint tells his or her side of the story first. No interruptions are allowed. Then the other party explains his or her version of the facts.

Step 3: Identifying the facts and issues

The mediator attempts to identify the facts and issues agreed upon by the parties. This is done by listening to each side, summarizing each party's views, and asking if these are the facts and issues as each party understands them.

Step 4: Identifying alternative solutions

Everyone thinks of possible solutions to the problem. The mediator makes a list and asks each party to explain his or her feelings about each solution.

Step 5: Revising and discussing solutions

Based on the expressed feelings of the parties, the mediator revises possible solutions and helps the parties to identify a solution to which both parties can agree.

Step 6: Reaching agreement

The mediator helps the parties reach an agreement with which both can live. The agreement should be written down. The parties should also discuss what will happen if either of them breaks the agreement.¹²⁴

2.5 *The mediation process*

The mediation process is explained to the students. They are told that the mediation begins with the mediator welcoming the parties and getting them to introduce themselves. The mediator will make them feel as comfortable as possible. Thereafter the mediator will explain that his or her role is to assist the parties to reach a voluntary agreement through good faith negotiations, and that he or she has no authority to decide the matter - the parties must make their own decision. The mediator also explains that he or she is impartial and has no stake in the outcome. If the mediator has had any prior relationship with any of the parties beforehand he or she clarifies this with the parties to ensure that there are no objections to the person proceeding

¹²⁴ See David McQuoid-Mason *Street Law: An Introduction to South African Law and the Legal System* 6th impression (1992) 32.

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as the mediator.¹²⁵

The mediator then explains the mediation process to the parties:

- (q) The parties will each have an opportunity to describe the unresolved issues and must address their comments to the mediator.
- (r) When one party speaks there should be no interruptions by the other party. Each party should take notes and respond later.
- (s) After their presentations the mediator will help the parties to identify the issues and possible solutions through discussion and negotiation.
- (t) Sometimes during the process it may be necessary for the mediator to meet separately (caucus) with one of the parties at their request or in order to make progress. When this happens the mediator should not be seen as taking sides as this opportunity is afforded to both parties. Furthermore, anything said to the mediator during a caucus will not be disclosed to the other party unless permission is given by the caucusing party.
- (u) The procedure that will be followed after the parties reach agreement will be explained to them (e.g. the agreement will be in writing and will include a clause stating what will happen if either party breaches the agreement).
- (v) The mediation proceedings will be regarded as confidential. The mediator will throw away his or her notes after the mediation is concluded. The mediator will not reveal what transpired what happened during the mediation without the consent of both parties or unless ordered to do so by a court of law.
- (w) The mediator checks whether the parties have any questions and whether they agree to the procedures as set out in the description of the process. Both parties should audibly state that they agree to the process.
- (x) The mediator congratulates the parties on choosing mediation, and tells them that he or she is confident that if they follow the procedures agreed to and

¹²⁵

Adapted by the present writer from Richard A Salem, Conflict Management Initiatives, Chicago

'Procedure for Opening the Mediation' (1990).



negotiate in good faith they should be able to resolve the matter.¹²⁶

2.6

The Famous Cape Malay Restaurant Mediation

The 'Famous Cape Malay Restaurant Mediation'¹²⁷ involves a chef who works in a restaurant and is promised a 10 % share of the profits. The agreement was sealed with a handshake between the chef and one of the partners but never reduced to writing. Although the chef received a handsome bonus at the end of the year, nothing further was said about the 10% share. When she queried this several months later she was told that the lawyers had been slow in preparing the paperwork. The restaurant continued to do well and she received a further sum of money, which she was told was her 'dividend from the profits'. The chef feels insecure because she has nothing in writing. As the success of the restaurant is due to her culinary skills she threatens to leave and set up her own restaurant nearby if she is not given an immediate 30% of the profits. She is then told that she cannot do so because her 10% share is subject to a restraint of trade agreement. The agreement prevents her from competing with the 'Famous Cape Malay Restaurant' for five years within a radius of 10 kilometers. She does not remember agreeing to this and wants to consult a lawyer. Instead it is suggested that the parties try mediation and she agrees - although she still wants legal advice on her position (and will press the mediator to advise her on the law).

The students are divided into groups of three: one to play the part of the chef, one to play the part of the partner who promised the 10% share, and one to be the mediator. This means that each student in the class is involved either as a client or a mediator. The Durban School for Legal Practice class usually has about 60 students so that 20 mediations can take place. The Practical Legal Training class is larger, with about 90 students, so that 30 mediations can take place. While the clients learn their scenarios the mediators are taken aside by the instructor and briefed on the mediation process. Once the mediators are comfortable with their roles as mediators they link up with their clients and commence their mediations.

¹²⁶ Ibid.

¹²⁷ The 'Famous Cape Malay Restaurant Mediation' was devised by Richard A Salem and David McQuoid-Mason.

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The mediation process usually takes about 40 minutes and once the mediations are complete the students give feedback on their settlements and the mediation process itself. Those students who complete their mediation before the others are requested to give their mediators feedback on the process within their small groups before sharing it with the whole class.

2.7 *When mediation works and does not work*

Students are informed that mediation is not a panacea for all disputes and that sometimes it is appropriate and other times it is not.

For instance, mediation works when:

- (y) The court cannot provide relief.
- (z) The client wishes to settle promptly.
- (aa) The client wishes to minimize costs.
- (bb) Voluntary compliance is desirable.
- (cc) The client wishes to avoid a court precedent.
- (dd) The parties have difficulty negotiating.
- (ee) The parties lack negotiating skills.
- (ff) The parties assess the facts differently.
- (gg) The parties assess the law differently.
- (hh) The parties have a continuing relationship.
- (ii) Complex trade-offs are required.
- (jj) The client wants confidentiality.¹²⁸

However, mediation does not work when:

- (o) The client cannot represent his or her best interests.
- (p) The client wants a court precedent.
- (q) One of the major parties is unwilling to mediate.

¹²⁸

Adapted from Nancy H Rogers & Richard A Salem *A Student's Guide to Mediation and the Law* (1987)

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- (r) One party adamantly denies liability.
- (s) One party is likely to go insolvent.
- (t) A favourable court judgment is likely for one of the parties.
- (u) It is not possible to conduct the mediation without discovery of documents which one of the parties is not prepared to disclose.¹²⁹

2.8 *The universe of mediation and arbitration*

Students are provided with an understanding of the universe of mediation and arbitration. They are shown that negotiation and mediation fall under interests-based or consensual methods of resolving disputes, whereas arbitration (and litigation) fall under rights-based or adjudicative methods of dispute resolution.

Interest-based methods include mediation, in respect of disputes involving such issues as labour, communities, commercial transactions, the family, neighbourhood matters, public policy decisions and court affiliated processes. Other interests-based dispute resolution mechanisms include regulation-negotiation (where, for instance, a government department wishes to involve all the role-players in getting them to agree to new regulations), and settlement weeks (where court rolls are cleared by requiring all matters set down for trial to be referred to a panel of mediators for a week or more in an attempt to get them settled).

The rights-based model uses litigation and arbitration but may also use variations of this. For instance, arbitration-mediation may be used whereby an arbitration award is sealed in an envelope and not disclosed to the parties and the latter are encouraged to engage in a mediation process. Only if the mediation fails will the arbitration award be made public. Similarly, 'private judging' may be used whereby a private judge is hired (eg a retired judge or senior lawyer) who hears all the evidence and then gives a judgment which may or may not be binding. Alternatively, 'mini-trials' may also be conducted whereby all the evidence is presented and the parties have an opportunity to see how well their case is likely to fare in the real court case. The harsh reality of the likely outcome may well result in the parties agreeing to settle out of court.

¹²⁹

Adapted from Nancy H Rogers & Richard A Salem *A Student's Guide to Mediation and the*

Law (1987) 51-58.



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There are also methods that are a combination of the interests-based and rights-based approaches to dispute resolution. For instance, non-binding arbitration may be used instead of the usual practice of binding arbitration. Likewise, a mediation-arbitration procedure might be followed whereby the parties agree to first try mediation and, if that does not work, to resort to arbitration.

2.11 *The Missing Machine Mediation*

The 'Missing Machine Mediation'¹³⁰ involves a trucking company that delivers a machine for a machine manufacturer, who has a cash flow problem, to a third party. The buyers of the machine pay the transport costs to the trucking company's driver - but instead of paying \$2 200 they mistakenly only pay \$200. The mistake is discovered and the remaining \$2 000 is paid directly to the machine manufacturer - not the trucking company. Instead of paying the money to the trucking company, the machine manufacturer gets his daughter, who is also his secretary, to 'stonewall' all enquiries by the trucking company for the next month, so that he can use the money to solve his cash flow problem. In the process the daughter is sexually harassed on the telephone by the trucking company's employees who become frustrated by her evasion of their enquiries. When the trucking company is asked to make another delivery on behalf of the machine manufacturer instead of delivering the machinery worth \$430 000, the company keeps it as security for the \$2 000 owed to it.

In the past the parties have had a good working relationship. The machine manufacturer was the trucking company's first customer and received a 30% discount because of its good record of prompt payment. When the cash flow problem arose, and the manufacturer held back the \$2 000, he tried to compensate the trucking company by giving it more work with another delivery. The trucking company had repaid the manufacturer's generosity by seizing machinery worth \$430 000 and refusing to release it until the \$2 000 had been paid. In addition the trucking company's clerks had sexually harassed the manufacturer's daughter who had done such a good job in protecting his interests. Because of their previous business record the parties agree to mediation rather than

¹³⁰ Devised by Richard A Salem, Conflict Management Initiatives, Chicago (1990), based on an actual case.

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resorting to litigation.

As in the 'Famous Cape Malay Restaurant Mediation', the students are divided into groups of three: one to play the part of the manager of the trucking company, one to play the part of the manager of the machine manufacturer, and one to be the mediator. Once again each student in the class is involved either as a client or a mediator and, while the clients learn their scenarios, the mediators are taken aside by the instructor and briefed on the mediation process. The mediators are then linked up with their clients and commence their mediations. The mediation process again takes about 40 minutes. Once the mediations are complete the students share information about the results of the negotiations and the mediation process.

2.10 *The Blom Divorce Mediation*

The 'Blom Divorce Mediation'¹³¹ involves a threatened divorce between a doctor and a former teacher who runs a small arts and craft gallery. They have been married for nine years and have an eight-year-old boy and six-year-old girl. The doctor has a low-income job with a medical clinic in a poor community that requires him to work 10 hours a day six days a week. He also serves on the boards of several non-governmental organisations and is seldom at home so there is no family social life. The wife is a qualified teacher of literature. She had previously worked as a teacher and later as a book store manager, but during the past three years, with financial help from her father, she and a neighbour had opened the gallery. The gallery has been losing money during the past three years although business has been slowly improving. As a result the wife's father pays out money each year to cover the losses.

The couple has a town house registered in both their names, but the husband makes all the bond payments. They also have cash in savings, some insurance policies and a four-year-old car owned by the husband. The wife is unhappy that the husband earns such a low salary as a doctor that the family is always strapped for cash. In addition because of his long working hours and other activities the husband spends no time with her and the children. The husband loves his children and wife. However, he is not happy that his wife, who is a qualified teacher, is involved in

¹³¹ Devised by Richard A Salem, Conflict Management Initiatives, Chicago and David McQuoid-Mason (1991).

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a gallery, which makes an annual loss that has to be paid for by her father. Before proceeding with the divorce the parties agree to mediation.

The students are divided into groups of three: one to play the part of the husband, one to play the part of the wife, and one to be the mediator. All the students in the class are involved either as clients or mediators. The clients learn their scenarios while the mediators are taken aside and briefed on how to mediate. The mediators join their clients and commence their mediations. The mediations often last longer than 40 minutes - because simulated matrimonial matters, as in the real world, seem to take longer to settle than other forms of mediation. The students report back on the results of their negotiations and how the mediators handled the process.

Conclusion

When teaching alternative dispute resolution skills such as negotiation and mediation it is necessary to engage the students in an active learning process. This is particularly true of law students and law graduates who tend to become encrusted with the objective, unemotional, and at times, somewhat cold, clinical approach to human problems that lawyers usually adopt. Part of the learning process, particularly in the mediation training, is to make them more empathic in the manner in which they deal with clients. This requires the students to drop their lawyers' masks and to demonstrate to the parties that they really care about their concerns. It also shows the students how important it is to become good listeners.

Even though the programme only lasts two days, provided creative, interactive teaching methods are used, all the students can be given an opportunity to experience the type of behaviour modification that may be required to be a good negotiator or mediator. The feedback from the students who attend the candidate attorneys' alternative dispute resolution classes at the Durban School for Legal Practice and the Practical Training Course is always very positive. Evaluations regularly indicate that the course is highly rated in the student assessments for the amount of 'learning through doing' that occurs. Its success lies in that it is a practical, not academic course.

Session II: Demonstrative CLE Negotiation Lesson

23. Negotiation Guidelines

1. PREPARING FOR THE NEGOTIATION

- § UNDERSTAND THE FACTS AND ISSUES
- § DECIDE WHAT IS THE LEAST AND MOST YOU CAN EXPECT
- § WHAT IS NOT NEGOTIABLE?
- § WHAT DOES THE OTHER SIDE CARE ABOUT?
- § WHAT IS IN BOTH YOUR INTERESTS?

2. THE NEGOTIATION PROCESS

- § TRY TO BUILD A GOOD RELATIONSHIP WITH THE OTHER SIDE
- § BE FRIENDLY AND CORDIAL
- § SPEAK ABOUT WHAT YOU WOULD LIKE (EG I THINK, I FEEL)
- § FIND OUT WHAT THE OTHER SIDE WOULD LIKE
- § BRAINSTORM SOLUTIONS OR OPTIONS TO SOLVE THE PROBLEM
- § DO NOT MAKE UNFAIR OR UNREALISTIC DEMANDS
- § DO NOT BECOME ABUSIVE, OVER-EMOTIONAL OR THREATENING
- § OFFER TO GIVE SOMETHING AWAY IN EXCHANGE FOR SOMETHING FROM THE OTHER SIDE

3. MOVING AND REACHING AN AGREEMENT

- § IDENTIFY YOUR COMMON INTERESTS
- § TRY TO MOVE THE PROCESS IF THE OTHER SIDE DOES NOT
- § CONSIDER OFFERING A COMPROMISE
- § TRY TO MAKE THE AGREEMENT AS FAIR AS POSSIBLE
- § USE OBJECTIVE CRITERIA TO MEASURE COMPLIANCE WITH THE AGREEMENT

negotiation guidelines.wpd

24. Negotiation Lesson Plan

1. TOPIC: INTRODUCTION TO NEGOTIATION

2. OUTCOMES: AT THE END OF THIS LESSON YOU WILL BE ABLE TO:
 - 2.1 EXPLAIN THE GUIDELINES FOR NEGOTIATION
 - 2.2 CONDUCT A NEGOTIATION
 - 2.3 APPRECIATE THE VALUE OF NEGOTIATION

3. CONTENT:
 - 3.1 AN EXPLANATION OF THE GUIDELINES FOR NEGOTIATION IS GIVEN
 - 3.2 PARTICIPANTS CONDUCT A NEGOTIATION USING THE MAYUMI AND RAMIL SCENARIOS

4. ACTIVITIES:
 - 4.1 FOCUSER: OLD WOMAN-YOUNG WOMAN: 5 MINUTES
 - 4.2 THE INSTRUCTOR EXPLAINS THE NEGOTIATION GUIDELINES: 10 MINUTES
 - 4.3 PARTICIPANTS PREPARE FOR THE NEGOTIATION: 10 MINUTES
 - 4.4 PARTICIPANTS CONDUCT THE NEGOTIATION IN PAIRS: 15 MINUTES
 - 4.5 THE INSTRUCTOR DEBRIEFS THE PARTICIPANTS: 5 MINUTES

5. RESOURCES:
 - 5.5 MAYUMI AND RAMIL SCENARIOS
 - 5.6 OVERHEAD PROJECTOR FOR NEGOTIATION GUIDELINES
 - 5.3 FLIP CHART AND PENS FOR DEBRIEF

6. EVALUATION: CHECKING QUESTIONS:
 - 6.1 WHAT IS NEGOTIATION?
 - 6.2 WHAT ARE THE NEGOTIATION GUIDELINES?
 - 6.3 WHAT IS THE VALUE OF NEGOTIATION?

Session III: Group Work on Developing a Negotiation Lesson Plan

25.Negotiation Lesson Plan Template

1. Topic:

2. Outcomes:

3. Content:

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4. **Activities:**

5. **Resources:**

6. **Evaluation:**

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SESSION V. Groups' Presentation of Negotiation Lesson Plans

Group 2: Negotiation Lesson Plan

NOTES:

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Group 3: Negotiation Lesson Plan

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Group 5: Negotiation Lesson Plan

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Session VI.: Demonstrative CLE Mediation Lesson

26. Steps in Mediation

13. INTRODUCTION

- § PUT PARTIES AT EASE
- § EXPLAIN GROUND RULES
 - S PARTIES REACH OWN AGREEMENT
 - S MEDIATOR DOES NOT TAKE SIDES

2. TELLING THE STORY

- § EACH PARTY TELLS THEIR STORY
- § NO INTERRUPTIONS

3. IDENTIFYING THE FACTS AND ISSUES

- § MEDIATOR HELPS TO IDENTIFY FACTS AND ISSUES
- § CLARIFIES FACTS AND ISSUES WITH PARTIES

4. IDENTIFYING ALTERNATIVE SOLUTIONS

- § EVERYONE THINKS OF SOLUTIONS
- § SOLUTIONS ARE LISTED

5. REVISING AND DISCUSSING SOLUTIONS

- § MEDIATOR HELPS PARTIES REVIEW SOLUTIONS
- § SOLUTIONS AGREEABLE TO BOTH SIDES ARE IDENTIFIED

6. REACHING AN AGREEMENT

- § AGREEMENT IS WRITTEN DOWN
- § A CLAUSE IS INCLUDED TO COVER A BREACH BY EITHER PARTY

mediation steps.wpd

27. Mediation Lesson Plan

7. TOPIC: INTRODUCTION TO MEDIATION
8. OUTCOMES: AT THE END OF THIS LESSON YOU WILL BE ABLE TO:
2.1 EXPLAIN THE STEPS IN A MEDIATION
2.2 CONDUCT A MEDIATION
2.3 APPRECIATE THE VALUE OF MEDIATION
9. CONTENT:
3.1 THE STEPS IN A MEDIATION ARE EXPLAINED
3.2 MEDIATIONS ARE CONDUCTED USING THE MAYUMI AND RAMIL SCENARIOS AND THE STEPS IN A MEDIATION
4. ACTIVITIES:
4.1 FOCUSER: PARTICIPANTS ROLEPLAY A LAWYER AND A MEDIATOR INTERVIEWING A CLIENT: 5 MINS
4.2 PARTICIPANTS ARE DIVIDED INTO TRIADS (GROUPS OF THREE) WITH TWO PARTICIPANTS PLAYING THE ROLES OF MAYUMI AND RAMIL AND THE THIRD THE ROLE OF THE MEDIATOR: 5 MINUTES
4.3 MAYUMI AND RAMIL GROUPS PREPARE FOR THEIR ROLES WHILE THE INSTRUCTOR TAKES THE MEDIATORS OUTSIDE TO BRIEF THEM ON THEIR ROLES BY CHECKING THAT THEY UNDERSTAND THE STEPS IN A MEDIATION: 10 MINUTES
4.5 THE PARTICIPANTS CONDUCT THE MEDIATION: 20 MINUTES
4.6 THE INSTRUCTOR DEBRIEFS THE MEDIATION: 5 MINUTES
5. RESOURCES:
5.1 MAYUMI AND RAMIL SCENARIOS
5.2 OVERHEAD PROJECTOR FOR STEPS IN A MEDIATION
5.3 FLIP CHART AND PENS FOR DEBRIEF
6. EVALUATION: CHECKING QUESTIONS:
7.1 WHAT IS MEDIATION?
7.2 WHAT ARE THE STEPS IN A MEDIATION?
7.3 WHAT IS THE VALUE OF MEDIATION?

Session VII: Group Work on Developing a Mediation Lesson Plan

28. Mediation Lesson Plan Template

1. Topic:

2. Outcomes:

3. Content:

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4. Activities:

5. Resources:

6. Evaluation:

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Session VIII: Group Presentation of Mediation Lesson

Group 1: Mediation Lesson Presentation

NOTES:

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Group 5: Mediation Lesson Plan

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Session X: Referral

29. Case Intake, Acceptance, Refusals and Referral Procedures¹³²

The following are suggestive procedures and strategies when dealing with case intake, acceptance, refusals and referrals.

A) The Client Interview/Intake

When a client arrives, the student at the Clinic should mark him/her "IN" in the appointment book, and give the client a Waiver form to read through.

Doing An Initial Client Interview/Intake

a) Read The Waiver Form

Students should ask the client to sign the Waiver and then sign as the witness.

b) Follow the Client Intake Checklist

For the first few intakes (until you are familiar with the interview) students should follow a Client Intake Checklist. This is a checklist that ensures that you cover all components of the interview.

7. The Interview Process

a) Students should fill in their name as the interviewer in the appointment book.

b) Students should introduce themselves to the client and show them to interview room - seating yourself closest to the door.

c) Students should ensure that client understands the Waiver form. They should be able to answer any of those questions since they have read it themselves.

d) Students should identify the problem:

- seek a "nutshell" explanation (i.e. ask them "what brings you here today?")
- find out clients goals (before you give any advice)
- communicate understanding of the problem, concerns & goals
- explain the balance of interview steps

e) Students should determine whether they should be filling out an intake form or a summary advice form, or both. They should be able to determine that as they are taking a brief synopsis of the matter at hand. Factors to consider are the legal matter, the jurisdiction in which the problem arose, and the financial situation of the client.

f) When doing both summary advice or an intake students should REMEMBER THESE TIPS:

- Use 'closed questions' and 'active listening techniques'
- Get detailed chronology

¹³² This information is taken from an excerpt of the Canadian Bar Association and All China Clinics Association Criminal Justice Reform and Advocacy Project Training Session Manual: Interviewing Skills, March 2005 as well as the book: Clinics as Counselors-A Client Centered Approach, 2nd Edition, American Casebook Series, West Publishing, 1991 and the University of Western Ontario Community Legal Services Training Manual for Case Workers, 2003/2004.
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- Confirm with client the facts understood by yourself
- Seek any clarification
- Ask for any other facts/info that is relevant such as dates and \$ amounts. If the matter is criminal, ensure you include the section of the Criminal Code to which the person was charged and a description of the charge (i.e. theft under, assault, etc.) This is needed because you may need to call the courthouse to confirm the next appearance and the nature of the appearance. Then write "confirmed" in the court date section once you have done so.
- If the client brings in a Plaintiff's Claim, be sure to write down the date it was served and the method of service used.

