CHAPTER 11

INTRODUCING LAW TO COMMERCE STUDENTS A CASE STUDY

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Scenario

Amir has matriculated with exemption and has been accepted to study a Bachelor of Commerce degree at the Nelson Mandela Metropolitan University (NMMU). He is particularly strong in mathematics and accounting and is looking forward to becoming a chartered accountant or economist. In between his set curriculum, Amir notices that there is at least one 'law' course he must pass in order to achieve his ambition. The course is entitled Commercial Law and requires proficiency in the following themes in order for credit to be awarded:

- ▣ background to law in South Africa;
- ▣ branches of law;
- ▣ general principles of contracts;
- ▣ contents of a contract, common contractual terms, forms of breach of contract and remedies for breach of contract;
- ▣ the passing, varying and ending of rights and duties by agreement and termination of contracts by law; and
- ▣ knowledge of three specific contracts, namely sale, lease and credit agreement.

Amir is concerned that he needs to gain credit in such a course since he has no intention of being a lawyer. He also wonders how the course will be presented considering that there are almost 700 students who must register for the course.

Similarly, Kavita, the law lecturer appointed to teach the module, has grave concerns about how to simplify law for such 'non-law' students without undermining the quality of the course being presented. She is also apprehensive about teaching to such a large class and wonders what techniques she can use for assistance.

This chapter deals with issues such as these by sharing the author's experience of teaching the subject using different techniques over a period of seven years. By using the formal feedback questionnaires prescribed by the faculty as an indicator of the

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student experience and by considering the University's statistics *vis-à-vis* the pass rate for the course and the author's personal teaching experience, it is hoped that some indicators of good practice in this framework will be evident.

The chapter adopts a two-pronged approach and focuses on both students and lecturers by exploring the effects of such a scenario on each group separately. While students' needs are often the focus of research in the sphere of legal education (Goldring, Sampford & Simmonds, 1998:94-99), the approach of also considering the needs of lecturers is justified on the basis that a bridge ought to be built in order to accommodate the needs of both groups. This chapter seeks to begin the construction of such a bridge by firstly noting the challenges and opportunities presented by the Amir/Kavita scenario for both students and lecturers. Secondly, the chapter contextualises these challenges and opportunities against the backdrop of the governing framework, namely, the South African Institute of Chartered Accountants (SAICA)/Independent Regulatory Board for Auditors (IRBA) curriculum. Thirdly, the chapter discusses a 'fresh approach' that emphasises the use of an appropriate textbook, proper use of technology, and flexibility regarding the method of assessment adopted. The chapter concludes with some general remarks and recommendations.

Challenges and opportunities

It has been argued that higher education in the next decade will be marked by unprecedented turbulence and change (Johnstone, 1996:iii). Stakeholders, employers and students are applying and/or experiencing great pressure for the delivery of high quality university education. The teaching and learning of law at first-year university level poses many specific challenges. These challenges are enhanced when the subject in question is a 'service course' for students registered for degrees other than the Bachelor of Law. In addition to the ordinary challenges facing a majority of South African university students, such as language difficulties, learners like Amir require motivation to study a subject that is not a course of their own preference. Lecturers may also require some additional motivation – a factor often forgotten. It is a cumbersome task to teach a large number of students who have no foundational background in law and lecturers may feel that they have been unlucky to be asked to lecture law to students who are not registered for the LLB degree. This may result in the temptation to take short cuts in terms of preparation and explanation of legal terminology. It may also be convenient for the lecturer to use a large class size as an excuse for a poor pass rate and/or general student dissatisfaction.

In the case of a law subject, it may also be correct to argue that a different mindset and approach is required (by both students and lecturers) than with standard business courses. In addition, complex legal concepts need to be introduced in a fashion that deals with the appropriate terminology without unnecessarily complicating the learning experience – especially when taking into cognisance the diversity of students' backgrounds.

Studying a subject such as Commercial Law in the midst of hundreds of other first-year students poses a further issue. Likewise, teaching such a large class is an

overwhelming experience and failure to develop the proper rapport with the students could have catastrophic consequences for all concerned. No matter how experienced a lecturer is, there is always a tremendous buzz of anticipation at the commencement of the year's first lecture – a buzz that is sometimes accompanied by a surge of nervous energy. Failing to control this nervousness, stuttering through the opening lecture or being unprepared in terms of how to use the available technology, for example, places the lecturer on the back foot from the outset.

