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# Legal Education in Malaysia: Should Law Teacher Practice as Lawyer?

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**Abstract:** The debate on the quality of legal teaching had been discussed for quite sometime. Malaysia is not an exception on this matter. It has been argued that one of the ways to improve legal education is by allowing law teacher to practise as lawyer concurrently with their teaching job at university. In Malaysia, law teachers do not have this privilege. This study examines the issue on this matter and the possibility forthe legal academia in Malaysia to practice as lawyer. In so doing, comparison is made with the practice of the Malaysian neighbouring country, Singapore as a source of critique. This study also discusses the challenges in allowinglaw teachers in Malaysia to practice as legal practitioners. The methodology applied in this study is doctrinal or pure legal research. This study found that allowing law teachers to also practice as lawyer is a way forward for Malaysia. The study also provides suggestion on how to allow law teachers to practise in Malaysia.

**Key words:** Academic lawyer, law teacher, legal education in Malaysia, legal profession in Malaysia, practise

## INTRODUCTION

Legal education is specialised to those who intend to become lawyers or to practice some aspects of law within a particular legal system. In any legal system, it relies so much on good legal education to develop human resources and idealism which strengthens the legal system itself. As such, a legal education needs to be multi-disciplined and multi-faceted education. Consequently such legal education would produce lawyers who are able to contribute to the development of the country and the society as a whole. In 1998 during the World Declaration on Higher Education in the 21st Century (World Declaration) that was held in Paris, it was mentioned that the core missions of higher education systems should be preserved, reinforced and further expanded "to educate highly qualified graduates and responsible citizens and to provide opportunities for higher learning and for learning throughout life". Further, Article 1 of the World Declaration proclaims that the core missionof higher education in particular is to contribute to the sustainable development and reforms of society by educating graduates through relevant qualifications including professional training with high level of knowledge and skills; advance, create and disseminate knowledge through research; as well as contribute to the development and improvement of education through training of law teachers. Hence, legal education does not only confine to a mere education of law student but also relate to the things that law professors do such as research, any activity on the production of knowledge and effort of transforming the legal education (Rashid *et al*., 2011). As far as Malaysian legal education is concerned, the most common method of instruction is the lecture followed by tutorials. The professional training is done during the final year, i.e., year four of the study. The courses that are offered by the law schools normally comprise of three parts: firstly, the knowledge which the student must acquire; secondly the skills they must learn and lastly, the practical exercises where the students are expected to use both the knowledge and skills. The knowledge can be derived from the courses learned in the law school such as contract law, company law, criminal law and others. The legal fraternity expectation from this academic study is to have enough knowledge of substantive law. On the other hand, the training skills comprises of legal research, information, management and problem solving, opinion writing, drafting and advocacy during the professional year.Therefore, when it comes to practical exercises, students should be able to use both the knowledge and skills. Nevertheless, law schools have been criticized for failing to adequately prepare students for law practice (Zimmerman, 2013; Chemerinsky, 2009) or fail to teach new lawyers how to practice law (Dolin, 2007). This problem isendemicin Malaysia and practically phenomenally worldwide. It is the aspiration of the Malaysian government that local universities produce quality graduates including law graduates. The academicians in the universities are among the main stakeholders who have great responsibilities in ensuring this goal is achieved. As for the legal education, the academicians are referring to the law teachers who are

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expected or even seen as responsible to prepare students for law practice. The law teachers then are expected to provide more training in practical skills with more experiential learning in legal education (Chemerinsky, 2009). In other words, law teacher should train students to 'be able to do' rather than just 'to know' (Keyes and Johnstone, 2004). It has been argued that there is a lack of networking connection between the law schools and the law practice. As Kales and Thayer (1912) claimed, the law teachers and who have never been in practice have the problem of their professional development and training. The case is aggravated when some have been a law teacher throughout 20-25 years without having exposed to outside professional lawyers skills as a lawyer. At this juncture, the quality of legal education might be attained, among others, when the law teachers are allowed to practice law. This might bridge the gap between law school and the law practice. Permitting the law teachers to practice law could in some way could enhance the quality of the legal education.

