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Research paper

Legal Education in Malaysia in the Context of Legal Practice

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Abstract

Upon attaining independence in 1957, most judges and lawyers in Malaysia received legal education and legal training in the United Kingdom. University of Malaya was the only premier law school in Malaysia during that time. Gradually, the number of law schools increased and now legal education is available in a number of both private and public universities in Malaysia. The landscape of legal education differ post 2008 when new law schools from public universities were made subject to a review conducted by the Legal Profession Qualifying Board (LPQB) – failure to obtain full recognition will result in students from the universities concerned, having to sit for Certificate in Legal Practice (CLP) examination. In the light of this development, legal education in Malaysia has become under strict scrutiny by the legal fraternity, and thus it is a question of what reasonable expectation should the country set on the legal education provided by universities. This article will address legal education from the point of view of universities, the relevance of the CLP examination and the level of skills and knowledge required to produce 'practice-ready' graduates. The discussion also considers the availability of the 9-months pupillage before admission to the Malaysian Bar and other criteria for education as provided for by the Malaysian Qualifications Agency (MQA). The whole paper will be based on the Legal Profession Act 1976, the MQA guidelines, the developments of legal education in Malaysia and the experience of laws schools under review by the LPQB and other stakeholders.

Keywords: *Legal,education,;legalpractice,;pupillage.*

1. Introduction

All higher education providers which offer legal education in Malaysia in view of legal practice is subject to the Legal Profession Act 1976 ("LPA 1976") . Section 3 of LPA 1976 provides that a 'qualified person' for the purpose of admission as an advocate and solicitor in Malaysia is a person under either three categories. The first category are those who have passed the final examination leading to the degree of Bachelor of Laws from University of Malaya, University of Malaya in Singapore, the University of Singapore or the National University of Singapore, being the universities that exist during the time LPA 1976 was enforced. The second category are barristers-at-law of England. While the third category, projecting future possibilities in the increase of law schools, comprises of those in possession of such other qualification as may by notification in the Gazette be declared by the Board to be sufficient to make a person a qualified person for the purpose. It was under the third category, that more local universities were granted qualification, namely Universiti Teknologi MARA (UiTM) (introduced LLB in 1982, effective 17.6. 1985), International Islamic University of Malaysia (IIUM) (introduced LLB in 1983, effective 30.6.1987) and the National University of Malaysia (UKM) (introduced LLB in 1984, effective 18.7.1990).
Since 2003, a wave of law degrees were introduced by new law schools. The new law schools are - Department of Law in Faculty of Public Management and Law (now College of Law, Government and International Studies (COLGIS)) Universiti Utara Malaysia (UUM), Faculty of Law, Multimedia University (MMU), Faculty of Syariah and Law, Universiti Sains Islam Malaysia (USIM) and Faculty of Law and International Relation, Universiti Sultan Zainal Abidin (UNISZA). The introduction of these new law schools can be regarded as the second phase of the process for obtaining qualification after many years the Board has last granted recognition to local universities.

2 .The New Law Schools and the Process for Qualification

The new developments and changes in the legal industry have contributed to a more rigorous assessment conducted on the new law schools by the Legal Profession Qualifying Board (LPQB). This was particularly responding to the industrial feedbacks voiced especially by the Bar Council about the declining qualities of local graduates (Thiru, 2011). The complaints were mainly on the overproduction of law graduates, the absence of a common evaluation system and the quality of education in local universities 1. In response to this, the Bar Council proposed the Common Bar Course (CBC) and the Common Bar Examination (CBE) to be imposed on all law graduates as the ultimate filter before admission as advocate and solicitors in Malaysia. The accuracy and comprehensiveness of the claim is a subject of further study and the nexus between the claims and the suggestions proposed were not convincing in the eyes of the Malaysian law schools. While the proposal is still being discussed by the stakeholders, the new law schools requesting for exemption from the CLP examination

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were nevertheless required to deliver the quality of education that matches the expectation of the industry.

The LPQB has set up an evaluation team to determine whether the new law schools have met the standard. The standard was benchmarked on the five Certificate of Legal Practice (CLP) examination papers conducted by the LPQB, which are taken by overseas law graduate for admission as advocates and solicitors in Malaysia. The evaluation required that the new law schools must contain the five CLP papers and the elements in them, called as the 10 CLP subjects for the purpose of evaluation. The subjects are civil procedure, criminal procedure, evidence, law of torts, law of contract, professional ethics, land law, bankruptcy, winding up and law of probate. The benchmark was clearly not as what is practiced in the existing law schools but to the 10 CLP subjects and the updates in practice and practical skills necessary in the view of the evaluators.

