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ARTICLES

NOTES & COMMENTS

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UNIVERSITI TEKNOLOGI MARA (UiTM)

An Introduction

Universiti Teknologi MARA (formerly known as MARA Institute of Technology) is Malaysia's largest institution of higher learning. It had its beginnings in 1956 as Dewan Latihan RIDA, a training centre under the supervision of the Rural Industrial Development Authority (RIDA).

Nine years later Majlis Amanah Rakyat (MARA) Act, 1965 provided for a change of name from Dewan Latihan RIDA to Maktab MARA (MARA College). The Act also defined a new role for the MARA College -- to train Bumiputras (literally it means "the sons of the soil" - ie the indigenous people) to be professionals and semi-professionals in order to enable them to become equal partners with other ethnic groups (ie the former migrants, especially the Chinese and Indians) in the commercial and industrial enterprises of the nation.

In 1967 Maktab MARA was renamed Institut Teknologi MARA (ITM) (or MARA Institute of Technology). In August 1999, the Institute was upgraded to university status and named Universiti Teknologi MARA (UiTM).

As part of the government's affirmative action policies, UiTM provides education and training in a wide range of sciences, technology, business management and professional courses to 56,408 full-time students in 2000. Another 3,156 have enrolled for off-campus courses. In addition, there are 7,725 students in distance-learning and flexible-learning programmes.

The main campus stands on a 150-hectare piece of land on a picturesque hilly area of Shah Alam, the state capital of Selangor Darul Ehsan, about 24 kilometres from the city of Kuala Lumpur.

The Universiti has also established branch campuses in the various states of the Federation: Sabah (1973), Sarawak (1973), Perlis (1974), Terengganu (1975), Johor (1984), Melaka (1984), Pahang (1985), Perak (1985), Kelantan (1985), Penang (1996), Kedah (1997) and Negeri Sembilan (1999).

The Universiti currently offers 184 programmes conducted by 18 Faculties. These programmes range from post-graduate to pre-diploma or certificate levels. More than half of these are undergraduate and post-graduate programmes, while diploma programmes account for an additional 39%. Some of the post-graduate programmes are undertaken in the form of twinning programmes, through collaboration with universities based overseas.

The following 18 Faculties currently run programmes in the University:

Accountancy; Administration and Law; Applied Science; Architecture Planning & Surveying; Art & Design; Business & Management; Civil Engineering; Education; Electrical Engineering; Hotel & Tourism Management; Information Technology & Quantitative Science; Mass Communication; Mechanical Engineering; Office Management & Technology; Performing Arts; Science; Sport Science & Recreation.

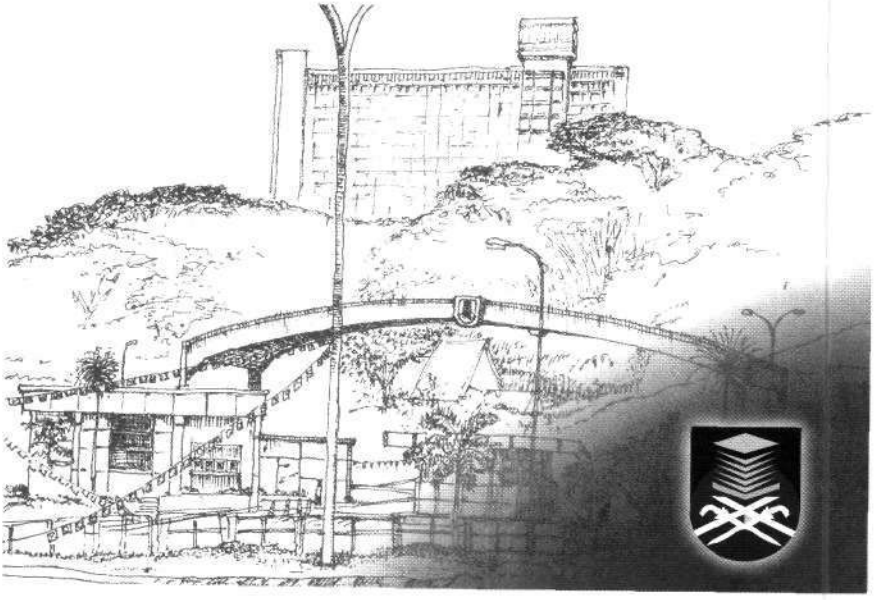
In addition to faculties there are 17 'academic centres' to cater various academic, business, technological and religious needs of the campus community. They are Extension Education Centre (PPL); Language Centre; Centre for Preparatory Education; Resource Centre for Teaching and Learning; Total Quality in UiTM (CTQE); Department of Academic Quality Assurance & Evaluation; Computer Aided Design Engineering Manufacturing (CADEM); Malaysian Centre for Transport Studies (MACTRANS); Text Preparation Bureau; Bureau of Research & Consultancy; Malaysian Entrepreneurship Development Centre (MEDEC); Islamic Education Centre; Centre for Integrated Islamic Services; Business & Technology Transfer Centre.

