

LEGAL EDUCATION IN BURMA SINCE THE 1960s:

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This longer version of the articles that appeared in The Journal of Burma Studies was submitted by the author and is presented unedited in this electronic form.

I INTRODUCTION

In the January 1962 issue of *International and Comparative Law Quarterly* the late Dr Maung Maung (31 January 1925- 2 July 1994)¹ wrote a short note and comment in the Comments Section of the Journal entitled 'Lawyers and Legal Education in Burma'.² Since then much water has passed under the bridge in the field of legal education in Burma and to the best of this author's knowledge there has never been an update in academic legal journals or in books about the subject. This article is intended to fill this lacuna in considerable detail and also to comment on variegated aspects of legal education in Burma since the 1960s.

Dr Maung Maung's Note of 1962 is a brief survey of Burma's legal education from the time of independence in 1948 to about March 1962³: the month and the year the

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² Maung Maung, 'Lawyers and Legal Education in Burma' (1962) 11 *International and Comparative Law Quarterly* 285-290. This 'Note' published while Maung Maung was a visiting scholar at Yale University in the United States is reproduced with slight modifications in Maung Maung, *Law and Custom in Burma and the Burmese Family* (Martinus Nijhoff, 1963) 137-141. In June 1965 Dr Maung Maung was appointed as Chief Judge (later nomenclature 'Chief Justice') of the Chief Court (later term 'Supreme Court') (then the highest Court) by the late General Ne Win then Chairman of the Revolutionary Council. (General Ne Win had taken over power in a military coup on 2 March 1962 and he appointed by decree Dr. Maung Maung Maung as a Judge of the Chief Court of Burma in July 1962 less than three years before Dr. Maung Maung was elevated to 'Chief Judge' by General Ne Win in June 1965). In July 1971 Dr. Maung Maung was appointed by General Ne Win as a member of the ruling Revolutionary Council (RC) which was a top legislative body. He also served as Judicial Minister from July 1971 to March 1974. He became a member of the Council of State when the 1974 Constitution (the Council of State was the highest legislative body during the period 2 March 1974 to 18 September 1988) came into force and held that post until late July 1988 when he became Chairman of the Council of People's Attorneys ('Attorney-General'). (The 'Council of People's Attorneys' was also an 'organ of State power' under the 1974 Constitution). He became President of the then Socialist Republic of the Union of Burma and also Chairman of the (single and ruling) Burma Socialist Programme Party on 19 August 1988. When the military took over power on 18 September 1988 all 'organs of State power' that were formed under the 1974 Constitution were abolished and Dr Maung Maung's 'term' as Head of State lasted just under a month. Dr Maung Maung died in Rangoon, Burma on 2 July 1994.

As far as the use of the term 'Burma' or 'Myanmar' is concerned I have used the term Burma instead of Myanmar and Rangoon for 'Yangon' unless I am making a direct quote where I used the term from the quoted sources be it Myanmar or Burma, Rangoon or Yangon.

Revolutionary Council led by the late General Ne Win (10 July 1910- 5 December 2002) took over power through a military coup from the democratically-elected government of the late Prime Minister U Nu (25 May 1907-14 February 1995). The (almost) exclusive focus would be on post-1962 and especially post-1964 developments⁴ in the field of legal education in Burma.

The author had studied and obtained basic degrees in law at (what was then called) Rangoon Arts and Science University.⁵ I have also studied the curriculum, conducted interviews, sat in law classes, perused and studied the contemporaneous teaching materials dealing with a variety of law courses during my sojourn in Burma in early to mid-2005. In this article, I will try to provide (published) references to the extent that they are available, but this may not be possible most of the time due to the sparseness of published and printed references. The author can vouch for the essential correctness of the factual information provided even if they are not extracted from or supported by published references.

Scope of Article

The scope of this article would be mainly on post-1962 developments concentrating chiefly on the LLB (Bachelor) program. These discussions will be based on my personal experience as a student in the 1970s, research concerning subsequent development in the 1980s and 1990s and observations made in the first few months of 2005 in Burma regarding aspects of legal education. Particular emphasis will be given to the teaching of law through distance education or University ‘correspondence courses’ which was first introduced in the year 1975 including teaching materials, teaching modes, assessment methods, and overall quality of this distance education course. Other teaching and research based programs such as that of the Master of Laws (LLM) and the relatively recently introduced Doctor of Philosophy (Ph.D.) program, and the various ways of obtaining the license to practice law apart from the main LLB programs in the post-1962 era will also be stated and commented on. The impression this author has formed from interviews with certain students doing the post-graduate LLM (Master of Laws) and also from observations at seminars, reports or presentations made for the ‘in progress’ Ph.D. students will also be presented.

Maung Maung, *Law and Custom*, Ibid 139 at foot note 1 stated that ‘[s]ome 800 candidates offered themselves for the examinations in Part A of the B.L [Bachelor of Laws] degree in March 1962 and some 200 for the Part B’. Dr Maung Maung also provided the information that ‘[t]he numbers for the [B.L Part A] final examination, in the previous years were: 16 in 1946, and in the following years till 1958 – 19, 52, 74, 56, 67, 68, 80, 98, 100, 115 and 158.’ Ibid.

⁴ In 1964 the then Revolutionary government made a major overhaul of the education system and reorganized the Universities. There were major changes in legal education too both in structure and in contents which are explored in this article.

⁵ Bachelor of Arts (Law) BA (Law), Bachelor of Laws LLB).

II 'REMAINS' OF THE COLONIAL AND IMMEDIATE POST-COLONIAL ERA: THE POST-GRADUATE B.L DEGREE AND ITS DWINDLING GRADUATES

In his 'Note' of 1962⁶ Dr. Maung Maung mentioned the B.L (Bachelor of Laws) degree which in early 1960s was the main method of obtaining a basic academic and professional law degree in Burma from 1948 up till the year 1968 when the BL degree course was phased out. One of the reasons for discussing the now long-defunct BL degree is to contrast the qualifications that are needed to attend the BL courses in the pre-1962 and immediate post-1962 era with those of the candidates who can enter for the BA (Law), LLB degrees the first batch of whom graduated in 1968.

The BL is a post-graduate course. Only those who already had a basic degree such as a Bachelor of Arts (BA) or Bachelor of Science (B.Sc.) degree could enroll and attend the two year and two parts (Part A and Part B) BL course. After the first year and having passed the BL (Part A) exam, a candidate who wanted to practice law could opt to do an 'internship' or chamber-reading with an Advocate⁷ of at least five years standing. The internship must be for a minimum period of year. Alternatively, a BL candidate could opt to do the 'internship' or 'chamber reading' only after passing the BL (Part B, i.e. second and final year) of the BL course. Regardless of whether a candidate opted to do his or her 'internship' after passing either the Part A or Part B of the BL Exams an internship of at least one year with an Advocate of at least five years standing is still needed to practice law.

Enquiries made by the author revealed that up till the mid-1960s all the courses in the BL were entirely or at least predominantly taught in English, the examination questions were set in English and the students had to answer in English. In later years starting around the mid-1960s a few of the BL courses exam papers could be answered in Burmese or in English.⁸

⁶ See *Law and Custom* above note 2.

⁷ The qualifications and experience needed for a person to become an Advocate in Burma would be discussed in the section dealing with the LLB courses.

⁸ I am unable to give printed references as regards this statement. I have been informed that up to the mid-1960s all the exam questions of the BL Part A and Part B Exams were set in English and only in the specific subject of Burmese Customary Law candidates could write their answers in Burmese. (Phone interview, senior academic, the Department of Law, Yangon University, 15 May 2005. The senior academic graduated had, a few decades earlier, graduated with a BL degree from Rangoon Arts and Science University. The senior academic emphasized that the allowance given to candidates to answer the Exam questions in Burmese was only in the subject of Burmese Customary Law and the senior academic though answered all the BL exam questions, including Burmese Customary Law in the English language. On 31 May 2005 I interviewed a (senior) Advocate and a BL graduate of the year 1967. The Senior advocate stated that to the best of his memory all the exams questions – in the second to last BL Exams – were set in English and in only one subject- Burmese customary law-could the students opt to answer the exam questions in Burmese in effect confirming what the senior academic had stated. .

III A SURVEY OF THE ‘ON CAMPUS’ BA (LAW), LLB and LLB COURSES: FROM THE 1960s to 1975

This section deals with the basic academic and professional degrees in law, the first batch of which graduated in 1968. As the author went through such a course some of the comments in this section would be ‘personalized’.

The new education system was introduced by the then Revolutionary government in 1964 where, among others, preference was to be given to science subjects. This ‘dichotomizing’ into science and arts subjects of the academic disciplines have a definite bearing as regards the admission of candidates into the LLB courses from the academic year 1987-88 to about the academic year 1993-1994.

A. The Admission Requirements, Curriculum, Teaching Methods and the Medium of Instruction in the BA (Law), LLB courses from 1963-64, to 1974-75 Academic Years

A new BA (Law), LLB course was implemented from the academic year 1963-64. From then till about 1996 there was only one Law Department in the whole country: that of the Law Department at the Rangoon Arts and Science University.⁹ The BL degree as mentioned above is post-graduate course, as only candidates who already had basic arts or science degree can enroll. In contrast, for admission to the BA (Law), LLB course a candidate needs merely to pass the Matriculation Examinations (i.e. High School examinations) and provided that candidates obtained a minimum amount of marks which varied from year to year, they can enroll in the first-year of the BA (Law), LLB course. In the initial years of the BA, LLB only about 100 to 150 students per year were admitted into the first year BA, LLB program. And only those who obtained the set minimum or cut-off marks in the High School Examination would be admitted into the BA, LLB program.

A brief but relevant ‘detour’ into Burma’s High School Examination system which is notable for the frequent changes as regards the fusion or dichotomy of subjects taught in the High Schools in terms of ‘science’ and ‘arts’ subjects is made below.

The Matriculation Examinations: The Arts/Science Dichotomy and Admission to the BA, LLB/LLB Programs

In Burma, the annual Matriculation Examinations have uniform questions set centrally and all the candidates in the entire country have to sit (until the Matriculation Examinations of 2001) for the same paper on the same day at the same hour.

⁹ Since June 1989 the formal name in English of Rangoon Arts and Science University, which in the 1980s was changed to University of Rangoon was changed again to ‘University of Yangon’. Depending on the era or the period under discussion the University will either be mentioned as ‘Rangoon Arts and Science University’ or ‘Yangon University’.

From inquiries made it is believed that during most of the years in the 1960s, on an average of about 100 to 150 candidates were admitted annually to the law course

In Burma's High Schools from 1968 to 1978, based on the marks that were obtained in the eighth standard (Middle School), the students are 'diversified' into 'arts' and 'sciences' streams for the next two years of their high school studies. Those who get better marks overall and good marks in mathematics and the general science subjects are 'assigned' to take the science 'stream' and those with lower marks are generally 'assigned' the arts 'stream'. In other words, on the whole the 'better' students were assigned to the science stream and the 'weaker' students the arts stream. The arts stream matriculates could not join Universities and Institutes that are based on the science disciplines, but only such 'arts' subjects like Law, Geography, History, Economics. The science matriculates however in addition to the science subjects in the Universities can also apply for the arts subjects such as Law, Burmese, Economics, Philosophy, History, Geography and Psychology.¹⁰

Admission into the Institutes and the subject specialization were determined by the marks obtained in the Matriculation examinations and also the 'quotas' (regarding the number of students) imposed by the respective Departments.¹¹ As for admission to the then five-year law (BA, LLB) course, due to the fact that science stream matriculates could obtain more marks than the arts stream matriculates¹² at least 70% and as much as 80% of the entrants in the academic years 1970-71, 1971-72 and 1972-73 were from the science stream. However starting from the academic year 1973-74 the admission policy for the entering BA (Law), LLB classes was changed in that the intake of each entering first year law classes henceforth would include half from the 'science stream' and half from the 'arts stream' of matriculates.¹³ Hence there was a 'differential' or different admission

¹⁰ At that time in the 1970s and at least until the 1990s and probably even currently for the purpose of classification the discipline or the subject of psychology was considered as an 'arts' subject.

¹¹ It might be added here (from the author's firm memory the minimum marks for the first year entering law class of 1970 which was about 150 students was 326 marks (out of a total of 600 marks) that a student can obtain in the Matriculation Examinations. In contrast the minimum marks required for admission to the then three Institutes of Medicine was 416 marks. The person who stood 'first' in Burma in the Matriculation Examinations of the academic year 1970 obtained 538 marks out of 600.

¹² For science stream Matriculates it is possible to obtain a maximum of 100 marks or quite close to that in the subjects of Physics, Chemistry or Mathematics. For the compulsory subjects of Burmese and English (for both science and arts stream matriculates) the maximum possible marks that can be obtained in them are in the low 80s (marks out of 100). Similarly in the arts subjects of Geography, History and Economics it is not possible for an Arts stream matriculate to obtain as much marks as a Science stream matriculates in the subjects of Physics, Chemistry and Mathematics. In the late 1960s and early 1970s the admission to the BA, LLB program is determined by the aggregate of marks a Matriculate obtained in the six-subject Matriculation Exam (both arts and science stream Matriculate candidates have to take six subjects) and the set quota of first year law students for that particular year. During that period the majority of first year law candidates to the LLB program were from the science stream.

¹³ Interview with a senior academic of Yangon University Department of Law in February 2005. That academic joined was a first year law student in University academic year 1974-75 () the student body consisted of about 300 students and half were from the arts stream matriculates and half were from the science stream matriculates. That senior academic passed the High School Examinations from the science stream in June 1974. In an interview with an advocate on 2 June 2005. I was told that he joined the Rangoon Arts and Science University as a first year law student in 1973 from the arts stream and he also confirmed that in the entering law class about 300 students half were from the science 'stream' and half

criterion (i.e. in terms of marks obtained in the Matriculation Examinations) for science stream matriculates (who usually score higher marks) and arts stream matriculates. This differential criterion, in this author's view, is generally fair in that due to the nature and 'marking trends' of the subjects they were assigned to take, arts stream matriculates would obtain lower marks than those of science stream matriculates. To have a substantive (rather than formal) 'level-playing field' in terms of admission to the then Burma's only 'Law School' it is desirable –perhaps even necessary- to have such a 'quota' system¹⁴ –of taking half the students from the 'science stream' and half from the 'arts stream'.

Another change took effect in the academic years 1978-79 to 1985-86 when there was a combination of science and arts subjects in the Matriculation Examinations. Hence during those academic years there was no 'division' of science and arts streams as far as admission to the first year law course (at the then Rangoon Arts and Science University/ University of Yangon) was concerned. This was so because all matriculates have to take both science and arts subjects in their Matriculation Examinations. However, from the academic years 1986-87 to 1993-94 there was yet again the division of matriculates into science and arts streams. The difference this time is those matriculating students who passed from the science stream are prohibited from taking law at Rangoon University at least as a full-time 'day' (or) 'on-campus' student.

Three separate teaching staff of Yangon University Department of Law had mentioned to the author that as a result of restricting admission into the law program only to those students from the arts stream during those academic years, the quality and academic standard of the student body fell significantly.

But (again) from the academic year 1994-95 the combination of arts and science subjects in the Matriculation examinations took place and this lasted six or seven academic years. However, diversifying of the arts and science subjects in the Matriculation Examinations was re-implemented from the academic year 2001-02. From a few interviews the author has learnt that since the latest 'diversification' of science and arts streams among matriculates since the academic year 2002 entry into first year law classes is no longer restricted only to arts stream graduates but those matriculates from science streams are also eligible.

The changing requirements for admission to the basic law program, as discussed above, should throw light on the capriciousness of the authorities vis-à-vis the policies and trends regarding basic and tertiary education in Burma since the late 1960s. The author believes that only when such a detailed background is given, the vicissitudes of legal

from the arts stream.

¹⁴ For a different sort of quota system –based on race- in admission to the University of Malaya Law Faculty (in comparison with those of students from the Pacific Island nation of Fiji) see Myint Zan, 'Thoughts on Affirmative Action in Admission to Law Schools: Malaysian and South Pacific Experiences' (2004) 13 (2) *Commonwealth Lawyer* 40. In the article the author has also expressed the view that the quota system practiced in the University of Malaya Law Faculty since its establishment in 1972 till the academic year 2001-02 though based on racial criteria (among Malaysian nationals) was not unfair and a qualified support can be given to that practice.

education in Burma during the past forty years could become clearer or at least could be viewed in proper perspective.

The Medium (Language) of Teaching in Burma's Law Courses: From English to Burmese and back to teaching in 'English'

The 'older' BL classes (late 1920s -1968) being taught predominantly if not wholly in English have already been mentioned. One of the fundamentals of the new education policy laid down and put into effect by the Revolutionary government in 1964 was that all University teaching would be done in Burmese though English remained a compulsory subject in the first two years of University regardless of subjects studied.

