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The Law School with two Masters?

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Summary

Professional bodies take great care to specify the syllabus content but few address the equally important issues such as the integrity of delivery and of administration.

The fundamental relationship between the modern law school and the professional bodies implicitly but necessarily extends beyond mere syllabus specification into maintenance of standards, particularly in academic judgements and professional administration, in the primary context of their recognition of legal qualifications. That intertwines consideration of current theoretical principles underpinning the issue of recognition of legal qualifications for professional purposes and the relationship, both organisational and legal, between the professional bodies and the law schools. That also necessitates classification of the potential relationship model of the professional bodies and the law school: e.g. as master and servant; pure agency; or contractual deliverer. Such classification informs the identification of tensions between the law school and the other major stakeholder i.e. the law students, all of which can be exemplified in an allegation of cheating in academic assessment at a law school, embracing, as it does, the respective conflicts, duties, obligations, discretions, and rights of the parties prior to, and consequent upon, a reference to the Office of the Independent Adjudicator.

This paper concludes by suggesting that the relationship between the professional bodies and law schools pivots on a precariously blind and reciprocal trust, which no party may wish, but all ought, to formalise.

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Introduction

This paper will explore aspects of plagiarism within undergraduate legal education (the Qualifying Law Degree – hereafter QLD). It will describe, firstly, the commercial, educational and professional contextual importance of professional accreditation for all the stakeholders (the law schools, the professional bodies, and the public); comment upon the inconstancy of approach to plagiarism therein; and finally suggest an approach for law schools at national level.

The massification of higher education (Becher et al 2001: 2.), including the expansion and facilitation of student access, and a developing global culture has encouraged a move from direct assessment by the professional bodies into, and a consequential growth of, accredited courses offering full or partial exemption or relief. The professional relevance of such higher education is fed by the desire for enhanced student employment prospects. Indeed, 'unpacking' Coventry University's mission statement

“We are a dynamic, enterprising, and creative university committed to providing an excellent education enriched by our focus on applied research”

gives pole position to courses where students

“reach high academic and professional, vocational, or creative practice standards”.

Whilst this perspective is not specific to the QLD, it connects well with the recent dialogue over proposed changes in legal education which has reactivated the debate on the purpose of undergraduate legal education and the extent to which the professional bodies should determine legal education and training and the possible alternatives to the QLD, if abolished (Ashford 2005:8).

This leads to consideration of the interaction of the standards – academic and professional – in the primary context of professional recognition of QLDs, as exemplified in the respective duties, obligations, discretions, and rights triggered by an allegation of cheating in academic assessment. This also engages consideration of the current theoretical principles underpinning the recognition for professional purposes of a law degree, the position of law school providers, the organisational relationship between the professional bodies and the law schools, and the relevance of

the qualifying law degree to student recruitment. In so doing it prompts an examination of the relationship model existing between the professional bodies and the law schools so as to identify the respective obligations discretions and rights – which themselves should inform the design, creation, operation and execution of policies with regard to plagiarism. It also explores a possible strategy to address plagiarism; to offer a transparent and effective reassurance of quality standards for the professional bodies; to demonstrate robust academic practices; and to achieve further and closer confidence-enhancing links with the professional bodies.

The Qualifying Law Degree

Although the study of law has considerable history, the professionally recognised law degree is comparatively new to academia. In 1913, the Haldane Commission had argued for academia to be free from the professional bodies, and for many years a degree (in any subject) was not a precondition of legal practice. After the Second World War, academic legal education slowly increased. Some (usually civic) universities offered academic legal programmes to run contemporaneously with the legal vocational education provided, and assessed, by the professions, but others resisted subsuming professional legal education into its academic sibling. In 1948, W.T.S. Stallybrass (Vice Chancellor of Oxford University) explained to the The Society of Public Teachers of Law, (now The Society of Legal Scholars - hereafter SLS) that academic law should be an “education in the Law and not ... education for the Law” (Hepple 1996). The Ormrod Report in 1971 addressed and distinguished academic and vocational education of lawyers. It confirmed the principle that all professional lawyers would “normally, but not necessarily,” have a university degree in law; but that merely recognised the reality that the majority of candidates for professional legal examinations would hold such a degree. One consequence of Ormrod was normatively to predicate professional legal education upon an academic legal knowledge, but to leave to the professional bodies the examination students for their final professional awards – best exemplified by the Inns of Court School of Law examinations for barristers and the Law Society Finals Examinations for solicitors.

