

LEGAL EDUCATION IN ASEAN

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I. INTRODUCTION¹

This article is intended to provide a general overview of the current state of legal education in ASEAN by focusing on a number of representative jurisdictions, in particular Indonesia, Malaysia, Singapore, Thailand and Vietnam. In broad terms, Indonesia, Thailand and Vietnam belong to the civil law tradition while Malaysia and Singapore belong to the common law family.

Legal education in the sense that we broadly understand it today is a relatively young creature in ASEAN. For Thailand, the first law faculty was established by King Rama VII in 1933 as the Faculty of Law and Political Science at Chulalongkorn University. In 1934 the Faculty of Law and Political Science was transferred from Chulalongkorn University to the newly established Thammasat University with the consequence that legal education at Chulalongkorn was suspended for some years.

In Indonesia, legal education had its origins in the colonisation of Indonesia by the Dutch. In 1909, the Dutch colonial government established a secondary school for law (*rechtschool*) which was not an institution of higher learning. Its function was to train Indonesians to work as clerks in the district courts. In 1924 the *rechtschool* was upgraded to become a school for higher education (*rechts hogeschool*). The school was established in Batavia

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¹ See also Tan Cheng Han *et al*, "Legal Education in Asia" (2006) 1 *Asian Journal of Comparative Law* 184 from which this paper is adapted.

as Jakarta was then known. After Indonesia became independent, the *rechts hogeschool* officially became the Faculty of Law at the University of Indonesia on 2nd February 1950.²

In Vietnam, there was no formal tertiary academic legal education during the war years. The government institution with primary responsibility for legal affairs, the Ministry of Justice, had been closed in the 1960s as part of a war-time de-emphasis on legal process. It was only in 1976, the year after Saigon had fallen, that a small law faculty was established at Hanoi University under the Ministry of Education and Training. Several years later, a small Judges Training School was established by the Supreme People's Court and the State Law Commission (the predecessor to the Ministry of Justice) opened a small two-year legal training school. In 1980 and 1981 these three institutions were merged to form the Hanoi Law College. The Hanoi University Faculty of Law and the Judges Training School were closed. When the Ministry of Justice was formally reopened in 1981, it took control of the new Hanoi Law College. In that year, the Ministry of Justice and the College opened a branch facility in Ho Chi Minh City. In the later part of the 1980s, Hanoi University and the Ministry of Education and Training re-established a law faculty within the university. Also in the later part of the 1980s, a group of lawyers trained at the pre-1975 Saigon University Law School and faculty at Ho Chi Minh City University opened a small law faculty within that university.³

In the parts of South-East Asia that had been colonised by the British, legal education did not begin till after the Second World War. Legal education in Singapore began in 1957 with the establishment, at the University of Malaya,⁴ of an independent Department of Law which obtained full Faculty status on 9 November 1959.⁵ In Malaysia, legal education

² Hikmahanto Juwana, "Teaching International Law in Indonesia" (2001) 5 *SJICL* 412 at 413.

³ M. Sidel, "Law Reform in Vietnam: The Complex Transition from Socialism and Soviet Models in Legal Scholarship and Training" (1993) 11 *UCLA Pac. Basin LJ* 221 at 224-225.

⁴ One of the predecessor institutions of the National University of Singapore (NUS).

⁵ Generally, see Kevin YL Tan, "Early Legal Education in Singapore" in Kevin Y.L. Tan ed., *Change and Continuity – 40 Years of the Law Faculty* (Singapore: 1999); Tan Cheng Han, "Challenges to Legal Education in a Changing Landscape – A Singapore Perspective" (2003) 7 *SJICL* 545.

began in 1972 when the University of Malaya established a Faculty of Law.⁶ Prior to the establishment of law schools in Malaysia and Singapore, virtually all lawyers in both countries were educated in England. As a result of this tradition, both countries continue to recognise at least some English law schools for purposes of entry into the legal profession.⁷

II. THE BASIC STRUCTURE OF LEGAL EDUCATION

In ASEAN, there are a relatively large number of law schools or other institutions connected with legal education. In Indonesia alone there are more than 200 Faculties of Law of which 27 are state institutions.⁸ Vietnam has between twelve to fifteen legal training institutions. About seven of these offer Bachelor of Laws programmes. The others offer only postgraduate programmes, practical training or some other types of legal training. The oldest law school in Vietnam is Hanoi Law University which was established shortly after the country was reunited in 1975.

In the two smaller common law jurisdictions that are surveyed in this paper, the number of law schools is fewer.⁹ Singapore currently has only one law school at the National University of Singapore that offers a law degree which is recognised under the Legal Profession Act for legal practice in Singapore. In August 2006, the Singapore Government announced that the Singapore Management University would be given permission to establish a second law school which will have its first intake of students in August 2007. In addition, the Nanyang Technological University has a law department within its business school. There are also a number of private institutions offering external law programmes that are currently not recognised for practice in Singapore. In Malaysia, excluding private

⁶ Prior to Singapore's independence in 1965, the University of Malaya had two campuses, one in Singapore and the other in Kuala Lumpur. After 1965, the University of Malaya in Singapore was renamed the University of Singapore and subsequently the National University of Singapore.

⁷ For example, Singapore recognizes nineteen English law schools and recently recognized several Australian, New Zealand and United States law schools, see http://www.lawsoc.org.sg/ble/n_first_schedule.htm.

