

# PREFACE

Legal education systems are undergoing changes as globalization progresses. In the case of Japan, after a new law school system was established in 2004, major law schools introduced legal education programs that included international exchange programs and classes and seminars taught in English. We have achieved results to some extent, but most of the international legal education in Japan depends on outbound programs, such as exchange study programs in law schools in the U.S. From the view point of fostering global legal education, Japanese legal education is lagging behind.

This is why we launched joint legal education programs with our partner universities in Mekong region countries. The uniqueness of this program is that we share the issues confronting our partner universities as a result of their historical, geographical and cultural backgrounds. We call this the Program for Asian Global Legal Professions (PAGLEP). PAGLEP aims to foster global legal professionals who can take strong leadership in finding solutions to legal issues occurring in globalizing societies.

We are doing research on how we can improve legal education in Asia. This book is the first compilation of our research activities and introduces comparative legal education in the Mekong region countries of Vietnam, Cambodia, Laos, Thailand, and Myanmar, as well as Japan. I hope this volume will become the basis for strengthening our collaboration and expanding our network into the future.

Naoya Katayama

Dean, Keio University Law School

31 July 2017



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# INTRODUCTION

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# WHY AND HOW SHOULD COMPARATIVE LEGAL EDUCATION BE PROMOTED IN AN ASIAN CONTEXT?

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Hiroshi Matsuo\*

(Keio University)

## 1. The Significance of Legal Education in Asia

### 1.1 Why Does Legal Education Matter in an Asian Context?

Legal education is a vital component of a working legal system. Like breathing life into a machine, legal education gives life to formal legal institutions by characterizing the functions and features of the national legal system. Diverse forms of legal education explain why different countries have different legal systems even though they are closely located in the same region and adopt the same or similar political and economic systems. This means that comparative legal education is worth promoting because sharing the theories and practices of legal education in content and method and their outcomes should be mutually beneficial for improving our legal systems.

The drafters of laws and regulations of a state are fostered through the pro-

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\* This article is based on the introductory note presented at the first meeting on comparative legal education in the Mekong countries and Japan held on March 4, 2017, at Keio University Law School (for details see <http://keiglad.keio.ac.jp/en/>). I wish to gratefully acknowledge the kind cooperation of Professor Keigo Komamura, Professor Naoki Kanayama, Professor David Litt, and Professor Hajime Yamamoto.

cess of legal education in that state. Legal professionals such as judges, prosecutors, and lawyers who are engaged in the interpretation of law and its application to specific cases are also trained by the same or different legal education programs. They constitute together a structural element of the country's legal system that will produce a variety of substantive element of law in society<sup>1</sup>. Government officials, the legal division staff of companies, human rights advocates and social reformers may also be conservatively or progressively influenced by what they were taught in classrooms dealing with subjects of law. It is indicated that lawyers who are trained in a dysfunctional legal education system are seldom a progressive force for legal reform, while changing legal education from a controlled and formalized system to a more autonomous and pluralistic program tends to lead to social reforms led by the legal professions<sup>2</sup>. This indicates that the content of law curriculum and adoption of pedagogical method in legal education programs are crucial for politically and economically changing Asian societies where legal reform holds the key to sustainable development.

In addition, the legal professions are the intermediaries between the judicial system and the ordinary citizen. Their role is critical in developing Asian societies where the justice system is on the way of restructuring. In this context, legal education appropriate to the situation is indispensable to strengthen the legal capacity of civil society and to foster a culture of lawfulness in society which is considered the spiritual basis for promoting the rule of law<sup>3</sup>.

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<sup>1</sup> The substantive element is the output side of the structural element, which is influenced by the cultural element (Lawrence M. Friedman, "Legal Culture and Social Development," *Law and Society Review*, vol. 4, 1969-1970, p. 34). If I use this analytical framework of a legal system, legal education is an empowering component of the structural element and is profoundly influenced by the cultural element. However, it does not neglect that the substantive element such as laws and regulations are used in legal education and are also influenced by the cultural element.

<sup>2</sup> Michel J. Trebilcock and Ronald J. Daniels, *Rule of Law Reform and Development: Charting the Fragile Path of Progress*, Edward Elgar, 2008, p. 306.

<sup>3</sup> Roy Godson, *A Guide to Developing a Culture of Lawfulness*, 2000; National Strategy Information Center, *Building a Culture of Lawfulness: A Guide to Getting Started*, 2011.

The role of lawyers and other legal professionals is also becoming important in globalizing Asian markets. As a result of the rapid increase of domestic as well as foreign investments, not only has the number of conflicts been increasing but the problems that need to be addressed are becoming more complicated, involving environmental, public security, and other global issues that have become more and more evident in Asian societies. In these circumstances, legal education needs to be revamped so as to treat these issues from a long-term and globalized perspective.

## 1.2 Emerging Networks of Legal Education in Asia

The sharing of information about legal education has facilitated international networks of legal education in various parts of the world to everyone's benefit. For instance, interregional cooperation among law schools and the alignment of curriculums in Latin American law schools under the MERCOSUR Regulation, led to the emergence of a common market in legal education.<sup>4</sup> The European Community Action Scheme for the Mobility of University Students (ERASMUS) has provided programs to enhance cooperation between law schools and developed transnational legal curriculums that allow for the mutual exchange of students and teachers among law schools in the European Union and in countries associated with the EU.<sup>5</sup>

In the Asian region, the ASEAN Law Association was established in 1979. It has supported collaborative work among judges, law teachers, law practitioners and government lawyers to understand and harmonize laws in this region. In 1988 it organized the Workshop on ASEAN Cooperation in Legal Education and sought to identify existing obstacles to closer cooperation in legal education among ASEAN countries, such as the differences in education systems, curricula, university calendars, time schedules, languages, required standards for admission, etc., as well as travel expenses, and inadequate information exchange

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<sup>4</sup> Trebilcock and Daniels, *op. cit.* (n. 2), p. 293.

<sup>5</sup> Trebilcock and Daniels, *op. cit.* (n. 2), p. 295.

and communication among law schools in the region.<sup>6</sup>

There is, as well, the potential for other collaborations in comparative legal education bridging East Asian countries with ASEAN countries that are not only compatible with the existing networks but also necessary, because they will provide a new perspective on the dynamic *changes* in legal education, for instance, the change that takes place in the development process from emphasis on memorizing blackletter laws to interpreting law. This will create, I believe, a new dimension of comparative legal education.

### **1.3 Legal Education As a Component of Legal Cooperation among Asian Countries**

Reform of legal education has been a key aspect of legal assistance activities in Latin America and Africa since the Law and Development Movement emerged in 1950s<sup>7</sup>. The Law and Development Movement declined in the 1970s, but legal education became the focus of legal assistance activities again when the Law and Development Movement was revived in the 1990s, triggered by market reforms in Central and Eastern Europe<sup>8</sup>. For instance, the American Bar Association has been providing legal assistance in law school reform, and the World Bank has been investing in legal education in order to change the attitudes and behaviors of lawyers and citizens. The legal assistance in the field of legal education has mainly focused on curriculum development, support for textbook writing, establishment of legal clinics, provision of scholarships for students to receive law degrees, etc. Also in the Asian region, the strengthening of legal education is recognized as the second step in legal cooperation following legislative reform. The main focus, however, has been on training programs for legal professionals, such as judges, prosecutors and lawyers, rather than on legal education in uni-

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<sup>6</sup> Sunaryati Hartono (ed.), *ASEAN Cooperation in Legal Education*, the National Law Development Agency, Jakarta, Indonesia, 1989, p. 18.

<sup>7</sup> Trebilcock and Daniels, op. cit. (n. 2), pp. 279-281; John John H. Merryman, "Comparative Law and Social Change," *American Journal of Comparative Law*, Vol. 25, 1977, pp. 457-458.

<sup>8</sup> Trebilcock and Daniels, op. cit. (n. 2), pp. 279-281.

versities<sup>9</sup>. It has become evident that effective outcomes in the training for legal professions cannot be achieved without basic legal education at the university level. The challenge for us is to find how to improve legal education with more streamlined programs that can be effectively linked to professional training.

## 2. Theoretical Perspectives on Comparative Legal Education

### 2.1 Legal Education As a Component of the Legal System in Governance Structure

Legal education determines the basic nature of a national legal system by producing legal professionals who will constitute a structural component of the legal system<sup>10</sup>. Thus, the features of a country's legal system are profoundly influenced by the patterns of legal education.

At the same time, legal education is also influenced by the governance structure of the state which closely relates to government control of legal education and the positioning of law schools and university law faculties in the political structure. The political intervention of legal education can lead to corruption in law school admissions and student grading, and the implanting of conservative dogma can lead to the churning out of conformists.

In its tense relations with political structure, legal education is required to keep a balance between legitimacy on the one hand and independence and accountability on the other<sup>11</sup>. In the governance structure of a state, law cannot be separated from politics, especially in the implementation process of development policy, but we are now experiencing in many parts of the world too much politicization of law which is weakening the forces of law, which in turn affects eco-

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<sup>9</sup> Public Policy Department, Japan International Cooperation Agency (JICA), *Capacity Development for Legal and Judicial Sectors in Developing Countries: JICA's Cooperation for "Rule of Law" Promotion*, JICA, 2009.

<sup>10</sup> See note 1 above.

<sup>11</sup> Trebilcock and Daniels, pp. 305-306.

conomic and social development. In these circumstances, the forces of law need to be backed by the force of *reason*, and to do this there must be a strengthening of the theory of law, including legal philosophy, legal history, law and society, and law and development, that are taught in legal education at universities.

## **2.2 The Cultural and Social Context of Legal Education**

At the same time, the curriculum of legal education should also reflect culture, the history of political and economic development, and the specific social needs and problems of the country. For instance, in the Asian region where market transactions cover the whole region and rapid economic growth has come to be associated with a number of social issues, such fields as economic law, intellectual property law, environmental law, taxation law, law of international trade and investment are drawing equal attention with law and culture and basic private laws. In this context, the traditional treatment of customary laws and conventional rules need to be aligned with the impact of globalization. The contextual circumstances of curricula cannot be directly exported from one country to another. This leads to the practical agenda of comparative legal education.

## **2.3 Interpretation of Law and Finding of Fact As a Basis for the Rule of Law**

Legal education is a long process of mastering the knowledge and skills needed to solve various conflicts in a legal way, that is, by applying legal rules to individual cases. It consists of two major components: one is to identify the appropriate legal rules from existing sources of law. In this context, the interpretation of law is inevitable, because it is impossible to provide law for every possible case in advance<sup>12</sup>; the other is to find and recognize the facts to which the legal rules apply. These two components are closely related, because without

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<sup>12</sup> However, it should be noted that, according to the legal theory of socialism, the power to interpret the law is exclusively held by the National Congress, not by the Court, which is not separated from legislature. If we talk about the interpretation of law, we cannot overlook how the “interpretation” of law is viewed by the governance structure of each country.

accurate finding of fact, the applicable legal rules cannot be identified, and without any typical legal rules applicable to typical cases, no meaningful facts can be recognized. They are, I believe, the fundamental basis for the rule of law which is of core importance in any legal system.

The essential problem is how to position interpretation of law and fact finding within a curriculum and how to relate them effectively in the long process of legal education. Roughly speaking, the interpretation of law is taught in university law faculty undergraduate courses, while fact finding is taught in professional institutions, though this may differ depending on the circumstances in each country. It is worthwhile to compare legal education curricula from the viewpoint of combining these two parts in Asian countries where the rule of law is promoted to strengthen sustainable economic and social development.

## 2.4 Developing a Theory of Law-Making

The objective of legal education is not limited to interpretation of law and fact finding, that is, the application of law, but extends to the study of law-making. Good law-making based on deliberated discussion in a democratic congress is becoming an important objective of legal education<sup>13</sup>. This relates to the integrity of law made by legislature and the relationship between legislature and judiciary as they work to improve the integrity of legal rules in the state<sup>14</sup>. However, the role of the court in relation to the legislature and the boundary between the application of law and law-making is not always the same in every country due to the differences of their governance structures. The topics of interpretation of law and law-making in the context of legal education need to take into consideration the governance system of the country where that legal education is

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<sup>13</sup> See, for example, Jeremy Waldron, *The Dignity of Legislation*, Cambridge University Press, 1999; Andrei Marmor, *Law in the Age of Pluralism*, Oxford University Press, Oxford University Press, 2007.

<sup>14</sup> Joseph Raz, "The Politics of the Rule of Law," in: *Ethics in the Public Domain*, Revised Edition, Clarendon Press, Oxford, 1994, p. 377; Ronald Dworkin, *Law's Empire*, Harvard University Press, 1986, pp. 225-227; Marmor, op. cit. (n. 13), pp. 39-56.

taking place.

### 3. Practical Approaches to Comparative Legal Education

#### 3.1 Basic Problems in Preparing Curricula for Legal Education

From the practical viewpoint, legal education curricula can be divided into an academic stage and a vocational stage: generally speaking, the first stage is prepared by universities, mainly in the faculty of law, while the second stage is conducted by professional organizations such as courts, prosecutors offices, lawyers offices, bar associations, and integrated judicial training centers managed by the Supreme Court and Ministry of Justice. The problem is how to streamline efficiently basic and theoretical learning with applied and professional skills because it is ideal to combine general liberal arts knowledge and interdisciplinary academic subjects with the refined professional skills and techniques. This is actually quite difficult, however. It takes much time and is costly to nurture qualified legal professionals of a number necessary for society. Law schools seek to bridge the first and second stages, but their terms of study are too short for that purpose and their tuition fees are high<sup>15</sup>.

The curricula of legal education, particularly in law schools, tend to be arranged so as to get as many students as possible to pass the state examination or bar examination. However, the role of the law school is to combine the learning of legal rules with legal skills, and to develop a humane and broad perspective based on a deeper understanding of law as a part of a comprehensive social structure. We need to share this dilemma and deliberate on possible solutions.

#### 3.2 Pedagogical Approaches

Pedagogical methodology is another important factor in comparative legal

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<sup>15</sup> From the key aspect of availability and inclusiveness, the cost of legal education is prohibitive in many countries. See Trebilcock and Daniels, *op. cit.* (n. 2), p 285.



education. It includes effective interaction between teachers and students in applying the case method; the use of moot court exercises and mock trials; the use of legal clinics; and cooperation with NGOs providing legal aid, etc.<sup>16</sup> These innovations will strengthen skills for analyzing a case, investigating facts, interviewing clients and persons of interest, negotiating, writing legal documents, and advocating at trials. For these purposes, comparative study is quite useful.

In this context, it is sometimes critically observed that the traditional method of teaching by lecture is archaic and obsolete compared with more participative and innovative teaching techniques. Especially, classroom education in a formalist curriculum is often characterized by an emphasis on rote learning of existing black-letter laws and regulations, and the regurgitating of memorized information on secondary doctrinal sources for examinations. It is indicated that this hinders the movement towards creating an interactive classroom environment where critical dialogue between students and teachers is encouraged, and affects the fostering of healthy skepticism, intellectual curiosity, and creativeness that are essential qualities for lawyers.<sup>17</sup>

The more interactive classroom environment needs to be shared in Asian universities. Still, we know well that the rote learning of black-letter laws is, in a sense, an indispensable part of legal education over the long-term and in the dynamic process of implanting the rule of law in society, which will in turn provide the foundation for further steps to be made in tandem with changes in the economic, political and social conditions of each state. What we want to know is what changes in society are related with what pedagogical aspects of legal education, and from this point of view, comparative legal education is a productive approach to further develop our legal systems.

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<sup>16</sup> Trebilcock and Daniels, op. cit. (n. 2), pp. 284-285.

<sup>17</sup> Cheng Han Tan, et al., "Legal Education in Asia", *Asian Journal of Comparative Law*, Vol. 1, No. 1, p. 17.

## 4. From Static and Macro Comparisons to Dynamic and Micro Comparisons

### 4.1 From Static to Dynamic Comparisons

As stated above, it is fruitful to observe and compare curricula and pedagogical methods of legal education in different countries, not as a static comparison of legal education systems, but as a comparison of dynamic changes taking place in national legal systems despite the persistence of deeply embedded traditions. In order to share this perspective on comparative legal education, we must take into consideration the current status and changing directions of the justice system within the governance structure of each state, including the changing role and number of judges, prosecutors, lawyers and other legal professionals, and the manner in which people qualify for those legal professions.

### 4.2 From Macro to Micro Comparisons

The curricula, teaching methods, semester terms,<sup>18</sup> and other features of legal education vary between universities even in the same country. Furthermore, the features of legal education cannot be made sufficiently clear if we concentrate our attention only on the formal curricula and educational systems of our institutions. Truly productive comparison of legal education requires us to enter into individual classrooms, if possible, to participate in their activities and feel for ourselves the characteristics and atmosphere of the class<sup>19</sup>.

### 4.3 Comparative Legal Education for Fostering Global Legal Professions

Reforms of national legal education systems are not possible if they are isolated from the dynamics of the gradual inter-linking of legal education systems through various forms of legal exchange in the globalizing Asian

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<sup>18</sup> As for the difference in semester terms, see MATERIAL at the end of this volume.

<sup>19</sup> From this point of view, see law classrooms report at ON-SITE REPORT below.

market<sup>20</sup>. Our lives and work are more tightly linked than ever through economic, political and cultural relations. Thus, although we are destined to start from Asia, we are not necessarily confined to the region, and need to go beyond narrow nationalism and regionalism to foster legal professionals who can solve problems occurring in globalizing societies, including various conflicts caused by foreign investments, international transactions, economic disparity, poverty and environmental destruction, as well as illegal transactions and noncompliance with laws and regulations<sup>21</sup>. The people who can deal with these kinds of issues are global legal professions<sup>22</sup>.

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<sup>20</sup> Veronica Taylor, "Legal education as development," in: Stacy Steele and Kathryn Taylor (eds.), *Legal Education in Asia: Globalization, change and contexts*, Routledge, 2010, pp. 233-234.

<sup>21</sup> For that purpose, collaborative initiatives are worth challenging. In this context, see also Jeff Waincymer, "Internationalization of legal education," in: Steel and Taylor (eds.), *op. cit.* (no. 21), pp. 70-84.

<sup>22</sup> About the concept of "global legal professions", see [<http://keiglad.keio.ac.jp/en/paglep/>]. See also the challenge for "global citizen lawyers" by Masahisa Deguchi, "Legal Education for Global Citizen Lawyers in the Global Society," in: Masahisa Deguchi and Marcel Storme (eds.), *The Reception and Transmission of Civil Procedural Law in the Global Society: Legislative and Legal Educational Assistance to Other Countries in Procedural Law*, Maklu Publishers, 2008, pp. 17-29.



## COUNTRY REPORTS

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# CURRENT LEGAL EDUCATION IN HANOI LAW UNIVERSITY:

## Its Challenges and Prospects

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Dr. Phan Thi Lan Huong\*

(Hanoi Law University)

### 1. Current status of legal education in Hanoi Law University

#### 1.1 Background of Hanoi Law University

Hanoi Law University, formerly known as Hanoi Juridical University, was established on November 10, 1979, in accordance with Decision 405/CP of the Council of Ministers, dated November 10, 1979, which merged the Juridical Faculty of Hanoi University and the Vietnam Juridical College.

In 1982, the Ministry of Justice decided to enlarge the university further to make it the key legal education institution of Vietnam by merging the Juridical Vocational Training School No. 1 with the Judicial Personnel School in Hanoi, thereby giving birth to the present Hanoi Law University. The current name (Hanoi Law University) has been officially used since July 6, 1993, in accordance with a decision of the Ministry of Justice.<sup>1</sup>

Hanoi Law University (HLU) currently has around 460 lecturers and pro-

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\* Deputy Head of International Cooperation Department of Hanoi Law University, and Head of Representative Office of Nagoya University in Vietnam.

<sup>1</sup> Introduction of Hanoi Law University, <http://www.hlu.edu.vn:81/gioithieu/c-42/Qua-trinh-hinh-thanh-va-phan-trien.html>

fessors and staff. Many professors are distinguished legal scholars in Vietnam. Nearly half of our academics are Ph.D. degree holders, more than 50 of who are professors and associate professors. While most founding members of Hanoi Law University were trained in the former Soviet Union and the Democratic Republic of Germany, many second and third-generation lecturers have had opportunities to study and exchange their legal knowledge at major law schools in various countries in the world such as Sweden, France, Germany, Russia, the United Kingdom, the United States, Canada, Australia, Japan, Singapore, China and elsewhere.

Currently, HLU's main departments cover business law, international trade law, civil law, criminal law, state and administrative law, and foreign languages. Together these departments provide four specialized training programs in general law, international trade law, business law, and legal English.

On April 4, 2013, the Prime Minister issued Decision No. 549/QĐ-TTg to develop Hanoi Law University and Ho Chi Minh Law University into the two leading legal education institutions in Vietnam by 2020. This Decision aims at build HLU into a leading legal training institution with advance legal training curriculums, teaching materials, and highly qualified teaching staff. Currently, the total number of students at HLU is around 15,000. HLU will need to develop its teaching staff and programs to provide training for around

19,000 students by 2020.<sup>2</sup>

## **1.2 Training programs**

### **1.2.1 Undergraduate Program (4 years)**

Hanoi Law University offers a four-year undergraduate program with four majors: general law, business law, international trade law, and legal English. It is important to note that the international trade law and legal English majors are quite new programs at HLU.

In order to obtain an LL.B degree, students must have 126 credits covering

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<sup>2</sup> Decision No.549/QĐ-TTg dated 4 April 2013.



both compulsory and elective subjects. Every year, around 2000 students enroll in the LL.B course at Hanoi Law University, but the Ministry of Training and Education has the authority to decide the number of students that HLU may accept, depending on its capacity (the number of teachers and professors).

The undergraduate programs are divided into three main parts: 1) general courses offered at all universities in Vietnam on Marxist-Leninist theory, history of the Communist Party, physical training, and national defense training; 2) fundamental legal training courses required for all law students in such areas as state and law theory, the constitution, administrative law, civil law, and criminal law; and 3) specialized courses designed to meet the requirements of the four majors as mentioned above.

It should be noted that students in the legal English program can acquire a Bachelor of Law if they undertake a double degree in legal English and the law program. However, this double-degree program has only been offered for three years and has many issues that need to be addressed.

Hanoi Law University also offers a 2.5-year bachelor of law program as a second degree for those who already have a bachelor in a different major.

### **1.2.2 Master in Law Program (2 years)**

There are two master's programs offered by Hanoi Law University: a two-year academic program and a 1.5-year new practical skills program started in 2016 for those who want to focus on professional legal practice, such as lawyers, judges, and prosecutors. However, the 1.5-year LL.M program provided by HLU is different from the legal training programs provided by the Judicial Academy and the Court Academy.

In order to obtain a Master's degree, students have to take compulsory courses and elective courses that are divided according to major under business law, state and administrative law, criminal law, civil law, and must also complete a Master's thesis. Notably, only students who already have a bachelor of law degree can enroll in the Master of Law course at Hanoi Law University.

### 1.2.3 Ph.D. in Law Program (3 years)

The Ph.D. program at Hanoi Law University is a three-years program in which students must publish a journal article related to their dissertation as well as successfully give an oral defense of their dissertation. Students who complete their dissertation early are allowed to graduate early.

## 1.3 Teaching methods

In the past, Hanoi Law University applied the traditional legal education methods which focused on lecturing and did not encourage creative thinking by students. Teachers played a central role and students were the audience. Students were often reluctant to express their own ideas or ask questions of the teacher. This teaching method, known as the “dominating teaching method,” did not encourage students to study independently. It also tended to focus on theory rather than the practical skills of reasoning. Students studied theory but lacked the ability to apply it.

Hanoi Law University has tried to introduce new teaching methods by reducing the lecture hours and increasing seminar hours. Students have to do self-study and homework. Problem-solving encourages students to learn how to interpret and apply law in practice. However, many students still depend on their professors and lack critical thinking skills. The current methods often used at HLU include lectures and discussions, with case studies, moot courts, dialogue, and legal clinics only used in small groups and for a few subjects.

In addition, the teaching staff of HLU often lack experience as they tend to be new HLU graduates employed as teachers. They become teachers after acquiring an LL.M degree and spending a year in probation teaching.

## 2. Challenges

Regarding legal education in Vietnam, there are still many problems to be resolved.

- Students are not familiar with the new teaching methods as the education system in Vietnam still applies the “dominating teaching method” at all levels. Students are not encouraged to express their own thoughts, and it is very hard for them to change this habit after entering law school.
- Teaching teams, especially the young teachers, are often graduates of the same university and have not been trained in the modern methods. Hanoi Law University needs to focus on increasing its teaching staff by around 50%. Those teaching LL.M and Ph.D. programs must have a Doctor of Laws degree, but currently only around 100 out of 350 teachers have this qualification and HLU still needs to build its capacity in this area.
- While modern legal training curriculums for academic development and practical training are being carried out to some extent, they are still infective. After graduating from HLU’s undergraduate programs, students still lack practical skills in such areas as presentation, case analysis, and academic writing. HLU does not have the autonomy to design its own curriculum as it is under the control of the Ministry of Education and Training and the Ministry of Justice. Many subjects are compulsory at all universities in Vietnam as a fundamental requirement for a Bachelor degree, and consequently students have to study many courses which are not related to law, for example, history of the Communist Party and a general course on Vietnamese culture.
- Lecture rooms and facilities at HLU are not applicable for modern teaching methods. For example, the shape and size of its seminar rooms are not suitable for group discussion, and make team work difficult as the tables are often fixed or hard to move.
- Language: Almost all teaching materials and lectures are in Vietnamese. Until recently, HLU did not have teachers who could teach law in English. This is a critical barrier to joint training programs and exchange programs with foreign universities.

To summarize, the current legal education in Vietnam remains out of touch with actual legal practice, and as a result HLU graduates do not acquire the professional skills they need to enter the job market.

### 3. The need for comparative legal education in Vietnam

Legal systems are different from country to country because of differences in history as well as socio-political and economic conditions. In other words, the nature of a country's legal system depends on the nature of its social system established under law. Vietnam is a socialist country lead by the Communist Party and the current legal system of Vietnam has its own history and tradition.

The current legal system of Vietnam is based on the ideologies of the former Soviet Union, and the Soviet legal system is based on a civil law system with modifications of Marxist-Leninist ideology. Vietnam relied deeply on the support of Soviet Union during the war and after reunification in 1975; the 1980 Constitution was based to a great extent on the constitution of the Soviet Union.

In parts the 1980 Constitution is a mirror image of the Soviet Union constitution. As Konrad-Adenauer-Stiftung (2008) note:

The Socialist Republic of Vietnam is a state of proletarian dictatorship (Art.2). Further, it speaks of the “collective mastery” of the working class, the collective peasantry and the socialist intelligentsia (Art. 3). For the first time the Constitution contained a provision on the role of the Communist Party of Vietnam as the only political party (Art. 4). The party was only limited insofar as “its organizations [were to] operate within the framework of the Constitution” (Art. 4, Par. 3).<sup>3</sup>

They further state, “Most of the lawmakers and senior state officials in Vietnam were trained in Soviet Union and Eastern European nations. The legal system and the role of law were used in the flexible way in order to maintain the autonomous role of the Communist Party.”<sup>4</sup>

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<sup>3</sup> *Constitutionalism in Southeast Asia* (Konrad-Adenauer-Stiftung, 2008), 337.

<sup>4</sup> Thi Lan Anh Tran, “Vietnam’s Membership of the WTO: An Analysis of the Transformation of a Socialist Economy Into an Open Economy with Special Reference to the TRIPS Regime and the Patent Law” (The University of Leeds, 2009), 153, <http://etheses.whiterose>.

The legal system of Vietnam was formed gradually under the leadership of the Communist Party and is based on the principles of democratic centralism (*tap trung dan chu*) and socialist legality (*phap che xa hoi chu nghia*).

These principles shape the nature of legislation in Vietnam. Although the National Assembly is vested with legislative power, the executive organs play an important role in legislation. Hence, the sources of law and their interpretation are different from the principle of rule of law. “The legal ideologies that provide the foundation for the establishment and operation of Vietnamese legal institutions significantly differ from those of rule-of-law systems.”<sup>5</sup> Under democratic centralism there is no separation of state power. All three state branches are involved in legislation. Hence, the concept of law refers to the various types of written legislation issued by competent agencies. Moreover, the Communist Party’s leading role in all aspects means that the legal system is strongly influenced by Party policies. No law may conflict with Party policies, and this is a condition of legal validity in Vietnam that also sets it apart from other countries.

The need for comparative studies of legal education has been recognized since World War II, as mentioned at the UNESCO conference of May 1949: “We are of the opinion that the legal profession throughout the world owes a duty to the peoples from which it springs to unite in an effort to overcome such of the tensions and misunderstandings rending the world community as lie within its special spheres of competence.”<sup>6</sup> Comparative studies in legal education will help future practitioners and scholars to acquire a deeper understanding of the tensions between different legal systems.

Currently, Vietnam has carried out legal reform in order to meet international standards as well as the need for globalization. For example, Vietnam has

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ac.uk/2688/1/uk\_bl\_ethos\_509876.pdf.

<sup>5</sup> Bui Thi Bich Lien, “Legal Interpretation and the Vietnamese Version of the Rule of Law,” *National Taiwan University Law Review* 6 (2009): 323, [http://www.law.ntu.edu.tw/ntulawreview/articles/6-1/11-Article-Bui%20Thi%20Bich%20Lien\\_p321-337.pdf](http://www.law.ntu.edu.tw/ntulawreview/articles/6-1/11-Article-Bui%20Thi%20Bich%20Lien_p321-337.pdf).

<sup>6</sup> “Comparative Law in Legal Education - Viewcontent.cgi,” accessed February 20, 2017, <http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2673&context=uclev>.

worked to bring its national legal system up to the standards of the World Trade Organization (WTO), of which it is a member, and its legal sectors have been reformed to conform to international trade rules. For example, the Administrative Court was established in 1996, and the Law on Administrative Complaints and Denunciations, in 1998, to meet a WTO requirement.