Whilst there was some subsequent movement through the creation of the Advisory Committee on Legal Education and Conduct following the Courts and Legal Services Act 1990, there remained the general principle of distinguishing academic from vocational legal education, and of allowing a recognised academic law degree to satisfy the academic requirements for entry into either branch of the legal profession. However, the sting remained in the tail: through the Joint Academic Stage Board (hereafter JASB) the professional bodies specified the syllabus and parameters of assessment (“Joint Announcement on Qualifying Law Degrees”); and law schools had to provide information about the courses to enable the professional bodies to discharge their own responsibilities under the Courts and Legal Services Act, under the ultimate sanction of withdrawal of recognition (Law Society 2006a). However the simplicity of this principle and that of the professional bodies’ commitment to work in partnership with law schools has masked the continuing underlining tensions between the professional bodies and the academic community (usually represented by the SLS, CHULS, and ALT). This tension can be seen in the JASB’s promulgation of, and the responses to, the “Joint Announcement on Qualifying Law Degrees” (Law Society 2006b) and the “Statements of the Joint Academic Stage Board” specifying in broad terms the syllabus, resources and provision for QLDs. Such statements and announcements look to place a primordial focus by the professional bodies not just

upon the design and validation of a programme (JASB 2005, 2007a, 2007b) but also upon certain details of its ongoing administration and delivery, whereas the academic community sought to maintain quality assurance through robust internal mechanisms and peer review. The JASB is frequently distant from the academic legal community as evidenced by the SLS's response to the JASB's document "The Way Forward" purporting to implement the Cooke Report (Cooke 2002). In its response, the SLS sought reassurance of greater consultation by the Professional Bodies with the Law Schools, and emphasised the role of external reviewers rather than blanket imposition of provisions.

Today, the importance of ensuring that a programme is professionally recognised lies in the increasingly competitive student recruitment market. A QLD course is often seen to be financially stronger (Birnbaum 1988) through having the potential to recruit to target, to attract better students and to justify higher fees - a view reiterated to the writer by Deans and senior officers within many law schools. This is also consistent with the professional bodies' approach: a prospective student lawyer will see that the Law Society heads its information with the statement "completing a law degree will help you qualify as a solicitor" and lists nearly 100 law schools offering a QLD. Consequently, a candidate with a law degree which is not a QLD will be placed in the same position as if s/he had studied any other degree, i.e. needing an additional year of full time study for the Common Professional Examination (Law Society 2006b).

Thus the professional recognition attendant upon the QLD is axiomatic to students, the professions and law schools.

Characterising the Relationship with the Professions

Until about two decades ago, many law schools were populated with staff combining professional practice and academic delivery, and so, culturally, they had a foot in both camps. Adapting Sawbridge (1996), it can be seen that those having a direct involvement with the professional bodies might have seen their reference group in the profession rather than in the law school; and as a consequence, there risked a conflict between loyalty and responsibility to the law school, on the one hand, and, on the other hand, to the professional body. Moreover,

"their subject expertise [made] it difficult for managerialist interventions to succeed without their cooperation" (Sawbridge 1996).

There is an imbalance. The overriding dynamic is from the external professional body subordinating many of the institutionally internal facets of the programme; and in the present context those representing the professions (and according the QLD status) may overwhelm those representing the law school. But expansion of student numbers and other increased academic demands have reduced the number of staff able and willing to engage, or retain a stake, in professional practice (or even holding membership of one of the relevant professional bodies), particularly where the law school does not offer vocational programmes such as the Bar Vocational Course and Legal Practice Course (and therefore require staff with professional qualifications and experience of legal practice). This puts at risk the normative professionally "shared assumptions and informal networks and quality procedures" (Quality Assurance Agency 1998: 6-7).

