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2009

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TYSTYSGRIF UWCHRADDEDIG ADDYSGU MEWN ADDYSG UWCH

POSTGRADUATE CERTIFICATE IN TEACHING IN HIGHER EDUCATION

Cylch Dygu 3 | Teaching Cycle 3

Using Negotiation Skills Practice to Develop Commercial Awareness

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Third teaching cycle:
Using negotiation skills practice to develop commercial awareness
Overview of the module

My third teaching cycle was also carried out during the delivery of the elective module, Commercial Property, Planning and Environment. As noted above, I designed and delivered the bulk of its module for the first time a year ago, incorporating some changes to the syllabus for this session. Eight students opted for this module this year, and all have completed the compulsory module, Property Law & Practice, and the elective module builds on the knowledge of practice and procedure developed during that course. There is a marked range of ability in the group, which includes the weakest and the strongest student of this year’s LPC cohort.

Rationale and aims

Commercial awareness is frequently cited by trainers as a necessary requirement for legal trainees (Fancourt, 2004, Harcup, 2004), yet a lack of professional awareness and preparation for practice are commonly raised criticisms of trainees entering practice. The CPPE elective is intended to prepare students for the practice of property law in a commercial environment. Some elements of commercial and business awareness are included in the foundation sessions at the beginning of the LPC year, and some reference to this background is made during the compulsory modules, particularly in the context of Business Law and Practice. During the CPPE elective module, I wanted to increase the focus on the development of commercial awareness in the legal context and to allow the students greater opportunities to focus on client needs and the obstacles which this may present to them in practice. This shift would give me an opportunity to encourage my students to develop a sense of continuity in their training, focusing not on skills required for assessment, but on skills required for professional practice. I also wished to build on the self-assessment and peer-feedback practices which students were involved in as a result of my second teaching intervention.

The aims of my third teaching intervention were therefore:
To encourage a lifelong learning approach by introducing a non-assessed skill;  
To increase responsibility for one’s own learning through reflection and observation;  
To increase commercial and legal awareness through emphasis on the commercial needs of the client.

Brief review of the literature

Skills are a compulsory element of the LPC programme and are assessed outside the core subject areas, on a competent/non-competent basis. Since the integration of legal skills is so crucial to the proficient practice of law in the profession and that the concept of skill competence is an amalgam of skill, knowledge and attitude (Kilpin in Webb and Maughan, 1996), the appropriate method of teaching and assessing skills is an ongoing debate among LPC tutors: Should skills be taught separately? Should they be embedded in to the compulsory subject areas? Should assessment of the skill be integrated with, or entirely separate from, the assessment of the legal content? (Slorach and Knott, 1996). The current model favours discrete sessions in each of the skill areas, with further practice and development of the skills through exercises in the compulsory subject classes. Assessment is through stand-alone take-home papers (for the written skills) and role-play (for the oral skills), largely directed towards assessing the skill rather than the law.

Research was carried out into the effectiveness of skills teaching on the LPC (Slorach and Knott, 1996, Webb and Maughan, 1996) soon after the inception of the then new style LPC programme (previously Law Society Finals, which had had little focus on skills or practical training). The “DRAIN” skills were taught in LPC1, being Drafting, Research, Advocacy, Interviewing and Negotiation. The research however, showed that negotiation as a skill was perceived by lecturers as the most difficult to teach and the quality of teaching of negotiation was rated significantly lower by students than that of any other skill. Negotiation as a skill is something which will develop with continued experience in legal practice and the introduction of this skill in the LPC year may have been too early in the legal career. It was dropped from
subsequent LPC programmes in favour of Legal Writing as an assessed skill (Slorach and Knott, 1996).

However, integration of skills into subject areas is vital if students are to develop the holistic competence of skill, knowledge and attitude as noted above, and they must be offered opportunities during the LPC to develop a sense of business and commercial awareness. In terms of general skills development, “hard skills” such as problem solving are also seen as key, and any skills training on the LPC is valuable to firms as trainees are then more effective during their first-seat (Fancourt, 2004). In the same survey, students criticised the LPC as being assessment driven, and felt that there was insufficient focus on “preparation for practice”. In her conclusions Fancourt states that:

“Increased integration of skills into the substantive subjects on the LPC, and greater emphasis on reflective learning are examples of ways to promote this awareness. Such measures should also make students’ experiences on the vocational course more meaningful, and help them to appreciate that they really are being prepared for practice.” (Executive summary, p. VIII - ix)

Since the purpose of the LPC is to introduce students to legal professional practice, the course needs to bridge the gap between undergraduate legal education and professional training (Nathanson, 1997, Webb and Maughan, 1996). Students now need to be able to solve real problems and, in applying the law, they must “mind the gap” between a purely legal analysis of a situation and the needs of their client (Maughan and Webb, 2005, Nathanson, 1997). Legal problem solving, whether in contentious or non-contentious matters, is likely to involve conflict (or at least differing goals) and in commercial situations, a client’s commercial interests or wants may well amount to an obstacle to reaching agreement (Nathanson, 1997). Introducing students to such issues in the LPC classroom is essential if they are to arrive at the doors of their training firms well prepared.