Thus in the teaching of law too Burmese was made the medium of teaching; examination questions were set in Burmese.¹⁵ This was so at least until the academic year 1986-87 when the medium was quite abruptly changed to 'English'. The reason for 'English' being in quotation marks will become evident in the next section when the contents and delivery of distance education courses in law are discussed.

The Curriculum of the BA (Law) LLB course in the 1960s and 1970s

Based on the author's experience and firm memory the curriculum of the BA (Law), LLB course in the academic year 1970-71 to the academic year 1974-75 at the Rangoon Arts and Science University for the five-year legal studies is described and discussed here. Needless to say there have been changes in the curriculum of the BA, LLB courses since then and the current curriculum (in the academic year 2005) of the LLB courses will be described and discussed in a subsequent section. The fact remains that this curriculum for the year 1970 to 1975 though not identical would have been quite similar to the curriculum for the BA (Law) LLB course in the 1960s and those of the mid-to-late 1970s and 1980s.

The BA (Law) LLB course at the Rangoon Arts and Science University which first admitted matriculates in the 1963-64 academic year is a five-year course. At the end of four years if a candidate passed all the courses he or she is awarded the BA (Law) degree. After doing one more year of law studies and passing the exams the successful candidates were awarded the LLB degree. Hence after successful completion of five years of legal studies candidates would be awarded the BA (Law), LLB degrees. It needs to be stated that unlike the B.L degree, BA, LLB degree is not a post-graduate degree. The B.L degree was a post-graduate degree of two years duration offered on a part-time basis for

¹⁵ During the time when the author was a law student in Rangoon Arts and Science University some of the important legal terms appeared in the Exam questions and were mentioned within brackets in English. For example in the Criminal Law and Procedure paper, terms such as 'summons cases' or 'warrant cases' appeared in English after the Burmese translations, terms such as 'part performance' appeared in brackets in English for the Land Law paper and even the Burmese translation of the phrase of *jus cogens* appeared in exam papers in the subject of International Law. In the subject of Conflict of Laws though the author clearly remembers that no translation was made of the term *Renvoi* either in the Lectures or in the Exam papers and the phrase *Renvoi* was written only in Roman letters (without any Burmese translation) in the Examination paper for the subject Conflict of Laws.

those who already hold a basic degree which is not in the field of law. In contrast those who had a BA (Law) degree had – at least during the 1960s and 1970s- already taken a minimum of 15 law subjects (inclusive of the first-year ‘Introduction to Law’) as well as a few non-law subjects. In the final year of legal studies the BA (Law) graduates had to do a further five subjects in law and wrote a (minor) thesis on an approved law topic. Only on the successful completion of these requirements were the candidates awarded the LLB degree.

In the first year of the then BA (Law), LLB course the following subjects were taught and assessed: (It needs to be mentioned again that apart from the compulsory course of English in the first and second years all other subjects were taught in Burmese. All the exam papers -apart from English-were in Burmese. The following is the Table of the subjects taught in the BA,LLB course during the academic years of 1970 to 1975..

First Year Subjects	Second Year Subjects	Third Year Subjects	Fourth Year Subjects	Fifth Year Subjects
Burmese	Burmese	L301 Jurisprudence and Socialist Legality	L 401 Civil Procedure	L 501 Administrative Law
English	English	L302 Labour Law	L 402 Constitutional Law	L 502 Revenue Law
History (Post Renaissance European history)	Economics (mainly of the socialist economic plans of the East European Countries)	L303 Land Law	L 403 Commercial Law	L 508 Defense Services Act
Logic	(Course) L 201 Criminal Law and Procedure	L 304 International Law	L 404 United Nations and Other International Institutions	L 511 Criminology
Economics (‘Analysis and Socialism’)	L 202 Burmese Customary Law	L 305 Law of Evidence	L 405 Conflict of Laws	L 513 Shipping Law
Introduction to Law (known as Course L	L203 Contract and Torts			Submission of Minor Thesis

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	L204 History of State and Law (Of Burmese legal history)			

Table 1: Subjects students have to take and complete at Rangoon University in the academic years 1970 to 1975 for the BA (Law), LLB course.

As far as the first year Economics course was concerned the fundamental principles of (liberal) economics was taught as ‘analysis’ and since Burma was at that time under a ‘Revolutionary’ socialist government, principles of socialist economics were also taught in the ‘Socialism’ segment of the first year economics course.¹⁶

As regards the second year course it might be noted that both *Contracts and Torts* were taught as a single course. About 70% to 80% of the course deals with contracts and only about 20%-30% with Torts. This ‘under-emphasis’ so to speak on the subject of Torts is perhaps reflected in the relative paucity of torts cases that are reported in the various *Digest of Law Reports* in Burma which would amount to less than 1/5 of the reported cases dealing with issues on contract law.¹⁷

As regards the subject *History of State and Law* from the first year law course, the exclusive focus of the course was on Burmese legal developments.

As regards the 4th year law subjects, the contents of the then ‘Constitutional Law’ course deserve comment. During the academic year 1973-74, the (so-called) ‘national referendum’ to adopt the 1974 one-Party constitution took place.¹⁸ The Lecturer who

¹⁶ Due to the fact that students from the science stream of Matriculates in the first year law classes have had no exposure to Economics the author recalls a first year law school classmate stating that he would pass the first year law course if he passed economics. In the early 1980s while I was doing my Master of International Law course at the Australian National University (ANU) we have to take ‘Principles of International Economics’ (not Socialism!) in the first semester and ‘International Economic Policy’ seminar in the second semester. As at least some of the author’s classmates in the ANU course –of various backgrounds in law- did not have formal training in Economics I also recall that they were worried about the Economics course. I myself spent more time in studying the Economics course than many of the ‘core’ international law courses.

¹⁷ Of course in many other Universities throughout the common law world Torts is a year-long course. Apart from Western Universities, in the University of Malaya Law Faculty and in the University of South Pacific School of Law where the author has taught for three years each in the early 1990s and the early 21st century respectively Torts is a two-semester, year-long course.

¹⁸ For an account of the drafting, and other processes, referendum, adoption, and coming into force as well as some of the essential provisions of the 1974 Constitution and how it came to an end see Myint Zan, ‘Law and Legal Culture, Constitutions and Constitutionalism in Burma’ in Alice Ehr-Soon Tay (ed) *East*

taught the subject was a Central Committee member of the single and ruling Burma Socialist Program Party who could be described somewhat charitably as a ‘Party elite’ and less charitably but more accurately as a ‘Party apparatchik’.

Through conversations with those who did the LLB courses earlier than the author it was learnt that the Constitutional Law courses in the 1960s include a perfunctory study of the (unwritten) UK Constitution and the United States Constitution. In contrast during that particular year when the author took the Constitutional Law course –and also in subsequent years- the exclusive focus was on the 1974 one-Party Constitution and virtually the whole course can be described as a genuflection and homage to it. The comparisons that were made were with the then one-Party Eastern European Constitutions, the Constitution of the former Soviet Union and the then Chinese Constitution.¹⁹ Moreover some of the contents of the course were, if not falsehoods, plainly inaccurate. For example, we were taught that in ‘capitalist Constitutions’ such as those of the United States, the provisions regarding human rights (such as the Bill of Rights in the *United States Constitution*) were not incorporated in the body of the Constitution itself but appear as ‘appendages’ to the Constitution which in the case of the *United States Constitution* was correct. But reflecting the totally propagandistic nature of the subject and displaying either total ignorance or willful distortion it was stated that the incorporation of such a Bill of Rights in the appendage of the US Constitution was that by doing so these rights become unenforceable in Courts. In contrast, claimed the then Constitutional Law Lecturer, ‘socialist Constitutions’ boldly stated the rights of the working people and the citizens in the body of the Constitution rather than as ‘appendages’ to the Constitution itself. The Lecturer then declared the superiority of ‘socialist’ (one-Party) Constitutions over that of bourgeois (‘capitalist’) ones.²⁰

Asia[.] Human Rights, National Building, Trade (1999, Nomos Publications, Baden-Baden, 1999) 180, 236-251.

¹⁹ The Lecturer virtually dictated from prepared course notes. The author clearly remembers that in one instance in reference to a Eastern European Constitution the Lecturer dictated the name of the country as ‘Yugoslavia’. He might have meant either ‘Yugoslavia’ or (the then) ‘Czechoslovakia’.

²⁰ The Lecturer conveniently (or willfully) did not mention that in the 1947 defunct Burmese Constitution enforceable rights (dealing with civil and political rights) and unenforceable policy statements (dealing mainly with social and economic rights) were ‘boldly’ stated in the 1947 ‘bourgeois’ Burmese Constitution. Indeed there were a number of case laws dealing with the enforceable –and enforced- provisions of the 1947 Constitution. During the period of the 1974 Burmese Constitution which was in force from March 1974 to September 1988 there was not a single instance or case when the Burmese courts enforced the ‘constitutional rights’ that apparently were accorded under the one-Party 1974 Burmese Constitution. See for e.g. the decision of the late Burmese Supreme Court- the Supreme Court and High Court of Burma being abolished by a decree of the Revolutionary Council on 30 March 1962- in *Ma Ahmar v The Commissioner of Police and One*, 1949 Burma Law Reports (BLR), Supreme Court (SC) 39, *Ma Thaung Kyi v Deputy Commissioner, Hanthawaddy and One*, 1949 BLR (SC) 30, *Khin Maung Myint v Union of Burma* 1953 BLR (SC) 24. (All of these judgments were written in English, a summary of the holdings in these cases can be found in Maung Maung, *Burma in the Family of Nations*, (1956, Djambatan) 122-23. For an enforcement of a criminal defendant’s rights as per provisions of the 1947 Burmese Constitution see *Nga Pein and two Others v The Union of Burma*, 1953 BLR (SC) 116, The judgment was written in English and a summary of the holdings of the case can be found in Maung Maung, *Burma’s Constitution* (1959, Martinus Nijhoff).

Before dealing with the thesis requirement some brief comments on the general contents of the BA (Law), LLB (Rangoon) curriculum can be made. When the author gave an impromptu presentation while visiting a law class at the University of Hawaii Law School in January 1997²¹ I enumerated the subjects that we have to take and Professor Conner, the Lecturer, pointed out to me that among others, ‘Corporation Law’ or Company Law was not in the curriculum. I replied to the effect that during the time of our legal studies it was the socialist era and it was probably deemed unnecessary for ‘socialist law students’ to study ‘capitalistic’ Company Law even though there was a *Companies Act* of 1940 –never formally repealed- which was enacted during the British colonial era. In the present day ‘market-oriented’ economy in Burma, I stated my view that aspects of the *Companies Act* might perhaps be taught. The 2005 law curriculum of distance education students does contain the subject of Commercial Law but not Company Law as a separate subject.²²

Moreover the subject of Equity and/or Trusts was not offered in the BA (Law) LLB curriculum. The then Lecturer who taught us the subject of Jurisprudence and Socialist Legality²³ told us that when she was doing the BL course (in the mid-1950s) they had to take the subject of ‘Equity’ and that it was a difficult subject.²⁴

The thesis requirement of the then BA (Law), LLB degrees and later LLB degree²⁵ will be briefly discussed here. In the final year of the BA (Law), LLB and later LLB degrees and up until the early 1990s there was a requirement for ‘day’ (i.e. for full-time on campus law students) –rather than those doing the correspondence courses in law- to write a thesis on an approved topic. There was apparently no strict requirement as to the length of the thesis for the author clearly remembers that in the year the author graduated (1975) a thesis (written in Burmese about disarmament issues in international law) for which that particular candidate was awarded a distinction was about three or four times

²¹ A class of Professor Alison Conner of the University of Hawaii Law School. I was asked about aspects of Burmese law and legal education during the entire duration of the class in an (informal) ‘question and answer’ session. I record my thanks to Professor Conner for letting me attend her class and for inviting me to make a presentation on aspects of Burmese legal education during her class.

²² In the Faculty of Law of the University of Malaya, from the author’s experience as a Lecturer there in the early 1990s Company Law was a compulsory subject but Commercial Law was a (very popular) optional subject. In contrast the LLB curriculum of the 1970s and early 21st century in Burma Commercial Law was, like all other subjects, compulsory but Company Law was not a separate subject.

²³ The same Lecturer taught us in the second year the subject of Burmese customary law, in the third year Jurisprudence and Socialist Legality, in the fourth year Conflict of Laws and in the fifth year Administrative Law. The author recalls the Lecturer stating that she will remember our ‘batch’ well since she had taught us four subjects for four consecutive years.

²⁴ Unlike the exclusion of the subject of Company Law in the LLB curriculum in the 1960s, 1970s and 1980s during the socialist era, this author is unable to fathom concrete reasons for the inclusion of the subject of Equity and Trusts in the BL curriculum in the 1950s and 1960s and its exclusion from the LLB curriculum from the 1960s onwards. In comparison with the curriculum of the Law Faculties or Law Schools of other developing countries where I have had the experience of teaching, in the University of Malaya Law Faculty the subject of Equity and Trusts was –and is- a compulsory subject and in the University of the South Pacific School of Law, Equity and Trusts is also a two-semester, year-long compulsory subject.

²⁵ As will be stated in a subsequent section starting from the Law School entering class of 1975-76, the first batch of which graduated in 1980 law graduands from the Rangoon Arts and Science University were no longer awarded the BA (Law), LLB but (merely) the LLB degrees.

lengthier than another thesis on an international law topic dealing with naval warfare written by another candidate.²⁶

In terms of the language used in the writing of the theses an overwhelming majority of the students in the 1960s, 1970s and 1980s wrote their theses in Burmese. The strict requirement of answering all examination questions only in Burmese²⁷ apparently did not apply to the writing of theses in English which was allowed. As early as 1968 when the first batch of BA (Law), LLB graduates emerged, a few of the LLB theses were written and submitted in English.

The requirement that ‘Day’ - i.e. full-time, face-to face ‘on campus’ students- in contrast to those doing the LLB degree by Correspondence or Distance Education courses for whom there never had been any such requirement²⁸- to write and submit their theses and had to be passed by examiners before being awarded their degrees was in force for about twenty-five years starting from 1968 till about the early to mid-1990s. This requirement was however dropped sometime between the late 1980s and mid-1990s.²⁹ During the late 1980s a significant change in policy was made in that the candidates for the LLB degree must write and submit their theses in English.³⁰

²⁶ A few other topics of the thesis which the author remembers from the ‘Class of 1975’ were one dealing with a comparative study of the powers and functions of the United States President and the Burmese President under the 1974 Burmese Constitution, a thesis dealing with the legal aspects of the Watergate affair and a bulky thesis (as roughly the same length and bulk as the thesis on Disarmament) dealing with the international law aspects of the (11 September 1973) military coup in Chile which overthrew the world’s first democratically-elected Marxist government of the late Salvador Allende. All of these theses, indeed all but two of the over 120 theses that were submitted by the class of 1975 were written in Burmese.

²⁷ From my experience of answering law exam questions in my Rangoon University days I would attest to this statement. During the third year of my law studies I approached a Tutor as to the advisability of answering one Exam question in the first term Examinations the subject of ‘Jurisprudence and Socialist Legality’ in English. The Tutor indicated that it would be fine so during the first term exam I answered one exam question in English. Subsequently, the Lecturer who taught the subject chided me in front of a class of more than 100 persons for answering ‘one question in English’ and the rest in Burmese. She said ‘next time’ (in the mid and final term Exams) I should either answer entirely in English or in Burmese and not ‘half-toad, half-fish’ (in Burmese *phar-ta-paing, ngar-ta-baing*). I even recall that the particular Exam question which I answered in English deals in essence with the role of interpretation (by the judges) in English law. An elder staff member in another Department strongly discouraged me from answering any question or any paper in English in future exams – an advice which I followed. The particular incident in the Jurisprudence class inhibited me from answering any Exam question in English for the rest of my Rangoon University law exams. It is ironic that starting from the mid-1990s most exam questions for the LLB ‘day’ and Distance Education exams the question were set in English and all the answers have to be in ‘English’ even though most if not virtually all the teaching and explanation of the law texts (mostly written in English) were in Burmese.

²⁸ The significance and anomaly –indeed the (in)equity- of this diversified treatment between the ‘Day’ and Distance Education students will be discussed in a subsequent section.

²⁹ In a phone interview with a senior academic of University of Yangon Law Department it was confirmed by the academic that sometime during that period the thesis requirement was dropped though the senior academic could not recall in which year it was dropped.

³⁰ This requirement of submitting theses in the English language also applied to the Master of Laws (LLM theses) starting perhaps around the late 1980s till mid-to late 1990s students were required to write their LLM theses in English. Previously at least until the mid-1980s a majority of LLM theses were written in Burmese though some were written in English. (In January 1985, the author perused LLM theses that were submitted in Rangoon Arts and Science University Central Library). Twenty years later in January 2005 all the LLM theses that I was able to peruse have English titles. The apparent reasons for dropping the theses

Having had the experience of teaching in Malaysian, Australian and South Pacific Universities I have not come across a compulsory requirement of the submission of an approved thesis for the basic law (LLB) degrees.³¹ There are requirements that students wishing to do the LLB (Honors) degree must write a thesis or written piece of work such as a thesis or a term paper.