As a result of the evaluation, graduates from UUM and MMU were required to attend Training Programmes on Conveyancing Practice, Drafting Pleadings and Opinion Writing organised by the Bar Council as part of Certificate of Completion. After the completion of the courses, UUM law graduates were allowed to do their pupillage without having to sit and pass the CLP examination 2. This requirement was imposed on UUM since 2009 until it was eventually lifted in February 2016. MMU received full and unconditional exemption from the CLP examination earlier than UUM, in December 2012. The situation was different for UNISZA and USIM as both institutions were granted provisional recognition and the graduates were required to sit for CLP examination after the first evaluation visit. This requirement has invited many responses from the stakeholders due to the suitability of the CLP examination which was meant as a solution for overseas graduate, including the issues of additional cost to graduates, repetition of substance and the low rate of passes. UNISZA received a second evaluation in April 2015 and was eventually granted exemption from the CLP examination in October 2015 for graduates who completed their LLB from 2015 onwards.

USIM is the last from the line of public universities still applying for exemption from the CLP examination. USIM received its first evaluation visit by the LPQB in 2013. The official report was released by the LPQB in April 2015 providing a provisional recognition, which required the graduates to sit and pass the CLP examination. The report also contained further requirements to be fulfilled including a second evaluation and the submission of periodical reports that encapsulate the progress and compliance to the requirements. The second evaluation visit was conducted in March 2017 with a number of 21 evaluators from the Bar Council, Attorney General's Chambers, and the Malaysian Qualifications Agency (MQA). The evaluation comprised of observation of lectures and tutorials, interview of lecturers and students, perusal of documents, library collections and facilities. The evaluation process was similar to UUM, MMU and UNISZA.

It is pertinent to note that qualification for practice granted by the LPQB is applicable only for the admission of advocates and solicitors in West Malaysia. The universities need to request for a special grant from Sabah and Sarawak under The Advocates Order 2010 (Sabah) and The Advocates (Amendment of Schedule) Order 2012 (Sarawak).

3. **The Law Syllabus**

In the early development of curriculum structure of law programmes, the law schools have been concentrating on the core law and important procedural subjects . This was particularly the practice of University of Malaya (UM), the National University of Malaysia (UKM) and International Islamic University of Malaysia (IIUM). The core law subjects are derived from the common law system such as law of torts, law of contract and equity, learnt by students in UK and other commonwealth countries with an addition of subjects relating to the legal system of the country such as Malaysian Legal System and Islamic Administrative Law in Malaysia. Procedural subjects are such as Law of Evidence, Criminal Procedure, Civil Procedure and Professional Practice. This is also in line with the LPQB's entry requirement for CLP of a recognised degree to have a minimum of 12 law subjects within a minimum of 3 academic years. It requires candidates to pass 6 core subjects namely Law of Contract, Law of Torts, Constitutional Law, Criminal Law, Land Law and Equity & Trust, with each is to be studied for the duration of one academic year.

The subsequent law schools have been adopting the practices of the earlier schools as the accepted composition of law syllabus in Malaysia. It was after the establishment of The Malaysian Qualifications Agency (MQA) in 2007, that the law programmes in institutes of higher learning are given guidelines as to the required content of a law degree. The 2008 programme standard for law and Shariah has very much reflected the practice of the law schools during the time. The second guideline was released in 2015, featuring more detailed suggestions on the programme aims and educational objectives, learning outcomes, curriculum design and delivery, body of knowledge and the skills relating to the outcomes. The panel members involved are from universities, LPQB, Attorney General's Chambers, Shariah Lawyers Association of Malaysia, private universities and the Bar Council.

According to the guideline, the curriculum design for Bachelor of Law requires 59.5-70% equivalent to 71-84 credit hours for core law subjects (with 120 minimum credit hour for graduation). The elective component constitutes 12.5-18%, equivalent to 15-22 credit hours and industrial training of 0-5%, equivalent to 0-6 credit hours (with 120 minimum credit hour for graduation).

The guideline lists the body of knowledge for core law subjects by reflecting the existing practice of the law schools in Malaysia and the essential branches of knowledge in the field. The courses are Constitutional Law, Corporate Law, Criminal Law, Equity, Family Law, Public International Law, Land Law, Law of Contract, Law of Probate, Law of Tort, Legal Method, Malaysian Islamic Law in Context, Malaysian Legal System and Moot. These courses are offered in two semesters, carrying three credit hours each. This has reflected the main body of knowledge of the law with heavy domestic input. Public International Law, Law of Probate, Legal Method and Moot are relatively a new development in the requirement of courses.

The professional year component is mentioned in a 40 credit hour separate template in the MQA 2015 guideline. This means that the Malaysian legal education recognises universities that introduce law programmes without the professional year component with a view that graduates from such universities will not be eligible to sit for the CLP examination. The courses under this category are Alternative Dispute Resolution Procedures, Bankruptcy and Winding Up, Civil Procedure, Civil Trial Advocacy, Conveyancing, Criminal Procedure, Criminal Trial Advocacy, Evidence, Office and Personnel Management, Professional Ethics.

