

LEGAL EDUCATION IN LONDON AND IN  
THE FACULTY OF LAW, UNIVERSITY OF MALAYA

( Jaginder Singh, NERACA, 1972/73, Vol. 1, p. 31 )

The first thing that struck me while studying in London was that the average English student was so much better informed than the average Malaysian student. He is more aware of the happenenings around him and he generally takes an active interest in political and social matters. Secondly, the average English student is far less book-oriented and more especially, less examination-conscious than his Malaysian counterpart. Furthermore, the pace of teaching and studying is very much faster than in Malaysia.

After my 'A' Levels, I was admitted to King's College, University of London, as an internal student. London University has two categories of students -- internal and external students. Internal students are those who are admitted by any one of the Schools or Colleges which form the University of London. Thus King's College, the London School of Economics, University College, Imperial College, Queen Mary College etc. are all Colleges which form part of the University of London. Each college will admit a student of its own accord and conduct its own examinations independent of the other colleges. However, the degree ultimately conferred is a University of London degree. External students, on the other hand, are admitted directly to London University and do not belong to any particular college. The University does not provide courses for external students and they are left to look for courses themselves.

However the University does set external examinations. Indeed it is possible to acquire a University of London degree without even having set foot in London. The University of London LL.B course, internal or external, stretches over a period of three years. Four subjects are covered each year. The first year is called Intermediate, and the second and third years, part I and part II, respectively. Henceforth, my comments shall be restricted to the internal degree as offered by King's College. It is not unusual for different subjects to be dealt with in each year in the different colleges of London University.

The subjects available for the Intermediate at King's College are Constitutional Law, Criminal Law, Elements of the Law of Contract, and the English Legal System. For Part One, the subjects available are the Law of Torts, Law of Trusts, English Land Law, and any one of a number of options including Law of Evidence, Succession, Family Law, etc. For Part Two the only compulsory subject is Jurisprudence and Legal Theory. The student is left free to choose any three out of twenty optional subjects.



The examination in all three years takes the form of one three-hour paper per subject. The basic course structure for the other University of London Colleges is the same as that of King's College except that the subjects offered may be different. For example, at the London School of Economics, there are six subjects in the first year, two of which combine to form one separate paper. These subjects deal with Economics and Politics.

In comparison, the Faculty of Law in the University of Malaya offers Malaysian Legal System, Law of Contract, and the Law of Torts for the first year; Criminal Law, Family Law, Constitutional and Administrative Law and Land Law for the second year. Law of Associations, Criminal Procedure, Evidence, Commercial Transactions Equity and Trusts, and two out of four optional subjects in the third year; and finally Jurisprudence, Civil Procedure, Administration of Estates, a project paper, and three out of seven options in the final year.

In my opinion the courses offered by our Faculty, particularly in the first and second years should be reorganised. Hence, in the first year Constitutional and Administrative Law should replace the Law of Torts, which should in turn be transferred to the second year. This is because firstly, the Law of Torts is a very abstract subject which students who have never before been exposed to any legal subject may encounter difficulty in fully comprehending. No doubt it is true that most students find the Law of Torts to be a most interesting subject, but interest is no substitute for an in-depth comprehension and appreciation of the subject. Indeed, if the Law of Torts was a second year subject, after a year of exposure to the study of law, that very same interest in the subject would be a considerable boost in encouraging the students to conduct their own research and achieve a better understanding of the subject; for out of all the subjects, this is the one which develops the most from day to day, and the one in which most original thought is required. This view is further enhanced by the fact that the results of the Tort paper in the final examination this year at the University of Malaya are very poor indeed. Few students discussed the cases and ventured to express an opinion in the regions of the law where the cases have cast a penumbra which leaves considerable scope for discussion. There appears to be a singular lack of originality in the answers.