The legal documents of Vietnam are drafted with the support and guidance of international experts and INGOs. Vietnam has received support from advanced countries such as the U.S., Japan, Denmark, Canada, and Germany in implementing its legal reforms. For example, JICA (Japan) has assisted Vietnam in drafting legal documents in civil and commercial areas, as well as in human resource development.<sup>7</sup> The USAID STAR project helped Vietnam to rewrite or adapt 93 legal documents related to trade agreements.<sup>8</sup> Nicholson and Quang (2005) note:

More recently, donors and entrepreneurs have advocated reforms to support the marketization of the economy, producing a diverse set of civil and common law influences from various sources including Sweden, United States of America, Canada, Japan and Australia to name a few.<sup>9</sup>

Consequently, the current legal system in Vietnam has been significantly impacted by donor countries. The legal system has gradually changed as a result and now has some new features that are different from when Vietnam had a cen-

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<sup>7</sup> “Technical Assistance Project for Legal and Judicial System Reform Vietnam Countries & Regions JICA,” accessed May 12, 2014, <http://www.jica.go.jp/vietnam/english/activities/activity09.html>.

<sup>8</sup> “USAID STAR Project Helped Propel Vietnam into the Global Economy DAI Online Publications,” accessed May 12, 2014, <http://dai-global-developments.com/articles/us-aid-star-project-helped-propel-vietnam-into-the-global-economy.html>.

<sup>9</sup> Penelope Nicholson and Nguyen Hung Quang, “The Vietnamese Judiciary: The Politics of Appointment and Promotion,” *Pacific Rim Law and Policy Journal Association*, 2005, 5, <http://digital.law.washington.edu/dspace-law/bitstream/handle/1773.1/659/14PacRimL-Po-lyJ001.pdf?sequence=1>.

trally planned economy. The issue is how Vietnam is applying the legal models and solutions for reforming different legal traditions (civil law, common law, socialist law, etc.) to create a coherent legal system.<sup>10</sup> In particular, the interpretation and application of law needs to be taught using modern methods (legal clinics, case studies, moot courts) in order to ensure that students acquire both academic and practical skills. In addition, there is an urgent need to introduce comparative studies in legal education in Vietnam so that law students can better understand the tensions and differences among the legal systems of selected countries.

Legal education in the ASEAN countries which can be divided into two main groups: those with a common law tradition (Singapore, Malaysia, and Brunei) and those of the civil law family (Vietnam, Thailand, Laos, and others). Comparative legal education can lead to establishing a common legal ground among the ASEAN countries and is crucial if students are to meet the challenges of globalization as well as local needs.<sup>11</sup>

In general, as Vietnam undergoes legal reform, lawmakers and law professors have used different approaches, such as reviewing the current legal documents of the other countries, to draw out lessons for lawmaking in Vietnam. But the reality is that the fundamental legal theories and current practices of Vietnam are not yet focused as they should be for legislation or legal education. It is becoming increasingly important to study law in context as every country has its own legal tradition. Furthermore, since the interpretation and application of law are different from country to country, comparative legal education is essential for students to learn about the legal theories and practices of different legal systems. Comparative legal education will contribute to creating a common system of legal education that will be key to training legal human resources in the era of globalization.

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<sup>10</sup> Per Sevastik, *Legal Assistance to Developing Countries: Swedish Perspectives on the Rule of Law* (Martinus Nijhoff Publishers, 1997), 115.

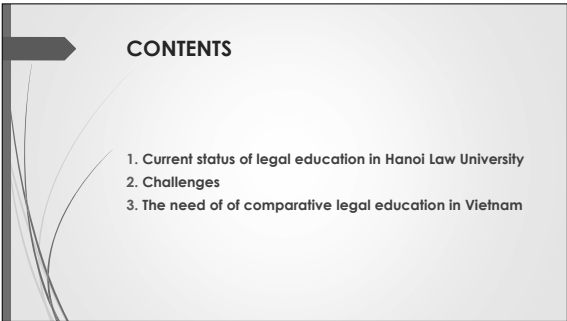
<sup>11</sup> "LEGAL EDUCATION IN ASEAN IN THE 21ST CENTURY - w2\_Malaysia.pdf," accessed February 22, 2017, [http://www.aseanlawassociation.org/9GAdocs/w2\\_Malaysia.pdf](http://www.aseanlawassociation.org/9GAdocs/w2_Malaysia.pdf).



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*CURRENT LEGAL  
EDUCATION IN HANOI  
LAW UNIVERSITY*



2

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*Contents*

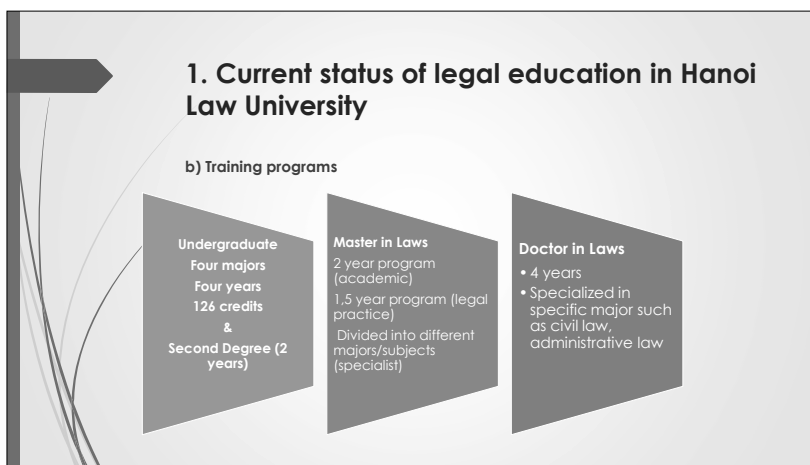
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*1. Current Status of Legal  
Education in Hanoi Law  
University  
a) Background of Hanoi Law  
University*





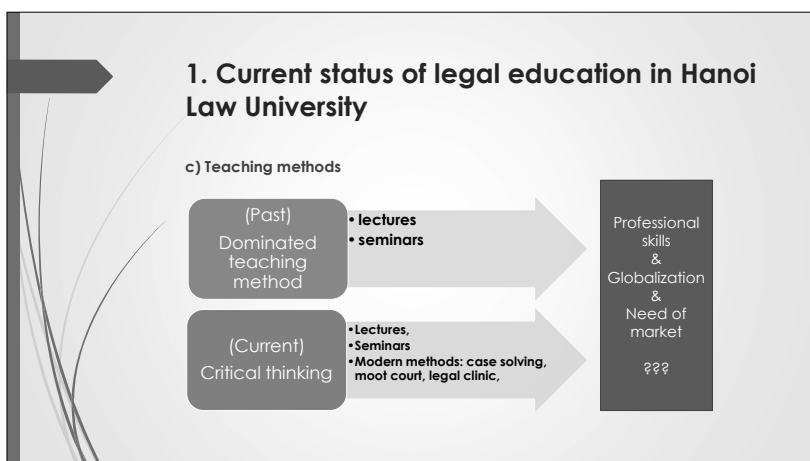


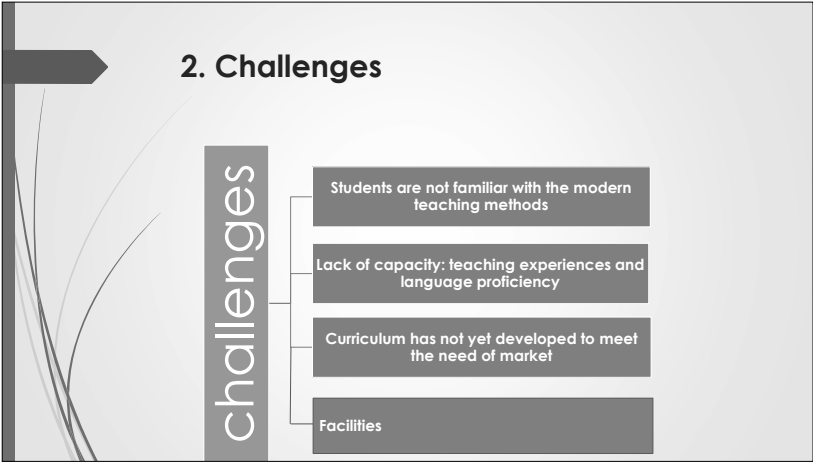
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*1. Current Status of Legal Education in Hanoi Law University*  
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*1. Current Status of Legal Education in Hanoi Law University*  
*c) Teaching Methods*

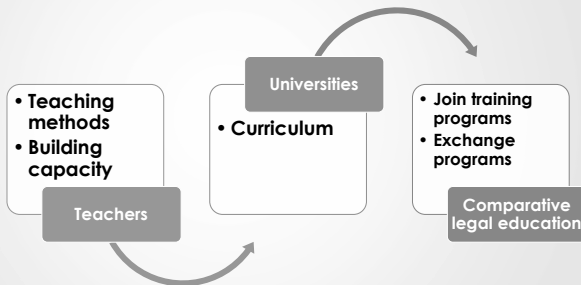




### 3. The need of comparative legal education in Vietnam

- Legal system is different from a country to country: The current legal system of Vietnam is based on the ideologies of the former Soviet Union
- Legal education: Need of common legal training curriculum and modern teaching methods
- Study law in context is becoming important gradually: Tension and misunderstanding in law interpretation and application: academic and practical skills
- Integration and globalization: narrow the gaps between domestic and international laws
- Need to develop a legal professional staffs who meet the needs of market.

### 3. The need of comparative legal education in Vietnam



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3. The Need of Comparative  
Legal Education in Vietnam



# LEGAL EDUCATION IN JAPAN AND VIETNAM:

## A Comparative Approach

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Shohei Sugita\*

(Nagoya University)

### 1. Introduction

During my one year and nine months as a lecturer at the Research and Education Centre for Japanese Law at Hanoi Law University, I have observed a difference between the Japanese and Vietnamese approaches to legal education. The difference is that legal education in Japan focuses on legal interpretations, while legal education in Vietnam focuses on legislation and the application of laws. This essay describes the different approaches towards legal education in these two countries by exploring the role of the judiciary in their legal systems.

### 2. Differing Approaches to Legal Education in Japan and Vietnam

Legal education in Japan is mainly focused on what is known as ‘legal interpretation’.<sup>1</sup> The precise meaning of the term ‘legal interpretation’ is a subject

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\* Assistant professor of Nagoya University, and coordinator of the Research and Education Center for Japanese Law in Vietnam.

of some controversy.<sup>2</sup> However, it must be defined for our convenience. I use the term ‘legal interpretation’ to not only assign meaning to a legal term but also to engage in a rational review of what making a law entails.<sup>3</sup> Legal scholars in Japan have enthusiastically studied and taught the legal interpretation approach. On the other hand, legal scholars in Vietnam have taught an approach involving the application of laws rather than legal interpretation. What caused this difference in approach between these two countries? I believe that differences between the respective judiciaries play an important role in legal education. In other words, the type of power that the courts exercise influences the approach towards legal education.

### 3. The Judicial System in Japan and Legal Education

The Japanese courts have the following three powers: engaging in permissive legislation (i.e. judicial review), drafting legal interpretations, and applying laws.<sup>4</sup> According to the Constitution of Japan, Article 81, judicial review is used to interpret and apply the Constitution in the context of specific disputes. Broad problems can be resolved by legal interpretation and the application of laws.

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<sup>1</sup> Masao Ikeda, “*Shinsedai Hogakubu Kyoiku no Jissen: Ima, Nihon no Hogaku Kyoiku ni Motomerareru Mono (5) -- Kaishakugaku no Denju kara ‘Ruru Zukuri Kyoiku’ he*” [Implication of the next generation legal education: the things that are required for legal education in Japan (5) -- Formation from teaching legal interpretation to teaching to making rules], in *Shosai no Mado* [The window of the author’s study], No.647, p.40 ff. (Yuhikaku Publishing, Tokyo 2016).

<sup>2</sup> Aharon Barak, *Purposive Interpretation in Law*, p.3 ff. (Princeton University Press, Princeton 2007).

<sup>3</sup> Zentarō Kitagawa, “*Hokaishakugaku niokeru Riron to Hokeisei: Hokaishakugaku no Saikosei no tameni*” [Theory of legal interpretation and making laws: For reforming theory of legal interpretation], in *Hotetsugaku Nenpo* [The Annals of Legal Philosophy], Vol.1971, pp.46 ff. (Japan Association of Legal Philosophy, Tokyo 1972); Aharon Barak, *supra* note 1, p.3 ff.

<sup>4</sup> The Constitution of Japan, Chapter 6, Article 81.

Hence, Japanese practitioners, judges, prosecutors and attorneys need to be well versed in legal interpretation. Japanese legal scholars study and promote legal interpretation as well. Consequently, legal education in Japan has primarily focused on legal interpretation.

#### 4. The Judicial System in Vietnam and Legal Education

The Vietnamese judiciary is different from the Japanese judiciary. The legal system of Vietnam is based in part on the ideology of the former Soviet Union.<sup>5</sup>

While Japan follows a liberal tradition in which state powers are separated among the executive, legislative and judicial branches, state power is regarded as inseparable in Vietnam.<sup>6</sup> This principle in Vietnamese law is termed *tap trung dan chu* or democratic centralism.<sup>7</sup> Based on this principle, the Standing Committee of the National Assembly (SCNA)<sup>8</sup> has the power to interpret the Constitution of Vietnam, interpret law and decree laws.<sup>9</sup> Therefore, it is popularly supposed that a Vietnamese court only has the power to apply laws to particular cases. As a result, legal practitioners in Vietnam need to know how to apply laws to cases and legal scholars in Vietnam teach those skills. It can be stated that in Vietnam, the judiciary can solve relatively narrow legal problems because of the lack of judicial review and legal interpretation. For this reason, legal scholars in Vietnam concentrate on studying legislation with the aim of solving legal problems.

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<sup>5</sup> Bui Thi Bich Lien, "Legal Interpretation and the Vietnamese Version of the Rule of Law", in *National Taiwan University Law Review*, Vol.6, p.324 ff. (National Taiwan University College of Law, Taiwan 2011).

<sup>6</sup> Bui Thi Bich Lien, *supra* note 5, p.324 ff.

<sup>7</sup> The Constitution of Vietnam, Article 8.1.

<sup>8</sup> According to the Constitution of Vietnam, Article 74, SNCA has the right to explain the Constitution, laws and decree laws; however, it has exercised this right only six times (Bui Thi Bich Lien, *supra* note 5, p.328 ff.).

<sup>9</sup> The Constitution of Vietnam, Article 74.

## 5. Significance of Varying Approaches to Legal Education

As described above, there is a difference between Japanese and Vietnamese legal education. Legal education in Japan focuses on legal interpretation, whereas in Vietnam, it focuses on legislation and the application of laws. I doubt that this distinction is a problem. Two reasons justify my assumption.

First of all, it cannot be stated that legal education which focuses on legal interpretation is superior to legal education which focuses on legislation and the application of laws. There is some criticism that legal education in Japan is too academic, that Japanese legal education resides in an ivory tower and is overly concerned with legal theory over the realities of society.<sup>10</sup> Second, legal interpretation can be employed to study legislation and the application of laws.<sup>11</sup> The core benefit of studying legal interpretation is to learn what making a law entails. When drafting legislation and applying laws, it is important to think what making of a law entails. Furthermore, it is possible to think about this by studying legislation and the application of laws. For instance, it is supposed that there are approximately 100,000 legislative documents in Vietnam. The reason why so many legislative documents exist is partly because it is necessary to provide definitions for legal terms applied to specific situations.<sup>12</sup> These legislative

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<sup>10</sup> Masao Ikeda, *supra* note 1, p.36 ff.

<sup>11</sup> This is the article which indicated a lack of legal interpretation regarding Vietnam's legal education; Takeshi Matsumoto, “*Betonamu Hoseibi Dayori*” (2015) [Report of Legal Reform Project in Vietnam (2015)], <http://www.icclc.or.jp/pdf/info150706.pdf> (International Civil and Commercial Law Centre Foundation, last visited Jul. 1, 2017).

<sup>12</sup> In Vietnam, there is a concept termed *giai thich phap luat*. This phrase directly implies the explanation of law. About this concept, there are two schools of thought. One insists that *giai thich phap luat* is an explanation (*giai thich chinh thuc*) of law made by authorized government agencies such as SCNA. The other school claims that *giai thich phap luat* is an explanation (*giai thich tinh huong*) of the law conducted by other authorities (See Bui Thi Bich Lien, *supra* note 5, p.328 ff.). I suppose that legislative documents in Vietnam can be classified as documents of sources of laws and documents of interpretation of laws. Documents of laws are made by authorized government agencies which are authorized to make legislative documents by the Constitution or by the law (the law of Promulgation of Legal Documents



documents include not only documents for making rules but also documents for providing meaning to laws. Thus, studying legislation is the same activity as studying legal interpretation.

## 6. Comparative Perspective of Legal Education in Vietnam and Japan

As mentioned above, there are several legislative documents in Vietnam. I propose that studying legislation in Vietnam includes engaging in legal interpretation. In 2016, the Vietnam Supreme People's Court announced ten case law decisions. I believe this development will encourage academic lawyers to contemplate the meanings of laws. As more and more legal scholars in Vietnam become aware that legislation can have relatively wider functions, there is more possibility of legal education expanding as an academic field.

It is important for Japan to compare Japanese legal education to Vietnamese legal education. Nowadays, there is an argument that Japanese legal education should move away from focusing on legal interpretation.<sup>13</sup> Ikeda proposes that legal education in Japan should focus on educating students who can create rules.<sup>14</sup> Researching Vietnamese legal education, which is certainly a different academic field from Japanese legal education, may provide some hints to re-thinking the academic field of legal education as a whole.

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(No.80/2015/QH13) is not sufficient). On the other hand, documents of interpretation of laws are prepared by other government agencies. Hence, I suppose that legislation in Vietnam includes ensuring legal interpretation.

<sup>13</sup> Masao Ikeda, *supra* note 1, p.40 ff.

<sup>14</sup> *Ibid.*, p.40 ff.

## 7. Conclusion

I have explained the difference between Japanese legal education and Vietnamese legal education from the perspective of differing roles of the judiciary. Because of the different roles of the judiciary, each country focuses on different approaches to the rule of law.

During my work with students who want to study in Japan, I have observed students having difficulty in explaining their research plans to Japanese professors because of the different approaches to legal education in the two countries. It can be asserted that as more comparative legal education studies are conducted, a lesser gap between these two countries will be observed. I hope that more comparative legal education studies will be conducted after this symposium.

## 8. Acknowledgements

This work was supported by the Nitto Foundation.

Documents

1  
*LEGAL EDUCATION  
IN JAPAN AND VIETNAM  
A COMPARATIVE  
APPROACH*

# Legal Education in Japan and Vietnam A Comparative Approach

杉田昌平 (SHOHEI SUGITA)

LECTURER JAPANESE LAW CENTER

HANOI LAW UNIVERSITY=NAGOYA UNIVERSITY

2  
*Introduction*

## Introduction

Japan: Focusing on Legal Interpretation

Vietnam: Focusing on legislation and application of laws

What makes this different?

3  
*View Point of  
My Presentation*

## View point of my presentation

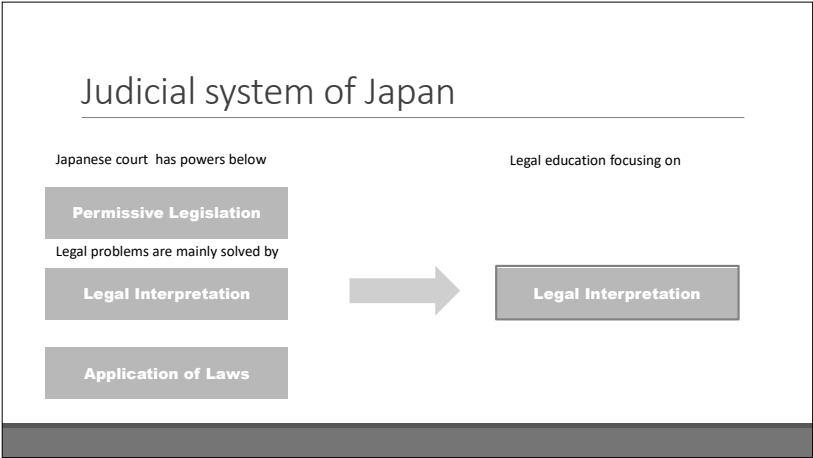
Difference of judiciaries influences on legal education

The type of powers that courts exercise

Permissive Legislation

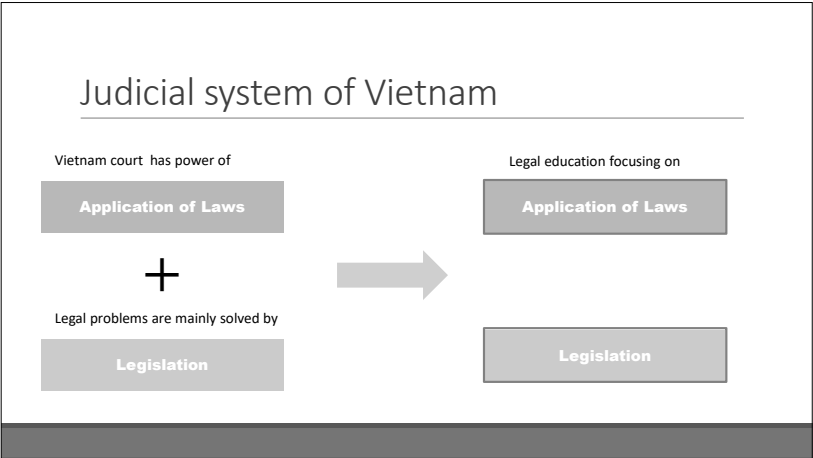
Legal Interpretation

Application of Laws



4

*Judicial System of Japan*



5

*Judicial System of Vietnam*

6  
*Is it a Problem?*

### Is it a problem?

My answer is No.

Legal education in Japan face critics.

Too academic

Legal Education of Japan stays in an ivory tower

Legal Interpretation can be employed to study legislation and the application of laws.

7  
*Perspective*

### Perspective

Legal education of Vietnam:  
gets wider academic fields.

Legal education of Japan:  
can re-think academic field of legal education.

Comparative legal education study:  
can reduce the gap between (among) countries and can enhance academic relationship between (among) countries

8  
*Acknowledgements*

### Acknowledgements

This work was supported by the Nitto Foundation.

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## LEGAL EDUCATION AT UNIVERSITY IN VIETNAM

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Nguyen Ngoc Dien\*

(University of Economics and Law Hochiminh city – Vietnam)

The lawyer is regarded everywhere as a person having good knowledge of law and capable of providing useful advice on appropriate behavior within the framework of social relations subject to law. The lawyer can be compared to a mathematician: while the mathematician uses mathematic formulas to resolve complex problems, the lawyer uses rules of law to handle the legal questions that arise in society<sup>1</sup>.

### 1. General characteristics of legal education

Legal education, the intellectual preparation for a legal expert's professional life, is prepared and organized logically and naturally in consideration of the function to be assumed by the person who undertakes the training program.

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\* Associate Professor and Vice-Rector of the University of Economics and Law – Member of Vietnam National University in HCM city.

<sup>1</sup> Association Henri Capitant, *Les professions juridiques – Rapport général sur la formation du droit*, Bruylant, Brussels, 2013 pp. 382 and 383.

## 1.1 Place of legal education in the education system

In the countries where the legal system is derived from a Romano-Germanic legal culture, legal education takes place in an institution of higher learning. There is moreover a traditional distinction between university training and professional training; the former aims at educating students in the theoretical knowledge of law while the latter focuses on preparing students for the legal professions of judge, lawyer, notary, bailiff, etc.

In Vietnam, a person who wants to become a legal professional must obtain a university degree, normally a bachelor of law, before applying for a professional legal training program. It is to be noted, furthermore, that most of the time, professional legal training takes place under the authority of a specialized training organization. At the beginning of this century, the Judicature Academy was entrusted with all kinds of professional legal training, including judges' training, lawyers' training, etc. But the judicature reform process led the way to the reinforcement of professional bodies, and as a consequence professional legal training was "reset" to an occupation transfer model in which a junior person is trained by a senior mentor. The founding of the Judges' Training Institute is one illustration of this tendency. A Notaries' Training School and a Lawyers' Training School are expected to be established in the future.

**Training objective.** Legal education in Vietnam, like in other countries, aims at a double target. On the one hand, it must help students acquire a thorough knowledge of law that will allow them to undertake legal professions as competent legal experts. On the other hand, it must help to foster good human resources who can play an active role in the building and development of a society based on the rule of law.

So from a social point of view, the legal expert who is a product of this legal education must logically fulfill a double function. First of all, the legal academic background puts the person in a position to say what is right and what is wrong



in terms of social behavior as required by law. In addition, with an understanding of law, the person will know what to do to improve the regulation of social order.

## **1.2 Place of legal education from a sociological point of view**

**A popular and prestigious training.** In Vietnam, legal education is open to everybody. It is popular, since it does not require anything in particular as far as student's social and intellectual qualities are concerned. That is an important difference from other forms of vocational training, such as for medical doctors, which will only take privileged candidates having good knowledge of chemistry and biology; for architects, whose training is premised on prior skills in mathematics and drawing. Legal education is also popular because it can be undertaken by all people interested in law, without regard to a person's social standing, gender, or family financial situation.

Furthermore, a legal education leads to the development of a professional occupation that is highly respected by society. Judges, notaries public, lawyers, and others engaged in legal occupations are greatly appreciated for their contributions, through their professional activities, to the building, consolidation, and defense of social order.

**An education model in evolution:** It is however undeniable that in the context of globalization, the legal education model developed in Vietnam is constantly criticized regarding its effectiveness, essentially a result of the confrontation between the Vietnam model and the legal education models adopted in countries imbued with the Anglo-Saxon legal culture.

It is often said that a lawyer graduating from a law faculty in Vietnam, and more generally in a country influenced by the Romano-Germanic legal culture, is likely to find it more difficult than a lawyer coming out of a law school to relate the theory of law to the actual practice of law directed at finding solutions to real life issues. That can generally be explained by the two following reasons.

First, unlike at a law school where case studies are used in teaching law so that students can experience legal practice even while they are still in academic preparation for the profession, the law faculty continues to use traditional teaching methods. These are the methods that were widely applied during the golden era of teaching Canon law and which are characterized by the teacher's total control of the classroom and the absence of interaction between teacher and students<sup>2</sup>. As for the content, the law school introduces what happens in real life in terms of law, while at a law faculty, students discover the law by using doctrinal instruments. They are not really encouraged to go beyond legal theory to legal reality.

Second, it is necessary to consider the particularities of the law school model in terms of its enrollment requirements. Normally, to be admitted to a law school, the candidate must have already acquired a university degree in another field of study. Thus, legal training is considered as a professional option for an intellectual. In most cases, a law school student is more mature than a law faculty student at a university study, and may already have a profession.

For the purpose of global integration, it is indispensable that serious consideration be given to revising the legal education system in Vietnam.

## 2. Access to legal education

### 2.1 Enrollment

**General requirements.** In principle, a holder of a high school diploma is

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<sup>2</sup> <http://law.ftu.edu.vn/vi/tin-tuc/tin-cua-khoa/giang-day-thuc-hanh>; [http://www.hcmulaw.edu.vn/hcmulaw/index.php?option=com\\_content&view=article&catid=16:cdiendansinhvien&id=2245:ddsvpgdth&Itemid=575](http://www.hcmulaw.edu.vn/hcmulaw/index.php?option=com_content&view=article&catid=16:cdiendansinhvien&id=2245:ddsvpgdth&Itemid=575)

entitled to apply for the first year of study at a law faculty. Previously, a national entrance examination was annually carried out for the selection of candidates. But since 2015, this examination has been replaced by the mechanism of a “call for candidates.” To be eligible to even apply, the candidate must graduate from secondary education with a “normal” grade average decided by the concerned university, and the first qualifying candidates to apply are the first to be accepted.

Concerning recruitment for the LLM, the entrance examination is still maintained. Master’s degree training is considered to be specialized. There is moreover a distinction between a research Master’s and a professional Master’s: the former opens the possibility for a graduate to continue their study at the Ph.D. level after having finished the Master’s program, while the latter orients the student to a professional life with an internship as part of the whole training program. In terms of curriculum content, there are more lectures on theory in the research Master’s program than in the professional Master’s program.

**Vocational training.** Legal vocational education in Vietnam, like in other countries with the Romano-Germanic legal culture, is open to holders of a bachelor of law degree who plan to become a legal professional. The most organized professional legal training is for judges and lawyers, as can be explained by the key positions of these professionals in the judicial process. Also popular for young people with a bachelor of law degree is training to become a notary public.

All these kinds of professional training are currently under public authority. It is probable however that in the coming years, professional bodies will take care of professional training. For example, the bar association will be entrusted with lawyers’ training, the notaries association with the training of notaries public, etc.

Recruitment requirements are different from one professional legal training to another. For instance, to apply for the judges' training program, the candidate must have a bachelor degree of law and experience in legal functions. The lawyers' training is available to candidates with a bachelor degree of law who successfully pass a special examination. It is possible for a legal expert to change from being a lawyer or notary, provided that this person meets the requirements as prescribed by law.

## 2.2 Training costs

**Tuition fees.** Fees are normally charged for university legal education in Vietnam and these tuition fees are regulated by law. In principle, a public university cannot demand a tuition fee that exceeds the limit set by a Prime Minister's decision. It is notable that compared with other disciplines, legal education is the cheapest<sup>3</sup>. Moreover, there is a distinction between an autonomous university and a non-autonomous university: the former is entitled to charge a higher tuition fee than the latter. Private universities are subject to the same regulations as those for autonomous universities regarding the setting of tuition fees.

In general, university legal education in Vietnam is considered to be the more accessible of university training programs in terms of tuition which explains the positive social sentiment towards this kind of university training.

**Funding of studies.** Most of the time, university study is financed out of family resources. Generally in Vietnam a student graduating from a senior secondary school at the age of 18 remains economically dependent on his/her parents.

