

**LEGAL TRAINING INSTITUTE
OF PAPUA NEW GUINEA**

Papers on Law Curricula

and

Business Transactions

**["2004 Conference on Educating Lawyers for Transnational Challenges" in
Honolulu, Hawaii.**

To be discussed at the Conference to be held on May 26 – 29,]

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PAPERS ON LAW CURRICULA AND BUSINESS TRANSACTIONS

There are two topics being addressed here simultaneously because they would seem to overlap in their discussions.

The first is in regard to what should be a curricular core for the Transnational Lawyer, and secondly what should be incorporated in the content of subjects or courses on business transactions.

What I submit to be the most pressing and relevant to prepare lawyers to be able to meet the challenges of the 21st century in dealing with Transnational Business Transactions are these.

The proposals submitted here are aimed mainly for law students of universities in developing countries such as Papua New Guinea, African countries, and the South Pacific. Students of these countries have certain drawbacks and deficiencies such as access to a wider range of reading materials regarding complex and technical fields like international business transactions. Even general reading materials like newspapers or financial business review newspapers where students before entering a law school would have read and appreciated the business complexities and nature, are

not accessible to most people. In Western countries some law students would have had some understanding and business experiences through other means prior to entering law school. These would make it easier for them in studying more complex subjects. In developing countries most students do not have these prior general knowledge or experiences and by entering law schools with such deficiencies, is quite a baffling experience. They normally do make up for these by sheer hard work on their studies.

The proposals made here are also based on the fact that in most developing countries law students' studies are funded by their government.

With that background the curricular core and the content of subjects and the duration of the degree program should be made compulsory.

Transnational curriculum for preparing tomorrow's lawyers should start at the undergraduate level because without a good foundation at that level a student studying more complex fields at a higher level would be a little disjointed.

First, a curricular core for undergraduate studies at universities should combine a Bachelor of laws degree with a Bachelor of Commerce degree. The duration for these two degrees should be five (5) years. The first two years should be spent at the School of Business within the University or elsewhere to study for the Commerce degree and then move on to the Law School to study for their law degree for three years. At the commerce degree program, students should have the choice of undertaking an Accounting stream, or a Business Studies stream or an Economics Studies stream. A law student should then graduate with both law degree as well as a bachelor of commerce degree. A law degree at this stage should be just the usual law degree programs that universities are already teaching.

However, there should be another year or two of Post-graduate studies for students who wish to continue. Such programs should then address the needs for preparing lawyers to meet the challenges of 21st century in Transnational Business Transactions. This should be a specialised course, which could not be taught at undergraduate level.

In regard to Post-graduate studies whether for an Honours degree or for a Masters degree, the courses should be taught or lecture courses and not by thesis. The idea is so that students can cover a fairly large area of the technical subjects that they would not have covered if doing a thesis.

This approach is carried out by the various colleges of the University of London for many years now. I was once a student there, and obtained my Master's degree in Commercial and Corporate laws and International Business Transactions, through this system so I do have a first-hand knowledge and experience of this approach. The content of the courses are also designed to meet the challenges of the 21st century. I would submit that the University of London could be engaged as a consultant to the universities in developing countries to design courses to prepare lawyers for the needs and challenges of the future because they saw such needs way back and have been running such programs for many years now. One can only read through the various handbooks of the colleges especially The London School of Economics and Political Science (which I attended), of the University of London, to find the number of courses that are designed for the present and future lawyers.

The theme of this conference in discussing the role of law schools and law curricula in preparing tomorrow's lawyers for a world where countries and jurisdictions are increasingly inter-connected, and where cross-borders flows of capital, goods, people, services and ideas are becoming an everyday phenomena, is a noble concern. However, it is much more urgent for lawyers in developing countries now to take such courses that should enable them to provide such legal services that should help in the development of their countries, without having to engage overseas consultants. Lawyers trained in such law curricula to be worked out by the conference must be relevant and useful to both the private (sector) firms as well as state trading or borrowing. For instance such curricula should include courses on International Finance that would include syndicated loan agreements and sovereign debt rescheduling as most developing countries face these kinds of problems all the time.

Following are the outlines of two examples of courses that were offered at LSE, London University, and which I took for a Master's degree. These courses I believe should be taken into account in any new law curricula that we should be discussing at

this conference because of their importance and relevance in meeting the needs of private and state enterprises in a global setting.

1. International Business Transactions

Scope: Legal problems relating to international business transactions by private firms (not state trading).

Syllabus: The following topics will be dealt with from the point of view of the law of Britain, the Commonwealth, the United States and the EEC:

1. Judicial jurisdiction in cases involving international business transactions, especially:-
 - (a) jurisdiction over companies (the “doing business” test);
 - (b) products liability;
 - (c) branches and agents;
 - (d) constitutional requirements in the USA;
 - (e) choice-of-court clauses;
 - (f) forum non conveniens;
 - (g) lis alibi pendens; and
 - (h) provisional remedies and procedure.
2. Enforcement of foreign judgments in commercial matters.
3. International arbitration.
4. Applicable law for international commercial contracts, especially the application of legislation dealing with:-
 - (a) boycotts and embargoes;
 - (b) consumer protection;
 - (c) labour law; and
 - (d) exchange controls.

The effect of international uniform-law conventions will also be considered.

5. Conflict of laws regarding agency.
6. Recognition of foreign governmental acts affecting property, especially financial assets.
7. The extra-territorial application of **American anti-trust laws** and the reaction of other countries.
8. The extra-territorial application of **EEC competition rules**.

2. Legal Aspects of International Finance

Description of Course

The course is designed to examine the legal issues created by the international operations of the world's large commercial banks and investment banks focusing primarily on the law affecting the activities of Euro-currency market in the City of London.

It will not be concerned with the legal aspects of domestic banking and the activities of clearing banks in relation to cheques, overdrafts, deposits and short term domestic finance, nor with international economic law.

The course will examine the financial mechanisms and legal structure of Euro-bonds (including F.R.N's), Euro Notes, Syndicated Loans, R.U.F's, N.I.F's, Project Finance and the legal relationship of the various parties to such transactions. It is designed to examine the legal nature and ramification of legal documents used in these transactions. The course will also examine the legal nature and effect of instruments used in international finance such as bid bonds, performance bonds and guarantees.

The remainder of the course will be concerned with an examination of the efficacy of English law remedies in the context of international finance. The problems raised by jurisdiction, choice of law and sovereign immunity will also be covered as well as the legal format of Sovereign State debt restructuring.

It should therefore worth governments meagre resources especially for universities and institutions in developing countries to run such law degree programs based on law curricular to be discussed at this conference because of their relevance and importance in preparing lawyers for the challenges of tomorrow.