Exploring the Validity of Legal Process Outsourcing and the Meaning of "Practice of Law" in Light of the 2015 ASEAN Economic Integration

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I. INTRODUCTION

It was another day in the life of comedian Sacha Baron Cohen, a famous actor in Bruno and Borat.[1] In 2004, Ali G, another caustic personality,

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interviewed American author Gore Vidal in an episode of *Da Ali G Show*, a cable television program featuring Cohen and all his alter egos.[2] During the interview, Ali G asked Vidal why the United States (U.S.) Constitution should be amended, considering that his ex-girlfriend has tried to "amend" herself so many times — implying that her forays into plastic surgery had less-than-stellar results.[3] "Jane Doe," Ali G's ex-girlfriend, did not find this joke funny, so much so that she filed an $800,000.00 defamation suit against Cohen, the show's producers, and its broadcasters.[4]

Home Box Office and Channel 4, *Da Ali G Show*'s respective U.S. and United Kingdom (U.K.) broadcasters, could just have settled with her out of court, as they have done before.[5] Channel 4, however, had other ideas. Tired of the usual business practice of settling defamation suits out of court — given that settling is almost always a cheaper way of making a nuisance suit go away than proving it is meritless in court — Channel 4 turned to India for help.[6] More specifically, it turned to SDD Global Solutions, an India-based legal process outsourcing (LPO) firm, which was the Indian arm of SmithDehn LLP, Channel 4's U.S. counsel.[7]

For months, Indian lawyers based in a country halfway across the Pacific Ocean worked on the *Da Ali G Show* case.[8] According to SDD Global Solutions head of operations Sanjay Bhatia, they researched and drafted the pleadings submitted, while an associated American attorney filed them.[9] Essentially, short of appearing in court, SDD Global Solutions did all the work for a fraction of the cost[10] and won the case.[11]

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1. Sacha Baron Cohen, *available at* http://www.biography.com/people/sacha-baron-cohen-297414 (last accessed Feb. 15, 2016).
2. Leigh Holmwood, *Ali G: US judge throws out woman's $800,000 libel claim*, THE GUARDIAN, Apr. 22, 2009, *available at* http://www.theguardian.com/media/2009/apr/22/ali-g-libel-win (last accessed Feb. 15, 2016).
3. *Id. See also* Kian Ganz, Indian LPO defends Ali G US libel claim for fraction of cost of Wall Street firms, *available at* http://www.legallyindia.com/20100409678/Legal-Process-Outsourcing-LPO/indian-lpo-defends-ali-g-us-libel-claim-for-fraction-of-cost-of-wall-street-firms (last accessed Feb. 15, 2016).
4. Holmwood, *supra* note 2.
5. *Id.*
6. Cassandra B. Robertson, *A Collaborative Model of Offshore Legal Outsourcing*, 43 ARIZ. ST. L.J. 125, 126 (2011).
7. Holmwood, *supra* note 2.
8. *See* Ganz, *supra* note 3 & Robertson, *supra* note 6, 126-27.
9. Ganz, *supra* note 3.
10. *Id.*

Jane Doe appealed. On the side of the defendants therein, SDD Global Solutions again researched and drafted the briefs for the defense on appeal.[12] A unanimous ruling affirmed the dismissal.[13]

The *Da Ali G Show* decision is a landmark case — neither for its substantive merits nor for its procedural considerations. Its importance lies in the fact that it gives producers and broadcasters ammunition to fight nuisance claims in court. Too often, they are forced to settle out of court due to enormous litigation expenses.[14] In fact, the *Da Ali G Show* decision was only the second of its kind in the U.S., the other one involving National Broadcasting Company comedy show *Saturday Night Live*.[15] The *Da Ali G Show* case, however, shows that it can be done, and at less cost.[16]

It was hailed as a groundbreaking win, a "clear signal that [broadcasting companies] will not hesitate to fight unmeritorious claims[.]"[17] Given that nuisance claims have become notorious for having a "chilling effect" on broadcasters, this was a significant development that would benefit not only broadcasters, but also the writers, producers, and performers.[18] This case also showed that LPO could be used for more than low-level legal work.[19]

In the *Da Ali G Show* case, LPO completely changed the nature of the defense.[20] It was not just about replacing domestic legal services with a low-cost alternative; it showed that LPO has the power to transform individual lawsuits.[21] Moreover, it also showed the burgeoning transition of LPO into a mainstream industry.[22]

