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TRANSFORMING LEGAL EDUCATION TEACHING AND LEARNING: THE REMOTE COMMUNICATION TECHNOLOGY

by

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INTRODUCTION

The traditional one-way lecturing will soon become a fading fashion in the higher education sector, thanks to the innovation of the Industrial Revolution 4.0 and now, with the social distancing rules due to COVID-19 pandemic. The higher learning institutions must embrace technology in their methods of teaching and learning and the law schools are no exception. The in-person face-to-face teaching of law must be innovated with the online learning either by live lectures or pre-recorded lectures, depending on the creativity of the lecturers who should have the autonomy to adopt various interactive contents to engage with the students regardless of their locations, provided that these students have a good internet connectivity. Undeniably, this method will provide the students with opportunity to learn law at their own pace, viewing the pre-recorded lectures as many times as they want until they have fully grasped on the content covered.

The need for the law schools to imbue technology in teaching and learning on a range of digital platforms are even more pertinent now since the Malaysian Judiciary have fully embraced technology in the delivery of justice. Even before the COVID-19 pandemic, courts have introduced the e-Filing, e-Service, e-court system, Queue Management System, e-Courts Finance, e-Lelong, e-Jamin, e-Jurubahasa, e-Daily Report, e-Arahan Amalan, e-Integrity, Sistem eBench Book, and Case Recording and Transcribing. The recent revolutionisation of the courtrooms with digitalization such as live-streaming or broadcasting of the court's proceedings would undeniably allow the public virtual entry into the courtrooms. Hence, this article highlights the need for the law faculties and law schools to embrace the remote communication technology in the teaching and learning of legal education which undeniably is an important tool for the graduate's future employability. It would be submitted that the law faculties and law schools in Malaysia must continue the e-learning beyond the COVID-19 period. The 'old-fashioned' face-to-face interactions between students and lecturers must be adjusted to imbue the remote communication technology. Further, the regulatory bodies of legal education in Malaysia must ensure that the remote communication technology is made a prerequisite in the teaching and learning of legal education. This is essential to prepare law students to embrace technology and to churn technology savvy law graduates for their future employability. As aptly noted by Tan Sri Datuk Seri Panglima Richard Malanjum, the former Chief Justice of Malaysia, at the Opening of the Legal Year 2019: 'The legal profession must embrace technology. There is no option Adapt or be dropped ... unless the Law schools start preparing their law graduates for the industry, they may end up in the unemployment queue'.¹

REMOTE COMMUNICATION TECHNOLOGY OF COURT PROCEEDINGS

Due to the ongoing outbreak of COVID-19 pandemic, judiciary across the globe, including Malaysia have made significant efforts of operating the court proceedings virtually, a significant shift from the traditional mode of hearing and trials. The recent amendments to the Courts of Judicature Act 1964 ('CJA'),² Subordinate Courts Act 1948 ('SCA'),³ Subordinate Courts Rules

1 Tan Sri Datuk Seri Panglima Richard Malanjum, 'Opening of the Legal Year ('OLY') 2019 Speech' (*Kehakiman*, 11 January 2019) http://www.kehakiman.gov.my/sites/default/files/OLY%202019%20CJ%27s%20Speech%20-%20Final_0.pdf assessed on 7 November 2019.

2 (Act 91) amended by the Courts of Judicature (Amendment) Act 2020 (Act A1621).

Act 1955 ('SCRA'),⁴ Rules of Court 2012 ('ROC 2012'),⁵ Rules of the Court of Appeal 1994,⁶ and the Rules of the Federal Court 1995⁷ have revolutionised the judiciary by allowing the adoption of digitalisation in the courtrooms. These amendments have empowered the courts to hold inter alia, virtual court hearings and trials using the remote communication technology. Undeniably, the digital transformation in the courts is aimed at ensuring the continued public access to the justice system even during the ongoing COVID-19 pandemic with the imposition of restriction on movement pursuant to the Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) Regulations 2020.⁸ Aside from the above, it would also allow the public virtual entry into the courtroom vide the live-streaming or broadcasting of the proceeding and further, increases public knowledge and awareness of the trial process in the Malaysian courts which undoubtedly, would bring greater transparency in the judicial decision-making process and increase public respect and confidence in the judicial system.

'Remote communication technology' is defined in s 3 of the CJA, and in s 2 of the SCA and SCRA as, 'a live video link, a live television link or any other electronic means of communication'. Section 15A of the CJA and s 101B of the SCA provides that the superior courts and the subordinate courts are authorised to conduct the proceedings of any cause or matter, civil or criminal, using the remote communication technology. Section 15A(2) of the CJA further provides that the place in which the High Court conduct the proceedings of any cause or matter, civil or criminal, through a remote communication technology shall be deemed to be conducted within the local jurisdiction of such High Court. The word 'place' is defined in s 15A(4) to include cyberspace, virtual place or virtual space. Likewise, s 101B of the SCA provides that the court proceedings carried out by the remote communication technology shall be deemed to be conducted within the local jurisdiction of the court as assigned in ss 56 or 76 and further, the word 'place' in this section includes cyberspace, virtual place or virtual space.⁹ It is noteworthy that the above amendments however do not affect evidence by child witness by means

3 (Act 92) amended by the Subordinate Courts (Amendment) Act 2020 (Act A1622).

4 (Act 55) amended by the Subordinate Courts Rules (Amendment) Act 2020 (Act A1623).

5 Rules of Court (Amendment) 2020.

6 See Rules of the Court of Appeal (Amendment) 2020 (PU(A) 352) r 95A.

7 See Rules of the Federal Court (Amendment) 2020 (PU(A) 353) r 127A.

8 (PU(A) 19/2020).

9 See Subordinate Courts Act 1948 s 101B(4).

of a live link under the Evidence of Child Witness Act 2007¹⁰ and evidence given by witnesses protected under the Criminal Procedure Code and the Evidence Act 1950.¹¹

Further, s 69 of the CJA provides for the Court of Appeal to receive further evidence by oral examination in court through remote communication technology.¹² Meanwhile, s 17B of the CJA and s 107A of the SCA provides that the Chief Justice may, after consulting the President of the Court of Appeal or the Chief Judge, issue practice directions for the purpose of carrying into effect the above new amendments. Lastly, s 4 of the SCRA provides that the Rules of Court may be made for regulating and prescribing the procedure with respect to the hearing of any matter or proceeding through a remote communication technology.

ROC 2012 was accordingly amended to facilitate the usage of the remote communication technology. The term 'remote communication technology' inserted after the definition of 'sign' in O 1 r 4 bears the same meaning assigned to it under CJA, SCA and SCRA. The court proceedings through remote communication technology are specifically contained in O 33A. Pursuant to O 33A r 2 the Court or Registrar is empowered to direct any cause or matter to be heard or any proceeding to be conducted remotely, either upon its own motion or by application of any party to a proceeding. Order 33A r 3 further states that any person, witness or prisoner as witness or party to any proceedings is allowed to attend the court and / or give evidence in those proceedings by means of remote communication technology. In cases of a person attending, a witness giving evidence and a prisoner as a witness or a party, attending or giving evidence, the Court or Registrar shall be satisfied that sufficient administrative and technical facilities and arrangements are made.

Order 33A r 4 further provides that the Court or Registrar is also conferred with the power to revoke, suspend or vary its earlier direction made under r 2, in the following circumstances: (a) where remote communication technology stops working and the proceedings would be unreasonable delayed waiting until a working system becomes available; (b) it is necessary for the Court or

10 (Act 676).

11 (Act 56).

12 Courts of Judicature Act 1964 s 69(1) provides that 'Appeals to the Court of Appeal shall be by way of re-hearing, and in relation to such appeals the Court of Appeal shall have all the powers and duties, as to amendment or otherwise, of the High Court, together with full discretionary power to receive further evidence by oral examination in court or through a remote communication technology, by affidavit, or by deposition taken before an examiner or commissioner'.

Registrar to do so to comply with its duty to ensure that the proceedings are conducted fairly to the parties in the proceeding; (c) there has been a material change in the circumstances after the Court or Registrar has made an order; or (d) it is necessary in the interests of justice to do so.

