

Legal Practice Experience for an Engaged Scholarship: A call for access to advocate's license for Ethiopian law schools' instructors

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Abstract

Theoretical and practical experience of law instructors is very essential to handle practice-oriented and clinical courses in law schools. Unless theory is integrated with practical experience, quality education may be compromised. This article explores the relationship between legal practical experience of law instructors and quality legal education in law schools. In doing so, the writer examined the legal regime in Ethiopia that regulates the licensing and registration of advocates to practice law in Ethiopian courts vis-à-vis the curriculum of law schools and proves that there is no law that permits law instructors to access advocates' licenses. Moreover, it examined the experiences of selected countries. The findings of this article revealed that, the delivery of clinical and practice-oriented courses in Ethiopian law schools were managed by instructors with no practical legal experience, and quality of instruction is compromised. To ensure quality education through an engaged scholarship, access to advocate's license for law instructors needs an immediate response and the law should be revised to pave the way for law instructors to deliver an engaged scholarship in their career.

Keywords: Clinical courses, advocate's license, practical experience, engaged scholarship

Introduction

As part of higher education institution, one of the main missions of law schools in Ethiopia is to provide quality education to their students.¹ This quality education rendering objectives of the law schools would only be successful if law schools could employ qualified instructors that could teach

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¹ Higher Education Proclamation, Proclamation No. 650/2009, *Federal Negarit Gazette*, 15th Year No.64. The customers of law schools are their students and students deserve to get quality legal education.

both theoretical and practice-oriented courses. It has been observed that research done by law professors² have a significant contribution to judges, lawyers and other legal professionals.³ The contribution of law professors to the legal profession based on engaged scholarship⁴ is not only a matter of responsibility rather it is a necessity for the profession.⁵

To make law professors focus on an engaged scholarship that could solve the practical problems of the community, their involvement in the legal practice and understanding the contemporary theoretical knowledge of law are very important. Understanding the place of both theoretical and practical knowledge of the law professor in the teaching activity, writers are advocating for the introduction of mandatory legal practice requirement for the professors.⁶

Following the introduction of the national harmonized curriculum for legal education in Ethiopia, clinical and practice-oriented courses have been introduced in the curriculum with the intent that these courses would be delivered and supervised by practice-oriented law instructors working either as a full-time or part-time staff of the law schools. However, the law schools

² In this article, the words professors and instructors are interchangeably used.

³ David Hricik & Victoria S. Salzmann, Why There Should Be Fewer Articles Like This One: Law Professors Should Write More for Legal Decision-Makers and Less for Themselves, 38 Suffolk U. L. Rev. 761 2004-2005

⁴ The concept of engaged scholarship is defined by Judge Edwards and he explained that, "*Engaged scholarship addresses problems related to the law, legal system, or legal profession that affect a significant portion of society or the legal community. It identifies current legal issues, offers possible solutions to legal problems, or meaningfully informs decision-makers on the issues before them*". See Edward L. Rubin, *The Practice and Discourse of Legal Scholarship*. 86 MICH. L. REV. 1835, 1850 (1988). Engaged scholarship is also a concept that promotes the combination of theory with practice to deliver a fruitful academic responsibility in law schools context.

⁵ David Hricik & Victoria S. Salzmann, Why There Should Be Fewer Articles Like This One: Law Professors Should Write More for Legal Decision-Makers and Less for Themselves, 38 Suffolk U. L. Rev. 761 2004-2005.

⁶ Emily Zimmerman, Should Law Professors have a Continuing Practice Experience (CPE) Requirement? North Eastern University Law Journal, Vol. 6 No.1, (2013-2014), p.131, (hereinafter Emily, Should Law Professors have a Continuing Practice Experience (CPE) Requirement?); Paul Horwitz, *What Ails the Law Schools?*, 111 Mich. L. Rev. 955 (2013). Available at: <http://repository.law.umich.edu/mlr/vol111/iss6/>; Harry T. Edwards, The Growing Disjunction Between Legal Education and the Legal Profession, 91 Mich. L. Rev. 34 (1992).

are managing these courses even by a fresh graduate due to lack of instructors who combine both theoretical and practical experience.⁷

To address the problem of practice-oriented staff, creating opportunities for the instructors to get advocacy license and practice in law was an ideal solution. However, the Ethiopian law does not allow law instructors to represent their clients privately and learn from their practice.⁸

This article aims to challenges in the delivery of clinical and practice-oriented courses in the law schools and demonstrate the need for practice-oriented legal education.

It proceeds as follows. First, it discusses the experiences in admission to legal practice in different countries. Next, the article explores the relationship between practical legal experience and an engaged scholarship in law schools and evaluates the Ethiopian legal regime in how it admits legal professionals into the world of practice. Finally, the article suggests solutions that will help to bring an engaged scholarship in Ethiopian law schools.

1. Admission Requirements to Legal Practice

Practicing law normally needs a license from the concerned authorities. However, the modalities of the licensing process differ from country to country. When a lawyer receives a license to practice law, it is presumed that an admission to law practice and representing clients is acquired. Becoming a practicing lawyer or an advocate requires a widely different process around the world. However, there are requirements which are common to all jurisdictions and these include age and competence. On the other hand, among others, obtaining a law degree, passing an entrance exam, or serving

⁷ Mizanie Abate ,Clinical Legal Education in Ethiopia: Challenges and Their Possible Way Out, Ethiopian Journal of Legal Education, V. 2, No. 2, (2009), p. 2,(*hereinafter Mizane*, Clinical Legal Education in Ethiopia: Challenges and Their Possible Way Out).

⁸ As per to the knowledge of the writer, exceptionally Southern Nation, Nationalities and Peoples Regional (SNNPR) State is still licensing law instructors to practice law. However, the law even in this region requires from the applicants to provide release paper from their ex-employers. It means that, there is no legal ground to say that the law in this region allows law instructors to get license. See Article 6(2)(g) of Proclamation No 164/2016, A proclamation to Provide for Licensing and Administration of Advocates and Paralegals Practicing at SNNPR State Courts, *Dehub Negarit Gazette*, 22th Year No.4.

in an apprenticeship are the common requirements from jurisdiction to jurisdiction.