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11. Dave Itzkoff, *A Legal Victory for Ali G and Sasha Baron Cohen*, N.Y. TIMES, Apr. 21, 2009, *available at* http://artsbeat.blogs.nytimes.com/2009/04/21/a-legal-victory-for-ali-g-and-sacha-baron-cohen/?_php=true&_type=blogs&_r=0 (last accessed Feb. 15, 2016).
12. Ganz, *supra* note 3.
13. Doe v. Channel Four Television Corp., No. B217145, 2010 Lexis 2468, at 1, 11, 23 (Cal. Ct. App. Apr. 6, 2010).
14. *See* Robertson, *supra* note 6, at 126.
15. Holmwood, *supra* note 2.
16. *See* Ganz, *supra* note 3.
17. Holmwood, *supra* note 2.
18. *Id.* According to the article, the "threat of substantial damages and significant legal costs forces defendants to settle with plaintiffs who have no justifiable claim." *Id.*
19. Ganz, *supra* note 3.
20. Robertson, *supra* note 6, at 127.
21. *Id.*
22. *Id.*

LPO is one aspect of the growing trend of liberalizing legal services and legal profession, as shown by the growing popularity of transnational legal practice.[23] The Philippines has not escaped this trend, try as it might to cling to the traditional notions of legal practice.[24] Currently, LPO is one of the "fastest growing sectors in the Philippine [Business Process Outsourcing (BPO)] industry."[25] The Philippines is home to many LPO firms, whose clients range from law firms in the U.S., U.K., and Australia, to different multinational companies as well as foreign corporations.[26]

Despite the growing popularity of LPO and the concomitant ethical concerns attendant to it, the Philippine legal community has largely been silent on how LPO has affected the local legal community.

The practice of law is an important part of Philippine society.[27] Unlike other professions, it has always merited special considerations and stricter rules because it is considered more than just a business.[28] Nonetheless, the scope of what constitutes practice of law has never been clearly outlined in any rule.[29] Practice of law in the Philippines has up to now been defined by the parameters set in *Cayetano v. Monsod*.[30]

However, the local law community cannot stay silent for long. The end of 2015 saw the arrival of the Association of Southeast Asian Nations (ASEAN) Economic Integration.[31] With it came the breaking of barriers among the Southeast Asian nations for the services industries — including no less than the legal services.[32]

The ASEAN Charter binds the Philippines to liberalize its legal services sector, which is, as of this moment, tightly closed, and is one of the most restrictive in the region.[33] The Philippine Constitution mandates the

23. *Id.*

24. *See* LegisPro, Legal Process Outsourcing, *available at* http://www.legisprocorp.com/web (last accessed Feb. 15, 2016) [hereinafter LegisPro, LPO].

25. *Id.*

26. *Id. See also* ParaLex, WHY outsource, *available at* http://paralexinc.com (last accessed Feb. 15, 2016).

27. RUBEN E. AGPALO, LEGAL AND JUDICIAL ETHICS 4-5 (8th ed. 2009).

28. *Id.* at 12.

29. *Id.* at 33.

30. Cayetano v. Monsod, 201 SCRA 210, 214-16 (1991).

31. ASEAN SECRETARIAT, A BLUEPRINT FOR GROWTH ASEAN ECONOMIC COMMUNITY 2015: PROGRESS AND KEY ACHIEVEMENTS 17 (2015).

32. *Id.* at 11.

33. *Id.* at 15. *See also* Andres D. Bautista, *My Four Centavos*, PHIL. STAR, June 28, 2014, *available at* http://www.philstar.com/opinion/2014/06/28/1339900/practice-law (last accessed Feb. 15, 2016).

protection of professions by limiting it to Filipino citizens, subject to a few exceptions.[34] While the ASEAN Charter recognizes each Member State's sovereignty to enact laws to protect its industries,[35] Philippine rules and regulations limit and restrict the practice of law — contradicting the object and purpose of the ASEAN Charter.

This protective regime is understandable in light of the principle that the practice of law is not a business, but a profession infused with public trust.[36] The restrictions exist ultimately to protect the public, to ensure that only those qualified are allowed to practice law.[37] The problem is that the current rules are largely ineffective in curtailing the unauthorized practice of law.

