BUSINESS LAW MODULE – HOW TO IMPROVE MY TEACHING STYLE? UNDERGRADUATE AND GRADUATE STUDENT’S TESTS EVALUATION

Professor Silvia Lucia CRISTEA

Abstract

This paper aims to put forward the views of students who take part in learning processes in order to understand the perceived challenges and use that information to improve the quality of the Business Law module to be developed. The mechanism of legal education in English will be then discussed, with particular reference to this process as it unfolds in the Bucharest University of Economic Studies. This action research–based study will highlight the importance of teachers’ self-perception adjusted to new approaches. What is more, initiating change in the teaching-learning context these academics operate in might be a justified conclusion and the main arguments to support or dismiss it will be presented.

Keywords: teaching law, evaluation, student’s level of understanding legal concepts, teachers’ self-perception.

JEL Classification: K22

1. Introduction

Having taught for 18 years, I find it appropriate to move to the other side of the barricade and become a student again. Once this decision was made, I joined the EDURES MA program and has been a student over the past two years. This experience has contributed to shaping and expanding my interest for teaching law through the medium of English in an academic setting that encourages the development of English as a medium of instruction (EMI) undergraduate and postgraduate modules and programs.

Teaching through the medium of English is a new professional challenge which relates both to curricular development and to course delivery. In the attempts to introduce EMI in their academic practice, Romanian academics inevitably strive to bridge diverse streams of thought, to answer questions that have not been raised before and to deliver a demanding disciplinary content. Such content can be sometimes difficult to grasp in one’s mother tongue, as it is for instance the legal regime of entities. These notions are unknown to Romanian students in their native language, which makes it all the more difficult to explain in a foreign language particularly as this understanding is mandatory for students’ future profession.

The picture is completed by the difficulty of using metaphorical expression in a language other than your native one, by appropriate selection of judicial cases to be shared with the students, by explaining and understanding new concepts and definitions making the necessary link between linguistic expression and professional content. Shall we use examples of legal texts – already translated, sometimes poorly so – or provide our own explanation in English? Making these complex decisions requires not only a simple reshuffling of teacher training but an entirely new approach to the teacher’s roles and responsibilities in the learning process.

To address the above challenges, this paper aims to put forward the views of students and lecturers who take part in EMI teaching/learning processes in order to understand the perceived challenges and use that information to improve the quality of the Business Law module to be developed.

The mechanism of legal education in English will be then discussed in a separate chapter, with particular reference to this process as it unfolds in the Bucharest University of Economic Studies. A specific case study will be dedicated the first year students in the School of Management.

This action research–based study will highlight the importance of teachers’ self-perception adjusted to new approaches. What is more, initiating change in the teaching-learning context these

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1 Silvia Lucia Cristea - Law Department, Bucharest University of Economic Studies, silvia_drept@yahoo.com
academics operate in might be a justified conclusion and the main arguments to support or dismiss it will be presented.

2. Why action research?

After years of practice I hope that I have become able to improve the teacher-student relationship and enhance its personal harmony value. I would like to continue and develop this relationship in terms of communication among souls. At the moment I believe I am facing a difficult task: that of making students understand the importance of their commitment to learning, to improving their ability to learn and to engaging in continuous development throughout their career. The time of their undergraduate and graduate study is an opportunity to develop their own practice of learning; not in terms of applying some compulsory methods, but some principles applicable to their own personality/individuality. It is an appropriate time to learn to take responsibility for their own learning and to find what motivates them to continue to develop during their future jobs, in other words to learn the practice of motivation.

In my opinion the most important approach that generates motivation is realizing that life is a continuous process of learning. Such an argument gives rise to two main questions:

First: If we are to prepare students for the real professional world, maybe teachers should ask themselves if they would make good practitioners apart from being good teachers. (There is a joke about people who do not perform well in practice becoming teachers). How can I rate my own abilities in this respect?

Secondly: Can I be as good at teaching law in English as I am in my native language? In order to respond to these questions, to myself in the first place, I should engage in Action Research as a means of increasing my awareness and improving my practice.

Action Research provides a suitable framework for to address a question that is central to understanding our own professional development: namely, how can I improve my practice? This question arises in my career at a moment when I am still searching for the perfect balance between teaching, administrative obligations and research.