Within the same jurisdiction, the licensing processes and requirements might be different when that jurisdiction has federal and state arrangements. In this context, the experiences of Ethiopia⁹ and the United States of America¹⁰ could be mentioned as an example where the licensing requirement has disparity between the federal and state governments. However, countries with unitary state structure have uniform legislation that authorizes advocates to practice law within their jurisdiction.¹¹

The experience of countries in how advocate's license is administered to practice law is discussed below. These countries' experiences are preferred to show the different experiences from countries with federal and unitary state structures. Based on that, *Kiswahili* Speaking East African Countries and the USA could be good representatives of countries that have unitary and federal structure of government respectively.

1.1 Admission to Legal Practice in *Kiswahili* Speaking East African Countries

In Kenya, as a *Kiswahili* speaking country, the issue of legal practice is regulated by the Advocates Act, Chapter 16 of the Laws of Kenya.

⁹ In Ethiopia, Federal courts Advocate Licensing and Registration Proclamation No.199/2000 is applicable for the Federal jurisdiction and all the nine regional states also have their own Advocates' Licensing and Registration Proclamations.

¹⁰ In the USA as well, the admission to the Federal Bar is different from state Bar as the admission requirement for the former is on a court-by-court basis, and each Court has slightly different local rules that establish the requirements of admission and general for the latter. For example, to practice in US District court for the Northern District of California requires that, "*that the Bar of this court consists of attorneys of good moral character who are active members in good standing of the State Bar of California. Attorneys must also certify that they have knowledge of the Federal Rules of Civil and Criminal Procedure and Evidence, the Rules of the United States Court of Appeals for the Ninth Circuit and the local rules of this court. Furthermore, attorneys must possess familiarity with the Alternative Dispute Resolution programs of the court and an understanding and commitment to abide by the Standards of Professional Conduct of this court set forth in Civil Local.*" <http://www.cand.uscourts.gov/attorneys/admission> (last accessed on 6/9/2017)

¹¹ For example as a unitary system of government in Italy, after graduating with law degree, those wishing to qualify as Italian attorneys are required to complete a period of internship of 4 semesters (2 years) in an established Italian law firm, under the supervision of a Senior Lawyer: during this period, the candidate will develop basic skills such as drafting pleadings, researching case law and appearing in Court in conjunction with a qualified lawyer to gain a better understanding of the judicial legal procedure in Italy and this is uniformly applicable throughout the country. <http://www.hg.org/article.asp?id=26125> (last accessed on 2/20/18).

According to this law, there are different requirements for admission of a lawyer to having the right of audience before Kenyan courts. Among these, completion of law degree from recognized university in the Commonwealth¹², attending Kenyan School of Law for Postgraduate Diploma in legal practicing¹³, completion of a mandatory one year article of pupillage under the supervision of a lawyer who has a minimum of five years of standing¹⁴ and application for admission to the Chief Justice could be mentioned.¹⁵ Applicants who have completed both academic and practical training are expected to petition the Chief Justice by accompanying an affidavit that shows the trustworthiness of the documents they attached as evidence of academic and practical training qualification. Once the petition is submitted to the Chief Justice, it will be sent to the High Court upon the approval of the Law Society of Kenya¹⁶, which is in fact an association of Lawyers and has a similar status to the American Bar Association (ABA). The admission program takes place in an open court with the presence of the Chief Justice, who finally pronounces the admission of the advocate to practicing law in Kenyan courts.

As indicated in the Advocates Act of Kenya, there is no formal bar admission examination administered either by the bar association or the authority that licenses the admission certificate. Rather, the exam administration is done by educational institutions that award the degree and postgraduate diploma.

In addition to academic and legal training requirements, the applicant who wishes to be licensed as an advocate should be a Citizen of Kenya, Uganda and Tanzania.¹⁷ Citizens of Uganda and Tanzania might be allowed to practice law in Kenya for different reasons. Primarily, these countries are in the commonwealth and English is a working language in these countries.

¹² Laws of Kenya, the Advocates Act, Chapter 16, Revised Edition 2009 (1992) Published by the National Council for Law Reporting with the Authority of the Attorney General, available at www.kenyalaw.org (last accessed 6/10/17).

¹³ Ibid

¹⁴ Ibid

¹⁵ Ibid

¹⁶ Ibid

¹⁷ Ibid

Moreover, these countries are among *Kiswahili* speaking East African nations and there might not be any language barrier to practice the profession before these courts. In addition, there is also the same permission in the Advocates Act of Uganda and Tanzania that allows Kenyan citizens to practice law before their courts.¹⁸

According to Advocates Code of Conduct of Kenya, advocacy service is not considered as an employment opportunity and graduates who wish to be advocates are not required to show that they are unemployed or should show letter of release from their former employer. Because of this reason, university professors are entitled to practice law so long as they fulfill the requirements provided by the law. So long as individuals have completed both educational and practical training requirements, they will be awarded a certificate to practice law before Kenyan courts.

1.2. Admission to Legal Practice in the USA

In the USA, there is no uniform law that regulates a practicing lawyer or an attorney. Rather, all the member states of the USA are allowed to enact their own criteria and legislation concerning legal practitioners as the power is among those residual powers¹⁹ given to the states. Based on that, lawyers are not admitted to practicing law throughout the United States, rather they are admitted to practicing law in a particular state. Separate rules govern admission to the various federal courts. In most states, admission to practicing law is gained by graduating from law school, passing the state's bar examination, and demonstration and possession of good moral character.