At present, in addition to LPO firms staffed primarily by Filipino lawyers practicing foreign law, foreign lawyers also practice law in the Philippines, by giving legal advice on foreign law.[38] These companies and lawyers remain unregulated, not because they choose to break the law, but precisely because there are no clear rules and regulations that govern their practice in the Philippines.[39]

Therefore, the overly broad scope of the practice of law in the Philippine jurisdiction not only hinders its ability to fulfill its obligations under the ASEAN Charter, but also unwittingly causes cases of unauthorized practice of law.[40] Worse, those who engage in unauthorized practice of law do so with impunity, because of the utter vagueness, if not lack, of the rules that govern them.[41] Globalization could prove to be successful in paving the way for the frictionless flow of services thus bringing down the barriers that used to cage the practice of law to a particular jurisdiction,[42] but the Philippine laws have not yet reacted to such change.

In light of this development, this Note aims to elucidate the reasons why the definition of the "practice of law" under Philippine jurisdiction violates the Philippines' obligation under the ASEAN Charter and is ineffective in regulating the conduct of LPO firms in the country. Essentially, the

34. PHIL. CONST. art. XII, § 14, ¶ 2.

35. Charter of the Association of Southeast Asian Nations pmbl., *opened for signature* Nov. 20, 2007 (entered into force Dec. 15, 2008) [hereinafter ASEAN Charter].

36. AGPALO, *supra* note 27, at 12.

37. *Id.* at 40.

38. Bautista, *supra* note 33.

39. *Id.*

40. *Id.*

41. *Id.*

42. *See* Jose Victor V. Chan-Gonzaga, *The Legal Profession in a World of Globalization and Electronic Commerce: Rules, Issues and Implications*, 45 ATENEO L.J. 325, 346 (2001).

definition of practice of law must be modified, not only to comply with the country's obligations under the ASEAN Charter, but also to address the growing ethical concerns exacerbated by the country's oxymoronically broad yet restrictive definition on who may practice law in the Philippines.

II. THE COMMERCIALIZATION AND THE LIBERALIZATION OF THE PRACTICE OF LAW

Practice of law, as it is traditionally defined, is evolving. A decade ago, just the thought that a Filipino would be able to represent an American before a U.S. Court was unfathomable. Today, it is a reality. This is possible through the twin phenomena of commercializing and of liberalizing the legal services industry.

A. The Commercialization of the Law

The practice of law is traditionally identified with the law firm — a partnership formed by, between, and among lawyers.[43] A person may hire more than one lawyer for separate interests, but the fact remains that such lawyer will be responsible for everything needed to fulfill the client's needs for the interest he or she was hired.[44] Today, however, the opposite is happening — lawyers' services are being unbundled, dissected, and distributed to different parts of the world to be performed by different teams through the LPO business model.[45]

LPO is an emerging industry that is slowly transforming from a fringe industry to one of the more popular and mainstream service industries around the world.[46] It has gained the stamp of approval from no less than the American Bar Association (A.B.A.).[47] While some ethical and legal issues remain, LPO is here to stay.

In less than a decade, the LPO industry has grown steadily and has increased exponentially, showing no sign of stopping, or even slowing

43. *See* AGPALO, *supra* note 27, at 14-15.

44. *Id.* at 33-34.

45. *See* Batish Technologies, Legal Processes, *available at* http://www.batishtechnologies.com/legal-processes-sydney/ (last accessed Feb. 15, 2016).

46. *Id.*

47. American Bar Association Standing Committee on Ethics and Professional Responsibility, ABA Formal Opinion 08-451: Lawyer's Obligations When Outsourcing Legal and Nonlegal Support Services, *available at* http://www.garretsongroup.com/additional-resource/aba-formal-opinion-08-451-lawyers-obligations-when-outsourcing-legal-and-nonlegal-support-services (last accessed Feb. 15, 2016) [hereinafter Formal Op. 08-451].

down. In 2006, LPO was a $146 million industry;[48] now, it is pegged as a $250 billion dollar industry.[49] In India (arguably the largest LPO provider)[50] alone, revenue from LPO grew from $320 million in 2008,[51] to around $600 million in 2010,[52] and $1,085 million by 2012.[53] By 2020, the LPO industry is expected to earn revenue of around $8,568.5 million,[54] with India and the Philippines leading the pack of LPO destination countries.[55]

For many, LPO is a godsend — a cost-effective alternative to the traditional route of hiring domestic but expensive law firms.[56]

This seemingly unstoppable growth rate has left the legal profession reeling and stumbling to catch up. LPO is by no means a perfect model, and its accelerated growth spurt has only exacerbated issues that are only now beginning to be noticed, and are under threat of festering, thus imploding upon the whole industry.