8. Fill out Summary Advice Form

When filling out Summary Advice Forms student interviewers should:

- Receive Supervisor approval if summary advice is given to the client and the student interviewer should make sure to get the Supervisor's signature of approval. Sometimes it may not always be possible to have a Supervisor sign the form while the client is in the office. In these cases the student may have to follow up later with a phone call.
- Give any additional information to client as instructed by Supervisor and write that on the form.
- Give a **referral** to other organization(s) as necessary. Give client a "**Referral Form**" if needed.
- Photocopy summary advice form for client - keep the original.
- Make copies of any documents which they have reviewed in the process of giving summary advice.
- Ensure that they give the client a copy of the waiver form.
- End the interview and properly file summary advice and waiver form in the intake bin.

Note: Clients should sign Waiver prior to the student giving any summary advice.

a) Checklist for Summary Advice

- Is the Waiver form(s) signed?
- Is the Summary Advice filled out in full?
- Did the student's Supervisor approve the information on the Summary Advice form and sign the form?
- Did the student copy the completed Summary Advice form and give the COPY TO THE CLIENT?
- Did the student advise the client of any relevant limitation periods?
- Did the student make sure that the relevant dates and \$ amounts were included on the form?
- Did the student take down alternate phone numbers to which the person can be reached in the event that he/she is instructed to do a follow-up at a later date?
- Did you properly file the form in the intake bin?

9. Steps to Filling out Summary Advice Form Steps For Filling Out An Intake Application Form

- Students should fill in the Intake form with potential client.

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- Students should have the client sign the Waiver form and the financial information in the appropriate place (stating that the given information is true) - then sign as witness. NOTE: If there are more than two people, students should have them each read and sign a waiver form and do separate Intake forms.
- Students should make copies of any documents.
- Students should follow Clinic procedures regarding who has the official authorization to accept or reject a client's case. These procedures may allow the client's case to be referred to immediately or deferred. If the decision is deferred, then tell the potential client that the decision will be made within the next few days and how he/she will be notified.
- Students should give the client a copy of the signed Waiver form and staple the original signed & witnessed copy to the Intake form along with their summary of facts and any relevant photocopies.
- Students should file the intake form.

a) Checklist For Client Intakes

There should be checklists in the intake rooms in the bin where the intake forms are found and until student interviewers are completely familiar with the intake process, they should refer to this to ensure they don't miss anything.

Most Commonly Asked Questions about Intake And/or Summary Advice

Q. What does one do if no Supervisor is there to give you direction to decide if a case should be taken?

A. Do the best you can to complete the intake. You may be able to get another Supervisor to advise you and have them initial your form - or - you may have to advise the client that you will follow-up with a phone call. In this case the client should give one or more numbers where they can be readily available.

Q. What does one tell the client when they are asking how long it will take to be approved?

A. Try to give an answer while they are in our office. Sometimes that is not always possible. If it is a RUSH application, they may call in within a few days to find out if they have been accepted.

Q. What should be photocopied and attached with the intake form and summary advice form?

A. It is important to attach to the intake, photocopies of anything that may be necessary in helping the Supervisor make a decision as to whether or not a person should be accepted as a client. Exercise your discretion, particularly where representation may be doubtful. Furthermore, remember that unless you have cleared it through your Supervisor, never take original documents from a client - photocopy. In this regard, caution the client about keeping all originals in a safe place.

Q. Are there any pamphlets that can be given to the client for the area of their concern?

A. You may give clients any of the pamphlets that the Clinic may have. Clinics should regularly make sure they have informational pamphlets to give to clients.

Q. Do we have a business card that the client can have with our number on it?

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A. Clinic should have business cards to provide to clients with Clinic contact information, the identity of the person handling the case (if possible this can be filled in) and the next appointment date.

B) Acceptance or Refusal of the Difficult Client and Case

The Situation

1. For various reasons a Clinic may sometimes not want to take on a case or a client. The wrong case can result in a number of unpleasant consequences: it can distract a Clinic from the enjoyment of helping others, cause frustration or anxiety, lack of time for other files, and disappointment by the Clinic and client over the results.

2. Although a Clinic has the right not to take a case, the Clinic may want to be slow to exercise that right if the probable result would make it difficult for the person to obtain legal advice or representation. Even a person who is unreasonable, unpopular, or disreputable is entitled to be represented by a Clinic.

3. A Clinic's sense of duty may sometimes get in the way of the Clinic's judgment about its ability to give that help. It is unlikely that a bad case at the outset will look better after the other side of the story is heard. If a case has merit, there will be another person or Clinic who will accept it - it need not be your Clinic.

4. It is unlikely that a poor client relationship will improve as time goes on. Another lawyer or Clinic may be able to get along better with the client than yours. If that is the case, communicate with the client and inform him that you are not taking his case. In this case, it is best to write a polite non-engagement letter. However, if the Clinic informs the client by telephone, the Clinic should write a detail memo to this file indicating the date.

5. If the Clinic decides not to take on a difficult client or case, or in the process of representing a client, the Clinic realizes it must withdraw and refer the client to another lawyer or Clinic, the Clinic should fully explain this to the client, including explaining that issues of confidentiality will continue even after the withdrawal and referral. In the case of a referral the Clinic should fully and adequately inform that client who the client is being referred to.

5. If the Clinic decides to take on a difficult client or case, the Clinic should ensure that it maintains a good relationship with the client and that it protects itself by keeping good records of all steps you take on the file.

Red Flag Warnings About The Difficult Client

a) Some Red Flag Warnings Which May Cause a Clinic to Consider Rejecting a Client

- the client has had more than one lawyer or Clinic for this matter;
- the client's expectations are unrealistic;
- the client has already contacted different authorities to plead the case;
- the client wants to proceed with the case because of principle and regardless of cost;
- the client expresses distrust of the Clinic or persons at the Clinic;

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b) Some Red Flag Warnings Which May Cause the Clinic to Consider Rejecting a Case

- the case has already been rejected by other lawyers or Clinics;
- the case has an element of avoidable urgency;
- the case requires more fees and costs than the Clinic is able to handle;
- the case is outside the Clinic's expertise;
- the case has a potential conflict of interest;
- the case requires significant disbursements which the client cannot cover without winning, and the outcome is doubtful;
- the case will over-extend the Clinic's time and resources;
- the case does not give the Clinic adequate time to prepare.

C) Some Strategies for Making Referrals

- Discuss the need for the referral with the client
- Explain, when applicable, the benefits to the client in referring the case to another person or office.
- Refer clients when possible to specific persons (or offices) who are immediately available.
- Provide the client with complete information on how to get to the referred person or office. (Maps and contact numbers, including email, would be helpful)
- Make a complete copy of the client's file and keep the copied file in your office. Explain to the client that you will be providing the referred person or office the file or you can provide the client a copy of the file to bring to the referred person or office.
- Explain that all confidentiality issues will remain even after the referral.
- Be polite, considerate and when possible empathetic to the client.
- Fill out and complete an Referral Form and have the client sign the form and acknowledging that he/she has been made aware of the referral.

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Workshop Programme/Agenda/Materials (Days 4 and 5)

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DAY 4	Street Law	
2nd Feb	Day Coordinator: Marlon Manuel	
9:00 9:45	Session I: General Introduction into Street Law and Street Law Teaching Methods (David McQuoid- Mason) <ol style="list-style-type: none"> 1. Teaching Social Justice to Law Students through Community Service – The South African Experience (David McQuoid-Mason) 2. Interactive Teaching Methods (David McQuoid-Mason) 3. Elements of Effective Street Law Lesson (David McQuoid-Mason) 	7 17 49
9:45 10:30	Session II: Street law Experience in South East Asia (Bruce Lasky)	50
10:30 11:00	Session III: Ice-breakers (Carlos Medina)	51
11:00 11:45	Session IV: Demonstration: Small Group Work – Introduction Human Rights (David McQuoid- Mason) <ol style="list-style-type: none"> 4. Lesson Plan (David McQuoid-Mason) 5. Universal Declaration of Human Rights 	52 54
11:45 12:00	Coffee Break	
12:00 12:15	Session V: Demonstration: Game - Why We Need Laws (David McQuoid- Mason) <ol style="list-style-type: none"> 6. Game – Why We Need Laws: The Pen Game 	56
12:15 13:00	Session VI: Demonstration: Taking A Stand Using Pres Formula: Capital Punishment (David McQuoid- Mason) <ol style="list-style-type: none"> 7. Taking A Stand: Capital Punishment 8. Thinking On Your Feet – The 'Pres' Formula 	59 60



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13:00 14:00	Lunch	
14:00 14:45	Session VII: Group Work on Developing a Street Law Lesson Plan (Choosing a topic) (David McQuoid- Mason)	
	9. The Case of the Kidney Patient	62
	10. Lesson Plan: The Case Of The Kidney Patient	63
	11. A Case Of Spouse Abuse	64
	12. Lesson Plan: A Case Of Domestic Violence	65
14:45 15:00	Coffee Break	
15:00 16:30	Session VIII: Group Work on Developing a Street Law Lesson Plan	66
16:30 17:00	Wrap-up for Day 4	68

DAY 5	Street Law	70
3rd Feb	Day Coordinator: Mariana Berbec-Rostas	
8:30 9:15	Session I: Group I Presentation of Street Law Lesson (David McQuoid- Mason)	71
9:15 10:00	Session II: Group II Presentation of Street Law Lesson (David McQuoid- Mason)	72
10:00 10:15	Coffee Break	
10:15 11:00	Session III: Group III Presentation of Street Law Lesson (David McQuoid- Mason)	73
11:00 11:45	Session IV: Group IV Presentation of Street Law Lesson (David McQuoid- Mason)	74
11:45 12:00	Coffee Break	
12:00	Session V: Group V. Presentation of Street Law Lesson (David McQuoid- Mason)	75



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12:45		
12:45 13:00	Session VI: Debriefing (David McQuoid- Mason)	
13:00 14:00	Lunch	
14:00 14:45	Session VII. Practical Tips for Implementing Street Law Curriculum (Bruce Lasky) 13. Pannasastra University of Cambodia Training Curriculum for Community Legal Education Program- Term I-II 14. Pannasastra University of Cambodia Training Curriculum for Community Legal Education Program- Term III-IV	76 77
14:45 15:00	Coffee Break	
15:00 15:45	Session VIII. Establishing and Running Sustainable Clinic (Mariana Berbec-Rostas) 15. Practical Steps to Establish Legal Clinic at Law Faculty (Mariana Berbec-Rostas) 16. Setting up a live client clinic: a checklist (Clinical Legal Education Organization - CLEO) 17. Academic Standards For Legal Clinics' Organization And Activities Within Bulgarian Law Faculties (ABA – CEELI) 18. Street Law-Type Clinic Model Standards (Open Society Justice Initiative) 19. Legal Clinics Evaluation Criteria (Open Society Justice Initiative) 20. Model Clinical Budget Outline (Open Society Justice Initiative)	78 90 92 99 105 111
15:45 16:30	Wrap-up for Day 5 Training Wrap-up Certificates Evaluation forms	
18:00	Farewell dinner	
4th Feb	Departure	



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DAY 4

Materials

Day Coordinator: Marlon Manuel

Session I: General Introduction into Street Law and Street Law Teaching Methods

1. Teaching Social Justice to Law Students through Community Service – The South African Experience

David McQuoid-Mason

In this paper 'social justice' is regarded as referring to the fair distribution of health, housing, welfare, education and legal resources in society, including, where necessary, the distribution of such resources on an affirmative action basis to disadvantaged members of the community.¹³³ Social justice in this sense is concerned with satisfying the 'needs' rather than the 'wants' of society. Law students can play a valuable role in assisting indigent members of society to satisfy some of these needs by engaging in community service programmes.

Most law schools in South Africa give students very little academic credit for community service carried out as part of their legal studies, for example work in legal aid clinics or Street law programmes. Many university law faculties have had legal aid clinics since the 1970s and Street law programmes since the late 1980s. Both programmes involve community service by law students which deserve academic recognition.

A. Legal Aid Clinics

In this section it is intended to consider the following: (i) the definition of legal aid and law clinics; (ii) the background to legal aid clinics in South Africa; (iii) how legal aid clinics can be integrated into academic teaching; (iv) the community service component of legal aid clinic work; (v) how legal aid clinics can teach social justice.

1. Definition of a legal aid or law clinic

Legal aid clinics are offices staffed by law students under the supervision of qualified lawyers which provide free legal services to indigent members of the community (ie. they deal with live clients with real life legal problems).¹³⁴ The term 'law clinic' is much broader in that it may include clinics that operate as legal aid clinics, but in some law schools, particularly in the United States, law clinics sometimes restrict their activities to simulated legal practice and do not deal with live

¹³³Cf AM Honore 'Social Justice' in R Summers (ed) *Essays in Legal Philosophy* (1968) 68; PN Bhagwati 'Human Rights as Evolved by the Jurisprudence of the Supreme Court of India' 1987 *Commonwealth Legal Bulletin* 236.

¹³⁴DJ McQuoid-Mason 'The Organisation, Administration and Funding of Legal Aid Clinics in South Africa' (1986) 1 *NULSR* 189 193.

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clients.¹³⁵ Even if they do deal with the latter they do not necessarily focus on poverty law problems.

In a developing country such as South Africa where there are vast economic and social differences between rich and poor, and where the majority of the population do not have access to proper legal services, law clinics take the form of legal aid clinics and deal predominantly with poverty law matters.¹³⁶ Thus legal aid clinics give students a valuable window into the world of poverty law and the real life problems of underprivileged members of society. In the context of the new South African Constitution¹³⁷ which enshrines a number of social and economic rights¹³⁸ work in a legal aid clinic sensitizes law students to both the theory and practice of social justice.

2. Background to Legal Aid Clinics in South Africa

At the time of the first international legal aid conference held in South Africa at the University of Natal, Durban in July 1973 there were only two university legal aid clinics in the country. These were at the University of the Witwatersrand run by staff and at the University of Cape Town run by students.¹³⁹ The third clinic was set up at the University of Natal, Durban immediately after the conference,¹⁴⁰ and thereafter there was a proliferation of legal aid clinics. By 1982 sixteen of the twenty one law schools in South Africa had clinics.¹⁴¹ In 1987 an Association of University Legal Aid Institutions was set up, and by 1988 the Attorneys' Fidelity Fund had been convinced of the educational value of legal aid clinics. Thus the latter agreed to fund, on an annual basis and provided funds were available, the salary of a director at those university clinics that were affiliated to the Association and had been accredited by the local law society in their area of operation.¹⁴²

Most of the clinics engaged in general practice, although some areas of law such as divorce, motor vehicle assurance (third party) claims and deceased estates (except for very small estates), were closed to them by the law societies. The vast majority of cases involved labour matters such as wrongful dismissals, unemployment insurance and workmen's compensation for injuries; consumer law problems such as credit agreements (hire-purchase), defective products, loan sharks and unscrupulous debt collection practices; housing problems such as fraudulent contracts, non-delivery and poor workmanship; customary law matters such as emancipation of women and succession rights; maintenance; and, criminal cases. During the struggle against Apartheid many of the clinics at the progressive universities were involved with civil rights cases involving pass

¹³⁵Cf N Franklin 'The Clinical Movement in American Legal Education' (1987-9) 2 NULSR 55 64.

¹³⁶See generally DJ McQuoid-Mason An Outline of Legal Aid in South Africa (1982) 139-163.

¹³⁷Constitution of the Republic of South Africa Act 108 of 1996.

¹³⁸Sections 26 (housing - within available resources), 27 (health care, food, water and social security - within available resources), 28 (children) and 29 (education).

¹³⁹McQuoid-Mason Outline of Legal Aid op cit 139.

¹⁴⁰The clinic was set up in the present writer's office on 1 August 1973 (McQuoid-Mason (1986) 1 NULSR 191).

¹⁴¹McQuoid-Mason Outline of Legal Aid op cit 139-161.

¹⁴²McQuoid-Mason (1986) 1 NULSR op cit 197.



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laws, police brutality, forced removals, detention without trial and other breaches of fundamental human rights.¹⁴³

With the advent of democracy in South Africa in April 1994 the legal aid clinics are still dealing with poverty law problems, some of which such as housing, the quality of police services and social security have continued as a result of non-delivery by the new Government, partly due to inefficiencies and obstruction by bureaucrats employed by the old regime, many of whom retained their jobs as part of the political settlement.¹⁴⁴ One or two clinics have moved from general practice to more specialized constitutional issues. Thus at the University of Natal, Durban, in addition to the ordinary Legal Aid course there is a specialist Clinical Law course which focuses on women and children, administrative justice and land restitution. However, the majority of clinics continue to engage in general practice and fewer restrictions have now been imposed by the law societies. Furthermore the latter also allow candidate attorneys to do their mandatory internships in accredited clinics.¹⁴⁵ As yet law students do not have the right to appear in the lower courts on behalf of indigent litigants, although student practice rules have been in the pipeline since 1985. It is hoped that the new Government will introduce these in the near future.¹⁴⁶

Student activities in a legal aid clinic expose them on a regular basis to social justice issues in the new South Africa. Clinical work enables them to obtain a realistic insight into whether the Government is able to deliver on the ambitious list of socio-economic rights enshrined in the final Constitution.

3. Integrating Legal Aid Clinics into Academic Teaching

Apart from social justice aspects of courses in Jurisprudence most other law courses teach students how to operate in a first world commercial legal environment rather than a third world poverty law situation. This is understandable because students who have spent long years studying at university, sometimes after considerable personal and family sacrifice, expect to deal with clients who can compensate them adequately for their services. Work in a legal aid clinic together with the study of certain aspects of poverty law reminds students that there is whole other world of legal practice.

¹⁴³Generally for the types of cases handled by legal aid clinics see McQuoid-Mason Outline of Legal Aid op cit 139-161.

¹⁴⁴Constitution of the Republic of South Africa Act 200 of 1993 s 236(2).

¹⁴⁵The Attorneys Act 53 of 1979 s 2 (1A) (b) was amended by s 2 of Act 115 of 1993 to allow aspiring attorneys to 'perform community service approved by the society concerned' - provided that the person who engages them is practising the profession of attorney, *inter alia*, 'in the full-time employment of a law clinic, and if the council of the province in which that law clinic is operated, certifies that the law clinic concerned complies with the requirements prescribed by such council for the operation of such clinic' (s 3(1)(f)).

¹⁴⁶The present writer drafted Student Practice Rules for South Africa based on the American Bar Association Model Rules for Student Practice (Council for Legal Education and Professional Responsibility State Rules Permitting the Student Practice of Law: Comparisons and Comments 2 ed (1973) 43) and submitted them to the Association of Law Societies of South Africa in April 1985 for onward transmission to the then Minister of Justice. Although the rules have been approved by all branches of the practising profession and the law schools they have been consistently and clandestinely blocked by beaurocrats in the Department of Justice. The new Minister of Justice, who took office in 1994, has given an undertaking to have the rules implemented.



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Legal aid clinic work has implications for the teaching of law because 'poverty law' is very often neglected in formal law curricula which tend to focus on 'rich people's law'.¹⁴⁷ A successful legal aid clinic programme requires students to be trained in the relevant substantive law subjects which reflect the needs of legal aid clients. Students also need to have the necessary skills to service clients professionally and effectively under the supervision of a qualified member of staff. Some universities provide law students with both, but very few give students academic credit for the work done by them. The fact that a Legal Aid course is examinable like other courses means that it is not marginalized. At the same time it forces students to focus on practical aspects of social justice in at least one of their courses.

Universities such as the University of Natal, Durban have a formal Legal Aid course which covers relevant aspects of substantive law not dealt with in the ordinary syllabus such as practical aspects of legal aid and the right to counsel; prison law; children's rights; consumer protection; unemployment insurance; workmen's compensation; social pensions; land law and restitution; litigation against the police; access to children and maintenance; and, motor vehicle assurance (third party) law.¹⁴⁸ These topics are presented at seminars by qualified lecturers in the field. The Legal Aid course also includes skills training in clinic procedures; interviewing techniques; small claims court procedures; interaction with other aid agencies; and alternative dispute resolution. Both aspects of the course are examinable. In addition students are graded on their performance in the clinic and a public welfare study report which they are required to submit in the second semester.¹⁴⁹

4. Community Service Component of Legal Aid Clinic Work

Legal aid students engage in community service in two areas of their legal aid work. The one is where they service clients in the clinic, and the other is when they compile their report on a public welfare agency. Both aspects of their field work count towards their final academic mark for the course.

Law students in the legal aid clinic are divided into firms under the leadership of a senior partner. The latter is responsible for ensuring that students report for duty on the days that they staff the clinic, and for the smooth running of the clinic. Each firm is allocated a supervisor who is a qualified lawyer or member of staff who is responsible for supervising the work of the students. No advice, letter, document or legal process leaves the clinic without being scrutinized by the relevant supervisor. Furthermore where it is necessary for legal processes to be signed or for a client's case to be taken to court, the matter will either be dealt with by the supervisor, (usually

with the responsible student in attendance), or referred to a lawyer willing to take on clinic cases. As mentioned students are graded on their performance in the clinic.

