

# Constitutional values and legal education in South Africa: Shaping our legal order

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## 1. Introduction

Law schools have a responsibility to remind law students by studying law they have the power to transform thoughts, policies and lives, and that law is not just about financial rewards, but the ultimate reward of contributing to the betterment of society and ultimately social change. By introducing concepts such as therapeutic jurisprudence enhanced by important constitutional values such as human dignity and *ubuntu* we strive to deliver lawyers that understand the Constitution<sup>1</sup> and its values.

By incorporating values such as *ubuntu* and ethos of *batho pele*<sup>2</sup> when integrating therapeutic jurisprudence into the main stream curriculum, through skills courses and ultimately clinical education, law schools can deliver therapeutic orientated preventative lawyers and thus enhancing the quality and integrity of its lawyers.

In rapidly changing social, economic and intellectual environments it is imperative that teaching and learning should transform from a primary concern with the transmission of knowledge (*learning about*) to a primary concern with the practices of a knowledge domain (*learning to be*). Law lecturers are faced with a new generation

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<sup>1</sup> Of the Republic of South Africa of 1996.

<sup>2</sup> *Batho Pele* principles were developed to serve as acceptable policy and legislative framework regarding the public service. These principles are aligned with the constitutional values and include: promoting and maintaining professional ethics, responding to people's needs and to provide service fairly, equitably and without bias.

of law students, many who may be the first in their families to enter university<sup>3</sup> and one of the important challenges that we face when educating law students, is how to enable these students to take their place in a very important profession. To meet this challenge it is necessary to instill skills that will be beneficial to the profession, future clients and the community as a whole. We are endeavoring to do so through embracing a therapeutic jurisprudence approach that focuses on the wellbeing of the student, the client and the community. The concept is explained on the website of the *International Network on Therapeutic Jurisprudence* as follows:

“therapeutic jurisprudence concentrates on the law’s impact on emotional life and psychological wellbeing. It is a perspective that regards the law (rules of law, legal procedures, and roles of legal actors) itself as a social force that often produces therapeutic or anti-therapeutic consequences. It does not suggest that therapeutic concerns are more important than other consequences or factors, but it does suggest that the law’s role as a potential therapeutic agent should be recognised and systematically studied.”<sup>4</sup>

The integration of therapeutic jurisprudence throughout the law student’s studies, starting at orientation and continuing through the final year clinical experience, will enhance therapeutic outcomes for all the parties involved. A therapeutic jurisprudence approach combined with teaching and learning methods that include the transformation from a primary concern with the transmission of knowledge to a primary concern with the practices of a knowledge domain, will enhance the student’s interpersonal skills, writing and reading skills.<sup>5</sup>

Teaching methods include role-play to transform knowledge to encompass more than the mere conveying of facts, thereby equipping students with enquiring minds and creating a learning environment that supports collaboration and encourages students to act purposefully in such an environment. The constitutional imperative of access to justice for all underlines the importance for law teachers to incorporate therapeutic jurisprudence in their teaching methods from the first year until completion of the students’ studies. Recently the constitutional court lead the way in ensuring that poor people also have access to justice and awareness must be

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<sup>3</sup>Van Zyl 2014 Safenet Report University of Johannesburg.

<sup>4</sup>Wexler 1999 <http://www.law.arizona.edu/depts/upr-intj/intj-welcome.html>.

<sup>5</sup>Cooney 2007 – 2008 *Kentucky Law Journal* 510.

created amongst students as to the importance of access to obtain our constitutional values.<sup>6</sup> Therapeutic outcomes achieved by teaching through a therapeutic lens attribute to a national goal to improve access to justice in our country.

## 2. Changing student demographics

It is important to know who our students are. This enables us to meet the challenges we face as a result of a changing student demographics. Many students start their first year of study without any family support as they live in rural areas far from the University. Data from 2014 indicates that 53,5% of students are first generation students. A first generation student at the University of Johannesburg (UJ) can be described as the first person in his/her family to enter higher education or a student who has a sibling at university.<sup>7</sup> The average first year student at UJ typically commutes, is a first generation university entrant and was not a very diligent school pupil.<sup>8</sup> As stated by Corrigan,<sup>9</sup> these students carry their own unique brand of baggage in a country that emerged in 1994 from nearly 50 years of apartheid. Young black students living in a post-apartheid society try to meet the high expectations set for them. Many of their parents have sacrificed their own youth to ensure a brighter future for this generation. This student therefore carries a heavy burden as he/she is expected to surpass the previous generation in every way.<sup>10</sup>

A number of first generation students are from rural areas and low-income households. These students and their families display a lack of familiarity with and knowledge of campus life, culture, norms and academic expectations.<sup>11</sup> Their studies are often financed through a government loan and/or bursary schemes. They often lack social or cultural capital<sup>12</sup> as they do not have family ties or business connections.<sup>13</sup> When teaching first generation students, lecturers face many challenges, such as existing social, cultural, economic and linguistic barriers. A

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<sup>6</sup> *Motswage & others v Rustenburg Local Municipality & others* 2013 ZACC 1.

<sup>7</sup> Van Zyl A 2011 Safenet Report University of Johannesburg.

<sup>8</sup> Van Zyl A 2011 Safenet Report University of Johannesburg.

<sup>9</sup> Corrigan 2010 *The Sunday Independent Life*.

<sup>10</sup> Corrigan 2010 *The Sunday Independent Life*.

<sup>11</sup> Taylor Smith Miller and Bermeo 2009 *The Pell Institute for the study of higher education*.

