

Legal Ethics in Asean Legal Education Systems

A Singapore Perspective

(A) Introduction

The question whether legal ethics should be a component of legal education in law schools has been a matter of much debate. Some legal scholars are of the view that legal ethics should be part of the law curriculum at the University. In Singapore legal ethics is not part of the law curriculum at the Law Faculty of the National University of Singapore (NUS) as a discrete subject. This does not mean that ethical issues are not taught at undergraduate level. The teaching method employed at NUS is such that ethical issues are taught and examined interstitially across several subjects throughout the four (4) year degree course. This method can be very effective, if taught properly. Legal ethics however is a core component of the Postgraduate Practical Law Course (PLC) conducted by the Board of Legal Education (Board). The Board is entrusted by legislation with the task of providing training, education and examination

of all “qualified persons”¹ intending to practise the profession in Singapore². All qualified persons are required to attend and satisfactorily complete the PLC (by passing the necessary examinations) before they can be admitted to practise as advocates and solicitors³ (lawyers) of the Supreme Court. It is intended in this short paper to examine legal ethics in the Singapore legal education system under the following heads:

- (i) Brief Background of Legal Education System.
- (ii) Canons of Legal Ethics.
- (iii) Teaching of Legal Ethics at the PLC
 - (a) Teaching Methods

¹ Only “qualified persons” are eligible for admission to the Bar. The definition of qualified person includes law graduates from NUS and barristers and solicitors from the United Kingdom.

² See section 4 of the Legal Profession Act (Cap. 161).

³ In Singapore we have a fused profession.

- (b) The Legal Profession Act⁴ (LPA) and The Professional Conduct Rules (Conduct Rules)⁵.
- (c) Problems/Recommendations.
- (iv) Legal Ethics in the Continuing Legal Education of Lawyers:
 - (a) Courses conducted by Law Society of Singapore.
 - (b) Courses/Lectures organized by the Law Academy.

(B) Brief Background of Legal Education System

The Singapore law school, then called the Law Department of the University of Malaya (in Singapore) was

⁴ The LPA was passed in 1967 to inter alia establish the Board of Legal Education and consolidate the law relating to the legal profession.

⁵ See Government Gazette No. S 156 of 1998.

set up in 1956. Until then, students wishing to become qualified lawyers had to pursue their law studies in the United Kingdom. The first batch of law students were admitted to the Law Department in September 1957. The first Professor of Law and Head of the Law Department was L A Sheridan. He was 29 years of age and was already a distinguished scholar. He became the Dean when the Law Department became a Faculty of Law in 1958. He had the unenviable task of setting up a law library, recruiting staff, devising an internationally acceptable syllabus, introducing teaching methods to inexperienced teachers and developing legal research. What Professor Sheridan achieved in a short span of some seven years was remarkable. The Law Faculty produced its first batch of twenty two (22) graduates in 1961. The first local law graduate was admitted to the Singapore Bar on 26th January 1962⁶. The first local law graduate was admitted to the Malayan (now Malaysian Bar) on 31st January 1962⁷. From then on, the ascendancy of local law graduates over overseas law graduates was only a

⁶ Mr T P B Menon was the 3rd President of ALA and Deputy Chairman of the Board for many years.

⁷ Mr Chan Sek Keong is currently the Attorney General of Singapore and Chairman of the Board.

matter of time. As at the 31st March 2005 there were a total of 3439 practising lawyers on the Roll of Advocates and Solicitors of whom 2094 are graduates of the Law Faculty of the University of Malaya (in Singapore) or NUS.

(C) Canons of Legal Ethics

The legal profession in Singapore is governed by the LPA and a plethora of Rules passed under the LPA including the Conduct Rules. The Conduct Rules cover a wide range of topics and can be said to constitute our canons of legal ethics. The ninety (90) or so Conduct Rules deal with topics like Relationship and Dealings with Clients, Conduct of Proceedings in Court, Defending Accused Persons and Conduct of Criminal Prosecutions. Added to the above is a body of case law that had been developed by our Courts over the years particularly after the LPA became law in 1967.