Order 33A r 5 states that in ensuring open justice to remain available while the Court is working towards a shift to the remote hearings, the Court or Registrar may direct the proceedings to be broadcasted to make it available to the public. The proceedings may also be recorded for the Court or Registrar to keep an audio-visual record of the proceedings. It is worth mentioning that O 34 r 2(2)(u) empowers the court, at pre-trial case management, to give the appropriate orders and directions regarding the manner in which the proceedings are to be conducted. This would include proceedings by way of remote technology communication. Aside from the above, O 42 rr 1 and 1A provides for judgment or order to be pronounced or delivered in the remote hearings and pursuant to r 5 the judgment or order pronounced or delivered in the remote hearings shall be reflected in the judgment or order.¹³

In relation to service of writ, O 10 r 1(1), ROC 2012 allow for service to be effected by means of electronic communication in accordance with any practice direction issued for that purpose. Further, O 62 r 6(1)(cc) provides for service of other documents also by means of electronic communication. The above order provides that ordinary service of any document, not being a document which is required to be personally served, may be affected by means of electronic communication. Further, O 63A r 17 provides that the Court's Electronic Filing System (EFS) can also be used as service of documents between the parties' solicitors. A party may still affect the service through electronic filing system though the service required is that of personal service, provided that the other party to be served has consented to it.¹⁴ Rule 17(3) provides that the service is deemed effected on the date and at the time that the first part of the electronic transmission is received in the Court's computer system.¹⁵ Rule 17(4) further states that the record of the service is issued by the Court's computer system or the service bureau as evidence of the service, the person serving the document may provide this record to the person being

13 See Rules of Court 2012 O 24 r 5(3).

14 Rules of Court 2012 O 63A r 17(2) provides: 'For the purposes of subparagraph (1)(b), a party who has instructed his solicitor to accept service of a document which is required by these Rules to be served personally shall be deemed to have agreed to be served using the electronic filing service'.

15 Rules of Court 2012 O 63A r 17(3) provides: 'The document shall be deemed to be served by electronic transmission from the computer system of the registered users on the date and at the time that the first part of the transmission is received in the Court's computer system'.

served the document¹⁶ and r 17(5) states that the proof of service may be filed through the electronic filing service. Apart from the above, O 70 r 10(1A) allows for service of the writ in an action in rem or a warrant of arrest to be effected by affixing the writ or warrant outside any suitable part of the ship's superstructure, and followed immediately with electronic communication by email or other means to the owners/demised charterers of the ship.

Finally, the power of the Chief Justice and Chief Judge to issue practice direction is contained in O 92 r 3B. Rule 3B (1) provides: 'The Chief Justice after consulting the Chief Judge may issue such practice directions as may be necessary — (a) for the better carrying out or giving effect to the provisions of these Rules; or (b) if the Chief Justice is of the opinion that the circumstances warrant that it is necessary in the interest of the dispensation of justice, public safety, public security, public health or propriety or for other sufficient reason to do so'. Rule 3B (2) further provides that, 'the Chief Judge after consulting the Chief Justice may issue such practice directions as may be necessary for the better carrying out or giving effect to the provisions of these Rules'.

TEACHING AND LEARNING OF LEGAL EDUCATION IN MALAYSIA

Given that the judiciary itself has embraced digitalization in the courtrooms, law schools must also be swift to respond, adopt and integrate technological changes into its curriculum. As of 2020, there are approximately 20 public and private universities and colleges offering law programmes such as Diploma of Laws, Bachelor of Laws, Master of Laws and Doctor of Philosophy in Law in Malaysia.¹⁷ Most times, these higher education institutions that offer legal education in Malaysia tend to practice the conventional method of delivering law in order to comply with the requirements provided under the Malaysian Qualifications Agency ('MQA') Programme Standards: Law and Shariah Law.¹⁸ The Programme Standards for Law and Shariah Law was designed to set specific guidelines on programme aims and educational objectives, programme learning outcomes, programme design, students admission criteria, student

16 Rules of Court 2012 O 63A r 17(4) provides: 'The person serving the document may produce a record of the service to the person on whom the document is served which is issued by the Court's computer system or the service bureau as evidence of the service, as well as the date and time of such service'.

17 Puteri Sofia Amiruddin, Ashgar Ali Ali Mohamed and Muhamad Hassan Ahmad, 'Transforming Legal Education in the Era of Fourth Industrial Revolution (IR4.0)' (2020) 2 CLJ ix, xi.

18 Malaysian Qualifications Agency, 'Programme Standards: Law and Shariah Law' (MQA, 2015) <https://www2.mqa.gov.my> accessed on 10 January 2021.

assessment method, criteria for academic staffs, educational resources and continuous quality improvement. The Programme Standards provides flexibility on the higher education institutions on the delivery of teaching and learning provided that it reflects the eight domain of learning outcomes which are in line with the Malaysia and international educational developments.¹⁹ The eight domains of learning outcomes comprises of: (i) knowledge; (ii) practical skills; (iii) social skills and responsibilities; (iv) values, attitudes and professionalism; (v) communication, leadership and team skills; (vi) problem solving and scientific skills; (vii) information management and lifelong learning skills; and (viii) managerial and entrepreneurial skills.²⁰

Despite the flexibility provided by the MQA on the manner in which teaching and learning can be conducted, it provides recommended delivery methods which includes: lectures, tutorials, guest lecture series, intellectual discourse, problem-based learning, experiential learning, interactive learning and case study. The list of the recommended delivery methods is by no means exhaustive as law lecturers are encouraged to adopt innovative teaching and learning methods to teach the new generation of learners.²¹ Teaching and learning in higher institutions have manifested into a hybrid of conventional and digital learning in the last decade. It has been noted that the new generation of learners consists of Generation Z and Generation Alpha whom are poised to be tech-savvy learners to date.

One important trait of these generations is the impact of technology on their learning development where the usage of iPads, laptops and mobile phones has been introduced early in their lives.²² They relied heavily on technology — be it as a source of entertainment or finding information hence it only made sense for law lecturers to bring digital experience into the classroom to supplement the existing teaching and learning practices as to be in line with the advancement in technology. Law lecturers in higher education institutions in Malaysia have been implementing various innovative teaching and learning methods in addition to the recommended methods by the MQA which includes: clinical legal education, mooted, blended learning, neuro-linguistic programming, gamification and augmented reality learning.

19 *Ibid.*

20 *Ibid.*

21 Puteri Sofia Amirnuddin, Ashgar Ali Ali Mohamed and Muhamad Hassan Ahmad, 'Transforming Legal Education in the Era of Fourth Industrial Revolution (IR4.0)' (2020) 2 CLJ ix, xv.

22 Michael Blissenden, 'Teaching Undergraduate Law Students in the 21st Century — Pedagogy in a Technological Era' (2015) 4 (1) Athens Journal of Law 213, 215.

Below are a list of summary of teaching and learning methods in the delivery of legal educations in Malaysia:

(i) Lectures:

The conventional and yet common practice of delivering legal education is lecturing. It involves an actual, physical action by the professors or law lecturers to stand in front of the lecture hall or classroom imparting knowledge to the law students. The professors or law lecturers usually present his or her lesson with the aid of using PowerPoint slides or handouts. This practice demonstrates a lecture-centred approach which tend to encourage law students to listen, pay attention, take notes and refrain from asking questions during lectures as to not interrupt the flow of the lecture.²³

The lecture method will also result in a tendency of law students to be passive learners during lectures and often expect professors or lecturers to provide them with sample answers.²⁴ It is a one-way street of learning process requiring the law students to absorb as many information as possible throughout the lecture.²⁵ Although the lecture method is preferred method of learning by the law students, it inhibits creativity and critical thinking process resulting in law students to regurgitate information from the lectures, handouts or even the textbooks. This is in contradiction to the expectations of the practising lawyers in Malaysia which demands law students to understand the practical applications of the legal principles instead of reiterating the law.²⁶

There is also tendency of students to be passive learners in the lecture method and students often expect professors or law lecturers to provide them

23 Awad Ali Alanzi, 'The Models of Legal Education: Implication for Saudi Arabia' (2020) 7 (3) *Journal of Education and e-Learning Research* 235, 239.

24 John William Hayton, 'Helping them to help themselves? An evaluation of student-led tutorials in a higher education setting' (2017) *Journal of Further and Higher Education* 1, 2 and Cuseo, J, 'The Empirical Case against Large Class Size: Adverse Effects on the Teaching, Learning, and Retention of First-Year Students' (2007) 17 (1) *The Journal of Faculty Development* 5, 5–21.

25 Jason James Turner, Puteri Sofia Amirnuddin & Harmahinder Singh Iqbal Singh, 'University Legal Learning Spaces: Effectiveness in Developing Employability Skills of Future Law Graduates' (2019) 16 (1) *Malaysian Journal of Learning and Instruction* 49, 56.

