

Student-centred problem-based learning as a transformative approach to legal education

René Hilary Cheryl-Anne Koraan - North-West University, South Africa

ABSTRACT

The quality of LLB graduates is causing an outcry among members of the legal profession. Concerns that law graduates are poorly prepared to meet the demands of practice and do not possess the legal skills expected of them have surfaced throughout the legal profession. Problem-based learning (PBL) is an instructional method that provides students with the knowledge and skills suitable for problem solving. Student-centred problem-based learning (SPBL) is a combination of problem-based and reiterative problem-based learning. In this paradigm students aim to understand and resolve a problem with which they are faced. Confronting students with practical scenarios and placing them in an appropriate environment (like a mock trial) may result in the students remembering and applying in practice what they have learnt in theory. This could arguably make for a law graduate with the skills required for practice. This paper discusses the LLB dilemma and the impact thereof on the legal profession. It describes the relevant pedagogical approach, which entails that the students continue to learn throughout the rest of their personal and professional lives. It also explores the use of mock trials (as a SPBL method) as a transformative approach to enhancing the development of the skills needed for practice.

Keywords: student-centred problem-based learning, problem-based learning, LLB dilemma, mock trials

INTRODUCTION

In 1998 the four-year undergraduate *Baccalaurues Legum* (LLB) degree was introduced by the *Qualification of Legal Practitioners Amendment Act 78 of 1997* (Van Niekerk, 2013). The degree was introduced as the minimum academic requirement for admission to practise as an advocate or an attorney under the then relevant legislative frameworks. The new LLB degree was designed to provide equal legal education for all and to remedy the problem of under-representivity in the profession by cutting a year's time and a year's fees off the programme of study qualifying one as a lawyer (Manyathi-Jele, 2014). Although the intentions were laudable, there has been consistent criticism of the quality of LLB graduates in recent years. Concerns that graduates are poorly prepared to meet the demands of practice and do not possess the legal skills expected of them have surfaced throughout the legal profession. Boseilo made the following remark at the LLB summit held in 2013:

...the recent chorus of complaints on the quality of LLB, which claimed that the graduates lacked broad skills, including writing, reading, ethics and an understanding of the Constitution, cannot be brushed aside (Sedutla, 2013: 8).

At the same summit Greenbaum indicated that only 22% of students complete the degree in four years (Sedutla, 2013: 8). Contributing to this is the inadequacy of primary and secondary education which leaves students unprepared for university (Sedutla, 2013: 8). Greenbaum refers to this as the 'articulation gap' between the two phases of education (Greenbaum, 2014: 11). The 'articulation gap' refers to '... the discrepancy between the standards and levels of reading, writing and critical engagement' taught at schools, and the demands of university education' (Greenbaum, 2014: 11).

It is evident that there is a need to revisit the structure of the LLB degree. The question now is whether or not there is a need to change the duration of the degree again. There is, however, another option. Instead of altering the duration of the degree programme, the structure thereof should be reconsidered, and the way the content is being taught should be adjusted. It is assumed that the way information is acquired may assist a student to remember and apply that information in practice (Schmidt, 1983).

Problem-based learning (PBL) is an instructional method that provides students with knowledge suitable for problem solving. It was developed at the Faculty of Health Sciences of McMaster University in approximately 1965 (Schmidt, 1993). Student-centred problem-based learning (SPBL), not to be confused with PBL, is a term coined by Kurtz, Wylie and Gold (1990) and refers to a combination of problem-based and reiterative problem-based learning. In this learning process students aim to understand or resolve a problem with which they are faced. Confronting students with practical scenarios, and placing them in an environment that is conducive to their learning (such as a mock trial) may result in their remembering and applying in practice what they have learned in theory. Although both instructional methods aim to provide students with knowledge suitable for problem solving, SPBL is particularly aimed at providing additional development of inquiry-, research- and communication skills. This could arguably inculcate law students with essentials such as the ability to read and write cogently, an understanding of the Constitution (Constitution of the Republic of South Africa, 2006), and a sense of the ethical standards, required for practice.

This paper discusses the LLB dilemma (pertaining to poorly equipped graduates) and its impact on the legal profession. It also explores the use of mock trials (as a student-centred problem-based method) as a transformative approach to enhancing the development and acquirement of the skills needed for legal practice. Quinot considers transformative legal education as what 'law teachers can and must do in order to achieve the aims of transformative constitutionalism' (Quinot, 2012: 412).

