

LEGAL EDUCATION IN MALAYSIA: WHERE IS IT HEADING?

By

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Abstract

Malaysia is a Federation consisting of 13 states and 3 Federal Territories.¹ It became independent on the 31st August 1957. When the Federation of Malaysia was formed in 1963, the federation was joined by the states of Sabah and Sarawak but Singapore chose to become an independent nation. As a former British colony, Malaysia inherited many British legacies, amongst others, its legal system and legal education. For many years after independence, all our judges and lawyers were trained in English law schools and universities. The first law school was set up in 1961 by the University Malaya, Singapore. The Law Faculty was later moved to Kuala Lumpur when Singapore left the Federation. The Legal Profession Act was passed in 1976 to govern the legal profession for West Malaysia whereas for the state of Sabah and Sarawak, each of these states has its own legal profession enactment or ordinance.

Since Malaysia continued to adopt the common law system, it is not a surprise that the syllabus and teaching law at the law faculty was very much based on the English law. Islamic law was only an optional paper at that time. At present, there are five law faculties offering law courses namely, the Law Faculty of the University of Malaya, Law Faculty, of Universiti Kebangsaan Malaysia, the Law Faculty of the International Islamic University, the Faculty of Law, University Technology Mara and the School of Law, Faculty of Law and Management, Universiti Utara Malaysia. The duration of the course is four years and upon completion, students will have to chamber for 9 months with a practising lawyer before they can be called to the bar and practice as advocates and

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¹ These states are Perlis, Kedah, Pulau Pinang, Kelantan, Trengganu, Pahang, Selangor, Negeri Sembilan, Melaka, Johor, Sabah dan Sarawak. The 3 Federal Territories are Federal Territories of Kuala Lumpur, Labuan and Putrajaya.

solicitor. From one law faculty to four law faculties, legal education in Malaysia has undergone tremendous changes and challenges. From a traditional English law syllabus, all the four law faculties are now moving towards other challenging areas of law, for example, space law and cyber law. Islamic law has become an important component of the syllabus. Discussions have also been made to set up body similar to the English Bar where students will sit for a uniform examination for all law students in Malaysia. The used of Malay language in the subordinate courts has also been a sensitive issue in Malaysia.

This paper intends to look at legal education in Malaysia since its inception to the present day practice and to analyse whether or not it is adequate in preparing Malaysian lawyers in facing the trans-national challenges.

The Present day Training of lawyers at Local law school

The training of lawyers at the five local law schools are very traditional where they are taught substantive law subjects which are being divided into compulsory and optional papers. These are:

Compulsory or Core Paper	Optional Paper
<ul style="list-style-type: none"> a. Malaysian Legal System or Legal Method; b. Constitutional law c. Criminal Law d. Law of Contract; e. Law of Tort; f. Jurisprudence; g. Equity and Trust; h. Evidence; i. Criminal Procedure; j. Civil Procedure; 	<ul style="list-style-type: none"> a. Cyber law; b. Environmental law; c. Media and the Law; d. Banking; e. Insurance law; f. Corporate finance; g. International Law; h. International trade law; i. Conflict of laws; j. Intellectual Property law; k. Space law;

<ul style="list-style-type: none"> k. Family law; l. Company law. 	<ul style="list-style-type: none"> l. Labour law; m. Computer law; n. Law of Credits o. Consumer law; p. Administrative law q. Sale of Goods; and etc²
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UKM, IIUM and UiTM³ have also introduced the subject called Professional Practice, Ethics and Remedy. This is due to the fact that there have been many complaints that our graduates are too theoretical and no nothing of the practical aspect of the practice.

Apart from the traditional compulsory law papers, UKM and IIUM offers Islamic law subjects as follows:

Compulsory/Core Paper	Optional Papers
<ul style="list-style-type: none"> a. Islamic Legal System; b. Islamic Jurisprudence; c. Islamic law of Contract (Muamalat); d. Islamic Criminal Law; e. Islamic Family Law; f. Islamic law of Evidence; g. Islamic Criminal and Civil Procedure; 	<ul style="list-style-type: none"> a. Islamic Banking law; b. Islamic Insurance law;

² These subjects may vary from one law school to another. Author uses the UKM as an example.

