

# University-Student Relationships in the 1990s: Challenges and Expectations

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3. form and scope of the subjects are adequate to the students' requirements; consequently we would suggest 15 hours of conversation classes for groups of 10-25 students, eg, in diplomatic and consular law or in social insurance law and an optional semester lecture on banking law for interested students;
4. the curriculum should be complete, ie the Warsaw School of Economics offers lecturers in such fields as environment protection, transfer law, telecommunications law, international tourism, international sea law and international tax law.

In the author's opinion, this presented model may be considered a universal proposal to be modified with respect to the specialities and emphasis of a particular school. Moreover, it combines two essential elements: acquisition of minimum knowledge in law by students of economics (lectures at the first level) and the possibility of full development of individual interests (lectures at the third level).

#### Notes

- 1 It should be emphasised that the Polish education system does not provide for a clear division between economics universities and professional schools; the Warsaw School of Economics combines characteristic features of both types, ie of a university (curriculum emphasises theoretical knowledge of economics and quantity methods) and of a higher professional school (teaching methods enable students to acquire practical knowledge).
- 2 This subject is also called: 'Encyclopaedia of Law' or 'Introduction to Law', etc, depending on the school.
- 3 In practice, Polish schools also call this scope of topics 'Commercial Law', 'Corporate Law', or 'Professional Trade Law'.

The 1990s have witnessed an inadequacy in university funding by governments worldwide. Universities are thus forced to look literally everywhere for money.<sup>1</sup> This has not only moved the universities increasingly into the private sector but has also caused them to look inwards, with the result that students, the primary recipients of the universities' product – knowledge, now have to pay tuition fees, or 'top-up fees' – as they are euphemistically called.

The payment of tuition fees by students has had a ripple effect: it has made the students feel the financial burden of their university education and, more importantly, has led to their increased sense of consumerism. The contract theory of the relationship between the university and the student cannot now be denied.<sup>2</sup> As the president of the New Zealand Students' Association put it: 'If the government is going to insist, as it plainly does, that education is now to be treated as a commodity that can be bought and sold, then students, too, will treat it like a commodity in the sense of pursuing certain legal avenues if the product isn't up to the advertised standard'.<sup>3</sup> The litigious posture of the students in New Zealand reached its high point in a £150,000 class-action lawsuit brought against the Victoria University of Wellington (VUW) in 1996 by four postgraduate students who were dissatisfied with their two-year MA environmental studies programme. They accused the university of a breach of contract, amongst other failings. The suit was bankrolled by the New Zealand Students' Association.<sup>4</sup>

It is worth mentioning that until this decade, free tuition for university students was an underlying assumption of New Zealand life. Today's 75 per cent limit on the tax payer subsidy for the costs of tertiary education leaves the average New Zealand student with an annual bill of £1,100.<sup>5</sup>

In Great Britain, the government

has announced that each university student has to pay a tuition fee of £1,000 from the 1998 session. This will heighten the students' view of themselves as customers with corresponding rights, relying on the government's 1993 Higher and Further Education Charters which set out what university 'customers' should expect.<sup>6</sup> The raised expectations of the students have posed new challenges for the universities. Already, claims by students against universities are numerous, and range from the sublime to the ridiculous: from claims that poor teaching and examination failures amount to breach of contract, to claims for failure by lecturers<sup>7</sup> to supervise dissertation; from claims for 'unfair failure', to claims for personal injury as a result of an alleged stress suffered from failing;<sup>8</sup> from claims for wrong classification of final degree,<sup>9</sup> to allegations of failure to provide enough teaching sessions<sup>10</sup> and claims that marking was biased on grounds of race or gender.<sup>11</sup> There are even claims by students for inadequate 'pastoral support' – counselling and private tutorials.<sup>12</sup>

The trend is growing fast and it is very worrying. It puts a lot of pressure on the lecturers to deliver. As the bursar of New College, Oxford, is quoted as saying: 'Once upon a time if Bloggs didn't turn up to give his lecture, you went to the pub, but nowadays if somebody messes up your timetable, you get very shirty indeed'.<sup>13</sup> A law firm representing 40 universities and colleges has disclosed that many of its clients are seeking advice on how to defend themselves against students' legal actions *in the sort of claims relatively unheard of five years ago*.<sup>14</sup>