¹⁴⁷Cf CJR Dugard 'A Review of South African Legal Education' in Faculty of Law Legal Aid in South Africa (1974) 160 161.

¹⁴⁸See Department of Procedural and Clinical Law, University of Natal, Durban Professional Training Manual (1996) 23-25.

¹⁴⁹Ibid.

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Students are also required to visit a public welfare agency, usually during their vacation periods, in order to assist the clinic in building up a local and national data base of useful agencies. Students spend time at the agency and thereafter write a report in which they cover the biographical details of the organisation; an organogram and description of its structure; a short history; a description of its functions and objects; the nature of its work and a summary of two case studies based on files and interviews; the main obstacles to the work of the organisation and how it seeks to overcome them; and, the future aims and plans of the organisation. The public welfare agency research project is graded and counts towards the legal aid student's final mark. The completed projects are kept in the legal aid clinic for reference purposes. They give legal aid students a good indication of the types of organisations that are providing social justice to certain parts of the community.

5. How Legal Aid Clinics Teach Social Justice

Social justice in the sense of acknowledging the importance of certain aspects of a welfare state, and the need to give preferential treatment to disadvantaged members of society, has been given some recognition in the South African Constitution.¹⁵⁰ Legal aid clinics which deal primarily with disadvantaged citizens become an important agent of reality for measuring the success or otherwise of the social and economic promises enshrined in the Constitution.

By working in a legal aid clinic law students obtain first-hand knowledge of how ordinary people are experiencing social justice in the new South Africa. They also have an opportunity to experience the difficulties involved in using legal rules to make social justice attainable to the person in the street. Sometimes they have the good fortune to assist clients successfully in enforcing the rights to which they are entitled. Thus there are two important aspects of student work in a legal aid clinic: (a) the opportunity to help disadvantaged and indigent members of society to obtain what is due to them, and (b) the theoretical and practical exposure they receive to the social justice issues of the day - something that is not possible in a regular black letter law course.

To achieve the above there is a need for properly integrated clinical law programmes which give academic recognition for the community service role played by law students. Such programmes can provide a valuable social justice learning experience for law students.

B. Street Law

In this section it is intended to consider the following: (i) the definition of Street law; (ii) the background to Street law in South Africa; (iii) how Street law can be integrated into academic teaching; (iv) the community service component of Street law; and (iv) how Street law can teach social justice.

1. Definition of Street Law

¹⁵⁰See above note 5.

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Street law is a programme designed to enable law students and others to make people aware of their legal rights and where to obtain assistance. Street law explains to men or women 'on the street' how the law affects them in their daily lives. For example, every time a person buys something, rents a house, gets married or divorced, or is the accused or victim of a crime, he or she comes into contact with the law. Street law helps people to understand how the law works and how it can protect them. It also explains what the law expects people to do in certain situations, what kinds of legal problems they should watch out for and how they can resolve such problems.¹⁵¹

Street law not only makes people aware of how the present legal system can protect them, but also encourages them to think about the type of legal future they would like in the future. This was particularly important during the negotiations for the new Constitution in South Africa when there was wide spread consultation with the public concerning its contents.¹⁵² The programme encourages tolerance by making participants argue and experience opposing viewpoints. It also encourages the use of alternative dispute resolution such as mediation, arbitration and negotiation to discourage people from resorting to violence by taking the law into their own hands.¹⁵³

By enabling law students to go out to schools and communities to teach them about the law, the Street law programme gives students an insight into the legal needs and aspirations of ordinary people.

2. Background to Street Law in South Africa

Street law originated at the Georgetown University Law Centre in Washington DC in 1972. Law students were sent out to the inner city schools where many young people in the black ghetto areas felt oppressed by the legal system. It was brought to South Africa in 1985 and a pilot project set up at the University of Natal, Durban for six months during 1986. The latter was so successful that it was converted into a full-time programme at the University of Natal in 1987. Shortly thereafter similar programmes were established at the Universities of Pretoria and the

Witwatersrand.¹⁵⁴ Since then they have spread to 17 of the 21 law schools in South Africa. Initially the programmes were funded by the Association of Law Societies with money from the

¹⁵¹DJ McQuoid-Mason 'Reducing Violence in South Africa through "Street Law" Education of Citizens' in Gerd Ferdinand Kirchhoff, Ester Kosovski and Hans Joachim Schneider (eds) International Debates of Victimology (1994) 347-348.

¹⁵²DJ McQuoid-Mason 'Popular Participation in Constitution-making: The South African Experience' unpublished paper presented at INTERWORLSA Conference on Democracy and Transition in Developing Countries with Particular Reference to Africa, New York, United States of America, 23-24 March 1996.

¹⁵³McQuoid-Mason in International Debates of Victimology op cit 348.

¹⁵⁴McQuoid-Mason in International Debates of Victimology op cit 349-350.

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Attorneys' Fidelity Fund, but in recent years the United States Agency for International Development has been the main donor.

The core of the programme is the five Street law text books and teacher's manuals that go with them. The books are written in simple English for pupils in the last three years of high school and community-based organisations. They are reader-friendly with cartoons and numerous student-centred exercises which draw on the experiences of the participants. The books cover an Introduction to South African Law and the Legal System,¹⁵⁵ Criminal Law and Juvenile Justice,¹⁵⁶ Consumer Law,¹⁵⁷ Family Law¹⁵⁸ and Welfare and Housing Law.¹⁵⁹ Subsequent books in the series followed the unfolding of political events in the country with an increasing emphasis on human rights¹⁶⁰ and democracy¹⁶¹ training.

The Street law programme uses a wide variety of student-centred activities in its teaching methods. These include role plays, simulations, games, small group discussions, opinion polls, mock trials, debates, field trips and street theatre.¹⁶² At a national level it hosts an annual mock trial and human rights debating competition as well as a youth parliament. Participants are high school children involved in the Street law programme from all nine provinces in the country. The school children come from all walks of life and a special effort is made to include children from very disadvantaged families.

Law students are trained to teach interactively and to draw on the real life experiences of the communities when discussing the law. Thus they obtain first-hand knowledge about social justice issues in the schools and communities where they work.

3. How Street Law can be Integrated into Academic Teaching

The Street law programme requires participating law students to be properly trained so that they can go out to schools and community groups and teach effectively and confidently. Some universities have a dedicated optional course in Street law¹⁶³ while others make it part of optional public interest law¹⁶⁴ or capita selecta¹⁶⁵ courses. Dedicated Street law courses tend to focus more on the teaching methodologies than the legal content of the programme with much of the latter being left to the individual initiatives of the students. However, where Street law is part of a

¹⁵⁵DJ McQuoid-Mason Street Law Book 1: Introduction to South African Law and the Legal System (1987).

¹⁵⁶DJ McQuoid-Mason Street Law Book 2: Criminal Law and Juvenile Justice (1987).

¹⁵⁷DJ McQuoid-Mason Street Law Book 3: Consumer Law (1990).

¹⁵⁸DJ McQuoid-Mason Street Law Book 4: Family Law (1990).

¹⁵⁹DJ McQuoid-Mason Street Law Book 5: Welfare and Housing Law (1992).

¹⁶⁰David McQuoid-Mason, Edward L O'Brien Human Rights for All (1991).

¹⁶¹David McQuoid-Mason, Mandla Mchunu, Karthy Govender, Edward L O'Brien and Mary Curd Larkin Democracy for All (1994).

¹⁶²See generally McQuoid-Mason in International Debates of Victimology op cit 353-353, and companion Teacher's Manuals for the different books.

¹⁶³For example, the Universities of Natal, Pretoria, the North-West and Fort Hare.

¹⁶⁴For example, the University of the Witwatersrand.

¹⁶⁵For example, the University of the Orange Free State.



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course such as public interest law there is often considerable emphasis on the substantive content of the course.

The University of Natal, Durban has a dedicated optional Street law course which includes regular seminars, an examination, the production of a mock trial package and community service by way of practical teaching in schools.¹⁶⁶ Two seminars a week are held during which students are taken through lesson plans for a wide variety of teaching techniques and subjects from the Street law texts on introduction to law, criminal law, consumer law, family law, housing and welfare law, human rights and democracy. In addition they are taken step-by-step through the preparation and presentation of a mock trial involving up to 24 participants. They experience a mock trial for themselves as a class and are then required to compile and present their own.

The Street law students write an examination at the end of the first semester in which they are required to demonstrate an understanding of how the Street law programme works, to prepare two lesson plans of their choice from selected topics, and to prepare a list of questions and the opening and closing addresses for one side of a mock trial. Thus the examination tests the ability of students to teach law to lay people in an organised and effective manner by indicating how they would go about preparing themselves for the lessons they have to present during the programme. The Street law students are graded according to their performance in the examination, the compilation of their mock trial package and the manner in which they carry out their teaching duties at schools.¹⁶⁷

4. Community Service Component of Street Law

The community service component of Street law programmes involving law students varies at different universities. Some require school visits while others confine Street law teaching by students to community organisations and train school teachers to do the teaching in schools. As originally conceived, however, the idea was to send law students into high schools to teach about the law, and most dedicated Street law courses do this.

At the University of Natal, Durban Street law students in the LLB programme are required to teach at least 20 lessons in schools and to present their own mock trial at their schools. The academic and training part of the programme is done by a law teacher, while the school allocation and other logistical matters are handled by the local Street law office on the campus. Students are each allocated two schools, and the number of schools involved in the LLB programme is such that the students have to visit both schools a week. They have to obtain a report from the responsible school teacher at the end of the school programme and are graded on their performance in the classroom. The latter is done by way of an evaluation by both the pupils in the classroom and the school teacher. The school's community service component counts 25% of the final mark, and the

¹⁶⁶Department of Procedural and Clinical Law Professional Training Manual op cit 25D.

¹⁶⁷Ibid.

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mock trial package counts for a further 25%.¹⁶⁸ A similar programme is run for undergraduate BProc students where Street law is part of the Legal Aid course. They are required to present 10 school lessons and a mock trial, but do not write an examination.

At present only a few of the 17 law schools involved in the Street law programme give academic credit for Street law work. Students in the programme deserve to be rewarded academically for the often long hours they devote to community service while teaching Street law.

5. How Street Law Teaches Social Justice

Street law students like legal aid clinic students obtain valuable insights into social justice issues in the communities they serve. Much of their teaching is experiential with the result that they draw on the experiences and needs of the communities when deciding which areas of the law to teach. Many of the lessons in the Street law texts are based on the social realities of the time and students are taught not to teach the law in a vacuum. They must be sensitive to the social justice demands of the communities concerned and relate these, where appropriate, to the provisions of the legal system and the new Constitution.

Law students benefit greatly through the experience of teaching communities about the law in its social context. They are also enriched when learning how some communities have managed to solve social justice issues and empower themselves without resorting to the law. Once again these are lessons which cannot be learned in a conventional substantive law school course. Students do not merely learn about the law as it is reflected in text books and law reports but gain first-hand knowledge as to how the law and legal institutions are working on the ground. In other words they learn about how the law affects the person on the street and not the person in the text book. This is a valuable lesson in legal realism because often the two are poles apart - particularly the law as it is applied to disadvantaged members of society. The latter is the acid test of social justice in any country.

C. Conclusion

Legal aid clinic and Street law programmes provide excellent mechanisms for the teaching of social justice. The latter, however, is best taught through a combination of academic theory and community experience and not from text books alone. Obviously there is an important role for the latter when setting out the theoretical framework for the concept of social justice, but it can only be made meaningful if it is considered within the context of the real world.

It is particularly important in developing countries that law students be encouraged to participate in community service and be given academic credit for their efforts. A properly integrated academic and community service programme can provide legal aid clinic and Street law students with a wonderful opportunity to contextualise the concept of social justice while at the same time rendering a service to society.

¹⁶⁸Ibid.

2. Interactive Teaching Methods (African Clinician's Manual – Chapter 13)

David McQuoid-Mason

Contents:

1. Brainstorming
2. Ranking exercises
3. Small group discussions
4. Case studies
5. Role plays
6. Question and answer
7. Simulations
8. Debates
9. Games
10. Hypothetical problems
11. Moots
12. Mock trials
13. Open-ended stimulus
14. Opinion polls
15. Participant presentations
16. Taking a stand
17. The PRES formula
18. Values clarification
19. Fishbow
20. Jigsaw
21. Each one teach one
22. Visual aids
23. Use of experts
24. Field trips

Outcomes:

At the end of this chapter you will be able to explain and use a variety of interactive teaching methods.

This chapter will deal with the following interactive teaching methods: (i) brainstorming, (ii) ranking exercises, (iii) small group discussions, (iv) case studies, (v) role-plays, (vi) question and answer, (vii) simulations, (viii) debates, (ix) games, (x) hypothetical problems, (xi) moots, (xii) mock trials, (xiii) open-ended stimulus, (xiv) opinion polls, (xv) participant presentations, (xvi) taking a stand, (xvii) thinking on your feet – PRES formula, (xviii) problem solving – FIRAC formula, (xix) values clarification, (xx) fishbowl, (xxi) jigsaw, (xxii) 'each one teach one', (xxiii) visual aids, (xxiv) the use of experts, and (xxv) field trips.

The discussion of each teaching method includes a brief explanation of the method and how it is used.

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13.1 Brainstorming

Brainstorming is a means of encouraging a free flow of ideas from students. It is an important learning technique because it encourages students to generate creative ideas without fear of criticism.

During brainstorming the law teacher invites students to think of as many different ideas as they can, and records all the suggestions on a black board or flip chart even if some of them might appear to be wrong. If the answers seem to indicate that the question is not clear, it should be rephrased. Law teachers should postpone any criticisms of the suggestions made until all the ideas have been written down. Thereafter, the suggestions may be criticised, and if necessary ranked in order of priority (see below para 13.2).

13.2 Ranking exercises

Ranking exercises involve making choices between competing alternatives. The law teacher can either use a brainstormed list developed by the students or give the students a list of items to rank, for example, 5 to 10 different items. Students should then be required to rank the items from e.g., 1 to 5, or 1 to 10, with 1 being the most important and 5 or 10 the least. Students can be asked to: (a) justify their ranking, (b) listen to people who disagree, and (c) re-evaluate their ranking in the light of the views of the other participants. For example, students may be asked to rank certain crimes from the most serious to the least serious.

A variation of ranking is to ask students to place themselves on a continuum based on their feelings about some statement or concept. For example, students may be asked to indicate their feelings on the death penalty by standing in a line and placing themselves on a scale from "strong approval" of the death penalty at one end and "strong disapproval" at the other. Students should then have an opportunity to justify their ranking, to listen to students who disagree with their viewpoints, and to re-evaluate their position based on the discussions they have heard. They could indicate this by moving their position on the line.

13.3 Small group discussions

Small group discussions should be carefully planned with clear guidelines regarding the procedure to be followed and the time allocated. The groups should usually not exceed five people to ensure that everyone has a chance to speak. The groups should be numbered off by the law teacher (e.g. 1 to 5), or formed by taking every five people in a row or group and designating them as teams for group discussions.

The groups should be given instructions concerning their task – including how long they will have to discuss a topic or prepare for a debate or role play and how the group should be run (e.g. elect a chairperson, and a rapporteur who will report back to all the other students). Groups should be told to conduct their proceedings in such a way as to ensure that stronger students do not dominate and everyone has a fair opportunity to express themselves.

13.4 Case studies

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Case studies are usually conducted by dividing students into three large groups of lawyers for plaintiffs or defendants (or prosecutors and accused persons) and judges, and then further subdividing the large groups into small groups to consider suitable arguments or solutions. Individuals from each group can be selected to present arguments or give judgments on behalf of the group. A variation might be for one group or set of groups to argue for one side, another group or set of groups to argue for the other side, and a third group or set of groups to give a decision or judgement on the arguments.

When requiring students to discuss case studies an eight step procedure can be used:

Step 1: Select the case study.

Step 2: Get the students to review the facts (ensure that they understand them – in plenary).

Step 3: Get the students to identify the legal issues involved (identify the legal questions to be answered – in plenary).

Step 4: Allocate the case study to the students (in small groups).

Step 5: Get the students to discuss the relevant law and prepare arguments or judgments (in small groups).

Step 6: Get the students to present their arguments (arguments on behalf of the plaintiff and defendant should be presented within the allocated time – in plenary or in small groups).

Step 7: Get the students to whom the arguments were presented to make a decision (e.g. students allocated the role of judges or the students as a whole – in plenary or in small groups).

Step 8: Conduct a general discussion and summarize (in plenary).

Case studies are often based on real incidents or cases, and at the end, after the students have made their decisions, the law teacher can tell them what happened in the real case. Case studies help to develop logical and critical thinking as well as decision-making.

13.5 Role plays

In role plays students draw on their own experience to act out a particular situation (e.g. a police officer arresting somebody). Students use their imagination to flesh out the role play. Role plays can be used to illustrate a legal situation.

The law teacher should use the following seven steps when conducting role plays:

Step 1: Explain the role play to the students (describe the scenario).

Step 2: Brief the students who volunteer (or are selected) to do the role play.

Step 3: Brief the other students to act as observers (give them instructions on what to look out for).

Step 4: Get the students to act out the role play (this can be done by one group in front of all the students or in small groups consisting of role players and observers).

Step 5: Ask the observer students to state what they saw happen in the role play.

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Step 6: Ask all the students to discuss the legal, social or other implications of the role play and to make a decision on what should be done to resolve the conflict in the role play (this can be done using small groups).

Step 7: Conduct a general discussion and summarize.

A variation of Step 6 would be to ask the students to act out a conclusion to what happened during the role play.

Although the law teacher sets the scene, he or she should accept what the students do. Role plays often reveal information about the student's experiences as a story in itself.

13.6 Question and answer

The question and answer technique can be used instead of lecturing. In order to use questions and answers effectively a checklist of the questions and answers should be prepared to ensure that all aspects of the topic have been covered by the end of the lesson. The questions must be properly planned beforehand to make sure that all the information necessary for the lesson or workshop has been obtained from the students.

Law teachers, when using the question and answer technique should wait for a few seconds, (e.g. at least about 5 seconds), after asking the question, in order to give students an opportunity to think before answering.

Instructors should be careful to ensure that more confident students do not dominate the question and answer session.

13.7 Simulations

Simulations require students to act out a role by following a script. They are not open-ended like role plays, and are carefully scripted to ensure that the objectives of the exercise are achieved.

Simulations usually require more preparation than role plays because the students need time to prepare to follow the script. The instructor should tell students about the persons or situation they are simulating before they act out the scene to give them time to rehearse.

The procedure for conducting a simulation is similar to that for a role play and law teachers should follow the seven steps suggested above in para 13.5.

13.8 Debates

Debates should involve relevant controversial issues such as abortion, prostitution, legalization of drugs, capital punishment etc. A controversial issue means that there should be a substantial number of students in favour and against the proposition.

The students may be divided into two groups, or small groups, to prepare arguments for one or other side in the debate. The groups help the persons on each side who are chosen to debate on

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behalf of the group. The debate is conducted and the participants then vote in favour of or against the proposition.

The law teacher can use the following steps to conduct a debate:

Step 1: Allocate the debate topic to groups of students and choose which groups will argue for and against the proposition.

Step 2: Get the groups to prepare their arguments and to choose two debaters to present their arguments (one, the main debater, to present the group's arguments, and the other, a replying debater, to reply to the opposing group's arguments).

Step 3: Allow the main debaters who are in favour of the proposition to present their arguments first within the designated time frame (e.g. 5 minutes).

Step 4: Allow the main debaters who are against the proposition to present their arguments within the designated time frame (e.g. 5 minutes).

Step 5: Allow the replying debaters who are in favour and against the proposition to briefly reply to their opponents within the designated time frames (e.g. 1 minute for each side).

Step 6: Ask all the students to vote on which side presented the best arguments and deserved to win the debate.

A variation of the debate is 'mini-debates'. Here all the participants are divided into triads (groups of three) to conduct mini-debates with debaters for and against the proposition in each triad, together with an adjudicator who controls the debate, decides who the winner is, and reports back to all the other students.

13.9 Games

Games are a fun way for people to learn because most people, whether they are adults or children, enjoy playing games. Games may be used as 'ice breakers' but they may also be used to teach important topics in the law. Games can illustrate complicated legal principles in a simple experiential format. Where games are used to teach about the law they should not just be fun but should also have a serious purpose.

An example of a game that can be used to teach values and knowledge and introduce students to the need for law and types of laws that exist in democratic societies is what the present writer calls the "Pen Game". (There are many variations of this game). The Pen Game is played as follows:

Step 1: The law teacher announces that the need for some sort of legal system will be illustrated by playing a game.

Step 2: The law teacher checks that each student has a pen (or a paper clip, or a bottle top or any other suitable object). Once the law teacher is satisfied that each student has a pen (or other object) the law teacher informs them that they will be playing the "pen" (or some other object) game.

Step 3: The law teacher tells the students that as it is a game they need to be in teams and divides them into teams using small groups or by rows if they are in a class room setting.

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Step 4: The law teacher tells the students that as they have teams they need to have team captains and designates the students on the right hand side of each group or row as the team captains.

Step 5: The law teacher checks that the students know who are in their teams, who their team captains are and that they are playing the pen game.

Step 6: The law teacher tells the students to start playing the pen game – ignoring any requests for rules.

Step 7: The law teacher allows the students to make up their own rules regarding the game for a couple of minutes but then tells them that they are not playing the game properly.

Step 8: The law teacher tells the team captains to pass the pen to the team members on their left and restarts the game. After a minute or so the law teacher stops them and tells them that they are not playing the game properly.

Step 9: The law teacher tells the team captains to hold the pen in their right hands and then to pass it to the team member on their left. After a minute or so the law teacher again stops them and tells them that they are not playing the game properly.

Step 10: The law teacher tells the team captains to hold the pen in their right hands, pass it to their left hand, and then pass it to the team member on their left. After a minute or so the law teacher again stops them and tells them that they are not playing the game properly.

Step 11: The law teacher tells the team captains to hold the pen in their right hands, pass it to their left hand, and then pass it to the right hand of the team member on their left. After a minute or so the law teacher again stops them and tells them that they are still not playing the game properly.