Now I start by encouraging myself to engage in some form of systematic research into my own practice! This is the result of two year at EDURES MA program! As Tony Harland and David Staniforth pointed out: "This way not necessarily be pure practitioner action research or include more conventional research methods, reflexive dimension focused on individual experiences of professional practice".

To describe the value of action research for my own development, I will quote McNiff:

"Action research is a practical way to look at one's own work to see if it is as one would like it to be and allow one to continue developing one's work."

If I want to improve my teaching skills, I need to understand an important aspect of Action research, i.e. the tie between practice (pedagogy) and the social situation, e.g. law courses, in which they occur. The inquiry is an attempt to understand the rationale and improve the success of certain practices within the specific context in which they are deployed (the course environment). Kemmis and Mc Taggart expand on these definitions: "Action research is a deliberate, solution–oriented investigation that is group or personally owned and conducted. It is characterized by spiraling cycles of problem identification, systematic data collection, reflection, analysis, data–driven action taken, and, finally problem redefinition. The linking of the terms action and research highlights the essential features of this method: trying out ideas in practice as a means of increasing knowledge about and/or improving curriculum, teaching, and learning".

The characteristics that commonly define action research include the following:

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the researcher’s practice is the subject of the research;

it is intended to achieve both action (in the form of data-driven change) and research (to develop an understanding that prompts ongoing change or improvement, and to add to what is known);

it is cyclic, with later cycles used to challenge and refine the results of earlier cycles;

it tends to be qualitative and participative;

it requires critical self-reflection. The researcher regularly and systematically critiques what he or she is doing during the research process, leading to refined questions, action plans, and methods, as well as new understanding.

The value of action research as a means of improving practice and its well-defined steps to this end have provided a useful framework for introducing change and dealing with a new teaching situation. This article will highlight the process of clarification I have gone through and explains the preparation preceding design and delivery of my Legal English course.

Because teaching through the medium of English will be a new experience to me, I need to build it on the current experience and to use student performance as a sort of baseline to build my future course on. Starting from the students’ current level of knowledge will help me provide the right level of complexity with my course and also involve students in the teaching/learning process.

Therefore, I have analyzed the results of student evaluation at both BA and MA level. The findings are the foundation for further changing the teaching process. Evaluating the students may be regarded as a way of evaluating the teacher at the same time. Therefore, in line with action research processes, I am looking at my own teaching in order to develop new methods, materials, and activities. What I achieved through teaching in Romanian will inform the future processes of teaching through the medium of English.

I have evaluated student’s knowledge for the purpose of clarifying the ‘black spots’ in Romanian law teaching and in particular of topics related to natural person regulation (e.g., individual enterprise, a family enterprise, an individual merchant/authorized natural person).

The second step is to bring together the comparative analyses of undergraduate and graduate student’s questionnaires: what was good in the teaching process, what is still to be done, differences between teaching English and teaching in one’s native language.

Next, I will build a case study of teaching Business Law in the School of Management and finally I will formulate my conclusions. I will try to highlight the proposed changes and the rationale for doing so.

### Basic Action Research Cycle

| Observe and document phenomena in existing setting (chapter II&III) | Reflect on Inconsistencies between values and practices in setting (chapter IV, 1) | Initiate first stage change (chapter IV, 2) |
| Observe and document effect of first stage change (chapter IV, 3&4) | Evaluate and reflect on effect of first change (chapter V) | Amend plan (finishing EDURES MA program) | Initiate modified change |

Adapted from Cunningham, B.M., 2008
3. Methodology

In order to highlight student’s attitudes towards and perceptions of studying Business Law, I designed two questionnaires: one questionnaire for undergraduate (11 questions), and one for graduate students (21 questions). They were delivered online through Google Docs platform to 1st year students of the Bucharest University of Economic Studies, School of Management, and to 2nd year graduate students, School of Commerce, Quality management expertise and consumer protection. As I needed a fairly large number of students to respond, I chose to administer a questionnaire rather than use other means of data collection. The questionnaires were initially designed and administered in Romanian because I needed full understanding and informed responses to the questions.

I have collected data from 77 respondents to the questionnaires - undergraduate and graduate students, 1st and 2nd year of study. All of them are Romanian, below 25 years of age, and a combination of males and females.

