

## EXPERIENTIAL LEARNING OF ETHICS, INTEGRITY AND ACCOUNTABILITY IN THE ISLAMIC FAMILY LAW COURSE

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### ABSTRACT

*Providing the avenue for learners to experience the practical side of ethics, integrity and accountability is a vital element for legal education. Experiential learning will allow students to understand the effect of failure to practice the norm in daily life. This study looks at the use of problem- based learning as a tool to educate and train learners with core values in the sphere of legal practice: ethics, integrity and accountability. It begins with an overview of PBL and its relevancy to legal education. Next it discusses the method of PBL and its complete process from beginning to end. The primary objective of discussion is on how ethics, integrity and accountability are being embedded in a selected course. The study demonstrates that PBL is an appropriate learning tool that would promote better understanding and empathy.*

Key words: PBL; ethics; integrity; accountability.

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### Introduction

Legal practice is made of advocates and solicitors whose ethical standards are expected to be exceptionally high and uncompromised. Those who do not meet the standards should not be allowed to practice as the public place a lot of trust in them and the violation of such trust will entail devastating effect. Cases of unethical lawyers and failure to observe the principle of integrity and accountability is on the rise and the Malaysian Bar Council reported that from January 2014 to August 2015, more than 400 disciplinary orders were made under Section 100 (8); 103C read with section 103D of the Legal Profession Act 1976 (LPA) against advocates and solicitors for professional misconduct or unsatisfactory professional conduct ( The Malaysian Bar: 2015a). The decline in moral values and professionalism is a great concern for law schools. Professional misconduct encompasses a wide range of conducts and situations. Unsatisfactory professional conduct comprises a considerable failure by a solicitor to reach or maintain a reasonable standard of competence and diligence in practice The Malaysian Bar: 2015b). Section 94 (3) defines misconduct as conduct or omission to act in a professional capacity which amounts to grave impropriety and these includes but not limited to the following –

- a) conviction of a criminal offence which makes him unfit to be a member of his profession;
- b) breach of duty to a court including any failure by him to comply with an undertaking given to a court;
- c) dishonest or fraudulent conduct in the discharge of his duties;
- d) breach of any rule of practice and etiquette of the profession made by the Bar Council under this Act or otherwise;
- e) being adjudicated a bankrupt and being found guilty of any of the acts or omissions mentioned in paragraph (a) , (b) , (c) , (e) , (f) , (h) , (k) or (l) of section 33 (6) of the Bankruptcy Act 1967;
- f) the tendering or giving of any gratification to any person for having procured the employment in any legal business of himself or any other Advocate and Solicitor;
- g) directly or indirectly procuring or attempting to procure the employment of himself or any other Advocate and Solicitor through or by the instruction of any person to whom any remuneration for obtaining such employment has been given by him or agreed or promised to be so given;
- h) accepting employment in any legal business through a tout;
- i) allowing any unauthorised person to carry on legal business in his name without his direct and immediate control as principal or without proper supervision;
- j) the carrying on by himself, directly or indirectly, of any profession, trade, business or calling which is incompatible with the legal profession or being employed for reward or otherwise in any such profession, trade, business or calling;
- k) the breach of any provision of this Act or of any rules made thereunder or any direction or ruling of the Bar Council;
- l) the disbarment, striking off, suspension or censure in his capacity as a legal practitioner in any other country or being guilty of conduct which would render him to be punished in any other country;
- m) the charging, in the absence of a written agreement, in respect of professional services rendered to a client, of fees or costs which are grossly excessive in all the circumstances;
- n) gross disregard of his client's interests; and
- o) being guilty of any conduct which is unbecoming of an Advocate and Solicitor or which brings or is calculated to bring the legal profession into disrepute.”