⁸ Juwana, *supra* n 2.

⁹ Brunei, which is also a common law jurisdiction, does not have a law school and traditionally its lawyers receive their legal education in England.

colleges that offer the law programmes of foreign universities, there are six law schools, namely at the University of Malaya, Universiti Kebangsaan Malaysia (UKM) or the National University of Malaysia, International Islamic University of Malaysia (IIUM), Universiti Technology MARA (UiTM), Universiti Utara Malaysia (UUM) and Multimedia University (MMU), the last being a private university.

III. DEGREES AND PROGRAMMES

Many law schools in the countries surveyed offer Bachelors, Masters and doctoral programmes. Most of the Bachelors programmes are four-year programmes (though students may take longer to complete) that are studied on a full-time basis. Two jurisdictions that do allow part-time Bachelors programmes in law are Malaysia¹⁰ and Vietnam. In Singapore, the National University of Singapore Faculty of Law has “double-degree” programmes that allow undergraduate students to simultaneously read law and another discipline. Its first two double degree programmes were started in the 2005-06 academic year, in Law and Economics, and Law and Business. Successful students enrolled in these two programmes will graduate at the end of five years with Honours degrees in both disciplines.¹¹ Recently, in September and October 2006, the law school received approval to offer two additional double degree programmes in Law and Life Sciences, and Law and Public Policy. The latter is a joint programme with the Lee Kuan Yew School of Public Policy that will see successful graduates obtain a Bachelor of Laws and a Masters in Public Policy.

In addition to undergraduate law programmes, the National University of Singapore also allows graduate students to complete its LLB programme in three years. Law schools in Thailand also have similar programmes. The history of how such a programme came about at the National University of Singapore is quite interesting. In the mid-eighties, the government of Singapore wanted several officers in the Administrative Service to read law as

¹⁰ For example, the Bachelor of Jurisprudence degree offered by the University of Malaya Faculty of Law.

¹¹ Students will spend approximately the equivalent of three years on law studies and two years on the other discipline.

the government wanted better qualified officers in the government legal service. As such, over a few years in the eighties, a number of specially selected civil servants read the LLB programme in a highly compressed manner over two years.¹² When it was felt that the programme had served its purpose, it fell into disuse for a few years until it was revived sometime in the early to mid-nineties. When it was revived, students were required to read the LLB programme over a minimum of three years. Currently, an average of around 15 students are admitted into this programme each year.

Master of Laws (LLM) programmes that are offered by law schools in the jurisdictions surveyed generally range from one to three years in duration. In the common law jurisdictions surveyed, the length of the LLM programmes is one year. In the civilian jurisdictions surveyed, the duration is generally three years except for Thailand where the duration can be up to four years as is the case at Chulalongkorn University.

In addition to traditional LLM programmes, some law schools in ASEAN offer LLM programmes in partnership with other law schools. One such programme is the LLM in Business Law established in 1997 by Chulalongkorn University, the University of Kyushu, the University of British Columbia, and the University of Victoria. This programme, the first international graduate law programme to be offered in Thailand, is taught entirely in English with the degree being granted by Chulalongkorn University. Another joint programme is the LLM programme in International Business Law offered by the East China University of Politics and Law and the National University of Singapore. This programme, which began in 2005, is also taught entirely in English. Aside from a period of eight weeks in Singapore, the programme is taught at East China University of Politics and Law's Shanghai campus with the degree being awarded by the National University of Singapore.¹³

¹² Hence the official name of the programme is the Approved Graduate Programme, which persists till today despite being a misnomer.

¹³ See http://law.nus.edu.sg/prospective/postgrad/coursework/llm_ibl.htm.

With increasing globalisation, it is likely that more such joint programmes will be established in Asia. Indeed, the Asian Law Institute,¹⁴ which brings together some of the leading law schools in Asia,¹⁵ is considering an ambitious LLM programme in Asian Legal Studies that will involve many of the partner institutions in a variety of ways. The National University of Singapore and New York University will also be establishing a joint LLM programme in Singapore that will have its first intake in May 2007.¹⁶

As for doctoral programmes, the duration is generally three years though there are some exceptions, e.g. Vietnam where it is possible to pursue a doctoral programme without an LLM degree in which case the duration is 5 years instead of 3.

IV. CURRICULUM AND COURSES AT THE BACHELORS (OR EQUIVALENT) DEGREE STAGE

A major objective of legal education is to educate law students for the practice of law in a particular jurisdiction. In many jurisdictions a law degree is a pre-requisite for entry into the legal profession. For example, in Indonesia the curricular of the law schools are standardised by the government through the Consortium for Legal Science, a body within the Ministry of Education.¹⁷

To facilitate the objective of educating future lawyers, most law schools have compulsory and elective components in their Bachelors programmes. In many of the common law schools, the compulsory part of the curriculum contains many subjects that are

¹⁴ See <http://law.nus.edu.sg/asli/>.

¹⁵ The institutions from ASEAN who are members of the Asian Law Institute are Chulalongkorn University, University of Indonesia, International Islamic University of Malaysia, University of Malaya, National University of Singapore, and University of the Philippines.

¹⁶ See <http://www.nyulawglobal.org/graduateadmissions/masteroflaws/index.htm>.

