

The Association of Law Teachers (ALT) is one of the organisations representing Legal Academics. It has a particular interest in the pedagogy and methodology of legal education. The following observations on the proposals represent the views of the Committee of the Association, which contains a number of heads of law schools and others with extensive experience of quality assurance and quality enhancement in higher education.

Having seen a draft of the SLS submission, we wish to associate ourselves with the remarks in that submission about the process adopted in this case and its relationship to the agreed and established procedures.

There are four specific proposals:

Condonation of marginally failed examinations

We consider that this would be more accurately stated as ‘Condonation of marginal failure of assessment in a Foundation’.

The ALT recognises that, in principle, it is for Professional and Statutory Regulatory Bodies (PSRBs) to determine the standards for entry to the profession concerned, and therefore in the case of law, inter alia, what constitutes a QLD or CPE as the case may be. We therefore accept that the JASB and/or the SRA/BSB are entitled to say that they will not recognise a qualification where there has been condonation of a failure in the assessment of a Foundation; however, we would argue that there are compelling arguments that this is not an appropriate step to take.

- In general a candidate is allowed up to three attempts at each module. This is prescribed for the CPE by the JASB requirements. For QLDs the position is determined by the regulations of the Higher Education Institution (HEI) concerned. Normally three attempts are allowed at level 1/C and 2/I. However some HEIs do not allow retakes at level 3/H, as their regulations prescribe that the candidate must take his award at the first opportunity. In most institutions the Foundation Equity and Trusts is a level 3/H module, and in some HEIs others are also. This would mean that where resitting is not allowed candidates will be obliged to take a CPE subject to redeem the deficit. While this presently happens where the failure is not marginal, or there is more than one failure, the effect of the change will be to discriminate against candidates who have difficulty with Equity and Trusts and who attend certain HEIs. This does not seem equitable.
- The concern of the PSRBs that weak candidates not be recognised as able to proceed to the vocational stage is a legitimate one, but we question whether a candidate who has a single condoned marginal failure is necessarily ‘weak’. The difference between the level of knowledge, understanding and (for level 3/H) evaluative and critical ability of a candidate who achieves a bare pass, and that of one who achieves a marginal fail, while identifiable, is not a yawning chasm. Condonation is only permitted if there is demonstrable strength in other modules, which should be an assurance of competence in the generic and transferable skills and attributes. The failure may not be attributable to a lack of knowledge as such, but to failure of technique, or in

respect of criteria relating to aspects relevant to the objectives of the HEI but not those of the Joint Statement. In short, the process of Condonation recognises the holistic nature of the QLD/CPE.

Minimum pass threshold of 40% for each element of assessment

At least since the report of the Lord Chancellor's Advisory Committee it has been accepted that a QLD is not solely, or even primarily the first stage in legal professional training. It is a degree in the full sense, representing a liberal education. As such it addresses aims and intended learning outcomes (ILOs) that are broader than the Joint Statement ILOs. In order for these to be fully embedded in the degree structure they need to be pervasive, and cannot be excluded from Foundation modules.

The aims and ILOs of the CPE are of course narrower and modelled more closely on the Joint Statement (even though it does not in terms apply to them). However it is designed as a course, not merely a set of assessments.

Where a range of assessments is assigned to a module there are good reasons for this:

- The need to provide early assessment which is both formative and summative (regrettably it is necessary to make these assessments summative to ensure that they are undertaken). All students have a learning curve. This is most pronounced at the start of a QLD or CPE programme, but applies to some extent to all learning. Failure, particularly marginal failure, of an assessment undertaken early in a module does not indicate that the student has definitively failed to master the module in question. This is likely to be particularly the case in level 1/C of a QLD, as the student in question will be coming to terms with the whole experience of higher education, but it is not unknown for able CPE students to struggle initially with the requirements of legal study.
- Assessments may be designed to assess skills as well as knowledge. Oral assessment and group assessment are common examples. Failure may be related to assessment criteria which relate to ILOs outside the Joint Statement; the tongue-tied student in a level 1/C moot is a common sight. The skills deficit can be made good later, and there may well be no knowledge deficit.
- Some ILOs cannot readily be assessed by examination – research skills, oral communication, group work. Research skills, in particular, are critical for practice.

QLDs fall to be assessed in accordance with HEIs common assessment regulations. These normally provide for internal compensation within modules for the above reasons. A threshold level is set for each element of assessment, so that it is only marginal failures in an element of assessment that may be compensated. An overall judgement is being made. It is the right and responsibility of the HEI to make this judgement, and the PSRBs have previously expressly accepted that they cannot go behind a judgment that a student has passed a module. We can see no valid reason for wishing to resile from this well-established arrangement.

This does not apply to the CPE, but the educational arguments for allowing an examination pass to compensate for a marginally failed in-course assessment, which may have been undertaken relatively early, are as strong. Given the 70:30 weighting of the assessment, it is unlikely that the reverse will occur.

In all cases, insistence on 'perfect' progression in the foundations will result in a very substantial number of students having to take referred assessments, increasing the stress on them, and distracting them from focussing on the new material they are currently learning.

Moving to single assessments for the QLD would result in the elimination of partial failure, but would impoverish the diet of assessments, and run the risk of ILOs not being adequately assessed. Alternatively certain ILOs/forms of assessment could only be addressed in optional modules and this creates significant logistical problems. These modules are by definition optional, and either there will need to be a significant element of prescription outside the foundations to ensure that all students have been assessed against all ILOs, or a very complex set of option constraints to ensure that the options taken entail assessment of all ILOs. These problems are reinforced in the case of Law major QLDs, as there are fewer optional modules included in the programme, to allow for coverage of the minor subject..

The argument that only a candidate who has achieved 40% in all elements of assessment can be assumed to have a competent grasp of the relevant foundation is logically unsound. By way of very brief example:

Assessment regime - early CW (10%) - moot assessment (on the written skeleton argument and oral performance (40%) - examination (50%). Candidate A marks 38/60/60 overall aggregate 58% - deemed unacceptable. Candidate B marks 40/40/40 aggregate 40% - deemed acceptable.

Assessment regime - examination 100% - law of contract - Candidate C Q1 (offer and acceptance) 30%, Q2 (implied terms and exemption clauses) 30%, Q6 (frustration) 55%, Q7 (illegality) 45%. Aggregate 40% - deemed acceptable.

Weighting of Assessments

So far as the CPE is concerned, this reiterates current practice and is uncontroversial.

For QLDs, the prescription of 60:40 is new, and does not reflect current practice. It is unduly prescriptive, and will lead to the skewing of assessment as Foundation modules will need to be handled differently. It militates against assessment of those ILOs which are not readily examinable, as noted above. It is another inappropriate attempt by PSRBs to exercise undue control over the design and organisation of degrees by HEIs, contrary to the understanding which has operated since ACLEC reported.

Oral Assessment on the CPE

This clarification is welcome, and uncontroversial.

John Hodgson

Honorary Secretary

Association of Law Teachers

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