

THE IMPORTANCE OF GRADUATE ATTRIBUTES IN PREPARING LAW STUDENTS FOR LEGAL PRACTICE

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SUMMARY

The gap between university legal education and legal practice significantly contributes to the view that most law graduates are substantially underprepared for entry into legal practice.¹ Consequently, this article suggests that an improvement in the training of law students, as far as preparing them for entry into legal practice is concerned, is necessary. It is argued that this preparation is supported by transformative constitutionalism – that is, after graduation, graduates will be expected to possess certain attributes that will ensure that they are ready for entry into legal practice. It is therefore necessary to investigate and evaluate such graduate attributes, as well as to ascertain the source of the need for such attributes. In this article, the Qualification Standard for the LLB degree, as the source stipulating the standard of proficiency for which the LLB degree should prepare graduates, is also discussed. This is followed by an evaluation of a baseline study into graduate attributes from the perspective of employers. Holistically seen, the qualification standard, as well as the graduate-attributes study, should provide an indication as to whether the LLB degree is adequately preparing law graduates for entry into legal practice. The qualification standard is set out and evaluated on whether, and to what extent, it aligns with the arguments put forth in this article. The research in this article has been conducted by way of a desktop study.

1 INTRODUCTION

The gap between university legal education and legal practice significantly contributes to the view that most law graduates are substantially underprepared for entry into legal practice.² Consequently, this article suggests that an improvement in the training of law students, as far as preparing them for entry into legal practice is concerned, is necessary. It is

¹ Uphoff, Clark and Monahan "Preparing the New Law Graduate to Practice Law: A View From the Trenches" 1997 65 *University of Cincinnati Law Review* 381 381.

² *Ibid.*

argued that this preparation is supported by transformative constitutionalism – that is, after graduation, graduates will be expected to possess certain attributes that will ensure that they are ready for entry into legal practice. It is therefore necessary to investigate and evaluate such graduate attributes, as well as to ascertain the source of the need for such attributes. The article also discusses the Qualification Standard for the LLB degree as the source stipulating the standard of proficiency for which the LLB degree should prepare graduates. Thereafter, a baseline study into graduate attributes from the perspective of employers is discussed. In this regard, it should be noted that no interviews were conducted with prospective employers. The attitude of employers, as discussed in this article, has been inferred and/or extracted from source material. Holistically seen, the qualification standard, as well as the graduate-attributes study, should provide an indication as to whether the LLB degree is adequately preparing law graduates for entry into legal practice. The qualification standard is set out, and is evaluated on whether and to what extent it aligns with the arguments put forth in this article.

2 WHAT ARE “GRADUATE ATTRIBUTES”?

Higher education is seen as an important contributor to the economy by way of producing skilled graduates.³ It was not until relatively recently (approximately the middle of the 1990s) that it was suggested that there must be a measurable link between what is taught at higher education levels and the development of skills necessary for the working world.⁴ It had previously always been assumed that graduates acquired sufficient skills during their academic years to be useful when they commence employment after leaving university.⁵ A baseline study was conducted in South Africa in order to determine whether higher education institutions deliver graduates of the appropriate quality expected by the working world.⁶ For this purpose, the following question is asked: do higher education graduates possess the necessary and applicable attributes in order to enter the professional world successfully? Before discussing and evaluating the mentioned baseline study, it is important to define “graduate attributes” in order to understand the focal points of the study. However, it is not always a simple task to delineate precisely what the term “graduate attributes” means, or at what stage of a person’s career they must be developed.⁷ Graduate attributes have been described as the skills, qualities and understanding that a

³ Winberg, Staak, Bester, Sabata, Scholtz, Monnapula-Mapeseta, Sebolao, Ronal, Makua, Snyman and Machika “In Search of Graduate Attributes: A Survey of Six Flagship Programmes” 2018 32(1) *South African Journal of Higher Education* 233 234, 236; Bridgstock “The Graduate Attributes We’ve Overlooked: Enhancing Graduate Employability Through Career Management Skills” 2009 *Higher Education Research and Development* 31, 40.

⁴ Greenbaum and Rycroft “The Development of Graduate Attributes: The Book of the Year Project” 2014 28(1) *South African Journal of Higher Education* 91 91; Bridgstock 2009 *Higher Education Research and Development* 31.

⁵ Greenbaum *et al* 2014 *South African Journal of Higher Education* 91.

⁶ See heading 5 1.

⁷ Van Schalkwyk, Herman and Muller “Graduate Attributes for the Public Good: A Case of a Research-Led University” in Leibowitz (ed) *Higher Education for the Public Good: Views From the South* (2012) 88.

university community agrees their students should develop during their academic years at the institution.⁸ The University of the Western Cape (UWC) defines graduate attributes as “[q]ualities, attitudes and dispositions that graduates should possess, in full or part, when they have completed their course of study”.⁹ Graduate attributes are strongly linked to the missions, visions and values of universities, as well as to their accountability for the quality of the graduates they produce.¹⁰ One view is that the emphasis should be on development, as the student progresses through the academic years, from the first year, up to and including the final year.¹¹ Another view is that the emphasis should be on employability, and should focus on generic skills – that is, skills, values and attitudes that employers might regard as attractive.¹² Graduate attributes include disciplinary expertise and technical knowledge, but are not limited to those.¹³ Instead, they also refer to qualities that should prepare graduates to perform social good in an uncertain future.¹⁴ It is submitted that, in the South African context, this refers to the constitutional vision of accomplishing social justice in order to improve the lives of people with reference to where they were during the previous political dispensation, and to where they can possibly go in the future. Barrie states that graduate attributes should include more than skills and attitudes.¹⁵ They could also include new concepts of wisdom and knowledge, which should be seen as the product of higher education itself.¹⁶ In this regard, graduate attributes should not be viewed as something completely separate or different from what higher education conventionally delivers, but rather as outcomes that can reasonably be expected from the higher education experience,¹⁷ specifically including undergraduate students.¹⁸ These attributes should not be viewed merely as entry-level skills for purposes of entering the working world after graduation, but as an important outcome of the university-based learning experience.¹⁹ It is submitted that this view, together with the previous descriptions of graduate attributes, serves to strengthen the argument in this article that university law schools should deliver graduates who are sufficiently skilled to serve the public upon their exit from university.

⁸ Van Schalkwyk *et al* in Leibowitz (ed) *Higher Education for the Public Good* 88.

⁹ University of the Western Cape “Graduate Attributes and the Strategic Plan for Teaching and Learning” (2013) <https://www.uwc.ac.za/TandL/Pages/Graduate-Attributes.aspx> (accessed 2020-05-17).

¹⁰ Winberg *et al* 2018 *South African Journal of Higher Education* 234.

¹¹ Van Schalkwyk *et al* in Leibowitz (ed) *Higher Education for the Public Good* 88.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ Van Schalkwyk *et al* in Leibowitz (ed) *Higher Education for the Public Good* 88; Greenbaum *et al* 2014 *South African Journal of Higher Education* 92.

¹⁵ Barrie “A Research-Based Approach to Generic Graduate Attributes Policy” 2004 23(3) *Higher Education Research & Development* 261 262; Van Schalkwyk *et al* in Leibowitz (ed) *Higher Education for the Public Good* 88.

¹⁶ Barrie 2004 *Higher Education Research & Development* 263.

¹⁷ Barrie 2004 *Higher Education Research & Development* 263; Van Schalkwyk *et al* in Leibowitz (ed) *Higher Education for the Public Good* 89.

¹⁸ Barrie 2004 *Higher Education Research & Development* 262.

¹⁹ Barrie 2004 *Higher Education Research & Development* 262; Greenbaum *et al* 2014 *South African Journal of Higher Education* 93.

In relation to the content and purpose of graduate attributes, Walker states that higher education can equip students with the essential cultural values and knowledge that are important for active citizenship and democratic participation in debates shaping ethical and political life.²⁰ This means that higher education has a central role to play in the health of democracy in society, in how such democracy contributes towards civic life, and in producing graduates who reflect such features.²¹ This argument is closely connected to the nature of the attributes that graduates possess when leaving university, as well as how these attributes will equip students for the working world.²² The concepts of social justice and civic life are also prominently stated in the Council on Higher Education (CHE) and the South African Qualifications Authority (SAQA) Qualification Standard, which is discussed below.²³ In 2001, the need for graduates to participate actively in expanding the national economy was already identified.²⁴ The attributes that an institution bestows upon graduates are the responsibility of both the institution and the graduates themselves:²⁵ graduates must see their development in the context of the working world and should strive to prepare to enter the working world as knowledgeable and skilled individuals.²⁶ The Preamble of the Legal Practice Act (LPA)²⁷ makes mention of the constitutional right to freedom of trade, occupation or profession,²⁸ as well as referring to the fact that justice is not accessible to many people in South Africa. The right to freedom of trade, occupation and profession, in the context of this discussion, requires some analysis. It is an individual right that consists of several underlying values. In this regard, it denotes the following:

²⁰ Walker "Pedagogy and the Politics and Purposes of Higher Education" 2002 1(1) *Arts and Humanities in Higher Education* 43 43; Van Schalkwyk *et al* in Leibowitz (ed) *Higher Education for the Public Good* 87. In this regard, see also Fourie "Constitutional Values, Therapeutic Jurisprudence and Legal Education in South Africa: Shaping Our Legal Order" 2016 19 *Potchefstroom Electronic Law Journal* 1 20. It is important that law teachers prepare students for an active citizenship role in society so as to display constitutional values and to share the same in relation to their clients when they (the students) enter legal practice after graduation.