¹⁷ Juwana, *supra* n 2.

similar to what is found in law schools in other common law countries.¹⁸ In Thailand, some of the compulsory courses include Jurisprudence, Legal History, Criminal Law, Source of Obligations, Persons and Family Law, Contracts, Constitutional Law, Civil Procedure, Criminal Procedure, etc.

In Indonesia, based on the curriculum designed by the Consortium of Legal Science, the curricular of the law schools are divided into compulsory subjects that comprise the national curriculum and other subjects that are decided by the individual law schools and which are referred to as the local curriculum. The national curriculum mainly consists of basic law subjects such as Introduction to the Study of Law, the Indonesian Legal System, Criminal Law, Civil Law, Constitutional Law, Administrative Law, and Public International Law.¹⁹ Law students in Indonesia must also generally take a concentration in an area of law, e.g. business law or family law.

In the socialist country surveyed here, namely Vietnam, the typical compulsory modules that are offered by law schools are General Theory of State and Law, Constitutional Law, Administrative Law, Administrative Procedure, Criminal Law, Criminal Procedure Law, Civil Law, Civil Procedure Law, Economic Law, Labour Procedure Law, International Law, Private International Law, and Family Law.

Most of the Bachelor of Laws programmes either require or allow its law students to read a certain number of non-law subjects. In general there are three broad models. The first is a law school that allows its law students the option of reading a number of non-law electives, e.g. the Faculty of Law in the University of Malaya. The second is to integrate some non-law subjects into the compulsory curriculum. One example is provided by Chulalongkorn University where law students have to read Law and Society, Accounting for Lawyers, and Economics for Lawyers. The third model is to allow law students to read

¹⁸ Typical compulsory subjects include Contract, Tort, Criminal Law, Legal System, Property Law, and Constitutional Law. There are of course variations between the different schools, e.g. the National University of Singapore has a compulsory Comparative Legal Traditions course and a legal writing programme which is not typically found in law schools outside North America. The aim of the legal writing programme at the National University of Singapore is to develop what is known as ‘adaptive expertise’, see Alexander F.H. Loke, “Forging a New Equilibrium in Singapore Legal Education” (2005) 24 *Wisconsin International Law Journal* 243.

¹⁹ Juwana, *supra* n 2 at 413-414.

another degree in conjunction with the LLB programme. At the National University of Singapore law school, for example, students are allowed to read double-degree programmes in Law and Economics²⁰ and Law and Business.²¹ Some law schools adopt combinations of these broad models.

The motivation behind allowing students to read courses or programmes outside law is to broaden the perspective of law students in the belief that such an education will ultimately lead to a better legal professional. Law is intimately connected with the society it is a part of. Law does not exist in a vacuum but is very much a reflection of a policy choice that has been made by society (or at least a section of it). The development of legal rules is therefore very much dependent on the social, cultural and historical contexts of the society in question, which collectively also shape prevailing theories and views of the role of the law.²² The study of legal rules is not enough as rules are not self-creating, self-identifying, self-articulating or self-justifying. It is almost invariably misleading to treat rules as things in themselves without reference to the contexts of their creation, articulation, operation and so on.²³ One weakness with legal education in many places is that there is an over-emphasis on the mere knowledge and mastery of the technical aspects of legal rules without spending sufficient time on the underlying reasons behind those rules. There is a tendency to look at law from a narrow internal standpoint which is understandable but inadequate.²⁴ Any

²⁰ See <http://law.nus.edu.sg/prospective/doublehons.htm>.

²¹ See <http://newshub.nus.edu.sg/pressrel/0503/050322.htm>.

²² Tan Cheng Han, *supra* n 5 at 567.

²³ W. Twining, *Blackstone's Tower—The English Law School* (London: Stevens and Sons/Sweet and Maxwell, 1994) at 175-176; see also L.A. Sheridan, "University Law" (1956) 22 *MLJ* xxviii at xviii-xxix; Alexander F.H. Loke, "Educating the Thinking Lawyer: The Past, Present and Future of University Legal Education in Singapore" in Kevin Y.L. Tan ed., *The Singapore Legal System*, 2nd ed. (Singapore: Singapore University Press, 1999) 325 at 339-346; D.W. Vick, "Interdisciplinarity and the Discipline of Law" (2004) 31 *Journal of Law and Society* 163 at 181-191. Lord Wright, "The Study of Law" (1938) 54 *LQR* 185 at 192, speaking extra-judicially of English law said: "But in a more substantial way we can see the influence of history, of current modes of social, moral, political and economic ideas, current, that is, among the classes from which the law makers, judicial or legislative, were drawn. We can often see that a rule of law is based on or adapted to conditions and ideas that have become obsolete, and we have to consider whether it is possible to apply the maxim *cessante ratione legis cessat ipsa lex*. See also E.C.S. Wade, "The Aim of Legal Education" (1947) 9 *CLJ* 286 at 288 where he states that the study and teaching of law should not be an exercise in professional technique, but in relation to its place in the world in which we live.

