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## **I. Judicial Reform and New Law Schools in Japan**

We are beginning a new system of legal education in Japan. New programs to train practice lawyers, or so-called “Japanese-style law schools,” start in April 2004.

### **A. Background: Traditional System of Training Lawyers and the Universities.**

Traditionally, there has been no educational requirement to sit for the national Bar Examination. Although most of the applicants, and most of the passers, have been law graduates, no degree or other formal training in law are required.

On the other hand, there are about 90 universities that have faculties of law or other law-related programs, in which around 40,000 students are enrolled. Partly because the Bar Examination didn’t require a law degree, and partly because not all students thought they wanted to be lawyers (the majority didn’t, in fact), those law programs were not designed to let students prepare to be lawyers. They were designed to give students some legal knowledge. After graduation, some graduates might serve the government, national or local; some might go to the business world; some might become journalists; and some might take the Bar Exam to be lawyers, of course. In sum, no specific career path is associated with the traditional law programs.

The Bar Examination consists of three steps. The first step, held in May, tests Constitutional Law, Civil Law and substantive Criminal Law by multiple choice questions. The second step, held in July, essay tests, which ask about Constitutional Law, Civil Law, Criminal Law, Commercial Law, Civil Procedure and Criminal

Procedure. This is the hardest part of the whole exam. Those who have passed the second step are interviewed in October, but few fail. One of the most important facts about the Japanese Bar Examination is that it is a competitive examination. The number of successful candidate was limited to 500 for a long period. The number has been gradually increased in 1990s and it reached a little less than 1200 last year. The Exam is so competitive that usual applicants have to take it many times and it usually takes years to pass it at last. The average of age of the successful applicants in 2003 was 28.15. Many people continue to study just for the Exam for years, well into in their late twenties or thirties; they may study while they work or they may just study! This phenomenon has been considered as waste of young talents. Reforms have been implemented from time to time<sup>1</sup> but radical solution has not been achieved.

As classes of the university law programs were not designed to become lawyers or to take the Bar Examination<sup>2</sup>, most of the applicants (and would-be applicants) go to cram schools. The cram schools teach only subjects tested in the Bar Exam and focus on test-taking skills. In fact, most of the applicants regard study at the cram schools as more important than study at the universities.<sup>3</sup> The applicants study only subjects / areas of law that were asked in the Bar Exam, and they don't pay attention other areas of law nor related studies even if they seem helpful to practice the Bar.<sup>4</sup> Therefore, some complains that recent passers tend to have limited intellectual horizon.

Successful applicants join the Legal Research and Training Institute, which is

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<sup>1</sup> Increase of number of passers is one of the reforms.

<sup>2</sup> Some universities have offered classes to prepare for the Bar Exam, but it has not been a norm.

<sup>3</sup> However, there have been few people who completely skipped university education. It is probably because it was risky to close possibilities other than the Bar Exam, and a college degree is helpful to get employed, both within and without the legal practice.

<sup>4</sup> As I see, this tendency seems to have grown stronger after so-called "culture electives" were abolished from the essay part in 1992 and so-called "law electives" were abolished in 2000. For "culture electives," applicants chose one non-law subjects from six, which included Political Science and Accounting. For "law electives," applicants chose one area of law from six subjects such as Administrative Law or Bankruptcy.

under the Supreme Court. They receive one and a half year training in legal practice, especially legal writing. The program includes one year apprenticeship at courts, offices of public prosecutors and offices of private practitioners. But it doesn't emphasize in studying the rule of law itself because those enrolled are considered to have mastered basics of law as they passed the Bare Examination. This step has been considered as important and the number of seats at the LRTI has defined the number of those who pass the Bar Exam.

When completed the program at the LRTI, candidates are admitted to the Bar with full license.

#### B: Reform of the Justice System and the New "Law Schools"<sup>5</sup>

Since only limited number of lawyers is supplied each year, Japan has been considered that it has experienced scarcity of lawyers. Some have argued that increase in number of lawyers was necessary, but such voices were sporadic and isolated. In late 1990s, however, many parts of Japanese society, especially the business world, began to complain about problems of the Japanese Justice System and the Cabinet formed the Justice System Reform Council. One major political agenda in Japan in 1990s had been de-regulation -- cutting down of regulations of the strong national Ministries. One of the philosophies of the Justice Reform is ex post remedies based on the rule of law, i.e., judicial remedies, in return for reducing ex ante regulation. Problems of human resources to facilitate judicial remedies, i.e., supply of lawyers, got attention as one of the agenda.