These insights call for a fundamental shift from formalistic legal reasoning to substantive reasoning under a transformative constitution, for a shift towards a constructivist student-centred teaching model and for the recognition of a paradigm shift in knowledge from linear to non-linear, relational or complex (Quinot, 2012: 412).

The term 'transformative constitutionalism' was introduced by Karl Klare as a:

...long-term project of constitutional enactment, interpretation, and enforcement committed (not in isolation, of course, but in a historical context of conducive political developments) to transforming a country's political and social institutions and power relationships in a democratic, participatory, and egalitarian direction. Transformative constitutionalism connotes an enterprise of inducing large-scale social change through nonviolent political processes grounded in law (Klare, 1998: 150).

In his address entitled 'Transformative Constitutionalism' Langa simplified this notion as simply 'that we must change' (Langa, 2006: 352). For the purpose of this study the transformative approach resonates with Quinot's approach to transformative legal education.

The aim of this paper is not to shift the blame from the content and structure of the LLB curriculum to the law lecturer. Instead it concerns itself with describing an alternative teaching method which may remedy the present situation, and may even be the only change required in order to do so.

THE LLB DILEMMA

The LLB Summit was held on 29 May, 2013. The summit was initiated by the South African Law Deans' Association (SALDA), the General Council of the Bar (GCB) and the Law Society of South Africa (LSSA) to discuss the challenges and future of the LLB degree (Sedutla, 2013). In a panel discussion Greenbaum said that though the four-year LLB degree had been introduced to reduce costs and increase access to the law profession, only 22% of the registered students completed the LLB degree in four years (Sedutla, 2013). From the comments made at the summit it would seem that the new LLB course is not delivering the desired outcome in that even among the successful 22% there is a lamentable lack of the qualities needed in the profession. The shortage of skills includes, but is not limited to, reading, writing, ethics, communication, problem solving and counting (Van Niekerk, 2013; Sedutla, 2013; Quinot & Van Tonder, 2014). It can be argued that the shortening of the degree is perhaps the biggest challenge to the current LLB degree.

The LLB Summit concluded with two suggestions. The first was for an extended LLB degree and the second for a return to the old post-graduate LLB degree (Van Niekerk, 2013). Montjane stated that 'law schools have to graduate individuals who not only know what the law is, but who have the skills to know what it ought to be' (Montjane, 2003: 89). This means that students should be confronted with issues outside the black letter law. According to Van Marle and Modiri (2012), at present the four-year LLB does not provide opportunities for critical thinking or the acquisition of skills. Though the debate concerning the length of the LLB degree remains at the forefront of attention in the profession, it is also possible that the time is ripe for law teachers to look at their own methods of teaching. According to Bezuidenhout and Karels, 'what we teach is often a measure of the way we teach' (2014: 41). They further state that 'the substance of our teaching has a profound effect on the formation of law graduates' (2014: 41).

Law teachers often work in silos and rarely collaborate with colleagues in other departments. According to Modiri, as a result:

They are unable to think globally about the legal education being offered as a whole and that is also the reason why law courses and course material are often so formulaic, outdated and stale. These excessive conceits are partly the result of a lack of humility on the part of the law teachers and they constitute a large part of how and why legal education came to be in such crisis (Modiri, 2014: 16).

PROBLEM-BASED LEARNING (PBL)

The concept of PBL, originally developed at the Faculty of Health Sciences of McMaster University around 1965, was influenced by the case-study method developed at Harvard Law School in the 1920s (Schmidt, 1993). The case-study method was developed by Christopher Columbus Langdell at Harvard Law School in 1870 (Weaver, 1991). The idea of PBL is for students, working in groups, to address a set of events (a case) under the supervision of a facilitator (Schmidt, 1993). The main purpose is to equip students with the knowledge suitable for problem solving. In this system, students are confronted with problems from life