Looking at the matter from the Constitutional and Administrative Law point of view, I feel that Constitutional Law is fundamental law, the very basis of the acts of the Judiciary, Executive, and the Legislature. Students should know and appreciate the Constitution governs, in the final analysis, all legal activity and therefore it is of the first importance to know exactly what the Constitution is all about.

From yet another point of view, at the present time, in the first year only the Law of Contract deals with statutory interpretation in any depth. Malaysian Legal System superficially covers everything, and the Law of Torts is almost wholly a Common Law subject. On the other hand, Constitutional and



Administrative Law and Land Law deal almost wholly with statutes, whilst Family Law, (once the Reform (Marriage and Divorce) Bill is passed, like Criminal Law, will also deal with statutes to a large extent. By transferring Constitutional and Administrative Law to the first year and bringing the Law of Torts into the second year, the distribution of Common Law study and statutes will become more even.

Turning to the third and fourth year courses offered by our faculty, in my opinion, the options available in the third and fourth years should be put together and the student be free to choose any one out of eleven optional subjects in the third year, and any three out of eleven optional subjects in the final year. The argument against this is of course that in the third year there is considerable overlap in the present four optionals, i.e. Islamic Law overlaps with Customary Law, and Comparative Law overlaps with Conflict of Laws. So, if all the optional papers are put together the student will be able to take for example, Conflict of Laws in the third year and Comparative Law in the final year and so will be doing much the same thing for one subject in the final year as he did in the third year. This however is an argument which will fall flat on its face if the subjects are taught with different emphasis and from different points of view. Comparative Law can be made a more specialised and detailed course than Conflict of Laws. As regards Islamic Law and Customary Law in my opinion there is little overlap, if any. Customary Law covers a much wider field and can be geared to Customary Law other than Islamic Law, or such Islamic Customary Law as is not dealt with in the Islamic Law course itself. Customary Law as such should cover Chinese and Indian Customary Law, and the Customary Law of East Malaysian. Furthermore, one of the very objects of setting up the Faculty of Law, as stated by the Board of Studies, is to promote the study and research of Malaysian, particularly Customary Law.

Furthermore, if all the optional papers were put together a student would have more scope, both for diversification and for specialisation. Hence, it would then be possible for a student to do an International Law subject, and a Customary Law subject, or, alternatively, if he wished to specialise in International Law, he would be able to do all three International Law subjects, namely Conflict of Laws, Comparative Law, and Public International Law. He would also be able to specialise in Commercial Law and related fields by doing Revenue Law, Banking and Negotiable Instruments, and Insurance and International Business Transactions.

As regards the method and standard of instruction in King's College, the basic system is that of lecture and tutorial. There are two lectures and a tutorial per subject per week, and this applies to all subjects. However, when the number of students for a particular optional subject is very small, then instead of lectures and tutorials there are seminars.



The standard of instruction varies considerably from one lecturer to another, but on the whole the standard is quite high. However, I must say that no matter how good the lecturer is, the lectures are inevitably incomplete. The teachers expect the students to do the basic groundwork themselves and they refer to the basic principles only so far as is necessary to bring home a point. The average student spends much of his time in the library following up what the lecturer has said. Most students read the law reports and any articles they are referred to. They do not rely on the lecturer's summary of a case or article as this is usually incomplete and highlights only certain points. Indeed, the lecturer expects the student to read the original sources for himself.

In this respect there is, regrettably, a striking contrast between the average student in London and the average student in our Faculty. Only a minority of our students read the law reports in any depth and do the basic groundwork themselves. Hence the lectures have to be restricted/basic principles, the lecturer not having an opportunity to discuss the controversial or interesting aspects of the subject. Furthermore, the students expect the lecturer to lecture at almost dictation speed. A lecture should in fact be at a little less than conversation speed, with the students listening most of the time and taking down the main points and references so that they can follow up on the lecture later on in the library.