²⁴ Tan Cheng Han, *supra* n 5 at 568; Alexander F.H. Loke, *supra* n 18.

critique of legal rules or doctrines which is more than a mere seeking after logical consistency or historical continuity must be based on materials outside the law itself.²⁵

The importance of perspectives outside the law is well summarized by a distinguished English judge. Lord Sankey, speaking extra-judicially, once said:

“The Courts are becoming more and more concerned with great social experiments. Law joins hands as never before with problems in economics, problems in political science, problems in the technique of administration. It is important that the curricula of our law schools should send out lawyers trained to appreciate the meaning of these relationships. They must shape the mind to a critical understanding of the foundations of jurisprudence. Unless the training we give supplies these perspectives there is grave danger that the lawyer will not prove adequate to the big problems he has to help in solving. We are now on the threshold of an epoch of profound legal transformation. Our educational methods have to breed a race of lawyers able to utilise the spirit of law reform for the highest uses. They have to teach the importance at once of stability and change. To do so they must know not only how to grasp the philosophic foundations of those decisions. We must also turn out lawyers with a courage to criticise what is accepted, to construct what is necessary for new situations, new developments, and new duties both at home and abroad.”²⁶

The noted English company lawyer, Professor L.C.B. Gower, also expressed similar views. He felt that every lawyer, whether he devoted himself to private practice or public service, had to make policy decisions demanding a knowledge of economics, political science

²⁵ S.P. Simpson, “The Function of the University Law School” (1936) 49 *Harv LR* 1068 at 1075-1076; Lord Justice Denning, “The Universities and Law Reform” (1947-1951) 1 *JSPIL (N.S.)* 258 at 259.

²⁶ Quoted in WPM Kennedy, “Legal Subjects in the Universities of Canada” (1933) *JSPIL* 23. See also Lord Wright, *supra* n 46 at 199: “Law in its own way covers the whole range of human activity; there is no side of life which it does not touch. And the student of law must know the course of national history under which it developed; he must appreciate the affinity of his ideas with the social, moral, and economic ideas alongside of which it developed.”

and sociology, and that somehow an attempt should be made to teach him something about them.²⁷

Although there are good reasons for exposing law students to other disciplines, it is unclear to what extent students benefit from such exposure in practice. While it is reasonable to assume that they acquire a better understanding of economics, sociology, history, etc, *and this is valuable in itself*, the extent to which this leads to a deeper understanding of how the law has developed and evolved (and therefore a deeper understanding of the law itself) is unclear. There is a danger that their law studies and their study of other disciplines are often kept in separate and distinct compartments.²⁸ The experience at the National University of Singapore Faculty of Law has shown that students have great difficulty integrating other disciplinary perspectives with their study and understanding of law. In the 1980s and 1990s the law school at the National University of Singapore required its students to read a number of compulsory and elective non-law subjects. The outcome was mixed. Many students did not feel that they benefited much from being required to read a certain number of non-law subjects that they had no real interest in. It could also not be said that their study of non-law subjects in any way materially enhanced their understanding and appreciation of their legal studies. As a result of this experience, the law school no longer makes it compulsory for its students to read non-law subjects. Instead, students may now *elect* to read a double-degree programme or a certain number of non-law subjects that they are interested in and which the law school believes law students may find valuable. In addition, there are plans to allow law students to read Minors in other disciplines such as Economics, Business, and Life Sciences. To obtain a Minor, students will have to read approximately one semester's worth of modules in another discipline thus ensuring some degree of depth in that subject.

²⁷ L.C.B. Gower, "English Legal Training" (1950) 13 *MLR* 137 at 171. See also L.A. Sheridan, "Legal Education in Malaya" (1962-63) 10 *Far Eastern LR* 489 at 491 and L.A. Sheridan, "Legal Education" (1961) 27 *MLJ* lxxxv at lxxxviii where he says: "This is not to say that a law student must become an expert in all branches of the social sciences. That would in any case be impossible. But social scientists are working around us, they will grow in number and in the extent to which they can make available to us knowledge of what Malaysians do and need, and it will become increasingly possible for the university to approach law as a policy science as well as an exercise in logic, grammar and analogy."

²⁸ Indeed many law teachers will say that students have difficulty integrating their understanding of different law subjects itself.

One way to enhance the utility of exposing law students to non-law subjects, according to Goldsmith, without abandoning the comfortable habits of law teaching altogether, is to promote the contextualization of doctrine. Thus the historical emergence of particular doctrines might be shown, to establish their contingency; also the social interests served by particular case law or statutory developments might be made explicit, in part by drawing attention to the consequences of legal actions. Students can therefore be encouraged to undertake evaluations of doctrinal developments on a deeper basis rather than simplistic ‘policy’ analysis. Varieties of social, economic and political theory would clearly be useful for these purposes. Cross-faculty teaching and collaborative research on areas of doctrinal significance might assist legal academics in developing these kinds of orientation to doctrinal scholarship.²⁹ In addition, if there are faculty who have been educated in law and another discipline this would provide a better environment within which a more inter-disciplinary education can be facilitated.

This is the broad approach that is currently being introduced at the National University of Singapore. There is a small handful of faculty who have degrees in law and another discipline³⁰ and it is anticipated that the number of such faculty will expand over the next few years.³¹ Teaching staff are encouraged to integrate multi-disciplinary perspectives into existing courses³² so that law students may better see the inter-connections between the different disciplines. This approach has been adopted in a number of courses including Company Law, Competition Law, Business and Finance for Lawyers, Biotechnology Law,

²⁹ A. Goldsmith, “Standing at the Crossroads: Law Schools, Universities, Markets and the Future of Legal Scholarship” in F. Cowrie ed., *The Law School – Global Issues, Local Questions* (England: Ashgate Publishing Limited, 1999) at 92-93.

³⁰ Indeed a candidate for a position at the NUS law school who has degrees in law and another discipline would have an advantage over other candidates with only a law degree.

