

Setting the LLB curriculum change context

2.1 Introduction

The environments or contexts in which curriculum change occurs can significantly impact curriculum change and the development of a Curriculum Change Management Model (CCMM) for facilitating comprehensive curriculum change of the LLB degree at South African universities. This chapter investigates the unique contextual factors and challenges that informed the development of the Draft LLB CCMM.

This chapter is divided into three parts. In the first part I describe seven factors that emerged from the literature review on the higher education landscape. These factors affect not only higher education but also legal education and its curricula. The second part shifts the focus to the South African legal education context. I provide a brief history of the four-year LLB, the concerns of role players about the quality of four-year LLB graduates, and the various attempts by the Council on Higher Education (CHE) to address these concerns.

The third part of the chapter focuses on the University of the Free State (UFS) context. It investigates whether the purpose and rationale for introducing the four-year LLB were met. For this purpose, I explore whether the UFS four-year LLB improved equity and widened access to racial groups previously disadvantaged by apartheid.¹ Also, a critical analysis of the old UFS LLB curriculum is conducted, and six main areas for improvement are identified. As mentioned in chapter 1, the LLB CCMM was not explicitly developed for the UFS but for facilitating LLB curriculum change at South African universities. Therefore, I use the Report on the National Review of the LLB to establish whether the UFS context can be generalised to other South African universities.²

1 The redress or previously disadvantaged racial groupings in South Africa are classified officially as African, coloured and Indian. See part 2.2.6.

2 CHE 'The state of the provision of the Bachelor of Laws (LLB) qualification in South Africa' (2018), <https://www.che.ac.za/publications/reports/state-provision-bachelor-laws-llb-qualification-south-africa> (accessed 15 September 2024).

Part 1.1 explained that an LLB CCMM, for the purposes of this study, comprises principles for facilitating comprehensive LLB curriculum change at South African universities. From the literature review in this chapter, I extract specific draft principles (DPs) for inclusion in the Draft LLB CCMM proposed in chapter 4. These principles are reflected in relevant footnotes. The implications of the higher education, legal education, and UFS environments on LLB curriculum change and the proposal for a Draft LLB CCMM are highlighted at the end of the chapter.

2.2 The higher education landscape

This part briefly investigates seven factors that influence higher education generally and shows how they have shaped legal education and LLB curricula in South Africa. These factors are (i) globalisation and internationalisation; (ii) student protests and the calls for decolonisation; (iii) technology and the Fourth Industrial Revolution; (iv) the impact of the coronavirus disease 2019 (COVID-19) pandemic; (v) the under-preparedness of students for higher education; (vi) equity and widening student access; and (vii) a changing student cohort. I also highlight the interrelatedness of some of these factors.

2.2.1 Globalisation and internationalisation

There are conflicting views about the meaning and interrelationship of the concepts of globalisation and internationalisation. This part aims to distinguish between the two phenomena and show how they shape higher education, legal education and the LLB curriculum in South Africa. These phenomena's interrelatedness, specifically from a curriculum viewpoint, is also described.

Globalisation represents one of the most fundamental challenges that higher education has experienced over its long history.³ Theorists⁴ and South African higher education policies⁵ perceive neoliberalism as

3 P Scott 'Globalisation and higher education: Challenges for the 21st century' (2000) 4 *Journal of Studies in International Education* 3.

4 A Dodds 'How does globalisation interact with higher education? The continuing lack of consensus' (2008) 44 *Comparative Education* 507-508.

5 See part 3.4.2.

the ideology underpinning globalisation. Neoliberalism suggests that participating in the global market is the most effective way in which to overcome poverty.⁶ Consequently, globalisation and its neoliberalism roots emphasise employability⁷ and the development of highly skilled graduates for the global world of work.⁸ This emphasis on employability aligns well with the vocational approach to legal education, which propagates legal skills development to enhance law graduates' employability.⁹

Contrary to globalisation, which has capitalist and economic origins, internationalisation is perceived as a philosophical ideology with a social and political purpose.¹⁰ I support the view that internationalisation is a reaction to globalisation.¹¹ Therefore, globalisation led to the need for internationally oriented higher education. Similarly, Knight describes internationalisation as 'the process of integrating an international, intercultural or global dimension into the purpose, functions or delivery of post-secondary education.'¹²

The 'White paper for post-school education and training' identifies numerous forms that the internationalisation of higher education can

6 RW Adhikary 'The World Bank's shift away from neoliberal ideology: Real or rhetoric?' (2012) 10 *Policy Futures in Education* 191.

7 M ter Horst, M van der Moolen & A Brandsma-Dieters 'Learning outcomes, mobility, and the curriculum' in R Coelen, KW van der Hoek & H Blom (eds) *Valorisation of internationalisation: About internationalisation of higher education* (2017) 262.

8 Dodds (n 4) 512.

9 See part 2.3.2.

10 KP Dzvimbo & KC Moloi 'Globalisation and the internationalisation of higher education in sub-Saharan Africa' (2013) 33 *South African Journal of Education* 4.

11 KW van der Hoek & A Hospers 'International HRM for an international university' in Coeleb and others (n 7) 161; MM Munusamy & A Hashim 'The internationalisation of higher education: A networking based conceptual framework' (2020) 6 *AEI-Insights: An International Journal of Asia-Europe Relations* 35.

12 J Knight 'Updating the definition of internationalization' (2003) 33 *International Higher Education* 2. Also see H de Wit & F Hunter 'The future of internationalization of higher education in Europe' (2015) 83 *International Higher Education* 2. The Delphi study conducted by the authors supports Knight's definition of internationalisation and extended it as follows: '[T]he process of integrating an international, intercultural or global dimension into the purpose, functions or delivery of post-secondary education in order to enhance the quality of education and research for all students and staff, and to make a meaningful contribution to society.'

take.¹³ These include the incorporation of intercultural, international and global dimensions into curricula; university staff and student movement across borders; international teaching and research collaboration; the conclusion of institutional agreements by higher education institutions from different countries; arrangements between universities of various countries for mutual recognition of qualifications; and the establishment of satellite campuses in other jurisdictions.¹⁴

Globalisation has changed the practice of law worldwide¹⁵ and is evident in the emergence of global law firms and globalised lawyering.¹⁶ Today's lawyers are increasingly exposed to transactions and legal disputes with multinational dimensions.¹⁷ These changes instigated the move towards globalised legal education,¹⁸ which is particularly evident in Australian¹⁹ and American²⁰ literature. In the same vein, the LLB Qualification Standard²¹ also emphasises the importance of the LLB curriculum being responsive to globalisation.²²

Responsiveness to globalisation requires law faculties to internationalise legal education and their curricula. Furthermore, in terms of section 39(1) of the Constitution of the Republic of South Africa, 1996 (Constitution), a court, tribunal or forum should consider international law and may consider foreign law when interpreting the Bill of Rights. Therefore, LLB graduates should be enabled to draw connections between domestic, international and foreign laws.²³

13 Government Notice 11, GG, 15 January 2014, 37229 (White paper for post-school education and training) 39-40.

14 Van der Hoek & Hospers (n 11) 161; Munusamy & Hashim (n 11) 35.

15 F Ali 'Globalizing the US law school curriculum: How should legal educators respond' (2013) 41 *International Journal of Legal Information* 252.

16 VI Lo 'Before competition and beyond complacency – The internationalisation of legal education in Australia' (2012) 22 *Legal Education Review* 3.

17 KE Davis & X Zhang 'Who wants the global law school' (2018) 3 *UC Irvine Journal of International, Transnational and Comparative Law* 72.

18 Ali (n 15) 252.

19 Lo (n 16) 6; Ali (n 15) 3; C O'Sullivan & J McNamara 'Creating a global law graduate: The need, benefits and practical approaches to internationalise the curriculum' (2015) 8 *Journal of Learning Design* 53.

20 Ali (n 15) 251; Davis & Zhang (n 17) 71.

21 See part 2.3.2.

22 CHE Qualification Standard for the Bachelor of Laws (LLB) (2015) 7, <https://www.chc.ac.za/publications/standard-reviews/standards-bachelor-laws-llb> (accessed 10 November 2024). Also see part 2.2.1.

23 O'Sullivan & McNamara (n 19) 54.

The following four approaches of Lo can be used to internationalise the LLB curriculum as an effective response to globalisation:²⁴ (i) the inclusive pedagogical; (ii) integrative; (iii) preferential; and (iv) experiential pedagogical approaches.

The inclusive pedagogical approach

This approach suggests that the law curriculum exposes students to compulsory and elective modules in international, comparative and foreign laws.²⁵ However, it can create the perception of an internationalised law curriculum, while this is not the case.²⁶ Furthermore, adding compulsory international law modules can overload the curriculum.²⁷ For the purposes of this study, modules, courses and subjects are regarded as synonymous.

The integrative pedagogical approach

This approach entails incorporating international and foreign law into core domestic law modules.²⁸ Some domestic branches of law have an obvious international dimension that provides students with an excellent comparative legal studies opportunity.²⁹ It has the potential to show how domestic and foreign law link in transnational settings.³⁰ Examples of these laws include taxation, family law, criminal law, intellectual property law, trade law, human rights law, environmental law and dispute resolution. The integrative pedagogical approach does not require students to have a comprehensive knowledge of foreign laws.

Some academic members may be reluctant to teach translational aspects. They may believe that students should acquire a thorough grounding in domestic law instead. Limited or no textbooks dealing with a specific branch of the law from a domestic, foreign and international perspective may also hinder the drive for internationalisation,³¹ and

24 Lo (n 16) 7.

25 As above.

26 O'Sullivan & McNamara (n 19) 54.

27 O'Sullivan & McNamara (n 19) 57.

28 Lo (n 16) 7.

29 O'Sullivan & McNamara (n 19) 54.

30 Davis & Zhang (n 17) 76.

31 Lo (n 16) 10.

academics may not feel competent to deal with internationalisation in their teaching.³² Although the integrative pedagogical approach is more challenging to implement, it is considered the best approach for internationalising the curriculum.³³

The preferential pedagogical approach

This approach provides students with the opportunity to study international, comparative or foreign law in independent research projects under the supervision of law academics, participation in international moot competitions, and internships or externships with international organisations or international law firms.³⁴

The experiential pedagogical approach

This approach enables students to acquire international exposure through summer, exchange and dual-degree programmes.³⁵ It helps students to gain a deeper understanding of another jurisdiction's domestic laws and requires established networks and cooperation agreements between higher education institutions.³⁶ Students can also participate in international moot competitions and undergo internships and externships with international organisations or law firms.³⁷

The UFS Faculty considered these strategies when developing the new LLB to ensure responsiveness to the challenge of globalisation.³⁸ The pedagogies have the potential to expose law students to different viewpoints, legal systems and cultures.³⁹ Exposing students to international and foreign law in core domestic modules assists them in understanding how foreign jurisdictions deal with problems similar to those experienced in South Africa.⁴⁰ When students reach the same conclusions by applying domestic and foreign laws, they understand that the same fundamental principles are usually relevant in different

32 Ali (n 15) 263-264.

33 O'Sullivan & McNamara (n 19) 56.

34 Lo (n 16) 8.

35 As above.

36 O'Sullivan & McNamara (n 19) 56.

37 Lo (n 16) 8.

38 See DP B19 in part 4.5.2.

39 Ali (n 15) 260.

40 Ali (n 15) 262.

jurisdictions.⁴¹ They may also realise that there are multiple ways in which to solve the same problem and to better understand the law's role in society.⁴²

A single approach cannot ensure that a law degree is responsive to globalisation and internationalisation. Ultimately, with the new LLB, it was crucial to find an appropriate balance between teaching core domestic law modules, on the one hand, and the globalisation and internationalisation of the law curriculum, on the other. Consequently, the Draft LLB CCMM should facilitate academics' integration of globalisation and internationalisation perspectives into their modules.⁴³

Despite its significance, globalisation and internationalisation are not immune from critique. Cultural identity loss,⁴⁴ the 'Englishisation' of higher education⁴⁵ and the commercialisation of higher education are often associated with these phenomena.⁴⁶

Some scholars present internationalisation, Africanisation and decolonisation as conflicting or contradictory concepts.⁴⁷ The following part explores the implications of these concepts on the LLB curriculum. I briefly explain how the protests led to the calls for decolonisation, clarify the meaning of the decolonisation concept, and suggest practical ways for decolonising South African legal education and the LLB curriculum.

41 Lo (n 16) 6; Ali (n 15) 262.

42 As above.

43 See DP B19 in part 4.5.2.

44 W Tamrat & D Teferra 'Internationalization of Ethiopian higher education institutions: Manifestations of a nascent system' (2018) 22 *Journal of Studies in International Education* 435. Globalisation implies transferring knowledge from Western countries to developing countries. This knowledge ultimately shapes the recipients' outlooks, values and behaviour.

45 A Doiz, D Lasagabaster & J Sierra 'Globalisation, internationalisation, multilingualism and linguistic strains in higher education' (2013) 38 *Studies in Higher Education* 1407; N Galloway, T Numajiri & N Rees 'The "internationalisation", or "Englishisation", of higher education in East Asia' (2020) 80 *Higher Education* 395. Internationalisation creates the impression that English is the language of higher education and that members of staff, students and administrative staff should be proficient in English to succeed in an international career. As such, internationalisation could create tensions between the local language(s) and English, with accompanying identity and cultural loss to those whose home language is not English.

46 Tamrat & Teferra (n 44) 435.

47 MM Botha 'Compatibility between internationalizing and Africanizing higher education in South Africa' (2010) 14 *Journal of Studies in International Education* 200-201.

2.2.2 Student protests and the calls for decolonisation

Student protests have for many years characterised South African higher education. In the post-apartheid era, students protested about security, accommodation, funding and academic exclusions.⁴⁸ The student protests of 2015 and 2016, however, were different from previous protests. Instead of taking place at previously disadvantaged higher education institutions, the student protests took place on the campuses of formerly advantaged institutions in unprecedented ways.

The student protests of 2015 and 2016 commenced with the Rhodes Must Fall movement at the University of Cape Town in early March 2015.⁴⁹ Students directed their protests at a statue at the University of Cape Town commemorating the British imperialist Cecil John Rhodes.

By 15 October 2015, the #FeesMustFall protests against the tuition fee increase for 2016 started at the University of the Witwatersrand.⁵⁰ The protests soon spread to other South African higher education institutions.⁵¹ The violence and damage to university property threatened to disrupt the academic year. On 23 October 2015, Jacob Zuma, the former President of South Africa, announced that there would be no class fee increase for 2016.⁵² However, some students were not satisfied and continued to protest. Eventually, in December 2017, the former President announced that fully subsidised and free higher education and training would be introduced for poor and working-class South Africans.

The #FeesMustFall movement was not restricted to free education. Students also expressed dissatisfaction with the continued inequality, power and social relations at higher education institutions,⁵³ the failure of government, and the inability of higher education to meet policy

48 CHE 'Decolonising the curriculum: Stimulating debate' (2017) 3 *Briefly Speaking* 1-2.

49 G Mavunga 'FeesMustFall protests in South Africa: A critical realist analysis of selected newspaper articles' (2019) 7 *Journal of Student Affairs in Africa* 81.

50 As above.

51 L Lange '20 Years of higher education curriculum policy in South Africa' (2017) 68 *Journal of Education* 32.

52 The Presidency 'The President's response to the Higher Commission of Inquiry into Higher Education and Training' 16 December 2016, <http://www.thepresidency.gov.za/press-statements/president%E2%80%99s-response-heher-commission-inquiry-higher-education-and-training> (accessed 16 February 2021).

53 CHE (n 48) 1.

promises since 1997.⁵⁴ Lastly, the call for free education became entangled with other educational and social issues. Decolonising the curriculum became one of the burning issues that higher education had to address.⁵⁵

The #FeesMustFall movement challenged academics to reconsider the role that they have played in maintaining colonised social structures and demanded that higher education and its curricula be decolonised.⁵⁶ However, academics were doubtful and sceptical about the meaning and implications of decolonisation.⁵⁷ The following parts briefly investigate the meaning of decolonisation, its relationship to Africanisation and internationalisation and the decolonisation of legal education.

Clarifying the decolonisation concept

There is no common understanding of decolonisation, and conversations on the topic are challenging.⁵⁸ However, it is not a new concept. Moritz Julius Bonn coined 'decolonisation' as an academic term in 1932.⁵⁹ The decolonisation of knowledge has increasingly received attention in literature since the mid-1970s,⁶⁰ yet its meaning and implications remain grey areas. Instead of viewing decolonisation as a curriculum issue, some academics perceive it as a political process.⁶¹ In this regard, the former Minister of Higher Education and Training, Naledi Pandor, acknowledged that '[d]ecolonisation means different things to different people. But it's possibly primarily a curriculum and a cultural issue.'⁶²

54 Lange (n 51) 32.

55 CHE (n 48) 2.

56 BL Adams 'The far-reaching impact of transformative curriculum: A narrative critical ethnographic case study' (2019) 1 *Journal of Curriculum Studies* 1. Also see J Campbell 'Decolonising clinical legal education' in AE Tshivhase, LG Mpedi & M Reddi (eds) *Decolonisation and Africanisation of legal education in South Africa* (2020) 31.

57 As above.

58 Tshivhase and others (n 56) 1.

59 R Gordon 'Moritz Bonn: Southern Africa and the critique of colonialism' (2013) 45 *African Historical Review* 1.

60 WD Mignolo 'Delinking' (2007) 21 *Cultural Studies* 450. The author provides an extensive list of authors who have written about this concept.

61 Campbell (n 56) 34.

62 'Address by Minister of Higher Education and Training, during the Higher Education and Training Dept Budget Vote 2018/19, Parliament, Cape Town' 29 May 2018, <https://www.polity.org.za/article/sa-naledi-pandor-address-by-minister-of-higher-education-and-training-during-the-higher-education-and-training-dept-budget-vote-201819-parliament-cape-town-17052018-2018-05-18> (accessed 20 December 2020).

