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**Workshop II**

**Legal Education in ASEAN in the 21<sup>st</sup> Century**

**Reinventing Philippine Legal  
Education**

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## Reinventing Philippine Legal Education

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It is quite evident that the Philippines is the most westernized nation in Asia. Filipinos go by Spanish sounding names, speak English the American way and predominantly profess the Christian religion. By way of a brief historical lesson, the nearly 400 years of western colonial rule started with the Spanish conquest of the islands which began on March 16, 1521—the date Magellan first landed on our shores though the Spanish regime was officially established only in 1565— over 40 years after that first landing. The Spanish occupation (1565–1898) was followed by a period under American sovereign control (1898–1935) ushered in by the defeat of the Spaniards in the Spanish American War of 1898, after which the Commonwealth of the Philippines was established (1935–1946). The Republic of the Philippines officially came into existence in 1946.

### A FUSION OF LEGAL SYSTEMS

Because of the country's colonial history, the Philippine legal system is one in which three of the world's legal traditions (Roman law, Anglican or common law, and Mohammedan law) have converged and found common ground; and where two traditions (civil and common) have been blended into a peculiar legal system unique to the Philippines.<sup>1</sup> Justice George Malcolm described this as a system, in which the two great streams of law—the civil, the legacy of Rome to Spain, and the common, the inheritance of the United States from Great Britain, amplified by American written law, have met and blended. On the substantive law of Spain... the (American) regime has grafted a simplified code procedure, the Torrens system, a negotiable instruments law, American public and private corporation law, and other commercial statutes."<sup>2</sup>

As to which system, Roman or Anglican, exerts greater influence, Justice Jose Laurel has said that "...legally and socially, the civil law system has so become interwoven with the life and proprietary interests of (Filipinos) that to introduce an entirely new legal system would be destructive of an institution... to which (the Filipino people) have been accustomed to for a period of more than 300 years."<sup>3</sup> And indeed, the Philippine Supreme Court has also said (through Justice Carson) that "neither English nor American common law is in force in these Islands; nor are the doctrines derived

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<sup>1</sup> Melquiades Gamboa, *An Introduction to Philippine Law*, 7<sup>th</sup> ed. c. 1969, Central Lawbook Publishing, Quezon City, Philippines, p. 59.

<sup>2</sup> *Ibid.*

<sup>3</sup> Jose Laurel, "What Lessons May Be Derived by the Philippines from the Legal History of Louisiana," II *Philippine Law Journal*, p. 63 (1915-1916).



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therefrom binding upon our courts, save only insofar as they are founded on sound principles applicable to local conditions, and are not in conflict with existing law...”<sup>4</sup>

But Justice Laurel also was quick to point out that “...we cannot now evade the tendency to amalgamate into one body the laws of the conquerors and the laws of the conquered...” Echoing this view, the Supreme Court admitted that “...nevertheless, many of the rules, principles, and doctrines of common law have... been imported into this jurisdiction, as a result of the enactment of new laws and the organization and establishment of new institutions by the Congress of the United States or under its authority; for it will be found that many of these laws can only be construed and applied through the aid of common law from which they are derived, and that, to breathe the breath of life into many of the institutions, recourse must be had to the rules, principles, and doctrines of common law under whose aegis the prototypes of these institutions had their birth.”<sup>5</sup> It is also true, then, that Philippine jurisprudence is “based upon English common law in its present-day form of Anglo-American common law to an almost exclusive extent.”<sup>6</sup>

The current state of Philippine law is succinctly summarized as follows:<sup>7</sup>

First, the greater bulk of Philippine private substantive law is Romanesque.

Second, there has been an increasing infiltration of common law principles into Philippine jurisprudence due to several causes, to wit: (a) the automatic substitution of Spanish political law by American political law, upon the transfer of sovereignty; (b) the continued drawing from American patterns by the Philippine Legislature in the enactment of new statutes; (c) the growing reliance by the bar and bench on American decisions in the application and interpretation, not only of American-derived statutes but also of the old statutes of Spanish origin; and (d) the imitation of the system of American legal education by the law schools of the Philippines.

Third, despite the rapid increase of the common law element, the Romanesque portion of Philippine law still predominates and will continue to predominate.