Step 12: The law teacher tells the team captains to hold the pen in their right hands, pass it to their left hand, pass it to the right hand of the team member on their left – but not to any members wearing spectacles (or any other distinguishing feature such as rings or clothes of a certain colour). After a minute or so the law teacher again stops the game and arbitrarily chooses one of the teams as the winners.

Step 13: The law teacher debriefs the game to find out how the students felt about it, why they felt the way they did, and what they learnt from the game.

Step 14: Summary and conclusion: The law teacher checks that the students understand why society needs laws to prevent confusion and chaos, laws should not work retrospectively, laws should not discriminate against people, people should have access to impartial courts that apply the rule of law, citizens should participate in the lawmaking process.

The Pen Game teaches knowledge and values – students not only learn why we need laws in society but also appreciate why laws are necessary. Law teachers should ensure that games are structured in such a way that they meet the learning outcomes for the exercise. Not only should the game cover the various principles to be learnt but the law teacher should ensure that during the debriefing all the outcomes have been achieved.

Games can be used to teach knowledge, skills and values.

13.10 Hypothetical problems

Hypothetical problems are similar to case studies, except that they are often based on fictitious situations. They can be more useful than case studies in the sense that a particular problem can be tailor-made for the purposes of the workshop. Furthermore, they are often based on an actual

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event (e.g. a newspaper report), even though it is not an officially reported legal case. The advantage of hypothetical problems is that appropriate changes can be made to the facts depending on the purposes of the exercise.

Hypothetical problems are particularly useful when teaching about human rights in an anti-human rights environment, because reference does not have to be made directly to the home country. Even though the facts may be identical to those in the home country the hypothetical problem can present them as occurring in a foreign country.

When dealing with hypothetical cases, just as in case studies, students should be required to argue both sides of the case and then to reach a decision. To this end law teachers can use Steps 1 to 8 mentioned for case studies in para 13.4.

13.11 Moots

Moots involve case studies in which students are required to argue an appeal on a point of law. Moots are different from mock trials because there is no questioning of witnesses, accused persons or experts as there is in mock trials (see below para 13.12). All the questioning would have been done at the trial stage. The moot is the appeal stage after the trial has been heard. The only people the appeal court sees and hears are the lawyers who argue the appeal.

In law faculties moots are usually conducted formally and students dress in robes and argue the appeal in a simulated moot court environment. Law students are required to carry out the preparation work on an individual basis and to present their arguments individually as legal counsel.

A variation used in street law-type clinics is for students to prepare arguments in small groups, as is sometimes done with case studies, and then to elect a representative to present the arguments of the group. Steps 1 to 8 for case studies in para 13.4 can be used for these types of moots.

Another method of presenting moots in street law-type clinics is to use "mini-moots" where students are divided into triads with a lawyer on each side and a "judge" to control the proceedings, give a judgement and report back to all the other students.

13.12 Mock trials

Mock trials are an experiential way of learning that teaches students to understand court procedures. Mock trials take a variety of forms. In law school programmes teaching criminal or civil proceedings the trials can be spread over a full semester with students being carefully coached on each aspect of the trial. Law students are required to prepare and participate on an individual basis.

In legal literacy and street law programmes large numbers of students can be used in mock trials. For example, mock trials using five witnesses and an accused can involve up to 28 participants - 8 lawyers for the plaintiff or prosecution team and 8 for the defence team, 3 judges, 5 witnesses, an accused, a registrar, a court orderly and a time-keeper. One lawyer on each side can make an

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opening statement, each lawyer can question one witness or the accused, and one lawyer on each side can make a closing statement. The chief judge can control the proceedings, each judge can question one witness or the accused, and one judge can be responsible for giving the judgment. The registrar calls the case, court orderly keeps order in court and the time-keeper keeps the time (see below Chapter 14).

Students are taught the different steps in a trial (see below para 14.2). They are also taught basic skills like how to make an opening statement, how to lead evidence, how to ask questions and how to make a closing statement. Students play the role of witnesses, court officials, judges and lawyers.

Generally on how to conduct a street law-type mock trial see Chapter 14.

13.13 Open-ended stimulus

Open-ended stimulus exercises require students to complete unfinished sentences such as: "If I were the Judge ..." or "My advice to the Minister of Justice would be ...".

Another method of using an open-ended stimulus is to provide students with an untitled photograph or cartoon and require them to write a caption.

Students may also be provided with an unfinished story and asked to give their own conclusion or to act out the conclusion in a role play (see para 13.5).

13.14 Opinion polls

An opinion poll allows students to express their opinion on the topic of study. A poll allows for a spread of opinions (for example, strongly agree, agree, undecided, disagree, strongly disagree). Opinion polls can (a) serve as the basis for discussion; (b) give the law teacher feedback on the values, attitudes and beliefs of the students; and (c) can be used to assess changes in attitudes.

To conduct an opinion poll, the law teacher should ask each student to express privately his or her opinion on the subject (e.g. by individually writing the opinion down). The law teacher should then ask students for their individual views and record them on a black board or flip chart in a table that reflects the views of all the students. This can be done by a simple show of hands. For example, how many strongly agree with statement number 1? Students should then be asked to justify their opinions and to listen to opposing points of view. If no one takes an opposing point of view, the law teacher can ask students what the arguments can be made for the opposing position.

The law teacher can use various poll items to check the consistency of students' beliefs and may wish to follow the opinion poll with a case study on the subject being discussed. For example, if during an opinion poll a number of students say that criminals should be rehabilitated and not punished the poll could be followed by a case study about a violent criminal with a long history of offences. The students could then be asked whether they think that the particular criminal should be punished or whether they still believe in rehabilitation.

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13.15 Participant presentations

Students can be given a topic to prepare for presentation. For example, students may be asked to research the topic formally (e.g. by consulting book, magazine, journal or newspaper articles on the subject), or informally (e.g. by asking parents, relatives or friends about particular aspects of the law and how it has affected their lives). Students can then be called upon to make a presentation to all the other students. Thereafter, the presentations are discussed by all the students.

13.16 "Taking a stand"

"Taking a stand" requires students to stand up for their point of view by physically standing up and verbally justifying their position. A controversial topic should be chosen.

As an example, students might be asked who are in favour and who are against the death penalty. Students would then have to take a stand under a placard stating "In favour", "Against" or "Undecided", and would have to articulate their opinions on the death penalty.

The following procedure can be followed:

Step 1: Prepare placards with headings: "In favour", "Against" and "Undecided" or other suitable headings.

Step 2: Introduce the controversial topic on which the students will be required to take a stand (e.g. the death penalty, legalization of drugs or prostitution etc). Tell students that they may move their position if they hear a particularly good or bad argument.

Step 3: Request students to take a stand under the placard that reflects their point of view.

Step 4: Get students to justify their position by making a single argument – alternatively giving students under each placard an opportunity to express their point of view.

Step 5: Get any students who moved their position to give their reasons for doing so.

Step 6: Test the consistency of the student's positions by introducing questions involving extreme examples (e.g. in a death penalty debate check whether those against would say that even Adolf Hitler who was responsible for killing millions of people should not be given the death penalty – had he been caught alive).

Step 7: Summarize the discussion and conclude.

To assist the students in articulating their viewpoints in a logical manner they may be required to use a formula like the PRES formula (see para13.17).

"Taking a stand" not only teaches students the skill of articulating an argument but also requires them to clarify their values.

13.17 "Thinking on your feet" – the PRES formula

The PRES formula has been developed to help students, particularly law students, to construct a logical argument when asked to think on their feet.

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The PRES formula requires students to present their arguments by expressing the following: (a) their Point of view; (b) the Reason for their point of view; (c) an Example or Evidence to support their point of view; and (d) to Summarize their point of view.

For example, opinions on the death penalty could be articulated as follows using the PRES formula:

1. Argument in favour of the death penalty for murder
 My Point of view is that I am in favour of the death penalty for murder.
 The Reason is that I believe that if you unlawfully take someone's life you deserve to lose your own.
 The Evidence for my point of view is the Old Testament of *The Bible* that says "An eye for an eye and a tooth for a tooth".
 Therefore in Summary I am in favour of the death penalty for murder.

2. Argument against the death penalty for murder
 My Point of view is that I am against the death penalty for murder.
 The Reason is that judges can make mistakes.
 An Example is the English case of Timothy Evans who was found to have been innocent after he had been executed.
 Therefore in Summary I am against the death penalty for murder.

3. Undecided argument on the death penalty for murder
 My Point of view is that I do not know whether I am in favour or against the death penalty for murder.
 The Reason is that I do not know whether it makes any difference to the murder rate in a country.
 For Example in the United States of America where some states have the death penalty and others do not the murder rate stays the same.
 Therefore in Summary I do not know whether I am in favour or against the death penalty for murder.

Steps when teaching the PRES formula:

Step 1: Introduce and explain the PRES formula.

Step 2: Demonstrate the PRES formula.

Step 3: Pose questions to individual students on controversial issues and ask them to immediately use the PRES formula.

Step 4: Debrief and conclude on the value of the PRES formula.

The PRES formula can be combined with other learning methods such as "take a stand" (see above para 13.16). If students are required to make submissions rather than to express a point of view the PRES formula can become the SRES formula (Submission, Reason, Evidence/Example and Summary). The PRES formula teaches the valuable skill of being able to think on one's feet.

13.18 Problem solving

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When solving a legal problem law students can construct a logical framework by using the FIRAC formula. The FIRAC formula refers to the following:

F = Facts
I = Issues
R = Rule of law
A = Application of rule of law to facts
C = Conclusion

Step 1: Ascertaining the facts

The relevant facts concerning the case or problem must be identified: For example, the question may involve a detailed description of how a doctor behaved during an operation that was conducted negligently. The relevant facts that point to negligent conduct must be identified.

Step 2: Ascertaining the issues

The issues or legal questions to be answered must be identified: For example, the question might be: Did the doctor act negligently?

Step 3: Identifying the rule of law

The relevant rules of law must be discussed – if there are conflicting rules these should be mentioned: For example, the rule of law regarding negligence by a doctor is that the doctor failed to exercise the degree of skill and care of a reasonably competent doctor in his or her branch of medicine (i.e. a reasonably competent doctor would have foreseen the likelihood of harm and would have taken steps to guard against it).

Step 4: Applying the rule of law to facts

The rule of law must be applied to the facts: For example, the rule of law regarding negligence by doctors must be applied to the facts in order to determine whether or not on the facts the doctor was negligent. On the given facts, did the doctor's conduct measure up to that of a reasonably competent doctor in his or her branch of medicine?

Step 5: Reaching a conclusion

After applying the rule of law to the facts, a conclusion should be reached on the whether, for example, the doctor's conduct was negligent.

The FIRAC formula can also be used to write opinions and to answer problem questions in written examinations.

13.19 Values clarification

Values clarification exercises encourage expression and examination of a student's own values, attitudes and opinions as well as those held by others. Thus, students are given an opportunity to examine their attitudes and beliefs. At the same time they are asked to consider other points of view. A value clarification exercise promotes communication skills and empathy for others.

Value clarification is important for promoting the development of the ability of students to listen, as well as their communication skills, their empathy for others, their ability to solve problems and make decisions, their reasoning and critical thinking skills, and their ability to maintain consistency regarding their attitudes and beliefs.

The steps that can be used by law teachers to teach values clarification are the following:

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- Step 1: Ask students to express their opinions* (i.e. identify their position on an issue).
Step 2: Ask students to clarify their opinions (i.e. explain and define their positions).
Step 3: Ask students to examine the reasons for their opinions (why they believe something; the reasons for their position; and the arguments and evidence that support their position).
Step 4: Ask students to consider other points of view (e.g. by asking students who hold opposite viewpoints to present their views, or asking students to write down the arguments for opposing viewpoints, or by the law teacher presenting opposite views for discussion).
Step 5: Ask students to analyse their position and other points of view (e.g. by asking students to identify the strongest and weakest arguments in support of their position, and the strongest and weakest arguments of students opposed to their opinion).
Step 6: Ask students to make a decision on the issue (i.e. students should re-evaluate and resolve the conflict between the various points of view to find the best result).
Step 7: Conduct a general discussion and summarize.

13.20 Fishbowl

“Fishbowls” can be used for observations of case studies, simulations, role plays or any other lawyering activity where students are required to critically analyse what has transpired during the activity. They are also useful when dealing with values and attitudes. For instance, in gender-sensitivity exercises fishbowls can be used to enable students to observe the differences between how women relate to each other in given situations as opposed to what men do in similar circumstances.

An example of the steps in a fishbowl is the following:

- Step 1:* The law teacher introduces the exercise by mentioning that the students will be divided into small groups to prepare for a role play.
Step 2: The law teacher divides the students into small groups of lawyers interviewing a client and clients who are about to be interviewed - with not more than five students in each group.
Step 3: The lawyers in the small groups prepare the questions they will ask during the interview and the clients in their groups prepare the questions they will ask and what they will tell the lawyer.
Step 4: The law teacher calls for volunteers from the groups to role play the interview between the lawyer and the client in front of all the other students. The remaining members in the groups are told that they are observers and the law teacher gives them a checklist of things to look out for during the role play.
Step 5: The role play is conducted and the observers make notes.
Step 6: At the end of the role play the law teacher asks the observers what they observed.
Step 7: The law teacher conducts a general discussion and concludes the exercise.

Fishbowls can be used to teach knowledge, values and skills in combination with a number of other learning methods.

13.21 Jigsaw

The jigsaw method is useful for introducing students to procedures such as legislative hearings where special parliamentary committees listen to representations from different interest groups

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regarding proposed changes in the law. The jigsaw is used to enable the different interest groups to consult with each other before they make representations to a parliamentary or other committee that is hearing arguments from people or organisations that have different interests.

Jigsaws can be conducted using the following steps:

Step 1: Brainstorm ideas to select two interest groups in favour of the proposed changes to the law and two that would be against.

Step 2: Divide students into two groups in favour of the change, two groups against the change ("home groups"), and a group of parliamentary committee members.

Step 3: The home groups meet to discuss the arguments they will make to the parliamentary committee. At the same time the parliamentary committee discusses the issues and the questions they will ask the home groups.

Step 4: The home groups subdivide into multi-interest groups with representatives from each home group joining a multi-interest group to hear each other's viewpoints. The parliamentary committee continues its discussions.

Step 5: The multi-interest group members return to their home groups, report back to their colleagues, and in the light of what they have learned from the other groups, the home groups refine their arguments for the parliamentary committee. The home groups elect two representatives to present their arguments to the parliamentary committee: one to make the arguments, the other to deal with questions. The parliamentary committee continues its discussions.

Step 6: The home groups each have a limited time frame (e.g. two minutes each) to present their arguments to the committee. The committee has a limited period for questions (e.g. one minute per home group).

Step 7: The parliamentary committee has a limited time frame (e.g. two minutes) to consider its decision and to present it (e.g. a further two minutes).

Step 8: The law teacher debriefs the lesson and summarizes.

The jigsaw is a fairly complicated procedure and the time frames need to be carefully managed by the law teacher.

13.22 "Each one teach one"

Each one teach one is a technique that requires all the students to become involved in teaching each other about a particular area of the law. Each student teaches another student a section of the law to be covered so that by the end of the exercise all the students would have learned about the whole topic.

The following steps may be followed when using the "each one teach one" technique:

Step 1: The law teacher prepares a number of cards with statements on them that cover different areas of the topic (e.g. certain legal definitions). A sufficient number of cards must be prepared to ensure that the topic is covered in accordance with the desired outcomes.

Step 2: The cards are distributed to the students and the students are told that they must teach their colleagues what is on the cards.

Step 3: The students move around the room teaching each other what is on their cards.

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Step 4: Once all the students have taught each other what is on their cards the law teacher ends the exercise.

Step 5: The law teacher checks with the students to ensure that they have all learned what was on the cards.

Step 6: The law teacher debriefs the lesson and summarizes.

The "each one teach one" procedure must be carefully controlled to make sure that all the information on the different cards has been transferred to all the students.

13.23 Visual aids

Visual aids take the form of photographs, cartoons, pictures, drawings, posters, videos and films. Photographs, cartoons, pictures and drawings can be found in text books, newspapers, magazines etc. Videos and films are usually available in libraries and resource centres.

Visual aids can be used to arouse interest, recall early experiences, reinforce learning, enrich reading skills, develop powers of observation, stimulate critical thinking and encourage values clarification (see above para 13.19). Students can be required to describe and analyse what they see, and through questioning, to apply the visual aid to other situations.

When using visual aids the law teacher may use the following steps:

Step 1: Students describe what they see (focus on the elements of the visual aid and describe everything seen, including any symbols).

Step 2: Students analyze what they see (e.g. how the elements of the picture relate to each other; the point the photographer or artist is trying to make; the meaning or theme of the picture; and what the figures or people represent).

Step 3: Students apply the idea of the visual (i.e. apply the idea to other situations by thinking about what the picture reminds them of; whether they can think of other events similar to it; and how the idea applies to local people and communities).

Step 4: Students clarify their beliefs (i.e. express their opinions on the visual aid, e.g. whether they agree or disagree with the photographer or artist's point of view, how they feel about the idea; and what they think should be done about the problem shown in the visual aid).

13.24 Inviting experts

Inviting experts can provide students with a wide variety of information, materials and experience not available in any books. The use of experts can give students valuable insights into how the law and social justice issues operate in practice.

Law teachers should use the following steps when using experts:

Step 1: Select an appropriate expert (e.g. a lawyer, community leader, judge, ex-offender or a government official).

Step 2: Prepare the speaker and the class (tell the expert and the students about the outcomes for visit, e.g. ask the students to prepare questions beforehand).

Step 3: Conduct the class (get the expert to give a short talk, or get them to play their normal role – e.g. a judge in a mock trial or to comment on students playing their role).



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Step 4: Debrief the visit (students should be asked what they learnt from the expert; whether he or she answered all their questions; and how what they heard from the expert relates to what they had previously learnt about the topic).

13.25 Field trips

Field trips are useful because law teachers can choose both interesting and relevant places for students to visit. The trips should be arranged so that the experience of the students is consistent with the learning outcomes for the exercise.

Students should be prepared before the visit, and told to look out for specific things. They should also be asked to record their reactions on an observation sheet that should be prepared beforehand. The sheets can form the basis of a discussion when the students return from the field trip.

Law teachers should use the following steps when arranging field trips:

Step 1: Decide where to go (e.g. the courts, prisons, police stations, hospitals, government offices etc)

Step 2: Plan the visit (students and hosts should be prepared for the visit: e.g. students should have observation sheets, and hosts prepared for briefings).

Step 3: Conduct the visit (students should observe the activities; ask questions; comment on specific things; and, complete the observation sheets).

Step 5: Debrief the visit (students should report back on what they saw; how they felt; what they learnt; and, how what they learnt related to previous knowledge).

STREET LAW MOCK TRIALS

Contents:

- 14.1 Preparation for a mock trial
- 14.2 Steps in a mock trial
- 14.3 Simplified rules of evidence
- 14.4 Special procedures
- 14.5 Conducting a mock trial
- 14.6 Mock trial package: *S v Serjee*

Outcomes:

At the end of this chapter you will be able to:

1. Explain the how to prepare for a Street law mock trial.
2. Explain the steps , simplified rules of evidence and special procedures used in a Street law mock trial.
3. Conduct a mock trial using the *S v Serjee* mock trial package.

As was stated in para 13.12 above mock trials are simulated court proceedings. They may be based on real cases or hypothetical problems. Mock trials can be either formal or informal. The format chosen depends upon the outcomes for the exercise. The easiest mock trials to run are those involving the criminal process.



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Mock trials allow students to experience court room procedures and understand how the courts resolve disputes. Mock trials enable students to see how lawsuits are dealt with by lawyers and judges and how the procedures impact on witnesses, accused persons and experts. They also help students to develop (a) critical thinking skills; (b) the ability to analyze problems; (c) strategic thinking; (d) listening and questioning skills; (e) oral presentation skills; (f) the ability to think on their feet; and, (g) skills in preparing and organizing material. Mock trials promote co-operative learning and affect attitudes towards the legal profession. Students are prepared for possible future involvement as parties and witnesses in trials. Mock trials help to lessen fear of the courts, and provide students with the knowledge and skills needed to perform their roles in the simulated court effectively.

As has been mentioned law school mock trials tend to be based on individual work by the students involved. However, street law-type mock trials are aimed at involving as many students as possible in the mock trial process. The steps in a mock trial are the same for both individual-based and street law-type mock trials as they are based on the sequence of steps that occur in real life trials.

14.1 Preparation for a street law mock trial

The law teacher should use the following steps when preparing for a street law mock trial:

Step 1: Distribute the mock trial materials to the class

Read through the charge or summons, the facts of the case and the witness's statements with all the participants. The law teacher should:

- (a) Make sure that the students understand the facts of the case, the nature of the charge (or summons) and the applicable law.
- (b) Get the students to read through each of the statements and to highlight those parts of the statements that favour the prosecution (or plaintiff) and those that favour the defence.

Step 2: Assign or select students for the various roles in the mock trial

Depending on the type of trial, students should be selected to play the roles of lawyers, witnesses, experts, judges, registrars, court orderlies, time keepers and court observers. For the role of judge, it is often helpful to invite a resource person, such as a lawyer, law student, or real judge. If this is not possible, law teachers or students may act as judges.

Step 3: Prepare participants for the trial

In order to involve the maximum number of students the law teacher should divide the class into training groups. Students should be divided into:

- Teams of lawyers, witnesses, experts and accused persons for the prosecution and defence. Each team has the responsibility for preparing its side of the case and needs to prepare opening statements, questions for their witnesses and those of the other side, and closing statements.

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- Teams of judges, (if more than one judge will be used), who need to know how to run the trial and must prepare questions for the witnesses and a preliminary judgment that will be subject to change after hearing the case.
- Teams of registrars, court orderlies and time keepers who need to be prepared for the various tasks in a trial (e.g. arrange time charts).