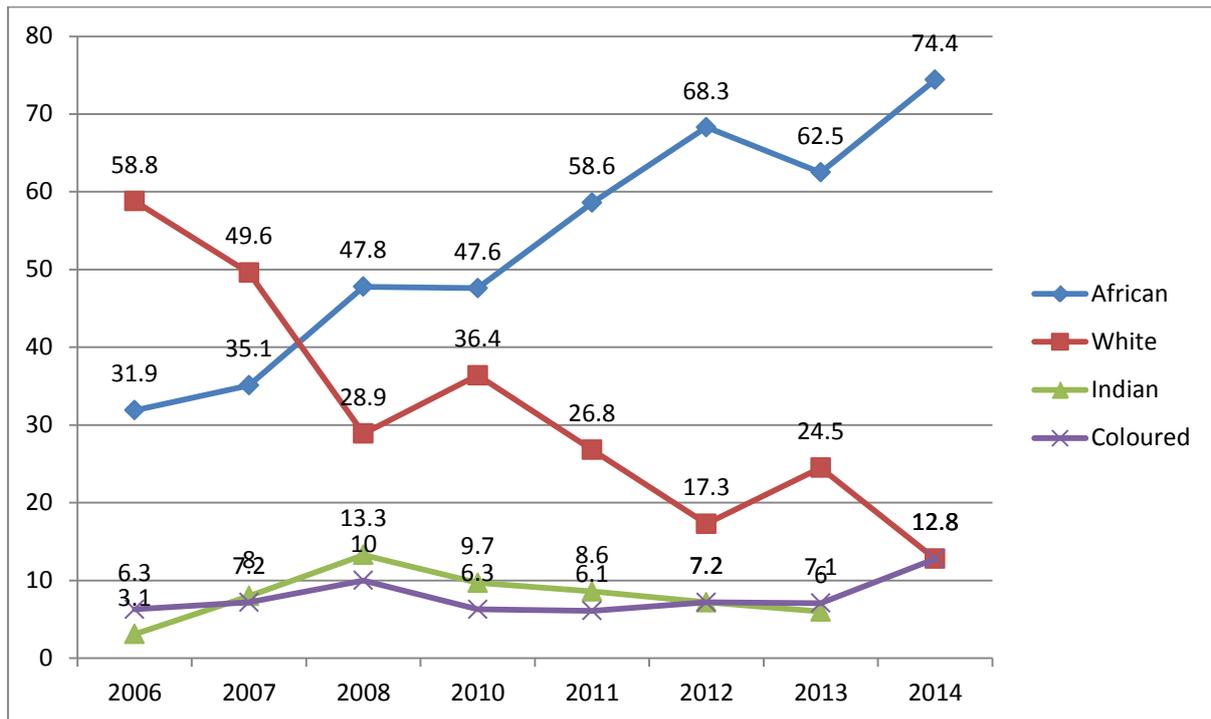
<sup>12</sup> Taylor Smith Miller and Bermeo 2009 *The Pell Institute for the study of higher education*.

<sup>13</sup> Students that were raised by a grandparent or other family member.

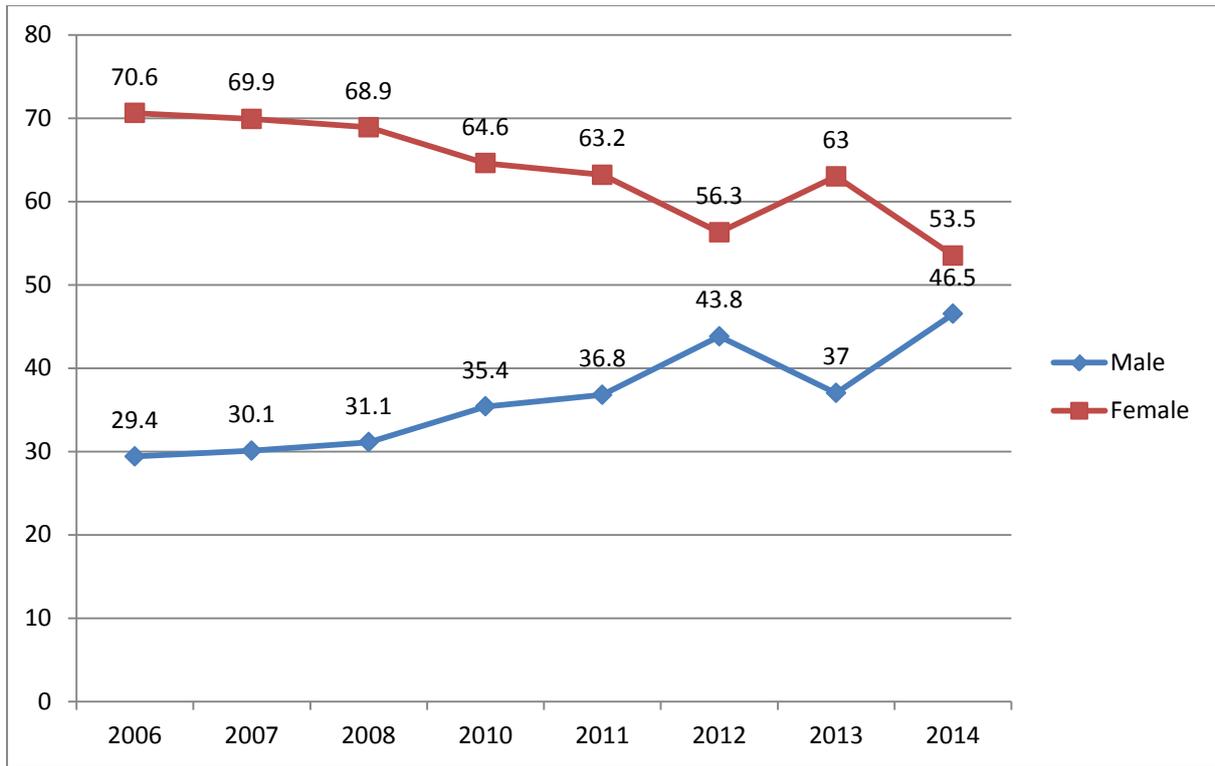
therapeutic jurisprudence approach, whilst upholding guiding values, such as integrity and respect for diversity and human dignity may provide solutions to the many challenges.