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<sup>3</sup> [http://www.thongtintuyensinh.vn/Muc-tran-hoc-phi-cac-truong-cong-lap-tu-nam-hoc-2015-2016-den-20202021\\_C248\\_D12994.htm](http://www.thongtintuyensinh.vn/Muc-tran-hoc-phi-cac-truong-cong-lap-tu-nam-hoc-2015-2016-den-20202021_C248_D12994.htm). The highest tuition fee is that for medical study.

However, after obtaining a bachelor degree, the student is normally able to find a fulltime job and thereafter pay for his/her own study for a Master's degree or Ph.D.

It is also possible for a university student to find a scholarship for total or partial funding of his/her study. Additionally, there is a system of credit for students to help those in need to get a loan to cover their study expenses. This loan is normally paid back after the debtor gets a job and has a regular income.

### 3. Training development

#### 3.1 Curriculum conception

The curriculum for a bachelor degree in law is normally is composed of two parts. The first part is defined by the Ministry of Education and Training and is required of all disciplines. It consists of subject matter related to Marxist-Leninist philosophy, the thought of Ho Chi Minh, and the Communist Party history. The second part is divided into two sub-parts. The first sub-part corresponds to general and basic knowledge of law and the second sub-part is composed of subject matter necessary for specialized study of a legal discipline. In accordance with the current regulations concerning university legal training, there are six disciplines: Law, economic law, civil law, administrative law, criminal law, and international law. Specialization is more accentuated at the Master's level while those with a bachelor of law are expected to be generalists.

Since legal training at the bachelor level remains general, the curriculum almost contains theoretical subject matter. Practical training is most of the time in the form of seminars or conferences at which practitioners are invited to talk on topics relating to theoretical courses.

At the Master's level, the curriculum is also composed of two parts corre-

sponding to two steps of the training program. In the first part, there is mandatory subject matter which is expected to consolidate the student's knowledge of philosophy, basic law, and legal reasoning and analysis. Normally, a student must take all the related courses before moving onto the second part which contains specialized subject matter relevant to the discipline of the specific Master's program.

At the Ph.D. level, the training program is set up to prepare the Ph.D. candidate for the methodological rules of drafting a thesis, as well as to keep the student motivated in his/her research. The main reason for this is that most Ph.D. students are already employed on a fulltime basis and often find it difficult to be fully engaged in their research. The training program usually includes a number of seminars in which Ph.D. students are invited to participate in discussions on technical issues related to Ph.D. thesis writing.

### **3.2 Training performance**

**Training time.** The university legal training develops through the three levels of Bachelor, Master's and Ph.D. The bachelor degree is currently granted after four years of study, but, by virtue of a recent regulation approved by the Prime Minister, the training time at bachelor level may soon be reduced to three years<sup>4</sup>. The Master's degree is normally requires two years, and the Ph.D. degree, three years. So, in terms of training time, there are similarities between Vietnam and most European countries.

The bachelors' legal training program normally includes an internship in the last semester. In the internship the student undertakes professional work under the supervision of a legal expert. The bachelors' legal training course is normally finalized by the writing of a dissertation which must be defended before a jury.

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<sup>4</sup> Decision n. 1982/QĐ-TTg dated 26 October, 2016 of the (Vietnamese) Prime Minister.

Internship is also mandatory for the Master's legal training program. However, this requirement is not so significant since most Master's students are already employed on a fulltime basis. To acquire a Master's degree, a student must also prepare and defend a dissertation.

A student working on a Ph.D. degree does not need to attend theoretical courses. The student is only obliged to attend seminars relating to his/her research and to present his/her research's results according to the university schedule. The defense of a Ph.D. thesis is carried out in 2 phases, at the training unit level and, when this first phase is successfully passed, at the university level. A Ph.D. degree is conferred after the successful defense of a thesis at university level and when other requirements leading to this point show positive results.

**Teaching methods.** The most favored legal teaching method in Vietnam consists of lectures given in an auditorium: the teacher speaks and the students take notes; there is no interaction during the lecture. Sometimes, students raise questions related to certain technical points and the teacher answers these questions to clarify his/her presentation.

However, there are more and more law teachers who try to combine theoretical lectures with practical case studies. The case studies used in teaching law may be invented by the law teachers or be actual cases collected from judicial or extra-judicial practice. It should be noted that currently court decisions are still not systematically published in Vietnam. Still, teachers and students can use other ways to access court archives for the collection of interesting court decisions.

Some formal judicial precedents are now being recognized in Vietnam to be a source of law. These are court decisions considered remarkable in terms of the quality of arguments or law interpretation that are used by the Supreme Court as examples of law application in the settlement of lawsuits, and that are recom-

mended to be used by the courts for similar cases<sup>5</sup>.

## 4. Post-training phase

### 4.1 Training follow-up

Training assessments by students provide an important means of not only checking on whether the teaching meets the need of students, but also of giving the teacher an opportunity to make necessary adjustments to improve teaching quality. The assessment method, based on the idea that a student is a customer, can be described as follows: at the end of a course, students are invited to fill in an online questionnaire; the survey results are communicated to the teacher concerned and to the head of the relevant department. The teacher is required to take students' opinions into consideration to improve his/her teaching methods.

This training assessment at the program level is necessary to acknowledge the contribution of the program to socio-economic development and social progress in different employment sectors. In the assessment process, the alumni association plays a very important role.

### 4.2 Professional outlets

So far, it is not difficult for a law student to find a job after graduation<sup>6</sup>. Most of the time, those with a bachelor of law are recruited by the public sector through a competition. It is also possible to serve as legal assistant in a private enterprise or as a clerk in a law firm, notary office, or bailiff office. Professional legal training is available to those who would like to be promoted to higher

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<sup>5</sup> Resolution n. 03/2015/NQ-HĐTP dated October 28, 2015 by the Council of Judges of the Supreme Court.

<sup>6</sup> <http://kenhtuyensinh.vn/co-hoi-viec-lam-cho-sinh-vien-nganh-luat-la-rat-lon>; <http://www.hcmulaw.edu.vn/hcmulaw16/index.php/48-c-ttsk/234-86-sinh-vien-lu-t-ra-tr-u-ng-co-vi-c-lam-n-d-nh>.



professional responsibility, and includes training to be a judge, lawyer, notary public, etc. There are also people with a bachelor of law who continue their university study at the Master's level so as to gain a competitive advantage in professional life.

In the unusual case that the holder of a university degree desires to acquire a second bachelor's degree in law, there are normally two options: 1. To work at a law firm as a clerk and undertake a lawyer training course to qualify as a probationary lawyer; or 2. To undertake a profession related to the first university degree. Taking the second option gives a person an advantage over other colleagues because he/she will have very good knowledge of law.

## Legal education at university in Vietnam

General view  
Development  
Reform ideas

1

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*LEGAL EDUCATION  
AT UNIVERSITY  
IN VIETNAM*

### General view

- > University legal education
- >> At bachelor level for everybody
- >> At Master and PhD levels for those already engaged in professional life and expect to be promoted in consideration of high academic qualification
- > Vocational legal education
- >> Performed by the Judicial Academy (except for judges' training)
- >> For those having obtained a bachelor of law
- >> Regarded as requirement for the issuance of professional license by the Ministry of Justice

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*General View*

## Development

- > Enrollment requirements
- >> As for Bachelor degreed training
- >>> Holder of a baccalaureate
- >>> Having positive bac exam total score as compared with the normal score determined by university
- >> As for Master degreed training
- >>> Holder of bachelor of law (sometimes a bachelor of law relevant to the Master program in terms of specialty)
- >>> Having succeeded in an entrance examination
- >> As for PhD degreed training
- >>> Holder of Master of law
- >>> Having succeeded in a test

## Development

- > Training time
- >>> For bachelor degree: 4 years
- >>> For Master degree: 2 years
- >>> For PhD degree: 3 years
- >> Curriculum development
- >>> Adoption of academic credit system at bachelor and master levels
- + For bachelor degree: around 130 credits
- + For Master degree: around 60 credits
- >>> program composition
- + Conditional subject-matters (
- + Specialized mandatory subject-matters
- + Specialized optional subject-matters
- > Training methods
- >> Prevalence of traditional methods (giving lectures)

### 3, 4

*Development*

## Reform ideas

- > As for university legal education
- > Shortening of training time at Bachelor level to 3 years
- > Change of teaching methods at Bachelor and Master levels:
- >> General implementation of case study
- >> Combination of theoretical lecture and practical legal talk
- > As for vocational legal education
- >> Use of occupational transfer model
- >>> Performance of professional training by professional corporate
- + Lawyers' training by VBA
- + Judges' training by the Judicature Academy ...

# CAMBODIAN LEGAL SYSTEM AND LEGAL EDUCATION

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Dr. Kong Phallack\*

(Pannasastra University)

This paper is written to provide a brief introduction to legal system, sources of law, dispute resolution, legal professions and legal education in Cambodia. The paper does not explain legal procedures in the Cambodian courts and procedures of dispute resolution outside the court.<sup>1</sup>

## 1. Overview of Cambodian Legal System

The Cambodian legal system has evolved from unwritten customary law to statutory law. Scholars have classified Cambodian legal development into two

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\* The author is Dean and Professor of Law of Faculty of Law and Public Affairs, Paññāsāstra University of Cambodia (PUC); Managing Partner and Attorney at Law of KhmerLex Legal Solutions, a locally established law firm; and arbitrator of the Arbitration Council. He has handled 780 cases among 2684 cases registered at the Arbitration Council. Dr. KONG Phallack used to serve as a chairman of the Board of Director of the Arbitration Council for two mandates.

<sup>1</sup> This paper is revised based on articles published in the book titled *Introduction to Cambodian Law* which is known as KAS's Publication under Editors: Hor Peng, Kong Phallack and Gorege Menzel (2012).

phases, namely Ancient Law and Modern Law.<sup>2</sup> The former refers to the unwritten customary law from Funan Period to the Angkor Period<sup>3</sup>, whereas the latter refers to the codification of Cambodian laws from 1336 to present<sup>4</sup>. Before French colonization (1863) Cambodia was governed by customary rules<sup>5</sup> based on consensus. From 1863 to 1953, the Cambodian legal and judicial systems were based almost entirely on the French system. This system had a strong impact not merely on the law and legal education system but also on Cambodian lawyers, prosecutors, judges and bureaucrats until 1975. From April 1975 to December 1978, the dictatorial proletariat regime of the Khmer Rouge eradicated the entire legal system, existing laws, judiciary and government's institutions. Judges, lawyers and other legal professionals were the target of execution. Vietnamese troops<sup>6</sup> invaded Cambodia and started their occupation on January 7<sup>th</sup>, 1979. At that time the country faced a severe shortage of lawyers and laws. Michael Vickery<sup>7</sup> described this situation as a complete legal vacuum. The legal system that emerged during these years was heavily influenced by the Vietnamese system. Major legislation promulgated during this period, included Cambodia's presently applicable contract law. During the period of the United Nations Transitional Authority in Cambodia (UNTAC) from 1991 to 1993 a number of laws, including criminal, and a judicial law and a press law, were enacted.<sup>8</sup> The current legal sys-

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<sup>2</sup> Royal University of Law and Economics and Cooperation and Cultural Activities of French Embassy, *Introduction Au Droit Cambodgien*, p.7.

<sup>3</sup> *Id.*, pp.8-15.

<sup>4</sup> *Id.*, pp.16-25.

<sup>5</sup> KONG Phallack, Hok Sophea, Tep Navy, Oeurn Borarorth, *The ASEAN Legal Systems*, Faculty of Law and Economics, Phnom Penh, 1998, p.12.

<sup>6</sup> Vietnam occupied Cambodia from 1979 to 1989.

<sup>7</sup> Michael Vickery, *Kampuchea: Politics, Economics and Society*, London, 1986. There were only ten law graduates including 5 judges remained in the country (Proclamation on January 10, 1979). Vietnam occupied Cambodia from 1979 to 1989.

<sup>8</sup> Under 1991 Paris Peace Agreement, UNTAC started its mission in Cambodia in order to help organize the general election and form a legitimate government. In cooperation with the Supreme National Council (SNC), a policy making body represents Cambodian four factions at home and abroad these laws were adopted.

tem is a hybrid legal system, which is an amalgamation of Cambodian customs, the French based legal system which is an influence from the French colonization and the common law system which is an impact of foreign aid assistance to the legal and judicial reform in Cambodia.<sup>9</sup>

## 2. Sources of Law in Cambodia

This section examines the Sources of Law in Cambodia. The word “sources” in this context mean origins of legal rules from relevant authorities in Cambodia and other sources recognized by laws in force, whereas the word “Law” in Cambodian context can mean domestic law and international law in accordance with the decision of the Constitutional Council.<sup>10</sup> In accordance the Cambodian laws and regulations as well as the current practice, the Sources of Law in Cambodia can be classified into primary sources which mean all legal instruments of the competent authorities of the State,<sup>11</sup> and secondary sources which mean customs, traditions, consciences and equity, judicial decisions, arbitral awards, and doctrines. In civil cases, when the law does not state explicitly or when there is a gap which the law does not stipulate provisions concerning any case, the adjudicate

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<sup>9</sup> Development partners provide assistance to legal and judicial reform in Cambodia are AU-SAID, ADB, CANADA, DANIDA, EU, Finland, FRANCE, ILO, JICA, GTZ, Netherland, OHCHR, SIDA, UNDP, UK, USAID, World Bank. See Council for Legal and Judicial Reform [<http://www.cljr.gov.kh/>].

<sup>10</sup> The Constitutional Council, CASE N°131/003/2007 Of June 26, 2007, Decision N°092/003/2007 CC.D Of July 10, 2007.

<sup>11</sup> Constitution, article 91 (New) (1993 as amended in 1999), and Law on the Organization and Functioning of the Council of Ministers, Art.13, Art.28, Art.29 (1994), The Law on The Administration and Management of Commune/Sangkat, Art.48 (2001), and Law on Administrative Management of the Capital, Provinces, Municipalities, Districts, and Khans, Art.32 and Art.53- Art.61 (2008).

Article 91 (new) of the constitution states: The members of the Senate, the members of the National Assembly, and the Prime Minister have the right to initiate legislation.

The deputies shall have the right to propose any amendments to the laws, but the proposals shall be unacceptable if they aim at reducing public income or increasing the burden on the people.

courts can proceed hearings by basing on customs, traditions, conscience and equity.<sup>12</sup> In the current practice, it is hardly to find Cambodian court judgments refer to precedents except the new hybrid court, the Extraordinary Chamber within the Court of Cambodia,<sup>13</sup> however precedents on arbitral awards are well developed by the Arbitration Council, a quasi tribunal body that has jurisdiction over collective labor disputes<sup>14</sup>. Whereas legal doctrines whether they are part of Cambodian laws and what are they, it requires a thorough study in order to determine whether it is Cambodian one's or it originates from other jurisdictions.

Legal scholars who study Cambodian laws would identify the following legal rules deriving from competent authorities in Cambodian as primary sources of law:

**The Constitution:** The Constitution is the supreme law of the Kingdom of Cambodia. All laws and decisions made by state institution must be in strict conformity with the constitution.<sup>15</sup>

**Laws (Chbab):** A law is adopted by the National Assembly and the Senate, and promulgated by the King or the acting Head of State.<sup>16</sup>

**Royal Decrees (Preah Reach Kret):** A Royal decree is an executive regulation proposed by the Council of Ministers and signed by the King or the acting Head of State.<sup>17</sup>

**Sub-Decrees (Anu-Kret):** A sub-decree is an executive regulation and usually prepared by relevant ministries, adopted by the Council of Ministers and signed by the Prime Minister.<sup>18</sup>

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<sup>12</sup> Law on Court Organization (1993), Art.4. However, this provision no longer exists under the Law on Court Organization (2014) promulgated by Royal Kram No. NS/RKM/0714/015 dated July 16, 2014. Article 91 the Law on Court Organization does not abrogate the Law on Court Organization (1993), it is just states any provisions of the said law which are contrary to the current law is null and void.

<sup>13</sup> See details about ECCC [<http://www.eccc.gov.kh>].

<sup>14</sup> Arbitration Council [<http://www.arbitrationcouncil.org/en/ac-decisions/arbitral-decisions>].

<sup>15</sup> Constitution, Art.152-new-2 (1993 as amended in 1999 and 2014).

<sup>16</sup> Constitution, Art.28-new (1993 as amended in 1994 and 1999).

<sup>17</sup> Constitution, Art.28-new (1993 as amended in 1994 and 1999).

<sup>18</sup> Law on the Organization and Functioning of the Council of Ministers, Art.13 (1994).



**Proclamations (Prakas):** A proclamation is an executive regulation is at the ministerial levels. It is prepared by the relevant ministries and signed by the relevant Minister(s).<sup>19</sup>

**Decision (Sech Kdei Samrach):** Decision is an executive regulation made by the Prime Minister, and relevant ministers.<sup>20</sup> Decision is also stated in article 150 of the constitution. However, decision is not defined by law. In practice, there are different types of decisions, such decision made by the Constitution Council, decision made by the Prime Minister, and decision made by relevant ministers and so on. Decision of the Constitutional Council is considered final and binding decision. Therefore, it has supremacy that means all laws and regulations must strictly conform with the decision of the Constitutional Council.

**Circular (Sarachor):** A circular is an administrative instruction which is used to clarify works and affairs of the ministries and it is signed by the Prime Minister and relevant ministers.<sup>21</sup>

**Bylaw (Deika):** Bylaw is a legal rule approved by the Councils of Sub-National Levels. The term ‘ Council of Sub-National Levels’ in this text mean the Capital Council, Provincial Councils, Municipal Councils, Districts Councils, Khans Councils, Sangkat Councils and Commune Councils. These Councils have a legislative power to issue bylaws (Deikas).<sup>22</sup>

**International law:** According to the decision of the Constitutional Council<sup>23</sup> international law is considered a source of Cambodian Law. All international treaties and conventions can become Cambodian law unless it is signed and ratified by the King after a vote of approval by the National Assembly and the Sen-

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<sup>19</sup> Law on the Organization and Functioning of the Council of Ministers, Art.29 (1994).

<sup>20</sup> Law on the Organization and Functioning of the Council of Ministers, Art.13 (1994). See also Sub-decrees on Organizations and Functioning of Ministries.

<sup>21</sup> Law on the Organization and Functioning of the Council of Ministers, Art.13, Art.29 (1994).

<sup>22</sup> The Law on The Administration and Management of Commune/Sangkat, Art.48 (2001), and Law on Administrative Management of the Capital, Provinces, Municipalities, Districts, and Khans, Art.32 and Art.53- Art.61 (2008).

<sup>23</sup> The Constitutional Council, CASE N°131/003/2007 Of June 26, 2007, Decision N°092/003/2007 CC.D Of July 10, 2007.

ate.<sup>24</sup> Based on this text, one can argue that Cambodia adopts a dualist approach<sup>25</sup> because all international treaties and conventions required an approval from the Cambodian Parliament. However, article 31 of the constitution states the Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human rights, the covenants and conventions related to human rights, women's and children's rights.<sup>26</sup> Based on this text, it seems that Cambodia adopts a monist approach<sup>27</sup> because the constitution recognizes all these international instruments.

### 3. Overview of Cambodian Judicial System

This section gives an overview on the judicial system in Cambodia but not explains procedures of each court. The judicial system focuses in this article is the courts and the prosecution departments. Courts of all sectors and levels have judicial jurisdiction over all cases including administrative cases.<sup>28</sup> At present, the Cambodian judiciary consists of the Courts of First Instance, Appeal Court and Supreme Court. The Courts of First Instances is the lower court and the Appeal Court and the Supreme Court is the Higher Court.<sup>29</sup> Besides these courts, there is a Hybrid Court, which is known as the Extra-Ordinary Chamber within the Court of Cambodia.<sup>30</sup>

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<sup>24</sup> Constitution, Art.26-new (1993).

<sup>25</sup> Rebecca M.M. Wall, *International Law*, London. Sweet & Maxwell, 2016, p.36.

According to the book, if a state is dualistic, international law will only become part of its municipal law if it has been expressly adopted as such by a way of legislative act.

<sup>26</sup> Constitution, Art.31 (1993).

<sup>27</sup> Rebecca M.M. Wallace, *supra* note 25, p.36.

According to the book, if a state is monistic, if it accepts international law automatically as part of its municipal law and does not demand an express act of legislature.

<sup>28</sup> Law on court Organization (2014), Art.4.

<sup>29</sup> Law on Court Organization (2014), Art.3, §1.

<sup>30</sup> Law on the Establishment of the Extra Ordinary Chambers within the Court of Cambodia

### 3.1 The Courts of First Instance

The Court of First Instance is regulated from article 12 to article 34 of 2014 Law on Court Organization. The Court of First Instance is the first trial court and shall be created by Royal Decree and located within the Capital and Provinces.<sup>31</sup> The Court of First Instance is divided into specialized Courts such as Criminal Court, Civil Court, Commercial Court and Labor Court.<sup>32</sup> However, these specialized courts are not yet created and in practice the competent court of respective province and the capital court hear all cases.

#### 3.1.1 Criminal Court of the Court of First Instance

The jurisdiction of the Criminal Court of the Court of the First Instance is stipulated in article 20 of 2014 Law on Court Organization. The Criminal Court of the Court of First Instance shall have competence to hear all criminal cases which fall within its jurisdictional competence in accordance with the Code of Criminal Procedures, except as otherwise provided by other law. The Criminal Court of the Court of First Instance shall adjudicate criminal cases by one judge or a Trial Chamber in accordance with the provisions of the Code of Criminal Procedures.<sup>33</sup>

#### 3.1.2 Civil Court of the Court of First Instance

The jurisdiction of the Civil Court of the Court of the First Instance is stipulated in article 21 of 2014 Law on Court Organization. The Civil Court of the Court of First Instance shall have competence to hear all civil cases which fall within its jurisdictional competence in accordance with the Code of Civil Procedures, except as otherwise provided by other law.

The Civil Court of the Court of First Instance shall adjudicate criminal cases

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(2004).

<sup>31</sup> Law on Court Organization (2014), Art.5 and Art.12. For Military Court, see Law on Court Organization (1993) Art.2, § 1.

<sup>32</sup> Law on Court Organization (2014), Art.14.

<sup>33</sup> Law on Court Organization (2014), Art.20.

by one judge or a Trial Chamber in accordance with the provisions of the Code of Civil Procedures.<sup>34</sup>

### 3.1.3 Commercial Court of the Court of First Instance

The term “Commercial Court” is found in the 1995 Law on Commercial Rules and Register. However, the court has not yet been established.<sup>35</sup> The jurisdiction of the Commercial Court of the Court of the First Instance is stipulated from Article 22 to Article 24 of 2014 Law on Court Organization.

The Commercial Court of the Court of First Instance shall have competence to hear all commercial cases including insolvency case in accordance with provisions commercial procedures.<sup>36</sup> The Commercial Court of the Court of First Instance, when hearing the cases, shall be comprised of three judges and accompanied by two advisors, who are businessmen or who have knowledge in commercial laws where the subject matter is equal to or over 1.000.000.000 (One thousand millions) Riels. However, where the subject matter is between 100.000.000 (One hundred millions) Riels to below 1.000.000.000 (One thousand millions) Riels, the trial chamber shall consist of only one judge and accompanied by two advisors, who are businessmen or who have knowledge in commercial law.<sup>37</sup>

The judgment of the Commercial Court of the Court of First Instance is rendered by one judge or three judges after the consultation with commercial advisors depending on the preceding paragraph. The commercial advisors do not carry out their duties permanently in the Commercial Court of the Court of First Instance. Commercial advisors carry out their functions at the invitation extend-

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<sup>34</sup> Law on Court Organization (2014), Art.21.

<sup>35</sup> Law on the Commercial Regulations and the Commercial Register, Art.55, (1995).

This law states during the period in which the Kingdom of Cambodia has no Commercial Court, the ordinary courts of the Kingdom of Cambodia shall be competent in all commercial matters.

<sup>36</sup> Law on Court Organization (2014), Art.22.

<sup>37</sup> Law on Court Organization (2014), Art.23.

ed by the President of Commercial Court of the Court of First Instance.<sup>38</sup> The procedures of selecting and terms of reference for the commercial advisors are determined by a Sub-Decree upon the request of the Minister of Justice following the consultation with the Minister of Commerce.<sup>39</sup>

### 3.1.4 Labor Court of the Court of First Instance

The term “Labor Court” is found in the 1997 Labor Law. However, the court has not yet been established.<sup>40</sup> The Organization of the Labor Court of the Court of the First Instance is stipulated from Article 25 to Article 28 of 2014 Law on Court Organization. The Labor Court of the Court of First Instance shall have competence to hear all cases relating to labor in accordance with the provisions on the labor procedures.<sup>41</sup> The Labor Court of the Court of First Instance, when hearing the cases, shall consist of one judge and accompanied by two labor advisors, among whom one is the worker/employee and another is the employer. The judgment of the Labor Court of the Court of First Instance is rendered by a judge after the consultation with labor advisors. The labor advisors do not carry out their duties permanently in the Labor Court of the Court of First Instance. Labor advisors carry out their functions at the invitation extended by the President of Labor Court of the Court of First Instance.<sup>42</sup> The procedures of selecting and terms of reference for the labor advisors are determined by a Sub-Decree upon the request of the Minister of Justice following the consultation with the Minister in charge of labor.<sup>43</sup>

The Competent Labor Court is the Labor Court of the Court of First In-

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<sup>38</sup> Law on Court Organization (2014), Art.23.

<sup>39</sup> Law on Court Organization (2014), Art.24.

<sup>40</sup> Labor Law (1997), Art.389.

The article states that pending the creation of the Labor Courts for the time being disputes related to the application of this law shall be referred to common courts.

<sup>41</sup> Law on Court Organization (2014), Art.25.

<sup>42</sup> Law on Court Organization (2014), Art.26.

<sup>43</sup> Law on Court Organization (2014), Art.28.

stance where the labor disputes arise. Though the competence is determined in the above paragraph, the workers/employees may file lawsuits in Court of First Instance as determined below, except as otherwise provided by the provisions of other law: at his/her place of residence or at the location of head office or a principal place of the company or legal entity or at the place of residence of the representative or a person in charge of the company or legal entity, if the location of head office or a principal place of the Company is not available.<sup>44</sup>

### 3.2 Appeal Courts

As explained above, the higher courts are composed of the Appeal Court and Supreme Court.

The Appeal Court is regulated from article 35 to article 54 of 2014 Law on Court Organization. The Appeal Court is the second level of trial chamber. The Appeal Court includes the Appeal Court in Phnom Penh and regional Appeal Courts to be established by a Royal Decree.<sup>45</sup>

According to the law, the Appeal Court consists of Criminal Chamber; Civil Chamber; Investigating Chamber; Commercial Chamber; Labor and other specialized Chamber to be created by Royal Decree when necessary. Each Chamber renders its judgment(s) autonomously within its jurisdictional competence, in the name of the Court of Appeal to which it belongs.<sup>46</sup> Each Chamber, when hearing the cases, shall consist of three judges, one of whom is the President in accordance with the applicable procedures. In the event that a case is transferred back by the Supreme Court, the Court of Appeal shall adjudicate the case with five judges all of whom did not previously adjudicate on the same case.<sup>47</sup> The Appellate Court reviews both *Ang Het (matters of facts)* and *Ang Chbab (matters of law)*.<sup>48</sup> The Court of Appeal has a jurisdiction to adjudicate all cases within

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<sup>44</sup> Law on Court Organization (2014), Art.27.

<sup>45</sup> Law on Court Organization (2014), Art.35.

<sup>46</sup> Law on Court Organization (2014), Art.37.

<sup>47</sup> Law on Court Organization (2014), Art.39.

<sup>48</sup> Law on Court Organization (2014), Art.42.

its territorial jurisdiction, except as otherwise provided by law to fall under the jurisdiction of other courts.<sup>49</sup>

### 3.2.1 The Criminal Chamber

The Criminal Chamber has competence to hear Uttoh Appeals against criminal judgments of the Courts of First Instance and other cases within its jurisdictional competence in accordance with the applicable provisions on criminal procedures.<sup>50</sup>

### 3.2.2 The Civil Chamber

The Civil Chamber has competence to hear Uttoh Appeals against civil judgment(s) of the Court of First Instance within its jurisdictional competence in accordance with the applicable provisions on civil procedures. The judgment is made by three judges, one of them is the chairman.<sup>51</sup>

### 3.2.3 The Investigating Chamber

The Investigating Chamber has competence to hear Uttoh Appeals against decisions of the investing judge and other cases as determined by law within its jurisdictional competence in accordance with the applicable provisions on criminal procedures. The judgment is made by three judges, one of them is a chairman.<sup>52</sup>

### 3.2.4 The Commercial Chamber

The Commercial Chamber has competence to hear Uttoh Appeals against decisions of the Court of First Instance in commercial cases within its jurisdictional competence in accordance with the applicable provisions relating to commercial procedures. The judgment is made by three judges, one of them is a

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<sup>49</sup> Law on Court Organization (2014), Art.41.

<sup>50</sup> Law on Court Organization (2014), Art.43.

<sup>51</sup> Law on Court Organization (2014), Art.44.