Though each state has the power to enact its own legislation, the examination for admission of an attorney is administered centrally by the American Bar Association (ABA). Since ABA is administering the exam, it usually makes recommendations to the authorities in the states concerning admission to the bar, and to lawyers and law schools in general. The ABA is making the recommendation in association with the National Conference of

¹⁸ The Advocates Act of Tanzania, January 1995, Article 8(b)(ii).

¹⁹ In the federal constitution, a power which is not clearly indicated in the constitution is referred as a residual power. In the USA constitution, the power of the federal government is clearly mentioned as it is referred as enumerated powers. However, powers that are not mentioned as enumerated powers of the federal government are referred as residual powers and these powers belong to the states.

Bar Examiners, and the Association of American Law Schools²⁰ who are responsible for the legal profession. The standard and guideline is prepared with intent that it will bring uniformity throughout the nation on practices in bar admission.

Since each federal court maintains its own separate bar, an attorney who wants to practice in federal courts must be separately admitted to the bar of that court. In this case, admission is given upon “motion by an attorney who is already a member of that court’s bar’ and who can affirm that the applicant is a person of good moral character.”²¹ The applicant is required to be admitted in the state in which the federal court sits to get an admission to a federal district court. In order to be admitted to the Supreme Court of the USA, the applicant is required to practice law before the court of any state at least for three years.²²

In the USA, moreover, this profession is not considered as a means of job opportunity and candidates are not required to show that they are unemployed for admission and certification. Rather, so long as candidates fulfill the educational and other requirements, they are allowed to take the examination administered by the ABA. Due to this, even professors who teach in universities are allowed to practice law so long as they successfully pass the bar examination.

University professors who teach in law schools are not only allowed to practice law there is also a move towards introducing a mandatory Continuing Practice Experience (CPE) for law professors who teach in the universities as legal practitioners do have an obligation to take a Continuing Legal Education (CLE).²³ Professor Zimmerman argues that, both ABA and Association of American Law Schools (AALS) should revise their admission and recruitment of staff requirements respectively to value practical

²⁰ The Code of Recommended Standards for Bar Examiners has been adopted by the policy-making bodies of the ABA, NCBE, and AALS. An initial Code was adopted in 1959. This standard has been amended in 1980, 1987 and 2011 to cope up with the changing circumstances.

²¹ Schwartz, M.D. et. al., *Problems in Legal Ethics*, (American Casebook Series), 11TH edition, St.Paul, Minn: West Group, (2015), p. 38.

²² Ibid

²³ Emily, Should Law Professors have a Continuing Practice Experience (CPE) Requirement?

experience.²⁴ With regard to the ABA's responsibility, she advised the Association to extend its accreditation requirement of law schools by introducing CPE as an obligation of law professors.²⁵ On the other hand, she recommends to AALS to employ professors who have practical experiences and committed enough to continue even after their employment.²⁶

2. Debates on the Need to Legal Practice Experience for Teaching Position

In the USA, there has been a heated debate among academicians and legal practitioners on the issue of whether law professors should have a legal practice experience²⁷ or not to produce qualified lawyers that could serve the justice system. The source of this debate is from the point of view of interest of the professors themselves and not from the government's policy perspective. The idea behind this debate is to make legal education more practice oriented and to prepare students for the practical aspects of law

2.1. Debates against Legal Practice Experience for Teaching Position

The idea against legal practice experience requirement of law professors for a teaching position emanates from some professors' themselves as they are more inclined to teaching and research work than to participate in the legal practice.²⁸ Law professors' justification to distance themselves from legal practice could be different. Among others, some claim that they did not have extensive practice experience before they became law professors, law professors who did spend a small amount of time in practice may not have

²⁴ Id, P.187.

²⁵ Ibid

²⁶ Ibid

²⁷ Jeremy Paul wrote a short article in New York Law Journal title "Theory Makes Successful Layering Possible." Paul argues that, University professors could produce successful lawyers and he rejected the practice experience of the professors in the legal profession as a judge, a public prosecutor and an advocate. WWW.NYLJ.COM Monday, April 21, 2014. On the other hand, B. Cohen, on his article titled as "*The Dangers of the Ivory Tower: The Obligation of Law Professors to Engage in the Practice of Law*", 50 LOY. L. REV. 623, 631 (2004) argues that, law professors should have practical skills to produce all rounded and skill full lawyers.

²⁸ Emily, Should Law Professors have a Continuing Practice Experience (CPE) Requirement?

actually enjoyed practicing law and some law professors resist the idea that law schools should be training grounds for law practice.²⁹

In addition, law schools themselves have a tendency to resist the idea of continuous legal practice experience of their professors. AALS has argued that there are some serious risks involved in encouraging law professors to engage in the practice of law. Professors who devote too much time to the outside practice may be depriving their students and their schools of important services.³⁰ The association also added that, devoting time to the outside world other than teaching and researching task would affect the professors' task of class preparation, scholarship, committee work and student advising.³¹ Though it seems that they support the responsibility of law professors to the outside world, their position towards legal practice seems negative:

Law professors are frequently in demand to participate in activities outside the law school. Such involvement may help bring fresh insights to the professor's classes and writing. Excessive involvement in outside activities, however, tends to reduce the time that the professor has to meet obligations to students, colleagues, and the law school. A professor thus has a responsibility both to adhere to a university's specific limitations on outside activity and to assure that outside activities do not significantly diminish the professor's availability to meet institutional obligations.³²

2.1. Debates for legal practice Experience for Teaching Position

Even though there is resistance by the law professors and the AALS on professors' participation in the world of legal practice and law schools leniency to employ those who have legal practice experience, there are strong critiques by scholars against the American law schools on their failure to make their students engaged and all rounded graduates. They also added that failure of law professors to identify themselves as practicing lawyers resulted in inadequate preparation of law students for the practice of law.

²⁹ Ibid

³⁰ ASSOCIATION OF AMERICAN LAW SCHOOLS, *Statement of Good Practices by Law Professors in the Discharge of Their Ethical and Professional Responsibilities*, in HANDBOOK 95 (2003), available at <http://www.aals.org/ethic.html> (last visited Oct. 4, 2004)

³¹ Ibid.