26 Salim Bashir, 'Press Comment | Tertiary Legal Institutions Should Enhance the Quality of Legal Training for Students' (*Malaysian Bar*, 24 November 2020) <https://www.malaysianbar.org.my/article/news/press-statements/press-statements/press-comment-tertiary-legal-institutions-should-enhance-the-quality-of-legal-training-for-students> accessed on 10 January 2021.

with sample answers.²⁷ This will further lead to Generation Z and Generation Alpha to be disengaged in the classroom due to lack of interactions between lecturers-students and between students-students themselves.

(ii) Tutorials:

In most higher education institutions, there will be tutorial sessions in addition to lectures provided for each module. It involves forming a small group of students, approximately 20–25 students per tutorial session to facilitate students' learning based on the pre-set content taught prior to the tutorial session. The aim of having tutorial sessions is to provide a platform where students are able to demonstrate their understanding and construct their own learning on the topic taught during lectures through the tutorial activities encouraging deep learning.²⁸ In Malaysia, so far, Taylor's University has also introduced X-Space collaborative classrooms to cater to new generations of learners which are meant for tutorial settings.²⁹ The use of X-Space collaborative classrooms stimulates law students' creativity and also confidence in discussing legal issues.

Depending on the higher education institutions, professors or law lecturers may conduct tutorial sessions either weekly or fortnightly per module. Contrary to lectures where professors or law lecturers will convey information, law students are highly encouraged to interact in discussions during tutorial sessions. Tutorial sessions are led by the professors or law lecturers teaching the module itself or it can be a separate tutor appointed to tutor the law students. Tutorial sessions usually allows the professors, law lecturers or tutors to engage with the law students, monitor their learning progress and also the dynamic of the discussion which can be unfeasible to conduct during lectures.

(iii) Guest lecture series:

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- 27 John William Hayton, 'Helping them to help themselves? An evaluation of student-led tutorials in a higher education setting' (2017) *Journal of Further and Higher Education* 1, 2 and Cuseo, J, 'The Empirical Case against Large Class Size: Adverse Effects on the Teaching, Learning, and Retention of First-Year Students' (2007) 17 (1) *The Journal of Faculty Development* 5, 5–21.
- 28 S. Mathieson, 'Student Learning' in H. Fry, S. Ketteridge, and S. Marshall (eds), *A Handbook for Teaching & Learning in Higher Education: Enhancing Academic Practice* (4th edn, Routledge 2015) 63–79.
- 29 Jason James Turner, Puteri Sofia Amirnuddin & Harmahinder Singh Iqbal Singh, 'University Legal Learning Spaces: Effectiveness in Developing Employability Skills of Future Law Graduates' (2019) 16 (1) *Malaysian Journal of Learning and Instruction* 49, 56.

Another effective teaching strategy within the realm of legal education in the law faculties in Malaysia is the presence of guest lecturers. Professors and law lecturers often invite guest speakers, more often than not, who are experts in their respective disciplines, to the class to enrich the module content, link theories with real-life practice.³⁰ It can be said that the presence of a guest lecturer or guest speaker in class is akin to authentic learning approach on campus where law students can envisage authentic real-life scenarios and the application of what was taught into practice. Having invited guest speakers to deliver talks or interact with the students facilitates student learning and motivation as students are provided with invaluable information on the current and emerging issues, trends and practices.³¹ The practical insights shared by the guest speakers can enrich students' learning experience, foster students' acceptance and understanding on what was taught by the professors or law lecturers in class. The guest lecture series also enhances the quality of student learning where students can develop positive outlook on the modules learned. It can also impact on student development and assist them in deciding their career paths.

(iv) Intellectual discourse:

Intellectual discourse is a technique that dates back to ancient times which offers a meaningful and engaging discussion for students to develop in-depth understanding critically. It has been said to be a potent learning model when it is conducted in a structured manner which provides a platform for law students to discuss on ideas and moral dilemmas.³² Law faculties in Malaysia are encouraged by the MQA to embed intellectual discourse in classroom. However, there are some law faculties that displayed additional initiative to organize seminars, forums, workshops or conferences to provide a thought-provoking environment for students where they can engage in active learning with fellow students, lecturers or even invited guest speakers. With intellectual discourse, students are expected to be able to engage in deep learning, to apply what was taught in class, to embrace legal and transdisciplinary issues in training law students to appreciate phenomena from a multiplicity of angles and to find solutions in creative ways. Intellectual discourse creates

30 Reem A. Alebaikan, 'Online and face-to-face guest lectures: graduate students' perceptions' (2016) 13 (2) *Learning and Teaching in Higher Education: Gulf Perspectives* 1, 1.

31 *Ibid.*

32 Lynda Tredway, 'Socratic Seminars: Engaging Students in Intellectual Discourse' (1995) 53 (1) *Strengthening Student Engagement* 26, 26–29.

opportunities for pedagogically rich classroom discourse, including teachers' use of general conversational strategies and specific discourse practices that might improve student understanding of content knowledge.³³

(v) Problem-based learning:

In order to engage the new generations of learners with learning, professors and law lecturers have also employed problem-based learning to encourage active engagements and interactions in the lecture halls or classrooms. Problem-based learning has become one of the attractive pedagogies to legal educators to assist law students to perfect their analytical skills and articulating perceptions of the law and judges' decisions.³⁴ Students will be provided with problem-based questions which usually involves hypothetical scenario with various issues requiring the students to read, understand, identify and analyse the issues in order to apply the applicable laws and cases to arrive to particular solutions. During this exercise, law students are trained to deconstruct the problems by identifying all possible 'hints' or keywords in the scenario given, critically analyse the scenario and think outside the box bringing the students' thinking as closer as possible to a practising lawyer. By combining various issues in one scenario, professors and lecturers will be able to assess students' full breadth of knowledge-fulfilling the MQA learning outcomes on knowledge, practical skills and problem-solving skills.

(vi) Experiential learning:

In order to create high impact and meaningful learning experience for the law students, higher education institutions introduced experiential learning which involves a process of cumulating knowledge through transforming experience. Examples of experiential learning include internship, collaborative projects and community service. This method encourages hands-on learning experience as it provides law students with a platform to take initiative, apply what they have learned and integrate their knowledge and skills in real-life environment. It has been noted that law students can develop and expand their network with classmates, academic team and members of the community

³³ *Ibid.*

³⁴ Awad Ali Alanzi, 'The Models of Legal Education: Implication for Saudi Arabia' (2020) 7 (3) *Journal of Education and e-Learning Research* 235, 237–238 and Admiraal, W., Wubbels, T., and Pilot, A, 'College Teaching in Legal Education: Teaching Method, Students' Time-on-Task and Achievement' (1999) 40 (6) *Research in Higher Education* 687, 687–704.

whilst in the process of learning law, fulfilling the MQA learning outcomes on social skills and responsibilities, values, attitudes and professionalism, communication, leadership and team skills and lifelong learning skills.

(vii) Interactive learning:

Another teaching pedagogy adopted by professors and law lecturers in legal education is interactive learning which seeks to actively engage law students in the learning process and most often with the support of technology. Examples of interactive learning includes ClassPoint, FeedbackFruits, H5P, Kahoot!, Quizizz, Mentimeter, Powtoon and VideoScribe. The emphasis of interactive learning is to provide law students with greater interactions and communications between the law students and the lecturers. With the use of interactive learning, law students are encouraged to think, compare, ask questions, imagine, create new ideas, develop artistic sensibility, and to develop higher-order cognitive activities such as analysis, synthesis, evaluation, and critical thinking.³⁵

(viii) Case study:

Another arguably effective means of delivery is the practice of using case study method. It is often used by the professors and law lecturers in class discussion to analyse and synthesise the historical judicial proceedings to understand the legal framework and the reasons behind judges' decisions. Case study method can actively stimulate law students' minds to create a possible and logical argument with a realistic view of the legal framework applied in the cases. Through case study method, law students are taught to illustrate and demonstrate specific legal principles and applications. It allows law students to mentally visualise a hypothetical scenario where they can analyse the case from different legal standpoints of the parties involved in the case.³⁶ Case study method can also enhance law students' retention and understanding of legal knowledge as it trains law students to prepare and present sound legal arguments.

(ix) Clinical Legal Education:

35 Zlata Tomljenovic, 'The Cognitive Aspect of Interactive Learning and Teaching in Visual Arts Education' (2020) 13 (2) *Journal of Elementary Education* 131, 137.

36 Awad Ali Alanzi, 'The Models of Legal Education: Implication for Saudi Arabia' (2020) 7 (3) *Journal of Education and e-Learning Research* 235, 239.