<sup>52</sup> Law on Court Organization (2014), Art.45.

chairman. The Commercial Chamber of the Court of Appeal, when hearing the cases, shall consist of three judges and accompanied by two advisors, who are businessmen or who have knowledge in commercial laws and who are not the commercial advisors to the same case previously adjudicated before the Court of First Instance and the Court of Appeal. The judgment of the Commercial Chamber of the Appeal Court is made by three judges after consultation with commercial advisors. The commercial advisors do not carry out their duties permanently in the Commercial Chamber of the Court of Appeal. The commercial advisors carry out their functions at the invitation extended by the President of the Commercial Chamber of the Court of Appeal. The procedures of selecting and terms of reference for the commercial advisors are determined by a Sub-Decree upon the request of the Minister of Justice following the consultation with the Minister of Commerce.<sup>53</sup>

### 3.2.5 The Labor Chamber

The Labor Chamber has competence to hear Uttoh Appeals against decisions of the Court of First Instance in labor cases and other cases within its jurisdictional competence in accordance with the applicable provisions on labor procedures. The Labor Chamber of the Court of Appeal, when hearing the cases, shall consist of three judges and accompanied by two labor advisors, among whom one is the worker/employee and another is the employer; both of whom are not the labor advisors to the same case previously adjudicated before the Court of First Instance and the Court of Appeal. The decision of the Labor Chamber is made by three judges, after consultation with the labor advisors. The labor advisor do not carry out his/her duties permanently in the Labor Chamber of the Court of Appeal. The labor advisors carry out his/her functions at the invitation extended by the President of the Labor Chamber of the Court of Appeal. The procedures of electing and performing duty of labor advisors are regulated by a Sub- Decree upon the request of the Minister of Justice following the consulta-

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<sup>53</sup> Law on Court Organization (2014), Art.46.



tion with the Minister in charge of labor.<sup>54</sup>

### 3.2.6 The Joint Chamber

The Joint Chamber may be created by the President of the Appeal Court to hear cases fall in competence of multiple chambers or if the case has found a controversial solution before different Chambers of the same Court of Appeal. The Joint Chamber is conducted at the invitation of the President of the Appeal Court. The Joint Chamber consists of at least five judges and decision of the Joint Chamber is binding all chambers to follow. The President of the Court of Appeal shall issue judgment in accordance with the decision of the Joint Chamber. The decision on the conflict of jurisdiction and conflict of law is the final decision.<sup>55</sup>

## 3.3 Supreme Court

The Supreme Court is regulated from article 55 to article 73 of 2014 Law on Court Organization. The Supreme Court is the highest court in Cambodia and located in Phnom Penh Capital<sup>56</sup> and it has a jurisdiction to adjudicate all cases within its territorial jurisdiction in accordance with applicable procedures.<sup>57</sup>

According to the law, the Supreme Court consists of Criminal Chamber; Civil Chamber; Investigating Chamber; Commercial Chamber; Labor and other specialized Chamber to be created by Royal Decree when necessary. Each Chamber renders its judgment(s) autonomously within its jurisdictional competence, in the name of the Supreme Court to which it belongs.<sup>58</sup> Each Chamber, when hearing the cases, shall consist of five judges, one of whom is the President in accordance with the applicable procedures.<sup>59</sup>

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<sup>54</sup> Law on Court Organization (2014), Art.7.

<sup>55</sup> Law on Court Organization (2014), Art.48.

<sup>56</sup> Law on Court Organization (2014), Art.55.

<sup>57</sup> Law on Court Organization (2014), Art.61.

<sup>58</sup> Law on Court Organization (2014), Art.57.

<sup>59</sup> Law on Court Organization (2014), Art.59.

### 3.3.1 Full Bench

A Full Bench of the Supreme Court is presided by the President of the Supreme Court and created by the ruling of the President of the Supreme Court and make decisions on behalf of the Supreme Court. The Full Bench is composed of at least 9 justices and has authority to adjudicate (i) the second Satuk Appeal filed against the judgments of the Appeal Court in accordance with applicable procedures; (ii) Motions for review against the final judgments of the Courts of First Instance and final Judgments of the Higher Court in accordance with the applicable procedures, and (iii) Motion for review or retrial in case there is a request made by the King via the Minister of Justice for review and remake a decision on any cases.<sup>60</sup>

### 3.3.2 The Joint Chamber

The Joint Chamber may be created by ruling of the President of the Supreme Court to hear cases fall in competence of multiple chambers or if the case has found a controversial solution before different Chambers of the Supreme Court. The Joint Chamber is conducted at the invitation of the President of the Supreme Court. The Joint Chamber consists of at least nine judges and decision of the Joint Chamber is binding all chambers to follow. The President of the Supreme Court shall issue judgment in accordance with the decision of the Joint Chamber. The decision on the conflict of jurisdiction and conflict of law is the final decision.<sup>61</sup>

### 3.3.3 The Criminal Chamber

The Criminal Chamber has competence to hear Satuk Appeals against criminal judgments of the Appeal Court in accordance with the applicable provisions on criminal procedures.<sup>62</sup>

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<sup>60</sup> Law on Court Organization (2014), Art.62.

<sup>61</sup> Law on Court Organization (2014), Art.63.

<sup>62</sup> Law on Court Organization (2014), Art.64.

#### 3.3.4 The Civil Chamber

The Civil Chamber has competence to hear Satuk Appeals against the judgment of the higher court and objections against the ruling on civil cases of the Appeal Court, and Satuk Appeals against the judgments of the Courts of First Instance and other cases in accordance with the applicable provisions on civil procedures.<sup>63</sup>

#### 3.3.5 The Commercial Chamber

The Commercial Chamber has competence to hear Satuk Appeals against the judgment of the higher court and objections against the ruling on commercial cases of the Appeal Court in accordance with the applicable provisions on civil procedures.<sup>64</sup>

#### 3.3.6 The Labor Chamber

The Labor Chamber has competence to hear Satuk Appeals against the judgment of the higher court and objections against the ruling on labor cases of the Appeal Court in accordance with the applicable provisions on civil procedures.<sup>65</sup>

### 3.4 Prosecution Department Attached to the Courts

According to 2014 Law on Court Organization, each court of all levels shall be attached with a Prosecutor's Office. The Prosecutor's Office at each Court of First Instance is called the Prosecution Department attached to the Court of First Instance. The Prosecutor's Office at the Court of Appeal is called the Prosecution attached to the Court of Appeal. The Prosecutor's Office at the Supreme Court is called the Prosecution attached to the Supreme Court. The representative(s) of the Prosecution shall be present in all court hearings of criminal cases or other cases as determined by law.<sup>66</sup>

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<sup>63</sup> Law on Court Organization (2014), Art.65.

<sup>64</sup> Law on Court Organization (2014), Art.66.

<sup>65</sup> Law on Court Organization (2014), Art.67.

<sup>66</sup> Law on Court Organization (2014), Art.8.

### **3.5 Administration Body of the Courts and Prosecution Departments**

With an effort to improve the court administration in Cambodia, article 10 of 2014 establishes an administrative body at each court of all levels: However, the administration of the courts and the prosecution departments are under the central administration of the Ministry of Justice. The administrative body at the Court of First Instance is called the Secretariat for Administration of the Court of First Instance and it is equal to a Department. The administrative body at the Court of Appeal is called the General Secretariat of Administration of the Court of Appeal and it is equal to General Department. The administrative body at the Supreme Court is called the General Secretariat of Administration of the Supreme Court and it is equal to General Department.

The budget of the courts and the prosecution of the departments is regulated by a sub-decree and it is part of budget of the Ministry of Justice and it indicates in a separate budget package.<sup>67</sup>

### **3.6 Military Court**

The Military Court<sup>68</sup> has jurisdiction only over military offenses. Military offenses are those involving military personnel, whether enlisted or conscripted, and which concern discipline within the armed forces or harm to military property.<sup>69</sup> All ordinary offenses committed by military personnel are tried in ordinary courts (provincial/municipal courts).<sup>70</sup> According to article 81 of 2014 Law

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<sup>67</sup> Law on Court Organization (2014), Art.79.

<sup>68</sup> KOY Neam, Introduction to The Cambodian Judicial Process, the Asia Foundation, 1998, p.17. The Military Court located in Phnom Penh is administratively, financially and logistically under the Ministry of National Defense. All activities carried out by the court such as statistics of investigations and trial activities must be reported to this Ministry.

<sup>69</sup> UNTAC Criminal Code, Art.11; see also LOAT, Art.9, § 2.

<sup>70</sup> LOAT, Art.9, § 3; see also UNTAC Criminal code, Art.11. The Military Court consists of Department of Prosecution, Department of a Chief Clerk, Department of Investigation, Department of Trial Judges, and a Secretariat (administrative office). All staffs are military personnel such as a President, three Vice Presidents, judges who are appointed by the Ministry of National Defense, and military defenders are appointed by the President of the Court after

on Court Organization, provisions related to Military Court in the existing laws remain valid and enforced until there are new provisions.

### 3.7 Environmental Court or Green Court

Despite no specialized environmental court, but in 2015, Cambodian Supreme Court they formed a National Judicial Working Group on Environment by Decision No. 78/15 dated 16 February 2015 and Local Judicial Working Group Network on Environment by Decision No. 111/15 SC.D dated 16 February 2015.<sup>71</sup> In addition, the Cambodian Supreme Court “has collated data on environmental cases. As of April 2015, 4,266 environmental cases had been filed. Final decisions had been handed down for 1,614 of these cases, while 2,632 cases were still pending. Notably, most of these cases dealt with forestry offenses”.<sup>72</sup>

Environmental law is a new area of law that has recently developed and there are not many experts and interests. From 2014, the Ministry of Environment of Cambodia has prepared an Environmental Code and when the code is adopted and promulgated it is necessary to create such a court since environmental law is very technical and complicated issues and a crosscutting sector.<sup>73</sup> Article 3 of 2014 Law on Court Organization Cambodian allows a creation of the specialized court when it is necessary.

### 3.8 Constitutional Council and Supreme Council of Magistracy

In addition to these courts, there are a *Constitutional Council (CC)*<sup>74</sup>, which

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finishing training at the Ministry of Justice.

<sup>71</sup> The Proceedings of the Fifth ASEAN Chief Justices’ Roundtable on Environment 2015, Siem Reap, Cambodia, pp.17-18. See [<https://www.adb.org/sites/default/files/publication/209906/5th-asean-cj-roundtable-envt-proceedings.pdf>].

<sup>72</sup> The Proceedings of the Fifth ASEAN Chief Justices’ Roundtable on Environment 2015, Siem Reap, Cambodia, pp.17-18. See [<https://www.adb.org/sites/default/files/publication/209906/5th-asean-cj-roundtable-envt-proceedings.pdf>].

<sup>73</sup> The Draft Environmental Code (8<sup>th</sup> version) can be found [<http://www.vishnulawgroup.com/index.php/publications>].

<sup>74</sup> See Constitutional Council of Cambodia [<http://www.ccc.gov.kh>].

has a duty to safeguard respect for the constitution, interpret the constitution and laws adopted by the National Assembly (and reviewed completely by the Senate), and has the right to receive and decide on disputes concerning the election of members of the National Assembly and election of members of the Senate,<sup>75</sup> and the Supreme Council of Magistracy, which is a judicial organ ensuring the smooth functioning and the independence of the judiciary in Cambodia.<sup>76</sup> It has a duty to decide and propose to the King on the appointment, transfer, leave of absence, delineation of duties, promotion and dismissal of judges and prosecutors to all courts<sup>77</sup> and takes disciplinary action against delinquent judges.<sup>78</sup>

Despite having different responsibilities, Cambodian judges and public prosecutors are both categorized as *Chaokrom* (magistrates). *Chaokrom* in its general sense is a title in the Cambodian judicial system refers not only to judges who sit at trial but also to those who hold the position of public prosecutors. A judge involved in a trial or investigation is called *Chaokrom Angkuy* (Sitting judge). A judge holding a position in the prosecutor department (*Ayakar*) is called *Chaokrom Chhor* (Standing judge).<sup>79</sup>

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<sup>75</sup> Cambodia. Const. Art.136; Art.137, § 1; Art.141.

The Constitution states CC consists of nine members with a nine-year mandate. 3 members appointed by the King; 3 members by the National Assembly and 3 others appointed by SCM. After promulgation of any law, the King, the President of the Senate, the President of the National Assembly, the Prime Minister, 1/4 of members of the Senate, 1/10 of members of the National Assembly or the courts may request CC to review the constitutionality of that law. Khmer citizens shall have the right to appeal against the constitutionality of any law through their representative or the President of National Assembly or the member of the Senate or the President of the Senate.

<sup>76</sup> Cambodia. Const. Art.132. See Royal Kram NS/RKM/0714/017 dated 16 July 2014 on the promulgation of Law on the Organization and Functioning of the Supreme Council of Magistracy.

<sup>77</sup> Cambodia. Const. Art.134.

<sup>78</sup> Cambodia. Const. Art.133.

<sup>79</sup> See details Royal Kram NS/RKM/0714/016 dated 16 July 2014 on the promulgation of the Statute of Judges and Prosecutors.

## 4. Overview of Cambodian Alternative Dispute Resolution System

The solution of conflict outside the judicial system, which is known as an Alternative Dispute Resolution (ADR) is not new in Cambodia. Cambodian people have long been solving their disputes outside the court.<sup>80</sup> In principle, and according to current practice, dispute resolution outside court in Cambodia is conducted based on the following methods:

### 4.1 Negotiation

Negotiation is the most common form of ADR in Cambodia that parties use to resolve disputes directly without assistance of a third party through compromise. Negotiation is allowed under Cambodian Law, for example, article 20 of the above-mentioned Cambodian Investment Law when investment disputes happen.

### 4.2 Conciliation

Conciliation or mediation is part of Cambodian Culture and Legal system. Conciliation is traditionally conducted by the third party, namely a monk, an *Achar* (knowledgeable expert) or a (prominent) person the parties trust, and a King<sup>81</sup> and formally it is conducted by a public officer appointed by the govern-

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<sup>80</sup> Carmen Maria Lopez Vasquez, Pre-Trial Dispute Resolution Process, 20 March, 1996, The Cambodian Development Research Institute (CDRI), p.9.

<sup>81</sup> The Conciliation conducted by the King is called *Preah Reach Savnakar* (The Royal Hearing). *The Preah Reach Savnakar* was applied before 1970. It is an extra-judicial forum or method of reconciliation by the King where citizens can submit their civil disputes to him for settlement. The Royal Hearing was revived in 1994 and was conducted every ten days. From early April 1994 to the end of May 1994 there were 133 cases lodged for the Royal Hearing, but only 40 cases had been heard. Due to the King's illness or for other unexplained reasons this method has been suspended. In the Royal Hearing method the King cannot make any decision. The Commission for Receiving Complaints for the Royal Hearing (CRCRH) is set up to receive complaints from various sources: (i) A complaint lodged directly with CRCRH by one or more parties whose dispute was settled by local authorities; (ii) A complaint for-

ment and the judge. In practice, a settlement of disputes through the conciliation is conducted in daily life and people never think of criminal or civil cases. If it is not severe enough harm their interests they prefer compromise to bringing cases to the authorities or the courts. According to the Cambodian legal framework, conciliation is permitted and found in various laws such as Code of Civil Procedures for Civil Case<sup>82</sup>, Labor Law (Labor disputes)<sup>83</sup>, Land Law and Regulations (Land disputes)<sup>84</sup>, Law on Management and Administration of Commune and Sangkat Council, Law on Management and Administration of Capital, Provinces, Khans, Municipalities and districts [local conflict] so on.

### **4.3 Arbitration**

This section briefly explains the Labor Arbitration and Commercial Arbitration in Cambodia.

#### **4.3.1 Labor Arbitration**

Labor Arbitration is regulated under Chapter 12 of Labor Law and Prakas of the Ministry in charge of Labor.<sup>85</sup> Cambodian labor arbitration body is known as

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warded by the National Assembly Commission or members; (iii) A complaint not processed by the court; (iv) A case already settled by the court; (v) A case finally settled by the court but for which authorities failed to execute the judgment. After receiving a case CRRH sends investigators to the place where the dispute arose or settled to collect information. The investigation report must be forwarded to the King's advisors for screening. During the Royal Hearing session the King hears a complete report read by a high ranking official, then he gives his opinion on the dispute to the parties how to get along together without causing prejudice to either of the parties or to authorities concerned for consideration. His opinion is not binding.

<sup>82</sup> Code of Civil Procedures, Art.97.

<sup>83</sup> Labor Law, Art.300-301, and 303 (1997).

<sup>84</sup> Su-decree on the Organization and Functioning of the Cadastral Commission, Art.7-11 (2002), and Royal Decree on the Establishment of the National Authority of Land Dispute Resolution, Art.3 and Art.15 (2006).

<sup>85</sup> Cambodian Labor Law, Art.309 (1997), and Prakas 099 on Arbitration Council dated 21 April 2004.



the Arbitration Council is a tripartite system composed of arbitrators from three lists, the employer's list, the employee's list and the government's list or neutral list. The Arbitration Council has handled 2684 cases from 2003- 2017 (July) according to the statistic recorded by the Secretariat of Arbitration Council. The Labor Arbitration is compulsory but the arbitral award is non-binding. The binding award can happen only when parties agree to choose binding or when there is no opposition of arbitral award after eight days.<sup>86</sup> The enforcement of binding arbitral award is made via the Compulsory Execution under the Code of Civil Procedures.<sup>87</sup>

#### 4.3.2 Commercial Arbitration

The commercial arbitration has been functioned and governed by the 2006 Law on Commercial Arbitration 2006. The Commercial Arbitration is operated under the National Arbitration Center but few cases has been handled by the center since its creation. The commercial Arbitration is voluntary but the arbitral award is binding. The enforcement of the arbitral award is made at the court under Code of Civil Procedure, section on Compulsory Execution.<sup>88</sup>

Cambodia ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 2001 via the Royal Kram NS/RKM/0701/10 dated 23 July 2001. Therefore, foreign arbitral awards are enforceable under Cambodian Code of Civil Procedures.<sup>89</sup>

In addition, Cambodia ratified the Convention on the Settlement of Investment Disputes (ICSID) in 2001 via the Royal Kram NS/RKM/0601/08 dated 29 June 2001.<sup>90</sup> ICSID provides facilities for conciliation and arbitration of investment disputes between Contracting States and nationals of other Contract-

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<sup>86</sup> See KONG Phallack, Labor Arbitration Council in Cambodia: Law and Practice: Cambodian Comparative Law, Year Book (first Publication), 2009, pp 163-171. See [<http://www.arbitrationcouncil.org>].

<sup>87</sup> Code of Civil Procedures, Art.350(h), Art.351(2) and Art.353.

<sup>88</sup> Code of Civil Procedures, Art.350(h), Art.351(2) and Art.353.

<sup>89</sup> Code of Civil Procedures, Art.353.

<sup>90</sup> The World Bank Group [<http://www.worldbank.org/icsid/constate/c-states-en.htm>].

ing States. In 2009, the Kingdom of Cambodia (Represented by the Ministry of Industry, Mines and Energy-Respondent) and Cambodia Power Company (Cambodian- Claimant) had a contractual dispute and the case falls under the ICSID Convention, Arbitration Rules. The case was concluded and the arbitral award was rendered on April 22, 2013.<sup>91</sup> But there is a limitation of information how the award is enforced.

In relation to the enforcement of foreign arbitral awards, William R. Wiebe, Esq, commented that Cambodian judges seem reluctant to enforce foreign arbitration awards because (i) the judges may be unfamiliar with international arbitration and with their responsibilities under the New York Convention; (ii) They may feel that it is unfair to enforce a foreign arbitration award in Cambodia (especially if the award is against a Cambodian business or national); (iii) They may believe that the dispute should have been brought to the Cambodian courts, and they may not want to enforce the award in order to penalize the party for not coming to the Cambodian courts first, instead of arbitrating the dispute abroad; (iv) They may be uncertain of the authenticity of the award and may think that it was obtained by persuading the party through fraud or corruption even when there is no evidence.<sup>92</sup> Consequently, in current practice, there is no statistics of arbitral awards enforced by the Cambodian Court.

## 5. Cambodian Legal Professions

Cambodian legal professions officially came into existence in 1932 through the Royal Declaration No.32 dated March 15, 1932 and Royal Kram No. 648 dated March 30, 1951.<sup>93</sup> Traditionally, people who practiced laws were called

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<sup>91</sup> ICSID CASE NO. ARB/09/18 [<https://icsid.worldbank.org/en/Pages/cases/ConcludedCases.aspx?status=c>].

<sup>92</sup> William R. Wiebe, Esq. *Alternative Dispute Resolution and Commercial Arbitration in the Kingdom of Cambodia*, the Faculty of Business, Phnom Penh, 1996, p.36.

<sup>93</sup> Bar Association of the Kingdom of Cambodia, *Legal Profession in Cambodia*, 2005, p.14.

“Sma-Kdey” or “Neak Thak Nay Kdey”<sup>94</sup> which means lawyers in present day. The current legal profession is a product of the country’s turbulent history and it is an independent and autonomous profession involved in serving justice and may only be pursued from within the framework of the Bar Association of the Kingdom of Cambodia (BAKC).<sup>95</sup> BAKC was established in 1995 and its governing body is called the Bar Council which is composed of a president and members and assisted by the secretariat. The President is elected for a term of two years. The members of the Bar Council are elected by registered lawyers for a term of three years.<sup>96</sup>

The Law on the Bar Association provides two gateways<sup>97</sup> to enter the legal profession in Cambodia, one through the training at the Lawyer’s Training Center<sup>98</sup> and the other through the two -year working experiences in legal fields.<sup>99</sup>

According to the Law on the Bar, apart from those lawyers who are members of the Bar Association, no one may perform this profession or provide legal consultation or prepare legal documents for compensation, except when such legal consultation or preparation of documents is an ancillary job to their profession or is a function permitted by law.<sup>100</sup>

Foreign lawyers can practice laws in Cambodia only with an authorization from the Bar Council. This authorization will depend on the sufficiency of qualifications of the foreign lawyer and will only be granted when the country of origin of the foreign lawyer provides this same possibility to Cambodian lawyers. This authorization may be withdrawn if there is malpractice during the practice of the legal profession in the territory of the Kingdom of Cambodia.<sup>101</sup>

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<sup>94</sup> *Id.*, p.14.

<sup>95</sup> Law on the Bar Association of the Kingdom of Cambodia, Art.1 (1995).

<sup>96</sup> Bar Association of the Kingdom of Cambodia, *supra note* 93, Ch.5, pp.71-84.

<sup>97</sup> Bar Association of the Kingdom of Cambodia, *supra note* 93, Ch.4, pp.55-70.

<sup>98</sup> Law on the Bar Association of the Kingdom of Cambodia, Art.31 (1995).

<sup>99</sup> Law on the Bar Association of the Kingdom of Cambodia, Art.32 (1995).

<sup>100</sup> Law on the Bar Association of the Kingdom of Cambodia, Art.4 (1995).

<sup>101</sup> Law on the Bar Association of the Kingdom of Cambodia, Art.6 (1995).

Legal Practicing structure in Cambodia can be classified into a solo law practice (Sole Proprietorship) and group practice (Law Office or Law firm).<sup>102</sup> According to the Law on the Bar, The Cambodian Law Firm must have a character of a civil company in which all of its members are lawyers.<sup>103</sup> However, the term “civil company is not defined by law, lawyers’ office is called “Law Office, Law Firm or Law group”. Any individuals or entities other than lawyers are not permitted to use the term “Law Office, Law Firm or Law group”.<sup>104</sup> Comparing with countries in the region and recent years of structural changes in legal profession as a part of the liberalization of legal services, there is an urgent need change the Cambodian Law on the Bar to meet and reflect the changes and requirements of WTO. For instance, in Singapore.

Law firms which were traditionally operating in a sole proprietorship or general partnerships were allowed to practice as limited liability partnership and limited companies.<sup>105</sup>

## 6. Legal Education

In Cambodia legal education process is divided into two phases: one is legal education at the faculty of law and the other is that at the professional school. After students finish a high school, they can immediately start studying at a university, faculty of law. In university, there are three levels of program: bachelor, master and doctoral program (professional degree and research degree) under the

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<sup>102</sup> Law on the Bar Association of the Kingdom of Cambodia, Art.46.1 (1995).

Article 46 states Lawyers may practice their profession individually or within the context of a group of a Law Firm which is lawfully established.

<sup>103</sup> Law on the Bar Association of the Kingdom of Cambodia, Art.46.2 (1995).

<sup>104</sup> Bar Association of the Kingdom of Cambodia, *supra note* 93, Ch.6, pp.85-96.

<sup>105</sup> Charles Lim Aeng Cheng, *Secretary - General, ASEAN Law Association (2003-2006)*, Legal Systems In ASEAN–Singapore Chapter 6 - The Legal Profession. See [[http://www.aseanlawassociation.org/papers/sing\\_chp6.pdf](http://www.aseanlawassociation.org/papers/sing_chp6.pdf)].

regulation of the Ministry of Education, Youth and Sport. These programs are provided by national universities and private universities. In terms of language, a variety of programs are provided mainly in Khmer language, but some programs are taught in foreign languages such as in English, French and Japanese. Because of the limited resources, this paper explains only the legal education program of Paññāsāstra University of Cambodia, Faculty of Law and Public Affairs (PUC-FLPA).

Paññāsāstra University of Cambodia is a private university. Its law school is newly set up in 2002 and all courses are taught in English. In Cambodia some law schools use the semester system based on the French system and the other law schools use the credit system. PUC-FLPA uses the credit system. Students need to acquire 130 credits for the bachelor program, 54 credits for master's degree, and 54 credits for L.L.D/ Ph.D. in law. The standard credit is one course has 3 credits and duration of the course is 48 hours.

For the academic year, which is important for the regional cooperation, most law schools have only two terms, but Paññāsāstra university of Cambodia has three terms.

There are three practical courses taught at PUC-FLPA at the moment: (i) Client consultation and practice; (ii) Contract writing; and (iii) Clinical program. Client consultation and practice aims to train law students who want to work at the law firm and pursue their study at a professional school and to become a judge or the lawyer. Contract writing is for students who wish to work in the private sector either the law firm or the company. Clinical Programs is set up at PUC-FLPA aiming at providing a practical opportunity for the students. One of example of Legal Clinic Program is a community legal education program where students can study and teach law for the community members and also for the high school students.

Students who study at the third year of the law school can sit for a Court Clerk Examination to become the court clerk. It is one-year program divided into 6-month study and 6-month practice. For other legal professions such as judge, prosecutor, lawyer, bailiff, and notary, students need to have at least a bachelor's

degree before they are eligible for sitting for an examination to enter each school. If students passed such an examination, they need to study for 1 year and practice for 1 year before they can become a judge, a prosecutor, a lawyer or a bailiff. The longest duration of legal profession a notary public where students need to study for 2 years and practice for 6 months after obtaining a bachelor's degree.

As for the teaching methodological approach, in Vietnam the legal education is focused on the application of legislation. In Japan the legal interpretation is considered to be most important. PUC-FLPA has adopted the hybrid approach composed of legal application and the legal interpretation. There is no court judgments for students to study, but the make-up case is developed for students to use their legal knowledge and try to interpret the law and apply it to the case. But for labor case, there are a lot of arbitral awards on public for students to study. One of example of teaching business law methodology developed by me is called "Applied Business Law". In this case, students have to develop a business project in compliance with Cambodian laws and regulations. This is a form of assessment how students learn business law. After learning the course, students are required to present their business project in the format of client consultation and submit a business project report. Students are free to choose any projects they are interested such as coffee shops, restaurants, schools, microfinance institutions, real estate agencies, bakery shops, etc.

As far as the standard of legal education is concerned, the quality is still an issue and the number of problems remain such as insufficient financial resources, management support, teaching resources and facilities; promotion of research and students' interests; and identification of national legal education policy.

In conclusion, legal system and legal education in Cambodia is at the cross road because different legal cultures have been integrated, transplanted and transformed into Cambodian system which can be called a hybrid system. Therefore, there is a need to conduct a baseline survey on legal reform in Cambodia to identify gaps, strength, weakness and errors of the current amalgamation of the different systems in order to harmonize all established laws and their enforcement mechanisms.

# LEGAL EDUCATION AT THE FACULTY OF LAW AND POLITICAL SCIENCE, NATIONAL UNIVERSITY OF LAOS

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Viengvilay Thiengchanhxay\*

(National University of Laos)

## 1. Current Status of Legal Education in the Faculty of Law and Political Science, National University of Laos

### **1.1 Background of the Faculty of Law and Political Science**

As the Lao People's Democratic Republic (Lao PDR) continues to implement the New Economic Mechanism (NEM) initiated in the mid-1980s and goes through a period of major social change there is an extensive need for well-trained judges, lawyers and prosecutors. There is also a need for trained lawyers to cope with the opening up of Laos to international investment as well as other forms of external contacts, and to strengthen and modernize the rule of law under the government of Laos.

In 1986 the first national law school was founded in Laos, the Vientiane Law School (VLS). It was placed under the administration of the Ministry of Justice and was not connected to any university. By 1997 the VLS had been integrated

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\* Associate Professor, Dean of the Faculty of Law and Political Science, National University of Laos.

into the ordinary university system under the Ministry of Education. Today the Faculty of Law and Political Science (FLP) is one of thirteen faculties of the National University of Laos (NUoL). The history of legal education in Laos is therefore very short comparatively speaking. Many of the older lawyers received their training either in France or in the former Soviet Union. Some of the younger lawyers as well have been trained abroad, either in Thailand, Australia, the USA, or Europe, but they are still rather few.

Today in Lao PDR, two of the five public universities<sup>1</sup> are offering degrees in law: the National University of Lao PDR (NUoL), in the central part of the Vientiane capital, and the University of Champasak which is based in the southern part of Laos, in Champasak province. The Faculty of Law and Political Science (FLP) was established as part of the National University in 1997, and remains the most important in terms of number of graduates as well as teachers. Currently FLP has 90 academic staff and more than 1500 students.<sup>2</sup> The number of students within the FLP has significantly increased over the last few years with around 600 graduates in higher legal education every year.

FLP offers five Bachelor programs: Criminal, Civil, Business Law, International Relations, and Political Science. In addition, there are four Master programs also offered at this Institution.

The academic and administrative staff, as well as the students, of FLP Vientiane and FLP Champasak are among the direct beneficiaries of these programs. There is no question that FLP Vientiane remains the leading legal university institution in the country and that many of the other schools make use of FLP curriculum and learning materials, especially as the main means of recruitment to other faculties. Substantial progress has been made within FLP Vientiane and it is now time to apply the lessons learned through further involvement with FLP

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<sup>1</sup> In Lao PDR now, Five Public Universities: National University of Laos (in Vientiane Capital); Souphanouvong University (in Louang Prabang Province); Champasack University (in Champasak Province); Savannaket University (in Savannakhet Province) and University of Health Science (in Vientiane Capital).

<sup>2</sup> Statistic from the Academic Affairs division of student enrolment of the year 2015-2016.