As a matter of fact, this has been the practice in Singapore that permits the law teachers to practice law besides lecturing in classes. In Australia, it was until late 1960's that most of law teachers were full fledge private practitioners (Keyes and Johnstone, 2004). This practice shows the importance of law teachers engaging in the practice of law while preparing law students with adequate legal knowledge, skills, values and proficiencies. Sadly, however this is not the case in Malaysia as law teachers are shunned from practicing due to the strict jacket statutory inhibition of the Legal Profession Act 1976. This study highlights the challenges if the law teachers be allowed to practice as academic lawyer.The finding provides some insights on the issue of viability of law teachers practising as lawyers and further to shape the future of legal education and practise in Malaysia.

**Problem statement:** George Bernard Shaw wrote, "He who can, does; he who cannot, teaches". The practitioner often feel that the academician is "lost in the airy height of pure theory" whilst the academician frequently believes that his practitioner brother "lost in a tangled jungle of meaningless verbalism" (Cohen, 2004). This article though, does not embark on these premises of thought solely. It relates to the importance of preparing the law students with adequate legal knowledge, skills, values and proficiencies. In doing so, the law teachers must engage in the practice of law. The question is can they do so in Malaysia? It has been taken cognisant that there are teachers or legal advisers who have proven their ability and competency have been appointed to become judges. So the question is why law teachers are not given equal opportunity in being a legal practitioner? Legal education in Malaysia started at tertiary level and four years is the time to mould the student to be a lawyer (for him to be qualified for pupillage). Within these four yearsat universities, it is the aspiration of the academician to impart knowledge, skills and values to the students. Cohen (2004) expressly stated the importance of law teachers to engage in the practice of law but this is not happening in Malaysia.

## MATERIALS AND METHODS

This research article adopts doctrinal or also known as pure legal research methodology. Doctrinal research is a study of legal and practice doctrines and is largely documentary. It focuses on the cases, rules and principles (Salter and Mason, 2007). To put it simply, it is a research which defines what the law in a particular area is. In doing so, this article collects and analyses data from the primary, secondary and tertiary sources. The primary data is collected by way of reference to statutes and decided law cases. Secondary data is taken from textbooks, journals, commentaries and articles. The third level of data is tertiary data. It will be collected from the internet. This data is similar to newspapers and websites which are easily accessible from office or home computers. The tertiary data collected from the Internet is only meant to complement the primary and secondary data (Mike and Chui, 2007). Although, this study does not adopt comparative approach, the position in Singapore is compared whenever relevant as a source of critique.

## RESULTS AND DISCUSSION

**Should the law teacher practice?** For the purpose of this discussion, the law teachers who should be allowed to practice are those holding law degree and teaching law students at law schools. This definition excludes those who are not law degree holders or law degree holders whom either do not teach law students or at law schools. Although, law teachers do not practice law, they are expected to have vast knowledge in certain area of law due to their background and task in the law schools.Therefore, the question is, do we need law teachers to practice and why? There are many arguments and thoughts on this matter. The whole arguments and reasons are basically centred on the issue of quality of law schools or the graduates. The proponent such as Cohen (2004) urged the legal academician to join legal practise because those who join the faculty will commonly lost touch with the realities of the day-to-day practise, whereas as the one who teaches, they have to keep

abreast with the legal development and practice for the purpose of imparting the legal knowledge to the students. She argued that the teaching of law nowadays is not like during the medieval time where it is purely on theory and knowledge of the law. Giving legal academician to practise will help them to be persons who have contact with the real world and by doing this they will be good teachers since they know how the law really work (James, 2004). Without going to the court, the credibility of law teacher might be questioned. As the lawyers will get new experience when going to the court, the practical experience of the law teacher could be very useful to the students. Although, there are arguments that experience enhance performance competency in a few distinct areas only (Sherr, 2000), this study argues that this colourful experience would later on enhance the quality in teaching.