In recent years, there has been an increase in the establishment of legal aid centres by universities in Malaysia to offer clinical legal education.³⁷ Law faculties that offer clinical legal education are usually operated by the law students to provide pro-bono services or free legal solutions to the community. On the most basic level, the clinical legal education offers a platform for students to engage in faculty-supervised law practice in a setting where law students can reflect upon the nature of that practice and its relationship to law as taught in the classroom.³⁸ It is considered as one of the teaching methods that can bridge the gap between the theory taught in class and its practice.³⁹ Law students are able to work as apprentices under the Head of the Legal Clinic who is often a practising lawyer.

Clinical legal education provides a training ground for the law students to represent clients effectively in the legal system whilst at the same time, they can develop critical view of the legal doctrine, rules, and procedure, legal theory, the planning and execution of legal representation of clients, ethical considerations, and social, economic and political implications of legal advocacy as these are all fundamentally interrelated.⁴⁰ This teaching method will also provide law students with real-life experiences in dealing with real clients and with real legal issues under the supervision of volunteered practicing lawyers or law lecturers.⁴¹ In fact, law students will gain various skills by participating in clinical legal education which are aligned with the MQA learning outcomes such as application of knowledge, practical skills, social skills and responsibilities, values, attitudes and professionalism, communication skills, problem solving and life-long learning skills.

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- 37 Jason James Turner, Puteri Sofia Amirnuddin & Harmahinder Singh Iqbal Singh, 'University Legal Learning Spaces: Effectiveness in Developing Employability Skills of Future Law Graduates' (2019) 16 (1) Malaysian Journal of Learning and Instruction 49, 54-55.
- 38 Hugh McFaul, 'Does Clinical Legal Education Need Theory' (2020) Asian Journal of Legal Education 1, 2.
- 39 Puteri Sofia Amirnuddin, Ashgar Ali Ali Mohamed and Muhamad Hassan Ahmad, 'Transforming Legal Education in the Era of Fourth Industrial Revolution (IR4.0)' (2020) 2 CLJ ix, xiii.
- 40 Hugh McFaul, 'Does Clinical Legal Education Need Theory' (2020) Asian Journal of Legal Education 1, 2.
- 41 Puteri Sofia Amirnuddin, Ashgar Ali Ali Mohamed and Muhamad Hassan Ahmad, 'Transforming Legal Education in the Era of Fourth Industrial Revolution (IR4.0)' (2020) 2 CLJ ix, xiii.

(x) Mooting:

Law students are also exposed to mooting which is essentially an activity that replicates the atmosphere in a court room by requiring law students to present their side of each case at an appeal level based on a fictitious lawsuit before a panel of appointed 'judges'. Mooting is considered as an attractive learning method for law students as they are able to experience the challenge to moot before a panel of judges. The judges are usually the law lecturers, invited lawyers or sometimes can even be retired judges.

In many law faculties, mooting plays an important role in providing law students with a degree of exposure closest to the real-life practice, albeit in a simulated fashion. As early as the 1890s, mooting was an important learning method for the learning of law, where law students learn to collate case law, read statutes, prepare submissions, improve legal writing and argue cases.⁴² Most law faculties integrate mooting in the academic curriculum in order to assist students to sharpen their advocacy skills, persuasive skills, communication skills, organisation skills, research and writing skills.

Mooting is usually conducted in a moot court which requires participating students to analyse and argue both sides of an appeal from a fictitious lawsuit before law lecturers and/or lawyers who serve as judges.⁴³ Depending on the higher education institutions, law students are required to participate in mooting as a requirement for graduation. Some law faculties, although mooting is not a compulsory module, offer moot court engagements in tasking the students to collate case law, read statutes, prepare submissions, improve legal writing and advocate legal arguments.⁴⁴ There are also moot competitions held in moot courts organised by universities, law firms, governmental agencies, and regional and international organisations which underline its importance to the student learning experience.⁴⁵

Mooting exercise must nonetheless be utilised effectively and appropriately integrated into the module in order to truly achieve the intended MQA learning outcomes on practical skills, values, attitudes and professionalism,

42 Jason James Turner, Puteri Sofia Amiruddin & Harmahinder Singh Iqbal Singh, 'University Legal Learning Spaces: Effectiveness in Developing Employability Skills of Future Law Graduates' (2019) 16 (1) Malaysian Journal of Learning and Instruction 49, 52–53.

43 *Ibid.*

44 *Ibid.*

45 *Ibid.*

communication, leadership and team skills, problem solving and scientific skills. Otherwise, moot court will simply be an additional learning space used as a classroom.

(xi) Blended learning:

The rapid development of online learning has resulted in many changes to the methodologies and techniques in teaching the law students. Some law faculties have incorporated blended learning into the teaching and learning curriculum.⁴⁶ Blended learning involves the customisation of knowledge transfer and skills via integration of conventional synchronous face-to-face learning on campus and asynchronous learning via online platform.⁴⁷ With the support of learning management system (LMS), it enables seamless and effective use of blended learning which signifies a new paradigm in modern legal education.

Blended learning confers significant advantages to the law students as it enables them to feel accustomed with the hybrid mode of learning to prepare for their future digitised work environment. This is particularly true when law students are able to utilise technological platforms to conduct legal research, engage in seamless student-lecturer online interactions and personalised learning in a borderless environment which are in line with the MQA learning aims and outcomes. The incorporation of 'blended learning week' into the curriculum can also heighten students' motivation, satisfaction in learning, a feeling of autonomy and responsibility.⁴⁸ Students are provided with the 'trust' to pace their own learning at their own time during the blended learning week, resulting in a good practice of time-management skills. In fact, the integration of social interaction and collaborative learning in a classroom and borderless

46 Norchaya Talib, Puteri Sofia Amirnuddin et al, 'Aspirations of a Young Law School: Process, Content and Direction' (2017) *The Law Review* 134, 142-143.

47 Damijana Kerzic, Nina Tomazevic, Aleksander Aristovnik, and Lan Umek, 'Exploring critical factors of the perceived usefulness of blended learning for higher education students' (*PLOS ONE*, 21 November 2019) <https://doi.org/10.1371/journal.pone.0223767> accessed on 10 January 2021 and Yuri Ariyanto, Budi Harijanto, Atiqah Nurul Asri, 'Analyzing Student's Learning Interests in the Implementation of Blended Learning Using Data Mining' (2020) 16 (11) *International Journal of Online & Biomedical Engineering* 153, 153-154.

48 The incorporation of 'blended learning week' was done at Taylor's Law School where teaching and learning in Week 8 in the 16-week semester needs to be delivered in an online platform.

environment can also stimulate the development of critical thinking skills, the co-creation of knowledge and meaning, reflection and transformative learning.⁴⁹

Blended learning shifts the education from teacher-centred to student-centred, and it also increases students interaction between students and teachers, leading to improved learning.⁵⁰ Blended learning is not a substitute for synchronous learning as it is meant to supplement learning by acclimatising law students to the on-going digitalisation of legal education and legal profession.

(xii) Neuro-Linguistic Programming:

To date, there is still mismatch between student experience, expectations of employers and the employment market.⁵¹ Whilst law faculties are constantly adapting and adopting changes to reflect the current trend in teaching and learning, there are still voices of dissatisfactions shared by the legal practitioners regarding the quality of the law students.⁵² It has been said that 'just as legal skills evolve with the course of time, so too should its education and training'.⁵³ Hence, Taylor's University introduced the Neuro-Linguistic Programming ('NLP') in Legal Skills and Methods module.

NLP is commonly known as the study of excellence which refers to the relationship between a person's internal experience (neuro), their language (linguistic) and their patterns of behaviour (programming).⁵⁴ NLP trains law students to understand the conscious and unconscious patterns of thinking, communication and behaviour to create effective thinking, influences

49 Mirjam Westerlaken et al, 'Blended learning for postgraduates; an interactive experience' (2019) *Medical Education* 1, 1

50 *Ibid.*

51 Jason James Turner, Puteri Sofia Amiruddin & Harmahinder Singh Iqbal Singh, 'University Legal Learning Spaces: Effectiveness in Developing Employability Skills of Future Law Graduates' (2019) 16 (1) *Malaysian Journal of Learning and Instruction* 49, 52-53

52 Salim Bashir, 'Press Comment | Tertiary Legal Institutions Should Enhance the Quality of Legal Training for Students' (*Malaysian Bar*, 24 November 2020) <https://www.malaysianbar.org.my/article/news/press-statements/press-statements/press-comment-tertiary-legal-institutions-should-enhance-the-quality-of-legal-training-for-students> accessed on 10 January 2021.

