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## LEGAL EDUCATION: PRODUCING “PRACTICE-READY” CANDIDATES IN MALAYSIA

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### ABSTRACT

*Despite the existing exam requirements in a bachelor of law degree, it is claimed that local law graduates are ill-prepared for legal practice, lack of fluency in English, particularly in writing and speaking skills. This paper explores efforts made by the law schools in Malaysia within their existing curriculum to prepare students for future legal practice careers and to cater to the needs of the legal industry. The requirement of a recognized law degree has been fulfilled by most law schools, and students studying in law schools without recognition by the Legal Profession Qualifying Board (LPQB) would have to sit for Certificate of Legal Practice (CLP) to qualify as a practitioner. Nevertheless, the Bar Council has been proposing for additional curriculum of Common Bar Course and Common Bar Exam. It is claimed that these additional stage of common bar course and exam would be beneficial for candidates alongside their somewhat “inefficient” bachelor of law degree. Sitting for this bar exam would allow candidates to qualify as “qualified person” under the law. Nevertheless, this paper holds on to the view that training in chambers or the pupillage period, would be the best place platform for law graduates to equip themselves with hands-on experience in legal practice, and that the “higher-standard” of paper-based exams proposed by the Bar would be futile in keeping up with the expectations of the legal industry for “practice-ready” candidates.*

**Key words:** legal education, academia, common bar exam

## Introduction

The suggestion to introduce a common bar examination as a single entrance as a lawyer has echoed since 1980s by the former Chief Justice, Tun Harun Hashim. In his article, Tun Harun Hashim suggested that as lawyers in Malaysia may acquire their law degrees from overseas or local, all persons intending to practise in Malaysia are required to pass a written examination in practice and procedure before admission to the Bar (Hashim, 1981). The Malaysian Bar Examination is held regularly during the second week of January and July each year. Only persons who possess a recognized law degree are permitted by the Bar Council to sit for this examination (Hashim, 1981).

Despite the current system of written examination requirement, it is claimed that current law graduates in Malaysia are ill-prepared for practice (Sharom, 2008). Complaints have also been made against local law graduate for lack of fluency in English, particularly in writing and speaking skills (Wai, 2015). In the recent years, the Bar Council conducted an employability survey on how employable were the new entrants to the Bar (Thiru, 2011). Based on this survey, it is found that most law firms were keen to employ those with foreign law degrees, rather than those of local law degrees (Koshy, 2013). The Attorney General was reported to set up a task force comprising representatives from stakeholder groups to study and review the state of legal education in Malaysia and to recommend ways to raise standards to a level of excellence (Koshy, 2013). Consequently, from year 2008, calls for a “higher” standard of examination, namely the Common Bar Exam (CBE) have been made by the Malaysian Bar Council to improve lawyering skills of future lawyers who graduate from recognized LLB course, both overseas and local.

In addition, to sit for the CBE, a framework on a Common Bar Course (CBC) has been set by the Bar Council to sieve candidates who are eligible to sit for the CBE, so as to maintain the quality of graduates who intend to qualify as “qualified person” under the law. CBC and CBE are considered walking hand in hand for this purpose; it will be an “all or nothing” approach. If a candidate

passed the CBC, he will be able to sit for the CBE; if he failed the CBC, he then will not be able to sit for the CBE.

Currently, a person who intends to practise law in Malaysia is required to obtain a recognized local law degree plus a successful chambering period of nine months. If the person graduates from foreign law school, he is required to pass the additional Certificate of Legal Practice Examination (Azzat, 2006). In a circular by the Ministry of Higher Learning, it was stated that the Cabinet decided that the enrolment of law students to public university as well as private university should be maintained and the establishment of new faculty of law in public universities will not be allowed by the Malaysian government (Ministry of Higher Learning, 2007).

This article discussed whether introducing a common bar course (CBE) to qualify as an advocate and solicitor in Malaysia is the way forward towards producing 'practice-ready' law graduates. Will the CBE form a good measuring standard of quality of law graduates? Is CBE a worthwhile innovation to the present legal education or a mere imitation to the current exam system set by the Malaysian Bar?

Understanding both the development of legal education and the changing scenario in Malaysia are crucial before discussing the possible suggestions to improve legal education as well as legal practice in Malaysia. Most importantly, the Bar Council should also address the issue on recognizing law degrees using a proper standard of procedure, with special reference to recognition process undergone by the Universiti Sains Islam Malaysia (USIM) in 2013 and 2017 recently.

### **The Law Dean Society: Report on Future Directions of Legal Education in Malaysia and Similarity in Conflict Around the Globe**

In February 2012, an official Committee for the Law Dean Society of Malaysia gathered for the first time to conduct a survey (Jalil et al, 2012). More than 6 months were taken in distributing the questionnaire among legal practitioners. The result was that 5% of

the members of the Bar responded to the questionnaires. Most questionnaires were returned unanswered.