THE FACULTY OF ADMINISTRATION AND LAW, UiTM

The Faculty of Administration and Law (formerly known as the School of Administration and Law) was founded in 1968. It began as a centre offering British external programmes, the LLB (London - External) and the Chartered Institute of Secretaries (now Institute of Chartered Secretaries and Administrators). The only internal programme offered then was the Diploma in Public Administration and Local Government (DPALG). In 1978 the LLB (London - External) programme was terminated and replaced by the current internal LLB programme. The LLB is a three-year academic degree course based on the structure of the undergraduate law programmes normally offered in the British universities. Unlike most of the British LLB programmes, however, the LLB at the Faculty is conducted on a semester system. In 1982 the Faculty introduced a one-year LLB (Hons) programme towards which graduates of the LLB could advance their studies. The LLB (Hons) is a professional and practice-oriented programme that provides training to students for their career in the legal practice as Advocates and Solicitors. The delivery of the curriculum for this course adopts the method and strategy of simulated or experiential learning. Because of the unique experience it provides to students in their legal training this course has acquired wide recognition and acceptance among the Malaysian public.

The Faculty of Administration and Law enjoys strong connections with the legal profession, particularly the Malaysian Bar, and the industry. It takes pride in continually developing pioneering options in its degree programmes, both at the academic and professional levels. In 1995 the Faculty introduced the degree of Bachelor in Corporate Administration (Hons) to train young and bright Malaysians to hold office as Company Secretaries. In the pipe-line are some new courses - Bachelor of Law and Management (Hons), Bachelor of Administrative Science (Hons), Masters of Law and Executive Masters in Administrative Science.

The Faculty currently comprises some 70 academic staff from both the disciplines of law and administration. It has about 600 students reading for the LLB and LLB (Hons) and 500 students reading for the Diploma in Public Administration and Bachelor in Corporate Administration (Hons). The Faculty admits about 200 students each year.



Main Entrance to Shah Alam Campus

EDITORIAL NOTES

This law journal had a long period of gestation in the Faculty. There were several attempts in the past, by individuals or the faculty collectively, to bring about its parturition. It is no easy task to initiate an academic journal, regardless of the discipline it represents. It demands a high degree of commitment in time, energy and attention. It calls for an intense love of labour for scholarship among a critical mass of the faculty members, either in the editorial board or as article contributors. But, at long last, this journal has arrived.

Many factors led to this successful launch. The recent elevation of this institution to university status created its own impetus. Our strong law programme and its capable teachers demanded, and will benefit from, this specialist forum for academic debate and analysis. There is support within the legal profession and among our many distinguished alumni for such a journal, too. We are delighted by the synergy and collaborative goodwill the notion of a journal has evoked. So, we were able to marshal much expertise and experience to bring out this inaugural issue of the Journal.

Academic faculty at UiTM are part of the worldwide network of academia. We must participate in discussions and debates over issues that are not only of direct academic and professional concern but also of importance to the general public. A journal such as this facilitates reflective and disciplined participation. In doing so, it helps the Faculty, and the University, to undertake its noble role in serving the general community.

A learned journal is one of the major measures by which the weight and prestige of an institution are judged. It reflects the institution's maturity and ability to manage and conduct its specialist discipline. It reflects a confidence among its faculty to offer themselves to be evaluated in the open market place of ideas, and it serves notice of the faculty's readiness to serve the community at large. This Journal, in no small measure, marks the coming of age of the Faculty.