Champasak. This could be facilitated through simple internships where teachers spend time with peers at FLP Vientiane and through participation of teachers from FLP Champasak in training programs that are being organized. Besides the FLP study program, a higher diploma in law is offered by the National Institute of Justice (NIJ), but the objective of NIJ is to train judges, prosecutors and lawyers for the country.

The Research and Training Institute of the Supreme Court and the Research and Training Institute of the Prosecutor's Authority provide continuing education programs for new court and prosecutor office staff.

## **1.2 Study Programs at FLP**

### **1.2.1 Bachelor's Degree Program (LL.B)**

The FLP is the only legal institution in Laos which offers a Bachelor's degree program. The courses are for 150 credits over a period of four years. The academic year starts in September. The entrance examination is organized by the National University every year in mid-August. The students cannot acquire the degree even if they have the required number of credits unless they pass the final thesis defense and acquire field practice certification.

### **1.2.2 Master's Degree Program (LL.M)**

The Master's degree program at FLP is a two-year course with two different periods of commencement, either in October or in March. At present, four Master's courses are offered for 20 students each in Master of Law, Master of Administrative Law, Master of Business Law, and Master of International Law programs. The last is offered in French in collaboration with the French university, Lyon III.

## **1.3 The Study Method**

FLP promotes lifelong learning and also encourages students to undertake independent learning. Students are urged to be creative, to use their knowledge, capacity, and experience in real practice, and to integrate their knowledge and

skills from various academic courses and learning experiences for additional independent learning outside of the classroom. Besides this, the FLP also provides an environment and facilities for students to study and do research, such as a modern and up-to-date library and reading rooms, computer rooms, and wi-fi facilities.

In order to make teaching and learning processes effective, teachers use teaching and learning strategies that are student-centered. In this process, they train students in the skills for discovering knowledge on their own. Students can use the knowledge they acquire and will be more responsible in undertaking independent study. They are assigned topics or problems to solve together so that they will consult each other and participate in solving these problems. Teaching methods that are used in FLP are lectures and practical activities (exercises).

#### (1) Lectures

All teachers must have a syllabus and must explain it to their students. In their lectures, teachers must teach in accordance with pedagogic principles and use up-to-date teaching and learning media such as PowerPoint, videos, and images.

#### (2) Practical activities

Teachers assign topics or problems and students study and do research in groups (called group study) or on their own. After this, students make presentations on their findings or write a report (course project). In the presentations there are discussions in which students seek solutions and conclusions together in order to have unanimous understanding of the topic. With the above teaching and learning methods, students are able to transform learning by memory into learning by critical thinking, problem analysis and problem solving.

#### (3) Student assessments

Student assessments are done in a variety of ways including exams, report writing, group or individual topic presentations, and question-answer sessions in the classroom.

#### (4) Clinical Legal Education (CLE)

Clinical Legal Education (CLE) is a progressive educational system most often implemented through a university-based law program to help develop better-trained, more socially conscious, pro bono-minded lawyers and graduates. It further helps in raising community legal awareness and empowerment through community legal education models. When such programs are developed on a large scale they make a clear and significant contribution to greater access to justice and the rule of law. Over the past few years, BABSEACLE and/or the FLP CLE have been in discussion with other universities in Laos on ways and means to establish CLE program initiatives. As a result, FLP CLE is planning to help expand and support a nationwide development of CLE with other universities throughout the country. This will also help to institutionalize CLE as a core part of legal education throughout Laos.

#### (5) Student-centered approaches

Besides lectures and seminars in classes, students are also encouraged to undertake student-centered learning in the form of group study, role playing, practice, and presentations, as well as independent learning via the Internet, especially through the legal English program at [<http://quizlet.com/>] where students can learn online English for Specific Purposes, such as legal terms and IR terms. In addition, students can join clubs at FLP that focus on specific areas that they may find interesting in such areas as: gender, Asian law, human rights, community development, debate, etc.

In order to assure the quality of the teaching and learning processes, there must be adequate teaching and learning strategies. Therefore, the FLP gives high importance to teaching and learning strategy. This is shown by teaching and learning strategies that are student-centered and by the use of problem-solving as the basic methodology of legal teaching.

## 2. Challenges

The legal education in Laos compared with the other ASEAN countries is very young and weak. It was a significant change in Laos education over the last decade when Lao PDR began to implement the United Nations Millennium Goal and Legal Master Plan (2009). According to the 8th Economic and Cultural Development Plan for 2016–2020, Lao PDR is to become a state with a median GDP of 3190 USD per person (1.6 times the 1970 USD of 2015) and a developing country by 2020.

There are some challenges for Lao PDR now and in the near future:

- Increasing the quality of legal education
- Improving the study environment for students
- Encouraging international exchanges of both professors and students

### (1) Capacity Building

- Government funding for educational infrastructure
- Human resources (professors and students)
- Teaching methodologies and skills
- Teaching materials
- Language skills (English)
- Curriculum (inappropriate)
- Low research skills of professors and students and also low incentive to support
- Computer and Internet skills

### (2) Academic environment

- Insufficient knowledge resources
  - a.* Databases, e-books, internet support
  - b.* Self-study centers for students
  - c.* Student tutoring support
- Social welfare support

(3) International cooperation

- Language skills of professors and students (English)
- Limitation of funding support
- Cooperation management
- Academic credit transfer with other universities

### 3. The Need to Improve Legal Education in Laos

Legal education provides a key to justice. Laos must learn from the past and look forward to the future. The strengthening of legal education and training will lead to improved legal higher education and strengthened institutional capacity with the following results:

- Improved professional and language skills of teaching staff
- New curricula complying with ASEAN standards and requirements
- Enhanced competencies of targeted teachers and practitioners
- Improved management and governance of the FLP and FLA
- Improved technical and pedagogical knowledge of faculty teachers, to be achieved through strengthened professional networks, increased access to legal materials, provision of legal training and re-training, focus on pedagogical methods, strengthened language proficiency, improved computer skills, and support for the research carried out by FLP teachers
- Improved student motivation, to be achieved through improved living conditions and learning/teaching facilities
- Improved management and administration, to be achieved through training programs

This kind of capacity-building must be made a priority, but improving the legal education will be complex.

## 4. Conclusion

Lao PDR has been a member of ASEAN since 1997 and of the AEC since the end of 2015. There is expected to be very significant influence of ASEAN on legal education in Lao PDR in the following areas.

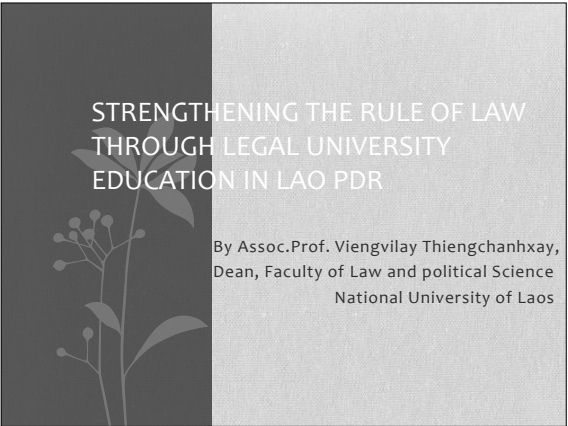
- Promoting and improving legal education in Lao PDR to meet ASEAN and international standards
- Developing curricula, human resources, methodologies, facilities and strengthening incentives for both lecturers and students
- Deepening cooperation with ASEAN and other countries
- Acquiring government policy support

University legal education will play a very important role in resource development in the fields of law and justice as Lao PDR strives for the rule of law.

Documents

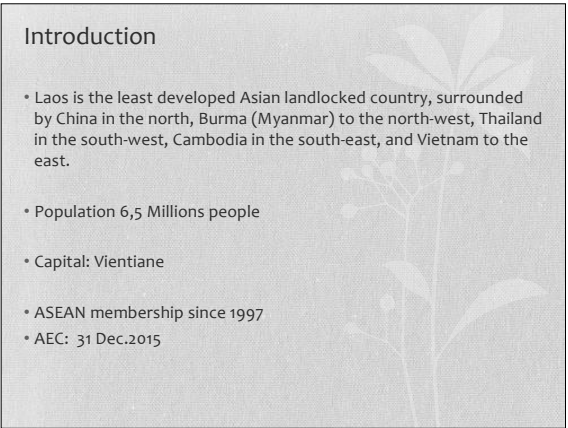
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*STRENGTHENING  
THE RULE OF LAW  
THROUGH LEGAL  
UNIVERSITY EDUCATION  
IN LAO PDR*



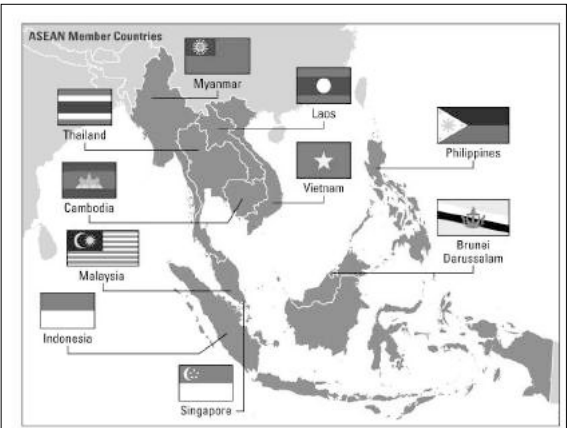
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*Introduction*



3

*ASEAN Member Countries*



### Asean Summit on Education

- Asean Summit was adopted the ASEAN Declaration on Strengthening Education for Out-of- School Children and Youth
- Adopted the ASEAN Work Plan on Education 2016-2020 which Education for Sustainable Development, higher education development and quality assurance mechanisms, university-industry partnership, and capacity building for teachers and the education community, pledging that no one will be left behind.

These important documents acknowledged equitable opportunities to quality education and deepened education partnership among ASEAN Member States.

4

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*ASEAN Summit on Education*

### HISTORY BACKGROUND

- In 1986 the first national law school was founded in Laos - the Vientiane Law School (VLS).
- By 1997 the VLS was integrated to the ordinary university system, under the Ministry of Education.
- Today the Faculty of Law and Political Science (FLP) is one of twelve faculties of the National University of Laos (NUoL).

5

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*History Background*

### THE LAW FACULTIES TODAY

- Two of the five public universities are offering degrees in law:
  - National University of Lao PDR (NUoL)
  - University of Champasak
- FLP has 90 academic staff and more than 1500 students.
- Around 600 graduates in higher legal education every year.
- FLP provide 5 Bachelor Programs: Criminal, Civil and Business Law, International Relations and Political Science.
- Four Masters programs: Law, Business Law, Political Science, International Law with Lyon III(France)

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*The Law Faculties Today*

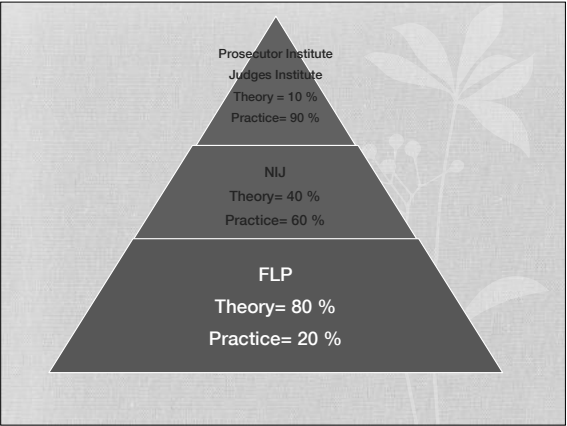


### OTHER LAW INSTITUTES

- National Institute of Justice (NIJ) provides higher diploma of law degree. Nevertheless, the objective of NIJ is training to be the Judge, prosecutor and lawyer for the country.
- The Research and Training Institute of Supreme Court and the Research and Training Institute of the Prosecutor's Authority provide a continuing program for new staff of the Court and Prosecutor's Office and short term of specific training program.

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*Other Law Institutes*



8

### THE TERM OF STUDY

- Higher Diploma : 3 years
- Continuing LLB program: 2 years
- LLB program : 4 years
  - 1 year; 2 semester, field practice 2 months
- LLM program: 2 years

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*The Term of Study*

### STUDY METHOD

Teaching and learning forms that are used in FLP are lectures and practical activities (exercises).

**Lecture hours:**

- All teachers shall have a syllabus and should explain it to students. In the teaching hours teachers shall teach in accordance with pedagogic principles and use up-to-date teaching and learning media such as PowerPoint, Video, Images and others.

**Practical hours:**

- Teachers give topic or problems and students shall study and do research by groups (called group study) or by personal study and research. After this, the students shall make presentation on their study findings or shall write a report (course project). In the presentation there are discussions, finding solutions and conclusions together in order to have unanimous understanding on the topic.

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*Study Method*

### OTHER METHOD OF STUDY

**CLE activities:** Clinical Legal Education (CLE) is a progressive educational system most often implemented through university-based law program to help develop better-trained, more socially conscious, pro bono minded lawyers and other graduates. It further assists in the raising of community legal awareness and empowerment through community legal education models.

**Student centered method:** Besides of lectures and seminars in classes students are also given the guidance of student-centered learning, through which students play important role of studying by group study, role play, practices, presentation as well as independent learning via internet access with especially Legal English program

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*Other Method Of Study*

### The challenges in the legal sector

- The qualify lawyer(limited)
- Improvement of Education and training
- The laws/Law enforcement
- Good Governance /Administration Transparency
- The cooperation

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*The Challenges in the Legal Sector*

13

*The Need to Improve in the Legal Education*

**THE NEED TO IMPROVE IN THE LEGAL EDUCATION**

- Capacity building: upgrade the professional and language skills of teaching staff;
- New curricula complying with ASEAN standards and requirements are developed;
- Competencies of targeted teachers and practitioners are enhanced;
- Management and governance of the FLP and FLA are improved;
- Improved technical and pedagogical knowledge among faculty teachers.
- Improved student motivation, to be achieved through improvements of living conditions and learning/teaching facilities.
- Improved capacity in management and administration. To be achieved through training programs.

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*Setting SMART Objectives*

### Setting SMART Objectives

The objectives can be:

<b>S</b>	<b>Specific</b>	described in specific terms.
<b>M</b>	<b>Measurable</b>	measured.
<b>A</b>	<b>Assignable</b>	assigned to an individual.
<b>R</b>	<b>Realistic</b>	realistically achieved within budget and resources.
<b>T</b>	<b>Time-Limited</b>	achieved within a stated time frame.

SMART Objectives Course (1987)  
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*The Continuation of the Strengthening of Legal Education and Training*

**The continuation of the strengthening of legal education and training**

The continuation of the strengthening of legal education and training, which should lead to improved legal higher education and strengthened institutional capacity through the following results:

- new curricula complying with ASEAN standards and requirements are developed;
- competencies of targeted teachers and practitioners are enhanced;
- management and governance of the FLP and FLA are improved.



# THAI LEGAL EDUCATION IN UNIVERSITIES

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Dr. Noppadon Detsomboonrut\*  
(Thammasat University)

## 1. Background of Thai Legal System

Good morning ladies and gentlemen. My name is Noppadon Detsomboonrut, Assistant to the Dean, Faculty Law, Thammasat University, Bangkok, Thailand.

Allow me to briefly introduce to you the background of the Thai legal system. The Thai legal system is characterized as a mixed system because first, in terms of structure, it is constructed as civil law. If you look at Article 4 of the Civil and Commercial Code which provides that: “Any law shall be applied to questions of a case for which such law contains a provision, in accordance with the letter or spirit of law of such provision. In the absence of any provision that may apply to the questions of a case, it shall be adjudicated in accordance with the customs of the locality, and in the absence of such customs of the locality, the questions of the case shall be adjudicated by analogy with the most nearly applicable pro-

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\* Assistant to the Dean, Faculty of Law, Thammasat University, Thailand; LLB (1st Honours), Chulalongkorn University; LLM, Thammasat University; LLM (Upper Second- class Honours), University of Cambridge; Ph.D. in Law, University of Edinburgh.

vision, and in the absence of such provision, the questions of the case shall be adjudicated by general principles of law.” Accordingly, the primary source of law of the Thai legal system is written law. Therefore, in terms of structure, the Thai legal system is civil law. However, the Thai legal system has been heavily influenced by common-law tradition because, *inter alia*, the historical reason that in the era of King Rama V, in order to fight against the attempt to colonize Thailand by powerful western countries, he sent some of his children and other royalties to be educated in common-law countries such as the UK and the US. Also at that time, many law scholarships were provided for students to study in common-law countries. Thus, at the beginning of the development of the modern Thai legal system, people who had common-law background played vital roles in building Thailand’s modern legal system. This was how common-law legal practice was initially embraced in Thai jurisprudence and it has influenced legal practices in Thailand since then. The patent example of common-law culture is the strict adherence to the Supreme Court’s decisions by Thai courts. Thus, this is the reason why Thailand is a mixed system; therefore, in terms of structure, the Thai legal system is a civil law system, but Thai courts have a practice of following earlier precedent very strictly. This has, however, led to a very awkward situation as although the rulings of the Thai Supreme Court are strictly followed, the Supreme Court tends not to elaborate the reasons for its decisions in a very illuminating fashion, unlike how supreme courts in common-law jurisprudences typically deliver their judgments. This creates difficulties for students because, although they realize that they need to know at least very important decisions of the Supreme Court to excel in their examinations, they cannot fully understand the rationales behind the decisions. The result is the weakness of the Thai legal educational system, especially in professional level examinations, namely the Thai-Barrister examination, the judge recruitment examinations, as well as the prosecutor recruitment examinations, because decisions are memorized rather than understood, due to the lack of adequate and appropriate elaborations.

## 2. Thai Educational System in General

Because of the time restrain, let me swiftly move to briefly discuss the general picture of the educational system in Thailand. The highlight that I would like to make here is that there are two main channels by which students can get admitted to universities.

The first channel is the National University Admission Examination which is the central one, and another channel is the direct-intake processes of individual institutions. There exist criticism that the quality of the examination questions of the central National University admission examination are unsatisfactory. Generally, they do not correspond to the contents taught in secondary schools, nor do they provide the necessary foundations for university education.

This leads to the problem that students admitted into university cannot deeply engage in multidisciplinary subjects due to their lack of foundation in the subjects of philosophy or other relevant fields of knowledge. For example, when we teach legal philosophy, it is difficult to get into details because a number of students do not have adequate information relating to what important philosophers have proposed. Accordingly, we have to spend time building the general knowledge of their thoughts and theories rather than engaging in deep debates.

## 3. Thai Legal Educational System

Moving to the Thai legal education system, after completing an LL.B. degree, students who would like to further their academic pursuit can choose to apply for LL.M. and Ph.D. programmes. Added to this, there are two important professional trainings or courses in the Thai legal education system. The first is a one-year course for the Barrister in law Examination. Although, this course is not a requirement for sitting the Thai Barrister Exam, generally students will

enroll in this course in order to prepare themselves for the examination. The other one is the lawyer license examination. This is a requirement for people who would like to acquire a lawyer license to practice in the Thailand Jurisdiction.

For people who would like to have a career as a judge or a prosecutor in Thailand, there are three different types of examinations for the recruitment of judges and prosecutors — a general round, a small round and a special round. All three examination types require a bachelor degree in law, being admitted as a barrister at law, and working experience. Those who would like to take the small round, have to earn a two-year Thai master degree in law. For the special round, people need to get a two-year Master of Law degree abroad in order to be eligible to sit the examination. One repeated criticism regarding judge and prosecutor examinations is that the successful rate of special intake is disproportionately higher than the other two types of intake, allegedly resulting in discriminatory practices.

#### 4. Thai Legal Educational System in Universities

After seeing the whole picture of Thai legal education, allow me to discuss Thai legal education in universities. As a member of Thammasat University, Faculty of Law, I will use Thammasat's law curriculum, on which many other Thai universities' law curriculums are modelled, as the focus of this discussion. Law students have to enroll in general education courses for 30 credits and then they have to enroll in compulsory law courses for 87 credits. If they would like to attain a minor or specialization, they have to take specialized subjects for 18 credits, and finally, there are 6 credits of elective courses which allow students to choose whatever courses are offered in the university.

Altogether they have to study 141 credits at minimum to attain their degrees. This is considered too many and in turn, reduces the time that they can spend



developing their creativity as well as preparing materials for classes. As a result, students attend lectures unprepared, just listening to the lecturers and taking notes with a low level of active participation. However, there is a new LL.B. in Business Law programme in English at Thammasat University with the number of the minimum credits required decreased from 141 to 125 credits compared to the Thai LL.B. programme. Many still have the perception, however, that the minimum credit requirement of the LL.B. programme is still too high.

Based on the general background I have provided before, let me address the problematical issues in Thai legal education in universities by dividing them into two categories — problems of the Thai general educational system and problems of the Thai legal education system.

The first consists of issues related to the general educational system. To begin with, there is the issue of the Thai educational culture. It is argued that the cultural environmental context in Thailand does not encourage people to develop creativity and critical thinking because Thais have a strong culture that requires juniors to pay solemn respect to their seniors. Added to this, because teachers are culturally revered figures, it is rare for students to make comments on the contents of the lessons teachers or lecturers provide. Another reason is that there is also a common perception of students that it is taboo for them to make a mistake in class. Even when they excel in class, they have the feeling that this will attract too much attention and, most of the time, it's not positive attention. Accordingly, students are not willing to participate in classroom activities and it's difficult to persuade them to do so. I think that we share this culture as a general Asian culture in terms of studying. This problem becomes obvious when Asian students go abroad to study in western countries where local students are very familiar with active learning methods. Then, there is the lack of foundational knowledge that I discussed before. Because pre-university education is not quite of an appropriate standard, students lack basic understanding of other relevant fields, such as the social sciences, humanities or philosophy. Hence, students cannot engage in

very sophisticated multi-disciplinary topics because they generally lack the necessary information to do so. Finally, there is the problem of the quality of central National University admission examinations that I have mentioned before. Also, Thailand is quite different from Japan in that teaching careers in Thailand do not attract many people. Thus, there is a lack of competition that probably contributes to the problem of the quality of the teachers.

Moving to the specific issues of the legal education system, I believe that I have said Thailand is a mixed system. Due to the common-law influence, Thai courts follow early decisions strictly. However, judges tend not to apply another essential aspect of common-law culture, which is that the legal reasoning behind decisions are elaborated extensively and in depth by the judges in order to persuade the audience to agree with their decisions as such decisions will set precedence for future cases. Thus, in Thailand, the contents of judicial rulings are generally not adequately elaborated, making it difficult for students to fully understand the judgments, especially in hard cases. They know, however, that to be a successful lawyer, they have to know and understand important decisions by hearts. For example, questions in the barrister at law examination and the judges or prosecutors examinations relate to facts that are similar to cases actually decided by courts, so students need to know what has been decided, even though they do not understand fully the reasons behind the judgments.

The next issue is that some people think there are serious problems caused by too-much politicization of judgments in Thailand. This means that in some situations judges exercise their power to make a judgement in order to forward their own political ideology, especially when it comes to controversial issues regarding interpretation of the Thai Constitution. Thus, it is very challenging for students to grasp what the real reasons are behind individual judgments because sometimes courts do not build a decision on legal reasoning or political theory, but on the political outcome.

Generally law curriculums in Thailand require too many credits for compulsory courses, as I have noted before, is another issue that Thai law schools are attempting to solve. We think that a higher level of participation in class is desirable for students and they need more time to prepare materials and to articulate their own opinions. If they don't have time to study or to create their own ideas, they cannot come out with their own ideas and it will be difficult to apply more active learning styles in this country. Also, students need to develop themselves in other aspects apart from making academic progress.

I think I have run out of time so I just would like to wrap up my section. There is an on-going reform of the LL.B. curriculum in Thailand right now that is expected to be implemented from at the 2018/2019 academic year. This reform is being drafted in cooperation by Thai law schools nationwide as they aim to fix the problems that I have discussed. So that is the end of my presentation. Thank you very much for your attention.

## Thai Legal Education In Universities

Noppadon Detsomboonrut (PhD)  
Assistant to Dean, Faculty of Law,  
Thammasat University,  
Bangkok, Thailand



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*THAI LEGAL EDUCATION  
IN UNIVERSITIES*

## OUTLINE OF THE PRESENTATIONS

- I. Introduction to Thai Legal System
- II. Thai Educational System
- III. Thai Legal Educational System
- VI. Thai Legal Education in Universities

2

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*Outline of the Presentations*

## INTRODUCTION TO THAI LEGAL SYSTEM

### ▪ Thai Legal System as a mixed System

I Constructed as a Civil Law System:

Article 4 of Thai Civil and Commercial Code: “Any law shall be applied to questions of a case for which such law contains a **provision**, in accordance with the letter or spirit of law of such the provision.

In the absence of any provision to apply to a question of a case, it shall be adjudicated in accordance with **customs of the locality**, in the absence of such customs of the locality, the question of the case shall be adjudicated by **analogy** with the most nearly applicable provision, and in the absence of such provision, the question of the case shall be adjudicated by **general principles of law**.”

- II But Strongly influenced by Common Law Traditions:
  1. Historical Reasons
  2. Practice of Judicial Bodies

3

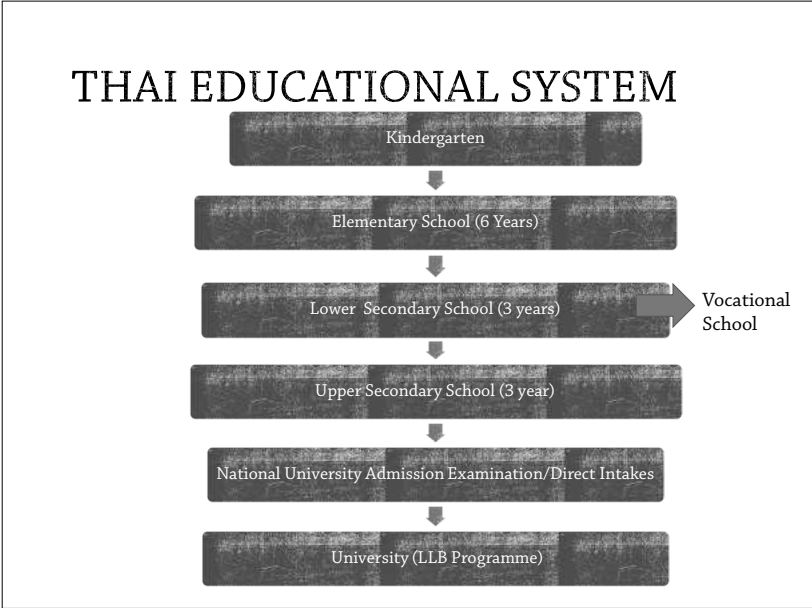
*Introduction to Thai Legal System*

## INTRODUCTION TO THAI LEGAL SYSTEM

- Political System: Currently: Military Government  
: Normally: Democracy with Constitutional Monarchy
- Judicial Branch Structure:
  1. the Constitutional Court
  2. the Courts of Justice,
  3. the Administrative Courts
  4. the Military Courts.

4

*Introduction to Thai Legal System*

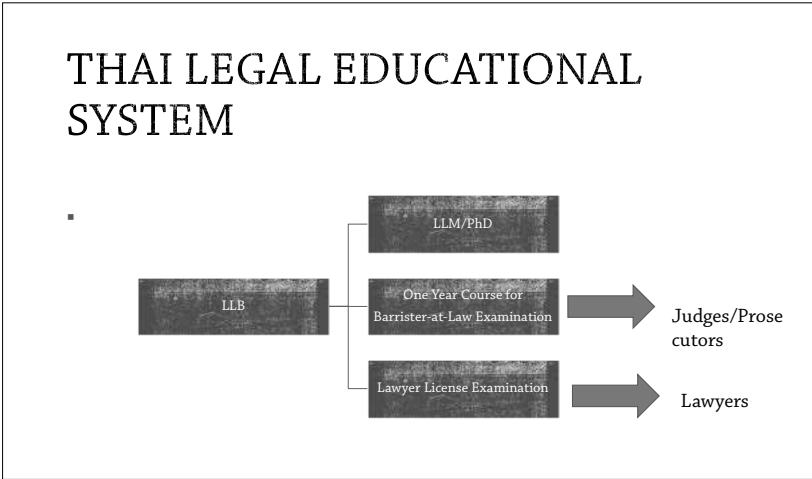


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*Thai Educational System*

6

*Thai Legal Educational System*



## JUDGES AND PROSECUTORS ADMISSION EXAMINATIONS

Examination	Bachelor Degree	Barrister at Law	Working Experience	2-Year Master of Law in Thailand	2-Year Master of Law Overseas
Big Round	×	×	×		
Small Round	×	×	×	×	
Mini Round	×	×	×		×

7

*Judges and Prosecutors  
Admission Examinations*

8

*Thai Legal Education  
in Universities*

## THAI LEGAL EDUCATION IN UNIVERSITIES

- Thammasat University
- Current Model: Thai Programme Model
- Optional Specializations: I. Civil Law II. Commercial Law III. Criminal Law and Criminal Justice System IV. Justice System V. Public Law
- LLB programmes for those who have already earned a bachelor degree from other field are offered in many universities including Thammasat University (with shorter period of study)

	With Minor/Specialization Credits	Without Minor/Specialty Credits
General Education Courses	30 Credits	30 Credits
Compulsory Law Courses	87 Credits	87 Credits
Minor/Specialty	18 Credits	-
Elective Courses	6 Credits	24 Credits
Overall	141 Credits	141 Credits

# THAI LEGAL EDUCATION IN UNIVERSITIES

- Thammasat University
- Current Model: LLB in Business Law (English Programme)

	credits
General Education Courses	30
Compulsory Law Subjects	89
Elective Courses	6
Overall	125

9, 10

*Thai Legal Education  
in Universities*

# THAI LEGAL EDUCATION IN UNIVERSITIES

- Thammasat University’s Faculty of Law’s LLB Programme Curriculum is perceived to be taken as a model for many law schools in Thailand.
- On the other hand, Chulalongkorn University’s Faculty of Law sets comparatively fewer credits for compulsory law courses and obligates its students to choose his/her specialization in order to complete its LLB programme. The specializations offered are I. Civil and Criminal law II. Business and Tax Law III. Public Law and IV. Public International Law.



