

# **The Expectation of Legal Skills in Chinese Legal Education**

**By PEI Bei**

**Zhejiang Gong Shang University School of Law**

**January 2008**

Before I started my career, I've been studied in three different places, including the universities in Shanghai, Hong Kong and Australia. From the above-mentioned study experiences, I can tell the differences among these different styles of teaching. When I studied in Shanghai, the East China University of Politics & Laws, for my bachelor degree, the four years studies were totally inculcated by taught-program. This teaching mode of curriculum was definitely good to the stability of theory studies, however, not good to increasing learning interest because of its neglect of practice skills. When I studied at City University of Hong Kong, this was my first time to meet with a lesson named "Applied Legal Skills". From this lesson, I was taught different theories of legal skills, including legal drafting, legal research, advocacy, interviewing, and negotiation. I have to say it's a wonderful journey for me. Everything in this lesson was so new to me at that time, and students' grade is not only evaluated by paperwork, but also by the performance in dealing with simulated cases.

## **I. Training in legal skills is appropriate in Chinese legal education**

Over the past five years, skills based legal education has entered more universities and colleges in China<sup>1</sup>; however, in all kinds of educations, taught-program is mostly adopted. Under this traditional teaching style, the instructors are more concerned about theories delivery and doctrinal analysis, instead of skills based education. In practice, however, more and more law school students are willing to attach themselves to the studies of real cases, more concerned about legal skills in reality as well. Most teaching staff understand that the science of law is highly practical and thus its theoretical research cannot be alienated from reality. Taking one of my courses as an example, *Advanced Commercial Negotiation* (bilingual education), which is a selective course. There are totally 63 students signed my class, and still some other students attend every class as auditors. During the study of *Negotiation*, I designed this course into four parts, which are theory study, cases simulation, video watching, and assessment with feedback. Students are so interested in the way I'm teaching. For example, I once did an exercise in which seven students interviewed me about my personal problem, and they counseled me about the issue and received comments on their counseling style. At the end of the semester, attendees gave me their thoughts, they thought it's quite different from the traditional teaching style, they felt it's not so boring any more, even if they have to take a lot of spare time on case study. And during the studies, I can tell their passion by their

---

<sup>1</sup> Zhen Zhen, The Present Situation and Prosperous Future of China Clinical Legal Education, October 7th, 2005, [http://www.law.ucla.edu/docs/zhen\\_zhen\\_prosperous\\_future\\_of\\_chinese\\_clinical\\_educatio.pdf](http://www.law.ucla.edu/docs/zhen_zhen_prosperous_future_of_chinese_clinical_educatio.pdf)

good behaviors. Only from this course, I already can tell how interested those students are in the skills based legal education, and how imperative it is for our teachers to design an appropriate program for students, as well.

Before I started this paper, I did a survey about *Introducing the Curriculum of Legal Skills into the Ordinary Teaching in Law School*. This survey was issued as the form of questionnaire, including 9 questions designed by myself. 400 questionnaires were distributed to law schools in three different universities<sup>2</sup>, including Zhe Jiang University (50 questionnaires), Zhe Jiang Industry University (150 questionnaires), and Zhe Jiang Gong Shang University (300 questionnaires). 376 questionnaires were completed and reclaimed. The questions I put in the questionnaire are as follows:

1. Until now, what is your favorable job in future?
  - A. Legal scholar
  - B. Lawyer
  - C. Public servant (judge, prosecutor, government officer)
  - D. Others (company's legal adviser; employee in the bank, insurance company, or doing business)
  
2. During your studies, have you ever accepted any training of legal skills directly or indirectly?
  - A. NO.
  - B. Yes, please note: \_\_\_\_\_
  
3. Do you think it's necessary to put the courses of legal skills into daily academic studies?
  - A. No
  - B. Yes
  
4. Assume that you won't work as an attorney or even not work in the legal field in future, do you still interested in the studies of legal skills?
  - A. No
  - B. Yes
  
5. All the skills included in the skills based legal education, what you prefer to study?  
(Multiple choice)
  - A. Negotiation
  - B. Mediation
  - C. Arbitration
  - D. Legal Drafting and Writing
  - E. Advocacy
  - F. Inquisition
  - G. Legal clinic study
  
6. If you've been learned those legal skills mentioned above, will you willing to try yourself to be a lawyer?
  - A. Yes
  - B. Still not.