Fourth, although many common law provisions and principles are being literally grafted on the law tree of the Philippines, the case law method of adjudication, which is a condition *sine qua non* of the common law system, is not adopted. The doctrine of *stare decisis* does not obtain here in the same sense that it obtains in common law

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<sup>4</sup> *US v Cuna*, 12 Phil 242 (1908), cited in Gamboa, *An Introduction to Philippine Law*, p. 75.

<sup>5</sup> *Alzua v Johnson*, 21 Phil 308 (1912), cited in Gamboa, *An Introduction to Philippine Law*, p. 75.

<sup>6</sup> *In re Stoop*, 41 Phil 213 (1920)

<sup>7</sup> *Ibid*, *An Introduction to Philippine Law*, p. 77.



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countries. Precedent is only evidence of the law and not the law itself. Consequently, the Philippine legal system is not likely to be a common law system in the strict sense.

The most important American legal concepts and institutions which have been incorporated into the Philippine legal system are:

- A. In the realm of government, the doctrine of separation of powers and the power of judicial review according to which the judiciary, a coordinate department of the government, serves as the ultimate interpreter of the Constitution.
- B. In the branch of adjective law, a scientific and simplified system of civil and criminal procedure.
- C. In the field of commercial law, a series of modern laws on trade and commerce, such as the Corporation Law, Insolvency Law, Negotiable Instruments Law, Securities Act, Insurance Law, General Banking Law, etc.
- D. With respect to the Civil Code: the rules of equity concerning trusts, natural obligations, estoppel, quieting of title and reformation of instrument; additional rules governing easement, damages, liability of common carriers, the statute of frauds, sale and partnership; a procedure for arbitration, etc.

## AMERICAN INFLUENCE

There is a pervasive American influence in the Philippine educational system. Indeed, within the first decade of America's occupation of the Philippines, a secularized, free, and compulsory public school system was immediately established.<sup>8</sup> Closely hewing to the characteristics of the American public school system, English was used as the medium of instruction and, indeed, the great majority of teachers (600 in all, called 'Thomasites,' having arrived in the Philippines on board the ship *USS Thomas*) were brought to the islands from America.

In 1902, to complement the existing highly-centralized public school system, the Philippine Commission further established a high school system supported by provincial governments; special educational institutions; schools of arts and trades; agricultural

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<sup>8</sup> "Historical Perspective of the Philippine Educational System," from [http://www.deped.gov.ph/about\\_deped/history.asp](http://www.deped.gov.ph/about_deped/history.asp)



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schools; and commerce and marine institutes.<sup>9</sup> In 1908, the Philippine Legislature approved Act No. 1870 which created the University of the Philippines.<sup>10</sup>

Insofar as the beginnings of American type law schools are concerned, the College of Law of the University of the Philippines was founded on January 12, 1911, but its origins can be traced earlier to law courses already offered in 1910 by the American organization Young Men's Christian Association (YMCA), largely through the efforts of George A. Malcolm (who later became the first permanent dean of the UP College Law, before being elevated to the Philippine Supreme Court in 1917). The UP College of Law opened in June 1911, with a total of 125 students, comprising freshmen and some sophomores from the YMCA. The faculty was at first predominantly American, but who were soon supplanted by Filipino teachers. One of the first Filipino faculty members, Jorge C. Bocobo, succeeded Dean Malcolm and became the first Filipino dean of the College. He held the position until 1934.<sup>11</sup>

The College offered a three-year course for full-time students and a four-year course for students who were employed and studying part-time. Starting in school year 1917-1918, given the bar performance of part-time students however, a four-year course was prescribed for all students starting.<sup>12</sup>

The first Philippine bar exams were administered in 1901, with 13 examinees.<sup>13</sup> There are now more than 100 law schools operating in the Philippines producing approximately 6000 law graduates a year. In 2005 a total of 5,610 examinees took the bar, out of which only 27.2% (1,526) passed. The lowest bar exam passing rate was recorded in 1999, when only 16.59% (660 out of 3,978) of examinees passed. The highest passing rate was recorded in 1981 with a 43% passing rate.

