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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.