If history is any indication, however, it is only a matter of time before LPO becomes indubitably embedded in the current legal services landscape.

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48. Mark Ross, Legal Process Outsourcing (LPO): 2007 and Beyond, *available at* http://www.ilw.com/articles/2008,0125-ross.shtm (last accessed Feb. 15, 2016).

49. V. Hemamalini, *Cobra First LPO MNC to Enter Chennai*, THE ECONOMIC TIMES, Jan. 5, 2007, *available at* http://economictimes.indiatimes.com/cobra-first-lpo-mnc-to-enter-chennai/articleshow/1064111.cms (last accessed Feb. 15, 2016).

50. Mary Heaney, Legal Outsourcing Survey (An Article on Legal Outsourcing Guide 2013-2014: The inside perspective for buyers of legal services, a handbook published online by the Global Legal Post) 7, *available at* http://www.globallegalpost.com/publications/feac6edcbd3bda348b862a3bf9ada570 (last accessed Feb. 15, 2016).

51. Robertson, *supra* note 6, at 135.

52. Ross, *supra* note 48.

53. Grand View Research, Legal Process Outsourcing (LPO) Market Analysis by Location (On-shore, Offshore), By Service (Contract Drafting, Review & Management, Compliance Assistance, E-Discovery, Litigation Support, Patent Support) And Segment Forecasts To 2020, *available at* http://www.grandviewresearch.com/industry-analysis/legal-process-outsourcing-lpo-market (last accessed Feb. 15, 2016).

54. *Id.*

55. Peter Archer, Outsourcing the Law gets New Look, *available at* http://raconteur.net/business/outsourcing-the-law-gets-a-new-look (last accessed Feb. 15, 2016).

56. *See* Neasa MacErlean, The Philippines to overhaul labour laws, *available at* http://www.globallegalpost.com/global-view/the-philippines-to-overhaul-labour-laws-3701629/ (last accessed Feb. 15, 2016) [hereinafter MacEarlean, Labour laws].

1. The Emergence of Legal Process Outsourcing

A confluence of a particular set of circumstances helped develop, shape, and grow the LPO industry. The "Great Recession" pushed the need to save costs and paved the way for a significant increase in outsourcing legal work offshore.[57]

At first, only administrative back-office work was outsourced offshore, such as administrative support like low-level legal work (i.e., filling out legal forms and transcribing depositions).[58] However, this was soon joined by tasks generally assigned to paralegals or junior associates, such as preparation of patent applications and document review.[59] Still, most lawyers were not worried about being replaced by LPO firms due to jurisdictional barriers that they deemed insurmountable.[60]

From providing backdoor support and doing administrative work, LPO firms started to increasingly provide legal services.[61]

2. The Development of LPO

There are four main models for outsourcing: (1) the Firm-to-Middleman Model; (2) the In-House Model; (3) the Firm-to-Firm Model; and (4) the International Contract Lawyer Model.[62] Of particular importance are the Firm-to-Middleman and the In-House Models.

The most common among the four is the Firm-to-Middleman Model, in which a law firm or corporation hires a LPO provider.[63] In this case, the LPO firm employs the lawyers who will work on the client's problem; however, they may also be considered as employees of the law firm or corporation depending on the degree of control exercised over such employees.[64]

57. Robertson, *supra* note 6, at 131.

58. *Id.* at 132.

59. Mary C. Daly & Carole Silver, *Flattening the World of Legal Services? The Ethical and Liability Minefields of Offshoring Legal and Law-Related Services*, 38 GEORGETOWN J. OF INT'L L. 401, 406 (2007).

60. Darya V. Pollak, *I'm Calling My Lawyer … In India: Ethical Issues in International Legal Outsourcing*, 11 UCLA J. INT'L L. & FOR. AFF. 99, 102 (2006) & Jill S. Chanen, *Moving to Mumbai: More Firms are Outsourcing Support Services to India. Will Legal Work be Next?*, 90 ABA J. 28, 28 (2004).