There is also too much spoon-feeding of the students in our Faculty. There is a considerable mass of material printed for the student, most of which is in fact reproduction of cases and other material which is readily obtainable in the library. Hence the students tend to rely only on such material and do not take the initiative to do any research of their own. However, I have no criticism about the publishing of materials on subjects on which there are no other sources, for example Professor Ahmad Ibrahim's Malaysian Legal System, and Nik Abdul Rashid's Land Law and Administration mimeographs.

The argument normally put forward for the printing and distribution of cases etc. by the Faculty is that there are insufficient law reports to go around in the library. This is a fair argument, but this shortage is rapidly being overcome, and it is my hope that students, even if they have the printed materials, will also refer to the library and go beyond the bounds of the printed material and lecture.

The one difficulty that our Faculty faces which does not arise in England is that whereas the London University degree is wholly an academic one, the degree that will be conferred by our Faculty will also satisfy the minimum requirements for its holder to be a "qualified person" for the purposes of the Advocate and Solicitors Ordinance. So we have to train our students not only as academicians but also as professionals.



"In Malaya, the view was adopted at the start, and has continued to be held, that the pulls of the academy and profession on legal education are far from opposed. There are differences in direction, but these are largely, even if not entirely, unimportant. Whether a law school is to be 'practical' or 'academic' might to some extent influence the choice of subjects to be taught and the way they are taught. The alleged difference that the practising lawyer is concerned with the law as it is whereas the academic is concerned with what it ought to be is, however, illusory. Academic lawyers and law students must be thoroughly familiar with the authorities as they stand and the technicalities of the law before they can carefully investigate on a sociological and philosophical basis propositions as to what the law ought to be. Conversely, the function to advocates and the judiciary is creative. They are constantly, though in piece meal fashion, changing what the law ought to be into what the law is."

(Extract from University of Singapore, Papers on Legal Education No. 4, "Legal Education in Malaya" by H.G. Colvert, P. Coomaraswamy and L.A. Sheridan.

Our Faculty has taken a number of steps to resolve any conflicts that might arise between the academic and professional pulls. Firstly, a Board of Law has been set up, the terms of reference of which are: 'To consider generally questions relating to teaching and research in law in the University and their relation to the requirements of the Legal profession and the needs of Malaysia.' Secondly, in order to encourage students to think in practical terms, moots are compulsory for all students in the second and third years, and finally, to show what the practical side of law is like, students will be attached to Judge's chambers, legal practitioners, in the legal departments of government offices, etc. during the long vacation. This will be on a voluntary basis in the first year, but will be compulsory in the second and third years.

Finally, at the end of the course, students who wish to go into practice will have to attend a three-month Practical Post-Finals Course which is now conducted in the University by practising members of the Bar. This course may be done simultaneously with the six-month pupillage period required before a student can be called to the Malaysian Bar.

Moving on to the LL.M degree offered by the University of London, this degree can be done by course-work and examination in four subjects, or by course-work and examination in three subjects and a paper in one subject. A student is free to choose any three out of forty-three subjects. The courses for the LL.M. are conducted on an inter-collegiate basis so that a student registered at any one of the University of London colleges can attend classes in any other college where that particular subject is taught. However in order to secure registration in any college, the student is required to do at least one subject with that particular college.



The classes for the LL.M course are usually small and they are conducted on a seminar basis of between 1½ to 2 hours per class. The students play a prominent part in the class and discuss with the lecturer, the issue at hand. Unlike the formal lectures at LL.B level, the dialogue in the LL.M classes is not one-sided.

Coming finally to the professional legal education courses, it is necessary to point out that in the United Kingdom, the legal profession has two branches in that, a practitioner is either a Solicitor or an Advocate. Each branch provides its own courses and holds its own examinations. Solicitors are catered for by the Law Society, which holds classes and conducts examinations. I have had no experience of the Law Society and shall add no more about the education offered by them.