The misconduct stated above comprises of violation of ethics, for example in para. (d); integrity, in para. (m) and accountability, such as in para. (i). In the wake of such increase, we acknowledged that something needs to be done because the world is still in need of legal practitioners who are ethical, have high integrity and accountability. The significant numbers shows us the possibilities of the practitioners not have developed their ethical values prior to practicing. A law student is expected to master a sound legal knowledge; legal reasoning; legal research; problem solving ability; lawyering skills, and other generic legal skills including communication, negotiation and ethics, which can only be acquired through various method of teaching and learning (Christensen & Kift 2001: 207). It was reported that fundamental values of the legal profession consists of provision of competent representation, striving to promote justice, fairness and morality, striving to improve the profession and professional self- development (MacCrate: 2007). Cort and Sammons describes a model of lawyering competencies to include the ability to recognize the ethical considerations in a situation, analyse and evaluate their implications for present and future actions, and behave in a manner that facilitates timely assertion of rights (Cort and Sammons: 1980). The Law Society of England and Wales proposed that once a person is qualified to practice as a solicitor, he should be able to preserve his own integrity, act consistently with professional and ethical requirements and defend and promote the reputation of the legal profession.

It is the primary duty of a law school to ensure that law graduates have the level of knowledge, skills, values of ethics, integrity and accountability necessary to render a high standard of professional legal services and obligation to clients. Nevertheless, nobody could deny that a law school cannot do and provide everything for students but at least, law schools could do better in preparing students to become legal practitioners. It is argued that ethics cannot be taught, instead, it is a personal attribute. A person cannot be said to value something just because he has knowledge about it. Student's motivation and capability to use his/her knowledge must developed so that he/ she knows how to apply and practice the cognitive domain (Prosser: 1995).

It is not sufficient for students to have the legal knowledge only, as it is utmost important for them to practice what they know and these knowledge and skills must relate to ethics, integrity and accountability which are the core values of the professional legal services. Students need real experience on the working environment and emotional elements of the job so that they are aware of the challenges of the legal world but he traditional academic setting of legal education may not provide students with hands- on experience. That is why a student- centred learning method that gives students ample opportunity to practice ethics, integrity and accountability should be adopted. Problem- based learning (PBL) and clinical legal education (CLE) are two widely used techniques in law school for that purpose.

The aim of this study is to show the coaching of ethics, integrity and accountability using the PBL approach in the teaching and learning of Family Law for Muslims and non- Muslims for second year students of the Bachelor of Syariah and Law programme. This paper describes the process of PBL and focuses mainly on how ethics, integrity and accountability are being nurtured, cultivated and fostered during the 7 weeks duration.

### **Problem- Based Learning**

PBL is student-oriented learning method which puts a problem first, and in which further learning is conducted in the context of that problem. In PBL, students are placed at the start of the process without being given a lecture as in the traditional process. Students become the master and attempt to solve issues identified while the lecturers become a facilitator in the process. In PBL the discussion and analysis of the problem kick starts the process of learning, and the problem sets out a factual scenario that raises various legal issues, which the students have not yet studied or no lecture has been delivered. The rationale of such idea is to encourage effective learning as students learn on the 'need to know' and 'discovery' basis. The key role of the problem is to trigger student's interests and stimulate their thinking and awareness that issues presented in the problem do exist. The problem provides students with a context for the student to identify what they need to learn in order to understand the problem and address the issues, thus students explore and experience real situation in working life (Macfarlane & Manwaring, 1998).

One of the distinctions between PBL and problem solving or also simulations, which are commonly used in legal education is that in PBL, the problem is presented at the beginning of a learning process. Which means, students are exposed to the problem before any formal learning instruction relating to the course/ subject/ topic is given. Whereas in problem solving method, students are first exposed to legal principles and the application of the rules. Thereafter, students are given a problem or simulation in which they are required to apply the rules or how the principle would fit in a situation. Students are not presented with problems until they have sufficient knowledge. The main role of the problem is to test on how much knowledge student have acquired and how well he/ she can apply it.

PBL is also different in the sense that the problems are multifaceted. They are purposely designed to contain several issues involving multiple legal doctrines. No direct questions are given, only description of a problematic situation. Thus, we do not expect specific outcome or dogmatic resolution as the problem can garner as much solution as possible depending on how students perceive the problem, the amount of time to be spent, and the depth of research. In contrast, for problem solving, student is given an express direction on what should be done or considered.

PBL gives student the opportunity to determine their own problem solving (York Law School: 8) as compared to ordinary problem that require students to answer in a way that their lecturer wants them to answer. It requires student to work in group and this pose challenges of real working environment in which different personalities will have to learn to adapt with the differences of each team members. In PBL students are trained to independently manage their team in order to achieve the goal or objective of the learning process.