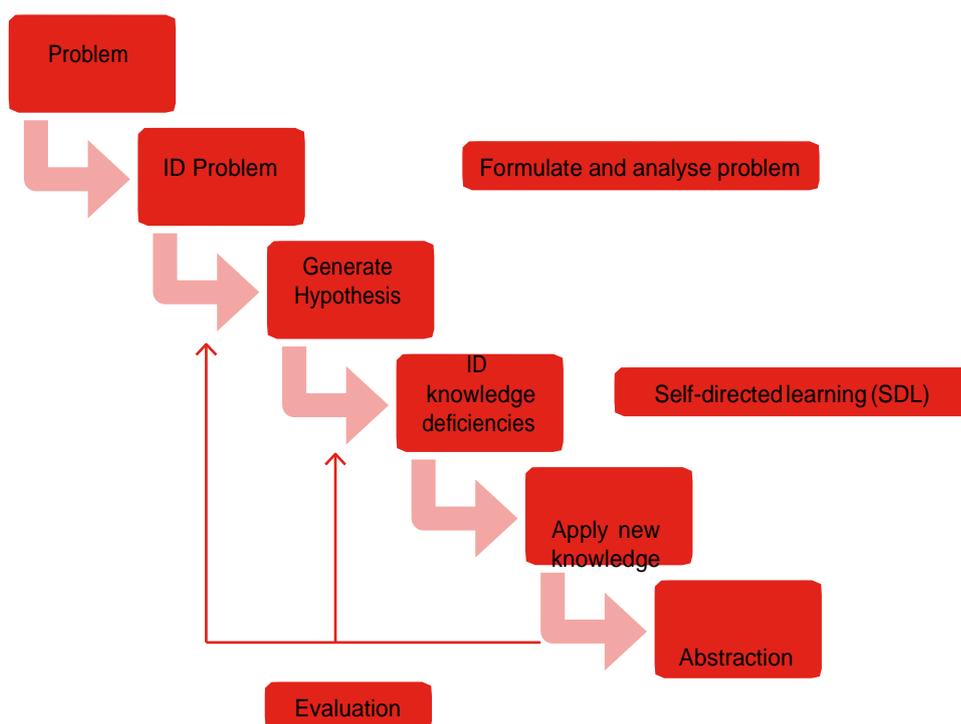
which they have to explain or analyse in terms of underlying legal principles. As a group, they then have to solve the problems first by discussing them among themselves and then by studying relevant sources (Schmidt, 1993). PBL is ordered into stages of learning (the PBL cycle). Hmelo-Silver (2004) sets out the following stages.

Firstly, students are faced with a problem that relates to knowledge they have already obtained. This is when they identify the problem. Secondly, they generate ideas or hypotheses. They now understand the problem better and are generating possible solutions to it. Thirdly, they identify their knowledge deficiencies relative to the problem. They are now engaged in self-directed learning (SDL) through performing research. At this stage the contribution of group discussions can have an 'independent facilitating effect on prior knowledge activation' as students can learn from each other even before new information is acquired (Schmidt, 1993: 427). Fourthly, they apply their (new) knowledge and evaluate their hypotheses. Finally, they reflect on the knowledge gained (Hmelo-Silver, 2004).

The PBL cycle can be explained alternatively by making use of a diagram designed by Hmelo-Silver (2004) (see Figure 1). He writes: 'Because students are self-directed, managing their learning goals and strategies to solve PBL's ill-structured problems (those without a single correct solution), they also acquire the skills needed for lifelong learning' (2004: 237).

During PBL teachers take on a different role, that of facilitators. The facilitators model behaviour they want the students to follow by thinking out aloud. They will ask questions such as: 'What's going on here? What do we need to know more about? What did we do during the problem that was effective?' (Stepien & Gallagher, 1993: 26). The facilitators will then coax their students to use these questions and take on responsibility for addressing the problem. In time, the students become self-directed learners (Stepien & Gallagher, 1993).

Figure 1:
Problem-based learning cycle



PBL can, however, limit certain skills development of students. As Kurtz et al. point out

However, since students are provided with a complete written problem in the problem method, they do not have an opportunity to develop their skills of inquiry and communication. Further students are often given research references, and so do not need to practise their research skills (Kurtz et al., 1990: 802).

STUDENT-CENTRED PROBLEM-BASED LEARNING (SPBL)

SPBL is a term coined by Kurtz et al. (1990) which refers to a combination of problem-based learning and reiterative problem-based learning. Reiterative problem-based learning is an extension of the problem-based method (Kurtz et al, 1990). During this learning process students reflect on their new learning, their prior knowledge, their reasoning and their problem solving skills (Kurtz et al., 1990). During this learning process students aim to understand or resolve a problem they are faced with 'by reviewing and evaluating the resources and process through which they analyzed the problem' (Kurtz et al., 1990: 799).