# ISSUES IN THAI LEGAL EDUCATION IN UNIVERSITIES

## General Educational System Issues

- Thai Educational Culture:
  - Suppressed Creativity and Critical Thinking
  - Passive Character of Students
- Weak Foundation of General Knowledge as a Consequence of the quality of Before-University Educational System
- Quality of National University Admission University
- Welfare and quality of teaching professionals in general

## Legal Educational System Issues

- Quality of Judgements : Generally Lack of Elaboration of Legal Reasoning
- Politicization of Judicial Authority especially Constitutional Court of Thailand
- Too Many Credits for Compulsory Courses
- Unclear distinction of the missions of University from those of other legal educations ex. Thai Barrister Courses (perhaps due to the character of legal Study is both a theoretical study and a professional study)
- Law Enforcement and Political situation which obviously contradicts with what is thought in Classes
- Class Sizes
- A low number of multidisciplinary and legal-skill-crafting courses offered

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*Issues in Thai Legal Education  
in Universities*

12

*Reform of LLB Curriculum*

# REFORM OF LLB CURRICULUM

- Curriculum Reform (ongoing: Entry into Force: 2018-2019 academic year)
- National LLB Curriculum Standard for Thai Programme, proposed and drafted by most law schools nationwide to be proposed to responsible governmental organs

## Goals

- Reduce Credits of Compulsory Law Courses
- Increase the variety of assessment methods in hope that students will develop more types of necessary skills necessary or beneficial for their further academic studies and future careers
- Reduce the size of classrooms and encourage higher levels of participation and critical exchanges
- Offer more courses on multi-disciplinary and contemporary issues as well as Pro Bono courses and activities
- Aim on improving students' general English and legal English Proficiency.
- Offer more skill-crafting courses: legal research skills, contract drafting and negotiations, moot court and legal clinics
- Offer specializations based on current legal academic developments and needs, ongoing social issues, legal market demands and unique specialization of each law school in Thailand.



## LEGAL EDUCATION IN MYANMAR

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Khin Mar Yee\*

(University of Yangon)

### Abstract

#### Legal Education in Myanmar

Rule of law is a major factor in the development of a country, and legal education is essential to the rule of law in Myanmar. The first department of law came into existence in 1920 with the establishment of Rangoon University (today, the University of Yangon). In the early years, a law degree of Bachelor of Laws (BL) was offered as through a part-time course. After 1964, students acquired a BA (Law) degree. The LLB degree was introduced in 1965 by the Department of Law at the University of Yangon under a new education system.. Currently, a large number of LLB degrees are awarded by 18 law departments at different universities in Myanmar, through on-campus courses, and at two universities, through distance education. Once graduates obtain their LLB degrees, they go through one year of chamber-reading after which they can apply for a Higher Grade Pleader License which entitles them to practice law in all courts except the Supreme Court. The Supreme Court awards licenses to be an advocate to

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\* Professor and Head of Department of Law, University of Yangon, Myanmar.

those who fulfill the requirements. To be a judge or public prosecutor, candidates must pass a selection board exam. Graduate diploma courses for Diploma in Business Law, Diploma in International Law, Diploma in Maritime Law, and a new Diploma in Intellectual Property Law are offered by the Department of Law, University of Yangon. In 1987, the language of instruction for teaching and learning was changed to English in all universities. Clinical legal education was introduced in 2013. Professors and lecturers, including foreign professors, in the departments of law of the different universities give lectures related to Myanmar laws and legal education in Myanmar.

Rule of law is a major factor in the development of a country, and in transforming to a democratic society, legal education is essential to establishing rule of law in Myanmar. According to Article 28 of the Constitution of the Republic of the Union of Myanmar (2008), the Union shall:

- (a) earnestly strive to improve education and health of the people;
- (b) enact the necessary law to enable National people to participate in matters of their education and health;
- (c) implement a modern education system that will promote all-round correct thinking and a good moral character contributing towards the building of the Nation.

Under Article 26 of the National Education Law of 2014, schools that implement higher education shall use a system of independent learning and independent administration.

Legal education in Myanmar started with the Rangoon University department of law established in 1920 under British Colonial Rule as one of the seven faculties of Faculty of Arts, Faculty of Science, Faculty of Law, Faculty of Medicine, Faculty of Engineering, Faculty of Education, and Faculty of Agriculture.

Today, a large number of students graduate with LLB degrees from 18 law departments at different universities in Myanmar. Two universities, Yangon University and Mandalay University, offer the degree through distance education courses.

## 1. Legal Education in the Past

The very first Department of Law came into existence in 1920 at Rangoon University, what is today the University of Yangon. It was one of the original seven faculties of Rangoon University. During the early years the Law Department only offered a law degree known as Bachelor of Laws (BL) as a part-time, post graduate degree course. The BL degree required a two-year course of study. Legal education in this period was good enough that graduate students were persuaded to attend the law classes. All the courses for the BL were fully taught in English until it was replaced with a fulltime BA (Law) LLB course in 1964. There was also a Registered Lawyer (RL) Course which was provided to any graduate throughout the Socialist era of the 1980s. At that time, RL graduates were able to apply for a Higher Grade Pleader license and then an Advocate License. Today, BL and RL courses are no longer offered. BA (Law) LLB degree holders are allowed to acquire a Higher Grade Pleader License and then an Advocate License if they meet the requirements.

With the advent of the Revolutionary Council in 1962, a committee to reform legal education was established, and significant reforms were accomplished through the Higher Education Law of 1964. After 1964, the graduate course became a fulltime course. Students acquired a BA (Law) degree after 4 years of study and had to continue their studies one more year for the LLB degree.

## 2. Present Legal Education

Though BL, RL and BA (Law) LLB degree holders are still working in different areas in the field of law, a Bachelor of Laws (LLB) is the minimum requirement to be a private lawyer, judge, or public prosecutor.

### 2.1 Bachelor of Laws (LLB)

In 1965, a new system of higher education brought about a five-year fulltime

legal education course for an LLB degree at the Department of Law, University of Yangon. From 1996 to the academic year 2012-13, the Department of Law, University of Yangon, was exclusively devoted to postgraduate legal studies. Since legal education is essential to the rule of law in Myanmar, outstanding LLB students of Yangon University, like other LLB students of Law Departments of different Universities of Myanmar, have the duties to work hard not only in the law subjects but also in English. Because of the importance of English language, LLB students have the chance to learn English until third year LLB as core course. In fourth year and fifth year, all core and elective courses are different areas of law subjects. Syllabus for fifth year LLB course is the same with that of qualifying class (QII) course. If a student is qualified in fifth year LLB or a Q II student passes qualifying class, he or she is entitled to attend the LLM class. Once the LLB graduates obtained their degrees, after one year of chamber-reading they can apply for Higher Grade Pleader License which would entitle them to practice law in all courts except the Supreme Court. There is no Bar Examination. To be an advocate, the Supreme Court gives a license to the applicant who has fulfilled the requirements. Up to now, 10887 advocates and 47446 Higher Grade Pleaders have been granted License by the Supreme Court of the Union.<sup>1</sup> To be judge or public prosecutor, they have to pass selection board exam, written and oral.

## **2.2 Master of Laws (LLM)**

The first postgraduate legal degree program at the Department of Law, University of Yangon, the LLM degree program, was established in 1973. The current LLM program is a two- year course of fulltime study. The program offers the opportunity to specialize in four different areas: Civil Law, Commercial Law, International Law, and Maritime Law. Since the late 1990s, LLM students are required to do undertake exams in either four or sixteen courses (depending on their specialization) and to sit for a closed-book exam at the end of each se-

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<sup>1</sup> Valid data as of June 2016.

mester. In addition, a thesis is required. At the end of four semesters, successful written examinations, and the submission and successful defense of a thesis, they are awarded LLM degrees. In order to be a teacher in a university law department, an LLM degree is the minimum requirement.

### **2.3 Master of Research (MR)**

This is a one year program dedicated to researching law. LLM degree holders who are qualified to do research are admitted to this program. MR degree holders are exempted from the written examination required to enter a PhD program. Students who pass an oral exam administered by a PhD steering committee are entitled to undertake the PhD Preliminary Course.

### **2.4 Doctoral Program (PhD)**

Since 1999, the Department of Law has offered a five-year PhD program. The first year is a preliminary qualifying year including theoretical study. The remaining four years are devoted to the preparation of the candidate's dissertation. Eligibility to enter the program is limited to academic staff with LLM degrees, government ministerial staff with two years of service, and MR degree holders who pass an entrance examination. Students in the PhD Preliminary Course have to prepare papers in the same four areas of specialization as for the LLM program.

### **2.5 Graduate Diploma and Master Courses**

#### **(DBL, DIL, DML, DIPL and MA Business Law)**

Graduate diploma courses have been offering by the Department of Law, University of Yangon, under the University's Human Resources Development Program since 2004. There are four different areas of law in which diplomas are offered: Business Law, International Law, Maritime Law, and Intellectual Property Law. The Diploma in Business Law (DBL) is the most popular among the first three diplomas (the other two being the Diploma in International Law (DIL), and the Diploma in Maritime Law (DML). The Diploma in Intellectual

Property Law (DIPL) is new with the first class to commence this academic year, 2016-2017. The Law Department at the University of Mandalay offers a Diploma in Business Law (DBL) and a Diploma in International Law (DIL). The other law departments have no diploma courses. Each diploma course lasts one year. Any individual with any kind of undergraduate degree who passes the entrance examination can enter a Diploma course. The University of Yangon law department has a two-year MA program in business law. In order to gain entry into the program a student must have a graduate diploma in business law and pass an entrance examination.

## **2.6 University of Yangon Distance Education Online Courses**

The Online postgraduate diplomas in Law and LLB programmes are offered by the University of Yangon Department of Law's Distance Education course. The online post graduate diploma in Law programme was started in 2013. The duration of the course is 10 months. The online LLB programme was started in 2014. Any graduate is entitled to take the online LLB programme.

## **2.7 Departments of Law in Myanmar**

There are 18 departments of law in Myanmar offering LLB courses for on-campus students and LLB distance learning courses under the monitoring of YUDE and MUDE. Until 1994, a full time LLB course was only offered at the University of Yangon. Later the course was also made available at some other universities in order to have equal development of all regions of Myanmar. Currently, 18 universities all over Myanmar have law departments offering the LLB Degree and some offering the LLM Degree.

## **2.8 Admission**

In the University of Yangon, there are entrance exams for Master and other Diploma courses. Outstanding students who get high scores in the BEHS examination are not required to take an entrance exam but they must have high marks to undertake a law major. Other universities likewise have no entrance exams but



require entrants to have marks.

## **2.9 Semester**

The first semester of the undergraduate course is from December to March and the second semester from June to October. Post graduate course including LLM start in June to October and second semester is December to March.

## **2.10 The Medium of Instruction and Teaching Staff**

As mentioned above, from 1920 until the 1960s, all BL courses were fully taught in English. Burmese (the Myanmar language) replaced English as the medium of instruction at all universities in 1965. In 1987, English was reintroduced as a medium of instruction for teaching and learning. Though the medium of instruction was changed to English in all universities for all disciplines, language barriers affect the understanding of legal education and other content of students and teaching staff. The official language in Myanmar is the Myanmar language. Lawyers, judges and prosecutors use the Myanmar language in the courts. Most students of past decades learned the law by heart, but robot learning, or rote learning, did not help them to apply in practice what they studied in school. Throughout the years, an unstable political situation leading to the opening and closing of schools and universities further impacted the quality of law graduates to some extent to the 2000s. After the re-opening of universities and colleges in 1999, the government has been establishing universities in different regions to provide equitable opportunity for the different regions of the country. This dispersion of universities, however, has strained the physical and human resources of the system. Still, while a majority of law students are hindered by the language barrier in learning the law, outstanding students attending the University of Yangon are clever enough in English to learn law.

Myanmar's universities are state financed or public. The appointment of teaching staff is undertaken by the ministry having jurisdiction. Today, about 10 ministries have jurisdiction over higher education or tertiary education. Legal education is under the jurisdiction of the Ministry of Education. A system of

transferring teaching staff among the different law departments deters any one law department from monopolizing human resources. Teaching staff of law departments, especially professors and associate professors, have duties not only in teaching but also in giving opinions on the drafting of laws.

## **2.11 Curricula and Syllabi**

The Board of Legal Study is made up of professors of the law departments of different universities, officials of the Attorney General Office, Supreme Court, police force, and the various ministries responsible for curriculum development. LLB, LLM, and other post-graduate diplomas are discussed in the Board's Study Meeting every year. Since all universities having law departments are state financed under the Ministry of Education, the curricula and syllabi for LLB and LLM courses are the same.

Several meetings on curriculum development were held with the cooperation of professors from Central European University, Columbia University, and the Australia National University, with the support of the Open Society Foundation (OSF). The syllabi in the undergraduate course in all law departments of Myanmar's different universities have the following components.

- (i) Compulsory core subjects
- (ii) Optional subjects, both law and non-law, including aspects of Myanmar, economics, philosophy, psychology
- (iii) English language course
- (iv) Myanmar Customary Law course, compulsory for LLB students, in the Myanmar language

A passing grade for LLB students is 50 and for LLM students, 65. In the last semester, LLM students have to write a thesis in one of the following fields of specialization: Civil Law, International Law, Commercial Law, or Maritime Law.

### 3. Legal Education in the Future

The necessity of legal assistance transcending national borders is an unavoidable reality of human society in this 21<sup>st</sup> century. Therefore, collaboration on legal education is important for rule of law. Collaboration with many foreign universities under MOUs including student exchange programs and lectures by foreign professors is increasing.

Under the new National Education Law of 2014, there is to be a program for internal and external quality assessments.

#### 3.1 Alumni Associations

Today, there are a number of alumni associations including the Law Graduates Association, Law Graduates Association organized for Helping Others, the Yamanya Hall Alumni Association, and the MA (Business Law) Alumni Association. One of the objectives of these associations is to support legal scholars so that students will have more opportunities apart from the government scholarships which are given to several outstanding students attending the law departments of the University of Yangon and Mandalay University.

#### 3.2 Libraries and Teaching Materials

Though each law department has a departmental library, reading materials are not good enough for law students. The main libraries of the University of Yangon and other universities have librarians, but there are no librarians for the departmental libraries. Today many foreign universities and individuals are donating law textbooks, and an e-library has been established under the sponsorship of the Open Society Foundation (OSF).

#### 3.3 Teaching Methods and Assessments

Traditionally, most teaching staff give lectures in class and in tutorial classes and seminars, and students have the chance to discuss the content with their teachers. The tutorial test is one type of assessment. Today, students are also

exposed to practical applications, such as in clinical legal education classes that include mock trials and moot courts, with the support of many law firms and lawyer associations, such as BABSEA CLE, ICRC, etc. The IHL Moot Court Competition is a program at the University of Yangon held in cooperation with the International Committee of Red Cross Myanmar to improve legal knowledge on IHL and to participate in the IHL regional competition. The semester-end exam is the main means of quality assessment for LLB and LLM students.

### **3.4 International Cooperation**

In 2013 January and February, the University of Yangon Law Department hosted two visiting professors sponsored by the Open Society Foundation (OSF) to offer classes focused on international human rights law, comparative constitutional law, international law, and international environmental law. In 2013, the Myanmar Japan Legal Research Center between the University of Yangon and Nagoya University was established and a series of seminars on different areas of law are conducted by this Center. The First National Myanmar Workshop on Clinical Legal Education sponsored by UNDP partnering with BABSEA CLE held a Faculty Seminar on Challenges of Globalization and the Rule of Law in Comparative Perspectives as part of a program sponsored by the Open Society Foundation at the University of Yangon campus.

Professors from foreign universities have visited the departments of law of various universities to give special lectures and hold seminars for undergraduate and post graduate students and teaching staff, as well, to improve the capacity for different fields of law.

Today, teaching staff at the University of Yangon and other universities have chances to learn teaching methods at many different foreign universities, including Columbia University in the United States, the Université de Toulouse in France, Oxford University in the United Kingdom, Central European University, the Australian National University, the National University of Singapore, Singapore Management University, Nagoya University in Japan, and Ho Chi Minh University in Vietnam, and to make presentations and give special lec-

tures related to Myanmar laws and legal education in Myanmar. There are many programmes and activities in legal education, for example, the third training workshop for international human rights law for teaching staff provided by Columbia University, the IHL Moot Court Competition in Hong Kong University sponsored by ICRC, the Clinical Legal Education (CLE) programme provided by UNDP, and these are expected to help improve legal education in the future. As a result of the decision of the 2015 Board of Study, and with the support of RWL University, Norway Oslo University and Columbia University, human rights law will be the core course for third year LLB students, from the upcoming 2017-2018 academic year.

### **3.5 Private Universities**


Under the new National Education Law of 2014, and a draft law for private education, private law universities and private law schools may be established in the future. Autonomy will be given to higher education institutions under the new National Education Law of 2014. Though fair competition is necessary for the quality assurance of law graduates, it is certain that the school fees of private law universities and private law schools will be much higher than the national law schools. Since all existing higher education institutions are state financed universities or public universities, up to now, school fees have been subsidized by the government. Basic education is free and a university student only has to pay 500 Kyats (less than 1 US Dollar) per month for school fees, which is much appreciated in Myanmar.

Presently, job opportunities for a qualified law graduate are good because there are many new law firms, NGOs, and enterprises with foreign direct investment that want qualified law graduates to support their work. There are as well opportunities at the Supreme Court, Attorney General Office, and administration departments and government agencies that appoint public prosecutors, judges, and officers for the legal sections of various departments.

Today, rule of law in Myanmar is often criticized because it needs to be much improved for the establishment of a democratic society. Legal education will

need to be improved as well for the benefit of the country and its people, including all races living in Myanmar.

Documents



## Legal Education in Myanmar


**Dr. Khin Mar Yee**  
**Professor &**  
**Head of Department of Law**  
**University of Yangon**

1

LEGAL EDUCATION  
IN MYANMAR

## Background of Law Department

- ▶ one of the seven original affiliated faculties\* of the Rangoon University (Now –University of Yangon).
- Faculty of Arts, Faculty of Science, Faculty of Law, Faculty of Medicine, Faculty of Engineering, Faculty of Education.
- \*\* Faculty of Agriculture



2

Background of  
Law Department

## University of Yangon

- Established on 1<sup>st</sup> Dec, 1920
- Oldest national university in Myanmar

3

University of Yangon

### **Bachelor of Laws (BL) degree**

- During the early years -
- the Law Department only offered a law degree known as Bachelor of Laws (BL) degree.
- as a part-time post graduate degree course.
- BL Courses were closed in 1964 and 1965.
- But the examinations were held up to 1968.

4

*Bachelor of Laws (BL) degree*

**BA (Law) LLB:  
Bachelor of Arts  
in Laws  
& Bachelor of Laws**



With the advent of the Revolutionary Council after 1962, a Committee to Reform Legal Education was established, and significant reforms were accomplished by the Higher Education Law, 1964.

After 1964, it became a fulltime course. ( 1964 to 2017 = 53 years)

5

*BA (Law) LLB:  
Bachelor of Arts  
in Laws & Bachelor of Laws*

### **Bachelor of Laws (LLB)**

- New system of higher education had been brought in the name of LLB degree since 1978. ( Graduates of 1981 Batch).
- It is also five year, full-time course of study at the Department of Law, University of Yangon.
- The LLB program has remained the main vehicle for law departments of 18 universities in Myanmar.
- University of Yangon (YU) and University of Mandalay (MU) were Post Graduate Universities from 2003 till 2013 academic year .

6

*Bachelor of Laws (LLB)*



- The Law Departments of The YU and MU have reaccepted its first year law classes for outstanding students (about 50 Nos.) starting from 2013-14 new academic year.

University of Yangon

Department of Law

University of Mandalay



7

- Because of the importance of English language, LLB students have the chance to learn English until third year LLB as core course.
- In fourth year and fifth year, all core and elective courses are different areas of law subjects. Syllabus for fifth year LLB course is the same with that of qualified class (QII) course of Law.
- If a student is qualified in fifth year LLB or a Q II student passes qualifying class, he or she is entitled to attend the LL M class.

8

## Master of Laws (LLM)

- The first postgraduate law degree program at the Department, the LLM degree program, was established in 1973. (Part time course to Two Year full time Course)
- Students with LL B degrees who are qualified are entitled to attend the LLM classes at several Law Departments of the different Universities.
- For YU & MU, Departments of Law qualified LLB degree holders are entitled to attend the LLM classes after successfully passing an entrance examination.

9

*Master of Laws (LLM)*

## Specializations offered for LLM

- In four different areas:
  - Civil Law,
  - Commercial Law,
  - International Law
  - Maritime Law.
- During their first three semesters students take requisite Masters level course and are assessed by examination.
- During their final semester, students must undertake their own research and produce a written thesis.

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*Specializations Offered for  
LLM*

## Master of Research (MRes)

- One year program dedicates to researching the law.
- Students are required to develop and produce a significant piece of scholarship during their candidacy.
- LLM degree holders who are qualified to do research are admitted to this program.

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*Master of Research (MRes)*

## Eligibility to enter the PhD program

- LL M degree holder academic staff and
- ministerial staff with two or more years of service that pass an entrance examination; and
- MRes degree holders (who are exempted from the written entrance exam).
- To date YU has conferred 98 PhD graduates for different areas of law (Civil Law, International Law, IP, Environmental Law, etc).

12

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*Eligibility to Enter the Ph.D.  
Program*

13

*Doctoral Program (Ph.D.)*

## Doctoral Program (PhD)

- Since 1999, the Department of Law, YU has offered PhD degree program.
- In 2010 MU offered PhD degree.
- Duration - five years.
- The First Year is a preliminary class + the remaining four years - preparation of the candidate's dissertation.

14

*Graduate Diploma Courses  
(DBL, DIL, DML, DIPL)*

## Graduate Diploma Courses (DBL, DIL, DML, DIPL)

- Graduate diploma courses have been offering by the Department of Law under the University's Human Resources Development Program since 1999.
- There are three different areas of law in which diplomas are offered: Business Law, International Law, and Maritime Law.
- Each diploma courses lasts one year.
- Any graduate degree holder who pass the entrance examination can attend the Diploma courses.

15

*LLB Correspondent Course &  
Distance Learning Education*

## LLB Correspondent Course & Distance Learning Education

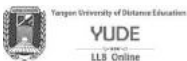



- Bachelor of Laws course was introduced in the Distance Learning Education System in the year of 1976 with intention of supporting the working people.



### New Distance Learning Law Course

- › PGDL – Post Graduate Diploma in Law
- › Opening in 2013
- › Graduated – 219
- › Fees – 500,000 Kyats
- › Online Course : Duration of Course – 10 months
- › LLB Online Course (6th December 2013)
- › 1st Semester – 200 Candidates
- › Result – 106/200
- › Fees – 150,000 Kyats per Semester
- › Duration of Course – 5 years



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*New Distance Learning Law Course*

The 18 Universities which have Law Departments						
No	Name	LLB	LLM	MRes	PhD	CHRD
1	University of Yangon	Outstanding Students	Civil Law , International Law, Maritime Law & Commercial Law	Ã	Ã	Diploma in Business Law- DBL, Diploma in International Law-DIL, Diploma in Maritime Law- DML, Diploma in Intellectual Property Law- DIPL & MA Business Law
2	University of Mandalay	//	Civil Law & International Law	Ã	Ã	Diploma in Business Law - DBL, Diploma in International Law- DIL
3	Mawlamyine University	Ã	Civil Law & International Law	Ã		
4	Yangon University of Distance Education	Ã				
5	Taunggyi University	Ã	Civil Law & International Law			
6	Dagon University	Ã	Civil Law & International Law & Commercial Law	Ã		
7	Magway University	Ã	Civil Law,			
8	Patheingyi University	Ã	Civil Law	Ã		

9	Sittway University	Ã	Civil Law			
10	Monywa University	Ã	Civil Law			
11	Myitkyinar University	Ã				
12	Mandalay University of Distance Education	Ã				
13	Taungoo University	Ã	Civil Law			
14	Pyay University	Ã	Civil Law			
15	Dawei University	Ã	Civil Law			
16	Yadanapone University	Ã	Civil Law & International Law			
17	East Yangon University	Ã	Civil Law & International Law	Ã		
18	Panglong University	Ã	Civil Law			

18

*The 18 Universities which  
have Law Departments*

19

*Admission  
Semester*

### **Admission**

In University of Yangon, there have entrance exam for Master and other Diploma courses. Outstanding students who got high score in BEHS examination have no entrance exam but they must have high mark to attend Law Major. Other universities also have no entrance exam but they must have required marks.

### **Semester**

First semester of undergraduate course start from December to March and Second Semester is from June to October. Post graduate course including LLM start in June to October and second semester is December to March.

**Current Teaching Staffs of YU Law Dept.,**

- 4Professors,
- 10 lecturers,
- 10 assistant lecturers &
- 2 tutors
- It is also supported by rich knowledge of distinguished part-time Professors.
- Functions- Not only teaching and giving legal knowledge but also giving suggestion for drafting.

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*Current Teaching Staffs of  
YU Law Dept.*

**IHL Moot Court Competition**

- One of the programs of Yangon University in promoting legal knowledge is to hold the International Humanitarian Law (IHL) Competition cooperating with the International Committee of Red Cross Myanmar to improve the legal knowledge on IHL and to participate in the IHL regional moot court competition.



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*IHL Moot Court Competition*

**CLE Program in Myanmar**

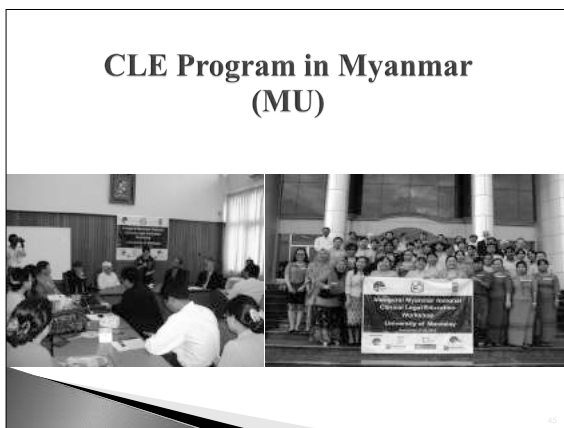


22

*CLE Program in Myanmar*

23

*CLE Program  
in Myanmar (MU)*



24



25

*International Collaboration  
& Development Partners*

### International Collaboration & Development Partners

- Open Society Foundations
- Nagoya University, School of Law, Japan
- Australian National University, Australia
- University of Oxford, UK
- Columbia University, US
- National University of Singapore (NUS)Faculty of Law
- Singapore Management University (SMU) Law School
- University of Toulouse I, France.
- UNDP partnering BABSEA CLE(*Bridges Across Borders Southeast Asia Community Legal Education Initiative* )

### **Library and Teaching Materials**

- › Though each Law Department has a Departmental library, reading materials are not good enough for law students. Main library of Yangon University and other Universities have librarian, but not in Departmental library.
- › Many foreign Universities and individual donors donate the Law text books.
- › E-library was established by sponsorship of OSF.



26

*Library and Teaching  
Materials*



# CURRENT STATUS OF LEGAL EDUCATION IN UNIVERSITIES: JAPAN

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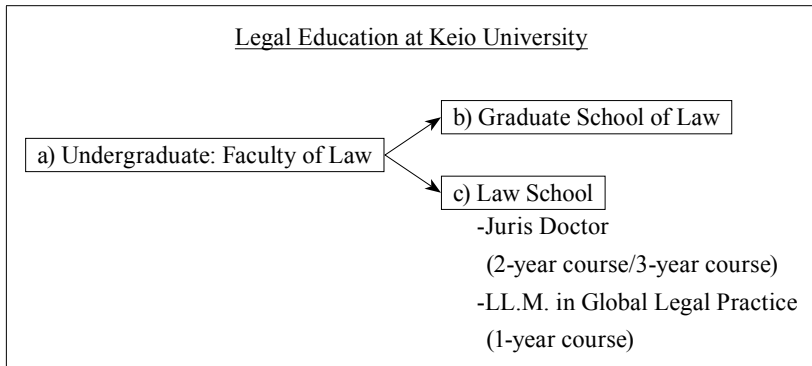
Dr. Rikako Watai\*

(Keio University)

## 1. Current Status of Legal Education in Japan

### 1.1 Introduction

One feature of legal education in Japan is its staging into a) introductory and professional education in undergraduate faculties of law, b) researcher training and education in graduate schools of law, and c) professional and practical legal education in law schools that serve as professional graduate schools.



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\* Professor of Administrative Law, Keio University Law School.

## **1.2 Faculty of Law**

In undergraduate education, most students in faculties of law either get hired after graduation by private firms or choose careers as public servants; only a small subset of students aim to become legal professionals. At the undergraduate level, the focus of education is on the detailed teaching of interpretive theory of basic legislation and the formation of case law, with particular attention to Constitutional Law, Civil Law and Criminal Law.

Keio University was founded in 1858 and the Department of Law was established in 1890. The first department head was John H. Wigmore, a famous evidence law professor from the United States. The department of law merged with the department of political science in 1920 to form the current Faculty of Law. The faculty of law has been devoted to globalization throughout the past century.

## **1.3 Graduate School of Law**

After graduating from the undergraduate level, most students who proceed to study law at a graduate school of law are those aspiring to become researchers. Around 30 students enroll in the master's programs at Keio University, with the number shrinking to around 10 candidates who continue on to doctoral courses.

Master's and doctoral level education, drawing primarily on the methods of comparative law, is focused on cultivating students' ability to deeply analyze their own research themes so as to craft high-quality research papers or dissertations.

## **1.4 Law School**

Legal education in Japan underwent a major shift in 2004. Up until that time, Japanese legal education was provided in law departments and also in graduate schools of law established to develop researchers as mentioned above. However, the year 2004 saw the establishment of law schools as professional graduate schools specializing in developing new judges, public prosecutors and attorneys.