³² Ibid

According to reports, the elite law schools in the USA prepare their top five students to become law professors but fail to prepare the rest of their students to become practicing lawyers.³³ These top and elite law schools not only do they fail to educate their students in legal doctrine and rigorous analytical thinking beyond the first year, but they also fail to impart the proper state of mind for legal practice.³⁴

The role of legal practice in teaching position is very significant. In a civil procedure course, for example, a professor who has practice experience could discuss how the plaintiff's case was structured and what considerations went into negotiating an acceptable settlement to his students. However, a professor who has no practice experience could not do that unless he/she invites to class another practitioner who has been engaged in the practice. In a bankruptcy and criminal procedure course, a non-practicing professor should do the same to discuss how the practice looks like. It means that non-practitioners are always dependent on other practicing professionals to handle practice oriented courses.

3. The Relationship between Legal Practice and Engaged Scholarship

A lot has been said and written by scholars³⁵ about the distance between law professors and legal education, and the gap between legal theory and legal practice. Judge Harry T. Edwards wrote that law schools and legal scholars are on a vastly different path than the rest of the legal profession, emphasizing abstract theory at the expense of practical scholarship.³⁶ In addition to treatise by scholars, concerned centers and research institutions said a lot about the gap between legal theory and practice and recommend

³³ Alex M. Johnson, Jr., *Think Like a Lawyer, Work Like a Machine: The Dissonance Between Law School and Law Practice*, 64 S. CAL. L. REV. 1231, 1233 (1991), Content downloaded/printed from Hein Online (<http://heinonline.org>) Wed Sep 8 12:10:38 2010

³⁴ *Id.*, p.1225.

³⁵ Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992); *Emily Zimmerman*, Should Law Professors have a Continuing Practice Experience (CPE) Requirement? NORTHEASTERN UNIVERSITY LAW JOURNAL VOL. 6 No.1 I, N.E. U. L.J. 131 2013-2014. Please see also R. Michael Cassidy, *Beyond Practical Skills: Nine Steps for Improving Legal Educations Now*, 53 B.C.L. Rev. 1515 (2012), <http://lawdigitalcommons.bc.edu/bclr/vol53/iss4/7>

³⁶ Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 35 (1993).

the combination of the two related issues of legal scholarship.³⁷ The *Maccrete* report³⁸ argued for more skills training and clinical opportunities in legal education to make future lawyers practice oriented and to contribute their part to the legal profession.³⁹

Teaching legal theories and legal practice has a direct correlation to the legal profession and it is not logical to separate them. Law professors' position in the elite law schools in the USA to distance themselves from practicing lawyers in order to gain the status and respect of their colleagues is not an accepted position. If a law professor continues to distance himself from practice, he cannot teach students to be better and ethical lawyers as he himself is uninformed about the world of practice. Tangible law practice expands a professor's knowledge and experience in the legal profession. It usually forces the professor to deal with new issues and new legal procedures, examine issues that have current relevance, and test ideas in the 'real world'.⁴⁰ By doing this, the professor will become a better scholar, teacher, and advisor to his students.

These days, Ethiopian law schools' curricula have included clinical and practice oriented courses. To administer these clinical and practice oriented courses⁴¹, it needs a professor who has a practice experience in the legal profession. If law schools deliver these courses by a non-practicing professor, it would be equivalent of teaching a medical student by a medical doctor who has never done an actual surgical operation and treated patients. Moreover, if law professors do not have a legal practice experience, law

³⁷ *Legal Education and Professional Development - An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap*, 1992 A.B.A. SEC. Legal Educ. And Admissions to the bar [referred as MACCRATE REPORT]

³⁸ Robert MacCrate was an American lawyer who served as Counsel to New York Governor Nelson D. Rockefeller and as Special Counsel to the Department of the Army for its investigation of the My Lai Massacre

³⁹ Gary A. Munneke, *Legal Skills for a Transforming Profession*, 22 PACE L. REV. 105, 130-35 (2001).

⁴⁰ Rory K. Little, *Law Professors as Lawyers: Consultants, Of Counsel, and the Ethics of Self-Flagellation*, 42 S. TEX. L. REV. 369, (2001).

⁴¹ In the Ethiopian law schools' harmonized curriculum as well, clinical programs such as Clinical Program on Child Rights; Clinical Program on Domestic Violence; Clinical Program on Family Law; Clinical Program on HIV/AIDS; clinical Program on Restorative Justice; and Clinical Program on Rights of prisoners are included. Moreover, there are also skill oriented courses such as Legal Research Methods, Legal Writing, Legislative Drafting, Pre-Trial Skills and Trial Advocacy, Appellate Advocacy and Moot Court and Judgment writing courses are included.

students may not directly observe the real subject matter they're supposed to study and their dream as an enlightened interpreters of the law could be affected.⁴² It is also difficult for law professors to prepare their students for law practice and connect theory to practice when they are unfamiliar with what their students will be doing as practicing lawyers.

Without current practice experience, a professor may lack the knowledge of what her students will face in law practice. She may also lack the confidence to put together practice-related information and activities into her courses. As long as students are coming to the law schools to make themselves as future lawyers, their professors should be familiar with the practice to acquaint their students with the practice.

Moreover, if law professors do not join the world practice, they will only be motivated to write texts that do not contribute to the legal profession and that are out of touch with the work that practicing lawyers and judges do.⁴³ If law professors join the legal practice, they will produce articles that could help judges and legal practitioners in addressing real cases. If law professors focus on theoretical aspects and ignore the practical scholarship, their articles may not be referred by judges. Studies in the USA showed that law reviews are seldom cited by the federal courts of appeals.⁴⁴ In addition to that, absence of an ongoing exposure to the practice of law by law professors would develop despicable attitudes about practicing attorneys and it will affect the profession badly. The damage that these attitudes can potentially inflict upon law students, who will become practicing lawyers, would be enormous.⁴⁵

It is also possible to say that the distance between law professors and legal practice would affect an engaged scholarship that professors could contribute. Engaged scholarship is a way of addressing legal problems which are "related to the law, legal system, legal profession that affect a significant

⁴² J. Jerome Frank, *Both Ends Against the Middle*, 100 U. PA. L. REV. 20, 28-29 (1951).

