

Pluralism in Legal Education in Malaysia

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Introduction

Legal education formally began in Malaysia in 1972 with the establishment of the Faculty of Law, University of Malaya. Before that, local students studied their law either in University of Malaya which was then based in Singapore or in England. With the separation of Singapore from Malaysia in 1965, University of Malaya - the oldest university in Malaysia - moved to Kuala Lumpur and later on set up a Law Faculty headed by a reputable professor, the late Ahmad Ibrahim. Apart from studying law either in Singapore or Kuala Lumpur, most local students then studied their law in England and obtained their Bars in one of the Inns. This is understandable since Malaysia was once colonized by the British and common law was much ingrained in Malaysian law. The influence of English law is very significant in Malaysian legal profession and education. Although Malaysia has its own written constitution, however other major aspects of statutory law and judicial precedents are very much influence by English law. That was made possible with the enactment of Civil Law Act 1956 which enable the reception of English law and equity into Malaysia, subject to their suitability with local circumstances.

Law Schools and Degrees

At present there are six public law schools that offer and run law programmes, namely University of Malaya (UM), Universiti Kebangsaan Malaysia (UKM), International Islamic University (IIU), University of Mara Technology (UiTM), Northern Malaysia University (UUM) and Malaysia Islamic Science University (USIM). However only UM, UKM, IIU and UiTM are at present regarded as law schools that produce 'qualified persons' to practice law under the Legal Profession Act (LPA) 1976. UUM and USIM applications for recognition of their degree under the LPA are still under process. There are over twenty private universities/colleges that run law programmes, with the exception of Multimedia University, twinning with foreign universities. The degrees are offered by their foreign partners.

Students graduated from the four public law schools which degrees are recognized under the LPA are exempted from sitting for the Certificate Legal Practice (CLP). CLP was introduced way back in 1984 as an interim measure to enable students graduated from English Universities without Barrister at law to practice in Malaysia. Such interim measure however has become permanent where a good number of students have sat for the CLP.

Content of Law Programmes

The syllabus of law programmes in public law schools is very much reflected by the characteristics of Malaysian law which are pluralistic in nature. Pluralism here refers to a combination of laws that forms a coherent set of Malaysian law. In Malaysia, there is an existence of Common Law, statutory law, Islamic Law and Customary law. The supreme law of the land is of course the Federal Constitution. It dictates the enactment and implementation of other laws, substantive or procedural. The Federal Constitution determines the form of

government and system where in Malaysia there is a Federal and State power. The Federal government has the most power in passing the laws but the States have power dealing with some matters such as religion, land and natural resources. Islamic law is enforced to a limited extent by the States and is only applicable to the Muslims. The Islamic law is enforced by the States' Sha'riah Courts but their jurisdictions are quite limited which basically cover family matters and morality. Customary law or locally known as *Adat* law is also important especially to the States of Sabah and Sarawak. There, customary law governs land matters, family disputes and petty crimes. There is a Customary Court in existence to hear disputes on such matters.

After independence in 1957, as the country marched into the era of modern and industrial development, Malaysian Parliament has passed various statutes. Legislations were enacted and passed to act as the framework of new economic activities related to institutional establishment, intellectual property, telecommunication, information technology, science and so forth. There are also statutes pertaining to consumers, finance, environment and human resources.

All of the above developments are very much reflected in the law syllabus. Law students are required to grasp basic knowledge relating to the combination of law – statutory laws, Islamic law as well as customary law. However, the emphasis on customary law is quite minimal as emphasis is given to statutory laws and in some universities especially IIU, USIM and UKM, the Islamic laws. Islamic law has become important in Malaysia. It started with the implementation of Islamic law in mainly family matters but now Islamic finance has gained a significant place in Malaysian financial activities. Study of Islamic banking or finance has already become part of law syllabus.

Statutory laws and case-law (judicial decisions) form the main syllabus in all the law schools.

Besides acquiring basic knowledge in law, students are also exposed to the methods of practicing the law. Although the aims of the law school in exposing students in this aspect is commendable but there is a challenge in running these courses. Most law schools have to rely on practitioners and being part-timers there have to juggle between their own practicing commitment and teaching at law schools.

