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How Far Ethics Education Positively Influences Ethical Decision Making of the Young Lawyers in Kedah?

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ABSTRACT

This paper was written based on part of the findings of a survey made on young lawyers who are practicing in the state of Kedah. Young lawyers are advocates and solicitors with less than seven years of active practice. The objective of this study is to determine what factors positively influenced young lawyers' ethical decision making. Data was collected from 133 young lawyers who are practicing in the state of Kedah between January - June 2006 through self-administered and close-end questionnaires. The finding suggests that knowledge in professional legal ethics gained at the law faculty, pupillage and short ethics course does not contribute much to the ethical decision making of the young lawyers. Moved by this finding, this paper attempts to discuss the current legal ethics education in Malaysia. The main contention of the writers is their firm belief that the current practice of professional legal ethics education in Malaysia is insufficient and far from being adequate in producing ethical lawyers. Therefore the writers have proposed for professional legal ethics education in Malaysia to be reformed and this proposal serves as the basic premise of this paper.

Keywords: *ethics education, law faculty, decision making, young lawyers*

Introduction

The legal profession is among the professions which are based on trust and confidence. The relationship between a client and his solicitor is therefore founded on fiduciary principles. The lawyers have to act bona-fide in the interest of a client and the client in return has utmost good faith in his or her lawyer. For the legal profession to become honorable, it must be practiced in an ethical way. The rules of etiquettes are spread into many aspects of legal practice such as dress code, decorum, client-solicitor relationship, as well as the decision making process.

In order to encourage ethics among future lawyers, professional legal ethics education has become an essential part of the law curriculum, besides the traditional subjects such as criminal law and civil law. The ethics education introduced to the law students aims to invoke a correct mindset so that by the time the students graduated they would already have a general idea what an ethical lawyer is all about and strive to achieve that fine ethical quality.

Fully sponsored by the Institute of Research and Development and Commercialization (IRDC) of Universiti Teknologi MARA, the writers have taken the initiative to survey the ethical decision making among young lawyers in Kedah.

The central question is, to what extent social environment, business environment; professional attributes, personal values, law and professional legal ethics education positively influence the ethical decision making among young lawyers in Kedah.

Literature Review

Young lawyers according to Legal Profession Act 1976 are the lawyers who have less than 7 years of active practice as advocates and solicitors in Peninsular Malaysia. Ethical decision making on the other hand is described as comprising integrity, honesty (Gimas, 2004, Viillareal 2003, Ramsey, 1996) equity in attitude, trustworthiness, honor and commitment to service (Villarreal, 2003).

Marnburg (1997) states that the universities have a great responsibility in providing an ethical framework for professional societies. Building students' ethical awareness should become an integral part of the universities' curriculum. According to Rhode (1995) the law faculty which declines, explicitly or implicitly, to address ethical issues encourages future practitioners to do the same.

Enderle (1996) emphasizes the need for ethics as an academic discipline that constitutes the "backbone" for improving professional practice. In USA, since mid-1970s, the American Bar Association has required accredited law faculties to provide instruction in professional responsibility through a

mandatory ethics course or by integrating ethical issues into the core curriculum (Enderle, 1996).

In Malaysia, the Bar Council and the law faculties of public universities in this country are playing their part in preparing future lawyers with a sufficient degree of ethical knowledge and awareness. Ethics education in Malaysia takes form in several methods and approaches such as lecture, ethics Course and pupillage system.

In a nutshell, legal ethics should be viewed as a major subject to provide students with a thorough grounding of the proper spirit in which lawyers should practice. It becomes the responsibility of the institutions of higher learning to teach ethics at the earliest possible opportunity to the law students.

Methodology

The dependant variable in this study is the ethical decision making of the young lawyers currently practicing in the state of Kedah. The independent variables are social environment, professional attributes, law, business environment, personal values and knowledge from professional legal ethics education.

This research used the survey research method. The questionnaire developed by Frank Kradasz of Northern Arizona University, USA was used. Several modifications were made to suit our target population and a pilot test was conducted to test the reliability of the questionnaire.

The target population in this study is the young lawyers in the state of Kedah. However during the sampling process it was found that all young lawyers are concentrated in four districts only i.e. Kota Setar, Kuala Muda, Kulim and Langkawi. We have discovered 133 young lawyers through out the state and since the sample is manageable, all young lawyers in Kedah have become our respondents.

Data was collected from 133 young lawyers who are practicing in the state of Kedah between January - June 2006 through a self-administered questionnaire. Data collected has been analyzed using the statistical program Statistical Package for Social Sciences (SPSS) Version 13.0.

Results and Discussions

Results

Based on the mean score analysis the finding shows that professional attributes, personal values and law are three major factors which highly contribute to the ethical decision making among young lawyers in Kedah, followed by social

environment, business environment. Surprisingly professional legal ethics education recorded among the lowest score.