53 *Ibid.*

54 Puteri Sofia Amiruddin and James Turner, 'Learning Law Using Augmented Reality and Neuro-Linguistic Programming' in Pradeep Kumar, Mike Keppell, and Lim Chee Leong (eds) *Preparing 21st Century Teachers for Teach Less, Learn More (TLLM) Pedagogies* (IGI Global 2020) 259-278.

comprehension and improves advocacy skills.⁵⁵ It is as an initiative to develop law students' metacognitive thinking that trains law students to be critically aware of their emotional intelligence — to learn to think of their own thinking. An example of NLP learning activity is where law students were required to engage in a one-minute speed conversation outside the classroom utilising the NLP techniques taught in the Legal Skills and Methods class. The NLP learning activity allows law students to be mindful on how they interact, such as understanding their own eye-contact, body gestures, hand movement, voice intonation, facial in order to read, analyse and sustain the interest of their 'audiences'.

NLP provides considerable improvements in a student's 'softer' skills which can also increase students' self-esteem, confidence in speaking, presenting, mootng, ability to build rapport, critical thinking, the ability to negotiate and resolve conflicts.⁵⁶ However, the successful applications of NLP depends on student engagement, their awareness of their particular learning style and willingness to broaden their minds to embrace change in learning.⁵⁷

(xiii) Gamification:

Another example of an innovative teaching and learning in legal education adopted by some law lecturer in Malaysia is the use of gamification in teaching law students. Gamification is an uprising trend in education to stimulate, motivate, engage and enhance law students' learning experience. Gamification involves a process of applying game mechanics or game elements into non-game-based contexts in an attempt to achieve learning outcomes.⁵⁸ The use of badges, points, progress bars, prize rewards, trophies, avatar and leader boards are examples of gamification in teaching law students. These examples were implemented in English Legal System and English Land Law modules at Taylor's Law School as an initiative to stimulate law students' motivation to learn law when movement control order was announced in March 2020 as a result of COVID-19 pandemic. The adoption of gamification to teach law students can serve as an efficient tool to stimulate students' thinking, promote active discussion in online class, increase their level of motivation to learn

55 *Ibid.*

56 *Ibid.*

57 *Ibid.*

58 Puteri Sofia Amirnuddin, 'Strategies to Enhance Virtual Legal Education' (*Marketing in Asia*, 28 September 2020) <https://marketinginasia.com/2020/09/28/strategies-to-enhance-virtual-legal-education/> accessed on 10 January 2021.

remotely, receptive to engage in virtual collaborations and to have friendly competition with peers, albeit in a borderless learning platform.⁵⁹

The law lecturer introduced points system for English Legal System and English Land Law modules to reward students for their early attendance in online class and also for their effort to share thoughts in discussion. The points are provided through the 'virtual store' concept where students will accumulate points throughout the semester in order to 'redeem' internship opportunities or letter of recommendation. The cumulation of points will be recorded on excel sheets where law students are able to monitor their own performance and progress throughout the semester. The adoption of gamification will motivate students not only to attend virtual classes early but it will also stimulate critical thinking. Students will be driven with the points system to achieve more points as these points reflect their own level of understanding for the topics assessed. At the end of the semester, the points will be tabulated and students will be able to trade their points to redeem merchandises from or internship opportunities with Malaysia Competition Commission.

(xiv) Augmented Reality learning:

Given that law practices in Malaysia operate in a disruptive market where work and the required skills set of law graduates are changing, the introduction of technology to the teaching and learning experience in the legal education becomes increasingly important to prepare graduates for future employment. The law lecturer who implemented gamification at Taylor's Law School had also introduced Augmented Reality ('AR') learning in order to be in line with the Fourth Industrial Revolution ('4IR'). AR involves real-time interactivity with two or three dimensional virtual objects overlaid on a real-life environment and it provides a novel way for law students to interact with information which can prepare the students to face challenges in the future legal practice.⁶⁰ The interactions using AR can enhance students' learning

⁵⁹ *Ibid.*

⁶⁰ Puteri Sofia Amiruddin and James Turner, 'Learning Law Using Augmented Reality and Neuro-Linguistic Programming' in Pradeep Kumar, Mike Keppell, and Lim Chee Leong (eds) *Preparing 21st Century Teachers for Teach Less, Learn More (TLLM) Pedagogies* (IGI Global 2020) 259-278.

experiences where they are provided with a platform to be curious, creative, interested and innovative in their studies.⁶¹

AR learning requires law students to scan a particular image set by the law lecturer using a custom-made mobile application namely 'LawleyPop' app and two dimensional video will appear on students' mobile devices. Upon learning law via the 'superimposed object', students will also receive an instruction to complete an activity in groups. Students are then required to create an AR poster to provide solutions based on the issue presented on the 'superimposed object'.

The objective of the AR activity is to assess students' ability to lead remotely, interact in groups, delegate tasks, conduct legal research and provide effective presentation using the latest technological platforms. This has been said to be an important characteristic for graduate work readiness given that the future work environment will involve colleagues collaborating remotely across multiple locations with the use of technology to communicate.⁶² AR learning also caters to new types of jobs that will be created in the future where spatial computing are becoming the most powerful tools in all industrial sectors.

CURRENT REMOTE COMMUNICATION TECHNOLOGY USED IN LEGAL EDUCATION

Even before the outbreak of COVID-19 pandemic many higher learning institutes (including law faculties and law schools) across the nation have adopted various learning management systems ('LMS') such as Moodle, Blackboard, Schoology, SAP Litmos and TalentLMS, among others. Students have access to the respective module page on LMS in order to obtain relevant learning materials uploaded by their lecturers which sometimes included the pre-recorded lectures⁶³ and interact with lecturers over the module page.⁶⁴ In the wake of COVID-19 pandemic, the law faculties and law schools were

61 *Ibid.* See also Jason James Turner, Puteri Sofia Amirnuddin & Harmahinder Singh Iqbal Singh, 'University Legal Learning Spaces: Effectiveness in Developing Employability Skills of Future Law Graduates' (2019) 16 (1) Malaysian Journal of Learning and Instruction 49, 57.

62 *Ibid.*

63 The government is looking into the possibility of using recorded lessons by selected teachers to be shared with other schools in Malaysia which is aimed, among others, at simplifying and enhancing the quality of teaching: 'Govt exploring use of recorded lessons in schools, says PM' (*The Malay Mail*, 7 September 2019) <https://www.malaymail.com/news/malaysia/2019/09/07/govt-exploring-use-of-recorded-lessons-in-schools-says-pm/1788287> assessed on 8 November 2019.

forced to migrate all their teaching and learning activities online in an extremely short period. Undoubtedly, it is worth struggling to stay relevant in the industry rather than completely halting the teaching and learning.

The COVID-19 pandemic has compelled the law faculties and law schools to go online where lectures conducted using the remote technology thereby replacing the in-person face-to-face lectures traditionally conducted in the classrooms. Nonetheless, the existing LMS are not yet ready to take up challenges post by massive migration of various class activities online. As a result, along with the usage of the existing LMS, in complementary manner, lecturers have opted for several other alternative online platforms where they can deliver the course contents fully online, ie, Zoom, Google Meet, etc. In the same vein, tutorials were also conducted using the same platforms as the online lectures. Although these platforms are free of charge in most cases, the services offered are limited in terms of number of students' who could join the class or the time. Thus, some institutes have even subscribed those services by paying certain fees to obtain unlimited access and more efficient service for the purpose of conducting online class activities.

This situation should not be prolonged further and an urgent need is there for the law faculties and law schools to enhance their existing LMS to include functions as in those online platforms such as online video conferencing option to conduct lectures and tutorials online. Alternatively, the lecturers can video record the lectures and make them available in the respective LMS. This would allow students the opportunity to learn at their own pace and convenient time by viewing the pre-recorded lectures as many times as they want until they have fully grasped the contents covered. Some may argue that delivering contents by pre-recorded videos may not be as interactive as either 'in-person' or 'online' face-to-face lectures. In this regard, higher learning institutes can enhance their existing LMS to include instant communication features as discussed in the following discourse with a view to create interactive learning environment. Therefore, delivering lectures in-person face-to-face in the traditional classrooms can now be fully replaced by delivering lectures online face-to-face via the video conferencing service available through the enhanced LMS where the lecturers will have options either to deliver live lectures or upload pre-

64 Richard E. West, Greg Waddoups and Charles R. Graham, 'Understanding the Experiences of Instructors as They Adopt a Course Management System' (2007) 55 *Education Tech Research Dev* 1, 2; Puteri Sofia Amirnuddin, Ashgar Ali Ali Mohamed and Muhamad Hassan Ahmad, 'Legal Education in Malaysia: Paradigm Shift in the Era of Fourth Industrial Revolution (IR4.0)' in Ashgar Ali Ali Mohamed (ed) *Malaysian Legal System* (2nd edn, CLJ Publication 2020) 967-996, 987.

recorded video lectures, and conduct live tutorials.