An Example of Law Syllabus (University Kebangsaan Malaysia)

Year 1:	Introduction to Malaysian Law
	Introduction to Islamic Law
	Constitutional Law
	Contract Law
	Law and Information Technology
Year 2	Law of Tort
	Family Law
	Islamic Family Law

	Criminal Law
	Islamic Criminal Law
	Islamic Business Transaction
Year 3	Land Law
	Company Law and Partnership
	Equity and Trust
	Public International Law
	Islamic Jurisprudence
	Islamic Banking and Insurance
	Law Attachment
Year 4	Criminal Procedure
	Civil Procedure
	Evidence Law
	Sha'riah Court and Procedure
	Conveyancing
	Corporate Matters
	Legal Ethics
	Negotiation Skills and ADR
	Advocacy and Litigation
	Remedies
Optional Courses	Environmental Law
	Labour Law
	Intellectual Property Law
	Insurance Law
	Corporate Finance Law
	Sale of Goods
	Computer Law
	Consumer Law
	Banking Law
	Cyber Law
	Administrative Law
	Law of Credit

Common Bar Examination

The demand for law degrees in Malaysia is increasing and the number of law graduates entering the legal profession has also increased. At present, there are about 17,000 lawyers registered with the Bar Council. Standards of law graduates also vary and there were also complaints heard about the standards of law graduates of late. Because of that, the Legal Qualifying Board has mooted an idea to introduce a Common Bar Examination (CBE). Attempts were made several times to actualize such idea but until now it has not borne fruit.

In actual fact, the Malaysian Government had agreed with the idea to introduce the CBE based on the cabinet decision on 28 February 2002. "The objective of establishing the CBE is to teach and train students to have the requisite practical skills and knowledge that they would face in the early years of practice as a professional lawyer so that they can serve the interests of their clients and public adequately and competently".

The principal objective of the CBE is that irrespective of universities and colleges that confer the law degrees, the students will have to pass the CBE before they can become 'qualified persons'. To achieve that end, the LPA needs to be amended, first to derecognize all the degrees which are currently recognized and second, to insert the qualification of CBE in the LPA as the only prerequisite to become a 'qualified person'. At present, the demand for law degree recognition for the purpose of being a qualified person, either from local or foreign law schools, is increasing. With the establishment of the CBE, such a problem will be solved where all law graduates will have to undergo the training and pass the CBE.

The CBE will also include legal training in which students will be taught on practical legal matters such as criminal and civil advocacy.

The effort to establish the CBE is not without challenge. The idea was mooted long time ago but until now it has not been successful. The biggest challenge is the financial aspect as this establishment will involve a setting up of a legal institute where over 3,000 students will be trained at the same time. A full time teaching staff are also required to be retained if the training is to be conducted properly. Relying solely on part-timers will hinder the smooth running of the programme.

It is suggested that the pupillage of nine month that is currently in practice now be incorporated in the training period of CBE. Otherwise students will have to undergo a long span of time before they can become a qualified person. Legal profession will not be attractive if students were to spend 5, 6 or 7 years before they can enter the profession. It is also high time for Malaysia to embark on introducing the separate profession of lawyers, where those who do not want to be barristers, may opt for some relevant courses only in the CBE. Finally, there has been no clear stance on the CBE from existing law schools which degrees have been recognized.

**The Three Most Important Features of My Country's Legal System that Others
Should Understand
Mexico**

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Abstract: I. The Mexican Legal System belongs to the Civil Law Tradition and has been influenced by the US Legal System. II. There is a gap between law and reality. III. There is tension on the system to solve legal, political, economic and social issues in accordance with the law.

I. Law in books.

Legal tradition. The Mexican Legal System^{1 2} clearly belongs to the Civil Law Tradition, although it has been highly influenced by the US Legal System, mainly in the area of Constitutional Law.³

Legal structures. Enacted in 1917, the Constitution⁴ provides for a Federal, Representative and Democratic Republic,⁵ composed of 31 States and a Federal District.⁶ It is also characterized for containing a very detailed chapter on human rights⁷ and social rights (e.g. rights of workers).⁸

Federal government. The “Federal Supreme Power” is divided into three branches: the Legislative, the Executive and the Judicial.⁹ The first two are renewed by elections.¹⁰ The Legislative is composed of the Senate and the Chamber of Deputies.¹¹ The Senate

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¹ See VARGAS, Jorge, Mexican Law http://www.mexlaw.com/best_websites/1_introduction.html. See also AVALOS, Francisco and Elisa Donnadieu, An Electronic Guide to Mexican Law, <http://www.nyulawglobal.org/globalex/Mexico.htm>.

² Legal information, in Spanish, may be found at <http://www.ordenjuridico.gob.mx/>. Official websites include: <http://www.camaradediputados.gob.mx/> (Chamber of Deputies), <http://www.senado.gob.mx/> (Senate), <http://www.presidencia.gob.mx/> (Presidency), <http://www.scjn.gob.mx/PortalSCJN/> (Supreme Court) and <http://www.directorio.gob.mx/index.php> (other agencies).

³ Lately, other fields of law have been influenced by the US System, including trade and competition.