'An important component of actual learning is that the topic studied is *understood*' (Schmidt, 1993: 423). Before students can start to analyse the problem they first have to understand it. This having been said, as with any legal subject, terminology is important and the understanding of certain concepts can be crucial to the problem-solving process.

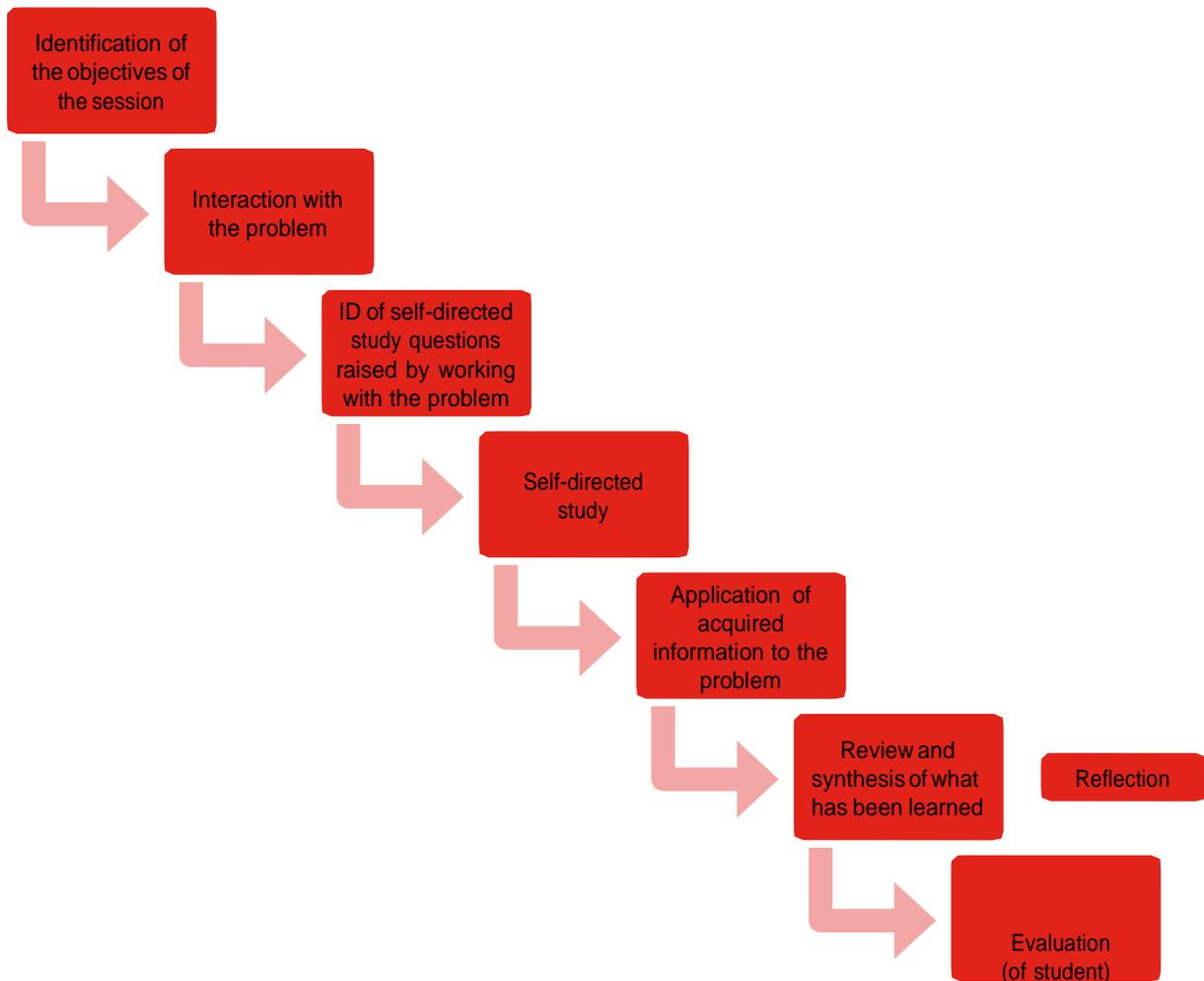
SPBL students need their prior knowledge and experience only as preparation. It is assumed that the way information is acquired assists the student in remembering and applying that information in practice (Schmidt, 1983). It can be argued that the evolving nature of the law can make what was taught irrelevant, however SPBL is about instilling certain skills and not time-restricted scenarios. When students are confronted with a real-life problem or scenario during their (undergraduate) studies, they are likely to remember how to solve it when in practice. SPBL also provides greater motivation than the lecture method where an instructor presents the information in lecture form and uses a case or two to illustrate the information given (Kurtz et al., 1990). Not only will students be motivated because of the relevant learning, but the method will encourage student independence and responsibility in the learning process (Kurtz et al., 1990). SPBL will also help them to develop the required skills such as communication skills, skills useful in group practice, and problem-solving skills, to name a few. Although PBL aims to provide a similar learning method it can limit the development of inquiry-, communication- and research skills as previously mentioned (Kurtz et al., 1990).