Using skills based exercises to develop these problem solving capacities can also assist students in understanding client needs, especially where they are
“accountable” to the client (Evered, 2005, Roper, 1988). Although there has been some criticism that it is over-used, role-play has been favoured as a model for skills development in the context of the oral skills and has been rated highly as an effective method of teaching (Webb and Maughan, 1996).

The teaching intervention

Prior to the first SGS session students were asked to complete an advance exercise in which they considered a number of questions relating to commercial negotiation in preparation for an in-class discussion focussing on important factors in measuring negotiation performance. Following the discussion they were asked to complete a short questionnaire on their own perceptions of legal and commercial awareness (Appendix 11).

Based on scenarios from my time in legal practice, I prepared negotiation role play exercises, which were given to students in the third and fourth sessions. Each student was allocated a role as solicitor or client, on one or other side (buyer/seller, landlord/tenant). Having carried out prescribed reading in advance of the session, students were given 10 minutes or so in class, to familiarise themselves with their role and the legal issues involved. Each solicitor then met with their client for up to 15 minutes, to discuss the clients’ concerns in relation to the transaction in question and to provide legal advice in relation to the issues raised. Solicitors were then required to take client instructions in advance of a negotiation meeting with the other side’s solicitors, during which meeting it was up to the solicitors to attempt to resolve any contentious issues in the best interests’ of their own client. Around 15 minutes or so was allocated for this part of the exercise. Students playing the role of client were asked to observe the negotiation exercise and to provide feedback to their solicitor in the form of a short questionnaire (Appendix 12). All students were then asked to reflect on the exercise at home, with a short proforma to assist them (Appendix 13).
In the eighth session, a more complex three-way negotiation exercise was introduced, again involving solicitors and clients, this time as landlord, tenant and proposed sub-tenant. Roles were allocated to six students and the remaining two students were asked to observe a solicitor-client interview, as well as the negotiation meeting, and to complete an observation form to provide feedback to the participants (Appendix 14). As before, students playing the role of client were asked to complete a feedback form for their solicitors.

Implementation of the teaching intervention

During the discussion in the first session, students were asked to identify and agree on the three most important elements in commercial negotiations in a legal context. After considerable discussion and negotiation amongst the students, the whole group identified the following four issues as key:

- Meeting client objectives;
- Efficiency – cost and time;
- Legal and commercial security (in terms of the legal advice given);
- Exceeding client expectations.

These elements indicated to me that my students had an insight into the application of the law in context and the need to understand the client’s commercial objectives. Seven out of the eight students completed and returned the perceptions questionnaire (Appendix 15).

From my point of view, the role play exercises seemed to work well in class. Students engaged with the material and participated in the exercises. The majority appeared to enjoy the opportunity to play the role of solicitor or client. Those observing in class provided some constructive feedback to their peers (Appendix 16). Very few, however, engaged with the opportunity to complete the reflection process at home after the sessions (Appendix 17).
Asked how well the student acting as solicitor had understood their commercial position, the majority of responses indicated that most felt that their position had been understood very well and that good explanations of law, risk etc had been provided. One suggested that although the solicitor had “understood implications/instructions regarding sublet/assignment, [but he] can improve in this area slightly”.

Clients were also asked to comment on how well their solicitor represented them in the negotiation exercise, and what their solicitors’ strengths were. Students engaged well with this process. Positive feedback to peers included clear and concise, willing to negotiate, firm, keeps calm and explains well, knew the law, listening to the other side, persuasive about level of risk, pressed for quick conclusion, quality of explanations, reasonable yet firm, professional manner, confident. The comments made by client students when observing the solicitors indicate a level of skill and competence in those who were acting as solicitors, as well as the ability of those observing to identify key strengths in their peers.

Students were asked to note areas that could be developed, to encourage them to reflect on the reality of the commercial situation and develop their capacity for giving feedback to peers. Not all students provided comment, but those who did suggested the following areas for improvement:

- Presenting why/how a proposed term or course of action could be mutually beneficial.
- Compromise.
- Did not explain to other side why we need [to] sublet.
- Both solicitors sticking to position – difficult to come to any conclusion.

