

Technological innovation (4IR) in law teaching and learning: Enhancement or drawback during Covid-19? book emerged from a lecture series the Faculty of Law at UP hosted in the 2021 academic year. Aiming to test the state of teaching and learning during the pandemic, the lecture series asked whether ERT and learning (ERTL) compromised or enhanced the teaching and learning of law. Among others, various academics from UP Law as well as from the universities of KwaZulu-Natal, Johannesburg and Free State. as well as officials from the DHET, participated in the series. This collection comprises chapters written by some of the representatives who were involved in the lecture series.

This book aims to set the tone for teaching and learning of law after the pandemic. It is our hope that the lessons learnt during the pandemic will be adopted in the day-to-day teaching pedagogy of law in the future. Despite the disruptions caused by the pandemic, a possibly unseen benefit can be identified. As this book argues, law teaching and learning using technological innovations have been positive for both academics and students. Thanks to technological innovation, the discipline of law is arguably in a far better position after the pandemic than before.

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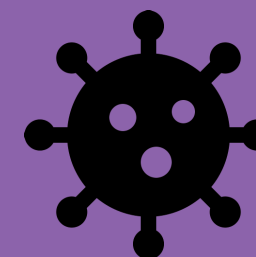
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Editor
Professor Charles Maimela

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Editor

Professor Charles Maimela
Faculty of Law, University of Pretoria

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*TECHNOLOGICAL INNOVATION (4IR) IN LAW TEACHING AND
LEARNING: ENHANCEMENT OR DRAWBACK DURING COVID-19?*

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PREFACE

When Covid-19 struck and the country was plunged into a hard lockdown, universities rallied to continue with online teaching and learning – Emergency Remote Teaching (ERT) as it was called at the time. The challenges were many and varied; yet we tackled them one by one and overcame many obstacles and hurdles, finally emerging from the pandemic with new insights, and energised to reimagine teaching and learning in a new, hybrid environment.

While the pandemic brought a myriad of new challenges on all fronts, existing inequalities in our South African society were exacerbated through job losses, as well as the death of breadwinners in families. In the education sphere, lack of internet access and internet-enabled devices, which were crucial to successful online teaching and learning, threatened to halt teaching and learning indefinitely. Universities and the private sector stepped up and assisted as far as possible to ensure that no student was left behind. Still, there were other factors that affected the online environment, such as load-shedding, which lecturers and students had to deal with on a daily basis. Suffice to say, we lived in a state of perpetual uncertainty, through several waves of the pandemic, unsure of what would happen even the very next day.

I believe that our humanity pulled us through. I believe that the pandemic forced us to reconnect with that central value that makes us human beings and to acknowledge our fellow human beings – in our case, lecturers and students – and to meet them where they found themselves during the pandemic. Maybe the pandemic provided us with a context that was often brutal and uncompromising – a timely wake-up call for all of us. We now have a very different understanding of the space, be it virtual or in person or hybrid, within which teaching and learning take place. We also know that this process does not reside with faculty alone – it is a joint endeavour between teachers and learners where participation by everyone is crucial to ensure success.

The pandemic also gave rise to renewed research on teaching and learning, as this volume of contributions shows. In order to get to grips with virtual teaching and learning law teachers had to engage with the

science of this new type of teaching and learning. We became innovative and explored and experimented – we shared stories, designed games, and connected in different ways. Interestingly, in some instances lecturers and students felt more connected online than when they were on campus. On the other hand, many lecturers and students missed contact class interaction and found the virtual platforms frustrating. Going forward, we must consider all these experiences in our bid to make teaching and learning accessible, stimulating, inspiring and rewarding for all.

Finally, the pandemic forced us to focus on well-being. Around the world, workload, work-life balance, flexible working and studying became serious topics of discussion. We now understand that all our efforts to produce the best teaching and learning materials for a number of different platforms will be in vain if we do not address the factors that impact our well-being. Teaching and learning do not happen in a vacuum – it happens within the context of our lived realities. In reimagining teaching and learning, we will have to be agile, flexible and creative to ensure that we produce the best teaching and learning experience for lecturers and students, and that we embark on this journey together.

Professor Elsabe Schoeman

Dean: Faculty of Law, University of Pretoria

**“NO STUDENT LEFT
BEHIND” TEACHING AND
LEARNING LAW DURING COVID-19:
THE VOICES OF LAW LECTURERS AND
STUDENTS IN THE ONLINE SPACE**

*Prof Charles Maimela
Prof Elsabe Schoeman
University of Pretoria*

General overview

Introduction and background

Covid-19 has caused serious disruptions in all the socio-economic activities and lives of people around the globe with devastating consequences. People suffered from anxiety and depression due to the various lockdowns imposed with the aim of preventing the spread of the virus from 2020 to date. The education sector, both basic and higher, was not spared from the devastating nature of the pandemic, with compromises made to save the academic year(s) from 2020 to date. This forced the universities working with regulatory and accreditation bodies such as the Council for Higher Education (CHE), Universities South Africa and the Department of Higher Education and Training (DHET), to come up with a master plan to save the academic year since the start of the pandemic. The master plan was shared with all public universities, to implement and ensure continuity despite the disruptions the pandemic caused.

The CHE master plan shared with universities can be described as a “GPS” to help manoeuvre the Covid-19 storm because of the guiding principles it provides. “No student should be left behind”: this means that in all teaching and learning activities, students should be afforded an opportunity to learn irrespective of the pandemic and their socio-economic circumstances. A call was made to universities to ensure that this guiding principle of the master plan becomes a reality. Various universities devised plans and systems to save the academic year(s) and provide students with the necessary support and assistance as they learned remotely during the emergency period. Universities made provision for laptops, cell phones, data and delivery of study materials to the homes of students in order to equip them with the necessary resources to embark on emergency remote teaching (ERT). Despite these necessary and important interventions, it is still doubtful whether the aim of saving not only the academic year(s)

but also its guiding principle that “no student should be left behind” was realised. How effective were learning management systems in ERT? How effective are these in the current hybrid or mixed online and in person teaching and learning system? Have the quality and integrity of the qualifications been compromised and, if so, to what extent? In this particular case, the focus is on the discipline of law at the University of Pretoria (UP). How did students and staff cope mentally, psychologically and physically? Covid-19, despite its devastating consequences and loss of lives, also serves as a wake-up call to all of society that it is no longer business as usual but rather business unusual, requiring us to think outside the box. This means that society and universities broadly must learn and unlearn on a constant basis to address the changing needs of an evolving society, which is set to experience more pandemics in future.

We need to embrace innovation and technology, especially in the higher education sector and deal with the myth that technology is going to take away employment or jobs from human beings. This narrow view of technological innovation in the higher education space must be rejected, and in the era of the Fourth Industrial Revolution (4IR), technology must be viewed as innovation to assist and enhance the pedagogy of teaching and learning that proved valuable during the pandemic and beyond. The voices of both students and staff are very important and must be considered as we take the teaching and learning agenda to the next level during and after Covid-19. This book affords all stakeholders an opportunity to engage on teaching and learning and – most importantly – to map a way forward that takes pedagogy and the practice of teaching and learning to the next level. The focus is the teaching and learning of law in the Faculty of Law at UP, and the book includes perspectives from other colleagues – from the universities of Johannesburg, KwaZulu-Natal, Limpopo and Free State among others – whom we invited to contribute to the lecture series on teaching and learning during and after Covid-19. The ultimate goal is for this book to help legal scholars and their students map a way forward for contemporary and future teaching and learning that make use of traditional teaching methods, introduces technology and maintains a balance between face-to-face and online environments, which can be described as a hybrid or mixed system.

Chapter layout

This book emerged from a lecture series the Faculty of Law at UP hosted in the 2021 academic year. Aiming to test the state of teaching and learning during the pandemic, the lecture series asked whether ERT and learning (ERTL) compromised or enhanced the teaching and learning of law. Among others, various academics from UP Law as well as from the

universities of KwaZulu-Natal, Johannesburg and Free State. as well as officials from the DHET, participated in the series. This collection comprises chapters written by some of the representatives who were involved in the lecture series. It comprises chapters from colleagues from UP Law as well as from UP support divisions such as Education Innovation. In total, the book comprises eight chapters outlining the experience of teaching and learning and how teaching practice and learning were enhanced or developed during the pandemic.

Conclusion

This book aims to set the tone for teaching and learning of law after the pandemic. The various chapters are detailed and comprehensive and include future perspectives or components. It is our hope that the lessons learnt during the pandemic will be adopted in the day-to-day teaching pedagogy of law in the future. Despite the disruptions caused by the pandemic, a possibly unseen benefit can be identified. As this book argues, law teaching and learning using technological innovations have been positive for both academics and students. Thanks to technological innovation, the discipline of law is arguably in a far better position after the pandemic than before.

1

“THE USE OF TECHNOLOGY HAS ALWAYS BEEN PART OF THE PLAN FOR HIGHER LEARNING INSTITUTIONS” – EXPERTS ON TEACHING DURING COVID-19 AT UP LAW LECTURE

*Dr Freddy Mnyongani
University of KwaZulu-Natal*

1 1 Introduction

The day of 11 March 2020 marks a defining moment in the collective memory of the world. This is the day the novel Coronavirus (Covid-19) was declared a global pandemic by the World Health Organization. Racing against time to contain a further spread of the virus and save lives, countries responded by putting in place stringent measures that had a disruptive effect on life as it was known before the outbreak, including on education in general. To salvage what was left of the academic programme for the first semester of 2020 and beyond, institutions of higher learning took an extraordinary step and migrated to emergency remote teaching (ERT) and learning. The argument undergirding this chapter is that, while the extraordinary measure was itself aimed at assisting in managing the disruptive effect occasioned by Covid-19 in the higher education sector, it in itself disrupted the 2020 academic project.

The retrospective will be presented in five parts. The first part will provide an overview of the state of disaster and its impact on teaching and learning in the higher education sector. The chapter will underscore the fact that given the rising daily infections and death rates internationally and locally, it was not going to be possible to continue with face-to-face teaching and learning as it existed before the pandemic without placing the lives both students and staff at risk. The second part will point out that, save for few exceptions, the regulatory framework in South Africa makes provision for institutions to be accredited to offer teaching and learning either by distance or on a face-to-face basis. In order to avert a legitimacy conundrum, the Council on Higher Education (CHE) intervened and granted permission to institutions to operate outside the parameters of what their accreditation credentials allow for. In the third part, the chapter will argue that the migration to the ERT placed students from less privileged backgrounds, particularly first year students, at a disadvantage. It is trite that for less privileged students, university infrastructure – such as accommodation, computer facilities with access to the internet and

the library – is pivotal to their learning. Moving them away from these resources was tantamount to setting this category of students up for failure. To conclude, the chapter will argue that in light of the unpredictable nature of both the human-made and natural disruptions, it is imperative for each institution of higher learning to up-skill staff to be au fait with teaching modes suitable for application when things are normal and in an emergency.

1 2 The state of disaster and its impact on teaching and learning in 2020

By the time the World Health Organization declared the Covid-19 outbreak a global pandemic, most tertiary institutions in the Southern Hemisphere had barely commenced with their 2020 face-to-face academic programme.¹ World Health Organization Director-General Dr Tedros Ghebreyesus reported at the time that about 118 000 cases in 114 countries were detected and that 4 291 people had lost their lives. The projection at the time was that there would be a rise in the number of cases, the number of deaths, and the number of affected countries. As images of the ravaging effects of the pandemic around the globe were beamed on the cable networks, it was clear that something needed to be done, and be done urgently. In this regard, the World Health Organization called on countries to “activate and scale up” their emergency response mechanisms.² Most countries, including South Africa, responded by going into a total shutdown mode.³

On 15 March 2020, empowered by s 3 of Disaster Management Act 57 of 2002, Dr Nkosazana Dlamini Zuma, the Minister of Cooperative Governance and Traditional Affairs, declared a national state of disaster in South Africa.⁴ On the same day, President Ramaphosa indicated in an address to the nation that the world infection rates had moved to

- 1 For South Africa, see Menon and Motala “Pandemic Leadership in Higher Education: New Horizons, Risks and Complexities” 2021 *Education as Change* 1.
- 2 WHO “Director-General’s Opening Remarks at the Media Briefing on Covid-19 - 11 March 2020” 2020-03-11 <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19--11-march-2020> (last accessed 2022-03-12).
- 3 Shiraef “Closed Borders, Travel Bans and Halted Immigration: 5 Ways Covid-19 Changed How – And Where – People Move Around The World” *The Conversation* 2021-03-18 <https://theconversation.com/closed-borders-travel-bans-and-halted-immigration-5-ways-covid-19-changed-how-and-where-people-move-around-the-world-157040> (last accessed 2022-03-12).
- 4 Department of Co-operative Government and Traditional Affairs “Declaration of a National State of Disaster” GG43096 of 15 March 2020 https://www.gov.za/sites/default/files/gcis_document/202003/43096gon313.pdf.

more than 162 000 people who have tested positive for the Coronavirus across the globe.⁵ At the time, South Africa only had 61 confirmed cases. President Ramaphosa went on to announce that the scale and the speed at which the virus was spreading was “unprecedented and urgent” and decisive measures had to be put in place.⁶

When the Minister of Higher Education, Science and Innovation, Dr Blade Nzimande, made an announcement on measures for the higher education sector, there was a sense of urgency. On the same day, he announced that all post-school institutions were to close early with effect from the next day, but research and postgraduate work would continue.⁷ Despite there being a sense of optimism that things would normalise and institutions return to normalcy after the Easter break, the Minister went on to state that: “Institutions will, however, be utilising this break period to identify and explore digital and online methodologies for teaching and learning that may need to be put in place to support the academic programme at a later stage.”⁸ The Minister went on to say that, the decision by institutions would be based on scientific evidence and institutional considerations. Universities such as the University of KwaZulu-Natal had already set up a campus health war room. As UKZN Vice-chancellor and Principal Prof Nana Poku explained at the time, the university was “instituting large-scale, high-level surveillance, prevention and response measures to make sure that we are ready when Covid-19 is detected in our vicinity”.⁹

By the time President Ramaphosa addressed the nation again on 23 March 2020, there were more than 340 000 confirmed cases in the world. In South Africa, as the President reported, the number of confirmed cases had increased six-fold in just eight days from 61 cases to 402. With effect from midnight 26 March 2020, President Ramaphosa announced

5 South African Government “President Cyril Ramaphosa: Measures to Combat Coronavirus Covid-19 Epidemic” 2020-03-15 <https://www.gov.za/speeches/state-ment-president-cyril-ramaphosa-measures-combat-covid-19-epidemic-15-mar-2020-0000> (last accessed 2022-03-12).

6 As above.

7 South African Government “Minister Blade Nzimande: Measures to Deal with the Coronavirus Covid-19 in the Post-School Education and Training Sector” 2020-03-17 <https://www.gov.za/speeches/minister-higher-education-science-and-innovation-statement-measures-deal-covid-19-threat> (last accessed 2022-03-12).

8 As above.

9 Nair “UKZN Launches Ground Breaking War Room to Fight Coronavirus” *Sowetan* 2020-03-20 <https://www.sowetanlive.co.za/news/south-africa/2020-03-03-ukzn-launches-groundbreaking-war-room-to-fight-coronavirus/> (last accessed 2022-03-12).

a lockdown.¹⁰ Universities, along with all other institutions of higher learning, had to close down, and students had to vacate the university residences and return to their homes. On 9 April 2020, the infection rates had sky rocketed. There were more than 1.5 million confirmed cases worldwide, and 90 000 people across the world had succumbed to the virus. In South Africa, the infection rate was at 1 934.¹¹ As the nationwide lockdown was extended by a further two weeks, prospects of returning to campus to continue with teaching and learning as it existed before 11 March 2020 became a remote possibility. The world was thrust into unprecedented times, and so was teaching and learning. For the higher education sector, a balance had to be struck between saving lives and saving the academic year.¹²

To salvage what was left of the academic programme for the first semester of 2020, and beyond, while at the same time saving lives, institutions of higher learning took an extraordinary measure and migrated to an ERT, learning and assessment mode.¹³ The core features of ERT, learning and assessment is that it is a temporary “stopgap”¹⁴ measure, implemented in haste under an emergency. As such, it has no sound pedagogy to rely upon. According to the Council on Higher Education (CHE),¹⁵ ERT, learning and assessment is defined as a:

temporary shift of instructional delivery to an alternate delivery mode as a response to crisis situations. ERT involves the use of fully remote teaching solutions for instruction or education that would otherwise be delivered face-

- 10 Department of International Relations and Cooperation “Statement by President Cyril Ramaphosa on Escalation of Measures to Combat Covid-19 Epidemic” 2020-03-23 <http://www.dirco.gov.za/docs/speeches/2020/cram0323.pdf> (last accessed 2022-03-12).
- 11 South African Government “President Cyril Ramaphosa: Extension of Coronavirus Covid-19 Lockdown to the End of April” 2020-04-09 <https://www.gov.za/speeches/president-cyril-ramaphosa-extension-coronavirus-covid-19-lockdown-end-april-9-apr-2020-0000> (last accessed 2022-03-12).
- 12 Parliamentary Monitoring Group “Saving the 2020 Academic Year: DHET, USAf, SAUS, SAFETSA, Deputy Minister” 2020-06-24 <https://pmg.org.za/committee-meeting/30530/> (last accessed 2022-03-12).
- 13 This was not a uniquely South African approach; it was approach adopted internationally. See the DHET “Commonwealth of Learning Guidelines on Distance Education during Covid-19” https://www.dhet.gov.za/SiteAssets/Guidelines%20on%20DE_Covid%2019.pdf (last accessed 2022-03-12).
- 14 Czerniewicz, Trotter and Haupt “Online Teaching in Response to Student Protests and Campus Shutdowns: Academics’ Perspectives” 2019 *International Journal of Educational Technology in Higher Education* 3.
- 15 The CHE is statutory body established in terms of the Higher Education Act 101 of 1997, as amended. Its work is also governed by the National Qualifications Framework Act 67 of 2008, as amended.

to-face or as blended or hybrid courses. ERT signals the use of a different form of transmission mode than contact classes but indicates that an online pedagogy has most likely not been adopted. ERT is based on the understanding that there would be a return to the normal contact-mode teaching and learning once the crisis is under control, and a safe return to classes possible.¹⁶

As the virus continued to change its trajectory by mutating,¹⁷ President Ramaphosa announced the different risk levels accordingly. The five alert levels are as follows.¹⁸ Alert level five is where drastic measures to contain the spread of the virus and save lives are implemented. Alert level four is where extreme precautions are taken to limit community transmissions and outbreaks are taken, while allowing some form of activity to resume. Under alert level three, restrictions are placed on activities, including workplace and social events to prevent high risk of transmission. Under alert level two, physical restrictions on leisure and social activities are imposed to prevent a resurgence of the virus. Under alert level one, an allowance is made for normal activity to resume with precaution.

On 8 June 2020, Minister Nzimande, empowered by the Disaster Management Act issued Directions for Criteria to Return to Public University and Private Higher Education Campuses as Part of a Risk-Adjusted Strategy for a Phased-in Return from Level 3.¹⁹ The *Government Gazette*,²⁰ outlined the strict processes to manage a phased-in return of staff and students to campus in line with the risk-adjusted levels announced by President Ramaphosa. With a clear understanding that campus institutional facilities would first be prepared in line with the Covid-19 regulations, the *Government Gazette* allowed for the following: under level four, final year students in programmes that require clinical training were allowed to return, starting with medicine (MBChB) and phasing-in of all other programmes. For level three, an allowance was made for the return of a maximum of 33 % of the students, and the criteria was

16 CHE 2020.

17 Bollinger, Maragakis and Ray "Covid Variants: What You Should Know" Johns Hopkins Medicine 2022-04-08 <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/a-new-strain-of-coronavirus-what-you-should-know> (last accessed 2022-03-12).

18 South African Government "About Alert System" <https://www.gov.za/covid-19/about/about-alert-system> (last accessed 2022-03-12).

19 Department of Higher Education "Directions for Criteria to Return to Public University and Private Higher Education Institution Campuses as Part of a Risk-Adjusted Strategy for a Phased-In Return From Level 3: Issued In terms of the Disaster Management Act, 2002 (Act No. 57 of 2002)" GG43414 of 8 June 2020 https://www.gov.za/sites/default/files/gcis_document/202006/43414gon652.pdf.

20 As above 7–9.

limited to final year students on path to graduating at the end of 2020, all years that require clinical training and postgraduate students who require laboratory equipment and other technical equipment. Level two allowed for the return of all years of study who require laboratory and technical equipment to complete the academic year, all years of study who require practical placements, experiential learning, work place based learning to complete the academic year and first year students in all programmes. Level one allowed for 100 % of the student population to return to campus. The expectation through the levels was that all other categories that were not invited back to campus would continue to receive support through the remote, multimodal teaching, learning and assessment until they could return to campus.

For institutions such as the University of KwaZulu-Natal, even under alert level one, the return of students to campus did not mean that there would be face-to-face lectures. The return accommodated students whose home environment was less conducive to study or who had connectivity challenges back home, to be brought to a relatively conducive environment with a stable internet connection. While it was safe for those students who needed laboratory facilities and clinical experience, for the rest of the students on campus, teaching and learning continued to be conducted remotely and online.

1 3 Teaching remotely and how the accreditation conundrum was averted

Though universities enjoy a relative measure of autonomy and are at liberty to craft policies to suit their needs, teaching and learning takes place within parameters set by the CHE and the Department of Higher Education and Training (DHET).²¹ Under the auspices of Universities South Africa (USAf), universities band together “to promote a more inclusive, responsive and equitable national system of higher education”.²² Institutionally, the regulatory framework provides certainty and predictability, and on a human level, it provides assurance to staff and students. In this regard, the conceptualisation, design and review of any programme must do so mindful of, among others, the mode of teaching and learning applicable to the individual institution concerned. Any changes to any approved programme or qualification has to comply with the set processes and procedures designed to guide such changes and, depending on the contemplated change, go through a number of approval

21 This is the government department whose mandate is to oversee post-school education and training.

22 Universities South Africa <https://www.usaf.ac.za/> (last accessed 2022-03-12).

structures within a given institution. From an audit and quality assurance perspective, policies, procedures and processes are indispensable.

Barring a few exceptions, South Africa clearly distinguishes between contact institutions where teaching and learning takes place in person, and those offering education by distance. With the exception of the University of South Africa (Unisa), which is an open distance and e-learning (ODEL) institution, all the public universities in South Africa are contact universities. One of the aspects the CHE scrutinises when granting accreditation is whether the proposed qualification or programme is aligned with the mission of the institution, the programme type, the mode of delivery and the profile of the targeted students.²³ Historically, the ODeL mode of teaching and learning has been accessible to students who – due to work commitments, personal circumstances or preference – were not able to avail themselves to attend contact sessions as per the requirements of a face-to-face institution. On the other hand, enrolling at a contact university came with an expectation that a student would participate in campus-based activities such as attending lectures and undertaking venue-based and invigilated assessments.

From a regulatory perspective, the first fundamental impact brought about by the migration to an online platform under ERT and learning (ERTL) was the blurring of the traditional divide between institutions accredited to offer face-to-face teaching and learning and those doing so by distance. The blurring of the divide created a potential regulatory conundrum. On 17 April 2020, the CHE issued a letter to all public and private institutions of higher learning, stating among other things that:

The restrictions on all programmes accredited for contact delivery are lifted. All the programmes accredited by the CHE for contact only can also be offered, supported and assessed through virtual and online delivery and blended learning approaches.²⁴

In June 2020, in the “Quality Assurance Guidelines for Emergency Remote Teaching and Learning and Assessment during the Covid-19 Pandemic in 2020”, the CHE went on to say that while the blanket approval was not ideal, it was necessary and must be accepted for the current conditions.²⁵

23 Criteria for Programme Accreditation (revised in 2012) 5. http://nr-online.che.ac.za/html_documents/CHE_Programme_Accreditation_Criteria_Revised_2012.pdf (last accessed 2022-03-12).

24 A copy is on file with the author.

25 CHE 2020.

Freed from the constraints of being either a face-to-face institution or one offering education by distance, institutions had a *carte blanche*, the only remaining constraint being the fact that the country was in a state of disaster. In a less than ideal environment, the ERT, learning and assessment had to take place remotely and on an online platform. According to Charles Hodges, Stephanie Moore, Barbara Lockee, Torrey Trust and Mark Bond, an online environment has its own benefits, such as the flexibility of teaching and learning anywhere and anytime, but the concern of these authors is that the speed with which this move was expected to take place “is unprecedented and staggering”.²⁶ Thrust into an unknown space, academics, like a novice learning how to play a piano in front of a paying audience, had to up-skill themselves in haste while at the same time saving the academic year.

1 4 Emergency remote teaching and socio-economic realities

South Africa is one of the most unequal countries in the world.²⁷ The post-school sector accounts for about 2,5 million students and staff.²⁸ Institutions of higher learning are a microcosm of the South African population and its challenges. To date, there continues to be a clear divide in terms of resources between historically white institutions and historically Black ones. In this regard, Kirti Menon and Shireen Motala note that:

Because historically white universities had the existing infrastructure, reserves and networks that allowed for greater access to resources, historically black and newly formed comprehensive universities tended to lag behind and be far more dependent on state subsidies than their wealthier counterparts.²⁹

Generally, institutions of higher learning derive their main source of income from government funding and tuition fees from students. The year

26 Hodges, Moore, Lockee, Trust and Bond “The Difference Between Emergency Remote Teaching and Online Learning” 2020-03-27 *Educause Review* <https://er.educause.edu/articles/2020/3/the-difference-between-emergency-remote-teaching-and-online-learning> (last accessed 2022-03-17).

27 Stats SA “How Unequal is South Africa?” https://www.statssa.gov.za/?p=12930&gclid=Cj0KCQjwjN-SBhCkARIsACsrBz6tR4BkH1nqqh2JiUy2P_W8hxm5MPGmA0hhK-X1eczFLXkJ8qvMmY0aAu0DEALw_wcB (last accessed 2022-03-17).

28 South African Government “Minister Blade Nzimande: Measures to Deal with the Coronavirus Covid-19 in the Post-School Education and Training Sector” 2020-03-17 <https://www.gov.za/speeches/minister-higher-education-science-and-innovation-statement-measures-deal-covid-19-threat> (last accessed 2022-03-12).

29 Menon and Motala 2021 *Education as Change* 4.

2020 saw an increase in government funding, but this happened against the backdrop of decreases in the collection of fees by most institutions.³⁰

While some of the students at residential institutions live in residences during the terms because they come from far-flung areas, others do so because they come from backgrounds that are not conducive to learning.³¹ For the latter group of students, an institution of higher learning provides an environment that is relatively conducive to learning and the infrastructure and resources – such as computer facilities with access to the internet, the library and recreational facilities – they need to learn. In addition, the institution provides them with accommodation. The Minister of Higher Education, Science and Innovation, Dr Blade Nzimande aptly observes that, “The majority of public universities and some public TVET colleges are not just teaching and learning spaces, but are also living spaces, which include student residences and staff housing”.³²

Whether conducted on a face-to-face or online basis, teaching and learning requires the necessary infrastructure. The face-to-face mode of teaching and learning with a genealogy that goes as far back as to the time of the Academy of Plato around 387 BC in Athens, has always taken place within the “traditional brick and mortar” structures.³³ With the evolution of society, different facilities and aiding tools were added to create an environment that is conducive to teaching and learning. Appropriate infrastructure is an important consideration for the regulatory body. In this regard, the CHE will not accredit a contact programme until it has satisfied itself of, among others, the existence of suitable and sufficient infrastructure such as adequate venues to support the proposed programme.³⁴ Some institutions, when teaching and learning migrated to ERT, learning and assessment, migrated to a space with no resources to

30 Stats SA “A Decline in Tuition Fees Dents Higher Education Revenue” <https://www.statssa.gov.za/?p=14860> (last accessed 2022-03-17).

31 Jili, Ede and Masuku “Emergency Remote Teaching in Higher Education During Covid-19: Challenges and Opportunities” 2021 *International Journal of Higher Education* 6.

32 South African Government “Minister Blade Nzimande: Measures to Deal with the Coronavirus Covid-19 in the Post-School Education and Training Sector” 2020-03-17 <https://www.gov.za/speeches/minister-higher-education-science-and-innovation-statement-measures-deal-covid-19-threat> (last accessed 22-03-17).

33 Singh, Steel and Singh “Combining the Best of Online and Face-to-Face Learning: Hybrid and Blended Learning Approach for Covid-19, Post Vaccine, & Post-Pandemic World” 2021 *Journal of Educational Technology Systems* 142.

34 CHE “Criteria for Programme Accreditation (Revised in 2012)” 2012- 09-23 13. http://nr-online.che.ac.za/html_documents/CHE_Programme_Accreditation_Criteria_Revised_2012.pdf (last accessed 2022-03-17).

their name. The starting point for some of the institutions was to first equip staff and students, accordingly.³⁵

Operationally, face-to-face teaching revolves around the lecturer, who plays the role of the instructor, while students are only receptors.³⁶ Jitendra Singh, Keely Steel and Lovely Singh have argued that this mode of teaching and learning “provides in-person, real time interaction between faculty-students and student-student, which in turn can spark innovative questions and conversations”.³⁷ Further, it provides students with an opportunity to seek clarification or response to their questions in the classroom. Abeer Okaz, on the other hand, writes that the face-to-face mode of teaching is passive and does not encourage students to engage critically with the information received.³⁸ Mindful of the socio-economic challenges in South Africa, this chapter asserts that the face-to-face environment has an added advantage in that it levels the societal inequalities by creating an equal platform for all the students, regardless of their unequal backgrounds. Once converged in a classroom environment, students have access to the same lecturer and the same lecture material on an equal basis. To the lecturer, the classroom environment provides an opportunity to assess, in real time, the level of comprehension of the students and their non-verbal communication.

A non-traditional mode of teaching and learning, which has gained traction in the last two centuries, is distance education or education by correspondence. In the distance mode of learning or learning by correspondence, teaching and learning takes place while the student and the instructor are not necessarily at the same place.³⁹ According to Thomas Miller and Frederick King, the two defining features of distance education are geographical location and time.⁴⁰ Unlike in a face-to-face context, where the lecturer directs the process of learning, in distance education, learning is self-directed. The core features of a self-directed process of

35 See Songca, Ndebele and Mbodila “Mitigating the Implications of Covid-19 on the Academic Project at Walter Sisulu University in South Africa: A Proposed Framework for Emergency Remote Teaching and Learning” 2021 *Journal of Student Affairs in Africa* 41–60.

36 Ananga and Biney “Comparing Face-To-Face and Online Teaching and Learning in Higher Education” 2017 *MIER Journal of Educational Studies, Trends & Practices* 173.

37 Singh *et al* 2021 *Journal of Educational Technology Systems* 142.

38 Okaz “Integrating Blended Learning in Higher Education” 2015 *Social and Behavioral Sciences* 600.

39 Gunawardena and McIsaac “Distance Education” in Jonassen DH (ed) *Handbook of Research on Educational Communications and Technology* (2008) 355.

40 Miller and King “Distance Education: Pedagogy and Best Practices in the New Millennium” 2003 *International Leadership in Education* 284.

learning are that it has “connotations of autonomy, independence, and isolation” and the student is able to continue with the task at hand with minimum assistance from the lecturer.⁴¹ This mode of learning, being non-traditional, has attracted criticism. About this, Charlotte Gunawardena and Marina McIsaac write that:

correspondence study, which was designed to provide educational opportunities for those who were not among the elite and who could not afford full time residence at an educational institution, was looked down on as inferior education.⁴²

Unisa, with its rich history dating back to 1873, has since 1946 been offering education exclusively by distance.⁴³ The Unisa model has historically been a source of solace to those who were disadvantaged by the apartheid system, including those in incarceration and those beyond the territorial borders of the Republic of South Africa.

Historically, both the face-to-face and distance education have been operating on two opposite ends of the spectrum with nothing common. The distance model relied on postal service to reach students, while students at a face-to-face institution had to converge at a designated place for their lectures. In distance education, learning has historically taken place asynchronously as both lecturers and students interact at different times.⁴⁴ Invariably, the pedagogical approaches guiding the two modes are also different. In preparing to have an in-person session with the students, a lecturer curates the material with a clear understanding that some gaps will be filled during the face-to-face session. Preparing for a distance session, on the other hand, is entirely different. The study material is curated in such a way that the student would be able to navigate their way through the material unaided by the lecturer. This mode of instruction is, by operation, less personal.⁴⁵

Both the face-to-face and distance modes have experimented with the use of technology to enhance teaching and learning. For instance, the use

41 Brookfield “Self-Directed Learning: A Critical Review of Research” 1985 *New Directions for Adult and Continuing Education* 7.