Furthermore, the act of lawyering involves research work which is the bread and butter of the academician. Therefore, practising law will be very helpful in updating them with new cases, legal materials and current development in law. While doing research which is part and parcel of their profession, practising law can enhance their knowledge and skills. Accordingly, this can benefit the students and legal education itself. Similar with other professions, the law teachersalso need to be creative and expert in their area. It is good if the law teacherhave a professional obligation to keep current with the practise of law by engaging in such practise (Cohen, 2004). As part of the teaching obligation, it can also be considered as a social responsibility to the society when they act as consultant in legal matters. Furthermore, eventhough the law school should maintain a closer association with the practising members of the profession, sometime in reality, this had not happened as they wished (Thio, 1969). Lawyers have their own profession which they have to devote. When involve in teaching, no doubt the lawyers can share their exceptional skills and experience and yet they might have no time in consulting their students and marking student's works. That is the problem of allowing lawyers to teach.

**Academic lawyer: the position in singapore:** Singapore is one of the countries that allowmembers of the law faculty to practise as an advocate and solicitor. The academic lawyers could do the lawyer roles and fight the gladiatorial battle in the court. The admission of advocate and solicitor of the Supreme Court of Singapore is identical and not much different from the Malaysian advocate and solicitor. Referring to Singapore Legal Profession Act, 'qualified person' can be defined as "any person who possesses such qualifications as the Minister may prescribe under Subsection (2) or may deem under Section 14(2) or (3)" and satisfies any requirement as prescribed by the Minister under Subsection (2). Besides, a qualified person is also any person who was approved under Section 7 by the Board of Legal Education before 9th October 2009. The Minister may also approve any person to be as qualified person in accordance with Section 15A (1) and 14(1) of the Legal Profession (Amendment) Act 2011.

The definition which has been listed under Section 2 must be read in conjunction with Subsection (2) whereby the Minister may, after consulting the Board of Directors of the Institute, make rules to prescribe the qualifications, education and training for and any other requirements that must be satisfied by person seeking to be qualified persons under this Act (Section 2(2) Legal Profession (Amendment) Act 2011). Therefore, all the above provisions apply to all members of the faculty who want to continue their legal practice in Singapore. Members of Faculty must also observe that under Section 26 of the Legal Profession Act 1976, no solicitor shall apply for a practising certificate.

**Unless:**

- He is practising or intends to practise in a Singapore law practice
- He is registered by the Attorney General under Section 130N to practise Singapore law and is practising or intends to practise Singapore law, in a Joint Law Venture or its constituent foreign law practice, a Qualifying Foreign Law Practice or a licensed foreign law practice
- He is practising or intends to practise as a locum solicitor
- If he has for a period of 3 years or more, held office as a Judge of the Supreme Court or of the Supreme Court of Malaysia or of any High Court in any part of Malaysia
- If he is an undischarged bankrupt
- If he has entered into a composition with his creditors or a deed of arrangement for the benefit of his creditors
- If he has one or more outstanding judgments against him amounting in the aggregate to $100, 000 or more which he has been unable to satisfy within 6 months from the date of the earliest judgment
- If he lacks capacity within the meaning of the Mental Capacity Act 2008 to act as a solicitor

As mentioned by the Singapore Institute of Legal Education all the above requirements does not apply to any full fledgemember of the academic staff of any department of the National University of Singapore or of

any Department of Law in any other institutions of higher learning in Singapore and who has been so employed in either case for at least 3 continuous years. Therefore, impliedly, it means that the members of faculty still a member of Law Society of Singapore but they are called as non-practising members.In addition, being admitted as an advocate and solicitor, the solicitor who joins as a member of Faculty of Law is also given exemption as above but the privilege on the appointment as a Senior Counsel will be maintained if he is a member of the Faculty of Law of the National University of Singapore or the School of Law of the Singapore Management University. The advocates and solicitors cum the Faculty of Law members can enjoy the privilege of the Law Society's membership under the purview of Section 39(b). The Section 39(b) shall be read in conjunction with Subsection (1A) of Section 41 wherein it specifically provides for members of the Faculty of Law or institutions of higher learning in Singapore. Therefore, they could enjoy and may be admitted as a member of the Society upon their application in the prescribed manner. However, they are not active practitioners of law in the court and therefore, under Subsection 2 of Section 41, the nomenclature referred to them should be non-practising members of the Law Society of Singapore.