South Africa was subjected to two generations of colonisation.⁶³ The first occurred when the physical spaces and bodies of Africans were colonised. This generation of colonisation includes the apartheid era, which is regarded as a manifestation of coloniality.⁶⁴ The second generation of colonialism occurred when South Africans' minds were colonised through disciplines such as law, economics, the sciences and education.⁶⁵ For example, the colonised nature of South African law is evident in its Roman-Dutch and English law foundations.⁶⁶

Decolonisation scholars argue that, despite colonies attaining independence, the logic of colonisation remains with the former colonies' citizens.⁶⁷ Colonialism has degraded, exploited and suppressed colonised citizens. Colonised higher education curricula expose African students, in particular, to problems, examples, interpretations, socio-cultural constructs and solutions that negate their history, lived experiences and dreams.⁶⁸ As a result, traditional white students are advantaged, while African students tend to suffer inferiority complexes and low self-concepts.⁶⁹

Decolonisation aims to liberate Africans from these feelings of inferiority. It requires whites and other non-Africans to respect the cultural heritage, ideas, aspirations, interests, ideals, rights and rationality of Africans.⁷⁰ Therefore, African students demand that the 'injustice of

63 AE Tshivhase 'Principles and ideas for the decolonisation of legal education in South Africa' in Tshivhase and others (n 56) 5.

64 L le Grange 'Decolonising, Africanising, indigenising, and internationalising curriculum studies: Opportunities to (re)imagine the field' (2018) 4 *Journal of Education* 9.

65 Le Grange (n 64) 8.

66 R van der Bergh 'The remarkable survival of Roman-Dutch Law in nineteenth-century South Africa' (2012) 18 *Fundamina* 71. Jan van Riebeeck brought with him the Roman-Dutch law when he established the East India Company in 1652. In 1795 Great Britain occupied the Cape. Great Britain continued to rule (except for a short time from 1803 to 1806) until the Union of South Africa was established in 1910. The British government decided to retain Roman-Dutch law, but it was recommended to gradually change to English law.

67 Le Grange (n 64) 9.

68 CHE (n 48) 3.

69 R Oelofsen 'Decolonisation of the African mind and intellectual landscape' (2015) 16 *Phronimon* 132; M Mamdani 'Between the public intellectual and the scholar: Decolonization and some post-independence initiatives in African higher education' (2016) 17 *Inter-Asia Cultural Studies* 79; K Luckett & S Shay 'Reframing the curriculum: a transformative approach' (2017) 61 *Critical Studies in Education* 13.

70 Botha (n 47) 204.

misrecognition' be addressed.⁷¹ Put simply, by demanding decolonisation, students insist on undoing colonisation in the curriculum.⁷²

Decolonisation and Africanisation

One of the earliest calls for decolonisation on the African continent can be traced back to Kwame Nkrumah, a Ghanaian independence leader, who called for the unification and total liberation of Africa in his book *Africa must unite*: '[T]he twentieth century became the century of colonial emancipation, the century of continuing revolution which must finally witness the total liberation of Africa from colonial rule and imperialist exploitation.'⁷³

Literature tends to use the terms 'decolonisation' and 'Africanisation' interchangeably and as synonyms.⁷⁴ Le Grange clarifies this tendency by explaining that Africanisation is a decolonisation project that aims to decentre and deconstruct imperial and colonised knowledge on the African continent.⁷⁵ Africanisation equates to decolonisation in Africa, while decoloniality or decolonisation has a broader application in a global context. Consequently, decolonisation and Africanisation can be regarded as synonymous since the demand for colonisation occurs on the African continent. However, Etieyibo qualified this statement by reiterating that the two concepts only have the same meaning when 'Africanization is focused on making something African and when that thing that is to be made African was deprived of its Africanness by colonialism.'⁷⁶

Decolonisation and internationalisation

As mentioned, some authors portray Africanisation, decolonisation and internationalisation as polarised and incompatible concepts.⁷⁷

71 Luckett & Shay (n 69) 10.

72 Le Grange (n 64) 8.

73 (1963) x.

74 G Mheta, B Lungu & T Govender 'Decolonisation of the curriculum: A case study of the Durban University of Technology in South Africa' (2018) 38 *South African Journal of Education* 3.

75 Le Grange (n 64) 10.

76 'Why decolonization of the knowledge curriculum in Africa? (2021) 67 *Africa Today* 75.

77 Botha (n 47) 200-201.

They argue that the more one internationalises the curriculum, the less decolonised it becomes, and *vice versa*.⁷⁸ For example, Moja states that the imperative to participate in the global economy caused South African higher education to be responsive to globalisation at the expense of decolonisation, Africanisation and local needs.⁷⁹

However, this need not be the case. Neale-Shutte and Fourie suggest that higher education institutions should find a balance between Africanisation and internationalisation: 'In order to be competitors in internationalisation, African universities need to establish their own identities and develop their own niche.'⁸⁰ The 'White paper for post-school education and training' supported this view by stating that internationalisation could be an ideal platform to present local and indigenous knowledge to the global community.⁸¹ However, Bitzer and Botha acknowledged that higher education institutions find it challenging to establish the appropriate balance between localisation and internationalisation.⁸²

Decolonising and South African legal education

Authors suggest that an inclusive process be followed to decolonise the law and its curriculum.⁸³ Tshivhase proposed ten strategies for decolonising legal education in South Africa:⁸⁴ (i) considering the demand for decolonisation when engaging with the graduate attributes of the LLB Qualification Standard; (ii) creating more social awareness by engaging with South Africa's historical context;⁸⁵ (iii) including more African

78 Botha (n 47) 205.

79 T Moja 'Globalisation – A challenge for curriculum responsiveness' in H Griesel (ed) *Curriculum responsiveness: Case studies in higher education* (2004) 22.

80 M Neale-Shutte & J Fourie 'Challenges to internationalization in African higher education' (2006) 20 *South African Journal of Higher Education* 121.

81 GN 11 (n 13) 40.

82 E Bitzer & N Botha 'Introductory chapter' in E Bitzer & N Botha (eds) *Curriculum inquiry in South African higher education* (2011) 23; G du Toit 'Curriculum types and models' in E Bitzer & N Botha *Curriculum inquiry in South African higher education* (2011) 20.

83 Tshivhase (n 63) 5.

84 Tshivhase (n 63) 9-15.

85 Specific modules such as constitutional law and African customary law provide an excellent opportunity to discuss past injustices and how these should be addressed going forward.

content in the curriculum;⁸⁶ (iv) integrating the work of African scholars in the curriculum; (v) engaging with concepts such as transformative constitutionalism; (vi) including a compulsory African language module in the curriculum; (vii) using jurisprudence to stimulate debates on Africanisation and decolonisation;⁸⁷ (viii) demonstrating diversity in teaching practices and pedagogy; (ix) teaching customary law as being of equal status with common law;⁸⁸ and (x) creating safe spaces and open communication to hear the voice of students on decolonisation.

The Draft LLB CCMM should allow academics to incorporate decolonisation into their modules.⁸⁹ They should not focus on only one of these strategies of Tshivase,⁹⁰ but should employ a combination in an attempt to decolonise legal education and the LLB curricula.

The concept of decolonisation is often referred to when discussing the Fourth Industrial Revolution.⁹¹ The popular view is that the Fourth Industrial Revolution provides unique opportunities for pursuing decolonisation.⁹² For example, technology can make higher education more accessible to marginalised communities, it can assist in delivering tailor-made learning experiences to these communities, and it can be used to create a more inclusive learning experience by incorporating into learning material culturally relevant content about these communities' identity, history and heritage.

86 The LLB curriculum should create learning opportunities about Africa's history and specific endeavours that aim to address the challenges the continent faces. Academics need to carefully consider curriculum content to engage adequately with students' life experiences.

87 A jurisprudence module provides an excellent platform for conceptualising decolonised and Africanised legal education.

88 Time should be allocated for customary law. It needs to be taught more broadly across the curriculum, and at an appropriate level to enable students to understand the complexity and significance thereof.

89 See DP B19 in part 4.5.2.

90 Tshivase (n 63) 9-15.

91 J Butler-Adam 'The Fourth Industrial Revolution and education' (2018) 114 *South African Journal of Science* 1.

92 VC Onwughalu & V Ojakorotu 'The 4th Industrial Revolution: An opportunity for Africa's "decolonization" and development or recolonization?' (2020) 17 *African Renaissance* 76.

2.2.3 Technology and the Fourth Industrial Revolution

In 2016 Klaus Schwab, founder and executive chairperson of the World Economic Forum, convinced the world that we are at the beginning of the Fourth Industrial Revolution:⁹³

We stand on the brink of a technological revolution that will fundamentally alter the way we live, work, and relate to one another. In its scale, scope, and complexity, the transformation will be unlike anything humankind has experienced before. We do not yet know just how it will unfold, but one thing is clear: the response to it must be integrated and comprehensive, involving all stakeholders of the global polity, from the public and private sectors to academia and civil society.

The term ‘Fourth Industrial Revolution’ refers to various technological transformations such as artificial intelligence, 3D-printing, robotics, autonomous vehicles, industrial internet of things, cyber-physical systems, quantum computing and nanotechnology.⁹⁴ The parts below illustrate that neither legal practice nor education has been immune to technology and the Fourth Industrial Revolution.⁹⁵

Computers and information technology have affected almost all regular activities of legal practitioners. Generally, it has a bearing on law office operations, court operations and technology-assisted reviews.⁹⁶ Nowadays, legal practitioners use software with specifically programmed algorithms to search, analyse and organise vast and diverse data sets for e-discovery or other record-intensive investigations.⁹⁷ Artificial intelligence can analyse lengthy legal documents and assist with research⁹⁸

93 ‘The Fourth Industrial Revolution: What it means, how to respond’ 14 January 2016, <https://www.weforum.org/agenda/2016/01/the-fourth-industrial-revolution-what-it-means-and-how-to-respond/#> (accessed 30 December 2020).

94 E Sutherland ‘The Fourth Industrial Revolution – The case of South Africa’ (2020) 47 *Politikon* 233.

95 WH Gravett ‘Is the dawn of the robot lawyer upon us? The Fourth Industrial Revolution and the future of lawyers’ (2020) 23 *Potchefstroom Electronic Law Journal* 27-28.

96 RL Marcus ‘The impact of computers on the legal profession: Evolution or revolution?’ (2008) 102 *Northwestern University Law Review* 1866-1867.

97 JO McGinnis & RG Pearce ‘The great disruption: How machine intelligence will transform the role of lawyers in the delivery of legal services’ (2014) 82 *Fordham Law Review* 3046; B Alarie, A Niblett & AH Yoon ‘How artificial intelligence will affect the practice of law’ (2018) 68 *University of Toronto Law Journal* 117; S Stern ‘Introduction: Artificial intelligence, technology, and the law’ (2018) 68 *Supplementary University of Toronto Law Journal* 10; Gravett (n 95) 17.

98 Gravett (n 95) 17-23.

and document generation.⁹⁹ It can be employed to determine how courts decide cases before, during and after trial through predictive analysis.¹⁰⁰

Artificial intelligence enables legal practitioners to work more efficiently and accurately, and tasks that took several hours can now be completed in minutes.¹⁰¹ Technology can reduce labour costs, causing clients to receive more value for their money.¹⁰² Gowder emphasises the role of 'transformative legal technology' in making legal services more affordable to clients, addressing unequal access to justice and legal redress.¹⁰³ Furthermore, artificial intelligence assists legal practitioners in staying abreast of new developments in their areas of expertise. It can also assist them in developing new areas of specialisation.¹⁰⁴

The Fourth Industrial Revolution requires higher education to use learning management systems such as Blackboard or Moodle, videos, podcasts, Powerpoint, social media and clickers. Higher education has to prepare graduates who are ready for the Fourth Industrial Revolution.¹⁰⁵ The LLB Qualification Standard emphasises the importance of information technology.¹⁰⁶ It requires higher education to produce LLB graduates who are competent in accessing information efficiently and effectively, and using technology to research, organise, evaluate and communicate information. In 2016 the South African Law Deans' Association (SALDA), in cooperation with the Legal Education and Development division of the Law Society of South Africa, organised a workshop on integrating information technology and internet law into the LLB curriculum.¹⁰⁷ Participants concluded that internet law should form part of the LLB curriculum as a stand-alone, integrated or hybrid module. Students must also be competent in using technology and

99 McGinnis & Pearce (n 97) 3058-3059. The authors note that online consumers and small business make use of artificial intelligence of, among others, LegalZoom, Rocket Lawyer, Nolo and Law Depot to generate legal documents.

100 McGinnis & Pearce (n 97) 3052-3053; Gravett (n 95) 17-23.

101 Alarie and others (n 97) 116-117; Gravett (n 95) 27-28.

102 Alarie and others (n 97) 116-117; Gravett (n 95) 28.

103 P Gowder 'Transformative legal technology and the rule of law' (2018) 68 *Supplementary University of Toronto Law Journal* 106. Also see McGinnis & Pearce (n 97) 3066.

104 Gravett (n 95) 27.

105 K Menon & G Castrillón 'Reimagining curricula for the Fourth Industrial Revolution' (2019) 14 *The Independent Journal of Teaching and Learning* 11.

106 CHE (n 2) 8.

107 SALDA 'The integration of IT and ICT law into the LLB curriculum workshop' (2016) 3-4 (on file with author).

databases, including LexisNexis-Butterworths, Jutastat, Sabinet Legal and other recognised e-research resources.

Undoubtedly, students will use artificial intelligence-driven language systems such as ChatGPT¹⁰⁸ and Gemini¹⁰⁹ in their future careers as legal practitioners.¹¹⁰ These systems generate human-like text based on questions and prompts.¹¹¹ Higher education should embrace using artificial intelligence-driven language systems. One of the significant advantages of artificial intelligence-driven language systems is their ability to enhance the learning efficiency of students. The systems can assist students with legal research and document analysis, thereby enabling students to spend more time on higher-order thinking and complex problem solving.¹¹² On the one hand, law academics should teach students how to use artificial intelligence responsibly and with integrity. On the other hand, academics should proactively develop assessment strategies to combat the potential misuse of generative artificial intelligence and create assessments resistant to cheating and plagiarism.¹¹³

Undoubtedly, technology and the Fourth Industrial Revolution should impact the LLB curriculum. Therefore, academics must incorporate aspects of the Fourth Industrial Revolution into their modules¹¹⁴ and consider how information technology skills will be developed in different years and modules of the LLB.¹¹⁵

The COVID-19 pandemic saw the rapid integration of features of the Fourth Industrial Revolution in higher education.¹¹⁶ Due to COVID-19, law schools have demonstrated that online teaching and learning can replace traditional teaching practices in law schools. The

108 <https://chatgpt.com> (accessed 23 September 2024).

109 <https://gemini.google.com> (accessed 23 September 2024).

110 M Ajevski and others 'ChatGPT and the future of legal education and practice' (2023) 57 *The Law Teacher* 363-364.

111 S Koos & S Wachsmann 'Navigating the impact of ChatGPT/GPT4 on legal academic examinations: Challenges, opportunities and recommendations' (2023) 6 *Media Iuris* 256.

112 Koos & Wachsmann (n 111) 268.

113 See DP B19 in part 4.5.2.

114 As above.

115 See DP D6 in part 4.5.3. The curriculum imperative and graduate attribute map played an important role in this regard (see part 5.5.2).

116 Y Bentata 'COVID-2019 pandemic: A true digital revolution and birth of a new educational era, or an ephemeral phenomenon?' (2020) 25 *Medical Education* 1.

part below very briefly describes the impact of this pandemic on higher education.

2.2.4 The coronavirus disease (COVID-19) pandemic

The outbreak of SARS-Cov2 was responsible for the infectious viral respiratory disease called COVID-19. It originated in Wuhan, China, in December 2019, affecting people worldwide. The pandemic occurred after the development of the new LLB and did not affect the UFS curriculum change process. I will not discuss the impact of the pandemic in detail and will only highlight some of the most significant effects of COVID-19 on higher education.

Before the pandemic, higher education institutions usually considered online teaching an additional option to face-to-face learning.¹¹⁷ The outbreak of COVID-19 and the announcement of the lockdown in South Africa on 23 March 2020¹¹⁸ meant that students could not attend face-to-face classes. Students and academics quickly had to adjust to ‘emergency online education’.¹¹⁹

Since June 2021, higher education institutions have had to follow a risk-adjusted strategy to phase in the reopening of campus activities.¹²⁰ COVID-19 has undoubtedly presented the most significant challenge to the relevance and resilience of higher education in recent times.

COVID-19 has been described as ‘a blessing in disguise’ by affirming the critical role of online and blended learning in higher education.¹²¹ The impact on South African higher education was profound.¹²² Law faculties will continue with online teaching, and teaching and learning

117 G Marinoni, H Van't Land & T Jensen *The impact of COVID-19 on higher education around the world* (2020) 6.

118 Government Notice 399, GG 25 March 2020, 43147 (Directions issued by the Minister of Cooperative Governance and Traditional Affairs with respect to the response to COVID-19 in the Cooperative Governance and Traditional Affairs sectors).

119 Marinoni and others (n 117) 6.

120 Government Notice 652, GG 8 June 2021, 43414 (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).

121 R Bordoloi, P Das & K Das ‘Perception towards online/blended learning at the time of COVID-19 pandemic: An academic analytics in the Indian context’ (2022) 30 *Asian Association of Open Universities Journal* 56.

122 OB Adedoyin & E Soykan ‘COVID-19 pandemic and online learning: The challenges and opportunities’ (2023) 31 *Interactive Learning Environments* 873.

will become more blended. However, higher education should note that COVID-19 and online teaching exacerbated the already under-preparedness of students from especially disadvantaged groups who lacked access to reliable internet and computers.¹²³

2.2.5 The under-preparedness of students for higher education

Most first-year students register for higher education studies directly after completing school. These students are not prepared for the demands of higher education,¹²⁴ and a so-called ‘school-university gap’¹²⁵ or ‘articulation gap’¹²⁶ is evident. The articulation gap is particularly prevalent in South Africa.¹²⁷ Campbell describes the under-preparedness of school leavers as a ‘major, critical issue’ impacting legal education in South Africa.¹²⁸ The gap is most evident in first-year students’ lack of foundational skills such as reading, writing, speaking and basic numeracy skills.¹²⁹

Although a range of factors have contributed to the current under-preparedness of first-year students, the policy of apartheid, the entrance

123 Adedoyin & Soykan (n 122) 866.

124 AL Bechuke & A Oduaran ‘Bridging the knowledge gap of South African first year students in the transition from high school to university’ in MA Mokoena & IJ Oosthuizen (eds) *A scholarly compendium for teaching and learning* (2018) 239.

125 C Nel, C Troskie-De Bruin & E Bitzer ‘Students’ transition from school to university: Possibilities for a pre-university intervention’ (2009) 23 *South African Journal of Higher Education* 975.

