CORRESPONDENCE

To the Editor,
The Journal of African Law.

Dear Sir,

African Legal Education—Educating lawyers in Bantu Law

Kindly allow me to reply to the matters raised in your Summer number [1963] J.A.L., 124-5, in criticism of the point of view I advanced in your special number on African Legal Education, [1962] J.A.L. 133.

As Mr. Hunt, in his concluding sentence, makes reference to politics it is necessary to point out that support for, or opposition to, the inclusion of the study of Bantu law in the education of legal practitioners cannot reasonably be used as a yardstick to measure support for, or opposition to, the policies of the present government of the Republic of South Africa. Fundamentally the question concerns not politics but the requirements of academic training and of the administration of justice.

Perhaps Mr. Hunt and the Board of the Faculty of Law in his university whose support he calls in aid have misunderstood the position. I spoke of "Bantu law"; he speaks (apparently without distinction) of "native customary law" and "native law". (Nothing turns on the difference between the words "Native" and "Bantu"—what used to be called Native Law is now called Bantu law: see *e.g.* section 32 of Act No. 76 of 1963 which, although passed after I wrote, reflects earlier usage.) If Mr. Hunt means Bantu common law (defined under the title "Native common law" in my *Native Common Law of Immovable Property* at p. 2) his hesitation in regard to a compulsory course is understandable. Students need to know the elements of Bantu common law to appreciate the problems encountered, but teaching on questions of interaction and choice of law forms an important part of a course on Bantu law. These questions, incidentally, are dealt with in each of the five current text-books on Native law (or Bantu law) in South Africa.

If an African marries without an ante-nuptial contract the proprietary regime between him and his wife is not the same as that in the case of non-Africans who marry in similar circumstances, and an African may, if he wishes, enter into a *lobola* contract ancillary to his marriage contract. If a lawyer untrained in Bantu law were asked by an African desirous of marrying to advise whether an ante-nuptial contract was advantageous or not and what the effect of a *lobola* contract was he would have to teach himself the law on the point before he could answer. So also if he were asked to draft a will he would first have to learn whether Africans can make wills, and if he found that his would-be client could make a will he would then have to learn whether all his client's property could be left by will or not, and, if not, to whom the property not devisable by will goes.

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If a would-be client had had summons issued against him his lawyer would have to discover what the rules on the application of Bantu law are (either in the Supreme Court or Magistrate's Court or Bantu Commissioner's Court depending on the origin of the summons) before he could advise whether the action was likely to be tried under Roman-Dutch law or Bantu law and whether it should be defended or not. The above are simple questions of major importance to Africans in urban areas as elsewhere. Is it reasonable to expect clients having such elementary and often urgent problems to wait (courts will certainly not wait) while lawyers qualify themselves in Bantu law? Though the questions are simple the answers are not simple. Pitfalls and difficulties may be encountered and untrained lawyers are more likely to come to grief than trained ones.

Practical value, however, is not the only criterion. Academic value, in the sense of value in training legal thinking, is of great importance. Here Bantu law has greater value than certain other subjects now made compulsory. Even though students spend three years learning law (or in a combined LL.B. curriculum spread three years' work over five), no law faculty can teach all the law. Much must be left out. However, if no place can be found among the large number of courses taken for a course (or even an extended so-called half-course) in Bantu law then, in my opinion, Bantu law is not given its proper value.

The question to be faced is this: is it in the interests of academic training and of the administration of justice (whether in urban areas or elsewhere) that law students should omit consideration of a difficult but academically rewarding field of study and that legal practitioners should lack proper training to advise Africans who wish to marry, who dispute over the guardianship or custody of children, who wish to purchase immovable property, who wish to make wills, and generally who contemplate action in court or against whom action is brought?

Yours faithfully,

A. J. Kerr

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