This also necessitates the correct labelling of the conceptual relationship between the professional bodies, the law schools and the student, to enable its characteristics to be identified, and the implications thereof understood. Given that the relationship is tripartite, the lawyer is attracted to Land's use of the agency label, (Land 2001) which has broad resonance within the public sector:

“The principal-agent framework captures an essential feature of work organizations ... that someone needs a task carried out, lacks the expertise or time to do it ... and delegates the task to an agent”.(Moe 2006).

This resonance lies particularly in the need for the agent's expertise and for the principal's control. Yet on further examination, 'agency' may not best fit with the relationship model's dictionary definition:

“A person who or thing which produces an effect; a natural force or effect on matter” (Shorter Oxford English Dictionary 2002).

Moreover, Professor GHL Fridman anchors 'agency' in matters contractual:

“the relationship which exists between two persons when one, called the *agent*, is considered in law to represent the other, called the *principal*, in such a way as to be able to affect the principal's legal position in respect of strangers to the relationship by the making of contracts or the disposition of property”.(Fridman 1996)

It is the use of 'contract' and 'property' which causes difficulty in the educational context. Firstly the reference to the requirement of a change in legal position excluded non-legal situations, and made a poor fit into the educational framework. Secondly, as Lord Wilberforce observed in *National Provincial Bank Ltd. v. Ainsworth*, [1965] 3 W.L.R. 1175 at 1247-8:

“Before a right or an interest can be admitted into the category of property, or of a right affecting property, it must be definable, identifiable by third parties, capable in its nature of assumption by third parties, and have some degree of permanence or stability.”

As a degree (or the accreditation offered therein) is incapable of transfer from the recipient to a third party, it fails this fundamental test. Moreover, there needs to be an intention to create a legal relationship (between the student and the professional body) which most professional bodies would deny prior to a formal application for some category of professional membership from the student: and that application would be admissible only upon completion of the predicated QLD. Agency may lie if one accepts the definition is provided by the learned authors of Bowstead and Reynolds on Agency:

“a fiduciary relationship which exists between two persons, one of whom expressly or impliedly consents that the other should act on his behalf, and the other of whom similarly consents so to act or so acts”.

The value of QLD lies in its acceptance by the professional bodies, but they do not authorise the law school to commit them (save in recognition following meeting of certain conditions). Thus, on balance, one must reject the legal concept of agency as both too broad and complex for the present: a better (if less compact) model is to divide the relationship into three separate elements. The first (student – law school) has contractual characteristics; the second (student – professional body) probably falls outside normal contract as acceptance of an offer made to all the world depends upon an intention to create a legal relationship (including the tests in *Carlill v. The Carbolic Smoke Ball Co* [1893] 1 QB 256); and the third (law school – professional body) is non contractual, being based merely around representations (with liability in tort). In the absence of a student’s formal application for professional membership (usually upon graduation), no relationship would normally subsist between the student and the professional body. As a consequence, prior to application for student registration, the professional bodies would lack authority to investigate matters of academic conduct, were any to be reported.

This lack of direct legal nexus favours seeing the relationship as merely a precarious reciprocal trust; and in so doing, favours the Bowstead and Reynolds definition as offering some consistency with the facts, and, more significantly, identifying the fiduciary quality of the relationship. This can be seen through the example of an academic misconduct case.

The Contextual Question of ‘Academic Misconduct’

Academic misconduct – commonly described as ‘cheating’ is apparently widespread, but not new - Dorothy L Sayers used it as a central issue in the plot of *Gaudy Night*. Discussion of it in secondary and Higher Education abroad as well as in the UK (Marcus 2005) now regularly features in the national academic and general press – even on the front page (Smithers 2005), but academic malpractice in Higher Education finds its roots in earlier education. A recent Qualifications and Curriculum Authority’s report revealed an increase in penalised cases of malpractice rose by more than 27% between 2004 and 2005 to 4500 cases (Editorial, Independent 2006: 6) although two thirds of all these offences were the unauthorised retention of a mobile phone rather than an attempt to cheat. From cases coming before the Joint Council for General Qualifications Malpractice Appeal Panel, it is apparent that some schools are failing to apply the most rudimentary procedural rules in areas of educational administration including the conduct of assessments. Moreover,

“as a result of changing demographic characteristics students are likely to be less well prepared for HE than was the case” (Becher et al 2001:5).

