

Aplicación del método ABP y la Clínica procesal en la enseñanza aprendizaje del Derecho procesal mercantil.

Application of PBL method and procedural Clinic on the learning of commercial procedural law.

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Resumen

Para la implementación del curso influyeron dos factores: El impulso en la universidad de un modelo pedagógico centrado en el alumno como persona y en su aprendizaje y la tendencia en la enseñanza del Derecho para desarrollar las competencias que exige el mercado laboral.

Diseñamos un curso que cubriera ambas características. En el programa se incluyeron diversas competencias a desarrollar, así como ciertas actitudes y valores a reafirmar o desarrollar en el alumno.

Se implementó el método ABP combinado con la clínica procesal. Se presentó a los estudiantes problemas jurídicos relacionados con los temas del curso. Siguiendo la metodología ABP cada problema se resolvió en tres sesiones, una dedicada al planteamiento del problema; otra a la investigación e integración de la información y una última para la presentación de un dictamen escrito y su discusión. Con el último problema planteado, se realizó el simulacro de juicio oral. Se dividieron los equipos en parte actora, demandada y tribunal, y cada uno desarrollo el rol que le correspondió. En una sesión se llevó a cabo la audiencia preliminar y en otra se realizó la audiencia de juicio, en la que presentaron sus alegatos en forma oral y el tribunal dictó una sentencia.

Palabras clave: Aprendizaje basado en problemas (ABP), Clínica Procesal, modelo pedagógico, rúbricas, habilidades y competencias.

Abstract

For the implementation of the course affected by two factors: The University momentum in a model student-centered teaching as a person and their learning and the trend in legal education to develop the skills required by the labor market. We design a course that covers both. The program included various competencies to be developed, as well as attitudes and values to reinforce or develop in students. We implemented the PBL method combined with the clinical trial. Students were provided with legal problems related to course topics. Following the methodology ABP each problem was solved in three sessions, one devoted to the statement of the problem, another for research and integration of information and one for the submission of a written opinion and discussion. With the last issue raised, we performed mock trial. Teams were divided plaintiff, defendant and court, and each role development that corresponded. At a meeting held the preliminary hearing and another hearing was held trial, at which they presented their arguments orally and the court issued a ruling.

Key words: Problem-based learning (PBL), Clinical Procedures, pedagogical model, rubrics, skills and competencies.

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Introduction

Globalization is a real phenomenon, whether we like it or not, it is immersed in practically all the activities of our daily lives. Among many other effects, this phenomenon has caused a very intense exchange between countries, not only in the commercial field, in terms of products, services or information, but has gradually been directed towards people. However, it is evident that countries are not very attracted to the idea of receiving migration except when the migrants have a high degree of

professional preparation, thus university education becomes a very important factor for the competitiveness of the countries.

The academic culture of excellence and comprehensive training for service are two of the three pillars of the vision for the year 2020 of the University of Monterrey. To concretize this vision, in 2010 the development of a pedagogical model was promoted as an institutional paradigm that guarantees quality and academic excellence. This model is focused both on the student as a person, and on their active learning. Under this vision, the profile of the graduate is focused on five main characteristics, among which the following stand out: investigate and solve problems; maintains constructive interpersonal relationships and has integrity as a person.

On the other hand, regarding the teaching of Law, we know that the current trend is that, in addition to addressing technical knowledge, it should focus on developing in the student the skills and competencies required by the labor market, not only local, but even internationally. As Claudio Grossman points out, today the practice of Law is immersed in processes of profound transformation and this starts, above all, as a consequence of globalization (Grossman, 2010, p.35).

Given this perspective, during the spring of 2011 we had to design, as a pilot group, a course for the subject of Commercial Procedural Law that would cover the characteristics of the graduate under the aforementioned pedagogical model and that would also develop in the student the skills and competencies required. in his professional practice, especially since at that time important reforms to Mexican legislation in commercial matters had been announced, which mainly included the implementation of oral proceedings in commercial matters at the beginning of 2012.

We implemented this course in the summer of the same year, whose experience we share through this paper.

A. The Analytical Program.

In the program of the pilot course, the following main competences were included:

- Critical reading and scientific writing.
- Application of scientific methodology in solving legal problems.
- Development of analysis, synthesis, assessment and critical judgment for problem solving.
- Adequate argumentation for effective oral and written communication.
- Teamwork.