SPBL gives students a complete experience that includes the inquiry and research stages, unlike the limited experience provided by PBL. As in the case of PBL there are stages in SPBL and, quoting Barrows and Tamblyn, Kurtz et al. (1990) describe the stages as follows:

- (a) Identification of the objectives of the session;
- (b) Interaction with the problem;
- (c) Identification of self-directed study questions raised by working with the problem;
- (d) Self-directed study;
- (e) Application of acquired information to the problem;
- (f) Review and synthesis of what has been learned, and
- (g) Evaluation (1990: 809-810).

These stages are explained next in a mock trial scenario. See Figure 2 for an illustrative diagram.

Figure 2:
Student-centered problem-based learning process



MOCK TRIALS AS A SPBL METHOD

The use of real-life problems as case studies for students during the SPBL is important, since this motivates students to solve the problems and leads to lifelong learning. Mock (criminal) trials are used to give students a glimpse of what awaits them in practice and 'has been identified as supporting higher order learning by moving beyond memorization to comprehension and application' (Kutnjak Ivković & Reichel, 2016: 2; Shepelak, 1996). The students are (usually) divided into groups (state and defence) and given a set of facts (a docket). They are given the necessary statements and other documents for perusal, as in a real case. These documents will be their first encounter with the facts of the case. They are then given the opportunity to consult with their witnesses or client before the trial. At this stage the students would have completed stages (a) to (b). They would have identified their position (as state or defence), read through the docket and heard the version of their witnesses.

After consultation with the witness or client, the students now have to identify the learning questions (c). At this stage they will identify their problem areas or lack of knowledge concerning the problem itself. With the version of their witnesses and the content of the docket in mind, they will identify the learning questions. This can be questions like: 'What are the elements of the crime?'; 'What are the possible defences and their requirements?'; 'Are there any applicable case-laws?'

The next stage (d) will be for the students to do research to answer the learning questions identified in (c). This is called self-directed study. It is at this stage that the collaboration between group members and the consultation of resources are important. If the learning questions are clearly identified, then this stage should be a focused one. After the research has been completed they apply the acquired information to the problem at hand (e). This stage requires a more detailed application of the research performed (case law, legislation and or policies). Once again this will be done in the group, where each of the identified learning questions is addressed. They will have to decide what the information obtained means for their client or case (Kurtz et al., 1990). After the analysis and solutions to the problem have been developed the students are ready to consult with their witnesses or client, hopefully with possible solutions. In the next stage (f) they reflect on how they approached the problem and what they have learned during this problem-solving exercise. They now have to 'integrate their knowledge acquired, and skills developed, into their existing bank of knowledge and skills' (Kurtz et al., 1990: 813).

The final stage (g) entails the evaluation of the students and is a significant part of the learning process. It should be determined if students have met the objectives of the course. To determine this, the lecturer should not only test the knowledge of the students but also the other skills expected to be obtained during the process (Kurtz et al., 1990). These can include communication skills, reasoning skills, research skills, problem-solving skills and writing skills (if written documents like a plea or heads of argument are required). Not all law lecturers necessarily have the practical experience to assess these skills themselves. To make sure that all the skills are adequately assessed academia should extend a hand to the courts and legal practitioners to assess these courses as opposed to relying on template marking rubrics which are based on non-practical components.