---

<sup>2</sup> According to the statistics from "2007 Top Law Schools Ranking in China", Zhe Jiang University is No. 3 University in Mainland China, No.1 in Zhe Jiang Province, and its law school ranks No.5 in China. Zhe Jiang Industry University is No.2 University in Zhe Jiang Province, however, its law school ranks out of No.100. Our University, Zhe Jiang Gong Shang University ranks No.3 in Zhe Jiang Province, and our law school ranks No.71 in China.

7. Do you think the legal skills study can be compatible with the existing academic studies? Please note the reason(s).

A. Yes. \_\_\_\_\_ B. No. \_\_\_\_\_

8. If skills based legal education were adopted, what's your expectation on the courses and the teachers?

\_\_\_\_\_

9. As a law school student, any suggestion for integrating the legal skills studies with the existing academic studies?

\_\_\_\_\_

Based on the statistics of 400 questionnaires, I made Results with statistics (table 1, please see annex). The statistics reflects that legal skills are eagerly required by law school students, not only in our university, but also in other universities, as well. Training in legal skills not only attempt to integrate foreign advanced education models into China's situation, creating the environment to stimulate and enhance student learning, but also produce positive influences in cultivating top-level legal talents in China by improving the teaching skills. It's no doubt that training in legal skills is appropriate and necessary in Chinese legal education.

## **II. Training in legal skills still has to be better planed to meet demand**

Although Chinese legal educators have done lot on contributing the skills based legal education, and several famous law schools and CCCLE (Committee of Chinese Clinical Legal Educators) already involved in establishing the clinical legal education programs based on American model, with my analysis, the skills based education are developed slowly in China because of the following reasons:

**1. No understanding of skills based legal education:** Most instructors are educated by traditional style, they never accepted any training of legal skills, which leads to no understanding of this program, and creates the formulary of thinking that the new generation of students should be also educated like the way they've been taught. Especially, people always dare not to open a door of a dark room. Most instructors won't enter the room only until they understand they themselves could become the light in the darkness. So, at the beginning of this program, it's important to show the pictures to the Chinese instructors, and make them understand the main goals and the blueprint of this program.

**2. Shorthanded of teaching staff:** for some instructors, they don't have any legal experiences in practice, they only teach instead of working as a lawyer, arbitrator or company's legal adviser after class, which makes them short of knowledge of the necessities of skills based legal education. For those instructors who do practice law in their spare time, usually are too overloaded to undertake skills training for students.

What's more, just as Prof. Zhen zhen mentioned in her essay, "there is still no independent assessment and excitation mechanism for instructors in the skills

training.”<sup>3</sup> Most instructors are only willing to accomplish the assigned teaching and research work in their own specialized areas. Taking our law school as an example, only less than 5 instructors are now conducting the skills training (i.e. legal clinic, moot court) in an innovative manner. Frankly speaking, even if the coached students are limited, it still requires instructors to direct each student individually in dealing with cases or monitoring the whole process. Therefore, the skills based legal education has been developed only by those dedicated and committed teachers.

**3. Insufficiency of funds:** Although the source of funds has expanded from donations from overseas and support from universities or colleges themselves, most law schools still lack of facilities to develop skills based legal education. With the accession to the CCCLE in 2007, our law school became the No.69<sup>th</sup> member in this organization. And we already started the reform of our legal education in order to transform the skills based legal education become an integral part of the law education system in our law school. Some of teaching staff in our law school are seeking some financial support from the individuals, law firms and enterprises. And we here sincerely hope more funds from different aspects can be invested in this area, and making the problem of costs for teaching finally be solved.