Because I intend to present questionnaires-results in synthesis I unified data obtained from students at the undergraduate and master-program! Summing up was possible only for the questions that were common to both questionnaires. The data was generated through application of the SPSS-program. SPSS is a widely used program for statistical analysis in social science. The software from the SPSS-program provides diagrams and charts.

Sixth chapter will include two finally viewpoint called critical thinking point of view and a creative point of view which allow me to decide what improvements need to bring the teaching method that I use and which are peaks able to reach in this way!

4. Research findings

4.1. Undergraduate and graduate tests evaluation. Teaching law perspective

The aim is to evaluate student’s level of understanding legal concepts, in particular that of natural person activity, following the Romanian Government Emergency Ordinance nr. 44/2008. I will present the most important results of undergraduate students test, first year, Management Faculty and graduate students, second year, Master in Quality Management and Consumers’ Protection, Commerce Faculty. I evaluated examination papers for undergraduate and graduate students, during winter exam session, February, 2016.

I will compare their assignment – providing answers to the following question: ”If you are to initiate your own business activity as a natural person, which legal form will you prefer: authorized natural person, individual enterprise or family enterprise? Please motivate your option by presenting the advantages for the choices you have made.”

Because more than 50% of student’s options are bound to authorized natural person I will restrict the analysis to this form. To compare students’ answers it is important to present the legal regulation such is analyzed in business law⁵, summarizing the Government Emergency Ordinance no. 44/2008.

The provision containing the legal definition considers PFA to be "the person who develops an activity using primarily its labor force, but who can hire third person with individual labor agreement – for the activity for which is authorized (becoming an employer – natural person); can collaborate, in its activity for which it was authorized, with natural and legal persons; can cumulate this capacity with one of employee of a third person; the person is assured in the public system of pensions, benefiting of rights of social insurance and the right to be assured in the system of the social insurances for health and unemployment; the person cannot cumulate also the quality of a natural person entrepreneur, owner of an individual enterprise; but the authorized natural person can switch

legal regime to owner of an individual enterprise by simply radiating his legal status from Trade Register; the conversion is also valid: the entrepreneur, owner of an individual enterprise can switch into authorized natural person; the person can be a non-trader or a trader because his activity has lucrative purpose”.

Analyzing best undergraduate student’s assignment and the best marked graduate student’s assignment too, I observe at least one significant resemblance (A) and more differences (B).

A. Both papers describe five particularities of authorized natural person activity:
- both answers contain references to possibility of hiring a third person;
- pulling the things together we appraise the fact that both answers yielded the significance of lucrative purpose for natural person activity;

B. I consider that most of the differences could be interpreted in consequences of student’s competences; so, while undergraduate students observed the simplicity of natural person status, like: hiring other persons, the accountancy realized in simple batch, the rights to be assured in the system of insurances; at the sometime, graduate students tend to observe the advantages of drawing up assuming natural person’s status, such as: minimum age limit to begin the activity, wife/husband legal regime, changing status/conversion to individual enterprise.

4.1.1 Relevance for teaching practice

We can subsequently interpret the results obtained as follows:

Teaching student’s legal skills tend to guide the teaching process from using only legal terminology from a more pragmatical perspective, such as fulfilling case studies – as examples of practical situations. Therefore, the solution is to revert the process: first the situation and only then the legal regulation, plus terminology.

Summarizing the specificity of natural person trader and then presenting the differences between legal forms constitute the perfect structure of courses dedicated to natural person in Business Law. So I’ll do it from now on!

The results obliged me to a new approach as Law teacher, as to compare the individual enterprise with SRL – unipersonal. This could be possible not only for graduate, but also for undergraduate students.

4.2 Legal input

This sub-section will highlight some notions to be communicated to students in what I find to be a more comprehensible/relevant way for them.