## 2.1 Student profile 2014

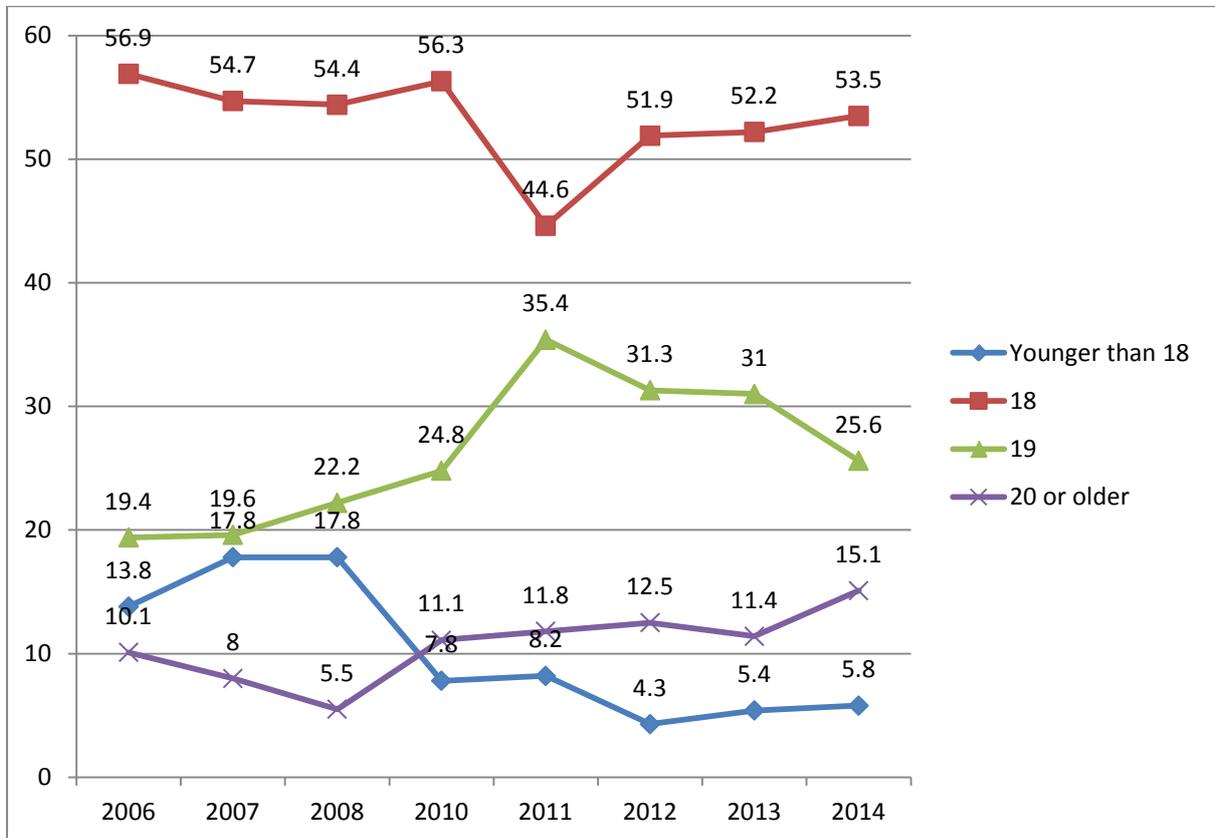
### 2.1.1 Population Group



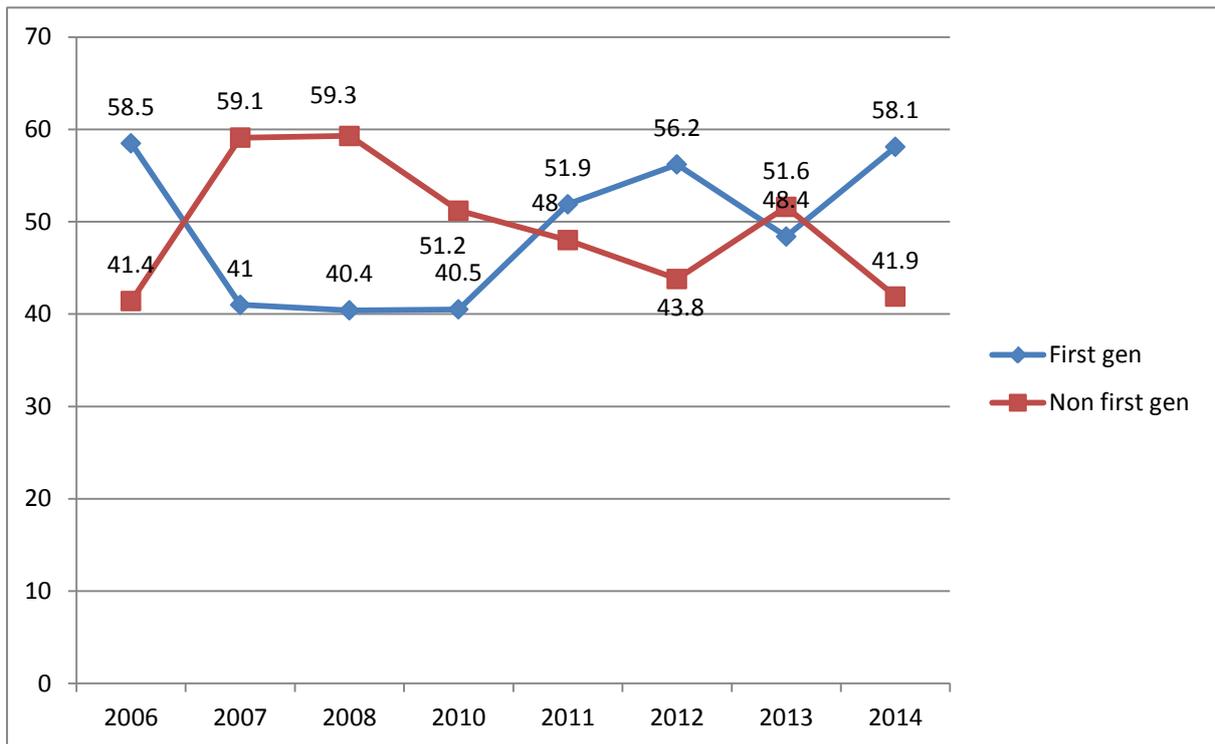
### 2.1.2 Gender



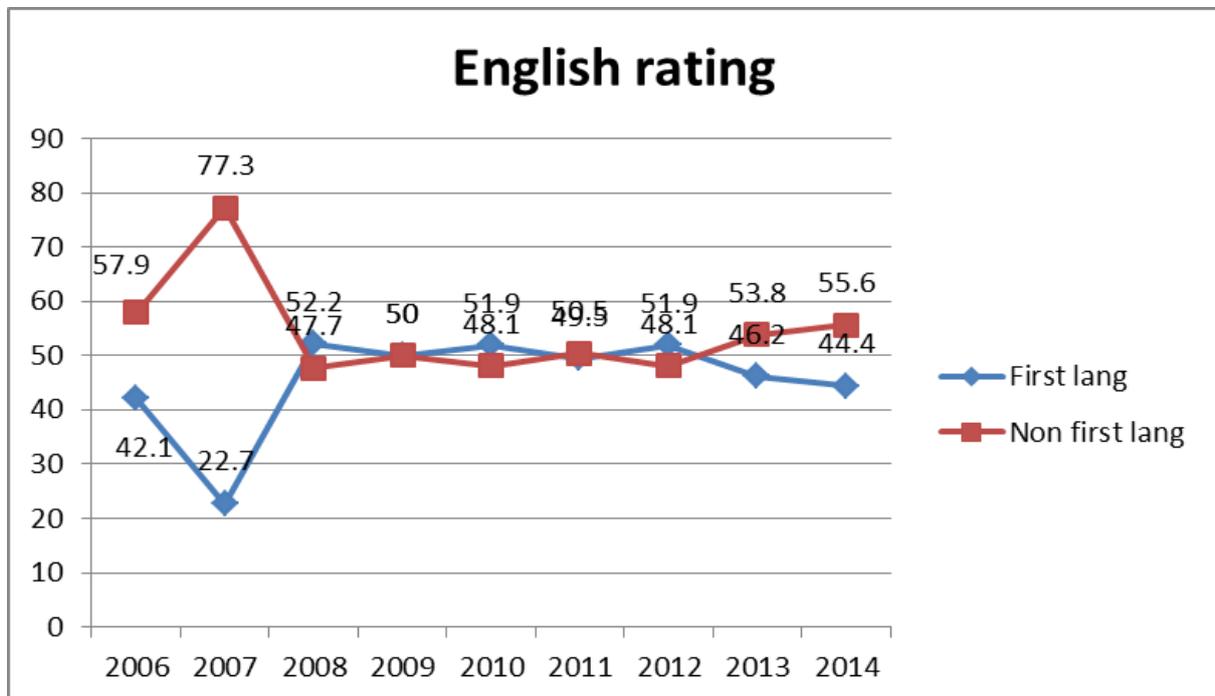
### 2.1.3 Age



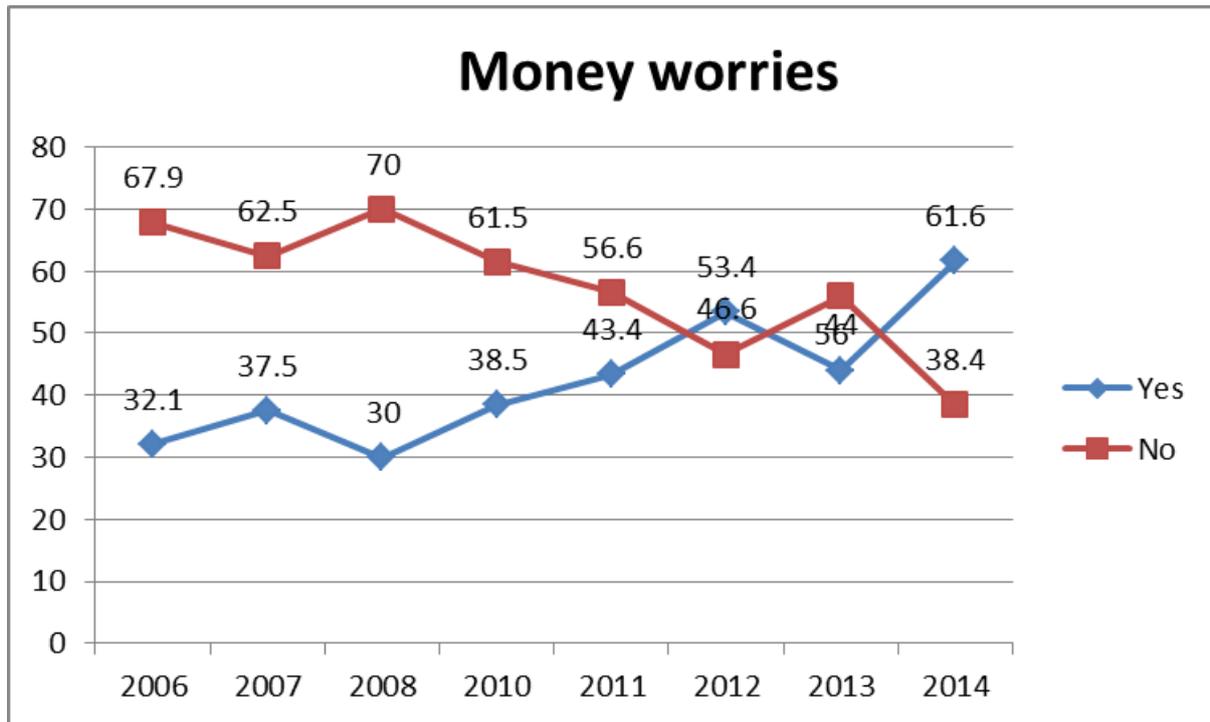
### 2.1.4 First generation status



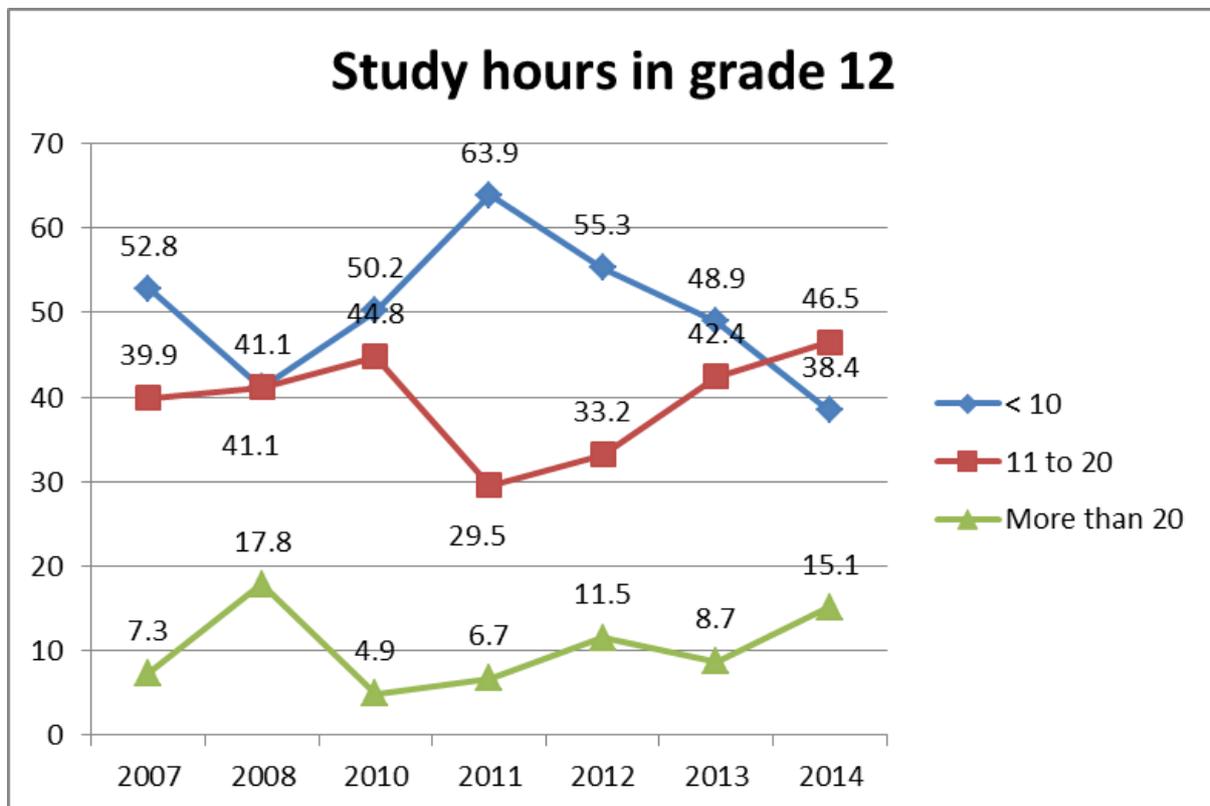
### 2.1.5 English rating



### 2.1.6 Money worries



### 2.1.7 Study hours



### 3. The current LLB (*baccalaureus legum*)

Responses from law firms and even the bench have indicated that the current four year LLB degree (undergraduate) does not prepare students adequately for the legal profession. Problems identified include a lack of literacy skills, analytical skills, ethics, morals and a general lack of maturity or awareness when dealing with clients. Students cannot solve problems or think critically and are unable to communicate arguments logically. A general work ethic is lacking in graduates. Legal practitioners represent the community and therefore must have the ethics necessary to gain the confidence of the public. They need to exude a certain level of professional integrity. Apart from the above skills and knowledge we want to deliver students that are socially conscious, strive for social justice and contribute to the constitutional imperative of access to justice. In the 2010 LLB curriculum research report, 61,3% of legal academics indicated that the main aim of the programme is to develop well-rounded law graduates who engage with legal concepts and can contribute to the legal profession and society.