These comments indicate an understanding of the importance to commercial clients of reaching a mutually acceptable agreement in a transactional negotiation.

Non-client observers of the advice session in the final exercise commented as follows:
- Took time to clarify the situation – identified various options. More advice about liability/restrictions.
- The solicitor, after several minutes of questioning gained an understanding of the client’s position. They gained a grasp of the benefits of retaining a good tenant. The majority of the advice good and covered the salient points. The client did appear to understand the advice that was given. The client adopted a sensible commercial position.

Evaluation

At the end of the teaching cycle, I sought feedback on the exercise in the form of a questionnaire (Appendix 18) and compared students’ responses with those given in the initial perceptions questionnaire at the start of the module. All students completed the final evaluation, which forms are attached at Appendix 19.

Students were asked to rate their own legal and commercial awareness. The results are shown in Figure 6. Of those who completed both the before and after questionnaire, only one student increased their rating (from moderate to fair). The remainder gave the same ratings before and after the elective. One student did not complete the initial questionnaire.

![Figure 6](image-url)
I also asked students to rate how much they had enjoyed the negotiation role play exercises and how helpful the exercises had been in terms of developing legal and commercial awareness. The results are shown in Figure 7. Most students found the exercises very or extremely enjoyable. One found it only slightly enjoyable. Most also indicated that it had been very helpful in developing legal and commercial awareness. One found it only slightly helpful.

![Figure 7](image)

Students were asked why they had given enjoyment and helpfulness ratings noted above. The comments returned suggest that students have engaged with the material in a practical and commercial manner, contextualising their learning and extending their ability to apply their knowledge. Students noted, for example, that:

- Agreement is more important than forcing clients' view on others, helps consolidate knowledge, puts knowledge into practice, it gets me thinking more practically. One student summed up the benefits of the role play exercise thus:

  - Playing the solicitor really makes you contextualise your understanding of the relevant law and commercial considerations. The role plays do ensure you put both your legal and commercial understanding into practice and highlight any gaps in knowledge quite quickly.
Not everyone enjoyed the role plays however. One student did not enjoy being against the louder and more forceful people. Another said “Sometimes I didn’t know what I was talking about”, indicating that the exercise had, at the very least, highlighted gaps in knowledge.

When asked how their strengths in terms of legal and commercial awareness had changed since the beginning of the elective, most indicated that they had not really changed. However, some responded positively, indicating again that the process had connected their learning in the classroom with a broader practical application and had developed knowledge of both legal and commercial awareness:

- Tend to think more widely around issue – course has made me more aware of everything involved.

- Find myself thinking more about property issues now, e.g. does Morgan’s butchers in town need to apply for a change of use, as they seem to sell more hot food now than raw meat.

When asked whether they would continue to use and develop what they had learned, and how, the majority of students indicated that they would continue to use the skills they had developed in the future, using them “for real” and “in practice”, as well as identifying the skills as “transferable” and “generic”.

Conclusions

The majority of students enjoyed participating in, and felt that they had benefitted from, the negotiation role play exercises. Their participation in class and written feedback demonstrates that a number of students have thought beyond the bounds of the classroom and have considered the practical, real-world relevance of their knowledge, and the need for continuing development after the end of the course. They engaged well in the observation process and have reflected on the value of the exercise to themselves and their own personal development – whether in terms of gaining knowledge, skills or commercial awareness. The feedback demonstrates that
the emphasis on the commercial needs of the client has helped students to apply their knowledge. Although the students' own ratings for their legal and awareness had, in the main, not changed between the beginning and the end of the elective (Figure 6), the qualitative feedback indicates that the exercise as a whole has altered the way they take into account client needs in their application of the law in any given situation. Arguably, this finding may indicate that there has been a subtle change in their awareness of how commercial factors may influence the way they tailor their legal advice.

In summary I think that this teaching intervention has worked well in terms of achieving the aims, which were:

- To encourage a lifelong learning approach by introducing a non-assessed skill;
- To increase responsibility for one's own learning through reflection and observation;
- To increase commercial and legal awareness through emphasis on commercial needs of the client.

However, some areas could be improved if this method is used again in the future. Few students completed the reflection forms after each individual role play session, and I feel that this exercise may be valuable to students in tracking their own progress. A number of students commented that the client information in the exercises should be more detailed, to assist with identifying commercial objectives and focussing the legal advice. I have already incorporated these changes into the materials for delivery next academic year. I also note that one student did not enjoy being against the louder and more forceful people and will take note of the suggestion to pair quieter students together initially to help develop confidence.