So, far from the offences being deliberate attempts to cheat, it would appear that many malpractice cases are more likely to be inadvertent; so favouring the current thinking that the numbers deliberately cheating are small. Isabel Nisbet (QCA’s Director of Regulation) describes this as a fuzziness of perception (Editorial, Independent 2006: 7) and it is often helpful to sub-classify them into malpractice and mis-practice to reflect the range of prohibited activities: thus, malpractice can be exemplified by impersonation, ghost written assignments for which the market is put at £90,000 per week, and services Oxbridge and Russell Group University students (Peeps 2006:13), and ‘notes in coats’ in exams; and mis-practice by the omission of footnotes or poor referencing. The need for such sub-classification is important for several reasons:

firstly, from a legalistic point of view the relevant mental elements are significantly different. One cannot ‘accidentally’ impersonate another, nor write notes on a shirt or blouse cuff, or have a wired wig (Guardian 2006:16) and, so, as malpractice the implication is of a deliberate act of deceit and dishonesty. In contrast, the mere omission of a footnote affords a wider range of interpretations which might be better described as mis-practice: poor referencing discipline, lack of understanding of the material, or lack of cultural awareness (Guardian 2006:16).

Academic malpractice is undoubtedly exacerbated by the growth in assessment by coursework: firstly, the lack of adequate supervision within secondary education can facilitate the establishment of bad practices including un-attributed borrowing of web-based and other materials – described as a culture of work “cobbled together from the internet”. Secondly, many establishments in secondary education encourage students to submit a draft of the work for ‘feedback’ prior to summative submission; and the lack of this latter facility in Higher Education can lead to student insecurity. Furedi places responsibility for this in the schools’ creation of a scenario where parents become far too directly involved in producing their children’s work (Furedi 2006:28). The consequence is that many students entering law schools find that student numbers do not allow staff to provide individual guidance, and, so, turn to other sources of assistance. Following reports of Parliamentary investigations into on-line essays, and with the intention of reducing extensive internet cheating, the Qualifications and Curriculum Authority (hereinafter QCA) proposed that assessments should be completed under supervised conditions and not undertaken at home. In a letter dated 7th April 2006, addressed to the Secretary of State for Education, Ken Boston QCA Chief Executive referred to the

“wider availability of the internet [has] created greater opportunities for malpractice ... This gives problems with ensuring authenticity and hence fairness”.

His proposal was to place greater emphasis upon exams and in class tests. The QCA’s approach involves “virtue, prevention and policing” i.e. instilling an awareness of the ethics of the electronic age, redesigning assignments, and imposing penalties. The Department for Education and Skills indicated that coursework would be used only

“where it is the most valid way of assessing subject specific skills” (Guardian 2006:6)

Academic malpractice in Higher Education has a potentially greater impact. It

“involves gaining a qualification under false pretences. A degree is a passport to a high-status and well-paid career (outside academia, at least). If we certificate students as having knowledge and abilities which they have not in fact demonstrated, then this particular function of the university system loses its *raison d’être* and its credibility.”(HEA 2006: 9).

The problem is widespread. According to a report commissioned by the THES, one in six HE students admitted to having cheated and many more to having copied from books and the internet; but the pattern is uneven: plagiarism among students at ‘old’ universities was a mere 4% and at Russell Group Universities 7% (THES 2006: 9).

and so the problem seems greater at post-1992 law schools. Alan Grafen, a former Senior Proctor at Oxford University, has warned of the greater threat posed by plagiarism (Oxford Student 2006), and Jean Underwood of Nottingham Trent University explained that “Society has to see plagiarism as a real issue.” Underwood’s research demonstrated that those most prone to cheat are in a high-pressure academic environment, reinforcing the suspicion that the introduction of higher financial contributions towards tuition costs further focuses the student on the need of evidence of achievement (including professional accreditation). There was also some noted correlation between low IELTS (or GCSE English Language) scores and cheating (Tysome 2006:4.), thereby indicating that students who struggle with English language proficiency may resort to cheating to pass. So, it can be seen that where the accredited degree is viewed as a means to an end, then anything which achieves the degree can be justified. The conflation of the academic award with professional recognition within the QLD merely intensifies the pressure on the student to succeed and thereby further exacerbates the problems surrounding academic misconduct within the QLD.