Judge Bosielo said the following about the legal profession in South Africa:

“It is universally accepted that the strength and vitality of any constitutional democracy depends largely on the quality, pedigree and integrity of its lawyers. A weak legal profession will produce weak judges. We want to have legal professionals who believe in fairness and equality, upholding the constitutional values. We need lawyers who actually understand the constitution. Lawyers should have the spirit of *ubuntu* and be willing to sacrifice, instead of being selfish. They should be socially conscious and develop an ethos of *batho pele* and be prepared to serve the community.”<sup>14</sup>

The above comments emphasize the urgent need to integrate therapeutic jurisprudence into the South African law curricula, to deliver legal professionals that will uphold the constitutional values<sup>15</sup> and eventually to produce judges that will uphold the constitutional democracy. The incorporation of therapeutic jurisprudence

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<sup>14</sup> “LLB Summit: Legal Education in crisis” De Rebus 2013 8 113.

<sup>15</sup> Equality, freedom, human dignity and *Ubuntu*.

principles allows law lecturers to create an awareness and respect for human dignity,<sup>16</sup> (both a value and a right in the constitution) by teaching students to uphold the constitutional values. Fred Zacharias suggested that we should think of therapeutic jurisprudence and preventative laws in terms of the law's effect on lawyers and law students as well as in terms of the effect on clients, litigants and other lay participants in the legal process.<sup>17</sup>

Currently the major role players<sup>18</sup> are considering the LLB curriculum and the adding of another year to the four year Bachelors of Law degrees. This is not unique to South Africa. There had been changes to legal practice and higher education in countries such as, Australia, Brazil, Canada, England, Wales, Ghana, Hong Kong, India, Nigeria and Zimbabwe.<sup>19</sup>

The five year academic programme followed by vocational training was long and expensive and as Midgley said: "a luxury that South Africa could ill afford in transitional times."<sup>20</sup> The four year undergraduate law degree was introduced in 1998,<sup>21</sup> to provide access to the disadvantaged groups in an attempt to create a broadly representative legal profession through the introduction of a cheaper and shorter degree. Unfortunately students struggled to complete the degree in just four years. One of the main challenges that need consideration when extending the degree is financial support. A large number of students current receive funding from the state through NSFAS (National Students Financial Aid Scheme). Currently funding is only made available for a limited period. Students have also indicated that their families often depend on them to start earning money at the earliest opportunity to assist in supporting their families. The general unpreparedness of students entering universities, as well as lack of academic literacy and numeracy skills must also be considered.

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<sup>16</sup> In *S v Makwanyane* 1995 2 SACR 1 (CC) 328 O'Regan held that dignity is "an acknowledgement of the intrinsic worth of human beings".

<sup>17</sup> Zacharias Fred C "Professional responsibility, therapeutic jurisprudence and preventative law" 1999 *Psychology, Public Policy and Law* 5(4) December 909-920 913.

<sup>18</sup> The South African Law Deans Association published a position paper proposing the five year degree. It was based on research that indicated that only 35% of all LLB students graduate within four years and only 55% ever graduate.

<sup>19</sup> Dicker L "The future of the four year LLB" *Advocate* 2011 22-26.

<sup>20</sup> Midgley R "South Africa: legal education in a transitional society" A paper presented at the Law and Society association, Berlin, Germany 2008. See also The LLB curriculum research report 2010.

<sup>21</sup> The degree was introduced by the Qualification of Legal Practitioners Amendment Act 78 of 1997.

The current debate about the restructuring of the LLB degree brought role players from academia and the profession together to once again answer the old universal question: “Should law schools train lawyers for practice or rather pursue a broader, academic legal education.” In South Africa, the social and historical context as well as the urgent need for transformation of our legal profession must also be considered. It is not just about delivering a graduate that has knowledge of the law, but rather an individual that has a deep understanding of our constitutional values and their responsibility to safeguard these values.

#### 4. The Legal Practice Act 28 of 2014

The preamble of this act states that it aims to provide a legislative framework for the transformation and restructuring of the legal profession into a profession which is broadly representative of South Africa’s demographics, to ensure that the values underpinning the Constitution are embraced, that the rule of law is upheld and ensuring that legal services are accessible.

The abovementioned objects of the act highlights the responsibilities of universities to deliver socially conscious graduates that strive for social justice, and contribute to the constitutional imperative of access to justice. In South Africa there are 22 473 attorneys, one attorney for every 2 350 people. For those living in rural areas, access to these legal professional are often difficult and expensive. In Australia there is approximately one attorney for every 230 people.<sup>22</sup>

Section 29 provides that community service may be included as a component of vocational training by candidate legal practitioners as well as a minimum period of recurring community service by practicing legal practitioners. If a programme similar to that of medical graduates is proposed, this would certainly contribute to the constitutional imperative of access to justice for all. The continued enrolment of legal practitioners can be dependent on this requirement. Although, at this stage, only an enabling provision, if implemented successfully it could be cornerstone for transformation of our future lawyers. Role players face many challenges in the

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<sup>22</sup> “Getting community service for lawyers” ( <http://groundup.org.za/article/getting-community-service-lawyers-right>) (20/10/2014)

successful implementation of this provision, such as lack of resources and places for graduates to complete community service. It is a possibility that Law Clinics at universities may be asked to assist with this community service as a component of practical vocational training, however the lack of resources to provide for this will be a major challenge.

Community service will not only promote access to justice, but can also support a therapeutic approach, teaching the student the importance of enhancing the well-being of the client and the community.

At the University of Johannesburg, the importance of contributing to society is highlighted from the first year. A first year committee is selected and part of their responsibilities during the year is to initiate community projects. In the second year students volunteer as part of the Constitutional Students Care Committee and several community projects are identified and addressed during the year. In the final year students take part in several community projects through the Law Clinic.

#### 5. The value of authentic learning, therapeutic jurisprudence and constitutional values

It is very important for a law student not to experience knowledge as a mere static product of information production and consumption, but as a process and instrument of inquiry to solve problems. The learning strategy of the University that encourages that teaching and learning at UJ should transform from a primary concern with the transmission of knowledge (*learning about*), to a primary concern with the practices of a knowledge domain (*learning to be*), is vital to the studies of any law student.