Mock trials as a SPBL method in law courses have proved to be very conducive to learning. SPBL could be used in all law courses, but it must be admitted that this could be a time-consuming exercise. The other challenge is the size of our law classes. SPBL works best if the number of students in the SPBL groups does not exceed 10-12 (Kurtz et al., 1990). Keeping in mind our class sizes, it may be advisable to implement SPBL in smaller classes only. It is not necessary to implement mock trials as a SPBL method in every module. This could be done in selected modules only. As a starting point SPBL could be introduced in a specific module in each year group. Collaboration between modules in the same year-group could also work well, ensuring the integration of law modules. Students would thus still enjoy the lecture method but would also be exposed to SPBL, giving them a glimpse of future practice.

American legal education has been the forerunner of clinical legal education (Greenbaum, 2012) and mock trials are found to be 'an exciting way to teach students trial court procedure and to develop a wide range of skills' (Bell, 2002: 42). Moot courts started in 1820 at Harvard and have been part of the curriculum of Boston University since the 1870s (Dickerson, 1999). After dissatisfaction with the traditional Law curriculum was expressed, the Report and Recommendations of the Task Force on Lawyer Competency: The Role of the Law Schools (Cramton Report) was released in 1979 (Shreve, 1981). The Cramton Report advocated for a curriculum that allows students to 'explore and develop a greater number of skills relevant to practicing law' (Shreve, 1981: 793). In 1992 the MacCrate Report, Legal Education and Professional Development, advised on 'narrowing the gap' between legal education and the legal profession (Greenbaum, 2012). Moot courts have been criticised by some legal academics and judges in the United States (Kozinski, 1997) but in a case made for moot court it was held that

Moot court is a valuable activity. It helps students to strengthen their writing abilities, their oral abilities, and their analytical abilities. Accordingly, it can help to improve their overall performance in law school and to make them more attractive to potential employers (Dickerson, 1999: 1227).

The Carnegie Report, *Educating Lawyers: Preparation for the Profession of Law*, has been the most recent review of legal education written by a group of legal educators (Greenbaum, 2012). The Carnegie Report called for an integration of 'the cognitive (knowledge), the practical (skills) and the ethical-social (values, ontology)' (Greenbaum 2012: 21). The above mentioned can be achieved by employing simulation (mock/moot court) as part of the law curriculum. A study was undertaken by Kutnjak Ivković and Reichel (2016) to explore if the inclusion of a mock trial exercise enhances students' learning. This was done in a criminal justice class. Students identified mock trials as the most useful method for teaching about the difference between civil law and common law trials (Kutnjak Ivković & Reichel, 2016). Students also indicated that active participation allowed them to apply their knowledge and also led to a greater understanding of the different type of trials (Kutnjak Ivković & Reichel, 2016).

CONCLUSION

It is clear from the research that the revision of the LLB degree is inevitable. It is expected from law graduates that they have certain necessary skills if they are to cope in practice. If graduates do not possess these skills it will lead to a chain-reaction of doubt and concern not only from the legal profession but also from the public in general (as it does at present). It is expected from law graduates to have the necessary writing-, reading-, research-, communication- and reasoning skills, to name but a few, and it seems that our recent graduates do not have them.

The uproar over ill-equipped and under-skilled graduates leads one to wonder if the four-year degree was a good idea. A review of scholarly research suggests that the problem is being imputed to the brevity of the degree programme. Students still graduate, though their skills are poor. But is this not indicative of the structure of the degree, rather than the duration? I am of the view that more focus should be given to the actual structure of the degree as well as to the way the content is taught. I suggest this would be a far less exhausting exercise (exhausting nevertheless, but less so) than extending or changing the degree itself.

The notion of transformative legal education has been expressed by various academic scholars and legal practitioners (Langa, 2006; Quinot, 2012; Greenbaum, 2014). The way legal education is being taught is in drastic need of a paradigm shift. Transformation is of paramount importance for legal education.

As Schmidt (1983) pointed out, the way students are taught assists them to remember and apply that information in practice. SPBL could play a major role in a student-driven learning environment. The use of mock trials as a SPBL method would help students to understand the problems set as well as to solve them themselves. Students would get practical exposure as well as remember how they dealt with the problem at university when confronted with a similar problem in practice. During mock trials students would more likely acquire the skills necessary to cope with practice. The lecturer would have to identify the skills to build on and formulate the scenario or case study accordingly. In the United States of America mock trials and moot courts have been successfully used to enhance students' learning (Kutnjak Ivković & Reichel, 2016).