This was done in emulation of the American legal education system, but un-

like in the United States, legal education at the undergraduate level and in graduate schools of law was left as it was.

Law schools offer either a two-year course for students who have already completed legal studies or a three-year course for students with no legal background. Students go on to take and pass the bar exam upon finishing either of these courses. The bar exam is given once a year in Japan. A total of 6,899 people took the exam in 2016, out of which 1,583 passed. The average passing rate was 22.95% and that of Keio University Law School graduates was 44.29%.

Successful candidates may enter the Legal Training and Research Institute program. This Institute is an official training program under the supervision of the Japanese Supreme Court. It is a one year legal apprentice program and a diploma upon completion is required to enter the judiciary, join a public prosecutor's office, or register as a practicing attorney with a local bar association. Most become practicing lawyers as fewer than 200 are selected to be judges or public prosecutors.

Education in postgraduate professional law schools involves the cultivation of problem-solving and legal interpretation skills necessary for conflict resolution. Japan has a total of 44 law schools as of 2016, with a combined enrollment capacity of approximately 2,700 students.

## **2. Keio University Law School: LL.M. in Global Legal Practice**

### **2.1 New Legal Education Scheme: Background**

In modern society, the ever-increasing international mobility of goods, money, and information has made the significance of national borders ambiguous, and trends in the international community have come to have a close relationship with our own country.

Taking the example of business, globalization has meant that Japanese corporations negotiate with foreign companies having different languages and

cultures, and this requires preparation for potential legal conflicts. This in turn requires personnel with abundant and correct information on legal systems in Japan and abroad, who can provide appropriate counsel. Global efforts are needed from the international community to resolve environmental issues and achieve sustainable growth. International organizations such as the United Nations are also seeking people with legal knowledge. Those who aspire to a legal career and young people starting in the legal profession, must therefore consider career paths that assume engagement in the global community.

## **2.2 LL.M. in Global Legal Practice**

From April 2017, a master of laws program in Global Legal Practice is being newly offered by the Keio University Law School. As this program aims to cultivate professionals who will be active in multinational firms and international agencies, teaching is exclusively in English. Along with students already qualified as lawyers in Japan, this course is intended for new graduates of Japanese undergraduate programs who aspire to play an active role in international agencies, as well as international students from around the world. Those who have not studied the basics of legal practice are required to complete 36 credits, whereas others only need to complete 30 credits. In either case, the standard duration for completion of the course is one year. Students may begin their studies in either April (Spring Term) or late September (Fall Term).

### LL.M. Course Categories

#### Core Program

- (1) Japanese Law and Asian Law in Global Perspective
- (2) Global Business and Law
- (3) Global Security and Law
- (4) Practical Training

#### Elective Program

- (5) Innovations and Intellectual Property Law
- (6) Area Studies

- (7) Comparative Law
- (8) Current Legal Issues
- (9) Legal Research and Writing

All students must earn at least four credits in either Global Business Law or Global Security Law, and at least four credits of Practical Training courses. Global Business Law deals with international transactions and international dispute resolution; Global Security Law with human rights and environmental and security issues; and Practical Training involves applied learning including mock trials and internships at law offices. The requirements are flexible and allow for programs that meet individual needs. In addition, elective courses are offered covering the latest legal issues and the legal system in Japan and other Asian countries. This program is designed to be highly practical, involving both theory and practice.

### **3. Conclusion: Legal Education at Keio University Law School**

Legal education aims to inculcate a legal mindset in students. In other words, it is by learning logical thinking and a balanced sense of legal interpretation that students are able to consider the logics of negotiation and persuasion with a view to problem-solving, as well as to articulate both these aspects verbally and in writing. The new LL.M. program in Global Legal Practice was designed to meet this end.

Knowledge easily transcends national borders. Globalization is deeply connected to education. Keio University Law School has high expectations for dual-degree and joint-degree initiatives in partnership with law schools around the world to enable students to develop legal knowledge that will translate to the global stage.

## APPENDIX:

### Keio University Law School, LL.M. in Global Legal Practice 2017 Course List

#### (1) Japanese Law and Asian Law in Global Practical Perspective

- 【1-1】 Law, Culture and Development in Asia
- 【1-2】 Introduction to Asian Law from Japanese Perspective
- 【1-3】 Japanese Law (State and Citizen)
- 【1-4】 Japanese Law (Economy and Social Structure)
- 【1-5】 Japanese Law (Legal History and Transformation)
- 【1-6】 Japanese Law (Contemporary Issues)

#### (2) Global Business and Law

- 【2-1】 International Commercial Transactions
- 【2-2】 Government Relations and Law
- 【2-3】 Cross-Border Litigation
- 【2-4】 Securities Regulations and Finance Transactions in Japan
- 【2-5】 Bankruptcy Laws
- 【2-6】 Law, Finance and Taxation of Corporate Acquisitions
- 【2-7】 European Integration and Global Business Law
- 【2-8】 Corporate Governance and Risk Management
- 【2-9】 International Commercial Arbitration
- 【2-10】 Japanese Competition Law
- 【2-11】 Business Strategy and Contract

#### (3) Global Security and Law

- 【3-1】 Environmental Law and Litigation in Japan
- 【3-2】 Environmental Law and Disaster
- 【3-3】 Introduction to Space Law
- 【3-4】 Multinational Corporations and Law
- 【3-5】 Legal Theory of Globalization
- 【3-6】 Globalization and International Human Rights in Japan
- 【3-7】 Globalization and International Criminal Law

(4) Innovations and Intellectual Property Law

- 【4-1】 Intellectual Property from a Global Perspective
- 【4-2】 Global Intellectual Property Management
- 【4-3】 Transnational Intellectual Property Enforcement
- 【4-4】 International IP Licensing Agreements

(5) Area Studies

- 【5-1】 Area Studies of Law(South East Asia)
- 【5-2】 Area Studies of Law(China)
- 【5-3】 Area Studies of Law(Korea)
- 【5-4】 Area Studies of Law(Singapore)

(6) Comparative Law

- 【6-1】 Introduction to American Law
- 【6-2】 Comparative Constitutional Law
- 【6-3】 Comparative Contract Law
- 【6-4】 Comparative Corporate Law
- 【6-5】 Comparative Corporate Finance and Law

(7) Current Legal Issues

- 【7-1】 Seminar(International Security Law)
- 【7-2】 Seminar(Frontier of the Cyberspace Law)
- 【7-3】 Seminar(Japan's Trade Law and Policy)
- 【7-4】 Seminar(Legal Issues in China, India and ASEAN)

(8) Legal Research and Writing

- 【8-1】 Presenting Japanese Law
- 【8-2】 Graduate Writing Seminar
- 【8-3】 Research Paper I
- 【8-4】 Research Paper II

(9) Practical Training

【9-1】 Negotiation

【9-2】 Arbitration

【9-3】 Drafting International Agreements

【9-4】 Drafting and Negotiation of M&A and JV Transactions

【9-5】 Moot Court I

【9-6】 Moot Court II

【9-7】 Moot Court I

【9-8】 Moot Court II

【9-9】 Internship



Documents

1

CURRENT STATUS  
OF LEGAL EDUCATION  
IN UNIVERSITIES: JAPAN

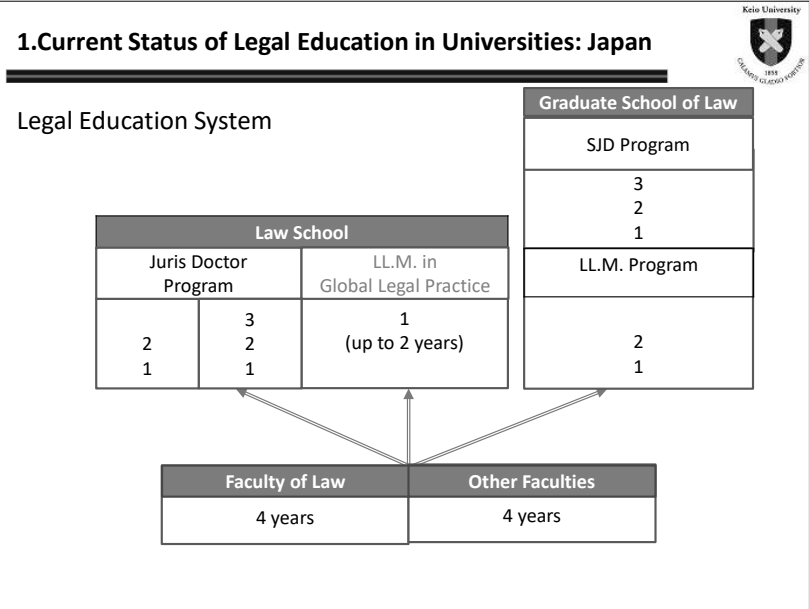


# Current Status of Legal Education in Universities Japan

Rikako Watai  
Keio University Law School

2

Legal Education System



## 2. Faculty of Law at Keio <http://www.law.keio.ac.jp/en/#ct02>



- 1890 Department of Law  
Head of the Dept. John Henry Wigmore



- 1920 Faculty of Law  
Dean Torajiro Kanbe

- Lectures
- Seminars



3

*Faculty of Law at Keio*

## 3. Graduate School of Law at Keio

- 3 Majors  
Civil Law, Public Law, and Political Science

- Researcher Training  
2 Year LL.M. Program: around 30 students  
3 Year S.J.D. Program: around 10 students

- Comparative Law Studies

4

*Graduate School of Law  
at Keio*

#### 4. Law School

• Japan's Law School System was established in April 2004

- 3 Year Course  
for students with no previous legal background
- 2 Year Course  
for students who have studied law

• Case Studies, Small Classes and  
Socratic Method



5

Law School

#### 5. Administrative Law Education

Rulemaking: Delegation Doctrine

- Faculty of Law: Lecture
- Graduate School of Law: Comparative Law Approach
- JD

(1) Sword Case

Possession of Swords prohibited without Registration  
Standard of review set by administrative legislation  
⇒ permits only Japanese swords ○

(2) Correction Facility Case

Visitation rules set by administrative legislation  
⇒ sets age limitation ×

(3) Hypothetical

6

Administrative Law  
Education

#### 5. Administrative Law Education cont. Hypothetical



• Law on the Benefit for Child Maintenance

Children who are eligible for the benefit are

- 1 a child whose parents' marriage was dissolved
- 2 a child whose father has died
- 3 a child whose father is handicapped
- 4 a child whose father is not known whether he is dead or alive
- 5 children who are in circumstances which are tantamount to the situations as provided in the preceding paragraphs and which are determined by the cabinet order

• Cabinet Order

a child who was conceived by the mother outside marriage (including instances where the marriage is not registered, but the parties are in reality in a situation similar to that of marriage) (except children recognized by the father).

7

Administrative Law  
Education cont. Hypothetical

6. Keio University Law School LL.M. in Global Legal Practice



▪ Unique among all Japanese law schools in terms of its ability to establish a “Japanese LL.M.” which enable the training of global legal professionals



8, 9

Keio University Law School  
LL.M. in Global Legal  
Practice

7. Keio University Law School: LL.M. in Global Legal Practice



Global Legal Practice  1 Year 30 Credits	Core Program	Japanese Law and Asian Law in Global Perspective
		Global Business and Law
		Global Security and Law
		Practical Training
	Elective Program	Innovations and Law
		Area Studies
		Comparative Law
		Seminar: Current Issues
		Legal Research and Writing

·Students must complete at least 4 credits from courses in the category “Global Business and Law” or “Global Security and Law” and 4 credits from “Practical Training”

## COMMENT

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# ANALYTICAL VERSUS SUBSTANTIVE APPROACHES IN AMERICAN AND JAPANESE LAW SCHOOLS

A. Reid Monroe-Sheridan\*  
(Keio University Law School)

## 1. Introduction

Although many Japanese universities have been operating professional graduate law school programs, based in part on the American model, for over a decade, there remain important differences in the typical pedagogical approaches of Japanese and American schools.<sup>1</sup> In this essay, I will briefly introduce what in my experience has been one of the most salient differences in this area—namely, the instructional emphasis in Japan on black letter law as opposed to abstract legal analysis—and consider a likely explanation for this development. I will then examine some of the measures that Keio Law School has implemented to support a curriculum with unusually rich practical and analytically focused course offerings in Japan.

My observations of pedagogical methods in Japanese law schools are based on my own experience studying as an exchange student and then teaching at several Japanese law schools, as well as discussions with other professors. I do

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\* Assistant Professor, Keio University Law School.

<sup>1</sup> Until the introduction of law schools in 2004, Japanese universities did not offer a professional graduate degree in law (Juris Doctor).

not have statistical data to support my assertions, though I do not believe they are particularly controversial.

## 2. Comparison of Approaches

One key component of legal education at most law schools in the United States is teaching to students to “think like a lawyer.”<sup>2</sup> Although this phrase is open to a range of interpretations, it is generally accepted as encompassing at least the ability to break apart complex problems into discrete analytical components, identify and apply rules relevant to those problems, and reach a logically defensible conclusion.<sup>3</sup> I remember professors devoting a great deal of class time to these skills when I was law student, especially during my first year.

These skills are, of course, not unknown in Japanese law schools. But I believe—and conversations with other professors indicate I have plenty of company here—that in general in Japanese law schools focus more on learning, and memorizing, the black letter of the law. Especially at highly selective schools from which many graduates enter law firms with sophisticated legal practices, I believe a greater emphasis on “thinking like a lawyer” would serve students well. That said, the decision of Japanese law schools to focus more on the substance of the law is not arbitrary, as I will explain later.

## 3. Law School as Preparation for Legal Practice

In both Japan and the United States, the majority of law students hope to enter professional legal practice. With that in mind, one relevant metric to compare the

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<sup>2</sup> See, e.g., David T. ButleRitchie, Situating “Thinking Like A Lawyer” Within Legal Pedagogy, 50 CLEV. ST. L. REV. 29 (2003).

<sup>3</sup> *Id.* at 37.



analytical and black letter approaches discussed above is to consider how well each approach prepares students for legal practice.

I believe the American approach offers distinct advantages, especially with respect to the practice of large law firms that handle complex matters. With the proliferation of increasingly inexpensive and sophisticated legal databases such as Westlaw and LexisNexis and practitioners' guides such as Practical Law Company, in most cases lawyers can easily locate relevant laws and advice on how to approach a vast array of client questions and legal analyses. In this information-rich environment, the value of even perfectly memorized black letter law has rapidly diminished.

Furthermore, clients do not typically pay large, expensive law firms for legal advice that can be obtained simply by knowing the applicable legal rules. The matters that such firms handle frequently require a complex analysis and application of law to facts, performed under time pressure, and involving some measure of ambiguity. In other words, one of the most important skills for lawyers in this sort of legal practice is the ability to "think like a lawyer." Of course, practice-specific knowledge, analytical skills, and legal judgment are developed through real-world lawyering experience over time, but law school education can play an important role in helping students build a strong foundation to activate when they begin legal practice.

#### **4. Explaining the Emphasis on Black Letter Law**

Competition among Japanese law schools is intense. If we accept that analytical skills are of critical importance to practicing lawyers and pure knowledge of legal rules is less valuable, why would Japanese schools continue to focus on the latter at the expense of the former?

The answer lies in the bar exam. The overall pass rate for the Japanese bar exam in 2016 was just 23%. Even among the best law schools, no school achieved a 50% pass rate for its students.<sup>4</sup> Furthermore, the pass rate was about 50% lower

for candidates who did not graduate from an LL.B. program.

Teaching practical lawyering skills to students is important, but the students will have to pass the bar before they have the opportunity to make use of those lawyering skills.<sup>5</sup> And students in Japan are keenly aware of law schools' average bar exam passage rates, meaning that improving its pass rate is one important means for a school to market itself to prospective applicants. Some Japanese law professors have told me that while they do not necessarily feel pressure to teach to the bar exam, they do generally consider whether their course material is relevant to the exam when planning their courses. In contrast, my experience is that law professors at top American law schools typically do not attach much importance, if any at all, to such considerations. Although these are generalizations, I believe they are broadly illustrative.

Compare the Japanese bar passage rates from top schools to their American equivalents and the difference is stark. Data filed with the American Bar Association shows that students from the U.S. schools with the highest pass rates generally pass the New York bar exam at a rate over 90%, and the overall pass rate is about double that of the Japanese bar exam.

If anything, the passage rate comparison understates the difficulty of the Japanese exam. The consensus of friends and colleagues is that most Japanese bar takers spend at least one or two years preparing for the exam while in law school. Contrast this with American bar takers, who typically start studying for the exam after (or immediately before) graduation from law school. While American students from selective law schools are spending one to three months studying for the New York bar and passing at high rates, their Japanese counterparts are committing five to ten times as much time to bar study and even then are more likely to fail than pass on the first attempt.

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<sup>4</sup> There are certainly reasonable arguments in favor of a difficult bar exam, but that discussion is beyond the scope of this essay.

<sup>5</sup> One exception in Japan exists for companies' in-house legal staff. These employees are not required to be qualified as lawyers to advise their employer on legal matters.

Considering all this, it is little wonder that American law schools feel more freedom to focus on analytical and practical skills.<sup>6</sup> And Japanese schools seeking to offer a rich selection of analytically focused and practical courses confront another challenge: with so much student focus on passing the bar exam, non-essential courses may attract few students or none at all. This can be particularly challenging when the school works to recruit practitioners to teach practical courses on an adjunct basis. Busy practitioners are often reluctant to devote time and effort to preparing a course that might be cancelled for lack of student enrollment.

## 5. Possible Solutions

Under these circumstances, what sorts of solutions are available to Japanese law schools that might allow them to offer a curriculum with rich analytical and practical components? We can look to Keio Law School for an example. Keio has successfully implemented several measures that allow it to provide a diverse selection of classes focused on practical skills and analytical instruction.

A central element of this success is the robust exchange program that Keio Law has built in recent years. Among other benefits, this ensures that there is a core group of students able to enroll in courses that are not focused on bar exam topics. In addition to enjoying freedom from Japanese bar exam pressure, nearly all exchange students take classes in English, meaning that Keio can typically avoid the cancellation of English-language law classes due to lack of student enrolment. This has allowed the school to build out an increasingly broad English-language curriculum, which in turn attracts more law school exchange students

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<sup>6</sup> The Japan Association of Law Schools puts additional pressure on law schools to focus on black letter law and legal doctrine, providing a lengthy list (approximately 200 pages) of “common achievement goals” comprised of legal rules, concepts, and doctrines that students should know upon graduation from law school.

looking to study in Japan.

In addition to its exchange programs, the launch of Keio Law School's Global Legal Practice master of laws program this April will further increase the pool of students for courses that do not relate directly to the bar exam. Furthermore, many of the Global Legal Practice students are already lawyers and will bring an additional level of practical focus to their classes.

This arrangement allows interested J.D. students to enroll in a broad range of English-language courses. To facilitate this, professors structure assigned work for certain courses in consideration of students' bar exam preparation. Keio also provides professors with greater flexibility in grading students in English-language classes. This is helpful in allowing professors to evaluate J.D. students, exchange students, and LL.M. students in light of their respective experience, English language ability, preexisting legal knowledge, and other relevant circumstances, which makes these courses more accessible to J.D. students.

Some additional measures that Keio and other law schools are using to help students build practical skills include the creation of clinical programs and for-credit internships, and opening certain courses to recent graduates who have taken the bar exam and are awaiting their results. The former helps students get direct, practical legal experience, while the latter allows students to supplement their legal education after the pressure of bar exam preparation has been relieved. Finally, well-connected career support services offices could also help students, especially those who do not pass the bar exam, find jobs working in companies' in-house legal departments or other positions that do not require a legal qualification in Japan. I expect we will see these and other novel measures employed with increasing frequency as the legal education community continues to adjust to the realities of the bar exam and the evolving legal market.

# ANALYTICAL VERSUS SUBSTANTIVE APPROACHES IN AMERICAN AND JAPANESE LAW SCHOOLS

A. REID MONROE-SHERIDAN  
ASSISTANT PROFESSOR (特任講師), KEIO LAW SCHOOL



1

*ANALYTICAL VERSUS  
SUBSTANTIVE APPROACHES  
IN AMERICAN AND  
JAPANESE LAW SCHOOLS*

2

*Analytical Versus Substantive  
Approaches*

## ANALYTICAL VERSUS SUBSTANTIVE APPROACHES

- One striking difference when comparing the curriculum of top Japanese law schools to that of top American law schools: in general, Japanese schools place a far greater emphasis on teaching and memorizing the substance of the law and less emphasis on developing analytical skills.
  - With the establishment of Japanese law schools in 2004, classes did increase their focus on Socratic dialogue and analytical skills, but the shift has been partial and seems to be reversing direction.
- In contrast, classes at top American law schools focus much more on legal analysis (often encouraging creative analysis and wide-ranging debate) in the context of a particular area of law.
- A clear example of this contrast is visible in the number of “open book” final exams at American schools compared to Japanese schools and the types of questions posed.

## ANALYTICAL VERSUS SUBSTANTIVE APPROACHES

- **Contention:** For sophisticated legal work, issue-spotting analysis based on a solid understanding of the foundational law is more valuable than a deep knowledge of specific legal provisions.
  - Lawyers now have immediate access to search laws, regulations, and cases (e.g., Google, Westlaw) and increasingly to high-quality practitioner-generated guidance on analytical frameworks for addressing client requests (e.g., Practical Law Company). This includes, for example, what problems to consider, typical laws to analyze, etc., for certain types of client requests.
  - Legal problems for which the answer is clearly provided in existing rules or regulations typically do not form a major part of the work handled by large and mid-sized law firms. The lawyers at the firms add value in part by offering the ability to apply sophisticated legal analysis to complex facts.
  - Increasing complexity of regulation and increasing internationalization of legal work have it unrealistic for any lawyer to have comprehensive knowledge of all law relevant to any moderately complicated matter. Lawyers must think critically about possible legal issues, review law in relevant areas, and, often, consult with specialists.
- Nonetheless, there is a very good reason for the focus on black letter law in the Japanese curriculum.

### 3

#### *Analytical Versus Substantive Approaches*

### 4

#### *Bar Passage Rates*

## BAR PASSAGE RATES

Japanese Bar Exam			New York Bar Exam	
School	Pass Rate (2016)	Non-LLB Takers	School	Pass Rate (2015)
Overall	23.0%	-	Overall	56%
Hitotsubashi	49.6%	28%	Yale	97.1%
U. Tokyo	48.1%	28%	Harvard	97.2%
U. Kyoto	47.3%	12%	Stanford	97.9%
Keio	44.3%	22%	Columbia	92.7%
Waseda	35.9%	27%	University of Chicago	86.0%

Source: 司法試験合格者は1583人 昨年より267人減 法科大学院別の合格率一覧表付き (Sept. 7, 2016, 産経ニュース); Hitotsubashi Law School Bar Pass Rate Data Compilation (<https://www.hit-u.ac.jp/function/outside/news/2016/20160907.pdf>); American Bar Association Form 509 Information Reports

## ANALYTICAL VERSUS SUBSTANTIVE APPROACHES

- Bar exam preparation time (estimates):
  - Japan: Typically at least 1-2 years (or longer) of studying between 3 and 8 hours per day.
  - New York: Typically 1-2 months of studying 5-8 hours per day. (Official BarBri course is approximately 2.5 months with recommended study and class time of 8-10 hours per day.)
- American law students study a lot less and pass the bar at much higher rates.
- Consider this tension: A lower bar passage rate likely means that the students who do become lawyers have higher levels of dedication and better knowledge of law than they would if the bar passage rate were higher. However, it also creates a test-focused environment where the most talented students are less likely to have training in the skills that are most helpful once they become practitioners.

### 5

#### *Analytical Versus Substantive Approaches*

### 6

#### *Analytical Versus Substantive Approaches*

## ANALYTICAL VERSUS SUBSTANTIVE APPROACHES

- What are Japanese students expected to learn in law school? Consider how this is shaped by the necessity of preparing students for the bar exam.
  - Japan Association of Law Schools has provided a 200-page list of bullet points mostly listing hundreds of rules and doctrines (共通的な到達目標). Although some schools (including Keio) have moved toward a broader and more practical approach, this list remains very influential.

## PARTIAL SOLUTIONS

- Assuming that bar exam reforms are unlikely, what other solutions exist?
- “Natural” adjustment over time: The number of Japanese law schools is currently shrinking. As the number of schools is reduced and admission to law school becomes more competitive, those students who are admitted to law school will be stronger candidates and more likely to pass the bar.
  - If the bar pass rate begins to increase, this may attract more talented students who otherwise would avoid law school, thus creating a beneficial cycle.
- What proactive measures can law schools pursue?
  - Consider the Keio model:
    - Exchange students and (soon) the L.L.M. program provide a backbone for non-core courses with a focus on analysis and practical competency.
    - Motivated J.D. students have the opportunity to take these courses. Because the exchange students (and soon the L.L.M. students) keep the classes occupied, the opportunity is available even in years when few J.D. students are interested in such courses.
    - More flexible grading for English language classes allows students to avoid a grade “penalty” if they devote more time to their core courses.
    - Many professors consider the fact that Japanese students will be occupied with bar study when providing class assignments.

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### 7

#### *Partial Solutions*

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### 8

#### *Partial Solutions*

## PARTIAL SOLUTIONS

- What proactive measures can law schools pursue (cont.)?
  - Build robust career support services for students who don’t pass the bar. Legal qualification not necessary to be in-house legal staff in Japan.
  - Clinical programs and for-credit internships are both ways to help students gain experience and make connections with practitioners that may be useful in a future job search.
  - Increase the number of exchange students to help Japanese students build English legal communication skills and provide support for non-core classes.
  - Offer analysis-focused courses for recent graduates who’ve already taken the bar exam but are waiting for results.



# ON-SITE REPORT

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# FROM LAW CLASSROOMS IN ASIAN UNIVERSITIES:

Short Report on the Collaboration Program  
in Vietnam and Cambodia

Hiroshi Matsuo\* and Hitomi Fukasawa\*\*

(Keio University Law School)

## 1. Introduction

From March 6 to 20, 2017, Keio University Law School (KLS: Tokyo, Japan) participated in a Collaboration Program for Comparative Legal Education with the Vietnam National University of Economics and Law (UEL: Ho Chi Minh City, Vietnam), and the Pannasastra University Faculty of Law and Public Administration (PUC-FLPA: Phnom Penh, Cambodia). The program included joint classes in which students and teachers could study materials and pedagogical features of the legal education of each university and discuss the future development of various types of legal exchange programs. These joint classes were held at UEL and PUC-FLPA. From KLS, 12 students participated (7 at UEL, and 5 at PUC-FLPA), while around 30 Vietnamese students at UEL and around 20 Cambodian students at PUC-FLPA also took part.

The purpose of the Collaboration Program was to experience the differences of legal education in terms of content, materials and pedagogical methods, to arrive at an understanding of their various political, economic and social backgrounds, and to seek out the advantages of promoting further international exchange

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\* Professor of Law at KLS, and Director of Keio Institute for Global Law and Development (KEIGLAD: <http://keiglad.keio.ac.jp/en/>).

\*\* Researcher of Law at Keio Institute for Global Law and Development (KEIGLAD).

with the purpose of advancing the development of legal education at each of the participating universities.

The major program components were: (a) lectures by foreign teachers about current legal topics in their home country, (b) presentations by students on their solutions for applying the laws of their own countries to a common topic provided to the students in advance<sup>1</sup>, followed by questions and discussions, and (c) class participation by foreign students at the host universities (UEL and PUC-FLPA).

This program was implemented as one of the Programs for Asian Global Legal Professions (PAGLEP)<sup>2</sup> and this was its first trial for holding joint classes to promote international legal exchange between the law students and teachers of different countries in Asian regions. It is worthwhile, we believe, to record our challenges and findings for the further development of the PAGLEP.

In this report, we will introduce discussions at and findings from the presentations by students on common topic (see (b) above) and the class participation (see (c) above) in Vietnam and Cambodia. It aims to find criteria to characterize legal education in Asian universities for the further comparative study.

## 2. Common Topic

### 2.1 Common Topic for Classroom Discussion

The following is the common topic assigned to the program students. It is based on a case that actually occurred recently, and was provided in advance to the participating students from Vietnam, Cambodia and Japan. The students were asked to analyze the question given at the end of the topic and to suggest solutions by applying the laws of their own country.

Ms. A owns a piece of land with a building on it in Vietnam, Cambodia or Japan (whichever is the student's home country). She lives in the U.K. and asks Mr. B

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<sup>1</sup> As for the content of the Common Topic, see Section 2 below.

<sup>2</sup> As for the general introduction of the PAGLEP, see [<http://keiglad.keio.ac.jp/en/paglep/>]

to manage the land and building for her. B lends the building to Company C and concludes a leasing contract for a duration of 2 years, with the provision that Company C could cancel the lease by giving 3 months advance notice or by paying 3 months' rent at the time of cancellation. The amount of rent agreed upon is USD 1000 per month to be paid one year in advance. Company C pays USD 12000 to B, and takes possession of the building to use as its office. After a year and a half has passed, B and Company C negotiate the renewal of the contract and agree to continue under the same conditions except for increasing the amount of rent to USD 1200 per month.

Around the same time, Ms A sells the land and building to Company D. B is told of this transaction by A only after he has already agreed to renew the contract with Company C, but B does not tell Company C of the change in ownership. C pays B to renew the lease for one year (USD 14400) and continues to use the building. After one month had passed since the renewal of the contract, Ms A and Company D register the transfer of title to the land and building, and Company D demands that Company C vacate the building. Company C complains to B, who apologizes and explains that he had thought Company D might agree to lend the building to Company C. B negotiates with Company D to renew the lease contract, and Company D agrees to lease the building to Company C under the same conditions previously agreed upon between B and Company C, with the provision that Company D will retain USD 4400 of the USD 14400 one-year rent paid by Company C as a fee for renewing the lease. Company D agrees to continue the lease contract with Company C, but demands a rent of USD 1500 per month and an additional payment of USD 3600. However, Company C refuses to accept the increase of rent and continues to negotiate with Company D, but they are unable to reach an agreement. Company C investigates and finds another building available for lease under almost the same conditions and decides to move, giving notice to B and Company D of its intent to cancel the lease with company D after only 2 months since the contract was renewed. Company C demands a refund of the unused portion of the rent (USD 12000) that it had paid one year in advance, as well as reimbursement of the USD 2000 it paid to investigate and enter into a new contract. To whom, how much, and on what grounds may Company C demand repayment of the rent and reimbursement of the moving costs?