Most law schools in the Philippines offer a Bachelor of Laws (LLB) degree, with the exception of the Ateneo Law School, the University of Batangas College of Law, and the MBA-JD dual degree program offered by the Far Eastern University Institute of Law in partnership with the De La Salle University Graduate School of Business, which offers a Juris Doctor along with a Master of Business Administration degree.

### THE MBA-JD DEGREE

Recognizing that the spheres of law and business are constantly overlapping, the Far Eastern University Institute of Law (FEU-IL) and the De La Salle University Graduate School of Business (DLSU-GSB) have collaborated to create a dual degree program in business management and law. The Program's business component provides a management education that prepares students for results-oriented decision-making; its

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<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Condensed from <http://law.upd.edu.ph/>.

<sup>12</sup> Ibid.

<sup>13</sup> Condensed from *INQ7.net* [http://news.inq7.net/breaking/index.php?index=1&story\\_id=71094](http://news.inq7.net/breaking/index.php?index=1&story_id=71094) and *Manila Standard Online* [http://www.manilastandardtoday.com/ContentLoaded?page=politics06\\_mar30\\_2006#top](http://www.manilastandardtoday.com/ContentLoaded?page=politics06_mar30_2006#top).



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law component provides students with legal knowledge and analytical tools necessary in understanding how law affects business and management decisions.

Indeed in a world that has become both increasingly competitive and interrelated, the need to learn and develop multi-disciplinary skills has become more apparent. Market expectations on the roles of the lawyer and the manager have expanded to take into account the changes brought about by technological advances and innovations. When asked to render a legal opinion or give professional advise, lawyers and managers are expected to provide tailored solutions to problems that simultaneously consider the “bigger picture.” The program, in effect, is designed to enable graduates to approach problems from both commercial and legal perspectives by equipping them with practical knowledge and skills in the two interrelated areas.

Atty. Ricardo Romulo, perceptively remarked that, “modern society reposes on a lawyer a role and responsibility that requires him to possess a far ranging knowledge of subjects other than law. Be as adviser, negotiator, advocate, judge, administrator or manager, a lawyer must be prepared to assume direction of all phases of the areas of personal conflict inherent in a complex society and economy.”

For his part, former Trade and later Finance Secretary Cesar Purisima observed that “the worlds of law and management have melded in our global economy, and the interplay of law, finance and business economics in modern day transactions requires the skills of both a business manager and a lawyer to analyze, package and negotiate a deal.”

Indeed, former Supreme Court Justice Florida Ruth Romero had predicted what Atty. Romulo dubs as “the age of enlightenment of legal education in the Philippines.” As head of the UP Law Center, Justice Romero has consistently battled for an interdisciplinary approach to the teaching and study of law, stating that “courses in economics, psychology, sociology, public administration, planning etc., would considerably broaden the outlook of law students and liberate them from the occasionally restrictive confines of the doctrinal approach.”

It was with this mindset that, the DLSU-FEU partnership, the first of its kind in the Philippines, was created. Dual degree programs—that is, law in combination with another degree in business, the social sciences, or the humanities—are already being offered by many American and English law schools, but it is a novel thing among Philippine universities.

The kind of innovative thinking that went into the formation of the MBA-JD program is also evident in the choice of faculty members and the teaching methods used in the program. Towards this end, we continually emphasize to the students the program’s commitment to the principles of relevance and participatory decision making. Relevance is displayed through the offering of courses that are taught by practitioners with exposure to international best practices and who know the practical “nuts and bolts” of the subject. Furthermore, faculty members are encouraged to use alternative teaching techniques apart from or in conjunction with the case method, which has been the basic tool of traditional legal education in American law schools since the early



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1900's. In this way, students not only learn the theory but also equip themselves with the skills needed to cope with real life situations. Participatory decision making is shown in the way we treat our students- not as subordinates but as partners not only in choosing elective subjects and faculty but in working towards the objective of providing relevant education.