**4. Shortsighted from some students:** According to the answers of the survey I made, some students brought up the attitude that they already so tired of dealing with so many courses, especially these useless courses (i.e. Computer Program, Marxism Plutonomy, Mao Zedong Thought etc), why should they bear more? Some students mentioned what they were planning to do in the future would be nothing to do with legal professions. And also some students care nothing about this reform, they took notes like this: I don't think whether to conduct skill based legal education has anything to do with me, I'm the students and I only learn, it seems your teacher's responsibility to worry about. I believe only with the support and concerns from all students or at least large part of students can really improve this area. So how to design and implement this plan in order to attract more students to be involved in legal skills training is quite important task for us.

**5. The restriction of geographical position:** “One of the teaching ideas in clinical legal education is to break through campus teaching in university and to make students in the clinic to learn from society and reality.”<sup>4</sup> Accordingly, students are required to conduct social practice, including community service, externships and other related activities. If we want to provide real scenes, we have to provide an office or legal aids center for students to contact with their clients, the litigant participants. However, our university is far away from the downtown, which makes the practice discommodious. Under this circumstance, clients only can contact with the law school students by email or phone call, which leads to the cases hardly being understood; and on the other hand, it's also not convenient for students to handle the cases.

Besides the above-mentioned problems I found in developing skills based legal education, there are still some others. However, those problems also show us how

---

<sup>3</sup> Zhen Zhen, The Present Situation and Prosperous Future of China Clinical Legal Education, October 7th, 2005, [http://www.law.ucla.edu/docs/zhen\\_zhen\\_prosperous\\_future\\_of\\_chinese\\_clinical\\_educatio.pdf](http://www.law.ucla.edu/docs/zhen_zhen_prosperous_future_of_chinese_clinical_educatio.pdf)

<sup>4</sup> Zhen Zhen, The Present Situation and Prosperous Future of China Clinical Legal Education, October 7th, 2005, [http://www.law.ucla.edu/docs/zhen\\_zhen\\_prosperous\\_future\\_of\\_chinese\\_clinical\\_educatio.pdf](http://www.law.ucla.edu/docs/zhen_zhen_prosperous_future_of_chinese_clinical_educatio.pdf)

promising this program will be in the future. It still needs consistent dedications of all the instructors and continuous reform of Chinese legal education system. It will be a long way to go for skills based legal education to integrate into the existing legal educational system and finally be accepted by students, teachers, and the whole society.

Our law school currently has started reform on this project based on the major problem existed. We already established Legal Clinic Center, and three teaching staffs have assigned to this center at the first stage, Prof. Liu Jianming is the director of this center. Law school has changed the teaching plan for all the law school students, arranging the skills based courses into the teaching plan, which means every law school students have to complete certain skills based courses for compulsory credits. Now the teaching plan and teaching materials on four courses are being prepared, which are *Legal Clinic*, *Arbitration Study*, *Legal Negotiation*, and *Lawyers and Notarization*.

Another good news is that the new president of our university was assigned in October 2007. Our law school will be largely supported by the new president, who is one of the top 10 jurists in entire China. He brought forward an idea on developing law school, which was “one building, one firm, one magazine”, i.e. law school has to establish independent building, set up a law firm for teaching staff who are qualified to be a lawyer and also can be used for students’ practicing, finally law school has to run a legal magazine of its own. This is not only a good beginning for the future development of law school, but also good for the skills based legal education concerning of the working environment, financial support and teaching staff. I can imagine with all the help from university, law school itself, and American side, our training in legal skills will be better prepared, and better served to meet the demand.

### **III. Training in legal skills may increase the practical abilities for law school students to be more competitive in employment market.**

In recent 10 years, with the fast development of Chinese economy, China’s legal education had a rapid development, and law became a quite popular major in universities and colleges. According to the statistics publicized in 1999 by the Ministry of Justice, there were 214 universities which had law faculties, and it was reported that the number had gone up to about 240 at the end of the 20th century, among them five special legal universities/colleges are directly subordinated to this Ministry<sup>5</sup>. And with the China’s WTO accession and the requirements for more legal personnel, the expansion of law school students reaches the highest in history. However, the outcome