## Problem-Based Learning In Family Law

The PBL method is implemented in the Islamic Family Law course offered to second year student of Bachelor of Syariah and Law. It is introduced at the 8<sup>th</sup> week and implemented until the 14<sup>th</sup> week. This is a hybrid method whereby PBL is not fully adopted for the whole course but merely incorporated at the second half of the course. The main motivation to implement this method is based on their condition as adults who become more mature and self-directed in learning, they have accumulated experience that would help them in their learning; they are more job oriented; and anticipate educational material that can be applied in future job (Knowles, 1980 in Werth, 2009: 22).

### *Steps in PBL*

The process begins with an introduction to PBL, the most fundamental part that enlighten students on why PBL is relevant so as to avoid misunderstanding and misconception. The extensive briefing was conducted to inform student of the PBL process especially the nature, steps and activities involved, assessment method and what is expected of the student/ group. Brief notes are also disseminated. Correct and clear understanding is important to make sure that students are aware of the lecturer's expectation so that they are able to work with clear objective. One of the most important things highlighted to students is the distinction between PBL and problem solving and the role of the problem. Another important aspect discussed during the briefing is the change in the role of lecturer and students. In PBL the lecturer's role is to facilitate the process by encouraging students to do more research, responding to their questions but not to give answers but rather to guide them to approach and reassess the problem (Winsor, 1989: 6).

In our PBL session, students are asked to form a group of 5-6 people, and the constitution of the group is entirely up to the students. Students have to set up a legal firm, elect a leader and other suitable post bearers and are informed that the problem is to be treated as a problem of their client. Students are also informed that the formation of the PBL group and their membership is similar to the challenges of real working environment where people have limited choice of colleagues and sometimes required to work instantly and closely with unfamiliar people to achieve various objectives.

Specifically related to ethics, integrity and accountability, students are required to answer questions to briefly assess their knowledge on the norms. Then the facilitator explain the meaning of the three norms and points to the students the importance of ethics, integrity and accountability in legal practice and encourage them to observe and practice the values as they go. In group, students are asked to share their experience and knowledge on breach of ethics, integrity and accountability and its effect. Then students are asked to elect a leader whom they think possess the values. Once they have elected a leader, they are instructed to hold the first group meeting to devise the objective and mission of each firm, based on the three values with the view to guide the conduct of team members.

11 different 'problems' or 'triggers' on new topics are divided among the 11 groups. These topics are not yet covered in previous lectures and they are: dissolution of marriage and ancillary relief. The problems based on real life situation involving various issues. Upon receiving the trigger students are asked to discuss problem in front of them and plan their strategy on how to embark on an effective research and data collection so that they will complete their research within 7 weeks. Each group identifies learning issues from the given 'problem' and decide each member's assignment. The facilitator also explains on how to conduct research and collect data.

Provided below are four samples of PBL triggers used in the present study:

- Tahzan's husband, Abboo is a womaniser and loves to spend his free time clubbing. He openly confessed that he has 4 girlfriends. Tahzan is no longer able to tolerate her husband's behaviour.
- Siti's husband left her and their 6 children since 2006. He never send any money and nothing was heard of him since. Siti's parents in law told her that they cannot tell her of his where about.
- Salima was born in 2012 to a young parents; Wasim and Kalilah who are 19 years old. Her parents were killed in a road accident in 2013. Since then, Salima was being cared for by Wasim's mother who is 65 years old. At the same time, Kalilah's elder sisters; Kaliza 26; Kalita 32 and Kalija 40 also claim that they are entitle to look after Salima.
- Your neighbour, Encik Razali looked agitated when he told you this, "I never get to see my children. When I go over to pick the children on the days I have visitation, there is no one home, or the children are all booked up with music or dancing lessons, football and hockey practise, drama lesson or tuition. There is always something. I miss them very much but I don't really know them anymore. I love them but I'm sick of paying the maintenance for the children that I never see. I believe the children will have little to remember about me."

Note that the problem is just a description of a scenario. No instruction or indication of solution is present in the problem. Students are required to assess the scenario, then to identify any issues, collect data to help solve the issues and propose a solution to it. This whole process demands student to conduct research and data collection to provide them with basic knowledge on the topics. The facilitator guides them by suggesting for instance, relevant books, articles, websites, resource persons and other materials and resources.