126 I Scott ‘A proposal for undergraduate curriculum reform in South Africa: The case for a flexible curriculum (2013) structure’, https://www.che.ac.za/sites/default/files/publications/Full_Report.pdf (accessed 10 November 2024). Also see L Greenbaum ‘Legal education in South Africa: Harmonizing the aspirations of transformative constitutionalism with our educational legacy’ (2016) 60 *New York Law School Law Review* 473, A Bauling ‘Towards a sound pedagogy in law: A constitutionally informed dissertation as capstone course in the LLB degree programme’ (2017) 20 *Potchefstroom Electronic Law Journal* 3; AD Crocker ‘Facing the challenge of improving the legal writing skills of educationally disadvantaged law students in a South African law school’ (2018) 21 *Potchefstroom Electronic Law Journal* 2; J Moyo ‘Underpreparedness in South African higher education: A limited test of the English grammar awareness of first-year university students’ (2020) 34 *South African Journal of Higher Education* 167.

127 RN Prince and others ‘Academic and quantitative literacy in higher education: Relationship with cognate school-leaving subjects’ (2021) 35 *South African Journal of Higher Education* 164.

128 J Campbell ‘The role of law faculties and law academics: Academic education or qualification for practice?’ (2014) 25 *Stellenbosch Law Review* 31. Also see Greenbaum (n 126) 491.

129 Prince and others (n 127) 171.

of first-generation students into higher education and studying in a second or third language, all play a crucial role. The impact of these factors on the articulation gap is explored next.

The effect of the policy of apartheid on the school system

The policy of apartheid imposed an inferior primary and secondary school education on African learners.¹³⁰ In the apartheid era, inequalities were evident in the distribution of resources, the quality of teachers and opportunities provided to black learners.¹³¹ In the post-apartheid era, schools for black learners in rural areas and townships continue to perform at apartheid-era levels.¹³² These schools are characterised by shortages of books and learning materials; poor infrastructure and facilities; unreliable learner transport; a lack of efficient management and leadership structures; limited commitment and discipline from learners and their parents; and few highly experienced and qualified teachers.¹³³ Consequently, learners from these rural schools find it particularly challenging to enter higher education.¹³⁴ Learners from black schools are academically less prepared for university than students from former Model C schools.¹³⁵ Model C schools were public schools that were for white learners only and who were privileged during apartheid.¹³⁶ They receive a state subsidy and are primarily funded by the parent bodies.

130 OT Gore “Student disadvantage”: Key university stakeholders’ perspectives in South Africa’ (2021) 10 *International Journal of Higher Education* 214.

131 SN Matoti & MA Lekhu ‘Problems first year university students bring to science classes and implications for teaching’ (2008) 12 *Interim* 126.

132 Equal Education Law Centre ‘Underperforming schools’ (2022), <https://eelawcentre.org.za/wp-content/uploads/underperforming-schools-report-2.pdf> (accessed 24 August 2024).

133 P du Plessis & R Mestry ‘Teachers for rural schools – A challenge for South Africa’ (2019) 39 *SAJE* S2-S7; L Arendse ‘The South African Constitution’s empty promise of “radical transformation”: Unequal access to quality education for black and/or poor learners in the public basic education system’ (2019) 23 *Law Democracy and Development* 100; Equal Education Law Centre (note 132).

134 S Timmis and others ‘Encounters with coloniality: Students’ experiences of transitions from rural contexts into higher education in South Africa’ (2019) 7 *Critical Studies in Teaching and Learning* 77-78.

135 P Christie & C McKinney ‘Decoloniality and “Model C” schools: Ethos, language and the protests of 2016’ (2018) 21 *Education as Change* 11.

136 As above.

They continue offering a relatively high quality of education and are the best-performing public schools.¹³⁷

Consequently, deep-seated racial and social inequalities are still prevalent in matric¹³⁸ results after apartheid.¹³⁹ White matrics continue to perform better than learners from other races. For example, in 2016, 83 per cent of white matrics obtained a grade of 40 per cent and above as opposed to only 29 per cent of African candidates.¹⁴⁰

The increased entrance of first-generation students

Since the dawn of democracy and the accompanying call for equity and widening access,¹⁴¹ South African higher education has witnessed an increase in African student enrolments. Most of these students are first-generation students.¹⁴² These disadvantaged students enter higher education with characteristics and experiences that place them in a disadvantageous position.¹⁴³ They often feel that they do not belong at university¹⁴⁴ and experience a deep sense of disconnection.¹⁴⁵ They usually come from low-income families, have single parents or even come from child-headed families, and have studied at under-resourced schools with inadequately qualified teachers.¹⁴⁶ First-generation students have limited

137 Almost all of the top ten public schools, based on the amount of distinctions per learner, were former Model C schools. See The South African '2021 Matric results: Here are the top 10 schools in South Africa' 21 January 2022, <https://www.thesouthafrican.com/news/breaking-2021-matric-results-top-schools-best-performing-list/> (accessed 14 November 2024).

138 Matric is the final year of high school and the minimum university entrance requirement.

139 South African Institute of Race Relations 'Report finds deep racial and social inequalities in matric results' 9 February 2016, <https://irr.org.za/media/media-releases/report-finds-deep-racial-and-social-inequalities-in-matric-results/view> (accessed 14 November 2022).

140 Unfortunately, more recent data are not available.

141 See part 2.6.

142 S Motsabi, B Diale & A van Zyl 'The academic persistence of first year first generation African students (FYFGAS): A framework for higher education in South Africa' (2020) 8 *Journal of Student Affairs in Africa* 73.

143 Motsabi and others (n 142) 78.

144 R Forsyth and others 'Shape-shifting and pushing against the odds: Staff perceptions of the experiences of first generation students in South Africa and the UK' (2022) 49 *The Australian Educational Researcher* 308.

145 N Norodien-Fataar 'The cultivation of learning dispositions among first-generation disadvantaged students at a South African University' (2018) 54 *Educational Studies* 520.

146 Motsabi and others (n 142) (n 284) 78.

knowledge of the application process for higher education, and available financial assistance. They are typically more anxious about financial obligations than non-first-generation students. Hence, these students are generally underprepared for higher education and are likelier to drop out and score lower marks than those from families with previous experience in higher education.¹⁴⁷

Studying in a second or third language

English and Afrikaans are the formal languages of instruction at most South African higher education institutions offering LLB degrees. Nonetheless, South Africa has 12 official languages,¹⁴⁸ and English is a second or foreign language for most LLB students.¹⁴⁹ Therefore, many students from disadvantaged educational backgrounds must study in their second or third language. It has severe implications for the academic success of these students, since research has confirmed the positive effect of mother-tongue education on university students.¹⁵⁰ Students whose mother tongue is not English struggle with legal academic discourse and English as a medium of instruction.¹⁵¹ The language problem is further exacerbated by some academic staff members having to teach the language of law while they are not native English speakers.¹⁵²

Higher education institutions should take positive steps to close the gap from their side.¹⁵³ Therefore, the new UFS LLB curriculum had to consider modules in literacy, numeracy, computer skills and general academic skills to bridge the articulation gap. Some universities have introduced extended curriculum programmes to provide additional foundation learning time.¹⁵⁴ Similarly, the UFS Faculty developed an

147 Forsyth and others (n 144) 308.

148 Sec 6 of The Constitution of the Republic of South Africa, 1996.

149 Greenbaum (n 126) 463.

150 D Maller 'Walking a mile in their shoes: Non-native English speakers' difficulties in English language mathematics classrooms' (2011) 4 *Journal of Learning and Design* 28; JM Thamaga-Chitja & T Mbatha 'Enablers and barriers to South African university classrooms' (2012) 30 *Southern African Linguistics and Applied Language Studies* 339.

151 B Bangeni & L Greenbaum 'Bachelor of Laws (LLB) students' views of their literacy practices: Implications for support in a time of change' (2019) 10 *Reading and Writing* 4-5.

152 Greenbaum (n 126) 483.

153 Scott (n 126) 17; Greenbaum (n 126) 483.

154 Scott (n 126) 23; Greenbaum (n 126) 484.

extended curriculum programme for the LLB. Students who do not meet the admission criteria for the mainstream LLB can register for the extended curriculum programme. This book focuses on developing an LLB CCMM for the mainstream LLB curriculum. Therefore, I will not elaborate on the development of the new extended LLB curriculum programme, which falls outside the scope of this book. It is important to note that the extended curriculum programme developed by the UFS Faculty should not be mistaken for the five-year LLB proposed by the National Review of the LLB and described in parts 1.1 and 2.3.2. Consequently, should institutions decide to present an extended curriculum programme in addition to the proposed five-year LLB programme, the minimum duration of the first-mentioned programme will be six years.

2.2.6 Equity and widening access to higher education

Across the globe, education policies have intensified their call on higher education institutions to address issues of increased democratisation and equity by widening access to ‘non-traditional’ groups.¹⁵⁵ Similarly, the call for equity and widening access has gained momentum since the democratisation of South Africa. In response to the international call for equity and widening access, the global gross enrolment ratio in tertiary education has increased from approximately 19 per cent in 2000 to almost 42 per cent in 2022.¹⁵⁶ Over the same period, the South African gross enrolment ratio in tertiary education has improved by more than 6 per cent, from 18,1 per cent in 2014 to 25,4 per cent in 2022.

South Africa has applied two main strategies to address widening access to higher education: (i) by offering financial aid through the National Student Financial Aid Scheme (NSFAS) to students from low-income families; and (ii) by modifying admission policies and selection

155 C Evans and others “‘Widening access’ to higher education: The reproduction of university hierarchies through policy enactment’ (2019) 34 *Journal of Education Policy* 101; B Kloot ‘Curriculum reform as a driver for change in higher education: The case of South Africa’ (2015) 60 *Journal of Education* 123-124.

156 The World Bank ‘School enrolment, tertiary (% gross)’ (2024), <https://ourworldindata.org/grapher/gross-enrollment-ratio-in-tertiary-education> (accessed 24 August 2024). The global gross enrolment ratio in tertiary education is calculated by expressing the global total enrolment number in tertiary education as a percentage of the total population of secondary school leavers in a specific year.

criteria to respond more to students' socio-economic backgrounds.¹⁵⁷ However, widening participation has not translated into significant social equity improvement.¹⁵⁸

Although access is often measured by increased enrolment from historically disadvantaged students, it is seldom assessed through a social justice framework that links equitable access to equitable outcomes.¹⁵⁹ Although higher education institutions generally succeed in increasing 'non-traditional' groups' enrolment rates, they typically find it challenging to improve the low retention and graduation rates¹⁶⁰ of non-traditional groups.

The following discussion reflects on the equity and widening access to higher education challenges for higher education and legal practice in South Africa. I refer to the apartheid-era race categories of African, coloured (people of mixed race),¹⁶¹ Asian and white. These racial groups correspond with the CHE's use of these terms to monitor redress.¹⁶² Note that the African, coloured and Asian racial groups are collectively

157 L van Niekerk 'Help hulle inkom én deurkom: Siënings oor studentetoegang en -sukses in regsopleiding in Suid-Afrika' (2024) 21 *Litnet Akademies* 7.

158 Luckett & Shay (n 69) 2.

159 J Quinn 'Drop-out and completion in higher education in Europe among students from under-represented groups' (2013), <https://nesetweb.eu/en/resources/library/drop-out-and-completion-in-higher-education-in-europe-among-students-from-under-represented-groups/> (accessed 15 October 2024) 9; T Gale & S Parker 'International research on the effectiveness of widening participation' Report to Higher Education Funding Council of England (HEFCE) and the Office for Fair Access (OFFA) (CFE Research and Consulting' (2013) 33, <https://webarchive.nationalarchives.gov.uk/20160702152239/http://www.hefce.ac.uk/pubs/rereports/Year/2013/wpeffectiveness/Title,92183,en.html> (accessed 10 October 2024); DRE Cotton, T Nash & P Kneale 'Supporting the retention of non-traditional students in higher education using a resilience framework' (2017) 16 *European Educational Research Journal* 62.

160 The graduation rate is also known as the throughput rate. The CHE 'Vital stats public higher education 2019' (2021), <https://www.che.ac.za/publications/vital-stats> (accessed 10 July 2024) described the calculation of the throughput rate as follows: 'The throughput rate calculates the number of first-time entry undergraduate students of a specific cohort of a specific year who have graduated either within the minimum time, or up to 2 years beyond the minimum time, to the number of students in the baseline enrolments of that cohort. Throughput rates are reflected in the section on cohort studies.'

161 Coloured people are popularly regarded as being of 'mixed race' and does not refer to the understanding of black people in Great Britain and the United States of America. M Adhikari 'Contending approaches to coloured identity and the history of the coloured people of South Africa' (2005) 3 *History Compass* 1.

162 CHE (n 160).

referred to as the 'black' racial group in South Africa.¹⁶³ Although the categorising of people by race may prolong stereotypes or reinforce existing biases, the reference to these racial groups can be justified by the intention to achieve socio-economic and educational justice for all South African citizens.¹⁶⁴

The most recent data made available by the CHE reveal that there has been a steady increase in the number of African enrolments at higher education institutions.¹⁶⁵ For example, in 2017, 823 838 African students were enrolled at higher education institutions,¹⁶⁶ while the number increased by almost 12 per cent to 919 404 in 2022.¹⁶⁷ Similarly, the higher education participation rate¹⁶⁸ for Africans has risen from 19 per cent in 2017¹⁶⁹ to 23 per cent in 2022.¹⁷⁰

The graduation and drop-out rates according to race for four-year degrees, with 2017 as the first year of enrolment, compare favourably with the results of the 2005 cohort. Six years after enrolment, 37 per cent of the 2005 African cohort graduated,¹⁷¹ while 70 per cent of the 2017 cohort graduated in 2022.¹⁷² After five years of study, the drop-out rate decreased from 57 per cent for the 2005 African cohort¹⁷³ to 24 per cent for the 2017 cohort.¹⁷⁴

Despite the improvement in the participation, graduation and drop-out rates for African students, these paint a less favourable picture when compared to white students' performance. Patterns of inequality are still evident. For example, in 2020 the graduation rate for the 2017 white

163 See, eg, the definition for 'black people' in terms of the Broad-Based Black Economic Empowerment Act 46 of 2003.

164 Z Erasmus 'Confronting the categories: Equitable admissions without apartheid race classification' (2010) 24 *South African Journal of Higher Education* 244. Also see P de Vos 'A rethink on race?' 3 October 2011, <http://constitutionallyspeaking.co.za/a-rethink-on-race/> (accessed 30 November 2022).

165 CHE 'Vital stats public higher education 2022' (2024) <https://www.che.ac.za/publications/vital-stats/> (accessed 10 May 2025).

166 CHE (n 165) 9.

167 CHE (n 165) 3.

168 This percentage represents the total head count enrolment over the national population of 20-24 years old, calculated as a percentage. See CHE (n 165) iii.

169 CHE (n 165) 16.

170 As above.

171 CHE 'Vital stats public higher education 2010' (2012), <https://www.che.ac.za/publications/vital-stats/> (accessed 10 May 2025).

172 CHE (n 171) 97.

173 CHE (n 171) 53.

174 CHE (n 171) 97.

cohort was 6 per cent higher, and the drop-out rate was 6 per cent lower than that of their black counterparts.¹⁷⁵

The unfortunate consequences of widening access can be traced back to ‘the architecture of the apartheid education system’,¹⁷⁶ the under-preparedness of students for higher education¹⁷⁷ and the complexity of transforming post-apartheid higher education.¹⁷⁸ Although the perceived difference in the quality of university graduates appears to be based on race, Godfrey¹⁷⁹ blames differences in universities’ capacities for this state of affairs. Historically black universities continue to suffer from the structural and agential legacies of apartheid,¹⁸⁰ management at these institutions remains poor, and the institutions still experience a funding crisis.¹⁸¹ These universities have not been able to meet the new imperatives of producing quality research,¹⁸² developing skills and creating improved facilities.¹⁸³ Consequently, their appeal to African students and staff has diminished.

Issues about broadening student access and low graduation rates have long dominated the South African legal practice and legal education landscape. The graphical illustrations below highlight patterns and inequalities among different race groups in legal practice and education. Data from the University of South Africa are not included in the discussion below since the University provides a distance and not a contact mode of tuition.

Figure 2.1 reflects the most recent data on the racial composition of first-year LLB students at South African universities from 2010 to

175 As above.

176 Gale & Parker (n 159) 18.

177 See part 2.2.5.

178 Kloot (n 155) 2.

179 S Godfrey ‘The legal profession: Transformation and skills’ (2009) 126 *South African Law Journal* 123.

180 BV Mtshweni ‘COVID-19: Exposing unmatched historical disparities in the South African institutions of higher learning’ (2022) 36 *South African Journal of Higher Education* 239. Also see Greenbaum (n 126) 479.

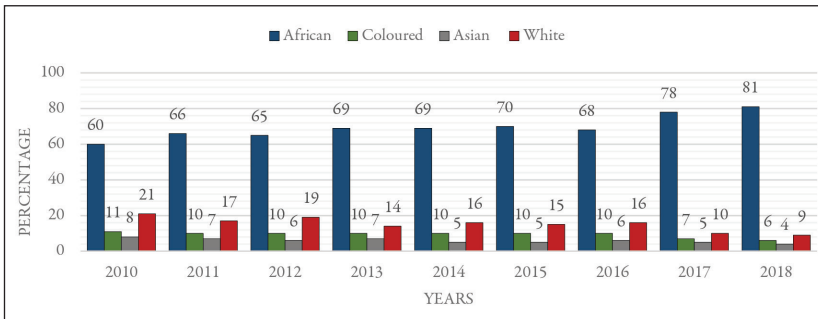
181 J Marire ‘Are South African public universities economically efficient? Reflection amidst higher education crisis’ (2017) 31 *South African Journal of Higher Education* 134.

182 E Muthama & S Mckenna ‘The contradictory conceptions of research in historically black universities’ (2017) 35 *Perspectives in Education* 139.

183 Higher Education South Africa ‘South African higher education in the 20th year of democracy: Context, achievements and key challenges’ 5 March 2014, <https://static.pmg.org.za/140305hesa.pdf> (accessed 30 November 2022).

2018.¹⁸⁴ Unfortunately, no data are available for the years 2019 to 2023. Figure 2.1 shows that there has been a steady increase in the relative distribution of first-year African LLB students from 2010 (60 per cent) to 2018 (81 per cent). The relative distribution of white first-year LLB students decreased from 21 per cent to 9 per cent over the same period.