In his discipline of philosophy, George MacDonald Ross has suggested that one problem is that of the student obliged to study a component as part of a degree programme without seeing its relevance, and offers the example of the study of medical ethics in a medical degree. There is an irony. Many prospective criminal barristers argue against the study of property law, although the definition of theft clearly requires such knowledge: “A person is guilty of theft if he dishonestly appropriates property...” Theft Act 1968 s. 1(1). Consequently, it is unsurprising that Ross has specifically identified law students as one of the categories of student more likely to plagiarise; but at this level, plagiarism tends to involve the copying of text rather than ideas, which necessitates distinguishing criminal intent from bad practice. As a strategy, Ross proposes

“Given that students won’t cheat if they want to learn, the key to preventing criminal behaviour is to foster a culture in which learning is valued for its own sake - in which those who arrive with enthusiasm don’t lose it, and the others acquire it. This involves both eliminating structural factors for which we ourselves are responsible and paying more attention to developing good practice” (HEA 2006).

But there are other problems. Ross alludes to the difficulties caused by a lack of a single definition of academic malpractice and to the conjuncture of unintentional plagiarism with poor academic practice, commenting that even

“experienced scholars will disagree where the line [between common and non-common knowledge] is to be drawn”.

Andrew Hamnett (Vice Chancellor of Strathclyde University) echoes this view:

“... students are confused about what constitutes plagiarism. There is a grey area between using a reference and direct copying some students don’t fully understand” (Davies 2006).

This grey area is illustrated by the accusation by Jon Appleton of Oxford Brookes that Peter Levin of the LSE, a plagiarism expert, had plagiarised. The allegation centred on the formatting of a passage (correctly footnoted but not indented), which allegedly gave

“the appearance that the author has developed certain ideas when, in fact, they were simply copied verbatim from the work of someone else” (Baty: 2006).

Derek Ord of Hull University cogently commented:

“I wonder how on earth we manage to advise our students at all if academics have the problems [discussed on the forum]” (Baty: 2006).

Whilst new technology (e.g. Turnitin) can identify text copied from Internet sources, it fails to identify the un-attributed use of the underpinning ideas; and it cannot easily distinguish between malpractice and mis-practice (Editorial Independent 2006). Jude Carroll at Oxford Brookes has criticised sole reliance on electronic detection system and argued for, inter alia, an active senior management group; greater student feedback; improved law schools support of staff addressing, reporting and disciplining plagiarism; and improved assessment (THES 2006b).

The problem of academic malpractice is doubly exacerbated in the study of law. The standard texts do contain a mandatory injunction to attribute, e.g. “Each idea or quotation which comes from someone else’s work must be attributable (sic) in the text itself” (Cassell 1998.), and a principal legal rule is that authority must always be given for every point or assertion made whether in the courtroom or in academic work. The consequence can often be that footnotes may occupy more than half the pages in many legal tomes. As many law questions are written around a specific line of cases, statutory provisions, and principles (all of which students will be expected to use, and often so in strict chronological order), it is to be expected that responses will bear a significant similarity to each other.