Likewise, as main attitudes and values to reaffirm in the student, the following were included:

- Value and respect the opinion of others.
- Show perseverance to find the solution to the problems raised.
- Act responsibly in following up on the problem until a solution is achieved.
- Promote ethical reasoning in the solution of practical cases.
- Be proactive in participating in the activities to be developed.

B. Methods.

In order to cover the characteristics of the graduate under the 2020 vision of UDEM, satisfying the current requirements of the lawyer's labor market and given that the skills, attitudes and values proposed would hardly be obtained using the method of the master class, the method was implemented. of Learning Based on Problems, known as PBL, combined with the Procedural Clinic, for which the students were presented with various legal problems related to the specific topics to be studied in the course, so that, acting as a legal office, they could carry out the corresponding investigation and issue an opinion on the case raised and in the last of the problems raised, they will hold a mock oral trial.

C. Mechanics used.

It should be noted that previously the students had already studied various procedural law subjects, so this course focuses specifically on commercial matters, contemplating 16 weekly sessions lasting 75 minutes each. To organize the activities to

be developed, four problems were presented during the course, the first three aimed at analyzing the procedural rules of the various commercial procedures and the last focused on the oral trial and its particularities.

Following the steps of the PBL methodology, each problem was solved in three sessions, one dedicated to the analysis and approach of the legal problem, establishment of the hypothesis and elaboration of a work plan; another to the analysis and integration of the information from the individual research that each of the team members carried out during the week and a last one for the presentation of conclusions through a written opinion and a group discussion.

With the last problem raised, the simulation of a commercial oral trial was carried out. Each team solved the underlying problem from the point of view of a hypothetical client, presenting a demand project. The teams were divided into the plaintiff, the defendant and the court, with the court proceeding to receive the claim and summon the defendant team to answer it, subsequently proceeding to summon a preliminary hearing.

In the following session, the preliminary hearing was held in which the court set the controversial points, admitted the evidence and summoned the trial hearing for its relief.

In a final session, the trial hearing was held, the evidence offered and admitted was released, their arguments were presented orally and the court summoned for sentencing.

Subsequently, the contending teams, for the purposes of practicing the written argument, presented their arguments in that form and the team that assumed the role of court prepared the respective sentence.

D. critical incidents.

In order to collect all the information on the most significant events that occurred during the process, the professor included a portfolio within the course web platform, in which the most relevant and recurrent critical incidents (positive and negative) were recorded. that characterized the implementation of the course, the conclusions reached, the decisions that were made and the specific actions to be taken for the next implementation period that allow the proposed improvements to be carried out.

The one that we consider most relevant was based on the responsibility of the student regarding his learning, since under the implemented work scheme the student himself is responsible for his learning, which normally represents the breaking of the paradigm of his traditional education, Given that most of the courses are still taught under the master class method and this implies that their structure is based on the learning of concepts and norms, it limits, in many cases, the student to memorize said concepts and norms, hindering the development of skills and abilities.

Thus, the first problem that the students faced was to understand that under the PBL method, the teacher does not teach or transmit any knowledge of the subject, but rather his role is limited to being a facilitator, who only intervenes to guide them on the points they must investigate to acquire the necessary knowledge to solve the legal problem contained in the case raised.

It should be noted that this problem did not appear only in the students, as a teacher we also felt some uncertainty that the students did not go deep enough to understand the necessary issues for the resolution of the case raised, despite the fact that this methodology was not entirely strange to us. , because in other subjects we had already worked both with PBL and with the case method, but they had been in totally practical seminars, where the application of these methods is essential.

The most relevant incident occurred in the session in which the first part of the course was evaluated. There were some protests from students who did not fully understand the method. Their complaint went two ways, on the one hand they felt that the teacher was not teaching them anything and on the other hand they felt unfair that

their grade was affected by classmates who did not work properly, because when carrying out the work plan in the first session of each problem presented, the work was distributed and if any of them did not collect the pertinent information, obviously it would have repercussions on the information that as a team they had to solve the problem, especially since one of the teams inadequately solved the problem by not having with complete information on the topic that one of its members had to investigate. It is important to point out that it did indeed affect their grade, but not definitively, since part of their grade corresponded to teamwork and another to their individual work, so those who did a good investigation of what corresponded to them, did not they were so drastically affected by their partner's research deficiency.

