

***International Business Transactions
With Chinese Characteristics***

***Fostering Cross Cultural Learning Experiences
In the Law***

***Summer Law Institute
At
The Kenneth Wang School of Law
Soochow University
Suzhou, China***

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Summer Law Institute – International Business Transactions with Chinese Characteristics¹

Purpose:

In 2003 we embarked upon a project to create an educational experience where law students from China and the West will come together to learn the basic techniques of problem solving in an international business setting while learning from each other the variations in approach, reasoning and expression which they will confront as lawyers in international practice.

Background:

In 2003 there were approximately 10 international summer law programs hosting foreign law students in China. These were mainly organized by American law schools for their students. These programs followed a variety of formats. Some were taught by the sponsoring school's faculty. Others were taught by a more diverse faculty including practitioners and faculty from other schools. On the whole, the majority of students came from the organizing school with the remainder coming from other American law schools. Some programs provided a Chinese law perspective, on the whole taught by an American faculty. Some included a few Chinese faculty members. Other programs had very little of a China law component. Instead, they were standard law school doctrinal classes. The cultural aspects of these pioneering programs consisted mainly of visiting the standard tourist sites as well as visits to judicial and administrative venues. There was limited interaction with the environment or the people of China.

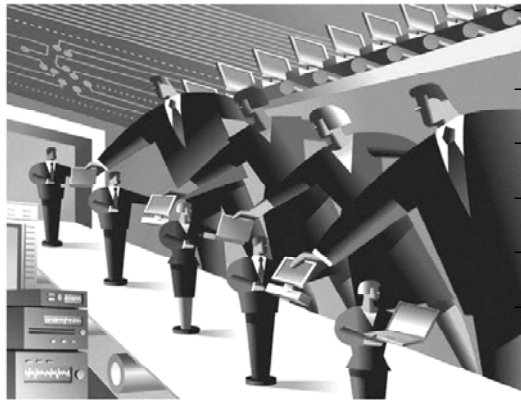
¹ The Summer Law Institute is a multi-institutional undertaking. It is formed by 3 partner schools which are primarily responsible for the administration of students entering the program from their jurisdiction. Cornell University Law School is the American partner, Bucerius Law School is the European partner and the Kenneth Wang School of Law is the Chinese partner. In addition, the institute is supported by four cooperating institutions – University of California – Hastings College of Law, Tsinghua University Law School, Pacific/McGeorge School of Law and the University of Milan School of Law. Each institution provides faculty and students. Financial support for the program is shared by the Wang Family Foundation and the Zeit Stiftung Ebelin und Gerd Bucerius.

While benefiting from the experiences of these pioneering programs, we decided to give special emphasis on fostering a robust cross cultural experience for our Chinese and Western students as well as faculty.² We, therefore, insisted on having a balance of Chinese and Western students. We incorporated Chinese faculty along with Western faculty.³ To force an interaction among the students we divided them into teams maintaining a balance of approximately one half Chinese and one half Westerners on each team. While the language of instruction is English, we presented some materials in our hypothetical package in Chinese. This, once again, forced team members to rely on each other in understanding the problem, as well as working with each other.

Course Structure:

The course is a problem solving exercise based upon a hypothetical international business situation. In the hypothetical, three high-tech companies (Chinese, American and German), each meet at the Shanghai Hi-Tech Trade Show. The students have been hired as summer associates to work in the legal counsel's office of their respective companies. Instructions from the General Counsel are provided as general guidelines of the tasks the summer associates must perform.

You've Been Hired Work Rules



- You've been Hired

Associates in the General Counsel's Office to work for a division of a large company.

General Counsel and other Attorney's are on Summer Holiday.

You've been asked to "mind the store" while they are away.

You will be working in a team of other associates also hired for the summer.

You will be dealing with various business people

You have an opportunity to "hire" experts . However, you will need to keep within a budget. The experts will not give you the answers to your questions, Rather, they will assist in guiding you.

² The Summer Law Institute at the Kenneth Wang School of Law is now the largest and most complex summer program in China. Each year it hosts approximately 100 law students. 50 are from various law schools in China (this past year over 34 Chinese law schools were represented). The other half is split between American law students (this year representing about 14 different American law schools), and European law students (this year representing 8 European law schools).

³ This past year, 2007, the program had close to 30 faculty members in the three weeks. We had our full-time faculty consisting of Barbara Holden-Smith, Associate Dean Cornell Law School, Karsten Thorn, Professor of Law, Bucerius Law School, the authors from the Kenneth Wang School of Law, Leo Martinez, Professor of Law, University of California, Hastings College of Law, James Li, Professor of Law, Tsinghua University. These full time faculty members were the core of the program, tying together each individual unit. The part time faculty would be engaged from periods of a day to a week. They may give a lecture or conduct a class on their specific area of expertise. Some would participate in panel discussions on specific topics. This put faculty and students in the challenging and stimulating environment which results from a high degree of intellectual exchange among the participants.