INSTANT COMMUNICATION

Apart from the delivery of contents and conducting tutorials, interactive communication among lecturers and students is equally crucial in the learning environment, especially for the students to discuss various matters with regard to the contents, the classes and tutorials. In view of that, the existing LMS of various higher learning institutes provide option for the lecturers and students to interact over the respective module page.

Nevertheless, it is interesting to find out that the instant communication among them rarely happen as they would rather prefer to communicate through the familiar free of charge instant messaging services, most notably the WhatsApp and Telegram — an instant mobile communication application.⁶⁵ Although it seems to be a casual online platform, using it makes the instance communication very much smooth and reliable compared to the usage of existing LMS which may every now and then face downtime in which the whole communication system would breakdown. Therefore, this is another aspect where the law faculties and law schools need to consider for the improvement of their existing LMS by including those features which would make the instant communication simple, smooth, easy and user-friendly thereby creating opportunity for the students to be in touch with their lecturers and also to collaborate with other students regardless of their locations.

ASSESSMENT

Although the MQA's guideline pertaining to the assessment methods provides that the assessment must contain continuous and final assessments, it does not impose specific assessment methods for any module or restrict types of

⁶⁵ With the advancement of mobile smartphones, WhatsApp, an instant mobile communication application, is now a widely accepted medium of communication where images, audio files, short video clips and text messages can be sent easily besides it being accessible anywhere regardless of geographical location.

assessment used in assessing students' level of understanding.⁶⁶ Thus, higher learning institutes have the liberty to design the relevant assessment methods for each module and accordingly the choice of assessment methods is usually selected depending on the particular module as well as the learning outcomes assigned for each module. The most commonly used forms of assessment methods for law programmes include written assignment, oral presentation, class/tutorial participation and final examination.⁶⁷ In this part, the focus would be on conducting final examination as the above mentioned similar online platforms used for the online lectures and tutorials are also used for the first three types of assessment methods, ie, written assignment, oral presentation and class/tutorial participation.

In the current state of affairs, final assessment or examinations are also conducted online as higher learning institutes are not allowed to conduct the same face-to-face due to the Movement Control Order (MCO) or lack of available space and resources to observe the strict social distancing rules as well as other SOPs imposed by the relevant government agency. Being online exam, it is an open book in nature and thus the questions are specifically designed to be problem-based questions in which students' ability to apply the relevant laws and decided cases to the legal issues covered in the questions could be tested. The final examination question paper and an answer booklet will be made available to the students either via the existing LMS or the preferred online platform pre-agreed by the lecturers and students, most notably Google Classroom or even WhatsApp sometimes. The students will be required to answer the questions within the stipulated time and submit their answer script in the same online platform.

Even though the above process may sound smooth, there are pros and cons. Online final assessment or examination can obviously save resources of the higher learning institutes and ease the academic as well as non-academic staff from performing hours of invigilation duty. Students can take the exam from

66 The guideline provides that 'the continuous assessment can be in a range of 40% to 70% and the final assessment can be in a range of 30% to 60% for the suggested assessment such as collaborative work, final examination, oral assessment, peer review, practical assessment and written assessment'. The guideline also provides that 'the continuous assessment can be in a range of 0% to 100% and the final assessment can be in a range of 0% to 100% for the suggested assessment such as student attachment/placement, projects or academic exercise' — Malaysian Qualifications Agency, *Programme Standards: Law and Shariah Law* (2nd edn, 2015) 29.

67 Puteri Sofia Amirnuddin, Ashgar Ali Ali Mohamed and Muhamad Hassan Ahmad, 'Legal Education in Malaysia: Paradigm Shift in the Era of Fourth Industrial Revolution (IR4.0)' in Ashgar Ali Ali Mohamed (ed) *Malaysian Legal System* (2nd edn, CLJ Publication 2020).

their own convenient place without having to travel to campuses. On the other hand, there is no proper invigilation method to rectify whether — although not all — a student copied from another student who is willing to share the answers or is assisted by a third party in answering the questions.

Therefore, it is essential for the higher learning institutes to create a pragmatic and viable online platform to conduct online examination as efficient as in-person examination. There are 'cheat-proof' technologies to prevent or detect any elements of cheating when attempting the assessments. Using such technologies for invigilating students' performance in the final exam is not something new anymore and these are being utilised by academics in the United States, Australia and China to name but a few.⁶⁸ In addition, since it is not only an open book but also open to all kinds of resources available online, the problem-based questions have to be designed in a way that the problems must be contemporary on the basis of real case scenario and no readily available answers could be found in any text book or the internet.

In this way, even when the COVID-19 pandemic is over, the delivery of contents and conducting tutorials can always be online and thus there is no need of going back to old-normal (in-person face-to-face lectures and tutorials in the classroom) but the new-normal (online face-to-face lectures and tutorials) will continue to be the norm for the future. Same goes to conducting and invigilating online final examinations. Online teaching and learning in legal education will become highly cost effective compared to maintaining large infrastructures like lecture theatres and classrooms on campuses for the purposes of conducting class activities and examinations. Students can also be relieved from paying high tuition fees if it is fully online. For administrative staff, lecturers and students, this will further save time to prepare and go to the offices, lecture theatres and classrooms on campuses, not to mention yet the reduction of carbon emission from the vehicles while travelling to campuses which may lead to maintaining a healthy and sustainable environment.

JUSTICE DELAYED IS JUSTICE DENIED: LEGAL EDUCATION REGULATORY BODIES TO EMBRACE REMOTE COMMUNICATION TECHNOLOGY

The renaissance of legal education today involves not only technology that has been in existing since the 90s but now, there is a need to advance the adoption of the latest remote communication technology ('RCT') during the current

68 *Ibid*, 993–994.

COVID-19 pandemic and beyond. The application of RCT includes, but not limited to live video link, a live television link or any other electronic means of communication. Despite the plethora of RCT available in the market, the legal fraternity was one of the industries that was unprepared for RCT. Therefore, RCT is now ever more a necessity to provide access to the legal field of practice and education. In the past, the RCT has been argued on the basis that it was a prospect to rejuvenate and revolutionise legal education. Legal services is a very old profession lasting for many decades and for the first time the development of technology has changed the legal service value network.⁶⁹ With the RCT as a disruptive innovation, the network is facing a radical change like work. Some may perceive RCT as a disruptive entrant however it is a compelling need especially during pandemic times.

The challenge today is not only on whether the educators are prepared for this change but also whether the regulatory bodies are prepared for the change. In RCT, educators are expected to be thoughtful, insightful, and engage in a far-sighted restructuring of legal education and they have to supersede the past models of the conservative face-to-face teaching and learning of legal education. Educators are today the avatars of law in the digital age of RCT. However, this can only be made possible if the regulatory bodies are ready and willing to accept that legal education today has to be free from the customs and conventions, ethos, and certification concerning qualifying degrees. These shackles will free law schools from the fear and remove conservatism in legal education. The applications of modern methods of teachings, readings, and assessments shall prevail.

The COVID-19 pandemic has shown that real changes through RCT in this digital age are timely, relevant, and imminent. In Malaysia, the Prevention of Infectious Diseases Act 1988⁷⁰ was invoked thereby halting and confining the daily practice in courts. This certainly proved to be a challenge and the courts have to accept the inevitable and innovate. Similarly, in legal education, this innovation included digital teaching methods⁷¹ and resources. In a globalised world, the borders are fragiley invisible and therefore RCT allows education to be a world tour and allows these students to gain knowledge and experience that develops relationships that supersedes professional goals. In RCT, educators become all-rounder from a coach to a classmate to a friend to a colleague. The use of digital technology brings learning possible through time

69 The entities of legal services include law schools, law firms, judiciary and all local and international bodies that regulate and administer the law.

70 (Act 342).

71 Such as MS Teams, Zoom and Google Hangout.

and space beyond an unimaginable vision. The quantum of technology in legal education during RCT will prepare future law graduates to embrace any untoward possibilities that may arise due to a pandemic at their workplace and therefore they will be more equipped just like graduates from the technical fields to be able to transfer their reasoning skills and knowledge in decision making through digital technology with ease. RCT as an innovation today is more pronounced and future acceleration of outsourcing to AI, within the legal network of the judiciary is foreseeable.