The problem was gradually solved, firstly because of the motivation represented by the resolution of real cases, since as Juny Montoya rightly points out, the purpose of PBL is not to solve a problem, but to use the problem as a "trigger" for the learning process. (Montoya, 2010, p. 92) and secondly by learning to work as a team, not just limiting themselves to distributing the topics to be investigated, but also working by interacting to solve the problem.

In addition to the fact that we saw the abuse of those students who do not work properly but who rely on the other members of the team who are actually responsible and do work, that is, the so-called free riders, who in the course that we occupies were the least, however, being evaluated based on the particular investigation that they had to carry out, they had no other choice but to work alongside their peers, since the qualification obtained by the team was not enough to prove the course, but required good individual work.

A positive impact that we had at the end of the course occurred precisely in the last session, corresponding to the trial hearing, since all the students were highly motivated and awaiting the outcome of the trial, especially since days before they found out that said case in At that time, it was for discussion in the last judicial instance for its definitive resolution and, being a complex matter, it motivated them to investigate the matter in depth and argue adequately when making their allegations and to take great care of the procedural aspects so as not to commit a mistake that

could cost them the judgment. That is to say, they acted as if they were really dealing with the matter, which allowed them to gain experience both in preparing for the hearings and in delivering them.

D. Evaluation

For Ruiz Iglesias, the evaluation model traditionally used is focused on measurement, characterized by the contrast between objectives and results; the objectives are normally oriented towards the mastery of the contents or towards operational know-how and it is mainly based on evaluation instruments of the type of objective tests. Contrary to the model focused on measurement, where the new information can be understood as the basis of what must be memorized or returned, we find the evaluation model based on competencies, where the new information that is incorporated must be the basis for translating it into integrated knowledge – knowing, knowing how to be and knowing how to do– and this integrated knowledge must be translated into competencies that intend to “do something with that knowledge, or rather, know how to transfer the information to the field of these different knowledges” (Ruiz, 2009 , p. 15).

The evaluation of competencies necessarily implies verifying the performance that the student is having when carrying out the various activities programmed during the course, since that integrated knowledge that Ruiz Iglesias speaks of is necessarily reflected in actions, that is, in the activities developed by the student. own student. Thus, in the merit course, we need to evaluate both the skills, attitudes and values acquired or reaffirmed by the student based on the activities that he/she will develop and not only by the knowledge acquired and contained in the course program.

To achieve the above, it was necessary to collect evidence of what the students were doing, as a process of collecting information that had to be permanently monitored, in such a way that we had the certainty of the progress they were making as the course progressed.

Evidently, the evaluation of the student's performance throughout the course was done in a systematic way. For this purpose, a calendar of activities was drawn up that was made available to the students on the course's web platform from the beginning; Through said calendar, all the activities to be developed were scheduled, obviously focused on promoting the skills, attitudes and values sought, thus, from the presentation of each of the problems, critical reading was encouraged; Likewise, having to delimit and define the legal problem and propose one or several hypotheses for its solution, as well as the preparation of a work plan, the application of a scientific methodology applied to the solution of legal problems was motivated; having to prepare an opinion on the case raised, they developed the ability to analyze, synthesize, assess and make a critical judgment in solving the problem; and by participating in a mock oral trial, it allowed them to develop argumentation skills both in written form through the preparation of the demand, response, arguments and sentence, as well as oral in the presentation of evidence and oral arguments, all through a true teamwork.

In the same way, certain attitudes and values were included in the course activities to reaffirm in the student, highlighting the promotion of ethical reasoning in the solution of problems, since in some of them ethical dilemmas were included in which the student had to decide on the application of undue situations but that benefited his client.

In order to be able to evaluate the evidence collected from the students, working individually and in teams, it was necessary to establish uniform criteria on what the students should know and be able to do according to the comprehensive performance sought. These criteria were reflected in various headings, among which the following stand out:

For the application phase of the PBL method:

- The evaluation criteria on the approach of the problem for research, covered the points of introduction, context, definition of the problem and hypothesis, as well as writing, spelling and application of research techniques.