³¹ An American commentator who has traced the history of interdisciplinary studies in the United States makes the point that interdisciplinary work grew significantly only in the latter part of the 20th century when more individuals with qualifications in law and another discipline became law professors, see L. Kalman, “Professing Law: Elite Law School Professors in the Twentieth Century” in A. Sarat, B. Garth and R.A. Kagan, eds., *Looking Back At Law’s Century* (Ithaca and London: Cornell University Press, 2002) 337. In the longer term, law schools in ASEAN that wish to have a better balance between doctrinal and interdisciplinary/theoretical scholarship may have little choice but to ensure that more of its faculty have degrees in law and another discipline.

³² Tan Cheng Han, *supra* n 2 at 565-573.

Biomedical Law and Ethics, Regulating the Corporation, Law and Economics for Lawyers, and Law and Sociology of the Family. The subject Law and Sociology of the Family provides a particularly good example as it is jointly taught by faculty from the law school and the Department of Sociology³³ and is open to law and sociology students.³⁴ The broad objective of the course is to provide an inter-disciplinary module that aims to enhance students' appreciation of the sociological nuances in family practice and to challenge students to use sociological research findings to think critically about the development of family law.

V. TEACHING COMPARATIVE PERSPECTIVES

The teaching of comparative law³⁵ or comparative perspectives within the curriculum deserves separate discussion. This is because many law schools in ASEAN already incorporate such perspectives in their teaching and many wish to do so on a larger scale. There are several reasons for this. Globalisation has made many scholars appreciate the growing inter-connectedness of legal systems. Because almost no society, community, or nation is completely autonomous or self-contained, most legal scholars have to deal with the phenomena of legal pluralism, multiple levels of ordering, and interlegality.³⁶ Law is seen less

³³ Professor Stella Quah from the Department of Sociology and Associate Professor Debbie Ong from the Faculty of Law.

³⁴ Where the law school is part of a comprehensive university, it may be better for legal academics to reach out to their colleagues in other disciplines with a view to collaboration than hiring non-lawyers as faculty within the law school (unless it is a joint appointment with another school). There is a danger that non-legally trained faculty in a law school will feel alienated and cut off from their disciplinary roots unless the longer term objective of the school and such faculty is for them to read for a law degree. Vick, *supra* n 23 at 192 agrees, in the context of research, that perhaps the best way to avoid the pitfalls of interdisciplinary work is to collaborate with someone trained in the non-law discipline involved but acknowledges that there are significant impediments to effective collaboration. This is something that most academics will attest to and the impediments include individualism, the way universities are organized into distinct departments and Faculties, and the reward system.

³⁵ The term 'comparative law' is used here in a broad sense for it may fairly be said that there is no such thing as Comparative Law, BS Markesinis, "The Comparatist (or a plea for a broader legal education)" in P. Birks ed., *What Are Law Schools For?* (Oxford: Oxford University Press, 1996) at 112.

³⁶ W. Twining, *Globalisation and Legal Theory* (London: Butterworths, 2000) at 255. Twining also states at 255-256 that nearly all description and interpretation involves at least implicit comparison and that in a loose sense we are all comparatists now. Legal scholars, law students and practitioners regularly have to use sources, materials and ideas developed in more than one jurisdiction and in more than one legal culture. As such they need to be equipped with at least the rudiments of coping with such material. Accordingly, comparative method needs to be treated as a central element of 'legal method'.

in autonomous national terms and increasingly as part of a comprehensive, transnational legal system that connects, through certain formal linkages, to other states and to an international system. Many civilian systems are adopting rules and principles from the common law and vice-versa. Lawyers are increasingly working on cross-border transactions involving lawyers and legal issues from multiple jurisdictions. In this context, professional facility in the law and procedure of other national and international jurisdictions, as well as the ability to operate effectively in diverse cultures, will be required.³⁷ In today's world it is insufficient for law schools to provide an education that is premised on the basis that its students will only practice domestic law. As such, it is unacceptable for students to graduate from law school with virtually no understanding of other legal traditions (or of differences within a recognised tradition itself).³⁸

A common way of introducing students to comparative perspectives is to offer courses on comparative law. Many Indonesian law schools introduce their students to the three main legal traditions that are found within Indonesia, namely Adat Law,³⁹ Islamic Law and the Civil Law. Some Indonesian law schools also offer courses that compare the civil law and the common law. Another common method is to offer courses that focus on foreign law. For example, in Vietnam, courses on Roman law and foreign constitutional law are taught. A further method of introducing students to comparative perspectives is by integrating such perspectives into existing courses.⁴⁰ Such a pervasive method of teaching allows students to see the differences of approach taken by different jurisdictions within the context of a specific area of the law. In Malaysia and Singapore, the law schools will make extensive reference to cases decided in other parts of the common law world. It is difficult for example to envisage any private law course in a common law school that does not incorporate any material from other parts of the common law world. At the National

³⁷ M.W. Reisman, "Designing Curricula: Making Legal Education Effective in the 21st Century" in *The Singapore Conference: Leading the Law and Lawyers into the New Millennium @ 2020* (Singapore: Butterworths, 2000) at 275-276.

³⁸ Tan Cheng Han, *supra* n 5 at 550. See also C. Valcke, "Global Law Teaching" (2004) 54 *Journal of Legal Education* 160 at 169-170.