In addition, because of large student numbers at universities such as NMMU, lectures may have to be repeated twice after the main lecture has been delivered. This has its own pedagogic problems, in particular when the same lecturer has to conduct each of the repeated lectures. For example, Kavita might prepare exceptionally well and successfully make it through her first lecture of the day to about 400 students. However, because of the lack of a venue large enough to accommodate all students or the existence of part-time students who need to attend lectures at night, she may then have to repeat the very same lecture to smaller groups. She might be tired and bored with the subject matter of the lecture when the time comes for the evening lecture, and consequently, she may rush through the material in a manner very different from the successful first class of the day. The large numbers also impact upon the method and manner of assessment. This factor should be understood in the context of lecturer workload policies¹ and tight budgets that make limited provision for adequate marking assistance.

In 2003, only 254 of the 558 students who attempted Commercial Law (the vast majority of whom were students registered at a university for the first time) passed the course. This is a failure rate of almost 55%. As much as academics need to focus on educating students in a manner that students can identify with, it is a reality that most students are simply interested in passing the prescribed courses, without much significance being placed on the retention of knowledge beyond the examination period. This chapter seeks to specifically address the book's theme of teaching and learning in the first year, including the issues of dealing with large classes, teaching style and curriculum innovation. The core problem this chapter seeks to address is how to improve the first-year student experience and success rate in this context. Simultaneously, it is suggested that this improvement should not occur to the detriment of the lecturer concerned. It is necessary to consider these challenges against the background of the SAICA/IRBA curriculum.

The framework of the SAICA/IRBA curriculum

SAICA, together with the IRBA, have created a curriculum for people hoping to enter the accounting profession. In particular, the syllabi for law service courses have been designed to describe the knowledge that newly qualified chartered accountants should

¹ Each faculty has its own 'workload policy' at NMMU in an endeavour to standardise the teaching/research balance experienced by academics.

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ideally have when they commence their careers as chartered accountants.² Importantly, the curriculum acknowledges that the law courses to be passed are service courses and that expert legal opinion should always be sought in difficult practical situations. As a result, the coverage aimed for is broad in nature and simply endeavours to expose students to relevant statutory and other legal principles ‘at a level which will enable them to recognise problems and the need to seek expert assistance’.³

The syllabi that are relevant to the theme of this chapter have been specifically fashioned to guide participating educational institutions. What is emphasised is that students must be taught about the fluctuating nature of law that exists in an ever-changing regulatory environment. As far as SAICA/IRBA are concerned, it is a priority that students grasp the general workings of the South African legal system, as well as the process of interpretation of statutes. In addition, certain legislation is considered critical to the chartered accountancy profession and knowledge of such legislation must be imparted in greater detail. As a result, the SAICA/IRBA curriculum for Commercial Law is divided into three levels:

- ▣ *Level 1*: where a simple awareness of the legislation as well as the objective of the law is required;
- ▣ *Level 2*: where a basic knowledge / broad outline is required; and
- ▣ *Level 3*: where a detailed knowledge is required.

Topics may not be taught at a lower level, but importantly, may be taught at a more advanced level should the educational institution so choose.

SAICA/IRBA have structured the Commercial Law syllabus into four parts. The learning objectives differ within each of the four parts. Only part two, dealing with companies, close corporations and partnerships, requires demonstration of a detailed knowledge, *inter alia* by way of explanation of important sections of relevant acts and the effects of recent court decisions. This includes the ability to analyse a given practical situation in terms of knowledge of relevant statutes, common law and case authority.⁴

It must be understood that such detailed requisites are usually attempted in a semester course subsequent to a course introducing Commercial Law to non-law students. This initial semester course is the subject of this chapter. It is also necessary to acknowledge that not all students attending classes in Commercial Law intend to be chartered accountants or auditors, and accordingly, do not fall within the ambit of the SAICA/IRBA curriculum guidelines. Practically no South African universities distinguish between the Commercial Law requirements for students attempting the Bachelor of Commerce or Business Science Accounting streams and those attempting more general Commerce or Business Science degrees. As a result, in practice one Commercial Law syllabus is designed for all students attempting such degrees – a university syllabus

² SAICA/IRBA Curriculum 1.

³ *Ibid.*

⁴ SAICA/IRBA Curriculum 2.

which endeavours to take cognisance of the SAICA/IRBA suggestions and give proper effect to their guidelines.

A fresh approach

The traditional approach to teaching law to non-law students involves the large-scale use of the existing sources of South African law, such as cases and legislation, without any meaningful contemplation of the different dynamic which is applicable in the case of law being taught as a service course. The traditional approach basically summarises complicated legal material in the time available without converting that material into something accessible.