Each day, students are presented with a new package of materials (emails, contracts, documents, memos, etc.) which lay the foundation for the specific problem of the day. Each day's unit explores a different aspect of International Business Transactions. Each day's morning session is focused on the doctrinal area of law around which that day's problem focuses. During the course of the three week program, the students are presented with 5 separate team tasks. These include drafting a memo, making a presentation to the board of directors, negotiating a joint venture arrangement, drafting a brief, and finally appearing for oral argument before both a Chinese court and an American court. The students work on these tasks in the afternoons and evenings.

Team Structure:

The students are divided into 12 separate teams, each of which represents one of the three companies in the hypothetical. The 12 teams are divided into 6 Red teams (Chinese company), 3 Blue teams (U.S. company), and 3 Gold teams (German company). Each team has approximately one-half Chinese members and one-half Western members. Teams are judged on the effectiveness of their representation of the client. The teams work with, and compete with, each other in negotiations, depth of analysis, client relations, and strategic approaches to issue definition and problem solving.⁴

Pedagogical Rationale:

The focus is not to teach, nor test, the students on substantive areas of law. Rather, it is to familiarize them with the intricacies and vagaries of international legal practice in a hypothetical international business transaction. They will need to develop sensitivity to various issues of law and culture which impact this hypothetical fact pattern. As the course continues, the fact pattern changes, and they will learn how these changes affect their legal analysis. They are forced to work with law students from different legal traditions (civil vs. common) as well as distinct cultural traditions.

We decided on a simulation, problem-solving pedagogy as the one which would lend itself best to foster the interactions we believed would yield the most robust educational results for the participants. Aware of the discourse among legal educators that more than a single pedagogy is needed to educate law students, we employed a variety of approaches in teaching the doctrinal components of the course. Lectures, panel discussions, as well as case-dialogue and Socratic methods were utilized to supplement the written materials in developing the issues in the hypothetical. Company memos and emails knit together a light hearted narrative which moves through each unit providing texture and meaning to the written documentation presented. This "narrative" approach was important to give the students a sense of "real life" practice. The recent concern expressed in current literature about the need to "contextualize" the training of lawyers sharpens the importance of introducing more simulation-problem solving approaches to our law schools⁵.

⁴ In order to ameliorate some of the economic differential between the Chinese and Western students, each team is provided a stipend of RMB 1,000 at the beginning of the institute to spend as they as each team decides. The restaurants, bars and coffee shops on Shi Chuan Street have been delighted by this boost to the local economy. It is a team building device. Another device we used has been a treasure hunt. While a small minority of the western students (particularly a few world-weary, cynical, twenty-something American students) criticized the exercise as "too summer camp", it did provide for team cohesion and enabled each student to coordinate with their team members as well as discover the city of Suzhou. This was a particular hit with the Chinese and European students as well as most of their American colleagues.

⁵ See generally, Todd D. Rakoff and Martha Minow, *A Case for Another Case Method* (Scheduled for Publication in 60 Vand. L. Rev. 587 (2007), and William M. Sullivan, et al, *Educating Lawyers* (2007).

Course Materials:

Students are provided with two sets of materials: 1) background reading materials for each unit, and 2) the hypothetical case materials as the foundation of their assignments. These readings consist of articles, summaries and other reading materials, including short summaries of various substantive areas to provide the students with a general background for each topic. Students are expected to prepare for class by reviewing these materials. The hypothetical materials contain the facts upon which students must base their analyses, and include company profiles, business memos, emails, business plans, sales contracts, licensing agreements, commercial invoices, correspondence, internal memos, etc. The hypothetical materials are distributed during the progress of the course, to be used by the students in analyzing the issues in the hypothetical.

Class:

Each day's class begins with a review of the prior day's hypothetical problem followed by distribution of new factual materials, such as memos, emails, or form contracts from business partners, announcement of new regulations and/or news events. These new materials will set the stage for that day's problem. Each day's new material is added to the students' respective case files. Teams are expected to sit together in class, and are called upon to answer questions or participate in discussions as a team.

After the review and setup for the current day's problem, a very general summary of the relevant legal subject area along with the changing hypothetical fact pattern is presented in lecture, with a panel discussion on the relevant law as it impacts the hypothetical case. The Faculty leads the discussions to compare and contrast the substantive law across different jurisdictions, along with its interplay with the facts of the hypothetical. Faculty act as "expert consultants", making themselves available to teams on some afternoons, as needed. The experts' purpose is not to provide the students with answers, but rather, to assist them in the organization, research and presentation of their work. They will also grade each team's performance.