14.2 Steps in a mock trial

A number of events occur during a trial, and most trials must happen in a particular order. For the purposes of this chapter a *criminal trial* will be used as an example. (In a *civil trial* the plaintiff or his or her lawyer would bring the case instead of the prosecutor.) The following steps occur in a mock trial:

1. The court is called to order by the court orderly.
2. The judge or judges enter and sit down.
3. The registrar calls out the name of the case.
4. The judge puts the charge to the accused and asks him or her to plead.
5. The accused pleads guilty or not guilty.
6. Counsel introduce themselves.
7. The prosecutor makes an opening statement.
8. The defence lawyer outlines the defence.
9. The prosecutor presents the case: The prosecutor calls the first witness and conducts the direct examination of the witness. The defence lawyer then cross-examines the witness. Afterwards the prosecutor re-examines the witness if necessary. The judge may ask questions to clarify issues.
10. The steps in 9 above are completed for each of the prosecution's other witnesses.
11. The prosecutor closes the case.
12. The defence lawyer presents the case in same manner as the prosecutor in 9 above: The defence lawyer calls the accused first (if he or she is going to give evidence) and conducts the examination-in-chief (also known as direct examination). The prosecutor cross-examines the accused. The defence lawyer re-examines the accused if necessary. The judge may ask questions to clarify certain issues. The same procedure is followed in respect of the witnesses for the defence.
13. In 12 above the accused must be called before the other defence witnesses if he or she is going to give evidence – to make sure that the accused does not change his or her story to make it fit with that of the other witnesses.
14. The defence lawyer closes the defence case.
15. The prosecutor makes a closing argument.
16. The defence lawyer makes closing argument.

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17. The prosecutor may reply to the defence's argument but only on matters of law raised by the defence - not the facts.
18. The judge or judges adjourn the case to consider their verdict.
19. The judge or judges give their verdict.

In a *criminal case* following steps occur when an accused is convicted. (These steps do not occur in a civil case. In a *civil case* the judges decides in favour of one, or other, or neither of the parties, and makes an appropriate court order B e.g. defendant must pay compensation.)

20. If the accused is convicted, the defence offers evidence in mitigation (reasons why the sentence should be reduced).
21. The prosecution is given a chance to say why the sentence should not be reduced or why it should be increased.
22. The judge or judges sentence the accused.
23. The judge tells the accused that he or she can appeal.

14.3 Simplified rules of evidence

Certain rules have been developed to govern the types of evidence that may be used in a trial, as well as the manner in which evidence may be presented. These rules are called the "rules of evidence" and have been designed to ensure that accused persons have a fair trial. The lawyers and the judge are responsible for making sure that these rules are obeyed.

Lawyers make sure that the rules of evidence are obeyed by making "objections" to evidence or procedure wrongly used by the other side. When an objection is raised the lawyer stands up and says "I object" and gives the reasons for the objection. The lawyer against whom the objection is raised will usually be asked by the judge to reply. The reply should tell the judge why the question or the witness= answer is not against the rules of evidence.

The rules of evidence used in real trials can be very complicated. A few of the most important rules of evidence have been adapted for mock trial purposes, and include the following:

14.3.1 Rule 1: Leading questions

Leading questions may not be asked when direct evidence is being obtained by the prosecutor or defence lawyers from their own witnesses or the accused or experts. When questioning their own witnesses or other parties called by them prosecutors and defence lawyers should use "open-ended" questions beginning with "Who" "Where" "What" "Why" "When" or "How". The same applies to questions during re-examination.

For example:

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Open questions: "Who was there?" "Where were you sitting?" "What happened next?" "Why did you do it?" "When did it happen?" "How did it happen?"

The above are open questions because the person asked cannot give a "yes" or "no" answer.

Leading questions may only be used in cross-examination. A leading question is one which suggests the answer desired by the questioner, usually by stating some facts not previously discussed and asking the witness to give a "yes" or a "no" answer. For example, a question which states: "You did that didn't you?" expects a "yes" answer, and one that states "You did not do that did you?" expects a "no" answer. Another example is the following:

Leading question: "So John, you never heard or saw Dan tell his younger brother that the plan was to steal the typewriter, did you?"

If a lawyer asks leading questions of their own witness, the opposing lawyer should object.

Objection: "Objection, your honour, counsel is leading the witness."

Possible response: "Your honour (or "Your worship"), leading is allowed in cross-examination" or "I will rephrase the question".

The question would not be leading if it were to be rephrased so that it does not ask for a "yes" or "no" answer.

Rephrased question: "What, if anything, did you hear Dan tell his younger brother about the plan to steal the typewriter?"

14.3.2 Rule 2: Witness goes beyond the question

Witnesses= answers must be in response to the questions. Answers that go beyond the questions are objectionable. This occurs when the witness provides much more information than the question calls for, for example:

Question: "Jabu, where do you work?"

Witness: "I am a teacher at the Village High School. On 15 August 2004, I saw the two boys holding the new Olympia typewriter. I knew that they were stealing the typewriter. Dan who was at the school door, obviously was the mastermind behind the theft."

Objection: "Objection, your honour, the witness is going beyond the question."

Possible response: "Your honour, the witness is telling us a complete sequence of events."

14.3.3 Rule 3: Relevance

Questions or answers that are irrelevant and add nothing to the understanding of the issue in dispute are objectionable. Questions and answers must be related to the subject matter of the case. This is called "relevance". Questions and answers that do not relate to the case are "irrelevant", for example: In a theft case, the police officer is asked: 'Officer Jabu, how many wives do you have?'

Objection: "Your honour, the question is irrelevant."

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Possible response: "Your honour, this series of questions will show that Officer Jabu's first wife was a teacher at the Village High School and was once assaulted by a student at the school."

(If Officer Jabu does not have such a wife, the response should be: "I will withdraw the question.")

In practice, the judge usually gives some freedom to the lawyers to ask questions, relying on the lawyers' good faith to ask questions that are relevant to the case.

14.3.4 Rule 4: Hearsay

Usually statements made by people who are not going to be called as witnesses in court cannot be used as evidence in the court case. Only statements made by people who are going to be called as witnesses can be used. This is because if people are not called to give evidence as witnesses the truth of their evidence cannot be tested by cross-examination in court.

There are many exceptions to the hearsay rule, but the only two that apply in mock trials are:

1. A witness may repeat a statement made by the accused provided that the witness actually heard the statement.
2. Statements made by the accused which go against his or her interest may be used as evidence.

This is because in both instances the accused will have a chance in court to dispute the truth of the statements. Examples of hearsay evidence that are allowed are the following:

Dash, a witness, says: "Mandla told mother that he would get his school fees somehow."

Objection: "Objection, your honour, this is hearsay."

Possible response: "Your honour, since Mandla is the accused, the witness can testify to a statement he heard Mandla make." Or, "Your honour, this is a statement against his own interest."

14.3.5 Rule 5: First-hand knowledge of events

Witnesses must testify about things that they themselves have seen, heard or experienced. For example:

Teacher Naranda testifies: "Mandla and Bert must have entered the typing room first."

Objection: "Your honour, the witness has no first-hand knowledge of who entered the typing room."

Possible response: "Your honour, the witness talked to the accused after the theft and was told what had happened."

14.3.6 Rule 6: Opinion evidence

Unless a witness is qualified as an expert in the area under question, the witness may not give an opinion about matters relating to that area of expertise. However, if the evidence is

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about something that ordinary people know about, an ordinary witness may give an opinion (e.g. whether it was a hot or cold day). For example:

Ordinary person: "Juvenile delinquency will continue to grow unless we use whippings on a regular basis" (This is an objectionable opinion unless it is given by an expert on juvenile delinquency).
Ordinary person: "Mandla seemed to be very frightened" is within the common experience of an ordinary witness.
Objection: "Your honour, the witness is giving an opinion."
Possible response: "Your honour, the witness may answer the question because ordinary persons can tell if someone is frightened."

14.3.7 Rule 7: Beyond the scope of cross-examination

In cases where the lawyer has reserved time to re-examine a witness after cross-examination, the lawyer on re-examination may only ask questions related to topics that the opposing lawyer raised during cross-examination. For example:

After cross-examination of Officer Duma in which the defence counsel only asked about the argument between the accused and his brother, the prosecutor in re-examination asks:
Question: "Officer, at what time did the teacher contact you from the Village High School?"
Objection: "Objection, your honour, counsel is raising matters not covered in cross-examination."
Possible response: "Your honour, by inquiring into the argument between the brothers, counsel opened the topic of the entire arrest process." Or, "I will withdraw the question."

14.3.8 Rule 8: Beyond the scope of the problem in the mock trial

This only applies to mock trials. Questions that go beyond the facts contained in the mock trial problem are objectionable. However, minor details regarding a character's role may be asked and added. For example:

Question: "Das, where did you attend secondary school?"
Objection: "Objection, your honour, this is beyond the scope of the problem."
Possible response: "Your honour, the witness is giving minor details to describe his background to the court. The facts will not have a significant impact on the outcome of the trial."

This objection only applies to mock trials and not real trials.

Special procedures

There are certain special procedures that have to be followed when introducing evidence or dealing with witnesses who are accomplices or who contradict themselves.

14.4.1 Procedure 1: Introduction of physical evidence

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The lawyers may wish to offer as evidence written documents or physical evidence, such as a stolen typewriter or a murder weapon. Special procedures must be followed before these items can be considered by the judge as evidence.

In the case of physical evidence, like a typewriter, the prosecutor must use the last person with the custody of the typewriter to get the evidence admitted to court. This person must then testify to the events to show that the typewriter has been under his or her control since the time the typewriter was brought to the police station. After testifying to this "chain of custody", the lawyer must ask the judge to admit the typewriter as Exhibit No. 1. Where documents are being entered into evidence the letters of the alphabet are used to identify them, e.g. Exhibit A.

Things other than documents are marked with numerals (e.g. Exhibit 1,2,3, etc.). Documents are marked with the letters of the alphabet (e.g. Exhibit A, B, C, etc.).

14.4.2 Procedure 2: Accomplice witnesses

Witnesses who are alleged to have participated in the crime charged in the trial, but have not yet themselves been charged, are called "accomplice witnesses". The use of their evidence against the person charged with the crime has to be considered with great care. This is because accomplice witnesses have a reason to lie to prevent them being prosecuted for the same crime. Making accomplice witnesses give evidence that could be used against them in a later prosecution is against the requirements of a fair trial in the Constitution.

A special procedure is used when accomplice witnesses testify. Accomplice witnesses are warned by the court that if they testify satisfactorily, the judge will order the prosecutor not to charge them with the crime that they are alleged to have committed. This is called granting the witness "immunity".

The prosecutor must inform the judge that the witness is being offered as an accomplice witness. The judge will then warn the witness. For example:

Judge to witness: "I am informed that you took some part in the offence charged here. If you tell the truth and give satisfactory evidence, I will order that you should not be prosecuted and that the things you say here will not get you into trouble in any way. Are you willing to be sworn in and to testify under these conditions?"
--

14.4.3 Procedure 3: Dishonest or confused witnesses

In cross-examination, the lawyer may want to prove that the witness should not be believed. This can be done by showing that the witness has said something before that is different from what the witness is now saying. The witness may have said something different when giving evidence earlier or may have made a sworn statement to the police which contradicted the evidence that he or she gave later.

For example, if a State witness gives evidence different from that given in the sworn statement, the prosecutor may hand the sworn statement to the defence and allow the



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defence lawyer to cross-examine the witnesses on the statement. The following steps should be used:

Step 1: Ask the witnesses if he or she recognises the affidavit.

Step 2: Ask the witnesses to read the section that differs from the present answer.

For example:

Defence lawyer: "Now, Naran, you testified in your direct examination that Mandla acted very nervously when you found the boys at the school on the night of 15th August, didn't you?"

Teacher: "Yes, that is what happened."

Defence lawyer: "Do you know what this paper is? Please tell the judge what it is."

Teacher: "Yes, that is my sworn statement to the police."

Defence lawyer: "Will you please read the second-last line of this paragraph?"

Teacher: "I thought that Mandla seemed quite open and natural about having the typewriter."

Defence lawyer: "That is sufficient, thank you."

14.5 Conducting a mock trial

The following steps should be taken before, and when, conducting a mock trial in a lower court such as a magistrate's or district court:

14.5.1 Lay out the court room

It is important for students to be familiar with the physical setting of the court room. The following diagram depicts the layout of a typical court room.

[

Lawyers conduct the trial while standing on their feet at the table for counsel. One lawyer remains seated while the other lawyer conducts his or her case.

14.5.2 Participants take their places

The lawyers, the accused (or parties in a civil case), witnesses, experts, registrar, court orderly, time keeper, and courtroom observers (spectators) take their places. The witnesses may or may not be allowed in court before they have given their evidence.

14.5.3 Orderly calls the court to order

As the judge or magistrate is about to enter the courtroom, the court orderly stands and says in a loud voice, "Silence in court!".

14.5.4 The registrar or clerk informs the judge or magistrate about the case

"Your honour, I am calling case (give name and number) for hearing."

14.5.5 The charge is put to the accused

The judge or magistrate asks the accused to stand: "Will the accused please stand?". The judge says to the accused: "Are you (name of the accused)? You are charged with the crime of

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(mentions the crime and puts the charge to the accused). How do you plead, guilty or not guilty?" The accused replies "guilty" or "not guilty".

14.5.6 Introduction of counsel

The judge or magistrate asks the counsel to introduce themselves e.g. "Who appears?"

14.5.7 Opening statement

The opening statement is the introduction to the case. Usually it is only done by the prosecutor who says what the charges are and what evidence will be led. In mock trials the defence lawyer usually says what the accused's defence is. The prosecutor always begins.

14.5.8 Prosecution case

The process of examining the witnesses begins. First the prosecutor's team presents its witnesses and evidence, then the defence team presents its witnesses and evidence. If the accused is going to give evidence he or she must be called first when the defence begins its case.

Each time a witness is called to the witness stand, the court orderly asks the witness whether he or she has any objection to taking the oath to tell the truth. If they do not the orderly administers the oath, by raising the right hand, and asking the witness to raise their right hand and asking: "Do you swear that the evidence that you are about to give is the truth, the whole truth and nothing but the truth? If so, raise your right hand and say, 'So help me God'." The witness should respond "So help me God".

If witnesses do not wish to take the oath they may make an affirmation in which case they are asked: "Do you affirm that the evidence that you are about to give is the truth, the whole truth and nothing but the truth?" – without any raising of the hand.

The lawyer who calls the witness asks a series of questions called "direct examination" (or "examination-in-chief"). These questions are designed to get the witnesses to tell their stories, saying what they saw, heard, experienced or knew about the case. The questions must ask only for facts, not for opinions -unless the witness has been declared an "expert" in the area under question or is giving an opinion about things in common experience. During direct examination the lawyer may only ask questions and may not make any statements about the facts, even if the witness says something wrong. Here the lawyer must use open-ended questions (see above para 14.3.1).

When the direct examination is completed, the lawyer for the other side then asks questions to show weaknesses in the witnesses' evidence through a process called "cross-examination". The purpose of the cross-examination is to show the judge that witnesses who give unfavourable evidence should not be believed because they: (a) cannot remember facts; (b) did not give all the facts during direct examination; (c) told a different story at some other time; (d) have a special relationship with one of the parties (maybe a relative or a close friend); or (e) bear a grudge against one of the parties. The cross-examination questions are designed

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to bring out one or more of these factors (see above para 14.3.1). Usually the questions are framed as statements with which the witness or the accused is asked to agree or disagree.

Sometimes, witnesses called by one side give evidence that helps the other side. The lawyer for the side getting the unexpected help should remember to use the evidence in the closing argument. After cross-examination, the prosecutor (or plaintiff's counsel) may "re-examine" the witness about matters that were raised in the cross-examination. No further cross-examination is permitted after the re-examination.

When the prosecutor has closed the prosecution case, the defence opens its case.

14.5.9 Defence case

The defence case is conducted in the same way as the prosecutor's case except that the defence calls witnesses for the direct examination and the prosecutor cross-examines. If the accused is going to give evidence, he or she must be called as the first witness. Again the defence may re-examine the witnesses but the prosecutor may not cross-examine again.

14.5.10. Closing argument

The purpose of the closing argument is to convince the judge that the evidence presented entitles the side that presented it to win the case. The closing argument should include:

- (a) a summary of the charges against the accused and what the law requires to be proved;
- (b) a summary of the evidence presented that is favourable to the presenting lawyer's case;
- and (c) a summary of how the law, when applied to the evidence and facts in the case, should enable the judge to rule in favour of the presenting lawyer's case.

New information may not be introduced in the closing argument. In a *criminal case* the prosecutor closes first, then the defence, and then the prosecutor may reply to any new points raised by the defence.

14.5.11 Deliberation and verdict

In making a decision, the judge considers the evidence presented and in order to determine the facts decides which witnesses were most credible or believable. Once having established the facts the judge applies the law to the facts and comes up with a decision in favour of one or other of the parties.

14.5.12 Time frames

To ensure that the mock trials are completed within a reasonable time, the following time limits are suggested:

Opening statement: 3 minutes each for the prosecution and defence.

Direct examination: 7 minutes for each witness (or 5 minutes, with 2 minutes reserved for re-examination).

Cross-examination: 4 minutes for each witness.

Closing argument: 3 minutes each for the prosecution and defence.

Reply 1 minute by the prosecution.

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If, during direct examination or cross-examination, a lawyer objects to a question of counsel or an answer of the witness, this time should not be counted as part of the allocated time. This means that when counsel argue about an objection and the judge rules on the objection "the clock stops" and the time taken is not counted towards the 7 minutes of the direct examination or the 4 minutes of cross-examination.

Counsel may "reserve" time in order to get a second chance to ask questions. So, for example, if the prosecutor reserves 2 minutes to re-examine one of the witnesses, he or she only gets 5 minutes for direct examination. The defence counsel will have 4 minutes of cross-examination, but the prosecutor will then have an additional 2 minutes for re-examination. There is no further cross-examination after re-examination.

If time limits are used, the time keeper should have time cards that read "2 min"; "1min"; "0". For each part of the trial that is timed, the time keeper should hold up the appropriate card to the judge and to the lawyer who is asking questions to let them know how much time is left.

14.6 Mock trial package: *S v Serjee*

S v Serjee is a mock trial package for a simple assault case that can be used by law teachers to show how the court process works. The mock trial can be based on the script or the students can role play the events. Law teachers should follow the instructions for conducting a mock trial in para 14.5 above.

14.6.1 Facts of the case

Juma and Betty go to a disco to dance on 20 July 2004. Serjee who has been drinking comes up to their table and says that he knows Betty. He tries to talk to her. Juma gets angry and asks Serjee to leave. An argument takes place and a fight follows. The police arrive and Serjee is arrested for assaulting Juma. Serjee claims that Juma caused the fight and he was only defending himself.

14.6.2 The charge against Serjee

The charge against Serjee reads as follows:

In the District Court of Durban (or some other town)
Serjee (hereafter referred to as the accused)
Is guilty of the crime of assault

In that upon or about the 20th day of July 2004 and at or near Dingo's Disco in the district of Durban the said accused did unlawfully and intentionally assault Juma by striking him in the face with his fist.

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Benedict John
Senior Public Prosecutor
September 2005

14.6.3 Evidence

There is no physical or documentary evidence in this case.

14.6.4 Witnesses

The following witnesses may assist the prosecution case:

1. Juma, the complainant.
2. Betty, Juma's girl friend.
3. Carol, Betty's friend.

The following witnesses may assist the defence case:

1. Serjee, the accused.
2. Naidu, a waiter at the disco.
3. Tom, a friend of Serjee's.

14.6.5 The law applicable

The prosecution will try to prove that Serjee assaulted Juma. Assault is defined as "an unlawful and intentional physical attack or the threat of an attack on another person".

Serjee's lawyer will try to show that Serjee was acting in self-defence. Self-defence allows a person who is unlawfully attacked by another to use reasonable force to defend him or herself. The force used, however, must be reasonable and equal to the attack that it has prevented. The person defending him or herself must not use excessive force and should run away instead of fighting if he or she is able to do so.

14.6.6 What must be proved?

In order to obtain a guilty verdict the prosecution must prove "beyond a reasonable doubt" that Serjee (a) unlawfully, (b) intentionally, (c) physically attacked or threatened to attack Juma. This means that the prosecution must prove all the elements of the crime beyond reasonable doubt.

Serjee may defeat the prosecution case by showing that any one of the elements was not proved beyond reasonable doubt by the prosecution. For example, Serjee could do this by showing that his act was not unlawful because he acted in self-defence. To prove self-defence Serjee would have to persuade the court that Juma attacked him first, he used reasonable force to defend himself and he could not run away because Juma prevented him from doing so.

14.6.7 What is the possible penalty?

If Serjee is found guilty of assaulting Juma he may be imprisoned or ordered to pay a fine.

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14.6.8 *Witnesses' statements*

Statement by Juma (prosecution witness and complainant):

My name is Juma and I live in Albert Park, Durban. I am 19 years old am studying for a Business Management degree at the University of KwaZulu-Natal. I am in my first year of study.

On the night of 20 July 2005 I had taken my girlfriend, Betty to the Dingo Disco in Main Street, Durban. While we were sitting at the table listening to the music a guy came up and started talking to Betty. I asked her if she knew him and she said "no". I then told him to leave. He was very drunk and kept bothering Betty. I then stood up and told him to leave before I called the manager. About the same time he raised his fists and when I turned to walk away he punched me on the nose with his fists. I fell to the floor with blood pouring from my nose which he had broken. Betty started screaming and Serjee walked away.

Statement by Betty (prosecution witness and girlfriend of Juma):

My name is Betty and I live in Albert Park, Durban. I am 19 years old and a first year arts student at the University of KwaZulu-Natal.

On the night of the 20th July 2005 I was with my boy friend Juma at the Dingo Disco when an old friend of mine, Serjee, came over to our table. Serjee had been drinking, and he grabbed my arm and told me to dance with him. Juma asked me if I knew him, and I said "no" because Juma is very jealous. Juma told Serjee to leave before there was trouble. Serjee did not leave and Juma stood up to argue with him. The next thing I knew was that they were fighting – hitting each other with their fists. I saw Juma fall to the floor with blood streaming over his face. I screamed and Serjee walked away.