THE ACCLIMATISATION OF THE DIGITAL AGE WITHIN THE MALAYSIAN LEGAL FRAMEWORK

The framework of the Malaysian legal system is the Federal Constitution and this was the result of the independence⁷² conferred by the British imperial government in 1957. Malaysia is a multicultural society with a constitutional monarch and Islam is recognised as the religion of the Federation,⁷³ however other religions are allowed to be practiced peacefully and in harmony. The court system still reflects the common law system, and concerning Islamic legal issues, a Syariah court has been established to facilitate conflict involving personal matters affecting the Muslims. The judiciary is one of the main organs of the government that reflects an external relationship of the seeming separation of powers with other organs namely, the executive and the legislature. Therefore, check and balances needed to be reflected and this would become more prevalent through digitalised technology.

The apex court in Malaysia is the Federal Court which has the most important role in legal decision-making in the country. The other courts within the category of superior courts are the Court of Appeal and the High Court. The COVID-19 pandemic saw that the Malaysian courts were in an increased and urgent need to be influenced to embrace RCT. In addition to the current work-from-home directive due to the COVID-19 pandemic, the courts too have had to embrace this culture. This however was initially frowned upon by the legal fraternity on the premise that the courtroom skills of the lawyer will erode in time.⁷⁴ After much debate, hesitantly the legal fraternity embraced this mode out of practicality and the reality that this pandemic

72 The Federation of Malaya was later joined by Sabah and Sarawak also known as Borneo States and Singapore (Singapore exited in 1965 and today is a sovereign state).

73 Federal Constitution art 3(1) Federal Constitution.

74 Zainun Ali, 'The Malaysian Court's Accessibility to Justice in the Time of COVID-19' (UNODC) <https://www.unodc.org/dohadeclaration/en/news/2020/10/malaysian-courts-accessibility-to-justice-in-the-time-of-covid19.html> accessed on 26 January 2021.

maybe to stay for some time due to the delay in the dilemma of vaccinations.⁷⁵ According to Tan Sri Datuk Zainun Ali, the former Federal Court judge, the notion of 'natural justice' and 'fair trial' through RCT will promote 'open justice' by virtual and live streaming. She further observed that the substance and procedure in civil appeal remain unchanged and therefore preserving the governance mechanisms of the judiciary.

This has been made possible especially for court cases due to the technological advancement in Malaysia. There are the challenges concerning the use of technology and this is dependent on the types of cases, it is perhaps more sensible if it was about civil cases as opposed to criminal cases. This is because for the RCT to work well a structured approach is needed to implement remote working.⁷⁶ The most important reliance would be the technological tools required to ensure that communication in a court case will be clear.

As stated earlier, to ensure that RCT is fully functional and successful in the courts, the ROC 2012 was amended vide the Rules of Court (Amendment) 2020. Apart from the above, the CJA, the SCA, and the SCRA were also amended to allow RCT to be used in court cases. This also signifies Malaysia's judiciary's conviction to be on the same path as many countries internationally. The move towards virtual court hearings and trials should facilitate courts and parties, includes any witness or any prisoner, to a more sustainable cost and time-saving actions as mentioned in the new Order 33A rule 2 and 3 of ROC 2012. Where the prisoners are concerned, the consent for the RCT is determined by the parties and the Officer in Charge in line with Prison Act 1955.⁷⁷ The appearance and evidence given via the RCT are taken as given in person during those proceedings.⁷⁸ Further, the examination in chief, cross-examination and re-examination will be allowed if courts are satisfied that the parties involved have provided the necessary administrative and technical facilities from the designated place of the parties and approved by Chief Justice.⁷⁹

75 Suzanna Pillay, 'The vaccination dilemma' (*New Straits Times*, 17 January 2016) <https://www.nst.com.my/news/2016/01/122580/vaccination-dilemma>.

76 Joshua Wu, 'Online Civil Trials in Malaysia: The Positives and Negatives' (*The Malaysian Lawyer*, 29 May 2020) <https://themalaysianlawyer.com/2020/05/29/online-civil-trials-malaysia-positives-negatives/> accessed on 26 January 2021.

77 (Act 537).

78 See Rules of Court 2012 O 33A r 3(3).

79 See Rules of Court 2012 O 33A r 4.

RCT in court is not without challenges, hence the court or the registrar has the power to revoke, suspend or vary the direction of it if there has been a delay due to technical problems, unfair to all parties, material change in circumstance and it is in the interest of justice.⁸⁰ In contrast, in the case of *SS Precast Sdn Bhd v Serba Dinamik Group Bhd & Ors*,⁸¹ the High Court by way of obiter stated that both parties' consent had not be the deciding factor for the use of technology (video-conferencing). Not only the O 32 rr 10 and 11 were considered but art 4 and 5 of the Federal Constitution⁸² were deemed relevant to the principle of 'overriding interest of justice' and therefore the courts cannot deny one person's right to the fundamental right to access to justice.

In *Liziz Plantation v Liew Ah Yong*,⁸³ the trial judge dismissed the transfer application and allowed for RCT and stated 'with the experience gained in using remote communication technology in dealing with the movement control order, conditional movement control order and the recovery movement control order that is extant and which were necessitated by the COVID-19 pandemic, the physical location of anyone litigant or witness and the issue of having to physically travel to any court has become very much less important'. This statement reflected that judges are not prepared to be left behind in the advancement of technology and are ready and willing to embrace various internet platforms such as 'Zoom', 'Skype' and 'Microsoft Teams' as stated in the above decision. The fundamental principle of human rights is justice and about public's access to court proceedings through live streaming which further enhances the freedom of information principle and therefore, reinforcing the adage that justice must be 'seen' to be done.

Delay justice is injustice⁸⁴ and therefore it is timely that RCT has appeared to dispel the negative perception of the legal decision-making by courts and preserved the sanctity of trials. In European courts, one of the pertinent issues

80 See Rules of Court 2012 O 33A r 6.

81 *SS Precast Sdn Bhd v Serba Dinamik Group Bhd & Ors* [2020] MLJU 400.

82 Federal Constitution art 4 is in relation to Supreme Law of the Federation and Federal Constitution art 5 is in relation to Liberty to Person.

83 *Liziz Plantation v Liew Ah Yong* [2020] 10 CLJ 94.

84 U.S. Supreme Court Justice David Josiah Brewer said 'One thing should always be borne in mind. Whatever the sifting process of successive appeals may accomplish in ascertaining the exact truth, justice delayed is often justice denied. The early end of every litigation should be one of the great objects of all judicial proceedings' — 'Justice Brewer Again on Appeals' (1903) *The Literary Digest* 27 (19) 608–609.

raised was the governance element of ethical principle⁸⁵ challenges in the judiciaries. Perhaps what ought to be in the minds of the legal experts should be legal and ethical challenges concerning safeguarding data and information systems about RCT.⁸⁶ Therefore, an Ethical Framework Code⁸⁷ for Artificial Intelligence Network must be implemented. A responsible use of RCT must comply with the Protection of Personal Data Act 2010.⁸⁸

Other countries have adopted this form of technology as way back as 2016. This is predominantly in Online Dispute Resolution, where the RCT is considered important. Online Dispute Resolution (ODR) is defined as ‘a branch of dispute resolution which uses technology to facilitate the resolution of disputes between parties. It primarily involves negotiation, mediation or arbitration, or a combination of all three. In this respect, it is often seen as being the online equivalent of ADR’.⁸⁹ The Civil Resolution Tribunal in Canada (‘CRT’) displaced traditional courts.⁹⁰ This tribunal offers online dispute resolution for small claims and condominium disputes. The novelty of this tribunal is that it offers information that allows the parties to establish and analyse their legal problems and deciding the legal disputes themselves. The CRT decision is enforceable in court similar to the courts originating cases. The advantage of such an alternative is that this tribunal will cater to the schedule of the parties in action and reducing the legal fees as no lawyers are required and removing inconveniences due to time taken to go to courts.

85 The five principles in the final document are: (i) Respect for fundamental human rights; (ii) Non-discrimination; (iii) Quality and security; (iv) Transparency, impartiality and fairness and (v) Under user control. See Judge Dory Reiling, ‘IT and AI: New Challenges for Judiciaries’ (*UNODC*) <https://www.unodc.org/dohadeclaration/en/news/2020/12/it-and-ai-new-challenges-for-judiciaries.html>.

86 A.D. (Dory) Reiling, ‘Courts and Artificial Intelligence’ (2020) *International Journal for Court Administration*, 11(2) 8.