²¹ Walker 2002 *Arts and Humanities in Higher Education* 42–43; Van Schalkwyk *et al* in Leibowitz (ed) *Higher Education for the Public Good* 87.

²² Van Schalkwyk *et al* in Leibowitz (ed) *Higher Education for the Public Good* 87.

²³ See heading 3. Also see Van Schalkwyk *et al* in Leibowitz (ed) *Higher Education for the Public Good* 87 in this regard as far as a former qualification standard is concerned.

²⁴ Van Schalkwyk *et al* in Leibowitz (ed) *Higher Education for the Public Good* 87. This was stated as part of the former Department of Education's National Plan in Higher Education.

²⁵ Van Schalkwyk *et al* in Leibowitz (ed) *Higher Education for the Public Good* 89.

²⁶ See Van Schalkwyk *et al* in Leibowitz (ed) *Higher Education for the Public Good* 89 in this regard. A complete discussion of the perceptions of graduates in this regard however falls outside the scope of this article.

²⁷ 28 of 2014.

²⁸ S 22 of the Constitution of the Republic of South Africa, 1996. It provides that "[e]very citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law".

- (a) that the public has an interest in allowing individuals to perform work for the purpose of their own living, rather than being supported by any public funds;²⁹ and
- (b) that the public also has an interest in benefitting from the skills of such individuals.³⁰

This right enables an individual to be self-providing and also to live a profitable, dignified and fulfilling life.³¹ It is self-evident that the legal profession falls within the definition of “profession” in this context. A “profession” is defined as any type of work that needs special training or a particular skill – often one that is respected because it requires a high level of education.³² A person who exercises a profession is called a professional person. “Professional” is therefore an adjective that describes work that needs special training or education, or it can describe a particular type of work that has the same qualities that are connected with trained and skilled people, such as effectiveness, skill, organisation and seriousness of manner.³³ It therefore describes a type of work that is respected owing to its requirement of a high level of education and training.³⁴ If consideration is given to these descriptions, the mould of the legal profession can easily be recognised. The constitutional right, entrenched in section 22, in fact establishes a vocation.³⁵ This denotes a relationship to the human personality in its entirety.³⁶ A vocation denotes a relationship that shapes and completes a person over a lifetime of devoted activity.³⁷ Furthermore, a vocation is the foundation of a person’s existence, and through which that person contributes to the totality of a social product.³⁸ It is consequently argued in this article that law graduates need to possess graduate attributes

²⁹ In this regard, see Rautenbach “The Right to Choose and Practice a Trade, Occupation or Profession: The Momentous and Meaningless Second Sentence of Section 22 of the Constitution” 2005 4 *Tydskrif vir Suid-Afrikaanse Reg* 851 854; *Affordable Medicines Trust v Minister of Health of the Republic of South Africa* 2005 6 BCLR 529 (CC) par 59; Currie and De Waal *The Bill of Rights Handbook* (2013) 465.

³⁰ *Affordable Medicines Trust v Minister of Health supra* par 60; Currie *et al The Bill of Rights Handbook* 465.

³¹ *Affordable Medicines Trust v Minister of Health supra* par 59; Currie *et al The Bill of Rights Handbook* 465.

³² Cambridge Dictionary “Profession” (2020) PROFESSION | meaning in the Cambridge English Dictionary (accessed 2020-12-10).

³³ Cambridge Dictionary “Professional” (2020) PROFESSIONAL | meaning in the Cambridge English Dictionary (accessed 2020-12-10).

³⁴ *Ibid.*

³⁵ University of Texas at Austin School of Law “Apotheken-Decision” (1 December 2005) <https://law.utexas.edu/transnational/foreign-law-translations/german/case.php?id=657> (accessed 2020-10-13). S 22 is similar in nature to s 12(1) of the German Constitution; thus, German jurisprudence, relating to the interpretation of s 12(1), has significant comparative value when interpreting s 22. The leading German case with regard to s 12(1) is the *Apotheken* decision (*Pharmacy case*); see Currie *et al The Bill of Rights Handbook* 462; *Affordable Medicines Trust v Minister of Health supra* par 59; Currie *et al The Bill of Rights Handbook* 465.

³⁶ University of Texas <https://law.utexas.edu/transnational/foreign-law-translations/german/case.php?id=657>; *Affordable Medicines Trust v Minister of Health supra* par 59; Currie *et al The Bill of Rights Handbook* 465.

³⁷ *Ibid.*

³⁸ *Ibid.*

not only to promote the quality of their own professional lives, but also to use such attributes to deliver professional, ethical and high quality legal services to the public.

Research shows that university staff struggle to understand general graduate attributes, because such attributes have different meanings in the various disciplines.³⁹ Nevertheless, many higher education institutions have formulated lists of generic attributes (across a variety of disciplines) that they want to see in their graduates.⁴⁰ These are called critical cross-field outcomes (CCFOs) and apply to the development of all graduates as far as economic and social contributions to society are concerned.⁴¹ They stem from the outcomes formulated by SAQA, which are viewed as critical to the development of the capacity for life-long learning.⁴² They include critical thinking, teamwork and effective use of science and technology, as well as viewing the world as a global village where problem-solving contexts cannot exist in isolation.⁴³ An example is the list compiled by the Central University of Technology in the Free State. The list states that graduates should be skilled, innovative, socially responsible and technologically savvy, as well as astute, competent and focused.⁴⁴ The university lists ten graduate attributes that must be present in all graduates;⁴⁵ these are sustainable development,⁴⁶ community engagement, entrepreneurship, innovation and problem solving, technological literacy, numeracy, communication, technical and conceptual competence,⁴⁷ teamwork and citizenship and global leadership. The University of Stellenbosch's Faculty of Medicine and Health Sciences states that graduate attributes of students should be reflective of an enquiring mind, an engaged citizen and a dynamic professional, as well as a well-rounded person.⁴⁸ The university further states that the aim of the graduate competence framework is to provide a transformed learning experience to students and to equip them with the necessary competencies to address health inequalities by way of patient-centred and community-based care.⁴⁹ Although this framework does not relate to law, it is submitted the approach

³⁹ Winberg *et al* 2018 *South African Journal of Higher Education* 234.

⁴⁰ Van Schalkwyk *et al* in Leibowitz (ed) *Higher Education for the Public Good* 89; Herok, Chuck and Millar "Teaching and Evaluating Graduate Attributes in Science Based Disciplines" 2013 4(7A2) *Creative Education* 42 42.

⁴¹ *Ibid.*

⁴² Van Schalkwyk *et al* in Leibowitz (ed) *Higher Education for the Public Good* 89. Also see Herok *et al* 2013 *Creative Education* 42 with regard to the notion of life-long learning.

⁴³ Van Schalkwyk *et al* in Leibowitz (ed) *Higher Education for the Public Good* 89.

⁴⁴ Central University of Technology, Free State "Developing CUT Graduate Attributes" (16 August 2018) <https://www.cut.ac.za/graduate-attributes> (accessed 2020-05-17).

⁴⁵ *Ibid.*

⁴⁶ This is explained to mean that a graduate should "[b]e environmentally sensitive and recognize [their...] role as a socially responsible citizen who care[s] for the common good of others, the country and environment".

⁴⁷ This is explained to mean that a graduate should "[d]emonstrate depth of specialised disciplinary knowledge and skills and be able to apply them in different contexts to solve problems".

⁴⁸ Centre for Health Professions Education, University of Stellenbosch "Graduate Attributes" (undated) http://www.sun.ac.za/english/faculty/healthsciences/chpe/Pages/Graduate_attributes.aspx (accessed 2020-05-17).

⁴⁹ *Ibid.*

is equally applicable to law schools, as there are also inequalities in communities regarding access to justice, quality legal services and community legal services. More general approaches to graduate attributes are evident from Nelson Mandela University (NMU) and the University of the Western Cape (UWC). NMU clearly supports the notion of the integration of graduate attributes with the academic experience, as their CCFOs mention that education must be life changing.⁵⁰ Other attributes, *inter alia*, include:⁵¹

- a) expanding and engagement with knowledge bases of various professions;
- b) excellence in art and science of various professions;
- c) awareness of the latest advances of technical competencies required by the various professions;
- d) production of new knowledge by way of understanding, inquiry, critiquing and synthesis;
- e) commitment to ethical conduct, social awareness and responsible citizenship;
- f) acknowledging and respecting constitutional principles, as well as values inclusive of equality, quality, equity, humanity, diversity and social justice;
- g) the ability to apply knowledge and skills in a variety of contextual and conceptual frameworks;
- h) the ability to think creatively and to generate a series of innovative ideas that are appropriate to a particular context;
- i) openness to new ideas;
- j) the ability to understand, interrogate and apply a variety of theoretical and philosophical positions, as well as the objective assessment of competing and alternative perspectives;
- k) critical reflection;
- l) relating and collaborating with others, exchanging views and achieving desired outcomes;
- m) the ability to function in a multilingual and multicultural context; and
- n) the ability to articulate ideas and information with confidence and coherently in visual, written, verbal and electronic formats.