The findings were that there in Malaysia, there is a common disagreement between law lecturers and practitioners on the scope of their duty, and this argument is similarly found around the globe. This is evident when the Law Dean Society of Malaysia discovered that the American Bar Association in the MacCrate Report also recorded the gap between academia and legal practice:

‘Complaints and recriminations from legal educators and practicing lawyers. The lament of the practising bar is a steady refrain; “they can’t draft a contract, they can’t write, they’ve never seen a summon, the professors have never been inside a courtroom”. Law schools offer the traditional responses, “We teach them how to think, we’re not trade schools, we’re centre of scholarship and learning, practice is best taught by practitioners”.

Another example of conflict between the legal profession and legal academia is seen in China whereby Li, Li and Hu (2016) found the result in an interview with a lawyer in law firm in Shanghai:

“Most law school graduates are not qualified. We cannot depend on them too much. Those law school teachers who are good at research are not familiar with legal practice. Those teachers who are practicing law are short of either professional ethics, or legal theories. Many students escape from the classes and only do some recitations before examination. Many students are at an idle state in all their four years of undergraduate studies...”

In Indonesia, Sulistiawati and Hanif (2016) found that unless law students are active in reaping the benefits of moot competitions at the undergraduate level, majority of the students are not equipped with required skillset to work in legal field:

While many participate in national moot courts, a majority of students do not. As a result –unless they were particularly proactive– many students graduate law school with a poor skillset, knowledge on, or interest in pursuing a career as a judge or

prosecutor. The problem is that our law school had failed to adapt itself fast enough to changing circumstances, allowing the traditional preference for a career as a judge and prosecutor to be swept away.

Munin (2016) has also reported that in Thailand, changes to the curriculum are happening, but subject much to the recognition of the Thai Bar:

Even at Thammasat University Faculty of Law, which produced the standard for the Thai Bar’s accreditation, attempts to introduce major reforms to the Bachelor of Law curriculum, for example, the reduction of the period of study from four to three years and the creation of the five-year-bachelor-plus-master-of-law programme, failed. The main reason of the failure was faculty members’ concern that the changes would not be accepted by the Thai Bar and the Judicial Committee.

Clearly, Malaysia is not alone in facing similar turmoil between the legal industry and legal academia with regards to the declining quality of law graduates who are yet to be “practice ready” when leaving the law school (Singh, n.d.).

In the next part, the article identifies the basic requirements in Malaysia to practise law and examines whether the standards are indeed insufficient to produce quality law graduates.

### **The Road to Becoming a Legal Practitioner: Current Requirements**

For law graduates to practise law, the law faculty must obtain the recognition of the Legal Profession Qualifying Board (LPQB). Section 5 of the Legal Profession Act 1976 (Act 166) determines the qualifications which may entitle a person to become a 'qualified person' for the purposes of Act 166. A 'qualified person' may be admitted as an advocate and solicitor if he fulfills the requirements as set out in Section 11 of Act 166, including serving the prescribed period of pupillage.

Hence, it is critical for those intending to practise as legal practitioners to pursue a recognized law course or program at undergraduate level as it will enable the holder to be eventually admitted as an advocate and solicitor. Such recognition of the law degree by the LPQB will be the prerequisite before a law graduate can embark into pupillage.

Table 1 below illustrates the law program offered by the respective local law faculties which have been recognized by the LPQB (Jalil et al, 2012).

**Table 1 Programmes Offered at the Public Universities**

University	Degree conferred	Recognition Date
University Malaya (UM)	LLB (Hons)	1.6.1977
Universiti Institut Teknologi Mara (UiTM)	Advanced Diploma in Law	17.6.1985
International Islamic University Malaysia (IIUM)	LLB (Hons)	30.6.1987
Universiti Kebangsaan Malaysia (UKM)	LLB (Hons)	18.7.1990
Universiti Institut Teknologi Mara (UITM)	LLB (Hons)	17.10.1996
Universiti Utara Malaysia (UUM)	LLB (Hons)	16.3.2016

By 2016, the number of law faculties in Malaysia remains seven, and that each faculty is located in seven public universities. Since the circular in 2007, there has been no other faculty of law established by the public universities. For private universities, there are many law degrees which usually involve two institutions, or “twinning program” between them and with overseas universities. However, Multimedia University is the only private university whose graduates are recognized by the Legal Profession Act 1976 to go for pupillage after completing their law

degree. Taylor University and HELP University are the other two private universities which conduct the local law program (Jalil et al, 2012).

In December 2011, the Department of Higher Education, Ministry of Higher Education called for a meeting among all Law Deans to discuss on the numerous criticisms about on the performance standard of local law graduates in at public law schools. The meeting was attended by the Deans and Deputy Deans of the schools. At the meeting, the Chairperson, Professor Dr Zarida Hambali, the former Director of Ministry of Higher Education, allocated a special fund for the law schools to conduct a study on the future directions of legal education in Malaysia (Jalil et al, 2012).