- According to art. 3 paragraph 3 of Law 31/1990 concerning the trade companies, associations of a SRL answer only until the concurrency of the registered equity. In the case of foundation through the act of will of a single person it is concluded a constitutive act, a status (art. 5, paragraph 2).
- Corroborating these provisions with those contained by art. 1 paragraph 2 and namely that the trade companies with headquarter in Romanian are Romanian legal persons, we observe that through an advantage of choosing the unipersonal SRL is that of the own legal personality, which the individual enterprise doesn’t have. Although, associate is a natural person the one concluding the agreements assumes rights and obligations, the one who has the quality of employer, of contributor, etc. is the unipersonal SRL, meaning a legal personality.
- Having a legal personality, the unipersonal SRL can decide its putting-up for growing the credibility before thirds and to amplify the scope of businesses, meaning profit.
- The accountable registration of a SRL will be developed in double faction, each trade operation having a double registration, since at individual enterprise the registration is realized through simple faction (according to Law of accounting no. 82/1991). Therefore, the accountant registration of a unipersonal SRL is more rigorous.
● An advantage which cannot be ignored by the entrepreneur is the fiscal one. The unipersonal SRL benefits of facilities and fiscal exceptions, the individual enterprise being deprived of them (tax income, deductibility, etc.).

● Also, the legal system is favorable for the unipersonal SRL regarding the assignation to third parts. The assignation of shares is allowed in any moment, on trade company duration (for example, through transformation from unipersonal LLC to multipersonal), while in the case of an individual enterprise any assignation of rights and obligations would have to be realized as a transfer with universal title between living people, forbidden under the conditions of Romanian Civil Code.

● Of course, the patrimony can be transmitted mortis causa in case of an individual enterprise, but this way of assignment is allowed also for the unipersonal SRL.

● According to OUG 44/2008 the heritors of the natural person entrepreneur, holder of an individual enterprise can continue the enterprise in case of the holder death, if they manifest their will in this meaning, through an authentic statement, in term of six months from the date of the inheritance opening. If there are more heritors it can be chosen the activity continuation under the legal form of familial enterprise (acc. to art. 27).

● From the point of view of the employer quality, the unipersonal SRL and the individual enterprise can conclude labor contracts, but holder of the obligation to pay income taxes from salaries is in the first case the legal person (SRL) and in the second one the entrepreneur holder of the enterprise.

● Regarding the insolvency procedure regulated by Law 85/2006, in the case of individual enterprise is applied the simplified procedure, the debtor answering with the affectation patrimony or with the entire patrimony (ac. Art. 26 of OUG 44/2008). Again, the situation of the SRL is favored, the liability of the debtor – the trade company being limited at its patrimony and not at the one of the sole associate.

● Next question to be analyzed, from undergraduate’s assignment is ‘If a student sells handmade ornaments, is this activity considered to be a professional one under the Romanian New Civil Code regulation?’

First, I consider important to present legal basis for ‘professionals’ as legal institution6.

The New Romanian Civil Code has erased the term merchant and it has introduced a new one: professional, which includes all persons licensed to perform economic activities.

Art. 8 from Law no. 71/2011 (issued for the entering into force of the New Romanian Civil Code) stipulates that the professional includes all types of merchants, enterprises, commercial agents and any other persons authorized to exercise economic or professional activities.

Art. 3 par. 2 Civil Code stipulates that „are considered professionals all those managing an enterprise”. The New Romanian Civil Code presents the professional as the one managing an enterprise, the activity of this enterprise being a systematic exercise for producing, administrating or selling goods, services.

The main benefits of teaching such notions is not primarily increasing knowledge of legal content, but the development of students’ logical and critical thinking. Hopefully other lecturers will contribute to such thinking when teaching their own disciplines.

According to art. 3 par. 3 New Civil Code ‘the exploitation of an undertaking’ is defined as being ‘the systematic exercise by one or more persons of an organized activity consisting in the production, administration or selling goods or in providing services, regardless of whether or not the activity has a lucrative purpose’.

To a great extent, the fact that both categories of students: undergraduate and graduate have to explain legal institutions as: enterprise and systematic character of exercise of activity, conduct me to the conclusion that:
- First, half of points accorded for correct answer was calculated as follows: 0,5 point for enterprise definition and 0,5 point for systematic character of the exercise of activity (each one for accurate solution/answer);

Almost every student’s answer analyzing enterprise definition was formulated contextually to manager’s activity; considering the company hiring the manager to be the enterprise.