The law society has created an honorific position for persons of esteemed calibre in the legal profession to be honorary members of the society. The honorary members will be elected by the Council from persons whom they may think fit, either for life or for such period as the Council may in any case consider appropriate. There are also former members of the Faculty of Law of the National University of Singapore that have been elected whom amongst them are Professor S. Jayakumar and Professor Tommy Koh due to their contributions to the legal spectrum of Singapore. Besides being an advocates and solicitors and members of the Law Society of Singapore, law academics also are privileged to have a right as legal consultants in a law firm. With this, they will proffer legal advisory services in the firm or to any organization and alike. The academics in Singapore are given space to advice in a wide array of legal issues in a way that will definitely expose them to the practical demand of the law as well as the theoretical paradigms of the black letter laws as read and interrelated according to their intellectual discourses in the university's lecture hall disseminated to their students. The Boulogne typology of education is not suited to the present legal education because it needs to buttress both the practical as well as theoretical aspects of laws and be holistically blended. Although, the academics in Singapore have been given a leeway to practise law in the court and to offer legal advice, this must be in conformity with the current rules and reputations emplaced by the university authority. This can be adopted by the Malaysian counterparts if we want to see our students and the academics benefit from the system.

**Legal framework for practising lawyers in Malaysia:** The legal profession in Malaysia is a fused one. The Malaysian Bar is the governing body that established earlier under the Advocates and Solicitor's Ordinance 1947 and subsequently was repealed by the Legal Profession Act 1976 (LPA 1976). As an independent Bar, it aims to uphold the rule of law and the cause of justice as well as to protect the interest of the legal profession and the public. Each advocate and solicitor is automatically a member of the Malaysian Bar as long as he/she holds a valid Practising Certificate. To obtain the practising certificate, the lawyer must comply with a list of requirements set out by the Bar Council. The Professional Indemnity Insurance (PII) is one of the requirements.This setup makes the Malaysian Bar's PII scheme unique, in that it is mandatory. All lawyers practising in West Malaysia are required to purchase PII in order to obtain or renew their Practising Certificate from the Bar Council. The proposal for Mandatory Professional Indemnity Insurance Scheme was unanimously endorsed by members of the Malaysian Bar at the 44th Annual General Meeting in March 1990.

Then, the LPA 1976 was amended with effect from 1st April 1992, to provide for the introduction of Mandatory Professional Indemnity Insurance for the profession. In order to implement these provisions, the Bar Council passed the Legal Profession (Professional Liability) (Insurance) Rules 1992. The content under these rules is the Master Policy arranged by the Council on behalf of the members indemnifies every advocate and solicitor who is in practice whether as a sole proprietor, partner, consultant or a legal assistant in a practice unit. The rules also provide disciplinary proceedings under the LPA1976 in the event of failure to comply. Therefore, we can understand that one of the requirements to be an advocate and solicitor, now a days is to comply with all the requirements including purchasing Mandatory Professional Indemnity Insurance. If the academicians will like to practise and they are not practising as full-time lawyers should the same requirements be imposed to this group of people and who should bear the cost? And can the company set up as one of subsidiary companies under the university? This can be seen under the LPA 1976

where a practising lawyer can be disqualified as a practising lawyer "if he is gainfully employed by any other person, firm or body in a capacity other than as an advocate and solicitor" (Section 30(1)(c) of LPA 1976). Therefore, any qualified person who is gainfully employed in accordance with Paragraph (c) of Subsection (1) shall surrender his practising certificate to the Registrar. Rule 44 in the Legal Profession (Practice and Etiquette). Rules 1978 states that,"an advocate and solicitor must not actively on any trade which is declared by the Bar Council from time to time as unsuitable for an advocate and solicitor, to engage in or be an active partner or a salaried officer". Clause (b) says that "an advocate and solicitor shall not be a full-time salaried employee of any person, firm (other than the advocate and solicitor or firm of advocates and solicitors) or corporation as long as he continues to practise and shall on taking up any such employment, indicate the fact to the Bar Council and take steps to cease to practise as an advocate and solicitor as long as hecontinues in such employment".