The outcomes of the research found several points to be reviewed. The law teachers, the Attorney General, the Bar Council and the judiciary must work together to provide support in terms of expertise and providing constructive ideas in moulding curriculum as well as participating in in teaching and training. It is also timely for the Bar to review the Pupillage program which is viewed by law teachers and newcomers to the profession as the entrance point to legal practice (Jalil et al, 2012). The research also suggested that coordination of the law teachers, the Bar and LPQB as well as the MQA promised a good start towards the strengthening of the legal education in Malaysia (Jalil et al, 2012).

At the same time, competition is also on the rise, particularly when foreign law firms are also practising in Malaysia. This competition emerged after the amendment to the Legal Profession Act 1976 in 2012 that allows foreign law firms to practise in Malaysia as a qualified foreign firm or to partner with a Malaysia counterpart as an international partnership (Jalil et al, 2012). Clearly, globalization necessitates the law school to equip law graduates that are not only competent in English but also, a third language or another international language other than English.

For a local law degree, it needs to be first recognized by the Malaysian Qualifying Agency (MQA) and also the Public Service Department (PSD). Hence, before setting up a new faculty of law

in any public university, a committee comprises of representative of the Bar Council, the Attorney General and academicians from law faculties needs to be established as a prerequisite of recognition process to be made by the Ministry of Higher Learning. Once the “green light” approval is given by the Ministry, the program can be offered to public. Nevertheless, the Ministry of Higher Learning continues to supervise and monitor the numbers of enrolment to the law faculty.

### **Legal Education in Malaysia: A Revamp of the Whole System of a Call For Change?**

Legal education is deeply influenced by globalization (Steele and Taylor, 2010). As a result, there have been movements to improve the current practice of legal education globally (Basedow, 2014). Around the globe, efforts have been taken to rebrand law schools in universities to meet the needs not only from the industry but also from the society at large (Stolker, 2014).

At present, there are various challenges confronting the legal profession and legal education in Malaysia. The challenges range from the quality of law graduates, the changing role of legal education, the emergence of new fields such as nanotechnology and Islamic banking, to the liberalization of legal services and the process of globalization. This can be similarly seen in another developing country such as Vietnam whereby the curriculum in the Vietnamese law schools has been modified to adapt to the contemporary needs (Bui, 2016). The quality of law graduates is determined by the curriculum design.

According to the Malaysian Legal Education Report (2012), in ensuring that the law graduates are fit to face the future challenges, the curriculum design therefore has to take into considerations any new development in the legal fields. Undoubtedly, legal education is the crux to the legal system (Kozuka, 2016). Without eligible lawyers, there will be no efficiency in a legal system that is surrounded by ever changing environment (Kozuka, 2016). This portrays the need for the legal education to be reshaped and reformed (Kozuka, 2016).



Within the Malaysian context, the Certificate Legal Practice (CLP) is the route to practising law if a student graduates from overseas, or from local universities whose degrees are yet to be fully recognized by the Legal Profession Qualifying Board (LPQB). If a student graduates from local law school that has been recognized by the LPQB, he will be exempted from this CLP requirement. Nevertheless, the turmoil began when CLP is alleged by the Bar Council to be insufficient. Instead, the Bar Council proposed for the CBE in creating law graduates that are practice-ready to meet the needs of the current job market. It is claimed that CBE is a viable replacement for the CLP (Azzat, 2006).

The next section explores both CLP and CBE and whether the latter possesses sufficient qualities or features to replace the former. If CBE is a mere repeat of exam-based systems of LLB and CLP, then unfortunately, the answer would not be in the affirmative.

### **The Certificate in Legal Practice (CLP)**

The Certificate in Legal Practice (CLP) was first introduced in 1984. During those times, CLP was taken as a course and examination taken by law graduates from outside Malaysia who failed to meet the entry requirements of the Bar Vocational Course in England, to qualify as a lawyer in Malaysia. Hence, the CLP has been a stopgap measure to assist Malaysians who were not able to sit for the English Bar Final Examinations as they failed to obtain at least a Second Class (Lower Divisions) Honours in their British university law degrees (Husaini and Salleh, 2013). The CLP then became a solution for those who cannot apply to be a Barrister and ended up as another recognized legal qualification to be an advocate and solicitor in Malaysia (Husaini and Salleh, 2013). Later, the CLP became compulsory for all Malaysian holders of LL.B from overseas universities who were not called to the Bar in the UK.

Governed by the Legal Profession Act 1976, it is the Legal Profession Qualifying Board (LPQB) of Malaysia that conducted the CLP course and examination. The LPQB also allows degree holders from certain universities in the UK, Australia and New

Zealand to sit for the CLP. Law graduates from local universities were not required to take the CLP, but were to complete an additional year of practical studies in their respective studies. Upon obtaining the certificate, the student will typically do chambering for nine months, be called to the bar and become a qualified lawyer (Husaini and Salleh, 2013).