Teams are called upon to provide their input to the day's lecture and discussion, and student questions and insights are encouraged. Incentives for classroom participation are provided. The purpose of the morning discussions, and the summaries of law, is not to provide answers to the hypothetical, but to provide an overview of the area of law which each team should explore to determine the issues for analyzing that day's hypothetical.

Problem Solving and Team Work:

Using the resources in the case file, as well as information and materials obtained from the resource website, background readings, the library, as well as Internet research, the students will work in teams to prepare the assignments. Students are expected to search the web for relevant statutes, agreements and background materials. To encourage participation by all the students, some of the materials are in only one language: English or Chinese, requiring that the team members work together to find the issues. Some of the materials will have translations, but the translations may or may not be accurate and will require review. Each team has different materials with some overlap, e.g., contracts between two of the companies, etc. Initial analysis and negotiations are based upon incomplete information. At the litigation portion of the

exercise, the students may face US-style discovery requirements, including the need to turn over materials which may compromise their original positions.

The entire multi-cultural exercise, from attending class to preparing assignments with teammates and faculty from other cultures, is intended to encourage the students to confront their own assumptions, and ultimately to realize that the absolutes of values are not absolute, but dependant upon a multiplicity of factors.

Measuring Outcomes

Working with the U.C. Berkeley Culture and Cognition Lab and its director, Prof. Kaiping Peng, we are studying the outcomes of the program over the last four years.⁶ We tested two sets of issues in this study. The first issue we tested was for cultural differences, and how members of different cultures view themselves, their relations with others, and their judgments of legal issues. We examined whether these groups react to cultural values and legal judgments in similar ways. This set of questions builds upon the existing scholarship in the field, and establishes the base line of cultural differences to help us to address the second issue.

The second issue we tested in this study focuses on the effects of cross-cultural interactions and learning: How do culturally diverse people respond to cross-cultural learning? What factors affects the outcomes of cross-cultural learning? By focusing on quantifiable data in this study, we can empirically test some of the most fundamental questions in cross-cultural education.

Informed by the existing scholarship, we predicted that Americans would be more individualistic in their judgments of values and to be more legalistic in their judgments of legal cases while Chinese would be more likely to endorse collectivistic values and to more likely to chose equitable rather than technically correct legal judgments. We also predicted that cross-cultural legal education would fundamentally alter students' value orientations and their ways of judging legal questions, but the magnitude and scores of these effects were the subject of the empirical tests we devised.⁷

For the legal judgment questions, we presented the students with four factual scenarios which represent common examples of legal disputes. The scenarios are designed to approximate varying types of legal cases. All these cases were tested in a previous cross-cultural study on law and psychology (Levenson & Peng, 2004) that had

⁶ We must emphasize that the "results" reported in this paper are very preliminary, as much work still needs to be done in analyzing the accumulated data.

⁷ A 2x2 Culture by Time Between Subject Design was utilized in this study. Both groups received the test before and again after, the cultural training.

Subjects were presented with two forms of questionnaire; both forms were matched to test the same psychological variables in questions. Materials were created in English with consideration for cross-cultural understanding of the concepts. The survey was translated into Chinese and translated back into English by separate translators. The authors resolved the few discrepancies that emerged.

We used the most famous individualism-collectivism scale as a measurement of cultural values (Triandis et al, 1988). Individualism, as a psychological concept, is defined by three behavioral components - emotional distance from one's in-group (e.g., parents, siblings, relatives, etc.), personal goals having primacy over in-group goals, behavior regulation by attitudes and cost-benefit analyses, and little avoidance of confrontation (Triandis et al., 1988; 1990). Collectivism, on the other hand, is defined by family integrity, a homogenous in-group along with strong in-group/out-group distinctions, the self being defined in in-group terms, and regulation of behavior by in-group norms, and hierarchy and harmony within an in-group. Previous research has shown that individualism-collectivism affects people's self-concept, (Triandis, McCusker, & Hui, 1990), conflict resolution, (Triandis et al., 1988), and attribution (Morris & Peng, 1994).

shown cross-cultural compatibility and validity. Students were asked to evaluate a variety of situations.

While the study is continuing, preliminary results confirm the cultural differences found in prior studies, even though the subjects in this study have legal training. American law students were more individualistic in their self-image than their Chinese counterparts. The concentration on self revealed itself in legal judgments made by the American students that tended to assume more individual control of circumstances, and contrasted with the responses of the Chinese students, who tended to assume individuals had less ability to act on individual free will.⁸ Given that base line, we looked at the second issue – the effects of cross-cultural training on our students.