---

<sup>5</sup>“A Survey and Prospects of the Legal Education in China” (August of 1999), in Huo Xiandan (ed.) *The Development and Transformation of China’s Legal Education (1978-1998)* (Beijing: Law Press, 2004) pp.129-133. In addition, The Ministry of Justice also had two cadre training colleges: Central Political-Legal College for Management Cadres (1985-1997) and the Central Educational College for Judicial and Police Officers (1956-2000, the predecessor of the Central Institute for Correctional Police). Since the late 1980s, this Ministry has been running the China National Attorneys Correspondence Centre, which was a form of distance legal education for the practising lawyers.

of the expansion directly leads to the saturation of employment market. Take our law school as an example, the employment rate are 85.7% in 2003, 74.8% in 2004, 69.8% in 2005, 56.8% in 2006, and 74.7% in 2007, and these figures includes those students who continue their studies for post-graduation or study abroad.<sup>6</sup>

In China's employment market, if a law school graduate want to find a job in legal area, usually he has three ways to go: Firstly, he can work in a law firm as an assistant with low payment (less than \$140/month only), even so, he may still have to find a new job if he failed in the bar exam next year; Secondly, he can work in the public service system, such as civil servants, only if he can pass the examinations in recruitment for public service, which are extremely fierce and difficult; Thirdly, he may look for a job in an enterprise, providing legal service, unfortunately, he's also difficult to be employed since he lack of working experiences. Some graduates are immature in their legal thinking and skills abilities, which would be not accepted by the employers. Currently most students still think their job in university/college is studying, which is not wrong but uncompleted. My opinion is that the reason we study is to learn the knowledge and use them into the society in the way of finding an appropriate job.

How to increase the employment rate is an imperative problem to every students and law school. Whatever how hard the law school tried, it's still not easy for law students becoming a qualified legal practitioner. The qualified attorney in China should be a legal practitioner who has obtained a practice certificate, and provides legal services to the public pursuant to law.<sup>7</sup> The most important requirement is that anyone who wants to be an attorney must pass the National Bar Examination (before 2001) or National Judicial Examination (now) at first.<sup>8</sup> And since 2001, a person who wishes to be, a judge or procurator, he/she must have passed the National Judicial Examination together with certain years of legal working experiences, while there is no working experience requirement for the qualification of an attorney (only one year's practice after passing the examination).

My point is that what we focus on not only the employment rate but increasing the students' practical abilities. Today's employment market requires those graduates who have real abilities instead of concerning their university's reputation. In confront with the austere reality, the law school still can and have to make efforts to enhance the practical abilities of law school students. It's necessary to design some applied legal courses for students to exalt their abilities on the one hand, and to increase their competing power in finding a promising job, on the other hand.

Training in legal skills may create the similar scenarios for students to understand skills necessary for the future practice. Once they practice during their internship, the institutes for internship will find those students can think, write, and speak like a lawyer, especially can deal with cases. The skills training will increase their practical abilities, making them more competitive in employment market. According to the "Results with statistics", there are 85.11% students in total willing to practice as a lawyer if they learned those useful legal skills, comparing with there are only 31.65%

---

<sup>6</sup> Figures are collected by law school of our university in October, 2007.

<sup>7</sup> Attorneys Law, Article 2.

<sup>8</sup> Attorneys Law, Article 6.

students willing to be a lawyer in the future currently. And the reason for this high difference is that students believe the training in legal skills will make them more professional, more acceptable by the markets, which also let them feel more confident. One of the major aims of the training in legal skills is to cultivate students to be ardently wanted by the employers based on their skilled abilities.

#### **IV. Training in legal skills should be designed properly to fit with the rest of the academic program.**

The skills based legal education definitely cannot be simply copied from western style, but should be designed scientifically based on the Chinese current situation. In the survey I made, most students give the positive answers on question No.7 (Do you think the legal skills study can be compatible with the existing academic studies?), the reason most students think is that a lot of courses, such as commercial law, procedure law, are highly skilled, and skills study can better the development of their theory. In order to fit with the rest of the academic program, and make students adapt themselves to the exchange from academic to legal practitioners, I suggest the law schools can contribute themselves into the following aspects based on the survey results:

##### **(1) Assigning qualified teachers in this program**

From the survey, we can fully understand that students are eager to have those teachers who have legal practical experiences. The students prefer those professional teachers who are familiar with cases study, interviewing, moot court and advocacy. They require teachers with good patience, skills, humorous, and especially willing to devote themselves to students and skills education. Just as what was mentioned in Professor Brian Lands berg's report: "...teaching clinical and advocacy skills also requires deep understanding by the professor: understanding of both the nuts and bolts of law practice and of the best methods for teaching practical skills to our students." When we assign experienced teachers into this program, each teacher should be exerted his/her speciality in specific course instead of filling them in any course at random. And even they do practice in specific area, they may still not competent to teach, so certain standard of qualified teaching and evaluation system should be consummated as well.

##### **(2) Based on Chinese situation, learning from the experiences of American Teaching Style**

Although China and America have different educational system, even the ways of thinking are also not exactly the same, China has learnt a lot from American legal education. Frankly speaking, till now, there's only small part of Chinese university /college fully understand the skills based legal education, most of them are top or famous ones. So it's quite honored to our law school be chosen in this program. My suggestions in this area are as followed:

In most western countries, the skills based courses, such as *Legal Profession*, *Trial Advocacy*, *Trial Practice and Procedure*, *Alternative Dispute Resolution*, are included in the core courses. All the skills based courses share a common goal: "to provide members of the community with critically needed legal services while giving

motivated law students the opportunity to experience the practical application of law and to develop skills as negotiators, advocates, and litigators within an exciting and supportive educational environment<sup>9</sup>. Just like Pacific McGeorge catalogue of courses, one would find that a student may receive a Certificate in Advocacy by completing 30 units of credit in various courses, of which only two units must be in clinical course.<sup>10</sup> However, in China, according to the rules of the Ministry of Education, curriculum of LLB must include already 70 core courses; J.M. must include the 14 core courses<sup>11</sup>. We actually don't have exact courses of legal skills, maybe only few credits for internship in student's senior year, but which is helpless of improving the practical skills. I suggest since we cannot change the teaching plan made by the Ministry of Education, we can design the skills based courses as restricted elective courses, which means if students want to graduate have to fulfill some credits of skills based courses.

Although Chinese teaching mode has been involved some classroom discussions or group discussions occasionally, the seminar system has still not been established yet. Taking moot court as an example, our law school has moot court, but it's more like a prepared show. Scenario is handed over to the students before the moot court, and students just recite their lines and perform them in front of others. I strongly suggest changing the teaching mode from one-way lecturing in a big classroom to small class and individuality-based mode. The size of class should be less than 30 students, and every time 3~5 students should be assigned into one group when they dealing with cases study. Under this circumstance, teachers might complain that we are short of hands, but we can assign qualified postgraduates as tutors to give guidance and help if necessary.

American teaching materials may not exactly appropriate for Chinese teaching, however, the templates should be delivered to us, just like Prof Beth showed us in December, which are quite unique and highly abstracted. For some useful books or articles, we can provide interpreters to translate them if permitted. It might be easier for Chinese educators to use these materials to fit the requirements of Chinese legal education.

### **(3) Case study should be fully concerned in skills based education.**

In order to let the students begin to know laws and regulations concerning specific legal areas and to learn how to deal with cases as lawyers do. And concerning the problem I mentioned before, the long distance is big trouble for students to get the first hand resources, the simulated cases could be used instead. In my class, Prof. Beth Lyon used a negotiation case in "Indonesia v. Malaysia" simulation, which created a good scene for students to participate. Of course, our law school has legal clinic, some students might get some phone calls for legal aids, but it's still limited. So on the one hand, teachers might bring more cases of their own or simulated cases for students to practice, on the other hand, our law school plan to establish law firm within the school, which can

<sup>9</sup> <http://www.law.gwu.edu/Academics/Clinical+Programs/>

<sup>10</sup> Professor Brain K. Landsberg, "The Role of Skills Based Legal Education", May 2007

<sup>11</sup> as following: Criminal Law, Criminal Procedure, Civil Law, Civil Procedure, Intellectual Property Law, Administrative Law and Administrative Procedure, Commercial Law, Economic Law, International Law, Private International Law, International Economic Law, Constitutional Law, Jurisprudence, History of China's Legal System, besides different optional courses and practice teaching.

provide not only real case, but also financial support for skills based legal education.