The University of Malaya (UM) was the place where the CLP was first formulated and taught, although incapable of coping with the rising number of law graduates every year. To cater to the increasing number of law graduates, two private institutions namely Advance Tertiary College and Brickfields Asia College were brought in and later the UM no longer plays the role as a venue to conduct the CLP courses (Husaini and Salleh, 2013). CLP students are required to take and pass five different papers in one sitting and may not accumulate the results. These five papers are: General Paper, Evidence, Civil Procedure, Criminal Procedure and Professional Practice.

Before 1999, only law graduates from UK and Ireland were required to study for the CLP upon obtaining LLB, unless they completed the Bar course within the UK or Ireland. For Australian and New Zealand graduates, having studied the relevant compulsory subjects during their LLB, they would be called to the Bar in their respective country, and would be regarded as “qualified persons” under Section 3 of the Legal Profession Act 1976. However, after 1999, the qualification rules were amended. The rules also require Australian or New Zealand LLB holders to also pass the CLP exam (Husaini and Salleh, 2013).

### **Proposed Changes to the CLP System**

The legal industry is interested to hire entrants of LLB qualification who are capable to work from day one (Maxeiner, 2009). In other words, the university is expected to provide not only legal education, but legal practice as well. 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 and be replaced with

the Common Bar Course (CBC) and the Common Bar Exam (CBE) (Cheah, 2008).

The Bar Council committee took into account the apparent weaknesses in the Certificate of Legal Practice (CLP) by looking at the “poor quality/standards of law graduates coming into the Bar from both local and foreign universities/law colleges (“Common Bar Exam”, 2009). The Bar Council committee took the view that the CLP is “outdated and does not serve the requirements of the modern-day legal profession (“Common Bar Exam”, 2009).” Some of the shortcomings seen in the Bar Council Ethics and Professional Standards course for pupils include appalling language skills, ethical values and the dismal absence of basic legal skills (“Common Bar Exam”, 2009). The Bar Council viewed these shortcomings as alarming and asserted that urgent measures such as the CBC and the CBE will be necessary (“Common Bar Exam”, 2009).

### **The Governing Principles of the CBC**

The principle of the CBC is that it will function as a single entry point into the legal profession in Malaysia. This is regardless of whether the undergraduate qualification is obtained locally or from foreign law schools.

The basic objectives of the proposed CBC are as follows:

- (1) The focus will be on skills or practical training (as opposed to testing on legal knowledge) to equip the student-at-law for Malaysian legal practice;
- (2) The combination of vocational and academic nature of the training will apply only where necessary. Hence, the CBC will not deal with substantive law as it is mainly covered under the domain of the universities/law colleges;
- (3) The CBC must combine the modern experience of other Commonwealth jurisdictions and the Malaysian’s peculiar requirements (in a fused profession, with the inherent weaknesses);
- (4) The CBC is to prepare the student-at-law for the first two years of practice;

- (5) The CBC should enable the student-at-law to choose to become either an advocate (litigation) or a solicitor (litigation or non-litigation). The student-at-law the option to customise their training in the last two semesters to cater for their choice; and
- (6) The CBC has to deal with some of the shortcomings in pupillage and enhance the training during pupillage.

Under the proposed scheme, the student-at-law will undertake the CBC on a full-time basis in the first three semesters. They will then begin their pupillage and continue with semesters four and five of the CBC on a part-time basis. The proposed scheme therefore is said to provide two benefits. First, it will allow pupils to easily compare the level of training that they are receiving from their masters with their peers. Secondly, if there are weaknesses, “peer-learning” and participation in the CBC programme would provide a safety net. The CBC could be used to deal with these weaknesses.

### **The Proposed CBC Structure**

The proposal for the CBC is that it is to be conducted in five semesters over a period of 20 months (inclusive of pupillage). The first three semesters will entail full-time study and the remaining two semesters will be conducted part-time together with pupillage.

Semesters 1, 2 and 3 will consist of compulsory subjects. In semesters 4 and 5 (where CBC and pupillage would be done simultaneously by the candidate), there would be a mixture of compulsory subjects and electives. As noted earlier, by their choice of the electives, the student-at-law (now pupil) can start tailoring their training to suit their preferred area of practice (litigation or non-litigation).

Moreover, the first three semesters mainly deal with aptitude, ethical values, basic legal skills and core areas of practice (“Common Bar Exam”, 2009). These constitute the bedrock of legal practice in Malaysia so that those coming into the Bar have the necessary qualities. At this stage of the CBC, it is also predicted that there should be the system would sieve out those

who do not possess these fundamental requirements. A “guillotine” would be imposed after each of the first three semesters to achieve these purposes. In other words, we can expect that not all students-at-law would make the grade and complete the CBC.

Another critical aspect of the CBC is the Student Law Office programme (which is in semesters 2 and 3). This entails the students-at-law in the CBC being divided into small legal firms. They will, for all intents and purposes, function as a legal firm in Malaysia and they are to put into practice the legal skills that have learnt (or are learning) in a simulated legal environment.