42 Gunawardena and McIsaac (2008) 355, 357.

43 Unisa “The leading ODL university” <https://www.unisa.ac.za/sites/corporate/default/About/The-leading-ODL-university> (last accessed 2022-03-17).

44 Littlefield “The Difference Between Synchronous and Asynchronous Distance Learning” *ThoughtCo* 2020-08-27 <https://www.thoughtco.com/synchronous-distance-learning-asynchronous-distance-learning-1097959> (last accessed 2022-03-17).

45 Songca *et al* 2021 *Journal of Student Affairs in Africa* 44.

of technology has made it possible for Unisa to transition from distance education to open distance e-learning (ODEL). According to Sindile Ngubane-Mokiwa and Moeketsi Letseka ODeL framework “is premised on the assumption that every student learning can be optimally supported by modern electronic technologies and other digital facilities”.⁴⁶ In the last decade, face-to-face institutions have gradually incorporated technology as they migrated towards a hybrid mode of learning, which is a blend of both face-to-face and online learning.⁴⁷ In a study focusing on the response to the use of technology by academics during times of protest, Laura Czerniewicz, Henry Trotter and Genevieve Haupt write that even though some of the academics had used engaged in blended learning at some level during the protests, “virtually all of them thought it was inferior pedagogically to a face-to-face mode of learning”.⁴⁸ The following reasons were given to support the claims made.⁴⁹ The first reason was premised on the conviction that students learn better through personal engagement with their peers and the lecturer. The second reason stemmed from a concern that an online environment creates a different set of accountabilities than the online environment. Thirdly, the respondents held the view that the students themselves did not like the online environment. Fourthly, the respondents were of the view that the online environment makes it difficult to give students personal attention and feedback. Lastly, some of the respondents reported a declining engagement and performance among students.

Firmly anchored in the face-to-face teaching mode, most institutions were still in the early stages of making use of the hybrid model. As such, when the migration to ERTL was announced, academics were at different levels of preparedness. It was to those who had an advanced level of this mode of learning that most institutions turned for tips and strategies on how to make optimal use of online tools, including on setting assessments.

1 5 **Aligning assessments with emergency remote teaching and learning**

According to Mfundo Masuku, Nokukhanya Jili and Primrose Sabela, assessment constitutes an indispensable process in teaching and learning.⁵⁰

46 Ngubane-Mokiwa and Letseka “Shift From Open Distance Learning to Open Distance e-Learning” in Letseka (ed) *Open Distance Learning (ODL) in South Africa* (2015) 132.

47 Singh *et al* 2021 *Journal of Educational Technology Systems* 141.

48 Czerniewicz *et al* 2019 *International Journal of Educational Technology in Higher Education* 10.

49 As above 10–11.

50 Masuku, Jili and Sabela “Assessment as a Pedagogy and Measuring Tool in Promoting

It is through assessment that one is able to check whether the module outcomes have been met and the theoretical and practical competencies achieved.⁵¹ Though most academics had experimented with online platforms as an aside while mainly teaching face-to-face, very few made use of the online marking tools in a way that could assist in lessening online acts of dishonesty.⁵² As a constituent component of teaching and learning, assessments in 2020 also had to be adapted in line with the ERT mode. In this regard, the CHE advised that:

The final summative assessment strategies for modules should be evaluated by academics for suitability under emergency remote teaching and learning conditions, and changes to assessment strategies and plans should be recorded on a module-by-module basis.⁵³

With in-person assessments no longer an option, universities resorted to remote online assessments. The one point of concern, though, was securing the integrity of the assessment process. Over the years, face-to-face teaching relied on students converging at a central place and undertaking their assessments in the presence of invigilators who had to, among others satisfy themselves of the identity of the person taking the particular assessment and also of the fact that the student did not have an unfair advantage over others by referring to unauthorised material. Even under the watchful eye of the invigilators, institutions of higher learning continued to experience acts of dishonesty such as cheating.

The migration to ERTL opened up the assessment process to other forms of dishonesty. Olivia Holden, Meghan Norris and Valerie Kuhlmeier outline some of the possible acts of dishonesty on an online platform as: students downloading papers from the internet and claiming them as to be their own work, using materials without permission during an online exam, communicating with other students through the internet to obtain answers, or having another person complete an online exam or assignment rather than the student who is submitting the work.⁵⁴ With assessments taking place remotely, it became impossible to account for

Deep Learning in Institutions of Higher Learning” 2020 *International Journal of Higher Education* 274.

51 As above 275.

52 Khan, Sivasubramaniam, Anand and Hysaj “‘e’-Thinking Teaching and Assessment to Uphold Academic Integrity: Lessons Learnt From Emergency Distance Learning” 2021 *International Journal for Educational Integrity* 7.

53 CHE 2020.

54 Holden, Norris and Kuhlmeier “Academic Integrity in Online Assessment” 2021 *Research Review Frontiers in Education* 2.

the identity of the person taking the assessment, particularly in the era of contract cheating or ghost writing. In jurisdictions such as the United Kingdom,⁵⁵ and Australia,⁵⁶ cases of contract cheating or ghost writing – when a student actively looks for a third party to complete an assessment for them at a fee – had already spiked.

The online platform provides a number of tools to assist in securing the integrity of assessments. The available tools are able to detect and help prevent cheating online.⁵⁷ Given the socio-economic challenges experienced by most institutions of higher learning, in South Africa, procuring proctoring tools, as Anne Verhoef and Yolandi Coetser aptly observe, may not be an affordable option. In addition to the issue of costs, the two authors point out that proctoring tools create a policing environment where students are under surveillance, thus raising some privacy concerns. Some of the proctoring tools have also raised concerns regarding racial biases.⁵⁸

With virtually no proctoring tools to rely on to secure the integrity of the assessments, the lot fell on academics to be creative in setting their assessment questions. As Zeenath Khan, Shivadas Sivasubramaniam, Pranit Anand and Ajrina Hysaj point out, academics opted to either set randomised multiple choice questions or questions that required knowledge application as opposed to knowledge reproduction.⁵⁹ A further challenge to navigate was the loadshedding schedule. Power outages were widespread during 2020.⁶⁰ With students scattered across the country, it became difficult for academics to manage the assessment process, particularly timed assessments and multiple-question formats, even if the latter were randomised. To ensure the integrity of the assessment process and that no student was left behind,⁶¹ some modules set up to three different assessments per session.

55 Newton “How Common Is Commercial Contract Cheating in Higher Education and Is It Increasing? A Systematic Review” 2018 *Frontiers in Education* 1–18.

56 Bretag, Harper, Burton, Ellis, Newton, Van Haeringen, Saddiqui and Rozenberg “Contract Cheating and Assessment Design: Exploring the Relationship” 2019 *Assessment and Evaluation in Higher Education* 676–691.

57 Holden *et al* 2021 *Frontiers in Education* 1–13.

58 Verhoef and Coetser “Academic Integrity of University Students During Emergency Remote Online Assessment: An Exploration of Student Voices” 2021 *Transformation in Higher Education* 8–9.

59 Khan *et al* 2021 *International Journal for Educational Integrity* 7.

60 Staff Writer “Load Shedding in 2020 has Been the Worst on Record: Graph” *BusinessTech* 2020-09-03 <https://businesstech.co.za/news/energy/431102/loadshedding-in-2020-has-been-the-worst-on-record-graph/> (last accessed 2022-04-01).

61 SA News “Higher Education Vows to Leave no Student Behind” 2020-04-20 <https://>

1 6 Some valuable lessons for the future

Most industries are familiar with the concept of planning for emergencies. For instance, in the aviation world, it is a standard feature for every aircraft to have emergency measures in place, which will be used in an event of an emergency. Upon boarding, passengers receive an elaborate explanation of what they will be expected to do or refrain from doing, should an emergency arise. In addition, there are simple documents to read to this effect. The education sector is not immune to emergencies, and there will be times when education will have to continue under an emergency. According to Nhlanhla Landa, Sindiso Zhou and Newlin Marongwe, the concept of education in emergencies “generally refers to war-torn countries, regions hit by natural disasters and political and war refugees living in refugee camps”.⁶² When it becomes humanly impossible to continue with face-to-face education, some jurisdictions – such as in Syria during the conflict, the United States of America during Hurricane Katrina and New Zealand during the Christchurch earthquake – have had to rely on technology as a stopgap measure to continue with teaching and learning.⁶³ South Africa has experienced a fair share of disruptions occasioned by protests. During the nationwide student protests that started in 2015, some universities responded by migrating the teaching and learning programme to an online platform as a stopgap measure.⁶⁴ Since then, some institutions have on a sporadic basis encountered disruptions that brought teaching and learning to a halt, but not to the same degree and scale as it happened in 2020. Faced with a *force majeure*⁶⁵ the nature of the situation was such that the transition to ERT, learning and assessment had to take place with immediate effect. Leaving nothing to chance, education administrators asked for all hands on deck as teaching and learning became a national project. In this regard, there was a well-coordinated synergy between entities in the higher echelons of power responsible for the higher education sector. The private sector also took an interest in ensuring the success of the academic year. In this regard, the Internet Service Providers’ Association of South Africa zero-rated some of its websites.⁶⁶

www.sanews.gov.za/south-africa/higher-education-vows-leave-no-student-behind (last accessed 2022-04-01).

62 Landa, Zhou and Marongwe “Education in Emergencies: Lessons from Covid-19 in South Africa” 2021 *International Review of Education* 168.

63 Czerniewicz *et al* 2019 *International Journal of Educational Technology in Higher Education* 6.

64 As above 1–22.

65 See Khan *et al* 2021 *International Journal for Educational Integrity* 24.

66 McKane “Here is the Full List of Zero-Rated Websites in South Africa” *My Broadband*

Institutions of learning are by nature competitive, and as such are inward looking. The introduction of ERTL saw institutions demolishing their silos and sharing information with other institutions. There was a sense of common purpose. In this regard, Prof. Sibongile Muthwa, in her capacity of the chairperson of Universities South Africa, remarked that:

It was the first time that our universities fully grasped, and put into practice, the importance of collaboration rather than competition. We have seen that as a system we do achieve far more by working together than by competing against one another. In 2020, we shared expertise, research infrastructure and other resources to provide input to the state and to bolster our fellow institutions. By engaging across functional teams to identify sector-wide solutions to common challenges, we also lessened the burden of anxiety and trauma among institutions.⁶⁷

To facilitate a speedy implementation of ERTL, the CHE placed the accreditation requirement in abeyance, and institutions had to follow suit by relaxing their teaching and learning policies. Freed from the regulatory constraints, institutions and staff were encouraged to be innovative.

Finally, academics and students played an important role in implementing ERTL. The first year in-take of 2020 had hardly settled in at their respective institutions when they were asked to go back home and study from there. For universities that recruit mainly from quintiles 1-3,⁶⁸ the first-year cohort requires assistance as they integrate in a different environment with its challenges. However, in line with the announcement from Minister Nzimande, these students were only able to return to campus under alert level one, which only came into effect from 21 September to 28 December 2020.⁶⁹ In terms of the semester system, this meant these students had to struggle on their own for the first semester of their university experience.

<https://mybroadband.co.za/news/internet/356371-here-is-the-full-list-of-zero-rated-websites-in-south-africa.html> (last accessed 2022-04-01).

- 67 Universities South Africa (USAf) *Annual Report 2020* file:///C:/Users/MnyonganiF/Documents/Research%20in%20General/Articles%20of%20Interest/Teaching%20Online%202021%20UP/USAf-Annual-Report-2020%20what%20we%20learnt.pdf (last accessed 2022-04-01).
- 68 See Department of Basic Education “Government Bridges Inequality Gap Through No-Fee School Policy” <https://www.education.gov.za/ArchivedDocuments/ArchivedArticles/Governmentbridgesinequalitygap.aspx> (last accessed 2022-04-16).
- 69 South African Government “Covid-19 / Novel Coronavirus” <https://www.gov.za/Coronavirus> (last accessed 2022-04-16).

Staff members, particularly academics, bore the brunt of it. Already in 2020, the CHE had anticipated that the migration to the ERTL would take a heavy toll on staff. In this regard, it advised that:

Academic staff workload allocations and performance agreements could be re-visited to account for the huge investment in time that they will be making to pivot to ERTL. Research output at individual level should be adjusted to account for the additional time academics will spend on developing ERT materials. A reduction in research outputs across the sector seems inevitable and should be anticipated.⁷⁰

The jury is still out as to whether research output adjustments were implemented. With a myriad workshop to attend, volumes of documentation to go through, and their teaching material to prepare and assess, academics stayed the course. Like fish thrown out of water, academics had to learn how to stay alive in a different environment and still deliver the academic year, which they did.

1 7 Conclusion

This chapter has reflected on events that led to the implementation of ERTL as an extraordinary measure in 2020. By its nature, ERTL is a stopgap measure and not a permanent feature. While the extraordinary measure was aimed at assisting in managing the disruptive effect of Covid-19 in the higher education sector, it also disrupted the 2020 academic project. The 2020 academic year was a difficult one for staff and students, but the burden was made lighter by the fact that those empowered to make decisions were hands-on and provided the necessary direction for each step. Notwithstanding the policy directives received, as implementers of the project at the coalface, academics had to fly by the seat of their pants to make teaching and learning a success in 2020.

2

CAN FACE-TO-FACE TEACHING AND LEARNING BE REPLACED OR COMPLEMENTED BY TECHNOLOGICAL INNOVATIONS?

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2 1 Introduction

This chapter highlights the importance and role face-to-face teaching and learning has played in the education sector for many years, in particular for a practical yet theory-based field such as law. This is because face-to-face teaching and learning has benefits such as human interaction; students learning independence and the soft skills of communicating daily and – in particular – professionally and engaging with lecturers and fellow students; and increased throughput rate. These are some of the benefits of face-to-face teaching and learning that have led to various contact universities – including the University of Pretoria (UP) – being accredited by the CHE to offer this form of teaching and learning.¹

However, Covid-19 disrupted the delivery of face-to-face teaching and learning as we knew it for all the accredited face-to-face higher-learning institutions. A new dawn emerged, and universities had to acclimatise and come up with strategies to ensure that teaching and learning continued despite the challenges posed by the pandemic and in line with the master plan of the CHE to save the academic year(s).² Technological innovations – learning management systems such as ClickUP and Blackboard Collaborate at UP – came to the rescue of all higher-learning institutions.³ Teaching and learning was conducted fully online in order to curtail the spread of the pandemic, while at the same time saving the academic year and continuing teaching and learning in the higher education space. This

- 1 The CHE is statutory body that was established in terms of the Higher Education Act. Its work is also governed by the National Qualifications Framework Act.
- 2 CHE “Quality Assurance Guidelines for Emergency Remote Teaching and Learning And Assessment During the Covid-19 Pandemic in 2020” <https://heltasa.org.za/wp-content/uploads/2020/12/CHE-quality-assurance-guide.pdf> (last accessed 2022-02-15).
- 3 UP Department for Education Innovation “A Quick Guide to ClickUP” <https://www.up.ac.za/education-innovation/article/2895112/a-quick-guide-to-clickup> (2022-01-11).

was a period of disruption but also of renewal, introspection, innovation – and hope.

The shift from face-to-face to fully online teaching and learning – and the introduction of hybrid teaching and learning, which is not something new for universities such as UP – needs to be interrogated. We can ask whether this shift has enhanced or compromised the integrity of the academic programme, in our case the teaching and learning of law. Can teaching and learning objectives for law students and graduates be fully realised online? Is there space for the co-existence of online and face-to-face teaching and learning, often termed as mixed or hybrid, at university level? How will human interaction be handled? And how can the gap online teaching and learning causes and the virtual fatigue be addressed? Are both staff and students better equipped to deal with this new environment of teaching and learning, bearing in mind their well-being and wellness? Most importantly, has a fully online law programme only helped universities and students save the academic year? Has it resulted in students graduating at the expense of acquiring quality? Has it resulted in students being skills deficient and not prepared for the future world of work? These are some of the questions this chapter addressing to craft a way forward for teaching and learning post the pandemic.

2 2 Teaching and learning the traditional way

With the exception of at Unisa and other distance-learning institutions, law in South Africa is mostly taught and learnt face-to-face. Unisa is one of the leading distance learning institutions in Africa and the world.⁴ This means it is a norm in South Africa, as well as regionally and internationally. Students are used to seeing a lecturer in front of them teach and engage with them in a classroom setting. Students attend classes, seminars and workshops, visit the library, write tests, debate and engage in other social activities – these are part and parcel of university life.⁵ Time is of the essence in the traditional way of teaching and learning. Students and lecturers must attend lectures on time, and follow the schedule concerning assessments, among other things. There is a timetable for class attendance,

4 Read more about the history and foundation of Unisa <https://www.distancelearningportal.com/universities/10784/university-of-south-africa.html> (last accessed 2021-12-07).

5 Most public and private institutions to offer face-to-face teaching and learning, or what is termed contact teaching and learning, must comply with certain requirements set by the CHE for accreditation purposes. CHE “Criteria for Programme Accreditation” (September 2004, revised June 2012) 13. http://nr-online.che.ac.za/html_documents/CHE_Programme_Accreditation_Criteria_Revised_2012.pdf (last accessed 2021-10-04).

consultations and writing of tests and exams as well as other practical assessments. The library, labs and other study areas also operate within certain prescriptions and times. The traditional way of teaching and learning is a routine exercise students have to adopt and adhere to in order to survive university. It can be argued that it is rigid and not flexible, unlike online teaching and learning as will be discussed below.

Face-to-face teaching and learning also contributes to the social make-up of students. This social aspect includes forming long-lasting relationships and developing networks as well as collaborations. Students also form relations with their lecturers to work on projects or for purposes of recruitment for future roles in the academy (should they wish to take that path in their legal career); this has been the case, especially now with the transformation drive or project in universities across South Africa.⁶ Face-to-face teaching and learning has been the preferred choice for many people in South Africa, due to the prestige some of these universities have based on the quality of graduates they produce for work. This includes UP. In particular, in this case, the Faculty of Law is ranked number one in South Africa and in Africa.⁷ Many students want to pursue their studies at the UP Law Faculty due to its prestige and position to increase their chances of obtaining or securing employment at the top law firms or in the private sector. All of this stems from the historical fact that there is quality in face-to-face learning, and graduates coming through contact learning tend to be well rounded because they were expected to partake of the campus culture and interact socially. These are the students said to be aware of their surroundings and social structures – this awareness stems from the face-to-face teaching and learning component. Despite the quality associated with face-to-face teaching and learning for students in general, and law students in particular, I would describe the traditional university as a do-or-die institution – especially in cases where students are not time conscious and do not participate in line with the timetable or prescribed period. Students who do not attend classes, consult or participate in group activities and assessments fail in great proportions and become university dropouts.⁸ The do-or-die system of face-to-face teaching and learning

6 Universities need to develop a strategy to attract and retain talented young Black graduates for future roles in the academy. A “grow your own timber” initiative will ensure that this is realised and can be supplemented with other key strategic objectives. The Employment Equity Act of 55 of 1998 is a case in point.

7 https://www.up.ac.za/news/post_3026248-up-law-programme-ranked-top-in-africa-by-times-higher-education-world-university-ranking-by-subject-2022#:~:text=The%20law%20programme's%20performance%20is,making%20academic%20programmes%20a%20success (last accessed 2022-02-23).

8 AbuRuz “Does Excessive Absence from Class Lead to Lower Levels of Academic Achievement?” 2015 *European Scientific Journal* 146.

has caused many Black students to become university dropouts due to their socio-economic circumstances; these students were not afforded an opportunity to acclimatise to the university environment and structures but fell straight into a routine that does not take into account their historical circumstances. The high dropout rate of Black students has without a doubt resulted in universities facing first generation students 28 years into the democratic dispensation.

The do-or-die approach of traditional face-to-face teaching and learning does not allow for a catch-up plan for students, especially those who could not attend class, do their assignments or practicals such as moot court or mock trials for genuine reasons. Students who missed a class due illness are given the option to write a sick test or consult; a lecture cannot be repeated for a student who did not attend class. Consultations are not there to repeat lectures but to consult on a specific subject area of the course content or an administrative query; consultations are by nature timed and limited. Students who were ill must catch up on their own due to the do-or-die system of face-to-face teaching and learning. This can result in anxiety and depression, which became extremely high during the pandemic.⁹ To expect lecturers to repeat a lecture for one or more students would be unfair because of the demanding nature of the job and the administrative roles academics play in the university broadly. Requiring 100 % physical and psychological presences of both student(s) and lecturer, face-to-face teaching and learning is inflexible. A 100 % presence is often not possible due to the fallibility of human beings and vulnerability of contracting a disease or being involved in an accident. A solution needed to be interrogated, one centred on adapting to the changing needs of society, because universities do not operate in a vacuum but are part of society and must address societal problems. The time was ripe for technological innovation to improve face-to-face teaching and learning and address the challenges it imposed and equip students with the necessary skillset. From the late 1990s, learning management systems became the order of the day at universities. From early in the new millennium UP took this opportunity, ran with it and introduced fully hybrid teaching and learning campus wide in 2014 with the backup of ClickUP and Blackboard Collaborate.¹⁰ The hybrid model was introduced to enable flexibility and opportunity for catch-up for both lecturers and students – who were not afforded this under traditional face-to-face teaching and learning.

9 Dane and Rakhmanov “Knowledge and Anxiety Levels of African University Students Against Covid-19 during the Pandemic Outbreak by an Online Survey” 2020 *Journal of Research in Medical and Dental Sciences* 53.

10 UP “WATCH: Online Learning Contributes to Student Success” https://www.up.ac.za/student-life/news/post_2583318-watch-online-learning-contributes-to-student-success 2017-10-07 (last accessed 2021-07-07).

In the hybrid model, lecture notes, recorded lectures and other learning materials are conveniently made available for use or reference at a later stage. UP ventured into hybrid teaching and learning to complement face-to-face teaching and learning and realise its strategic vision of teaching the UP way, the motto being *Prepare, Engage and Consolidate*.¹¹ Students are required to engage with the learning material before the lecture starts and must come to class prepared to robustly interrogate and consolidate the learning material at the end of the lecture to reach a comprehensive understanding of the subject matter.

The introduction of learning management systems to support traditional face-to-face teaching and learning was a move in the right direction to enhance teaching and learning generally. All this is attributed to the technological innovations and 4IR,¹² in which universities are investing to equip students and staff for a changing world. The question if the 4IR revolution is taking away the role of human beings in the higher education space is a superficial one of fact, which will be interrogated further in this chapter. However, it is important at this point to reiterate the view that the use of technological innovations in order to supplement the face-to-face traditional teaching and learning does not aim to replace this mode of teaching and learning. The face-lift to face-to-face traditional teaching and learning made possible by the introduction of technological innovations is important in the 21st century and, without a doubt, places contact universities such as UP at an advantage. This allows for innovation and creativity to be the order of the day in teaching and learning, which cannot be underestimated.

2 3 Online teaching and learning

Constant social, economic and technological innovations in the 4IR to address the needs of society in general and that of the education sector in particular is the new normal. It can be described as a new dawn where technology and human beings work, hand in hand, for a better world for all – in this case a better and enhanced education for all students and staff. The introduction of learning management systems and other technological innovations in the practice of teaching and learning in the late 1990s and early 2000 marked the beginning of collaboration between face-to-face and online teaching and learning in the same institution, which is termed hybrid or mixed teaching and learning.¹³ In the past, face-

11 UP “Teaching and Learning the UP WAY” https://www.up.ac.za/media/shared/391/pdfs/pd-2020-t-1_new.zp184685.pdf (last accessed 2021-07-07).

12 Njontini (2020) 23–24.

13 UP “WATCH: Online Learning Contributes to Student Success” <https://www.up.ac>.

to-face and online teaching and learning were considered two different forms of teaching and kept separately; for example, we have distance learning institutions such as Unisa and contact universities such as UP due to the separation of teaching and learning pedagogies. Technological innovations filled the gap and ensured that two forms of administering teaching and learning can be merged to become one to improve quality of teaching and learning for students and lecturers.¹⁴

Online teaching and learning has allowed students and lecturers an opportunity to engage in synchronous practice for instant online delivery, and in some instances asynchronous practice, which allows students to participate in teaching and learning later on at their own pace and time.¹⁵ This means that there is an element of flexibility in the way teaching and learning is being conducted. The platform of online teaching and learning allows students and lecturers an opportunity to engage in a flexible model, to accommodating students who are not physically present in class but can join the lecture from anywhere.¹⁶ It is often argued that in addition to flexibility and agility, online teaching and learning also reaches a wider range of students, increases participation in class and assessments, and pass rates, reduces travelling costs for both local and international travels, cuts the distance and requires dedication and discipline on the part of the students.¹⁷ From the above, it is clear that the online environment ensures students have a better quality of teaching and learning and must not be seen as replacing face-to-face form, because both systems have been in existence for some time. These two systems teaching and learning were kept separate, but now they are combined to ensure that a graduate of the 21st century has quality education and the necessary skills to enter the job market and make a difference in society.

Despite the important role online teaching and learning plays in higher education, there are downsides to this. The myth that online teaching and learning is going to replace human beings and take over the entire education system must be rejected with the contempt it deserves. Online teaching and learning needs human beings, and human beings

za/student-life/news/post_2583318-watch-online-learning-contributes-to-student-success 2017-10-07 (last accessed 2021-07-07).

14 Van Eck *Institutional Legal Education Amidst a Whirlwind of Change?* 41 Law and Industry 4.0 Selected Perspectives on a New Scholarship of Teaching and Learning (LexisNexis 2020).

15 Synchronous vs Asynchronous <https://www.worcester.edu/CTL-Reemote-Teaching-Synchronous-vs-Asynchronous/> (accessed 10 June 2021.)

16 Ananga and Biney 2017 *MIER Journal of Educational Studies, Trends & Practices* 173.

17 As above.

as innovators of the technological innovations in education need these innovations in order to take education to the next level. It means there is an element of a reciprocal relationship that is at play. It is said that online teaching and learning lacks human interaction and touch. There is no warmth in the delivery of this form of education because the interaction is impersonal and the complete opposite of face-to-face teaching and learning.¹⁸ Research shows that the majority of high school learners elect to go to contact higher education institutions to interact with their fellow students but – most importantly – have somebody stand in front of and teach them the subject matter. This preference is attributed to them being used to this form of teaching and learning for the entire duration of their schooling years.¹⁹ For example, during the pandemic, at most contact universities, including UP, students, through their student representative councils, pled with universities management either for a reduction of fees or for a refund because their fees included a lecturer standing in front of them and they did not experience this during the pandemic.²⁰ This affirms that students view the role of a lecturer in front of them as very important. This chapter does not aim to understand whether this plea of the students is legitimate, but it is safe to say that online teaching and learning is labour intensive. Another downside to online teaching and learning is that it does not consider the socio-economic circumstances of the students and lecturers. Critics of online teaching and learning conclude it is a system of education that champions the elite and fails to consider the local context.²¹ South Africa is part of the Global South; the local context would be poverty, under-developed schools in rural areas and townships where the majority are Black students from previously disadvantaged backgrounds. These students do not have access to a stable internet connection due to their geographical areas and still make use of pit toilets. Children die at school due to making use of pit toilets; the Michael Komape story is a case in point.²² Students from previously disadvantaged backgrounds still

18 Baber “Social Interaction and Effectiveness of the Online Learning – A Moderating Role of Maintaining Social Distance During the Pandemic Covid-19” 2020 *Asian Education and Development Studies* 4.

19 As above.

20 Koornhof “Covid-19: The Impact of Universities and How Their Business Models Need to be Flexible” 2020-10-09 *News24* <https://www.news24.com/news24/columnists/guestcolumn/opinion-covid-19-the-impact-on-universities-and-how-their-business-models-need-to-flexible-20201009> (last accessed 2021-06-16).

21 Stats SA “Inequality of South Africa” https://www.statssa.gov.za/?p=12930&gclid=Cj0KCQjwjN-SBhCkARIsACsrBz6tR4BkHlnqqh2JiUy2P_W8hxm5MPGmA0hhK-X1eczFLXkJ8qvMmY0aAu0DEALw_wcB (last accessed 2021-09-29).

22 Ryan “Komape Family Wins Court Battle 7 Years After Son Drowned in a Pit Toilet in Limpopo” *News24* 2021-09-17 <https://www.news24.com/news24/southafrica/news/komape-family-wins-court-battle-7-years-after-son-drowned-in-a-pit-toilet-in-limpopo-20210917> (last accessed 2021-10-20). Furthermore, refer to Wangenge-

encounter language challenges and comprehension because English and Afrikaans – second and third languages – remain languages of instruction. This means that other home languages must make way for English or Afrikaans to at least access higher education and make it in life.²³ In addition, students must be well acquainted with technology to commence with active teaching and learning, and the majority first encounter a computer when they enter university. The point is, as much as students from previously disadvantaged backgrounds must not be left behind, must be introduced and helped to learn using technology, their context is important and should not be forgotten. Universities have a responsibility to ensure that they fill this gap, accommodate and support these students to avoid them from being excluded and failing their courses. For students from previously disadvantaged backgrounds to be on the same footing with students from urban and better resourced schools, proper support and programmes must be introduced to fill this gap. The computer literacy course has made this category of students feel stigmatised and undermined by their counterparts. Universities must devise an inclusive approach to cater for all students in this regard.²⁴ Technology must be introduced in a structured manner and not be seen as a hindrance for students from previously disadvantaged backgrounds, because online teaching and learning is the future and here to stay. Universities, when introducing these innovations, must consider the local context, which must serve as a guide.

Teaching online is labour intensive for both students and lecturers. Preparing lectures takes time. Not only preparation for class, and notes, but also recording of lecture notes and videos require practice and often have to be repeated for better quality. The marking process is also cumbersome. There appears to be no working hours due to the flexibility; students and lecturers work throughout the day, and this results in very serious consequences for all.²⁵ At the beginning, health and well-being were compromised, and family life took a backseat because both students and lecturers wanted to be well acquainted with the new online world. This was when both parties to teaching and learning had to unlearn face-to-face teaching and learning and embrace the new paradigm. However,

Ouma and Kupe “Uncertain Times: Re-imagining Universities for New, Sustainable Futures” 2020 *Universities South Africa* 5 <https://www.usaf.ac.za/wp-content/uploads/2020/09/Uncertain-Times-Paper.pdf> (last accessed 2022-09-28).

- 23 Lafon “The Impact of Language on Educational Access in South Africa” 2009 *Create Pathways to Access Monograph* 3 <https://files.eric.ed.gov/fulltext/ED508749.pdf> (last accessed 2022-09-28).
- 24 Wangenge-Ouma and Kupe 2020 *Universities South Africa* 6.
- 25 Jones and Kessler “Teachers Emotion and Identity Work During a Pandemic” 2020-11-09 *Front. Educ.* <https://www.frontiersin.org/articles/10.3389/feduc.2020.583775/full> (last accessed 2022-04-03).

it will be a grave mistake post Covid-19 for contact universities like UP to shun face-to-face teaching and learning and to exclusively embrace fully online delivery. Face-to-face still has a role to play, especially in higher education due to the human element. The health challenges faced by staff and students during online teaching and learning includes anxiety, depression, loneliness and stress; families got broken down and there were heavy workloads.²⁶ This stems from the fact that human beings are social, and constant human interaction is very important in our daily lives and routine.

For the local context, a hybrid or blended approach should be the way to go. This will ensure that no student is left behind, and they mixed learning experiences.²⁷ Students will not feel overwhelmed and discouraged but will have an opportunity to experience the best of both in one institution, which in the past were kept separately.

Another point of concern raised with online teaching and learning is that students feel lonely, and this results in other consequences: failing, anxiety, depression and other mental illnesses and obesity among other health challenges.²⁸ This does not only affect students but extends to lecturers as well. Both students and lecturers have online fatigue due to the lack of social and human interaction. During the pandemic, there was a rise in cases of anxiety and depression presumably due to a lack of contact between human beings, and loneliness became a major factor for concern. As much as online teaching and learning is important in line with the changing needs of society, the human element or interaction is a part that cannot be removed or taken for granted – it is very important. Hence, the earlier argument that technology cannot replace warm bodies in teaching and learning because the human connection is very important. Co-existence in this space is essential in order to take teaching and learning to greater heights. During the start of the pandemic, from 2020 to date, technological innovations in teaching and learning really saved the day. Universities managed to save the academic year(s) and ensured that students continued with their studies despite the disruptions.²⁹

26 As above.

27 Please refer to both Wangenge-Ouma and Kupe 2020 Universities South Africa and CHE “Quality Assurance Guidelines for Emergency Remote Teaching and Learning And Assessment During the Covid-19 Pandemic in 2020” 2020 <https://heltasa.org.za/wp-content/uploads/2020/12/CHE-quality-assurance-guide.pdf> (last accessed 2022-02-15).