UWC has developed a Charter of Graduate Attributes,⁵² which guides the university in developing the knowledge, skills and competencies of graduates.⁵³ The various faculties and departments at the university are currently in the process of analysing such graduate attributes in the context of their own missions and visions, and embedding such attributes in the

⁵⁰ Nelson Mandela University "Our Desired Graduate Attributes Profile" (2015) <https://nmmu10.mandela.ac.za/Looking-ahead/Our-Desired-Graduate-Attributes-Profile> (accessed 2020-05-18).

⁵¹ Nelson Mandela University <https://nmmu10.mandela.ac.za/Looking-ahead/Our-Desired-Graduate-Attributes-Profile>.

⁵² A complete discussion of this charter falls outside the scope of this article. A link to the charter is available at <https://www.uwc.ac.za/TandL/Pages/Graduate-Attributes.aspx>.

⁵³ University of the Western Cape <https://www.uwc.ac.za/TandL/Pages/Graduate-Attributes.aspx>.

teaching and learning of the various modules in their degrees and courses.⁵⁴ It is submitted that all university law schools should follow this approach, should their universities have similar charters. Such attributes should be in alignment with the national qualification standard for the legal discipline, as set by the CHE. It is relevant and applicable here to analyse and evaluate the qualification standard applicable to the legal profession.

3 QUALIFICATION STANDARD FOR THE LLB DEGREE

3.1 Introduction

The CHE is the quality control council for higher education in South Africa.⁵⁵ SAQA provides national qualification framework (NQF) level descriptors that are applicable to each discipline.⁵⁶ The CHE must ensure that the NQF level descriptors remain current and appropriate.⁵⁷ The LLB degree currently meets the requirements of NQF level eight.⁵⁸

It is consequently necessary to identify some applicable sections of the qualification standard in order to evaluate to what extent they apply to and support the theoretical basis and arguments advanced in this article.

3.2 Preamble

The Preamble to the qualification standard provides valuable information with regard to the content of the standard. It recognises that the law is central to the creation of a cohesive and successful society, that it fulfils a significant role in facilitating economic development and that it plays a vital role in entrenching the ethos and values of South Africa's constitutional democracy.⁵⁹ It further recognises that the Constitution is transformative in nature; that constitutional democracy aims to transform the legal system in accordance with its foundational values of human dignity, equality and freedom; and that this ethos must pervade the whole legal system.⁶⁰ Thus, legal education cannot be separated from transformative constitutionalism.⁶¹ Transformative constitutionalism denotes a change, brought about in a structured manner, to better things by way of adherence to a constitutional system of government.⁶² In the South African context, transformative

⁵⁴ University of the Western Cape <https://www.uwc.ac.za/TandL/Pages/Graduate-Attributes.aspx>. Also see Herok *et al* 2013 *Creative Education* 42 and Greenbaum *et al* 2014 *South African Journal of Higher Education* 94 in this regard.

⁵⁵ Council on Higher Education *Higher Education Qualifications Sub-Framework: Qualification Standard for Bachelor of Laws (LLB)* (May 2015) 3

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ CHE *Qualification Standard for LLB* 8.

⁵⁹ CHE *Qualification Standard for LLB* 7.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² Mbenenge "Transformative Constitutionalism: A Judicial Perspective From the Eastern Cape" 2018 32(1) *Speculum Juris* 1 2.

constitutionalism is a process, not an event that has taken place and therefore been completed.⁶³ It is a transformative process in itself.⁶⁴

This article makes the argument that transformative constitutionalism can lead to improved and high-quality legal education.⁶⁵ There are a few reasons for this. In terms of the Constitution, the rights of people should be protected and enforced, wherever necessary and applicable. The Bill of Rights includes fundamental rights that are designed to improve the lives of people, including the right to equal education, as well as access to justice when people need legal problems to be resolved by the involvement of the courts. The Constitution also seeks to advance the dignity and equality of people. Transformative constitutionalism seeks to improve the lives of people. In a South African context, this means that a person's past and circumstances need to be taken into account in order to determine in which ways improvement(s) can be brought about. Therefore, constitutional values need to be actively and clearly incorporated into the teaching and learning of law students so that students can learn how to apply the law in order to advance people's rights.⁶⁶ This may also indicate to students in what instances the law should be challenged if procedural law and evidence do not bring about both substantive and procedural justice.

As far as legal education is concerned, proper student education, as well as preparation for legal practice, cannot be achieved without appropriate legal education based on transformative constitutionalism.⁶⁷ The Preamble consequently states that legal education:⁶⁸

- a) must be responsive to the needs of the economy, the legal profession and society as a whole;
- b) must produce skilled graduates who can think critically and have a substantial understanding of the impact of the Constitution on legal development;
- c) must promote social justice in South Africa;
- d) must enable law graduates to execute their professional and social duties in an ethical and efficient manner; and
- e) must be responsive to ever-evolving information technology.

3 3 Purpose

The qualification standard states that the LLB degree prepares students for entry into legal practice.⁶⁹ For that reason, the degree offers a broad education that should develop well-rounded graduates with the following attributes:⁷⁰

⁶³ Mbenenge 2018 *Speculum Juris* 2; Langa "Transformative Constitutionalism" 2006 3 *Stellenbosch Law Review* 351 354.

⁶⁴ *Ibid.*

⁶⁵ See Quinot "Transformative Legal Education" 2012 129 *South African Law Journal* 411 412.

⁶⁶ See Quinot 2012 *SALJ* 415.

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ CHE *Qualification Standard for LLB* 8.

⁷⁰ *Ibid.*

- a) knowledge and appreciation of the values and principles in the Constitution;
- b) a critical understanding of theories, concepts, principles, ethics, perspectives, methodologies and procedures integral to the law;
- c) the ability to apply the aforementioned knowledge, appreciation and critical understanding in an appropriate manner to academic, professional and career contexts; and
- d) the capacity to be accountable and take responsibility in academic, professional and relevant societal contexts.

3 4 Standard for awarding the LLB degree

The qualification provides that the LLB degree may be awarded to students if and when the following attributes are evident:⁷¹

- a) *knowledge*: the graduate must have a comprehensive and sound knowledge and understanding of the Constitution and basic areas of law. These areas include, *inter alia*, formal law, perspectives on the law, the legal profession, as well as the dynamic nature of the law and its relationship with relevant and applicable contexts, including political, economic, commercial, social and cultural contexts.⁷² Clinical Legal Education (CLE) is expressly stated as an alternative to any specialisation in particular fields of law that may be presented;⁷³
- b) *critical thinking skills*: the graduate must, *inter alia*, be able to recognise and reflect on the role and place of the law in society and beyond;⁷⁴ and
- c) *research skills*: the graduate must be able to find, select, organise, use, analyse, synthesise and evaluate a variety of relevant sources of information in theoretical and applied research-based contexts.⁷⁵

As far as CLE is concerned, it forms part of the LLB curriculum at most South African and overseas universities.⁷⁶ It is an experiential learning methodology by which law students acquire practical skills by delivering legal services to indigent members of society in a social justice environment, mostly at university law clinics.⁷⁷ “Experiential learning” can be defined as

⁷¹ *Ibid.*

⁷² CHE *Qualification Standard for LLB* 8–9.

⁷³ CHE *Qualification Standard for LLB* 9.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ Du Plessis “Clinical Legal Education Models: Recommended Assessment Regimes” 2015 18(7) *Potchefstroom Electronic Law Journal* 2778 2778.