Statement by Carol (prosecution witness and friend of Betty):

My name is Carol and I live in Albert Park, Durban. I am 18 and a half years old. I am a first year music student at the University of KwaZulu-Natal. I am a friend of Betty's and attend History of Music lectures with her at the University. I have seen Duma and Serjee at the Disco on previous occasions.

On the night of the 20th July 2005 I was with some friends at the Dingo Disco. I noticed Juma and Betty enter the Disco and sit at a table about two meters away from us. As I was talking to my friends and listening to the music I suddenly heard some loud shouting and looked up to see Serjee punching Juma. Juma fell to the floor with blood all over his face. Betty began screaming and Serjee walked away.

Statement by Serjee (the accused):

My name is Serjee and I live in Albert Park, Durban. I am 22 years old and a fourth year medical student at the University of KwaZulu-Natal. I also play in a band called Pulse which sometimes plays at the Dingo Disco.

On the 20th July 2005 I was at the Dingo Disco. I was walking around seeing who was there when I saw Betty. I had gone out with her for six months and not heard from her for the last couple of months. I went over and asked her how she was. I had had a couple of drinks

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but I was not drunk. I asked her to dance, and the guy next to her looked at me in a funny sort of way. I know Betty well and knew that she wanted to dance with me so I took her by the arm. Then this guy sitting next to her confronted me. I told him that I did not want any trouble. He jumped up and before I knew it he grabbed and hit me in the face. I hit him back but he only let go of me when I punched him on the nose and he fell to the floor. Betty started screaming and I walked away. I am usually a gentle person but if I had not hit the guy I would not have been able to get away from him.

Statement of Naidu (defence witness and waiter at Dingo Disco):

'My name is Naidu and I am 25 years old. I am employed as a waiter at the Dingo Disco in Durban. I know Serjee because he plays in a band here occasionally.

'On 20th July 2005 I was at the Dingo Disco. This one guy was sitting with a girl when Serjee went over to them. Serjee had only had two drinks. I know because I was waiting on his table. Serjee indicated to the girl that he wanted to dance, and then he held her arm to help her up. The guy she was with became angry and started shouting. Serjee smiled and told him to relax. The guy jumped up and grabbed Serjee. Serjee hit him back with his fist and they really started punching each other. The guy only stopped grabbing Serjee when he punched him on the nose and he fell to the floor bleeding. The girl started screaming and Serjee was able to walk away.

Statement of Tom (defence witness and friend of Serjee):

'My name is Tom and I am a fourth year medical student at the University of KwaZulu-Natal. I live in Albert Park, Durban. I am 23 years old and am a friend of Serjee. We have been together at medical school since first year.

'On the 20th July 2005 I was at the Dingo Disco. I was sitting at Serjee's table when he decided to walk around to see who was there. He saw his old girl friend, Betty, and went across to talk to her. It looked as if he asked her to dance because he took hold of her arm with his hand. This seemed to make the guy sitting next to her angry because he started shouting. He then suddenly jumped up grabbed Serjee. Serjee tried to escape but the guy started punching him. Serjee eventually punched him on the nose and the guy fell to the floor. At the same time Betty started screaming. Serjee was now free from the guy's clutches so he was able to walk away. Serjee is a gentle person he would never knowingly hurt anyone – he punched the guy to free himself.

14.6.9 Conducting the mock trial

The case of *S v Serjee* can be conducted as a mock trial over a period of three and a half hours. Two and a half hours for preparation (on the steps in a mock trial, the simple rules of evidence, ascertaining the facts, discussing the criminal charge and the law, and preparing the questions and arguments) and one hour to present the case.

The law teacher should use the following steps to prepare for and conduct the mock trial:

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Step 1: Explain the purpose of a mock trial, its steps and the simple rules of evidence.

Step 2: Get the students to read the facts of the case and check that they understand them.

Step 3: Get the students to read the charge and check that they understand it.

Step 4: Explain the law to the students and what the prosecution and defence will have to do to succeed in their cases.

Step 5: Get the students to read each statement and highlight the parts of the statements that assist the prosecution and which help the defence.

Step 6: Divide the students into teams for the prosecution and the defence as well as judges and court officials (see para 14.6.10).

Step 7: Get the students in their teams to prepare questions for direct examination, cross-examination and re-examination of their witnesses and the accused. They should also prepare their opening statements and closing arguments and for any objections they may wish to raise should certain questions be asked. In doing so they should take into account the previously highlighted facts in each statement that supports their case and need to be brought to the attention of the court. While preparing their questions students must bear in mind the simplified rules of evidence mentioned in para 14.3 above. Students acting as judges, the registrar, the court orderly and the time keeper should also be briefed on their roles.

Step 8: When the students are ready the mock trial should be conducted using the steps in the mock trial mentioned in para 14.2 above.

Step 9: At the end of the exercise the law teacher should debrief the mock trial.

14.6.10

Teams for the mock trial

Prosecution team

1. Prosecutor: Opening statement.
2. Witness: Juma.
3. Witness: Betty.
4. Witness: Carol.
5. Prosecutor: Direct examiner of Juma.
6. Prosecutor: Direct examiner of Betty.
7. Prosecutor: Direct examiner of Carol.
8. Prosecutor: Cross-examiner of Serjee.
9. Prosecutor: Cross-examiner of Naidu.
10. Prosecutor: Cross-examiner of Tom.
11. Prosecutor: Closing argument.

Defence team

1. Defence lawyer: Opening statement.
2. Accused: Serjee.
3. Witness: Naidu.
4. Witness: Tom.

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5. Defence lawyer: Direct examiner of Serjee.
6. Defence lawyer: Direct examiner of Naidu.
7. Defence lawyer: Direct examiner of Tom.
8. Defence lawyer: Cross-examiner of Juma.
9. Defence lawyer: Cross-examiner of Betty.
10. Defence lawyer: Cross-examiner of Carol.
11. Defence lawyer: Closing argument.

Court officials

1. Judge or judges/assessors.
 2. Registrar of the court.
 3. Court orderly.
 4. Time-keeper.
-



3. Elements of an Effective Street Law Lesson

David McQuoid-Mason

1. HUMAN RIGHTS/LAW/ETHICS/ PRACTICE AND PROCEDURES.
2. POLICY CONSIDERATIONS.
3. CONFLICTING VALUES.
4. INTERACTIVE TEACHING STRATEGY.
5. PRACTICAL ADVICE.



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Session IV: Demonstration: Small Group Work – Introduction Human Rights

4. Lesson Plan

1. **TOPIC:** *THE TOPIC OF THE LESSON*

2. **AIM:** THE OBJECTIVE OF THE EXERCISE IS FOR PARTICIPANTS TO BE ABLE TO EXPLAIN, DO OR APPRECIATE SOMETHING

3. **PROCEDURE:** THE ACTIVITIES THAT WILL BE CONDUCTED TO ACHIEVE THE AIM OF THE EXERCISE, FOR EXAMPLE:

- 3.1 INTRODUCTION: BRAINSTORM ON MEANING OF CONCEPT.
- 3.2 ALLOCATE ONE QUESTION TO EACH GROUP.
- 3.2 SMALL GROUP DISCUSSIONS ON QUESTIONS.
- 3.3 REPORTS BACK.
- 3.6 GENERAL DISCUSSION.

4. **TIME FRAMES:** THE TIME REQUIRED FOR EACH ACTIVITY:

- 4.1 INTRODUCTION: 7 MINUTES.
 - 4.2 ALLOCATION OF QUESTIONS: 3 MINUTES.
 - 4.2 SMALL GROUP DISCUSSIONS: 15 MINUTES.
 - 4.3 REPORTS BACK: 20 MINUTES.
 - 4.4 GENERAL DISCUSSION: 5 MINUTES.
- TOTAL: 50 MINUTES.

5. **RESOURCES:** LIST THE RESOURCES NECESSARY TO TEACH THE LESSON (EG HAND-OUTS, FLIP CHART, PENS ETC)

6. **CHECKING QUESTIONS:** PREPARE QUESTIONS TO CHECK KNOWLEDGE OF STUDENTS

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1. **TOPIC:** **INTRODUCING HUMAN RIGHTS**

2. **OUTCOMES:** AT THE END OF THIS LESSON YOU WILL BE ABLE TO:
 - 2.1 EXPLAIN WHAT RIGHTS SHOULD BE IN A BILL OF RIGHTS
 - 2.2 DECIDE WHAT ARE THE MOST RIGHTS.
 - 2.3 EXPLAIN WHICH RIGHTS ARE IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR).

3. **CONTENT:** 3.1 SMALL GROUP WORK: LISTING RIGHTS (10 MINUTES).
 3.2 SMALL GROUP WORK: RANKING HUMAN RIGHTS (5 MINUTES).
 3.3 REPORTS BACK FROM GROUPS (20 MINUTES).
 3.4 COMPARING STUDENTS' LISTS WITH THE UDHR (10 MINUTES).
 3.5 DISCUSSION (5 MINUTES).

4. **RESOURCES:** PHOTOCOPY OF UDHR
 BLACKBOARD/FLIPCHART

5. **CHECKING QUESTIONS:** QUESTION AND ANSWER ON UDHR

5. UNIVERSAL DECLARATION OF HUMAN RIGHTS (1948)

1. ARTICLE 1: RIGHT TO EQUALITY.
2. ARTICLE 2: RIGHT TO FREEDOM FROM DISCRIMINATION.
3. ARTICLE 3: RIGHT TO LIFE, LIBERTY, PERSONAL SECURITY.
4. ARTICLE 4: RIGHT TO FREEDOM FROM SLAVERY.
5. ARTICLE 5: RIGHT TO FREEDOM FROM TORTURE, DEGRADING TREATMENT.
6. ARTICLE 6: RIGHT TO RECOGNITION AS A PERSON BEFORE THE LAW.
7. ARTICLE 7: RIGHT TO EQUALITY BEFORE THE LAW.
8. ARTICLE 8: RIGHT TO REMEDY BY A COMPETENT COURT.
9. ARTICLE 9: RIGHT TO FREEDOM FROM ARBITRARY ARREST, EXILE.
10. ARTICLE 10: RIGHT TO FAIR PUBLIC HEARING.
11. ARTICLE 11: RIGHT TO PRESUMPTION OF INNOCENCE UNTIL PROVED GUILTY.
12. ARTICLE 12: RIGHT TO PRIVACY.
13. ARTICLE 13: RIGHT TO FREEDOM OF MOVEMENT.
14. ARTICLE 14: RIGHT TO ASYLUM IN OTHER COUNTRIES.
15. ARTICLE 15: RIGHT TO NATIONALITY AND FREEDOM TO CHANGE IT.
16. ARTICLE 16: RIGHT TO MARRIAGE AND A FAMILY.
17. ARTICLE 17: RIGHT TO OWN PROPERTY.
18. ARTICLE 18: RIGHT TO FREEDOM OF BELIEF AND RELIGION.
19. ARTICLE 19: RIGHT TO FREEDOM OF OPINION AND INFORMATION.



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20. ARTICLE 20: RIGHT OF PEACEFUL ASSEMBLY AND ASSOCIATION.
21. ARTICLE 21: RIGHT TO PARTICIPATE IN GOVERNMENT.
22. ARTICLE 22: RIGHT TO SOCIAL SECURITY.
23. ARTICLE 23: RIGHT TO DESIRABLE WORK AND TRADE UNIONS.
24. ARTICLE 24: RIGHT TO REST AND LEISURE.
25. ARTICLE 25: RIGHT TO ADEQUATE LIVING STANDARD.
26. ARTICLE 26: RIGHT TO EDUCATION.
27. ARTICLE 27: RIGHT TO PARTICIPATE IN CULTURAL LIFE.
28. ARTICLE 28: RIGHT TO SOCIAL ORDER OF HUMAN RIGHTS.
29. ARTICLE 29: COMMUNITY DUTIES FOR FREE AND FULL DEVELOPMENT.
30. ARTICLE 30: FREEDOM FROM INTERFERENCE IN ABOVE RIGHTS.

UDHR.ABBREVIAT



Session V: Demonstration: Game - Why We Need Laws

6. Why We Need Laws: The Pen Game

2. **Aim:** the objective of the game is for participants to be able to explain why we need laws in society and what kinds of laws exist in a democratic society.
3. **Procedure:** the game is played as follows:
 - 3.1 The educator announces that the need for some sort of legal system will be illustrated playing the pen game.
 - 3.2 The educator divides the participants into teams. The educator designates the first participant in each row on the left as a team captain and makes sure that each participant has a pen (or pencil or any other suitable object). Once the captain in each row has a pen or similar object the participants are told to begin playing.
 - 3.3 Participants get confused by the lack of directions and soon some may become angry. After a minute or two the educator stops them and tells them that they are not playing the game properly.
 - 3.4 The instructor tells the participants that the rules of the game require the team captains to pass the pens or other objects to the team members on their right. The participants begin playing again but the educator stops the game and tells them that they are still not playing it properly.
 - 3.5 The instructor tells the captains to hold the pen or other object in their left hand and then pass it to the person on their right. The instructor again stops the game and tells the participants that they are still not playing the game properly.
 - 3.6 The instructor tells the captains to hold the pen or other object in their left hands; then to put it into their right hands; and then to pass it to the person on their right. The instructor again stops the game and tells the participants that they are still not playing the game properly.
 - 3.7 The instructor tells the captains to hold the pen or other object in their left hands; then put it into their right hands; and then to put it into the left hand of the person on their right. The instructor again stops the game and tells the participants that they are still not playing the game properly.
 - 3.8 The instructor tells the captains to hold the pen or other object in their left hands; then put it into their right hands; then to put it into the left hand of the person on



their right; and then to leave out people who are not wearing rings. The instructor then points to one team and declares them the winner.

3.9 When the winners are announced, most of the remaining participants are likely to be angry about how the game was played. This anger is used as a basis for discussion. The instructor can begin with the following questions: what made you angry about the way the game was played? Why was it unfair?

3.10 The answers should be directed to emphasize five main elements:

3.9.1 A game cannot be enjoyed without a clear and consistent set of rules announced to all players before it begins. The same applies to laws in society. (For example, the courts will sometimes refuse to enforce laws which are written in an unclear way or are too vague).

3.9.2 The rules cannot be changed in the middle of the game without feelings being hurt. The same applies to laws. (For example, laws cannot be changed to make previously lawful conduct unlawful without warning people about the change beforehand. People cannot be charged with doing something which only became a crime after they did it).

3.9.3 Participants cannot be excluded from games without good reason. For instance, groups of individuals should not be arbitrarily discriminated against on the basis of race, gender, sex, ethnicity, religion, nationality or any other unreasonable reason.

3.9.4 The winners of the game were arbitrarily selected. In a democratic society people have access to impartial, independent courts where judges listen to the arguments of both sides and apply the law to the facts to reach a decision.

3.9.5 The participants were not consulted about the rules – they were imposed and the instructor behaved like a dictator. In democratic societies people elect representatives who make the laws that govern them.

4. Time frames:

4.1 introductions to game: 3 minutes.

4.2 play the game: 7 minutes.

4.3 debrief the game: 10 minutes.

4.4 general discussion: 5 minutes.

total: 25 minutes

5. Answers:

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5.1 the participants should be encouraged to see the relationship between the rules of the pen game and laws in a society. Before leaving the game, the instructor should try to develop a definition of what law should be, based on the experience of the participants in the game. Obviously the theory of what the law *should be* is not always what *it actually is* in practice. The difference between theory and practice will often come up when using interactive teaching methods.

5.2 A definition of law may read as follows: *the set of rules a group or community uses to control the conduct of the people within it. These rules should be clear, consistent, fair, should not change without notice, and should treat people equally*).



Session VI: Demonstration: Taking A Stand Using Pres Formula: Capital Punishment

7. Taking A Stand: Capital Punishment

“Taking a stand” requires students to stand up for their point of view by physically standing up and verbally justifying their position. A controversial topic should be chosen.

As an example, students might be asked who are in favour and who are against the death penalty. Students would then have to take a stand under a placard stating “in favour”, “against” or “undecided”, and would have to articulate their opinions on the death penalty.

The following procedure can be followed:

Step 1: prepare placards with headings: “in favour”, “against” and “undecided” or other suitable headings.

Step 2: introduce the topic of the death penalty. Tell students that they may move their position if they hear a particularly good or bad argument.

Step 3: request students to take a stand under the placard that reflects their point of view.

Step 4: get students to justify their position by making a single argument – alternatively giving students under each placard an opportunity to express their point of view.

Step 5: get any students who moved their position to give their reasons for doing so.

Step 6: test the consistency of the student’s positions by introducing questions involving extreme examples (e.g. in a death penalty debate check whether those against would say that even adolf hitler who was responsible for killing millions of people should not be given the death penalty – had he been caught alive).

Step 7: summarize the discussion and conclude.

To assist the students in articulating their viewpoints in a logical manner they may be required to use a formula like the pres formula (see para13.17).

“taking a stand” not only teaches students the skill of articulating an argument but also requires them to clarify their values.

8. Thinking On Your Feet – The ‘Pres’ Formula

The pres formula has been developed to help students, particularly law students, to construct a logical argument when asked to think on their feet.

The pres formula requires students to present their arguments by expressing the following: (a) their point of view; (b) the reason for their point of view; (c) an example or evidence to support their point of view; and (d) to summarize their point of view.

For example, opinions on the death penalty could be articulated as follows using the pres formula:

1. Argument in favour of the death penalty for murder
 My point of view is that i am in favour of the death penalty for murder.
 The reason is that i believe that if you unlawfully take someone’s life you deserve to lose your own.
 The evidence for my point of view is the old testament of *the bible* that says “an eye for an eye and a tooth for a tooth”.
 Therefore in summary i am in favour of the death penalty for murder.

2. Argument against the death penalty for murder
 my point of view is that i am against the death penalty for murder.
 the reason is that judges can make mistakes.
 An example is the english case of timothy evans who was found to have been innocent after he had been executed.
 Therefore in summary i am against the death penalty for murder.

3. Undecided argument on the death penalty for murder
 My point of view is that i do not know whether i am in favour or against the death penalty for murder.
 The reason is that i do not know whether it makes any difference to the murder rate in a country.
 For example in the united states of america where some states have the death penalty and others do not the murder rate stays the same.
 Therefore in summary i do not know whether i am in favour or against the death penalty for murder.



Steps when teaching the pres formula:

Step 1: introduce and explain the pres formula.

Step 2: demonstrate the pres formula.

Step 3: pose questions to individual students on controversial issues and ask them to immediately use the pres formula.

Step 4: debrief and conclude on the value of the pres formula.

The pres formula can be combined with other learning methods such as “take a stand” (see above para 13.16). If students are required to make submissions rather than to express a point of view the pres formula can become the sres formula (submission, reason, evidence/example and summary). The pres formula teaches the valuable skill of being able to think on one’s feet.



Session VII: Group Work on Developing a Street Law Lesson Plan (Choosing a topic)

9. The Case of the Kidney Patient

Soobramoney suffers from a serious kidney disease which requires regular kidney dialysis treatment for his survival. If he is not given treatment he will die. Soobramoney cannot afford treatment from private clinics and approaches a state hospital for dialysis treatment. The hospital refuses to treat him because dialysis treatment is very expensive and it has limited resources to provide such treatment. The hospital says that he does not meet its criteria for treatment.

The hospital only has a limited number of kidney dialysis machines. The hospital's policy states that patients suffering from irreversible chronic kidney disease will only qualify for dialysis if the patient is a good candidate for a kidney transplant. However, in order to be eligible for a transplant the patient must not have other significant diseases. Unfortunately Soobramoney suffers from other significant diseases.

Soobramoney brings an urgent application in the South African High Court for an order directing the hospital to provide dialysis treatment for him. He bases his application on three provisions of the Bill of Rights in the South African Constitution:

Article 11	Everyone has the right to life.
Article 27(1)(a)	Everyone has the right to health care services, within the available resources of the state.
Article 27(3)	No one may be refused emergency medical treatment.

The State opposes Soobramoney's application on the grounds of three provisions of the Bill of Rights:

Article 27(1)(a)	As set out above.
Article 27(3)	As set out above.
Article 36(1)	Any right in the Bill of Rights may be limited if the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.

The hospital also argues that Soobramoney's case does not qualify as 'emergency' medical treatment.

Questions

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1. If you were the lawyers for Soobramoney what arguments would you make?
2. If you were the lawyers for the hospital what arguments would you make?
3. If you were the judges what would your decision be?

10. Lesson Plan: The Case Of The Kidney Patient

1. **Topic:** the case of the kidney patient
2. **Outcomes:** at the end of this lesson students will:
 - 2.1 be able to explain why it may be difficult for citizens to enforce socio-economic rights in a country with scarce resources.
 - 2.2 have participated in a case study and observed or experienced how lawyers construct and present arguments.
 - 2.3 have participated in a case study and observed or experienced how judges make their decisions.
 - 2.4 be able to explain how arguments are presented in a court of law.
3. **Content:**
 - 3.1 instructor to introduce facts of *soobramoney v minister of health, kwazulu-natal* and ensure that everyone understands them (5 minutes).
 - 3.2 divide the participants into three large groups: one to act as lawyers for the applicant; one to act as lawyers for the state; and one to act as the judges (2 minutes).
 - 3.3 participants in large groups to be subdivided into smaller groups of not more than five per group (3 minutes).
 - 3.4 small groups to prepare arguments for their side of the case. The judges will consider possible judgements but will have to listen to the arguments before passing a judgement (10 minutes).
 - 3.5 groups divided into mini-moot triads: set up groups of three in mini-courts with a lawyer for the applicant, a lawyer for the state, and a judge in each (5 minutes).
 - 3.6 judges conduct mini-courts in triads (three min for lawyers for applicant, three min for lawyers for the state, one min reply by applicant, three minutes for judges to give judgments (10 minutes).
 - 3.7 judges report back on their decisions (5 minutes).
 - 3.8 debrief the lesson by asking the participants what they thought of the judgements and what they experienced in their different roles (5 minutes).