- Those corresponding to the evaluation of the individual research work, included reading comprehension, personal reflection, handling of sources, writing, spelling and application of research techniques.
- The evaluation of the opinion presented to the client on the problem posed, included a summary of the problem, group reflection, argumentation, writing and spelling.
- Finally, the peer evaluation of teamwork was included, including the criteria for each of the team members to evaluate their peers, including points such as attendance at team activities, completion of the tasks entrusted on time and form, attendance at meetings having previously read the points to be worked on, contribution in the discussions, respect for the opinion of others, etc.

For the application of the Legal Clinic:

In this second phase, for the activities that involved written work, such as the presentation of the claim, the response, the counterclaim, the agreements, the arguments and the preparation of the sentence, the rubric was used in a similar way to the activities developed for the application of the ABP method, but emphasizing in the criteria of argumentation and legal foundation in each of the activities.

For the mock oral trial, the rubric on discussion evaluation was used as the main instrument, which includes, among its most important points, the demonstration of knowledge about key concepts, both substantively and formally, timely management of the stages of the procedure, timely and relevant contribution, argumentation, etc.

E. Focus group.

At the end of the course, several students from the various pilot groups were randomly chosen to attend an interview with the area in charge of implementing the university's pedagogical model, about their learning experiences under the proposed model. Some of the comments of the law students were the following:

Regarding learning by experience, they pointed out "I think it is excellent that we have to investigate to find information because I start to think in the long term when I am already working, that I have a doubt and do not know how to investigate it, that I always need an advisor, I do not want that"

"In the course we see examples and those examples I link them and if it works"

Regarding collaborative learning, one student said "Collaborative work at first made me lazy and now I understand that if it works for us because others see things that I do not see, you learn to respect the ideas of others and accept mistakes."

Regarding the contextual aspect, they pointed out: "In these types of courses you grow quite a bit as a person, for example: right now that it was the simulation of the oral trial, you get nervous about what you are going to say and what you are going to do, it is a way of waking up, it is a simulation of working life, it is already applied learning, I feel that I needed more class hours, I dedicated more time to it than to other classes, it builds self-confidence".

As we can see, the comments of the students were favorable to the implementation of the course under the proposed modality, however, there was also a comment that, although it was not negative, did not coincide with said implementation. The student pointed out: "I would like the course to be more theoretical and for the teacher to explain to us some things that we do not understand or are difficult to understand, because in this course he did not explain anything to us and I was left with many doubts."

F. F. Aspects to consider for a future implementation.

Probably the only point that we could consider, if not as negative, at least as worthy of consideration when implementing the methodology that we have been discussing, is the workload that is generated for the teacher with the combination of PBL methods. and Procedural Clinic, because although this scheme does not prepare or expose the class in a traditional way, the workload increases significantly, since to collect evidence and evaluate the student's performance in weekly activities, it requires duplicating efforts as it is necessary to read all the work done weekly and

evaluate both the individual research and that of each of the teams and give feedback in a timely manner, in addition to the fact that it is difficult to act as a facilitator for all the teams, so it is recommended that the professor has the support of one more teachers to help you with these tasks, so that the feedback that students require about their your weekly jobs are more agile.

conclusion

The result of the combination of the ABP method and the Procedural Clinic was very interesting and satisfactory, the evaluation through the corresponding rubrics allowed us to verify the performance of the students throughout the course and verify that they acquired not only legal knowledge, but also, they reaffirmed and to a large extent they developed the skills, attitudes and values outlined in the course program.

In the Merit Commercial Procedural Law course, students not only built their knowledge regarding the various procedures contemplated in commercial law, but also learned to apply the knowledge acquired throughout their career to real and specific cases, such as was the case of analyzing, investigating and applying theoretical issues on the fulfillment of contractual obligations, as well as the application of various commercial contracts, among others, that is, they not only practiced the application of the adjective aspects of commercial matters, but also its substantive aspects.

It is necessary to continue modifying the teaching-learning process of Law to stimulate in the student the development of research skills, legal reasoning and oral and written argumentation in problem solving, applying all of this in a simulation of real cases. , because finally these skills and competencies are what the student will require when graduating from the degree, regardless of the area of Law that is dedicated in their professional practice.

It also gives them a very large competitive advantage over graduates from other universities who continue to use the traditional method, since the most prestigious employers, both national and foreign, as Pérez Perdomo points out, will invariably look for the lawyer who has already developed the skills and competencies required for the position to be filled. (Perez Perdomo, 2010, p. 57)

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