Both the NUS and the Board are fully aware that from the very inception of legal training all lawyers who practise at the Bar should be imbued with high standards of professional and ethical conduct. In fact this is the “ethical challenge”

referred to in the English Lord Chancellor's First Report on Legal Education and Training published in 1996. What has been set out in that Report is of application to all if not most common law jurisdictions. The relevant parts of paragraphs 1.19 and 1.20 of the Report state as follows:

“1.19 As the organizations in which law is practised become larger and more complex, as competition and instability in the market for legal services increases, and **as many legal practitioners experience a growing sense of insecurity, there are real dangers that professional standards will be threatened unless counterbalancing steps are taken to reinforce ethical values. However, no amount of external regulation of professional practice will serve as an adequate substitute for the personal and professional values and standards that lawyers should internalise from the earliest stages of their education and**

training. Teaching in ethical values should include more than a familiarization with professional codes of conduct and the machinery for enforcing them. Nor is it clear that the present approach, whereby professional ethics are taught pervasively across a wide range of legal subjects and topics, is sufficient to meet the complex ethical issues that lawyers are likely to face in modern practice. Professional ethics and conduct should certainly form a central part in the extended education that we hope intending solicitors and barristers will receive in future. Students must be made aware of the values that legal solutions carry, and of the ethical and humanitarian dimensions of law as an instrument which affects the quality of life.

1.20 The ethical challenge goes beyond the obligations that solicitors and barristers

owe to their particular clients. **The legal profession also carries wider social and political obligations to society as a whole. If the profession is to fulfill its role in protecting the rights of minorities within society and promoting the welfare of the disadvantaged, it is vital that its own composition reflects the social and cultural diversity of today's society.** *[Emphasis added]*

The sentiments expressed in the Lord Chancellor's First Report are echoed in Rule 2(2) of the Conduct Rules in these terms:

"2(2) In the interpretation of these Rules, regard shall be had to the principle that an advocate and solicitor shall not in the conduct of his practice do any act which would compromise or hinder the following obligations:

- (a) to maintain the Rule of Law and assist in the administration of justice;
- (b) to maintain the independence and integrity of the profession;
- (c) to act in the best interests of his client and to charge fairly for work done; and
- (d) to facilitate access to justice by members of the public.”

Our Courts have given life and meaning to Rule 2(2) of the Conduct Rules. Two recent examples would suffice. In **Lie Hendri Rusli**⁸ the plaintiff sued a legal firm for negligence. The question before the Court was whether the legal firm owed a duty to disclose to the plaintiff that the legal firm was acting for other parties in a conveyancing transaction and consequently there was a conflict of interest.

⁸ **Lie Hendri Rusli v Wong Tan & Molly Lim** [2004] 4 SLR 594.

Judicial Commissioner V K Rajah (as he then was) encapsulated the spirit of Rule 2(2) of the Conduct Rules in these words:

“The Court is ever anxious to maintain and police the standards of the legal profession, **which performs a vital role in a society that is predicated, and places premium, on the rule of law. In the discharge of its duty to uphold the legal system, the legal profession must seek not only to jealously maintain high standards but to unflinchingly remain alert and acutely conscious of the fact that the public perception and the standing of the profession is indivisibly determined by the standards it embraces and observes.** Rule 2 of the Legal Profession (Professional Conduct) Rules 1998 explicitly prescribes that solicitors have the following obligations:”

A more startling case was where the solicitors acting for certain claimants to the estate of a testator named Shaik

Ahmad Basharahil⁹ misled the Court into releasing funds which had been paid into Court by the Public Trustee in the course of the administration of the estate. Justice V K Rajah again after making reference to certain provisions of the Conduct Rules touched upon a lawyer's duty to the client and the Court in the following words:

“A solicitor's duty to act in his client's interest must therefore take into account prevailing standards of conduct prescribed by the LPPCR¹⁰, ethical rules and practices prescribed by the Law Society as well as general professional and ethical conventions and practices established through the effluxion of time. If a client insists on a course of action which is inimical to the prevailing professional standards prescribed for or expected of a solicitor, that solicitor has no option but to discharge himself from the matter: rule 58 of the LPPCR. **All solicitors qua**

⁹ See **Public Trustee v By Product Traders Pte Ltd** [2005] 3 SLR 449.