4. **Resources:** photocopy of *soobramoney v minister of health, kwazulu-natal*.
5. **Checklist:** questions and answers on access to health care and limited resources.

11. A Case Of Spouse Abuse

Late one night you hear screams, bangs and crashes. You look out and see your neighbor Mrs Ho being slapped and punched by her husband as she tries to walk out of the door. Before she can run away Mr Ho pulls her back into the house and slams the door. You know that Mr Ho has a drinking problem and that this is not the first time he has beaten up his wife.

1. If you were the neighbor, what would you do? Would you call the police? If you would, what would you tell them? If you would not call the police, explain why not.
2. Suppose you are a police officer and you receive a call that Mr Ho is beating up his wife. When you and a fellow officer arrive at the Ho's you find that Mrs Ho is cut, bruised and beaten up. Roleplay you and your colleague talking to the Ho's.
3. Acting as the police, decide what you would do in this situation. Would you question the couple? Would you arrest Mr Ho? Would you take Mrs Ho out of the house?
4. Acting as Mr Ho, decide how you would react to the police in this situation. Acting as Mrs Ho decide how you would react. Would you lay charges against your husband? Would you stay in the house? Would you do something else?
5. Suppose you are the Magistrate dealing with the Ho=s case. Would you send Mr Hoto jail? Would you take some other action?
6. What programs are available in your community to help abused women? Are there places where abused women can go if they decide to leave home?



12. Lesson Plan: A Case Of Domestic Violence

1. **Topic:** domestic violence
2. **Outcomes:** at the end of this lesson you will be able to:
 - 2.1 explain what is meant by domestic violence.
 - 2.2 have participated in a role play illustrating the problems involved in domestic violence.
 - 2.3 Decide how you would respond to issues of domestic violence.
 - 2.4 explain what legal and other remedies are available to deal with domestic violence.
3. **Content:**
 - 3.1 Brainstorm meaning of domestic violence (5 minutes).
 - 3.2 Preparation for roleplay: small group discussions on roles of neighbour, wife, husband, police and judge in the domestic violence case (10 minutes).
 - 3.3 Roleplay domestic violence case with volunteers chosen from small groups (10 minutes).
 - 3.4 debrief roleplay: questions on feelings of various players (5 minutes).



- 3.5 question and answer on remedies: debrief to legal and other remedies (10 minutes).
- 3.6 review students’ understanding of the concept of domestic violence, how they would react, and legal and other remedies (5 minutes).

- 4. **Resources:** handout of a case of domestic violence.
- 5. **Checking questions:** questions and answers on spouse abuse.

Session VIII: Group Work on Developing a Street Law Lesson Plan

NOTES:



NOTES:

DAY 5

Materials

Day Coordinator: Mariana Berbec-Rostas



Group 2: Presentation of Street Law Lesson

NOTES:

Group 4: Presentation of Street Law Lesson

NOTES:

Session VII. Practical Tips for Implementing Street Law Curriculum



13. Pannasastra University of Cambodia Training Curriculum for Community Legal Education Program

Starting from September 2005, to March 2006

TERM I-II

No.	Subjects/ topics	Date & time: 12:00-1.30 PM	Hours
1.	Class orientation	September 20, 2005	1.5hrs-2hrs
2.	Introduction to Law	September 22, 27 & 29, 2005	4.5hrs
3.	Cambodia Judicial System	October 4, 6, 11, & 13, 2005	6hrs
4.	Cambodian Criminal law and Criminal Procedure	October, Nov 2 & 3, 2005	6hrs
5.	Cambodian Civil law and Civil Procedure	November 8, 11, 15, & 17, 2005	6hrs
6.	Student In-Class Lesson Plans and Debrief	November 22, 23, & 24, 2005	4.5hrs
7.	Legal and Argumentative Writing	December 1, & 2, 2005	3hrs
8.	Human Rights and International Instruments	December 6, 7, & 8, 2005	4.5hrs
9.	Liberty, Right to Life, Property Right	December 13, & 15, 2005	3hrs
10.	Freedom of Expression & Defamation	December 20, 2005	1.5hrs
11.	Right of Access to Justice	December 22, 2005	1.5hrs
12.	Constitutional Law & Constitutional Rights	January 3, 4, & 10, 2006	4.5hrs
13.	Women Rights	January 11, 17, & 18, 2006	4.5hrs
14.	Children Rights	January 24, 25, & 31, 2006	4.5hrs
15.	Alternative Dispute Resolution	February 1, 7, & 8, 2006	4.5hrs
16.	Khmer Rouge Tribunal & Truth Reconciliation	February 14, 15, & 21, 2006	4.5hrs
17.	Democratization and Roles of Citizens	February 22, 28, & March 1, 2006	4.5hrs
18.	Advocacy and Legal Aid	March 7, 8, 14, 15, 06	6hrs
19.	Civic Education and Legal Responsibility	March 20, & 21, 2006	3hrs

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20.	Wrap Up and Class Evaluation	March 28, 2006	1.5hrs
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14. Pannasastra University of Cambodia
Training Curriculum for
Community Legal Education Program
(formerly known as “Street Law”)
 Starting from March 2006 to November, 2006

2006-TERM III-IV

No.	Subjects/ topics	Hours
1	Class orientation	1.5hrs
2	Teaching Methodologies	2hrs
3	Introduction to Law	3hrs
4	Constitutional Law and Rights	3hrs
5	Civic Education/Professional Responsibility	1.5hrs
6	Teaching Methodologies/Lesson Plan Writing and Journal Writing	4.5hrs
7	Cambodia Judicial System	4.5hrs
8	Cambodian Civil Law and Procedure	4.5hrs
9	In Class Lesson Plans and Debriefing	3hrs
10	Cambodian Criminal Law and Procedure	4.5hrs
11	Rights of Accused	3hrs
12	Legal Aid	3hrs
13	Labor Law	4.5hrs
14	Contracts and Tort Law	4.5hrs
15	Human Rights and International Instruments	4.5hrs
16	Property Rights and Cambodia Land Law	4.5hrs
17	Family Law	4.5hrs
18	Juvenile Justice and Children’s Rights	4.5hrs
19	Domestic Violence	1.5hrs
20	Human Trafficking	1.5hrs
21	Health and the Law/HIV/Aids	1.5hrs
22	Conflict Resolution and Peace building	4.5hrs
23	Wrap Up/Class Evaluation, Paper Due	1.5hrs

**Session VIII. Establishing and Running Sustainable
Clinic
(Mariana Berbec-Rostas)**


**15. Practical Steps to Establish Legal Clinic at
Law Faculty**



Stage 1. Preparation/Needs Assessment



1. What is the current structure and curriculum approval process at your law faculty/university?
2. What is the individual course structure (syllabus)?
3. What methodology is used for teaching at the faculty?
4. What practical experience students get within the existing curriculum? How efficient it is?
5. What kind of social and legal problems the students could work on – vulnerable groups protection, lack of legal awareness and education, etc.
6. Based on the previous Q, what model of the clinic would be best fit within the given setting of the university?




Stage 1 Needs Assessment 2

- Where will the clinic be organized?
 - Which department within law school will be responsible for the clinical course; where (physically) the law clinic office will be placed;

- What are clinic's goals & objectives ?
 - Develop clinic's main goals and objectives – educational (to teach and develop knowledge, skills, and values about lawyering) and service provision (to provide legal counseling to underrepresented/vulnerable groups, to teach laypersons about law and human rights, to train paralegals, etc.);

- What is clinic's mission?
 - Based on the above defined goals, develop the mission for your clinical program – one paragraph outlining what your clinic is and what it does;




Stage 1: Curriculum Design

Pre-Curriculum Work:

- What are the requirements for introducing/approving a new course at the faculty?
- What area/-s of law the clinical course will cover? E.g. civil, criminal, administrative, human rights, interdisciplinary, etc.
- When would it be best for students to enroll in the clinic (level/year) and for how long (length of the course in academic hours)?
- What kind of a course will it be – mandatory/optional?
- What academic credit students will be awarded?

Stage 1: Curriculum Design 2

- How will students be selected?
- What would be the syllabus structure? How many hours will be allocated to the theoretical knowledge, lawyering skills and values? How many hours for practicing the skills and reflecting and evaluating?
- How will students be evaluated during and at the end of the course?
- What kind of teaching and background materials will be needed to teach the course?



Stage 1. Legal Practice: General

- What kind of practical legal work students will be engaged in? Types of cases, profile of potential clients, partner organizations, etc. E.g. legal counseling, representation, legal education, etc.
- Which lawyering skills are fundamental for the above mentioned work? E.g. interviewing/counseling, legal analysis and reasoning, communication, research, investigation, teaching and methodology, trial advocacy, etc.
- What additional theoretical knowledge will be needed for legal practice component?
- What initial methodology training is needed for faculty to teach interactively and practice-oriented?

Stage 1. Legal Practice: Case work

- Who will be the client of the clinic?
- How the cases will be selected (in legal aid clinic)?
- What are the general practice rules in the country?
- What minimum legal practice standards and rules should be considered by the clinic?
- How teachers or lawyers will be supervising casework of students? What additional supervision work is needed – human and financial resources for legal representation?



Stage 2. Project Design and Proposal

Describe all the above – curriculum and case work into a project proposal that will follow the below structure:


1. **Overview:** a short description of the project, its main objective/-s, target group/-s, main activities, and projected results for the target groups;
2. **Background/Rationale:** why this project is proposed and what is the background historical, legal, and socio-economic environment where the initiative is to be launched;
3. **Goals and Objectives:** what is project trying to achieve? List short-, mid-, and long-term objectives;
4. **Target Group/-s:** who will benefit from this project and how? List each target group separately and describe their situation shortly;

Stage 2. Project Design and Proposal 2



- 5. Duration of the Project;
- 6. Project Partners: who is in charge of the implementation of the project; what other partners are contributing and how;
- 7. Description of Main Activities under each objective: what will project partners do to achieve the objectives set;
- 8. Detailed Work plan according to proposed activities under 7;
- 9. Detailed Budget;
- 10. Progress and Final Evaluation Criteria: how the project activities will be assessed and by whom?





Stage 3. Launch and Piloting

- **Design Teaching Materials and Tools:** work on preparation of lesson plans and teaching materials for the lawyering skills classes, design class schedule for both lawyering training and supervision work, et al.
- **Design Office and Case Management Rules:** rules designed for students to follow when working in the legal clinic – relations with clients, file management, reporting to supervisors, office equipment, etc.
- **Work with support staff and contributors:** - clarify roles and functions, design office structure of reporting and duties, meet with supervisors and partners on the cases and case supervision;
- **Select Students for the Clinic:** according to criteria for selection;



Stage 4. Evaluation and Needs Assessment

- Description of Activities and main achievements over the project period;
- Lessons learned from both successes and failures during the project;
- How challenges were overcome?
- What would need to be changed or adapted for the second cycle of the project?
- What public relations are needed for the clinic’s institutionalization and fund-raising?
- What would be the medium and long term plan for the clinic (strategic planning)?



16. Setting up a live client clinic: a checklist¹⁶⁹

In working through this checklist you are advised also to consult the CLEO Model Standards.

Educational goals and outcomes

1. What are the goals of the proposed clinic?
2. Where does it fit into and contribute to the curriculum?
3. What is the intended learning outcomes derived from those goals?
4. What type of clinic will best meet those goals and outcomes:
 - Live client or simulation?
 - In-house or externship?
5. On what types of cases should the clinic work to fulfill those goals and outcomes?
6. Which, if any, of those goals or outcomes may need to revised or scaled down because of resource constraints?

Staffing

7. What is your intended staff:student ratio?
8. How many teaching staff do you need (based on what assumption in respect of student numbers and contact hours)?
9. What experience or qualifications should each teacher have (distinguish between faculty and field supervisors if appropriate)?
10. What training should clinical teaching staff have:
 - completed before supervising students?
 - as on-going staff development?
11. What support staff do you need:
 - administrative?
 - secretarial?
 - technical?
12. What experience should each member of your support staff have?
13. What training are clinical support staff likely to:
 - require before the clinic accepts clients?
 - need as on-going staff development?

Resources

14. What is the intended duration of the clinic? (in 'teaching' weeks)?
15. How will the clinic manage the academic vacation breaks?
16. Have you identified (a) physical location(s) for the clinic?

¹⁶⁹ Source: <http://www.ukcle.ac.uk/resources/trns/clinic/checklist.html> .



17. Is the location reasonably accessible to students and clients with a disability?
18. Are there any safety or security issues that need to be addressed at that location?
19. How much dedicated office space (if any) does the clinic require (seats/hours/weeks):
 - for clients' access to the clinic (consider also accessibility issues here)
 - for student-centred or student-directed clinical activities
 - for supervision by clinical teaching staff
 - for dedicated support staff
20. How much dedicated teaching space (if any) does the clinic require (seats/hours/weeks):
 - for face-to-face teaching
 - for student group work
21. What other physical resources does the clinic require:
 - furniture
 - document storage
 - computers and peripherals
 - telephone, fax and copying facilities
 - stationery and legal forms
 - other consumables
22. What additional library resources does the clinic require?
 - consider also whether these should be located in the main law library or as a separate facility in the clinic suite (and security issues, if any)
23. What indemnity cover have you arranged?

Case management

24. Create systems for recording all stages of a case, for example:
 - intake appointments system and day book
 - secure client filing system
 - attendance notes, telephone messages, record of interview, court/tribunal attendance and representation
 - diaries (client appointments, court/tribunal appointments, limitation)
 - client database and conflicts checker
25. Create an office manual for the clinic detailing office procedures, professional standards and matters of 'house style'.
26. Establish office account or arrange institutional facility for dealing with case related expenses, for example travel costs, court and expert fees (if any).
27. Determine what documents are to be available as standard (for example, client care letters, terms and conditions of retainer etc) and which are to be drafted case-by-case by students.
28. Determine a workable system for referrals to other agencies, as appropriate.

Preparing student activity

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29. Devise induction and orientation programme and any on-going training to be run by clinic staff.
30. Consider devising a learning contract to be agreed between student and supervisor (may be particularly valuable on externship programmes).
31. Draft assessment tasks and criteria.
32. Devise record and evaluation forms for recording outcomes of clinical supervision.
33. Consider whether you intend to use a virtual learning environment as part of the programme. If so, for what purpose(s)?



17. Academic Standards for Legal Clinics’ Organization and Activities within Bulgarian Law Faculties

I. Necessity of legal clinics in legal education

Bulgarian legal education is traditionally orientated at offering students very high level of theoretical knowledge. Students’ practical education takes place after the graduation in the form of traineeship with the judiciary or by an attorney. The Ordinance on State Requirements does not provide for practical education during the studies except for two-week traineeships. However, these traineeships tend to be insufficient, ineffective and formal. All these determine the need of legal clinics’ introduction as a subject in legal education.

II. Objectives

Formulating clinical education objectives is of substantial significance for settlement of all other issues related to its organization. On the basis of the so far gained experience, we consider that the objectives of the clinical education might be formulated in the following way:

- 1. Acquiring of practical knowledge and skills by law students during the time of their studies;**
- 2. Providing free legal assistance to disadvantaged citizens.**

III. Organizational building

The world practice shows that there are two established basic models for legal clinics’ set up and functioning:

- The legal clinic is being established and set up within the university structure. This is made through decision of university governing body. The legal clinic is a separate unit within the legal faculty.
- The legal clinic is registered as a separate non-profit legal person.

The biggest part of the currently established legal clinics follow the second model, but there is also clinical education organization established as a unit within the respective university.

1. Types of legal clinics.

The question related to the types of legal clinics might be taken up from two points of view.

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With a view to their activities the legal clinics could be:

- Working in an appointed law branch (for example Labour, Family, Succession, and etc. law);
- According to the target group (providing assistance to the community from a definite region or nationality).

In view of the specificities of legal clinics established within the legal faculties structure, where the stress is set on the education we consider more appropriate the establishment of clinics according to the law branch.

The legal branches, as to which legal clinics have been set up should be selected in a way reasonably providing that the mass of people looking for legal assistance shall be among socially disadvantaged citizens. *It is advisable, due to pedagogical and professional reasons, to avoid establishment of legal clinics as to law bodies or bodies of legal branches.*

Legal clinics shall not be established as to law branches, which social element is being overlooked or underestimated. Such branches might be commercial law, insurance law, concession law, financial law, tax law and etc. With a view to the above stated argument and the need for mastering of concrete practical knowledge and skills the establishment of legal clinics, which are too generally oriented is not recommendable – for example law clinics in civil or public law.

In view of legal clinics' social function citizens' needs in the respective settlements or parts within, where the legal clinic is being set up, are to be analyzed.

According to the objectives:

- Simulative legal clinics, and
- Clinics working with real clients.

By the first type the accent is on students' practical training by teaching specific clinical knowledge and considering real or game cases, but without being in contact with people, looking for legal assistance. Basic principle as to the second model is the work with real clients and provision of free legal assistance.

The above described objectives and the so far gained experience in Bulgaria show that there is also a third model, which combines the simulations and the work with real clients.

It is recommended to use the so called "*hybrid model*" of legal clinic where the resolving of simulative and real cases are combined as a most perspective form for attaining the purposes of clinical education.

The combination of the work with real clients and simulative cases might be used to attain synthesis between students' theoretical and practical knowledge and skills. *The entirely simulative clinics are not to be recommended*, as far as they lack substantial components of the clinical education and as their result might also be attained through seminars in other law subjects.

IV. Syllabus

- Drafting of syllabus, which is to be included in the law curriculum of the respective law faculty is a mandatory prerequisite for the stability of the legal clinic.
- The subject "Legal clinic in..." might be elective or optional.
- Drafting of the syllabus is made in a traditional way by determining a given period of lectures and seminars. In parallel with this a detailed curriculum is being prepared, where the subjects are pointed out. Regardless of the type of clinic the discipline's curriculum should contain:
 - a. Professional and legal ethics;
 - b. Interviewing and consulting clients;
 - c. Drafting and work with legal documents.
- A graphic for the whole academic year is set for carrying out simulations and work with real clients.

V. Students

Students' selection criteria:

Depending on the academic year:

This is defined by the subject of the legal clinic. For example in the Administrative law and process legal clinic might participate students in their third or higher academic year as at this level they already have the theoretical knowledge needed. The syllabus indicates the obligatory, elective and optional disciplines, which should have been covered by the students willing to participate in the clinic in order to be admitted to the competition.

Declaration of willingness.

The students willing to be included in a legal clinic submit a request with the legal education Director in the beginning of the semester, which for the clinic is scheduled.

The selection of students who will participate in the clinic could be done through competition including:

- Written exam;
- Written test;
- Interview;
- Record of academic grades.



Since the work at the legal clinic presumes the existence of theoretical preparation, the most appropriate form of assessment is carrying out a test.

The academic grades shall be used only as additional criteria to the chosen basic one/s.

Criteria for setting the number of students at the legal clinic.

The minimum and maximum number of students in a legal clinic depends firstly on the number of lecturers and attorneys engaged in the work of the clinic, secondly – from the available resources and equipment of the legal clinic and thirdly – from the provisions of the Educational activity regulation adopted by the respective university. It is recommendable that the number of students per clinic keeps the ratio of one lecturer per eight students. This ratio may vary depending on clinic's specifics.

Group work

During the simulations and the work with real clients students are divided in groups. Particular lecturer or attorney is responsible for each group. The groups should consist of three to five students.

Evaluation of students' work.

According to the syllabus the discipline "Legal clinic in ..." should be graduated with an examination. With a view to legal clinic's objectives the rating shall be made in regard to the entire work of the student, acquired skill in the sphere of material and procedural law, attained skills in providing legal assistance, work with documentation and others. The rating is given by the lecturer in charge with the group. In the groups supervised by attorneys, the attorney suggests the mark, which is to be given by the lecturer. Legal clinic's training successive graduates could receive an attestation on that in the form of certificate or similar document.

It is recommendable to follow the future professional realization of the students' participated in legal clinics.

VI. Lecturers

Currently, in Bulgaria, there is no specific science rank for the legal clinics' lecturers according to the Science degrees and ranks act. This is why there is yet no form of training for the lecturers willing to participate in the work of the legal clinics. The presently existing clinics as well as the establishment of new ones require carrying out of specialized clinical training for the lecturers.

Lecturers' training shall include at least the following themes:

- a. Idea and basic conceptions of the clinical education;
- b. Administration of the legal clinic;
- c. Legal clinic activity popularization;
- d. Professional and legal ethics;
- e. Team work;

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- f. Teaching of interview skills and client consulting;
- g. Legal activities organization and management;
- h. Drafting and work with legal documents;
- i. Control over the quality of the provided legal assistance;
- j. Planning and analyses of the legal clinic's budget.

Each legal clinic shall have a director, who will be in charge of clinic's organization and work. In clinics with more than one lecturer one of them shall be clinic's director. This position is different from the position of Clinical education director who is responsible for the clinics in the framework of a discrete legal faculty.

VII. Attorneys

The attorney's role in the legal clinic is to supervise students' work, to discuss with them cases' factual and legal aspects and to consult them before providing the assistance to the client of the legal clinic and when necessary to perform procedural representation.

Attorneys' participation is a key-element in legal clinics' work. This determines the need of establishing stable relations with bar colleges. Besides this, criteria on the selection of attorneys for the legal clinics need to be elaborated and specified. These criteria shall include professional experience, pedagogical skills and abilities for professional organization of the team work in the clinics and others depending on the type of legal clinic.

In view of clinical education objectives and the needs of the social group, which will use the legal assistance it is recommendable to use the possibilities provided under Attorneys act (SG # 55 / 25.06.2004) art.38 paragraph 1, subparagraph 1 and 2¹⁷⁰ in the framework of legal clinics. The provision of *pro bono* legal assistance to disadvantaged citizens is social and professional responsibility of the Bar before the society. The involvement of attorneys in legal clinics work is an appropriate way for executing this public duty.