⁷⁷ McQuoid-Mason “The Four-Year LLB Programme and the Expectations of Law Students at the University of KwaZulu-Natal and Nelson Mandela Metropolitan University: Some Preliminary Results From a Survey” 2006 27(1) *Obiter* 166 168; Bodenstein (ed) *Law Clinics and the Clinical Law Movement in South Africa* (2018) 43; Ortiz “Going Back To Basics: Changing the Law School Curriculum by Implementing Experiential Methods in Teaching Students the Practice of Law” (June 2011) <https://www.law.cuny.edu/wp-content/uploads/page-assets/strategic-planning/future/changes-in-legal-education/Ortiz-2012.pdf> (accessed 2019-10-01) 4; Bleasedale, Rizzotto, Stalker, Yeatman, McFaul, Ryan, Johnson and Thomas “Law Clinics: What, Why and How?” in Thomas and Johnson (eds) *The Clinical Legal Education Handbook* (2020) 8. Also see Dednam (“Knowledge, Skills and

“[t]he process whereby knowledge is created through the transformation of experience. Knowledge results from the combination of grasping and transforming experience”.⁷⁸ The knowledge of the student, which is conceptualised in the abstract, becomes more concrete in being actively applied to practical scenarios.⁷⁹ At the same time, students have the opportunity to observe how to execute a particular task, as well as to reflect upon the experience.⁸⁰ Experiential learning provides the ideal opportunity for more integrated teaching and learning, because it involves a clear link between thinking and doing.⁸¹ CLE can also host simulated activities. Simulations are excellent exercises where a live-client model is not available, but where teachers nevertheless are looking for opportunities to introduce active learning in modules.⁸² Simulations are also beneficial, because they are more resource friendly, predictable and more manageable than the live-client model.⁸³ It also exposes students to practical scenarios, providing them with the opportunity to apply their doctrinal knowledge.⁸⁴

3.5 Applied competence

The qualification standard provides that the graduate must have the following competences:

- a) *ethics and integrity*: the graduate must have knowledge of relevant ethical considerations of law and must be able to act ethically and with integrity within the university, as well as with clients, courts, other legal practitioners and members of the public;⁸⁵
- b) *communication skills and literacy*: the graduate must be proficient in reading, writing, comprehension and speaking to specialists and lay persons in a professional capacity.⁸⁶ In the guidelines to the qualification standard, “proficiency” is described as being able to show

Values: Balancing Legal Education at a Transforming Law Faculty in South Africa” 2012 26(5) *South African Journal of Higher Education* 926 927), where it is stated that the South African law curriculum must increasingly provide for social justice issues.

⁷⁸ Kolb “Experiential Learning: Experience as the Source of Learning and Development” (26 August 2005) https://www.academia.edu/3432852/Experiential_learning_Experience_as_the_source_of_learning_and_development (accessed 2020-03-25) 20; Quinot and Greenbaum “The Contours of a Pedagogy of Law in South Africa” 2015 1 *Stellenbosch Law Review* 29 47.

⁷⁹ Quinot *et al* 2015 *Stellenbosch Law Review* 47.

⁸⁰ *Ibid.*

⁸¹ See Quinot *et al* 2015 *Stellenbosch Law Review* 48 in this regard.

⁸² Bodenstein *Law Clinics and the Clinical Law Movement in South Africa* 217.

⁸³ Hall and Kerrigan “Clinic and the Wider Law Curriculum” 2011 *International Journal of Clinical Legal Education* 31.

⁸⁴ See Krieger “Domain Knowledge and the Teaching of Creative Legal Problem Solving” 2004 11 *Clinical Law Review* 149 149 in this regard. This approach exposes students to “real world” situations. Also see Evans, Cody, Copeland, Giddings, Joy, Noone and Rice *Australian Clinical Legal Education: Designing and Operating a Best Practice Clinical Program in an Australian Law School* (2017) 44–45 with regard to the benefits of simulations.

⁸⁵ CHE *Qualification Standard for LLB* 10.

⁸⁶ *Ibid.*

ability or skill in doing something.⁸⁷ Proficiency in writing can be developed by regularly exposing students to problem solving and research-type problems and to expect them to produce well-written and coherent work.⁸⁸ Proficiency in language includes both substantive and formal components.⁸⁹ The substantive component includes relevance, clarity and precision concerning the topic and scope of the research being conducted, systematic and clearly structured treatment of the topic, and logic and persuasiveness of arguments, as well as the correct application of authority.⁹⁰ The formal component includes consistency in style, subdivision for primary⁹¹ and secondary⁹² sources, language and appropriate diction.⁹³ Proficiency in speaking can be developed by way of moot courts, debating settings, as well as oral presentation or defence of research projects.⁹⁴ Graduates must be able to provide clear and concise descriptions during presentations, respond effectively to any questions posed to them, as well as demonstrate clear understanding of trial or debating procedures.⁹⁵ Graduates must be able to conduct presentations with spontaneity, not solely making use of a prepared text.⁹⁶ Such presentation must be organised and well reasoned, clearly setting out the most important facts and legal principles, as well as applying such principles to the facts of the case.⁹⁷ As far as communication in general is concerned, the graduate must be able to demonstrate effective verbal, written, listening and non-verbal communication skills.⁹⁸ The graduate must also be able to apply communication skills to situations relevant to professional legal practice and must further be able to engage with diverse audiences as far as culture, language and gender are concerned;⁹⁹

- c) *numeracy*: graduates must be able to perform basic numeracy tasks as far as the legal field is concerned;¹⁰⁰
- d) *information technology*: the graduate must be able to access information in an effective manner.¹⁰¹ The graduate must furthermore be able to use technology as a tool to conduct research, as well as to organise, evaluate and communicate information;¹⁰²

⁸⁷ CHE *Qualification Standard for LLB* 13.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

⁹¹ "Primary sources" refers to legislation and case law.

⁹² "Secondary sources" refers to books, journal articles and similar sources.

⁹³ CHE *Qualification Standard for LLB* 13.

⁹⁴ *Ibid.*

⁹⁵ CHE *Qualification Standard for LLB* 13–14.

⁹⁶ CHE *Qualification Standard for LLB* 14.

⁹⁷ *Ibid.*

⁹⁸ CHE *Qualification Standard for LLB* 10.

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*

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- e) *problem solving*: graduates must be able to identify and define relevant issues in legal problems.¹⁰³ Graduates must further be able to identify and use the most relevant sources and research methods in solving legal problems and generating reasoned solutions to such problems;¹⁰⁴
 - f) *self-management and collaboration*: graduates must be able to act effectively in both individual and collaborative settings;¹⁰⁵
 - g) *transfer of acquired knowledge*: graduates must be able to apply knowledge to different, new and unfamiliar fields of law, deal with the development of the law on a continuous basis and transfer knowledge to others.¹⁰⁶ As far as a description of “continuous basis” is concerned, the guidelines to the qualification standard states that life-long learning is a pursuit that is essential for every law graduate throughout the career of such graduate.¹⁰⁷ With regard to “transfer of knowledge to others”, the guidelines state that the graduate must have an understanding of the law and also be able to explain it to colleagues, clients, lay persons and members of society who do not have sufficient exposure to the law;¹⁰⁸ and
 - h) *agency, accountability and service to the community*: graduates must be able to recognise, reflect on and apply social justice imperatives.¹⁰⁹ This entails that graduates must acknowledge the capacity, agency and accountability of a legal practitioner in the shaping and transformation of the legal system in order to promote social justice.¹¹⁰ In this regard, fairness, legitimacy, efficacy and equity in the legal system play important roles.¹¹¹ It further entails that graduates must understand the professional responsibilities of a legal practitioner in rendering services to members of the community.¹¹²

3 6 Assessment

The qualification standard provides information about the types of assessment that are appropriate in order to test graduate attributes. The standard mentions a variety of assessment methods, including summative and formative assessments.¹¹³ Assessments must occur regularly during the course of a particular module and must include authentic problem solving in real-life contexts or simulated teaching and learning activities.¹¹⁴ The staff

¹⁰³ CHE Qualification Standard for LLB 11.

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

¹⁰⁷ CHE Qualification Standard for LLB 14.

¹⁰⁸ CHE Qualification Standard for LLB 15.

¹⁰⁹ CHE Qualification Standard for LLB 11.

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*

¹¹² *Ibid.*

¹¹³ CHE Qualification Standard for LLB 12.

¹¹⁴ *Ibid.*

must be adequately qualified in order to conduct such assessments.¹¹⁵ There must be opportunities for students to engage in independent research, which must also be assessed.¹¹⁶ The guidelines to the qualification standard provide further insight into the nature of assessments, namely written or verbal assignments, tutorials, collaborative work, small group work, case studies, portfolios, moot courts, examinations and tests, role play, mock trials, client consultation exercises, reflective journals, observation of real work, as well as actual work in live-client clinics, which must be duly supervised, or any simulation of said work.¹¹⁷ The guidelines also provide that assessments may include any other compulsory and voluntary activities.¹¹⁸ There must be regular and constructive feedback to students as far as problem solving, research, literacy and communication skills are concerned.¹¹⁹

4 RELEVANCE OF THE QUALIFICATION STANDARD FOR THIS ARTICLE

It is clear that the relevant provisions of the qualification standard, as analysed, support the arguments for better preparedness of law graduates for legal practice. The following points are important as far as this conclusion is concerned:

- a) *the importance of transformative constitutionalism*:¹²⁰ this fully substantiates the argument that students need to be pervasively taught about the supremacy of the Constitution and that all areas of law, whether substantive or adjectival, must be measured against its provisions in order to ensure that social justice takes place and that the values of dignity, equality and freedom are advanced. In this way, students will be made aware of their role in legal practice, as well as the important task of the legal profession to serve the needs of members of society as far as their democratic rights are concerned. The legal profession is thus developed in order to advance the spirit and purport of the Constitution instead of applying conservative and rigid interpretations of legal principles and procedures that are not underpinned by the mentioned constitutional values;
- b) *the importance of both substantive teaching and practical training*:¹²¹ theory and practice should not be taught separately from each other. This substantiates the argument that a methodology like CLE, or any other practical training, should play an integrated role in the teaching and learning of the law.¹²² In this regard, CLE is explicitly mentioned in the qualification standard as an alternative to any field of

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

¹¹⁷ CHE *Qualification Standard for LLB* 15.

