# TOWARDS MORE ECONOMICALLY LITERATE LAW GRADUATES

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## PREFATORY STATEMENT

One of the most significant developments of the past two decades has been the increasing tendency of economic concepts and issues to impinge upon and influence the practice of law. The growing complexity of modern life, the continued expansion of human knowledge, the increasing sophistication of commercial activity, the steady enlargement of the public sector's share of the economy — these and related factors have operated to bring about the increasing impingement of economics on the domain of legal practice. It is going to be the position of this paper that the typical producer of the Philippine law school at the start of his legal career is not in a position to cope with the above-stated change in the environment of legal practice and that appropriate remedial action needs to be taken by the authorities supervising legal education in this country.

## THE ISSUE

Over the years it has become clear that the present curriculum for the Bachelor of Laws degree does not prepare a new member of the bar for legal practice of the sort that involves dealing with issues which in nature are legal-economic rather than strictly legal. Thus, it has been observed that most new lawyers, even those with fine scholastic or bar-examinations records, have a difficult time coping with cases involving such economic concepts as *inflation*, profit, risk, subsidy and devaluation. More specifically, they have a difficult time when confronted with cases requiring their judgment as to whether a wage is fair or a cost is excessive or an investment in sound or whether a state of competition exists. They grope, they improvise, they guess; in the end they come up with briefs that are less than convincing. Many examples can be cited to illustrate this point.

Take the general provision in the law to the effect that:

> "(i)n case of doubt in the interpretation or application of laws it is presumed that the lawmaking body intended right and justice to prevail."[1]

[1] Art. 10, New Civil Code.



The provision speaks, laudably enough, of right and justice being done, conformably to the intention of the lawmaking power, by those who apply the law and those who interpret it, i.e., the executive branch of the government and the judiciary, respectively. But in the absence of reasonable familiarity with the basic principles of economics, how is a lawyer who is an executive or judicial officer of the government to know what is right or just in cases involving issues essentially economic in nature? In a case involving the accuracy or reasonableness of a return on investment, for instance, how can a government lawyer argue or a judge decide on the basis of rectitude or justice if he has little or no understanding of the economic significance of such things as industry medians, normal operating conditions, non-recurring factors and deflationary adjustment. Or how, in the absence of a reasonably good grasp of the basic economic principles, can a legal officer of the government — be he in the executive department or not — pass upon a question involving, say, pricing if he is highly or totally unfamiliar with the concepts of productivity, average cost, economies of scale and marginal revenue?

A more specific example of the difficulty encountered in legal or judicial practice by lawyers who know little or nothing about economics is the provision in the law of obligations and contracts relating to inflation and deflation. The provision states that:

> "(i)n case an extraordinary inflation or deflation of the currency stipulated should intervene, the valve of the currency at the time of the establishment of the obligation shall be the basis of payment, unless there is an agreement to the contrary".[2]

Under the terms of the provision, a debtor or a creditor may demand that payment of a debt be done on the basis of the value of the stipulated currency discounted for the effect of the extraordinary inflation or deflation, respectively, which has in the meantime intervened.

The meaning of this particular provision of law is clear enough, which is that where an extraordinary inflation or deflation occurs, the general rule — that the stipulated currency's value at the time of a debt's payment is the basis therefor — ceases to be operative and is set aside and the stipulated currency's value at the time of the establishment of the obligation becomes the basis for its liquidation. Equally clear is the intent of the provision, which is to shield creditors and debtors from the erosive or effects of severe inflation or deflation, respectively, on real monetary values.

What is far from clear is how the framers of this provision of law expect a lawyer or a judge to be able to adjudge a state of inflation or deflation to be extraordinary in the absence of a reasonable degree of understanding of the nature and workings of inflation — what causes it, how it is measured, who it hits hardest, how it is brought under control, and so on. Being made able to say that an inflationary or deflationary situation is extraordinary and to defend such a proposition is of course

[2] Art. 1250, New Civil Code.

not merely an exercise in legal-education broadening; it has very practical legal effects, for it is clear from the wording of the provision that the basis for payment of a debt becomes the value of the stipulated currency at the time of the debt's establishment only when the intervening inflation or deflation is extraordinary. It thus has a decisive effect on the magnitude of the debt to be repaid.

Still another specific example of the difficulty encountered by lawyers and judges who have very little or no familiarity with the basic principles of economics relates to changes in the system by which changes in the external value of the national currency are determined.

Among the cases that give lawyers and judges the greatest trouble are those involving devaluation or revaluation of the peso. This is true whether the downward or upward movement of the value of the peso vis-a-vis other currencies has resulted from the free interplay of market forces under a floating exchange rate system (de facto devaluation or revaluation) or from a formal action of the monetary authorities of the Philippines (de jure devaluation or revaluation).

What conditions cause national monetary authorities to alter the external value of the national currency? What do they generally seek to accomplish when they do so, whether on a de facto or a de jure basis? Under what circumstances do they adjudge it preferable to let the free interplay of market forces determine the external value of the national currency? If new members of the bar were taught the answers to these and related questions, one would see lawyers and judges doing a better job of dealing with cases involving de facto or de jure changes in the external value of the peso.

A final specific example may be given of the difficulty encountered by lawyers and judges with very little or no exposure to economics. This relates to the concept of competition.