⁴ A translation of the Federal Constitution, by Carlos PÉREZ-VÁZQUEZ, may be found at <http://www.juridicas.unam.mx/infjur/leg/constmex/pdf/consting.pdf> (Last updated 2005).

⁵ Article 40.

⁶ Article 42.

⁷ Articles 1 to 29 of the Mexican Federal Constitution. Unless otherwise indicated, references are made to the Federal Constitution.

⁸ Article 123.

⁹ Article 49. See HERNÁNDEZ, Ma. del Pilar, *Division of Powers in the 1917 Mexican Constitution*. Mexican Law Review, Number 2, December 2004. <http://info8.juridicas.unam.mx/cont/2/arc/arc5.htm>.

¹⁰ Article 41.

¹¹ Article 50.

is formed by 128 members, elected to 6-year terms.¹² The Chamber of Deputies is integrated by 500 individuals¹³ who serve 3-year terms.¹⁴ Consecutive re-election is prohibited.¹⁵

The Executive Branch is vested in the President (chief of state and head of government). The President is elected for a 6-year term and may not hold office a second time.¹⁶ There is no Vice President. The President freely appoints and removes Secretaries to the Cabinet.¹⁷

The Judicial Power is vested in the Nation's Supreme Court of Justice, the Electoral Tribunal, the Circuit Courts (both Collegiate and Unitary) and the District Courts.¹⁸

Supreme Court Justices are appointed by the President and approved by the Senate.¹⁹

State governments. Powers not explicitly vested in the federal officers are reserved to the States.²⁰ Each State has its own Constitution, which provides for Legislative, Executive and Judicial Branches.

Judicial review. Federal courts are empowered to exercise jurisdiction over "Amparo" cases. "Amparo" is a native institution. It is a constitutional remedy to obtain relief against violations of constitutional rights committed by any public official (including the Federal or State Legislatures, officials and judges). Notice that relief applies only to the petitioner. Thus, for example, a Federal Law may be declared unconstitutional and not applied to the petitioner but still be applicable to others. The decision serves only as a reference for subsequent cases, not having the same force of precedents in Common Law Systems.²¹

Sources of law. The Federal Constitution is the highest source of Law.²² The President may conclude treaties, with the approval of the Senate.²³ Congress may enact laws, bills and codes in those matters explicitly vested on the Federal Government.²⁴ The President executes the laws enacted by Congress and, to that end, may issue regulations, decrees

¹² Article 56.

¹³ Article 52.

¹⁴ Article 51.

¹⁵ Article 59.

¹⁶ Article 83.

¹⁷ Article 89.

¹⁸ Article 94.

¹⁹ Article 96.

²⁰ Article 124. See CARBONELL-SÁNCHEZ, Miguel, *The federal State of the Mexican Constitution: an introduction to its problematic*. Mexican Law Review, Number 3, June 2005. <http://info8.juridicas.unam.mx/cont/3/arc/arc1.htm>.

²¹ Article 105 provides for other methods of judicial review.

²² Article 133.

²³ Article 89. See MÉNDEZ-SILVA, Ricardo, *Treaty Making, Genealogy and the Constitution Today*. Mexican Law Review, Number 4, December 2005. <http://info8.juridicas.unam.mx/cont/4/arc/arc7.htm>. SERNA-DE-LA-GARZA, José María, *The International Treaty-Making Power and the Division of Jurisdictions in the Mexican Federal System*. Mexican Law Review, Number 6, December 2006. <http://info8.juridicas.unam.mx/cont/6/arc/arc9.htm>.

²⁴ Article 124.

and executive orders.²⁵ *Jurisprudencia* (the ensemble of five consistent decisions relative to a specific point of law, uninterrupted by any incompatible rulings, and rendered by the highest Federal Courts) has a binding effect on inferior Federal and State Courts that are within the geographical jurisdiction of the tribunal that established it.²⁶ General Principles of Law and Doctrine are secondary sources of law. Custom is occasionally recognized as a source of law.

II. Law in action.

The role of the law: the primacy of the law. Both Federal and State Legislatures expressly declare and practice their predominant position as lawmakers. For example, the legislation declares that all individuals must obey the law, and even more, that ignorance of the law does not excuse compliance with it.²⁷ Disuse, custom or practice contrary to the law cannot be pleaded against its observance.²⁸ Judges are subject to the law and bound by its wording.²⁹ All the aforementioned elements may lead to the conclusion that Mexican society must function in accordance with the rule of law.