³⁹ A term used to denote customary law in the Islamic regions of South East Asia.

⁴⁰ Tan Cheng Han, *supra* n 5 at 553-554.

University of Singapore law school, there are also attempts to incorporate civilian law perspectives into existing courses.

Perhaps the most ambitious attempt at teaching comparatively is the McGill law school's integrated common law and civil law programme. From the very first year, students will be introduced to civil law and common law concepts and encouraged to compare and critically evaluate the two traditions. This "trans-systemic method" is intended to foster not only outstanding analytical ability, but also critical reflection and openness to diverse approaches to legal problems.⁴¹ The McGill law school, situated as it is within the civil law province of Quebec which is part of a largely common law Canada, is in a unique position to offer such an integrated programme. It is difficult to see many other law schools being able to replicate such a model.

Also interesting is the Bachelors programme at the Faculty of Law of the International Islamic University of Malaysia. Reflecting its heritage as a centre for Islamic legal studies in a common law jurisdiction, in addition to courses in the common law such as Law of Contract, Law of Torts, and Equity and Trust, there are also courses on Islamic Law, e.g. Islamic Legal System, Islamic Criminal Law, Evidence and Procedure of Shariah Court, Islamic Law of Banking and Takaful, etc.⁴²

The teaching of comparative perspectives can also be enhanced through greater collaboration amongst law schools, e.g. through faculty exchange and joint teaching programmes. In the area of teaching, law schools have traditionally tried to be self-contained, though visiting and adjunct faculty are common to add greater diversity to the menu of courses. In the future, because of the growing inter-connectedness of legal systems, law schools will find it increasingly desirable, indeed necessary to collaborate in teaching across national jurisdictions so as to enhance the comparative perspectives their students are

⁴¹ See <http://www.law.mcgill.ca/undergraduate/>.

⁴² See http://www.iiu.edu.my/laws/upload/course/llb_structure2.pdf.

educated in. Improvements in telecommunications, e.g. in video-conferencing will speed up this process.⁴³

As globalization does, or at least should, cause us to re-think and re-analyse our assumptions,⁴⁴ there is likely to be growing interest within many ASEAN law schools to introduce more comparative law in their curriculum. Ultimately, the benefit of a holistic comparative approach to legal education (which should not detract from the need to understand domestic law) is that an understanding of different legal traditions and approaches to law can lead to a more insightful and flexible lawyer and one that is better able to operate across national jurisdictions. Such traits are surely of virtue to all lawyers whatever their specialization.⁴⁵ At the same time comparative legal studies enrich the atmosphere of learning within the law school, and enhance understanding of the strengths and weaknesses of our own legal system.⁴⁶ The comparative dimension teaches students not to take the assumptions of their own legal system for granted; it counteracts a tendency to ultra-sophisticated exegesis and quasi-scholasticism which arises when generations of scholars continue to examine the same fundamental documents within a purely national context.⁴⁷

There are, however, several challenges that are faced by Asian law schools who want to adopt more comparative approaches. First, many law teachers who have been educated solely within a particular legal tradition do not have the confidence to incorporate perspectives from outside their legal tradition. Their corpus of knowledge is “usually

⁴³ Tan Cheng Han, *supra* n 5 at 573-577.

⁴⁴ D.B. King, “Globalization Thinking for Modern Legal Education” in D.B. King, ed., *Legal Education for the 21st Century* (Colorado: Fred B Rothman, 1999) at 394.

⁴⁵ *Ibid.* at 411-416; see also G. Bell, “World-Class Law Schools Will Teach (and are Already Teaching) the Laws of the World, in *Change and Continuity*, *supra* n 5 at 176-177.

⁴⁶ I Dore, “The International Law Programme at St Louis University School of Law” in *Legal Education for the 21st Century*, *supra* n 44 at 387. See also C. Valcke, *supra* n 38 at 168-169. For law students who have aspirations to work overseas, such traits and mindsets will be invaluable, although other factors are obviously relevant to obtaining such employment.

⁴⁷ B. de Witte, “The European Dimension of Legal Education” in P. Birks ed., *Reviewing Legal Education* (Oxford: Oxford University Press, 1994) at 72-73. Clark and Tsamenyi, “Legal Education in the Twenty-First Century: A Time of Challenge” in *What Are Law Schools For?*, *supra* n 35 at 25-26 state that “Australian law graduates will have to be less parochial and more international in their legal outlook. Students will have to be more aware of other legal systems and have a greater understanding of international law (both public and private), comparative law and be more knowledgeable about and sensitive to other cultures.”

bounded territorially⁴⁸ or bounded within their specific tradition. Secondly, many law teachers have limited language abilities and will have to rely on translations which are either limited or non-existent. Thirdly, language and limited financial resources also make it difficult to rely on foreign professors.⁴⁹ These challenges must be overcome before a legal education that is materially comparative can be meaningfully incorporated into the curriculum of law schools in Asia.⁵⁰ One possible solution (subject to financial constraints) is for Asian law schools to send their faculty to read a second law degree in a jurisdiction with a different tradition. While this may appear unattractive as it is both time consuming and costly, not least because it will often involve language training, it seems to be the most effective way to produce academics who can understand different legal systems and how to compare them. There is a danger otherwise that teaching comparative law will just remain at a superficial level,⁵¹ one that is unable to prepare students for the needs of legal practice today.