In the first meeting, groups discuss their plan and strategy including decisions on meeting dates and datelines for each assignment. Again the facilitator approach each group and draw their attention to ethics, integrity and accountability and its application throughout the PBL process especially in data collection. Progress discussion with the facilitator is carried out once a week and they are welcome to request a facilitation session that could help group/ firms to improve their research and research skills. Weekly discussion or seminar is conducted every week, for a duration of two hours and groups present their progress in the form of a table shown below.

Fact	Issues	Data	Solution	Verification
Fact taken from the given trigger without assumption and presumption.	Any issues or questions, legal or not, arising out of the facts.	Information and data collected in relation to the issues to help provide solution. Several methods can be used for data collection.	The proposed solution based on available data.	This is to make sure that group propose a solution based on authentic data and whether or not data support the solution. If it is not, it cannot be verified.

Every week, members will take turn to become leader of the group and progress made can be seen in their presentation. Leaders are asked to show how much progress has the group make under his/ her leadership. During weekly seminars, the facilitator spends about 5 minutes to discuss ethics, integrity and accountability to get student respond on how they are doing and further encourage student to consistently observe the norms. At the end of week 7, each group submits a final report and every student complete self and peer assessment. The self and peer assessment contains questions relating to ethics, integrity and accountability.

**Cultivation Of Ethics, Integrity And Accountability In The Pbl Process**

Ethics, integrity and accountability are being nurtured in the whole process of PBL in three levels, at the beginning of PBL, during the weekly seminar, and at the end. At the beginning students are asked of their awareness of ethical, integrity and accountability issues by answering related questions such as: “How important are ethical issues in the legal profession?” and to state their agreement to the following statement; “Privacy of one client may be ignored for the benefit of the larger group of client”, and sharing their awareness of the issues reported in the news such the incident of Enron, WorldCom, Wikileaks, Arthur Anderson, Tabung Haji and a few others. Then they are informed of ethical, integrity and accountability dilemma facing the people including legal practitioners so they are prepared of the possible impasse that could take place in their life and during the PBL.

During the process, issues of ethics, integrity and accountability are posed to students every week, as a reminder of the importance of the values for civilized society, including discussing with students the disciplinary orders made against a number of advocates and solicitors in the form of fines, reprimand, struck- off and suspension including the those who have been practicing for many years. Several prominent individuals who are famous for their strong ethical practices are also introduces and discussed such as the Prophet Muhammad, the companions of the prophets, the leaders of the Ottoman empire, and Tun Ismail Ali and Tan Sri Ahmad Ibrahim from the modern era.

Lastly, at the close of the PBL process, students are asked if they have been practicing the values throughout or if they have in any way violated the norms such as if they have intentionally refused to attend group meetings. For integrity, students are asked if they have properly cited the reference and for accountability, leaders are asked of the group’s performance and required to answer if the group is not doing well in group meeting, data collection and weekly presentation. This is an opportunity for the facilitator to show the need for persistence in practicing ethics, integrity and accountability.

The facilitator is aware that the effort may not be effective but it sure has increased the awareness of the students of the critical value of being ethical, honest and responsible. It is recommended that a specific module is developed to incorporate the cultivation of ethics, integrity and accountability throughout a law programme, to allow learners to truly observe these values in guided manner.

**Conclusion**

The teaching of ethics, integrity and accountability must be the guiding principles of legal education so that learners are constantly aware the values should underpin their conduct at all times. PBL requires student to work harder and smarter, aware of the environment and be mindful, apart from having to work independently and be responsible for their own learning. This study has shown that the application of PBL in legal education is a challenging encounter but benefits the students in many ways.

On one hand students are mindful that legal practice is not only more puzzling and perplexing but demands the practitioner to always be vigilant with challenges to their values such as ethics, integrity and accountability. As for the facilitator or instructor, knowledge, experience, and commitment are the key to successful PBL because the increased workload can easily demotivate. Nevertheless, PBL is a good platform to help learners understand the magnitude of ethics, integrity and accountability first hand. There is also a pressing need for legal education in Malaysia to come out with its own module in the teaching of ethics, integrity and accountability through experiential learning.

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