¹¹⁸ *Ibid.*

¹¹⁹ CHE *Qualification Standard for LLB* 12.

¹²⁰ See heading 3 2.

¹²¹ See heading 3 3.

¹²² See, *inter alia*, Welgemoed *Integration of Clinical Legal Education With Procedural Law Modules* (doctoral thesis, Nelson Mandela University) 4 7 2 1 in this regard.

specialisation to which a student might be exposed.¹²³ CLE can play a vital role in assisting with the development of students concerning the applied competences,¹²⁴ as prescribed by the qualification standard. When integrated with procedural law modules, it can advance students' appreciation of ethics and professionalism, communication, problem solving and collaboration in the handling of a client's case.¹²⁵ In this regard, students can be divided into groups when working on simulated cases, drafting documents, or partaking in moots and mock trials; from these activities, their ethical and professional behaviour can be ascertained. In executing these activities, students will learn how to transfer knowledge to others. In this regard, mock consultations can serve as a good platform where students can "consult" with one another and "provide legal advice". In doing so, they must foster an appreciation for social justice in accordance with the principles and values of the Constitution and critically evaluate the benefit of existing legal principles and procedures in the context of their "client's" case and social setting. Students must be afforded the opportunity to reflect on the actions that they have taken to evaluate their effectiveness. Constructive feedback from the presenter plays a paramount role in combining substantive legal principles with practical steps taken in order to place students in a position to substantiate and justify fully the procedures that they have suggested for a client in a particular social setting;

- c) *the importance of training in the use of digital technology*:¹²⁶ being part of transformative legal education, students must be skilled in using digital technology in performing practical legal work, such as, making use of document-generating software to draft process and pleadings.¹²⁷ Transformative legal education is based on transformative constitutionalism as a guiding theory and overarching discipline.¹²⁸ *Inter alia*, it focuses on the impact of the digital revolution on the acceptance of knowledge and teaching and learning.¹²⁹ This also includes the use of digital technology to conduct research for the purpose of finding adequate and practical solutions to legal problems. It is submitted that training law students to use digital technology promotes the legal profession's move to a more advanced and technologically developed level;
- d) *appropriate assessment methods*:¹³⁰ in this regard, the qualification standard reiterates the necessity for practical training, specifically mentioning problem solving in a real-life context, simulations, moot

¹²³ See heading 3 4.

¹²⁴ See heading 3 5.

¹²⁵ *Ibid.*

¹²⁶ *Ibid.*

¹²⁷ See, *inter alia*, Welgemoed *Integration of Clinical Legal Education* 4 7 4 2 in this regard.

¹²⁸ Quinot and Greenbaum 2015 *Stellenbosch Law Review* 29 35. Also see Bauling "Towards a Sound Pedagogy in Law: A Constitutionally Informed Dissertation as Capstone Course in the LLB Degree Programme" 2017 (20) *Potchefstroom Electronic Law Journal* 1 11–12 in this regard.

¹²⁹ Quinot *et al* 2015 *Stellenbosch Law Review* 11–12.

¹³⁰ See heading 3 6.

courts, mock trials and work at law clinics. The collaborative work directive also reinforces the constitutional notion of participatory parity. Participatory parity¹³¹ is a theory of social justice¹³² based on the principle that everyone has the right to participate and interact with one another as peers in social life.¹³³ In working together, the students develop an appreciation for the needs of others and learn to listen closely to a colleague's input in a matter. This facilitates appreciation of the needs of clients in legal practice and listening closely to what clients want in order to assist them accordingly. The reference to reflective journals emphasises the importance of affording students opportunities to evaluate their own performance critically and to learn from it in collaboration with the law teacher.¹³⁴ The reference to other compulsory or voluntary activities refers to concepts like working at university law clinics and mobile law clinics¹³⁵ – activities that can play a valuable role in enriching students' knowledge and enhancing their practical skills. Assessment in this regard may be linked to students' participation and performance in each of these activities;

- e) *the provision of constructive feedback to students about their performance in all teaching and learning activities:*¹³⁶ without feedback, students do not know whether they have satisfactorily completed particular activities and accomplished certain learning outcomes. Feedback is paramount to students' development as future legal practitioners, especially taking into account the need to develop professional accountability to members of the public. In this regard, the qualification standard specifically mentions accountability and professional responsibility to members of the public; and
- f) *linked to the previous item is the graduate's ability to transfer knowledge to others:* this is important insofar as a graduate's interaction with members of the public is concerned, and also as a candidate legal practitioner providing legal training to students as part of community service as discussed.

From a practical perspective, student numbers at universities might present problems as far as the above-mentioned points are concerned. Large student numbers is a current reality at almost all law schools in South Africa. This presents problems, as it may not be possible to use any or adequate

¹³¹ Liebenberg "Needs, Rights and Transformation: Adjudicating Social Rights" 2006 1 *Stellenbosch Law Review* 5 7. "Participatory parity" is a theory that has been developed by Nancy Fraser.

¹³² Armstrong and Thompson "Parity of participation and the politics of status" 2007 *European Journal of Political Theory* 1 1.

¹³³ Liebenberg 2006 *Stellenbosch Law Review* 7; Armstrong *et al* 2007 *European Journal of Political Theory* 1.

¹³⁴ See, *inter alia*, Welgemoed *Integration of Clinical Legal Education* 4 3 2 with regard to the importance of student reflection.

¹³⁵ See, *inter alia*, Welgemoed *Integration of Clinical Legal Education* 4 7 2 3 with regard to the mobile law clinic of NMU and how it can enrich student experience and education.

¹³⁶ See heading 3 6.

practical methods to teach students.¹³⁷ The availability of venues large enough to accommodate all students may also be problematic. Furthermore, large student numbers may also have an impact on student behaviour and discipline in class, lecture organisation and time management.¹³⁸ Blended learning might be a solution. This is especially beneficial in addressing large student numbers. Problematic and complex issues, brought up during lectures and other engagement sessions, could be discussed online by the law teacher on a dedicated e-learning site by way of a frequently-asked-questions section. As far as CLE is concerned, a clinician might prefer to produce a video recording discussing problems and issues experienced during practical sessions at the law clinic. This recording could be posted online on an e-learning site where students could watch it, learn from it and pose questions to the clinician on a thread provided on the site. The clinician could respond to the questions. Mock trials, moots and other practical exercises, including consultation skills and drafting skills, could also be conducted online. This approach would eradicate the need for venues and the problem of large student numbers. It would furthermore enhance transformative legal education, in that digital technology would be made part and parcel of the teaching and learning experience.

5 A BASELINE STUDY RELATING TO GRADUATE ATTRIBUTES ON SOUTH AFRICAN GRADUATES FROM THE PERSPECTIVE OF EMPLOYERS

5.1 Reasons for the baseline study

During 2009, the results of a baseline study, undertaken by Higher Education South Africa (HESA), was published. This study was a pilot survey and its purpose was to ascertain the views and expectations of employers, as well as their evaluation, of the quality of graduates produced by higher education institutions in South Africa.¹³⁹ The study was not specifically conducted with regard to law graduates, but it is submitted that the study, as well as its results, are applicable to the legal profession. The reason for this submission stems from the fact that legal practitioners are constantly on the lookout for new candidate legal practitioners to join law firms and, for that reason, these legal practitioners can be classified as “employers” in the context of this discussion. Furthermore, the baseline study does not exclude legal practitioners in this regard. It was envisaged that the outcomes of this study would:

¹³⁷ Also see Du Plessis “Clinical Legal Education: The Challenge of Large Student Numbers” 2013 38(2) *Journal for Juridical Science* 17–19 where it is stated that, even for CLE, large student numbers are a challenge.

¹³⁸ McGlynn “The Pros and Cons of Small Group Teaching” (13 June 2018) <http://www.sec-ed.co.uk/best-practice/the-pros-and-cons-of-small-group-teaching/> (accessed 2019-07-22).

¹³⁹ Griesel and Parker “Graduate Attributes: A Baseline Study on South African Graduates From the Perspective of Employers” 2009 *Higher Education South Africa & The South African Qualifications Authority* 1–2. Also see Greenbaum *et al* 2014 *South African Journal of Higher Education* 94–97 for a discussion of this baseline study.