In Nigeria, the payment of university tuition fees is also a product of the mid-1990s. The amount charged appears to be on an upward review every academic year. In the University of Uyo (in Akwa Ibom State), for instance, the fee was about 500 naira<sup>15</sup> three years ago, in 1997 it was increased to 1,000 naira. When the university



announced an increase to 3,500 naira in 1998, the students protested and boycotted classes. The university then bargained with the student union leaders and a compromise fee of about 3,000 naira was agreed upon. The idea of a *bargain* and an *agreement* highlights the now unarguably contractual nature of the relationship between the student and the university. Interestingly, however, the students in Nigeria are not as litigious as their New Zealand nor their British (let alone their American) counterparts in relation to academic matters. The major areas of student litigation in Nigeria are challenges to suspension or expulsion, mostly on non-academic grounds,<sup>16</sup> and the area for judicial decision is generally that of fair hearing.<sup>17</sup> Challenges to scores or grades or to the degree of pass have mostly been satisfactorily settled by the faculty/university internal complaint and review procedures without recourse to the law courts. This may be because the students are aware of the judicial reluctance to interfere with academic decisions which have been properly taken.<sup>18</sup>

### Conclusion

There is now increased competition for graduate employment in most countries. In the case of law graduates, however, the competition starts even before the search for employment begins. In England, for instance, a good class degree in law is needed to be able to secure a place in a chambers for pupillage or for a training contract in a solicitor's firm. As leading law chambers and law firms 'milk round' for first class candidates,<sup>19</sup> a candidate with an unexceptional academic record is unlikely to be successful in an application to a top civil set for pupillage or a training contract.<sup>20</sup> Students are thus, understandably, eager to evade the detrimental effect of lower grades

and they reckon that since, after all, they are paying through the nose for their education then the final product they receive, namely the degree, should be such as will benefit them in the labour market.

Unfortunately, however, the students have no contract with the university to award them a degree or unmerited pass levels; and the lecturers too have no contract with the students, or any duty to them, to give marks. Marks are normally awarded, not given. There is no objection to the courts ensuring that the laid down procedure for making academic decisions is followed,<sup>21</sup> but it is important that the academic decision should continue to be made by the lecturer and, when properly made – ie following the proper procedures (where such procedures exist) – the decision should not be interfered with by the court. It is foreseeable that the students, as consumers, are poised to legally challenge the products they receive (the scores and ultimately the class of degree they are awarded) but it is hoped that the courts will not give in to the destruction of this last vestige of academic freedom. To do so will be to sing the *nunc demittis* of the university system as the students may then go to court to get whatever grade of pass they want.

### Notes

- \* Research PhD law student, University of Birmingham, England; senior lecturer-in-law, University of Uyo, Nigeria, and member of the International Bar Association.
- As succinctly put in 'A new Ivy League rises in Britain', *The Sunday Times*, 9 March 1997, 'high finance is stealthily replacing high table. Yesterday's temples of education are now multinational business corporations. The chancellor is the chairman, the vice chancellor is the managing director and the chief executive, the bursar is the secretary and the senate is the board of directors'. The only disagreement in the corporate analogy may be that rather than the bursar, it is the registrar who is

the company secretary while the bursar is the financial controller.

- The relationship between the university and the student has been argued variously to be based on contract, on status (membership in the university), or on a combination of contractual, private law and public law rights. See: C B Lewis, 'The legal nature of a university and the student-university relationship', *Ottawa Law Review* xv (1983); D J Farrington, *The Law of Higher Education*, London: Butterworths, 1994 at p 325.
- 'Turning to the law', *The Guardian Higher*, Tuesday, 4 February 1997.
- Ibid.*
- Ibid.*
- 'Now students revolt with help from lawyers', *Sunday Express*, 24 March 1996, at p 12.
- The terms 'lecturer' and 'teacher' are used interchangeably.
- See footnote no 6 above.
- 'Judge backs city graduate's fight', *Evening Mail*, Wednesday, 22 October 1997.
- 'Going to law to save your career', *Independent*, 22 August 1996, at p 23.
- 'If I've failed my exam then I'll sue', *Sunday Mercury*, 10 March 1996, at p 7.
- Ibid.*
- Ibid.*
- Ibid.* (Emphasis mine).
- 'Naira' is the name of the Nigerian currency.
- See, eg, *Adekunle v University of Port Harcourt* (1991) 3 NWLR (Pt 181) 534; *Ani v University of Ibadan* (1992) 5 NWLR (Pt.240) 217.
- Enefiok Essien, 'Fair Hearing and University Discipline: An Appraisal' (1991) *Justice* (A journal of contemporary legal problems), vol 2, no 6, p 51.
- Garba v University of Maiduguri* (1986) 1 NWLR (Pt 18) 550.
- Cameron Timmis, 'Top of the class', *Legal Business*, February 1998, at p 16.
- Chris Maguire, 'PACH: finding your way to a pupillage', *Legal Business*, February 1998, at p 11.
- R Manchester Metropolitan University, ex p Nolan, Independent*, 14 July, 1993; *Susan M v New York Law School*, 76 NY 2d 241, 556 NE 2d 1104, 1106, 557 NYS 2d 297, 299 (1990); T A Schweitzer, 'Academic Challenge' Cases: Should Judicial 'Review Extend to Academic Evaluations of Students?', *The American University Law Review* 267 (Winter 1992) at p 268.