The use of mock trials as a SPBL method could be time-consuming to the lecturer and I therefore suggest that only one module in each year group is identified to accommodate these mock trials. A more holistic approach to different fields of law is also advised (Modiri, 2014). This would ensure that students gain practical exposure and the full learning experience provided by SPBL in each year of study. The difficulty of the problems students encounter in the mock trials should increase each year to enhance their learning and build their skills. It stands to reason that law graduates who are exposed to mock trials year after year will find practice less intimidating. At the end of the day, law lecturers help prepare students for practice, and how they do it can have a vital impact on the students' ability to cope with practice. Though there

is no quick-fix to the LLB dilemma, however, the student-centred problem-based learning method is worth exploring as a transformative approach to legal education.

REFERENCES

Bell, K. (2002) 'Using moot courts in the classroom (Cases, controversy, and the court)' *Social Education* 66(1) pp.42-46.

Bezuidenhout, I. & Karels, M. (2014) 'Legal educators-the peddler of precedent, the skill builder and the socially conscious knowledge generator' *Acta Academica* 46(3) pp.40-51.

Dickerson, D. (1999) 'In moot court' *Stetson Law Review* 29 pp.1217-1227.

Hmelo-Silver, C.E. (2004 Collet (2013),) 'Problem-Based Learning: What and How Do Students Learn?' *Educational Psychology Review* 16(3) pp.235-266.

Greenbaum, L. (2012) 'Current issues in legal education: a comparative review' *Stellenbosch Law Review* 23 pp.16-39.

Greenbaum, L.A. (2014) 'Re-visioning Legal Education in South Africa: Harmonising the Aspirations of Transformative Constitutionalism with the Challenges of our Educational Legacy' *SSRN 2575289*.

Klare, K.E. (1998) 'Legal culture and transformative constitutionalism' *South African Journal on Human Rights* 14 pp.146-188.

Kozinski, A. (1997) 'In Praise of Moot Court--Not!' *Columbia Law Review* 97(1) pp.178-197.

Kurtz, S., Wylie, M. & Gold, N. (1990) 'Problem-based learning: an alternative approach to legal Education' *Dalhousie Law Journal* 13 pp.797-816.

Kutnjak Ivković, S. & Reichel, P. (2016) 'Enhancing Student Learning By Using Mock Trials in Criminal Justice Courses' *Journal of Criminal Justice Education* 27 pp.1-24.

Langa, P. (2006) 'Transformative constitutionalism' *Stellenbosch Law Review* 17 pp.351-360.

Manyathi-Jele, N. (2014) 'National LLB task team on access and quality legal education' *De Rebus* July, pp.8.

Modiri, J.M. (2014) 'The crises in legal education' *Acta Academica* 46(3) pp.1-24.

Montjane, L. (2003) 'Toward a Discursive Legal Education' *Education as Change* 7(2) pp.88-102.

Quinot, G. (2012) 'Transformative legal education' *South African Law Journal* 129 pp.411-433.

Quinot, G. & Van Tonder S.P. (2014) 'The potential of capstone learning experiences in addressing perceived shortcomings in the LLB training in South Africa' *Potchefstroom Electronic Law Journal* 17(4) pp.1350-1390.

Schmidt, H.G. (1983) 'Problem-based learning: rationale and description' *Medical Education* 17 pp.11-16.

Schmidt, H.G. (1993) 'Foundations of problem-based learning: some explanatory notes' *Medical Education* 27 pp.422-432.

Sedutla, M. (2013) 'LLB summit: Legal education in crisis?' *De Rebus* 532 pp.8-10.

Shepelak, N.J. (1996) 'Employing a mock trial in a criminology course: An applied learning experience' *Teaching Sociology* 24(4) pp.395-400.

Shreve, G.R. (1981) 'Bringing the Educational Reforms of the Cramton Report into the Case Method Classroom--Two Models' *Washington University Quarterly* 59 pp.793-807.

Stepien, W. & Gallagher, S. (1993) 'Problem-based learning: As authentic as it gets' *Educational Leadership* 50(7) pp.25-28.

Van Marle, K. & Modiri, J. (2012) 'What does changing the world entail? Law critique and legal education in the time of post-apartheid' *South African Law Journal* 129 pp.209-219.

Van Niekerk, C. (2013) 'The four-year undergraduate LLB: Where to from here?' *OBITER* pp.533-544. Weaver,

R.L. (1991) 'Langdell's Legacy: Living with the Case Method' *Villanova Law Review* 36 pp.517-596.