The problem of academic malpractice is situated close to the expectation that law schools meet recruitment and retention levels but also without loss of standards; and so law schools are keen to demonstrate maintenance of standards through publicising successful detection and disciplinary processes (including expulsion). As Professor Donald Pennington, Coventry’s Vice-Chancellor (sic) commented of that Institution’s disciplinary policy: “It was a conscious decision to make it a high profile issue.” (Davies 2006)

The problem is that there remains disparity in approaches to plagiarism between institutions (Editorial THES 2006b). Deciding whether the ‘wrong’ is academic misconduct is an academic (if highly disputed) issue turning on the insufficiency of the direct attribution of sources, and it may prove tiresome to substantiate the charge (without invaluable objective evidence, such as provided by Turnitin) within the disciplinary process for academic assessment. An easier approach is to see the ‘offence’ as one of poor academic practice resulting in deduction of mark, without any formal disciplinary process charge or investigation; but this may tempt students (and staff) into charge- / plea-bargaining rather than face a formal disciplinary process (Editorial Education Guardian 2006:12). Frank Furedi observes:

“Authorities preoccupied with increasing student numbers are reluctant to get involved in the messy business of appeals and litigation” (Furedi 2006:28).

although this is not a universally held view (Davies 2006).

To handle the volume of malpractice cases outside Higher Education, the Joint Council for General Qualifications operates an tiered approach: the first stage is investigatory with fixed penalties in the event of finding prima facie evidence; the student may appeal to a Review Panel staffed by senior academic advisers; and a final appeal lies to the Malpractice Appeal Panel (MAP), staffed principally by independent lawyers. From the MAP lies only an application to the High Court for Judicial Review. Drawing upon unpublished data taken from cases heard before it, the present writer comments that this system seems to operate efficiently and effectively with only a handful of cases reaching the MAP annually.

Problem and suspicion; and one way forward?

Academic malpractice committed within the framework of a professionally accredited degree places at risk not only the degree but also the professional accreditation accorded to qualifications achieved at that institution. The professional bodies expect the law school to advise of any plagiarism determination concerning a student registered on a QLD and also when writing a students reference for professional membership.

Moreover, on its application for student membership (typically immediately after graduation), the Law Society requests details and the results of investigation of any accusation of plagiarism and in serious cases may refuse to grant student membership:

“When you enrol as a student member of the Law Society, you must declare any information that might affect your suitability to be a solicitor. Failure to do so may have serious implications. Such information includes any criminal conviction, including official cautions, reprimands and final warnings, even if they are spent; any instance of cheating in exams or plagiarism during a course of study.”

The Chartered Institute of Management Accountants encompasses academic misconduct within general ‘misconduct’:

“... conduct by any Member or Registered Student resulting in any conviction, or adverse finding by, sanction or order of, or undertaking to any tribunal or court or other body or authority, which the Institute considers relevant to their membership of, or registration with, the Institute.”

However, the professional bodies’ attitude to the actual adverse finding may vary dependent upon the nature of the offence: thus poor referencing should be distinguished from malpractice: and the vitally important distinction between ‘innocent’ and ‘dishonest’ also highlights a potential gulf between professional and academic perspectives. This is clearly shown in the recent case of educational malpractice case *Clarke* before the Solicitors Disciplinary Tribunal (Solicitors Disciplinary Tribunal, Application 9501-2006).

Clarke, already admitted and on the Roll, fell within the jurisdiction of the Law Society (by virtue of the Solicitors Act 1974). She was accused of unprofessional conduct on the basis of academic malpractice. The allegation was of cheating in a professional conduct test (related to a competency qualification for solicitors giving advice at the police station) taken in May 2005 at Cardiff University which had used a number of scenarios, one of which the University staff picked to test the candidate. In preparation for the test, Clarke had legitimately become familiar with the practice test scenario that was ultimately selected by the University, but did not alert the invigilator to her familiarity with the scenario selected.¹[1] When this coincidence was discovered, the University alleged cheating and reported the matter to the Law Society. In the circumstances, and, due to continuing stress, Clarke chose to admit the offence with a view to its early disposal. That the Tribunal accepted that the complaint was substantiated only “in view of the respondent's admission” and chose to impose no penalty clearly questions whether, in the absence of that admission, other evidence would have justified such a finding, as the Tribunal commented:

“although on the face of it the allegation was serious, no dishonesty had been alleged against the respondent” (Solicitors Disciplinary Tribunal, Application 9501-2006).

The SDT reinforced this point by emphasising that

“at most, the reality of the situation that had arisen was that the respondent had been guilty of an error of judgement in her preparation for the test and had not formulated any intention to gain an unfair advantage”.

