

REPORT ON ALA WORKSHOP I

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“LEGAL ETHICS IN ASEAN LEGAL EDUCATION”

25 November 2005, Makati Shangri-la, Rizal Ballroom
Makati, Philippines

Speakers from the ALA member countries delivered their respective papers at the ALA Workshop I and highlighted the following points, under the topic “Legal Ethics In Asean Legal Education”.

Atty. Rufus Rodriguez acted as the moderator.

I. MR. AHMAD JEFRI ABDUL RAHMAN, Brunei *“Legal Ethics in ASEAN Legal Education”*

Are we a profession or are we no longer a profession? This is the question posed by Mr. Ahmad Jefri Abdul Rahman at the start of his lecture. He observed that today, the ideals of law as a profession have been left behind by the goal of winning a case. Today, there is at least one (1) complaint against a lawyer. So the problem faced by lawyers today is whether to treat law as a profession or as a business. Law as a profession means service to the public, competence and ability to regulate ourselves as lawyers.

The root of the problem can be traced to the way ethics is treated in law schools. For one, there is no full-time faculty of law in the university. Then, legal ethics is not treated like other laws such as contract law. Also, legal ethics is only an elective subject.

In conclusion, Mr. Ahmad Jefri Abdul Rahman believes that the teaching of legal ethics must be made compulsory. Aside from this, the fact the problem of treating legal ethics in the legal education system is being talked about in seminars/workshops such as in ALA’s Commemorative Session, is very encouraging.

II. PROF. DR. HIKMAHANTO JUWANA, Indonesia *“Legal Education Reform in Indonesia”*

There two (2) kinds of legal training in Indonesia. First is the **Academic Training** for those who want to be law faculty. These are high school students,

unlike in the U.S., for example, where a major degree is required. Those who undergo academic training need not necessarily enter the legal profession. There must be a modification in the curriculum so that students have early exposure for professional ethics, including traditional and non-traditional and that this can be followed through students want to enter professional training.

On the other hand, there is **Professional Training** for judges, professors, practicing lawyers and notaries. In this kind of training, there is a legal ethics subject in each field.

Prof. Juwana added that the following are the challenges in teaching legal ethics in Indonesia:

1. Students take the course just to pass the subject.
2. To whom will the subject be taught?
3. The Case Study Method of teaching would be effective since students are more interested if shown cases/reality. It is difficult, however, to have this method.

III. **MS. MARIETTE PETERS-GOH, Malaysia**

“Legal ethics in the Malayan Legal Education System”

Legal ethics cannot be taught, it has to be shown, it has to be demonstrated. Although Malaysia has various statutes dealing with legal ethics, the problem is, students find ethics to be the most boring subject. Further, students have this perception that they cannot make money if they study ethics, so it they would rather study banking law. The mindset of students in studying ethics has become: “tell me not how to get caught when I breach the rules of legal ethics.”

Despite all these, Ms. Peters-Goh still believes that the legal profession is still a noble profession and the fact that lawyers are seen in a bad light is all the more reason to teach legal ethics. Fortunately, in Malaysia, the teaching of legal ethics is compulsory. There are two (2) bar exams – those from the public universities and Certificate in Legal Practice (CLP) for external students and students who read law in foreign universities.

The challenge lies on how to teach legal ethics. In some law schools, legal ethics is one whole subject. In some law schools, however, legal ethics is just a component of other law subjects. Moreover, legal ethics is taught in a passive way, mostly through lectures, tutorials and examinations.

Ms. Peters-Goh suggested to look at other methods available:

1. Problem Based Learning (PBL) Approach where students are required to resolve dilemmas without too much emphasis on the substantive law issues;
2. Pervasive Approach where ethics is incorporated or inculcated into all aspects of the legal curriculum, thus, showing the relevance of legal ethics not in isolation; and
3. Clinical Stimulation Approach where students are attached to legal aid offices and cases involving real people in actual situations are posed to them. This approach needs, however, cooperation from practicing lawyers considering that in Malaysia, there is local segregation among lawyers - if you teach, you just teach, and if you practice, you just practice.

Considering the foregoing, Ms. Peters-Goh suggested that legal ethics be taught in all four (4) years in law school. During the first year, students must be taught using the Socratic approach, with emphasis on the general rules of ethics and the role, function, duties and powers of the Bar Council. During the second, third and final years, the PBL approach may be used. Lastly, at the pupillage level, a clinical stimulation must be adopted. The key really is to use not just one approach. And of course, there must be a continuing legal education for lawyers.

IV. DEAN RAUL C. PANGALANGAN, Philippines

"The Power and Limits of teaching Ethics in the Classroom"

In the Philippines, legal ethics is a compulsory subject in law schools and it is one of the Bar Examinations subjects. It is also one of the subjects required to be taken as part of the Mandatory Continuing Legal Education Program (MCLE). So if one asks if there is enough teaching in legal ethics, the sure answer is yes. There is a reason to worry, however, because each time the legal profession is faced with a legal dilemma, the suggestion is to increase the number of legal ethics units being taught in law schools.

What is needed is a reorientation in the teaching of legal ethics. A pervasive approach may be applied, where legal ethics is spread in different subjects. One problem in the present structure of teaching legal ethics is the use of the case-study method, where students are required to study actual cases decided by the Supreme Court. The effect is that students only remembers what the Supreme Court said and the method forecloses any real ethical debate.