61. Robertson, *supra* note 6, at 133.

62. Pollak, *supra* note 60, at 107-09.

63. *Id.* at 107.

64. *Id.* at 107-08.

Today, more and more complex or high-end legal work is being sent to LPO providers offshore.[65] Foreign lawyers now assist in writing briefs, analyzing case law, and drafting documents like patent applications.[66] Skill-intensive tasks are now part and parcel of work being sent to LPO firms.[67] Back in 2004, LPO firm Mindcrest helmed the legal work for a large multinational company that wanted to establish a subsidiary in the U.S.[68] Mindcrest not only researched different federal and state laws,[69] it also devised the most optimal way for the client to incorporate based on its business plans.[70] Clearly, such work is more than mere administrative tasks, which was supposedly what all LPO firms are for.

In order to capitalize on efficiency and cost-reduction, law firms started to gradually unbundle their services — transferring those work normally performed by junior associates to LPO providers.[71] These services were assigned to experts, which included lawyers, or trained professionals in other fields, like engineers, to work on both legal and non-legal tasks.[72] Others specialized by hiring foreign lawyers exclusively to work on a specialized task, such as patent research.[73]

Thus, what were once the jobs assigned to new hires and junior associates, the "grunt work"[74] were sent to be performed by lawyers who were halfway across the world and were often more experienced.[75]

High-end legal jobs comprise only about 15% of the work sent to LPO providers, with the exception of the intellectual property field; the over 50%

65. Robertson, *supra* note 6, at 132–33.

66. *Id.* at 133.

67. *Id.*

68. Mindcrest Inc., Recent Projects, Nov. 28, 2004, *available at* http://www.mindcrest.com/projects.html (last accessed Feb. 15, 2016).

69. *See* Mindcrest Inc., Legal Content and Publishing Services, *available at* http://www.mindcrest.com/services/legal-content-publishing/index.shtml (last accessed Feb. 15, 2016).

70. *See* Mindcrest Inc., Corporate Legal Services, *available at* http://www.mindcrest.com/services/corporate/index.shtml (last accessed Feb. 15, 2016).

71. Robertson, *supra* note 6, at 132 & 135 & Daly & Silver, *supra* note 59, at 406–07.

72. *See* Daly & Silver, *supra* note 59, at 407.

73. Robertson, *supra* note 6, at 132 & Daly & Silver, *supra* note 59, at 409.

74. *See* Frank H. Wu, That's Why We Call it 'Work,' *available at* http://abovethelaw.com/2014/02/thats-why-we-call-it-work (last accessed Feb. 15, 2016).

75. Robertson, *supra* note 6, at 132.

of the outsourced work comprise high-level work.[76] However, this is bound to increase. As the LPO industry becomes more established, LPO firms are expected to take on more high-level legal work.[77] Despite this, LPO is still primarily seen as a cost-saving measure.[78]

And with the increase in outsourced legal services comes an expansion of the LPO industry — both in the size of LPO firms and in the destination of LPO services. At present, LPO firms are becoming bigger and bigger, with some comprising more than 400 professionals under their fold.[79]

3. The Emergence of the Philippines as a Premiere LPO Destination

India has always been a premier LPO destination, and it remains the most prominent one. However, in recent years, the ranks expanded to include countries such as China, Sri Lanka, and the Philippines.[80] The Philippines, in particular, shares advantages offered by India like having fluent English speakers, low costs, and familiarity of practitioners with common law principles.[81]

The Philippines is no stranger to BPO. International firm Baker & McKenzie has long operated its own internal LPO center in Manila.[82] The firm White & Case also has its own LPO center in the Philippines, providing back-office services.[83]

Integreon Managed Solutions, Inc. (Integreon) — the largest global LPO provider that counts among its clients top global law firms and investment banks — has also expanded its operations to the Philippines.[84] It currently

76. *Id.*

77. *Id.*

78. Pollak, *supra* note 60, at 106.

79. Neasa MacErlean, Exigent becomes 400-strong LPO specialist through mLegal takeover, *available at* http://www.globallegalpost.com/big-stories/exigent-becomes-400-strong-lpo-specialist-throug h-mlegal-takeover-28999018 (last accessed Feb. 15, 2016).