### BEYOND THE SOCRATIC METHOD

More recently, a lot of discussion has taken place about the continuing suitability of the strict application of the Socratic method to the study of law. This method of teaching where a law professor is supposed to draw the answer out of law students through a series of questions remains the hallmark of Philippine legal education. Revived and adapted to the law school setting in the 18<sup>th</sup> century by Harvard Law School dean Christopher Columbus Langdell, it continues to dazzle and dazzle the Filipino law student. Most criticism of the Socratic method commonly center around its main weaknesses or disadvantages, these being—

*That it is an inefficient methodology.* The Socratic method is an inherently slow methodology which inevitably tends to minimize course coverage.<sup>14</sup> The Socratic method—a dialectic method of inquiry first described by Plato in the *Socratic Dialogues*, which typically involves two speakers at any one time with one leading the discussion and other agreeing to or rejecting certain assumptions<sup>15</sup>—adopted in its purest form as a teaching method, simply takes too long. The concepts that may be elicited in the conduct of an hour and a half-long series of Socratic dialogues between professor and students could probably be covered in a 20-minute lecture, after which more important points could still be taken up in a moderated discussion. Even in a straight lecture where a student is not required to recite, students will get little value out of attending class if they have not prepared just as thoroughly.<sup>16</sup>

*That it allows for very little feedback from professor to student, making grades seem arbitrary.* Law professors and students alike have noted that the lack of feedback allowed by the Socratic method can limit their appreciation of what they are doing well and what they are doing wrong.<sup>17</sup> This is especially true in large classes, where interaction between students and professor is limited.

*That it makes no room for practical and participatory learning.* According to its advocates, one of the main advantages of the Socratic method is that it encourages students to prepare for class because only “intensive and consistent daily preparation (will allow) students to participate effectively in (the) process.”<sup>18</sup> But the experiences of universities that have adopted alternative methods also show that the most effective way

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<sup>14</sup> Andrew Beckerman-Rodau, “A plug for the ‘traditional approach’ to teaching law,” from <http://www.law.suffolk.edu/arodau>.

<sup>15</sup> Definition taken from <http://www.wikipedia.com>

<sup>16</sup> See “The varying methods of teaching” Thomas M. Cooley Law School, <http://www.cooley.edu/introlaw/Lesson%203/lesson%203-1.htm>

<sup>17</sup> Anthony Ricky, contribution posted on [http://thenonbillablehour.typepad.com/nonbillable\\_hour/2004/11/five\\_by\\_five\\_an.html](http://thenonbillablehour.typepad.com/nonbillable_hour/2004/11/five_by_five_an.html).

<sup>18</sup> University of Arkansas, “Law school teaching methods,” from <http://www.uark.edu/admin/urelinfo>



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to ensure that students come to class prepared is to make classroom learning more of a participatory experience. Participatory methods (such as research and writing projects, presentations, debates, role-play and others) and activities that require working out practical legal problems make students in larger part responsible for their own learning.

### DIALOGUE V CASE STUDY

These critiques are particularly relevant to a program that seeks to combine the two disciplines of business and law.

Many law professors still maintain that the Socratic method is “incredibly well-suited to teaching law”<sup>19</sup> According to some, the Socratic method, applied skillfully, helps students “discern relevant from irrelevant facts... and distinguish between seemingly similar facts and issues.”<sup>20</sup> Socratic discourse requires students to “articulate, develop, and defend positions that may at first be imperfectly defined intuitions,”<sup>21</sup> thus effectively developing reasoning and problem-solving skills.

The “cornerstone” of business school teaching, on the other hand, is the case study method. Usually, in a business school classroom, (1) one case study is discussed per class session; (2) class participation makes up a large percentage of the course grade; and (3) the final exam consists of another case study.<sup>22</sup> Sara Kelley of the Georgetown University Law Center makes the following points in her discussion on law schools adopting business school teaching methods:

In MBA classes a case study is usually between five and twenty pages long. It lays out a fact pattern and requires students to plan a responsive course of action. (The) advantages of the case study method over law school’s case method include its requirement of group effort, its encouragement of meaningful class participation, and its focus on problem solving. According to Professor Don Welch of Vanderbilt Law School, “legal education helps students prepare students to exercise professional judgment through the case method. But it may be that the kind of case method used in business schools... does this more effectively.”<sup>23</sup>

Some forward-thinking American law schools are already using case studies and simulations as part of classroom teaching technique. Stanford University’s website, for instance, provides the following information for potential students:

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<sup>19</sup> Michelle Adams, “New Ideas for Law School Teachers: Teaching Intentionally,” from [http://www.concurringopinions.com/archives/2006/06/post\\_7.html](http://www.concurringopinions.com/archives/2006/06/post_7.html)

<sup>20</sup> From <http://www.answers.com/topic/case-teaching>

<sup>21</sup> Elizabeth Garrett, “The Socratic Method” in <http://www.law.uchicago.edu/socrates/method.html>, originally printed in *The Green Bag*, c.1998.