These dicta, and the absence of any penalty or sanction, can be interpreted as serious criticism of the formulation of the complaint, and, indirectly, of the University's approach. More generally the SDT's comments underline a potentially fundamental difference of approach between academic and professional approach to potential academic malpractice.

The difficulty is that the professional bodies have delegated to the law schools the task of policing academic malpractice but those professional bodies have failed to articulate a clear definition of academic malpractice. This has allowed law schools to develop only a generalised notion of academic malpractice with fragmented interpretations and responses (Birmingham et al 2006); and it is left to staff, often at the lower levels, to effect crucial judgements. The Office of the Independent Adjudicator has highlighted the danger of inconsistency of treatment of students generally. The combination of individual attitudes of individual staff members, varying institutional policies with disparate application régimes, risk an activity being

¹ Of course, one educationally underpinning principle of the unseen test (in whatever guise it may choose) is the uncertainty of one or more of the facts, subject, area, questions etc. A further principle is that the assessments should address a relevant and (in professionally orientated assessments, a commonly encountered) problem area. A third (and consequential) principle is that, to ensure parity of academic outcomes across a cohort, there must be a significant commonality (and often significant similarity) between assessments; and in the context of scenario based assessment, often these principles loosely translate into similar scenarios with similar issues. One must ask, therefore, whether, educationally, the chance selection of a familiar scenario imposes any unfair advantage; and indeed, the extent to which the practice in the assessment and administration in this case departed from that commonly encountered in the UK.

viewed as poor academic practice at one institution and as academic misconduct at another. In this uncertainty, the suspicion arises that some legal academics, knowing the serious consequences upon a student's career of a successful charge of academic malpractice, may be less conscientious in initiating the process. The resultant practice lacks transparency, is unfair to students, fails to provide objective assurance to the professional bodies offering professional recognition, and thereby puts at risk the law school's ability to resist internal pressure to change offered by the professional bodies.

In contrast, the Joint Council for General Qualifications malpractice procedures have significantly and successfully reduced the confusion and the administrative workload surrounding malpractice by providing consistency between the various QCA Boards through a series of defined broad categories of offences (with examples), agreed penalty bands and normative recommendations for action. It is time that the professional bodies should offer clearer guidance to Law Schools by establishing a schema of clearly defined categories of academic misconduct; commonality in the recognition of degrees of seriousness; agreed bands of penalties; and an essentially systemic institutional acceptance of the primacy thereof over institutional values and procedures (Elton 1998) practices and, consequently, should be built upon research of common types of plagiarism within law programmes; the location of responsibility of identifying plagiarism; investigative and disciplinary processes; and sanctions. This could be achieved through a questionnaire and subsequent structured interviews coordinated via one or more of the academic bodies (e.g. SLS or CHULS), and the professional bodies to evidence co-operation and engagement with the professional bodies' current requirements. From the results could be extracted a Common Code of Definitions, Practice and Penalties for QLDs.

Conclusion

This paper has explored a theme familiarly recurrent in Higher Education and exemplified by the conflict of interests and duties in QLD programmes and epitomised in the title of Goldoni's *A Servant to Two Masters*:

“the servant is trying to deliver food to his different masters (but which courses to which masters?) while grabbing some food himself” (Macaulay 2006).

It has shown both the importance of the QLD within the provision of undergraduate legal education, and the consequential need for law schools to retain the confidence of the professional bodies. It has also explored the theoretical relationship model existing between the professional bodies and the law schools. It has demonstrated that the relationship pivots on a precarious reciprocal trust, and that the growth of plagiarism; the lack of universal agreement upon a definition thereof; the consequential procedures, together with the professional bodies' uncertain focus thereon risks undermining that trust. The suspicion is that part of the problem lies with the lack of an agreed definition of plagiarism amongst law school and the disparity of procedures and wider interpretative margin within HE.

Consequently, the confidence of the professional bodies should be retained through a review of institutional practices with regard to plagiarism within QLDs. The objective

would be a common policy practice and approach, co-ordinated by the SLS and CHULS with the concurrence of the professional bodies.

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