Figure 2.1: *Racial composition of first-year LLB students at South African universities from 2010 to 2018*



Although Figure 2.1 provides evidence that the four-year LLB succeeded in broadening access to African students, it is insufficient if there is no associated likelihood of graduating.¹⁸⁵ Figure 2.2 shows the most recent data on the relative distribution of LLB graduates at South African universities according to race from 2010 to 2018.¹⁸⁶

¹⁸⁴ Law South Africa's Legal Education and Development Division *LSSA Lead annual statistics* (2024), <http://www.lssa.org.za/about-us/about-the-attorneys-profession/lssa-lead-annual-statistics> (accessed 12 November 2022).

¹⁸⁵ Greenbaum (n 126) 489.

¹⁸⁶ Law South Africa's Legal Education and Development Division (n 184) 151.

Figure 2.2: *Racial composition of LLB graduates at South African universities from 2010 to 2017*

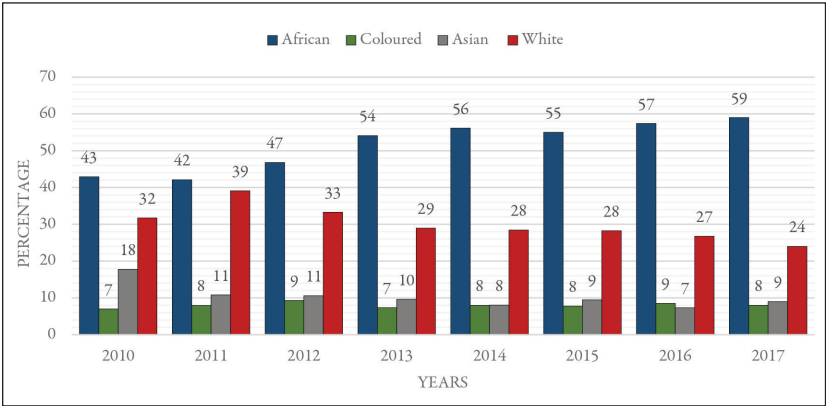


Figure 2.2 reflects a steady increase in the relative distribution of African LLB graduates from 2010 (43 per cent) to 2017 (59 per cent), while white LLB graduates decreased from 32 per cent to 24 per cent over the same period. The representation of coloured graduates varied between 7 (2016) and 18 per cent (2010). Although the relative distribution of African LLB graduates in Figure 2.2 is commendable, it does not provide conclusive evidence that higher education institutions succeeded in ensuring that they have a reasonable prospect of success. For example, the higher relative distribution of African graduates can be attributed to the increase in African students admitted to the LLB (see Figure 2.1), while the graduation rate remained unchanged.

It is widely acknowledged that cohort graduation rates reflect a more accurate picture of student success.¹⁸⁷ Table 2.1 summarises the graduation rates for three LLB student cohorts at South African universities.

187 T Lewin & M Mawoyo *Student access and success: Issues and interventions in South African universities* (2014) 24.

Table 2.1: *Graduation rates according to race for the 2008 to 2013 and 2010 to 2015 student cohorts*

| Cohort | Description | N | Percentage of students who graduated (%) | | | | |
|--------------|--------------------------------|-------|--|----------|-------|-------|---------|
| | | | African | Coloured | Asian | White | Average |
| 2008 to 2013 | Number of students enrolled | 2 661 | | | | | |
| | % graduating within four years | | 28 | 18 | 40 | 39 | 31 |
| | % graduating within six years | | 49 | 44 | 62 | 61 | 53 |
| 2010 to 2015 | Number of students enrolled | 3 078 | | | | | |
| | % graduating within four years | | 33 | 23 | 41 | 41 | 34 |
| | % graduating within six years | | 54 | 43 | 70 | 58 | 55 |

Table 2.1 paints a gloomy picture of the national graduation rates for the 2008-2013 and 2010-2015 four-year LLB student cohorts.¹⁸⁸ Only about one-third of LLB students graduated within the minimum prescribed period of four years. More than 50 per cent of the two cohorts of students graduated within six years. White students continued to outperform the previously disadvantaged racial groups. For example, 41 per cent of the 2010-2015 white student cohort graduated within four years, while 33 per cent of their African counterparts graduated in the same period. However, the graduation rate after respectively four and six years (49 per cent; 55 per cent) for the 2010-2015 African cohort of students was 5 per cent higher than the respective graduation rates for the 2008-2013 African cohort of students over the same number of years (28 per cent; 54 per cent). Table 2.1 shows that the graduation rates for

188 CHE (n 2) 27-30.

the different racial groups of the 2010-2015 cohort are closely aligned if their study periods are more extended than the minimum of four years.

It is important to note that widening participation as a single variable did not cause low graduation rates. In addition to factors negatively influencing students' preparedness for higher education, low graduation rates can also be attributed to the lack of support and responsiveness to the needs of the diverse student population and the absence of a student-centred approach to designing and delivering higher education curricula.¹⁸⁹ Consequently, institutions must be cautious about admitting students to merely increase access and address historical inequities if they cannot offer sufficient support to ensure these students have a fair chance of academic success.¹⁹⁰ Greenbaum suggested the following for enhancing the academic success of African LLB students:¹⁹¹

A commitment to deploying additional resources and including teaching methodologies, such as small group teaching, which instantiate collaborative and cooperative learning and values diverse learning styles, is one strategy that could be adopted. Making explicit the conventions of legal argument, reasoning, and knowledge construction, as well as surfacing tacit understandings that rely on a notion of students coming with heterogeneous life experiences and social and cultural capital, are key factors to facilitate the enculturation of students into the discipline. Embedding learning skills that are discipline-specific at appropriate times in the curriculum could also support understandings of the integration of knowledge across courses.

The question also arises as to whether African law graduates experience challenges in entering the legal profession as attorneys or advocates. Generally, attorneys have the same role as solicitors in other Commonwealth countries.¹⁹² The role of an advocate is comparable to that of barristers. As general legal practitioners, attorneys provide a wide range of legal services and general legal advice. Advocates are specialist practitioners who usually represent clients in cases requiring expert knowledge. Advocates may also provide a legal opinion on an issue.

Despite the noble aspirations for the four-year LLB described in part 2.3.1 and 25 years after introducing the qualification, African

189 Quinn (n 159) 9.

190 Van Niekerk (n 157) 9.

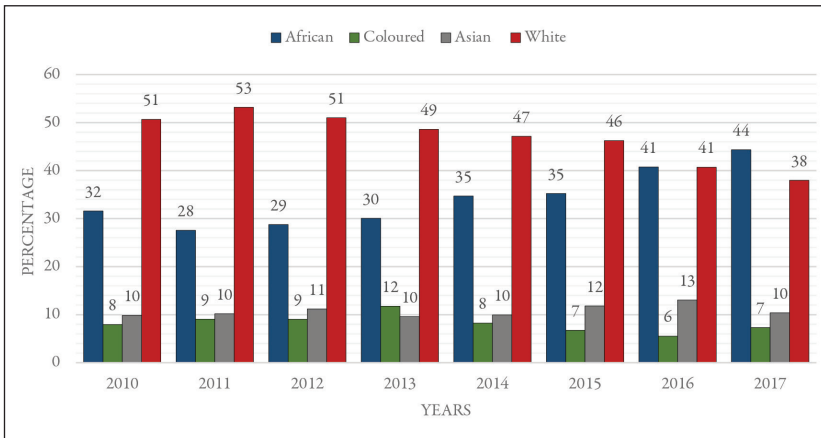
191 Greenbaum (n 126) 489.

192 Pretoria Society of Advocates 'Advocacy as career' (2021), <https://www.pretoriabar.co.za/index.php/advocacy-as-career> (accessed 12 December 2022).

law graduates still find it challenging to enter the legal profession and establish themselves as successful legal practitioners.

Figure 2.3 shows the racial composition of attorneys admitted to the legal profession from 2010 to 2017.¹⁹³ Sobering conclusions can be drawn when one compares the composition of LLB graduates by race in Figure 2.2 with the data depicted in Figure 2.3. For example, Africans comprised 55 per cent and whites 28 per cent of the 2015 LLB graduates. However, in 2016, only 41 per cent of the attorneys admitted comprised Africans. It starkly contrasts with whites, who represented 41 per cent of the attorneys admitted to practice in the same year.

Figure 2.3: *Racial composition of newly admitted attorneys from 2010 to 2017*



Due to rounding-off, the percentage of scores may not add up to 100 per cent.

Unfortunately, the racial composition of attorneys admitted to the legal profession from 2018 to 2024 is unavailable. Yet, data from the Law Society of South Africa in Figure 2.3 indicate a positive trend, with black (African, coloured and Indian) candidate attorneys constituting an increasing proportion of the pool. Also, the Law Society of South Africa

¹⁹³ Law South Africa's Legal Education and Development Division (n 184). In addition to graduating with an LLB, candidate attorneys need to complete practical vocational training (articles) of 24 uninterrupted months to be admitted as attorneys. Also see Government Notice 921, *GG*, 31 August 2018, 10177 (Regulations issued under section 109(1) of the Legal Practice Act, 2014).

reported that the percentage of black candidate attorneys increased from 77 per cent in 2021¹⁹⁴ to 80 per cent in 2023.¹⁹⁵

The transformation of legal education and the introduction of the four-year LLB, as described in part 2.3.1, caused an oversupply of graduates.¹⁹⁶ Also, the impact of COVID-19 and the poor economic climate caused law firms to employ fewer candidates.¹⁹⁷ Consequently, securing articles has been described as ‘an absolute nightmare’ and ‘one of the most challenging objectives’ that graduates face today.¹⁹⁸ Legal firms now have the opportunity to employ only the best-qualified graduates.¹⁹⁹ Employers perceive graduates from historically white universities to be of a higher quality than graduates from other universities.²⁰⁰ Legal firms, therefore, tend to recruit graduates from historically white universities, which ultimately leads to a surplus of black graduates from historically black universities.

The low admission numbers of blacks, as depicted in Figure 2.4 below, translate into an attorney’s profession in which the racial composition has changed at a slow pace.²⁰¹ Blacks represented 30 per cent of practising attorneys in 2010. Thirteen years later, blacks comprised 50 per cent of practising attorneys, which remained substantially below the national demographic of 92,7 per cent.²⁰²

194 ‘2018/2019 Annual Report’ (2019) 7, https://www.lssa.org.za/wp-content/uploads/2019/11/LSSA-AR-and-AFS-2018_2019.pdf (accessed 26 August 2024).

195 ‘2023/2024 Annual report’ (2024), https://www.lssa.org.za/wp-content/uploads/2024/06/2023_2024-Annual-report.pdf (26 August 2024).

196 Godfrey (n 179) 123.

197 Law Society of South Africa ‘2022/2023 Annual Report’ (2023), https://www.lssa.org.za/wp-content/uploads/2023/03/2022_2023-Annual-Report.pdf (accessed 26 August 2024).

198 KS Abrahams ‘From LLB to admission – Are there any guarantees?’ (2017) 578 *De Rebus* 43.

199 Godfrey (n 179) 123.

200 As above.

201 Law South Africa’s Legal Education and Development Division (n 184); Law Society of South Africa ‘2019/2020 Annual Report’ (2020), https://www.lssa.org.za/wp-content/uploads/2021/04/LSSA-Annual-Report-2019_2020.pdf (accessed 26 August 2024); Law Society of South Africa ‘2021 Annual Report’ (2021), <https://www.lssa.org.za/wp-content/uploads/2022/03/LSSA-Annual-Report-2021-1.pdf> (accessed 26 August 2024); Law Society of South Africa ‘2022 Annual Report’ (2022), https://www.lssa.org.za/wp-content/uploads/2023/03/2022_2023-Annual-Report.pdf (accessed 26 August 2024); Law Society of South Africa (n 197); Law Society of South Africa (n 194).

202 STATS SA ‘Media release: Census 2022 population count results’ 10 October 2023, <https://www.statssa.gov.za/?p=16716> (accessed 26 August 2024).

Figure 2.4: *Racial composition of practising attorneys in South Africa from 2010 to 2023*

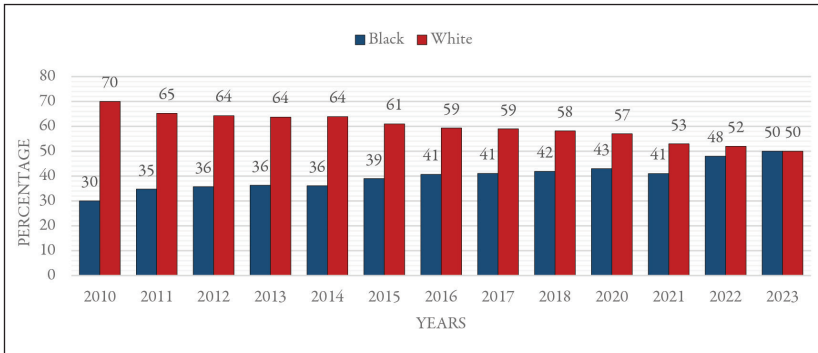
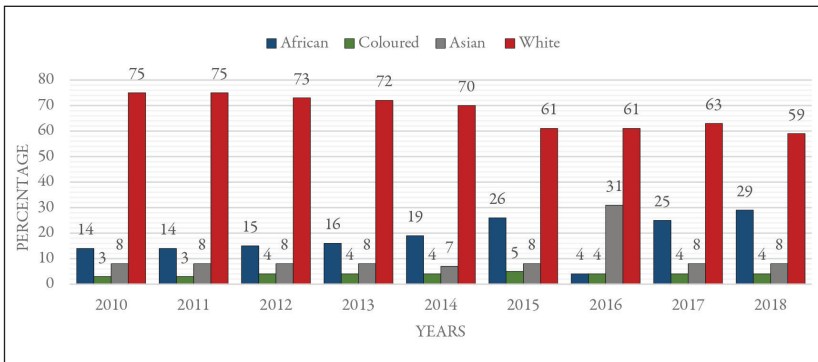


Figure 2.5 below depicts the most recent data on the racial composition of practising advocates in South Africa from 2010 to 2018.²⁰³ In 2018, 59 per cent of practising advocates were white. Compared to 2010, the relative distribution of practising African advocates increased by 15 per cent. More recent data are not available.

Figure 2.5: *Racial composition of practising advocates in South Africa from 2010 to 2018*



The discussion above indicates that the increased supply of black LLB graduates did not significantly change the demographics of the attorneys' and advocates' professions. The Draft LLB CCMM had to

203 Government Notice 921 (n 193).

prioritise the needs, experiences and expectations of a more diversified student population.²⁰⁴ Ultimately, innovative teaching, learning and assessment practices should be introduced since they are central to enhancing student-centredness.²⁰⁵ Despite the increased diversity, the current student cohort exhibits similar behaviours and characteristics when analysed from the perspective of generational studies, which will be briefly described next.

2.2.7 The current cohort of students

The current cohort of students, often referred to as Generation Z, were born between 1995 and 2010.²⁰⁶ These students have entered higher education with unique beliefs, expectations and values,²⁰⁷ which presents opportunities and challenges for law faculties and the law curriculum.²⁰⁸

Today's student body grew up with constant access to technology and the internet, making them inseparable from their daily lives.²⁰⁹ They are skilled at using social media and can quickly adapt to and master new computer software, applications and online resources.²¹⁰ Generation Z students' preference for hybrid learning implies incorporating technology and multimedia in teaching and learning practices.²¹¹ Therefore, lecturers are strongly encouraged to use videos, podcasts, simulations, interactive internet tutorials and internet-based educational games in their teaching.

Students' constant access to a stream of information makes distinguishing between unreliable and credible sources complex.²¹² The continuous bombardment of information causes students to have shorter attention spans, a desire for convenience and immediacy, and a preference for learning material that is concise and engaging.²¹³

204 Student centredness forms the core of the LLB CCMM.

205 See DPs B20 and B21 in part 4.5.2.

206 C Seemiller & M Grace *Generation Z goes to college* (2016) xxi.

207 TD Atkins 'ForTheCulture: Generation Z and the future of legal education' (2020) 26 *Michigan Journal of Race and Law* 109.

208 Atkins (n 207) 113.

209 C Giunta 'An emerging awareness of Generation Z students for higher education professors' (2017) 5 *Archives of Business Research* 90Giunta 98.

210 Giunta (n 209) 95.

211 M Hernandez-de-Menendez, CAE Diaz & R Morales-Menendez 'Educational experiences with Generation Z' (2020) 14 *International Journal on Interactive Design and Manufacturing* 849-850.

212 Hernandez-de-Menendez and others (n 211) 851.

213 As above.

Generation Z students favour communication via digital platforms.²¹⁴ It implies that academics should be mindful of this preference and consider communicating with students via digital platforms, such as social media. Due to Generation Z students' inclination to communicate digitally, they can find face-to-face communication challenging, and their social and relationship skills are often underdeveloped.²¹⁵ Consequently, the LLB curriculum should focus on developing students' interpersonal, verbal and non-verbal communication skills.²¹⁶

The current student cohort is more diverse than previous generations.²¹⁷ This diversity brings new perspectives and experiences to legal education, which enriches the discourse for social justice, equity and inclusion.²¹⁸ They demand a law curriculum that explicitly tackles social justice issues²¹⁹ and law faculties to remove systemic barriers and create a welcoming and inclusive environment for all law students, regardless of their background.²²⁰

The review above concludes the discussion of the seven challenges that have shaped higher education, curriculum development and the Draft LLB CCMM proposed in part 4.5. The following part analyses the South African legal education context and its implications for developing the Draft LLB CCMM and the new LLB curriculum.

2.3 The South African legal education context

This part focuses on the South African legal education context by exploring the introduction of the four-year LLB, the perceptions about the poor quality of four-year LLB graduates in the years that followed, and the CHE's three attempts to address these quality concerns. As stated in part 1.1, the chronology in the annexure to this book arranges

214 Giunta (n 209) 98; CKY Chan & KKW Lee 'The AI generation gap: Are Gen Z students more interested in adopting generative AI such as ChatGPT in teaching and learning than their Gen X and millennial generation teachers?' (2023) 10 *Smart Learning Environment* 6.

215 Hernandez-de-Menendez and others (n 211) 851.

216 CHE (n 22).

217 LP Graham 'Generation Z goes to law school: Teaching and reaching law students in the post-millennial generation' (2018) 41 *University of Arkansas Little Rock Law Review* 40; Atkins (n 207) 132.