<sup>22</sup> Sara Kelley, “Developments in Legal Education: Law Schools Adopting Business School Teaching Methods,” from [http://www.aallnet.org/sis/allsis/newsletter/25\\_1/DevLegalEd.htm](http://www.aallnet.org/sis/allsis/newsletter/25_1/DevLegalEd.htm)

<sup>23</sup> Ibid.



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Research has shown that existing law school teaching methods and curricula do not adequately teach students the full complement of “lawyering” skills they need to competently practice law. The traditional appellate case method assumes that a problem has reached a point where litigation is the only alternative, and presents students with a scenario in which all relevant issues have been identified, the questions of law narrowly focused, and the questions of fact resolved. Skills-oriented courses and clinical programs have made significant contributions to a law school’s ability to teach lawyering skills. Their reach, however, has been limited by a combination of factors, including their high cost and the relatively few law students who actually take advantage of these programs.<sup>24</sup>

Stanford, among others, espouses the incorporation of case studies and simulations into law school curricula in order to bolster skills in critical areas, such as<sup>25</sup>

- Problem solving
- Legal research
- Factual investigation
- Persuasive oral communications
- Counseling
- Negotiation
- Recognizing and resolving ethical dilemmas
- Organization and management of legal work

A growing number of law schools and professors in the United States are finding that a mix of reading (cases), listening (lectures), and participation (class interaction/simulation) can be greatly beneficial for students, particularly for ‘today’s generation of students’ who, according to law professor Laura Heymann, are

“...a more diverse group in terms of race, gender, religion, ethnicity, sexual orientation, financial status, political views, family situations, work experience, and life experience... who have been raised on a diet of popular culture and instant communication, resulting in shorter attention spans and higher demands on faculty to use technology in the classroom. They are fluent Internet users but do not always have a similarly-developed ability to be intelligent consumers of information... Finally, some students today see themselves as consumers of an

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<sup>24</sup> “What are case materials?” Stanford Law School in <http://www.law.stanford.edu/publications/casestudies/faq/>

<sup>25</sup> Ibid.



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educational service, which manifests itself in the way they treat the classroom experience...<sup>26</sup>

### THE WAY FORWARD

Following their lead, the DLSU-FEU MBA-JD dual program seeks to explore how the two systems of learning—business and law—can be combined so that each discipline enriches the other.

Challenged to find a balance between business and law, practical and book learning, the DLSU-FEU MBA-JD program is one in which (1) students are treated as real professionals who are responsible for their own learning; (2) law faculty are encouraged to adopt a mixture of teaching methods, especially those that conduce to learning and discussion even outside the classroom; (3) the use of technology is promoted to enhance the classroom experience, facilitate greater course coverage, and aid in interactive learning; and (4) a decided emphasis is placed on exercises and discussions about practical legal processes and problems.

Now only in its fourth year, the DLSU-FEU MBA-JD program is still fine-tuning its curricular offering, taking into consideration feedback received from both students and faculty. Although the disparity between business and law school learning methods may never be completely bridged, the MBA-JD program proves the point that a certain dynamism between the two approaches may realistically be achieved. Indeed, by focusing on the strengths of each discipline and ensuring an internal cohesion between legal and business principles, a student literally and figuratively gets the best of both worlds and should turn out to be a more complete business lawyer.

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<sup>26</sup> Laura Heymann, “Teaching Today’s Students” from [http://www.concurringopinions.com/archives/2006/04/teaching\\_todays\\_1.html](http://www.concurringopinions.com/archives/2006/04/teaching_todays_1.html)