VIII. Legal clinic's organization and resources

1. Organization of legal clinic's activity:

Each law faculty elects Director of legal clinic education. The director manages, coordinates and represents the interests of legal clinics before the leadership of the faculty, university and third parties. The Director approves the work plans of the different legal clinics as well as their annual reports.

¹⁷⁰ Attorneys act

Art.38 /1/ The attorney may provide free legal aid and assistance to:

- 1. persons entitled to support funds;
- 2. persons having financial difficulties;

.....

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The activities of the discrete legal clinics are managed by legal clinic's Director. S/He is lecturer who teaches and provides consultations in the same legal clinic. Director's powers are:

- Learning process organization;
- Coordination of the work with real clients;
- Setting up teams within the clinic;
- Process organization and adoption of cases;
- Quality control of the activities in the legal clinic;
- Selection of students and recruitment of attorneys.

In the beginning of semester, in which the legal clinic starts work the legal clinic Director elaborates "Legal clinic in ... working plan". The plan is public and it precisely regulates the questions related to the place and time of citizen's intake, the work of the legal clinic during non studying days, the events taking place outside clinic's intake premises and others. Upon finishing legal clinic's lectures for the respective course the Director prepares "Annual report for the activities of the legal clinic in"

The impossibility of the citizen looking for legal assistance to pay is to be assessed on case by case bases. The decision for client's admissibility to legal assistance within the clinic is made by the clinic's Director after discussion with the students and when necessary with practicing lawyer.

When carrying out their activities the legal clinic participants shall act with due care in order to inform every person looking for legal assistance as well as their current clients that the legal assistance is being provided by law students and is not attorney's service under the Attorneys act.

In case where client needs legal assistance, for which it is provided in a due way that could not be offered by the legal clinic, the legal clinic Director directs the client to the local bar college after explaining him his/her right of free attorney's defense under Attorneys act.

It is recommendable to keep documentation in digital and hard copy type and to elaborate rules on creation, use and recording of clinic's information massif. The rules shall provide for the levels of access for lecturers, attorneys, coordinators, secretary, accountant and students in relation to different types of documents.

2. Resources needed for the activities of the legal clinic

Premises. The legal clinic shall have separate detached office with the respective university. *Basic requirement for the legal clinic's premises is that it shall provide for the possibility of private conversation with the client.* The availability of separate office outside law faculty building might substantially facilitate the access of socially disadvantaged people to the legal clinics. This will not only raise the clinics' work effectiveness but will also create opportunities for close cooperation between the clinic

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and local administration, local subdivisions of central authorities, professional and non-governmental organizations.

Administration. The legal clinic shall have the minimum necessary administration to enable attaining the objectives of clinical education. Depending on the type of clinic the administration might include coordinator, secretary and accountant. In view of legal clinic's stability it is recommendable to use the resources of the relevant faculty for secretary, accountant, telecommunication and other services the same way as it is done for the other subjects included in the curriculum.

IX. Clients

The first necessary aspect is drafting criteria for selection of clients for the legal clinic. The criteria might include:

1. In view of clinic's objectives:

- Socially disadvantaged citizens who could not afford to pay for legal assistance.

2. In view of the type of clinic.

- The legal clinics accept cases, which subject relates entirely or predominantly to the legal clinic law branch.

A judgment on the relativity of the case shall be made after assessing the ability of the citizen looking for legal assistance to pay for such.

Provided that considerations related to cases factual or legal difficulty, conflict of interest or inconsistency with legal ethics require, the legal clinic may refuse to accept the case by motivated denial addressed to the applicant for legal assistance.

X. Popularization of legal clinics' activities

In view of exercising their objectives the legal clinics shall inform the society for the essence of clinical education and their concrete activities.

Appropriate forms for this are:

- Organization of public lectures;
- Appearance in Medias;
- Keeping internet site;
- Others.

The practice shows that the cooperation between legal clinics and central and local authorities' administration as State Agency for Child Protection, Social Assistance Agency, Employment Agency, municipalities and others is very effective.

Conclusion

The present standards for clinical education in Bulgaria's law faculties set the framework for the essence, establishment and functioning of the legal clinics. The discrete legal

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clinics may vary in their details provided that they do not contradict with the principles set forth in the present standards. The differences in legal clinics' organization and activities shall reflect the specific of the law branch they are working in, the public needs and available resources.

Clinical education standards are method for self-regulation. Their observance is not an obligation than rather a good practice, which shall be kept by the law faculties in the country.



18. Street Law-Type Clinic Model Standards

Open Society Justice Initiative Legal Capacity Development Program

These model standards were developed by participants at the “Enhancing the Sustainability of Street Law-Type Clinics in Law Schools” conference sponsored by COLPI/Justice Initiative, which took place in Budapest on 21-25 August 2002. These standards are intended as a model for individual program standards, national program standards and regional standards. The adoption of standards by any clinic or network comes from an internal process of discussion by clinic leaders and others involved in the clinics. These model standards are intended to stimulate such a conversation.

Standards are features of a clinic that help to guarantee the quality of the clinic’s work and communicate this message to stakeholders. Required standards are those considered essential and minimally necessary for the operation of a street law-type clinic. Recommended standards are considered desirable but not absolutely necessary for ensuring the integrity of a street law-type clinic.

The participants of the August 2002 conference believe that all clinics should follow the required standards. However, individual clinics will determine if those “recommended” standards should be recommended or, in fact, required for that individual clinic.

1. STANDARDS FOR CURRICULUM AND LESSON CONTENT

REQUIRED

The topics are appropriate (i.e., close to the interest, culture, and mentality of the target groups).

The curriculum builds skills.

The program develops materials to support law student training and lessons in the community setting.

Recommended

The topics are substantive and relate to important ideas.

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The topics are current.

The ordering of topics/lessons is coherent and meaningful.

2. STANDARDS FOR TEACHERS/TRAINERS

Required

The teacher/trainer has an understanding of the street law mission.

The teacher/trainer understands and can use interactive methods, and implements them.

Training materials are available and the teacher/trainer has experience in preparing and using them.

The teacher/trainer has the necessary legal knowledge.

The teacher/trainer reflects on his/her practice and is also evaluated by students/participants/colleagues.

Recommended

The teacher/trainer has participated in trainings focusing on communication skills.

The teacher/trainer has a psychological disposition appropriate for street law.

The teacher/trainer has skills in developing a curriculum/syllabus/course plan.

3. STANDARDS FOR TEACHING METHODS, INCLUDING SUPERVISION

Required

Teaching methodologies are all-inclusive, interactive and differentiated.

Teaching methods are clear and understandable.

Teaching methods are student oriented and engage students in active work.

Teaching methods are appropriate to the learner group.

Teaching methods initiate interest in the topic.

Teaching methods help maintain an engaging pace of activities.

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Teaching methods foster skills, knowledge and values development in learners.

Teaching methods involve ongoing monitoring and feedback of learner experiences.

Teaching methods are oriented to and include self-evaluation.

Law students participate in regular meetings and debriefings with their trainer or supervisor.

Recommended

Methods and methodologies support and strengthen the democratic process.

Teaching methodologies may include:

Small group work, role plays, case studies, debates, critical thinking exercises, brainstorming, opinion polls, games, hypotheticals, question and answer, field trips, simulations, ranking exercises, taking a stand, mock trials, drama, use of resource persons and other interactive work.

Various teaching methods are balanced.

Teaching methods are humanistic and any suppression by each other is impossible.

Law students participate in regular meetings and debriefings with their trainer or supervisor on a weekly basis.

Law students' work is supervised within the community setting a minimum of twice during the semester.

4. STANDARDS FOR LAW STUDENTS

Required

Law students are trained in the use of interactive teaching methodologies and implement them.

Law students teach a minimum of ten lessons in a community setting over the course of the street law-type clinic.

Recommended

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Law school students participating in a street law-type clinic are no younger than in their second year of law school.

Law students are trained in the use of interactive teaching methodologies and implement them for a minimum of four hours.

Law students are trained in the preparation of lesson plans and are able to prepare lesson plans.

Law students organize mock trials and special events with learners.

Law students teach the same students within these community settings over the course of the clinic.

Law students teach a total of 20 lessons a year.

5. STANDARDS FOR STUDENT ASSESSMENT

Required

Assessment methods are based on the knowledge, skill and attitudes of law students and pupils.

Law students participate in an evaluative process of their work.

Recommended

Law student and pupil assessment is regular.

Assessment methods used on law students and pupils are complementary and holistic.

Law student assessment includes individual work, preparation for giving lessons, participation in the law school seminar, performing lessons in the community setting.

Assessment methods includes feedback from law students themselves, teacher/trainer, peer students, pupils.

6. STANDARDS FOR DOCUMENTATION

Documentation for Street Law Programs is for:

Administrators of street law-type clinics

Documentation techniques include:

Scenarios of individual street law lessons, using written and visual recordings;

Supervision records for law students.

Recommended

Documentation for Street Law Programs is for:

University administrators, Administrators in community settings, such as principals and prison supervisors

Documentation techniques include:

List of participating community-based agencies, such as schools, and law student participants

List of community-based learners, such as high school students

Letters of communication between the street law-type clinics and community-based organizations, donors and others;

Opinions of the program

Students' records about problems, obstacles, achievements, new ideas came from their lessons and recommendation for program and curriculum development

7. TEACHING/TRAINING STANDARDS FOR THE ENVIRONMENT

Required

Trainers well qualified to teach using interactive methods

Community-based learners, such as secondary students, adult learners in various settings, such as prisons, shelters, churches, adult education course, or other community settings in which adults are gathered.

Recommended

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Agency to sponsor the program, such as law school, law student association, NGO

Trainers with legal knowledge

Teachers interested to receive training in street law-type methods

Receptive administrators in community-based agencies

Law school seminars for law students include a practical component.

Materials and methodologies are made available to other members of the legal and education communities.

8. STANDARDS FOR PROGRAM EVALUATION

Required

Formative evaluation: Regular feedback received from clients (including staff and administrator of the programs in which clients are organized, e.g., teachers, school and prison administrators, etc.) and law students

Feedback reviewed and discussed by law students and their supervisor.

Summative evaluation:

Takes places each half year or at the conclusion of a clinic program.

Recommended

Summative evaluation:

Involves input from supervisors, law students, clients

Qualitative and quantitative techniques include feedback forms and questionnaires; interviews; focus group discussions.

Independent impact evaluation:

Seeks to determine outcomes on law students and clients

May involve public opinion surveys

Is conducted by independent evaluator or researcher.

April 7, 2006

Open Society Justice Initiative

19. Legal Clinics Evaluation Criteria

The below criteria shall be used in conducting evaluations of the activities and progress of the legal clinics projects run by the Justice Initiative jointly with local university partners. These criteria are designed based on several previous compiled evaluation documents by our experts and clinicians in the field from CEE and FSU region, as well as other regions around the world – North America, Asia, and Latin America.

Introduction

Please indicate the name of the clinic, the period when you visited the clinic. It is desirable that the names of those persons interviewed, as well as the list of documents reviewed is also indicated here.

A general description of the clinic – when it was established, by whom, the focus of the clinic, types of legal services to clients or community, substantive area of law in which it operates, where it is placed within the university structure, etc.

I. Course structure and classroom atmosphere

NB: please indicate the title of the course, a brief outline of the curriculum and total no of hours, and also the list of knowledge, skills, and values that students acquire during the course according to the syllabus.

1. Course is structured in a logical fashion and is likely to provide students with the knowledge, skills, and professional and social justice values they will need to achieve the goals of the clinic.
2. Course design is well integrated with students other coursework (i.e. the general substantive and procedural law courses at the faculty).
3. Course relies on interactive teaching methods designed to convey the necessary legal skills as well as knowledge of the law and professional values, such as:
 - open and interactive classroom discussion
 - role-play exercises based on fact patterns from real or hypothetical cases very close to real situation
 - actual clinic cases incorporated into classroom discussion

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- simulated client interviews and other lawyering activities
 - individual or small group work on issues of particular interest for the clinic clients.
4. Class size limited to a number of students that ensures active student participation, effective learning and responsible supervision.
 5. Students are sensitized to social and other problems faced by the clinic's client pool and how to provide clients with the information necessary for clients to make key decisions about their legal options.
 6. Classroom discussions focus on the student, and allow for exchange of information and input between students and instructors.
 7. Students demonstrate a grasp of:
 - professional responsibility and ethical considerations
 - listening skills
 - substantive legal knowledge
 - ability to ascertain client needs and communicate legal options
 - legal reasoning and argumentation abilities.
 8. Students show a commitment to the clinic and to their clients.
 9. Students understand the appropriate scope of services that comprise representation of the client.

Comments

Clinics should ensure a space for discussing the social context of the clinic's clients, probably incorporated into the seminars, rather than the lectures, to ensure that students actively participate in the discussion. A lecture format is not sufficient for ensuring that students truly understand their role within the clinic, their clients' needs and the goals of the clinic, nor for training students in ethics and professional responsibility. Such a discussion would need to take into account the client perspective and might be led by social workers and NGO activists. It would be important to allow room for a discussion of the role of law and lawyers in addressing social problems.

Clinics should also provide ample opportunity for students to discuss their cases during the seminar. Many ethical, communication, and counseling issues come up in the cases handled by the students. Such classroom discussions are not a substitute for one-on-one supervision of students. However, an important aid in helping students improve their abilities to identify and address these kinds of issues is to discuss their cases as a group and learn from each other's experience, with the facilitation of an instructor.

II. Clinic staffing

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10. Instructors/supervisors with the appropriate mix of practical skills and teaching ability are employed by the clinic.
11. Instructors/supervisors understand and use clinical teaching methodologies and are committed to the goals of the clinic.
12. Instructors/supervisors have necessary expertise to work in the clinic's chosen practice areas.
13. Instructors/supervisors work collegially to establish the clinic's goals, procedures and teaching methodology, meeting regularly to coordinate classroom components and discuss issues raised in their work with students.
14. Instructors/supervisors have devised workable supervision plans to guide them in advising students, monitoring student work and measuring student progress.
15. Instructors/supervisors provide regular feedback to students regarding their work and devote sufficient time to meet student needs.
16. Instructors/supervisors provide students the opportunity to take as much responsibility as possible on cases without compromising the quality of service provided to the client.
17. Instructors/supervisors developed teaching evaluation procedures, and solicit anonymous feedback from students (and, where applicable, from clients) on clinic's effectiveness.
18. The clinic has adequate administrative/financial staff to manage the clinic's affairs.

Comments

One way to structure client interviewing, to ensure that there is adequate supervision of the students' work, would be to require that each student meet with the client at least twice. The students would be instructed only to take in information at the first meeting, and not to provide any advice or feedback without prior consultation with the supervisor. The students would then schedule a second meeting with the client.

Such supervision requires a great deal more time and attention from instructor/supervisors than many clinics initially choose to allocate. There are at least two possible means for resolving these issues. First, clinics might consider requiring students to work in teams.

Second, clinics should consider creating a second position in each clinical section in addition to the clinic instructor, in order to take on some of the supervisory burden. The position might be filled by a Masters student, or even by a final year law student. That person could assist in some of the individualized training and supervision.

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III. Student Selection

19. Clinic has devised a standardized application procedure (application/competition/interview/faculty recommendation).

20. Clinic established and follows selection criteria reasonably designed to select committed and effective clinical students. Clinic attracts a diverse and qualified student pool.

21. Students demonstrate commitment, active participation, dedication to their clients, and a sense of professional responsibility.

Comments

Clinic has devised a formal application procedure to select students for the clinic. The application form requests information about general skills – e.g. foreign language, computer, research – and other extracurricular activities and courses. A record of exam results can be asked to be attached.

In addition, it is recommendable to include an open-ended essay question designed to elicit a personal statement addressing why the student would like to participate in the clinic. This would help to distinguish those students who are well oriented to the social justice mission of the clinic. Requiring personal statements allows a clinic to give more weight to the motivation and commitment of the students as well as their level of maturity and readiness to accept responsibility.

Another component of the selection process that clinics might consider would be to interview clinic applicants, but the amount of time that would require may be prohibitive.

IV. Student Legal Practice

22. The clinic provides legal services, e.g.:

- counseling/ legal advice
- non-adversarial representation before administrative agencies
- ADR/negotiation and mediation
- administrative hearing representation
- trial representation
- training or community education/Street Law teaching;
- other

23. Appropriate relationships have been established between the clinic and relevant courts, state agencies/public institutions, or civil society organizations for the legal services provision.

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24. Students work independently but their work is monitored effectively to ensure quality and responsible service.
25. Casework/teaching is distributed evenly among clinical sections and among students.
26. A system is in place to follow-up on casework and other client needs when school is not in session.
27. Students demonstrate an ability to contend with disparate client conduct and needs, communication problems and lack of sophistication.
28. Students have developed some experience in resolving ethical issues involved in client representation.
29. Adequate provision is made to cover court fees and other expenses related to students' work on behalf of clients.
30. Clients are informed about the pro bono character of the services and agree to be served by a law student.

V. Client outreach and selection of cases

31. Clinic has established reasonable criteria and procedures for case selection, rejection and referral.
32. Sufficient means are employed for publicizing the work of the clinic and attracting new clients and cases.
33. An adequate system has been designed to avoid case overload and refer case overflow appropriately to other service providers.
34. There is coordination with relevant NGOs to ensure a smooth flow of mutual case referrals and avoid duplication of effort.
35. Relations have been established with the bar association, and any conflicts stemming from fear of competition for clients have been alleviated.

Comments

When clinics are first getting set up, they often emphasize the need for publicizing the availability of their services. Yet, extensive publicity efforts are actually less important than ensuring the high quality of the service provided. If a clinic develops a reputation for providing high quality service, then "word-of-mouth" advertising will become much more important than the other formal means of publicizing the clinic. On the other hand,

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if it develops a very good reputation, the clinic may become overwhelmed with prospective clients. If that case, it is important to establish clear and objective criteria for determining which clients or cases will be selected for students to work on and to establish a process for referring other clients to other service providers.

VI. Material Conditions and Sustainability

36. Adequate space has been provided, including workspace for students and private area for client consultations.

37. Computer, telephone, copy machine, and other office equipment is adequate and accessible to students.

38. Relevant books and other reference materials are available to students.

39. The clinic is well integrated into the law school and enjoys a favorable reputation within the law school community and the legal community more generally.

40. Political support from the law school administration is sufficient and increasing, as reflected by credited clinical course, no. of teaching hours or other indicators of support.

41. Future funding prospects for the clinic are reasonably secure.

42. There is sufficient staffing capacity for the clinic, and the staff has opportunities for professional development.

43. Clinical management staff (director, coordinator/administrator) has sufficient knowledge about raising funds for the clinic, project proposal writing and financial reporting.

General Guidelines

In addition to the lectures on social justice, clinics should incorporate issues such as client perspectives, the role of lawyers in addressing social problems, and ethics and responsibility in interactive discussion format, ideally with the participation of NGOs and social workers.

Individual cases handled by the students should be discussed within the seminars, with the instructor addressing some of the issues described above within the context of these actual cases.



Clinics should provide intensive skills training to each student individually before he/she conducts actual client interviews.

Clinics should actively cultivate senior students and recent graduates as potential assistant instructor/supervisors, making an effort especially to retain those students who are most highly motivated to develop the clinic and who have the understanding and language skills necessary for professional development as clinical teachers. Involvement of such teaching assistants would probably be more effective and sustainable than involving practicing lawyers.

Clinics should maintain concrete collaborations with NGOs to help build up the students' caseload and as a possible means of additional supervision.

Clinics should solicit anonymous, written feedback from students in order to continually improve the effectiveness of the clinic. Regular meetings of the teaching staff are also necessary for the same purpose.

Clinics should have a set of internal office management rules, as well as casework related rules for students to follow.



20. Model Clinical Budget Outline¹⁷¹

I. BUDGET SUMMARY:

Budget line	Total budget in USD
1. Personnel	
2. Office Equipment/Supplies	
3. Administration/running costs	
4. Travel/workshops and publications	
5. Miscellaneous	
TOTAL:	

II. BUDGET DETAIL:

1. Personnel

Position	Commitment	Net Salary/month (in USD)	Taxes and Social Security Contributions	Total salary/month (in USD)	Total cost 12 months (in USD)
Project manager/clinical director	50 – 75 %	300 ¹⁷²	100	400	4,800
Project coordinator/ Office manager or assistant	50 - 75%	200	70	270	3,240
Clinical teacher	50%	300	100	400	4,800
Practicing lawyer/supervisor	30%	250	0	250	3,000
Total Personnel					15,840

2. Office Equipment/Supplies

Type of equipment	Quantity	Price (USD)	Total cost (USD)
Table	5		
Computers	4		
File cabinet (for keeping confidential documents)	1		
Telephone	1		
Chairs	15		
Printer	1		

¹⁷¹ Please note that this is a budget outline developed based on fundamentals for clinic funding. The items and also the amounts should be adapted to local circumstances of the country and of the university where clinic is hosted.

¹⁷² Please note that the figures are used as a demonstration only. You should calculate the amounts according to specifics of your university salary schemes and contributions you need to pay according to the law of the country.

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Fax machine	1		
Copy machine	1		
Books order	20		
Total Equipment			

3. Administration/Running costs

Type of expense	Months	Cost/month (USD)	Total (USD)
Rent for office	12		
Telephone/fax	12		
Office supplies (paper, pens, notebooks, folders, etc.)	12		
Legal database subscription	12		
Electricity	12		
Heating/air-conditioning	12		
Mailing	12		
Cartridges for printer and copy machine	12		
Other?			
Total Administration			

4. Travel/workshops and publications activities

Type of expense	Quantity	Cost/unit (USD)	Total (USD)
Local transportation			
Air tickets			
Hotel accommodation			
Printing costs			
Materials for workshop			
Meals during workshop			
Total Travel/workshops			

5. Miscellaneous costs

Type of expense	Cost per unit (USD)	Total (USD)
Total Miscellaneous:		

III. BUDGET EXPLANATIONS: a narrative description of costs. For Personnel, please provide brief description of their major tasks and responsibilities.

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