Method of Applying for a license to Practice Law for the BA, LLB graduates

After being awarded the BA, LLB or LLB degrees a graduate who wants to obtain a practicing license has to do a one-year internship with an Advocate of at least five years standing. At the end of the one year internship known as ‘chamber-reading’ a law graduate can apply, with the testimonial of the chamber-master that the person concerned had done his reading at Chambers, for a ‘Higher Grade Pleader’ license. After obtaining a Higher Grade Pleader³² license and continuous practice as a Higher Grade Pleader for one year the person concerned can apply for an Advocate license. The application for an Advocate³³ license must be accompanied by testimonials as to good character, evidence/testimonials as to at least one year practice as a Higher Grade Pleader³⁴ and the prescribed fees. The Bar Council and the registry of the Chief Court/Supreme Court/Central Court of Justice scrutinize the applications and if approved the person is admitted as an Advocate.

IV THE DISTANCE EDUCATION AND ON-CAMPUS LAW COURSES SINCE 1975: POPULARIZING THE LAW OR MASS PRODUCTION OF LAW GRADUATES AND LAWYERS?

requirement for both the LLB and LLM degrees will be canvassed in a later section.

³¹ In the academic year 2007-2008 the University of Malaya Law Faculty has a compulsory ‘project requirement’ where students either individually or in groups have to submit their projects before graduation.

³² Without using official terms a Higher Grade Pleader can be defined here as a legal practitioner who can practice law in all Burmese courts except the highest court which since March 1962 has been under various English nomenclatures: namely Chief Court (1962 to about 1970), Supreme Court (1970 to March 1974), Central Court of Justice (March 1974 to September 1988) and again Supreme Court (from September 1988). During the same period the Burmese nomenclature for the highest court has also been changed (or reverted back to the previous name) three times.

³³ An Advocate is a legal practitioner who can practice in all Burmese courts including the current Burmese Supreme Court.

³⁴ From the 1970s to about 1999 a BA, LLB graduate or LLB graduate can apply for an Advocate license after a year’s continuous practice as a Higher Grade Pleader. From about 1999, the rules were changed in that three years practice as a Higher Grade Pleader was made the minimum requirement. That change was made because the authorities concerned felt that the Higher Grade Pleaders were not of sufficient caliber to allow them to become Advocates after one year practice in the capacity as a Higher Grade Pleader. (Interview with U Than Htay, Advocate, Mandalay, 21 May 2005.)

During the years 1974 and 1975 there were continual demonstrations both by students and workers against the Burmese government. First, in June 1974 there were workers' demonstrations which were soon quelled by force. Soon after the Universities re-opened the 'U Thant disturbances' took place in December 1974. Student-led demonstrations erupted in Rangoon to protest the shabby treatment given to the late third Secretary-General of the United Nations, when U Thant's body was ordered to be interred in an ordinary Rangoon cemetery by then Burmese President U Ne Win.³⁵ Universities were re-opened in June 1975 and soon thereafter demonstrations again broke out: the third demonstrations by workers and students in about a year..

When the Universities were re-opened in 1976 the authorities have introduced what was then called 'correspondence courses' in a variety of subjects which were mainly 'majors'. One of the reasons, if not the main reason for the introduction of correspondence courses in most University subjects would be that by doing so it would have the effect of preventing students from gathering in various campuses throughout the country throughout the academic year. This dispersal of students would deny them a base where they could gather and protest against the government.

The University courses that were not offered through correspondence were subjects which by their nature are not amenable to being offered 'long-distance' and through correspondence. They would include Medicine, Dentistry, Engineering, Veterinary Science and Animal Husbandry which were offered in educational Institutes and the subjects of Forestry and Geology which involved field trips and which were offered as 'majors' in Arts and Science Universities. The subject or 'major' of Law definitely was offered as a Correspondence course starting from the academic year 1975. In the first year law correspondence course altogether about 6500 students were admitted. In the previous academic years up to 1974 there was a 'cap' of first year law students to about 300 per academic year. From 1975 regardless of the marks candidates obtained in the Matriculation (Basic Education High School Examination) so long as they passed it from the 'A' List ³⁶ they could apply for and admitted to the first year law by correspondence.

The 6500 students or so that were admitted as first year law major for the correspondence courses in the academic year 1975 were more than twenty times the normal intake of the LLB courses since their inception in the academic year 1963-64. Indeed one could say that the total number of students admitted into the first year law program by correspondence in the academic year 1975-76 alone probably exceeded the number of *all* the first year 'day' (on campus) LLB students that were admitted in the academic years 1963-64, 1964-65, 1965-66, 1966-67, 1967-68, 1968-69, 1969-70, 1970-71, 1971-72, 1972-73, 1973-74 and 1974-75 as first year 'on-campus' BA, LLB intakes.

³⁵ See generally Andrew Selth, *Death of a Hero: The 1974 U Thant Disturbances in Burma* (School of Pacific and Asian Studies, Australian National University, 1991)

³⁶ In the 1970s and 1980s those who passed the Matriculation Examination from the A list can apply for any University courses but those who passed the Examination from the 'B' List cannot apply for admission to Universities but can apply to 'technical schools' dealing with such technical subjects as 'pottery-making' and mechanical repairs.

Those law graduates who graduated in the year 1980 and all subsequent years whether they be ‘day’ or full-time law students or from those of correspondence courses were no longer awarded the double degree of BA (Law), LLB but only the degree of LLB.³⁷ There were some differences in terms of contents, requirements of the correspondence course from that of the ‘day’ LLB which is briefly discussed in the next sub-section.

A The Admission Requirements, Delivery and Teaching Methods, Curriculum and the Medium of Teaching in the LLB Correspondence courses from 1975-76 to the Present (Academic Year 2005)

Admission Requirements

The author is aware that in the early years of the correspondence courses up to the academic year 1987-88, matriculates from both the science stream and arts stream were admitted into the first year law program. But when there was a diversification of arts and science matriculates starting from the academic year 1987 (which lasted till 1994) it was not sure whether the admission to the University correspondence courses in law were restricted only to arts streams matriculates. I was unable to obtain an unequivocal answer from the current administrators of the distance education in law as regards this query. However according to the then Head of the Department of Law of Distance Education University (DEU) distance education students are mostly full-time workers and it would be unfair to limit the intake of correspondence students in law only to arts streams matriculates. Therefore the Head of the Department expressed her view that even when ‘on-campus’ LLB courses were available only to arts students, the correspondence courses would have been open to all matriculates be they from the arts or science streams.³⁸ The sheer number of students that are currently enrolled in the Distance Education program in law –to be discussed in the next sub-section- would probably attest

³⁷ The foregoing – and following- ‘un-attributed’ facts and statements are taken from personal experience, conversations and interviews with staff members and students as well as observations by the author and though (as stated earlier) they cannot be supported by published references the author can vouch for the essential correctness of them.

³⁸ The author interviewed on 2 June 2005 an Advocate and who is attached to a law firm (‘Pole Star Law Chamber’ in Rangoon) and who matriculated from the arts stream in 1988. However the said Advocate who attend University of Rangoon/Yangon as an on-campus student graduated with an LLB only in 1998, (due to the fact that the Universities were closed for three years from June 1988 to 1991 and also due to the fact that he had failed and had to repeat the second and third year law courses) was quite categorical in his assertion that during the academic years 1987-88 to 1993-94 there *was* ‘diversification’ in admission to the University correspondence courses in law in that only arts stream matriculates could enroll in the correspondence courses.

The Advocate who in June 2005 was freshly admitted told me that his serial (Advocate’s enrolled) number is just over 7000 – though he could not remember the exact number. Hence as of June 2005 there are approximately just over 7000 Advocates (legal practitioners who can practice in all Burmese courts including the current Burmese Supreme Court) in the country and roughly about 30,000 Higher Grade Pleaders. (Information about the number of Higher Grade Pleaders -legal practitioners who can practice in all Burmese courts except the current Burmese Supreme Court- was obtained through a colleague of the author who, at the author’s request, made enquiries from the Registry of the current Burmese Supreme Court. The clerk from the Registry from whom the author’s colleague made inquiries declined to tell him the exact number of Higher Grade Pleaders.

to the fact that since 2001-2002 when there is yet again being diversification, the correspondence/distance education courses in law were open to both arts and science streams matriculates.

Delivery, Teaching Methods, Curriculum and Medium of Teaching in the LLB Correspondence Courses

For obvious reasons the ‘delivery’ and teaching methods of the correspondence or distance education courses in law would have to be different. The distance education students meet their ‘teachers’ only once or twice per academic year for ‘crash courses’ before the exams which lasts for a few days. The distance education students converge at a teaching centre in Rangoon, Mandalay or other cities where teachers based in Rangoon at Burma’s then only law school³⁹ travelled to the teaching centers to give crash courses in the respective subjects. From the author’s conversation with both students who were taught and teachers who had taught law through distance education and the author’s observations of the nature and delivery of the correspondence courses throughout the years the following generalizations can be made about the ‘crash courses’ given from a few weeks to a few days prior to the exam.

In the early years of the ‘correspondence courses’ the teaching was done predominantly if not exclusively in Burmese. From the academic year 1975 – when correspondence courses in law was introduced- to the late 1980s/early 1990s all the course materials were written in Burmese. The exam questions were also set in Burmese and students need answer their exams only in Burmese. Since the early 1990s though for virtually all subjects taught in Burma’s Universities ‘English’ was stipulated to be the medium of teaching. Most (though not all) of the course books delivered to the distance education students in law have been –and still are- written in English. Moreover, since the exam questions of both distance education courses and on-campus LLB students are set in English, the students are required to answer the exams question (for most subjects in law)

The Advocates, Higher Grade Pleaders and ‘chamber students’ in the ‘Pole Star Law Chamber’ (see also note 68 below) where the said Advocate is attached to come from various ‘Matriculation’ backgrounds as far as ‘arts/science’ dichotomy discussed above is concerned. One of them is , an Advocate and the chief lawyer of the firm matriculated from the arts stream in 1973 (he is a 1978 BA, LLB graduate) when there was an arts/science branching in the Matriculation Exams and when the first-year LLB entrants were (for the first time) divided into two groups: half from the science and half from the arts streams at the Department of Law of then Rangoon Arts and Science University. Another lawyer and Advocate from the same law firm is a 1984 matriculate (1989 LLB Graduate). He passed his Matriculation Exams when there was a ‘fusion’ of arts and science subjects in the High School teaching and the Matriculation Examinations. Yet another lawyer (and Advocate) as stated above matriculated in 1987 when there was –again- ‘diversification’ of arts and science subjects in the Matriculation Exams and where during that period at least the ‘on-campus’ LLB candidates are concerned only those who matriculated from the arts stream are allowed to take Law at the University. Some of the chamber-students in the Pole Star Law chamber matriculated around 1999 (graduated with LLB 2004/2005) when there is –again- a fusion of arts and science subjects in the Matriculation Exams.

³⁹

Till the academic year 1995-96 there was only one Law Department in the whole country which was at Rangoon Arts and Science University or University of Rangoon (official nomenclatures of the University till mid-1989) and Yangon University (official nomenclature of the University from mid-1989)

in English only. Notwithstanding these facts and requirements the teaching ‘medium’ for want of a better word can only be described as being a mixture of Burmese and English with perhaps Burmese ‘pre-dominating’.

This can be illustrated by two examples which the author was able to observe: one a video-lecture broadcast live to fourth year law distance education students on the subject of Conflict of Laws and dealing with the topic of ‘Recognition of Foreign Judgments’⁴⁰ and another an LLM (Master of Laws) class which were taught face to face on the subject of the use of force in international law.⁴¹

The Conflict of Laws Lecture for fourth and final year law students by distance education was given by Professor Dr Marlar Aung, Head of the Department of Law of University of Distance Education. The Lecture given by live video-conference some time in March 2005 lasted about 30 minutes. It was broadcast live to students at more than a dozen Distance Education Centers throughout the country. Professor Marlar Aung used power-point presentations which were written in English. She read the power point presentations and then explained the meaning of those statements and summary points to them in Burmese. Professor Marlar Aung’s explanations were succinct and to the point and was clear. There is an unofficial policy that though virtually all the teaching materials have to be written in English, and the students have to answer their exam papers also in English, in the explanation of the phrases and the contents of the courses are to be done in Burmese.

The second Lecture that I attended was the LLM class in the stream of international law taught of a senior academic at Yangon University. Photocopied notes in English pertaining to the United Nations Charter’s provisions and practice concerning use of force were distributed in advance to the class. The Lecturer read out some important sentences or paragraphs from the distributed notes to a class of eight persons and explained them in Burmese. Even though it was a small post-graduate class there were virtually no discussions or questions from the students. During the Lecture the Senior academic did ask my views and opinions on the topic of the NATO intervention in Kosovo of March 1999 in which I explained (in Burmese to the class) my views on the topic as well as others related to the use of force.⁴²

In my interviews with four persons who have studied –and are still studying- for the LLB by distance education (three of whom have graduated in 2004 and 2005 respectively) all

⁴⁰ The author would like to thank the senior academic of Distance Education University for inviting me to the live video Lecture broadcast to all Distance Education Centers throughout Burma on the topic of ‘Recognition of Foreign Judgments’ from the studios of DEU in March 2005.

⁴¹ The author would like to thank the senior academic from the Department of Law, Yangon University for the chance to attend the LLM class in the ‘stream’ of international law in February 2005.

⁴² It should be noted that this was a class for the first-semester of the first year of the two-year LLM course for face-to-face on campus teaching and the other was the ‘proper’ distance education course for LLB students. However the medium of teaching using a mixture of Burmese and English languages is common to both the undergraduate LLB class and postgraduate LLM class. The Lecturer concerned used power-points for the undergraduate live video lecture and there was no use of teaching aids for the face-to-face postgraduate LLM Lecture.

of them did state that the method of teaching in terms of the language used was essentially as described above.

As for assessment methods it is learnt that in the academic year 2004-05, 30% is on two compulsory assignments which the Distance Education students have to submit and 70% is assigned for the year end 'closed-book' examinations.

The author has had the chance to peruse the assignment questions (which is usually included in the teaching materials sent to the Distance Education students): they are simple 'question and answer type questions' which can be answered by referring to or just copying from the materials stated in the 'Study Guides' that are sent to the students. For example one of the questions in a recent assignment for the course *Constitutional and Administrative Law* was 'What is Administrative Law?' The answer could be given by copying what is written in the teaching materials which is what most if not all students did in answering. In fact the author saw an assignment which answered the question which started with this sentence: 'As a consequence...' .'. The candidate 'cut' and 'pasted' the exam questions from the teaching materials without realizing at all that an answer to the question should not start with 'As a consequence...'.⁴³ Equally discouraging, the author observed that the marker spent roughly two minutes –or less- on each assignment sent by the distance education law students and most students obtained upwards of 16 marks out of 20 with a significant percentage of the students achieving twenty marks out of twenty! Since there are approximately 25,000 students in lower Burma alone who are doing the first, second, third and fourth year law subjects through distance education⁴⁴ one can imagine the number of assignments that have to be 'marked' by the staff of Distance Education Centers spread across the country. On the basis of approximately 25,000 students per academic year studying for or towards the LLB degree by distance education and based on the fact that each student has to submit two assignments per academic year, there would be about 50,000 assignments to mark for the staff from the Centers of the Distance Education University for the Lower Burma area. It is estimated that at most there would be a few dozen teaching staff to 'mark' these assignments and one could understand why markers of these assignments –and also those of exam papers- could spend, at most, only a few perfunctory minutes on each assignment or exam answer papers.⁴⁵

I have also reviewed the exam papers for the Distance Education students doing the LLB course. They normally would consist of four or five questions each in two parts. Students

⁴³ Ordinarily such a 'cut and paste' of assignment answers as described above could amount to plagiarism and the candidates could be subject to severe penalties at least in terms of marks given to the assignment. Indeed when the author was teaching law and non-law students at University of the South Pacific both on campus and off-campus ('distance education') (like the Burmese students they are from developing countries) I would repeatedly remind the students not to 'cut and paste'.

⁴⁴ The breakdown of law students doing the LLB degree by Distance Education in Lower Burma will be given in a subsequent sub-section.