³ UKM started this course in year 2000; IIUM and Uitm have been doing it for quite sometime.

At all law schools mooting is compulsory and also attachment programme where students usually in their 3rd year have to attach themselves at any legal firm, legal dept, legal aid centre, etc to learn the practical aspect of the law.

Chambering

Upon graduation, all local graduates must chamber for 9 months with a master who is in active practice and who has been a practising lawyer of at least 7 years standing.⁴ For foreign graduates (i.e. those who obtained their LL.B from any English, New Zealand or any other commonwealth countries) they must sit for the Certificate for Legal Practice Examination (or The CLP)⁵. The Qualifying Board is setting out this examination.⁶ Once they passed the CLP examination, they may chamber for 9 months with a master who is in active practice and who has been practising law of at least 7 years standing. Upon completion of the chambering period, these graduates will be call to the Malaysian Bar and become an advocate and solicitor of the High Court of Malaya. The West Malaysian are not allowed to practice law in the East Malaysia, thus if they wish represent someone in the East Malaysia, such lawyer may have to apply for a working permit. For East Malaysian who has been called to the High Court of Malaya, must chamber another 3 months in East Malaysia before he or she may be call to the East Malaysian Bar and become an advocate and solicitor of the High Court of Sabah and Sarawak.⁷ It must also be pointed out that in Malaysia it is not a split profession like in the UK. Here a lawyer is an advocate and solicitor, doing all the jobs of both professions at the same time.

Challenges of the legal Education in Malaysia

a. A Common Bar Examination

⁴ Legal Profession Act 1976, s12

⁵ The CLP examination came into existence as a temporary measure to alleviate the plight of Malaysian students in London when the Senates of Inns of Courts in England announced as from 1983 only those with a second class degree may sit for the Bar finals in UK.

⁶ Qualifying Board is set up the Legal Profession Act 1976, s26 and consist of the Attorney General as the Chairman, two judges appointed on the recommendation of the Chief Judge, Chairman of the Bar Council and Dean of a Law Faculty appointed by the Minister of Education. The Qualifying Board is also responsible in determining a 'qualified person' as defined by the Legal Profession Act.

⁷ These were amongst the agreement made between the leaders of both countries when negotiating the formation of Malaysia in 1963 and these were translated in the Malaysia Act 1963.

One of the main issue that was discussed at the 12th Biennial Malaysian Law Conference organised by the Bar Council was the issue of the common bar examination. The CLP examination is not without a problem. The very low passing rate and no proper syllabus and information has been the key criticism of the examinations. Furthermore it was set up as a temporary measures. In 1989 C.A Morrison QC conducted a study on the on the CLP examination and recommended that it should continue but it lack skills training.⁸ In 1993 the Bar Council set up a Special Committee to examine the entry requirements into the profession. The Committee made the following recommendations:

- a. the historical relationship with the Council of Legal Education in UK(CLE) be reviewed and there should no longer be any automatic recognition of a law degree in Malaysia for purposes of admission;
- b. all accreditation of overseas law degrees including that from the UK, for the purpose of admission to the Bar be henceforth undertaken by the Qualifying Board;
- c. a review be undertaken of all UK law degrees from the standpoint of standard and quality;
- d. only LLB external of University of London be recognised;
- e. that the Qualifying Board stipulates a minimum requirements for entry into local universities;
- f. that all entrants to the Bar must satisfy the minimum requirements for entry into local universities;
- g. the minimum requirements for entry into the CLP course are a second Class lower LLB Honours.

In 2001 the Ministry of Education of Malaysia proposed that the legal education be reviewed in order to face the developments in the new millennium. University of Malays was requested to conduct the study and submit a report namely ‘Aims/Objectives of the law Programmes in Public Institutes of Higher Education’. The report inter alia

⁸ As noted by Haji Kuthubul Zaman Bukhari, in his paper ‘Legal Education: Proposed Common Bar Examination For Entry into The Legal Profession: Expectations and Problems, 12th Biennial Malaysian Law Conference, 10-12 December 2003.

recommended for a common bar examination. In fact the Minister at the Prime Minister Department call for a meeting in 2003 comprising of members of the Bar, judges and academician to look at the possibility of implementing the common bar examination but so far nothing has materialised.

