

INTERNATIONAL PROGRAM *ON-LINE*

PROFESSIONAL SKILLS & CLINICAL LEGAL EDUCATION:

Access to Justice in times of COVID-19



SYLLABUS

Course Team

Course Leader: Alan Russell, Senior Lecturer, Law Division, School of Law and Social Sciences, London South Bank University, Solicitor of the Supreme Court of England & Wales, Senior Fellow of the UK Higher Education Academy UK

MPU's Faculty: Geisa de Assis Rodrigues, School of Law, Mackenzie Presbyterian University, PHD in Civil Law (UERJ), Visiting Fellow Brazil Institute (Kings College), Co-coordinator of Hope Arsenal Mackenzie Advice Clinic, Appellate Federal Prosecutor

Course Description

In 2011 London South Bank University (LSBU) opened an inner-city Legal Advice Clinic where trained law students working under the supervision of legal professionals provide free, immediate, drop-in, face-to face social welfare law advice to members of the local community. To date the LSBU Clinic in London has assisted more than 5000 poor, vulnerable citizens.

The course will present this exciting and innovative model of university-based drop-in legal advice services, which places students right at its heart, and will explore in depth the theories and concepts that lie behind it.

We will contextualize the model within broader theories of access to justice, clinical legal education, and pro bono and cause lawyering. We will examine the capability of the model to help tackle deficits in access to justice, reduce social exclusion and assist large numbers of low income and vulnerable citizens with their everyday legal problems.

We will learn and practice the skills involved in all stages of the drop-in legal advice process: reception and data collection; taking instructions (finding out what the problem is); researching the problem; delivering the advice; and writing up the case record.

There will be lots of space for questions, discussion and reflection and there will be lots of hands on practical exercises and simulations when you can practice and develop your professional skills.

The theoretical content of the course will be based broadly on UK and USA perspectives. The practical content will explore those theoretical perspectives in the Brazilian and UK contexts.

By the end of the course, participants will have acquired the knowledge, theoretical understanding and practical skills required to participate in their own university-based drop-in Legal Advice Clinic and will have developed and enhanced the following vital legal professional skills: interviewing, researching, drafting, giving advice and advocacy.

Class Schedule and Activity

From 9am to 1pm - São Paulo time

Monday 03 August

Introduction to Clinical Legal Education

This class introduces the course. We will begin by exploring the foundations of clinical legal education in the USA and the UK and the role of clinical legal education in the broader context of socio-legal studies and critical legal thinking.

The class will include an introduction to the LSBU drop-in model of clinical legal education.

Required reading

Jerome Frank, 'Why Not a Clinical Lawyer School?' (1933) 81 (8) University of Pennsylvania Law Review and American Law Review 907-923. Available as a PDF download

Recommended reading

Andy Unger & Alan Russell, 'Clinical Legal Education Conference: Quality & Supervision', International Journal of Clinical Education, Vol 24, No 1 (2017) <http://www.northumbriajournals.co.uk/index.php/ijcle/article/view/581>

Tuesday 04 August

Exploring the Fundamentals of Access to Justice

We will consider the fundamentals of access to justice. These, broadly speaking, are:

- Awareness of rights, entitlement, obligations and responsibilities

- Awareness of procedures for resolution
- Ability effectively to access resolution systems/procedures
- Ability effectively to participate in resolution process in order to achieve just outcomes

We will also explore the variety of ways in which people come to use legal services and the barriers they face in doing so. We will begin considering the following questions:

- Which groups of people experience the most legal problems?
- Why do people instruct lawyers?
- For what types of legal problems is advice most often sought?
- What other problems do unresolved legal problems lead to?

We will start to explore some of the leading empirical research around these issues.

We will survey and discuss the contribution university based legal services make to access to justice in the UK and Brazil. We will explore some of the international barriers to justice.

Required reading

Franz Kafka, *The Trial*, 'Before the Law' (this is only a very short extract from the literary novel and it is all you need to read, although of course feel free to read the whole novel for pleasure!) Translation by Ian Johnston of Vancouver Island University available online at <http://records.viu.ca/~johnstoi/kafka/beforethelaw.htm>

Tom Cornford 'The Meaning of Access to Justice' in 'Access to Justice: Beyond the Policies and Politics of Austerity, ed Palmer et al (2016) Hart Publishing. Available as a PFD download

Pascoe Pleasance and Nigel Balmer, 'How People Resolve 'Legal' Problems', (Report to LSB, Cambridge 2014) (you only need to read the Key Findings and Executive Summary – pages 1-6) <https://research.legalservicesboard.org.uk/wp-content/media/How-People-Resolve-Legal-Problems.pdf>