80. Robertson, *supra* note 6, at 134.

81. Anthony Lin, *Inside the Revolution: The Filipino Option*, AMERICAN LAWYER, Oct. 5, 2010, *available at* http://www.globalcriterion.com/news/articles/176-the-american-lawyer-inside-the-revolution-the-filipino-option.html (last accessed Feb. 15, 2016).

82. *Id. See also* Debbie Legall, The outsourcing game, *available at* http://www.ibanet.org/Article/Detail.aspx?ArticleUid=3C083447-E9EE-4AC9-850A-7CD477ADCFF0 (last accessed Feb. 15, 2016).

83. MacErlean, *Labour laws*, *supra* note 56.

84. Lin, *supra* note 81. *See also* Leanne Mezrani, *LPO on the up*, LAWYERS WEEKLY, July 27, 2012, *available at* http://www.lawyersweekly.com.au/news/lpo-on-the-up (last accessed Feb. 15, 2016).

employs 70 Filipino lawyers in its local Philippine office, and has plans to "build [a] significant scale of operations [in the country]."[85] Integreon's chief operating officer, Lokendra Tomar, thinks that the Philippines' LPO industry has a higher growth trajectory compared to India's.[86] Interestingly, Integreon is partly owned by Filipino conglomerate Ayala Corporation.[87]

Certainly, a key factor is the competitively low costs of outsourcing to the Philippines, wherein lawyers from top local law firms earn even less than their Indian counterparts.[88] To illustrate, an Indian LPO lawyer earns approximately $10,000.00 a year, which is a fraction of what a new hire in a large U.S. law firm can expect to earn in his first year.[89] Looking at these figures, the costs saved by U.S. companies and firms in offshore legal outsourcing are astronomical.

Nevertheless, cost savings are immaterial if the work performed is sub-par, and in this respect, LPO service providers do not fail to deliver quality work despite less cost. In one comparative study conducted by a Baker & McKenzie associate, the work done by the Indian LPO service provider proved to be at par with an onshore provider, with the advantage on cost savings.[90] Some law firms have been so satisfied with the work done by LPO firms that they have chosen to employ the LPO firms full-time over their own associates.[91]

LPO has been silently growing in the Philippines, which has become home to a number of LPO service providers that cater primarily to clients in the U.S. and the U.K.[92] Aside from the Ayala-affiliated Integreon, some of the LPO firms in the Philippines include LegisPro, Kittelson & Carpo, and LPO Manila — all of which are operated by members of the Philippine legal profession.[93] LegisPro, in fact, is chaired by retired Senior Associate Justice Florentino P. Feliciano.[94]

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85. Lin, *supra* note 81.

86. *Id.*

87. *Id.*

88. *Id.*

89. Robertson, *supra* note 6, at 136.

90. Gavin Birer, The Results Are in and the Winner Is..., *available at* http://www.slaw.ca/2009/04/20/the-results-are-in-and-the-winner-is%E2%80%A6 (last accessed Feb. 15, 2016).

91. *See* David Streitfeld, *Office of Tomorrow Has an Address in India*, L.A. TIMES, Aug. 29, 2004 *available at* http://articles.latimes.com/2004/aug/29/business/fi-outsource29/2 (last accessed Feb. 15, 2016).

92. *See* LegisPro, LPO, *supra* note 24.

93. *See, e.g.*, LegisPro, Principals, *available at* http://www.legisprocorp.com/web/index.php/submenuprincipals (last accessed Feb. 15, 2016) [hereinafter

All three LPO firms basically offer the same services to prospective clients, consisting mainly of legal research, administrative services, and litigation support.[95] This shows that providing LPO services is slowly taking hold in the mainstream Philippine legal community, with companies slowly cropping up and becoming competitive with each other.

4. Ethical Issues that Surround LPO

The practice of law is imbued with public interest.[96] While LPO is a growing industry that has allowed legal services to be performed faster and cheaper, it has also led to the exacerbation of some issues, especially with regard to the protection of the client.[97] The liberalization of the legal profession made it easier to send information to different people, making such information more vulnerable and the situation more complicated because of having less control over the manner of work by the LPO.[98]

Nevertheless, the primary reason why LPO has taken its current direction is the lack of clarity in the rules with regard to outsourcing.[99] This legal lacuna has caused LPO to thrive, despite the ethical issues that haunt the system.[100]

In the U.S., different states' bar associations have published their own opinions to address LPO concerns.[101] The Standing Committee on Ethics and Professional Responsibility of the A.B.A. released a formal opinion in 2008 that categorized LPO firms as non-lawyer assistants.[102] These, however, are not enough to address the issue of how different legal jurisdictions

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LegisPro, Principals] & Kittelson & Carpo, About Us, *available at* http://kittelsoncarpo.com/about-us (last accessed Feb. 15, 2016).