⁴⁵ The maximum number of students this author have to coordinate and to mark is about 180 papers and if the candidates are over 100 he would usually get marking assistance whereby detailed marking guidelines are given to markers and the author would go through their markings before finalizing them. For the academic staff of Distance Education University for Lower Burma when they have to mark around 50,000 assignments per year it is realized that it is not possible to indulge in such 'fastidious' thoroughness.

have to answer two questions from each part in a three-hour exam: The questions are straight-forward ‘essay’ questions like Define the term Advocate⁴⁶, ‘What are the differences between “Substantive Law and “Procedure Law”?’ Answer’⁴⁷, ‘How many Judicial Principles are laid down in the 1974 Constitution? Mention detail of them [sic]’⁴⁸, ‘Give comment on [sic] Civil Justice under the Machinery of Justice in the period of Myanmar kings’.⁴⁹

Three students who have graduated with an LLB by Distance Education told me that their teachers indicated to them during the ten day crash-course that twelve issues or questions such as those questions reproduced above would be in the exams. Out of twelve questions and answers which were rehearsed they could expect six of them to be in the exam paper.

I have also conducted informal interviews regarding the basic legal knowledge of the students and graduates of the LLB by distance education. Only a few months prior to my interview with him in April 2005 a third year had sat for and passed the ‘Contract and Torts’ subject in his second year law final exams by distance education. I asked him (in Burmese) how many elements are there to constitute a valid contract and to briefly state what they are. He was unable to answer that question or state any (i.e. not even one) of the essential elements of a valid contract (in the Burmese)

I also asked a graduate of the LLB by distance education who graduated in 2004 and who in June 2005 became a Higher Grade Pleader. I posed the question to her, first in English and then in Burmese ‘What is Administrative Law?’ which was one of the assignment questions in the 2005 University by Distance Education in the subject. Apart from stating the name of the course in Burmese she was unable to answer the question. The subject of ‘*Constitutional and Administrative Law*’ is taught in the final year of the four-year LLB by distance education course. At the time of the interview, the interviewee has freshly graduated with an LLB degree only a few months earlier. Therefore one feels that the interviewee should be able to tell at least in Burmese and at least a rough definition of ‘Administrative Law’.

Curriculum of the LLB by Distance Education Course

The Distance Education courses in law (previously called ‘correspondence courses’) have been operating since 1975. There would have been a few changes in curriculum since then. The following curriculum is from the academic year 2004 and 2005. The author obtained this information from the Distance Education University in Yangon. The curriculum of the four-year law (LLB) course as well as the number of students enrolled

⁴⁶ Question Number 1 in Section A of the first year LLB Exam Paper for the subject, ‘Introduction to the Study of Law (Course No L-1101), and Myanmar Legal History’ (L 1103) in the University of Education, Yangon, Final Examination, October 2004.

⁴⁷ Question Number 3 in Section A of the same Exam. The questions are reproduced exactly as written in the Exam.

⁴⁸ Question Number 2 in Section B of the same Exam.

⁴⁹ Question Number 3 in Section B of the same Exam.

in that course is posted on the board of the Department of Law and I have reproduced it here.

The subjects the LLB by distance education students have to take in the first year (in the academic years 2004 and 2005) are:

First Year	Second Year	Third Year	Fourth Year
Introduction to the Study of Law and Myanmar Legal History	(Course Code) <i>Myan 211</i> Myanmar	<i>Eng 311</i> English	<i>Law 411</i> Civil Law and Procedure
English	<i>Eng 211</i> English	<i>Law 310</i> Criminal Law	<i>Law 413</i> Constitutional Law and Administrative Law
History of State and Law and Jurisprudence	<i>Law 211</i> Jurisprudence	<i>Law 311</i> Revenue Law	<i>Law 414</i> Military Law
Logic in Practice	<i>Law 212</i> Myanmar Customary Law	<i>Law 312</i> Land Law	<i>Law 415</i> Conflict of Laws
Aspects of Myanmar (Culture)	<i>Law 213</i> Law of Contract and Tort	<i>Law 313</i> International Law	<i>Law 416</i> Shipping Law
	<i>Law 214</i> Labor Law	<i>Law 314</i> Commercial Law	

Table 2: Subjects Offered to Distance Education Students in Academic Year 2005

It could be commented here that in the curriculum in the BA (Law), LLB curriculum in the 1960s and 1970s ‘History of State and Law’ and ‘Jurisprudence’ were two separate subjects that were taught in the second and third years respectively.

As far as the first and second year curriculum is concerned the subject of Economics which were taught in the first and second years in the BA (Law), LLB course is absent in the current (2005) LLB by distance education course. Aspects of Myanmar (Studies/Culture) (which is apparently taught ‘in English’)⁵⁰ was not required for the BA (Law), LLB students in the 1960s and 1970s.

In the 1960s and 1970s Constitutional Law and Administrative Law were taught as separate subjects in the fourth and fifth year respectively of the BA (Law), LLB programs. In the 2005 LLB by distance education they are taught as one subject. In the 1970s and 1980s as was previously mentioned the exclusive focus in the Constitutional Law course was on the 1974 one-Party Constitution. This effectively came to an end when the State Law and Order Restoration Council (SLORC) came into power and

⁵⁰ From a comparative teaching perspective, the author is aware from my stint of teaching at the University of the South Pacific School of Law that ‘Pacific Society’ (or a subject to that effect) would be a required subject for first year law students in that institution starting from the academic year 2005.

abolished all ‘organs of State power’ that were formed under the 1974 Constitution. Conversations with a Lecturer who currently teaches ‘Constitutional and Administrative Law’ and a perusal of the course materials indicate that selected provisions of both the 1947 and 1974 Constitutions are mentioned and discussed briefly in the Constitutional Law segment of this particular course.

Two general points could be made regarding the design of the curriculum both in the current LLB by distance education course and the BA,LLB/LLB courses for on campus students. First, courses in the curriculum are compulsory and no optional subjects are available. In contrast, in the Law Schools and Law Faculties in Malaysia⁵¹, Australia⁵² and the South Pacific⁵³ where the author had previously taught, quite a few optional or elective courses are available for law students beyond the compulsory courses.⁵⁴

The second notable point of the LLB by distance education is that there is no compulsory requirement to write a thesis for all the past thirty years since its inception. In contrast, the ‘day’ or ‘on campus’ BA, LLB/LLB students from the first graduates in 1968 to the early 1990s are compulsorily required to submit and pass the thesis before they graduate.

Requiring the LLB by correspondence/distance education students to submit a thesis would have been a factual impossibility which no one could even dream of implementing. Even in the ‘inaugural year’ of 1975-76 when correspondence courses in law were first introduced there were about 6500 students. Supposing only half of those enrolled in the course graduated five years later in 1980⁵⁵- in fact about 2/3 if not more of them graduated- there would be around 3000 thesis to supervise by the academic staff of the then only Law Department at Rangoon University. As there are currently (in 2005) around 50,000 students enrolled in distance education course in law throughout the country the sheer impossibility, indeed inanity, of requiring them to write a thesis in the final year of the course becomes even more evident.

Since on-campus LLB students had to write and submit theses (from about the mid-1960s to about the mid-1990s) and none of the correspondence LLB students, the first batch of which graduated in 1980, are required to do so amount to different standards being

⁵¹ University of Malaya’s Faculty of Law, Univerisiti Kebangsaan Malaysia’s (National University of Malaysia) Faculty of Law.

⁵² University of New England School of Law, Armidale, New South Wales. Deakin University School of Law, Victoria.

⁵³ University of the South Pacific School of Law, Port Vila, Vanuatu.

⁵⁴ For example in the University of Malaya Law Faculty in the early 1990s second year law students have to compulsorily take either International Law or (Basic Principles of) Islamic Law as an ‘optional’ subject. From the author’s experience a majority of students (a significant portion of them non-Muslims Chinese and Indian Malaysian students) opted to take the subject Islamic Law rather than International Law. Those students who did not take International Law as an optional subject in the second year have had the chance to take it in the third or fourth year of the four-year LLB degree from the University of Malaya. Since about the academic year 2000 both Islamic law and Public International Law are compulsory subjects at the University of Malaya.

⁵⁵ In the 1970s and at least part of the 1980s the LLB by correspondence/distance education course was (like those of on-campus LLB students) a five-year course.

applied for the same degree.⁵⁶ The author has learnt of two measures that were taken apparently to partially ‘ameliorate’ this unfairness, anomaly or at least divergent requirements for the same degree. One is that starting from the 1980s ‘correspondence’ LLB students have to take one more law subject than their on-campus counterparts. The second measure is that in terms of qualification to the LLM (Master of Laws) program offered at Yangon University it is relatively very rare for the LLB by distance education students to ‘qualify’ to attend for the LLM course.⁵⁷

Furthermore, LLB graduates (distance education) have to do an extra year in their LLM studies than their on-campus counterparts. The distance education LLB candidates who ‘qualified’ for the LLM course have to enroll as on-campus students and have to re-take the fourth year (final year) LLB subjects for a year and must perform well in that ‘preliminary year’ before they are allowed to proceed to the LLM by course work. The on-campus LLB graduates who are qualified to do the LLM course are not required to do the ‘preliminary’ (LLM) course.⁵⁸

Before concluding this sub-section the ‘break down’ of students who are studying law by distance education in Lower Burma (only) in the academic year 2005 will be given. As stated previously, these numbers do not include the students who are studying for or enrolled in the Distance Education University in Mandalay, Upper Burma and other Distance Education Centers in Upper Burma. The list is also not inclusive of the ‘day’ on campus students studying for the LLB degrees in some of the Law Departments throughout the country.⁵⁹

⁵⁶ In contrast at the end of the three-year Economics course by distance education, students who graduated are (currently, 2005) awarded the BA (Economics) degrees. Those on-campus students who graduated are awarded B.Eco. (Bachelor of Economics) degrees. Interview with senior academic, Yangon University of Distance Education, 16 May 2005.

⁵⁷ Interview with senior academic, Yangon University of Distant Education. Senior academics from both University of Yangon and Yangon University of Distance Education informed the author that up until recently only a couple of dozen or so among the few thousand LLB graduates by distance education each year are qualified to attend the LLM course.

⁵⁸ Interview with senior academic, 16 May 2005. Also, on 18 May 2005 the author interviewed a LLB graduate (by Distance Education) who graduated in early 2005 (after passing the Exams held by the Distance Education University in October 2004). The graduate informed me that she was ‘qualified’ to attend the LLM course contingent on the fact that she would have to re-do the final year LLB course as an ‘on-campus student’. She told me that on the advice of her father, a lawyer – and a former class mate of the author – she decided not to attend the three-year LLM course even though she was informed that she could do so if she wanted to.

⁵⁹ Dr Maung Maung writing in 1962 about legal education in Burma stated that (*Law and Custom* above note 2 at 139) ‘[t]he University of Mandalay at the insistence request of the Bar, which points out that the High Court sits in the city though legal education is available only in Rangoon, plans to organize its law faculty in the near future’. More than thirty years after Dr Maung Maung wrote about a Law School being opened in Mandalay a Law Department was finally established at University of Mandalay around 1996. The main upper Burma Distance Education University was also established around the same time. Since the mid-1990s though, the Law Departments in various Universities throughout Burma has mushroomed. As of February 2005 there are sixteen Law Departments attached to various Universities throughout the country. Among them six Law Departments teaches law ‘face to face’. They are (1) University of Yangon (no teaching of undergraduates, only post-graduate courses) (2) University of Mandalay (no teaching of undergraduates only post-graduate courses) (3) East Yangon University (located within the metropolitan area of the capital Rangoon/Yangon) (4) Dagon University (located within metropolitan Rangoon) (5) West Yangon University (no separate Law Department; law is taught only for the BA (Business Law) degree) (6)

As of May 2005 (in the academic year 2005) 9476 students are enrolled in the first year law course offered by distance education in Lower Burma (alone), 8545 students in the second year, 6201 students in the third year and 1385 students in the fourth and final year of the LLB.⁶⁰

First Year	Second Year	Third Year	Fourth Year	Total
9476	8545	6201	1385	25607

Table 3; Enrollment of Law Students in the Yangon University of Distance Education, Academic Year 2005

A total of 25, 607 students are enrolled through 13 Distance Education Centers in Lower Burma alone. Though the exact figures enrolled in the Upper Burma Distance Education Centers are not known it is conservatively estimated that it would be no less than 21,000. Based on Lower Burma figures and estimates of Upper Burma figures, by 2005 at least 45,000 and as much as 50,000 students are enrolled throughout the whole country for the LLB by distance education. To these one may add on-campus law students who could be no less than 3000. Hence about 54,000 students are enrolled in the LLB on campus and distance education modes in the academic year 2005. Writing in the year 1962 Dr Maung Maung stated that ‘about 800 students offered themselves for the BL (Part A) Exams and about 200 for the BL (Part B) Exams in March 1962.’⁶¹ Hence in March 1962 a total of about 1000 students were enrolled in law courses potentially leading towards an academic and professional law degree. Just over forty-three years later in early 2005 a possible total of (at the very least) 52,000 students – more than fifty times the number in 1962- are enrolled in various law courses throughout the country.⁶²

The Teaching of Law in ‘English’: A ‘Revisit’ and a Commentary

The teaching of law in ‘English’ has been mentioned and to a certain extent commented on in previous sections. It is hoped that by now the reasons for the use of ‘inverted

Yadanabon University (located in Mandalay). (Interview with senior academic, Law Department of University of Yangon, February 2005).

⁶⁰ As stated earlier these figures are copied from the board which is displayed in the Law Department of Distance Education University, Yangon. For comparison, the number of students enrolled in the three-year ‘English major’ course is 2167 in the first year, 1782 in the second year and 1420 in the third and final year with a total of 5309 English majors enrolled by distance education course throughout Lower Burma. The relative paucity of those students doing English major by distance education is that for matriculates to be enrolled in an English major course by distance education or on campus modes they need a minimum marks (at least in the low to mid-50s out of 100 in English in the Matriculation Examinations) whereas matriculates with marks as low as 40 (or a little more than that) in English or other subjects can enroll in law courses through distance education.

⁶¹ Law and Custom, above note 2, 139 at foot note 1.

⁶² The population of Burma around 1962 would be about 18 to 21 million. The population of Burma in 2005 would be around 50 to 54 million. In about four decades the population of the country has increased (at most) three times but the number of candidates enrolled in law courses have increased ‘exponentially’ (at the very least) 50 times. One trusts that the question posed as a sub-heading for this section as to whether the Correspondence courses/Distance Education courses are intended to genuinely popularize the law or are intended to ‘mass-produce’ law graduates has been answered.

commas' of the phrase 'in English' is clear. Here, a few more 'live' examples will be given regarding this medium of teaching law especially in relation with distance education courses.

The reason(s) for the switch from the teaching of law mainly (if not almost exclusively) in Burmese from the start of the BA, LLB course in the early 1960s to at least about mid-1980s to teaching 'in English' may be due to the government's wish to claim that tertiary education is on par with other countries and to 'upgrade' the education system to 'world-level'. It needs to be stated here that the switch from using Burmese as a medium of instruction to 'English' in Universities covers all the other arts and science subjects too. Still, in the field of legal education certain course materials such as Myanmar (Burmese) Customary Law for the Labor Law (both for the second year) are in Burmese. Also, land law for the third year law students (by distance education) the first part of the course on (Module No. Law 313 A Part I) is in English⁶³ and the second part of the course (Module No. Law 313 B Part II) is in Burmese.⁶⁴

The shift in teaching law –and other tertiary subjects- from Burmese to English has not been smooth, easy or straight-forward for both teachers and students. Stylistic and grammatical errors – a few of them very 'glaring'- can be found in almost all of the teaching materials prepared for distance education students in law. Many if not most of the teaching staff who have had to prepare and write the course materials themselves grew up, learned the law and obtained their law degrees during the era when Burmese was the medium of teaching. It can be stated here that grammatical errors can be found in most of the teaching materials prepared for distance education students and they are not typographical errors.⁶⁵ For instance the following paragraph appears in the course material concerning the subject of 'Public International Law' which is reproduced exactly as it is written:

It is therefore clear that the Supreme Court considerably modified the 'doctrine of incorporation adopted by the British Courts and followed by the Myanmar High Court in the King V Maung Hmin'⁶⁶ and in subsequent cases. But it is quite incomprehensible why the Supreme

⁶³ The first part of the course deals generally with Transfer of Property (Chapter II), Sales of Immovable Property (Chapter III), Mortgages (Chapter IV), Leases (Chapter V), Exchange[s] (Chapter VI) and Gifts (Chapter VII). Cited from Land Law (Third Year Text Book), Code No. 81, Yangon University of Education, Contents Page.

⁶⁴ The second part of the course deals mainly with Burmese legislation such as the 1960 *Urban Rent Control Act*, and the 1963 and 1965 laws (decrees) issued by the Revolutionary Council regarding Agricultural Rents. All of these legislation are also in Burmese. Nevertheless the author was informed by a senior academic of Distance Education University, (interview 15 May 2005) that the exam questions in the subjects of Myanmar Customary Law, Labor Law and Land Law were for some years in English. This was so because the then , Head of the Department of Law insisted on examining all subjects in English.

⁶⁵ There are also fair amounts – oft-times a substantially fair amount- of typographical errors in most of the Distance Education course materials that I have perused.