The confusion between enterprise as legal person and enterprise as professional activity tends to the result of full point given as assessment – evaluation, even there is a difference between answer – done and teacher’s expectation.

After days the professional activity ought to be tied up to an individual activity, not for a legal person one; such been the case of manager as company’s representative; because undergraduate’s students question was bind to an occasional activity, the answers are balancing between two options: to consider the activity being continual and organized as authorized natural person or natural person entrepreneur holder/owner of an individual enterprise, or, second option: to organize the activity as company; both cases/solutions the professional activity was considered as effect of organizational character as enterprise; undergraduate’s students question has a final exigence: to enumerate as much as possible practical situations. The overall answers presented the opposite side: natural person versus legal person; even so, there were also some exceptions!

Summarizing the answers, I must consider, years after, a new perspective: when teaching Law it is better to present two different situations and then formulate as the first compulsory stage: to make the comparison between situations and then observe which is the professional or non-professional activity!

4.3. Critical thinking point of view:

Different hypothesis as emerge about when during undergraduate education. Should students study Law discipline 1st, 2nd or 3rd year? Schools like Cybernetics consider Business Law as difficult task-discipline, so it has to be studied only for the 3rd year of study!

In the other side, studying Business Law 1st year, first semester, as it is used in all the other Schools of University of Economic Study, is even a worst option to do!

From the teacher’s point of view, the lack of knowledge and the lower level of critical thinking are real obstacles to understanding the concepts of Business Law for first year of University of Economic Studies! As we shall see in a later section, fellow-teachers options is to study Business Law in the second year, as it will be revealed in chapter VI, section 3.

3rd year of university study is both heavier and lighter decision to do! It is heavier because teaching Law is to formulate, explain and interpret legal regulations! Students from final year of study are particular adverse storing and interpreting rules!

It is lighter because at this level, student’s experience help to formulate students’ own questions, so from practice you can build theoretical knowledges. E.g.: students from Cybernetic School, already experiencing PFA as computer professionals can understand practical situations. So, is not a surprise for them the fact that the employer prefer not to hire computer-professionals-so evading income employment taxes, but to encourage professionals to develop their own business, as PFA, and then collaborate with the employer-company!

Metaphorically speaking it is like you want to prepare a person to become a lawyer and judge while the case!

4.4. Creative thinking point of view:

If the comparison of the three individual forms of conducting business, regulated by Government Emergency Ordinance no. 44/2008 students have gained information especially out of practical examples, from which they can then gain theoretical content, which is the limit to which this question can be pushed that can be pushed!

Could I go as far as to compare the entrepreneur owner legal regime with the goodwill notion? This can help me add new elements to my teaching style in a way that I did not do before!

The goodwill represents the legal universality in fact, constituted from the totality of the fixed assets, tangible and intangible assets which a trader can use in the exercise of his activities.
Through this formulation we understand that the goodwill has no legal personality (unlike the patrimony, which being constituted from the totality of rights and obligations to a legal subject, is a legal universality of fact) and it cannot be protected legally, unlike the regulations of the French law.

If until O.U.G 44/2008, the Romanian law regarding the trade law, was embracing the existent theory of the French doctrine, according to which the goodwill is a universality of fact and that each element keeps its own individuality (marks, export licenses, labor contracts and all the tangible movable assets), being able to be transmitted separately from the trade fund, we consider that after the regulation of O.U.G 44/2008 appears a new conception.

Starting from the theory of patrimony of affectation we assist at the centralization of some assets into a different trade patrimony, represented by the goodwill.

Of legal protection benefits the debtor–entrepreneur who can invoke the existence of a civilian patrimony (nest egg, constituted with the assets which are not used in trade activity) and a different trade patrimony, respectively the goodwill/individual enterprise.

This explication is argued by art. 26 from O.U.G 44/2008, which constitutes the liability of the owner of the individual enterprise with affectation patrimony, if this was constituted, and with the entire patrimony, in addition. The formula chosen by legislator is perfectible.

From the interpretation of art. 26 we can conclude that the natural person could answer with the entire fortune. If it’s so, why would chose a person this legal status, when it is already the one as natural authorized person?

On other side, understanding the amplitude of the goodwill from the doctrinaire definition enounced at the beginning of the present section and the notion of affectation patrimony, we consider that this time we assist at a notional superposition between the individual enterprise and goodwill, where we introduce also the notion of labor force employed.