The Law students wishing to become Barristers are attended to by the Council of Legal Education which was set up by the four Inns of Court, namely Inner Temple, Middle Temple, Lincoln's Inn and Gray's Inn. Before a student can do the courses at the Council of Legal Education, he must first be admitted to one of the Inns of Court. Upon admission he must register with the Council of Legal Education and pay the appropriate fees in order to attend the classes.

The course is divided into Part One and Part Two. Part One is in turn divided into Section A and Section B, each of which consists of three papers and the student must pass all three papers at one sitting, or at least two and be referred in one before he can proceed to the next section. Upon successful completion of Part One, the student can then proceed to Part Two. There are three compulsory papers in Part Two namely, General Paper I, General Paper and Criminal and Civil Procedure, and three optional papers. General Paper I consists of Criminal Law and Tort, and General Paper II consists of remedies for breach of Contract and Trusts. The interesting point to note in the General Papers is that they are not usual type of examination papers. The candidate is required to answer two of the four questions set. The answer to the question usually takes the form of counsel's opinion, and then the student has to draft the appropriate documents, e.g. a Statement of Claim, a Defence, an Originating Summons, an Indictment, or other such like document.

I must say that the conditions prevalent in the Council of Legal Education are abysmal. The Council does not have a library of its own which students can use. The student has to use the library of his own Inn of Court, but this is often an inconvenience as the Inns are situated some distance away from the Council. Thus, if a student has two hours between classes in between classes he wastes anything up to an hour walking to and fro between the library and the Council. Also, the classes are far too big and frequently a good proportion of the students have to sit in a different room from which the lecturer is lecturing, and have the lecture relayed to them by microphone. Finally the canteen facilities are extremely poor. With all these factors put together and the general atmosphere of the place, it is little wonder that the failure rate is so high.



The most striking difference between legal education in London and in our Law Faculty is that there is a long standing tradition in the teaching and practice of Law in London. This creates an aura in which the student is enveloped, and this, in some strange way, actually helps the student. This is a feeling that must be experienced and cannot be described. Also, due to this long tradition, the facilities for studying law in London are outstanding. One can locate any book and material on any topic one desires. There are also the living contemporary authorities who are easily accessible and who are fascinating to listen to, and for those who are interested in advocacy one can see the finest barristers in the country in action in the courts. The sight of the wheels of justice and of the law-making process actually grinding rubs off onto anybody interested in the law, and one feels that one is actually in the midst of the development of the law and not that the development is being handed down to one. But having said this, I must add that although our Faculty is in its infancy, it is nevertheless developing very rapidly. The facilities available for a new faculty are extremely good. Although our library is by no means complete, for a new faculty it is in fact very good, and no doubt over the coming years it will grow very rapidly. I dare say our students have got little to complain about, and I for one would certainly recommend that any Malaysian who wished to do law should in the first place seek admission to the Faculty of Law in the University of Malaya.

#### 'Legal Scholar' and Legal Technician

A law student who seeks to adapt to a traditional legal education must at the outset exchange for his mind the notion that a law school is a place where he merely imbibes and eats up rules which he must know and apply mechanically. It is not too far-fetched to label those who mechanically retain such a notion as "legal technicians". At this juncture, I would like to make a request to an examination. I am not denying the importance of "bookish" training in legal education. But I do wish to state that it should be the sole objective of a law school. In order to distinguish those who perceive a more dynamic role for a law school from those legal technicians, I shall employ the label of "legal scholar".

A legal scholar is one who must start with a belief that the function of a law school is merely to churn out "legal technicians". In the words of a close friend, "He differs from a legal technician in that he is not merely applying rules of law to a factual problem but is able to question the validity of the rules of law which he is applying. He does not get lost with understanding legal concepts all time mind of law as found in legislation. Technical people, Customs, etc., which involves the "corpus" of law. He must also ask himself whether the law has functioned as a dynamic force in the development of the country. He must also be able to question the law of the country. He must also be able to question the law of the country."