Compare this to “open-ended cases” approach used in business schools where students examine actual facts, not abstract propositions. Unlike law school, there is no single, right answer to the problem, and much more – an answer given by a Supreme Court which is “infallible because it is final.” Thus, there is sufficient opportunity to debate outcomes because the answer is not either black or white.

In answering the question which of the two (2) ways are better, the following points must be taken into consideration:

1. Plea to Focus.

Students must understand the sociological context of the law. In the United States and Japan, sociological studies abound to examine the decline in values. In the Philippine context, this means looking at the moral universe of the Filipino.

2. Students must be made to understand the “why” of legal ethics.

Here, the law student or lawyer is compelled to examine his day-to-day choices as ethical choices, whether it is a seemingly innocent postponement, or deferment of cross-examination to the next hearing, or less innocent, like finding *padrinos* with the court. For this, the case study is the best mechanism, not decided cases, and the seminar or workshop type discussion is more fruitful, rather than the hard Socratic.

What is, therefore, the best way to teach legal ethics? Dean Pangalangan says that it is *through example*. Teachers must respect the time of the students and they must place the checking of the students’ papers on top of their priorities.

V. **MR. PATRICK NATHAN, Singapore**

“Legal ethics in the ASEAN Legal Education Systems: A Singapore Perspective

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. 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.

Legal ethics, however, is a core component of the Postgraduate Practical Law Course (PLC) conducted by the Board of Legal Education (Board). 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 solicitors¹ (lawyers) of the Supreme Court.

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. This is the “*ethical challenge*” referred to in the English Lord Chancellor’s First Report on Legal Education and Training published in 1996.

The PLC is compulsory for those intending to practise at the Bar. Legal ethics is taught at the PLC by way of lectures, tutorials and seminars conducted by senior members of the Bar. All students are also required to discuss problems which have been prepared based on decided cases or hypothetical fact situations. 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.

Mr. Nathan made the following recommendations:

1. It must be considered whether whether Professional Ethics should be introduced as a compulsory subject in the second or third year of law school, because the concerns expressed in the English Lord Chancellor’s First Report appear more real than illusory. As the PLC extends for only a period of five months there is a limit as to what can be achieved at the PLC
2. There must be regular workshops conducted on selected topics in professional ethics.
3. 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 on qualities like honesty, courtesy, chivalry and unshakeable integrity.

In conclusion, Mr. Nathan states that we have to understand that the legal profession is developing. Thus, it is more imperative to make sure that we are kept abreast of legal developments and ethical demands.

¹ In Singapore we have a fused profession.

VI. MS. LE THI KIM THANH, Vietnam
“Legal Ethics in Vietnam Legal Education System”

Ms. Le Thi Kim Thanh gave a short background of the legal education system in Vietnam. At present Vietnam has three main Law schools:

1. The Hanoi Law University.

The HLU, organized under the Ministry of Justice, is the principal institution for undergraduate legal training. There are four faculties at the HLU: the Faculty of Civil and Criminal Law, the Faculty of Constitution and Administrative Law, the Faculty of Economic Law and the Faculty of International Law. The HLU offers a graduate programme consisting of two different stages. The first and second year are common for all students and consist of basic scientific courses. The first two years are completed with an exam. The certificate entitles the students either to continue to the second stage of the programme, which virtually all students do, or apply to other colleges. The students at the second stage may choose between the four faculties.

2. Law School of the National University in Ho Chi Minh City.

This was established in March 1996. The School runs special shorter part-time graduate programmes for government officials in the southern provinces.

3. Faculty of Law at the Hanoi National University.

The Faculty administered by the Ministry of Education and Training. This results in a slightly different, perhaps more “theoretical”, training than that offered by the HLU which organized under the Ministry of Justice. Both institutions are nevertheless subject to the same national curriculum and their LL.B. exams are equal.

Until now, however, **none** of these three law education bases has legal ethics subject in their teaching curriculum. They merely teach basic laws. The only institute having this subject in their teaching curriculum is the Judicial Academy, which is special training school for people who already have bachelor of law degree and want to become lawyers, judges, notary public officers. But even in this Academy, legal ethics subject is not adequately paid attention to. During the whole period of 6 month training in this Academy, participants only have **half a day** to study legal ethics. And the method of teaching is still quite a traditional way, there is no active participation from the participants as well as no case study due to time limit.

From the above, Ms. Le Thi Kim Thanh believes that legal ethics education in Vietnam **still needs to be improved** in the future. She recommends the following:

1. All law universities should have a part of legal ethics in their teaching curriculum. This part would be *more focused* on the theory.
2. In the Judicial Academy law graduates should be refreshed with this subject and at the same time be equipped further with more practical issues such as case study. The total duration for teaching this subject should at least be 3 or 4 days.
3. Legal ethics must be included in continuing legal education of lawyers, considering that in Vietnam lawyers are not bound to have continuing legal education.

VII. OPEN FORUM

During the open forum, some of the delegates gave the following observations/comment/reactions/suggestions:

1. The teaching of legal ethics should not only be focused on do's and don'ts.
2. Legal ethics should be integrated into other fields of study.
3. There must be understanding of the legal system and the role of advocates within that system.
4. We must encourage the universities to communicate with the Bar Council with regard to the programs for legal ethics.