⁶⁶ The citation of this case which was decided by the High Court of Judicature in Rangoon was nowhere given in the course materials.

Court did not have considered [sic] or even mentioned in their [sic] judgment the important ruling by a Full Bench of the High Court.⁶⁷.

What then is the impact of these on-campus and distance education students doing their legal studies ‘in English’? The author interviewed a recent LLB graduate by distance education. Due to the good marks she obtained in the courses she was qualified to attend the three-year LLM course. The interviewee stated that unlike her father’s generation of graduates⁶⁸ she felt that her generation perhaps learnt less. She attributed this to the fact that the teaching in her father’s generation was done in Burmese. She stated that virtually all the LLB by distance education students learnt the ‘tipped’ topics ‘by heart’. She is of the opinion that as all the Burmese courts’ works including the submission of briefs, arguments and other documents are in Burmese she did not see much point of teaching ‘in English’ in this particular mode.

It could be stated here that since the year 1970 all judgments of the highest Burmese courts have been written in Burmese. In the 1948 *Burma Law Reports* – a compilation of decisions given by the then High Court and Supreme Court of Burma- out of 117 decisions that were reported only three were written in Burmese and the rest were written in English. (Nineteen Forty-eight was the first year of Burmese Independence.) The year 1968 was the second- last year in which judgments (15 out of 54 reported) in the 1968 *Burma Law Reports* were written in English. Nineteen-sixty nine was the last year where any judgment written in English appeared in the *Burma Law Reports*. In the 1969 *Burma Law Reports* three reported judgments of the Chief Court of Burma out of total of 47, were in English.

In May 2005 the author visited a ‘Pole Star Law Chamber (firm)’ in Rangoon in order to research how many rulings of the apex courts were written in English and how many were written in Burmese from 1948 (in the first year of Burmese independence) to 1969 (the last year in which any judgment written in English appeared). With the help of a lawyer with the Law firm, I manually counted the reported judgments in the various Burma Law Reports in the library of the Pole Star Law Chamber. The reported rulings consist of the reported judgments of apex courts (Supreme Courts and High Courts, from 1948 to March 1962; Chief Court, Court Martial Appeals Court and Special Criminal Court Appeals Court from March 1962 to December 1969) that were in the Burma Law Reports from 1948 to 1969. The breakdown of the rulings reported in various Law Reports from the year 1948 to 1969 with the types of Courts and the percentages of the reported rulings either in the English or in the Burmese language is provided in the table below.

Table 4: The Name of Burmese Apex Courts, and the numbers and percentages of Rulings that were written in English and Burmese languages as reported in the annual Burma Law Reports from 1947/1948 to December 1969.

Name of	Period	Rulings	Rulings	Total number	Percentage
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⁶⁷ Yangon University of Distance Education, Text Book, *Public International Law*, Module No. Law 314 A, Law 314 B, (For Law Students) Code No. 82, 20.

⁶⁸ Her father graduated with a BA (Law), LLB in 1976. She graduated with an LLB by distance education in 2005.

Court (s)		Written in English	Written in Burmese	of Rulings Written in both languages	of Rulings Written in English
Supreme Court	1948- March to 1962	320	121	441	72.5%
High Court	1947/1948 to March 1962	954	154	1108	86.1%
Chief Court	post-April 1962 to December 1969	409	840	1249	32.7%
Court Martial Appeals Court	post-April 1962 to December 1969	14	7	21	66.6%
Special Criminal Courts Appeal Court	post-April 1962 to December 1969	0	69	69	0%
All apex Burmese Courts	1947/1948 to December 1969	1697	1197	2888	58.7%

Table 5: The Minimum and Maximum Number of Rulings that were written in Burmese as reported in the annual *Burma Law Reports* by the top apex Burmese Courts from the period of 1947/1948 to December 1969

Name of Court	Year(s) in Which There Were None or Minimal Rulings Written in Burmese	Number of Rulings Written in Burmese
Supreme Court/High Court	1949	0
Supreme Court/High Court	1950	0
Supreme Court/High Court	1951	0
Supreme Court/High Court	1959	2
Chief Court	1966	263

Table 6: Breakdown of Rulings Written in English and Burmese languages by the apex Burmese courts before and up to three weeks after the 2 March 1962 military takeover *

Name of Court (s)	Period	Rulings Written in English	Rulings Written in Burmese	Total number of Rulings Written in both languages	Percentage of Rulings Written in English
Supreme Court	1948- to 30 March 1962	320	121	441	72.5%
High Court	1947/** 1948 to 30 March 1962	954	154	1108	86.1%
Supreme and High Courts Combined	1947/1948 to 30 March 1962	1274	375	1549	82.2%

* The Supreme Court and High Court of Burma continued to exist and delivered a few rulings after the 2 March 1962 military takeover until it was abolished by a decree of the Revolutionary Council on 30 March 1962 .Hence the cut-off date of end of March 1962 for the rulings delivered by the now long-defunct Supreme and High Courts of Burma.

** The *1948 Burma Law Reports* contained a few rulings delivered after the High Court of Judicature in Rangoon during the year 1947.The major bulk of the rulings that were reported in the ‘High Court’ section of the *1948 Burma Law Reports* were from the High Court that was established under the 1947 Constitution after independence in January 1948.

Table 7: Breakdown of rulings written in Burmese and English languages in post-April 1962 to December 1969 period (after the 1962 military takeover)

Name of Court (s)	Period	Rulings Written in English	Rulings Written in Burmese	Total number of Rulings Written in both languages	Percentage of Rulings Written in English
Chief Court	post-April 1962 to December 1969	409	840	1249	32.7%
Court	post-April	14	7	21	66.6%

Martial Appeals Court	1962 to December 1969				
Special Criminal Courts Appeal Court	post-April 1962 to December 1969	0	69	69	0%
All apex Burmese Courts	post-April 1962- to December 1969	423	916	1339	31.5%

In an interview with an Advocate in Mandalay⁶⁹, the author asked whether the ‘chamber-students’ or recent batch of graduates who are lawyers now have more or less legal skills than those lawyers who have had their legal education in Burmese. The Advocate said they are less able since they studied ‘in English’ and are not familiar with some of the actual court work since they spent most of the time cramming for their exams ‘in English’.

It might be stated here that from the experience the author has had in other developing countries the dichotomy between the medium of teaching (be it in English or in the vernacular) and the language used in courts is not so marked, anomalous or ‘skewed’ as in Burma. For example, in the University of Malaya Law Faculty where the author had taught in the early 1990s the language requirements of answering exam questions (English or Malay) is, apparently, (but only apparently) not as strict as among those currently doing legal studies in Burma. In the University of Malaya, students can answer either in English or in Malay since the exam questions are set in both languages. In contrast, since the early 1990s, students who take law be it on-campus or by distance education in Burma have had no choice but to answer only in English since the exam questions are set only in English. In 2005, the University of Malaya Law Faculty’s policy is more relaxed since individual teachers- even local Malaysians- can teach entirely in English but the exam questions have to be set in both Malay and English and students can –as before- answer their exams in either language.⁷⁰

From the author’s experience in the University of Malaya Law Faculty in the early 1990s, in seminars and tutorials even local Malaysians teachers have to teach entirely in English. This is not the case in Burma even in the post-graduate LLB class and definitely and comprehensively in all the LLB classes where ‘explanations’ were given in Burmese from printed notes or course materials written in English. Hence the author’s impression

⁶⁹ The advocate has RL (Registered Lawyer) and HGP (Higher Grade Pleaders) The HGP (Higher Grade Pleader) and RL (Registered) Courses in law –which since the late 1980s- have ceased to operate will be discussed in the next section.

⁷⁰ Phone interview with senior academic of the University of Malaya Law Faculty, 21 May 2005. The senior academic informed the author that nowadays the teaching policy of the University of Malaya Law Faculty is more relaxed and though he did set the LLB exam papers both in English and in Malay all of his LLB teachings are conducted entirely in English.

is that even those Malaysian students who did answer the exam questions in Malay would do better in expressing and communicating their legal knowledge in English -or indeed any communication- than virtually all of the Burmese LLB by distance education students who were compulsorily required to answer most of their exams in English. Part of the reason for this discrepancy, is that when Malaysian students were (and are) taught in English, they are taught mainly in English. Another –equally significant- reason would be that due to the differences in education systems and indeed political and judicial systems, starting from the 1960s, both Malaysian law teachers and their students have had more exposure to and significantly better English language skills than their Burmese counterparts.

Moreover as far as the language(s) used by the Courts are concerned it is true that since the 1990s there has been a switch from English to the use of ‘Bahasa Malaysia’ or ‘Bahasa Melayu’ (Malay) in some Malaysian courts mainly in the lower courts. Nevertheless at least some if not almost all of the rulings and judgments of the higher courts of Malaysia such as that of the Supreme Court and Federal Court of Malaysia (the highest court in Malaysia) are still written in English.⁷¹ In the case of Burma since the year 1970 no judgments of any court, including the highest court, has ever been written in English. Notwithstanding the apparently fairly dramatic switch from teaching in Burmese into ‘English’ in the LLB courses starting from the early 1990s, a corresponding change has not taken place in Burmese courts. No court in Burma uses English or allows the use of English in the written memorials of counsel, oral arguments, or in writing judgments. This is so even in the highest courts.⁷² The use of English in the judgments of all Burmese courts is not at all an option. The closure of this ‘option’ is dictated by policy considerations and has practical dimensions as well.⁷³

⁷¹ Most of the judgments of the Federal Court (the highest court), Court of Appeal and the High Courts of Malaya and Borneo are still written in English and they are reported in various Malaysian law journals.

⁷² Unlike Burma, the highest or the higher courts of virtually all former British colonies in the developing countries of Asia, Africa, the Caribbean and the South Pacific still write at least some of their judgments in English. This is certainly so with the former British colonies in Asia such as that of Pakistan, India, Sri Lanka, Bangladesh, Singapore, Malaysia and the Hong Kong special administrative region.

In the 1940s and 1950s a significant majority of the judgments delivered by the now abolished Burmese Supreme Court and High Courts were in English (see above Table 4) and briefs of counsel, written and oral submissions were also in English. After the advent of the Revolutionary Council in March 1962, for a few more years, it was still the practice that written memorials and oral submission before the then highest court (Chief Court) could either be given in English or in Burmese of counsel’s choosing. (Interview with Senior Advocate, Mandalay, 30 May 2005.). Among a total of 47 reported judgments, three judgments were written in English by the Chief Court of Burma (then the highest court) in the 1969 *Burma Law Reports*. From 1970 onwards all the judgments of all courts including highest courts have been written in Burmese.

⁷³ In the conference commemorating the fiftieth anniversary of the founding of the Burma Historical Commission which was held in Rangoon from 12 to 14 January 2005 a paper on ‘Teaching of English in Myanmar: One-hundred and Fifty Years of Experience and Experimentation’ was presented by the pro-Rector of the University of Foreign Languages in Rangoon. During the discussion period (which was done entirely in English) I inquired as to whether there is a possibility of the current Myanmar (Burmese) Supreme Court writing at least a few of the judgments in English in the future. I asked this in the light of (a) the previous – if now ‘dead’- tradition of the highest courts in Burma writing most of the judgments in English during the first fifteen years of independence from 1948 (b) for at least ten years now the medium

When the author's experience of teaching law to South Pacific students is contrasted with those of the current generation of Burmese law students, the differences are even more notable. At the University of the South Pacific School of Law, the students 'hail' from (mainly) Anglo-phone (or former British colonies) of the South Pacific. Their native languages are numerous and they do not have a common 'South Pacific language'. Hence, students have no choice but to do their entire course- lectures, tutorials, seminars, the writing of examination papers, term papers and theses- only in English. One student from Fiji stated to the author that English is not the second language for most Fijian students -especially those from the rural areas- but their 'third' language since they have their native dialect and the national language which is Fijian which they have to learn at least contemporaneously if not prior to their learning English. Yet, the author's general though strong impression is that even the less-than-mediocre LLB students at the University of the South Pacific have equal if not significantly better language skills than some LLM (post-graduate) students studying at the University of Yangon which the author have had the chance to interview and interact with.⁷⁴ And as far as language used

of teaching law has switched into 'English' in that the course materials are written in English and the students have to answer their exams in English.. The pro-Rector replied to the effect that since Myanmar (Burmese) is the national or official language he did not think that my 'suggestion' (in fact it was not a suggestion it was a query if somewhat a 'mischievous' one) would be implemented. In response I could state here that under the *1947 Burmese Constitution* (which was in force in the first 14 years of Burmese independence) Burmese was the official language too (though the use of English is allowed even though the 1947 Constitution did not specifically state that the apex courts may write their judgments in English) they still did so. Also, the *1957 Federal Constitution of Malaysia* specifically states that Malay is the official language but that did not prevent the highest courts in Malaysia still writing some of their judgments in English more than 50 years after the Constitution came into force. A participant in the conference a former Lecturer in Burmese at the London School of Oriental and African Studies (SOAS) told me privately (after the paper-reading session) what she thought was one of the reasons for some of the Malaysian (higher) courts' judgments being written in English. Malaysia being a member of the (British) Commonwealth, it is perhaps incumbent that (some) decisions of its higher courts are written in English for the legal practitioners of other Commonwealth and common law jurisdictions to study. I might also add that the majority -if not all- of the current Myanmar Supreme Court judges -in contrast to their elder Burmese brethren who graced the apex Burmese courts in the 1940s, 1950s and the 1960s- and in comparison with judges of the apex courts in Malaysia and other Commonwealth countries and former British colonies- do not have the English language skills to competently write their judgments in English even if policy considerations prohibiting them from doing so are 'lifted'.

⁷⁴

Almost immediately after writing this sentence, I interviewed a third-year LLB by distance education student and asked him to read from the Preface of the course materials of the course 'The Law of Contract' Module Law No. 213 A, Distance Education University, Yangon). In fact he was unable to tell me in Burmese what the word 'Preface' meant. The author patiently waited over fifteen minutes for the student to translate (in a very rough manner) the last sentence in the Preface which reads: 'The student should digest the provisions under Section 10 [of the *Contracts Act* 1872] which covers all the essential ingredients to become a valid contract'. In reading the 'Preface' the third-year LLB student by distance education was unable to tell me what the words 'consent', 'previously', 'prepare', 'terms', 'valid', 'essentials', 'consequences', 'breach', 'specific' meant though he knew the term 'void' and correctly identified what the phrase 'void contract' means. Yet he did not know the meaning of the term 'valid contract'. The one-hour I spent with this third-year law student was an exercise in frustration, since it took me over an hour just to go through five sentences that are written in the Preface. Though the student knew the meaning of the words 'can' he was unable to tell me the meaning of the phrase 'I must go to school' or 'I should go to school'. Yet the student passed his Contract Examinations and all other examinations held in the second year LLB course by distance education. (Interview with students, 21 May 2005). From the author's

in the South Pacific Courts are concerned, from experience the author can state that English is used even in the proceedings of the lower courts in the South Pacific countries of Fiji and Vanuatu. As for the judgments of the highest courts of the countries of the South Pacific which are former British colonies or protectorates, all of them are written in English.⁷⁵

In the case of Burma even if LLB graduates have acquired some English language communication skills and English-language-based legal skills during the course of their legal education, they would not have the chance to advance them in a practical and meaningful way after graduation and indeed after they become lawyers or judges. This is so because all works concerning the Burmese courts have to be conducted in the Burmese language.

As the Burmese government is unlikely to change its 'dual' and rigid policy of requiring – if only perfunctorily- students to conduct their legal studies 'in English' and all court work to be done in Burmese only, this anomalous and unbeneficial situation would be perpetuated.

Method of Obtaining a Practicing License for the LLB Graduates by Distance Education

Once the LLB graduates obtained their degrees, after one year of chamber-reading they can apply for and obtain their Higher Grade Pledership License which would entitle them to practice law in all Burmese courts except the current Myanmar (Burmese) Supreme Court. Till about 1999, after continuous practice as a Higher Grade Pleader for a year, (and since about 1999 for three years) an application for the license to practice as an Advocate can be made on payment of prescribed fees and recommendations forms and testimonials as to character. The application for Advocateship –especially since the late 1990s (if not earlier)- must be made to the Office of the Attorney-General and must also include the documentation of cases that applicants have appeared as Higher Grade Pleaders during the relevant stipulated period and if the Attorney-General Office accepts the application Advocate licenses are issued.

experience even those students who failed the same law subject three times and were excluded from the LLB program at University of the South Pacific School of Law were much, (much) better than this student who was in 2005 in the third year LLB by distance education at Yangon Distance Education University and graduated from it in 2007. I related this interview or encounter with this student to a senior academic of Yangon University (Interview 25 May 2005). The senior academic told me that roughly 50% of Distance Education University students have the same caliber and competence as the student. A few weeks after my 'interview' with the student, I talked to another third year law student of the Distance Education University. A matriculate from the science stream, she matriculated in 2002 and because of her low marks in the Matriculation Exams was able to take only the Arts subjects (such as that of law) as a distance education student. As of May 2005 she works full-time as a sales person in a photographic store. I told her part of the title of my article 'Legal Education in Burma'. She knew what 'education' meant but did not know the meaning of the word 'legal'.