The gap between law and reality. Few examples will suffice to conclude that this is only a formal expression of the theory of the Primacy of the Law, but there is a great distance between the law as it is enacted and its application:³⁰ 1) The Federal Constitution is “rigid”.³¹ However, it has been amended 7 times only in 2007.³² 2) States are free and sovereign to organize their internal regimes,³³ but traditionally State Civil Codes were identical to the Federal one. 3) The Federal Constitution contains very detailed provisions on human rights in criminal proceedings.³⁴ Nevertheless, Amnesty International asserts “*Leyes, pero no justicia*”.³⁵ 4) “Men and women are equal under the law.”³⁶ Nonetheless, Human Rights Watch insists that “violence against women is a major problem in Mexico.”³⁷ 5) Individuals have the constitutional right to be educated.³⁸ Yet, OECD states that “around 40% of Mexican 15-year-olds in 2003 had

²⁵ Article 89.

²⁶ Articles 192-197B, *Ley de Amparo*.

²⁷ Article 21 of the Federal Civil Code.

²⁸ Article 10 of the Federal Civil Code.

²⁹ Article 14 of the Federal Constitution and Article 19 of the Federal Civil Code.

³⁰ See VALADÉS, Diego, *The Rule of Law as a Cultural Problem (The Case of Mexico)*. Mexican Law Review, Number 5, June 2006. <http://info8.juridicas.unam.mx/cont/5/arc/arc8.htm>.

³¹ Article 135.

³² See http://www.diputados.gob.mx/LeyesBiblio/ref/cpeum_crono.htm.

³³ Article 40.

³⁴ Articles 14, 16, 17, 18, 19, 20, 21, 22, 23.

³⁵ <http://web.amnesty.org/pages/mex-070207-action-esl>.

³⁶ Article 4.

³⁷ http://hrw.org/reports/2006/mexico0506/6.htm#_Toc134005773.

³⁸ Article 3.

literacy skills below the minimum levels required for normal functioning.”³⁹

III. The Legal System’s tension.

Tension exists on the system and its institutions to face and solve important legal, political, economic and social issues according to the principles of a modern constitutional democratic state.

Emergence of the Supreme Court. In the book, the Federal Constitution establishes a separation of powers. In reality, the Executive has traditionally been the dominant branch.⁴⁰ Reforms implemented since 1989 have opened the Mexican political system. Opposition parties have made historic gains in elections at all levels.⁴¹ In the middle of this political conundrum, the Supreme Court has heroically emerged as a neutral referee in conflicts between powers and levels of government. A member of the Supreme Court concludes: “Conflicts that in other times were solved through vertical political controls, today, under the impossibility to convene or dissolve in the political arena, find solution in this Court.”⁴²

Federal-State legal issues. With this political scenario, where different political parties rule in different States, important changes are now being introduced in the way the Federal and State Governments interact: 1) New forms of marriage and family relationships are appearing in certain State Civil Codes, which is leading to new problems in domestic conflict of laws. 2) Federal authorities challenge States’ powers to legislate in certain issues. 3) States are deeply changing procedural laws in order to incorporate the use of oral and adversarial proceedings, which is putting pressure on the Federal Government to promote the modernization of federal laws by introducing oral trials. 4) States initiated a firm movement to press the Federal Government to amend the Constitution in order to adopt clear principles on transparency and access to information.

Pending social and economic issues. As a paradox, exactly on the same day that the North American Free Trade Agreement entered into force, poverty and social inequality led to the popular revolt headed by the Zapatista movement (an armed revolutionary group based in Chiapas, one of the poorest states of Mexico). More than 10 years later, “poverty rates remain high, as does income inequality. According to World Bank estimates, over 45 percent of National population was living in moderate poverty in 2005. For extreme poverty, the total was 18 percent.”⁴³ World Bank states that to secure strong job creation and significantly reduce poverty, the country needs to carry out specific structural reforms needed to accelerate growth.⁴⁴

³⁹ <http://www.oecd.org/dataoecd/51/59/38120467.pdf>.

⁴⁰ For more than 70 years, Mexico's presidential elections were won by the candidates of the official party, PRI.

⁴¹ <http://www.state.gov/r/pa/ei/bgn/35749.htm>.

⁴² GUDIÑO-PELAYO, José de Jesús, *The Supreme Court's Participation in the Construction of the Mexican Democratic Model*. Mexican Law Review, Number 4, December 2005. <http://info8.juridicas.unam.mx/cont/4/arc/arc5.htm>

⁴³ Mexico Country Brief, <http://web.worldbank.org/>.

⁴⁴ <http://web.worldbank.org/>.

Even if to a foreign eye the Mexican Legal System may seem similar to that of other nations in the developed Western Hemisphere, there is still much to be done to ensure the full observance of the rule of law.