This approach raises the question: How much time I devote to gifted students (with high potential)? How do I encourage them to become future researchers? What am I really doing for them?

5. Discussion of results, conclusions and implications

Combining the point of view of quantitative and qualitative research, I decide to focus on critical thinking as process, and always remember for academic future research as useful skills:
- identify other people’s positions;
- evaluate evidence;
- weigh up opposing arguments fairly;
- read between the lines;
- recognize unreasonable persuasive techniques;
- reflect on issues in an organized way;
- draw conclusions sensibly;
- present a point of view cogently?

Other people’s position, analyzed in the previous chapter II, revel to me the new teacher, or the genuine one, hidden for several years in the dark!

To evaluate evidence is to present the case study (section IV.1): how to teach law in English at the School of Management-first year, using new acquired EDURES-competences, such as: interpretative analysis, evaluation, explanation, inference and self-regulating, key skills for critical thinking, as Facione communicates.

The importance of using new learning methods becomes clear. These include making known the intended course outcomes at the beginning of the course so that student could see the course aim, and draw conclusions sensibly, in their own way! Even though this is not current practice, I believe it is a good way of involving the students and making them more responsible towards their own

learning. Promoting team work and exploring answers as a team (2-3 or more students together) is also a way of encouraging students to learn from one another.

Trying to answer the first question in Chapter II of this work, I realized that the struggle for becoming not only a better teacher, but also an acknowledged practitioner may involve more alternatives! In my profession, traditionally, being a practitioner means working as a lawyer, prosecutor, judge or notary-public. At the end of EDURES MA program, I realize that it is a difficult, challenging task to become a practitioner of the English language, in my case, to teach law in English!

Answering the second question in the same Chapter II, now I understand that to be a teacher as good in English as in your native language, it is not enough to learn English! To achieve the performance already achieved in Romanian needs a strong motivation, resulting in hours of in-depth study on the legal concept in English, including the common law legal system! These translate into scientific research in English! All this involves moral and financial support from the University and for a long period of time while the new practices get established.

The go back to where I started from, the conclusion should be better expressed as the answer to a question formulated at the beginning: how will Silvia, the student turn into Silvia, the EDURES graduate? Quite clearly, one way in which this may happen is becoming a better EMI practitioner in the specific field of Business and Commercial law!

The most difficult question to answer is how should all this be achieved. And that is so because the answers are too idiosyncratic and personal, each individual has its own particular way to do it!

Everything that was presented in this thesis was a possible answer to the question of, *how to do it?* that reflects my own way of addressing the challenges. But, inevitably, a further question remains: Is Silvia a better teacher at the end of the EDURES experience?

The extent to which we can facilitate bringing to life students’ dreams makes us better teachers. Hope and a view of the future are necessary ingredients. This is my answer, but what matters more is asking the question and finding our own answers as we go along.

### 6. Post-conclusion

**Airey’s recommendations for beginner EMI teachers**

Below is a summary of nine recommendations:

1. It is even more important to be well prepared when teaching in English.
2. Less is more. Decide what are the key ideas in your presentation and emphasize them.
3. Try not to translate a lecture you already have – think and prepare in English.
4. Use power point to structure your lecture, but remember it’s even more important to keep the amount of text on a slide to a minimum.
5. Make a list of key terms/vocabulary.
6. Put all new terms on power point or in handouts (increased redundancy).
7. Pronunciation, check if possible – this can be a problem if your pronunciation is different than that of your (international) students.
8. Depending on your level of English either: prepare by writing a full manuscript but don’t read this out in class! (low level) or prepare by immersing yourself in English e.g. by reading a novel or disciplinary literature in English (higher level). Take every chance available to practice your spoken English.
9. Practice your lecture!

Whilst the reader may well find these recommendations helpful, the relative inexperience of the lecturers in teaching in English should be recognized.

Thus, the above recommendations are perhaps best seen as representative of the areas that these lecturers focused on whilst changing their teaching language to English. Thus, no claim is made

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about the merit of the list of recommendations and it may well be the case that more experienced lecturers employ quite different methods of dealing with English-medium instruction.

Bibliography