From time to time lawyers and judges are called upon to deal with cases which revolve around the question whether a particular intention by a business enterprise is likely to result in a diminution or in the outright disappearance of competitive conditions in the industry of which the business enterprise forms part. All too often lawyers present such cases, and judges pass judgment on them, without understanding all the economic issues involved and without fully realizing all the economic consequences of a decision upholding or enjoining the proposed action. The economic ramifications of certain cases clearly indicate competition-reducing situations which on balance would be promotive of the public welfare, whereas those of other cases would point to reduction of competition with no concomitant benefit for the national economy. Only new members of the bar possessed of a reasonable degree of understanding of the economics of industrial structuring would be able to tell one set of cases from the others.



## CONCLUSIONS

The thrust of the foregoing discussions is that the graduates of law schools in the Philippines gain admission to the Philippine bar inadequately prepared to deal competently with cases involving economic issues. Considering that the only way to bring law students to such a state of preparedness is to expose them to the basic principles of economics, and since present law does not require academic credits in economics for admission to the Bachelor of Laws degree course, the conclusion that is inescapable is that appropriate action be taken by the Supreme Court to correct the deficiency.

## THE LAWS INVOLVED

The sources of the Supreme Court's power to regulate admission to the Philippine bar is the Constitution,[3] which authorizes it to:

> "(p)romulgate rules concerning x x x x x the admission to the practice of law, x x x x x which, however, may be repealed, altered or supplemented by the National Assembly. x x x x x

In the exercise of its Constitutional mandate the Supreme Court has promulgated the Rules of Court and has approved the curriculum for the Bachelor of Laws degree course. Potentially there are three ways in which the High Court can bring about the correction of the above-discussed deficiency: it can amend the Rules of Court, it can alter the curriculum for the Bachelor of Laws degree course, or it can do both.

The Rules of Court[4] state that:

> "No applicant for admission to the bar examinations shall be admitted unless he presents a certificate that he has satisfied the Secretary of Education that before he began the study of law he had pursued and satisfactorily completed in an authorized and recognized university or college, requiring for admission thereto the completion of a four-year high school course, the course of study prescribed therein for a bachelor's degree in arts and sciences, with *any* of the following subjects as major or field of concentration: political science, logic, English, Spanish, history and economics.

The curriculum for the Bachelor of Laws degree course is composed of Introduction to Law, Civil Law, Criminal Law, Remedial Law, Commercial Law, Political Law, Labor and Social Legislation, Legal Ethics and Practical Exercises, Taxation, Practice Court, Medical Jurisprudence, Legal Accounting and Legal Bibliography.

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[3] Article X, Section 5 (5)

[4] Rule 138, Section 6

## RECOMMENDATIONS

As already indicated, there are potentially three directions in which the Supreme Court can go in order to raise the capacity of new members of the Philippine bar to deal competently with cases involving economic cases. One is to amend the Rules of Court so as to make it a requirement that economics be *the* major subject or field of concentration in the degree course prescribed by the Secretary (now Minister) of Education for admission to the study of law. Another is to alter the curriculum of the Bachelor of Laws degree course so as to make provision for law-student instruction in the basic principles of economics. The third direction is a combination of the two measures.

Of the three the least objectionable and easiest to implement would be the curriculum change. To convert economics from an optional to a compulsory subject in the pre-law arts or sciences degree course not only would cause disruption but is certain to evoke strong objections from those who regard political science or history or logic as being at least as good as economics for purposes of preparation for the study of law. On the other hand, a change in the law curriculum intended to affect the one-unit, non-law component thereof would create no disturbance and, because no law subject was involved, could give rise no valid objections.

Of the four non-law, one-unit subjects in the present law curriculum — Introduction to Law, Legal Bibliography, Legal Accounting and Medical Jurisprudence — the best candidate for deletion and replacement by an economics-orientation subject, appropriately entitled Legal Economics. would be Legal Accounting. This choice is easily defended.

Introduction to Law is needed, at the start of a long, difficult and important enterprise, to orient first-year law students towards a clear appreciation and understanding of the meaning and the demands of the study of law. The value of Legal Bibliography is explained when it is pointed out that even in their final year in law school some students waste much valuable time and effort due to inability to locate references and citations, which state of affairs would not exist with knowledge of legal bibliographic techniques. Medical Jurisprudence, on the other hand, elucidates the provisions of the Revised Penal Code on capital crimes and offenses involving physical injury and accordingly is a necessary component of the present law curriculum.

The same cannot be said of Legal Accounting. In the first place, relatively rarely do legal practitioners and magistrates have to deal with cases involving the intricacies of balance sheets, income statements and their various components. In the second place, when such cases do present themselves, their accounting aspects can easily and ideally



should be referred to certified public accountants, whether in the capacity of a court-appointed commissioners or otherwise. In any case, there is evidence to indicate that the subject matter of Legal Accounting and the manner in which it is being taught do not, at the end, give rise to law students better able to understand balance sheets and profit and loss statements than when they entered law school.

In conclusion it can be stated that with the minor change proposed above the highest judicial authority of this country can bring into being a revised legal education system more conducive to the production of the economically literate legal practitioners and judges that the times demand.