The Journal functions also as a meeting point for law teachers and practitioners who share a common interest in various areas of law. It provides them a source of information on the current and topical issues in their specialised areas. It creates a forum for the exchange of ideas and for engaging in discourse over sometimes intricate and often vexed legal issues. Much is gained by the legal fraternity, as well as the legal system, through such engagements and encounters.

Law teachers, as members of the broader academic community, are aware that it is no longer tenable for them to function solely within their traditional ivory towers, isolated from the reality of the world outside. For career and professional advancement, and for taking their rightful role in the community, no academic can confine

herself to her classroom or departmental audience. She must reach for a wider audience. The recognition (or lack of it) that she gains from her peers, both within and without the discipline, will speak for her standing and credibility in the community, both scholarly and otherwise. This Journal will serve as one channel for the Faculty members to reach that wider audience.

There are relatively few academic legal journals in this country. Most existing legal publications cater for the professional needs of legal practitioners. One ramification of this is that there are few discourses on theoretical and abstract legal issues. Yet these issues are important for the fuller appreciation and development of the law and the legal system, by the legislature, the reform bodies and the courts. This Journal will try to answer this need and stimulate discussions on issues that are of interest and relevance to the academic and broader communities.

The labour and skill required for this Journal to thrive will challenge the staff of the institution and the supporters of this initiative among the profession and the wider community. We hope the Journal sails well in fair winds.

Our wish is that Malaysia's legal profession, its legal academic circle and the many students and practitioners of law in this country and elsewhere will benefit from this forum for analysis and reform. We hope this Journal makes an important contribution to debate on vital legal matters in our society. We hope, too, that our quest for self-expression and critical reflection among the members of the legal academia will be assisted by this Journal. It is with great pleasure and some satisfaction at the completion of this worthy task that we complete this inaugural Editorial.

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NOTES & COMMENTS

UiTM LAW FACULTY "BLOOMS" INTO THE NEW MILLENIUM: EXAMINING WITH PURPOSE

*by MOHD DARBI BIN HASHIM**

Ahmad is a first year student reading for a Bachelor of Laws (LL.B) degree. Right now he is in the midst of sitting for the final examination. And before him is the examination paper on the Law of Contract over which he nervously awaits the instruction from the chief invigilator to begin writing the answers. Then it comes. "You may start writing now! The time on the wall clock is now nine o'clock and you shall stop writing at twelve sharp!" Ahmad begins reading the instructions on the front cover of the paper. "This paper contains SEVEN questions," reads the first instruction. "Candidates are required to answer any FOUR of the questions," reads the next. The rest of the instructions prescribe the "dos" and the "don'ts" of the examination room.

Ahmad then flips over to the pages that contain the questions in order to have a quick glance at them. He could see that there are two essay questions, the first asking for his comment on a quoted statement and the second requiring him to state and discuss the general principle regarding a certain requirement in the making of a valid contract and the exceptional instances where the principle does not apply. Then there are four other hypothetical problem questions; two of them are broken into two parts - (a) and (b).

Generally the questions require candidates to advise one or two of the *dramatis personae* in the hypothetical situations on either their rights or liabilities. The last of the seven questions requires candidates to write short notes on any three of five subject matters -- the first is on a decided case; the second on a legal maxim; the last three on legal principles. Feeling confident about the issues that each of the questions raises (and fortunately he has done a good deal of preparation on the topics to which the issues relate), Ahmad decides to answer two problem questions, one essay question and write notes on the decided case and two legal principles. He ticks with a red-ink pen against the question numbers to indicate his selection.

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The Dean wishes to thank Associate Professor Rahmat Mohamad, Associate Professor Dr. Lim Heng Gee and Norha Abu Hanifah for their contributions during the initial conception of the project to review the testing and evaluation method in the Faculty.

The wall clock already shows 15 minutes past nine. Ahmad cautiously begins writing his first answer.

The above is the typical scene of a law examination involving substantive law subjects in most law faculties in the common law world. And Ahmad is just a typical law student who is required to endure the situation (and many times over) in order that his knowledge of the law that he has supposedly acquired over the specified duration of his studies be tested and examined. He will be considered to have passed the test if he has, in the examiner's estimation, answered "satisfactorily" the questions posed. For whatever the experience he is now going through is worth, Ahmad might perhaps take consolation in the fact that he is merely experiencing the vital moment that many generations of lawyers, judges and legal academics, from the most learned and erudite to the mediocre, the world over have faced, at one time or another, in their legal education and training. And many more generations of them in the future will have the very same experience. Hence the predictable wheel of law examination rolls on in law faculties; and the Faculty of Administration and Law at UiTM is no exception. Like law faculties elsewhere, it is entrapped in the typicality of the examination process just depicted.