In Syed Mubarak bin Syed Ahmad v Majlis Peguam (2000) 4 MLJ 167 the appellant, a public accountant was admitted and enrolled as an advocate and solicitor of the High Court of Malaya. His application for an annual certificate was rejected by the Bar Council on the ground that he was disqualified under section 30 (1) (c) of the LPA1976. The Court clarified that the words 'gainfully employed' in Section 30 (1) (c) refers to a contract of service and not to a contract for services. Therefore, the appellant argued that advocate and solicitor is not entitled to apply for an annual certificate only when he is employed under a contract of service in some capacity other than as an advocate and solicitor. In addition, in this case, the Court has made a stand to reject the appellant's contention. The Court used purposive approach rather than literal approach whereby in this situation, the primary purpose of this act (i.e., LPA 1976) is to protect and regulate the legal profession. It is obvious that the Parliament intends persons who choose to be advocates and solicitors must exclusively practise as such. Another legislation governing the law teachers in public universities is the Statutory Bodies (Discipline and Surcharge) Act 2000. This Act was enacted by the Parliament with the objective to provide a set of procedures and regulations with regards to the discipline of and discharge on officers of statutory bodies incorporated by federal law and for the matters connected. In this Act, the officer is defined as "a person who is employed on a permanent, temporary or contractual basis by a statutory body and is paid emoluments by the statutory body and includes a person who is seconded to any subsidiary corporation or company of the statutory body or any other statutory bodies or any Ministry, department or agency of the Federal Government or any department or agency of the Government of any State or any company in which the Federal Government of the Government of any State has an interest". Section 3 (1) of the Act provides that "an officer shall at all times give his undivided loyalty to the Yang di Pertuan Agong, the country, the government and the statutory body". Besides, the officer cannot be dishonest and untrustworthy in carrying out his duties. This is pertinent because the public officer is doing his job by bringing the name of Head of State accordance of Montesquieu doctrine.In addition, the regulations are also applied to all officers of a statutory body throughout the period of their service. Therefore, the breach made by any officer of any provision of the code of conduct which has been set out in this regulation will make him liable to any disciplinary action.

Regulation 4 expresses that,"an officer also cannot take part either directly or indirectly dealing in the management or dealings of any commercial, agricultural or industrial undertaking, take any reward for any work done with any institution, company, firm or private individual and as an expert furnish any report or give any evidence". However, there are exceptions to this provision whereby if the officer has been given permission, he can do the job. As a whole, this set of regulations that applies to any law teachers is meaningless when there is no amendment to the Legal Profession Act 1976. This is because the root of the problem is to allow the academicians to go to court or practise as an advocate and solicitor in the High Court of Malaya. However, if ever the employer (university) allows his employees of the law faculty to practise but at the same time the law is silent, on itself, it is not allowed.

**Challenges and way forward:** There are challenges in allowing law teachers to practice as lawyers. The challenges are from the profession of both teachers and lawyers itself. In addition, the laws that governing these two professions are also affecting the practicability of this suggestion.Among the question raised is to what extent the academic lawyers should be allowed to practise? As such, defining the word "practice" is crucial. As Cohen (2004) argued is it involving in clientcare-taking and brief-writing hack or practice in the giving of opinions to other lawyers upon legal problems submitted? If the concern of the meaning of practice is clientcare-taking, it would not reach the objective of enhancing the skill of the law

teachers because it distracts the law teacher from the subject matter of his courses and deprive him of the time which he needs to devote to his courses. In addition, a great deal of necessary clientcare-taking is not law at all but mere business (Kales and Thayer, 1912). The tasks of the law teachers are huge as these bright students need to be transformed to be excellent legal practitioners.

It is not about just delivering lectures and planning out activities for them but the demand goes beyond that scope as they need to prepare them with the skills and competency to be in the legal fraternity (Moliterno, 2012). Kales and Thayer (1912) argued that the law teachers may practice in giving opinion to the lawyers on legal problems but it must not limit as to the academic consultation only. In fact, law teachers should write more articles to help legal decisions (Hricik and Salzmann, 2004). The law teachers must also be a person who is sought as an advocate whose personal skill and power in carrying the mind of the court is in demand. It is suggested that the special field of practice of the law teacher should be in the appellate courts because it involves with several skills in which he should have practice as special counsel in preparing the printed briefs and arguments and the making of oral arguments before those courts. As he is the one who prepared the written arguments, this should be made for him to appear before the court to deliver the facts and conduct the whole case. One thing to assure is,the law teacher is expected to practice something that they are expert and familiar with. In order to make the practice up to the required qualities, he must choose to be in line of the subjects which he teaches.