28 Chen and Lucock “The Mental Health of University Students During the Covid-19 Pandemic: An Online Survey in the UK” 2022 *Plos* <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0262562> (last accessed 2022-01-16).

29 South African Government “President Cyril Ramaphosa: Measures to Combat

ERT was introduced from the master plan of the CHE, and universities went fully online, put various contingencies in place in order to save the academic year(s), for continuity. If the master plan was not rolled out, and no technological innovations were introduced, students and academics would be at home doing nothing. The consequences would be dire in the economy due to the skills deficiency. Lecturers and students would be uncertain about their futures and roles. The future of the university in terms of its position and role in society would be dim and uncertain, and disaster would be the order of the day.

This pandemic was a wake-up call to the world at large and more particularly for higher education institutions as agents of social change through the production of knowledge and innovation. The time for complacency is over. Both students and staff must enter a period of learning, un-learning and re-learning in order to remain relevant to the constantly changing needs of the world. Universities will no longer be the same post Covid-19, and the pandemic, as much as it has been devastating and cost millions of lives and livelihoods, must also be seen as a new dawn, of renewal and inclusiveness. For a practical programme like law in the 21st century, the graduates we produce must be well grounded and taught using various technological innovations, yet we should not compromise on the human touch. Mock trials, group assignments or work, drafting of legal opinion and summonses among other things will also ensure that students are well balanced and equipped with the necessary soft skills, of communication with fellow students and lecturers. This is important – a balance needs to be maintained between face-to-face and online teaching and learning.

2 4 Staff and students' response to online v face-to-face teaching and learning

The human mind always fears the unknown. When Covid-19 with its aggressive nature hit amid the growing and constantly changing society of the 21st century, fear of loss of life and of socio-economic opportunities such as employment were the order of the day. However, the virus had to be kept in check and in control; mitigating factors had to be introduced to curtail its spread and save lives.³⁰ Health protocols such as social distancing, masks, avoiding crowded spaces, washing hands,

Coronavirus Covid-19 Epidemic" 2020-03-15 <https://www.gov.za/speeches/statement-president-cyril-ramaphosa-measures-combat-covid-19-epidemic-15-mar-2020-0000> (last accessed 2021-03-12).

30 As above.

lockdown restrictions and following a balanced diet were introduced.³¹ These measures had devastating consequences for institutions of both basic and higher learning, where face-to-face teaching and learning was the tradition. Institutions such as UP, having already adopted a mixed or hybrid form as part of embracing 4IR to equip students and staff for this new world, had an advantage during the pandemic.³²

With the pandemic steaming ahead during early 2020 and universities grappling with lack of resources among other things, the CHE introduced a master plan to save the academic year and ensure teaching and learning continues despite the disruption. Staff and students in most if not all universities in South Africa and beyond had to venture into the unknown, teaching and learning fully online. Not only were they supposed to adjust to teaching and learning online but were also required to live in the online space in order to conduct other university work like meetings, consultations, workshops and administrative duties and responsibilities. Staff and students had to acclimatise and fast. This notwithstanding the resistance against and ignorance of online teaching and learning, because academics and students saw it replacing the normal face-to-face mode that had been the status quo.³³ The resistance likely emanated from lack of university resources to invest in learning management systems and other technology and lack of training of staff and students, which in turn could be attributed to lack of infrastructure and information technology support. However, I believe the major reason for the resistance of technology in higher education was how it was introduced to staff and students. Technology is introduced as a system that can be used by only a select few smart and talented people in the academy at the exclusion of the majority. It was also introduced as optional and not mandatory for staff and students in most if not all universities.³⁴

This really caused confusion and also conflict between staff and students. Students stood to benefit from bold and courageous lecturers

31 Shiraef “Closed Borders, Travel Bans and Halted Immigration: 5 Ways Covid-19 Changed How – And Where – People Move Around The World” *The Conversation* 2021-03-18 <https://theconversation.com/closed-borders-travel-bans-and-halted-immigration-5-ways-covid-19-changed-how-and-where-people-move-around-the-world-157040> (last accessed 2022-03-12).

32 UP “Watch: Online Learning Contributes to Student Success” 2017-10-20 https://www.up.ac.za/student-life/news/post_2583318-watch-online-learning-contributes-to-student-success (last accessed 2021-07-07).

33 Wangenge-Ouma and Kupe 2020 Universities South Africa.

34 Times Higher Education “Enabling Digital Transformation in Higher Education in South Africa” <https://www.timeshighereducation.com/hub/d21-emea/p/enabling-digital-transformation-higher-education-south-africa> (last accessed 2022-03-03).

who applied technology in their teaching, but then students with less tech-savvy lecturers were at a disadvantage. Universities including UP would produce two sets of graduates despite the fact that they graduated with the same qualification in the same institution. Graduate from one group would leave having explored and benefited from the use of technological innovation, and students from the other would leave poorer on this front, because they were not exposed to technology, as to its use in the classroom was not compulsory. This was the situation prior to the pandemic, but Covid-19 neutralised the situation to an extent. In the wake of the pandemic, the content of the law courses remained the same, but lecturers used technology to reach more students and ensure that no student was left behind in line with the principle of the master plan document of the CHE.³⁵ For this to be a reality in the last two years, lecturers and students had to do some introspection, learn and unlearn, and – most importantly – they had to explore to ensure that teaching and learning could continue in a state of disaster without the values and principles of teaching and learning being compromised. This meant that teaching and learning still had to be interactive, engaging, challenging and thought provoking – especially for a field like law, which is a social science and deals with the needs and interests of society – and come up with solutions in the process. All this takes place during the synchronous and asynchronous process of teaching and learning because the online environment allows for flexibility and agility.³⁶

Lecturers and students had to have a mind shift and prepare for this new world or system they had been avoiding but that had been in existence for some time but was considered to be reserved for a select few. This is because most if not all South African universities treated technological innovation as a flagship project with a small scale. However, Covid-19 turned the flagship project into to be rolled out on massive scale in a short period in order to realise the objectives of the master plan of no student left behind. As to whether this was achieved or not, each case must be separately interrogated and each institution's internal data, geographical area and socio-economic aspects considered.³⁷

It is important – as universities move past this difficult period of the pandemic with devastating consequences but with the academic year(s) being saved – to also prioritise the health and well-being of staff and students. This is an important investment universities must make for the

35 CHE 2020.

36 Synchronous vs Asynchronous <https://www.worcester.edu/CTL-Reemote-Teaching-Synchronous-vs-Asynchronous/> (last accessed 2021-06-10).

37 CHE 2020.

future of higher education amid the constant changes in the sector and the broader society in general. Some universities are already making this investment to ensure staff and students health and well-being are restored through counselling and other psychological support mechanisms. Workshops teach staff and students how to survive, work and play despite the challenges being faced by the world. UP is one of the universities offering these services to both staff and students through its employee wellness programmes steered by human resources; these programmes have proven beneficial for both staff and students as they find their way during this state of disaster.³⁸ Universities that are not able to fund these initiatives must be assisted by the state; in particular, the DHET must offer support, especially to the historically Black universities that still lack in infrastructure, among other things. The pandemic can be seen as an added burden and set-back to existing challenges, which threaten the survival of these universities.³⁹ The pandemic has reaffirmed the resistance and agility of the human spirit for survival, and in the context of the teaching and learning, great work is continuing. Lecturers and students need to be commended for their dedication and resilience during this time.⁴⁰ It is very important that the voices of these two important stakeholders must be heard as we construct a way forward post Covid-19. They must share their experiences and views of the state of disaster, enter into debates with university administrators and the executive on the way forward and construct a model that best works for the curriculum and – most importantly – for students as they are prepared for work opportunities. A top-down approach will not work – rather, a collaborative venture between all stakeholders is very important and will ensure that the mistakes of the past do not occur in the higher education space again. More transparency and inclusivity is key for the future of teaching and learning.

Another lesson learnt from the pandemic is that there is space for both online and face-to-face delivery of teaching and learning. A blended approach to teaching and learning is the future; both methods are very important in their own unique way and approach. Students and lecturers

38 UP 2020-04-14 “Employee Well-Being Programme at UP is Here for Staff” https://www.up.ac.za/coronavirus-updates/news/post_2887191-employee-well-being-programme-at-up-is-here-for-staff-#:~:text=EWP%40UP%20is%20available%20to,%40up.ac.za (last accessed 2021-04-06).

39 VanderMerwe “Historically Black Universities See More Students Debts and Challenges” 2021-04-01 *Research Professional News* <https://www.researchprofessionalnews.com/rr-news-africa-south-2021-4-disadvantaged-universities-bear-brunt-of-south-africa-student-debt/> (last accessed 2021-06-13).

40 Du Plessis, Van Vuuren, Simons, Frantz, Roman and Andipatin “South African Higher Education Institutions at the Beginning of the Covid-19 Pandemic: Sense-Making and Lessons Learnt” 2022-01-21 *Front. Educ.* <https://www.frontiersin.org/articles/10.3389/educ.2021.740016/full> (last accessed 2022-03-23).

will be exposed to both worlds because these are key to quality graduates being able to make a difference in their own lives and the broader society. University administrators and executives must also take a proactive stance during the transition period to ensure that both students and staff are fully capacitated to enter teaching and learning, post the pandemic. Understanding and collaboration should be the order of the day to ensure all are working in the interests of the students and for the sustainability of the university for generations to come. Thus, in my opinion, the debate on whether online teaching and learning is replacing or competing with face-to-face teaching and learning is a fruitless exercise and must rather be directed at ensuring that both methods or approaches co-exist for the benefit of all students. There is space for this co-existence. In the legal fraternity, for example, courts and other dispute resolution bodies have adjusted to this new way of doing things. For example, court proceedings are now conducted fully online and, in some instances, the hybrid or blended approach is adopted.⁴¹ This affirms the point that online mechanisms to teaching and learning did not only infiltrate the higher education space but also industries such as the practice of law. The adoption of technology in court proceedings from the start of a trial to the end has been welcomed. It has also confirmed that blended learning in law does not compromise the integrity of the law qualification and the quality of those graduating during the pandemic.

This confirmation is important as in some instances university law schools had been accused by the industry (law firms, bar societies and councils) of producing candidates with a less solid theoretical and practical background.⁴² While on this point, it is important to highlight that law students must be encouraged to explore other fields and opportunities in the practice of law and not only become attorneys or advocates. The field of law is very broad and has a wide variety of opportunities, including being a prosecutor, law researcher or clerk, academic and legal advisor among others.⁴³ Law schools normally have collaborative agreements or ventures with law firms and other legal statutory bodies that contribute towards the practical coursework. The CHE as a regulatory body also

41 The South African Judiciary "About Court Online" <https://www.judiciary.org.za/index.php/court-online/about-court-online> (last accessed 2022-03-13).

42 Muir "The 'Blame It on Law School Controversy', or Unrequited Law Students" 2012-02-14 *Law People* <https://www.lawpeopleblog.com/2012/02/the-blame-it-on-law-school-controversy-or-unrequited-law-students/> (last accessed 2022-02-14).

43 Faculty of Law 2021/2022 *Undergraduate Faculty Brochure* explains at the early stages of the career of students the various opportunities available to them when they complete their studies. <https://www.up.ac.za/media/shared/368/Faculty%20Brochures/2020-2021/ug-fb-law-2020-21-final-07.11.2019.zp182950.pdf> (last accessed 2021-03-07).

requires universities to strengthen this collaboration with industry for a better quality education.⁴⁴ Law firms and bar societies have an important voice to add in the teaching and learning of law, and it would be interesting to see and hear what industry has to say during this time and post Covid-19 about the quality of candidates who graduated during the state of disaster. The law industry also has a role to play in mapping the way forward for teaching and learning post Covid-19, however, due to the blended approach it also adopted in conducting its business and practice. It means that the graduates who were exposed to a blended or fully online teaching and learning environment also benefited greatly; they were able to adjust quickly to the new blended or online environment of practising law. Technology transcends all sectors. Universities must play an active role to ensure that students are equipped and exposed to the latest technological innovations in teaching and learning. Failure by universities to adjust to this new world may render them redundant in the sphere of knowledge production and generation. The consequences may include the following: that students will shun universities, academics will leave and seek better opportunities elsewhere, and/or the research productivity and teaching and learning throughput rate will go down.

The pandemic, by enforcing the use of technology to save the academic year, also contributed in part to the call for a decolonised and transformed curriculum for all fields or courses offered in universities.⁴⁵ This is a result of the country's painful past and experience of colonialism and apartheid, during which local and indigenous knowledge and knowledge systems were side-lined in favour of Western knowledge, which is still the order of the day 28 years after the dawn of democracy.⁴⁶ The co-existence of online teaching and learning with the traditional way of teaching and learning, which is face-to-face, must also take into account that the local context and voice is very important in knowledge production and thinking. This is where the aspect of curriculum transformation is factored in – to ensure that students stand to benefit from an inclusive and dynamic curriculum encompassing the diversity of the South African population. Transforming the curriculum using a blended approach to teaching and learning can only enhance it while ensuring that all stakeholders have an equal opportunity to learn and engage not only about technological innovation but also about the diversity and differences in South Africa that make us one. This

44 CHE 2020.

45 UP "UP Law Leads the Way to a Transformed Curriculum" 2021-06-21 https://www.up.ac.za/faculty-of-law/news/post_2990236-up-law-leads-the-way-to-a-transformed-curriculum (last accessed 2021-09-20).

46 Himonga and Nhlapo *African Customary Law in South Africa: Post-Apartheid and Living Law Perspectives* (2019) 10.

is a great opportunity and must be explored by universities, which need to avoid a repeat of the consequences of the 2015 #FeesMustFall movement, where students protested for free, decolonised education.⁴⁷ Universities are making a bit of headway in this regard, but a lot of work still needs to be done. UP is leading on this score and already in 2016 developed a policy framework for a transformed curriculum. In 2021 the institution organised a relaunch of this drive for faculties to take stock and reflect on what they had done after the policy framework was adopted and what they are going to do going forward.⁴⁸ The relaunch took place during the pandemic, and all faculties participated with great energy and vigour, sharing their plans and objectives for the future. This was a step in the right direction for UP, to embark on such an initiative for a transformed curriculum across all disciplines.

2.5 Conclusion

In conclusion, for quality education, online and face-to-face teaching and learning must co-exist. They both must be standard practice post Covid, and all stakeholders – staff, students and the industry – have a role to play to ensure proper support, infrastructure and training is provided. Covid-19 proved that online teaching and learning is not only appropriate for disasters, pandemics and emergency but, due to its flexibility and agility, can form part of day-to-day teaching and learning practice. However, humans are still essential, and the human element must not be compromised.

47 Mavunga “#FeesMustFall Protests in South Africa: A Critical Realist Analysis of Selected Newspapers Articles” 2019 *JSAA* 81.

48 UP “Curriculum Transformation Framework” <https://www.up.ac.za/faculty-of-law/article/2291240/curriculum-transformation-framework> (last accessed 2021-01-12). Furthermore, please refer to UP “‘Every Field of Study Requires Regular Renewal, Reinvention and New Knowledge’ – UP Law Professor on Curriculum Transformation” 2021-09-21 https://www.up.ac.za/news/post_3018862-every-field-of-study-requires-regular-renewal-reinvention-and-new-knowledge-up-law-professor-on-curriculum-transformation (last accessed 2021-11-17).

3

EMBRACING AND REIMAGINING TECHNOLOGY-ENHANCED LEARNING IN PUBLIC INTERNATIONAL LAW TO GENERATION Z

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3 1 Introduction

The setting in which higher education teaching and learning takes place changed overnight as a result of the impact of Covid-19.¹ As in the case of other institutions, UP's Law Faculty of was prompted by the pandemic to convert from mainly face-to-face learning to emergency remote teaching (ERT),² or to fully online teaching practices.³ This chapter reports on the

- 1 For a discussion of ERT during Covid, see *The Difference Between Emergency Remote Teaching and Online Learning* (2020); Bozkurt and Sharma "Emergency Remote Teaching in a Time of Global Crisis due to Coronavirus pandemic" 2020 *Asian Journal of Distance Education* i–vi; Kajiita, Nomngcoyiya and Kang'ethe "The 'Revolution' on Teaching and Learning: Implications of Covid-19 on Social Work Education in Institutions of Higher Learning in Africa" 2020 *African Journal of Social Work* 25–33; Bozkurt *et al* "A Global Outlook to the Interruption of Education due to Covid-19 Pandemic: Navigating in a Time of Uncertainty and Crisis" 2020 *Asian Journal of Distance Education* 1; Means, Bakia and Murphy *Learning Online: What Research Tells us About Whether, When and How* (2014); Crawford *et al* "Covid-19: 20 countries' Higher Education Intra-Period Digital Pedagogy Responses" 2020 *Journal of Applied Learning and Teaching* 1.
- 2 ERT is defined as a temporary shift of instructional delivery to an alternate delivery mode for crisis circumstances; see Hodges *et al* "The Difference Between Emergency Remote Teaching and Online Learning" *Educause* 2020 <https://er.educause.edu/articles/2020/3/the-difference-between-emergency-remote-teaching-and-online-learning> (last accessed 2022-09-21).
- 3 "Fully online practices" is defined as a situation in which face-to-face lectures, without prior planning and preparation, are replaced by online facilitation of learning (instruction) only. It is noted that the University of Pretoria was in the position to

emergency shift in facilitating Public International Law (PBL 320), a third-year core module servicing between 550 and 650 students annually. In this context the chapter reflects on the response to the disruption in the practice of legal education resulting in fully online instruction and the re-imagination of how technology best can be employed to facilitate instruction in PBL 320. This contribution aims to answer the important query of whether the use of technological innovation compromised or enhanced the quality of presentation of the PBL 320 module and promoted student success.

Reimagining and embracing technological innovation is a response to a central driver in curriculum transformation called “renewal of pedagogy and classroom practices”.⁴ In this context of the renewal of pedagogy and “virtual” classroom practices, it was important to reflect on the response to the disruption in the practice of legal education, and specifically PBL 320, in order to reimagine how technology best can be employed to facilitate fully online instruction. The process of planning for the transition took place in alignment with the UP teaching and learning approach,⁵ during the first semester of 2020 through the collaboration between the lecturers (as facilitators and planners),⁶ and the academic staff developer.⁷

transition rather effortlessly as the technological infrastructure was in place as a hybrid approach to teaching had been encouraged already. The authors are cognisant that not all universities had the capital to supply students in need with laptops and data.

- 4 Curriculum transformation involves continuously rethinking and re-evaluating the ways in which we learn and teach. UP Faculty of Law “Curriculum Transformation Framework (S4466/17 – amended)” <https://www.up.ac.za/faculty-of-law/article/2291240/curriculum-transformation-framework> (last accessed 2022-09-21).
- 5 The UP’s hybrid model that assumes three phases in teaching and learning, namely, preparation before class, engagement in class, and consolidation after class. UP Education Innovation Document Digital strategy for teaching, learning and student success – Department for Education Innovation (2020). See also UP Department of Education Innovation “Teach and Learn the UP Way” <https://www.up.ac.za/media/shared/391/pdfs/teach-learn-up-way-2020.zp184675.pdf> (last accessed 2021-11-27).
- 6 The 2020 team consisted of Dr Martha M Bradley (module coordinator); Professor Annelize Nienaber; Mr Marno Swart (assistant lecturer); Ms Jessie Phyffer (Academic Associate); Mr Felix le Roux and Mr Mbongeni Ncube (tutors). The 2021 team consisted of Dr Martha M Bradley (module coordinator); Ms Jessie Phyffer and Mr Marno Swart (assistant lecturers); Mr Felix le Roux (academic associate); and Mr Nicolaas J Nel (tutor). Ms Faith Mathibedi served as educational consultant and Mr Andre du Plessis as video producer and animator.
- 7 A professional developer was mandated, among others, to facilitate professional development interventions and support initiatives to develop expertise in teaching practice.

It is important to understand that moving teaching and learning online involves more than merely uploading files and video links to ClickUP.⁸ The PBL 320 team sought to reimagine the new teaching space and its dynamics. The major challenge was twofold: first, “understanding how teaching and learning change when particular technologies are used”⁹ and, second, how generation theory informs our choice of technologies during the process of facilitating changes to this module. Student interaction is another issue we considered in adapting teaching to online-facilitated instruction with Generation Z (or colloquially referred to as “Gen Z”)¹⁰ in mind.

Through a focus on the characteristics of student needs, which led to an increased use of diverse (technology) modalities that facilitate teaching online and the use of student support eco-systems, the PBL 320 team considered the specifics in the environment of the current cohort of students – Generation Z – including the influence of the demands raised by the nature of contemporary skills (21st century skills, 4IR, and so forth). This chapter addresses the following questions presented in sequence after this introduction: What contextual conditions and dynamics can be considered (part 2)? Which modalities (technology infrastructures) are to be used to enable a shift not only to ERT/online teaching but to excel at teaching and learning by embracing technology (part 3)? How can we, as a teaching team, adapt by learning from student responses to the transition of PBL 320 to move to fully online instruction when we return to the classroom (part 4)?

3 2 Contextual conditions and dynamics

Generation Z, a generally accepted description of the generation born between 1995 and 2010,¹¹ are digital natives that have grown up in an information-rich era.¹² They are a technology-savvy and highly connected generation who can and do quickly access a wealth of information

8 ClickUP is a customised name for the UP’s learning management system, supported by Blackboard.

9 Harris, Mishra and Koehler “Teachers’ Technological Pedagogical Content Knowledge and Learning Activity Types: Curriculum-Based Technology Integration Reframed” 2009 *Journal of Research on Technology in Education* 393.

10 Generation Z, a generally accepted description of the generation born between 1995 and 2010. Dolot “Characteristics of Generation Z” 2018 *E-mentor* 44–45.

11 As above.

12 Mohr and Mohr “Understanding Generation Z Students to Promote a Contemporary Learning Environment” 2017 *Journal on Empowering Teaching Excellence* 87–89; Cilliers “The Challenge of Teaching Generation Z” 2017 *International Journal of Social Sciences* 190.

through various mediums.¹³ They grew up in the early 2000s, when now commonplace technologies such as the internet, smartphones and laptops were just emerging as central features of everyday life they are today.¹⁴ As a result, Generation Z lives in, and prefers to function in, both the real and virtual world.¹⁵ It is in this reality that most of our students, as Generation Z, function and for whom we as team sought to design our offering for PBL 320. This part highlights a few features of Generation Z and how the PBL 320 team designed its offering to accommodate these generational features. Also, it highlights the response of the team to the South African reality of unequal access to virtual spaces.

Before the PBL 320 offering was redesigned it had been designated as a high-impact module by UP. Modules with this designation have large enrolments and a high failure rate. In response, the 2020 team decided to adopt the University's approach to teaching and to separate learning into three phases – prepare, engage and consolidate. It was thought that a well-organised offering would appeal to Generation Z's self-identification as a well-organised generation.¹⁶ Separating each lecture into these three independent but interrelated phases allowed students to plan their schedules and created a solid foundation at the outset which allowed the international law module, one that often is considered complex and “foreign” to law students, to play to the strengths of the character of Generation Z. In dealing with the Covid-19 pandemic and the consequent shift to ERT, the solid foundation of the offering provided by well-organised lectures became an indispensable part of the module in coping with a tumultuous time for students and lecturers. The PBL 320 team reacted by deciding to make learning easier rather than more difficult for Generation Z, which we did by appealing to the generation's affinity with technology.¹⁷

Several consequences arise out of and around rapid technological advances. One such consequence for Generation Z students is that they feel comfortable in a virtual world.¹⁸ The team had to remain cognisant of the reality of an unequal South African society and of how inequality

13 Dolot 2018 *E-mentor* 45; Cilliers as above 190; Graham “Generation Z Goes to Law School: Teaching and Reviewing Law Students in the Post-Millennial Generation” 2018 *University of Arkansas as Little Rock Law Review* 50.

14 Dolot as above.

15 As above.

16 Dolot 2018 *E-mentor* 46.

17 As above 45.

18 As above.

plays out in the virtual world, specifically access to it.¹⁹ The PBL 320 team nevertheless recognised the shift to ERT and online learning as offering an opportunity to venture into the virtual world as a way of meeting our students at their level. As such, our offering made use of short videos, longer animated videos, and a video game, all of which immersed our students in a virtual, yet still highly educational and authentic (or simulated) world of public international law content and the questions it poses. Using these tools appealed simultaneously to another feature of Generation Z – their preference for visual stimuli as a mode of learning.²⁰

An additional feature of digital natives is that they prefer and seek out feedback and communication.²¹ With this characteristic in mind the PBL 320 team designed short, computer-based quizzes for the students to complete after each lecture. The purpose of these quizzes was to allow them to test their knowledge of the content and to identify any gaps in their understanding of the content. As learning had been completely shifted to an online environment and because there were not as many opportunities for students and lecturers to communicate in person, these quizzes acted as feedback mechanisms for students. As for being able to communicate with students, weekly newsletters were sent to all students on Monday mornings. These newsletters contained all relevant information for the week, including the content to be covered during that week, what was expected of students and any other general announcements of which they should take note, such as upcoming tests or lecture consultation hours.²² Students communicated to us that they found these newsletters particularly helpful and a key to their success in the module, with one student remarking: “The weekly newsletters were greatly appreciated as it set the tone for the week and provided clear instructions and information.”

A final feature of Generation Z that influenced our teaching programme is the fact that they have shorter attention spans and struggle to sift through and sort out the valuable from the sea of information that

19 Of the South African population, 36 % does not have access to the internet, and only 1,2 % of the rural population (which makes up 32,4 % of the South African population) has internet access; see Briggs “Connectivity in South Africa: The Numbers You Need to Know” 2021-07-13 *ITWeb* <https://itweb.africa/content/dgp45Ma6yKxqX918> (last accessed 2021-11-06).

20 Mohr and Mohr 2017 *Journal on Empowering Teaching Excellence* 92; Cilliers 2017 *International Journal of Social Sciences* 190–191; Graham 2018 *University of Arkansas as Little Rock Law Review* 82. It should be emphasised that at the University of Pretoria, the Disability Unit would transform visual media in an appropriate format in the event that a student is visually impaired. The PBL team did however ensure that audio options were available in the alternative to visual offerings.

21 Dolot 2018 *E-mentor* 46; Graham as above 71.

22 Examples of these newsletters are on file with the authors.

they have at their fingertips.²³ We considered this issue, as well as the fact that visual media are beneficial to advancing the understanding of Generation Z students,²⁴ and designed Powtoons (animated videos) for the “prepare” phase of learning. Powtoons are short, partly animated videos that provide students with the main points of the lectures that are covered in the “engage” phase. They are meant to highlight what information is important for the students in their upcoming lectures and to structure their note-making. The Powtoons combined almost all of Generation Z’s preferred methods of learning and retained information in a short, but educational, visual medium. The educational value of Powtoons is discussed further below.

While the PBL 320 team took time in designing an offering in a way that complemented the strengths of Generation Z, we also had to take into consideration South African reality. As mentioned above, not all South Africans have equal access to the virtual world.²⁵ For those that do have access, this may not be constant access and may require both logistical and financial planning to be able to access online teaching.²⁶ We ensured that all of our course material (video content, audio content, and traditional course material such as readings and PowerPoint slides) was accessible via UP’s zero-rated data system that it had coordinated with South African network service providers. We also ensured that all typically data-intensive media, such as videos, were converted into less data-intensive audio-formatted versions in which no educational value was lost. Where students had problems accessing these materials, we worked with them to find ways of giving them access and ensuring their success. We did what we could to ensure that no student was left behind as a result of unequal access to virtual spaces.

Technological pedagogical content knowledge (TPACK) was used as a lens during the process of implementing ERT in 2020.²⁷ The framework

23 Mohr and Mohr 2017 *Journal on Empowering Teaching Excellence* 87–89; Cilliers 2017 *International Journal of Social Sciences* 193; Graham 2018 *University of Arkansas as Little Rock Law Review* 52, 60.

24 See Graham as above 82, where the author states: “A well-chosen, meaningful visual can often work as a chunking technique that helps students process a large amount of information that would otherwise overwhelm them.”

25 Briggs “Connectivity in South Africa: The Numbers You Need to Know” 2021-07-13 *ITWeb* <https://itweb.africa/content/dgp45Ma6yKxqX918> (last accessed 2021-11-06).

26 As above.

27 TPACK “explicitly considers the role that knowledge about technology can play in effective teaching”. It further “refers to knowledge about the complex relations among technology, pedagogy, and content that enable teachers to develop appropriate and context-specific teaching strategies”. See Koehler, Mishra, Kereluik, Shin and Graham

facilitated the integration of content, pedagogy and technology of the PBL 320 module. During the planning phase we clarified the ERT situation to ourselves as a team, identified the challenges of facilitating PBL 320 fully online and developed action strategies. In the action phase we put those strategies into action; in the observation phase we analysed students' feedback and results; and, lastly, reflected on the processes and integration of the three knowledges of the framework – technology, pedagogy and content.

3 3 Generation Z and technological modalities employed

The rapid advances in technology have changed the way in which people learn and engage with material. In recognition that Generation Z spends much of their time online, we determined that education should offer access to multiple platforms using multiple media for learning, including traditional written work and videos. At the core of the design of our online offering we strive to meet our students on their level even though the focus is to deliver the relevant legal content. We highlight the fact that our teaching approach conforms to the UP-promoted method of teaching and learning designed to prepare our students for a future technology-based workplace and we follow the “prepare, engage and consolidate” approach.²⁸

The TPACK framework articulated well with the ERT mode as it promoted the consideration of technological affordances and pedagogical knowledge in planning for the PBL 320 module. While the preparation, engagement and consolidating phases were already applied in this module, the phases became even more useful and practical when the world moved to ERT mode. This approach assumes three phases in the teaching and learning environment, namely, (a) preparation before a lecture; (b) engagement during a lecture; and (c) consolidation after a lecture.²⁹ The preparation before enabled student preparedness and/or afforded introduction to the content inducing prior knowledge to build on during the engage phase.³⁰ The latter and consolidate phases were now (in the ERT environment) replaced with students “engaging virtually”

“What is Technological Pedagogical Content Knowledge? (TPACK)” in Spector, Merrill, Elen and Bishop (eds) *Handbook of Research and Education Communications and Technology* (2014) 102.

28 See UP Department of Education Innovation “Teach and Learn the UP Way” <https://www.up.ac.za/media/shared/391/pdfs/teach-learn-up-way-2020.zp184675.pdf> (last accessed 2021-11-27).

29 As above.

30 As above.

with the content through diverse technological tools of which some will be explained below. The radical move to ERT forced the team to integrate the module's content with pedagogical and technological knowledge to produce an effective facilitation strategy. It was invaluable for the team to understand how teaching and learning change when particular technologies are used in the migration of the PBL 320 module to being facilitated fully in an online mode.³¹

We highlight three of these technological interventions: Powtoons, as an example of employing technology in the “prepare” phase; 3D and 2D partially and fully animated lectures/videos as an example of employing “chunked” content in the “engage” phase; and a computer game including the use of virtual escape rooms as examples in the “consolidation” phase – all of which illustrate the embracing of technology in facilitating PBL 320 during ERT.

3 3 1 Prepare phase: Powtoons

As mentioned above, one of the tools used by the PBL320 team to meet Generation Z on their level were Powtoons. These videos are employed in the “prepare” phase of each lecture because their design is perfectly suited for preparing students for content-heavy, complex lectures. This subsection discusses what Powtoons are, why they are suited to Generation Z students and why they are effective learning tools.

Powtoons are short videos that can contain text, animated characters and props, and real images.³² The PBL 320 team makes use of all these features and adds narrations as an extra element, thereby creating teaching mediums that are audio-visual.³³ Powtoons have several potential benefits,³⁴ but for our public international law students the purpose of the videos was to break down difficult information into smaller, organised pieces of information that allow students to structure their notes and process lesser

31 See, generally, Harris *et al* 2009 *Journal of Research on Technology in Education* 393.

32 Adnyani, Suprianti, Marsakawati and Narotama “Powtoon as the Implementation of Edutainment for Young Learners” 2021 *Advances in Social Science, Education and Humanities Research* 204, 205.