In addition, based on the coefficient of variation (CV) values in the third column of Table 1 shown below, the individual response score distribution for this factor can be considered to be fairly consistent as compared to other factors under study. This ensures that all the respondents on the average have somewhat similar opinion on their perception on the factor strength of positive contribution towards ethical decision making among young lawyers in Kedah.

Based on the analysis, it is clear that professional legal ethics education which is taught in the university and gained from the pupillage and ethics course does not have a high positive influence on young lawyers' ethical decision making.

Table 1: Mean Score, Standard Deviation and Coefficient of Variation of Factors Positively Influencing Young Lawyers' Ethical Decision Making

	Mean	Std. Deviation	CV
Professional Attributes	4.0406	.52441	12.48
Personal Values	3.9298	.55966	14.24
Business Environment	3.8947	.43594	11.19
Law and Punishment	3.8684	.77703	20.09
Professional Legal Ethics Education	3.7669	.51735	13.73
Social Environment	3.3058	.56115	16.97

Table 2: Result of t-test

	t	df	Sig. (2-tailed)	Mean Difference	95% Confidence Interval of the Difference	
					Lower	Upper
Social Environment	-14.268	132	.000	-.69424	-.7905	-.5980
Professional Attributes	.893	132	.374	.04060	-.0493	.1305
Law and Punishment	-1.953	132	.053	-.13158	-.2649	.0017
Business Environment	-2.785	132	.006	-.10526	-.1800	-.0305
Personal Values	-1.446	132	.151	-.07018	-.1662	.0258
Professional Legal Ethics Education	-5.196	132	.000	-.23308	-.3218	-.1443

Discussions

The fact that professional legal ethics education gained from the pupillage, the Malaysian Bar ethics course and the ethics subject taught in the university, are not considered by the young lawyers as highly influential towards positive ethical decision making serves as a reminder that the Malaysian legal education system needs to be reformed.

Azzat et al. (2004) states that among the most notable contributing factors towards the lack of quorums among today's lawyers is 'legal education' which fails to emphasis a lawyer's duty to his profession. The Malaysian Bar Council in its Press Statement on July 2, 2002, endorses the view of the Minister that the education system and discipline at university level should be restructured to produce more ethical lawyers (Anonymous, 2004).

The writers fully concur with the Malaysian Bar's point of view and below are several reasons why the current ethics education in Malaysia needs to be revamped.

A Dry Non-Integrated Chalk and Talk Approach

The ethics course in most law faculties is normally conducted in the traditional large class lecture/tutorial teaching methodology. Often there were complaints made by the students about the dry nature of the teaching method. The syllabus tends to focus on the abstract and philosophical aspects of ethics, with lack of emphasized on practical framework to establish a meaningful understanding of how to conduct a court case or a client counseling in an able and ethical manner.

As any other subjects taught at the law faculty, the ethics course comprised of continuous assessment comprising of tests, assignments and final examination. The course tends to be an exam oriented paper, where the students will learn by memorizing, treating the course as another paper chase. If that being the case, the students will soon forget everything the moment they finish answering their exam paper. In the long run, we will produce lawyers whose examination slip show that they have taken ethics course, but in reality lacks of practical knowledge.

Apart from teaching theory of professional and legal ethics, the law faculties are also responsible to teach legal skills such as advocacy, counseling and public speaking as part of academic curriculum. However, most law faculties set apart the subject of professional ethics from professional skills. Therefore there is a need to integrate both subjects together as most ethical conduct are needed as part of professional skill.

Anderle (1995) introduced a conceptual framework of professional ethics that promotes a "bottom-up" approach, which is a "problem- and action-oriented" conception that appears to be fruitful in terms of both practical

relevance and theoretical understanding. It is therefore obvious, the method of teaching ethics need to be revamped as the conventional method does not adequately present the subject in a way that both stimulates and informs students, which allows them to assimilate the information and skills necessary for the ethical pursuit of a career in the law. Perhaps a vocational, clinical or workshop approach to the subject is more suitable in teaching professional ethics as it could lead to practical involvement as well as two ways communications between the instructors and the students.

In USA, the Law faculty of Loyola University required its students to take a course that combines the subjects of professional skills such as client interviewing, client counseling and legal negotiation with the subject of professional ethics. These subjects were combined; as a result from the simple observation that most ethical issues arise in the context of the representation of a client, and that, while some ethical issues could potentially be anticipated, many arise unexpectedly at a trial or during negotiation process. Unless the law students acquire sensitivity to a wide range of practical ethic rules and principles, they may lack professional skill to recognize and deal with an issue when it initially arises (Wolfson, 1995).