¹⁰ The abbreviation LPPCR is a reference to the Conduct Rules.

officers of Court have an absolute and overriding duty first and foremost to the Court to serve public interest by ensuring that there is proper and efficient administration of justice. They should never mislead the Court either actively or passively. Nor should they consciously furnish to the Court erroneous or incomplete information or for that matter incorrect advice that may subvert the true facts. This is a sacred duty which every Court is entitled to expect every solicitor appearing before it to unflinchingly discharge. **So overwhelming is the public interest in maintaining the dignity and honour of the legal profession through the preservation of the highest ethical and moral standards amongst solicitors that the Courts cannot risk allowing it to be compromised by even a few recalcitrant individuals within the profession.** If and when any such breaches come to light, they must be dealt with swiftly and severely.” *[Emphasis added]*

(D) Teaching of Legal Ethics at the PLC

The Board has produced a Manual on Professional Responsibility which includes several chapters on various aspect of legal ethics and the Conduct Rules. Legal ethics is taught at the PLC by way of lectures, tutorials and seminars conducted by senior members of the Bar. In addition all students are required to

- (a) discuss problems which have been prepared based on decided cases or hypothetical fact situations, and
- (b) undertake a case study based on a “mock” file prepared by the Board.

The object of the PLC is to familiarize those intending to practise law with the provisions of the LPA, the Conduct Rules and the decided cases on professional conduct and ethics. The PLC is compulsory for those intending to practise at the Bar. The PLC Handbook contains a paragraph on seeking advice from senior members of the

Bar and Judges which bears repeating:

“During the course, students will come into contact with many members of the profession who will willingly place their time, knowledge and experience at the disposal of younger members of the Bar. Students should make the best use of the opportunity to learn from them by seeking their advice and discussing problems with them. They should, however, remember that they will obtain assistance most easily from other lawyers and from the members of the judiciary by learning from the outset to approach them with due respect, tact and courtesy at all stages.”

It is brought home to all students at the PLC that the Conduct Rules and the provisions of the LPA relating to disciplinary proceedings are not only meant for punishment of errant lawyers but as a deterrence against similar defaults by other like minded lawyers and the protection of public confidence in the administration of justice. The learned Chief

Justice Yong Pung How summarized the law in **Samuel**¹¹ in the following words:

“ It is not simply a question of punishing the solicitor concerned. A further consideration must be what course should the Court take to protect the public and to register its disapproval of the conduct of the solicitor. **In the relevant sense, the protection of the public is not confined to the protection of the public against further default by the solicitor in question. It extends also to the protection of the public against similar defaults by other solicitors through the Court publicly marking the seriousness of what the instant solicitor has done.** ... In short, the orders made should not only have a punitive but also a deterrent effect.

There are also the interests of the honourable profession to which the solicitor belongs, and

¹¹ See **R Samuel v Law Society of Singapore** [1999] 1 SLR 696.

those of the Courts themselves, to consider. The administration of justice can only proceed on the basis that solicitors can place reliance upon the honesty of the solicitors with whom they deal. The public too must be able to repose confidence in a profession which plays so indispensable a part in the administration of justice. **Similarly, the Courts of this country must be able to depend on the honesty and integrity of all practitioners appearing before them** and to expect that they will maintain the highest standards of personal honesty and integrity in their dealings with the Courts.”

(E) Recommendations

The writer would like to make the following recommendations:

First NUS (working together with the Board and the Law Society) should consider whether Professional Ethics should be introduced as a

compulsory subject at the law school in the second or third year of the LLB (Hons) curriculum. The main reason for this is that the concerns expressed in the English Lord Chancellor's First Report appear more real than illusory and that if we fail to act promptly we may well find in some years to come that we are not in tune with developments in law schools in other common law jurisdictions. As the PLC extends for only a period of five months there is a limit as to what can be achieved at the PLC - however well organized it may be. This is because qualities like honesty, integrity, civility and courtesy cannot be taught by reference to the cold print of the Manual or by lectures and tutorials conducted by well intentioned senior lawyers. Much will depend on the individual, his background (the environment in which he was brought up) and perhaps to some extent his years at law school at NUS and the period of pupillage with his pupil master.