⁷⁵ The judgments of the Supreme Court and Court of Appeal (the highest court) of Vanuatu are also written in English and briefs and arguments of counsel in the Vanuatu Supreme Court are also made in English notwithstanding that roughly half of the educated persons in Vanuatu are Anglo-phone and the other half Franco-phone and also notwithstanding the fact that until independence in July 1980 Vanuatu was a joint British-French condominium.

V THE NOW-DISCONTINUED HIGHER GRADE PLEADERSHIP (HGP) EXAMINATIONS AND THE REGISTERED LAWYER (RL) COURSE AND EXAMINATIONS: YET ANOTHER METHOD OF OBTAINING A LICENCE TO PRACTICE LAW UNTIL THE RECENT PAST

A. The Higher Grade Pleadship (HGP) Examinations

Admission Requirements for the Exams

The Higher Grade Pleadship (HGP) Examinations which was in existence since the British colonial era were held semi-regularly in the 1960s, 1970s and 1980s. Since the 1960s any person who had passed the second year in any University in Burma can sit for the HGP Exams. There is no separate taught course like the LLB course. Nor was there any correspondence courses offered officially for the HGP Exams.⁷⁶ The law subjects that were examined in the HGP examinations consisted of six papers only. The subjects are stated in Part I and Part II of the exams. They are usually held annually and candidates can take either Part I and Part II of the exams in the same year or take the Part I exam one year and Part II exam to be held the next year. This is in contrast to the BL Examinations where candidates can proceed to the BL Part B only after passing all the subjects in the BL Part A Exam.

Table 8: Subjects Candidates Sitting for the Higher Grade Pleader (HGP) has to take in the 1980s

Course	Subjects
Higher Grade Pleader Exam Part I	Criminal Law, Criminal Procedure Law of Evidence (Paper I)
Higher Grade Pleader Exam Part I	Family Law (Paper II)
Higher Grade Pleader Exam Part I	Miscellaneous Law (Paper III)
Higher Grade Pleader Exam Part II	Civil Procedure Code, <i>Limitations Act</i> , <i>Succession Act</i> , <i>Small Causes Courts Acts</i> (Paper IV)

⁷⁶ Even though no official courses were conducted during the duration of the HGP courses, there were several private tuition courses which taught the candidates appearing for the HGP Exams. Also, in the current era there are a fair amount of private tuition courses that cater to and teach the LLB students especially those thousands taking the LLB by distance education.

Higher Grade Pleader Exam Part II	<i>Contract Act, Succession Act, Negotiable Instrument Act, and Torts</i> (Paper V)
Higher Grade Pleader Exam Part II	<i>Contract Act, Succession Act, Negotiable Instrument Act, and Torts</i> (Paper V)
Higher Grade Pleader Exam Part II	<i>Transfer of Property Act and Restitution Act.</i> (Paper VI)

At first glance, it would seem that a lot is covered in the course but only the very basic and perfunctory knowledge of these Acts or subjects is required for a candidate to pass the HGP Exams. Since the mid-1960s – if not earlier- all the examination questions were in Burmese and from the author’s perusal of some of them in the 1970s and 1980s they were pretty perfunctory, straight-forward and easy. Unlike the LLB and distance education courses the conduct and examination of the HGP examinations was coordinated not by the Universities or by the Law Departments but by the Government (General) Examination Board.

The eligibility requirements of scheduled HGP exams were changed by the authorities in May 1977 in that the next HGP exams, those who had passed the Matriculation Examinations from the ‘B List’ (i.e. those who passed the Matriculation Examinations but cannot join any tertiary courses in the Universities and the Institutes) could sit for the HGP exams. The author was informed that the first HGP examinations after the ‘admission requirements’ were changed were held only in May 1980.⁷⁷ From 1980 till about the late 1980s or early 1990s those who passed the Matriculation Examinations from the ‘B’ List could sit for the HGP Exams⁷⁸ which were held annually. The candidates who passed the Higher Grade Pleadership Exam would become Higher Grade

⁷⁷ Interview with Advocate, from Mandalay, 18 May 2005. The Advocate passed the HGP Exams that were held in 1980 after the admission criteria for the HGP Exams were lowered. The Advocate told me that not only those who passed the Matriculation Examinations from the B List were eligible to sit for the HGP Exams but any person who had served as a ‘people’s judge’ or magistrate in the Ward/Village courts for four years under the then People’s Judicial System in force could sit for the HGP exams even if the persons concerned do not pass the primary school not to say the Matriculation Exams from the ‘B’ List. (During the ‘People’s Judicial System’ in force at that time a majority, up to 90% of the ‘people’s judges’ did not have law degrees.) See for e.g. Myint Zan ‘Law and Legal Culture, Constitutions and Constitutionalism in Burma’ in Alice Tay (ed) *East Asia[.] Nation-Building, Human Rights, Trade* 180, 232-36.

⁷⁸ The author has a high school classmate who appeared for the Matriculation Examinations in 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977 and perhaps even in subsequent years. He either failed the successive Matriculation Examinations or passed them only from the ‘B’ List thus making him ineligible even for any correspondence courses (after 1975) including that of law. Yet apparently the author’s high school classmate appeared for – and passed perhaps in one sitting-the HGP exams in the 1980s and was apparently at least in nominal practice in Mandalay in the 1980s.

Pleaders (through this route) and after obtaining their licenses they could practice law in any Burmese court except the highest Burmese Court⁷⁹ of those times.

Application for Advocate for those who become Higher Grade Pleaders through HGP Exams: A Different Route from those of LLB Graduates

A Higher Grade Pleader had a different route to traverse from those of LLB graduates to become an Advocate. An LLB is an academic and professional degree whereas those who passed the HGP which could at best be vaguely called a ‘professional qualification’ and hence the HGP is not a degree. Those who have successfully become Higher Grade Pleaders have to practice for a minimum of seven years (as a Higher Grade Pleader) and then have to sit for the Advocateship Exams and only after they passed the Exam can they become Advocates. On passing the exam subject to payment of fees and acceptance of their application for Advocateship by the Bar Council and the registry of the Central Court of Justice (the highest court during that period), a Higher Grade Pleader could become an Advocate.

Ever since the HGP exams were discontinued in the early 1990s there has been no examination for Advocateship.

B. The Registered Lawyer (RL) Courses and Examinations

The Registered Lawyer course was introduced in the 1970s and the last RL Examination was held in May 1988. Since then it appears to have been discontinued even though there seems to be occasional rumors that they may be revived.⁸⁰

Admission Requirements and Contents of the Course

Like its predecessor BL course, which was discontinued in 1968 the RL was a part-time two-year, two-parts course, the classes were taught only in Rangoon.⁸¹, and ordinarily

⁷⁹ From March 1974 to September 1988 when most of the HGP Exams were held the English nomenclature of the highest court at that time was called the ‘Central Court of Justice’.

⁸⁰ Interview with U Advocate, Mandalay (18 May 2005). The Advocate had sat for and passed both the HGP Examinations (in 1980) and RL (Part II) Examinations in May 1988.

⁸¹ Even though the RL course was offered only in Rangoon those who were outside the Rangoon metropolitan area could still manage to enroll themselves in the RL course perhaps by what could be termed as ‘subterfuge’. The Advocate told me that even though during the time of the RL course in 1987 and 1988 he resided (and still currently resides) in Mandalay, a town approximately 400 miles north of Rangoon he arranged to put his name in the list of family members of a relative in Rangoon. Thus for the purpose of being able to enroll in the RL course he became a resident of Rangoon. U Than Htay told me that he attended only a few classes after registering himself in the Registered Lawyer course. He came back to Mandalay and studied for the RL course through notes. During the time of the Part A and Part B RL exams he went to Rangoon to sit the exams. He was lucky enough to have sat and passed the RL Part B exams that were held in May 1988 which happened to be (as of May 2005) the last batch of RL exams. Those who failed the RL (Part B) Exams that were held in May 1988, or those who passed the RL Part A exams did not get the professional qualifications in law and the only remedy for them to get a license to practice law would be to enroll in the distance education or on campus LLB courses with perhaps request

only those who have a degree from a Burmese University could enroll in the RL course. Unlike the BL though, the ‘RL’ qualification is administered not by the University authorities but by the Central Examination Board of Burma. Even though persons who obtained the RL qualification can become Higher Grade Pleaders and Advocates⁸², it is arguable that the RL is mainly a professional qualification - though a higher one than the HGP- and not an academic degree.

The medium of teaching in the RL courses, during the years of its existence starting probably from the mid-1970s until May 1988, was in Burmese. The exam questions were set in Burmese and students have to answer the exam papers only in Burmese.⁸³

Table 9: Subjects that candidates sitting for the Registered Lawyer Course Has to take in the 1980s

Name of Course	Subjects
Registered Lawyer Part I	<i>Introduction to Law</i>
Registered Lawyer Part I	<i>Criminal Law, Criminal Procedure and Defense Services Act</i>
Registered Lawyer Part I	<i>Contracts and Torts</i>
Registered Lawyer Part I	<i>Family Law</i>
Registered Lawyer Part I	<i>Labor Law</i>
Registered Lawyer Part I	<i>Constitutional Law (of the 1974 Constitution)</i>

for credit for the courses they have already completed.

⁸² The method of those who have successfully completed both Part A and Part B of the RL course to obtain the license to practice law is the same as that of the LLB graduates. They have (only after completion of Part B of the RL) to do their ‘chambers’ with an Advocate of five years standing and after one year internship or ‘chamber-reading’ can apply for a Higher Grade Pleaders license. After practicing for one year as a Higher Grade Pleader, an RL could apply for a license to practice as an Advocate.

⁸³ This is in contrast to the BL courses which perhaps until the mid-1960s, the teaching was done essentially in English, the students have to answer their exams only in English (with the exception of Burmese customary law). (Interview with Professor Daw Than Nwe 16 May 2005. Professor Daw Than Nwe is a 1965 BL graduate.)

Registered Lawyer Part II	<i>Civil Procedure</i>
Registered Lawyer Part II	<i>Law of Evidence</i>
Registered Lawyer Part II	<i>Land Law</i>
Registered Lawyer Part II	<i>Jurisprudence and International Law</i>
Registered Lawyer Part II	<i>Transport Law</i>
Registered Lawyer Part II	<i>Commercial Law</i>

Method of Applying for a Higher Grade Pleader License and Advocate License for those who Passed the RL Examinations

After passing all the subjects taught in the first and second years of the RL Exams persons who want to obtain a Higher Grade Pleaders license have to do one-year of ‘chamber-reading’ with an Advocate of at least five years standing. After one-year continuous practice as Higher Grade Pleaders RL ‘graduates’ could apply for an Advocate license

VI THE DIPLOMA COURSES IN LAW: COURSES THAT APPARENTLY DO NOT LEAD TO PROFESSIONAL LEGAL QUALIFICATIONS

Since the early 1960s, all the courses and examinations described in the previous sections which comprise the BL courses and examinations, the on-campus BA, LLB/LLB courses and examinations, the correspondence/distance education LLB courses and examinations, the HGP examinations and the RL courses and Examinations were the avenues that were available –and some still are- to persons interested to obtain a license to practice law. The passing of the examinations of the Diploma courses discussed in this section would not lead to a professional law qualification.

Since the 1990s the Center for Human Resource Development at the University of Yangon has offered one Certificate in Business Law Course and three Diploma Courses in Law.

A. Certificate in Business Law Course

The course can be attended by any matriculate. The author has not perused the syllabus or the contents of the course. I have studied the exam questions and as befitting a certificate course they are very easy. The teaching, I am sure, would be mixed in that notes written in English would be distributed to the students but all the explanation of the notes would be given in Burmese. In the examination questions a few can be answered in a short sentence or two and there is at least one question where the candidates need only fill in a blank with a single word and the first letter of the word is given in the exam question! The authorities concerned intend to ‘phase out’ this course.⁸⁴

⁸⁴ Interview with senior academic, Department of Law, Yangon University, February 2005.

B. Diploma Courses in Business Law, International Law and Maritime Law

These courses are coordinated by the Center for Human Resource and Development but the teaching staff from the Department of Law of Yangon University, teach the courses. Any person who is a graduate of a University can attend any or should they so want all of the courses. The courses are of nine-months (two semesters) duration. The fee for Diploma course is 30,000 Kyats (units of Burmese currency) per course.⁸⁵

The courses are, as explained above, taught 'in English' in that the course materials distributed to the students are in English, the exam questions are set in English and the answers by the students have to be written in English.⁸⁶ But from previous experience and interview with one of the Lecturers who teaches the Diploma courses the explanations in Burmese have to be given in a very basic manner and repeatedly so that the students will understand a few of the basic ideas in the distributed notes.⁸⁷

Eight subjects in each of the Diploma courses are taught over two semesters: four subjects to each semester. The assessment in the Diploma courses, is an end-of-semester three-hour closed-book examination. In the academic year 2004 approximately about 14% of the Diploma in Business Law students failed. They can sit for 'supplementary exams'. As of the academic year 2005 the courses have been taught for seven years.

The Diploma in Business Law course is the most popular course with about 500 students enrolled in the course in the academic year 2005. The Diploma in International Law course has an enrollment of approximately 300 students and the Diploma in Maritime Law course about 120 students.

VII THE MASTER OF LAWS (LLM) COURSES SINCE THE MID-1970S AND A MASTER OF RESEARCH (M.RES.) DEGREES: A REVIEW

A. MASTER OF LAWS COURSES AND DEGREES

The Master of Laws (LLM) courses were opened in the academic year 1973-74 at the Department of Law at (what was then) Rangoon Arts and Science University. From the author's firm memory, an advertisement appears in newspapers in August 1973 that a part-time Master of Laws (LLM) course will be offered at the Department of Law of

⁸⁵ As of mid-May 2005 the official exchange rate for one US dollar is about six to seven Kyats and the unofficial (real) rate hovers from around 950 Kyats to 1000 Kyats.

⁸⁶ It is learnt that some students petitioned the the Head of the Department of Law to let them answer the exam questions in the Diploma courses in Burmese but the Professor refused to allow the students to do so. Interview with a graduate of both the DBL (Diploma in Business Law) and DML (Diploma in Maritime Law), 31 May 2005.

⁸⁷ This and the following information were obtained from an interview with Professor Dr Tin May Htun, 16 May 2005. Professor Daw Than Nwe also told the author that when she teaches the Diploma courses she uses 'bi-lingual' teaching.

Rangoon Arts and Science University. Only those who achieved an average score of 65% in the BL Examinations or an average of ‘Grade 4’⁸⁸ in the BA, LLB course were eligible to attend the LLM course which first commenced in 1973. The duration of the coursework component of the course was three years and an LLM thesis would have to be submitted two years after the completion of the course work requirements. Hence the duration of the course would be five years! Indeed it has taken approximately seven years for the first batch of 1973 LLM entrants to graduate with an LLM degree. Similarly the students who graduated with a BA (Law), LLB in 1975, were qualified to attend the LLM course starting from the academic year 1975-76 completed their courses only seven years later in 1982.⁸⁹

In the first fifteen to twenty years of the LLM courses the medium of teaching was in Burmese.⁹⁰

Curriculum and Assessment of the LLM courses

The current (academic year 2005) curriculum of the LLM course will be stated and discussed subsequently. In the earlier years, the LLM course was ‘stream lined’ into two areas: that of civil law (i.e. municipal/domestic law), and international law.

Though the exam papers for the coursework component of the course were set in English, students have the option to write their answers in Burmese and most LLM students did so.⁹¹ The same was true for the thesis component at least throughout the 1980s⁹² whereby most LLM candidates wrote their theses in Burmese.

⁸⁸ ‘Grade 1’ being the lowest and ‘Grade 5’ being the highest grade awarded during that time.

⁸⁹ The author knew and can vouch for these facts, since in February 1985 the author perused the LLM theses collection at the Central Library of Rangoon Arts and Science University. The earliest LLM thesis was submitted in 1980 and since the author knew –and can vouch for– the fact that the first year LLM class started in academic year 1973-74 it had indeed taken seven years for these ‘inaugural’ LLM candidates to graduate. Also, the author’s classmates from the (BA,LLB) class of 1975 graduated with their first LLM degrees in 1982 and I saw copies of their LLM theses with the year of submission printed on their theses.

⁹⁰ Phone interview (18 May 2005) with, an Advocate and now a business woman in Mandalay who attended the second ‘entering’ LLM class in academic year 1974-75. After three months of doing the LLM course in December 1974 the Universities were closed during the student demonstrations at U Thant’s funeral the Advocate discontinued the LLM. She informed me that the teaching in LLM course was in Burmese. A senior academic who graduated with a BA,LLB degree in 1979 and attended the LLM courses starting from the academic year 1979-80 also told me (interview 16 May 2005) that the teaching in the LLM courses throughout most of the 1980s was essentially in Burmese and though the exam questions were set in English, the students have the option to answer in Burmese.