218 Atkins (n 207) 104.

219 CHE (n 22); Atkins (n 207) 100.

220 Atkins (n 207) 108.

the events that are significant for the purposes of this study in order of their occurrences. The part below focuses specifically on the period from 1994 to the present.

2.3.1 Introducing the four-year LLB in South Africa

One of the most significant changes that impacted South African legal education was the introduction of a four-year undergraduate LLB in 1998. Before 1998, the LLB was not offered as a first Bachelor's degree, but as a postgraduate degree. Students could obtain the qualification after graduating with another Bachelor's degree, such as a *Baccalaureus Iuris* (BLuris), *Baccalaureus Procuratoris* (BProc), Bachelor of Arts (BA), Bachelor of Commerce (BCom) or Bachelor of Business Science (BBusSc), which required a total study duration of five or six years.

The democratisation of South Africa in 1994 gave rise to the desire to transform the legal professions and legal education.²²¹ Debates on this issue commenced in 1995 and were driven by aspirations to improve access for black students to legal studies and to improve representation of all race groups in the legal professions. Furthermore, the drive to transform legal education aimed to address the perceived disparities in the quality of different law degrees and reduce the cost of qualifying as a lawyer. Taking five years to complete an LLB was perceived as a luxury that could hinder the transformation of the legal profession. Prospective African, coloured and Indian law students, in most cases, could not afford the fees for five years of study, and a status distinction was evident between those attorneys who completed only a BProc degree and those who had graduated with a Bachelor's degree and a postgraduate LLB. The distinction between the two groups of attorneys also tended to follow racial lines, since most black attorneys graduated with the BProc degree. This state of affairs limited black lawyers' access to the advocates' profession and the judiciary.²²²

Extensive consultation between universities, the legal professions and the government commenced in 1995.²²³ The Qualification of

221 L Greenbaum 'The four-year undergraduate LLB: Progress and pitfalls' (2010) 35 *Journal for Juridical Science* 2; Greenbaum (n 126) 467-468.

222 Judges could only be appointed from the ranks of experienced advocates. See Greenbaum (n 126) 2, 9.

223 Greenbaum (n 126) 2.

Legal Practitioners Amendment Act 78 of 1997²²⁴ was promulgated in 1997. In terms of section 1 of this Act,²²⁵ the minimum educational requirement for admission to practice in South Africa as an advocate or attorney is a 'degree of baccalaureus legum of any university in the Republic after completing a period of study of not less than four years for that degree'. The LLB would be the only qualifying degree for entry into the legal professions. Consequently, universities retained the freedom to continue offering the five-year or six-year two-tier LLB.²²⁶ The two-phased legal education system continued to apply to those graduates who wished to practise as attorneys or advocates.²²⁷ The first academic phase requires graduates to obtain an LLB from a university, while the second professional phase requires legal professionals to prepare graduates for careers as attorneys or advocates.²²⁸

The introduction of the four-year LLB was 'accepted with varying degrees of enthusiasm'.²²⁹ Although many deans were reluctant to embrace the new dispensation, their concerns about lowering standards were overshadowed by other stakeholders' overwhelming support.²³⁰ Political and symbolic factors beyond the control of legal educators gave birth to the reconceptualisation of legal education.²³¹ Similarly, Smith²³² claimed that the process followed to introduce the four-year LLB 'was characterised by a feeling of inevitability' among deans and law academics. He could find no convincing arguments supporting the

224 Qualification of Legal Practitioners Amendment Act 78 of 1997.

225 As above.

226 A two-tier model entails the offering of an LLB after a student has completed a first bachelor's degree.

227 G Pickett 'The LLB curriculum research report. A research report produced for the Advice and Monitoring Directorate of the Council on Higher Education (2010) 12, <http://www.lssa.org.za/upload/Report%20on%20LLB%20Research%20Findings.pdf> (accessed 10 September 2014).

228 LLB graduates intending to become advocates need to complete a pupilship of at least 12 uninterrupted months to be admitted as an advocate. Vocational training (articles) of 24 uninterrupted months is required for LLB graduates to be admitted as advocates. See *GG* (n 120).

229 R Midgley 'South Africa: Legal education in a transitional society' in F Cownie (ed) *Stakeholders in the law school* (2010) 106.

230 Greenbaum (n 126) 468.

231 Greenbaum (n 221) 2.

232 N Smith 'No convincing arguments for undergraduate LLB' (1997) 3455 *De Rebus* 345, 802.

introduction of an undergraduate LLB and stated that the ‘only change is that the new minimum entrance requirement is lower for everyone.’²³³

‘Pruning’ legal education by one year did not make jurisprudential or educational sense to Smith.²³⁴ The introduction of a new constitutional dispensation ‘complicated’ South African law to a considerable extent. Additional conceptual training was required, yet the duration of the LLB was decreased by one year. Furthermore, reducing the duration of legal education could only be considered in a country with a sound primary and secondary education, but not in South Africa, with its discriminatory educational legacy as described in part 2.2.5.

Authors²³⁵ shared the sentiment of Smith²³⁶ that the four-year LLB would not advance the transformation agenda of the government, but would create a ‘system of legal education which neither serves the graduate nor the people the graduate is supposed to serve’. The transformation would merely ‘create more ill-equipped law-school graduates more quickly’.²³⁷ The authors also challenged the pedagogical soundness of the process²³⁸ because no research was commissioned into the state of South African legal education before making such an important decision. Similarly, Greenbaum reported the following in 2010:²³⁹ ‘The informing ‘vision’ that inspired the change appears to have been clouded by vague, atheoretical interests, founded upon symbolic gestures and unarticulated premises, lacking in a well-researched or pedagogical foundation.’

Part 2.2.6 showed the limited success of the four-year LLB in transforming legal education and legal practice. The question arises

233 As above.

234 As above.

235 S Woolman, P Watson & N Smith ‘Toto, I’ve a feeling we’re not in Kansas anymore: A reply to Professor Motala and others on the transformation of legal education in South Africa’ (1997) 114 *South African Law Journal* 34.

236 Smith (n 232) 267.

237 Woolman and others (n 235) 270.

238 Woolman and others (n 235) 55. The authors refer to two reports as good examples of the kind of the research they had in mind, namely, (i) D Pearce, E Campbell & D Harding ‘Australian law schools: A discipline assessment for the Commonwealth Tertiary Education Commission’ (1987), <https://catalogue.nla.gov.au/catalog/37462> (accessed 5 May 2023); (ii) R MacCrate *Legal education and professional development: An education continuum* (1992) 150: ‘Providing additional classroom coverage of professionalism issues will not be an easy task. Law school curriculum reform is a tedious and often frustrating task and seems to work best when modest changes are made at the margin by adding one or two additional courses.’

239 Greenbaum (n 221) 256.

as to whether the concerns about the four-year LLB, as highlighted above, were mere speculations. The following part reports on the issues concerning the quality of four-year LLB graduates.

2.3.2 Concerns of role players about the quality of LLB graduates

Despite limited research on South African legal education,²⁴⁰ complaints from the judiciary, legal practitioners, legal professional bodies and law academics about the questionable quality of four-year LLB graduates have become strident since its inception in 1997.

Judge Mojaelo, an initial proponent of the four-year LLB, admitted in his address to the Limpopo Law Council in 2012 that the four-year LLB has not successfully delivered quality graduates as envisaged in 1997.²⁴¹ He observed that some graduates ‘can barely utter a few coherent sentences, never mind articulate the case of his client’. Ill-advised clients would often have been better off on their own. The quality of the younger generation of legal practitioners was also questioned by retired Judge Bernard Ngoepe, who claimed that the standards were not as they used to be.²⁴² He blamed the curriculum as nothing more than a mere BProc curriculum with two or more modules added. At a summit meeting of stakeholders on ‘The crisis in legal education’ on 29 May 2013, Justice Bosielo, an acting Constitutional Court judge at the time, warned attendees of the potential consequences of the four-year LLB: ‘Unless we take drastic measures to remedy these problems our fledgling constitutional democracy underpinned by our Bill of Rights and the rule of law will be seriously imperilled.’²⁴³

In 2014 Judge Davis presented a paper on the similarity and conflict between legal transformation and legal education at a conference at the University of Cape Town (UCT) in honour of former Chief Justice Pius Langa. He reported that he had examined several private law text books and found that LLB students are ‘subjected to a Constitution-free zone

²⁴⁰ Campbell (n 128) 16.

²⁴¹ P Anetos ‘Judge Ngoepe calls for “genuine” postgraduate LLB degree to make comeback’ 14 August 2014, <http://www.bdlive.co.za/national/law/2014/08/15/judge-ngoepe-calls-for-genuine-postgraduate-llbdegree-to-make-comeback?service=print> (accessed 10 May 2015).

²⁴² Anetos (n 241) 9.

²⁴³ As above.

of private law teaching' and a lack of 'engagement with a legal method by which to meet the transformative legal challenge'.²⁴⁴

Legal practitioners also seem to have little confidence in the education that four-year LLB graduates receive.²⁴⁵ Pantazis,²⁴⁶ for example, stated that there 'is no doubt that, generally, the quality of the LLB in South Africa is of an unacceptably low standard'. A survey conducted by the Professional Provident Society among almost 500 attorneys revealed that only 24 per cent of respondents believed that the four-year LLB sufficiently prepared practitioners to succeed in the profession.²⁴⁷ Drawing from various sources, Van Niekerk²⁴⁸ claimed that graduates who 'have been born from this initiative are not worthy of the qualification that they have obtained as many of them are unable to read, write and count at the level required by the legal profession'. Van der Merwe also supported the view that the LLB failed to develop graduates with an acceptable quality of graduate attributes: 'Many (prospective) candidate attorneys, including those who have been good students and achieved good results, cannot write an essay'.²⁴⁹ Bauling concurred with this view and claimed that skills courses at South African universities are insufficient to close this gap.²⁵⁰ Nevertheless, writing is an essential professional skill in almost every branch of legal practice.

The concerns of representatives of the Law Society of South Africa and the General Council of the Bar of South Africa regarding the declining quality of four-year LLB graduates were reported in the media until the National Review of the LLB in 2015.²⁵¹ According to Nic Swart, former

244 As above.

245 A Klaasen 'From theoretician to practitioner: Can legal education equip students with the essential professional skills needed in practice?' (2012) 19 *International Journal of Humanities and Social Science* 301.

246 Anetos (n 241).

247 Klaasen (n 245).

248 Klaasen (n 245) 533-536.

249 P van der Merwe 'The trouble with LLB graduates' (2007) 492 *De Rebus* 4.

250 A Bauling 'Towards a sound pedagogy in law: A constitutionally informed dissertation as capstone course in the LLB degree programme' (2017) 20 *Potchefstroom Electronic Law Journal* 3; also see D Colgan and others 'Change to a skills-based LLB Curriculum: A qualitative study of participants in a family law course' (2017) 20 *Potchefstroom Electronic Law Journal* 3.

251 Quoted in Van der Merwe (n 249); P van der Merwe 'Profession can make important contribution to investigation into effectiveness of LLBs' (2010) 492 *De Rebus* 4; N Manyathi 'South Africa LLB under investigation' (2010) 530 *De Rebus* 8; N Jenvey 'South Africa: Low-skilled lawyers prompt calls for law degree reform' 15 June 2013, <http://www.universityworldnews.com/article>.

Director of the Legal Education and Development branch of the Law Society of South Africa, graduates struggled significantly with written communication skills.²⁵² They lacked proficiency in drafting basic legal documents and conducting research. The low quality of graduates ultimately places a considerable burden on the legal profession to overcome the university-practice gap. Former deputy chairperson of the General Council of the Bar of South Africa, Izak Smuts, was also quoted as saying: 'In our country ... you can get a law degree for toffee. There is a massive overproduction of under-skilled people and ... legal graduates who ought to be excluded from practice.'²⁵³

Numerous law academics have expressed concerns about the quality of LLB graduates²⁵⁴ and made recommendations for improving LLB curricula at South African universities.²⁵⁵ Academics submitted that the LLB curricula struggled to achieve the required graduate attributes

php? story=013063155 812925&mode=print (accessed 30 November 2022); A Ndlovo 'Law graduates "barely able to read"' 23 February 2010, <http://www.timeslive.co.za/local/2010/02/22/lawgraduates-barely-able-to-read?service=print> (accessed 8 May 2015); Law Society of South Africa 'LSSA calls on CHE to consult the legal profession on issues related to the LLB degree' 24 April 2017, <https://www.lssa.org.za/press-releases/lssa-calls-on-council-on-higher-education-to-consult-the-legal-profession-on-issues-related-to-the-llb-degree-2/> (accessed 14 November 2022).

252 Law Society of South Africa (n 251).

253 Quoted in K Hawkey 'A+ or F- for the LLB?' (2013) 530 *De Rebus* 3.

254 See, eg, Scott (n 128) 12; Greenbaum (n 126) 17; K van Marle & J Modiri 'What does changing the world entail? Law, critique and legal education in the time of post-apartheid' (2012) 129 *South African Law Journal* 212; J Modiri 'The crises in legal education' (2014) 46 *Acta Academica* 1; Society of Law Teachers of Southern Africa 'Crisis in legal education' 29 May 2013, http://www.lssa.org.za/upload/Report%20on%20LLB%20Summit%2029%20May%202013_amended.pdf (accessed 15 May 2015); LC Hough & T Broodryk 'Teaching legal writing skills in the South African LLB curriculum: The role of the writing consultant' (2016) 27 *Stellenbosch Law Review* 535; GG Quinot & SS van Tonder 'The potential of capstone learning experiences in addressing perceived shortcoming in LLB training in South Africa' (2014) 17 *Potchefstroom Electronic Law Journal* 1350.

255 Greenbaum (n 221) 2; Campbell (n 128) 15; K van Marle 'Reflections on legacy, complicity, and legal education' (2014) 46 *Acta Academica* 196; Quinot & Van Tonder (n 254) 1350; G Quinot & L Greenbaum 'The contours of a pedagogy of law in South Africa' (2015) 26 *Stellenbosch Law Review* 29; Bauling (n 250); D Colgan and others 'Change to a skills-based LLB Curriculum: A qualitative study of participants in a family law course' (2017) 20 *Potchefstroom Electronic Law Journal* 1; E Snyman-Van Deventer 'Teaching South African (LLB) law students legal analysis to ensure critical thinking' (2019) 44 *Journal for Juridical Science* 79; K van Marle 'Hold onto critical jurisprudence' (2019) 3 *Law, Democracy and Development* 202; E Snyman-Van Deventer 'Methods to use when teaching legal ethics in South Africa' (2021) 24 *Obiter* 312.

within the minimum time of four years.²⁵⁶ Following the LLB Summit on 29 May 2013, SALDA, the Law Society of South Africa and the General Council of the Bar of South Africa issued a joint statement in terms of which they confirmed that substantial consensus was reached to extend the four-year LLB to five years.²⁵⁷

The literature review above revealed that most of the complaints from the judiciary, legal practitioners, legal professional bodies and law academics were made prior to the National Review of the LLB, which commenced in 2015. I believe the commencement of the National Review of the LLB signalled to stakeholders that their calls for improved LLB graduate quality were being heard. Therefore, it was unnecessary to further complain about the quality of these students. However, it does not imply that the quality of LLB graduates miraculously improved overnight. Improving the quality of the LLB curriculum and its graduates should be seen as a long-term project. Instead of complaining, studies since 2016 seem to have focused on strategies to improve the quality of the LLB curriculum and its graduates.²⁵⁸

2.3.3 Attempts to address the quality of LLB graduates

The criticism levelled against the quality of the LLB curriculum and its graduates could not be dismissed. Since 2009, the CHE has engaged with various role players to improve the quality of LLB graduates. In the following parts, I briefly explain the three CHE attempts to address the quality of LLB graduates: (i) the LLB Curriculum Research Project; (ii) the LLB Qualification Standard; and (iii) the National Review of the LLB. The chronology in the annexure to this book provides a bird's eye view of where these attempts of the CHE fit into the broader framework of events.

256 SALDA 'Position paper on legal education' (2013) 2 (on file with author).

257 South African Law Deans' Association, Law Society of South Africa & General Council of the Bar 'Joint statement: LLB summit charts the way forward' 2014, http://www.lssa.org.za/upload/JOINT%20PRESS%20STATEMENT%20ON%20LLB%20SUMMIT%206_13.pdf (accessed 14 August 2014).

258 See, eg, Quinot & Greenbaum (n 255) 290; Greenbaum (n 221); Hough & Broodryk (n 254); Bauling (n 250); Colgan and others (n 255); Van Marle (n 255); Snyman-Van Deventer (n 255).

LLB Curriculum Research Project

The CHE conducted a survey in 2010 that culminated in the LLB Curriculum Research Project.²⁵⁹ The project aimed to determine the extent to which the LLB curriculum met the requirements for the different professions that graduates could enter and identify common graduate attributes across all law profession areas. However, the research report was not well received. Ahmed Essop, former chief executive officer of the CHE, deemed it to be ‘of limited value, and the results reported such poor quality that it could not be published.’²⁶⁰ Consequently, I do not consider it necessary to discuss the results of the study.

LLB Qualification Standard

In January 2013, SALDA, the Law Society of South Africa and the General Council of the Bar of South Africa announced their intention to host an ‘LLB Summit: Legal education in crisis?’

At the summit on 29 May 2013, Essop, former chief executive officer of the CHE,²⁶¹ suggested that higher education institutions use a newly developed peer-driven qualification standard development process. The recommendation was accepted. In November 2014, the LLB Standards Development Working Group endorsed a revised version of the LLB Qualification Standard accepted by all higher education institutions offering an LLB.²⁶²

The LLB Qualification Standard aims to strengthen the public’s confidence in the value and credibility of the LLB.²⁶³ It clarifies the meaning, purpose and distinctiveness of the LLB and addresses the lack

259 Pickett (n 227).

260 C van Niekerk ‘The four-year undergraduate LLB: Where to from here?’ (2013) 34 *Obiter* 536.

261 A Essop, representing the CHE in his capacity as chief executive officer of the CHE, address to the LLB summit: ‘Crisis in legal education’ 29 May 2013, http://www.lssa.org.za/upload/Report%20on%20LLB%20Summit%2029%20May%202013_amended.pdf (accessed 15 May 2015).

262 CHE (n 22).

263 CHE ‘A Framework for qualifications standards in higher education’ (2013), <https://www.che.ac.za/publications/frameworks/framework-qualification-standards-higher-education> (accessed 10 November 2024).

of clarity about the graduate attributes expected of LLB graduates. It provides the following:²⁶⁴

[A] framework for the consistent and coherent development and design of qualifications and their curricula across the higher education system; clarify the meaning, purpose and distinctiveness of qualification types and variants ... guide the accreditation and recognition of learning programmes ... [and] provide broad guidelines for the achievements expected for the award of a higher education qualification.