⁴³ Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992).

⁴⁴ Louis J. Sirico, Jr. & Beth A. Drew, *The Citing of Law Reviews by the United States Courts of Appeals" An Empirical Analysis*, 45 U. Miami L. REV. 1051, (1991).

⁴⁵ Cohen, page 634.

portion of society or the legal community.”⁴⁶ Engaged scholarship, if applicable, helps to identify existing legal issues, offers possible solutions to them or significantly informs decision makers on the issues before them. Participating and devoting time in the practice world would help professors identify topics for their research. Professors who advise students about law practice would be better-informed advisors if they actually had some exposure to law practice.⁴⁷

4. Admission Requirements to Legal Practice in Ethiopia

As government in Ethiopia has a federal form, regulating the admission requirements to the legal profession in Ethiopia is given for both the federal and regional governments. It is the power of the regional governments to determine the requirements to practice before state courts. Regional states in Ethiopia are allowed to enact their own admission requirements to practice law within their jurisdiction. On the other hand, practicing before the federal courts is regulated by the federal government.

To practice law before federal courts, any Ethiopian has a choice among three types of licenses that are issued by the Attorney General and these are federal first instance court advocacy license, federal courts advocacy license and federal court special advocacy license .⁴⁸ To be certified and practice in the federal courts, there are some common requirements provided by the legislature for the three types of licenses. Legal education requirement, ethical behavior suitable for the legal profession, no criminal record that shows an improper conduct for the profession, passing an entrance examination and having professional Indemnity Insurance Policy are the main requirements.⁴⁹ According to Federal Courts Advocates Licensing and Registration Proclamation, everyone is not allowed to be admitted to practicing law before the federal courts. Rather, the profession is only

⁴⁶ Edward L. Rubin, *The Practice and Discourse of Legal Scholarship*. 86 MICH. L. REV. 1835, 1850, (1988)

⁴⁷ Paul Horwitz, What Ails the Law Schools?, 111 Mich. L. Rev. 955, (2013). Available at: <http://repository.law.umich.edu/mlr/vol111/iss6/7>.

⁴⁸ Federal Courts Advocates Licensing and Registration Proclamation No. 199/2000), Article 3 and 7.

⁴⁹ Id, Article 4. As far as professional Indemnity Insurance concerns, it is not yet practiced. Advocates are not expected to buy insurance policy for the sake of securing their license.

limited to Ethiopians, and foreigners are not allowed to practice law before the federal courts.⁵⁰

Even though foreigners are educated in the Ethiopian law schools and speak one of the languages which are spoken in Ethiopia, they are not allowed to practice law. Moreover, the profession is only opened for unemployed Ethiopians who could present evidence that shows their good moral character from their former employers.⁵¹ Unless an Ethiopian is able to produce evidence from his/her former employer, she/he is not allowed to apply for license. The proclamation indirectly indicates that employed Ethiopians even from the law schools are not allowed to have an advocate's license to practice law before the federal courts. Considering the position of the proclamation that bans foreigners even who speak the federal working language and attended their education in Ethiopia and Ethiopians who are employed in whatever sector, it is possible to assume that, advocate's licensing and admission before the federal courts is considered as job opportunity.

The position of the Federal Courts Advocates Licensing and Registration Proclamation that considers the legal profession as a means of job creation by the federal government is strengthened by the Amhara region Advocates' Licensing and Registration Proclamation. Similar to the federal proclamation, this proclamation recognizes three types of licensing which are administered by the regional Justice Bureau. These licenses are second class advocacy license, first class advocacy license and special advocacy license.⁵²

In this proclamation, the admission requirements were almost similar to the federal proclamation. The requirements are educational training, good moral character, passing entrance examination and providing evidence from the ex-employer that shows the good moral character of the applicant. However, the regional government recently revised the law and paved the way for fresh

⁵⁰ Id, Arti.3(1)

⁵¹ Id, Arti.4(2)(b)

⁵² Amhara Region Licensing, registration and controlling code of conduct of advocates proclamation No of 75/2000 Article 7 as amended by The Licensing, Registration of advocates and Controlling Code of conduct proclamation, revised proclamation No.211/20014. Please see also Tigray Regional Court Advocates' Licensing and Registration Proclamation No. 156/2000.

graduates from the law schools to apply for the second class advocates' license without any work experience.⁵³ This is the first law in the country that allows fresh graduates to practice law before the courts without having any practical experience⁵⁴ as a judge, public prosecutor, an attorney or legal educator.

Both the federal and regional proclamations do not allow university instructors to be admitted and practice law before the Ethiopian courts as they are not able to submit evidence of release letter. In fact, both the federal and regional laws allow university instructors to have an advocate's license without entrance examination so long as they leave law schools after serving for five years (four years for the regions) or after serving as an assistant professor and leave their teaching position.⁵⁵

In the past, there was a practice of licensing university instructors both by the federal and regional governments. Nowadays, university instructors are banned from having license to practice law unless they terminate their employment relationship with academic institutions. Advocacy license used to be given for university instructors in the Amhara region through a reform introduced by the regional Justice Bureau following its business process reengineering (BPR).⁵⁶ The BPR document developed by the regional Justice Bureau allowed university instructors to practice⁵⁷ law so long as they fulfill the character, education and service requirements. However, the regional Justice Bureau has suspended the BPR document and the document was replaced by the pervious licensing, registration of advocates and

⁵³ Id, Article 8(1) of Amhara Region Licensing, registration and controlling code of conduct of advocates proclamation

⁵⁴ According to my interview with Ato Dessie Seyoum, Amhar Region Justice Bureau Legal Research and Drafting Main Process owner, the law is designed to create job opportunity for fresh graduates from the Ethiopian law schools. Since law graduates were almost unemployed and the position was saturated, the regional government has designed this mechanism and revised the former law for this specific purpose.