**(4) Introducing“online cooperation” between Chinese students and American students if possible**

Professor Ji Weidong once suggested “the Uses of Digital Technology in Legal Education”<sup>12</sup>, which is the distance education through the Internet or other means. My opinion here is that set up the international cooperation between Chinese students and American students. Currently, several senior law students are working American students on specific case study. They talk with each other through internet, and transfer their different ideas from different angles, as far as I know, both sides are enjoyable on this kind of international cooperation. Genuine knowledge comes from practice. Through this mode of practice, Chinese students will be more aware of how American students think, research and practice, and American students will also understand more culture and business in Chinese legal practice as well. This mode could be only few times in the whole skills based education, and dealing with some cases involved in international issues, such as human rights, immigration, child custody, through this online cooperation, not only students from both sides can be upgraded in practice, but the school-school relationship could be bettered as well. Students’ transfer or summer program could also be developed based on this cooperation.

**(5) Inviting legal practitioners to give lectures or guidance to students**

No matter how hard we tried to overcome gaps between legal education and practice, many graduates still complain that what they learnt from professors cannot meet the needs of practice. In fact, our law school has invited a few senior judges to teach some courses as a part-time professor, and famous lawyers or scholars to give lectures for both LLB and LLM Programs. In recent several months, the famous legal scholar LIANG Huixing was invited to give lecture on “PROPERTY LAW IN CHINA” to our students; three Italian lawyers( Pietro Bembo□Jane Mori□Valatina Roberto) were sent by the Italy Milan Law Association to instruct several seminars in European Law; Prof.Thomas Giegerich and Prof. Dagmar Richter from Kiel University gave two lectures on “several issues of existing international law” and “EC unified market law” respectively. And Prof. Beth Lyon gave us a wonderful presentation on the topic of “Clinical Legal Education in the United States” in December. We also start to design to put this kind of teaching mode in JM program as well.

**Concluding Remarks**

Thus it can be seen that it still a long way to go for Chinese legal educators, especially to the immature like our law school. But with the help from American parties and the hard work of our law school, I believe that the prospects are becoming very bright from now on.

---

<sup>12</sup> Legal Education in China: A Great Leap Forward of Professionalism, the 18th LAWASIA Biennial Conference “A Dynamic Asia Pacific: Legal Issues in 2003 and Beyond” in Tokyo, 1-5 September 2003.p 12

**Results with statistics (table 1)**

		The College of Law Zhejiang Gong Shang University	The College of Law Zhejiang Industry University	The College of Law Zhejiang University	Total
Questionnaire	Distributed	250	50	100	400
	Reclaimed	226	50	100	376
<b>1</b>	A	9.29%	3.00%	10.00%	7.72%
	B	31.86%	25.00%	44.00%	31.65%
	C	40.70%	38.00%	32.00%	38.83%
	D	18.15%	34.00%	14.00%	21.80%
<b>2</b>	A	65.49%	48.00%	28.00%	55.85%
	B	34.51%	52.00%	72.00%	44.15%
<b>3</b>	A	3.98%	7.00%	0.00%	4.26%

	B	96.02%	93.00%	100.00%	95.75%
4	A	12.39%	4.00%	18.00%	10.90%
	B	87.61%	96.00%	82.00%	89.10%
5	A	87.17%	93.00%	92.00%	89.36%
	B	70.35%	84.00%	62.00%	72.87%
	C	30.09%	35.00%	42.00%	32.98%
	D	44.69%	53.00%	84.00%	52.13%
	E	72.57%	89.00%	92.00%	80.32%
	F	43.46%	38.00%	24.00%	39.36%
	G	37.61%	76.00%	72.00%	52.39%
6	A	86.73%	81.00%	86.00%	85.11%
	B	13.27%	19.00%	14.00%	14.89%
7	A	84.51%	91.00%	90.00%	86.97%
	B	15.49%	9.00%	10.00%	13.03%