But the crucial questions can now be asked: What really is the testing objective or objectives of the examination questions? What skills, abilities, competence or proficiency in the students do they seek to measure? Assuming that each of the question formats (essay, hypothetical problem, short-note, case comment, etc) has certain teaching-learning-testing ends, are teachers aware of them whenever they determine (or rather imitate) the formats for their examination papers? Assuming further, and giving the benefit of the doubt, that teachers are conscious of the testing objective/s in each of the distinctively formatted questions they are throwing to the students, do students know what exactly they are examined for? Why the tedious rigmarole after all?

These questions beg for answers, yet they have not been addressed by teachers and teaching institutions. Law teachers and others responsible for legal education have largely ignored them. Law teachers in most places rather smugly repeat the process, without ever pausing to reflect on its justification, reason or efficacy. This happens despite the repeated caution by educationists on the need for clear testing objectives in examinations, irrespective of the form and discipline involved. Law teachers and law faculties no doubt have given much attention and consideration to matters relating to content, delivery, writing and research in the legal education curriculum. Yet for reason or reasons unexplained the examination aspect in the curriculum is often overlooked, ignored and neglected.

The crucial point that is missed in legal education occasioned by such laxity on the teachers' part is that, testing, being an important and essential component in a teaching-learning process, influences as much as it is influenced by other aspects of the process. So if the testing procedure is flawed and defective, it weakens and

undermines efforts to generate positive results in the other teaching areas, such as classroom delivery. And the converse is also true: when the procedure is efficient it impacts the other aspects in the teaching-learning process, as they are compelled to meet its demands. In short, therefore, testing done in an examination or other assessment is reflective of its entire antecedent processes in the curricula. And further, perhaps with a tinge of "structuralist" insight, it can be stated that an examination is not so much testing of students, but of the curriculum and the teaching learning process they experience.

In its effort to find answers to the crucial questions raised above the Faculty of Administration and Law, UiTM, on 8 May 2000 held a half-day seminar to review the testing process in its Bachelor of Laws programme. The seminar received good attendance and lively participation from the Faculty members involved in law teaching. The discussions were further enriched by the presence and contribution of two legal scholars from Australia, Professor Jim Corkery of Bond University, and Mr. Brayn Brown of the Sydney College of Law. (They currently serve as the Faculty's external examiners for the law programmes).

The Dean initiated the discussion by pointing out the inherent weaknesses in the typical examination format that the Faculty currently adopts for its Bachelor of Laws programme. The principal one is that examination questions lack any clear testing objective. As a corollary to this, questions lack a clear structure both in terms of their layout and individual format. The designing of examination questions appears to be heavily dictated by the individual preference of teachers, which choice is limited to essays, problems, short notes on legal concepts, doctrines and cases. The underlying rationale and reason/s for teachers preferring one form of question as against another is, however, never articulated. And there are further ramifications for this *laissez-faire* examination approach, where subjectivity tends to reign supreme: it becomes difficult to make a comprehensive improvement in the way questions are drafted and in the whole testing method in the programme. This situation in turn contributes to lack of development, complacency and lethargy in the examination system.

The existing practice, too, creates difficulty in making assessment on the standard and quality of questions as well as across the board comparison between subjects. From a practical point of view the situation makes vetting of questions difficult and tedious, as vettors do not exactly know what they have to deal with in the questions. Should they merely proof read questions, that is to say, to limit themselves to form, or should they deal with their content as well (a venture that often intrudes into the claimed territorial expertise of others).

With such matters left very much in the hands of individual teachers, students meet varying intellectual demands in the programme (as reflected in the way questions are presented in the examinations). In so far as the Faculty is concerned, this results in a difficulty in maintaining and defining the general standard and rigour of the programme that students can expect.

As alluded to earlier, the conventional law examination approach often gives students choices in selecting questions they want to write answers on. The standard practice is to instruct candidates to answer four out of seven or eight questions. The pitfall in such a procedure is that it draws and encourages students toward topic spotting and avoiding the perceived difficult and harder questions. Coupled with the students' lack of understanding of the testing objectives, this approach results in their poor learning strategies and examination preparation. As for the teachers, it is a case of wasted time and effort whenever only a few candidates attempt the "harder" questions, which sap much energy and thought in designing. The "harder" questions are the problem style questions.