The CBC subjects in the respective semesters are listed as follows (“Common Bar Exam”, 2009):

Semester 1: Introduction to Malaysian Legal Practice

- (1) Practical Aspects of Malaysian Law
- (2) Legal Interpretation Skills: Constitution, Statutes and Case Law
- (3) Practice Management Skills

Semester 2: Legal Aptitude, Ethics and Practical Skills

- (1) Legal Language and Communication Skills (including IT skills)
- (2) Lawyering Skills and Practical Legal Research
- (3) Legal Ethics and Professionalism
- (4) Business and Solicitors Accounts
- (5) Interviewing and Client Counseling Skills
- (6) Opinion Writing
- (7) Student Law Office Programme

Semester 3: Core Subjects 1

- (1) Civil Procedure
- (2) Criminal Procedure
- (3) Drafting Skills
- (4) Evidence
- (5) Real Property Practice
- (6) Commercial and Corporate Practice
- (7) Student Law Office Programme

Semester 4:

Compulsory Subjects

- (1) Introduction to Advocacy
- (2) Negotiation Skills
- (3) Alternative Dispute Resolution — Mediation

Electives (Choose 4)

- (4) Advanced Evidence
- (5) Advanced Civil Procedure
- (6) Advanced Criminal Procedure
- (7) Advanced Real Property Practice
- (8) Advanced Corporate and Commercial Practice
- (9) Wills and Probate Practice
- (10) Insolvency Practice
- (11) Family Law Practice

Semester 5:

Compulsory Subjects

- (1) Remedies
- (2) Execution/Enforcement Proceedings

Electives (Choose 5)

- (3) Administrative Law Practice
- (4) Advocacy in Criminal Law
- (5) Industrial Law Practice
- (6) Intellectual Property Law Practice
- (7) Human Rights Litigation
- (8) Alternative Dispute Resolution — Arbitration
- (9) Introduction to Islamic Banking and Finance

The above mentioned subjects are not carved in stone. New electives may be included from time to time, to meet the demands of the stakeholders. The proposed system will be compulsory for every person who intends to practise in Malaysia, regardless of foreign or local 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, at least 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.

If implemented, CBC prolongs the period of time of 9 months required in the current process of pupillage. Currently, only law graduates from recognised law schools are allowed to undergo pupillage. These include LLB holders from the University of Malaya (UM), National University of Malaysia (UKM), the International Islamic University Malaysia (IIUM), Universiti Teknologi MARA (UiTM), Multimedia University (MMU) and Universiti Utara Malaysia (UUM).

On 14 March 2016, the law faculty of Universiti Sultan Zainal Abidin (UNISZA) received recognition from the LPQB. Graduates who completed their studies from 2015 from UNISZA are eligible to undergo pupillage (“The LPQB Portal”, n.d.). Law degree of Universiti Sains Islam Malaysia (USIM) has yet to be fully recognized (Husaini, 2012). Unfortunately, only candidates from law schools that are recognized by the LPQB can undergo pupillage. If the law school has yet to be recognized, the students cannot undergo pupillage and cannot even sit for CLP or the future CBE.

This paper suggests that in order to ensure the opportunity to practise, perhaps the Bar Council of Malaysia could set certain standard of procedures of recognition of the degree, before focusing on the CLP conversion to the CBE. In the next section, the article illustrates problems faced by two institutions at the stage of recognition of their degree programs, which, the authors feel that there is a pressing need to address the issue by the Bar Council, before implementing CBE in due course.

### **Standard of Procedure for Recognition: A Missing Link towards Recognition Process?**

There has not been a clear guideline as to what are the specific documents to be prepared for the recognition process. The usual practice however, is that every law faculty is to prepare ten files of procedural subjects; (1) Civil Procedure (2) Criminal Procedure

(3) Law of Evidence (4) Law of Contract (5) Law of Torts (6) Professional Ethics (7) Land Law (8) Conveyancing (9) Bankruptcy and Winding Up of Companies and (10) Law of Probate.

UNISZA and USIM have been working towards LPQB recognition for almost a decade, with substantial resources mobilised to achieve this end (Shukor, Rusli and Tajudin, 2015). The Faculty of Syariah and Law (FSU) of USIM aim to produce law graduates that are well-versed in both Syariah and Civil-within the Malaysian context, civil law refers to the non-religious law. LPQB recognition takes place only after the law faculty was formed. In preparing itself for its first LPQB visit in 2013, FSU has endeavored towards strengthening its legal fraternity by ensuring more than 80% of its academic staff are PhD holders from various legal fields, both local and international law. In addition, the faculty has employed legal practitioners and ex-practitioners to teach at the faculty. All the ten subjects as mentioned above were inspected by the LPQB during their evaluation visits on 18-21 November 2013 as well as 6-8 March 2017. The result of the first visit of 2013 was that a conditional recognition is granted. The report prepared by the LPQB was nine-page in length, and was sent to USIM after eighteen months from the date of the visit. There were recommendations suggested, although somewhat briefly, by the LPQB. The LPQB revisited USIM for the second time in March 2017 and promised for the outcome date to be no later than October of the same year.