The following paragraphs elaborate on the LLB curriculum imperatives, the purpose of the LLB and the graduate attributes that graduates should possess in terms of the LLB Qualification Standard.

The Preamble to the LLB Qualification Standard identifies five imperatives that an LLB curriculum needs to address: (i) globalisation; (ii) the ever-evolving information technology; (iii) social justice; (vi) constitutionalism; and (v) transformative constitutionalism.²⁶⁵ The effects of globalisation and ever-changing technology on the LLB curriculum were addressed in parts 2.2.1 and 2.2.3. Below, I provide a brief description of the latter three curriculum imperatives.

South African legal education should advance social justice by developing LLB graduates who recognise, reflect and can apply social justice imperatives.²⁶⁶ As legal practitioners, LLB graduates should accept responsibility for shaping and transforming the South African legal system. Furthermore, they should promote the social justice aspirations of fairness, legitimacy, efficacy and equity and understand how they can serve the community.

The Constitution is the country's supreme law and requires all other sources of law to be subservient to it. Constitutionalism requires all laws to be interpreted and applied in terms of the values that underlie a democratic and open society based on human dignity, equality and freedom. Klare stated that the Constitution could be described as 'social, redistributive, caring, positive, at least partly horizontal, participatory, multicultural and self-conscious about its historical setting and transformative role and mission'.²⁶⁷

264 CHE (n 22) 10.

265 CHE (n 22) 7.

266 CHE (n 22) 11.

267 KE Klare 'Legal culture and transformative constitutionalism' (1998) 14 *South African Journal on Human Rights* 153.

Transformative constitutionalism has been described as a South African 'brand' or 'paradigm' of constitutionalism.²⁶⁸ It is much more than constitutionalism.²⁶⁹ It is a broader emancipatory project²⁷⁰ committed to a comprehensive and more deep-rooted political and social change.²⁷¹ Contrary to transitional constitutions that usually envision a particular state of society that does not require change once the aims have been achieved, transformative constitutionalism requires continuous self-improvement.²⁷²

Klare argued that the transformative nature of the Constitution requires a new transformative methodology.²⁷³ He cautioned that the culture of jurisprudential conservatism could discourage appropriate constitutional innovation.²⁷⁴ The disconnect between the conservative legal culture and the transformative aims of the Constitution suggests the need for a transformation of the legal culture and legal education.²⁷⁵ Klare referred to this as transformative constitutionalism, which he describes as follows:²⁷⁶

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

In 2006, the late Chief Justice Pius Langa²⁷⁷ confirmed the critical role that legal education needs to play in achieving the aims of transformative constitutionalism. He delivered a prestigious lecture at Stellenbosch University and postulated that transformative constitutionalism requires the following of South African legal education:

268 M Hailbronner 'Transformative constitutionalism' (2017) 65 *The American Journal of Comparative Law* 532.

269 Hailbronner (n 268) 527.

270 Hailbronner (n 268) 528.

271 Klare (n 267) 533.

272 Hailbronner (n 268) 533.

273 Klare (n 267) 156.

274 Klare (n 267) 171.

275 Klare (n 267) 306.

276 Klare (n 267) 150.

277 P Langa 'Transformative constitutionalism' (2006) 17 *Stellenbosch Law Review* 356.

No longer can we responsibly turn out law graduates who are unable to critically engage with the values of the Constitution and who are unwilling to implement those values in all corners of their practices. A truly transformative South Africa requires a new approach that places the Constitutional dream at the very heart of legal education. It requires that we regard law as part of the social fabric and teach law students to see it as such. They should see law for what it is, as an instrument that was used to oppress in the past, but that has that immense power and capacity to transform our society.

Quinot²⁷⁸ responded to the legal education challenges that Klare²⁷⁹ and Justice Langa²⁸⁰ posed by proposing a new theoretical framework for transformative legal education. Quinot's framework entails a revision of the substance of what is being taught.²⁸¹ He suggested that the law curriculum should incorporate fundamental rights and judicial review. The curriculum should reflect the new constitutional paradigm and its impact on established areas of the law.²⁸² New legal methods and value-based substantive reasoning should be adopted.²⁸³ The LLB curriculum requires an interdisciplinary approach integrating the law with other disciplines, such as psychology, philosophy, political science, economics and public administration. The LLB curriculum must consider matters such as morality, policy and politics in legal analysis, the context in which law operates and the society it intends to regulate and transform.²⁸⁴

The LLB Qualification Standard states that the qualification needs to prepare graduates for entry into the following: (i) legal practice as attorneys or advocates; (ii) a wide range of careers that require the application of the law; and (iii) postgraduate studies.²⁸⁵

As candidate legal practitioners, LLB graduates can undergo practical vocational training either as pupil advocates or as candidate attorneys.²⁸⁶ Once they have been admitted and enrolled in terms of sections 24 or 30 of the Legal Practice Act 28 of 2014, they may practise as attorneys

278 G Quinot 'Transformative legal education' (2012) 129 *South African Law Journal* 411. Also see SR Smith & A Bauling 'Aiming for transformation: Exploring gradueness in South Africa' (2013) 25 *Stellenbosch Law Review* 148.

279 Klare (n 267) 150.

280 Langa (n 277) 312.

281 Quinot (n 278) 414.

282 As above.

283 Quinot (n 278) 415.

284 As above.

285 CHE (n 22) 8.

286 See part 2.3.1.

or advocates. Other careers that LLB graduates can pursue as legal practitioners include state law advisors, family advocates, judicial officers, public prosecutors, state advocates and state attorneys. LLB graduates can also pursue careers that require the application of the law in the private or public sectors.²⁸⁷ They can, for example, be employed as legal advisors in the private or public sectors.²⁸⁸

The Report on the National Review of the LLB questioned whether the LLB curriculum can indeed prepare students specifically for careers that require the application of the law in the private or public sectors.²⁸⁹ However, it suggested that the effectiveness of preparing students for such careers depends on the degree to which students develop generic skills and the number of non-law modules introduced in the curriculum.²⁹⁰

Instead of entering the workforce, LLB graduates can enrol for a postgraduate diploma or Master's degree.²⁹¹ Graduates who foresee a career in academia will typically register for a Master's degree in law in a specific area of specialisation.

The LLB Qualification Standard organises the essential graduate attributes that are required of all graduates into three domains: knowledge, skills and applied competence.²⁹² The paragraphs below identify the different graduate attributes that need to be developed and show the relationship between the graduate attributes and the various approaches to legal education proposed by James.²⁹³

LLB graduates need to have a comprehensive and sound knowledge and understanding of the Constitution and basic areas or fields of law.²⁹⁴ Furthermore, LLB graduates should have advanced knowledge of a selected area(s) of the law or knowledge of the specialised area(s)

287 S Godfrey & R Midgley 'Scarce and critical skills: Law professionals' (2008), http://www.lmip.org.za/sites/default/files/documentfiles//Law_DoL_Report.pdf (accessed 30 November 2022).

288 The Department of Justice, eg, offers positions in the offices of the Master of the High Court, the South African Human Rights Commission, the Commission on Gender Equality, the Public Protector and the Legal Aid Board.

289 CHE (n 22) 23.

290 CHE (n 22) 25.

291 CHE (n 22) 12.

292 CHE (n 22) 8-9.

293 N James 'Australian legal education and the instability of critique' (2004) 28 *Melbourne University Law Review* 380.

294 CHE (n 22) 6-9. These basic areas of the law include (i) aspects of private, public, mercantile and formal law; (ii) international and comparative aspects of law, perspectives on law, and the legal profession; and (iii) the dynamic nature of law

of the law. These requirements of the knowledge domain support the doctrinal approach to legal education.²⁹⁵ The approach emphasises 'black letter' law²⁹⁶ and the law's intellectual rigour, educational value and social importance.²⁹⁷ The knowledge domain of the LLB Qualification Standard also expects graduates to have some understanding of a discipline other than law,²⁹⁸ which points to the liberal approach to legal education.²⁹⁹ This approach requires the law to be more contextually taught with insights from different disciplines and cultures.

The skills that LLB graduates should exhibit are critical thinking and research skills.³⁰⁰ This domain reflects elements of the pedagogical and radical discourses in legal education.³⁰¹ The pedagogical approach requires academics to teach the law using orthodox education scholarship. These academics should exhibit a willingness to apply critical thought to their own positions, perspectives or arguments.³⁰² The radical discourse explicitly encourages critique as a pedagogical activity.³⁰³ It aims to undermine the legal system's *status quo* by exposing and questioning political positions, gender and political biases and power relations.³⁰⁴

The applied competences expected of LLB graduates are ethics and integrity; communication skills and literacy; numeracy skills; information technology skills; problem-solving skills; self-management and collaboration skills; the ability to transfer acquired knowledge to others and to new and unfamiliar fields of law; and agency, accountability and service to the community.³⁰⁵ Developing these graduate attributes requires a liberalist and vocational approach to legal education. The

and its relationship with relevant contexts such as political, economic, commercial, social and cultural contexts.

295 James (n 293) 328.

296 Campbell (n 128) 24.

297 James (n 293) 380-382.

298 CHE (n 22) 6-9. These basic areas of the law include (i) aspects of private, public, mercantile and formal law; (ii) international and comparative aspects of law, perspectives on law, and the legal profession; and (iii) the dynamic nature of law and its relationship with relevant contexts such as political, economic, commercial, social and cultural contexts.

299 James (n 293) 389-90.

300 CHE (n 22) 9.

301 James (n 293) 394.

302 James (n 293) 396.

303 James (n 293) 399.

304 James (n 293) 398.

305 CHE (n 22) 10-11.

liberalist discourse focuses on teaching ethical values,³⁰⁶ while the vocational approach propagates the development of other legal skills to enhance graduates' employability.

The discourses described above draw attention to the tension between theory and doctrinalism, on the one hand, and practice and skills on the other,³⁰⁷ which are well documented in international literature.³⁰⁸ Greenbaum³⁰⁹ reviewed legal education literature from the United States of America, the United Kingdom and Australia. She identified the tension between the teaching of legal doctrine and the teaching of legal skills within the university curriculum as a critical focus area in international legal education literature. Even though limited scholarship is available on the disjuncture between legal education and legal practitioners' demands in South Africa, the prevalence of the tension between legal education and legal practice is not less evident.³¹⁰

Incorporating elements of the different legal education discourses into the LLB curriculum will contribute to graduates being prepared for the various career and study options mentioned earlier.³¹¹ For example, incorporating elements of vocationalism and doctrinalism can prepare LLB graduates for entrance to legal practice. Liberal elements will support graduates in entering careers that require the application of law, and radicalism will play an essential role in preparing LLB graduates for postgraduate studies. However, incorporating and achieving an equilibrium between the different discourses relating to legal education (especially doctrinalism, vocationalism and liberalism) in the curriculum is challenging.

306 James (n 293) 389-90.

307 Greenbaum (n 221) 12, 17.

308 Examples of UK literature: Quality Assurance Agency for Higher Education 'Subject overview report on law' (1995), <http://78.158.56.101/archive/law/resources/quality-management-and-assurance/graduate/index.html> (accessed 10 September 2014); Great Britain Parliament 'Lord Chancellor's Advisory Committee on Legal Education and Conduct (1996), <https://www.legislation.gov.uk/uksi/1999/3296/contents/made> (accessed 10 August 2021); R Boden & M Nedeve 'Employing discourse: Universities and graduate "employability"' (2010) 25 *Journal of Education Policy* 24; D Weisbrot 'What lawyers need to know ... what lawyers need to be able to do: An Australian experience' (2002) *Journal of the Association of Legal Writing Directors* 21.

309 L Greenbaum 'A history of the racial disparities in legal education in South Africa' (2009) 3 *John Marshall Law Journal* 37.

310 Campbell (n 128) 16; Bauling (n 250) 1.

311 CHE (n 22) 6.

Staff members must consider how the curriculum imperatives and graduate attributes will be developed in and distributed across different modules³¹² and years of study³¹³ of the new LLB. Consequently, staff members need to understand the LLB Qualification Standard and the graduate attributes expected of LLB graduates.³¹⁴ They must also be competent in incorporating these aspects into their modules.³¹⁵ There also needs to be consensus among staff members about the purpose of the LLB. Unfortunately, as described in 5.7.2, the Draft LLB CCMM neglected to provide for this issue.

Although the LLB Standard seems to be uncontroversial and generally acceptable to higher education institutions and the legal professions, Greenbaum was concerned about the following: '[T]he unspoken view, also anecdotal, that the standards are merely aspirational and unattainable at institutions that are poorly resourced and have high student enrollments and small numbers of staff, many of whom are relatively inexperienced.'³¹⁶

Modiri advocates critical legal education that aims to empower students to become agents of social change. He criticised the LLB Qualification Standard:³¹⁷

My central protest against the document is with its drive to rationalise and standardise legal education, thereby eclipsing creativity, debate, provocation, and doubt. As I see it, although law students come to receive training in the discipline of law, its history and sources and the different sub-divisions of law, in preparation mostly for life as legal professionals, they also come to be transformed, enraged and discomfited, to discover themselves politically and intellectually, to leave more thoughtful and intelligent. The focus on law graduates' 'professional duties', on strict categories of knowledge and on keeping up with global and technological trends seems to miss the incalculable dimension of learning, of becoming undone by new ideas, texts, and people.

On 7 November 2017, the Higher Education Qualification Committee (HEQC) placed the LLB qualifications of four universities on notice of withdrawal and withdrew the accreditation of one LLB qualification

312 See DP D5 in part 4.5.3.

313 See DP D6 in part 4.5.3.

314 See DP B18 in part 4.5.2.

315 See DP B19 in part 4.5.2.

316 CHE (n 22) 4.

317 J Modiri 'The time and space of critical legal pedagogy' (2016) 27 *Stellenbosch Law Review* 532.

for not meeting, among other things, the requirements of the LLB Qualification Standard. The following part provides more information about the National Review of the LLB and the compliance of law faculties with the different aspects of the LLB Qualification Standard.

National Review of the LLB

At the LLB Summit mentioned above, Essop confirmed that the CHE and SALDA had agreed on a National Review of the LLB.³¹⁸ The National Review of the LLB commenced in 2015. The CHE appointed a National Review Reference Group to define, among other things, the scope of the National Review of the LLB. Higher education institutions had to meet the LLB Qualification Standard and the 'Criteria for programme accreditation' to be accredited.³¹⁹ Each higher education institution offering the LLB submitted a self-evaluation report that was desktop-evaluated by an academic peer.³²⁰ Site visits took place from August to October 2016, and panels of two to three academic peers evaluated the offering of the LLB at different higher education institutions.³²¹ Two independent individuals served as chairpersons for respectively eight and nine of the panels, respectively.³²² Each panel prepared a report based on the self-evaluation report and the site visit.³²³ On 7 April 2017, the HEQC conveyed its final decision about the accreditation of LLB programmes in South Africa to all higher education institutions offering the LLB.

The Law Society of South Africa expressed its dissatisfaction with the National Review of the LLB.³²⁴ Although the legal professions were consulted during the drafting of the LLB Qualification Standard, the HEQC excluded the Law Society of South Africa from the review process. However, it should be noted that in South Africa, the HEQC

318 Joint statement (n 257).

319 CHE 'Criteria for programme accreditation' (2004), <https://www.che.ac.za/publications/criteria-programme-accreditation> (accessed 10 November 2024).

320 CHE (n 22) 13.

321 As above.

322 As above.

323 As above.

324 Law Society of South Africa 'LSSA calls on CHE to consult the legal profession on issues related to the LLB degree' (2017) available at <https://www.lssa.org.za/press-releases/lssa-calls-on-council-on-higher-education-to-consult-the-legal-profession-on-issues-related-to-the-llb-degree-2/> (accessed 14 November 2022).

is responsible for accrediting the LLB qualifications presented by higher education institutions and not the legal professions.³²⁵

In November 2018, the Report on the National Review of the LLB concluded the review of LLB programmes.³²⁶ The review process aimed to address the significant problems in legal education. Ideally, the recommendations presented in the Report on the National Review of the LLB had to bring about further curriculum changes and discussion within and among law faculties and the employers of graduates.³²⁷ The following paragraphs briefly describe South African universities' compliance with the LLB curriculum imperatives, the purpose of the LLB, and essential LLB graduate attributes as set out in the LLB Qualification Standard.

The National Review of the LLB considered whether the LLB curricula of universities complied with the curriculum imperatives of social justice, constitutionalism, transformative constitutionalism, globalisation and the ever-evolving information technology.³²⁸

The Report on the National Review of the LLB emphasised that clinical legal education is the foremost method for instilling responsiveness to social justice in the LLB curriculum. Students must be involved with 'real clients' and 'law-in-action' to achieve responsiveness to social justice.³²⁹ Therefore, the Report on the National Review of the LLB advocated including clinical legal education as a core module in the LLB curricula of South African universities.

Donating food parcels to underprivileged fellow students, supporting the homeless and other vulnerable segments of society, and engaging voluntarily in social justice initiatives of student organisations assisted a minority of institutions in instilling a sense of social responsiveness in their students.³³⁰

Although most universities addressed constitutionalism, four institutions neglected the concept of transformative constitutionalism in their curricula.³³¹ The Report on the National Review of the LLB is silent on the reasons for the neglect. However, one could speculate that some

325 CHE (n 22) 4.

326 CHE (n 22) 7.

327 CHE (n 22) 50. Also see part 1.1.

328 CHE (n 22) 18.

329 CHE (n 22) 19.

330 As above.

331 CHE (n 22) 18.

universities may have been unfamiliar with the meaning and implications of transformative constitutionalism. The absence of a formal definition for the concept may also have contributed to this state of affairs. The Report on the National Review of the LLB stated that simply incorporating transformative constitutionalism into the curriculum is insufficient.³³² It emphasised the importance of internalising the implications of transformative constitutionalism in institutions' teaching, learning and assessment practices and the interactions among and lived experiences of colleagues and students.