⁹¹ Interview with senior academic 16 May 2005. That senior academic graduated with an LLM degree from then Rangoon Arts and Science University in 1986.

⁹² In February 1985 the author perused the LLM theses submitted from 1980 to about 1983 (about ten to twelve theses) which were available from the library of Rangoon Arts and Science University. Among them about two or three theses were written in English and the rest were written in Burmese. The senior academic (interview 16 May 2005 also) confirmed that most of the LLM theses that were submitted in the early to about mid-1980s including that of herself were written in Burmese.

However, starting from the early 1990s until the theses requirement for the LLM degree was scrapped in the late 1990s all LLM students have to write their theses in English.

In late April 2005 the author interviewed a senior academic who informed me that at least some of the LLM students who were required to write their theses in English did so by paying others to choose their topics for them and to write the theses for them. At times there appeared even to be an implicit understanding between the students and some of the academic staff about such arrangements. Some students who submitted their proposals for approval by the Board of Graduate Studies (of the Law Department) were unable to explain even in a rudimentary manner the scope of their theses topics which they themselves had proposed. At the viva voce or oral examination a few of the candidates who had already submitted their theses were unable to defend their theses since these were written for them through paid-services. The senior academic informed me that it was due to these factors the theses requirement for the LLM degree was dropped.⁹³

Since the late 1990s LLM students have to do exam papers in either four or sixteen courses (depending on their specialization) and had to sit in a closed-book exam at the end of each semester. In addition a term-paper on an assigned topic has to be written either by the concerned candidate individually or through a joint project with other candidates for each subject per semester. At the end of four semesters, successful written examinations and the submission of assigned 'term-papers' (rather than 'independent' theses) they are awarded LLM degrees.⁹⁴

As for the LLB graduates who are 'qualified' or stated as eligible to join the LLM courses, a very significant majority of them are from the on-campus courses. The senior academic informed me that in the academic year 2005 about 35% of the on-campus LLB graduates were qualified to attend the LLM courses. The senior academic explained to me the reasons for giving a large number of (on-campus) LLB graduates the opportunity to attend the LLM course. First, with the mushrooming of Law Departments attached to Universities throughout the country, there is a need for more tutors for these Law Departments. And as all those who are appointed as tutors are required to do the LLM courses, the increase in the number of LLB graduates who are qualified to attend the LLM might result in an increase in an application for tutors. Secondly, if there is an increase in a number of LLM graduates it might just be conceivable that those LLM graduates would roughly have the caliber of the BA (Bachelor of Arts) 'of old' (probably of the 1960s, 1950s or earlier decades).⁹⁵

As of the academic year 2005 the LLM course is diversified into four main 'streams' or specializations namely those of Civil Law, International Law, Maritime Law and Commercial Law.

⁹³ Interview with senior academic, Department of Law, University of Yangon, 29 April 2005. In mid-2008 in another interview with another academic essentially the same information was stated.

⁹⁴ Interview with senior academic, University of Distance Education, 16 May 2005.

⁹⁵ Interview with senior academic, 29 April 2005.

Table 10: Breakdown of Subjects to be taken by Candidates for Master of Laws (LLM) degree in academic year 2005 at University of Yangon

	Category	Duration of Course	Subjects to be taken		
1	Civil Law	Two Years	Criminal Law		
			Civil Law		
			Family Law		
			Constitution Law		
2.	International Law	Two Years	International Law of Armed Conflict		
			International Economic and Trade Law		
			Law of International Institutions		
			Law of Treaties		
3.	Maritime Law	Two Years	Marine Insurance		
			Carriage of Goods by Sea		
			Shipping Laws		
			Law of the Sea		
4.	Commercial Law	Two Years	Company Law		
			International Economic Law		
			Investment Law		
			Law of Taxation		
			Company Law II		
			International Trade Law		
			Banking and Finance Law		
			Environmental Law		
			Intellectual Property Law		
			International		

			Sale of Goods		
			Private International Law		
			Law of Employment		
			Transport Law		
			Law of Arbitration		
			Problems of Foreign Commercial Contracts		
			General Insurance		

It might be noted that in the Civil, International and Maritime Law specialties, the subjects taught were only four which were spread over two semesters whilst in the Commercial Law specialization the subjects taught were 16 spread over four semesters. It might be that the designers of the LLM curriculum felt that taken into account the present market-economy system and foreign investments in the country, a variety of commercial law subjects need to be taught if only in a basic matter since one subject is taught only for a semester. As for the term paper requirement, each semester, students who are enrolled in the commercial law stream of LLM have to choose to present a term paper on one particular subject among the four that are taught during the semester. This requirement is

in contrast to the other LLM specializations where a short term paper has to be written for all the four subjects that were taught during that semester.

Commentary on the LLM courses

Viewing the LLM course structure and assessment since the early to mid-1980s, it can be noted that at least in the initial decade, it was indeed a very long course since the course itself was stated to be of five-year duration. In actual fact many if not virtually all who commenced the course between the years 1973 to about the mid-1980s took about seven years to obtain their Master of Laws degrees, making it one of the longest if not the longest LLM (by course work and thesis) in the world. However probably since the 1990s the LLM course has taken only about two years for the qualified candidates to complete: a more reasonable duration.⁹⁶ As explained in the previous section, there could be very marked discrepancies in standardizing and synchronizing, even in a very rough manner, the academic level and competence of the LLB on-campus and distance education students. Similarly, there could also be intricacies in trying to synchronize and evaluate the qualities of the LLM graduates of old (of the 1980s to about early 1990s) and the LLM graduates of the past decade or so.⁹⁷

Though a precise figure of LLM graduates from Burmese Universities cannot be verified it is estimated that there are several dozens of them.⁹⁸ It could be further stated that among those academic staff in Universities there are currently a few LLM graduates from foreign Universities. Most of them are from Japanese Universities and all of those who

⁹⁶ In an interview with a senior academic of the Law Department of Distance Education University (24 May 2005) she informed me that the course work element of the LLM program in the 1970s and 1980s was three years but virtually all of the candidates who completed their course work took about four additional years researching and writing their theses. The senior academic also said that most of the LLM candidates which include most of the academic staff members of the Law Department of the then Rangoon Arts and Science University (including herself) wrote their theses in Burmese. On average during the 1970s to well into the 1980s LLM candidates spent about six to seven years to obtain their degrees.

⁹⁷ Among others, the method of assessment for the coursework component of the LLM program during the mid-to late 1970s and the 1980s was that if a candidate failed (say) one subject in the first year of the LLM program that candidate had to repeat the whole year of the program and all the subjects of that year including the subjects the candidate had passed. If a candidate failed another subject in the repeated year – again- then that candidate is altogether excluded from the LLM program. In contrast since about the mid-1990s candidates who are enrolled in the LLM programs even if they failed any or all subjects in the LLM program that they took each semester, they can sit supplementary exams in the failed subject(s) only roughly about three months after they failed the particular subject(s). If they still failed the subject then they cannot have another supplementary again but will have to wait for the next year to re-enroll in the failed subject and sit for their exams (but only in the subject/s that they have failed) again.

⁹⁸ Since the late 1990s the LLM course is taught – and LLM graduates are produced- not only at University of Yangon but also a few other Universities throughout Burma including but not limited to Mandalay, Patheingyi, Toungoo, Mawlamyitha Universities and others. A senior academic (interview 24 May 2005) informed me that since there is a shortage of staff in the Law Departments of those Universities offering the LLM courses, teachers from the Law Department of the University of Yangon have to go and teach in those Universities. And some students such as those doing their LLM studies at the University of Toungoo (about 200 miles north of Rangoon) have to come and attend the classes at University of Yangon. And even though nominally the LLM degree is awarded by the University of Toungoo the teaching was done by staff at the different University of Yangon and the examination questions are also set by the staff from the University of Yangon.

have been awarded their Master of Laws degrees from Japanese Universities have also been awarded the Doctor of Philosophies (Ph.D.) degrees.⁹⁹ As of the academic year 2005 among the teaching staff of the Law Departments in all of Burma's Universities there is no person who had had their post-graduate degrees in law from either the United States of America or Australia or other common law (and British Commonwealth) Universities such as those of Canada and New Zealand. The previous (as of 2008) Head of the Department of the University of Yangon has a Master of Laws (LLM) degree awarded from the University of London.¹⁰⁰ Since the 1988 uprising and the takeover by the State Law and Order Restoration Council, the academic programs such as those of Colombo Plan which sponsored Burmese students to study in British, Australian and other Western Universities have been suspended by the sponsoring governments. Among the developed nations only Japan has not suspended academic ties with the Burmese government. Hence scholars who went abroad for post-graduate studies in law since 1988 have to go only to Japan. This explains the fact that the majority of post-graduate degree holders among the academic staff in the Law Departments of Burma's Universities have post-graduate degrees in law either from Japanese Universities or by those awarded from the University of Yangon itself.

Since the late 1990s though, the educational authorities have developed a Doctor of Philosophy (Ph.D.) program in law.

MASTER OF RESEARCH PROGRAM (M.RES)

Before discussing the Ph.D. program another and more recent program which is intermediate between the LLM and the Ph.D. program will be briefly mentioned. Those candidates who did well in the LLM programs are eligible to attend the new Master of Research (M.Res) program. It is entirely a research program where candidates have to write a substantial thesis. In the 2005 academic year only about three students are enrolled in the Master of Research program in law.

When the Examination Board feels that the theses submitted by the Master of Research (in Law) is of sufficiently high caliber, the candidates can proceed to the Ph.D. program in law without enrolling in the Ph.D. 'preliminary program'. In other cases where the

⁹⁹ As of May 2005 there are at least three academic staff who have graduated with Master of Laws and Doctor of Philosophy degrees from Japanese Universities who are staff members of the Departments of Law in Burmese Universities.

¹⁰⁰ Prior to Dr Daw Than Nwe becoming the Head of the Department of Law at the University of Yangon, the previous Head of the Department of Law from 1986 to about the mid-1990s was Professor Dr Tin Aung Aye who obtained his 'LLM' (Dip.Jur) and 'LLD' (Dr.Jur) from Martin Luther University from the former East Germany in 1975. From September 1971 until his death on 16 June 1986 Professor U Tin Ohn, BA (Hons), BL (Rangoon), LLM (London) was the Head of the Department of the then Rangoon Arts and Science University. From about 1964 to his appointment by the late General Ne Win as Attorney-General in September 1971 Professor U Hla Aung, BA, BL (Rangoon), LLM (Harvard), MPA (Master of Public Administration, Minnesota) was the Head of the Department of Law at Rangoon Arts and Science University. To the best of the author's knowledge among the full-time academic staff members of the Department of Law since 1964 Professor U Hla Aung was the only person who have academic degrees in law from a United States Law School (Harvard University) and Professors (the late) U Tin Ohn and Professor Dr Daw Than Nwe are the only persons to have academic degrees in law from the United Kingdom (University of London).

quality of the submitted Master of Research theses are considered not to be of acceptable standard, then these persons are required to do the Ph.D. preliminary programs should they want to proceed towards the Ph.D. degree.¹⁰¹

VIII THE NEW PH.D. PROGRAM IN LAW: DESCRIPTION, OBSERVATIONS AND COMMENTS

Since the late 1990s under the auspices of University of Yangon, doctoral programs in law are eligible for qualified candidates. The discussion below is based, among others, on information provided during interviews with various Ph.D. holders from the University of Yangon especially with an academic who became the first person to be awarded the Ph.D. degree in December 2002.

A. The Methods, Procedure Concerning the Program of Ph.D. for Academic Staff of the various Law Departments throughout Burma

When it was first inaugurated in the late 1990s the requirements for those who wanted to do the Ph.D. course in law are

- the candidate must be an academic staff of a University
- the candidate must be under the age of forty-five
- the candidate must have an LLM degree

Candidates who meet these criteria have to first sit an ‘entrance exam’ on a variety of law subjects which are set in English and candidates have to answer them in English. If candidates pass the entrance Ph.D. exams they can initially enroll for the one-year ‘preliminary’ Ph.D. course and candidates must pass it before being allowed to proceed with the writing of their Ph.D. theses. However as stated earlier, candidates who passed the Master of Research course with very good marks can enroll themselves straight into the Ph.D. program without doing the preliminary course. The subjects that are taught and examined in the preliminary courses are in the broad areas of Civil Law, Family Law, International Law and Constitutional Law. Depending on the years and the persons teaching in the preliminary Ph.D. program, the choice or emphasis in each area of the law may change. In one year the emphasis of the preliminary course in the area of International Law could be in the specific area of International Air and Space Law and in another year it could be in the specific area of International Humanitarian Law.¹⁰²

Once candidates have passed the preliminary program, the writing of the Ph.D. theses can be commenced. The supervisors are appointed mainly from the academic staff of the Law Departments. By the late 1990s there were at least three academic staff with Ph.D. degrees from Japanese Universities and they together Head of the Department of Law at University of Yangon were the main supervisors of the Ph.D. candidates.¹⁰³ The first

¹⁰¹ Interview with senior academic, 24 May 2005.

¹⁰² Interview with senior academic, 16 May 2005.

¹⁰³ In an interview with a senior academic (25 May 2005) she indicated that in the initial years of the Ph.D. program the supervisor was more often than not the Head of the Department of Law and the one Japanese doctorate holder was assigned, in effect, as a ‘co-supervisor’ that academic’s own thesis. The co-supervisor’s ‘supervision’ was said to be nominal since the co-supervisor’s Ph.D. theses topic was on the

doctorate in law from University of Yangon was awarded to a senior academic in December 2002, and two months later in February 2003, the second doctorate in law was awarded to another academic.¹⁰⁴ As a result of being able to produce two doctorate holders in law in quick succession the then Head of the Department of Law was awarded the Doctor of Literature (D.Litt) degree by the University of Yangon in 2003.¹⁰⁵ Hence from early 2003, the Law Department of Yangon University has at least three doctorate holders locally-produced to supervise other doctoral candidates. And as of May 2005 there are approximately about 30 doctoral candidates who have passed the Ph.D. preliminary courses and are preparing their theses. Among those who are in various stages of the preparation for their theses about ten are under the supervision of one supervisor whose specialization is in international law.¹⁰⁶

During the theses-writing period candidates have to give a total of four seminars or presentations.¹⁰⁷ Though the presentations are not formally assessed the general performance of the presentations are commented upon by the audience who would mainly be academic staff from various Law Departments from the Rangoon metropolitan area and sometimes from outside of the Law Department such as those from the Attorney-General Office.¹⁰⁸

The theses have to be submitted within three years after formal admission to Ph.D. candidature; no extension is granted and the candidate would not be awarded the Ph.D. degree if a candidate does not submit the thesis within the stipulated period.¹⁰⁹

As for the essential requirements for the theses it is stated that all Ph.D. theses at Universities throughout the country must be written in English. The only exceptions are that theses concerning the Burmese (Myanmar) language and literature and the Pali language (the lingua franca of Southeast Asian Buddhism) and literature can be written in the Burmese language.¹¹⁰ Apparently there is no minimum or maximum word limit as

subject of environmental law whereas the senior academic's topic concerns the topic of Immunities in international law.

¹⁰⁴ Interview with senior academic, 25 May 2005.

¹⁰⁵ Interview with two senior academic, February 2005 and 25 May 2005.

¹⁰⁶ Interview with senior academic, 25 May 2005. The academic was assigned to be the supervisor of at least ten Ph.D. theses whose broad topic was in the field of international law. Other Ph.D. holders among the academic staff have been assigned Ph.D. theses supervision depending on the topic. The senior academic also informed me that since there are no Ph.D. holders among the academic staff at the Law Department in the field of civil law (domestic law) outside persons such as those who have had experience in civil law – although no holders of doctorates- are appointed as co-supervisors.

¹⁰⁷ Interview with senior academic, 16 May 2005.

¹⁰⁸ In the sessions the author has had the chance to attend, the main comments were given by the then Head of the Department of Law and myself. In February 2005 the author attended two different sessions which lasted altogether about six hours. The author listened to about six different presentations. The author also participated and commented on the substance of each presentation. During the first session the author was introduced to a few staff members from the Attorney-General Office.

¹⁰⁹ Interview with senior academic, 25 May 2005. The senior academic indicated that there has been at least one candidate that she knows of who did not obtain the Ph.D. degree due to the fact that the said candidate could not submit the thesis on time. The senior academic also expressed the view that there could still be a few others who would not be able to complete their Ph.D. theses on time.