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- a) provide useful data to give rise to debate and engagement with the industry;¹⁴⁰ and
 - b) establish an empirical threshold against which periodic future reviews could be measured.¹⁴¹

In a South African context, this baseline study is still relevant and applicable, despite being somewhat dated. This is because the country's economy has not changed and/or improved significantly compared to the time that the study was undertaken. The economy has certain pressing needs and the need for a "skills revolution" was expressed by former Deputy President Phumzile Mlambo-Ngcuka.¹⁴² This expression formed part of the Deputy President's vision to mobilise high-level support for priority skills development.¹⁴³ The Deputy President stated that curriculum developers are not paying sufficient attention to the relevance of skills and competencies of graduates in the context of the world of employment.¹⁴⁴ The Deputy President's statement supports the argument in this research that something more is required from higher education in order to produce better graduates for practice. The expectation is for higher education to commence active engagement with the skills needs of the economy, while at the same time addressing the many pressing imperatives constraining South Africa as a developmental state and relatively young democracy.¹⁴⁵ The mentioned engagement should be conducted by way of research, knowledge motivation and innovation.¹⁴⁶

The baseline study was conducted within the following contextual layers as far as skills and employability are concerned:¹⁴⁷

- a) the interface between higher education and the employment world, as well as the challenges in aligning these two areas;
- b) the current pressing skills needs of the economy and society;
- c) the reality of a twenty-first century world that is driven by knowledge – a notion that should compel higher education to produce graduates who are able to compete and participate in the increasingly globalised world and economy in useful and productive ways; and
- d) the concern of employers about the gap between the outcomes of higher education and the needs of the economy. This gap refers specifically to the quality, type and quantity of graduates produced by higher education institutions.¹⁴⁸ In this regard, higher education has expressed, with some frustration, that universities are not human resources development factories and that employers must therefore

¹⁴⁰ *Ibid.*

¹⁴¹ *Ibid.*

¹⁴² Griesel *et al* 2009 *Higher Education South Africa & The South African Qualifications Authority* 2.

¹⁴³ *Ibid.*

¹⁴⁴ *Ibid.*

¹⁴⁵ *Ibid.*

¹⁴⁶ *Ibid.*

¹⁴⁷ Griesel *et al* 2009 *Higher Education South Africa & The South African Qualifications Authority* 3.

¹⁴⁸ *Ibid.*

appreciate the role that higher education plays in the education of students and the type of graduate that can be delivered.¹⁴⁹

In conducting this baseline study, HESA assumed the following:¹⁵⁰

- a) that knowledge, skills, competencies and values, developed by higher education, may not be aligned with the needs and expectations of employers and the demands of the rapidly changing working world; and
- b) that “skills” may require redefinition in order to bring the responsibilities of higher education in alignment with the possibilities of new and changing forms of work and how knowledge is being applied.

In light of the aforementioned, the study was structured so as to produce the following information:¹⁵¹

- a) graduate attributes that are considered as important by employers when graduates enter the working world; and
- b) the extent to which graduates graduating from South African higher education institutions demonstrate these attributes.

5.2 The study and its results

In conducting this study, it was noted that there is a shift away from the earlier notion of preparing graduates for “employment” towards a notion of “employability”.¹⁵² “Employability” is influenced by four broad, but interrelated components, namely:¹⁵³

- a) *skilful practices*: this refers to communication, time management, self-management, resource management, problem solving and lifelong learning;
- b) *deep understandings grounded in a disciplinary base*: this refers to specialised expertise in a field of knowledge;
- c) *efficacious beliefs about personal identity and self-worth*; and
- d) *metacognition*: this refers to self awareness, as well as the ability to reflect on actions taken.

“Employability” appears to be a very deep notion.¹⁵⁴ It is inclusive of a lot of soft skills and not merely of attributes that will enable graduates to perform the work when entering the working world. Soft skills refer to time

¹⁴⁹ *Ibid.*

¹⁵⁰ Griesel *et al* 2009 *Higher Education South Africa & The South African Qualifications Authority* 3, 19; Greenbaum *et al* 2014 *South African Journal of Higher Education* 95.

¹⁵¹ *Ibid.*

¹⁵² Griesel *et al* 2009 *Higher Education South Africa & The South African Qualifications Authority* 4.

¹⁵³ Griesel *et al* 2009 *Higher Education South Africa & The South African Qualifications Authority* 5.

¹⁵⁴ *Ibid.*

management, networking, teamwork, creative thinking and conflict resolution.¹⁵⁵

In conducting the study, a questionnaire was provided to employers.¹⁵⁶ In the questionnaire, various questions were asked and employers had to answer with written comments or indicating values on two sets of rubrics.¹⁵⁷ Both sets of rubrics contained values from one to five, with one being indicative of “Very Dissatisfied” and five being indicative of “Very Satisfied”. One rubric was based on the type of graduate that the employer perceived higher education institutions to have delivered and was titled “what you get”.¹⁵⁸ The other rubric was based on the type of graduate that employers expected to receive after the graduate’s exit from higher education institutions, and was titled “what you expect”.¹⁵⁹ Graduate attributes were categorised into four main groups for the purposes of this study, namely:¹⁶⁰

- a) *basic skills and understanding*: this category investigated whether graduates display the necessary knowledge to meet the expectations of the workplace. In this regard, it was asked: can graduates hit the ground running when entering the workplace? The assumption was that employers would expect graduates to possess basic communication skills and an understanding of the workplace in order to perform effectively.¹⁶¹ The study revealed that there was a gap between what higher education institutions deliver and what employers expect.¹⁶² The expectations of employers were also placed in different categories and the biggest gaps were found in these categories: “ability to find and access information”, “written communications skills”, and “ability to use information”;¹⁶³
- b) *knowledge and intellectual ability*: this category investigated whether graduates demonstrated the intellectual ability and adequate conceptual depth to perform well in the workplace. The assumption was that graduates need to have consolidated their intellectual ability and knowledge foundation, which would enable them to engage with

¹⁵⁵ Doyle “What are Soft Skills?” (revised 24 June 2020) <https://www.thebalancecareers.com/what-are-soft-skills-2060852> (accessed 2020-04-20).

¹⁵⁶ Griesel *et al* 2009 *Higher Education South Africa & The South African Qualifications Authority* 23–27.

¹⁵⁷ *Ibid.*

¹⁵⁸ Griesel *et al* 2009 *Higher Education South Africa & The South African Qualifications Authority* 24, 25; Greenbaum *et al* 2014 *South African Journal of Higher Education* 95.

¹⁵⁹ Griesel *et al* 2009 *Higher Education South Africa & The South African Qualifications Authority* 24, 25.

¹⁶⁰ Griesel *et al* 2009 *Higher Education South Africa & The South African Qualifications Authority* 6.

¹⁶¹ Griesel *et al* 2009 *Higher Education South Africa & The South African Qualifications Authority* 9.

¹⁶² Griesel *et al* 2009 *Higher Education South Africa & The South African Qualifications Authority* 9–10.

¹⁶³ Griesel *et al* 2009 *Higher Education South Africa & The South African Qualifications Authority* 10. The ratings were as follows: “ability to find and access information” – higher education delivered: 3.5, while employer expected: 5.0, bringing about a gap of 1.45; “written communication skills” – higher education delivered: 3.2, while employer expected: 4.5, bringing about a gap of 1.34; “ability to use information” – higher education delivered: 3.4, while employer expected 4.6, bringing about a gap of 1.23.

the demands of the workplace, as well as for them to benefit from workplace opportunities.¹⁶⁴ Once again, the delivery of higher education and the expectations of employers were placed in different categories and of these, the biggest gap was in “understanding of economic and business realities”;¹⁶⁵

- c) *workplace skills and applied knowledge*: this category investigated whether the performance of graduates was indicative of an appropriate and applied competence to tasks inherent to the workplace. The assumption was that graduates would be able to move from a theoretical approach to a more practical basis.¹⁶⁶ Of the various higher education delivery and employer expectation categories, two stood out as displaying the biggest gaps: the “ability to choose appropriate information to address problems” and the “ability to plan and execute tasks independently”;¹⁶⁷ and
- d) *interactive and personal skills*: this category investigated how graduates see and conduct themselves in the context of the workplace and workplace practices. The assumption was that changes in workplace practices demand flexibility and adaptability of graduates.¹⁶⁸ Of the various higher education delivery and employer expectation categories, the biggest gap was recorded in “openness and flexibility”.¹⁶⁹ “Openness and flexibility” apparently refer to a graduates’ willingness to be transparent about their own abilities and to continue learning,¹⁷⁰ realise where change(s) are required and adapt to bring about such changes.¹⁷¹ Of significance is that the smallest gap was recorded in “willingness to learn”.¹⁷² This clearly shows that graduates have a desire to learn skills that are applicable to the workplace. However, it is not clear what the cause of the lack of openness and flexibility in graduates is.

¹⁶⁴ Griesel *et al* 2009 *Higher Education South Africa & The South African Qualifications Authority* 11.