In the Suzhou study, we tested the base line difference between the two cultural groups by examining Chinese students and the American students' responses in a before and after test. We found that before cultural interaction and training, there were indeed cultural differences on individualism-collectivism, such that the American students were measurably more individualistic ($M = 3.73$) than the Chinese students ($M = 3.36$).

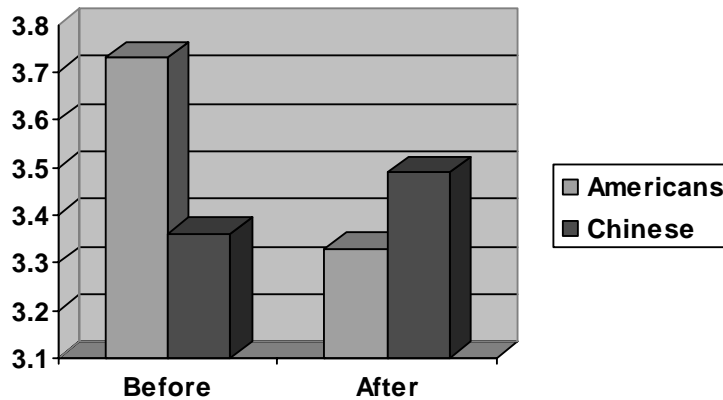
We then tested the cultural difference after the cultural interaction and knowledge training. We found not only that there were changes, but that the difference was somewhat reversed. While both groups had moved towards each other, the American students' responses had become even less individualistic ($M = 3.33$) than those of the Chinese ($M = 3.49$)!

Figure 1 Effects of Cultural Knowledge Training on Chinese and American Students' Beliefs on Individualism

⁸ Once again, we designed two forms for the same kind of legal scenarios. The first kind of scenario involved individual responsibility and the second kind concerned group responsibility. Form A was administered at Time One before cultural interaction and knowledge training and Form B was administered at Time Two after cultural interaction and knowledge training.

The first case in Form A described psychological research indicating that the perceived moral culpability of an actor affects a lay person's causal determination. Mark Alicke conducted studies in order to show that when multiple potential causes are present, people most frequently select the most morally blameworthy cause as the likeliest cause. In Alicke's studies, when presented with a hypothetical fact pattern relating to a car accident, subjects cited the driver (the actor) as the primary cause of the accident more frequently when his reason for speeding was to hide a vial of cocaine than when it was to hide his parents' anniversary gift. Perceivers also consistently selected the actor as the primary cause of the accident despite the presence of other causal factors, such as an oil spill or tree branch blocking a traffic sign. Alicke described this effect as *Culpable Causation*, "the influence of the perceived blameworthiness of an action on judgments of its causal impact."

The second case in Form A teased out cultural differences in causal explanation. In a series of studies testing cultural differences in attribution, Peng and his colleagues (Morris & Peng, 1994; Morris, Nisbett, & Peng, 1995; Peng & Nisbett, 1997) used descriptions of recent mass murders committed by either a Chinese or an American as the stimuli, and asked American and Chinese college students to explain these events. They found that Chinese indeed place more weight on situational, social, and global causes, as compared with American students. Such cultural differences were also shown to exist in people's counterfactual reasoning about the cause and effect relations of mass murders, as well as in the media reports in a Chinese newspaper (*The World Journal*) and an American paper (*The New York Times*). Such findings are significant as well as provocative, because social psychologists and cognitive psychologists have long argued that there is a strong universal tendency for people to attribute behaviors of humans and objects to internal dispositions of an individual or object, which has been called the "correspondence bias." It is well documented that such a bias exists even when situational influences are obvious, leading to the so-called "fundamental attribution error."



We note that the difference between the two groups narrowed by more than 56% (from .37 to .16). This demonstrates a pronounced movement by both groups towards the mean. What was most compelling was the movement among the students – American students’ attitudes of individualism moved three times as much as the Chinese students. We theorize that this large movement owes much to removing the American students from their original environment and placing them in an entirely different cultural setting. The movement of Chinese students to a more individualistic self-perception demonstrates the effects of cross cultural interactions even when remaining in one’s original environment, but interacting with a different population. This measurable change occurred within a three week period of intense multi-cultural interaction. We expect an even greater movement in students who engage in a longer program or have greater opportunities for education abroad programs.

These preliminary “results” will assist in focusing our continuing research. That research will enrich our understanding of how culture and perspectives of law are intertwined. We, as teachers of the law, must inculcate in our students a sensitivity to the vagaries of cultural influence on the legal perspectives and outcomes in this interrelated but diverse world. The research suggests that such a sensitivity can be fostered by intense cross cultural interactions in a simulated real world legal environment where students from different legal and social cultures must work with each other. It is one way of preparing our students for the world they will inherit and shape. It is a beginning.