The issue of recognition of LLB course is crucial, whether or not the CBC and CBE materialised. If the CBE is later introduced and the FSU law program has yet to be recognised by the LPQB by then, law graduates from USIM will not be qualified for undergoing pupillage, and hence they will not be eligible to sit for the CBE. This definitely would jeopardise their future to become legal practitioners as CLP will be abolished and no longer be available to them. Ultimately, but arguably, Malaysia would eventually suffer from waste of talent and human resource nurtured by its own public-funded universities.



Despite the inability of graduates of USIM to practise as advocates and solicitors due to such pending recognition by the LPQB, the law degree has already been recognised by the Public Service Department. The Public Service Department ratifies that the law program suits basic requirements, but it is the LPQB who grants the recognition of eligibility of practicing law after the completion of the degree. Currently there has been a high prospect for employment for law graduates from these two universities within financial institutions, higher academic institutions and corporate institutions. It is hoped that the LPQB specifies clearer guidelines for any forthcoming law schools established in Malaysia for it will save time and cost when a law school is aware of explicit and clear requirements as to how the assessment for recognition is made. Recognition process can be accelerated and more graduates get to practice as lawyers immediately upon completion of their pupillage.

If the law school lacks certain curriculum element, the LPQB could at least draw guidelines of their expectations, allowing easier process for the law faculty to understand what it is that the legal industry requires from the law graduates, and therefore meeting the high expectations of the industry. This is discussed in the following section.

### **Expectations of the Legal Industry**

It seems that the industry of legal practice expect law graduates to know every single aspect of legal practice from day one the graduates begin their pupillage. In fact, some experienced practitioners require universities to produce students that are ‘practice-ready’. Nevertheless, in most cases, these legal practitioners themselves are to a certain extent confused or unable to explain in detail what ‘practice-ready’ really means as different practitioners define the term differently (Shukor, Rusli and Tajudin, 2015).

Legal practitioners may not be able to expect the university or the law school to complete legal training for them. It is a fact nevertheless that law schools provide legal education and some basic legal training due to constraints of time as law students are required to take up to six or seven subjects per semester.

Malaysian law faculties, be it recognised and unrecognised schools of law have limited means to provide comprehensive legal training that would produce law graduates possessing the skills of an experienced lawyer expected by most practitioners at the moment. It is to be remembered that law schools do not only produce legal practitioners, but also future academics, bankers, administrators, diplomats and the like.

As such, law graduates could only experience hands-on legal training when they undergo pupillage or chambering at legal firms. This is stated clearly in the Malaysian Bar's 'Pupillage' (2002-2008) stated as following:

The object of pupillage is to give an opportunity to the pupil to gain some acquaintance with the work of an advocate and solicitor before commencing practice. The graduate from law school has at least a basic knowledge of substantive and adjectival law but the advocate and solicitor is concerned with the practice of law which is very different from the academic study of law.

It is to be remembered that lecturers are not lawyers and vice versa. Does this mean that academics do not, and cannot, provide legal advice to law firms or clients in addition to their academic responsibilities (as happens for instance in the UK)? Their daily professional routines and job-scopes are not the same. Legal practitioners depend on law lecturers to provide legal education as the Legal Profession Act 1976 prohibits them from engaging on another employment. If law graduates are expected to know everything and to be practice-ready from day one, what are then the purpose of the 9-months pupillage and the relevance of having to seat for CBE? If we observed newly graduated medical doctors, most of them are not 'practice-ready' when they first started their housemanship training in hospitals. They would then have to undergo two-year training before they become qualified doctors.

In a similar vein, a rookie could not automatically become a professional – it takes effort and a lot of legal experience for them to become expert practitioners. There is definitely a start to everything. Perhaps this is the time for legal practitioners who are expecting too much from law graduates to reflect on themselves – were they ‘practice-ready’ when they first began their pupillage ten, twenty, thirty or forty years ago?

Moreover, law schools in Malaysia are also subjected to the requirements under the Ministry of Higher Education and the Malaysian Qualifications Agency (MQA) in terms of curriculum structure including the specification of credit hours and the like. Law schools could not simply introduce new subjects without adhering to the procedures that are set.

There is also a confusion emerged between the Ministry of Higher Education and the LPQB on the encroachment of the professional body to determine the recognition of law schools in Malaysia. What does this recognition actually mean? Will the MQA ever be sufficient as a recognition body? Should the LPQB be concerned only with determining qualified persons after graduation as for purpose of entry into the Bar? Thiru (2008), the President of the Malaysian BAR asserted the following point:

“...the check on quality will not be at the undergraduate level... but at the professional entry level... for entry into the Bar. Thus the final check would be at the entry level into the legal profession.”