The Report on the National Review of the LLB failed to provide details of the initiatives that institutions have applied to ensure responsiveness to globalisation in the LLB curriculum. It merely states that the requirement was met by faculties 'offering suites of modules, both core and elective, which address globalisation'.³³³

On the one hand, responsiveness to ever-revolving information technology requires institutions to embrace and use information and communication technology as a pedagogical tool for studying law.³³⁴ On the other hand, LLB curricula should incorporate the law governing the use of information and communication technology and the internet. As a pedagogical tool, institutions should provide learning management systems such as Blackboard Learn³³⁵ and Moodle³³⁶ for every module in the LLB.³³⁷ The learning management system should not merely serve as an information hub, but as a catalyst for active learning. The Report on the National Review of the LLB recommended that all faculties should introduce a module on cyber law core module or as an integral part of an existing module.³³⁸

The National Review of the LLB revealed that the primary objective of most institutions' LLB curricula is to develop students for legal practice.³³⁹ However, this does not prevent institutions from preparing LLB students for other careers that require the application of law or postgraduate studies. A well-designed LLB curriculum that equips

332 CHE (n 22) 18-19.

333 CHE (n 22) 19-20.

334 CHE (n 22) 20.

335 <https://www.blackboard.com> (accessed 24 September 2024).

336 <https://moodle.com> (accessed 24 September 2024).

337 CHE (n 22) 20.

338 CHE (n 22) 54.

339 CHE (n 22) 20, 21.

graduates with generic skills and includes non-law modules should enable graduates to excel in various fields that require legal knowledge.³⁴⁰ Although it is debatable whether the LLB can genuinely prepare students for careers other than legal practitioners, many faculties are actively working to enhance generic skills through dedicated modules, strategies and assignments.

The LLB curricula of institutions generally provided a comprehensive understanding of South African law, its values and its historical context.³⁴¹ The curricula covered the core legal areas, international law, legal perspectives, the dynamic nature of law and other disciplines. An overwhelming majority of faculties complied with the requirements for the knowledge domain of the LLB Qualification Standard.³⁴² However, a major concern was that some faculties did not adhere to the requirement to include some discipline(s) other than law in their LLB curricula.³⁴³ Although the LLB Qualification Standard does not prescribe a minimum number of credits for these disciplined non-law modules, the Report on the National Review of the LLB, unfortunately, only requires a proper balance between law and non-law modules.

Research and writing skills are essential graduate attributes that are not only of significant value to graduates aspiring to pursue careers as legal practitioners, but are also essential for those planning to pursue postgraduate studies. Although not prescribed by the LLB Qualification Standard, the curricula of most universities expected students to undertake a research project.³⁴⁴ In those cases where such a research project is not required, other interventions should be introduced to ensure the development of students' research skills.³⁴⁵ Successful interventions include, for example, research seminars, 'writing across the curriculum' and requiring each student to submit ten written assignments per year.³⁴⁶ Interestingly, the interventions of most of the faculties that did not require a research report were considered inadequate.

340 CHE (n 22) 20, 22.

341 CHE (n 22) 31-33.

342 CHE (n 22) 32.

343 CHE (n 22) 32-33.

344 CHE (n 22) 35.

345 As above.

346 CHE (n 22) 34-35.

While many faculties performed well in teaching critical thinking, others focused on rote learning and neglected a critical examination of the law in their teaching and assessment practices.³⁴⁷ The ability to critically engage with law is essential for LLB graduates. Critical thinking skills can be enhanced by engaging students in critical class discussions and assessments that do not underscore rote learning but foster independent thinking and critical analysis of legal knowledge.³⁴⁸ Although these initiatives can assist in developing students' critical thinking skills, they can only be successfully developed if embraced in each module of the LLB curriculum.³⁴⁹

The LLB curricula of institutions emphasise ethical conduct through various legal practices and free-standing ethics modules.³⁵⁰ The Report on the National Review of the LLB stated that law clinics are crucial for students to gain practical experience and to deliver community service.³⁵¹ Some universities require community service for graduation, while others offer street law modules. The use of information and communication technology seemed to be adequately embedded in the curricula of all institutions. Teamwork, problem solving, communication and other skills were primarily addressed in moot courts.³⁵² Numeracy is often taught through dedicated modules in LLB curricula.³⁵³

Overall, it seems as if the National Review of the LLB positively impacted legal education in South Africa. However, more work should be done to ensure that LLB graduates are adequately prepared for their chosen careers.

The parts above focused on the South African legal education context. Nevertheless, the research methods of the study are rooted in the experience of UFS academics who participated in the comprehensive LLB curriculum change process. Therefore, I regard it as apposite to provide some insight into the UFS institutional context in which the LLB CCMM was developed.

347 CHE (n 22) 35-36.

348 CHE (n 22) 34-35.

349 CHE (n 22) 36.

350 As above.

351 As above.

352 As above.

353 As above.

2.4 University of the Free State context

The UFS LLB was one of four programmes that the HEQC put on notice of withdrawal of accreditation on 7 April 2017.³⁵⁴ The reasons for the decision were based on the Faculty Board's decision to replace its LLB with a newly developed one.³⁵⁵

During the HEQSF alignment process, the institution wrote to the CHE (21 April 2015) that, based on a decision to review all current Law offerings and on the view that 'a better aligned and more coherent [LLB] curriculum is needed', it wanted to 're-categorise the qualification ... to C, to be phased out by the date to be determined by the Minister of Higher Education and Training'. This implies that an application for accreditation of a new programme needs to be submitted.

On 9 November 2017, the HEQC revised the accreditation status of the old LLB to conditionally accredited, which was based on an improvement plan.³⁵⁶ The HEQC advised the UFS Faculty to apply for the accreditation of a new LLB programme by March 2019 and to provide evidence of an accredited LLB programme by 30 October 2020.³⁵⁷ Students, employers and *alumni* validated the new LLB during three focus group discussions³⁵⁸ from 11 to 14 March 2018. The UFS application was approved by the Faculty Board³⁵⁹ and all other UFS structures and uploaded to the CHE website³⁶⁰ on 31 March 2018. As mentioned in part 1.2, the HEQC accredited the newly developed LLB on 19 November 2018.³⁶¹

The UFS LLB curriculum change process generated an in-depth understanding of comprehensive LLB curriculum change in real life.³⁶² As stated in part 1.2, the UFS was the only university to engage in a comprehensive curriculum review of its LLB due to the promulgation

354 CHE (n 22) 4.

355 CHE 'HEQC report on the review of the UFS Bachelor of Laws (LLB) programme 2016-2017' (2017) 1 (on file with author).

356 See DP D10 in part 4.5.3

357 CHE 'HEQC report, University of the Free State: Improvement plan analysis report 9 November 2017' (2017) 1 (on file with author).

358 See DP D11 in part 4.5.3

359 19 March 2018.

360 <https://www.che.ac.za> (accessed 8 November 2024).

361 CHE 'Accreditation status update: Bachelor of Laws (LLB) programme (2019)' (on file with author).

362 G Thomas *How to do your case study* (2021) 10.

of the Higher Education Qualifications Sub-Framework (HEQSF).³⁶³ Therefore, the UFS LLB curriculum change process served as an ideal case to extract considerations that other higher education institutions may use when deciding to develop new LLB curricula.

Considering the above, gaining insight into the UFS institutional context is necessary. In this context, the decision was made to replace the LLB with a newly developed LLB. Also, the Draft and Final LLB CCMMs were developed in this context. To get an understanding of the UFS institutional context, I investigate whether the four-year UFS LLB met its transformational goals of improving student equity and widening access. Furthermore, a critical analysis of the old UFS LLB identified specific concerns to address in a new LLB curriculum. The question is also discussed as to whether these concerns were particular to the UFS LLB curriculum or whether they were also prevalent in the LLB curricula of other South African universities.

2.4.1 Equity and widening access

Cohort studies provide a good picture of student success³⁶⁴ and indicate the total number and percentage of particular first-time students (cohorts) who have graduated or dropped out over a specific number of years.³⁶⁵ Table 2.2 summarises the results of the UFS LLB cohort study performed according to race for first-time entering students from 2013 to 2018.

It is clear from Table 2.2 that the UFS succeeded in widening access to African, coloured and Indian students. For example, first-time entering African students increased by more than 300 per cent from 49 students in 2013 to 150 in 2018. Over the same period, the number of white first-time entering students ranged from 38 in 2013 to 73 in 2016.

363 Email from O Mokgatle, Director of the Directorate of National Standards and Reviews at the CHE, 26 October 2022.

364 Lewin & Mawoyo (n 187) 24.

365 Department of Higher Education and Training '2000 to 2017: First time entering undergraduate cohort studies for public higher education institutions' (2020), <https://www.dhet.gov.za/HEMIS/2000%20TO%202017%20FIRST%20TIME%20ENTERING%20UNDERGRADUATE%20COHORT%20STUDIES%20FOR%20PUBLIC%20HEIs.pdf>. (accessed 3 November 2024).

Table 2.2: Cohort study for 2013 to 2018 first-time-entering UFS LLB students

| Years | Race | Total | Number of graduates (n) | | | | | Graduation rate (%) | | | | | Dropped out | | Still registered | | Total | |
|-------|----------|-------|-------------------------|----|----|----|-------|---------------------|----|----|----|-------|-------------|----|------------------|----|-------|----|
| | | | 4 | 5 | 6 | >6 | Total | 4 | 5 | 6 | >6 | Total | n | % | n | % | n | % |
| | | | | | | | | | | | | | | | | | | |
| 2013 | African | 49 | 12 | 4 | 1 | 4 | 21 | 24 | 8 | 2 | 8 | 43 | 28 | 57 | 0 | 0 | 28 | 57 |
| | Coloured | 17 | 5 | 2 | 3 | 0 | 10 | 29 | 12 | 18 | 0 | 59 | 7 | 41 | 0 | 0 | 7 | 41 |
| | Indian | 1 | 1 | 0 | 0 | 0 | 1 | 100 | 0 | 0 | 0 | 100 | 0 | 0 | 0 | 0 | 0 | 0 |
| | White | 38 | 18 | 4 | 1 | 1 | 24 | 47 | 11 | 3 | 3 | 63 | 14 | 37 | 0 | 0 | 14 | 37 |
| | Overall | 105 | 36 | 10 | 5 | 5 | 56 | 34 | 10 | 5 | 5 | 53 | 49 | 47 | 0 | 0 | 49 | 47 |
| 2014 | African | 60 | 14 | 10 | 1 | 2 | 27 | 23 | 17 | 2 | 3 | 45 | 33 | 55 | 0 | 0 | 33 | 55 |
| | Coloured | 15 | 3 | 1 | 2 | 0 | 6 | 20 | 7 | 13 | 0 | 40 | 9 | 60 | 0 | 0 | 9 | 60 |
| | Indian | 5 | 2 | 0 | 0 | 0 | 2 | 40 | 0 | 0 | 0 | 40 | 3 | 60 | 0 | 0 | 3 | 60 |
| | White | 57 | 20 | 4 | 5 | 4 | 33 | 35 | 7 | 9 | 7 | 58 | 24 | 42 | 0 | 0 | 24 | 42 |
| | Overall | 137 | 39 | 15 | 8 | 6 | 68 | 28 | 11 | 6 | 4 | 50 | 69 | 50 | 0 | 0 | 69 | 50 |
| 2015 | African | 66 | 10 | 12 | 5 | 0 | 27 | 15 | 18 | 8 | 0 | 41 | 39 | 59 | 0 | 0 | 39 | 59 |
| | Coloured | 19 | 5 | 2 | 2 | 1 | 10 | 26 | 11 | 11 | 5 | 53 | 9 | 47 | 0 | 0 | 9 | 47 |
| | Indian | 2 | 1 | 0 | 0 | 0 | 1 | 50 | 0 | 0 | 0 | 50 | 1 | 50 | 0 | 0 | 1 | 50 |
| | White | 73 | 15 | 12 | 5 | 0 | 32 | 21 | 16 | 7 | 0 | 44 | 41 | 56 | 0 | 0 | 41 | 56 |
| | Overall | 160 | 31 | 26 | 12 | 1 | 70 | 19 | 16 | 8 | 1 | 44 | 90 | 56 | 0 | 0 | 90 | 56 |
| 2016 | African | 112 | 15 | 26 | 8 | 1 | 50 | 13 | 23 | 7 | 1 | 45 | 59 | 53 | 3 | 6 | 62 | 55 |
| | Coloured | 32 | 6 | 10 | 0 | 0 | 16 | 19 | 31 | 0 | 0 | 50 | 16 | 50 | 0 | 0 | 16 | 50 |
| | Indian | 4 | 1 | 1 | 0 | 0 | 2 | 25 | 25 | 0 | 0 | 50 | 2 | 50 | 0 | 0 | 2 | 50 |
| | White | 73 | 15 | 12 | 6 | 0 | 33 | 21 | 16 | 8 | 0 | 45 | 37 | 51 | 3 | 6 | 40 | 55 |
| | Overall | 221 | 37 | 49 | 14 | 1 | 101 | 17 | 22 | 6 | 0 | 46 | 114 | 52 | 6 | 12 | 120 | 54 |
| 2017 | African | 133 | 31 | 19 | 1 | 0 | 51 | 23 | 14 | 1 | 0 | 38 | 66 | 50 | 16 | 32 | 82 | 62 |
| | Coloured | 29 | 7 | 7 | 0 | 0 | 14 | 24 | 24 | 0 | 0 | 48 | 9 | 31 | 6 | 19 | 15 | 52 |
| | Indian | 4 | 0 | 2 | 0 | 0 | 2 | 0 | 50 | 0 | 0 | 50 | 2 | 50 | | 0 | 2 | 50 |
| | White | 59 | 22 | 10 | 0 | 0 | 32 | 37 | 17 | 0 | 0 | 54 | 24 | 41 | 3 | 7 | 27 | 46 |
| | Overall | 225 | 60 | 38 | 1 | 0 | 99 | 27 | 17 | 0 | 0 | 44 | 101 | 45 | 25 | 59 | 126 | 56 |
| 2018 | African | 150 | 52 | 0 | 0 | 0 | 52 | 35 | 0 | 0 | 0 | 35 | 40 | 27 | 58 | 39 | 98 | 65 |
| | Coloured | 12 | 4 | 0 | 0 | 0 | 4 | 33 | 0 | 0 | 0 | 33 | 7 | 58 | 1 | 2 | 8 | 67 |
| | Indian | 2 | 1 | 0 | 0 | 0 | 1 | 50 | 0 | 0 | 0 | 50 | 1 | 50 | 0 | 0 | 1 | 50 |
| | White | 48 | 25 | 0 | 0 | 0 | 25 | 52 | 0 | 0 | 0 | 52 | 15 | 31 | 8 | 26 | 23 | 48 |
| | Overall | 212 | 82 | 0 | 0 | 0 | 82 | 39 | 0 | 0 | 0 | 39 | 63 | 30 | 67 | 66 | 130 | 61 |

Widening access alone will not be sufficient if students do not have the prospect of graduating.³⁶⁶ Table 2.2 shows that the graduation rates

366 Government Notice 1196, GG, 15 August 1997 (White paper 3: A programme for the transformation of higher education) 11; Greenbaum (n 126) 474.

of particularly African students compared poorly to those of white students. White and African students of the 2016 cohort shared the same total graduation rate of 45 per cent. The total graduation rates of African students in the other five cohorts were consistently lower than those of white students.³⁶⁷ For example, for the 2017 cohort, 54 per cent of white students graduated, while only 38 per cent of African students graduated. This was accompanied by a drop-out rate of 50 per cent for Africans and 41 per cent for white students of the 2017 cohort.

The Report on the National Review of the LLB stated that approximately one-third of students at South African universities completed their LLB studies within the minimum four-year period.³⁶⁸ The data in Table 2.2 paint a gloomy picture for UFS LLB students. About 45 per cent of students did not graduate within six years of study.³⁶⁹ The 2014 to 2017 UFS cohorts reported lower graduation rates after four years of studies than the 33 per cent national average. For example, the total graduation rate within four years of study was only 17 per cent for the 2016 cohort.

Furthermore, the percentage of the 2014 to 2016 UFS cohorts who have not graduated within six years of study was consistently higher than the national standard of 45 per cent.³⁷⁰ The low graduation and high drop-out rates for African students were only one concern plaguing the UFS LLB. In the following part, I specifically reflect on concerns about the LLB curriculum.

2.4.2 A critical analysis of the University of the Free State LLB curriculum

I considered it imperative to critically analyse the old LLB curriculum before the UFS Faculty commenced developing the new curriculum. Such a critical analysis has the potential to identify specific principles for facilitating comprehensive LLB curriculum change at any South African university. Data obtained from four other initiatives and events assisted

³⁶⁷ The 2017 and 2018 cohorts were excluded since 2022 and 2023 figures were not available.

³⁶⁸ CHE (n 22) 28.

³⁶⁹ CHE (n 22) 2.

³⁷⁰ The graduation rates within six years of study for the 2017 and 2018 cohorts were excluded since 2022 and 2023 figures were not available.

with the critical analysis. The chronology in the annexure to this book frames the timing of these events within the broader framework of the study.

Initially, in the first quarter of 2015, I conducted three informal focus group discussions with academics, four with students, two with *alumni* and three with employers, which included legal practitioners and employers hiring graduates in positions requiring the application of the law.³⁷¹ These discussions focused on the strengths of the old LLB curriculum and generated recommendations for addressing the weaknesses in the curriculum. The new LLB curriculum and LLB CCMM had to address the weaknesses or shortcomings raised by focus group members. Also, the strengths of the old LLB curriculum had to be maintained in the new curriculum.³⁷²

Second, I administered an informal survey among all academics and LLB students. All 30 staff members participated in the survey, and 1 307 questionnaires were completed by students in the second semester of 2016 and the first semester of 2017. The results of the survey were beneficial and provided insight into participants' perceptions of (i) the learning time that the average student requires to achieve the learning outcomes of modules in the old LLB curriculum;³⁷³ (ii) the desirability of offering the modules as year-long or semester modules;³⁷⁴ and (iii) the most appropriate years of study for the various modules.³⁷⁵

Third, the Faculty requested the Directorate for Institutional Research and Academic Planning, UFS, to appoint five higher education and legal education experts to review the UFS LLB externally. The review, conducted from 14 to 18 March 2016, preceded the National Review of the UFS LLB in September 2016. The self-evaluation report and the Report on the External Institutional Review of the UFS LLB provided valuable insights into areas for improving the LLB curriculum.³⁷⁶ It was

371 See part 1.2.

372 See DP D8 in part 4.5.3.

373 See DP D1 in part 4.5.3.

374 See DP D2 in part 4.5.3.

375 See DP D6 in part 4.5.3.

376 UFS 'National Review of the Bachelor of Laws (LLB) programmes: The institutional self-evaluation report of the University of the Free State (2016) (on file with author).

imperative for the new LLB curriculum to address the concerns raised by the Report.³⁷⁷

Lastly, the 'HEQC report on the review of the UFS Bachelor of Laws (LLB) Programme 2016-2017'³⁷⁸ had significant implications for the LLB curriculum change. The analysis of the data sources mentioned above identified six main areas for improvement: (i) prescribing a realistic number of credits for modules and the qualification; (ii) reconsidering the duration of modules; (iii) changing the sequencing of some modules over the different years of study; (iv) introducing more non-law modules; (v) improving the alignment of the curriculum with the curriculum imperatives of the LLB Qualification Standard; and (vi) enhancing the development of specific graduate attributes.