¹¹⁰ The general policy concerning the Ph.D. theses is posted in the notice Bulletin of the Department of Law at Yangon University. The notice (including the requirement that all theses except in the subjects of

regards the length of the theses. There is the stipulation that a Ph.D. thesis must have the potential of being published in professional and academic journals.¹¹¹ As of May 2005 under the scheme of allowing academic staff under the age of 45 to do their doctorates, seven persons have been awarded Ph.D. degrees.¹¹²

More recently since about 2003, the educational authorities have made another regulation mainly concerning those academic staff members from the Law Departments throughout the country. The regulation is that law staff members who are within the age of forty-five and fifty-four who do not have doctoral degrees¹¹³ are strongly encouraged to enroll for the Ph.D. degrees.¹¹⁴ Taking into account the service and the age of these ‘senior’ staff, the regulations stated that they do not need to go through the Ph.D. preliminary program and they can proceed to the candidature through the compilation and writing of theses. The requirement of being academic staff members (in the Law Department) of these Universities is flexible in that a part-time Lecturer is currently enrolled in the program. I have had the chance to observe two sessions of the academic staff Ph.D. presentations. The author’s comments on the Ph.D. program in the next section are based mainly on these observations.

Observations and Comments on the Ph.D. Program

In February 2005, the author attended two different sessions of ‘paper-reading’ by the Ph.D. candidates at University of Yangon, held on two different days.

The first presentation on a topic on Maritime Law was the best presentation which I have had the chance to listen to. The presenter is a part-time Professor at the Law Department of the University of Yangon. He did not ‘read’ from a prepared text. In fact the author has had almost an eerie feeling due to the fact that it was the first time in my experience that an audience of Burmese academics presenting and discussing a legal topic entirely (or almost entirely) in English. The presenter was able to respond to my questions well.

The presentations that followed were not of the same caliber or quality as the first presentation. The next presentation on an aspect of social security law in the Burmese context was a ‘fairly distant’ second vis-à-vis the first presenter’s impressive presentation.

Starting from the second presentation the queries posed by me and the Head of the Department of Law at the end of each presentation were, in my view, not satisfactorily

Burmese and Pali) must be written in English is written in Burmese.

¹¹¹ The author read the notice on the notice bulletin of the Department of Law at University. This requirement was also written in Burmese.

¹¹² Interview with senior academic, 25 May 2005.

¹¹³ In Burma the retirement age is sixty though many academic staff members as well as government servants can get ‘extensions’ of one year each.

¹¹⁴ Interview with senior academic, 25 May 2005. In another interview with another academic previously attached to the Department of Law, in mid-2008 that academic stated that about 25 to 30 candidates have been awarded the Ph.D. degrees in law by the University of Yangon.

answered. The Chair of both sessions had to ‘answer’ or respond to my questions in lieu of the presenters.

In a presentation about aspects of the Japanese legal system about five or six pages of notes were distributed. In the distributed notes (which currently constituted at least a part of a draft of the Ph.D. thesis of the candidate) there was not a single foot note or the provision of references. The author strongly suspects that these notes were ‘extracted’ from a book or an article. The author’s question as to whether there is (or has been) a separate Constitutional Court in Japan in addition to the Supreme Court went unanswered by the presenter.¹¹⁵ The author’s query relating to the very basic aspects of legal education in Japan also remain unanswered. In the next day or so when I met the presenter I gave the ‘gratuitous’ but apparently – judging from the presenter’s gracious response- welcome advice that the presenter should cite any and all the sources which are not one’s own. I also stated that if they are not properly cited and wholesale reproduction is made as in the distributed paper it could amount to plagiarism or at least ‘cut and paste’ of divergent materials or materials from one source.

The two other presentations which I attended another day in February 2005 were also in effect ‘cut and paste’ presentations. At least in comparison with the first presentation on Maritime Law they fell short, in the author’s opinion, of the requirement that a Ph.D. presentation must be ‘original, substantive and scholarly’ contribution to legal knowledge which is the standard in reputable Universities throughout the world.

Both of the presenters in those sessions are Professors at two separate Departments of Law. They enrolled in the Ph.D. program due to the regulation which strongly encourages that all academic staff within the age of forty-five and fifty-four who have not had Ph.D.s to do so. Hence they were not required to go through the ‘preliminary courses’.

At this session, the first presenter spoke on the topic of ‘Piracy’. Since in the distributed notes there was a discussion albeit briefly of ‘Mutiny’ and since one of the definitions of Piracy mentioned in the distributed notes of the presenter seem to overlap with that of the traditional definition of Mutiny I asked the presenter what would the differences be between these two legal definitions as canvassed in the presenter’s distributed (draft) paper. The presenter replied briefly (and somewhat curtly) that ‘my paper is about Piracy and not Mutiny’. In another part of the paper, citing sources, the presenter mentioned about the ‘*Achille Lauro*’ ship-jack (so to speak) where, in October 1985, a certain group of armed Palestinians ‘hijack’ the Italian cruise ship *Achille Lauro* and killed one of the elderly American passengers during the hijacking. The quoted phrase mentioned that the *Achille Lauro* incident was one of the incidents where the Press has (rightly or wrongly) classified as ‘piracy’. In another part of the presenter’s paper a commentary (reproduced from other sources) stated that the definition of ‘piracy’ in an international legal document (probably the 1982 *Convention on the Law of the Sea*) requires that the acts defined to constitute piracy must be done for ‘private ends’. As these two issues were

¹¹⁵ The author asked the question since at least one other Asian country, South Korea, which like Japan, is a Civil Law country has a separate Constitutional Court in addition to the Supreme Court. See for e.g. Gavin Healy ‘Judicial Activism in the New Constitutional Court of Korea’ (2000) 14 *Columbia Journal of Asian Law* 213.

mentioned in the same paper I asked the question as to whether the acts done by the ‘militant’ Palestinians in the *Achille Lauro* incident could amount to ‘piracy’ or not since it could be argued that the Palestinians were acting not for private ends but for ‘public’, political purposes. The presenter appeared to be unaware of the bare details of the *Achille Lauro* incident and again it was the Chair of the Session Professor Daw Than Nwe who had to respond to my query.

Having made these critiques (in good faith) or at least without ‘malice aforethought’ (in the non-technical sense of the phrase) it needs to be mentioned that I also have had the opportunity to review for a total about two hours or so copies of the Ph.D. theses that were submitted and for which the degrees were awarded by the Senate of the University of Yangon.¹¹⁶ To the extent that I am competent to comment on – admittedly in the limited time I spent in the Law Department of University of Yangon- they are well-written and substantially sound. I am of the view that they do fulfill the requirement of substantial and scholarly contribution to legal knowledge and can vie with doctoral theses which were submitted in other Universities of standing. At least two out of three, perhaps all three of the candidates have had the opportunity of spending at least a few months and up to a year in foreign Universities while undertaking parts of the Ph.D. research.¹¹⁷

Still, from the author’s observation a few suggestions can be made regarding the administration and assessment of the Ph.D. courses. First, according to the information that the author has obtained, there are about thirty candidates in the academic year 2005 who are enrolled in the Ph.D. program and one academic staff alone is assigned to supervise at least about ten theses. It would appear that there is an emphasis on quantity over quality. If a person has to supervise ten candidates and if the supervisor is also Chairperson of the Board of Post-graduate Legal Studies, as is currently the case¹¹⁸ wouldn’t it encumber the supervisor cum Chairperson and couldn’t it potentially create an appearance of possible conflicts of interests?

Secondly, as indicated earlier, ways and means should be found to improve the format and quality of the Ph.D. paper reading or presentation sessions. Among others, with one exception all of the presenters in the paper-reading session which I have attended merely read from prepared notes in their presentations.

Thirdly, the requirements of the Ph.D. theses should be more precisely stipulated and followed. From what the author has learnt there is no minimum or maximum word-limit as regards the length of the Ph.D. theses.¹¹⁹

¹¹⁶ I requested the permission of Ph.D. holders to review their theses and I thanked them for their kind permission to do so.

¹¹⁷ One of them, spent about a year in the Republic of Korea, Another candidate spent a few months in Switzerland while undertaking research on her Ph.D. theses.

¹¹⁸ As of May 2005 the Chair of the Board of Post-graduate legal studies was supervising at least seven Ph.D. theses. Interview, senior academic, May 2005.

¹¹⁹ During the 1970s, 1980s and 1990s there was also no stipulated length of the LLB as well as LLM theses and there has been considerable divergence in the length and scope of the LLB and LLM theses.

Moreover the requirement that a submitted Ph.D. thesis must be capable of being published in a professional and academic journal needs to be more precisely defined and elaborated. There is definitely room for improvement as regards the presentation papers that are distributed in the paper-reading sessions. If the quality and standard of the Ph.D. presentations are improved, the quality of the final-product of the future Ph.D. theses would also be enhanced.

Finally and perhaps most importantly the statement that foreign scholars may be invited in assessing the Ph.D. theses which is in the policy document needs to be implemented. Currently, according to the information provided to the author, among the seven Ph.D. degrees awarded by the University of Yangon¹²⁰ only in one instance was there an involvement of a foreign scholar in the examination process.¹²¹ In the three theses that this author has had the chance to review, in at least two, perhaps all three of them the names of the same two persons appeared as examiners. These two persons are assigned as ‘external examiners’ since they are outside of the University of Yangon and apparently because they hold doctoral degrees in law (from foreign Universities).¹²² My view is that a wider net should be cast in the appointment of at least one –preferably two- external examiners to enhance the rigor and quality of the examination process. As is the requirement in some Universities in Australia, at least one among the three examiners of a Ph.D. thesis should be from outside the country and true experts in the field or sub-field should be assiduously sought out for the purpose of quality control.

The basic lack of books and other research documents is another obstacle and difficulty which quite a few doctoral candidates in law in Burma – and perhaps in other academic disciplines as well- have had to face. This perhaps is a structural difficulty and can, to a certain extent, be alleviated by arranging some doctoral candidates to have training, during parts of their candidature, in foreign Universities. At least two of the first three doctoral degree-holders did spend several months at foreign Universities and Institutions which do improve their research work, methodology and quality of their theses. Since there are at least about thirty persons enrolled for the Ph.D. program in law in the academic year 2005, to arrange for even some – not to say most- of these candidates to spend sometime abroad for even a few weeks may not be easy to implement. Hence to achieve at least rough parity or comparability of the standard of Ph.D. with other reputable Universities in other developing countries a more rigorous selection process, training to improve the research methods, writing and presentation style as well as general English language skills of all Ph.D. candidates are to be recommended.

¹²⁰ As of May 2005 all the seven doctorate holders from the University of Yangon are females.

¹²¹ Interview with senior academic 25 May 2005. The thesis was that and the foreign scholar was an academic staff from a University in the Republic of Korea (South Korea).

¹²² The two persons who had both acted as examiners in at least two if not all three of the Ph.D. theses that I have had the chance to peruse are (1. The senior academic informed me that due to the sparseness of doctorate holders among the external examiners internally (that is in Burma), it has so far always been the case that either or both of these persons (or oft-times both) are appointed as external examiners in all the Ph.D. theses that were examined and awarded to be of doctoral standard by the Senate of the University of Yangon on the recommendation of the examiners. This preponderance if not ‘duopoly’ of these two external examiners even in quite variegated topics might narrow the range and perspectives of assessment of the Ph.D. theses.

In contrast to other sections where the requirements of the undergraduate LLB, in both on-campus and distance education modes are discussed I have taken the liberty of stipulating some suggestions for possible improvement of the recently implemented Ph.D. program. It is clear that the nascent Ph.D. program do have some 'teething problems'. In contrast to what has occurred and are still occurring- in the virtually mechanically mass-produced LLB graduates of the past few decades - about whose quality, I have virtually given up hope of any 'salvage' or 'towage' towards better shores, the quality and standard of the Ph.D. program in law can and should be enhanced.

IX

CONCLUSION

In his 'Note' published in early 1962, the late Dr Maung Maung wrote about the necessity (then) of 'of the review of the aim and purpose of legal education itself'.¹²³ Preceding the sentence quoted above Maung Maung wrote that '[t]he time now [1961/1962] appears ripe for reforms in legal education'. At the end of the Note, Maung Maung citing contemporaneous articles and reports dating back to as early as 1952¹²⁴ wrote optimistically that '[v]ast opportunities exist in the field of legal education in Burma, as in many new nations, and in legal education in particular the opportunities appear to be limitless'.¹²⁵ Earlier though he had warned that '[o]bviously it is no longer enough to manufacture law graduates who wander off with inadequate skills and, what is worse, only a vague sense of purpose'.¹²⁶

All these comments and observations made by Maung Maung appears pertinent when one looks at developments – perhaps in most areas they can perhaps be termed as 'regressions'- that had occurred in Burmese legal education since the early 1960s. Whether one can appropriately consider many of the developments, as detailed above, which had transpired these past decades as 'reforms' in the positive sense of the word, is also debatable. However Maung Maung's statement at the end of his 'Note' that the opportunities 'in legal education appear to be limitless' was prophetic. Maung Maung and the lawyers of his generation could not have envisaged¹²⁷ that the introduction of the correspondence/distance education LLB courses, the now suspended HGP examinations and RL exams would have resulted in an exponential growth in the number of law graduates who in Maung Maung's own words 'wander off with inadequate skills and, what is worse, only a vague sense of purpose.'

¹²³ Maung Maung,, 'Lawyers and Legal Education in Burma' (1962) 11 *International and Comparative Law Quarterly*, 285, 287. The five page note appears in the 'Notes' sub-section of the 'Notes and Comments' section of the *International and Comparative Law Quarterly*.

¹²⁴ Maung Maung, above at 290.

¹²⁵ Ibid

¹²⁶ Ibid 281.

¹²⁷ Dr. Maung Maung might not have envisaged the developments in the last few decades in what could be considered legal education but he was the architect just over a decade later (from the 'prospective' of the early 1960s) of the 'People's Judicial System' which was inaugurated in August 1972 and which did great, one could say almost irreparable – at least in the short to medium term- damage to the legal profession and the legal system. See Myint Zan 'Law and Legal Culture' above note 23 at 231-35 and the sources cited therein.

The illustrations given from personal experiences in the above pages would, one hope, make the point that the mass production during the past few decades of law graduates with ‘inadequate skills’ have become a sad reality; something that lawyers, educators and indeed the general public of Dr Maung Maung’s generation could not have imagined. Partly to illustrate this point the author has devoted most of the space above to a detailed description and analysis of the correspondence/distance education courses in law. I have also described the contents and particulars of the BL and the BA, LLB/LLB ‘on campuses’ courses as well as various ways and means of obtaining license to practice law. The author well-nigh realizes that in giving such a detailed description, he opened himself to the charge that his ‘update’ and ‘account’ of legal education in Burma is too detailed, too ‘personalized’ and in most parts ‘merely’ descriptive. I acknowledge that these ‘charges’ are to a certain extent true. The ‘mitigation’ I would like to plead would be that a detailed, personalized and in some instances merely ‘descriptive’ account is necessary given the paucity of materials in academic journals on legal education in Burma and given that a lot of developments that warrant detailed and descriptive account and analysis *had* happened in Burma in the past few decades. What had happened in Burma in the legal field- in the academic legal field- escapes the notice even of seasoned Burma academics as well as political commentators.

In recent years, apart from a book or articles about Burmese investment and commercial laws¹²⁸ –of obvious use to merchants of all kinds in this age of economic rationalism and globalization- a jurisprudential analysis of Burmese law has been rare and that of Burmese legal education in academic legal journals virtually non-existent. Due to the sparseness, indeed the scarcity of written sources and resources, personal account – through interviews with students, staff, lawyers and my own experience- has been the major mode of presentation and analysis in this article. Also, especially in the earlier parts of the article the author has described aspects of high school and tertiary education in Burma from the 1960s to the 1990s that is not directly related to, but has connotations on legal education. One trusts that these two aspects of the article will prove to be useful for educational historians and comparative (legal) educationists.

What lessons can be learnt from this account of legal education in Burma? The author hesitates to say that any positive ‘lesson’ can be learnt from this exercise. The ‘lesson’ if any would be that at least some of the ‘developments’ in Burmese legal education during the past few decades, are not something to emulate¹²⁹, but rather to avoid.

An ancient adage- probably Biblical- which the author is currently unable to ‘source’ states in effect that ‘It is not for thee to complete the task, but neither art thou entitled to flinch from it’. In writing this article it is not the purpose of the author to pontificate about ‘legal educational reforms’ in Burma or to provide moral, educational or other ‘lessons’ to learn from the vicissitudes, saga, developments or indeed good points of the Burmese legal educational ‘scene’ during the past four decades or so. It is hoped,

¹²⁸ See for example Alec Christie and Suzanne Smith, *Foreign Direct Investment in Myanmar* (Sweet and Maxwell, 1998).

¹²⁹ Compare (or rather contrast) Steve Hendrix ‘Restructuring Legal Education in Guatemala: A Model for Law School Reform in Latin America’ (2004) 54 *Journal of Legal Education* 597.

however, that the author has not ‘flinched’ from describing- as well as analyzing and commenting on- all major aspects of Burmese legal education during the past several decades.