Secondly the Law Society (which is doing laudable work in organizing lectures and seminars) should conduct regular workshops on selected topics in professional ethics (or on current topics including case law relating to professional ethics) for the benefit of the legal profession. The Judges of the Supreme Court and senior members of the Bar should be invited to participate in this project.

Thirdly lawyers must be made to realize that success at the Bar does not depend on one's success in any individual case or run of cases or the wealth one acquires from law practice but inter alia on qualities like honesty, courtesy, chivalry and unshakeable integrity. Lord Hailsham summarized these qualities thus¹²:

“.... Success at the bar depends in the end upon the respect in which one is held by one's fellow-

¹² Passage from Lord Hailsham's Memoirs entitled "A Sparrow's Flight".

practitioners and perhaps particularly, the Bench, and not upon one's success in any individual case or run of cases. If you once deceive the Court they will ever forget it The Bar is one of the most competitive professions in the world but, like many other activities in life, it is a field where **generosity, courtesy chivalry and above all, unshakeable integrity pay material dividends.**"

In the same vein Chief Justice Warren Burger of the United States Supreme Court once cautioned that "**lawyers who know how to think but have not learned how to behave are a menace and a liability not an asset to the administration of justice**"¹³. More recently Justice Sandra Day O'Connor of the United States Supreme Court

¹³ Warren Burger, The Necessity of Civility 52 FRD 211 (1971).

cautioned that “More civility and greater professionalism can only enhance the pleasure lawyers find in practice, increase effectiveness of our system of justice and improve the public’s perception of lawyers”¹⁴. In short “civility is the lubricant which gives justice a chance to be done”¹⁵.

(F) Legal Ethics in Continuing Legal Education

Section 38 of the LPA sets out the purposes of the Law Society which include the maintenance and improvement of “**standards of conduct and learning**” of the legal profession in Singapore. Section 4 of the Singapore Academy of Law Act¹⁶ states that the functions of the Academy of Law include the promotion and maintenance of “**high standards of conduct and learning**” of the legal profession in Singapore and the standing of the profession in

¹⁴ Sandra Day O’Conner; Professionalism 76 Wash. ULQ 5 at 8 (1998).

¹⁵ Philip Jeyaratnam (Senior Counsel) current President of the Law Society of Singapore in an address to students attending the PLC in July 2005 - reproduced from Law Gazette August 2005.

¹⁶ See Statutes of the Republic of Singapore (Cap. 294A).

the region and elsewhere. Both the Law Society and the Academy of Law have done and are doing admirable work in organizing lectures and seminars in their respective continuing legal education programmes. However the emphasis in each case in the past had been the upgrading of skills in the various fields of substantive and procedural law. It is heartening to note that in July 2005 the Law Society launched its Inaugural Forum on Legal Ethics with senior lawyers participating in discussions on Ethics and Professional Courtesy in the different areas of practice. The writer understands that the Professional Affairs Committee of the Academy of Law is looking into ways of developing and maintaining high ethical standards amongst young lawyers. These are steps in the right direction.

(G) Conclusion

The writer is of the view that the quality of our legal education system is due to a large measure on the efficiency of our law school at NUS and the Board which together give to the young lawyer of today a training of “breadth and intensiveness” which was unknown to the young lawyer

some decades ago. As expected the years have brought their change and the law school and the Board have evolved with the times. With liberalization the focus will be on new legal services and cross border transactions. It is of paramount importance to a country like Singapore that we stay attuned to such changes so that we will continue to play a vital role in the region. The writer is confident that the NUS working in tandem with the Board, Law Society and the Academy of Law will be able to inculcate in our young lawyers the high ethical standards that would be expected of them in the years to come.

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* The views expressed in this paper are the personal views of the writer and they do not reflect the views of the Board of Legal Education of which the writer is the Director of Postgraduate Professional Legal Education and also Secretary of the Board.