The Council recommended to establish new graduate programs to train practice lawyers. Topics in the Recommendation include: Only those who completed the program are eligible to sit for the (new) Bar Exam; basic period of education is three

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<sup>5</sup> The process is documented by an insider. Yoshiharu Kawabata, *The Reform of Legal Education and Training in Japan: Problems and Prospects*, 43 S. Tex. L. Rev. 419 (2002).

years but schools may shorten to two year for those who already have legal background; traditional undergraduate programs in law are kept, but the new program should admit enough number of applicants who have non-law background or working experiences.

The Ministry of Education and Science solicited application to establish such programs in June 2003. 72 applied<sup>6</sup>. 68 were accredited; 4 were rejected. Some universities established new independent schools; some just added new programs to the existing schools. The admitted schools are planning to admit 5605 students in total<sup>7</sup>. We just began the new program this April.

## **II. Teaching Foreign Law(s) under the New Setting of Legal Education**

Now I discuss education of foreign or comparative law in the new setting of legal education in Japan. There are two views, an optimistic or idealistic one, and a pessimistic or realistic one. These views are not specific to education of foreign law; they are common to areas of law or study areas other than ones asked in the (new) Bar Exam.

The new law schools are expected to offer variety of elective courses.<sup>8</sup> Thus students can not only broaden their perspectives but also specialize in any one or two field(s) of law to survive a more competitive market of legal services brought by the Reform. This prospect supports an optimistic view. Students (and universities) may attach importance to studying foreign laws, which may help practice after the students

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<sup>6</sup> This number includes 20 national universities, 2 universities run by local governments and 50 private universities. Many of them have already had undergraduate programs in law.

<sup>7</sup> No study has made to count actual number of enrollments.

<sup>8</sup> New law schools shall “[p]rovide law students with basic understanding of cutting-edge legal areas, have them take a broad interest in various problems arising in society”. The Justice System Reform Council, Recommendations of the Justice System Reform Council – For a Justice System to Support Japan in the 21st Century – Chapt. III, Part 2, 2.(1)b. available at < <http://www.kantei.go.jp/foreign/judiciary/2001/0612report.html>> (visited March 15, 2004).

are admitted to the Bar. Students may want to study foreign law just because they want to broaden their intellectual horizon, too. In fact, some new law schools emphasize teaching foreign law, especially American Law; they hired new faculty members who are specialized in, or have experience of, American Law and practice and business in the U.S., some of whom are American.

On the other hand, a pessimistic view is also possible. The only purpose of the new law schools is to become practice lawyers. To get licensed, applicants (i.e., graduates of the new law schools) have to pass the new Bar Examination. However, as above mentioned, the expected numbers of applicants that pass the new Bar Exam is limited to 3000 a year while the number of admitted students to the new Law School, i.e., of the expected graduate, is 5605<sup>9</sup>. There is an apparent gap of numbers; substantive number of graduates won't pass the new Bar Exam.<sup>10 11</sup> Thus, the new Bar Exam will be competitive one (again!) The applicants and would-be applicants (i.e., students at the new law school) will focus on subjects tested in the Exam and pour less resource to study areas of law that are not tested. The concrete plan for the new Bar Exam has not been fixed, but I haven't heard sincere proposal that foreign law should be included in the test subjects.

Which will realize? The question rests on evaluation of number of 3000, number of new entry of lawyers per year. The pessimistic prospect seems inevitable in the short run. The new law schools will be evaluated by the number or rate of successful candidates of the new Bar Exam among their graduates. Not only students but also the schools will have to focus on tested subjects. Thinking in the long run, however, the scene may change once the many people who have challenged the traditional Bar

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<sup>9</sup> This number can be increased because some universities are planning to establish a new school in and after 2005.

<sup>10</sup> What area graduates who cannot pass the new Bar Exam should work in, is recognized as potential issue; but few concrete proposals have been made yet.

<sup>11</sup> Of course, schools that cannot let many students pass the Exam will have to get out. Competition has already begun as in the form of gathering excellent students.

Exam are admitted to the Bar. If you consider the number of 3000 as large enough to supply lawyers in Japanese market, the Exam will become less competitive. Japan will have so many lawyers that each lawyer has to equip some competitive power. Specialization, including specialization in international practice, is an alternative. Then the focus of study at the law school will shift from tested laws to wider areas of law, including foreign laws.

The more radical prescription is to design the new Bar Exam as a qualifying examination as in the U.S. The Exam tests minimum qualification as an attorney and market will select lawyers excellent enough to survive. This argument is consistent with the ideal of the Judicial Reform and such proposal was in fact made in the early discussion.