33 This is one of the potential benefits of Powtoons as described by Adnyani *et al* as above 205.

34 Six of these are listed in Adnyani as above 205.

amounts of information.³⁵ The fact that the videos are no longer than five minutes caters to the short attention span of Generation Z.³⁶

Even though the videos are short and meant to cater to limited attention spans, employing multiple intelligences and connecting images with concepts and ideas can improve long-term memory retention.³⁷ Powtoons are able to meet Generation Z on their level while having immense educational value. Using Powtoons as an educational medium can help overcome any difficulty students might have with traditional delivery methods,³⁸ as well as help them learn independently, and better prepare to identify important concepts in the “engage” phase of the lecture.³⁹ The student feedback on the use of Powtoons as an educational tool in the “prepare” phase of the lecture has been positive. One student even remarked: “The Powtoons, which were used as prepare part of the material, were always beneficial and acted as a good revision tool before the semester tests.” Another student considered the Powtoons educational and fun, stating, “One of my favourite features were the Powtoons, as they give you a foundation of the material you are about to study and they give you a general idea of what the theme is about, and they were fun to watch!”

The benefits of using Powtoons to teach Generation Z are clear. Employing multiple intelligences in short, yet visually stimulating videos is perfect for the digital natives’ learning style and also is an effective tool for long-term memory retention. They are effective in educating and entertaining students⁴⁰ which helps break the monotony of traditional learning and can help break down complicated content. The PBL 320

35 Another potential benefit of Powtoons is the synthesising of information that allows students to achieve greater understanding of the information; see Adnyani *et al* as above 205.

36 Graham 2018 *University of Arkansas as Little Rock Law Review* 52.

37 Steffes and Duverger “Edutainment With Videos and its Positive Effect on Long Term Memory” 2012 *Journal for Advancement of Marketing Education* 3; Puspitarini, Akhyar and Djono “Developing Powtoon-based Video Learning Media for Five Grade Students of Elementary School” 2018 *Advances in Social Science, Education and Humanities Research* 173.

38 Puspitarini *et al* as above 173.

39 Herwati, Sulisworo and Fayanto “The Development of Learning Videos on PowToon-based Work and Energy Topics to Support Flipped Classroom Learning” 2019 *Journal of Research and Method Education* 55.

40 Steffes and Duverger 2012 *Journal for Advancement of Marketing Education* 1.

team has found that Powtoons are among the best audio-visual tool to use to help “prepare” Generation Z students for their lectures.

3 3 2 Engage phase: Videos

The engage phase concerns the formal lectures that before Covid took place via face-to-face contact sessions.⁴¹ The PBL 320 team made use of various videos in the “engage” phase of lectures. These videos included formal recordings of the lecturer presenting the work, interviews with esteemed experts, and 3D and 2D partially and fully animated videos. The part that follows explains the value of these videos with reference to the concepts of cognitive load, learner control, and learning efficiency.

3 3 2 1 Cognitive load

The cognitive load theory postulates that the storage of information into long-term memory requires the processing of that information from sensory memory to working memory.⁴² However, since the capacity of working memory is very limited, it is crucial that the working memory receives signals or cues to indicate which information it should receive, process and commit to long-term memory.⁴³ Videos provide a unique opportunity to reduce the cognitive load of students and to help them commit important information to long-term memory instead of temporarily memorising large volumes of information (also known as “cramming”/“parrot learning”/rote memorisation). To this end, videos should be as short as possible or divided into several segments and each video should be focused on a specific learning outcome.⁴⁴ This focus is even more important if one considers the generally short attention span of Generation Z students.⁴⁵ These principles guided the PBL 320 team in the design of videos for lectures. The help of Andre du Plessis, a senior video director at UP with extensive experience in video production, was enlisted to ensure that lecture videos were thoroughly edited. Thus, the videos contained only the most relevant and necessary information and on-screen graphics were used to signal important information. The lecturer

41 UP Department of Education Innovation “Teach and Learn the UP Way” 3–4 <https://www.up.ac.za/media/shared/391/pdfs/teach-learn-up-way-2020.zp184675.pdf> (last accessed 2021-11-27).

42 Brame “Effective educational videos: Principles and Guidelines for Maximising Student Learning From Video Content” 2016 *CBE—Life Sciences Education* 1–2.

43 Brame as above 2.

44 Fyfield, Henderson, Heinrich and Redmond “Videos in Higher Education: Making the Most of a Good Thing” 2019 *Australasian Journal of Educational Technology* 2.

45 Graham 2018 *University of Arkansas as Little Rock Law Review* 52.

also highlighted the learning outcome at the start and end of each lecture to ensure clarity on the most important aspects of the course content.

The use of 3D and 2D partially and fully animated videos was a particularly useful and exciting innovation employed by the PBL 320 team. These videos maximise working memory capacity by fully engaging the visual and auditory pathways for information processing.⁴⁶ For example, a fully animated video was used to illustrate and explain some of most the complex topics in international air law. The video used 3D animation to depict the different scenarios that could result from a commercial airplane making an unauthorised journey through another state's airspace and explained the lawfulness of the actions of the state in each scenario. Another example was the use of a partially animated lecture to explain the different maritime times under the international law of the sea – an abstract concept that usually is very difficult to understand through text only. These examples show that videos have the potential to make even the most daunting and difficult concepts easily understandable in a way that text rarely is capable of doing.⁴⁷ As Isabel Vieira, Ana Lopes and Filomena Soares note, “a moving image can help someone to see a process or realise how something works, moves, or performs”.⁴⁸ Students appreciated these animated videos, with one remarking that, “The animated lectures made it easier to visualise the work in areas where it would otherwise be difficult to understand.” With animation, “problem-based scenarios can be brought to life” in a way that is both educational and enjoyable to students.⁴⁹ Video lectures, especially those that utilise 3D or 2D animation, also have the benefit of stimulating different parts of the brain and accommodating multiple learning styles at once. The combination of visual and auditory learning material in multimedia formats such as video has been shown to increase memory, comprehension, understanding, and learning.⁵⁰

46 Brame 2016 *CBE—Life Sciences Education* 2.

47 Bravo, Amante, Simo, Enache and Fernandez “Video as a New Teaching Tool to Increase Student Motivation” 2011 *IEEE Global Engineering Education Conference (EDUCON)* 638, 640.

48 Vieira, Lopes and Soares “The Potential Benefits of Using Videos in Higher Education” Proceedings of EDULEARN14 Conference 2019-08-07, Barcelona, Spain 750 https://recipp.ipp.pt/bitstream/10400.22/4853/1/THE_POTENTIAL_BENEFITS_OF_USING_VIDEOS_IN_HIGHER_EDUCATION_1166.pdf (last accessed 2022-09-30).

49 Colbran, Gilding and Colbran “Animation and Multiple-Choice Questions as a Formative Feedback Tool for legal education” 2017 *The Law Teacher* 252.

50 Steffes and Duverger 2012 *Journal for Advancement of Marketing Education* 2.

3 3 2 2 *Learner control*

The use of videos in higher education places the learning process largely under the control of the student.⁵¹ Students can access videos at anytime and anywhere, videos can be re-watched as many times as needed, and videos can be paused and rewind where necessary. This aspect of learner control has various benefits. Since there is flexibility in the time when videos are accessed, issues related to transport, internet access, and other personal circumstances are less disadvantaging than in other modes of teaching and learning. Furthermore, the fact that students can pause or rewind videos means that they can learn at their own pace and re-watch parts that are unclear or require revision. Rather than having to adapt to the teaching style and pace of the lecturer, students can work through the lecture in a way that suits their individual needs.

It would appear that the most significant benefit of learner control is that it encourages and develops autonomous learning, which is a crucial skill in the legal profession and any other professional occupation.⁵² The use of videos in higher education entails not only learner *control* over the learning process but also learner *responsibility* in the learning process. The lecturer still provides guidance and fulfils the role of teaching the course content, but students assume the responsibility to work and learn independently, which is what will be expected of them when they enter the professional world. Thus, apart from being valuable tools in the teaching of the course content, videos contribute to the training of competent graduates that can learn autonomously after the completion of their studies. The development of autonomous learning also aligns with the general trend to engage in flipped learning – a mode of teaching that entails the facilitation of learning outside the classroom to make more time for collaborative activities in class time.⁵³

3 3 2 3 *Learning efficiency*

Videos that are short, concise and focused make the learning process more efficient for several reasons. First, Generation Z students, who have encountered evolving technologies throughout their lives, are very comfortable using videos as part of the learning process.⁵⁴ Streaming

51 Fyfield *et al* 2019 *Australasian Journal of Educational Technology* 3; Bravo *et al* 2011 *IEEE Global Engineering Education Conference (EDUCON)* 640.

52 Bravo *et al* as above 641.

53 Fyfield *et al* 2019 *Australasian Journal of Educational Technology* 3.

54 Rackaway "Video Killed the Textbook Star? Use of Multimedia Supplements to Enhance Student Learning" 2012 *Journal of Political Science Education* 190; Vieira *et al* 750

platforms such as YouTube and Netflix, as well as social media platforms such as Instagram and Facebook are omnipresent in the lives of contemporary students and thus the use of videos in higher education provides a sense of familiarity that facilitates the learning process. Second, videos are often valuable at clarifying what is expected of students in the learning process. For example, the PBL 320 team recorded short videos (one to two minutes) at the start of each week explaining how students should approach the week's lectures and which tasks they had to complete. The number of queries and concerns regarding the course decreased dramatically following the implementation of these "approach to the week" (weekly plan) videos. Edna Bravo, Beatriz Amante, Pep Simo, Mihaela Enache and Vicenc Fernandez *et al* similarly observed that "the use of video prior to the class session generated fewer doubts from students".⁵⁵ Third, videos have been shown to increase student motivation and engagement.⁵⁶ Students are more motivated to study difficult concepts and are more willing to meaningfully engage with the course content if it is presented in an exciting format with which they are familiar and are able to understand. Videos, especially those that include 3D and 2D animation, capture the attention and even imagination of students in a way that text is rarely able to do. The addition of short consolidation activities such as multiple-choice questions to be completed after watching the video lectures further enhances student motivation and engagement since students receive immediate feedback on their progress in the learning process.⁵⁷ The PBL 320 team utilised short computer-based tests (CBTs) as a mode of formative assessment to assist students in reaching the learning outcomes of each part of the course. Fourth, videos offer a unique opportunity to include the insights of leading scholars and experts on the subject matter.⁵⁸ For example, the PBL 320 team included recordings of interviews conducted by the lecturers with world-famous international lawyer, Professor Dire Tladi, as part of the course content. These videos offer students the chance to see and hear experts discussing the concepts about which they are learning— an experience that often is more engaging than reading a journal article by the expert concerned.

[https://recipp.ipp.pt/bitstream/10400.22/4853/1/THE POTENTIAL BENEFITS OF USING VIDEOS IN HIGHER EDUCATION_1166.pdf](https://recipp.ipp.pt/bitstream/10400.22/4853/1/THE_POTENTIAL_BENEFITS_OF_USING_VIDEOS_IN_HIGHER_EDUCATION_1166.pdf) (last accessed 2022-09-30); Bravo *et al* 2011 *IEEE Global Engineering Education Conference (EDUCON)* 638.

55 Bravo *et al* as above 640.

56 Brame 2016 *CBE—Life Sciences Education* 4–5; Colbran *et al* 2017 *The Law Teacher* 250; Bravo *et al* as above 638.

57 Colbran *et al* as above 253–254.

58 Bravo *et al* 2011 *IEEE Global Engineering Education Conference (EDUCON)* 639.

3 3 2 4 Conclusion

From the above it may be concluded that videos, when used correctly, are valuable tools in the teaching and learning process. They reduce the cognitive load of students, deliver a measure of control over the learning process to the student and make the learning process more efficient. On videos as educational tools, one student remarked: “I enjoyed listening to/watching the lecture videos and found that I retained the information well.” It is submitted that the advent of videos in higher education is a positive development that should be embraced by both lecturers and students.

3 3 3 Consolidate phase

The consolidation phase is the final phase of the UP way of learning.⁵⁹ The PBL 320 team employs continuous assessment in this phase to complement the preparation and engagement phases. The 2022 UP “Way of learning” document states:

Alternative authentic forms of assessment (suitable to gather evidence about students’ achievement of a particular module’s outcomes) should be carefully considered. Some competencies could be measured effectively with technology. This becomes even more important at a university that has large class sizes like UP. Whichever format the assessment takes, the problems posed have to address the creative problem-solving skills students will need to thrive in the future. Assignments and assessments after class provide further opportunities for students to consolidate their knowledge and organise it into meaningful hierarchical patterns.⁶⁰

To address this phase of learning, the PBL team made use of traditional quizzes in the form of CBTs, but we also introduced a computer game and an escape room.

3 3 4 Computer game

This part of the contribution aims to promote a better understanding of the benefits of gaming in higher education. In order to achieve this objective, the authors will first introduce our game *Saving Calisto: Two Presidents and a Grudge*, then motivate the benefits of gaming according

59 UP Department of Education Innovation “Teach and Learn the UP Way” 4–7 <https://www.up.ac.za/media/shared/391/pdfs/teach-learn-up-way-2020.zp184675.pdf> (last accessed 2021-11-27).

60 As above 5–6.

to gamification theory in general. Thereafter, we turn more specifically to how our student body, predominantly made up of Generation Z, benefits from our game. We do this through the lens of gamification theory and generational theory.

In 2020 the PBL 320 team scripted, produced and piloted the computer game *Saving Calisto: Two Presidents and a Grudge* with the assistance of Dennis Kriel of the Department for Education Innovation as lead animation designer. The game was intended to be part of the “consolidation” phase of our online offering and was designed specifically to place the students in the position of a legal advisor in order to assess their understanding of the work covered in the “engage” phase of the lecture as well as to introduce them to the reality of what they might experience in the workplace. The student adopts the role of an advisor to a newly elected woman president who is faced with a potential biochemical attack by an opposing state with which her country has a strained history. The entire story takes place in a war room and the characters are designed to represent people usually found in such a room.

The reasons for selecting a video game to form part of our consolidation phase as a mode of self-assessment was inspired by the literature on the benefits of gamification theory and digital game-based learning theory in teaching,⁶¹ in combination with generation theory. The benefits, which will be discussed in this part of the chapter, complement the way in which students of Generation Z learn.⁶² At this point, it is beneficial to discuss some core gamification definitions that will be employed by the authors below. According to Ilaria Caponetto, Jeffrey Earp and Michela Ott the term “gamification” means the application of gaming elements in a non-gaming environment to enhance the experience of those involved in the gaming.⁶³ “Digital game-based learning theory” is promoted as a theory that underscores the value of employing digital games for educational purposes rather than using mere stand-alone applications.⁶⁴ The PBL 320 computer game qualifies as a “serious game”. “Serious games” are the

61 Brougère *Jeu et Education* (1995); Egenfeldt-Nielsen, Meyer and Sorensen *Serious Games in Education – A Global Perspective* (2011); Aldrich *Learning by Doing: A Comprehensive Guide To Simulations, Computer Games, and Pedagogy in e-Learning and other Educational Experiences* (2005); Connolly, Boyle, MacArthur, Hainey and Boyle “A Systematic Literature Review of Empirical Evidence on Computer Games and Serious Games” 2012 *Computers and Education* 661.

62 See part 2 of this chapter for insight into the learning preferences of Generation Z and generational theory.

63 Caponetto, Earp and Ott “Gamification and Education: A Literature Review” 2014 *European Conference on Games Based Learning* 50.

64 Egenfeldt-Nielsen *et al* (2011).

category of computer games that have entertainment characteristics but are purposefully built for education or training.⁶⁵

Brianno Collier and David Shernoff make the case for the suitability of video games in higher education.⁶⁶ These scholars highlight the importance of engagement in learning.⁶⁷ Collier and Shernoff motivate the argument that video games should be approached as a distinct mode of conveying information,⁶⁸ as opposed to mainstream educational media such as books and videos, because of the increased level of interactivity.⁶⁹ Richard van Eck also reflects on engagement as an advantage of gamification.⁷⁰ He points out that the reason why games can be effective learning tools is not simply because of what games are, but also because of what specific games embody and what learners are actively doing when playing the game.⁷¹

The authors will highlight the benefits that were particularly appealing to the PBL 320 team when designing and developing *Saving Calisto*. The narrative of *Saving Calisto* is designed to be educational, engaging and somewhat relatable to ensure that students remain captivated by the developments in the game without losing the point of the educational goal. A major challenge lecturers face is getting students to engage with the subject matter in order to deepen their understanding and highlight how the knowledge they acquired can be applied. This game was designed in response to this challenge and the gaming format catered to this as simulation games offer an excellent opportunity to heighten engagement and achieve these goals.⁷² These aims are achieved partially by allowing the students to fail to enable them to learn from their mistakes.⁷³ The game also makes learning fun by incorporating emotions and elements such as surprise.

65 Younis and Loh “Integrating Serious Games in Higher Education Programmes” paper presented at Academic Colloquium 2010 https://www.researchgate.net/publication/236975228_Integrating_serious_games_in_higher_education_programs (last accessed 2022-09-30).

66 Collier and Shernoff “Video Game-Based Education in Mechanical Engineering: A Look at Student Engagement” 2009 *International Journal of Engineering Education* 308.

67 As above.

68 As above.

69 As above.

70 Van Eck “Digital Game-Based Learning: It’s not Just the Digital Natives who are Restless” 2006 *EDUCAUSE Review* 16.

71 As above.

72 Ding, Guan and Yi “Game-Based Learning in Tertiary Education: A New Learning Experience for the Generation” 2017 *International Journal of Information and Education Technology* 148, 149.

73 As above.

Caponetto *et al* explain that game play has a multitude of benefits, not least in that it helps inspire students to engage with the work.⁷⁴ Incorporating gaming into the learning process sparks the interest of students and prompts them to engage in a new, but also somewhat familiar way, with work that they may perceive as tedious or complex.⁷⁵ Gaming ultimately makes learning more attractive, captivating and effective.⁷⁶ Game play also offers a creative online environment in which students can be prepared for the future workplace that increasingly makes use of technology.⁷⁷ Students belonging to Generation Z are likely to work in technology-filled workplaces; therefore we must match their probable experience to less traditional teaching approaches.

Gábor Bíró points out that one of the benefits of gamification as a learning theory is that gamification facilitates diverse learning paths.⁷⁸ The PBL 320 game incorporates diverse learning paths by not only including main objectives or goals in the form of questions at the end of each level, but also incorporating smaller goals (questions) throughout the level that influence the pathway taken by the student in the game. As discussed in part two of this contribution, the authors are cognisant of the learning preferences of Generation Z who make up a large portion of our student body, and gamification theory supports and offers a different medium to be employed in the consolidation phase apart from quizzes. The shorter attention spans of Generation Z⁷⁹ are appealed to through the game by including smaller goals (questions) that students must answer before they can reach the end of the level where they are faced with the main goal (question) of the level.

Dividing the game into smaller units not only keeps students engaged and therefore motivated but also acts as positive reinforcement and builds confidence.⁸⁰ Similar to Bíró, Karl Kapp considers the essence of gamification as not being rooted in the technology employed, but rather in the diverse learning environment in combination with “the system of decisions and rewards all aimed to increase motivation and reach higher

74 Caponetto *et al* 2014 *European Conference on Games Based Learning*.

75 As above.

76 As above.

77 Ding *et al* 2017 *International Journal of Information and Education Technology* 148.

78 Bíró “Didactics 2.0: A Pedagogical Analysis of Gamification Theory From a Comparative Perspective with a Special View to the Components of Learning” 2014 *Procedia-Social and Behavioral Sciences* 149.

79 As above; Graham 2018 *University of Arkansas as Little Rock Law Review* 52.

80 Bíró 2014 *Procedia-Social and Behavioral Sciences* 149.

levels of engagement in the learning process”.⁸¹ Van Eck shares this sentiment and argues that games are effective because of what students learn as they play the game.⁸²

An added benefit of gameplay that we have incorporated into our game is that the can be designed to develop the critical thinking skills.⁸³ Christopher Cheong, Justin Filippou and France Cheong argue that gaming helps students develop problem solving and higher-order thinking skills and thus equips them better for their future workplace.⁸⁴ As Laura Graham points out, the constant use of smartphones by members of the Generation Z cohort impairs their critical thinking skills.⁸⁵ Elias Aboujaoude states:

The more we become used to just sound bites and tweets the less patient we will be with more complex, more meaningful information ... we might lose the ability to analyze things with any depth and nuance.⁸⁶

Our game was designed to work with Generation Z and their short attention span, but it was also designed to encourage and develop critical thinking skills, as demonstrated below.

We wanted to show that these two ideas can coexist. By way of an example, the overall theme of the game is the use of force in international law and all questions in the game address this theme in some way. One scenario places the student in the position of deciding whether an issue should be solved through diplomatic channels or whether it is appropriate to use force instead. This situation forces the student to engage with the law of the use of force and to consider when it is appropriate to use force or when diplomatic channels are the more appropriate option. A failure to think about and critically apply the law results in the student losing the game. In real life such a failure can result in thousands of deaths and international liability. As such, although the game is in a highly visual

81 Kapp *The Gamification of Learning and Instruction Fieldbook: Ideas Into Practice* (2013), cited by Biró as above 150.

82 Van Eck 2006 *EDUCAUSE Review* 16.

83 Cheong, Filippou and Cheong “Towards the Gamification of Learning: Investigating Student Perceptions of Game Elements” 2014 *Journal of Information Systems Education* 233.

84 As above.

85 Graham 2018 *University of Arkansas as Little Rock Law Review* 29.

86 As cited by Brouillette *Arts Integration in Diverse K–5 Classrooms: Cultivating Literacy Skills and Conceptual Understanding* (2019) 62.

medium that does not demand much attention from students; they still are required to think critically about their answers.

Serious games promote situated cognition.⁸⁷ The principle of situated cognition provides that learning that occurs in “relevant” and meaningful context is more effective than learning occurring outside such a context.⁸⁸ Returning to the above example, the use of force was chosen as a theme because of its continued relevance in international law and in real life owing to the reality of political tensions potentially boiling over into an armed conflict.⁸⁹ Our game placed students in a “war room” specifically designed to mirror an actual situation in which a president has to decide between going to war or not. The entire game unfolds in this war room. Grounding the game in this room and context was a deliberate choice taken in order to make it more realistic and, thus, meaningful. Losing the game can lead to the loss of thousands of lives because of an unjustifiable war. Virtual lives are at risk, but the hope is that if students are ever placed in a similar situation in their future workplaces, they will be able to recognise that real lives are at stake. Serious games, therefore, are effective because learning takes place in a meaningful learning environment (the game) where learning is both simulated, applied and practised.⁹⁰

The use of gaming is not novel in education,⁹¹ but this initiative is a first for the PBL 320 team. Designing a game that was able to appeal to Generation Z and play to their strengths while ensuring that it has educational value was a valuable experience for the PBL 320 team. We aim to learn from the experience and to employ gaming in our future approach to hybrid teaching and technology. In future, we aim to develop the game to be used as a formal assessment method.

3.3.4.1 *Escape room*

The use of escape rooms in higher education has been shown to significantly increase student motivation and engagement.⁹² Furthermore,

87 Van Eck 2006 *EDUCAUSE Review* 4.

88 As above.

89 For example, Iran and the United States of America came very close to a war in January 2020 when the latter country killed the Iranian general Qasem Soleimani in a drone strike; see “Qasem Soleimani: Strike was to “stop war”, says Trump” *BBC News* 2020-01-04 <https://www.bbc.com/news/world-middle-east-50989745> (last accessed 2021-11-07).

90 Van Eck 2006 *EDUCAUSE Review* 4.

91 As above. See also Cheong *et al* 2014 *Journal of Information Systems Education*; Kapp (2013).

92 Adams, Burger, Crawford and Setter “Can you Escape? Creating an Escape Room

students seem to appreciate the educational value of escape rooms and tend to find completing escape rooms more enjoyable than traditional classroom exercises.⁹³ With this in mind, the PBL 320 team used an escape room as a form of assessment for the first time in 2021. Since all teaching and learning activities took place online under ERT, the escape room was virtual. The escape room was assigned as the consolidation activity at the end of the lecture on statehood and jurisdiction. It was built in Google Forms, a free application available online.

Several principles guided the design of the escape room. First, it is crucial for escape rooms to have an engaging narrative that grabs the student's attention.⁹⁴ The escape room used in PBL 320 challenged the student to find six gems in mysterious locations in order to escape and the student would receive a gem upon answering a question correctly. Second, students received sufficient guidance to ensure that they understand how to navigate the escape room.⁹⁵ Since the input and processing of answers in Google Forms is case sensitive, the PBL 320 team included very specific instructions to each question, for example, that answers should be typed, all in capital letters and that students should be aware of spelling answers correctly. This avoided the potentially frustrating situation where a student types the correct answer but is unable to proceed because of a spelling error or a difference in fonts used (upper case). Third, escape rooms should ideally follow a fixed sequence whereby solving a puzzle unlocks the next one.⁹⁶

The escape room in PBL 320 consisted of several sections (referred to as levels) – each containing a piece of narrative followed by a question that needed to be answered correctly to unlock the next section. If students answered a question incorrectly, the response validation function in Google Forms provided feedback. Fourth, the difficulty level of the escape room needs to strike a balance between challenging the student and not causing excessive frustration or stress.⁹⁷ To this end, the PBL 320 team ensured that the questions were challenging on an intellectual level but that the answers were not longer than a single word. Students enjoyed

to Facilitate Active Learning” 2018 *Journal for Nurses in Professional Development* E1; López-Pernas, Gordillo, Barra and Quemada “Examining the Use of an Educational Escape Room for Teaching Programming in a Higher Education Setting” (2019) 7 *IEEE Access* 31735.

93 Adams *et al* as above E4–E5; López-Pernas *et al* as above 31725.

94 López-Pernas *et al* as above 31724.

95 As above 31732.

96 As above 31733.

97 As above 31724–31725.

this method of consolidation and encouraged creating more in the future, with one student remarking, the “escape room was so amazing. I think it should be done more often”.

In summary, the inclusion of escape rooms in higher education offers an opportunity to assess students in a way that is enjoyable and engaging. The experience of the PBL 320 team has shown that escape rooms can be employed effectively during ERT since they can be built and operated online at no extra cost.

The choice of technology in each of the phases of prepare, engage and consolidate proved to be effective to accommodate, reach and engage with Generation Z.

3 4 Lessons learnt and looking to the future

In conclusion we reflect on lessons learnt, sharing our success rate and looking to the future. Covid-19 forced us to examine our beliefs and practices about facilitating PBL 320 fully online and influenced the choices of the technological tools we used as the team engaged in reflexive activities in facilitating in the ERT environment. The technology used was chosen to fit the specific content and context to make it accessible. The integration of technology, pedagogy and content knowledge confirmed the three central themes identified in the existing TPACK literature base.⁹⁸ The first theme is teaching strategies/methods;⁹⁹ in PBL 320 this includes Powtoons, 2D and 3D videos (animations), games, micro-learnings, narrated PowerPoints, YouTube videos and audio content (MP3/4). The second theme is content representations,¹⁰⁰ the mentioned technological affordances were useful to chunk the learning material. In addition, animations aroused interest, simulations stimulated interest through authentic incident replays, a range of modalities increased understanding and enhanced learning through the use of multiple senses (visual, auditory and verbal learning materials), which in turn enhanced conceptual understandings. The third theme is student knowledge¹⁰¹ – while knowledge of content-specific understanding is an implicit part of both technological and activity structures, the integration of TPACK has supported student engagement, explanations of difficult concepts, scaffolding and making connections, bringing complex case law facts into reality, simplifying abstract principles comprehending abstract

98 Koehler *et al* (2014)

99 As above 108.

100 As above.

101 As above.

international law principles and, it would, enhancing retention. The delivery methods that were adopted successfully neutralised the disruptive nature of Covid-19 as evidenced by a historically high throughput rate as well as positive student evaluations. The paradigm shift from ERT to embracing and re-imagining technology in teaching PBL 320 has resulted in transforming a former high-impact module into a “student favourite” and to producing a greatly improved student success rate.¹⁰²

Reflecting on whether or not the introduction of technological innovation compromised or enhanced the PBL 320 curriculum by improving the learning experience of Generation Z, the authors of this contribution are of the opinion that it enriched our offering and we propose the further use of those innovations that proved successful in developing a hybrid approach. However, contact sessions remain important. As the PBL 320 team look to the future and the hope of resurrecting our lecture halls once herd immunity has been gained, we will keep the technological assistance but will merge what currently is in the “prepare” and “engage” phases into the “prepare” phase. Contact sessions should be employed to engage students in consolidating the content by encouraging interrogation of the content and provoking debate by questioning and by engaging students to meet the challenges raised by the subject matter. We are further challenged to design for the development of higher order thinking skills and student collaboration activities.

In conclusion, the PBL 320 team took steps to understand who we were teaching and the context in which we were teaching. We understood that ERT unexpectedly was thrust upon our students just as it was on us, and we adopted an approach that allowed us to work with our Generation Z students rather than against them. We recognised that they appreciated feedback, communication and organisation, and that they suffer from short attention spans that appreciate visual mediums and organised information. We also recognised that not all students in South Africa have equal access to the virtual space, and we did what we could to ensure that no student was left behind. One student remarked:

From all of my modules, the PBL 320 team provided the best platform for learning and engagement. The entire layout of the module made it incredibly easy to track my progress to keep up to date or catch up when necessary. The

102 Of the 634 students who were enrolled for the examination of 2020, 623 passed. This should be compared to 2019, when 571 students were enrolled for the examination and 470 students passed.

entire system simply worked excellently and I truly think this module should set the standard for online teaching and learning.

This comment is evidence that the team is on the right track and that all the interventions discussed in this chapter are achieving what they are meant to. Our efforts were not in vain as they culminated in PBL 320 achieving its highest pass rate to date and promoting it from the list of UP high-impact modules.¹⁰³

103 As above.

4

ONLINE TEACHING, COVID-19 AND THE LLB CURRICULUM: LOOKING BACK TO LOOK FORWARD

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4 1 Introduction

Any real change implies the breakup of the world as one has always known it, the loss of all that gave one an identity, the end of safety.¹

In March 2020, the fabric of South African society experienced the start of a seismic shift when the government imposed a mandatory lockdown to curb the spread of Covid-19. The higher education sector was not immune to this change as thousands of students were compelled to leave their institutions and resume online learning from home. Similar to other universities, the University of Pretoria introduced emergency remote teaching (ERT), a rapid approach to teaching and learning as a means to ensure that the academic year could be completed remotely. Due to the inherent historical inequalities in South Africa, it soon became clear that “access to online learning [would be] uneven at best and lacking in most instances.”² Predominantly Black and indigent students were forced to continue their studies in the face of dire circumstances, including limited access to laptops, data, network coverage and basic resources such as electricity. Many students, regardless of race, gender and socio-economic status experienced enormous difficulties to cope with their studies due to the psychological distress caused by the pandemic. Often overlooked by university management with tunnel vision on the well-being of students, academics were forced to silently cope with the overwhelming burden of online teaching.

* The views expressed in this paper are my own and do not reflect the opinions and beliefs of Tuks Law Faculty or the University of Pretoria.

1 Baldwin *Nobody Knows My Name: More Notes of a Native Son* (1961).

2 Bekker and Carrim “Education Lecturers’ Perceptions of Organising Systemic Online Teaching and Learning During Covid-19 Pandemic Conditions in 2020 at Two Selected Universities in South Africa” 2021 *Journal of Education* 50.

In November 2021, I was invited by the Deputy Dean of the Law Faculty to participate as a guest speaker in a lecture series focused on teaching and learning during Covid-19. The question I was tasked to address, is the following: “Teaching under Covid-19: Did it compromise or enhance the LLB curriculum using technological innovations such as artificial intelligence?” This paper is my attempt to answer the question. The overall structure of the paper takes the form of four sections. Following this introduction, the second part draws primarily on the CHE Qualification Standard for the Bachelor of Laws,³ in order to provide clarity on the broad purpose of the LLB, the skills law students must obtain to attain the qualification and the resources required to complete the degree. In the following section, I endeavour to answer the core question of this paper by addressing the impact of online education on the LLB curriculum. Finally, the conclusion provides my reflection on teaching in a post-pandemic context.

4.2 The LLB Qualification Framework

The term “information technology” is explicitly referred to in the LLB Qualification Framework. In terms of the framework, LLB graduates must be able to “access information efficiently and effectively; and use technology as a tool to research, organise, evaluate and communicate information”.⁴ It states further that, “IT resources are available to enable graduates to achieve the purposes of the LLB qualification.”⁵ The objective of the LLB qualification is not only to equip graduates with the skills required to discharge their “professional duties efficiently”, but encompasses a rather momentous undertaking: to produce a legal profession capable of building a society steeped in the values of the broader democratic constitutional project.⁶ These values include human dignity, equality and the advancement of human rights.⁷ Thus, in light of this significant purpose, it is to be expected that the LLB qualification confers critical thinking skills on graduates who are cognisant of the specific societal context in which they find themselves in.