b. Islamic law

Malaysia is a multi-racial and multi-religious country. It is a Federation, which consists of 13 states and the Federal Territories of Kuala Lumpur, Labuan, and Putrajaya. It has a written constitution where it follows the usual pattern of dividing executive and legislative powers between the Federation and the States and there are three lists of subjects, namely, the Federal List, the State List and the Concurrent List.⁹ Civil and Criminal law are within the Federal Government's jurisdiction except Muslim personal law, native law and customs, which are within the competency of the State Government. In Sabah and Sarawak, the native personal laws are placed under Concurrent List. Since the Muslim personal law are within the competency of the State Government, each state in Malaysia has its own Syariah Court system, which deals with matters relating to Islamic law and where both parties are Muslim.

The Federal Constitution provides that Islam is the religion of the Federation but other religion may be practised in peace and harmony in any parts of the Federation.¹⁰ Art 11 of the Federal Constitution, which guarantees the freedom of religion, further strengthens this provision. Malaysia has many times declare it to be an Islamic state and therefore there is an urgent need to study and master the Islamic law. At present there exist two-court systems namely the syariah court system in each states and the civil court system under the Federal jurisdiction. All matters pertaining to Islamic law and Muslim shall only be heard in the Syariah court and the rest in the civil courts. The Legal Profession Act 1976 governs the advocate and solicitor who practice in the civil courts whereas the Syariah lawyers have no specific body that govern them as it is very much state matters.

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⁹ Federal Constitution, Art 73 and 74

¹⁰ Ibid, Art 3

In reality, a person who would like to practice syariah law must obtain a Diploma of Syariah Legal Practice from IIUM or UKM and then apply to be admitted to each syariah courts. Thus if he plan to practice in all states and Federal Territories, he must apply to all and get an individual permission from each courts. Many advocate and solicitor are also syariah lawyers but the state they practice Islamic law may be one or two states only. It very much based on locality of their legal firm. Because there is no special body that governs them, there has been many complaint of mal-practice of syariah lawyers, which go unattended.

c. WTO and its impact on Malaysia and the Legal Profession.

Malaysia was the 23rd country to ratify WTO Agreement and one of the consequences of this act is to also accept GATS. GATS enter into force on 1st January 1995 and are binding on all members of the WTO. The GATS established for the first time, multilateral framework for the progressive liberalization of trade in services, including legal services. The express implication of GATS is that there will be liberalization of legal services. Currently, foreign lawyers may be admitted to practice in Malaysia either by an Order of the High Court pursuant to s18 of the Legal Profession Act 1976 or by the issuance of a Special Admission Certificate by the Attorney General under s28A of the same Act. Liberalization of the legal profession certainly is a great challenge to all lawyers in Malaysia.

d. Technologies and law

Of course the advancement of technologies must also mean that law and lawyer must either be more advance or as advance as the advancement of technologies. Malaysian lawyers are into cyber law, information technology law and intellectual property laws. But it is only a small group of lawyers while the rest remained with the traditional law practice. Occasionally when the need arise to draft a certain law, for example, space law or digital signature law, expert from other countries who are more advance in these areas will be requested to assist. This is not cheap and law schools must be aware of the

advancement of technologies and cultivate a syllabus, which moves towards that direction.

e. Use of Bahasa Malaysia in the courts.

The Malay language is the national language of Malaysia. All government bodies must use Malay language in all their communications. The courts are no exception. The lower courts (Magistrate and Session Courts) have been using the Malay Language but the higher courts (High Court, Court of Appeal and Federal Court) have continuously used English language as the language of the courts with prior permission of the presiding judge. All law local law schools except IIUM and UiTM used Malay language as the medium of instruction in lectures but in tutorials English language is being used. Idealistically we hope to produce bi-lingual lawyers with comparative knowledge and background (the reason why we are also teaching Islamic law).

Conclusion

The legal education in Malaysia has still a long way to go before any firm and solid decision could be made. The rift between the government, the Bar and the Bench that has clouded many of our objectives for many years should be removed or put aside and all sectors (govt and non-govt) should be working together to achieve the nation mission and vision. Until it is made, law schools have grappled with it and hope at the end they will be able to fulfil the nation requirements as well as lawyers who are fit to practice anywhere in the world.