94. LegisPro, Principals, *supra* note 93.

95. *See, e.g.*, LegisPro, Services, *available at* http://www.legisprocorp.com/web/index.php/submenuservices (last accessed Feb. 15, 2016) & Kittelson & Carpo, Services, *available at* http://kittelsoncarpo.com/services (last accessed Feb. 15, 2016).

96. AGPALO, *supra* note 27, at 4.

97. Daly & Silver, *supra* note 59, at 420–21.

98. *Id.* at 421.

99. *See* Mark L. Tuft, *Supervising Offshore Outsourcing of Legal Services in a Global Environment: Re-examining Current Ethical Standards*, 43 AKRON L. REV. 821, 836–41 (2010).

100. *See* Daly & Silver, *supra* note 59, at 420.

101. N.C. State Bar, Formal Op. 12 (2007); Prof'l Ethics of the Fl. Bar, Op. 07-2 (2008); The Assoc. of the Bar of the City of N.Y. Comm. on Prof'l; & Judicial Ethics, Formal Op. 2006-3 (2006).

102. Formal Op. 08-451, *supra* note 47.

regulate the practice of law in light of the LPO.[103] Some of these issues include disputes about attorney-client privilege, conflicts of interest, duty of competence, advertising restrictions, and even tort liability.[104] The most prominent debate, however, is with regard to the unauthorized practice of law.

Stephanie L. Kimbro, co-founder of a virtual law office based in North Carolina, says that if a lawyer wants to practice law in more than one jurisdiction, he must be prepared to "juggle the regulations of multiple state bars and regulatory entities."[105] This is particularly difficult because different jurisdictions may have vastly different rules as to what practice of law entails and as to who may be allowed to practice law.[106]

It is virtually impossible to resolve the issue of unauthorized practice of law vis-à-vis LPO because jurisprudence about the matter lacks coherence.[107] In addition, there is no interest in enforcing prohibitions when the work is outsourced to firms or companies within the U.S.[108] Hence, issues about unauthorized practice of law will rarely be brought up (on the part of the U.S. courts, bar associations, and law firms) because they are perfectly willing to look the other way.[109] This, however, does not help in regulating the work of LPO companies in the countries where they operate and their effect on the legal profession in those jurisdictions.

The authority to practice law is territorial — it has always been defined and limited by territorial boundaries.[110] The emergence of the LPO industry has put this belief to the test. For some, it is borderline "heretical" that "individuals and corporations" who are unlicensed to practice law in the U.S. and did not study in American law schools may "nevertheless still possess the competency necessary to provide certain legal services to the public."[111] Nonetheless, competence has never been defined by geographic boundaries.[112] The real question then, is, "[s]hould integrity and quality of

103. Daly & Silver, *supra* note 59, at 405.

104. Robertson, *supra* note 6, at 127-28.

105. Stephanie L. Kimbro, *Regulatory Barriers to the Growth of Multijurisdictional Virtual Law Firms and Potential First Steps to Their Removal*, 13 N.C. J. L. & TECH. ON. 165, 168 (2012).

106. *Id.* at 188.

107. Daly & Silver, *supra* note 59, at 427-28.

108. *Id.* at 428.

109. *See* Daly & Silver, *supra* note 59, at 428.

110. *See* Kimbro, *supra* note 105, at 190.

111. Kimbro, *supra* note 105, at 219.

112. Herbert M. Kritzer, *The Future Role of "Law Workers": Rethinking The Forms of Legal Practice and the Scope of Legal Education*, 44 ARIZ. L. REV. 917, 918 (2002).

legal work be second to a state's bar license or a geographic boundary line?"[113] According to LPO, the answer is no.