Fostering critical thinking is closely linked to the type of assessments imposed on law students as I will argue later in this article. For now, it is important to briefly discuss assessment as referred to in the Qualification

3 Council on Higher Education (CHE) “Qualification Standard for the Bachelor of Laws (LLB)” May 2015 (hereafter referred to as the “LLB Qualification Framework”).

4 As above 10.

5 As above 12.

6 As above 7.

7 As above.

Framework which requires the implementation of a variety of formative and summative assessments throughout the duration of the LLB degree.⁸ Specific assessments are not prescribed, but several examples are listed which include written and oral assignments, tutorials, essays, dissertations, moot courts, examinations, tests and multiple choice questions (MCQs).⁹ The Qualification Framework emphasises that an adequate standard of teaching and learning resources, are made available to ensure the effective implementation of these assessments.¹⁰ In the context of the topic of this article, “e-resources” and “IT resources” are included as particular resources necessary to meet the objectives of the qualification.¹¹ Academic staff are also expected to provide “regular and constructive feedback” so as to guarantee that graduates attain the “problem-solving, research, literacy and communication skills” envisaged in terms of the LLB degree.¹² As a final point, it is worth noting that students should be subjected to “meaningful assessment” in terms of the Qualification Framework.¹³ The meaning of this concept is not explained anywhere in the text of the document. Therefore, it is submitted that this term be interpreted in light of the broader purpose of the LLB qualification. As noted above, it is envisioned that LLB graduates contribute to the crucial goal of transforming South African society into one immersed in the values of equality, dignity and the advancement of human rights. This suggests that LLB students should ideally be exposed to assessments meaningful enough to develop the critical skills required to meet the latter objective. However, as discussed in the next section, the road to achieving the purpose(s) of the LLB qualification becomes very difficult or even unattainable for students who are unable to access the necessary teaching and learning resources required to complete the degree.

4 3 Online teaching during the pandemic: The impact on the LLB curriculum

In this section I engage primarily with two studies documenting respectively how students and lecturers experienced online teaching and learning during the pandemic.¹⁴ Furthermore, I draw on my own experience as

8 As above 12.

9 As above 15.

10 As above 12.

11 As above.

12 As above.

13 As above.

14 See Bekker and Carrim 2021 *Journal of Education* 48–66; and Pillay, Khosa, Campbell, Nyika and Sheik “African Female University Students’ Experiences of Online Education at Home During the Covid-19 Pandemic” 2021 *Journal of Education* 31–47.

a lecturer involved in online teaching at UP's Faculty of Law during the height of Covid-19.

As is now a well-known fact, South Africa went into lockdown on 23 March 2020 to curb the spread of Covid-19.¹⁵ Students across the country returned to their homes from where they were forced to continue their education via a virtual platform.¹⁶ Many students, irrespective of race, class or gender were psychologically impacted by the sudden disruption in their daily routine, as well as the imposed isolation and physical distancing. A range of emotions were widespread among students, including anxiety, worthlessness, hopelessness, fear, and loss.¹⁷ I noticed the damaging emotional impact of Covid-19 on my students who, almost on a daily basis, communicated that they were not capable of submitting their assignments on time (or at all) due to debilitating anxiety disorders. Their emails were usually accompanied by a medical report confirming a diagnosis of anxiety or depression. The detrimental psychological effect of the virus seemed to transcend race, class and gender, as far as I could tell.

However, socio-economic background, which may often intersect with race, played a key role in students' experiences of online teaching and learning as is elucidated below. It has been suggested that material conditions have a direct bearing on the learning experiences of students.¹⁸ Ansurie Pillay, Martha Khosa, Bridget Campbell, Nicholas Nyika and Ayub Sheik studied the online education experiences of a group of African women during the pandemic.¹⁹ Several of the students in the study identified deficient access to material resources as a factor which negatively impacted on their online learning experience. In particular, access to network coverage, data and electricity determined the extent of the students' participation in online teaching and learning.²⁰ As a result of sporadic network coverage and unstable internet connections, students often missed online lectures, could not check emails on a regular basis and failed to submit their tasks on time.²¹ Regular power outages also resulted in a negative learning experience as some of the participants described "[living] without electricity for three days" as a normal occurrence.²²

15 Pillay *et al* as above 32.

16 As above.

17 As above 34.

18 As above.

19 As above.

20 As above 37.

21 As above.

22 As above.

The issue of data “running out” due to the numerous modules students were required to engage in, also posed a significant hurdle to a successful online learning experience.²³ Due to their disadvantaged backgrounds, the participants could not afford travelling to public libraries or internet cafes in order to seek out alternative methods when resources at home left them in the lurch.²⁴ In light of these findings, the study concluded that the marginalised socio-economic status of the participants had a detrimental impact on them academically.²⁵ Seeing that these students are exclusively Black; race and socio-economic status thus became intersecting factors which fundamentally informed the participants’ experience of online teaching during the pandemic.

The authors’ findings correspond with the informal observations I made with regards to my students’ experience of online education. White students rarely failed to submit a task due to a lack of access to data, electricity or poor network coverage. The obstacles to online teaching and learning that the latter cohort of students faced, were almost always psychological in nature. In comparison, most complaints about resources, such as an inadequate electricity supply, data running out and deficient laptops stemmed from Black students.²⁶ Therefore, based on recent research,²⁷ and also drawing on my own engagements with students throughout the last two years, it is undeniable that predominantly Black, indigent students experienced limited access to physical and e-resources during the pandemic. Although several universities, including UP, provided laptops to underprivileged students, the difficult socio-economic circumstances at home for many Black, poor students also contributed to a negative experience of online education for these students.²⁸ Therefore, if one adopts resources as a measure that has an impact on how online education is experienced,²⁹ I conclude that the latter group of students were subjected to a compromised LLB curriculum during the pandemic.

I will now shift the focus to the link between online education and assessments, in particular. Tanya Bekker and Nazir Carrim argue that the

23 As above 38.

24 As above.

25 As above.

26 As a point of qualification: Of course, it is entirely possible that white students at the University of Pretoria suffered from learning constraints due to a lack of material resources. However, I am speaking from my vantage point as a lecturer responsible for my specific courses.

27 Pillay *et al* 2021 *Journal of Education*.

28 As above.

29 Pillay *et al* 2021 *Journal of Education* 34.

quality of online education may have been compromised by ERT, which universities were compelled to adopt during the pandemic.³⁰ In their study which focuses on university lecturers' experience of online education, they note that the primary focus of ERT was to ensure that "learning takes place, no matter what."³¹ For this reason, the urgency of equipping students with the necessary resources to enable them to cope with the demands of online teaching often overshadowed "epistemological access, content and quality of online teaching and learning".³² The authors contend that online access does not automatically translate into epistemological access.³³ In other words, having access to materials online does not mean that students will necessarily acquire a comprehensive conceptual and theoretical understanding of the knowledge in those materials.³⁴ The realisation of epistemological access depends on a variety of factors, including assessment practices and the extent to which students are engaged in knowledge construction.³⁵ A recent study has shown that the transition to online teaching resulted in lecturers engaging less with students than was the norm during the pre-Covid-19 era.³⁶ This finding is troubling since students' engagement in knowledge construction is a vital part of what facilitates their learning.³⁷ In the study performed by Bekker and Carrim note, almost half of the lecturers indicated that they reduced the content of their courses which in turn limited students' opportunities to engage with conceptual and theoretical knowledge through tutorials, debates, additional writing opportunities, and so forth.³⁸ This may have had a detrimental impact on epistemological access.

An additional factor which may have negatively affected epistemological access is the type of assessments preferred by lecturers. Although most lecturers reported that they did not reduce the amount of assessments for online teaching purposes, they admitted to preferring a specific format of assessment during the pandemic, namely MCQs.³⁹ Although MCQs can be utilised as a formative assessment in some instances, it is primarily

30 Bekker and Carrim 2021 *Journal of Education* 50.

31 As above.

32 As above 51.

33 As above 53.

34 As above.

35 As above 54.

36 As above.

37 As above.

38 As above 60-61.

39 As above.

regarded as a summative form of assessment.⁴⁰ Formative assessments such as research essays offer substantive feedback to students, which in turn opens up further opportunities for lecturer-student engagement.⁴¹ This may have a positive impact on epistemological access because this type of engagement leads to a greater chance of knowledge construction taking place on the side of the student. In contrast, MCQs are predominantly product based, meaning that they provide a correct or incorrect answer to a question.⁴² They limit lecturer-student engagement and constrain the potential to provide substantive feedback.⁴³ The utilisation of MCQs as the primary or only form of assessment, may therefore, adversely affect epistemological access.

On the one hand, I empathise with lecturers who chose to employ MCQs as the sole or main type of assessment for their courses. Their decision mitigated the overwhelming burden of online marking specifically and online teaching as a whole during a time when the focus of university management was primarily on students' well-being, to the detriment of lecturers, in my view. On the other hand, the exclusive or primary use of MCQs as a form of assessment is not an effective manner in which to evaluate students' knowledge of the LLB curriculum. I regard the fostering of critical thinking as crucial to the development of knowledge construction. Formative assessment practices, such as writing papers, allow students to engage with each other and their lecturer, which is crucial to developing critical thinking skills and ultimately developing a deep conceptual and theoretical understanding of course content. Consequently, the exclusive use of MCQs coupled with fewer writing opportunities and reduced lecturer-student engagement compromised the quality of the LLB curriculum for all students during the pandemic, in my view.

4 4 Online teaching and the LLB curriculum in a post-Covid context: Some ruminations

The broad purpose of the teaching and learning lecture series has not been only to engage and reflect on teaching and learning using technology during Covid-19, but also to map the way forward post-pandemic. For this reason and as I conclude this paper, I want to take the opportunity to engage with the topic in a slightly different manner. Instead of asking whether online teaching during the pandemic has enhanced or compromised the

40 As above 62.

41 As above.

42 As above.

43 As above.

LLB curriculum using technological innovations, I want us to consider asking a different question, namely: *Has the Covid-19 experience changed us to such an extent that universities are ready to seriously engage with broader societal issues that have been exacerbated as a result of the pandemic, such as the widening gap of inequality in South Africa through the LLB curriculum?*⁴⁴ Chris Brink writes that universities should ask itself two questions about their academic work: “What are we good at?” and “What are we good for?”⁴⁵ The first question is usually understood in terms of academic disciplines that straddle our teaching and research.⁴⁶ The standard response to this question is that we are good at producing research in medicine or law or engineering, for example.⁴⁷ And we measure how good we are through rankings, publications, citations, and league tables.⁴⁸ Another model answer in response to the first question typically relates to the quality of education offered in the faculties of a university, for instance, “We have a good law faculty”. This type of answer is generally backed up by student surveys, important alumni, employment statistics or teacher rankings.⁴⁹

Although many academics believe that the mainstream replies to the former question would suffice as appropriate answers to the latter one, Brink argues that the “good-for question” requires a response that speaks more directly to societal challenges.⁵⁰ For the author, civic engagement should be regarded as a core function of academia, similar to research and teaching. However, he cautions that civil society engagement is not detached from teaching and research, nor does it overlap with teaching and research. Rather, it should be regarded as “orthogonal” to research and teaching: engagement is purposeful in the sense that it is not merely directed at analysing societal issues, but aspires to address them. Brink calls on academics to “... deploy our expertise, the subjects and disciplines that we are good at, in order to be able to give a reasonable response to the question of what we are good for”.⁵¹

44 The World Bank classified South Africa as the most unequal country in the world in 2022. See International Bank for Reconstruction and Development / The World Bank “Inequality in Southern Africa: An Assessment of the Southern African Customs Union” 2022 <https://documents1.worldbank.org/curated/en/099125303072236903/pdf/P1649270c02a1f06b0a3ae02e57eadd7a82.pdf> (last accessed 2022-08-08).

45 Brink *The Soul of a University: Why Excellence is not Enough* (2018) 285.

46 As above.

47 As above.

48 As above 285–286.

49 As above 286.

50 As above 287.

51 As above.

To some extent, the views expressed by Brink align with the Preamble of the LLB Qualifications Framework, which provides that:

[l]egal education as a public good should be responsive to the needs of ... broader society [and] it must produce skilled graduates who are critical thinkers and enlightened citizens ... who are advancing the course of social justice in South Africa.⁵²

This momentous goal is not attainable in a post Covid-19 world, where technology may possibly be viewed as a replacement for contact lectures, in my opinion. Although technological innovation can be used as a tool to enhance the teaching of the LLB curriculum, it is an aid and not a substitute for contact lectures. The fostering of critical, enlightened LLB graduates who are responsive to the needs of our society cannot be attained through technological innovations alone but is significantly increased through the academic engagement offered in contact lectures and the social interaction in the broader campus community that often stimulate intellectual debates. This intellectual rigour – which is only possible through human contact, in my view – can contribute to the solution of societal problems which in turn, shifts the focus to the question: “What are we good for as the University of Pretoria?”

As explained elsewhere in this paper, the deployment of technology during the pandemic has placed a magnifying glass on the inequalities that exists in our student population and has contributed to a compromised LLB curriculum for many Black, poor students in particular. In addition, the harsh reality of online teaching during the pandemic has led to some academics taking some shortcuts which may have compromised the LLB curriculum for all students. Universities, of which UP is a prime example, tend to focus obsessively on the first question that Brinks asks, namely “What are we good at?”, because higher education institutions are consumed with rankings, publications and citations. However, I agree with Brink that more focus should be placed on the second question: “What are we good for?” It is vital that this question be addressed through the teaching of the LLB curriculum, especially in light of the urgent needs of civil society in a post-pandemic world.

52 Council on Higher Education (CHE) “Qualification Standard for the Bachelor of Laws (LLB)” May 2015 7.

5

THE IMPACT OF THE ABRUPT TRANSITION TO ONLINE LEARNING IN THE LAW OF SUCCESSION AS A RESULT OF COVID-19

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5 1 Introduction and background

It was a Thursday morning, on 5 March 2020, when the National Institute for Communicable Diseases confirmed that there had been a suspected positive case of Covid-19.¹ March 2021 marked the beginning of a new normal in South Africa as President Cyril Ramaphosa announced the very first national lockdown which was anticipated to last for only three weeks from 26 March 2020 to 16 April 2020.² The lockdown included measures stipulated in the guidelines for education in emergencies.³ This unexpected announcement led to the sudden need for Universities to find alternative ways of adopting to the “new norm”. UP, in particular, took proactive steps to help ensure that it had a plan of action in place, bearing in mind that the safety and well-being of students and staff alike are paramount.⁴

In this chapter, we reflect on the teaching and learning experience since the dawn of Covid-19 by discussing our experiences with emergency remote (online) learning and how it has impacted us as educators as well as students from different socio-economic backgrounds. We will thereafter discuss how we have, particularly in the second year Law of Succession (ERF 222) core module,⁵ adjusted to the remote teaching and learning experience without compromising the high academic standard of

1 Mkhize “First Case of Covid-19 Coronavirus reported in SA” 2020 National Institute for Communicable Diseases <https://www.nicd.ac.za/first-case-of-covid-19-coronavirus-reported-in-sa/> (last accessed 2021-11-14).

2 “Coronavirus: President Ramaphosa Announces a 21-day Lockdown” *Insession News* 2020 <https://www.parliament.gov.za/storage/app/media/Publications/Insession/2020-09/final.pdf> (last accessed 2021-11-14).

3 Landa *et al* 2021 *International Review of Education* 167.

4 University of Pretoria News “University of Pretoria Covid-19 Information” (2020) <https://www.up.ac.za/coronavirus-updates> (last accessed 2021-11-21).

5 A total of 726 students enrolled for 2020, and 745 enrolled for 2021.

teaching. This will be done by showing how we implemented the flipped teaching approach. The authors will thereafter conclude by providing recommendations in support of a blended learning approach post Covid-19, which has the potential to expand higher education access to a wider population.

5 2 The abrupt transition to emergency remote teaching and learning

The Covid-19 pandemic resulted in severe life changing developments in the country as around the world. When the president announced the state of national disaster,⁶ and the national lockdown respectively, travel was restricted and gatherings of more than 100 people (later reduced to 50) were prohibited in an effort to combat the spread of the disease.⁷ Following the president's announcement, on 17 March 2020, the Minister of Higher Education announced that universities would close until 15 April 2020 for early recess based on the assessment of the course of the virus.⁸ The Minister also instructed higher education institutions to begin preparations for online teaching and learning that may need to be put in place to support the academic programme at a later stage.⁹ Following his announcement, most universities announced their intention to switch to emergency remote teaching and learning (ERTL). In particular, the vice-chancellor of UP, Professor Tawana Kupe, on 3 April 2020,¹⁰ announced that should it not be possible to resume contact lectures when the University re-opens on 20 April, "we plan to continue the academic programme by teaching online until the University's normal functioning can be resumed".¹¹

6 S 27(1) of Disaster Management Act 57 of 2002.

7 Disaster Management Act of 2002: Amendment of Regulations issued in terms of s 27(2). Also see Landa *et al* 2021 *International Review of Education* 169.

8 Manamela "The Minister of Higher Education, Science And Innovation: Statement on Measures to Deal with the Covid-19 Threat in the Post-School Education and training sector" 2020-03-17 DHET 3 https://www.dhet.gov.za/SiteAssets/Media%20Statement%202020/DHET%20Covid-19%20STATEMENT%20FINAL_17%20March%202020.pdf (last accessed 2022-01-11).

9 Pather, Brown and Lawack "An Evidence-Based Approach to Learning and Teaching During the 2020 Covid-19 Pandemic" 2021 University of the Western Cape Repository 18 https://repository.uwc.ac.za/bitstream/handle/10566/6015/learning_and_teaching.pdf?sequence=1&isAllowed=y (last accessed 2022-09-30).

10 This marked the eighth day of the national lockdown.

11 UP "Message from the VC – 3 April 2020" 2020-04-03 https://www.up.ac.za/coronavirus-updates/news/post_2885657-message-from-the-vc-3-april-2020 (last accessed 2021-11-21).

However, the move from face-to-face learning to online learning was not entirely new for some South African Universities. The year 2015 saw South African higher learning institutions come to standstill as students embarked on the fees must fall movement to revolt against what they experienced as a colonised educational system.¹² As such the Fees-Must-Fall movement gave us a glimpse of what the future of teaching and learning will eventually become. Thankfully, teaching and learning on an online platform was not a foreign concept for universities like UP which, under the leadership of the then newly appointed Vice-Principal: Academic, Professor Norman Duncan implemented blended and online delivery as a strategy in 2015/6 to enable the academic year to be completed and all curriculum to be covered, despite the protest disruptions.¹³

It was clear from then that technological modes of instruction were here to stay although contact educational learning institutions might not have been foreseen the extent to which they will rely on them five years thereafter when the world came to a halt with the sudden disruption of Covid-19 which saw the entire world go into lockdown. Thus, forcing these institutions to find innovative ways of delivering quality and uncompromised education to the students that would still prepare them for the world beyond the university.

Accordingly, the lockdown regulations made face-to-face mode of teaching and learning impossible as it abruptly forced contact universities out of their comfort zone. Inevitably, the teachers were forced to be creative with how they were going to adapt their teaching strategies to a fully online platform. The main goal was to provide support for students to graduate on time as well-rounded, responsible citizens fully prepared for the world beyond university and to ensure that no student is left behind. Internationally, a global survey report revealed that by May 2020, 67 % of higher education institutions had adopted online learning, while 24 % were working on solutions to get there and the remaining 9 % either cancelled all teaching or are unaffected.¹⁴

12 Himonga and Diallo “Decolonisation and Teaching Law in Africa with Special Reference to Living Customary Law” 2017 *PER* 2.

13 Dugmore “UP Shows Strong Adaptability to Online Teaching and Learning – Survey” 2020-07-07 *UP News* https://www.up.ac.za/student-affairs/news/post_2906988-up-shows-strong-adaptability-to-online-teaching-and-learning-survey (last accessed 2022-01-05).

14 Marinoni, Van ‘t Land and Jensen “The Impact of Covid-19 on Higher Education Around The World” 2020-05 International Association of Universities 23 https://www.iau-aiu.net/IMG/pdf/iau_covid19_and_he_survey_report_final_may_2020.pdf (last accessed 2022-09-30).

It was therefore, in particular to South Africa, imperative from the very beginning, not to be ignorant to the different social standings of the students and to ensure that we adopt different strategies to cater for different students from different socio-economic backgrounds. Besides poor road networks, lack of electricity, and low economic status, now more than ever Covid-19 magnified the different social standings of teachers and students alike.¹⁵ It distinguished those that were able to easily adjust to online learning and those that found it difficult due to the lack of resources or other factors such as unfavourable home environments.

The subsequent paragraphs show our response to remote teaching and learning as a faculty and in particular, the ERF 222 team.

5 3 The Law of Succession approach and response to emergency remote teaching and learning

The term ERTL refers to a mode of delivery through which contact and face-to-face delivery has been transferred to usually digital, remote platforms under emergency conditions.¹⁶ Therefore, ERTL is not online learning which is meant to be deliberately and thoroughly planned, designed and developed based on specific pedagogies appropriate for online learning.¹⁷ In other words, the move to an entirely online platform is meant to be temporary in order to address the worldwide pandemic of Covid-19.

In coming up with a strategy, the ERF 222 team had to bear in mind that to survive in today's world of work, students have to be ethical, adaptable, problem solvers, critical thinkers, team players, effective communicators and self-directed learners who are intellectually aware. All of which were well developed pre-Covid-19 pandemic. Moreover, UP's teaching and learning model also encourages optimal use of today's technology.¹⁸

In the pursuit of not wanting to leave any student behind, the ERF 222 team implemented an asynchronous class approach that runs on a more

15 Mukuna and Aloka "Exploring Educators' Challenges of Online Learning in Covid-19 at a Rural School, South Africa" 2020 *International Journal of Learning, Teaching and Educational Research* 136.

16 CHE "Quality Assurance Guidelines for Emergency Remote Teaching and Learning and Assessment During the Covid-19 Pandemic in 2020" 2020 <https://heltasa.org.za/wp-content/uploads/2020/12/CHE-quality-assurance-guide.pdf> 1.

17 Council on Higher Education (CHE) (n 15) 1.

18 University of Pretoria "Teach and Learn the UP Way" 3 <https://www.up.ac.za/media/shared/391/pdfs/teach-learn-up-way-2020.zp184675.pdf> (last accessed 2021-11-21).

relaxed schedule with students accessing class materials during different hours and from different locations. We thus executed the following measures in order to adapt to a completely online platform of teaching and learning:

- (a) Uploading pre-recorded lectures in different formats and platforms for better accessibility (that is, whitelisted YouTube videos, PDF, PowerPoint presentations and MP3 voice recordings). This took into consideration, student's accessibility to data. The work that is covered in all these formats is the same although each platform had its own data consumption. Therefore, students had a variety of formats to choose from in terms of what they found what works best for them.
- (b) The lecture notes are compiled in a more detailed manner to accommodate students who may not have the textbooks. The study guide specifically assures students that the study notes are enough to equip students with assessment readiness. Additionally, UP's OR Tambo Library granted students access to the prescribed e-textbook.
- (c) Tutorials are posted on Fridays at 8am, and students have until Wednesdays at 8pm to submit via Turnitin. These tutorials were aimed at granting the students the opportunity to practically engage with the work in order to enable the students to better prepare themselves for assessment purposes.
- (d) We held live question and answer (Q&A) Blackboard Collaborate sessions closer to assessment dates. This allowed students to clarify any confusions or difficulties with the work prior to writing the assessment; specifically tests and exams.
- (e) Assessments are open book. We have thus ensured that questions are more high level and open ended to allow students to critically engage, and apply the work to the set of facts provided (problem based and application-based questions). This includes for example, calculation of intestate succession shares to beneficiaries, the calculation of collation, identifying and drafting provisions of wills as well as administration of the deceased's estate. These types of questions allow students to engage with ERF 222 in a more practical manner. We encourage students to apply what they are taught to real life situations that they are exposed to on a regular basis.
- (f) More time is allowed for students to complete tests and assignments as we are aware of some challenges such as electrical cuts, poor connectivity, travel time to internet cafes and technical glitches (not a closed list) that may delay the students' ability to submit work on time.

In addition to the above measures, we have actively employed the hybrid flipped-learning model – Teach & Learn the UP Way, which worked successfully even when the face-to-face teaching component could not

take place and all learning had to happen remotely. The model requires students to prepare for lectures, complete pre-lecture assessments and engage in class. To prepare for class ahead of time, students were initially provided with a semester plan that entailed a breakdown of topics to be covered weekly. In their study guides, each of the topics as per the syllabus themes, provided study objectives which students must strive to achieve as well as the relevant sources to read. Thereafter, every Monday morning, students were reminded of the weekly plan.

Therefore, students were able to prepare before class by consulting their study material in the forms of textbook, case law and legislation, ahead of time and engaging with the work prior to the actual class by answering the study objective questions listed in the study guide.¹⁹

Study objectives

After studying this study unit theme, you should be able to:

1. Explain and distinguish between the abovementioned terms
2. Determine in a simple problem or clause when the estate “falls open” (*delatio*) and *dies cedit* (vesting of rights) thus occurs (see examples in slides)
3. Determine in a given problem when *dies venit* (moment when acquired right becomes enforceable) occurs (see example in slides)
4. Evaluate what a beneficiary acquires at most immediately upon the death of the deceased (slides)
5. Evaluate who the “owner” (who is entitled to the assets?) of the assets is immediately upon the death of the deceased
6. Critically evaluate whether vesting of rights take place automatically or whether beneficiary has to adiate/accept the benefit first
7. Determine the moment of vesting in the event of intestate succession

¹⁹ See the box with an example of the type of study objective questions that students were expected to attempt prior to a scheduled lecture. The same questions were to be revisited by the students at the end of the study unit to measure their understanding of the work.

This was aimed at promoting independent thinking on the part of the students. The research about effective teaching and learning highlights the advantages of preparing for class: “Prior knowledge can reduce the attentional demands associated with engaging in well-learned activities, and it can facilitate new learning”.²⁰

Following preparation, students engage with the actual work by attending weekly pre-recorded classes, at their own convenience. Following the lecture, the students often asked questions on Blackboard discussion forums. The study notes or lecture slides have practice activities to further enable students to work on the questions and ask if there is any confusion. This also helps the lecturers to gauge the level of understanding by the students so that we can know what we need to focus on to strengthen students’ understanding of the work. Although we responded to most questions asked on the blackboard discussion forum, we saw students engage with and attempt to assist each other to better understand the work. Research has found that when students explain the work to their peers, it enhances their own understanding and retention.²¹

A definite and calculated “consolidate” phase was implemented. “Tutorial” questions that were problem-based were posted on ClickUP on a weekly basis. This enabled students to revise all the provided material by *applying* the theoretical principles stemming from common law, legislation, seminal case law and academic literature such as textbooks and journal articles, to a complicated set of facts on the week’s work.²² These questions were discussed by students on the Discussion forum and students were encouraged to submit their answers to us whereby we could ascertain whether they understood the subject-matter. Virtual Collaborate Blackboard sessions were scheduled to provide feed-back and to review certain aspects of the work. Recordings of such sessions were made available to those students who could not attend due to the high data usage such sessions required. A typical tutorial-type question on ERF 222 and posted on ClickUP read as follows:

20 National Academies of Sciences, Engineering, and Medicine *How People Learn II: Learners, Contexts, and Cultures* (2018) 10.

21 Also see Y Terada “Why Students Forget—and What You Can Do About It” (2017) https://www.edutopia.org/article/why-students-forget-and-what-you-can-do-about-it?utm_source=facebook&utm_medium=socialflow (last accessed 2022-01-05).

22 See “tutorial” questions below.

You are a candidate attorney. Your principal requests you to take his 4 o'clock appointment with client T, who wants a will prepared for him. During the consultation, T indicates that he intends to bequeath his immovable property to his children and the residue of his estate to his grandchildren, B and C. He provides you with a typed list of assets constituting this residue, wherein he clearly indicates the specific portion of the residue allocated to each grandchild. He wants you to keep this list on file and to refer to it in the will. Analyse the legal position and indicate how you will approach this request in order to ensure that the specific bequest to the grandchildren is valid. Fully substantiate your answer. [15]

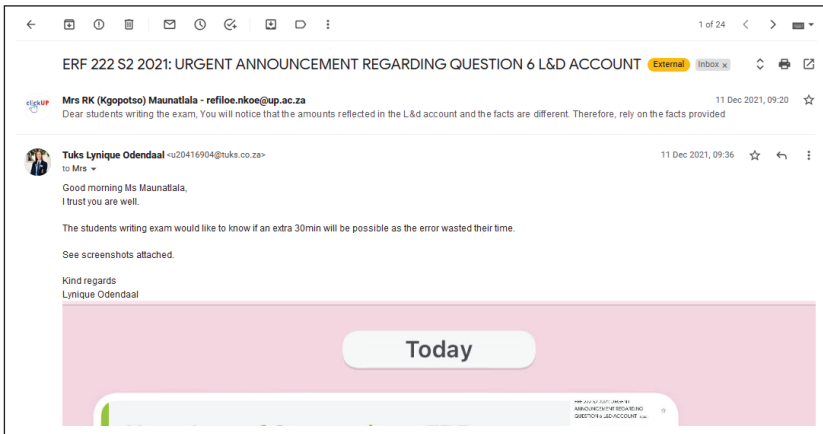
This tutorial question achieves the following:

- Students are exposed to a problem-solving exercise.
- They are expected to produce a well-written, coherent answer aiming to improve language proficiency. This would include a formal (language), as well as a substantive component, namely a clearly structured treatment of the topic(s), persuasiveness of arguments and correct use of authority.
- In this specific tutorial, the student has to identify the relevant legal principles.
- The student has to do research and identify and select the most relevant sources and research methods likely to assist in solving such legal problems and generate reasoned solutions and advice to the client(s).
- It enhances inquiry-based learning, enabling students to think, communicate and justifying their arguments. It stimulates critical thinking and creates opportunity to develop a deeper understanding of concepts.
- Constructive feedback was later given during a virtual Blackboard Collaborate session.

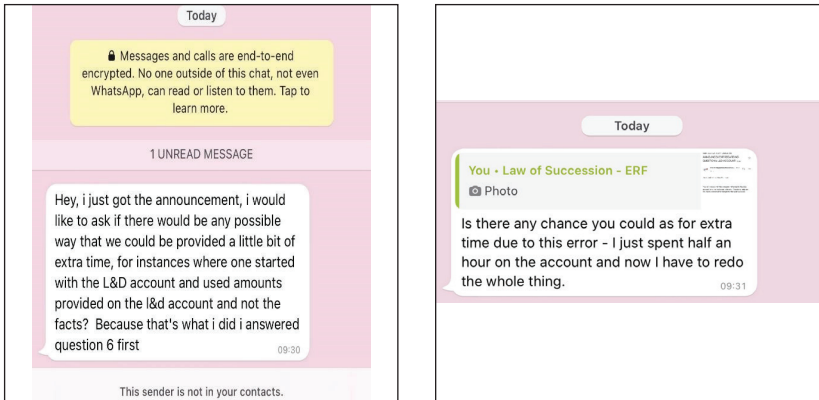
Another important aspect that is as important as learning, is the eradication of the feeling of loneliness among students due to the remote learning. Hence it is pivotal to ensure that students feel supported and do not feel overwhelmed by the remoteness. So, students are given the platform to interact with the teachers on ClickUP via the discussion board (they could choose to remain anonymous) and via email to which we respond as soon as practically possible but not later than 24hours. The class representative also facilitated an ERF 222 WhatsApp group in terms of which students

felt a sense of a community. We shared the WhatsApp link and details on ClickUP in order to enable students to have access to the official WhatsApp group that was authorised by their lecturers. Thus, students were made aware of the authorised WhatsApp group and as such would know which other ERF WhatsApp groups were unauthorised (if any). As a result, we have not received any complaints regarding the sharing of false information on the official group nor any other groups created by students (if any).

The class representative was the overseer of the WhatsApp group. The group was an open group that allowed all students in it to contribute to the group. Any queries, especially those that concerned majority of the students, were asked on the group and the class representative would send us (lecturers) the screenshot of or simply relay the concerns of the students to us. See the following screenshots as an example:



Class representative communicating student queries from the official WhatsApp group



Because of the speedy reception of messages on WhatsApp, we sometimes requested that the class representative relayed important messages on the WhatsApp group in case students may miss the announcements on ClickUP. Students were, furthermore, equipped with the appropriate analytical, application and practical skills to prepare them for the professional field.