By contrast, to achieve the learning outcomes expected of today's graduates requires the highest standards of innovative teaching and course design. More flexible learning methods are probably the only way to reach and motivate today's larger and more diverse student population and to provide the quality of education now expected (Johnstone, 1996:iii). A number of best-practice guidelines have emerged from the author's own experience of endeavouring to address the challenges outlined.

Using accessible everyday English as far as possible in all aspects of the course being presented (lectures, supporting material and in assessment) serves to accommodate the language challenges faced by multi-cultural classes. Similarly, without avoiding necessary subject-specific terminology, such jargon may be understood better when introduced carefully, progressively and in a meaningful fashion.

By focusing on the development of a proper understanding of key concepts in a manner that combines necessary theory with interesting practical scenarios and realities, the subject in question may assume greater relevance to students' everyday lives without at all undermining the crux of the knowledge expected of these students. In fact, while there is little empirical evidence in support of this assertion, it is probable that a fresh approach is as likely, if not more likely, to translate into actual engagement with the subject material (during and post-study) than would be the case with more traditional approaches. The impact of the broadening of context by including international perspectives, together with the significance of an approach which simultaneously focuses on skills development while endeavouring to develop the capacity of critical thinking requires further investigation – part of future research which may be conducted in this area.

Textbook

The use of an appropriate textbook is crucial to the first-year learning experience, both in terms of directing students towards core material that they may require in practice (that is, when aspects of law are brought into focus during the course of their particular sphere of business) and to assist students to pass the course. According to Johnstone, students will gain as much, if not more, from a good text as they will from listening to a well-presented lecture:

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Students can read material several times faster than they can absorb aurally, and have the opportunity to work at their own pace, browse, skip to another part of the text to make connections between concepts, reflect on interesting material, or re-read sections of the material they initially did not understand. Students may also find it easier to engage critically with a text than a lecture, and have a greater opportunity for judicious note taking. (Johnstone, 1996:1)

Johnstone acknowledges that developing appropriate teaching materials that improve student learning in law is time consuming and involves hard work (Johnstone, 1996:187). In fact, designing and developing appropriate materials is a more complex task than many traditional forms of teaching (Johnstone & Joughin, 1997:1). Johnstone has identified six important principles that are specifically conducive to the creation of effective teaching materials for law (Johnstone, 1996:65-102):

1. All basic subject information should be included in the instructional materials.
2. The materials should be 'user friendly'.
3. Content should be chosen to achieve a variety of learning objectives.
4. Materials that reflect a variety of different voices should be chosen.
5. Visual aids and 'signposts' should be used in the materials.
6. Teaching materials should fully engage students in 'dialogue' and activity.

Two different ways in which the law relating to the concept of latent defects may be put to students serve to illustrate different approaches of conveying the same idea.

Option A: A traditional approach

The purchaser is entitled to a merx free from latent defects.

An implied warranty against latent defects is read into every contract of sale, unless it has been excluded by the parties. This warranty entitles the purchaser to certain legal remedies, should the merx contain a latent defect. The seller is liable for latent defects despite the fact that he or she was unaware of the defect and did not act in bad faith. A purchaser who wishes to institute a claim because of latent defects in the merx, must prove that

- a) there is or was a material defect in the merx. A material defect is a shortcoming or abnormal characteristic in the merx which renders it completely useless or less useful for the purpose for which it was bought. If the purchaser indicated expressly or by implication to the seller that he or she wanted to use the merx for a specific purpose, the defect will be regarded as material if it impairs the serviceability of the merx for such purpose. If a special purpose was not known to the seller, a material defect is one which detrimentally affects the serviceability of the merx for the purpose for which things of that kind are ordinarily used ...