Whereas *learning about* entails the learning of subject theory, such as concepts and facts. *Learning to be* promotes the application of theory to analyse real-life problem situations. To encourage *learning to be* from the first year, we provide students with real-life problem situations for both mootings and during formal assessments as well as various role-play exercises to support this principle. In supporting a meaningful, integrated approach to teaching, the development of these skills should be expanded on during each consecutive year of study, until final year students are then exposed

to practical experiences in the Law Clinic. Students often ask why must they have to study this or how will it assist them in their careers one day. Through *learning to be* activities such as mootings, role-play<sup>23</sup> and court visits, students are able to connect these activities to the real-life tasks of a legal professional. Students soon discover that there are vast differences between *learning about* the law and *learning to be* a lawyer.

The *learning to be* or *authentic learning activities* provide a framework for the incorporation of therapeutic jurisprudence outcomes<sup>24</sup> and the advancement of constitutional values. Through the placement of students in real-life situations, including role-play (lawyer/client interactions), we encourage an approach in which law and legal practice may be more humane, therapeutic, beneficial and humanistic.<sup>25</sup> Encouraging this humanistic approach supports the essence of *ubuntu* as a constitutional value as explained by Mokgoro J in *S v Makwanyana* (par 308): “it envelops the key values of group solidarity, compassion, respect, human dignity, conformity to basic norms and collective unity, in its fundamental sense it denotes humanity and morality”.

## 5.1 Letter writing and drafting skills

Teaching letter writings skills to law students creates excellent opportunities to integrate valuable therapeutic jurisprudence principles. A therapeutic jurisprudence approach concentrates on the law’s impact on the emotional life and psychological wellbeing of all the participants<sup>26</sup>, whereas the focus of the drafting of letters and other legal documents must primarily be on the emotional well-being of the client. It is important to introduce the purpose<sup>27</sup> and fundamentals of therapeutic

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<sup>23</sup> By using role-play as a teaching method lecturers provide for kinesthetic learners that remember better through experience by doing.

<sup>24</sup> According to Wexler and Stolle therapeutic jurisprudence focuses on the law’s impact on emotional life and recognizes that the law itself can be seen as a therapeutic agent. Stolle DP & Wexler D “Therapeutic jurisprudence and preventative law: A combined concentration to invigorate the everyday practice of law’ 1997 *Arizona Law Review* vol25 p1.

<sup>25</sup> Diacoff S “Afterward: The role of therapeutic jurisprudence within the comprehensive law movement” in Stolle DP, Wexler DB & Winick J *Practicing therapeutic jurisprudence: Law as a helping profession* 2000 465.

<sup>26</sup> Wexler 1999 <http://www.law.arizona.edu/depts/upr-intj/intj-welcome.html>

<sup>27</sup> To integrate the psychological and emotional well-being of the client into the practice of law. Cooney 2007 – 2008 *Kentucky Law Journal* 509.

jurisprudence already in the first academic year as this cultivates an awareness of the importance of the client-lawyer relationship and contributes towards an inherent culture promoting the psychological and physical well-being of the people involved.<sup>28</sup>

### 5.1.1 Plain language

In terms of section 64 the National Credit Act,<sup>29</sup> the consumer has the right to information in plain and understandable language. The Act further states that the document is regarded to be in plain language if it is reasonable to conclude that an ordinary consumer of the class of persons for whom the document is intended, with average literacy skills and minimal credit experience, could be expected to understand the content, significance, and import of the document without undue effort. Section 22 of the Consumer Protection Act,<sup>30</sup> entails a similar condition as

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<sup>28</sup> Baker and Zawid 2005 *ST Thomas L Rev* 711.

<sup>29</sup> 34 of 2005. Right to information in plain and understandable language Section 64. (1) The producer of a document that is required to be delivered to a consumer in terms of this Act must provide that document (a) in the prescribed form, if any, for that document; or (b) in plain language, if no form has been prescribed for that document.

(2) For the purposes of this Act, a document is in plain language if it is reasonable to conclude that an ordinary consumer of the class of persons for whom the document is intended, with average literacy skills and minimal credit experience, could be expected to understand the content, significance, and import of the document without undue effort, having regard to-

(a) the context, comprehensiveness and consistency of the document;

(b) the organization, form and style of the document;

(c) the vocabulary, usage and sentence structure of the text; and

(d) the use of any illustrations, examples, headings, or other aids to reading and understanding.

<sup>30</sup> 68 of 2008. Section 22. (1) The producer of a notice, document or visual representation that is required, in terms of this Act or any other law, to be produced, provided or displayed to a consumer must produce, provide or display that notice, document or visual representation-

(a) in the form prescribed in terms of this Act or any other legislation, if any, for that notice, document or visual representation; or

(b) in plain language, if no form has been prescribed for that notice, document or visual representation.

(2) For the purposes of this Act a notice, document or visual representation is in plain language if it is reasonable to conclude that an ordinary consumer of the class of persons for whom the notice, document or visual representation is intended, with average literacy skills and minimal experience as a consumer of the relevant goods or service, could be expected to understand the content, significance and import of the notice, document or visual representation without undue effort, having regard to-

(a) the context, comprehensiveness and consistency of the notice, document or visual representation;

(b) the organization, form and style of the notice, document or visual representation;

section 64 of the National Credit Act regarding the right to information in plain and understandable language.

Baitsewe<sup>31</sup> suggests that external structure can be a mechanism that can aid consumers by means of descriptive headings, a table of contents, text boxes to highlight important text sections, legible font type and size, white spacing and capital letters.<sup>32</sup> Throughout their studies, specifically in the Legal Skills course and the Law of Contract, students must be made aware of the needs of their clients for the information and structure that would best assist understanding of the content of the document.<sup>33</sup> The goal is to “empower consumers to understand the contracts they sign and to make informed decisions”.<sup>34</sup> This will definitely result in a therapeutic jurisprudence outcome for the reader of the document

## 5.2 Moot court

During mooting activities students are given a real life problem, involving a family law dispute regarding the care of a child. Students are now encouraged to ensure the emotional and psychological wellbeing of the child to ensure a therapeutic outcome. In analysing and researching the problem, students are constantly reminded of the importance of our constitutional values, such as human dignity and equality. At this, early stage students are alerted that good lawyering includes a preventative orientation and sensitivity to the effect of the law on the client<sup>35</sup>. Students are also required to research across disciplines, as the research problem address sensitive social issues, such as HIV/Aids, drug abuse and poverty. By providing students with sensitive social issues, the well-being of the client in these proceeding is emphasized. Students also have the opportunity to collaborate with fellow students and tutors, providing a framework where they must treat colleagues and peers with

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(c) the vocabulary, usage and sentence structure of the notice, document or visual representation; and

(d) the use of any illustrations, examples, headings or other aids to reading and understanding.