OECD/Open Society Foundations (2019), *Legal Needs Surveys and Access to Justice*, OECD Publishing, Paris (you only need to read the 'executive Summary' and 'Overview of Legal Needs Surveys and Access to Justice' at pages 11-20) https://www.oecd-ilibrary.org/governance/legal-needs-surveys-and-access-to-justice_g2g9a36c-en

Global Insights on Access to Justice, World Justice Project 2019 (you only need to read the section 'About this Report' – pages 1-10 plus selected individual country profiles) <https://worldjusticeproject.org/sites/default/files/documents/WJP-A2J-2019.pdf>

Richard Moorhead and Margaret Robinson, 'A Trouble Shared: Legal Problems Clusters in Solicitors and Advice Agencies' (November 2006) DCA Research Series 08-06 (you only need to read the 3 page executive summary at i–iii but you can read more if you wish, particularly pages 70-87) https://orca.cf.ac.uk/5184/1/Moorhead_et_al_2006_A_Trouble_Shared.pdf

Orla Drummond and Gráinne McKeever, 'Access to Justice through University Law Clinics' (October 2015) Ulster University Law School and the Legal Education Foundation (you only need to read pages 5-14 and pages 31-36)

https://www.ulster.ac.uk/__data/assets/pdf_file/0003/132654/Access-to-Justice-through-Uni-Law-Clinics-November-2015.pdf

Morag McDermont and Ben Crawford, 'Advising in Austerity' University of Bristol Law School Blog (April 2017) http://legalresearch.blogs.bris.ac.uk/2017/04/advising-in-austerity/#_ga=2.75234903.455330890.1515353333-2085428647.1515353333

Julinda Beqiraj and Lawrence McNamara, 'International Access to Justice: Barriers and Solutions' (October 2014) The Bingham Centre for the Rule of Law (you only need to read the Executive Summary – pages 5-7 – but you can of course read more if you wish) available at <http://www.biicl.org/ingham-centre/projects/internationalaccess>

Recommended Reading

Nancy Fraser, 'Reframing Justice in a Globalizing World' (2006) 36 New Left Review 1 . Available as a PDF download Pascoe Pleasance, Nigel Balmer and Catrina Denvir, 'How People Understand and Interact with the Law' (PPSR 2015) (the Executive Summary – pages 3-17) https://www.thelegaleducationfoundation.org/wp-content/uploads/2015/12/HPUIL_report.pdf

Wednesday 05 August

- (1) Pro Bono and Cause Lawyering
- (2) Litigants in Person and the Impact of Representation

In this class we will critically consider the role of pro bono. We will touch on examples of the types of pro bono casework conducted, for example, by leading UK law firms as part of their Corporate Social Responsibility Agenda and address the tensions that exist in this area. We will explore some of the theoretical underpinnings of pro bono provision. We will explore the role of the 'cause-lawyer': we will the ethical tensions between lawyering for a 'cause' and more traditional notions of professional legal practice. We will consider the following questions:

- What tensions exist in law firm provision of pro bono/CSR?
- How can they be alleviated?
- Does/should pro bono have a new role to play in the current access to justice climate?
- What is a cause lawyer?

This class will also address the problems faced by litigants in person (self-represented litigants) in court proceedings in the UK and in other jurisdictions. We will consider how the courts deal with self-represented litigants, their impact on the judicial process as well as exploring a sample of some of the initiatives that seek to reduce the problems they face. Against this backdrop, we will also address empirical work on measuring the impact of legal advice and assistance in response to social welfare law problems. Questions to consider therefore include:

- What problems do self-represented litigants face?
- What tools do self-represented litigants need to better understand the court process?

- What is the impact of self-represented litigants on the judicial process and court procedure?
- What impact does representation have?

Required reading

Pro Bono & Cause Lawyering

Richard Abel, 'The Paradoxes of Pro Bono', 78 Fordham L. Rev. 2443 (2010). Available as a PDF download

Lisa Vanhala & Jacqui Kinghan, 'Literature Review on the Use and Impact of Litigation' (April 2018) Public Law Project research paper <https://publiclawproject.org.uk/wp-content/uploads/2018/04/Literature-Review.pdf>

Litigants in Person

Richard Moorhead, 'The Passive Arbitrator: Litigants in Person and the Challenge to Neutrality', 5 LS 16(2) (2007) 405. Available as a PDF download

Rebecca Sandefur, 'The Impact of Counsel: An Analysis of Empirical Evidence', 9 Seattle J. Soc. Just. 51 (2010-2011). Available as a PDF download