Option B: A fresh perspective

In the days of the Roman Empire, the poor slaves were valuable ‘property’ for the slave owners, who would buy and sell them at a market. A slave who was a good gladiator (fighter), for example, could earn a lot of money for his master. Now imagine that Remus (a wealthy slave owner) sold his slave Maximus to Claudius (another slave owner) for fifty gold coins. Maximus was tall and well built, and Claudius hoped to make a lot of money through this deal. Claudius proudly took Maximus to the Colosseum (the big stadium in Rome where people were entertained in ancient times, similar to the sports stadiums of today), but after handling the sword for about half an hour, Maximus was unable to move his arm for a week. Some law had to be made to protect Claudius in this situation, especially because it would be difficult for Claudius to prove that Remus had known of Maximus’ weak arm. Faced with this sort of problem, the magistrates of the Roman markets made an edict (an official rule or order). This edict made it the seller’s duty to tell the buyer about any hidden problems in the item being sold – problems that might cause the item to be in a less than perfect condition for the purpose for which it was going to be used. These problems (or flaws or faults) are called defects. To this day, it is the seller who has to take responsibility for defects, even if he wasn’t aware of them at the time of the sale. The reason for this is that the seller is in a position to be aware of defects in the item being sold. To the buyer who buys an item and discovers a defect afterwards, it makes no real difference whether the seller was being dishonest or didn’t know about the problem. This responsibility for defects is one of the duties that the law puts on the seller in a contract of sale.

The differences between the two approaches are striking. Whereas the former is littered with jargon that has not been explained to the reader and contains long sentences full of complicated English words, the latter bases the explanation around a scenario that students may be able to identify with more easily. The sentences are short and crisp and jargon is highlighted and explained. The paragraph flows like a story and, it is submitted, is more likely to result in the meaningful understanding of the material by students.

Importantly, the sort of lecture presentation facilitated by the manner the material is presented in Option B is likely to impact upon the mindset and approach of the lecturer concerned. While it is true that a lecturer may simply ignore this approach (even if it is contained in the textbook) and teach in the traditional fashion, the provision of such scenarios in the text make it easier for lecturers to use the examples provided to explain the content contained in the book. When preparing for a class, it is often difficult to think of appropriate examples to explain complicated material – especially if the academic lacks practical experience in the particular area of law. The use of appropriately crafted texts should assist lecturers in aligning their presentation style to one that simplifies (rather than complicates) the material being presented.

Of course, it is also a tremendous advantage when books, such as study guides, are available for students who require specific additional support which lecturers may be

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unable to provide given the large class numbers. Such guides are most useful when based on content requiring mastery for purposes of tests and examinations. Additional material can assist in the identification of the most important themes, topics and ideas that must be understood and can help in the development of the skills necessary to master the course. The material can also be used to introduce students to additional questions and to provide a step-by-step guide to answer questions. This will help to ensure proper preparation for tests and examinations.

Technology

While the role of technology in legal education has been questioned, it is generally accepted that the use of technology can assist in facilitating an appropriate approach (Maharg, 2007:261). For example, placing notes, such as a PowerPoint presentation, on an intranet site well in advance of a lecture gives diligent students the opportunity to view the presentation for a given lecture, digest the material to be covered during the lecture, match this material against the content contained in the prescribed textbook and come to class ready to engage with the lecturer regarding any points of difficulty. This approach also enables students to spend their time in lectures listening to the explanations offered rather than frantically scribbling down notes. Modern recording devices that permit an audio media file (digitally recorded) to be placed on an intranet site or e-mailed to students is a further innovation which requires serious consideration and investigation. At the very least, this option will permit a student to catch up a missed lecture without any additional time being spent on the part of the lecturer concerned. A confused student may also refer to a particular recording of a lecture in order to grasp the gist of a troublesome topic rather than trying to make contact with a fellow student a few hours before a major examination.

Where costs permit, a compact disk could be included as part of the prescribed study material. This could provide additional material (such as cases and Acts of Parliament) to students who enjoy access to computers. For those students who do not have such access, the additional material may be printed and placed in the university library. It is also possible to assist lecturers by creating compact disk support material, such as presentations and additional questions and activities, pertinent to their lectures. An academic who is lecturing a course for the first time may be unsure as to the level of detail required and how to assess the students' performance. Such assistance will enable the lecturer to better understand the level at which the material should be presented. The lecturer will also have the benefit of suggested assessment activities. This may assist inexperienced colleagues in pitching the prescribed material at the appropriate level and in understanding the suggested tone of the course they are lecturing.

In very large classes, properly installed data projection devices and sound equipment can also facilitate student interest and involvement, especially when considering that audio-visual equipment tends to assist in maintaining silence (and student focus) during lecture presentations.

Research has also shown that these interventions contribute to the general interest level generated by the course. They also seem to serve as a motivator and encourage students to attend classes (despite attendance being voluntary) and to give due attention to the subject of commercial law, thereby improving their chances of passing. It was specifically observed that students in a large class remained quieter during lectures delivered in dim lighting with the assistance of a PowerPoint presentation. Students also interacted more with the lecturer in such an environment and it may be speculated that this was a direct result of their enhanced comprehension of the subject matter taught in that particular lecture. A number of students specifically commented upon such factors in student feedback forms for the subject.