In order to equip students even further with the necessary application and practical skills to prepare them for the professions, our plan for 2022 is to incorporate a practical exercise on the drafting of a basic will. This requires them to apply the theoretical principles practically, something that they will be expected to do very early in their professional careers. It will read as follows:

GROUP EXERCISE

Draft a fictitious, valid, joint will by making use of your own facts and imagination. The parties (testators) should, however, make provision for the massing of their respective estates or portion(s) thereof. You can choose the method for achieving this purpose. Secondly, provision must be made for the situation should the testators die simultaneously. You must address the situation where they are, for example, survived by their minor children under such circumstances. You can also apply other testamentary institutions in the allocation of assets (especially where you have made use of partial massing of estates, as discussed in class).

Allocation of marks:

- General **structure** of the will. (10)
 - **Formulation/Drafting** of the essential testamentary institutions as required. (20)
 - Other testamentary institutions applied. (5)
 - **Validity** of the will. (5)
 - **Language** and **spelling**. (5)
 - Bibliography (sources consulted). (5)
- [50]**

The study guide emphasises the student's responsibilities with regard to making a success of emergency remote learning, and in particular, to complete the module successfully by stating the following responsibilities:

- a) Do prior reading in preparation for lectures.
- b) Listen to the narrated PowerPoint slides.
- c) Study the relevant case law and other study material, including relevant legislation.
- d) Work through the provided Study Objectives.
- e) Work through the tutorial exercises and participate in tutorials.
- f) Ask us when you don't understand something.
- g) Work throughout the semester, study hard and complete the required assessments.
- h) Manage your time effectively. The number of credits allocated to a module give an indication of the volume of learning required for the completion of that module and is based on the concept of notional hours. Given that this module carries a weight of 15 credits, it follows that you should spend an average of 150 hours of study in total on the module (1 credit= 10 notional hours).

This includes time for lectures, tutorials, reading the textbook and other prescribed material, assignments, preparation for tests and tests themselves.

This means you must spend approximately 10 hours per week on this module for the 14 weeks it is presented.

Lastly, with regard to curriculum transformation, the four UP curriculum drivers²³ will be incorporated and actively pursued, namely responsiveness to social context, epistemological diversity, renewal of pedagogy and classroom practices as well as an institutional culture of openness. Renewal of pedagogy and classroom practices that involves re-imagining and embracing technological innovation has been discussed above. With regard to responsiveness to social context, renewed emphasis will be placed on the nature, philosophy and principles of ERF 222 within the South African constitutional and social milieu. The need for and importance of such an approach is evident from judgments by the Constitutional Court in recent times. Sufficient for purposes of this contribution is the following *dictum* by Mhlantla J in *King v De Jager*.²⁴

[69] Therefore, the principle of freedom of testation is at the heart of testate succession and cloaked in constitutional protection by virtue of the rights to property, dignity, and privacy. Freedom of testation thus informs public policy and carries significant weight in any analysis of what public policy, as infused with our constitutional values, dictates.

[70] However, one cannot ignore that there are competing values at play. Our Constitution also envisages and promises a democratic State based on “human dignity, the achievement of equality ... non-racialism and non-sexism... and the supremacy of the Constitution. Furthermore, it protects all persons from direct or indirect unfair discrimination, both in the public and private sphere. It is therefore evident that the common law position – where out-and-out disinheritance clauses in private wills have seemingly been out of reach of the courts’ powers to declare them unenforceable on public policy grounds – cannot be maintained. *This is because, in a constitutional dispensation based on the supremacy of the Constitution, we are enjoined to recognize both freedom of testation as well as recognize the principle of non-discrimination even in the private sphere.*²⁵

Victor AJ,²⁶ elaborated with the following perspective:

[168] Unless there is a *transformative constitutional approach* taken by courts when equality rights are affected, the historical and insidious unequal distribution of wealth in South Africa will continue along various fault lines

23 UP Faculty of Law “Curriculum Transformation Framework (S4466/17 – amended)” <https://www.up.ac.za/faculty-of-law/article/2291240/curriculum-transformation-framework> (last accessed 2022-09-21).

24 *King v De Jager* 2021 (4) SA 1 (CC) paras 69-70.

25 As above, emphasis added.

26 As above.

such as in the case, gender. A more robust understanding of substantive equality within our constitutional framework is necessary. Public policy is now deeply rooted in the Constitution and its underlying values.²⁷

As lecturers we will make a continued effort to help students to: Explore the discipline/field, understand the legitimate ways of adding to knowledge in the field of ERF 222; question theory and practice; make connections; see patterns; apply flexibly what is learnt within specific contexts or in solving specific, open-ended problems; and generate new questions and new knowledge.²⁸

5 4 Teaching during Covid-19: Did it compromise or enhance the LLB?

A recent data survey conducted by UP's Department for Education Innovation shows that the vast majority of lecturers and students at the institution managed to move relatively seamlessly into remote online teaching and learning mode.²⁹ The following section reflects on the advantages and disadvantages or challenges that we have experienced and observed since the move to emergency remote (online) teaching and learning.

5 4 1 Advantages

5 4 1 1 Student perspective

Online learning offers a number of advantages including, flexibility whereby students can access the work at their convenience, in their own time and engage with it at their own pace. In ERF 222, we uploaded the lectures twice a week on Mondays and Wednesdays respectively. However, students downloaded the work at their convenience.

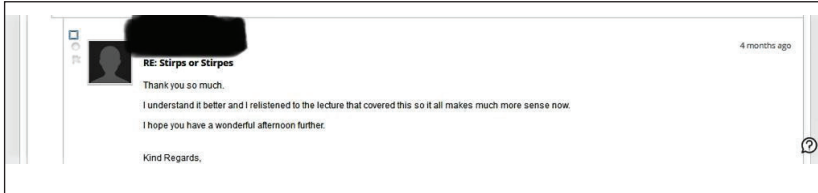
Students, moreover, have the advantage of being able to replay the narrated lectures as they please. The screenshot below is from one of the students who was struggling to grasp the work, and in particular, the concept of *stirpes* from intestate succession law. After responding to their query, the student also highlights that relistening to the pre-recorded

27 As above, emphasis added.

28 UP Policy on Teaching and Learning: Document number S 4463/16.

29 Dugmore "UP Shows Strong Adaptability to Online Teaching and Learning – Survey" 2020-07-07 *UP News* https://www.up.ac.za/student-affairs/news/post_2906988-up-shows-strong-adaptability-to-online-teaching-and-learning-survey (last accessed 2022-01-05).

narrated lecture helped her get a better understanding of the concept. A number of other students (student feedback survey) also mentioned that being able to relisten to the lectures helped clear any misunderstandings of the work and helped improve their understanding. Pre-Covid-19, if a student missed a class, it was their responsibility to catch up with the work by asking notes from their classmates as lectures were not recorded nor were the lecture slides uploaded on ClickUP.



Another noticeable advantage that is a result of learning online is the equipping of students with computer and electronic literacy, time management and organisational skills. Studying remotely means students have to learn to manage their time. When students attend face-to-face classes, it is easier to attend class and thereafter go home to focus on other responsibilities. However, with studying from home, students have to learn to designate time for attending classes and studying for all modules in the comfort of their home, while expected to assist with other home responsibilities. Time management and organisational skills that students gain from learning online will definitely be an advantage in the legal profession. Our responsibility is to foster an environment in which students will be ready for the world beyond the University.

The fact that students benefited from our approach is evident from the following feedback received during 2020 and 2021 respectively:

ERF Feedback 2020: Student representative

Covid-19 has impacted the daily lives of so many and thus it is no surprise that this impact effected the university's mode of learning towards the student body. In respect of the module ERF, Professor van der Linde and his team [Ms. Refiloe Maunatlala, Ms. Elisa Rinaldi and Mr. Kholofelo Thutse] made this year and the academic success thereof possible. Firstly, the general administration and quality of the lectures were the highlights of the academic year, as the lectures were always clear and easily accessible. In my experience as class representative for this module, I have found that majority of the student body have found this course to be organised in such a way that it helps the students understand not only the work, but the practicality thereof. Additionally, the lecturer ensured that lectures were provided in various formats to consider all students and their respective data restrictions. Even more so, the tutorials that were provided granted students the ability to critically engage with the content and prepare for application-based questions that appeared in the tests and examinations. Professor van der Linde was prompt in addressing student enquiries and issues, and he was helpful when students struggled with the work. Moreover, marks and results were provided in a fair amount of time that allowed the ERF students to plan their studies and address any academic issues accordingly. Finally, the overall feel for Professor van der Linde and the module itself was a positive one. As class representative I can affirm to the fact that the communication between the students and the ERF team was always open and safe for students to voice their concerns. With the help of Professor van der Linde, the ERF students were able to not only finish the year but finish the academic year on a positive note.



University of Pretoria

ENDQ3_MIDSEM2_Student Feedback on Online Teaching Survey_2021

Course: erf222_s2_2021: ERF 222 S2 2021
Instructor: RK (Kgopotso) Maunatlala *, E (Elisa) Rinaldi, LK (Legodi) Thutse
Response Rate: 123/788 (15.61 %)

22 - Elaborate on which topics, materials, online activities and assessment tasks that contributed to your learning and development in this module.

Response Rate	32/788 (4.06 %)
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- In the Lecture Theme on Intestate succession, the examples that were given in the PowerPoint slides to indicate the family tree contributed to my development in this module.
- Understanding intestate succession and how the different calculations work. Understanding the introduction and basics of testate succession in law in South-Africa and how wills work.
- All of it.
- All of them. My favourite topic that we covered so far was the intestate succession. I felt like this part of the work was asked in a practical manner which made me feel like I was properly able to apply my theoretical knowledge to the question.
- Submission of weekly tutorials aided in preparation for the semester test, by exposing students to the type of questions that could be asked, as well as provided guidance on how to answer such questions.
- The tutorials are a helpful way to practise engaging with the work and helped me get an idea of how the assessments will appear.
- bb collaborate sessions
- I was challenged intellectually through the content and/or activities in this module.
- The clearly typed slides as well as the supplementing audio/video content provided a well-rounded learning experience.
- The live collaborate session and detailed lecture videos.
- The tutorials which promote contextual understanding.

- The tutorials work very well as they make sure you keep up to date with the work and helps you know how to answer questions thoroughly.
- The tutorials are helpful as they show how to answer questions and how to approach the questions which is helpful when doing assessment tasks
- I enjoyed chapter 1 and 2 the most and the lecturer provided platforms to make me understand it even better
- The worksheets assisted in me understanding the work.
- The tutorials overall helped me keep up with and better understand the content
- The requirements of condonation of wills in the high court was something that opened my mind regarding invalid wills
- Testament and intestate succession broadened my learning experience
- The live sessions, tutorials and the lectures in themselves were very beneficial.
- N/A.
- The tutorials.
- I enjoyed the level of engagement that has been facilitated in this module.
- TUTORIALS!!!!
- Tutorials really helped me understand the content.
- narrated presentations, tutorials and live question and answer sessions before assessments helped me learn and understand more.
- By doing the weekly tutorial activities, it really helped me to understand the work better. It also helped to create an expectation of the possibilities of how the questions can be asked.
- Recorded PowerPoint slides
- the narrated videos and tutorials helped make preparation for the tests easier.
- Nothing really contributed to my learning in this module, I do not expect to do well.
- The tutorials and online assignment really helped a lot.

5 4 1 2 Lecturer perspective

Working from home, although a new experience for us, offers flexibility. We were able to prepare lecture notes well in advance according to our own schedule and as such could prepare ourselves for when challenges such as

load shedding took place. Working remotely enabled us to structure our time in such a way that we can prerecord as many lectures as we could well in advance. This also meant, we could make time to listen to the lectures and fix any mistakes if any. This certainly meant that we could always evaluate and improve our teaching strategies and align them with the needs of the students.

Pre-recorded lectures enabled us to be more mindful of time and the concentration span of students. Therefore, we were careful about the amount of information presented for each lecture. The pre-recorded lectures allowed us to ensure that we focus on the study objectives bearing in mind the time constraints of online lecturing.

Emergency remote (online) teaching has made us even more empathetic to the realities and needs of the students. We receive emails from students communicating their struggles with mental health as well as uncondusive home environments for studying. Consequently, these students express their struggle with being able to study or the effect of their mental state on their marks. Therefore, we have become more lenient, empathetic and understanding of students' challenges, especially because the pandemic has been challenging to a lot of students and lecturers alike. We have also partnered with the faculty student advisors to whom we refer the struggling students.

While comfort zones encourage composure and calm, they can also inhibit growth.³⁰ The Covid-19 pandemic has challenged lecturers, in particular, the ERF 222 lecturers, to move away from the comfort zone and to get creative with online teaching strategies while ensuring that no student is left behind. The third driver of the University's curriculum drivers is the renewal of pedagogy and classroom practice. Even with the shift to online teaching and learning, we adopted a new pedagogy and classroom practice. Lectures were presented with the aid of narrated MS PowerPoint slides, which are available to students via ClickUP. In addition, where possible, concepts are given social relevance and context through the use of YouTube videos. A hybrid approach is used to conduct assessments. ClickUP is used for formative assessments, such as assignments, written tests are scheduled for the summative assessments, such as: two semester tests and the final examination. The course has a strong focus on application and problem-solving type questions.

30 Walden University "The Pros and Cons of Comfort Zones Acknowledging and Wisely Deciding when to Embrace and Break Through Boundaries is Critical to Career and Life Successes" (2021) <https://www.waldenu.edu/programs/psychology/resource/the-pros-and-cons-of-comfort-zones> (last accessed 2022-01-05).

A further advantage that we have witnessed is that, when students work online, analytics show us how they are working and we can therefore determine the patterns followed by successful students and the obstacles to student success.³¹

The results from the survey conducted by UP's Department of Education Innovation highlight the concern that the sudden and rapid move to online learning, with no training and little preparation will result in poor user experience that is uncondusive to sustained growth. Accordingly, the ERF 222 team was privileged to attend the E-Learning Professional Development Courses offered by UP's Department of Education Innovation that equipped us with the skills to successfully navigate and utilise ClickUP to the student's advantage.³² See below the table of the 2021 course schedule:

- 31 Kupe "Higher Education Post-Covid-19: 'Online Learning Must Remain a key Component of Teaching Systems,' Writes UP Vice-Principal" 2020-07-24 *University of Pretoria News* https://www.up.ac.za/coronavirus-updates/news/post_2910807-higher-education-post-covid-19-online-learning-must-remain-a-key-component-of-teaching-systems-writes-up-vice-principal (last accessed 2022-09-30).
- 32 Data from a University of Pretoria (UP) survey shows that the vast majority of lecturers and students at the institution managed to move relatively seamlessly into remote (online) teaching and learning mode. The survey found that 47,7 % of lecturers found it "easy" to adapt to remote teaching, while 43 % found it "difficult" and 7 % found it "very difficult". Also, 16,4 % of lecturers surveyed indicated that it was very difficult to maintain the same standards of teaching and learning as with face-to face/ hybrid learning. For more findings, also see Dugmore "UP Shows Strong Adaptability to Online Teaching and Learning – Survey" 2020-07-07 *UP News* https://www.up.ac.za/student-affairs/news/post_2906988-up-shows-strong-adaptability-to-online-teaching-and-learning-survey (last accessed 2022-01-05).

CLICKUP / E-LEARNING CONTACT WORKSHOPS				
Tuesday	2 February 2021	In-Video Assessment (H5P)	Lecturers	09:00 – 11:00
Friday	5 February 2021	Creating Digital Lectures	Lecturers	09:00 – 16:00
Monday	8 February	ClickUP OVERVIEW	Lecturers	08:00 – 13:00
Wednesday	10 February 2021	ClickUP ASSESSMENT Workshop	Lecturers	
Thursday	11 February 2021	ClickUP COLLABORATION Workshop	Lecturers	
Tuesday	16 February 2021	ClickUP ASSIST course	Administrative Staff	08:00 – 12:30
Tuesday	23 February 2021	Trendy Tools for cool lectures	Lecturers	09:00 - 13:00
Wednesday	24 February 2021	ClickUP Grade Centre	Lecturers and administrative Staff	08:00 – 13:00
Thursday	25 February 2021	Turnitin	Lecturers	08:00 – 12:00
Friday	26 February 2021	Turnitin Grading and Feedback	Lecturers	08:00 – 12:00

These courses equipped us with computer literacy skills as well as electronic skills to be able to easily adapt to online teaching. Covid-19 was an uncomfortable but necessary push to teachers advancing themselves with electronic skills that may have been neglected pre-Covid-19.

5 4 2 Disadvantages

5 4 2 1 Ensuring academic integrity

With the move to emergency remote (online) learning, plagiarism and dishonesty have become an even bigger threat. Therefore, it is paramount for us to ensure that students are not cheating and thus maintain academic integrity. We have had to deal with students submitting plagiarised papers. An example of this being what we encountered in 2021, whereby two students submitted the exact answer sheet for semester test two. One of these students submitted their paper via Turnitin while the other claimed to have had technical errors with submitting and thus emailed one of the lecturers her paper. Thankfully, plagiarism detection software like Turnitin scans student papers for plagiarised content.

Upon uploading the students' papers to Turnitin on behalf of the student, the two papers were flagged for plagiarism, with 99 % of their papers being the same. Consequently, students were dealt with in accordance to the procedure prescribed in the UP Plagiarism Prevention Policy.³³

Another way of avoiding plagiarism, especially for online assessments, is by creating large question pools and randomise questions and answers. This should be accompanied by disallowing the option to backtrack. In other words, students are advised to be sure of their answers before answering and moving on to the next question.

We have been intentional in alerting students to the consequences of academic dishonesty and the importance of conducting themselves in an ethical manner. Academic integrity is clearly communicated to the students. Technology has made it easier for students to distribute information on platforms such as social media. As such, we have made students aware of the copyright implications of the work we post.

33 https://www.up.ac.za/media/shared/1/ZP_Files/s5106-19-plagiarism-prevention-policy.zp181077.pdf (last accessed 2022-09-30).

5 5 Other challenges

Hereunder, we briefly discuss some more challenges presented by the move to emergency remote (online) learning. These challenges are those both students and lecturers were exposed to.

5 5 1 Internet connection problems and load shedding

Participating in an online environment requires a technological device, connectivity, data and general computer skills. Despite the University securing free or cheap data for all students and loaning laptops to 1 937 students,³⁴ connectivity and electricity supply remain a challenge for some students.

We have received a number of student emails complaining about the constant power cuts in their areas due to load shedding as well as internet connectivity challenges. Therefore, it was difficult setting assessment submission times that will work favourably for everyone. We, as a result, had to accommodate students in numerous ways including allowing student to make late submissions via email and opening the submission link for longer. Each late submission case was dealt with on its own merits.

For lecturers, internet connectivity challenges and load shedding meant that it took much longer to convert study materials from one format to especially YouTube formats. It also took longer for YouTube videos to be whitelisted due to the backlog that was experienced by the Department of Education Innovation. This meant that the students who preferred using YouTube videos to study had to wait longer than students using other formats for access.

5 5 2 Isolation, loneliness and time consumption

One of the essential benefits of contact (face-to-face) teaching and learning is a sense of community. The impacts of the Covid-19 pandemic and the shutdown it triggered at universities across the world, led to a great degree of social isolation among university staff and students.³⁵ Hence, the disadvantage of remote teaching and learning is that it can be very

34 Dugmore “UP Shows Strong Adaptability to Online Teaching and Learning – Survey” 2020-07-07 *UP News* https://www.up.ac.za/student-affairs/news/post_2906988-up-shows-strong-adaptability-to-online-teaching-and-learning-survey (last accessed 2022-01-05).

35 Filho *et al* “Impacts of Covid-19 and Social Isolation on Academic Staff and Students at Universities: A Cross-Sectional Study” 2021 *BMC Public Health* 1.

lonely for especially first year students who have never been exposed to University setting as well as early career academics. Low physical activity and spending all the time at home has been reported by some students and lecturers alike as being very stressful and lonely.³⁶ For the students, we created a WhatsApp group to grant the students a sense of community. Bearing in mind that in 2020, the second years only experienced the University environment for two months before the president announced the national lockdown in March, their learning experience was also predominantly online. So, the students responded positively to the WhatsApp group which was coordinated by the class representative. It also made it easier for the class representative to communicate the shared concerns of the students to us via email, thus reducing numerous emails.

For the lecturers, we discovered that teaching online was much more time and resource intensive than contact teaching. Being introduced to the recording of narrated lectures was definitely stressful. It took almost an entire day to compile the lecture notes and thereafter narrate the 25-30 minutes lecture. This certainly, took away some of the family time that would ordinarily, pre-Covid-19 pandemic, be enjoyed with loved ones to focus on preparing for lectures. In addition to the timeous preparation of lectures, we were also faced with emails to which we must respond as soon as reasonably possible to avoid panic from students.

The online marking of assessments also took longer than the physical marking of papers. This was dependent on the internet connectivity speed and the load shedding interruptions. Although leniency was exercised from the lectures regarding the extension of submission times, students still expected their marks feedback within the normal two weeks period for tests and one week period for exams. This created a lot of pressure when it came to marking. It was time consuming.

5 5 3 Constant exposure to unfavourable home environments

According to the quarterly employment statistics survey released by Statistics South Africa (Stats SA), the formal non-agricultural sector shed 648 000 jobs in the second quarter of 2020.³⁷ Trauma and mental health was a constant reality for a lot of families with the death of loved ones, loss of jobs and working and studying remotely. Some students

36 Chandra "Online Education During Covid-19: Perception of Academic Stress and Emotional Intelligence Coping Strategies Among College Students" 2020 *Asian Education and Development Studies* 230.

37 Stats SA "SA Loses More Than 600K Formal Sector Jobs During Covid-19 Lockdown" 2020 <http://www.statssa.gov.za/?p=13690> (last accessed 2022-09-30).

communicated being overwhelmed with studying from home, especially, struggling to catch up with all modules that they were expected to and home responsibilities.

5.6 Conclusion

It is without a doubt clear that the Covid-19 pandemic has utterly disrupted the education system as we knew it. The years, 2020 and 2021 have indeed been a learning curve for both students and teachers. Technological innovations such as artificial intelligence have created an opportunity for new ways of teaching and learning. Thus far, it has enhanced the curriculum and should not be frowned upon.

It has been almost two years since South Africa has been on lockdown and thus students studying and learning remotely as they are unable to fully come back to campus for face-to-face classes. Resultantly, we believe that it is technology that has been our saving grace. We would not have been able to save the academic year had it not been through technological means such as Blackboard, Microsoft Teams, Google Meet, WhatsApp and many more.

Notwithstanding the fact that online learning carries a stigma of being of a lower quality than face-to-face learning, despite research showing otherwise,³⁸ Covid-19 pandemic has shifted our mind-set and changed any unwarranted rejections of online teaching and learning platforms. We, therefore, strongly hold that although the use of technology and e-learning has proven to be beneficial, online learning should not replace contact learning. The human/social aspect is still very important to also equip students with soft skills that will enable them to become well-rounded individuals. Thus, online teaching and learning should be used to supplement and support contact classes as opposed to replacing it. Hence, we should not underestimate the contribution of lecturers as well as student networking to the learning process. Post Covid-19 or post-lockdown, we submit that there should be no going back to how things were and that hybrid or hyflex learning models should in fact be our way forward. The hybrid or hyflex models of teaching and learning requires all modules, including ERF 222, to have a predominantly contact teaching and learning component, as well as a significant online teaching and learning component. That way the human and social element will remain an integral part of teaching and learning. It will, therefore, be a pity if we

38 Hodges *et al* "The Difference Between Emergency Remote Teaching and Online Learning" *Educause* 2020 <https://er.educause.edu/articles/2020/3/the-difference-between-emergency-remote-teaching-and-online-learning> (last accessed 2022-09-21).

go back to pre-Covid-19 teaching in universities. The way forward is for universities to embrace the suppleness of hybrid learning and maximise its use for the betterment of the curriculum.

6

COVID-19 TEACHING AND LEARNING: TOWARDS WOMANISM, ETHICS OF CARE, STORYTELLING AND UBUNTU

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6 1 Introduction

Using a Black feminist conceptual lens, educational scholars Sherell A. McArthur and Monique Lane draw upon Hooks' work and define love in the context of teaching as "a politicized ethic of care and healing" Pedagogical love, accordingly, is "an authentic love and concern for the social and educational well-being of every learner ... [including] efforts to provide individuals with the necessary supports to thrive in both their personal and academic lives."¹

The on-going global pandemic reminds us that we are interconnected as humans. We are part of and not separate from each other. It is crucial that we extend principles of womanism, ethics of care, storytelling and ubuntu during these crucial and challenging times of teaching and learning during Covid-19 and beyond. This is crucial in reducing the negative effects of the pandemic on the academic successes of students and academics. When the Covid-19 crisis fades away, which it will, we have a chance to make academia a more ethical, empathetic, and thus a rewarding profession. This will also encourage students to understand their role towards contributing to the attainment of social justice.

The pandemic has revealed the extent of the country's inequalities. The Covid-19 pandemic has exposed once again the persisting inequalities that student activists were fighting against during the #FeesMustFall and free, decolonised education protests.² For many Black students, online learning meant going back home to townships and villages and to sharing rooms not conducive to studying. It further meant insufficient or lack of significant network coverage and, although some institutions provided students with data and laptops, not every student benefited from some of

1 Green "Playing in the Face of Death: Pedagogical Play as Love and Lament in a Time of Covid" (2021) *Religious Education* 25.

2 Tshikota "Racial Epistemology at a Time of a Pandemic: A Synopsis of South Africa's Persisting Inequalities Through the Lens of '#FeesMustFall' and '#FreeDecolonisedEducation'" 2021 *Pretoria Student Law Review* 30.

these initiatives.³ Furthermore, for many African women, leaving campus residences and returning home meant taking on a number of traditional and gender-based cultural responsibilities, including household chores and caring for family members.⁴ Furthermore, the Covid-19 pandemic resulted in women in academia being exposed to greater unpaid care demands at home, taking care of family members who are ill or elderly and also taking care of children.⁵

This disruptive time posed an opportunity to foster transformation among marginalised members of our society such as students who are socially and economically disadvantaged as well as women in academia. The Covid-19 remote learning provided educators an opportunity to be innovate with their methods, and this chapter reflects on how I incorporated skills of womanism, ethics of care, storytelling and ubuntu in improving my lectures. This experience reminded me of traditional African societies where women had the primary role of educating their children through oral methods for example through folktales and storytelling. A woman is furthermore viewed as compassionate and concerned more with maintaining social relations and concerned with social welfare. Although women in traditional African societies were viewed as primary educators of their children the African community played a significant role in the educating and raising of an African child. This experience led me to promote womanism and the ethics of care in my approach to teaching and the incorporation of storytelling and ubuntu which are traditional ways of teaching and learning and have proved to be efficient in teaching and learning during the Covid-19 era. Throughout the chapter I elaborate on how womanism, ethics of care, storytelling and ubuntu assisted towards managing my teaching and traditional gender roles.

6 2 The role of womanism and ethics of care in teaching and learning under and post Covid-19

The presence of women in academia has a very powerful potential of assisting towards the exposing of both societal and cultural injustices suffered by women and the broader South African society. As previously mentioned in the contribution women academics are among the most negatively impacted by the Covid-19 pandemic and so their experiences could assist towards better understanding the needs and challenges of

3 As above 30.

4 Pillay *et al* 2021 *Journal of Education* 32.

5 Chitsamatanga and Malinga "Coronavirus (Covid-19) and Women in Higher Education in a South African University: Academic and Social Implications" 2021 *African Journal of Gender, Society and Development* 8.

students from diverse backgrounds. The role and place of women was appreciated in the #FeesMustFall. During #FeesMustFall, women on campus fought against the image of politics that only included men and excluded and silenced women leaders. The contribution of women as key players in their communities and as both educators and leaders should be highlighted more in academia and our tertiary institutions. In promoting the role of women in teaching during and post Covid-19 I used the approach of womanism in my teaching and research.

Womanism embodies humanism, which seeks the liberation of all and not only women.⁶ Womanist teachers share the understanding of society and the existence of struggles against oppression.⁷ When a womanist enters the academy, they bring with them different kinds of lives shaped by their historically triple oppression.⁸ Womanists are concerned about the whole community which means both men and women can come together in dialogue to define and address the needs of the community.⁹ The holistic approach means that womanism is a non-elitist movement.¹⁰ It considers all people in the community – men and women and the recurrent humanist – and is closely associated with human solidarity more than anything else.¹¹ This strategy accordingly addresses diversity, reconciliation and promotes social cohesion and inequities among others. The term “womanism” is argued to reflect the complexity of life for an African woman.¹² A womanist approach and pedagogy thus aligns itself with an empathetic approach to social research that is rooted in critical connections relevant to race, gender and class.¹³ A womanist leader accordingly thinks broadly and views her leadership as connected to the face of her people.¹⁴ Womanists produce an academic mother identity who, through their experience of triple oppression, is committed to the

6 Beauboeuf “A Womanist Experience of Caring: Understanding the Pedagogy of Exemplary Black Women Teachers” 2002 *The Urban Review* 72.

7 As above 80.

8 Philips and McCaskill “Who’s Schooling Who? Black Women and the Bringing of the Everyday into Academe, or Why We Started ‘The Womanist’” 1995 *Postcolonial, Emergent, and Indigenous Feminisms* 1010.

9 Masuku “The Depiction of Mkabayi: A Review of her Praise Poem” 2012 *South African Journal of African Languages* 128.

10 As above.

11 As above.

12 As above.

13 Marr “Ditchin’ the Master’s Gardening Tools for Our Own: Growing a Womanist Methodology from the Grassroots” 2014 *Feminist Teacher* 101.

14 Masuku 2012 *South African Journal of African Languages* 128.

eradication of oppression and the establishment of a just society.¹⁵ This can be established through their activism which is observed in their teaching practices within their own cultural heritage.¹⁶ Their empathetic nature and understanding enables them to engage in social action to redress inequalities.¹⁷

I link womanism in this chapter to the ethics of care which according to Carol Gilligan is linked to women. The ethics of care has its origins from Gilligan whose work argues for the appreciation of gender differences associated with women.¹⁸ An ethics of care encompasses cooperation and responsiveness to needs and these characteristics are argued to be more consistent in women.¹⁹ Women in terms of the ethics of care are viewed as having more concrete experiences than men of integrating care and caregiving into their daily lives.²⁰ Women are according to the ethic of care most skilful at listening empathetically and at adapting rules to particularised circumstances.²¹ Gilligan's work highlights how gender differences through the ethics of care can be used to improve law based on what we can learn from women.²² Gilligan implies ethic of care is distinctively the voice of women.²³ Gilligan's work is also often cited in legal studies and is used to demonstrate the importance of focusing on connections between people and not overly focusing on abstract rights and duties.²⁴

The developing of an ethics of care within a higher education and teaching and learning context is necessary alongside institutional structures and organisations that support students from a systematic point of view.²⁵ Ethics of care acknowledges care as a core element in pedagogic

15 Hill-Brisbane "Black Women Teacher Educators, Race Uplift, and the Academic Other-Mother Identity" 2005 *Advancing Women in Leadership Online Journal* 3.

16 As above 3.

17 As above 4.

18 Bender "From Gender Difference to Feminist Solidarity: Using Carol Gilligan and an Ethic of Care in Law" 1990 *Vermont Law Review* 3.