One must remember that the underlying philosophy of education differs between universities and the professional bodies. Universities aim at providing the much needed legal education while the professional body’s underlying theme is to meet the expectations of the Malaysian Bar and the needs of clients and society (Thiru, 2011). In contrast with a typical LLB program, what will be more intense at the CBC level is the fact that after each of the first three semesters of the CBC, a “guillotine” would be imposed to sieve out those candidates who do not possess the

requisite qualities of aptitude, ethical values, basic legal skills and core areas of practice (Thiru, 2008).

### **Potential Benefits of CBC and CBE**

At the moment, in order for a Malaysian law graduate to be called to the Malaysian Bar, the only way to go about it is for him or her to obtain an LLB from a recognised law school as this will allow him or her to undergo pupillage. During pupillage, law graduates are required to sit for an Ethics Examination that will determine whether or not they would eventually be eligible to be called to the Bar (“Pupillage”, 2002-2008). Once CBE is introduced, all law graduates during pupillage would have to undergo this examination before he or she could be admitted as an advocate and solicitor.

As a form of examination, the CBE tests the potential lawyers in a vocational way. The Bar Council has proposed for combined approaches of different jurisdictions, such as the UK, Australia, New Zealand, Hong Kong and Singapore with local requirements (Thiru, 2008). It creates another platform of practical training using enabling learning method such as online learning, DVD as well as conventional lecture-seminar methods (Thiru, 2008). This is undeniably a missing element within the typical LLB course offered by most, if not all, law schools.

The difference between CBC and LLB in fact, does not end there. In fact, CBC offers very specific courses such as Practical Aspects of Malaysian Law and Negotiation Skills and Remedies, to point out a couple of examples. The selection of courses is purported to shift the focus of practical training based on experiential learning (Thiru, 2008). This is in line with the spirit of many excellent works on experiential legal education in the United States. The Carnegie Report for instance has proposed for experiential education at the undergraduate level, through legal clinics, externships and course simulations (Katz, 2013). These suggestions by the Carnegie report are executable within the Malaysian law schools, subject to sufficient fundings provided by the government into the relevant Universities. At present, USIM has established a legal clinic in the Faculty of Syariah and Law,

located in USIM main campus in Nilai, Negeri Sembilan, Malaysia.

### **Are CBC and CBE necessary?**

Since the CBE will eventually replace CLP as the medium to enter legal practice, the LPQB should first solve matters pertaining to what are the standards of procedures required for the recognition of law degree of USIM, before they proceed with the proposed framework. This is because the eligibility to CBC and CBE is subject to the fact that the law graduates must come from an LPQB-recognised LLB undergraduate program (Thiru, 2008). The fate of hundreds of law graduates of USIM will be at stake and their plights should not be ignored. The academic staff of both USIM has been well-trained and majority of them are also PhD holders from universities all around the world. In this regard, UNISZA and USIM possess similar status as other recognised law schools in Malaysia like that of UM, UKM and IIUM. To add, some of the academic staff are also ex-practitioners.

### **Conclusion**

Should the CBE be implemented? This question should be answered by looking at the fact of whether or not this new regime could definitely produce 'practice-ready' students. The scenario of legal education and practice in Malaysia would change for the better if the CBE and the CBC could produce 'practice-ready' students. Law schools ought to be consulted by the Bar Council before its proper implementation, and that the contents of the CBC and CBE ought to be published and available online for all law schools to take cognisance of them. There must be a thorough study on the feedback of the stakeholders, which may include universities, the ministries, the industry and members of the public. There must also be a correct and sound co-relation between the problems relating to the quality of legal practitioners at hand and the proposed CBC. Lawyers need to properly define what 'practice-ready' means in order for the proposed implementation of the CBE to carry desirable weight, and avoiding this new regime from being just another cosmetic improvement on Malaysia's arena of legal education. The law faculties

acknowledge the importance of instilling necessary lawyering skills, provided that the legal fraternity too, has to acknowledge the limitations and dynamics of educational institutions. Both educational and legal industries should commit to this understanding, moving towards a positive harmonization of both worlds.

### **Recommendations**

This research has revealed several areas that require immediate action not only on the part of the law faculty but the legal fraternity as well. The law faculty ought to conduct reviews on the program structures, law teachers have to embrace new teaching and learning method and enhance the level of professionalism. There can be wider engagement with the legal industry and more research conducted on legal education as well as training for law teachers.

While the Bar, the Attorney General Office and the judiciary need to work together with the law school to provide support in terms of expertise and providing constructive ideas in moulding curriculum as well as participating in teaching and training. It is also timely for the Bar to review the Pupillage program which is viewed by law teachers and newcomers to the profession as the entrance point to legal practice. The Law Professional Qualifying Body (LPQB) must work together with Malaysia Qualification Agency (MQA) and Law Deans' Council in preparing the standard for evaluation process for the purpose of ascertaining whether a particular law program reached the required standards for their graduates to be recognised as "qualified person" and at the same time streamlining the evaluation process to avoid duplicity in the assessment exercise for accreditation conducted by MQA.