¹⁶⁵ Griesel *et al* 2009 *Higher Education South Africa & The South African Qualifications Authority* 12. The rating was as follows: higher education delivered: 2.9, while employer expected 4.2, bring about a gap of 1.34.

¹⁶⁶ Griesel *et al* 2009 *Higher Education South Africa & The South African Qualifications Authority* 13.

¹⁶⁷ Griesel *et al* 2009 *Higher Education South Africa & The South African Qualifications Authority* 13–14. The ratings were as follows: “ability to choose appropriate information to address problems” – higher education delivered: 3.1, while employer expected: 4.5, bringing about a gap of 1.42; and “ability to plan and execute tasks independently” – higher education delivered: 3.1, while employer expected: 4.5, hence a gap of 1.41.

¹⁶⁸ Griesel *et al* 2009 *Higher Education South Africa & The South African Qualifications Authority* 15.

¹⁶⁹ Griesel *et al* 2009 *Higher Education South Africa & The South African Qualifications Authority* 15–16. The rating was as follows: higher education delivered: 3.4, while employer expected 5.0, hence a gap of 1.60.

¹⁷⁰ See Griesel *et al* 2009 *Higher Education South Africa & The South African Qualifications Authority* 17 in this regard.

¹⁷¹ See Griesel *et al* 2009 *Higher Education South Africa & The South African Qualifications Authority* 15 in this regard.

¹⁷² Griesel *et al* 2009 *Higher Education South Africa & The South African Qualifications Authority* 15–16. The rating was as follows: higher education delivered: 4.0, while employer expected 4.7, hence a gap of 0.75.

5 3 Comments on the baseline study by Higher Education South Africa and the South African Qualifications Authority

HESA and SAQA considered the responses from the employers in the context of the two assumptions on which this study was based.¹⁷³ There appeared to be a need, as far as both instances are concerned, for engagement between employers and higher education institutions on how to narrow the gap between what is expected and what is delivered.¹⁷⁴ To address this, a common understanding must be reached about the nature of the gaps, as well as ways in which to narrow them.¹⁷⁵ Investigating higher education's work-based and work-placed teaching and learning programmes can assist in establishing what is best and most appropriate.¹⁷⁶ It will further require an investigation into the particular curriculum and educational and assessment practices in order to conclude what will be most effective as far as both higher education and the workplace are concerned.¹⁷⁷

The study revealed the importance of proficiency in English, communication and digital technology for the purpose of employability.¹⁷⁸ As indicated in the study, this is hardly surprising,¹⁷⁹ especially taking into account that communication and digital technology are concepts integral in almost all forms of employment, including the legal profession. A foundation for these skills is firmly established in the majority of countries, but not in South Africa.¹⁸⁰ Thus higher education has to address the failure of the school system in order for such a foundation to be established in a more systematic and thorough manner.¹⁸¹ This foundation is of paramount importance for the legal profession, as communication plays an important role in the everyday life of legal practitioners,¹⁸² and digital technology, as part of the Fourth Industrial Revolution, now finds accelerated application in the legal profession.¹⁸³ Transformative legal education also requires that students be trained as far as digital technology is concerned.

Overall, the findings of HESA and SAQA are summarised as follows:

¹⁷³ See heading 5 1.

¹⁷⁴ Griesel *et al* 2009 *Higher Education South Africa & The South African Qualifications Authority* 19.

¹⁷⁵ *Ibid.*

¹⁷⁶ *Ibid.*

¹⁷⁷ *Ibid.*

¹⁷⁸ *Ibid.*

¹⁷⁹ *Ibid.*

¹⁸⁰ *Ibid.*

¹⁸¹ *Ibid.*

¹⁸² Hyams "On Teaching Students to 'Act Like a Lawyer': What Sort of Lawyer?" 2008 13 *Journal of Clinical Legal Education* 21 22; Swanepoel, Karels and Bezuidenhout "Integrating Theory and Practice in the LLB Curriculum: Some Reflections" 2008 (Special Issue) *Journal for Juridical Science* 99 103. Communication, in this regard, consists of both writing and verbal skills. Also see Welgemoed *Integration of Clinical Legal Education* 3 4 4 with regard to the importance of effective verbal and drafting skills.

¹⁸³ Also see Welgemoed *Integration of Clinical Legal Education* 4 7 4 2 with regard to the importance of digital technology and artificial intelligence in the legal profession.

- a) employers have a much more complex perception of the role of higher education.¹⁸⁴ This means that employers and higher education may be misreading each other's positions;¹⁸⁵
- b) there is a need to narrow the gap between what employers expect and what higher education delivers.¹⁸⁶ This primarily concerns a proactive task directed at engagement and the application of knowledge by graduates;¹⁸⁷
- c) it is noted that employers do add value to the conceptual foundation, knowledge and intellectual approach to tasks that higher education is generating;¹⁸⁸
- d) this study presents a real opportunity to promote engagement, understanding and more collaborative efforts between higher education and employers. To accomplish this, both higher education and employers must have clarity on how far higher education should go in order to narrow the gap as far as education is concerned, and on to what extent employers should provide on-the-job-training and continuing development;¹⁸⁹
- e) there is political sensitivity relating to the mentioned issues, which may lead to simplification.¹⁹⁰ Nevertheless, honest and constructive engagement between higher education and employers remains essential to improving quality across higher education institutions.¹⁹¹ The issues cannot merely be left out; they need to be problematised and contextualised.¹⁹²

To achieve better synergy between higher education and employers, the study recommends, *inter alia*, that, before graduation, students should have a clear idea of the expectations of future employers.¹⁹³ In this regard, businesses and companies can conduct presentations about these expectations at universities, thereby facilitating the interaction between higher education and employers.¹⁹⁴ It is significant that the study regards it as important to increase the student's career literacy while the student is still attending university.¹⁹⁵ In this regard, it is submitted that career literacy should commence in the first academic year, permeate all other academic years, and culminate in a definitive summary in the final academic year. This will contribute towards continuous education of students and contextualise their preparation for entry into the working world. A pleasing and

¹⁸⁴ Griesel *et al* 2009 *Higher Education South Africa & The South African Qualifications Authority* 19.

¹⁸⁵ *Ibid.*

¹⁸⁶ Griesel *et al* 2009 *Higher Education South Africa & The South African Qualifications Authority* 20.

¹⁸⁷ *Ibid.*

¹⁸⁸ *Ibid.*

¹⁸⁹ *Ibid.*

¹⁹⁰ *Ibid.*

¹⁹¹ *Ibid.*

¹⁹² *Ibid.*

¹⁹³ *Ibid.*

¹⁹⁴ *Ibid.*

¹⁹⁵ *Ibid.*

unanticipated outcome of the study is that employers appear to understand the demands of a changing working world, as well as the demands that the future will place on graduates who enter the workplace.¹⁹⁶ This emphasises the role of higher education in producing thinking, responsive and intellectually well-grounded graduates who possess flexibility and the ability to adapt readily to demands and challenges.¹⁹⁷

5 4 Significance of the baseline study for this article

The baseline study by HESA and SAQA has revealed that there is substance to the dissatisfaction of various stakeholders in the legal profession as far as the preparedness of law graduates for legal practice is concerned. A “skills revolution”, as suggested by the former Deputy President,¹⁹⁸ is paramount, as graduates appear to lack the necessary skills required for entry into the legal profession. For this reason, the training provided by university law schools and the expectations of legal practice require alignment to ensure that graduates can adapt to the working world. This alignment is beneficial to both graduate, as far as self-development is concerned, and society at large, as graduates must serve members of the public in an accountable and professional manner when entering legal practice.¹⁹⁹ Alignment should be seen as a constitutional imperative as far as teaching and learning by university law schools are concerned. Without a more practical approach to law modules, fully underscored by constitutional values, graduates will not develop a sense of how the law can promote social and procedural justice to improve people’s lives. Thus the various suggestions for improvement in the teaching and learning of students (including enhanced written and verbal skills, the involvement of legal practitioners and adequate recognition of the impact of the Fourth Industrial Revolution) can significantly assist with the narrowing of the gap between higher education and the working world.

An important question to be answered is whether the integration of graduate attributes with curricular content is yielding any success. It is not easy to determine whether students have absorbed such attributes during their academic years at university.²⁰⁰ To answer this question, the views of academics (the primary teachers at university level) should be visited. In the United Kingdom, there has been very little sign of large-scale impact in this regard.²⁰¹ In Australia, it has been reported that academics regard graduate attributes as relatively unimportant additive outcomes that are only taught in order to supplement the more important substantive content of the various modules.²⁰² These findings therefore appear to provide a somewhat negative

¹⁹⁶ *Ibid.*

¹⁹⁷ *Ibid.*

¹⁹⁸ See heading 5 1.

¹⁹⁹ See the Preamble of the Legal Practice Act 28 of 2014, as well as Welgemoed *Integration of Clinical Legal Education* 5 2 2 1 in this regard.

²⁰⁰ Greenbaum *et al* 2014 *South African Journal of Higher Education* 93.