19 As above 3.

20 As above 38.

21 As above 45.

22 Ellman "The Ethic of Care as an Ethic for Lawyers" 1993 *Georgetown Law Journal* 2665.

23 As above 2665.

24 As above 2665.

25 J Fieldman "An ethics of care: PGCE students' experiences of online learning during Covid-19" (2020) 2 *Critical Studies in Teaching and Learning* 3.

relationships.²⁶ It is further submitted that creating a context of care is even more necessary in online teaching and learning.²⁷ According to the ethics of care all humans are at some point vulnerable and fragile and require support from others.²⁸ From the perspective of an ethics of care, the lecturer is interested in the expressed needs of the students and not the assumed needs of the students as assumed by a particular school or institution.²⁹ This approach is applicable to the most vulnerable students and academics and the term *umuntu akalahlwa* has also been discussed by Maserole Kgari-Masondo and Pfuurai Chimbunde and is translated to mean that a person cannot be thrown away,³⁰ and is applicable to the argument that the needs of students and academics who have been greatly affected by teaching and learning during the Covid-19 pandemic cannot just be simply be left unaddressed. This approach encourages the decolonisation of the pedagogy and emphasises humanism which is directed by compassion, care, respect and love for others and the recognition of their identities, history and experience.³¹

An example of womanism and an ethics of care according to my understanding can be found in the University of Cape Town's (UCT) vice-chancellor's approach to education. The vice-chancellor has through social media platforms encouraged students and potential students in their studies and towards enrolling for further studies. She has as a result been named as "Deputy Mother" by social media users as a result of her mothering and caring approach towards not only students but towards the broader South African community in encouraging South Africans to study further. Through social media platforms she often coordinates weekly research discussions wherein discussions take place among different stake holders on important issues involving research topics as well as research funding. This approach demonstrates a form of womanist approach to education and also demonstrates ubuntu wherein her focus is not only on academics but on the broader South Africa community. This is form of duty is beyond her role as a vice-chancellor and is a means of giving back to the broader academic society and the broader South African

26 Fieldman 7.

27 Fieldman 5.

28 Fieldman 7.

29 G Quinot "Higher education in community – collaborative higher education, an ethic and pedagogy of care and Ubuntu" accessed at <https://www.sun.ac.za/english/learning-teaching/ctl/Documents/Auxin/Auxin%20Presentation%2022Sept2020.pdf> accessed on 25 January 2022.

30 Kgari-Masondo and Chimbunde "Progress of an African Student During Covid-19 and Beyond in Higher Education: Re-Colonisation or Decolonisation?" 2021 *Perspectives in Education* 326.

31 As above.

community who are encouraged to study further through her encouraging and caring approach towards promoting the attaining of educational accomplishments by even ordinary South African citizens from diverse educational and social backgrounds.

Importantly womanism and the ethics of care should not be viewed as attributes which can only be found in women. Importantly, from a South African perspective, Nombuso Dlamini describes womanism as *ubufazi* in isiZulu, a concept that translated relates to the carrying out of actions which although have gender associations can be practised by anyone whether man or woman.³² Thus, accordingly both men and women could carry out duties linked with womanism.

The womanist approach and ethics of care compelled me to incorporate my experiences as women in my lecturing and eventually leading me to exercise compassion, care and responsibility. This entailed maintaining a carefully planned and flexible schedule for assessments and lectures to accommodate myself as well as the students and the exercise of an excellent communication system wherein students were made aware of assessment dates timeously to encourage meticulous planning. Maintaining regular communication with the students and the prior planning of assessments and lectures enabled me to also incorporate my research duties and to plan ahead.

6 3 Storytelling

Women in traditional African societies also taught their young children and this took place through among other ways folktales and storytelling. Storytelling is one of the oldest methods of interaction and communication in human interaction.³³ The oral tradition of storytelling functioned originally to maintain and enforce culture.³⁴ The use of oral education in education is defined as teaching through encouraging listening and learning.³⁵ Storytelling is very important in legal education as well as in legal practice since it could assist students to learn communication and

32 Dlamini "Literacy, Womanism and Struggle: Reflections on the Practices of an African Woman" 2001 *Journal of International Woman Studies* 79.

33 Edosomwan and Peterson " A History of Oral and written Storytelling in Nigeria" 2016 paper presented at the American Association for Adult and Continuing Education Commission for International Adult Education Annual Pre-Conference 91-99 <https://files.eric.ed.gov/fulltext/ED581846.pdf> (last accessed 2022-09-30).

34 Malungana "The Relevance of Xitsonga Oral Tradition" 1999 *Alternation* 47.

35 Sopian "Importance of Storytelling in Legal Education and Profession: An Analysis" 2019 *Journal of Emerging Technologies and Innovative Research* 60.

analytical skills.³⁶ Legal practitioners depend on a story told by their clients and in that regard storytelling is an essential method of legal practice. Classic Greek orators who were lawyers relayed stories as a primary technique for practising law.³⁷ The legal academy began to incorporate storytelling when critical theorists questioned traditional legal canons through telling their own counter stories.³⁸ Five techniques have been used to integrate storytelling in law studies: metaphors to explain complex stories; war stories to explain legal rules or doctrines; the most common technique used in law studies – case discussions, stories that describe legal cases; literature, where lifelike characters and stories from literature are taken as a model; and finally stories in which individuals integrate and build their own stories expanding their routes and viewpoints.³⁹ In summary, teaching through storytelling resonates with the characteristic of a successful lawyer whose task is to collect scattered information and facts from clients and develop a persuasive narrative from the relayed information. Storytelling is a very practical skill that could aid in training and building skilled lawyers. A practical example of the use of storytelling in legal practice is the South African Truth and Reconciliation Commission, where apartheid victims had the opportunity to tell their stories and to elicit admissions from the alleged perpetrators.⁴⁰

An example of this form of teaching can be made in the form of one of the lectures in MDR 420 (Media Law) where the teaching instruction takes place as follows:

Research question/case study: Contempt of court (breach of a court of order/ scandalising the court versus the constitutional right to freedom of expression)

Minister Lindiwe Sisulu made a remark that South Africa is “mentally colonised by Black judges settled with the view and mindset [sic] of those who dispossessed their ancestors”.⁴¹ She furthermore asks how poverty can still exist in a judicial system in a country that has a constitution that is admired by the world.⁴² Briefly discuss whether the Minister’s comments

36 As above.

37 Levit “Legal Storytelling: The Theory and the Practice-Reflective Writing Across the Curriculum” 2009 *Journal of the Legal Writing Institute* 262.

38 Sopan 2019 *Journal of Emerging Technologies and Innovative Research* 60.

39 As above.

40 Levit 2009 *Journal of the Legal Writing Institute* 263.

41 Cornish “Minister say South Africa ‘mentally colonised’ by black judges” 2022-01-15 *Rfi* <https://www.rfi.fr/en/africa/20220115-minister-lindiwe-sisulu-anc-says-south-africa-mentally-colonised-by-black-judges> (last accessed 2022-01-31).

42 As above.

constitute contempt of court or whether they constitute the exercise of the constitutional right to freedom of expression. In the event that it is found that her comment constitutes contempt of court, further mention the applicable form of contempt of court that her comment constitutes.

At the start of each study theme, a research question or a case study is introduced to the students and they are expected to answer the question while the lecture is presented. This approach assists in ensuring that each student is able to engage with the study theme practically.

The above described form of teaching constitutes a form of storytelling pedagogy which often gives way to a better understanding. In the earliest times prior to the advent of writing, storytelling was the only tool available by which individuals within their communities could preserve and share their heritage.⁴³ There are a growing number of educators in higher education who feel that the telling of stories is a powerful way of teaching.⁴⁴ By engaging in stories, lecturers can encourage students to think critically.⁴⁵

Storytelling has been an important technique in the process of learning and understanding. Individuals through this form of learning gain a better understanding through the use of concrete examples rather through vague abstractions and generalisations that often have no relationship to life's experiences.⁴⁶ Great teachers from the times of Plato, for instance, have used stories, myths, parables and personal history to instruct, illustrate and guide the thinking of their students.⁴⁷ Storytelling helps students to think critically, to factual content and also could assist in enhancing student's problem-solving skills in a personalised fashion.⁴⁸ Teaching and learning through storytelling also reflects education in an African context which was embedded in proverbs, myths, folktales, songs and storytelling among others.⁴⁹ Through this approach, students are able to learn to tell their stories and create scenarios for others and relate such to real life issues concerning a certain subject content or module.

43 Abrahamson "Storytelling as a Pedagogical Tool in Higher Education" 1998 *Education* 440.

44 As above 446.

45 As above 447.

46 As above 441.

47 Venter "The Notion of Ubuntu and Communalism in African Educational Discourse" 2004 *Studies in Philosophy and Education* 158.

48 As above.

49 As above.

The use of storytelling in my lectures served as a reminder of my experience as an African woman. Storytelling can be described as a natural and traditional form of teaching in an African community although it is not limited to African communities. Through storytelling I had a form of assurance that learning would be more accessible and practical for students from diverse backgrounds. Furthermore, storytelling was practiced and used by students in their own individual study groups and in their societies as it the oldest form of teaching and learning which has been practised by many generations.

6 4 Ubuntu

Ubuntu is an African value which encompasses the capacity in African culture to express compassion, reciprocity, dignity, harmony and humanity towards building the and maintaining an African community.⁵⁰ Ubuntu can be described as a Nguni/ Zulu South African word which refers to the interconnectedness and common humanity and the responsibility of humans towards each other.⁵¹ Ubuntu articulates social interdependence and is deeply rooted in a sense of establishing a community.⁵² Ubuntu in an academic sphere can contribute towards making the process of assessment sensitive to the needs of learners.⁵³ The concept of Ubuntu is thus very crucial for a number of institutions including tertiary institutions or institutions of higher learning. Ubuntu enhances team participation, sharing of skills ideas and leads to some kind of shared vision.⁵⁴ Ubuntu creates the possibility of creating and promoting togetherness and coexistence among students who come from diverse backgrounds some characterised by oppression, marginalisation, limited opportunities and oppression.⁵⁵ In that the main concern and aim for teaching and learning under and post Covid-19 should be for all students – regardless of their, among others, racial, educational, linguistic, background, sexual orientation – to have the ability and potential to equally excel in their studies.⁵⁶ This can take place when humanity and the spirit of mutual

50 Nussbaum “African Culture and Ubuntu: Reflections of a South African in America” (2003) 17 *Perspectives* 2.

51 As above.

52 Letseka “In Defence of *Ubuntu*” 2012 *Studies in Philosophy and Education* 48.

53 Beets and Van Louw “Education, transformation, assessment and Ubuntu in South Africa’ in Waghid (ed) *African(a) Philosophy of Education: Reconstructions and Deconstructions* (2005) 175.

54 Msila “Ubuntu and School Leadership” 2008 *Journal of Education* 81.

55 Ngubane and Makua “Intersection of Ubuntu Pedagogy and Social Justice: Transforming South African Higher Education” 2021 *Transformation in Higher Education* 4.

56 As above 5.

cooperation are at the forefront of learning.⁵⁷ The spirit of ubuntu has been emphasised by African universities offering open distance learning where emphasis has been placed on lecturers or educators who should help learners in a humane manner.⁵⁸ The underlying concern of ubuntu is humanness in the welfare of others.⁵⁹ In accordance with the spirit of ubuntu, techniques of cooperative learning are emphasised.⁶⁰ All students are in that regard expected to reach a certain standard of competence.⁶¹ Study materials should have a bearing on the values of ubuntu. This entails the creation of user-friendly materials that would not result in students struggles unnecessarily while looking for requisite content.⁶² The incorporation of ubuntu rejects competition and arrogance among learners that could impede cooperative learning within a university community.⁶³ Importantly, in the spirit of ubuntu, technology should not replace the more affordable and accessible means of education.⁶⁴ In designing lecture materials, lecturers have to demonstrate awareness of student welfare and the diversity of each student's circumstances.⁶⁵ This observation reflects the concerns that I had when dealing with my modules.

Ubuntu also encourages collaboration among lecturers and administrative staff in terms of assessments and to ensure that students are not penalised for circumstances beyond their control, for instance technical issues. However, the spirit of ubuntu also encourages truthfulness and honesty among students.⁶⁶ Since ubuntu encourages mutual cooperation, all role players – such as academics, support staff departments and university management – must combine efforts to ensure the effective and efficient teaching and learning of students under and post Covid-19.⁶⁷ In African culture learners are used to working in groups and not as individuals and this should also be considered in a virtual classroom context.⁶⁸

57 As above.

58 Davidson "Ubuntu Values in an African University" in Letseka (ed) *Open Distance Learning (ODL) in South Africa* (2016) 23.

59 As above.

60 As above 24.

61 As above.

62 As above.

63 Letseka "The Nexus Between Open Distance Learning (ODL), African Philosophy and *Ubuntu*" in Letseka (ed) *Open Distance Learning (ODL) in South Africa* (2016) 35.

64 As above 37.

65 As above 37.

66 As above 38.

67 Mashile and Mataone "Leadership in ODL Institutions: An Ubuntu Perspective" in Letseka M (ed) *Open Distance Learning (ODL) in South Africa* (2016) 56.

68 Venter 2004 *Studies in Philosophy and Education* 158.

The spirit of ubuntu in teaching and learning under and post Covid-19 also requires the ensuring of continuous collaboration and co-operation among the teaching staff, academic associates, assistant lecturers and this has the advantage of sharing workload, sharing skills, emotional support and mentorship which leads to improved efficiency and effectiveness in teaching. In this way, through this support and collaboration and cooperation the needs of students are able to be accommodated. Through collaboration and cooperation, mutual respect, the attainment of mutual goals could be accomplished. Collaboration and cooperation should also include management as they could be able to provide resources that could enhance efficiency and effectiveness in teaching and learning under and post Covid-19. The importance of ubuntu in teaching learning under and post Covid-19 constitutes a reflection of education in an African context that involves sharing with and helping others. The spirit of ubuntu when invoked during teaching and learning under and post Covid-19 could ensure that students receive the necessary support to help them navigate the stress and hurdles experienced during this pandemic and assist them in attaining academic success.

Through ubuntu I was made aware of the value of mutual cooperation in a teaching department and a faculty. Ubuntu requires the delegation of responsibilities among a teaching team as opposed to executing tasks individually, which could result in a failure to meet deadlines and also affect work life balance, which is crucial in promoting productivity in academia. Ubuntu also encouraged the spirit of mutual respect among myself and students which resulted in a team effort towards teaching and learning. The use of practical teaching and learning methods such as storytelling also assisted my students to study within their individual groups through relaying their own stories and interpretation of the law. Ubuntu assisted in reminding me to share to tasks with my lecturing team and this encouraged mutual corporation as well as team work. Ubuntu assisted me to recognise and appreciate that we are ultimately a community of scholars.

6 5 Conclusion: Practical lessons to be learnt

6 5 1 Womanism and ethics of care

*When they are fighting together women for the recognition and betterment of lives in communities, they will be practicing communalism and that will culminate in ubuntu and their position in the community will be solidified.*⁶⁹

69 Molehe, Marumo and Motswaledi “The Position of Womanism Versus Feminism in a Contemporary World: The African Philosophy Perspective” 2020 *Gender & Behaviour* 16807.

The contribution women make in exposing cultural and societal injustices within South African society is powerful. Womanism and ethics of care encourages an educator to realise the importance of appreciating that not all students come from privileged backgrounds.⁷⁰ This approach importantly can be practised women or men, white or Black people, as mentioned by Dlamini, importantly from a South African perspective, as *ubufazi* in isiZulu and is describes as the carrying out of actions that might have gender associations but can be practised by anyone, man or woman.⁷¹ I encourage this approach for teaching and learning under and post Covid-19 where lecturers place themselves in the shoes of learners and take into account their diverse backgrounds and provide an accommodative online learning atmosphere crucial to ensuring the success of learners.

6 5 2 Storytelling

*Storytelling has been used for centuries as a powerful vehicle for communication, recreation, entertainment, education, and to pass on cultural identity. It is a vital and unique ingredient of the human experience. Regardless of medium (legend, myth, folk tale, fairy tale, poem, novel, film, or play) stories are enjoyed by everyone. While stories, whether fiction or poetry, were historically narrated; today's modes of communication include printing, radio, TV, cinema, and Internet. Stories have appeal because they capture interest and attention, enable recall of details by association, and bring facts to life by putting them in personal scenarios.*⁷²

A practical teaching approach is essential, and in particular one that includes case studies reflecting on current affairs to enable students to partake in lifelong learning and further expose them to social and cultural diversities. Teaching and learning through the inclusion of case studies as a form of storytelling could also encourage students to study within their family environments encouraging healthy debates on the effect of the law on the society. This approach clearly highlights the role of ubuntu through mutual cooperation through societal participation in studying. In this way, the young African person also becomes aware that studying should not result in social alienation from his or her family and community, however; instead, a community could take part in the education of the young African – this is the role and value of ubuntu. This form of approach takes place through sketching practical scenarios and telling stories when each study theme is introduced and then posing a question. This

70 Dlamini 2001 *Journal of International Woman Studies* 90.

71 As above 79.

72 Davidhizar and Lonser "Storytelling as a Teaching Technique" 2003 *Nurse Educator* 217.

requires the learner to participate in the module actively and practically through attempting to answer the relevant case study. This will enhance the student's critical thinking skills and will also require of engagement in a form of field research in which the student can incorporate the views of his or her family and community members in terms of answering the case study.

An example of this approach would be as follows:

Theme 1: The role of the media in democracy and censorship

Question one: Phathiswa Magopeni, who was the Head of News at the South African Broadcasting Corporation (SABC), has been dismissed with immediate effect. There have been speculations that her dismissal comes as a result of the incumbent Minister of Transport - Minister Fikile Mbalula accusing her of being anti the ruling party. She has furthermore been blamed for the ruling party's loss in the November 2021 elections. She was also blamed for not allowing enough coverage of the ruling party during election campaigns in that regard. Her dismissal furthermore follows a disciplinary hearing which last month found her guilty of misconduct for failing to prevent the broadcast, airing and publication of an interdicted Special Assignment (an investigative programme dealing with current affairs on SABC) episode. As a result of all the above mentioned complains there has been a resulting breakdown of trust in the relationship between Phathiswa Mangopeni and the SABC.⁷³

In light of the above facts discuss whether the dismissal of Phathiswa Mangopeni can be argued to be unjust censorship and an infringement of the constitutional right to freedom of expression in particular section 16 (1) (a) of the Constitution of the Republic of South Africa of 1996 which guarantees freedom of the press and media.

This form of approach results in the articulation of the clear objectives of each module and furthermore exposes learners to clear assessment objectives and expectations. Learners have to be made aware of what to study and the rationale behind every study theme and ultimately the

73 Mabi "SABC Head of News Phathiswa Magopeni shown the door" 2022-01-28 *Times Live* <https://www.timeslive.co.za/news/south-africa/2022-01-28-sabc-head-of-news-phathiswa-magopeni-shown-the-door/> (last accessed 2022-01-29); Suttner "Danger Signals as SABC Victimises Head of News Division, Phathiswa Magopeni" 2022-01-24 *Daily Maverick* <https://www.dailymaverick.co.za/article/2022-01-24-danger-signals-as-sabc-victimises-head-of-news-division-phathiswa-magopeni/> (last accessed 2022-01-29).

purpose of the module and its relevance in the broader society and this form of teaching approach makes these goals possible.

6 5 3 Ubuntu

*The philosophy of Ubuntu, therefore, advocates a fundamental respect in the rights of others, as well as a deep allegiance to the collective identity. It serves to regulate the exercise of individual rights by emphasising sharing and co responsibility and the mutual enjoyment of rights by all.*⁷⁴

The cooperation between lecturers, academics, tutors, administration staff, teaching assistants and management will result in the addressing of student queries timeously. Efficient communication and consistent communication among the latter mentioned parties and regular meetings held toward addressing the needs and challenges of both lecturers and learners will ensure that both learners and lecturers will progress during teaching and learning during the Covid-19 pandemic. It is crucial for clear communication guidelines to be communicated to learners for instance in their study -guides on the communication procedure and protocol and respect should at all times be encouraged when communicating. A spirit of consistent and healthy communication is encouraged as opposed to a spirit of merely reporting only on challenges as this will assist in navigating, predicting and dealing with potential challenges before they emerge.

74 Padayachee, Lortan and Maistry “Rethinking Higher Education for Social Responsibility in South Africa: Considering Synergies between Gandhian Principles and Ubuntu” in Hall and Tandon (eds) *Socially Responsible Higher Education: International Perspectives on Knowledge Democracy* (2021).

7

TEACHING DURING EMERGENCY REMOTE LEARNING: LESSONS AND RECOMMENDATIONS

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It always seems impossible until it's done. – Nelson Mandela

7 1 Introduction

To stay abreast with the changes of the current contextual demands in tertiary legal education, it becomes a necessary task to read and study extensive current literature tackling new and constant challenges relating to teaching in the pandemic. There are challenges relating to the medical implications of long term Covid-19 experienced by students, which has posed uncharted territory, in which more support is needed. The online community of students is incongruent to physical and face-to-face student community. Students feedback have communicated that there is a feeling of isolation relating to learning in their homes. Students further conveyed that stable internet connections were problematic, due to geographic location and coupled with loadshedding woes. A further possible challenge with online teaching and emergency remote learning is to encourage active participation, such as students switching on their cameras, to enable the lecturer and other students to see each other's faces. However, it must also be noted that unstable connections do not facilitate such interactions as switching on cameras, which uses more bandwidth and renders the connection unstable. Online teaching and emergency remote learning have exposed different mediums of cheating and plagiarism possibly such as other students paying graduates to write their exams, and exploiting WhatsApp groups, to distribute questions and answers for assessments or even copying verbatim from texts and the internet without proper referencing and conducting unwarranted google searches for answers. Possible collaboration with classmates and taking the assessments together in the same venue with their own computers and further discussing the questions and answers are also possibilities. The independent learning and assessment becomes problematic in these expansive circumstances and unlimited possibilities. If students are not invigilated physically, then the student must devise their own moral integrity which poses a challenge in the current context that we are living in with the peer pressure, competition for attaining the highest marks for securing employment in a depressed economy, where firms are retrenching employees, and withdrew posts of

candidate attorneys. The demand and supply of articles is a smaller pool and achieving the best results does not always guarantee a placement for training as a candidate attorney. The paper navigates these challenges, proposing mechanisms and tools to ensure that a student is individually accountable for their studies. Collaborative learning is necessary for group work, but it is not the aim of all types of assessments, as individualistic learning is quintessential for passing each module that culminates into the obtainment of the degree, which is the end goal for most law students.

7.2 Reflections as a lecturer for fourth year LLB

It is important to undertake a deep reflection after the passing of each week, month and semester, to determine the areas of improvement to enhance the student experience and to improve my skills set as a lecturer. The circumstances, in which we now teach is a platform to fine tune and develop skills and character. It is an enabler for personal and professional growth.

The statistics for 2021 relating to the modules Alternative Dispute Resolution (AGF 420) and Civil Procedure (SIP 421) were as follows:

Module	Total number of students	No Exam entrance	How many qualified for exams	How many qualified for promotion	How many absent/sick	Supplementary exam	Failed after exam
AGF 420	175	1	9	165	0	0	0
SIP421	516	2	25	489	0	0	0

The abovementioned statistics illustrates that the student load for one lecturer is work intensive. The ratio is one lecturer that services 691 students cumulatively. This is an intense workload, as this facilitates at least 50 emails per a day from students setting out various minor queries relating to their work. I used ClickUp to post as many announcements as possible to try and curb the constant flurry of emails from early in the morning until midnight. It meant that one works more than 12 hours a day facilitating the email questions and responses. It is my understanding that some lecturers in the Faculty created a separate email for students to ask questions about the module in order to avoid the overcrowding of their inbox, and to allow for more than one lecturer to address the concern.

However, if you are the sole lecturer, it does not assist to create another email address that you need to respond to queries, as you can simply archive emails in your main inbox to manage the overcrowding of emails, as there are no tutor support for the mentioned modules.

The amended regulations provided that students were automatically promoted if they obtained a cumulative assessment mark of 65 %. This meant for each module there were three assessments that they needed an overall cumulative mark of 65 % to pass the module and this meant they were exempt from writing the final examination. For SIP 421, a 95 % promotion rate was obtained as majority of the students obtained the cumulative mark of 65 % for their three assessments. The three assessments comprised two semester tests and a quiz. The semester tests each equated 20 % each and the quiz was 10 % equated to a final mark out of 50. Each assessment tested different study units covered during the semester. The few students that wrote the exam passed the examination and there were no failures.

AGF 420 was composed of a 94 % promotion rate. The three assessments for this module were one semester test, a quiz, and an oral component, that provided that the student either sends me a voice recording via email that was converted into an MP4, alternatively to upload it on ClickUp, or a narrated PowerPoint or a written assessment that addresses a specific problem question that is posed through upload on ClickUp or email. The semester test was weighted towards 20 % and the oral and quiz components were both 15 % each. The students were incredibly creative in addressing the oral component and did a few aspects that thoroughly impressed me the way they collaborated with their peers in a safe virtual space, using a recorded dialogue on Zoom. The students that wrote the exam passed the exam. There were no supplementary examinations.

For SIP 421 and Alternative AGF 420, ClickUp was used to post all the study material, namely the study guide, announcements, narrated PowerPoint presentations of each study unit that the student had at their disposal together with the scope of assessments as set out in the study guide.

I used ClickUp as a form of support for the students. I used this platform to constantly remind students of important information such as approaching deadlines. Students were grateful for these reminders, which they communicated in email correspondence, though the classes were so big, this enabled that students to not fall through the cracks and fail the modules.

7 3 Literature pertaining to emergency remote learning

Due to the global pandemic the literature surrounding emergency remote learning is evolving, present and current. There is a trend of a common voice relating to the hardship and the access to education from the Global North and Global South respectively. Abel Alvarez exposed the areas of concern, in a study that he had undertaken with five students, relating to their experience of studying during emergency remote learning.¹ The common themes that were exposed by the students was that they felt isolated and lack of support when they were in lockdown by their government.² There were some students in their first year of study that did not have access to laptops or tablets and were forced to use their smartphones to complete the assessments for the year in the Philippines.³ There were no face-to-face lectures at the University of the Philippines. Furthermore, there was limited access to public spaces of computers as the internet cafes did not open due to the strict lockdown conditions imposed by the government.⁴ The reliability of internet connection posed a problem in the submission of assessment, as a secure and stable connection was difficult to obtain due to access.⁵ The stark contrast of the “haves” and “have nots” was an emphasis that the pandemic placed upon the wage earners and their deprivation of wages due to the lockdown conditions that stopped work in certain instances.⁶ The digital divide between the different classes was expanded by the pandemic. Only 22 % of households possess laptops at home.⁷ The way forward that the author proposed was policy amendments to facilitate for digital access to computers as well as providing for different tools that facilitated for the online and offline student.⁸ The similarities with South Africa are evident, as the digital divide, which was exacerbated by strict lockdown conditions preventing access to computers is a similar problem. The response by South African universities to address these issues included the provision of laptops and other devices. This also included the provision of data to allow for them to complete their assessment. This is another type of intervention that

1 Alvarez “The Phenomenon of Learning at a Distance Through Emergency Remote Teaching Amidst the Pandemic Crisis” 2020 *Asian Journal of Distance Education* 144.

2 As above 147–148.

3 As above 148.

4 As above 149.

5 As above.

6 As above 150.

7 As above 149–150.

8 As above 150.

has had a positive and meaningful impact. The creation of zero-rated platforms to submit assignments has also posed as useful mechanism to assist the student that does not have data for their assessments and are in a financial crisis.

Aras Bozkurt and Ramesh Sharma postulate several important aspects of emergency remote learning. The first distinction that is made is the use of terminology, that online learning or distance learning is different to emergency remote learning.⁹ The former was developed for many years; whereas the latter is where we find ourselves for a transient period of time. People are encouraged to vaccinate in the wake of normalisation as campuses open for face-to-face physical interaction, and the traditional teaching methodologies shall return.¹⁰ Bozkurt and Sharma emphasise that online learning tools, must not be used as the saving grace instead of teaching methodologies and pedagogies, as they must accompany each other hand in hand to facilitate for the learning experience of the student.¹¹ The authors stress the importance of the emotional support of the student, and that even if knowledge gained is almost forgotten, students remember how the learning experience made them feel – an aspect of reflection on the positivity or negativities about the University,¹² which may, in turn, affect future student enrolment.

Trust and Whalen elucidated that the pandemic has exposed that teachers and lecturers alike need additional technological skills and further required to be familiar with different types of experience in order to aid the student experience.¹³ The authors used a survey to determine whether the teachers and lecturers felt that they were prepared for the pedagogy of emergency remote learning.¹⁴ The majority of the responses indicated that the teachers and lecturers were overwhelmed by the online tools and were unprepared to navigate the training and skills for emergency remote learning.¹⁵ It surely was a reality that was felt by the lecturers in South Africa. This sentiment must have also been compounded by

9 Bozkurt and Sharma “Emergency Remote Teaching in a Time of Global Crisis due to Coronavirus Pandemic” 2020 *Asian Journal of Distance Education* 1.

10 As above 2.

11 As above 3.

12 As above 3.

13 Trust and Whalen “Should Teachers be Trained in Emergency Remote Teaching? Lessons Learned from the Covid-19 Pandemic” 2020 *Journal of Technology and Teacher Education* 189.

14 As above 191.

15 As above 191–192.

the uncertainties regarding Covid-19. There was a feeling of fear and repudiation as one navigated an unchartered educational shift.

Abdalellah Mohmmmed, Basim Khidhir, Abdul Nazeer and Vigil Vijayan define the phrase “emergency remote learning” as follows:

Emergency remote teaching is defined as a sudden interim shift of instructional delivery to an online delivery mode as result of an immense catastrophe, in contrary to the online courses which are initially planned and designed to be delivered.¹⁶

The catastrophe is the state of disaster that was declared by the government of South Africa, which provided that the online delivery mode was necessary to curb the spread of the virus. Minsun Shin and Kasey Hickey opine there is a need to dedicate more support to some students in the emergency remote learning mode.¹⁷ Their study conducted reveals that students are in crisis and need the extra care and attention to ensure they indeed study and complete their programmes.¹⁸ Some of the issues that the study exposed were “accessibility, digital divide, inequity, and mental/emotional/physical health that more female students experienced”.¹⁹ This is a common narrative that students in South Africa have experienced as well, a culmination of factors have made this difficult for a student to successfully navigate through it. It is necessary that students reward is emphasised for the output that they put into their studies.²⁰

7 4 Online teaching is the forefront of the industrial revolution

In the 4IR, technology is at the forefront of development and the future. However, there are many challenges that present themselves in this realm. Access to these technologies and connectivity issues being examples

16 Mohmmmed, Khidhir, Nazeer and Vijayan “Emergency Remote Teaching During Coronavirus Pandemic: The Current Trend and Future Directive at Middle East College Oman” 2020 *Innovative Infrastructure Solutions* 1, 2. See also Hodges *et al* “The Difference Between Emergency Remote Teaching and Online Learning” *Educause* 2020 <https://er.educause.edu/articles/2020/3/the-difference-between-emergency-remote-teaching-and-online-learning> (last accessed 2022-09-21).

17 Shin and Hickey “Needs a Little TLC: Examining College Students’ Emergency Remote Teaching and Learning Experiences During Covid-19” 2021 *Journal of Further and Higher Education* 973.

18 As above 973–974.

19 Shin and Hickey as above 973.

20 See also Baboolal-Frank “Emergency Remote Learning During the Pandemic from a South African Perspective” 2021 *International Journal for Educational Integrity* 1–9.

thereof. The more demand for a faster network and bandwidth, the more internet traffic, which slows the speed of the user's connection. The Department of Higher Education and Training (DHET) has the potential to ensure that internet access is cheaper by subsidising tertiary and secondary education.

7 5 Online tools to prevent plagiarism

There are universities that use different methods to curb cheating. Unisa used the Iris invigilation software programme – which is an interface that the student downloads through the Google Chrome browser. Iris needs to be downloaded onto a laptop or computer with a camera and sound; this means that speakers need to be functionally operational. The exam has integrated the Iris system. Iris software turns on your camera automatically and your sound, which simultaneously does the recording for the duration of the exam. If you do not look at your screen for long periods at a time or there are irregular sounds, you are flagged. The lecturer is able to tap into the recording to verify whether or not you are cheating. The other tool that Unisa uses is the invigilator application (app), which you can download on your cell phone. This app periodically asks you to take pictures of yourself (“selfies”), your student card and your surroundings to ensure that you do not have any assistance. The systems are not without their issues. There are glitches that occur, such as the Iris software not always activate and switch on. On some of these occasions the student would need to apply to write the aegrotat exam. It may also have its drawbacks from an administrative point of view as it requires constant vigilance in the sphere of checking the recordings of a significant number of students.

Randomise questions, have a timer for questions that close after a period. Have a pool of questions so that students receive different type of questions but maintaining the same standard, so that students are writing different questions that prevent collaboration, even if they take the test next to each other. The time factor prevents collaboration as well as constantly glancing at notes and lectures to figure the answer out. Inserting the reasons for true or false questions, prevent students from manipulating their answers to suit the most desired outcome.

7 6 Challenges faced by students caused by the pandemic

In these unprecedented times a number of deaths have been recorded *vis-a-vis* the information released by the government of South Africa. Notably in the first and second waves, there were backlogs for funeral parlours regarding burial ceremonies for the deceased that had succumbed to

Covid-19. Children and adults were losing both their relatives and loved ones due to Covid-19. The death of parents, loved ones, grandparents and friends hampered the studies of students, as they grappled with numerous losses and to acclimatise to what was happening in the current context and the world at large. It was difficult to unpack the fact that life was so fragile, and that every person began to know someone close that had lost the Covid-19 battle. Fear became the second virus, as people were scared to live or go outside or shop or to interact in fear that they would get Covid-19 and lose the battle.