87 Judge Dory Reiling who is a former judge of the Amsterdam District Court in the Netherlands. Judge Reiling has also worked with the Council of Europe on issues related to artificial intelligence commented that ‘[i]n order to ensure the responsible use of artificial intelligence (AI) in compliance with the European Convention on Human Rights and the Convention on the Protection of Personal Data, to help improve the predictability of the application of the law and the consistency of court decisions and to prevent discrimination, The European Commission for the efficiency of justice (CEPEJ) decided to draw up the Ethical Principles on the Use of AI in the Administration of Justice’ - Judge Dory Reiling, ‘IT and AI: New Challenges for Judiciaries’ (*UNODC*) <https://www.unodc.org>.

88 (Act 709).

89 Hon. Arthur M. Monty Ahalt (ret.), ‘What You Should Know About Online Dispute Resolution’ (MontyAhalt.com) <http://montyahalt.com> accessed 20 March 2021.

90 ‘Online Dispute Resolution (ODR)’ (*ADR Institute of Canada*) <https://adric.ca/online-dispute-resolution/>.

Further, the United Kingdom has also made inroads in technology whereby the Civil Justice Council will handle low-cost cases through RCT.⁹¹ Therefore, assisting the general public by eliminating the 'middle man' and this reduce in legal cost both concerning lawyers and court's fees. In the USA, car owners are choosing online dispute resolution to resolve legal issues in parking matters. The US had 66 active sites of court commanding online dispute resolution in 12 states.⁹² India is considering expanding the capacity and access to online dispute resolution. The argument that the RCT is a compelling reason was made in the case of *MetersandInstruments Private Limited & Anor v Kanchan Mehta*⁹³ where it was stated:

Use of modern technology needs to be considered not only for paperless courts but also to reduce overcrowding of courts. There appears to be a need to consider categories of cases which can be partly or entirely concluded 'online' without the physical presence of the parties by simplifying procedures where seriously disputed questions are not required to be adjudicated.

The Supreme Court of India⁹⁴ took note of *Kanchan Mehta's* case and suggest that that modern technology should be used to overcome flooding in the courts. The court suggested the mechanism of filing complaints online without requiring the physical presence of the parties so long as matter can be settled without adjudication and the use of video conferring to do away with a physical presence in court.

Having said the above, it is worth mentioning that the legal education in Malaysia for a law degree completed locally or overseas is regulated by the MQA established pursuant to the Malaysian Qualifications Agency Act 2007.⁹⁵ This agency undertakes audit assessments through its quality assurance documents about quality. Therefore, all law schools in Malaysia whether private or public must adhere to the Malaysian Qualifications Framework

91 'Online Dispute Resolution (ODR)' (*Courts and Tribunal Judiciary*) <https://www.judiciary.uk/reviews/online-dispute-resolution/>.

92 'Online Dispute Resolution in the United States Data Visualisation' (*American Bar Association, Center for Innovation*, September 2020) <https://www.americanbar.org/content/dam/aba/administrative/center-for-innovation/odrvisualizationreport.pdf>.

93 *MetersandInstruments Private Limited & Anor v Kanchan Mehta* 2017 TaxPub (CL) 0840 (SC).

94 The Supreme Court of India in a *suomotu* writ petition captioned 'Expeditious trial of cases under Section 138 of N. I. Act, 1881' - Lavanya Narayanan, 'SC registers a suo motu writ petition to evolving a mechanism for expeditious adjudication of cheque bounce cases' (*Law Times Journal*, 9 March 2020) <http://lawtimesjournal.in/sc-registers-a-suo-motu-writ-petition-to-evolving-a-mechanism-for-expeditious-adjudication-of-cheque-bounce-cases/>.

95 (Act 679).

(MQF), Codes of Practice, the Guidelines to Good Practices, and Programme Standards, to study law in Malaysia. These guidelines are important to the quality of legal education thereby producing quality law graduates. Further, for the legal profession, the law graduates in Malaysia, will be required to complete the Certificate of Legal Practise, unless the institution from where they graduated are given the exemption. The legal profession in Malaysia is regulated by the Legal Profession Act 1976 ('LPA')⁹⁶ with Sabah and Sarawak having a separate act namely, the Advocates Ordinance (Sabah)⁹⁷ and Advocates Ordinance (Sarawak).⁹⁸ Part 2 of the LPA sets the necessary qualifications to be admitted as an advocate and solicitor.⁹⁹

Based on the above, it is clear that a high standard of requirement is expected out of these students. The students will be expected to achieve a set of learning outcomes to graduate with good honours or CGPA degree. The content of the law program generally is decided by the universities themselves and admission to the program is based on a merit system. It is a fact that most of the local law schools have been reluctant to embrace digitalised online learning platform. They seem to be comfortable with the 'old-fashioned' teaching style and formal instruction namely, the face-to-face interactions between students and professors.

The imminent threat of COVID-19 pandemic and a lockdown enforced by the government, the resistance to online legal education came to a halt with the Ministry of Education had, in early 2020, approved to proceed with an online learning platform. This pandemic has resulted in the radical and immediate development of online teaching and learning and today the law schools in Malaysia are forced to embrace the e-learning and this must continue with the regulatory bodies of legal education in Malaysia making it prerequisite for the law faculties and law schools to imbue the remote communication technology in the teaching and learning of legal education. This is essential to prepare the law students to embrace technology and to churn technology savvy law graduates for their future employability.

96 (Act 166). Legal Profession Act 1976 s 2 clearly states that the LPA covers Malaysia as a whole: 'This Act shall apply throughout Malaysia but shall only be made applicable to Sabah and Sarawak with such modifications as the Yang di-Pertuan Agong may by order make; and such Order shall be published in the Gazette'.

97 (Cap 2).

98 (Cap 110).

99 See Dr Chithra Latha Ramalingam, 'Future of Legal Education in Malaysia: Towards A Common Bar Course' in Asghar Ali Ali Mohamed (ed), *Malaysian Legal System* (2nd edn, CLJ Publication 2020) 997.

It is also worth mentioning that one of the challenges concerning RCT is the security issue under the Personal Data Protection Act 2010 (PDPA).¹⁰⁰ As mentioned earlier, the universities in Malaysia conduct online e-learning through various platforms namely the LMS and social media platforms such as Zoom, MS Teams and Google Hangout, among others. The three components of the PDPA¹⁰¹ are the data users, data processors, and data subject and therefore academic institutions are required to obtain consent or they are at risk of exposing the students and lecturers of breaching the PDPA.¹⁰² Conversely, students and academics may also be in breach of the PDPA if the online classes are recorded or photograph to capture the screenshots of the facial features and any relevant information of the student that appears online. Various initiatives can be implemented to ensure that Universities are not held liable for these offenses. The support of AI in many Universities is overwhelming and therefore any form of challenges faces can be mitigated by the drive for competitive quality legal education and pedagogical improvement.

CONCLUSION

It is undisputable that the remote communication technology has allowed people virtually unrestricted access to various websites from their computers and mobile devices which is considered as an efficient means of communication, research, marketing and collaboration. Electronic communication tools such as e-mail, Twitter and Facebook have made information dissemination and reception more instantaneous. Further, with the advancement of mobile smartphones, WhatsApp and Telegram being an instant mobile communication application, are now a widely accepted medium of communication where images, audio files, short video clips and text messages can be sent easily besides it being accessible anywhere regardless of geographical location. It also facilitates voice and video calls via an Internet connection. The courts have embraced the remote communication technology in the delivery of justice with the court proceedings, be it civil or criminal, is now being conducted using the remote communication technology namely, through live video, television links or any other electronic means of communication. The service of documents is also allowed vide the remote communication technology.

100 (Act 709).

101 Under Personal Data Protection Act 2010 s 4, processing data includes collecting, recording, holding, storing or carrying. It also includes organisation, adaptation, retrieval, transmission and making data available to others.

102 The General Data Protection Regulation 2016 (EU-GDPR) also applies to data subjects who are European Union citizens who are studying overseas.

It is now imperative for the legal profession regulatory bodies, the Legal Profession Qualifying Board and the Malaysian Bar, to stress not only the conventional synchronous face-to-face learning on campus but also asynchronous learning via the online or remote platform. The law faculties and law schools must also embrace the disruptive force of the technology and thereby prepare their law students to embrace technology and to churn technology savvy law graduates for their future employability. Hence, law schools must embrace and incorporate the remote communication technology in their curriculums to make the students familiar and accustomed to this new innovation in the legal practice. What is emphasised here is that the virtual learning experience via the remote communication technology must be allowed to continue beyond the COVID-19 period as it is now an important tool for the future workforce.