Carroll Seron et al, 'The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City's Housing Court: Results of a Randomized Experiment', Law and Society Review, Volume 35, Number 2 (2001) (you only need to read this short abstract of the article) <https://www.ncjrs.gov/App/publications/abstract.aspx?ID=194269>

James Greiner & Cassandra Wolos Pattanyak, 'Randomized Evaluation in Legal Assistance: What Difference does Representation (Offer and Actual Use) make? (you only need to read the single page abstract on page 1) https://docs.google.com/viewerng/viewer?url=https://www.yalelawjournal.org/pdf/1088_q6v2s7cc.pdf

Recommended Reading

Paul McKeown, 'Pro Bono: What's in it for Law Students? The Students' Perspective', International Journal of Clinical Education, Vol 24, No 2 (2017) <http://www.northumbriajournals.co.uk/index.php/ijcle/article/view/597/1015>

Thursday 06 August

- (1) Digital delivery of legal advice to people on low incomes – the emerging role of technology in social welfare law services
- (2) Health and Wellbeing – a new focus for social welfare law services?

This class will explore the current international debate on possible ways forward for social welfare law services. We will consider two emerging strands (1) harnessing advances in

technology to provide interactive web-based advice services (2) the co-location of social welfare law advice and medical services in health settings.

The focus on technology is pertinent in light of the current global COVID-19 pandemic. This course was to have been delivered face to face in a classroom at MPU. The pandemic means this is not possible and the course will be delivered online. Social welfare lawyers and legal advice NGOs are also having to move their services online. We will explore and discuss the issues and challenges involved in going 'virtual'.

We will consider the role of university drop-in legal advice services have in this new evolving advice landscape. We will explore how student legal services can shift from face to face to 'virtual' advice. We will consider whether the move online is likely to be permanent or a temporary response to COVID-19? Is moving online desirable? Will online advice widen or threaten access to justice? We will also explore the following broader issues:

- How effective are student led legal services?
- Can students really help to close the justice gap
- Should students be stepping in when the state is withdrawing public funding for social welfare law advice?
- What level of supervision is required to ensure a high quality service?
- What are the limits on the number of people that can be helped by student drop-in legal advice services?

Required reading

Technology

Roger Smith, 'Digital Delivery of Legal Services to People on Low Incomes', Legal Education Foundation (December 2014) <http://www.thelegaleducationfoundation.org/wp-content/uploads/2014/12/Digital-Delivery-Paper-1.pdf>

Roger Smith, 'What is the technology needed for access to justice?' Legal Voice, 3 November 2017 <http://www.legalvoice.org.uk/technology-needed-access-justice/>

Roger Smith, 'Ten Ways in which Technology can expand access to justice', Legal Education Foundation (February 2018) <https://law-tech-a2j.org/digital-information/ten-ways-in-which-technology-can-expand-access-to-justice/>

Health & Justice

'Getting it Right in Social Welfare Law', Second Report of the Low Commission on the Future of Advice and Legal Support, Legal Action Group (March 2015) (Chapter 4, page 74-94 only) http://www.lowcommission.org.uk/dyn/1435772523695/Getting_it_Right_Report_web.pdf

'Health Justice Partnerships in Social Prescribing International Workshop' Updated Background Materials (November 2017) https://www.ucl.ac.uk/access-to-justice/sites/access-to-justice/files/hjp_workshop_updated_information_final.pdf

Sarah Beardon & Hazel Genn 'The Health Justice Landscape in England & Wales: Social Welfare Legal Services in Health Settings (2018) https://www.ucl.ac.uk/access-to-justice/sites/access-to-justice/files/lef030_mapping_report_web.pdf

Recommended Reading

Jennifer Harris 'The shift to digital advice and benefit services: implications for advice providers and their clients', chapter (page 53-62) in 'Advising in Austerity: Reflections on challenging times for advice agencies', ed Samuel Kirwan, Policy Press (2016)
<http://www.oopen.org/search?identifier=621110>

Kirsteen Paton & Vickie Cooper 'Domicide, Eviction & Repossession' (page 164-170) in 'The Violence of Austerity' ed Vickie Cooper & David Whyte, Pluto Press (2017)
https://www.academia.edu/35639438/The_Violence_of_Austerity

Friday 07 August

Advice Skills

In this final class we will explore the qualities and practical skills law required to deliver social welfare law advice to live clients in a university Legal Advice Clinic.

We will discuss:

- Working with clients – respecting the client, assumptions, opinions, language and bias
- Interview skills – listening, identifying all the issues, questioning, summarizing, note taking
- Information resources and research skills
- Delivering advice face to face
- Advice records
- Professional conduct – knowing your limits, client confidentiality