An isolated, Non-multidisciplinary Approach

Professional ethics is not the exclusive subject of the legal profession alone, but equally exist in other professions. Most of the time, the ethical requirement of legal professions are similar to those in other professions. Therefore, it is beneficial to the Malaysian Bar and the law faculties to collaborate with other professional bodies to conduct a multi-disciplinary ethic course, seminar or workshop. In Malaysia, the most recognized collaboration currently in existence is perhaps the Medico-Legal Society collaboration. Perhaps now is the time to collaborate with other professions such as accounting, engineering, architecture or banking as some of their ethical dilemmas could be learned as a lesson for the benefit of the legal profession.

In USA, the University of Harvard Law School Program on the Legal Profession has taken an initiative to bring together students and faculty from a wide range of disciplines to examine particular ethical problems confronting professionals. The interdisciplinary approach used in Harvard seeks to reformulate the method in ethical teaching in law school. Cross-professional exchanges help the law students to observe professionals in other fields coping with issues that are present in the students' own discipline (Wilkins, 1995).

A One-Off Short-Course Approach

Freeman (1996) study finds that short term/one-off ethics course (such as the one conducted by the Malaysian Bar) may only raise students' awareness of

the ethical dimensions of their work and their sensitivity to ethical issues, but did not markedly increase their ability to explicitly rely on their code of professional ethics nor did it increase their ability to discuss ethical issues with confidence and competence.

Apart from that, Eynon et al. (1996) study reports that professional body (such as the Malaysian Bar) should offer continuous professional courses, and that ethics courses should be ongoing programs (Eynon, 1996). As transpires from the Malaysian Bar Ethics Committee report, most of their activities focused on the chambering students. The speakers at the ethics course traveling from one town after another, talking on the topic of ethics, to the chambering students and young lawyers.

It is hereby submitted that there is a need for a continuous ethics course in the way there is a need for a continuous legal and professional skills development. The target audience should be broad enough to cover not only chambering students and young lawyers but to include senior lawyers as well. The rationale behind this suggestion is, ethics like any other virtue needs to be reminded repeatedly so that people will not easily forget.

The Cheap Labor Syndrome

The idea behind the pupilage system is for the senior lawyer as the Master to act like a mentor and to guide the chambering student on the rules of etiquette and legal practice. However, more often than not it was observed that this period of chambering is no more than subjecting the pupil to a false front of cheap labor where the chambering students have been assigned to postpone the case, stand-down matters or do the dispatch work. Even if the Master has the genuine intention to become a good Master, the Master might be too busy; as a result the students are very much left to themselves. (Anonymous, 2002).

To overcome this situation, there is a need to introduce a reporting obligation by the firms who take in the chambering students. In Canada, a firm taking on a pupil is required to submit an education plan that describes the anticipated pupilage experience to be provided to the chambering student. A mid-term evaluation by both the master and the pupil is required, to assess how closely the experience to date matches with what was in the education plan (Lee Shih, 2002).

Perhaps the Malaysian Bar should be given the role to monitor the progress chart of the chambering students based on the education plan and to decide whether the Masters have given enough guidance and exposure before the students could be called to the Bar.

Besides taking in the fresh graduates as chambering students, the legal firm could also play a further role by ensuring that they hire and retain lawyers with a reputation for high standards of ethical behavior not merely based on the candidates experience or their business connection. The senior lawyers or

partners of a firm should also play the paternal role in guiding the young lawyers who have just being called to the Bar by constantly talking about the values of ethics at work and the obligation to honor the profession and to preserve its dignity.

Conclusions

This paper only focused on what has been done by public universities and the Bar Council. It does not include the private higher education institutions which also offer law degree programs in this country through twinning programs, fast-track programs or a double-degree program. Just like the public universities, the private colleges should not omit ethics education from their curriculum structure although it may not be as commercial and profitable as intellectual property law, cyber law or business law. Without undermining both the public and private higher education institutions' effort in nurturing the ethics of their undergraduates, it has to be pointed out that most the institutions are very proud to highlight their students' academic achievement, but fail to pledge their commitment to produce law graduates with the highest possible ethics, as it is often said, good academics achievement is not necessarily translated into good ethical practice.

However we have to admit that, no matter how hard we try, even with a continuous and rigorous ethics education, we can never be guaranteed that the law graduates who become advocates and solicitors will never be lured down the path of unethical practices. The difficulties caused by the economic downturn, stiff competition, greed and love for money (not for justice) and the material world which glorifies rich and sensational lawyers (not ethical lawyers) created an unhealthy culture whereby ethics and virtues will be forever under threat. To tell the truth whatever the input and the sanction that we impose, in the final analysis, it falls back on the individual lawyer whether to be or not to be an ethical lawyer, to honor their oath and to uphold the integrity of the profession.

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