The Dean expressed his confidence that, by eliminating and rectifying the existing weaknesses and shortcomings in the examination process and procedure, the current programmes could be consolidated and further improved. And as the Faculty will soon embark on offering law teaching at higher levels, it is imperative that the prevailing weaknesses be quickly removed lest they will spill-over into the higher level programmes. In tandem with the current demand in higher education, the efforts taken by the Faculty would fulfill the need to establish a quality benchmark that is both transparent and accessible to public scrutiny. An equally important consideration the seminar highlighted is that improving the testing processes in the programmes could generate further positive outcomes in the students' learning experience. These include the development and cultivation in the students of,

a. a broad working knowledge on the basic or core areas of law that is usable well beyond their college life;
b. the capacity of knowledge comprehension and retention in the subject areas taught;
c. an holistic view of the law rather than perceiving legal knowledge in a pigeonholed and parceled manner;
d. the attitude and habit of life-long learning rather than "passing and forgetting".

The Proposed Examination Format

To overcome the weaknesses and shortcomings in the current testing mode for the Bachelor of Laws programme, the seminar resolved that the Faculty adopts the following format:

Examination Questions will be divided into three sections. In a marked departure from the current practice where candidates are given choices as mentioned above, all questions are made compulsory. Question or questions in each of the sections are designed to meet specific learning objectives based on Bloom's taxonomy of cognitive behaviours[1] as depicted in the table below.

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1 Benjamin S. Bloom et al., Taxonomy of Educational Objectives: *The Classification of Educational Goals. Handbook I: Cognitive Domain* (New York David McKay 1956).

As can be seen from the taxonomy, the capacity for knowing the subject matter learned represents the lowest level while the ability to evaluate and making synthesis represent the highest level of achievement in the teaching-learning process. Students should be tested across this hierarchy of skills, with as much emphasis as is reasonable on requiring them to demonstrate the skills of application and analysis. This is because the further students go up the hierarchy, the more competent they are. Few examinations can, however, adequately test the top two skills, although the best students will show glimpses of the abilities to evaluate and synthesise legal materials.

Six Major Levels of Bloom's Taxonomy

Level	*Characteristic Student Behaviors*
Knowledge	Remembering; memorizing; recognizing; recalling
Comprehension	Interpreting; translating from one medium to another, describing in one's own words
Application	Problem-solving; applying information to produce some result
Analysis	Subdividing something to show how it is put together; finding the underlying structure of a communication; identifying motives
Synthesis	Creating a unique, original product that may be in verbal form or may be a physical object
Evaluation	Making value decisions about issues; resolving controversies or differences of opinion

In regard to the individual structure of each question in relation to its testing the learning objectives the seminar considers the following:

Section A:

This section will include 10 short single-topic/single-issue problem questions. The testing objective is directed to measuring students' knowledge and understanding of basic legal concepts, doctrines, maxims, principles and rules relating to the subject through their ability to identify and spot *issues* in the given set of facts pattern. This activity requires the skills of knowledge, understanding and some application. Taking Contract Law as an example, the questions can raise specific issues on intention to create legal relation, proposal as distinguished from mere invitation, past consideration, misrepresentation, uncertainty of terms, an exception to the privity rule, penalty as opposed to liquidated damages, impossibility of performance through destruction of the subject matter, voidability of contract through restraint of trade and the requirement of knowledge in exemption clauses.

Section B:

This section will have two single-topic/multiple-issue (between three to four issues) problem questions. Again using Contract Law as an example, one of the questions could focus on the concept of consideration. Within its fact pattern will be included issues relating to, say, its adequacy, sufficiency, validity and exceptions. The learning abilities tested by these questions would be on knowledge and understanding of the selected topics and analysis and application of their related concepts, rules, principles and doctrines. The questions thus make demand on candidates to display their cognitive and intellectual abilities through to the fourth level on Bloom's taxonomy. This is vitally necessary as the abilities to analyze a given set of legal problems (the ability that involves identifying the various material or relevant facts, seeing their interconnection with one another and organizing them in a logical and coherent sequence or order) and the application of the appropriate legal principles, rules and procedure for its resolution lie at the hub of legal thinking and practice. Students must be made aware of the need to hone those skills early in their legal training if their learning experience is to be meaningful at all.