Although the areas for improvement were explicitly raised in the discussions about the UFS old curriculum, they were general concerns that were also raised in the Report on the National Review of the LLB. Thus, it made sense to incorporate DPs related to these concerns in the Draft LLB CCMM. The parts below briefly describe these areas for improvement.

Prescribing a realistic number of credits for modules and the qualification

The HEQSF, as described in part 3.4.2, prescribes a minimum of 480 credits for a professional Bachelor's degree such as the LLB. One credit represents ten notional study hours.³⁷⁹ As such, credits measure all the time required to complete the learning activities in which a student needs to engage. These activities include, for example, attending classes, self-study, and preparing and participating in assessments such as tests, assignments and examinations.

The old UFS LLB required 768 credits or 7 680 notional study hours of learning, which seemed unrealistic and pedagogically unsound.³⁸⁰ The

377 See DP D9 in part 4.5.3

378 CHE 'HEQC report on the review of the UFS Bachelor of Laws (LLB) programme 2016-2017' (2017) 25 (on file with author).

379 CHE 'Higher Education Qualifications Sub-Framework' (2013), https://www.che.ac.za/sites/default/files/onlinefiles/PUB_Higher%20Education%20Qualifications%20Sub-Framework%20%28HEQSF%29%202013.pdf (accessed 10 November 2024).

380 CHE (n 22) 25.

288 credits³⁸¹ above the prescribed minimum of 480 credits for the degree translated into more than two years of additional study³⁸² and almost 23 extra hours of study-related work per academic week.³⁸³ The credits and corresponding notional study hours of modules and the curriculum did not represent a realistic teaching and learning load. It suggested that the curriculum was overburdening students.

The LLB Curriculum Research Report,³⁸⁴ the Report on the External Institutional Review of the UFS LLB³⁸⁵ and the HEQC report on the review of the UFS Bachelor of Laws (LLB) programme 2016-2017³⁸⁶ raised concerns about the excessive allocation of credits and the number of modules. The Report on the External Institutional Review of the UFS LLB suggested that the new credit allocation and curriculum design should be benchmarked against institutions that have managed to develop LLB curricula with limited modules and credits per year.³⁸⁷ Furthermore, it recommended amalgamating related modules such as Roman Law (16 credits) and Historical Foundations of South African Law (16 credits). Comparing the UFS modular credit values with those of other universities showed that the UFS LLB modular credit values were too high. Most of the other universities allocated 12 credits to modules with outcomes similar to those in the UFS LLB modules, yet the UFS allocated 16 credits to such modules.³⁸⁸

381 768 credits minus 480 credits = 288 credits.

382 An average full-time student is expected to study for 40 hours a week, thus requiring a minimum credit load of 120 credits or 1 200 notional study hours per academic year that consists of 30 weeks (30 weeks x 40 notional study hours = 1 200 notional study hours = 120 credits). Therefore, two years of study are equal to 240 credits, which is less than the additional 288 credits required by the UFS curriculum.

383 754 credits x 10 notional study hours per credit = 7 540 notional study hours over four years. This equals 1 885 notional study hours per year (7 540 notional study hours ÷ four years) and 62,83 notional study hours per week (1 885 ÷ 30 academic weeks per annum). Considering that an average full-time student is expected to study for 40 hours a week, the UFS requires 22,83 additional study hours per week (62,83 notional study hours minus 40 notional study hours = 22,83 notional study hours).

384 Pickett (n 227).

385 UFS (n 376).

386 CHE (n 22) 5.

387 UFS (n 376) 11.

388 Eg, UFS LLB awarded 16 credits for the statutory interpretation module. However, 13 other universities awarded 12 or fewer credits to similar modules.

The informal study conducted among staff members and students in 2016 and 2017 revealed a considerable disconnect between modular credit values during the curriculum design phase and the notional study hours experienced or estimated by students and lecturers. In most instances, modular credit values were overstated during the planning phase. Therefore, the credits did not accurately reflect the actual workload expected of students. The study served as a pointer for credit allocation to modules in the new LLB.

Furthermore, the Report on the National Review of the LLB identified the allocation of realistic credit values as an area of concern for 13 other universities.³⁸⁹

In several cases, a clear impression was gained that credit values are awarded, not on the basis of calculated notional hours (and the learner activities that make up those notional hours) for each module – but on the basis of an accounting exercise to ensure that the total number of credits for each year of study does not exceed a desired maximum (or minimum).

Clearly, the Draft LLB CCMM in chapter 4 had to allocate realistic credit values and corresponding notional hours for teaching, learning and assessment.³⁹⁰ Part 3.4.2 highlights that it is one of the fundamental principles of the National Qualifications Framework (NQF) and applies to all universities changing their LLB curricula. The total number of credits allocated to the old UFS LLB was the highest out of all other law faculties.

Reconsidering the duration of modules

The informal survey among staff members and students and the focus group discussions revealed that some modules should be presented as year-long modules, not semester courses. In line with the Law Curriculum Project, participants in the focus group believed that semesterisation (i) caused an overloaded curriculum that ‘never gets finished’; (ii) resulted in a situation where students did not internalise knowledge through reflection and application but crammed everything into their short-term memory; and (iii) leads to insufficient time being available for law

389 CHE (n 22) 25.

390 See DP D1 in part 4.5.3.

academics to actively engage with their students.³⁹¹ The Report on the External Institutional Review of the UFS LLB added that year modules would enable academics to spread out assessments over two semesters.³⁹² The discussion indicates that the Draft LLB CCMM had to address the appropriate classification of modules as semester and year modules.³⁹³ The careful consideration of whether a module should be offered as a semester or year-long module applies to any curriculum and, therefore, is not unique to the UFS context.

Changing the sequencing of some modules over the different years of study

Participants in all focus groups suggested that some LLB modules were not logically sequenced through scaffolding and vertical integration in the curriculum.³⁹⁴ For example, modules in Criminal Law were presented in the first year of study, which seemed incongruous. Since all laws need to be interpreted and applied in terms of the Constitution, participants suggested that students be exposed to Constitutional Law modules earlier in the curriculum and not only in the fourth year of study. The Report on the National Review of the LLB stated that problems related to the sequencing of modules were also evident in other LLB curricula.³⁹⁵ It is suggested that law faculties engage in scaffolding exercises to ensure that modules are presented in appropriate years of study.

Participants in the academics' and employers' focus group discussions were concerned about most LLB graduates' inability to integrate their knowledge of the different fields of law into other contexts. Graduates seemed to 'compartmentalise' their knowledge and found it challenging to apply their knowledge to real-life problems. Horizontal development of graduate attributes, as explained in part 3.4.3, did not occur.

The Report on the National Review of the LLB found that the problem concerning the sequencing of modules was not unique to the UFS position. The LLB curricula at some universities did not provide for the logical sequencing of modules.³⁹⁶ Consequently, the Draft LLB CCMM

391 Pickett (n 227).

392 UFS (n 376) 11.

393 See DP D2 in part 4.5.3.

394 These concepts are explained in part 3.4.3.

395 CHE (n 22) 52.

396 CHE (n 22) 24.

in part 4.5 had to provide for scaffolding and vertical integration.³⁹⁷ Instead of presenting modules in silos, modules need to be presented in an integrated manner.³⁹⁸ Furthermore, the graduate attributes and curriculum imperatives had to be appropriately mapped across the new LLB modules.³⁹⁹ and years of study.⁴⁰⁰ Part 3.4.3 on curriculum mapping explains the significance of these aspects for facilitating curriculum change at any university and not only at the UFS.

Introducing more non-law modules

Non-law modules in the old LLB curriculum were limited to a language module in the first year and a choice between Criminology or Accounting in the second year of study. Only academics in the focus groups identified the need to include more non-law modules in the new LLB curriculum. The Report on the External Institutional Review of the UFS LLB emphasised that the curriculum offers students little opportunity to be exposed to the 'breadth' of knowledge and various ways of thinking in the degree.⁴⁰¹

The study of 'a discipline other than law' in terms of the LLB Qualification Standard aims to enhance graduates' appreciation and understanding of 'the dynamic nature of law and its relationship with relevant contexts such as political, economic, commercial, social and cultural contexts'.⁴⁰² The Report on the National Review of the LLB stated that LLB curricula at South African universities generally fail to include sufficient non-law modules to produce well-rounded graduates.⁴⁰³ However, it acknowledged that it is challenging to determine the exact percentage of non-law modules to be included in the LLB curriculum.⁴⁰⁴ Unfortunately, the Draft LLB CCMM in part 4.5 failed to provide for the incorporation of sufficient discipline-based non-law modules in the LLB curriculum. The Final LLB CCMM had to include a principle in this regard.

397 See DP D3 in part 4.5.3

398 See DP D4 in part 4.5.3

399 See DP D5 in part 4.5.3.

400 See DP D6 in part 4.5.3.

401 UFS (n 376) 11.

402 CHE (n 22) 13.

403 CHE (n 22) 32.

404 CHE (n 22) 53.

Improving the alignment of the curriculum with the curriculum imperatives of the LLB Qualification Standard

The HEQC Report on the Review of the UFS Bachelor of Laws (LLB) Programme 2016-2017⁴⁰⁵ stated that the LLB largely met the requirements regarding the inclusion of constitutionalism, transformative constitutionalism and responsiveness to ever-evolving information technology.⁴⁰⁶ However, the 2016 Report on the External Institutional Review of the UFS LLB⁴⁰⁷ found that the curriculum had to improve its responsiveness to globalisation and social justice. Consequently, the UFS Faculty had to consider the strategies for enhancing the curriculum's responsiveness to transformative constitutionalism and globalisation described in parts 2.2.1 and 2.2.1. The discussion in part 2.3.2 showed that several universities did not sufficiently align their curricula with the curriculum imperatives of the LLB Qualification Standard.⁴⁰⁸ Thus, enabling staff members to address the curriculum imperatives in their modules⁴⁰⁹ and appropriately map them across the modules⁴¹⁰ and years of study of the LLB curriculum⁴¹¹ is not unique to the UFS curriculum change process.

Enhancing the development of specific graduate attributes

Part 2.3 elaborated on the essential graduate attributes that law graduates need to exhibit in terms of the LLB Qualification Standard. Specific graduate attributes identified for improvement by the data sources were writing and research, critical thinking and practical legal skills. The Report on the National Review of the LLB confirmed that the UFS was not the only university required to improve the development of these skills in their students.⁴¹²

In the old LLB, writing development took place in specific Legal Practice modules from the first to the fourth year of study and in a

405 CHE (n 379) 3.

406 These concepts are described in parts 2.2.1 and 2.3.2.

407 UFS (n 376) 11.

408 Also see CHE (n 22) 18-20.

409 See DP B19 in part 4.5.2.

410 See DP D5 in part 4.5.3.

411 See DP D6 in part 4.5.3.

412 CHE (n 22) 34-36.

research report in the last year of study.⁴¹³ Despite these initiatives, the focus groups were not convinced that the LLB curriculum developed students' writing skills to the desired level of proficiency. Students were seldom expected to access texts in the library or read beyond the materials prescribed in the module outlines.⁴¹⁴ Focus group members believed that the curriculum did not adequately prepare students for legal practice skills and competencies. Some participants mentioned that the Legal Practice modules were presented as theory and not as practical modules. During the focus groups, students and *alumni* suggested that the development of writing and research skills should be addressed in doctrinal modules.⁴¹⁵ Although academics acknowledged, at least to some extent, their responsibility for developing LLB students' writing skills, they attempted to explain what constrained them from developing these skills.⁴¹⁶ Academics stated that school leavers are under-prepared for higher education and are not equipped with the necessary language and writing skills. They regarded writing skills development as labour-intensive. The modules focusing on writing skills development showed a high student-to-lecturer ratio. Therefore, detailed feedback could not always be provided to students. It also implied that academics seldom used written assignments as assessment tools. Lecturers found them too time-consuming to mark and focused instead on legal content or doctrinal law in tests and examinations.

The Report on the External Institutional Review of the UFS LLB suggested that student numbers be capped for electives in the fourth year to allow for enhanced research skills development where the class size would not be a deterrent to creating more research and writing opportunities.⁴¹⁷

In line with the Report on the National Review of the LLB, participants suggested that more legal drafting (for example, heads of argument, legal opinions), moot court participation, small claims court observation and court visits should form part of the curriculum.⁴¹⁸

413 UFS (n 376) 49.

414 As above.

415 Also see Bangeni & Greenbaum (n 151) 3.

416 UFS (n 376) 49.

417 UFS (n 376) 15.

418 CHE (n 22) 54.

The array and number of written assignments had to be increased in successive years of study.⁴¹⁹ In the fourth year of study, a student should be competent to write a substantial research essay assessed on both language proficiency and substantive content.

Focus group participants stated that the old LLB did not optimally develop students' critical thinking skills. Academics claimed that three main factors had contributed to this unfortunate state of affairs. First, the institutional drive to achieve a success rate or pass rate of at least 75 per cent or even 80 per cent in all modules caused them to lower their standards. Therefore, students tended to be 'spoon-fed' instead of being challenged. Second, the UFS Faculty admitted too many students into the LLB. Classes of approximately 700 students in the first year of study were the usual enrolment. Class size hindered the development of critical thinking skills and student engagement. Third, academics stated that studying law was not the first choice for many LLB students. These students do not want to engage in critical thinking because they are not interested in studying law.

The Report on the External Institutional Review of the UFS LLB⁴²⁰ identified a lack of the requisite emphasis on developing critical and analytical thinking skills. The Report suggested that students should be required to evaluate policy arguments, critique judgments and synthesise rules from various legal sources.⁴²¹ Part 2.3.2 highlighted that the limited development of critical skills was not limited to the UFS but also applied to other universities.⁴²²

Alumni, student and employer focus groups argued that the LLB did not adequately prepare graduates for employment. The self-evaluation report acknowledged that the law clinic provides an excellent platform to teach practical legal skills.⁴²³ However, not all LLB students could be accommodated in the Law Clinic. Thus, their participation was voluntary as an extracurricular activity. They sometimes had the opportunity to shadow attorneys in the clinic, but they mainly carried out administrative functions. More financial resources were required to effectively engage in clinical legal education.

419 CHE (n 22) 56.

420 UFS (n 376) 12-13.

421 UFS (n 376) 8.

422 CHE (n 22) 35-36.

423 UFS (n 376) 53.

Both the Report on the National Review of the LLB⁴²⁴ and the Report on the External Institutional Review of the UFS LLB⁴²⁵ stated that the LLB curriculum did not sufficiently focus on developing students' ability to recognise, reflect on and apply social justice imperatives. Although clinical legal education is the foremost vehicle for teaching this competency, other modules, such as Community Service, Street Law, Alternate Dispute Resolution and Legal Practice, could also provide opportunities for developing these skills.⁴²⁶ The Report on the National Review of the LLB acknowledged that other institutions also experienced problems providing meaningful clinical legal education to all LLB students.⁴²⁷ Nevertheless, every effort should be made to make clinical legal education compulsory for all students. For example, the UFS Faculty should consider generating third-stream income to support and provide meaningful clinical legal education to students.

It is evident from the discussion above that the six areas of concern pertaining to the UFS LLB also applied to the LLB curricula at other universities. Therefore, the concerns identified from the discussion of the UFS LLB were not unique to the UFS Faculty. Furthermore, almost all the problems identified in this part were evident from the literature reviews in other parts of this chapter.

2.5 Conclusion

The factors that have shaped the higher education landscape have implications for LLB curriculum change and developing the Draft LLB CCMM in chapter 4. Responsiveness to globalisation requires law faculties to internationalise legal education and the LLB curriculum. Higher education institutions should take positive steps to address the under-preparedness of school leavers, and to meet the demands on equity and widening access to higher education. The LLB curriculum should be decolonised, and aspects of the Fourth Industrial Revolution should be addressed in the LLB curriculum. The curriculum imperatives of the LLB Qualification Standard specifically address all these aspects, except

⁴²⁴ CHE (n 22) 19.

⁴²⁵ UFS (n 376) 21. Social justice is one of the imperatives in the 'LLB Qualification Standard' for developing an LLB curriculum. See CHE (n 22) 7.

⁴²⁶ CHE (n 22) 54.

⁴²⁷ CHE (n 22) 55.

for the decolonisation of the curriculum. The cohort study in Table 2.2 and discussion on the Report on the National Review of the LLB in part 2.3.2 underscored the need to increase the minimum years of study for the four-year LLB by an additional year. The LLB CCMM developed in this study can play a significant role in facilitating the development of a five-year LLB curriculum in South Africa.

The attempts of the CHE to monitor and improve the quality of the LLB in the second part of the chapter can assist in improving the quality of four-year LLB graduates in South Africa. The LLB Qualification Standard provides directives and guidelines for the coherent and consistent development of LLB curricula. The Report on the National Review of the LLB suggested specific curriculum change initiatives at all universities. It also recommended the extension of the LLB from a minimum of four to five years.

The discussion on the UFS context revealed six areas for improvement in part 2.4.2. The Report on the National Review of the LLB pointed out that these areas for improvement were also evident in the LLB curricula of other South African universities.⁴²⁸ Therefore, the focus of the study on UFS academics' experience of the UFS curriculum experience can give rise to generalisable conclusions for the Final LLB CCMM proposed in chapter 7.

Fourteen DPs for inclusion in the Draft LLB CCMM, evident in the footnotes, were collected from the literature review in this chapter.⁴²⁹ Developing the Draft LLB CCMM was not only informed by the challenges in the higher education, legal education and Faculty contexts. Curriculum theory and curriculum planning also played a significant role. The following chapter deals with these aspects.

428 CHE (n 22) 50-51.

429 See DPs B18 to B21, D1 to D6, and D8 to D11 in part 4.5.