The method of assessment

It has been argued that there must be a coherent link between the learning objectives in a subject, the assessment tasks and the selected teaching methods (Johnstone, Patterson & Rubenstein, 1998:32). In addition, there appears to be some evidence that the method of assessment is directly connected to the number of students who pass a course in Commercial Law. In particular, when both long questions and multiple choice questions were used, students appeared to struggle to grasp the same material for these two different forms of assessment. The pass rate at NMMU grew by almost 50% when the method of assessment was changed to problem-type multiple-choice questions only. This approach enabled students to prepare in a specific way by remembering detailed points of law rather than trying to remember entire pages of text for long questions plus details for purposes of shorter questions. Using the same singular assessment criteria for three tests, a main examination and a supplementary examination has also consistently proved to be successful in improving the pass rate. While it would be interesting to note the impact of negative marking on these figures, it is clear that a year which saw all questions having an additional option marked 'none of the other options is correct' (or incorrect, depending upon the question asked) resulted in a 10% drop in the course pass rate.

Conclusions and recommendations

Lawyers and legal academics who teach so-called 'service courses' in law to first-year non-law students at universities should carefully consider the dynamic of the situation they face before adopting a traditional or standard system of instruction. A more flexible approach in terms of selection of an appropriate instruction method that stimulates interest amongst students and a focused and consistent assessment strategy throughout the course may have a positive influence on both the teaching and learning experience. This approach must, however, consider the practical problems common to the assessment of large classes. Flexible learning takes many forms, but it typically incorporates greater freedom in location and time of study, greater student control over learning goals and style, less lecturing and transmission of knowledge in large classes and the use of high quality resource materials, such as printed study guides or their computer-based equivalents. As Johnstone notes:

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Practised well, flexible learning fits education more closely to the needs of students, and has the potential to enhance the quality of outcomes through closer and more active engagement with the subject matter. The application of flexible learning methods to professional subjects, where strong integration between theory and practice is an indispensable part of a student's training, is particularly appropriate. (Johnstone, 1996:iii)

In the case of the teaching of an introductory Commercial Law course for commerce or business science students, additional support for this type of approach is to be found in the SAICA/IRBA curriculum, which grades the requisite knowledge into three levels. While some of the material covered requires a basic knowledge and broad outline, the majority of subject matter simply requires awareness of the applicable legislation together with the objective of the law in question. As the SAICA/IRBA curriculum indicates, what is essentially expected of non-law students of Commercial Law in their first encounter of law is an awareness of the issues together with the knowledge that detailed problems in these areas often require expert legal assistance. Accordingly, it is argued that these guidelines open the door to greater flexibility in terms of the content focused upon. It is up to the lecturer in charge to identify key topics within the mandatory themes to be covered and to present this material in a fresh and interesting manner. Non-core material, which is unnecessarily complex for purposes of students who simply need to know the basics, should accordingly be omitted. Far from resulting in the downgrading of the course or the lowering of standards, this approach will free up space in the presentation of the course for interesting, topical and relevant discussions. Such discussions are more likely to stimulate passion for a course that a student, such as Amir, would not have studied out of choice. Such an approach would also benefit other lecturers in Kavita's position.

A 'new generation' textbook and other supporting material, such as a study guide or multilingual dictionary that conveniently translates Latin maxims into three South African languages, would appear to enhance the experience of students in such a classroom. Ideally, teaching material (together with classroom teaching methods) should be tailored to meet the interests and needs of students in accordance with a carefully selected range of learning objectives (Johnstone, 1996:187). Given the large classes, the proper use of available technology, such as PowerPoint presentations, digital audio recordings and supporting compact disks with additional material, may also play a significant role. Ultimately, students want to pass the course in order to obtain credit for degree purposes. While problem-type multiple-choice questions raise a number of debatable issues (even in cases where students have no access to past papers in order to memorise answers), our experience at NMMU seems to suggest that a consistent application of one method of assessment pays dividends by equipping students, through practice, with the necessary techniques to answer such questions over the course of a semester. Adverse side effects of this somewhat expeditious approach may be ameliorated by rigorous moderation, both internal and external.

Increased attention to how and why law is taught to students of other disciplines requires more than merely modifying traditional methods to ensure that they are more

appropriately and effectively used. In fact, new and different methods to provide more effective and efficient legal education should be developed and adopted (Goldring, Sampford & Simmonds, 1998:89).

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