7 6 1 Funding

Students that had bursaries that failed modules were at risk of losing their bursaries according to the NSFAS contractual conditions. There were delays in disbursement of bursaries covering fees as well as living allowances, which caused students undue stress and pressure; their livelihood was threatened as they could not financially support their families. The economic climate was not kind, as there was a wave of mass retrenchments that affected a significant number of families. Students have communicated in email correspondence there was pressure on the children to find part time work to help with the bills and education bills that needed to be paid. Some of the full-time students communicated by email that they have taken up daytime employment, and I find that they engage with their studies at night and email at midnight hours, querying the work or administrative aspects relating to the course.

7 6 2 Loadshedding

South Africa has an energy crisis. Loadshedding,²¹ has had devastating effects on the functioning of the country as a whole. Those who had the means to do so bought generators, worked in a public space with a generator (for instance in a shopping mall) with Wi-Fi and connection outlets. However, this was a privilege that some may not have enjoyed. The net effect meant that students did not always have a stable connection due to loadshedding, so one had to plan assessments around loadshedding. The pragmatic approach that I adopted was allowing the student to be accountable for their studies, by giving them a week to complete the assessment, in that way they could plan around their loadshedding schedule, part time work and ensuring that they had a stable and

21 Loadshedding is the deliberate shutdown of electric power in a part or parts of a power-distribution system, generally to prevent the failure of the entire system when the demand strains the capacity of the system. <https://www.dictionary.com/browse/loadshedding> (last accessed 2022-08-05).

uninterrupted connection to the internet, as they elected in the week when to sit for their timed assessment.

7 6 3 Access and poverty

A student in emergency remote learning is required to have a device either a tablet or a laptop that they can connect through a stable internet connection. UP provided data and zero-rated platforms for students to submit their assessments without any challenges. However, the economic climate, employment scenario and the crisis that we live in within the pandemic nearly obliterated the middle class overnight. This meant that more and more people live below minimum wage and in poverty. Poverty is not an unknown reality in the South African context. The situation was further exacerbated by the Covid-19 pandemic. There were food parcels being collated for students through various University endeavours such as the Faculty student advisor, where emails were sent to donate money and food, and arrangements would be made for access to the food parcels by the student advisor. These actions were taken because some students were hungry and could not concentrate due to various reasons not being able to feed themselves due to a financial crisis.

7 6 4 Lack of student support community

The traditional university setting facilitated student support that was fostered on campus through physical contact. The residences that students stayed in fostered a community and camaraderie among the students. During the lockdown in 2020, students had to leave their residences, and their community that they knew for a few months. This was a difficult period for many students, as going home to learn remotely was not an option. In 2021, students were allowed back in residence, however, residences cannot be over capacity in order to curb the spread of Covid-19. The first-year students have suffered the most, as this is their final year and they have not gotten to enjoy the community that is the face-to-face contact, making friends and lifelong partnerships with people of different social and culture backgrounds, that they have the same commonality of the attainment of their degree.

7 6 5 Depression, anxiety, mental issues

Nationally students reported that they are suffering with depression, anxiety, and mental issues due to not coping with the new normality that we find ourselves in.²² Lives are easily lost due to robbery and hijacking to

22 Viljoen (2020) "National Survey of Student Mental Health Launched" 2020-04-16

mention a few common causes of mortality.²³ Coupled with the existing crime is the pandemic and the necessary safety precautions that we need to take to protect each other, which we find that there are people that willingly put others in danger and expose them to the virus knowingly causes anxiety. Families, friends, loved ones and parents dying causes emotional disruptions and stagnates the studies as mental wellness is the priority for a student to be functional and excel in their studies. More support is needed for students, suffering from these medical conditions.

7 7 Conclusion and recommendations

The pandemic has changed all our lives. Teaching in the pandemic seemed like an impossible task until it was completed for two years and now, we find ourselves in the third year. There were discussions about contact sessions in structured groups, and to lecture to smaller groups to curb the spread of the virus. The virtual classroom was necessary and working towards contact sessions becomes an avenue for collaboration and meaningful active interaction and engagement, not simply the traditional teaching or lecturing or the sharing of knowledge. The lesson learnt is that we need to adapt to the constant change in the circumstances and the priority is the students and the way they feel emotionally and physically about their learning experience. We are no longer operating within the known paradigms of teaching but the pedagogy of learning through experience, collaboration, active participation is constantly changing.

The recommendations to address the challenges of the student cohort are as follows:

- Make more funding available to students who are detrimentally affected by the pandemic.
- Provide students with food stamps or vouchers for their weekly meals.
- Make counsellors and psychologists available for students who need support for their mental well-being.
- Create a safe space on campus for the student who does not have ideal conditions at home.
- Hold small weekly community meetings for students to foster the student community and allow students to feel and know that they are part of a bigger picture and not isolated and alone in their academic journey.

Stellenbosch University <https://www.sun.ac.za/english/Lists/news/DispForm.aspx?ID=7281> (last accessed 2022-01-10).

23 Ferreira and Koko “Latest Crime Statistics: Murder, Kidnapping and Commercial Crimes Increase” 2022-02-18 *Mail&Guardian* <https://mg.co.za/news/2022-02-18-latest-crime-statistics-murder-kidnapping-and-commercial-crimes-increase/> (last accessed 2022-08-05).

- Make tablets and computers easily accessible for students, whether on campus or remotely.
- Give students more access to campus when they are detrimentally affected by loadshedding.
- Create a mentor or “buddy” system, where mentors and students are partnered so that well-being can be monitored.

8

EXPERIENCES OF TEACHING TRUSTS AND ESTATES DURING COVID-19 AND THE WAY FORWARD

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8 1 Introduction

Due to Covid-19, UP, in general, and the Faculty of Law specifically faced deciding how to continue teaching and learning. The University has a commitment to enable students to complete the academic year successfully and student success remained a priority.¹ As a result of the pandemic and in attempt to achieve the mentioned aim, the Faculty of Law was prompted to convert from mainly face-to-face learning and some online teaching methods, usually planned in advance and especially at a post-graduate level, to what was called emergency remote teaching (ERT). In contrast to teaching and learning experiences that are planned from the beginning and designed to be online, ERT is described as “a *temporary shift* of instructional delivery to an alternative delivery mode due to crisis circumstances.”² Charles Hodges, Stephanie Moore, Barbara Lockee, Torrey Trust and Mark Bond further submit.³

It involves the use of fully remote teaching solutions for instruction or education that would otherwise be delivered face-to-face or as blended or hybrid courses and that will return to that format once the crisis or emergency has abated. The primary objective in these circumstances is not to re-create a robust educational ecosystem but rather to provide temporary access to instruction and instructional supports in a manner that is quick to set up and is reliably available during an emergency or crisis.⁴

This contribution serves to report on this shift to ERT in facilitating instruction in Trusts and Estates (TBS 410), a fourth-year elective module

- 1 Duncan, Vice Principal *Academic Message to teaching staff* 2020.
- 2 Hodges *et al* “The Difference Between Emergency Remote Teaching and Online Learning” *Educause* 2020 <https://er.educause.edu/articles/2020/3/the-difference-between-emergency-remote-teaching-and-online-learning> (last accessed 2022-09-21)
- 3 As above.
- 4 For a discussion of ERT during Covid, see *The Difference Between Emergency Remote Teaching and Online Learning* (2020); Bozkurt and Sharma “Emergency Remote Teaching in a Time of Global Crisis due to Coronavirus pandemic” 2020 *Asian Journal of Distance Education* i-vi; Kajiita, Nomngcoyiya and Kang’ethe “The ‘Revolution’

servicing 120 students annually. In this context the contribution reflects on the response to the disruption in the practice of teaching and learning to fully online instruction and examines how technology was employed to facilitate instruction. Secondly, the contribution focuses on the way forward, post Covid-19, in building on the success achieved during this difficult time.

8 2 Reimagining and embracing technological innovation under Covid-19

8 2 1 Initial planning and preparation

The process of planning this new educational approach (ERT) took place in correspondence with the UP Policy on Teaching and Learning.⁵ The policy regulates following a scientific approach to teaching and learning regardless of the mode of delivery; the acquisition of teaching knowledge and skills; becoming a reflective practitioner and providing an opportunity for students to improve their learning skills. The emphasis is on a resource-rich scholarly teaching in an inquiry-based learning and hybrid delivery model.⁶ The following five research-based teaching principles were (still) kept in mind and not compromised, namely, encouraging contact between students and lecturer; inviting engagement; promoting deep learning; providing appropriate learning support and respecting diversity.⁷

The UP teaching and learning approach that has a presumption of three phases in teaching and learning, namely, preparation before class, engagement in class and consolidation after class⁸ was (still) adhered to during the pandemic. However, in the process of rushing to implement ERT, I had to guard against especially two potential challenges, namely, diminishing the quality of the module and not focusing sufficiently on

on Teaching and Learning: Implications of Covid-19 on Social Work Education in Institutions of Higher Learning in Africa” 2020 *African Journal of Social Work* 25–33; Bozkurt *et al* “A Global Outlook to the Interruption of Education due to Covid-19 Pandemic: Navigating in a Time of Uncertainty and Crisis” 2020 *Asian Journal of Distance Education* 1; Means, Bakia and Murphy *Learning Online: What Research Tells us About Whether, When and How* (2014); Crawford *et al* “Covid-19: 20 countries’ Higher Education Intra-Period Digital Pedagogy Responses” 2020 *Journal of Applied Learning and Teaching* 1.

5 Doc no S4463/16.

6 Para 3 of the policy. See for discussion para 2 2 below.

7 Para 5 of the policy.

8 UP Education Innovation Document “Digital Strategy for Teaching and Learning and Student Success” (2020). See also UP Department of Education Innovation “Teach and Learn the UP Way” <https://www.up.ac.za/media/shared/391/pdfs/teach-learn-up-way-2020.zp184675.pdf> (last accessed 2021-11-27)

the students by simply bombarding them with lectures without taking in account that they might feel isolated and possibly lack the necessary support systems such as technological devices, data and signal.⁹ I created a sense of community and care through the UP online learning system branded as ClickUP and made use of communication options such as the Announcement tool, the Discussion tool and Blackboard Collaborate tool as discussed below. Students were advised to use the Discussion tool or forum to ask questions and provide answers to questions. Throughout the module students received encouraging messages combined with detailed information of other administration/learning-related aspects.

8 2 2 Teaching online the UP way (Covid-19)

As indicated¹⁰ UP ascribes to a flipped-learning methodology which requires students to come prepared to “class”, engage during lecture/class slots and provides students with the opportunity to consolidate their knowledge and organise it into meaningful hierarchical patterns after class.

In respect of the “prepare” phase the Trusts and Estates 410 Study Guide stipulates a clear weekly work schedule so that students keep up with the extent of the work for each week independently. Students have been encouraged and empowered in their preparation for an upcoming class by providing them with detailed source references¹¹ and study objectives pertaining to different study units (topics) in advance. Lectures, initially very detailed, were provided to students in five different formats, namely, narrated PowerPoint slides; a narrated PowerPoint show enabling them to make further notes on the slide presentation; PowerPoint slides in PDF format; a mere MP3 audio presentation which they use in conjunction with the PDF slides and, lastly, a YouTube video version. These different formats have been provided for the student’s convenience in view of the data usage required to access these different formats varies from zero to high data usage.

As far as the “engage” phase is concerned, initially, during the first few weeks I have ensured that through detailed narrated Power Point slides

9 See in this regard warnings posted by Bozkurt and Sharma 2020 *Asian Journal of Distance Education*.

10 Para 2.

11 Such as the relevant pages from the prescribed textbook(s), legislation, case law and journal articles. Both the prescribed textbooks were available as e-books, namely Du Toit, Smith and Van der Linde *Fundamentals of South African Trust Law* (2019); De Clercq, Schoeman-Malan and Van der Spuy *Deceased Estates* (2021). I also ensure that the other sources are readily available.

difficult concepts are explained. Then I have made use of Blackboard Collaborate to be virtually available every two weeks for revision. A discussion tool was opened where the students can ask questions. Students were able to engage by providing answers to questions among themselves and I would intervene where necessary.

A definite and calculated “consolidate” phase was implemented. Even though Trust and Estates 410 is a fourth-year module, “tutorial” questions that are problem-based were posted on ClickUP on a weekly basis.¹² By this means, students were enabled to revise the provided material by *applying* the theoretical principles stemming from common law, legislation, seminal case law and academic literature such as textbooks and journal articles to a complicated set of facts based on the week’s work.¹³ Questions relating to the topics can be debated on the Discussion forum, and students were encouraged to submit their answers to me in order to ascertain whether they have understood the subject matter. Virtual Collaborate Blackboard sessions have been scheduled to provide feedback and to review certain aspects of the work. Recordings of these sessions have been made available to students unable to attend due to the high data usage the sessions require. A typical tutorial-type question on the Law of Trusts and posted on ClickUP reads as follows:

The “Limpopo Hunting and Safaris” *inter vivos* family business trust, founded by X, has five trustees namely X, Y (X’s spouse), and their children A, B and C. The trust is used by X as a vehicle to run a tourism and hunting operation. The income and capital beneficiaries are X, Y, their children A, B and C, as well as their grandchildren F and G (children of B). The trust fund consists of R 2 000 000 cash, a game farm in Limpopo and various vehicles.

Trustee Y and her sister S are also members of a Close Corporation, “Modimolle Outdoor Catering CC”. This CC contracted with the trust to provide catering services at the restaurant on the farm at a very lucrative prescribed tariff. Trustee meetings are hardly ever held. A and B were not consulted and are unaware of this contract. A and B, in any event, are not involved in the day-to-day administration of the trust, since they totally rely on their father X, who is the “managing trustee” of the trust.

12 See para 2.3.

13 See “tutorial” questions below.

Trustee C occupies a cottage on the farm without paying rent to the trust. C's parents-in-law occupy another cottage, also without paying any rent. This takes place with the tacit consent of X and Y.

Trustee C, in his private capacity is on the brink of insolvency due to another business concern of his (and of which he is the sole owner) being detrimentally affected by the recent lock-down, power outages and load shedding. X and Y want to exercise the very "wide general powers" the trustees have in terms of the trust instrument for the trust to stand surety for C's personal debt to Standard Bank. No such specific power is provided for this in the trust instrument.

Y (married out of community of property to X with the accrual system) plans to sue X for a divorce. X, however, has informed her that there is no accrual in his estate that can be apportioned since all his assets vest in the "trust".

The grandchildren F and G are studying at the University of the Wine Lands. F and G have concerns about the administration of the trust, the trust's financial position and the inadequate income it provides in addressing their educational and monthly maintenance needs. The situation is aggravated by the fact the trustees don't aggressively invest the cash fund despite having the power to invest. The trustees feel they have an obligation to invest in safer fixed property and Government bonds. Y is concerned about her future financial independence.

Y, F and G, approach you for legal advice. PREPARE A LEGAL OPINION and advise them in detail on ALL applicable aspects and possible remedies. [30]

MARKING/ SCORING RUBRIC

1. Identification of problem(s) [5]
2. Application of legal principles to facts and substantiation of argument [20]
3. Structure and outline [3]
4. Technical presentation [2]

This tutorial question achieves the following:

- Students are exposed to a problem-solving exercise.
- They are expected to produce a well-written, coherent answer aiming to improve language proficiency. These requirements include a formal (style, footnotes, bibliography and language) as well as a substantive component, namely a clearly structured treatment of the topic(s), persuasiveness of arguments and correct use of authority.
- In this specific tutorial, the student has to identify the relevant legal principles applicable to the founder, trustees and beneficiaries of the trust respectively.
- The student has to undertake the research that will identify the most relevant sources and research methods likely to assist in solving the legal problems and to generate reasoned solutions and proffer advice to the client(s).
- It enhances inquiry-based learning, thus enabling students to think, communicate and justify their arguments. It stimulates critical thinking and creates an opportunity to develop a deeper understanding of concepts (in this instance of the “basic trust idea”; the importance of adherence to basic trust principles in the formation and administration of trusts and the legal consequences of the failure to comply).
- Constructive feedback is given later during a Virtual Blackboard Collaborate session where students ask questions and clarify issues.
- Even during Covid-19 the relevant material was readily accessible.

The “tutorial” exercise for Administration of Estates is the following:

Draft the following elements of the executor’s account based on the furnished information: (Half marks are awarded.)

- | | |
|---|-------------|
| 1. Liquidation account. | (14) |
| 2. Recapitulation statement. | (5) |
| 3. Distribution account. | (3) |
| 4. Fiduciary asset account. | (6) |
| 5. Estate duty addendum (including the apportionment of estate duty). | (7) |
| | [35] |

The elements must comply in all respects with the provisions of Regulation 5(1) promulgated in terms of the Administration of Estates Act 66 of 1965.

Personal information

Deceased: Mr X (ID number 650319 5088 080)

Date of death: 30 January 2019
Marital status: Married out of community of property with the inclusion of the accrual system to Mrs X, who survived the deceased.

Assets

1. Residential property (house) 39 Marais Street, Annlin, situated in the township Pretoria, held by the deceased under deed of transfer A123/1999 – Valuation R6 000 000 (not reduced to cash)
2. Toyota Hilux Registration number NDP 365 LP- valuation R800 000 (not reduced to cash)
3. Furniture and household effects – valuation R500 000 (not reduced to cash)
4. Shares in the “Big Five” company listed on Johannesburg Securities Exchange– valuation R700 000 (reduced to cash)
5. Fixed deposit of R2 000 000 in cheque account 1021942053 at ABC Bank on date of death
6. Mr X was the fiduciary owner (fiduciary) of a house 30 Mahlangu street, Silverton which was valued at R1 500 000 at the time of his death. At his death the property is to be transferred to Y, major daughter of the deceased who was 23 years and 8 months old at Mr X’s death. Transfer costs to Y amount to R10 000

Other payments

1. R2 000 000, being the proceeds of Sanlam life insurance policy on the life of the deceased, payable to the estate and collected by the executor
2. Proceeds of Liberty life insurance policy payable to Y, daughter of Mr X – R2 000 000
3. Proceeds of Momentum life insurance policy on the life of the deceased payable to Mrs X, payable in terms of a properly registered antenuptial contract between Mr X and Mrs X – R800 000

Liabilities

1. ABSA – first mortgage bond over house Marais Street 39, Annlin – R1500 000
2. Receiver of Revenue – final assessment – R200 000
3. Gauteng Funeral Services – funeral expenses – R20 000
4. Banking charges in respect of estate bank account – R1 000

5. Advertisements - Notice to creditors -
 - GG - R80
 - Citizen - R400Notice - account for inspection -
 - GG - R80
 - Citizen - R400
6. Executor's remuneration according to tariff
7. Master's fees according to tariff
8. Valuation costs - R30 000
9. Transfer costs wrt residential property - R20 000
10. Accrual claim by Mrs X: R 500 000

Testamentary stipulations

The deceased, Mr X, made a valid will with the following stipulations:

1. To the surviving spouse, Mrs X:
 - The residential property Annlin
 - Furniture
 - Cash legacy: R500 000
2. To Y, major daughter of the deceased:
 - The residue

This tutorial exercise achieves the following:

- It enhances the student's proficiency in compiling and drafting a liquidation and distribution account by applying the relevant legal principles in terms of relevant legislation.
- It enhances numeracy skills by requiring the student to calculate, *inter alia*
 - o Master's fees
 - o Executor's fees
 - o Gross value of the estate
 - o Value of fiduciary and usufructuary interests for purposes of estate duty
 - o Estate duty and apportionment thereof in terms of the required formula
 - o Balancing the account.

These skills are essential for purposes of the attorneys' board examination in which administration of estates is one of the papers.

Students have attention drawn to the responsibility to be prepared. They have to prepare and listen to the narrated lectures, read the

prescribed case law and journal articles, have copies of the respective pieces of legislation – such as the Trust Property Control Act 57 of 1988, the Administration of Estate Act 66 of 1965 and the Estate Duty Act 45 of 1955 – available when engaging with the slides, and work through the “tutorial-type” questions and submit them. Students who were not active on ClickUP I phoned to enquire after their well-being and reasons for not engaging with the module.

8 2 3 Applied competencies and high-order cognitive abilities

The aim throughout the process of ERT has been to maintain the module’s high academic standard. In general, the module aims to provide students with a comprehensive and sound knowledge and understanding of the law of trusts (nine weeks) and the law pertaining to the administration of estates (five weeks).

This is an elective module and the aim is to introduce these branches of law to students and to develop in them an interest in advancing to post graduate studies such as the LLM Estate Law programme. The purpose of the module thus is to offer a broad education that results in well- rounded graduates/practitioners with –

- A knowledge and appreciation of the values and principles enshrined in the Constitution with regard to the prevention of discrimination in the public and private domains;
- A critical understanding of theories, concepts, principles, ethics, perspectives, methodologies and procedures of the discipline of law;
- An ability to apply the above appropriately to academic, professional and career contexts; and
- A capacity to be accountable and take responsibility in academic, professional, and relevant societal contexts.

All lectures during Covid-19 were presented with the aim of developing the students’ ability to solve a problem and to advance their communication (writing), research and numeracy skills in the process.

In respect of the Law of Trusts, after reviewing the theoretical concepts and legal principles, students *inter alia* have to prepare and draft a testamentary trust encapsulating these principles, as well as forging a link with the general ERF 222 module studied in the second year. The instructions read as follows:

DRAFTING OF TESTAMENTARY TRUST

DRAFT a fictitious valid will that includes a testamentary trust by using your own facts and imagination. In the will you, *inter alia*, must make provision for the following situation according to the needs and instruction of your client:

- (a) Testamentary trust of testator/testatrix married in/out of community of property; deal with income and capital; beneficiaries and their rights to income/capital; powers of trustees, duties of trustees; termination etcetera.
- (b) Properly CONSTRUCT such a testamentary trust (use correct wording) by correctly applying the relevant legal principles and different possibilities in this regard.
- (c) Make provision for: revocation, nomination of executor and trustees; security etcetera (application of second year LLB Law of Succession 222 principles)
- (d) As well as creating a testamentary trust in regard to some assets, you must include other testamentary institutions in respect of the remaining assets (application of second year LLB Law of Succession 222 principles)
- (e) **Marking/Scoring rubric**

1.	Formulating of type of trust chosen; essentialia; validity of will; structure and outline of will; other testamentary institutions; duties; powers; termination	(35)
2.	Originality regarding set of facts	(5)
3.	Technical presentation (grammar, legal terminology; spelling; footnotes; bibliography; general impression)	(10)

This exercise aims to combine prior, and fourth year knowledge into a single scenario. Preparing a will is a task students often encounter early in their professional careers. As well as ensuring that the “will” complies with the formalities in s 2(1)(a) of Wills Act 7 of 1953 (second year LLB ERF 222 principles) the student has to consider using either a so-called “ownership” trust or a “bewind” trust as envisaged in s 1 of the Trust Property Control Act 57 of 1988. After consideration of the advantages and requirements of each of these two possible trust constructions, the student proceeds properly and correctly to construct a clause whereby a testamentary trust comes into being. In this construction, additionally, he/she must ensure that the so-called “essentialia” or minimum requirements for a trust to be valid are reflected. The students have their attention drawn to the demand that for purposes of the exercise the trust property is made up of some assets only and not the founder/testator’s entire estate. This requirement is instructed in order to enable the student to (also) include other “testamentary institutions” in the will pertaining to the remainder of the testator’s assets. In this regard the student might consider making use of formulating any of the following testamentary institutions: a suspensive or resolutive condition, a suspensive or resolutive time clause, a modus or obligation, direct or fideicommissary substitution or a usufruct, among others. This requirement involves re-visiting and incorporating second year LLB ERF 222 principles in the final product.

In respect of the powers and duties of the trustees, students are prompted to differentiate between statutory and common law duties. By reading the case law, they are equipped to formulate the necessary trustee duties, such as a detailed duty to invest; to take control of the trust property and to give effect to the clear or properly interpreted directives contained in the trust instrument; the duty of trustees to act jointly in business with outsiders, unless the trust instrument specifically authorises action by a lesser number of trustees; the duty to account to the Master of the High Court and to beneficiaries; the duty to act with the necessary care, diligence and skill which can reasonably be expected of a person who manages the affairs of another; the duty to open a bank account; and the duty to register and identify trust property, to mention a few duties.

Drafting and constructing the beneficiary clause(s) especially are a challenge and require a high degree of skill and higher-order cognitive abilities. In applying the relevant legal principles, the student, first, must distinguish between income and capital beneficiaries in the event of the “ownership” trust construction. An income beneficiary’s right in respect of the trust income mainly is determined by the nature of the trust, namely whether it is a discretionary or non-discretionary (vesting) trust. In this regard the student again must reflect on second year ERF 222 principles

as determined in *Braun v Blann and Botha*. A testator may confer a power of appointment on a trustee of a typical family (private) trust to appoint the income and/or capital beneficiaries from a “class” or specified group of persons. If the student decides on this “discretionary” scenario, he/she then is required to draft the necessary clause in a legally valid manner. Again, examples are available through research and by reading the relevant case law.

On the other hand, a vesting trust is one in which the trust instrument sets out exactly who are the trust beneficiaries and to what extent each beneficiary benefits from the trust. If the student decides on this construction, he/she will formulate the necessary clause in this regard. In terms of the rights of capital beneficiaries in respect of the trust capital the task of formulating the necessary clause is even more daunting and potentially is intimidating. In the event of the “ownership” trust the provisions of the trust instrument are decisive in determining the nature of the rights of the capital beneficiaries. It is especially important to determine whether a discretionary or vesting trust is at hand and whether or not provision is made for direct substitution. Although the theory regarding the beneficiary’s rights have been dealt with extensively during the engage phase, the student again is required to re-visit the second year ERF 222 module and the discussion on the “falling open” of an estate (*delatio*); vesting of rights (*dies credit*) and the enforcement of rights (*dies venit*) in order successfully to understand and to construct a sensible capital beneficiary clause.

In the process students work on their own and undertake independent management. The requirement they prepare a valid, albeit fictitious, will makes students sensitive in relation to the ethics applicable in the legal profession, with the emphasis on the need to ensure that clients have legal certainty and peace of mind on estate matters. This entire exercise, arguably, conforms to an enquiry-led curriculum, promotes deeper learning in view of preparing and equipping students for practice as envisaged by the Council on Higher Education’s National Review of the Bachelor of Laws Degree (2017). With regard to all assessments students were required to:

- Find, select, organise, use, analyse and evaluate a variety of information sources (textbook, case law, journal articles and so forth)
- Determine the relative authority of relevant information sources
- Read, interpret and summarise information sources
- Present and make a reasoned and substantiated choice between possible solutions

- Use techniques of legal reasoning, methodology and argumentation to reach a plausible solution
- Use appropriate referencing style guidelines
- Demonstrate academic integrity in research (plagiarism guidelines).

8 3 Evaluation and way forward

In conclusion I reflect on the lessons learnt, the success rate and the way forward in teaching Trusts and Estates 410. Covid-19 and ERT compelled me to re-imagine the application of innovative technological methods in order to maintain my teaching philosophy, to strive towards preparing students for legal practice and for post-graduate studies in law.

The temporary delivery methods of instruction that were adopted successfully addressed the problems caused by the disruptive nature of Covid-19 as evidenced by a high pass rate of 98 % as well as numerous positive student evaluations expressing their gratitude and appreciation. The students appreciated the effective communication, encouragement, organisation, structure, high standard of slides and instruction, feedback and the emphasis on applied competence preparing them for practice as indicated above. I realised that not every student initially had equal access to the virtual space and technological devices but through the assistance of senior faculty student advisor Farhana Hassan, we could ensure that no student was left behind. The successful implementation of ERT raised the following challenges:

- Ensuring students were engaged with the module and kept up with the weekly programme. Some students waited until the previous week and its assessment before engaging with the work. A system of awarding an “attendance mark” for tutorials and Blackboard Collaborate sessions later was devised to overcome this challenge.
- Not all students attended the Virtual Blackboard Collaborate sessions due to the heavy LLB test/assessment schedule.
- Students who did attend the Virtual Blackboard Collaborate sessions were often not “prepared” as envisaged by UP’s teaching and learning approach. Many did not participate actively in discussions.
- Ensuring academic integrity. I required students to submit their work for assessment through plagiarism detection software Turnitin. Some initial problems were detected; however, I explicitly alerted students to the consequences of practising academic dishonesty and the importance of conducting themselves in an ethical manner.

- As lecturer I was required to do “extraordinary things” regarding course delivery and learning that I was not prepared for, but campus support staff and especially the Department of Education Innovation must be commended for the support they provided staff and students.

I am eager to return to face-to-face teaching but will incorporate the technological innovations and methods of teaching in order to enhance and develop UP’s hybrid approach to teaching. In this regard, one could consider merging what is currently in the “prepare” and “engage” phases into the “prepare” phase. Face-to-face lectures then can be used to engage students through inquiry-led education. I support the view that teaching by questioning and not by telling enables students to think, communicate and substantiate their ideas. As student numbers for elective subjects are “capped” at 100, there is an excellent opportunity to use blended learning and other innovative methods of instruction such as small group discussions and even “role-play” in which students mimic and explain or even criticise the actions of the three parties to a trust, namely the founder, the trustees and the trust beneficiaries.

In this regard, recognition is paid to Andrew Northedge’s view that a socio-cultural account of the teacher’s role allows a balance to be struck between, on the one hand, the traditionally heavy focus on “delivering knowledge” and, on the other, the danger with a student-centred approach of underplaying the significance of the teacher’s specialist knowledge and skills. The teacher, as subject expert, has three key roles to play in enabling learning: lending the capacity to participate in meaning, designing well planned excursions into unfamiliar discursive terrain and coaching students in speaking the academic discourse.

I propose to continue my effort to help students explore the discipline/field and understand it use study methods appropriate to the discipline field, understand the legitimate ways of adding to knowledge in the field of trusts and estates, question theory and practice, make the connections, see the patterns, apply flexibly what is learnt within specific contexts or in solving specific open-ended problems, and generate new questions and new knowledge. As an admitted attorney of the High Court of South Africa, I am confident that I will be able to meet these expectations in respect of my lecturing responsibilities.

A variety of assessment methods and types, including summative and formative ones should be used. Assessment opportunities occur regularly throughout the course of study. As indicated, students already engage in a level of independent research and, in this regard, the Council on Higher Education’s national review of the Bachelor of Laws degree is considered.

The LLB programme of UP has been confirmed subject, inter alia, to the following short-term condition: addressing the apparent misalignment between the teaching and learning practices observed and the assessment methods employed in the faculty.

Assessments correspondingly include authentic problem-solving either in real life work contexts or in simulated teaching and learning activities. Adequate access to resources such as the library and e-resources as well as IT resources are available to meet the problem-solving and research attributes of the module.

Lastly, in respect of curriculum transformation the four UP drivers of curriculum transformation, will be incorporated into teaching and actively pursued, namely responsiveness to social context, epistemological diversity, renewal of pedagogy and classroom practices and an institutional culture of openness. The renewal of pedagogy and classroom practices has been addressed above and involves re-imagining methods and embracing technological innovation. In order to meet students' needs, increasingly, there must be use of diverse (technology) modalities that facilitate teaching online. Regarding displaying a responsiveness to social context, renewed emphasis will be placed on the nature, philosophy and principles of trust law in the South African Constitutional and social milieu. The importance of following this approach is evident from the recent Constitutional Court judgment in *King v De Jager*, and especially the following dictum by Victor AJ:

[167] In applying the principles of the Equality Act it is incumbent on every court to promote the spirit, purport and objects of the Bill of Rights. My concurrence is therefore directed at focusing on the Equality Act and how it should be interpreted in a more robust manner on the issue of testation based on transformative equality. My analysis considers the constitutional framework and section 9 of the Constitution as being the source of the right sought to be enforced without circumventing the Equality Act. The Equality Act seeks to regulate unfair discrimination and the adoption of positive measures in the public and private spheres.

[168] Unless there is a transformative constitutional approach taken by courts when equality rights are affected, the historical and insidious unequal distribution of wealth in South Africa will continue along various fault lines such as in the case, gender. A more robust understanding of substantive equality within our constitutional framework is necessary. Public policy is now deeply rooted in the Constitution and its underlying values.

It is my wish that Trusts and Estates 410 maintains its reputation as a popular, valuable and highly regarded elective module on the LLB programme for years to come.

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