Section C:

This section of the paper will contain one large problem question that involves cross-topics/multiple issue (between four to five issues) in form. Hence in a Contract Law examination, for instance, four topics on mistake (mistake as to identity), terms (implied terms and limitation clause), breach (anticipatory breach), frustration and remedies (damages and specific performance) can be selected to provide the issues in the facts pattern. The underlying testing objective here is essentially similar to that in questions under Section B above, that is, testing of knowledge and understanding of the topics selected and analysis and application of their related concepts, rules, principles and doctrines. However, in addition to that it also assesses students' ability to see and identify the inter-connection and inter-play of concepts, rules, principles and doctrines across topics in the course of accomplishing a legal problem-solving task. With students exposed and familiarized to such a testing process, not only are they tested on the breath and depth of their comprehension of the subject but also they are able to develop the skills and confidence to handle legal issues to an advanced and complex level.

Within the broad framework thus proposed there are, however, a few details that need further refinement and consideration at the programme committee level in the Faculty. What, for instance should be the appropriate assessment weight to be allocated to each section. The tentative suggestion is that Section A carries 25 marks, Section B, 30 marks and Section C, 45 marks. It is also pointed out that perhaps not all but only certain subject areas in law are suited to the proposed problem oriented examination format. Accordingly, at the initial stage of its

implementation the format applies only to the substantive and procedural law areas offered, both as core and elective, in the programme, viz. Contract, Tort, Constitutional Law, Administrative Law, Equity and Trust, Criminal, Law, Law of Agency and Sales, Administration of Trust, Land, Civil Procedure, Criminal Procedure, Law of Associations, Evidence, Conveyancing, Family Law, Banking, Intellectual Property, International Trade, Industrial Law, Public International Law. Teachers involved in the "perspective subjects" (for example, Jurisprudence, Law and Social Theory, Law and Economic, Environmental Law, Law and Women, Law and Medicine) are nonetheless encouraged to be imaginative and creative to conform to the format suggested. In regard to the need for testing students' abilities at evaluative and synthesis levels on Bloom's taxonomy, it is proposed that this be done through written class assignments, take home examinations or workshops.

Notwithstanding the reservations expressed by few seminar participants, it is generally felt that the proposed new examination format is an innovation and an improvement to the one currently practised in the Faculty. Most importantly, examination questions will now have a definite and clear structure that both teachers and students will become familiar with, and thereby providing room for further and future critical assessment, changes and modification to the examination process and procedure. With such a structure put in place for the teachers, preparing examination questions becomes a conscious directed activity; for the students, learning and training will be less random, but more focused and purposeful. What is most notable here is that the structure is theoretically informed and academically defensible. It has clear testing objectives measured against time tested and generally accepted Bloom's taxonomy of cognitive understanding, thus enabling students' learning abilities and skills to be comprehensively, systematically and progressively tested at different levels of difficulty. A corollary to this is that training of students' mind and developing their intellectual potential can be carried out to the highest possible level. From the educational psychology point of view the proposed format thus helps to encourage students to engage in "deep" as opposed to "surface" learning.

The proposed format will also enable students following the programme to have a clear indication regarding the skills they are required to develop and master and be tested upon. They therefore can be more fully aware and conscious of the progress in their learning and training experience. They will also be able to better measure their abilities and skills and teachers can more quickly spot their weaknesses and help rectify them early.

Administratively and pedagogically, the proposed format promises better teamwork in terms of the preparation of examination questions and grading of scripts, as the tasks required from team members could easily be identified and assigned. Learning and training process in the Faculty can be made more rigorous and raised onto a new height, as the testing procedure can more surely separate the chaff from the wheat. It might be argued, however, that the process is elitist. That it weighs heavily

toward creating failures in the society. Any assessment system, of course, creates comparative success and comparative failure. This system is intended to measure human *comparative ability* for optimal utilization of talents and skills in society, so that education improves skills and so that merit is encouraged.

In the context of the Faculty's own future development and progress the present effort marks yet another milestone that significantly helps create its own identity, standards and tradition in legal education. This in turn can help foster confidence and pride both in the graduates and the teachers.