²⁰¹ *Ibid.*

²⁰² *Ibid.*

answer to the aforementioned question. Graduate attributes can only be successfully internalised by graduates if there is a willingness to integrate them with the module content, which will be reflective of a belief by the particular law teacher that such attributes are indeed important.²⁰³

The baseline study has already shown that graduates indicate a willingness to learn skills that are applicable to the workplace;²⁰⁴ therefore, it is submitted that law schools have no choice but to regard integration of graduate attributes with curricular content as paramount to the professional education and training of law students.

It is consequently submitted that law schools at South African universities should take immediate and serious notice of the content of the baseline study, as well as the expectations of legal practice, and adapt the teaching and learning of all substantive law and procedural law modules accordingly.

6 CONCLUSION

Arendt stated the following:²⁰⁵

“Education is the point at which we decide whether we love the world enough to assume responsibility for it and by the same token save it from that ruin which, except for renewal, except for the coming of the new and the young, would be inevitable. And education, too, is where we decide whether we love our children enough not to expel them from our world and leave them to their own devices, not to strike from their hands their chance of undertaking something new, something foreseen by no-one, but to prepare them in advance for the task of renewing the common world.”

The Legal Practice Act²⁰⁶ (LPA) brings about new developments for the legal profession. As argued, it requires of legal practitioners and candidate legal practitioners to practise law in a professional and ethical manner, ever aware of the best interests of their clients. This duty, together with the constitutional imperative to improve the life of all members of society against the backdrop of the constitutional and democratic values, provides opportunities for legal practitioners and candidate legal practitioners to renew the common world, as stated by Arendt. Arendt’s pedagogy requires universities to serve the public good by way of critical learning experiences and notions of democratic freedom, instead of a consumerist future.²⁰⁷

It has been indicated that the legal profession is, and has always been regarded as, a noble profession.²⁰⁸ It therefore does not come as a surprise that the South African Minister of Justice and Correctional Service, Ronald

²⁰³ Greenbaum *et al* 2014 *South African Journal of Higher Education* 93.

²⁰⁴ See heading 5.2.

²⁰⁵ Arendt “The Crisis in Education” (undated) file:///D:/LLD%20research/Arendt-Crisis_In_Education-1954.pdf (accessed 2020-05-21); Walker 2002 *Arts and Humanities in Higher Education* 48.

²⁰⁶ 28 of 2014.

²⁰⁷ Walker 2002 *Arts and Humanities in Higher Education* 48. Also see heading 2.3 in this regard.

²⁰⁸ See, *inter alia*, Welgemoed *Integration of Clinical Legal Education with Procedural Law Modules* 5.2.2.1 with regard to the legal profession being depicted as a noble profession.

Lamola, has called for judicial officers to be held to the highest standards of scrutiny.²⁰⁹ As justification for this statement, the Minister stated that the conduct of judicial officers must at all times be beyond reproach and their conduct must befit their office.²¹⁰ This follows the suspension of a magistrate based on misconduct for allegedly being linked to corruption.²¹¹ The Minister indicated that such allegations are devastating to the image of judicial officers, the courts and the rule of law in general.²¹² Perception definitely matters,²¹³ especially as far as a noble profession is concerned. The influence of social media on public perception of everyday life (the legal profession not being exempt in any way) has been discussed. The judiciary and the rule of law are therefore no exceptions.²¹⁴ US Supreme Court Justice Kennedy has stated that, where there is a loss of confidence in the judicial system and a misunderstanding of the judicial system, steps must be undertaken to correct this.²¹⁵

Therefore, whether it is a judicial officer, legal practitioner, legal administrative official, or the rule of law in general that is compromised by way of unprofessional and unethical conduct, the entire legal profession is tainted by public perceptions of impropriety, and appears not to heed the call for accountability of the provisions of the LPA. As also stated, it may raise concerns about the legal education and training that legal professionals have undergone, not only during their years of experience and vocational training in practice, but also as far as university education and training is concerned. Sibanda indeed states that “[s]ome of the faultlines in the judiciary and legal profession lie in our legal training.”²¹⁶ Law schools offer legal practices modules as part of the LLB curriculum, but topics like professional conduct and ethics are not always sufficiently addressed.²¹⁷ As professional conduct and ethics are linked to the law, the inclusion of such aspects in the training of students should be emphasised. It will strengthen the attempts to produce graduates who can fulfil accountable roles in serving the public.

It can therefore be stated without doubt that the advent of the LPA requires a new level of legal education. This is undeniable when taking into account statements that the LPA must bring change not only to the legal profession, but also to the manner in which the legal profession provides legal services to beneficiaries of the system (members of the public).²¹⁸ During practical vocational training, candidate legal practitioners use substantive law, legal procedure and aspects of evidence every day. This

²⁰⁹ Sibanda “Why Pay a Lawyer When You Can Buy the Judge? Corruption in our Legal System is a Threat to Democracy” (1 March 2020) <https://www.dailymaverick.co.za/opinionista/2020-03-01-why-pay-a-lawyer-when-you-can-buy-the-judge-corruption-in-our-legal-system-is-a-threat-to-democracy/> (accessed 2020-03-17).

²¹⁰ *Ibid.*

²¹¹ *Ibid.*

²¹² *Ibid.*

²¹³ *Ibid.*

²¹⁴ *Ibid.*

²¹⁵ *Ibid.*

²¹⁶ *Ibid.*

²¹⁷ *Ibid.*

²¹⁸ Thebe “Legal Practice Act and human rights at the core of issues discussed at LSSA AGM” (2015) <http://www.saflii.org/za/journals/DEREBUS/2015/89.pdf>.

does not cease after they have been admitted and enrolled as legal practitioners; it intensifies. In applying substantive law, legal procedure and evidence, legal practitioners and candidate legal practitioners are serving the world. In this regard, and to paraphrase Arendt's above-mentioned words, if law teachers value the world that is to be served by legal practitioners and candidate legal practitioners, law teachers must educate law students accordingly. This requires transformative legal education to enable students to undertake "something new", as stated by Arendt, when entering legal practice as adequately qualified graduates.

However, in order for graduates successfully to undertake "something new" upon entering legal practice, they need to possess the required graduate attributes. The LLB standard makes it clear that a substantial knowledge of legal theory, practical skills and an appreciation of constitutional values, legal ethics and professionalism are paramount for all law graduates. It is consequently recommended that law schools should devise faculty-specific CCFOs in order to direct the focus to the desired quality of graduates when leaving university.²¹⁹ These faculty-specific CCFOs should not in any way contradict what is contained in the LLB standard. Rather, they should be viewed as focus areas as to where specific training is required to prepare students better for legal practice. The CCFOs should therefore flow from and be interrelated with what is stated in the LLB standard. It is submitted that these CCFOs will also amplify the identity of a particular university as far as the recognition of the importance of graduate attributes are concerned. In devising such graduate attributes, law schools should ensure that the constitutional imperative, as argued for in this article, is strictly adhered to. If they do so, the foundation is firmly established for the training of law graduates who can promote the spirit and purport of the LPA and the Constitution from their first day in legal practice.

A wide range of employability skills can have positive effects not only on graduate learning outcomes and employability, but also on the economy.²²⁰ For this reason, higher education institutions should play a pivotal role in developing the career management skills of students.²²¹ University law schools must actively engage with aspects of employability as far as all law modules are concerned.²²² It is submitted that, in order to determine whether university law schools are compliant in this regard, more frequent baseline studies relating to graduate attributes may be required. This could be done every alternate year, with annual reports submitted to the particular government funding institution(s) by law schools, clearly setting out the training provided to law students. As much as this may bring about administrative burdens for both law schools and government, it may result in more practice-ready law graduates. It is therefore important that universities remove the division between themselves and the demands of legal practice in order to assist graduates to prepare for their careers in legal practice.²²³ In

²¹⁹ See heading 2 for examples of CCFOs of UWC and NMU.

²²⁰ Bridgstock 2009 *Higher Education Research and Development* 39.

²²¹ *Ibid.*

²²² See Bridgstock 2009 *Higher Education Research and Development* 39 in this regard.

²²³ See Bridgstock 2009 *Higher Education Research and Development* 40 in this regard.

this way, university law schools become important conduits between skilled law graduates and members of the public being served in an accountable, professional and ethical manner.

It can therefore be concluded that the graduate attributes, as provided for in the LLB standard, are sufficient to prepare law students for legal practice. Law schools should further familiarise themselves with the mission and vision of the LPA, in order to be clear on how important it is to comply with the constitutional imperative, as argued for in this article. If not, such universities may be accused of producing legal practitioners who are not responsive to the needs of the public, especially in a developing country like South Africa, where there is a large disparity in the distribution of wealth.²²⁴

²²⁴ McQuoid-Mason "Can't Get No Satisfaction: The Law and Its Customers: Are Universities and Law Schools Producing Lawyers Qualified to Satisfy the Needs of the Public?" 2003 28(2) *Journal for Juridical Science* 199 207.