VI. TEACHING METHODOLOGY AND STUDENT ASSESSMENT

As can be expected, reflecting the rich diversity within ASEAN there is a variety of teaching and assessment methodologies that are employed. In Vietnam, Thailand and Indonesia, the most commonly used method of teaching is the traditional magisterial lecture. As for student assessment, the final examination is the means most often used. There may be mid-term and other periodic tests though these generally do not count towards the final grade. Sometimes a dissertation may be required before graduation.

⁴⁸ Vick, *supra* n 23 at 180.

⁴⁹ The challenge of limited financial resources is one that cuts across many issues and is the root cause of many of the problems facing Asian (and other) law schools. It is for example a major challenge for law schools in Asia to attract the best minds to academia because of the inability to pay competitive salaries. In some jurisdictions such as the Philippines, this has led to law schools having hardly any full-time faculty. Most law teachers in the Philippines practice law in the day and conduct classes in the evening. Not only does this affect the quality of teaching, research output is also minimal.

⁵⁰ It should be said though that these are not challenges unique to Asian law schools.

⁵¹ One perhaps understandable aspect of the superficial nature of comparative law teaching is that it often is the case that such teaching is intended principally to illuminate domestic law rather than to additionally allow students to see the issues through a global lens and as part of an international system, see Tan Cheng Han, *supra* n 5 at 577-578; C. Valcke, *supra* n 38 at 174-176.

In Singapore and Malaysia the lecture and tutorial method is used in many subjects, particularly the compulsory subjects. Students in compulsory courses generally attend common lectures and also have small group tutorials which serve as a means for a discussion between the professor and his or her students. Some professors will conduct the lecture in the traditional way while others may employ the Socratic method, or at least a mix of the traditional lecture and the Socratic method. At the National University of Singapore, most electives are taught using the seminar method which requires a group of between twenty to fifty students to be prepared before the class begins as most of the time in class is devoted to a discussion of the topic in question. While the final examination is still a very common means of assessing students,⁵² this is increasingly being complemented by other forms of assessment including tests, assignments, group work, class participation, class presentations, and “take-home” examinations.

One shortcoming with legal education within ASEAN seems to be the over reliance on transmitting information which is an indication of what is expected of students and what the teaching process seeks to achieve. This explains why in most law schools in ASEAN “open book” examinations are not a popular practice indicating that the memorisation of rules is an important objective of legal education. It has been said by a leading Indonesian law academic that most lectures are still presented in the form of one-way communication. It is not uncommon for lecturers to simply dictate notes to their students. The problem of rote learning is exacerbated by the fact that the teaching material is often limited to one or two textbooks, lecturers often do not prepare adequately, and they prescribe a bare minimum of reference material. The subject content is also frequently not up to date. Furthermore, in class and in assessments, lecturers do not challenge their students to answer questions according to how they think about the law. Rather, students are encouraged to give priority to answering questions in a manner that they consider to be the way the lecturer expects them to answer the question. The widespread assumption among students is that they will successfully graduate if they reproduce the dictated notes for that lecturer.⁵³

⁵² Virtually all examinations are “open book” in nature.

⁵³ Hikmahanto Juwana, “Legal Education Reform in Indonesia” (2006) 1 *Asian Journal of Comparative Law* 208 at 215.

It is widely accepted by educationists that students learn best when they are active participants in the learning process and not simply passive onlookers.⁵⁴ Students learn passively when all they do is listen to a presentation where information is organised and transmitted to them. Active learning on the other hand occurs when students do more than merely listen. This means that there are degrees of active learning. The student who listens to a lecture but is reflecting and thinking about what is being said is engaged in active learning. Active learning involves a high level of mental engagement with the subject matter. Teaching methodology can enhance the environment for active learning. While it is true that students can engage in reading and writing without any appreciable degree of mental engagement, and the converse is true in a traditional lecture, a learning environment that provides opportunities for students to participate actively enhances the prospects of active learning taking place. It also sends a valuable signal to students of what is expected of them. Such a learning environment will place less emphasis on information transmission and more on the development of higher order mental skills such as reasoning, critical analysis, judgment, etc.⁵⁵ More importantly it will stress that the student is the principal author of the student's own learning; professors are guides but the principal explorers and thinkers must be the students themselves.

It has been said that active learning is more than a set of techniques. It is also an orientation on the part of students and teachers. In the context of legal education, it includes a belief that such education should help students understand legal concepts and theory, improve critical thinking, and develop professional skills and values. It seeks to focus students not only on what they are learning but how they are learning as well.⁵⁶ Ultimately,

⁵⁴ See, for example, D. Hounsell, "Understanding Teaching and Teaching for Understanding" in F. Marton, D. Hounsell and N. Entwistle eds., *The Experience of Learning* (Edinburgh: Scottish Academic Press, 1984) at 189-210.

⁵⁵ See also M.H. Sam Jacobson, "A Primer on Learning Styles: Reaching Every Student" (2001) 25 *Seattle University Law Review* 139 at 143-145; Y.K. Yip, "Active Learning" in *Ideas on Teaching* (Centre for Development of Teaching and Learning, National University of Singapore, February 2003) at 2-3; M. Glickman, "Five Active Learning Techniques" in *Ideas on Teaching* (Centre for Development of Teaching and Learning, National University of Singapore, February 2003) at 6-7.