USIM offers a five year double major programme that contain fundamental components of law and Shariah known as Bachelor of Laws and Shariah with Honours (LLB and Shariah)(Hons.) (formerly known as Bachelor of Syariah and Law with Honours). The degree complies with 50-66 credit hours of civil core subjects, similar to the 50-66 credit hours civil core component for a single major bachelor's degree in law in the MQA guideline. USIM's law programme also contains 40 credit hours of professional year component with a view to seek exemption from the CLP examination so that the graduates will be able to do their pupillage for the purpose of admission as advocates and solicitors. Another 50-66 credit hours are allocated for Shariah subjects, hence the need of an additional year in the curriculum structure. The remaining credit hours contain the general courses, electives and industrial attachment. USIM is the only university in Malaysia that offers double major degree of law and Shariah law with a view of professional practice, while UIA is the only university that offers a double degree programme with a view of professional practice via its LLB and LLB(S), in two separate awards.

4. Reasonable Expectation on Legal Education

The expectation from the local graduate seems very high due to the high demand and challenges in the legal education3. The legal industry is interested to hire law graduate who seems capable to work from day one 4. In other words, the university is expected to provide not just legal education, but for legal practice as well. In fact, some experienced practitioners require universities to produce students who are 'practice-ready'. Nevertheless, the explanation of what 'practice-ready' really means is uncertain, as different practitioners define the term differently.

Hence comes the question: what should reasonably be the role of universities? Universities are struggling to tune themselves between the priority of providing the understanding of the law which includes the philosophies and substance on one hand; and practical skills and hand-on experience on the other. With the mechanics of the semester system, student learning time, pedagogy and depth of legal substance to impart, there is so much so that a university can do. Law schools provide legal education and some bits and pieces of legal training due to constraint of time and resources. Legal practitioners thus could not reasonably expect the universities or the law schools to produce a ready made lawyer quality graduate to feed the law business. It must be acknowledged that law schools do not only produce legal practitioners, but also future academics, bankers, administrators, diplomats and other professionals.

Universities nevertheless should be commended for trying to accommodate to these new demands. By having strategic sharing of experience among the universities, and networkings with the legal practitioners, the universities are now providing proper facilities for legal training and inviting more legal practitioners to guide the students in specific skills such as advocacy and drafting.

The actual full fledged hands-on legal training should be when the graduates undergo pupillage or chambering at legal firms. It is only reasonable that the universities expect that education at the undergraduate level should be of 'adequate exposure to practice' and that further enhancement towards practice-ready quality to be polished during the 9-months pupillage. This is the appropriate approach that we should adopt for a sustainable enhancement of legal education.

At the moment, there is no efficient mechanism within the Legal Profession Act 1976 that scrutinises and regulates pupillage in legal firms. There is inadequate guidance or supervision on how a legal firm should conduct its pupillage program for chambering students. A scrutinising mechanism under the Legal Profession Act 1976 should be established to ensure that pupil-in-chambers receive the training that they are supposed to, in order for the pupillage system to be effective.

5. The Way Forward

In May 2008, the then Minister in the Prime Minister's Department Datuk Zaid Ibrahim, who was also the then de facto Minister of Law announced that the CLP would be scrapped off and be replaced with the Common Bar Course (CBC) and the Common Bar Exam (CBE)5. This proposed exam will be compulsory for every student wishing to practice in Malaysia, including local graduates. The Malaysian Bar has been advocating the CBC and CBE since the 1980s as a single entry point to the legal profession for both local and foreign law graduates. Despite being propagated for more than six years, the details of the implementation and the method of execution of the CBC and CBE remain unclear to the local universities. The law schools in Malaysia are not adequately informed about the implementation that will take place and how far the proposed CBC and CBE will affect them. Further discussions with the stakeholders are needed if the proposed CBC and CBE are going to be the direction of legal education and practice in Malaysia. Considerations must be given to all aspects including the content, facility, finance and most importantly whether CBC and CBE can really address the problems put forth on the quality of lawyers. Currently, there are discussions with universities and the Law Deans Council of local universities in Malaysia to obtain general feedback on the matter. If implemented, this course might prolong the period of time of 9 months required in the current process of pupillage.

Concerted effort is needed from all. The universities must also strive their best to enhance the quality of teaching and learning experience and to provide adequate exposure on the practical aspects of law by way of industrial attachments, networking and collaborations with legal practitioners. Similarly, the legal practitioners must also utilise the pupillage duration to deliver the practical know-hows in practice to the newcomers in the industry. The newly established Inns of Court of Malaysia is a great effort as an avenue to gather all those from the academia, judiciary, legal practice and other law professional areas. This allows a better interaction and is very useful for a more positive environment in the legal fraternity.

6. Conclusion

Legal profession is a noble profession, an important tool to drive a nation towards success and development. It is one of the world's oldest profession and remains important until today. In fact, the first three Prime Ministers of Malaysia were from the legal background.

The LPQB remains as a body to ensure that law graduates in Malaysia fulfills the quality and standards needed to be admitted to the Bar. However, this duty should not be left totally in the hands of the universities. This duty has to be shared together between the university and the legal fraternity. Practitioners and universities should share the same burden to produce quality lawyers towards becoming a developed and successful nation.

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