<sup>31</sup> Baitsewe R is the Head of the Unit for Document Design at the Stellenbosch University Language Centre

<sup>32</sup> Baitsewe R “*Plain language: More than just ‘plain’ words*” Consumer Law Review May/June 2012

<sup>33</sup> Baitsewe R “*Plain language: More than just ‘plain’ words*” Consumer Law Review May/June 2012

<sup>34</sup> Stoop PN and C Chürr “*Unpacking the right and understandable language in the Consumer Protection Act 68 of 2008*” Potchefstroom Electronic Journal 2013 Volume 16 No 5

<sup>35</sup> Stolle DP & Wexler DB “Therapeutic jurisprudence and preventative law: a combined concentration to invigorate the everyday practice of law” 1997 39 Ariz. L. Rev 25.

respect. By exposing students to concepts such as therapeutic jurisprudence and preventative lawyering<sup>36</sup>, an expectation is created that, upon entering the profession, they will promote these concepts. A therapeutic jurisprudence approach proves a human aspect to the law and enforces the constitutional value of human dignity. Justice Cameron stated that the law's role is also to repair, therefore awareness that the law can afford a means of healing and restoration must be created amongst law students.<sup>37</sup>

### 5.3 Court visits and the legal profession

Students have the opportunity to visit three courts during their first year. Of particular relevance is the guided visit to the Constitutional Court. Students can now experience our history of transformation and the importance of our Constitution, constitutional values and the Constitutional Court. Guest speakers from the profession are invited to address students at orientation and later during their studies on the legal profession. These lawyers emphasize that practitioners represent the community and therefore must have the ethics necessary to gain the confidence of the public and that they also need to exude a certain level of professional integrity.

### 5.4 Mediation

Wexler explains that from a therapeutic jurisprudence viewpoint the law itself can be a potential therapeutic agent in that legal rules, procedures and the behaviour of legal actors may produce therapeutic or anti-therapeutic results.<sup>38</sup> Therapeutic jurisprudence encourages the application of the law in a more therapeutic way.<sup>39</sup> It is concerned with the improvement of the law and the operation thereof by searching for ways of minimising negative and promoting positive effects on the wellbeing of those affected by the law.<sup>40</sup> One of the ways of how this objective can be reached is

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<sup>36</sup> Preventative law is defined as "a branch of the law that endeavours to minimize the risk of litigation or to secure more certainty as to legal rights and duties." Stolle P, Wexler DB, Winck BJ & Dauer EA "Integrating preventative law and therapeutic jurisprudence: a law and psychology based approach to lawyering" 1997 California Western Law Review vol 34 no1 16.

<sup>37</sup> Cameron E "Justice: A personal account" 2014 Tafelberg 63 -64.

<sup>38</sup> Wexler 1992 *Law and Human Behaviour* 16(1) 27.

<sup>39</sup> Wexler 1999 <http://www.law.arizona.edu/depts/upr-intj/intj-menu.html>.

<sup>40</sup> King *et al Non-Adversarial Justice* 26.

by introducing mediation as an alternative to court-based adjudication. Students at the University of Johannesburg are made aware of this form of alternative dispute resolution during their first year, when they study Law of Persons and the Family as a subject. It is required of the students to do an assignment on this topic.

The Children's Act<sup>41</sup> makes provision for compulsory mediation in certain instances. Section 21(3)(a) determines that when the parental responsibilities and rights of unmarried fathers are in dispute, it is compulsory that the matter be referred for mediation. However, if one of the parties feels that it is in the best interest of the child, they can approach the High Court without having to engage in mediation first.<sup>42</sup> With regards to parenting plans, the Act states that if co-holders of parental rights and responsibilities are having difficulties in exercising these rights, they must seek mediation, in order to agree on a parenting plan.<sup>43</sup> In order to achieve this, the parties must partake in mediation through a social worker or any other qualified person.<sup>44</sup>

Currently, Western-style divorce and family mediation is practiced to give effect to the Children's Act.<sup>45</sup> According to Boniface there is place for African group-style mediation in the context of mediation provided for by the Children's Act.<sup>46</sup> "This mediation is facilitated by elders and takes place in "an attitude of togetherness" and "in the spirit of *Ubuntu*."<sup>47</sup> Section 71(1) states that if circumstances permit, the children's court may refer a matter brought before the court to any appropriate lay-forum. The lay-forum may include a traditional authority. The purpose is to attempt to settle the matter out of court by way of mediation. The South African Law Reform Commission hereby attempts to identify various protective mechanisms for children at risk and recognizes that extended family, friends and communities form support systems for these children.<sup>48</sup> In these communities, the values of *ubuntu* are

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<sup>41</sup> 38 van 2005

<sup>42</sup> Heaton J "Parental responsibilities and rights" in Davel CJ and Skelton A *Commentary on the Children's Act* Juta Cape Town 2007 p 3-15

<sup>43</sup> Section 33(2)

<sup>44</sup> Section 33(5)

<sup>45</sup> Boniface AE "African-style mediation and Western-style divorce and family mediation: reflections for the South African context" PER 2012 volume 15 No 5 p 379

<sup>46</sup> Boniface *supra* p 393

<sup>47</sup> Boniface *supra* p 381

<sup>48</sup> Gallinetti J "The children's court" in Davel CJ and Skelton A *Commentary on the Children's Act* Juta Cape Town 2007 p 4-38

exercised.<sup>49</sup> *Ubuntu* refers to the key values of group solidarity, namely compassion, respect, human dignity and conformity.<sup>50</sup> If during the mediation these values are exercised, it is likely that a therapeutic outcome will be achieved. Mediation and the value of mediation will be introduced to first year students in 2015 in the Legal Skills course. Through role play, the therapeutic jurisprudence outcomes and the constitutional values of *ubuntu* and human dignity will once again be highlighted. This approach will ensure that awareness for the constitutional values are created from the first year of the student's legal studies.

## 5.5 Clinical legal education

Cronje and Heaton states that "The majority of the population does not have access to private legal practitioners, as they simply cannot afford to pay lawyers' fees. Some people are able to obtain legal advice (and sometimes legal representation) through the Legal Aid Board, legal aid clinics at universities or legal advice centres of non-governmental organizations."<sup>51</sup>

The University of Johannesburg has a law clinic that is housed on three campuses. All final year LLB students are required to successfully pass Applied Legal Studies, the module of which the Law Clinic forms part. The Law Clinic is a form of service learning based in an authentic learning environment. It entails teaching and learning that is directed at specific community needs and integrated into a credit-bearing academic programme and curriculum in which students participate in contextualized, well-structured and organized service activities. These activities are aimed at addressing identified service needs in a community. The student must reflect on these experiences in order to gain a deeper understanding of the linkage between curriculum content and community dynamics as well as to achieve personal growth and a sense of social and civic responsibilities.<sup>52</sup>

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<sup>49</sup> According to Goldberg, V. "Practical and ethical concerns in alternative dispute resolution in general and family and divorce mediation in particular" 1998 TSAR 748 another mediation model is used in Canada and the United States, apparently with partial success. It is called the sensitize-a-mediator model, whereby existing conflict resolvers such as mediators are trained in cultural issues and considerations that are important to the communities served.