⁵⁶ G.F. Hess, "Principle 3: Good Practice Encourages Active Learning" (1999) 49 *Journal of Legal Education* 401 at 402.

being active participants in the learning process allows students not only to understand better the discipline, but should facilitate the development of ‘transferable intellectual skills’ that every professional should possess.⁵⁷ In the context of the legal profession, lawyers frequently encounter novel issues in practice and often have to advise on areas of law that they may not be familiar with. The pace of change in legal practice also means that lawyers will have to contend with transformation. The effective practitioner must therefore have the ability to ‘get-up’ on the law in areas that are unfamiliar to him or her. To do this effectively, the legally trained person must have a deep appreciation and understanding of the philosophy and methodology of the law, of its ethos and nature, rather than simply knowing rules. Without truly understanding *the law*, a practitioner will find it difficult to understand its essence, thereby rendering it difficult to find possible solutions to novel situations. Law schools have an important role to play in facilitating the development of such lawyers.⁵⁸ Through appropriate teaching methodologies and a vibrant curriculum, they can help their students to develop independent and critical learning skills, develop a spirit of inquiry, see the big picture and make connections within areas of the law and between different legal subjects, organize, analyze and synthesize large amounts of information, apply legal principles to difficult fact situations, and think laterally.⁵⁹ The great challenge for many ASEAN law schools is to foster such a dynamic learning environment.

The current unsatisfactory state of education in ASEAN (and it must be said that this is true within other parts of Asia and the world as well) is not limited to its law schools and has cultural and historical roots. What was said of Indian law teachers seeing themselves

⁵⁷ D. Oliver, “Teaching and Learning Law: Pressures on the Liberal Law Degree” in *Reviewing Legal Education*, *supra* n 72 at 77-80; W. Wilson and G. Morris, “The Future of the Academic Law Degree” in *Reviewing Legal Education*, *supra* n 72 at 102; Thio Su Mien, “The Role of the Law Schools in the Developing Nations” (1969) 11 *Mal LR* 250 at 254-257; Loke, *supra* n 23 at 336. Twining, *supra* n 23 at 60 states that many of the so-called transferable skills of reading, writing, analyzing and arguing, enquiring, etc can be developed through the study of any number of subjects.

⁵⁸ Brownsword, “Law Schools for Lawyers, Citizens, and People” in *The Law School - Global Issues, Local Questions*, *supra* n 29 at 27-28.

⁵⁹ Tan Cheng Han, *supra* n 5 at 561-562. See also Tan Sook Yee, “Legal Education in Singapore” (1979) 21 *Mal LR* 58 at 67; Loke, *supra* n 23 at 334-335.

as ‘gurus’ imparting knowledge to students⁶⁰ is probably true at all levels of education in many parts of Asia including ASEAN. When students have on the whole been passive learners prior to gaining entry to university,⁶¹ it is difficult for them to transform themselves into active learners particularly when the university environment itself is not conducive to such a mode of learning. It is also the case that in many parts of Asia there is a certain respect for hierarchy that makes it difficult for students to challenge the assumptions of their teachers and for teachers to be tolerant of students with different perspectives. It is also natural for law teachers who have been taught in such a manner to teach similarly. Fortunately there are many law teachers in ASEAN who recognise that such a state of affairs is not acceptable and who are using more participative methods of teaching as well as assessment methods beyond the final examination. At the same time, there is a growing realisation that teaching methods in the primary and secondary levels of education must be reconsidered. Thus while it will be a great challenge to change the method of teaching and learning from a passive to an active mode, there are some positive signs that such a change is taking place.

VII. CONCLUSION

Legal education in ASEAN is currently in a state of ferment. Many law teachers recognise the need to improve the current state of legal education. A number of schools are taking steps to upgrade their physical facilities. The priorities should be better teaching classrooms and more offices for faculty. Too many classrooms today are not configured for interactive teaching and learning. If law schools want to go beyond passive learning, the physical environment of classrooms plays a role. Many faculty also do not have their own offices within the law school, which affects research and teaching productivity as well as the collegiality that is essential to all academic institutions of higher learning. Better libraries are also essential and law schools in Asia have a long way to go in this area. Many law libraries in Asia are rudimentary and particularly lacking in materials by authors from other jurisdictions.

⁶⁰ Upendra Baxi, “Towards a Socially Relevant Legal Education” (1976) 5 *Journal of the Bar Council of India* 23 at 38.

⁶¹ Jacobson, *supra* n 55 at 145 states that many law students have achieved academic success prior to law school primarily through memorization; see also Hikmahanto Juwana, *supra* n 53.

For those law schools that are fortunate enough to have the resources to improve their facilities, this will naturally have a positive impact on teaching and learning. For example, when classrooms are configured in a certain way, it sends a message to faculty and students of what is expected of them and also more easily allows them to engage and be engaged in that manner. More will, however, have to be done to effect a change in mindset that will be crucial to legal education in ASEAN being comparable to the best international standards. While ASEAN does have a number of very good law schools, there are many that clearly have a great deal to do if they want to provide a legal education that conforms to international best practice. There will be no quick or easy solutions. There will be many existing law teachers who will not wish to change their approaches to teaching and learning. Little can be done about such faculty who are tenured. Law schools should therefore concentrate on helping those existing faculty who are prepared to adapt. Future hires are also crucial in changing the overall teaching and learning culture at the law school. But of course little can be done without adequate resourcing which is a matter that law schools in ASEAN often have no control of and which is usually the root of the problem.