Besides these, there are other areas to explore which includes reviewing the curriculum structure of the law foundation courses, which are the main feeder for law programme, and allowing law teachers to practice law as this will enable law teachers to keep track with legal practice and impart crucial lawyering skills to the students. The coordination of these parties namely, the law

teachers, the Bar and LPQB as well as MQA is a good start to the strengthening of the legal education in Malaysia.

Some of the recommendations formulated from the surveys in the course of the Law Dean Society’s research are:

- i) There is a need to set up a centre for legal education or a joint law school working party to provide for training and ongoing support in enhancing the quality of legal education and to meet the challenges of legal practice and the nation.
- ii) There is a need to review the current law foundation programme that is the main feeder for local law program in Malaysia and align the contents of the program with the required skills and competency of a law graduate.
- iii) It would be appropriate for the law teachers especially those teaching law professional papers to be allowed to practice thus enabling them to integrate the teaching of professional skills in the curriculum.
- iv) There should be a clear demarcation between the role of MQA and LPQB in governing legal education to avoid duplicity. Therefore, there is a need to have a comprehensive and mutually accepted standard of what is required by LPQB in recognising a qualifying law degree for admission to practice.

According to the recommendations made by the Malaysian Dean’s Council, there is a need to establish a Centre for Legal Education (CLE) to improve the teaching and training of law students. There may be a need for a council of law schools to determine the future direction of legal studies in Malaysia in terms of curriculum, teaching pedagogy and required skills.

Staff exchange between law schools should be encouraged to instill standards and harmonization among the law schools. This will also enrich the experience of the law teachers. The expertise of the law professors can also be shared among the law schools. Continuous engagement with all the stakeholders is needed to ensure that the gap between theory and practice is reduced. The CLE can be the platform to pull together the relevant

parties. Too many regulatory regimes such as MQA, LPQB, Ministry of Higher Education and so on, may be causing confusion in trying to meet the different expectation and standards;

### **The Way Forward for Law Schools**

What can the law schools do? The system ought to change, both at the Bar level and the government level, whether MQA or the Ministry standardization of curriculum, but law schools may empower changes in the classroom. For example, and particularly for new universities such as USIM and UNISZA, case study in classroom promotes changes from traditional knowledge-based lecturing/teaching, to more interactive teaching. Arguably, interactive teaching is less efficient, but it can be more effective in terms of helping students understand the complexity and subtlety of legal issues and legal thinking. Case study urges the students to focus on developing fundamental skills of critical reading and writing and professional skills of analyzing facts and interpreting rules (McConnaughay and Toomey, 2016). For example, the Peking University School of Transnational Law has done interactive teaching of “Socratic Method” and hereby the feedback of the students on the method applied (McConnaughay and Toomey, 2016):

The study of...law is something new and unfamiliar to me, unlike any schooling I've ever been through before. The professors use the Socratic method here; they call on you, ask you a question, and you answer it. At first, I thought it was inefficient – why didn't they just give a lecture? But I soon learned that it was not just a matter of efficiency, but a way to educate yourself. Through professors' questions, you learn to teach yourself.

“The most attractive part of STL for me is [the] teaching method, which is concentrated on motivated thinking instead of forced feeding. ... Professors will not say yes or no to any answer; they ask students to think in wider and deeper ways”.

“[T]he Socratic Method...left me with the deepest impression. I got a better understanding of the differences between STL and



traditional Chinese law schools – initiative [and] critical thinking are greatly emphasized at STL...”

McConnaughay and Toomey (2016) stated that this method resulted into STL graduates having “exceptionally high placement and salary success with China’s and the world’s leading law firms, companies and government agencies precisely because of the special value employers place on STL’s dual J.D./J.M. program and the powerful analytical, problem-solving and advocacy skills that accompany its successful completion”. In fact, the demand for STL graduates by leading Chinese law firms is growing rapidly. Although the number of Chinese lawyers remains dramatically lower in relation to China’s population than the number of lawyers in other nations, several Chinese law firms are in great competition for major multinational firms with not only local work, but also sophisticated transnational work.

Chesterman (2016) reiterated that the lecturers are to prepare students for a globalised market with critical and analytical skills, good communication skills- both oral and written with future clients. This is viable if students, both civil and common law jurisdictions are also encouraged to participate in international moot court competitions, for it is the most effective way to train a law student to analyse legal issues, research law or policy, draft written submissions, and make oral submissions (Chen, 2016).

There seems to be many things to be done by the law school that the Bar Council needs to understand. Hence, at the least, the Bar Council ought to provide a clear standard of procedure as to how new and young university such as USIM could go about in preparing for the recognition process, so that its law graduates receive similar opportunity like other local law graduates to practice as lawyers in the Malaysian legal industry. The discussion of CLP versus CBE might continue, but the prerequisite remains: a recognized law degree by the LBQB itself, before entrants can have a brighter future embarking on a new journey. The journey of lawyering, and well-beyond.

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