<sup>50</sup> Rautenbach C, Bekker JC, Goolam NMI *Introduction to Legal Pluralism* Lexis Nexis Durban 2010 p 27

<sup>51</sup> Cronje, D.S.P. & Heaton, J., *South African Family Law Second Edition*, LexisNexis Butterworths 2004

<sup>52</sup> University of Johannesburg, Work integrated Learning and Service Learning Policy drafted by Academic Development and Support approved on 17 July 2007 p 7

In 2013, 241 students were enrolled in the Law Clinic's clinical programme. The law clinic is managed by a director, who is a qualified and admitted attorney and who also lectures the subject Applied Legal Studies. There are three principle attorneys (clinicians) who are assisted by another two attorneys. A total of 712 civil cases were opened of which 40% were family related matters.<sup>53</sup> Clients that qualify for representation must comply with the means test of the Law Clinic of Johannesburg. This test involves that a maximum of R2 500 allowed for a single applicant or R3 500 allowed for a household should remain once the total expenses have been subtracted from the income. Students are exposed to authentic learning by real life tasks in a real environment whereby tangible results are achieved.<sup>54</sup> During September 2009, the Law Clinic was involved in a "precedent-setting" ruling in the South Gauteng Johannesburg High Court where an unmarried father, Mr. Jose Williams, was declared to have full parental rights and responsibilities over his daughter whom he nearly lost to adoption.<sup>55</sup> The ruling was made under section 21 of the Children's Act<sup>56</sup>, where an unmarried father can acquire full parental rights and responsibilities in respect of his child.<sup>57</sup> This case had a therapeutic outcome as the child is now with her biological father instead of an adoptive family.

According to the Dean of the Law Faculty, Prof P O'Brien, "[t]he Law Clinic serves as an example of how teaching and learning could successfully be integrated with community engagement. ...Community engagement in the form of students rendering legal assistance to real live clients, who are facing actual legal problems, is a useful tool that instills in a student permanent learning of insightful knowledge of the law."<sup>58</sup> The service learning experience has a therapeutic outcome in that it is a collaborative partnership that enhances mutual reciprocal teaching and learning

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<sup>53</sup> According to Mr EJ Hanekom, Faculty Co-ordinator: Faculty of Law report regarding "The current status of community engagement within the Faculty of Law" dated 19 May 2014, a total of 1997 consultations with members of the community has been done by final year law students for 2013.

<sup>54</sup> Faculty of Law Year report 2013 compiled by the Dean of the Law Faculty, Prof P O'Brien

<sup>55</sup> Article that was published on page 3 of The Star on September 30, 2009

<sup>56</sup> 38 of 2005

<sup>57</sup> Section 21(1) (b) if he, regardless of whether he has lived or is living with the mother- (i) consents to be identified or successfully applies in terms of section 26 to be identified as the child's father or pays damages in terms of customary law; (ii) contributes or has attempted in good faith to contribute to the child's upbringing for a reasonable period; and (iii) contributes or has attempted in good faith to contribute towards expenses in connection with the maintenance of the child for a reasonable period.

<sup>58</sup> Faculty of Law Year report 2013 compiled by the Dean of the Law Faculty, Prof P O'Brien

among all members of the partnership. This includes lecturers, clinicians, students, members of the communities and representatives of the service sector.<sup>59</sup>

The Law Clinic provides students with opportunities to gain experience in legal counselling and preventative law, through community outreach projects.<sup>60</sup> Common problems identified in communities served by the law clinics at the University of Johannesburg are; a lack of understanding and awareness of anti-nuptial contracts, members of the communities are unfamiliar with estate planning and the drafting of wills, as well as their legal rights during eviction proceedings. Students could provide members of the community, through preventative law counselling, with the necessary information. Students exposed to this approach may in practice continue preventative lawyering and incorporate aspects of therapeutic jurisprudence.<sup>61</sup> This approach supports lawyering with an ethic of care and will assist in producing graduates who have the spirit of *ubuntu*, are socially conscious and prepared to serve the community. The spirit of *ubuntu: umuntungumuntungabantu*, a person is a person through other people, must be inculcated, and a willingness to serve our communities must be cultivated amongst our students as opposed to pursuing interests based on self-enrichment.<sup>62</sup> The expanding notion of *ubuntu* as a value plays an important role in a country still endeavouring a changing social order.<sup>63</sup>

However to succeed with the abovementioned, students must be introduced to these approaches from the first year. A course in legal skills can provide such an opportunity, through the introduction of mediation as an alternative dispute resolution method. Through community outreach programmes, initiated at the start of the first year and followed through the following years of studies, lecturers can provide a framework for the development of a social consciousness, particularly with reference to the poor and vulnerable members of society.

## 6. Conclusion

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<sup>59</sup> University of Johannesburg, Work integrated Learning and Service Learning Policy drafted by Academic Development and Support approved on 17 July 2007 p 7

<sup>60</sup> "Therapeutic jurisprudence" 71 Rev, Jur 2002 177

<sup>61</sup> See n 35 at 184.

<sup>62</sup> Dicker L "The 2013 LLB summit" Advocate 2013 15.

<sup>63</sup> Bennet TW "*Ubuntu: An African Equity*" PER 2011 vol 14 47.

We want to prepare students for an active citizenship role in society, and have them display the constitutional values of human dignity, equality, freedom and *Ubuntu* when they interact with their fellow students, lecturers, other citizens and with their clients one day when they enter the profession. It is imperative that our students uphold guiding values, such as integrity, respect for diversity and human dignity. We believe that though academic excellence is of the utmost importance, academics and students have a role to play in re-shaping our society. If we accept Judge Bosielo's words that the strength and vitality of any constitutional democracy depends on the quality and integrity of its lawyers, it is imperative that our students uphold guiding values, such as integrity, respect for diversity and human dignity. By embodying these values they can improve the legal system of our country and promote progress.

## Annexure A

Celebrating twenty years of democracy, a class of final year LLB students were asked to explain what *ubuntu* means to them.

The following illustrates what *ubuntu* means to our students:

Vuyokazi Mpele: “In my home language; isiXhosa *Ubuntu* is said “umtungumtungabantu” – a person is a person because of others. I am because we are. When I have more than enough for me, *ubuntu* will require of me to share the little that I have.

Maipoto Shate: “*Ubuntu* is a way of life. *Ubuntu* is tolerance, love acceptance and lending a hand to another.”

David Oberholzer: “It is the human spirit within each of us, that reaches out to others, to promote their care and wellbeing.”

Geraldine Halvorson: “Caring for each other, standing together, recognising each human being’s dignity and worth. I believe at the heart of *Ubuntu* lies the ability to forgive.”

Ayavuya Jack: “The active and inherent practice of togetherness in a community.”

GN Luthuli: “*Ubuntu* is humanity.”