⁵⁵ Please see Article 11(2) of Federal Advocates' Licensing

⁵⁶ በአብዛሙ ቁጥጥር የሰነድ ማህበራት እና የጠበቆች ምዝገባ ዋና የሥራ ሃይት አፈጻጸም ላይ ስልጠና ለመስጠት የተዘጋጀ ማንኛውም 2000 ዓ/ም፣ ገጽ 27 "...ከዚህ ቀደም ዳኛ፣ አቃቤ-ሀገር፣ ገንዘብ-ፈጅ፣ የሀገር ለማካሪ ወይንም መምህር፣ የመዝገብ ቤት ሹም እና ከዚህ ጋር ተዛማጅነት ባላቸው የሥራ መስኮች ላይ ተሰማርተው አገልግሎት ሲሰጡ ከመቆየታቸው በላይ በሀገር ከታወቁ ከፍተኛ ትምህርት ተቋማት ዲፕሎማ ወይንም ዲግሪ የያዙትን ባለሙያዎች የጥላቻና ስራ ፈቃድ ለማግኘት ፈተና እንዲወሰዱ መደረጉ ደንበኞችን ከማጥላት በስተቀር የሚጨምረው ፋይዳ የለም። ስለሆነም በዚህ ማንኛውም ለሀገራችን ደረጃ ጥላቻና ስራ ፈቃድ ለመስጠት የተጠየቁትን መሰፈርቶች አሟልቶ የተገኘ ባለሙያ የሰ ፈተና የጠየቀውን ፈቃድ እንዲያገኝ ይደረጋል።"

⁵⁷ Interview with Ato Yitayew Tensaye, Amhara Region Justice Bureau Advocates and Documentation Licensing Process owner, May, 20, 2017.

controlling code of conduct proclamation No. 75/2000 and later by Proclamation No.211/2014.⁵⁸

The writer asked the concerned officials in the Amhara region⁵⁹ as to why the revised proclamation failed to include the BPR document that used to allow university instructors to practice law in the regional courts and they replied that;

There has been continuous complaint from the officials of the law schools situated in the region. Law schools complained that instructors are abusing their teaching jobs as they become full-time advocates. Specifically, the officials of the Law School at Wollo University directly complained to the bureau to revoke the license of university instructors. Moreover, the BPR document was intended to work for six months and at the end of six months time, it has no effect.

In the opinion of the writer of this article, prohibiting law instructors from practicing law is equivalent to prohibiting a medical doctor who teaches in a university from practicing her medical profession. If the concern of law schools was the misconduct of instructors, they could have used their own controlling mechanisms. It is clear that the practical experience of law instructors has a direct effect on the quality of education. Law schools have practical courses that need an instructor who has a practical knowledge and experience. It is very difficult for a law school instructor to teach criminal procedure, clinical program on family law, civil procedure, evidence law and other similar practical courses without having a practical experience.

According to research, the majority of Ethiopian law school instructors do not possess practical skills themselves.⁶⁰ It goes without saying that they cannot deliver skill-oriented courses. In practice, these instructors are delivering skill-oriented courses. It was commented that such instructors were wasting time.⁶¹ This research shows that the quality of teaching in law

⁵⁸ The Licensing, Registration and Controlling Code of Conduct of Advocates Proclamation No 75/2000 was introduced mainly to recognize exit exam, special advocacy license for institutions and permission of second class advocacy license for new graduates without any experience.

⁵⁹ Interview with Ato Dessie and Ato Yitayew

⁶⁰ Mizane, Clinical Legal Education in Ethiopia: Challenges and Their Possible Way Out

⁶¹ Abdi Jibril, The Need to Harmonize Ethiopian Legal Education and Training Curricula, *Ethiopian Journal of Legal Education*, Vol. 4, No, 1 (2011), (hereinafter Abdi, The Need to Harmonize Ethiopian Legal Education and Training Curricula, *Ethiopian Journal of Legal Education*)

schools has been compromised due to lack of practical skills of instructors. To fill the practical skill gap of university instructors, law schools are inviting practitioners such as judges, prosecutors and advocates to teach practical and skill-oriented courses.⁶² However, employing practitioners to teach practical and skill oriented courses might have a disadvantage as judges and practitioners could be remote for theories.

5. Challenges of Law Schools in Handling Clinical and Practice-Oriented Courses

Since 2006, Ethiopian law schools have introduced a national harmonized curriculum due to legal education reform program introduced in the country. The legal education reform and curriculum harmonization agenda was set to address the identified pre-2006 law school curricula in the country.⁶³ The pre-2006 curriculum was criticized and the harmonized curriculum was introduced due to the incompatibility of the legal education and legal system that the law schools had before 2006.⁶⁴ Though Ethiopia is dominantly a civil law legal system, the concept of its legal education was related more with the common law legal system.

In addition to legal system and legal education incompatibility, the former curriculum was also criticized for lack of skill-oriented courses in its course content.⁶⁵ To address those shortcomings, the new harmonized curriculum came up with skill-oriented courses such as Legal Research Method, Legal Writing, Pre-Trial Skills and Trial Advocacy, Appellate Advocacy and Appellate Moot Court, Judgment Writing, Externship and clinical programs. In addition to practice-oriented courses, the new curriculum has introduced clinical program courses which include clinical programs on Child Rights, Domestic Violence, Family Law, HIV/AIDS, Restorative Justice, and Rights of Prisoners

⁶² Bahir Dar University School of Law employs judges and prosecutors as part-timers to cover skill oriented courses.