There are two basic points to check in comparing the different solutions to the case arrived at by applying the laws of the students' own countries:

1) Who are the parties to the lease contract concluded between B and Company C? What is B's legal position in relation to Ms A?

2) Was the renewed contract concluded between B and Company C taken over by Company D or not and on what grounds?

## **2.2 Presentations and Discussions in Vietnam**

### **2.2.1 Presentation by the Vietnamese Students**

The Vietnamese students' presentation started with an introduction to the general rules regarding land ownership and legal agents in Vietnam. They distributed a copy of the articles of the Civil Code relating to the case and they read out the text of those articles. Then they directly applied the provisions of the Civil Code articles to the case. For example, their response to the first question was as follows. According to the Vietnamese Civil Code of 2015, all land in Vietnam is owned by the nation and the government permits individuals to have land use rights. However, people directly own the buildings on the land to which they have land use rights. They can lease their land use rights and the buildings to others. In addition, agents can act for the principals to conclude the lease contracts. In this case, B is acting as an agent for Ms A. Therefore, the original lease contract is between Ms A and Company C. Their explanation regarding the first point is thus very clear.

As for the second point, they simply concluded that B should refund the money to Company C, because the renewed rent for one year was paid by Company C to B, and the renewed contract was not taken over by Company D. Therefore, Company C cannot demand a refund from Company D, but instead should demand reimbursement from B.

### **2.2.2 Presentation by the Japanese Students**

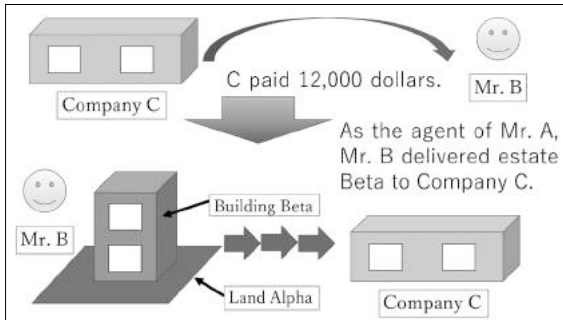
The Japanese students' presentation started with an explanation of the case. They also explained the basic rules for lease contracts and agents in Japanese law

by citing various relevant articles. However, in applying the provisions of the relevant articles to the case, they also explained how either party could make a claim or defense against a claim by applying procedures for civil conflicts referred to as *yōken jijitsu* (要件事実).

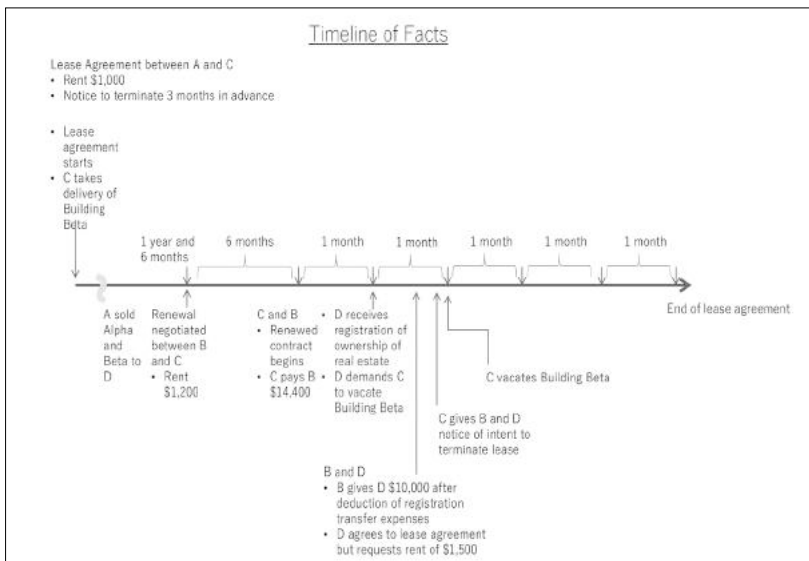
*Yōken jijitsu* refers to the practice in Japanese civil procedure in which both sides of a dispute must present legal foundations for their respective arguments. It divides the burden of proof between the parties according to the relevant provisions of substantive law in which there are principle rules and then exceptions to those rules (with further exceptions, and so on and so forth). The plaintiff argues his/her claim and presents evidence derived from the principle rules of substantive law. The defendant may concede or deny the facts presented by plaintiff, or deny knowledge of the facts presented by the plaintiff. Even if the defendant concedes a fact supporting the plaintiff's claim, the defendant can still present an exception to the principle rules as a defense.

The Japanese students analyzed whether Ms A and Company C had concluded the lease contract by applying the *yōken jijitsu* principle. First, they quoted an article of law concerning the agent which states that *a manifestation of intention made by an agent representing that the same is made on behalf of the principal within the scope of the agent's authority binds the principal* (Article 99, Japan Civil Code). They divided this phrase into the following elements: (1) the agent was authorized by the principal before the contract; (2) the agent concluded the contract; and (3) he showed that he was the principal's agent. Second, they picked up facts from the case to qualify these elements. Finally, they concluded that the lease contract, including renewed contract, was concluded between A and Company C through agent B.

As for the second point, the Japanese students found that there was no explicit provision to be applied to the question and explained that the solution was to apply a precedent which held that if Company C, the lessee, had acquired possession of the building on the basis of a lease contract, then it was recognized to have the right to oppose adding a third party to the lease contract between Ms A and Company C. At the same time, third party Company D, which had taken over



*Analysis of the case  
by students*



ownership of the leased building, could take over the lease contract in principle, so long as all the parties, that is, A, C and D, did not demand otherwise<sup>3</sup>. According to this precedent, the new owner takes over the status of lessor. As a result, Company D, as the new lessor, has obligations to Company C, the lessee. When Company C canceled the lease contract in accordance with provisions in the contract, it could claim reimbursement from Company D, as also provided for in the lease contract.

<sup>3</sup> Supreme Court, Judgment, 23 April 1971, Minshu Vol.25, No.3, at 388.



## 2.3 Discussions and Findings

First, the students discussed whether the lease contract between Ms A and Company C succeeded to Company D or not<sup>4</sup>. On this point, students had different opinions.

The Vietnamese students understood the renewed contract between Ms A and Company C, which was concluded by Ms A's agent B, to be invalid because B lost the status of agent when ownership of the property was transferred from Ms A to Company D. However, the Japanese students claimed that the lease contract was renewed before the property was transferred from Ms A to Company D, and even if B had lost his status as Ms A's agent, B had paid money to Company D, and therefore Company D had acknowledged B as the agent. On this point, the Vietnamese students expressed some concern, citing the relevant articles of law.

First, they explained about Article 478, Paragraph (2) of the Vietnamese Civil Code of 2015<sup>5</sup>. According to this provision, if a conflict occurs over ownership of leased property, the lessee can terminate the lease contract and claim compensation for damages from the lessor. Secondly, they explained about Article 133, Paragraph (2) of the Vietnamese Civil Code of 2015<sup>6</sup>. This provision concerns the protection of the good faith of a third party. Students discussed whether Company D could demand that Company C vacate the building, if Company D did not know about the lease contract between Ms A and Company C when it concluded the sales contract with Ms A. However, they noted that these

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<sup>4</sup> If Company D does not take over the lease contract concluded between Ms A and Company C, it is explained that the sales contract for the land and building concluded between Ms A and Company D ends the lease relationship between Ms A and Company (*emptio tollit locatum*).

<sup>5</sup> Article 478 (2) Vietnamese Civil Code: In the event of a dispute as to the ownership rights with respect to leased property, which interferes with use of that property by the lessee, the lessee has the right to terminate unilaterally the performance of the contract and demand compensation for damage.

<sup>6</sup> Article 133 (3) Vietnamese Civil Code: The owner of a property shall have no right to reclaim the property from the bona fide third party if the transaction with such party remains valid as prescribed in Clause (2) of this Article, but the owner may proceed against the party at fault to refund appropriate expenses and compensate for his/her damage.



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*Discussion of the students  
in UEL*

articles did not directly address the problem of whether or not the lease contract between Ms A and Company C succeeded to Company D. Students discussed for a long time, but could not reach a conclusion.

## **2.4 Presentations and Discussions in Cambodia**

In Cambodia, the Japanese students made a presentation on the Common Topic (2.1 above) and the Cambodian students made some comments from the viewpoint of the Cambodian Civil Code. The presentation by the Japanese students was the same as that made in Vietnam. They said that the renewed lease contract was succeeded by Company D, and because Company C canceled the lease, in accordance with the provisions of lease contract, Company C could claim reimbursement from Company D, also as provided for in the lease contract.

### **2.4.1 Discussions and Findings**

Discussion began with the confirmation of the facts of the case. The Cambodian students explained that, according to Article 598 paragraph (1) of the Cambodian Civil Code<sup>7</sup>, a lessee can claim legal status to a new owner as long

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<sup>7</sup> Article 598 Cambodian Civil Code (Conditions for perfection of lease of immovable): (1) A lease of an immovable may be held up against a subsequent acquirer of any real right over the immovable by virtue of the fact that the lessee has occupied, and continuously used and profited from the leased immovable.

as the lessee is in possession of the leased property. In this case, Company C possessed the leased property, and therefore could claim the right of lessee even if Company D was the new owner. As a result, Company C could cancel the lease contract with Company D and demand reimbursement in accordance with the provisions of the lease contract.

Thus the Japanese students and the Cambodian students came to the same conclusion, but their approach was not identical. The Japanese students used precedent (the Supreme Court decision) to solve the case, because there is no article in the Japanese Civil Code which explicitly stipulates the succession of a lease contract by the new owner of leased property<sup>8</sup>.

It is taught in Japanese legal doctrine that the effect of a lease contract is relative between the parties. If the leased property is sold to a new owner, the lessee cannot claim the right of lessee against the new owner who is a third party. This means that the sales contract “breaks” the lease contract (*emptio tollit locatum*). This conclusion comes from the strict provision that real rights (such as ownership) can be opposable against a third party while claim rights (such as the rights of a lessee) cannot be opposable against a third party. However, from the viewpoint of the need to protect the right of the lessee, this formal and strict doctrine has been amended by precedents and special laws, such as the Act on Land and Building Leases, which recognize exceptions to the principle of “sales contract breaks lease contract.” As a result, the legal status of the lessee has been strengthened.

In Cambodia, there is an article in the Civil Code itself which explicitly protects the status of the lessee. This means that the protection of the lessee is a principle of law in Cambodia, and this is recognized as a progressive feature of the Cambodian Civil Code.

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<sup>8</sup> As result of the recent amendment to the Civil Code (promulgated on 2 June 2017, Law No. 44), the lease contract succeeds to the new owner if the lessee had acquired the registration of the right of lessee or possession of the leased building before the new owner registered the transfer of ownership (Art. 605-2, Japanese Civil Code).



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*Discussion of the students  
in Pannasastra university*

## **2.5 Conclusion of the Program**

We used and studied the same topic in Vietnam, Cambodia and Japan. While it was found, on the one hand, that the analyses of the case, approaches to the question, and the conclusions were not identical, on the other hand, it was commonly observed that every student tried to solve the case by identifying the particular rules of law (or precedents) and applying them to the case before us. The Civil Codes seemed to be very familiar among the students. The Vietnam Civil Code was enacted in 1995 (amended in 2005 and in 2015), the Cambodian Civil Code, in 2004, and the Japanese Civil Code, in 1896 (with significant amendments in 1946 and in 2017). Given this, it seems that we have been sharing similar patterns of a gradual spread of the rule of law, starting from identifying the particular rule of law (or precedent) to be applied to the case.

It seemed that finding the relevant article in the Civil Code was the most important skill for the Vietnamese and Cambodian students. Especially in Vietnam, we found that many students were quick to show they knew the content of particular articles without ever opening any books to check, but they had difficulty solving the question when there did not seem to be any provisions of law that directly and clearly addressed the case. This suggests that the next step in legal education may be to teach interpretation of law so as to cover cases for which there seem to be no directly applicable provisions. It is no accident that the Vietnamese government has, since April 2016, institutionalized the continuous

publication of selected decisions of the Supreme Court by authorizing them as precedents<sup>9</sup>. Based on these precedents, the interpretation of existing provisions of law may become more popular in Vietnam, which will cover cases where the legal provisions are not directly applicable. A similar process may also occur in Cambodia so as to cover cases that are not provided for by the provisions of law<sup>10</sup>.

Throughout the study of the Common Topic, we shared the similarities and differences of our respective legal solutions to the case. We also realized that a simple comparison of the characteristic approach would not be so fruitful. Rather, we needed to understand the characteristic approaches of the Vietnamese, Cambodian and Japanese students within the context of a process of dynamic change in response to political, economic and legal circumstances as well as the publication of case law. In this dynamic viewpoint of legal development, we can find a number of useful devices that should contribute to the further development of legal education in each country.

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<sup>9</sup> The Vietnamese government published 10 precedents in April 2016. Council of Justice The Supreme People's Court, 2015, No. 03/2015/NQ-HDTP, [online] , 28 Jul. Available at <<http://vbpl.vn/TW/Pages/vbpq-toanvan.aspx?ItemID=92535> > (Accessed 27 Jul. 2017 ). It also announced that related organizations, including the Vietnamese Bar Association, would provide information about precedents to be recommended as authorized precedents. It is expected the Vietnamese government will continue to accumulate precedents, which will greatly improve the knowledge and skills for interpretation of law through the critical study of them in universities.

<sup>10</sup> The Cambodian Ministry of Justice has a plan to compile case law and publish it in what would be one of the major components of legal cooperation between Cambodia and Japan, the Legal and Judicial Development Project (Phase 5) of the Japan International Cooperation Agency (JICA). The Bar Association of the Kingdom of Cambodia also has a desire to publish a critical study of judgments in its journal. JICA, Legal and Judicial Development Project (Phase V), [online] June 24, 2017. Available at <<http://gwweb.jica.go.jp/KM/ProjectView.nsf/11964ab4b26187f649256bf300087d03/a3946086e3ce0e3a492580a00079df25?OpenDocument>> [Accessed on July 27, 2017].

## 3 Class Participation

### 3.1 About Class Participation

As a part of the Collaboration Program, the Japanese students and teachers participated in classes at UEL and PUC-FLPA. In this section, we will introduce the content and teaching styles of these classes, and our findings.

### 3.2 UEL

#### 3.2.1 Content of the Class

On March 10, 2017, we participated in the International Business Law Class for undergraduates at UEL.

The topic was the WTO Dispute Settlement System. The teaching style was case method study. Before the class, the teacher provided an assignment that included 13 questions and a case study related to the topic to be discussed later in the class.

The 13 questions were general and simple ones about the WTO dispute settlement. For instance, they included the following questions: “*What are differences between the GATT and WTO’s dispute settlement system [?]*” and “*Can a member challenge the WTO consistency of measure by a private party?*”

The case study, however, was more complicated and longer than the questions. It involved an imaginary dispute between Country A and Country B. Country A is the world largest producer and exporter of LED displays. However, recently Country B has been producing and exporting good quality LED displays and has become a competitor of Country A. To protect domestic industry, the government of Country A decided to limit the import of LED displays. The government of Country B is concerned by Country A’s decision and decides to challenge the consistency of the WTO in handling this matter. A lawyer is asked by the government of Country B to advise on the procedural and systemic issues arising in the course of the dispute settlement proceedings in Geneva. In the course of the proceedings, some situations arise. Students were tasked with analyzing the various situations and giving appropriate advice to Country B.

MỤC LỤC	
LỜI NÓI ĐẦU	
DANH SÁCH CÁC VẤN ĐỀ TRONG KHUÔN KHỔ	
HỆ THỐNG GATT/WTO VÀ TÊN VIỆT TẤT CỦA	
VỤ KIỆN	
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2.1. Đối ứng và đối xử	100
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III. NGUYÊN TẮC MINH BẠCH	100
3.1. Khái niệm	100
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*Contents of the text book*

### 3.2.2 Findings

The teacher used the case method style. The case and questions were original. From our viewpoint, it is very challenging to use the case method style in a WTO law class because the case is long and complicated. In addition, the class was taught in English. The class seemed to be very successful. We think that there are two reasons: (1) the teacher skillfully combined the case method style and lecture style approaches; (2) the class size was not big so that the teacher could use group work.

Regarding reason (1), the teacher did not require students to prepare perfect answers before the class, but he did ask students to answer questions during the class. At the beginning of the class, he explained about the case and the topic for the day. The lecture focused on the key points of the case. After that, students formed small groups and discussed each of the questions. Students shared their opinions with other group members. At the end of the class, each group answered questions. Finally, the teacher summarized the topic of the day. This combination of lecture and group work enabled the students to answer questions on their own, even though the case was long and complicated.

As for reason (2), the class only had 24 students. It was not big but a good size for group work. The teacher could pay attention to individual students. And the students also could ask the teacher questions any time during the class. Sometimes the teacher and students discussed with each other. In the class, one boy student

answered a question, but his answer was wrong. The teacher explained the correct answer, but the student could not understand the explanation. He asked again to clarify the reason. They debated for a while and finally the student was able to understand the explanation. The group work also created an environment in which the students could help each other.

If the class had been larger, the situation might have been different. In Japan, most undergraduate classes, except for seminar style classes, have more than one hundred students. Therefore, most teachers teach using the lecture style. This is the normal teaching style for a large class. However, it tends to be a one-sided explanation and it is hard for the teacher to pay attention to each student. Teachers always say, “If you have any questions, please ask me anytime,” but students are hesitant to ask. Worse than that, some students come to class just for attendance. Law school classes are smaller than undergraduate courses, but even law schools have difficulty taking care of individual students.

The WTO law class at UEL was an inspiration and provided new tactics for the case method teaching style. The topic concerned the WTO dispute settlement system and the teacher used a case that would illustrate the process of WTO dispute resolution. Students were tasked with finding the relevant articles of related laws. The case was long, but by following the articles and processes, students were finally able to arrive at an answer. However, actual legal disputes are more complicated and we cannot solve a conflict just by applying the stipulated provisions of law. We will sometimes need to interpret individual provisions of law to find a solution to a case. We need to improve the case method style by presenting case studies that need to be resolved not only by directly applying relevant articles in applicable laws, but also by interpreting existing laws to find the rules that are not written into law.

### **3.3 PUC-FLPA**

#### **3.3.1 Content of the Class**

On March 17, 2017, the Japanese students and teachers observed a Business Law class at the Pannasastra University Faculty of Law and Public Administration





*Presentation by students*



*Business logo designed by students*

(PUC-FLPA). The uniqueness of this class was that students simulated the establishment of a business. They decided to start a certain business project by themselves and researched the application processes provided for by laws and regulations. In the final class, they present how to start their business according to those laws and regulations.

We observed seven group presentations. Each group made a presentation about their business project including the reason for the choice, targets of the business, location, logos, the type of business, and so on. Most of groups chose the restaurant business, and as the business type, every group chose partnership.

Students explained the legal processes through role play. Some students played the role of clients and others, lawyers. Students who were clients asked legal questions of the students who were lawyers. They asked, for example, how long and how much it would take to get a certificate for the business, what kind of application was needed, what kind of regulations did the government have, and so

on. At the conclusion of the presentation, the students summarized the necessary legal process for starting a business.

### **3.3.2 Findings**

When we start a new business, we have to consider a lot of things: business activities, logos, advertisements, marketing strategies, type of company, how to get permissions, licenses, and so on. This class assigned students to make a presentation on how to establish a new business under the conditions of existing laws and regulations. Throughout their study, students learned the actual legal process for the establishment of businesses.

In Cambodia, it is hard to study law based on legal practice, because judgments are not made public, and this is a major issue in Cambodia. However, this class seemed to be trying to overcome this issue. The class was a business simulation, but it made students study law from the perspective of legal practice because they had to make field studies of which government authority had the right to give permission, how long it took to get permission, and so on.

This teaching and learning style seemed to be very useful for people who would like to start a new business in Cambodia where business chances have been expanding, but at the same time, it is hard to get sufficient legal information on one's own. This class provided the key for starting a new business and how to get the necessary information. Some students actually chose the class for their own future business possibilities. A girl student who wanted to start a business at the Night Market, said that if she asked consultant offices how to start a business, they would charge her a lot of money. But now she could start her business for herself, because she had learned the whole process for establishing a business.

### **3.4 Conclusion on the Class Participations**

In the Business Law class in Cambodia student presentations were based on legal practice. However, sometimes explanations about the same business were different, even though the business activities were the same. For example, two groups made presentations on establishing a bakery shop. But their explanations

about the application process to get government permission were different. We wondered which answer was correct.

However, such situations apparently happen frequently and government officers sometimes answer differently, as they interpret the requirements for application differently. The participants could understand how the situation was problematic.

## **4. Conclusion**

### **4.1 Possibilities in the Changing Focus on Legal Education**

The use of a Common Topic requiring students to find a solution to a case by applying the laws of their respective countries seems to be effective, not only to increase knowledge of the function of law in foreign countries from the viewpoint of comparative law, but also to better understand the differences in analysis and fact-finding, and to realize that there are cases which cannot be resolved by applying existing provisions of law, but which require that there be an interpretation of law. The differences in approach appear to reflect the characteristics of the legal education the students have had at their home universities.

For students in Vietnam and Cambodia, black letter laws seem to be more crucial to solving conflicts, and thus the main focus of the students was to find the appropriate laws and regulations for the case before them and to apply them to that case. Their approach was considered the essence of finding a legal solution to the conflicts in the case. A case for which no applicable black letter laws exist is not conceived of, and thus is not the main focus of the students.

In contrast, for the Japanese students, most materials they deliberate in the classroom are cases without any directly applicable laws, so that they need to interpret the existing laws which are closest to the case and to find precedents for the same or similar cases.

The differences in focus of the students can be attributed to the different circumstances of their legal education and of the major pedagogical method adopted in their respective countries. If precedents are made public and published

in official reports and law journals in Cambodia and Vietnam<sup>11</sup>, the focus of legal education and the pedagogical method may change in those countries in accordance with the increase in legal education of more practical cases.

The change of focus in legal education will be facilitated with the increase of more complicated cases which are not provided for in the laws but that are likely to occur with greater frequency with the rapid expansion of economic activities in Vietnam and Cambodia.

The social needs that jurisprudence is expected to address will change along with changes in economic, political, and social conditions. It is important that law schools provide the kind of legal education that will meet those needs of society. The degree of legal knowledge and skills in the interpretation of law that are required will depend on social needs, and will determine the basic characteristics of legal education in each country. The proper understanding of this basic character of legal education will greatly contribute to developing programs for foreign students. It will also deepen the dynamic theory of interpretation of law that takes into consideration changing economic and social conditions.

## **4.2 Mutual Impacts of the Different Pedagogical Methods for Legal Education**

There are various types of effective teaching and learning methods for legal education. The experience of participating in the law classrooms of foreign countries, and observing teachers apply more effective pedagogical methods, through a trial and error process, is fruitful for both students and teachers and will help them to improve their learning styles and teaching methods. The unique devices we observed can be effectively shared by all classroom participants, and there seems ample room to combine the various unique pedagogical methods to further improve legal education. For that purpose, however, the collaboration programs between students and teachers need to be continued and extended to other universities starting from those in Asian countries.

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<sup>11</sup> See footnotes 11 and 12 above.

## MATERIAL

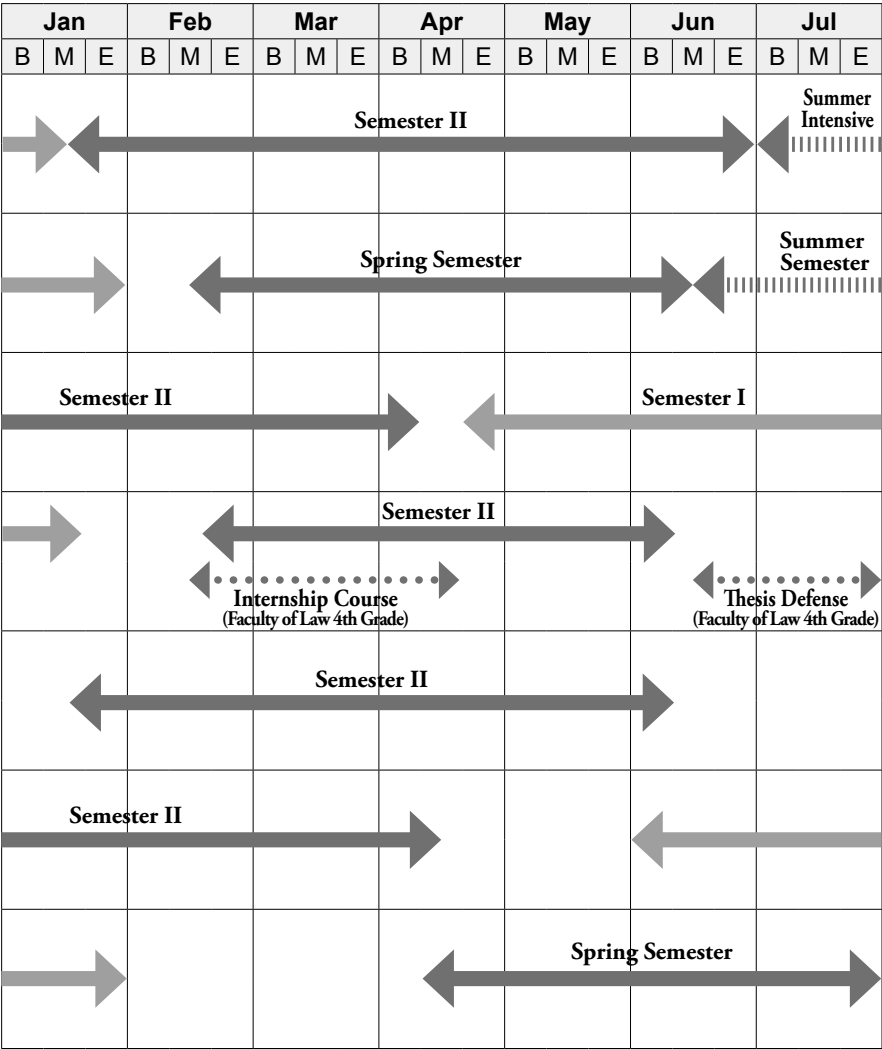
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# DURATION OF THE SEMESTER

	Aug			Sep			Oct			Nov			Dec		
	B	M	E	B	M	E	B	M	E	B	M	E	B	M	E
HLU (Hanoi, VN)	<div> <div></div> <div>Semester I</div> </div>														
UEL (Ho Chi Minh, VN)	<div> <div></div> <div>Fall Semester</div> </div>														
PUC(CAM)	<div> <div></div> <div>Summer Term</div> </div>														
LNL (LAO)	<div> <div></div> <div>Semester I</div> </div>														
TML (THA)	<div> <div></div> <div>Semester I</div> </div>														
YUL (MMR)	<div> <div></div> <div>Semester I</div> </div>														
KLS (JPN)	<div> <div></div> <div>Fall Semester</div> </div>														

- Hanoi Law University, Vietnam (HLU, VN)
- University of Economic and Law in Ho Chi Minh City, Vietnam (UEL, VN)
- Pannasastra University, Faculty of Law and Public Affairs in Cambodia (PUC, CAM)
- National University of Laos, Faculty of Law and Politics in Laos (LNL, LAO)
- Thammasat University, Faculty of Law in Thailand (TML, THA)
- Yangon University, Faculty of Law in Myanmar (YUL, MMR)
- Keio University Law School (KLS, JPN)

*DURATION OF THE SEMESTER*



B=Beginning  
M=Middle  
E=End

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# ABOUT KEIGLAD

## KEIGLAD - Keio Institute for Global Law and Development

We, Keio Institution for Global Law and Development, KEIGLAD is established in order to assist the promotion of international exchange and international cooperation among researchers, students, and staffs for legal study and legal education. KEIGLAD will promote the concerned projects as follow:

- Promotion of the Program for Asian Global Legal Professions (PAGLEP)
- Collection of information on the concerned comparative law
- Collection of information on the method of legal education
- Provision of materials for legal education
- Provision of information and support for foreign students who will study at Keio Law School and Keio Law School students who will study in abroad
- Promotion of the concerned symposiums and research meetings
- Publication of working papers
- Other matters concerned with objectives of KEIGLAD

Through these activities, KEIGLAD aims to contribute to the promotion of “Law-Ubiquitous Society”, in which Anyone can access to justice Anywhere and Anytime.

## ABOUT THE AUTHORS

**Naoya Katayama**

Dean, Professor, Keio University Law School, Japan

**Hiroshi Matsuo**

Director, KEIGLAD; Professor, Keio University Law School, Japan

**Phan Thi Lan Huong**

Deputy Head, International Cooperation; Professor, Department of Hanoi Law University, Vietnam

**Shohei Sugita**

Assistant Professor of Nagoya University, Japan

**Nguyen Ngoc Dien**

Vice-Rector, Associate Professor, the Vietnam National University of Economics and Law in Ho Chi Minh City, Vietnam

**Kong Phallack**

Dean, Professor, Faculty of Law and Public Affairs, Pannasastra University of Cambodia

**Viengvilay Thienchanhxay**

Dean, Associate Professor, Faculty of Law and Political Science, National University of Laos

**Noppadon Detsomboonrut**

Assistant to the Dean, Faculty of Law, Thammasat University, Thailand

**Khin Mar Yee**

Head of Department of Law, Professor, University of Yangon, Myanmar

**Rikako Watai**

Professor, Keio University Law School, Japan

**A. Reid Monroe-Sheridan**

Assistant Professor, Keio University Law School, Japan

**Hitomi Fukasawa**

Researcher, KEIGLAD, Japan

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代表者 松尾 弘

〒 108-8345 東京都港区三田 2-15-45

TEL 03-5427-1574

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