Kales and Thayer (1912) also argued that the law teachersshould engage in advocacy skills for certain reasons. Firstly as the law is a rule and principle that established by the case, it needs to be tested in the court rather than mere analysis and logics. In other words, facts delivered by the law teachers need to be properly tested in court. In other word, the law teacher must keep his practical knowledge up to date not just a mere prediction. Secondly, the law teachers should practice in order that he may obtain the training and experience. The effective way to get the experience is by handling of litigated cases in related groups of subjects; they would experience from legal problem that arises in those subjects. In some way, practicing may benefit him when the law lecturer has to prepare cases for hearing especially related to the subject he teaches. As the job of advocate requires an intellectual to solve the complex problem, the law lecturer needs to prepare the argument to the degree that will keep his courses vital. As Edwards suggested, the law school should have more "practical" professors. Moreover, the law teachers may get the first-hand knowledge on how the courts thinks and operates since they are the one who appear before the court, stand together with other advocates in presenting argument and defend his points. Experience as an advocate will give the effectiveness in handling a class especially in problem solving and in guiding the future lawyer thinker. It is however not possible for the law teacher to engage in advocacy training, particularly due to the difficulties like having no time to practice. Doing many works in a time may distract their focus. Both teaching and advocacy need two different skill of preparation, then, it would not enhance their skill but put them more on stress and burden (Kales and Thayer, 1912).

Lawyering is more about rigorous intellectually demanding occupation for it commands clear and lucid thought with the prowess to process assimilate and deduce large amount of information and find solutions to resolve complex legal issues at hand. To survive in the profession, lawyers must have that intellectual capabilities and abreast with the current developments in the law as well as the legal environments. This restraint is lacking in most of the law teachers, the hands-on in the law in action. As suggested by Zimmerman (2013), a suggestive solution is that it is ambulatory for them to be equipped with that exposure through Continuing Practise Experience (CPE). The CPE should be made compulsory to the law teachers in the same way of the Continuing Legal Education (CLE) or Continuing Professional Development (CPD) for lawyers. It is envisaged that the law teachers have been in the enclaves of the ivory tower and have distanced themselves from practice for quite a while.

The dynamism of the law practice with current changes taking place within the legal system as well as the developments of the law which are fast evolving, outpaces the law academic's comprehension in that industrial setup.With the introduction of CPE, the law teachers not only reap the benefits of horning their advocacy skills and the 'goings-on' in the legal setups but above all, it will raise their statures and standings in the eyes of the students and the legal luminaries. This would allay the misconception that law academics are in the ivory tower and see the law in an ideal but not in a practical kaleidoscope. Again, the current governing law in Malaysia does not accommodate the law teacher or academician to practice as lawyer. The LPA1976 as provided under Section 30 (1) (c) explicitly prohibit the lawyers to have more than one professions and the court

has also decided the matter to that effect as in the case of Syed Mubarak bin Syed Ahmad v Majlis Peguam Malaysia. Since the legal setting up of legal profession in Malaysia is 'monogamous', the amendment of relevant provision is needed to overcome the hurdles.

## CONCLUSION

Law teachers need to impart and disseminate not only the black letter law knowledge but most importantly to be able to enlighten their students on the industry development as law is dynamic. A better and wholesome law graduates could be churned and produced for the market, home and abroad. The purpose of having the law teachers to practise initially does not mean to take control of the role of the practising lawyer but to preserve the noble profession as a law teacher. This may improve the quality of teaching as the academician would be more alert with the actual and realities in the legal practice. It may also help improving the quality of the graduates in terms of the expectation to meet the market demand and requirement as being practised in the industry.

Furthermore, providing training to the Malaysian very own local law teachers and giving them international exposure of practice are pertinent especially in their respective specialized area. As a matter of fact, we know that as a legal practitioner, the basic law subject for an undergraduate covers the basics on domestic law and practice related subjects. However, for academicians or law teachers, they need to be an expert in the area of domestic law and during their postgraduate level, they have also have to master some international law-based subjects and specialized area in their respective field and this certainly an added advantage for them. In conclusion, with the rules and regulation emplaced by the university authority, the academics in Malaysia should be given avenues to practice law in court and to give legal advice as what has been practiced in Singapore.

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