⁶³ Abdi, The Need to Harmonize Ethiopian Legal Education and Training Curricula, *Ethiopian Journal of Legal Education*.

⁶⁴ Ibid

⁶⁵ Ibid

Though the national harmonized curriculum introduced skill-oriented and clinical program courses to address the shortcomings of the previous curriculum, law schools lack experienced staff who could deliver these skill-oriented courses. As research shows, law schools in Ethiopia lack instructors who possess practical experiences to deliver skill-oriented courses and these courses are delivered by instructors even who have never experienced practical cases.⁶⁶

The new harmonized curriculum was designed to deliver clinical and practice-oriented courses by instructors who possess both practical and theoretical expertise. The curriculum was designed with intent that if an instructor lacks either of these qualifications, he/she is not appropriate for the courses.⁶⁷ It also added that if the law schools lack an experienced supervisor and teacher to deliver these courses, committed practitioners outside the law schools shall supervise students at legal clinics.⁶⁸

However, clinical and practice-oriented courses are not delivered as expected in the curriculum. Rather, the courses are even delivered by fresh graduates who have no practice experience as a judge, an advocate or as a public prosecutor. In this context, Mizane Abate in his research shows the magnitude of the problem in delivering clinical courses saying that,

...it may not be possible to find individuals who combine both types of experience. In Ethiopia, only a small minority of university law teachers were practicing law (be it as a judge, prosecutor, private practitioner or legal advocate of government or private institutions). Another problem is that experienced specialists who could share their practical experiences to students may not be interested in teaching at law faculty-they are too busy or teaching is not profitable for them to do it. Even where practitioners are willing for teaching, the experienced lawyers usually lack experience of interactive teaching methods⁶⁹.

⁶⁶ Mizanie, Clinical Legal Education in Ethiopia: Challenges and Their Possible Way Out.

⁶⁷ Dr. Mizane Abate in his research told us that, the issue was raised in a workshop held at Mekelle and participants agreed that, in as much as possible, individuals in charge of supervising the clinical programs have to be instructors who are or used to be in the practice.

⁶⁸ Mizanie, Clinical Legal Education in Ethiopia: Challenges and Their Possible Way Out.

⁶⁹ Ibid.

It is possible to understand from the above assertion that law schools are not properly handling practice-oriented course due to lack of practitioners who could deliver courses and supervise students. Some law schools try to resolve these problems by employing part-time instructors from the courts.⁷⁰ However, part-time instructors from the courts should not be considered as a long lasting solution since they themselves are remote to the updated theoretical understanding to deliver the courses.

6. Call for Advocates' License for Ethiopian Law School Instructors

One of the objectives of Ethiopian higher education institutions is to “prepare knowledgeable, skilled, and attitudinally mature graduates in numbers with demand-based proportional balance of fields and disciplines...”⁷¹ This objective stated in the proclamation will be achieved only when students are trained with a good curriculum and in accordance with the curriculum. In addition to the curriculum, the quality of admitted students and professors employed to teach the students are very essential to produce graduates who could be domestically as well as internationally competitive.

The objective of Ethiopian law schools' curriculum is not different from the objective of the higher education proclamation. The basic aspiration of the curriculum is to provide basic legal training to the students. To achieve this objective the program aspires to:⁷²

- *equip students with basic knowledge of major national legislations and procedures along with the skills of legal interpretation required to solve legal problems;*
- *train professionals who will be able to undertake the technical aspects of drafting and revising laws;*
- *enhance the critical thinking abilities of students so that they can understand and implement laws as judges, practicing lawyers, prosecutors, public defenders or academicians;*

⁷⁰ For example, Bahir Dar University Law School employs judges and public prosecutors to manage civil procedure, criminal procedure and other practice oriented courses.

⁷¹ Higher Education Proclamation No. 650/2009, Federal Negarit Gazette, 15th Year, No.64, Article 4(1).

⁷² Bahir Dar University School of Law, National Modularized Curriculum of the LL.B Program in Laws, June 2013, pp. 4-5.

- *train professionals who can deliver legal advice in public and business laws either by working for particular firms or individuals seeking such advice;*
- *educate individuals who will be able to defend and advise clients with professionalism, understanding and responsibility;*
- *prepare dedicated professionals who can research and publish, and hence reinforce Ethiopian legal jurisprudence; and*
- *produce legal professionals who serve the society with high integrity and who strive to defend rights and liberties and uphold the fundamentals of rule of law.*

To achieve the objectives of the law schools' curriculum, courses should be given by qualified and experienced instructors both in theory and practice. However, this objective of the curriculum may not be realized as practice-oriented and clinical courses are taught by non-practitioners and even sometimes by fresh graduates who have never seen the door of courts. If instructors are detached from the practice, they may not be effectively preparing students for the skills they would need in the practice of law.⁷³ Law and medical teaching strongly need skills and attitudes on the part of the teachers who could be good role models for the student to emulate as he or she moves into the practice.⁷⁴ If an instructor teaches and practices copyright law at the same time, he/she will know about the practical aspects of copyright law and trademark law that he/she had probably never encountered in a law school. He/she will learn how actual trademark searches are done and what issues are frequently raised by trademark examiners who evaluate trademark applications. He/she will also learn how to search for a design mark and where to look for descriptions of goods and services that are acceptable to the trademark office. If the instructor only teaches the theory and has no information on the practice, he/she may not suggest a solution to the practical problems in the practical world.

To address the problem and achieve the objectives of the curriculum and the higher education proclamation, law schools need to have staff that could manage both theoretical and practice-oriented courses. This would be only

⁷³ Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992)

⁷⁴ Norman Redlich, *Professional Responsibility of Law Teachers*, 29 CLEV. ST. L. REV. 623, 624, (1980)

possible by allowing law instructors to get advocacy license and to practice law. Except for the decisions of the federal Supreme Court cassation decision, court decisions are unreported. Due to this, there may not be room either for law research or for practical law teaching within the law schools without creating an opportunity for the instructors to practice law.⁷⁵

In fact in other jurisdictions, there is a move towards a mandatory legal practice requirement for a professor who teaches law in law schools. Even researchers who have experience both in academics and practicing law advise that;

*Every law professor should at sometime during his or her teaching career be forced to confront that reality, not only because it will make that professor a better teacher and a better scholar, but also a better, less cynical, more humble and appreciative representative of our profession - the one we share with the lawyers we have all educated and sent out to the world of practice.*⁷⁶

However, in Ethiopia university instructors are not allowed to get advocacy license unless they leave their academic career. If law schools want qualified instructors that could teach theories and practices of law in an integrated manner, they should create a forum with the concerned authorities to pave the way for their instructors to be involved in the practice of law.⁷⁷ The involvement of instructors in real legal practice would help them to familiarize themselves with real life understanding of the impact of the law on society and contribute their part in the development and refinement of the laws when needed. According to Article 5(3) of the Federal Courts Advocates Licensing and Registration Proclamation, "... license may not be issued to a person who has another permanent job."⁷⁸

⁷⁵ G. Krzeczunowicz, ETHIOPIAN LEGAL EDUCATION: Retrospection and Prospects, *Journal of Ethiopian Studies*, Vol. 1, No. 1 (January 1963), pp. 68-74. Accessed: 16-02-2018 11:18 UTC via JSTOR

⁷⁶ B. Cohen, *Then Dangers of the Ivory Tower: The Obligation of Law Professors to Engage in the Practice of Law*, 50 *LOY. L. REV.* 623, 631, (2004).

⁷⁷ According to the information tipped from Ato Mihret Alemayehu, Bahir Dar University School of Law Vice Dean, recently, Law Schools' Consortium has raised the agenda and it established a task force to facilitate a forum between law schools and the concerned authorities.

⁷⁸ Federal Courts Advocates' Licensing and Registration Proclamation No. 199/2000, *Fed. Neg. Gazetta.*, year 61, No. 27.

Though it is arguable whether academic position is a permanent job or not, from the very outset, it is not logical to expect qualified judges and advocates from an instructor who does not know what the practice world looks like. So long as students join law schools to be practice lawyers, among others, it would be useful for those teaching law students (law instructors) to have some familiarity with current legal practice. This familiarity will only be established if they are allowed to get the license and practice of it.

Familiarity with the current realities of law practice could inform individual instructors of pedagogical as well as curricular understandings more broadly. Moreover, spending time in the world of law practice could help law instructors identify issues for their research, both legal issues that arise in a practice setting and issues about the context in which law is practiced. This move will help to insure quality education in law schools. Instructors' involvement in the practice world may help bring fresh insights to their classes and writing. However, their involvement in the practice world does not mean an excessive involvement in outside activities that tends to reduce the time that the instructor should give to his or her students, colleagues, and law school.

Licensing and practical engagement of law instructors may not only assure quality education in law schools, it will also help to retain the academic staff in their academic career. If instructors are licensed, they will get additional income by representing clients and will be more motivated to stay in the academic career. Working for paying clients may affect the objectivity with which a law professor approaches teaching and scholarship. However, the risk could be minimized through appropriate controlling mechanisms by the law schools themselves.

Moreover, the licensing of law instructors will help and advance legal aid activities of law schools. An instructor who practices a commitment to helping the indigent will serve as a more effective enlightened interpreter for his students. He will have earned the direct experience critical to his role of conveying the sense of importance in such service. The time spent by the instructor in performing free legal aid service meets many needs. This service addresses the cutbacks in legal services appropriations, thereby

affirming his/her commitment to providing access to the justice system. It furnishes a model for his students, who will more likely endeavor to emulate their teacher by displaying their own commitments to the needy in their future practices.

Ethiopian law schools should aim to create a truly integrated model of legal education that fully combines theoretical and doctrinal scholarship, clinical education, and practicing advocates to support the profession. Hiring should also focus on diversity of perspectives, with no ideological or academic group having a favored status. Based on that, practical, theory-oriented, and critical legal scholars, along with their clinician counterparts could flourish in the school.

Concluding Remarks

In every profession, the experience of the professional plays a pivotal role in contributing a lot to his/her career. This logic will apply at the same time for those professionals teaching legal education. If the teacher teaching law has an experience in theory and practice, he will be able to meet the objectives of the curriculum without any difficulty.

Understanding the place of practice experience in the legal profession, researchers are advocating for the introduction of continuous practice experience for law teachers. The experience of teachers will enhance their teaching and scholarship and strengthen their connection to the legal profession. This experience gives an opportunity for teachers to create strong relationship with other practicing lawyers and enhance their interaction with students. This interaction with the students will help to integrate theory and practice better in the classroom and in the minds of their students.

Licensing of law teachers is one mechanism to link the theory with practice. However, Ethiopian law schools' instructors lack this opportunity to integrate the theory with practice as they do not have access to get advocate's license. The law that licenses advocates requires law teachers to resign from their teaching position if they want to get the license.

Lack of access to get the license would affect teaching, researching and community service mission of law teachers. Unless the teacher knows the

practice, he/she may not be able to integrate the theory with practice in those practice-oriented and clinical courses. The teacher's practical experience will enhance the quality of her/his teaching, thus assisting one's professional development and growth as a teacher and scholar; law teachers may not also be able to conduct practitioner research that could suggest significant solutions to practical problems. Moreover, law teachers may not be able to deliver pro bono services in the form of representations as they do not have a license to do that.

The best approach in legal education scholarship is to balance between theory and practice. To achieve a balanced and engaged scholarship, opening access for law teachers to get an advocacy license is a timely issue. If we do that, the legal academy will assume the responsibility to write more useful and problem-oriented articles. What I am proposing, however, is that we all should be sensitive to the value of experiences in training future lawyers, judges and advocates.