Nevertheless, because LPO, by its very nature, triggers multiple jurisdictions' rules and laws simultaneously, it is thus important (if not imperative) to have universal guidelines or standards on how to treat such issues. However, LPO has progressed to a point where it has "vastly outpaced" the law.[114] While LPO continues to grow and influence the practice of law, scholars and skeptics alike are left waiting for the law to keep abreast with reality.[115]

The status of practice of law in the U.S., with different states having different definitions and enforcing varying regulations, mimic the status of practice of law among the Philippines and the other members of the ASEAN.

B. The Liberalization of the Legal Profession

The ASEAN started in 1967 as a way to bridge together Indonesia, Malaysia, the Philippines, Singapore, and Thailand, in order to achieve regional and economic stability in the region.[116] Today, the ASEAN is a legal entity composed of 10 Member States (with Cambodia, Laos, Myanmar, Vietnam, and Brunei Darussalam joining later), and it has taken several concrete steps to realize its vision of having a single ASEAN Community.[117]

To realize this dream, the different heads of government of the Member States came together in 2007 to create ASEAN Charter.[118] The Charter, the so-called Constitution of the ASEAN,[119] is a legally-binding agreement,

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"[B]eing admitted to practice, and hence licensed to provide any type of legal service within the geographic area of admission, has little to do with competence to practice." *Id.*

113. Kimbro, *supra* note 105, at 219.

114. Laurel S. Terry, *A Case Study of the Hybrid Model for Facilitating Cross-Border Legal Practice: The Agreement Between the American Bar Association and the Brussels Bars*, 21 FORDHAM INT'L L.J. 1382, 1384 (1998).

115. Pollak, *supra* note 60, at 103.

116. Association of Southeast Asian Nations, History: The Founding of ASEAN, *available at* http://www.asean.org/asean/about-asean/history (last accessed Feb. 15, 2016).

117. U.S. Department of State, Association of Southeast Asian Nations (ASEAN), *available at* http://www.state.gov/p/eap/regional/asean/ (last accessed Feb. 15, 2016).

118. *See* ASEAN Charter, *supra* note 35, art. 1.

119. Luu Tien Dzung, ASEAN Charter and ASEAN Lawyers: For the Rule of Law, Access to Justice and Human Rights (Workshop Paper for the 11th General Assembly of the ASEAN Law Association in Vietnam) 1, *available at*

which provides for ASEAN's legal status and institutional framework, while also setting clear regional targets and establishes rules on accountability and compliance.[120]

1. The First Step under ASEAN

The ASEAN did not commit to regional economic integration until 1992, during the fourth ASEAN Summit in Singapore, which gave birth to the ASEAN Free Trade Area (AFTA).[121] The AFTA was the first step in ASEAN liberalization of trade within the region.[122] Three years later in 1995, this liberalization effort was extended to services through the creation of the ASEAN Framework Agreement on Services (AFAS) at the Bangkok Summit.[123]

The AFAS sought to liberalize trade in services by expanding existing obligations, enhancing regional cooperation, and substantially eliminating restrictions.[124] This includes not only removing existing discriminatory measures and market access limitations but also prohibiting the enactment of such measures and limitations.[125] In order to realize this, the AFAS also sanctions mutual recognition of education, experience, and qualifications among Member States.[126]

The Philippines ratified the AFAS in 1996,[127] but it limited its commitment to liberalize legal services by exploring the possibility of introducing exceptions to the nationality requirement in order to practice of

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http://www.aseanlawassociation.org/11GAdocs/workshop6-vn.pdf (last accessed Feb. 15, 2016.).

120. ASEAN Charter, *supra* note 35, art. 1.

121. HistorySG, ASEAN Leaders Agree to Create an ASEAN Free Trade Area, *available at* http://www.eresources.nlb.gov.sg/history/events/bf07b77f-68fd-4473-9ccb-1197fe323cb8 (last accessed Feb. 15, 2016).

122. *Id.*

123. ASEAN Framework Agreement on Services, *opened for signature* Dec. 15, 1995 [hereinafter AFAS].

124. *Id.*

125. *Id.* arts. I & III.

126. *Id.* art. V.

127. ASEAN, Table of ASEAN Treaties/Agreements and Ratification, *available at* http://www.asean.org/wp-content/uploads/images/2012/resources/TABLE%20OF%20AGREEMENT%20%20RATIFICATION-SORT%20BY%20DATE-Web-October2012.pdf (last accessed Feb. 15, 2016).

law.[128] The AFAS is the precedent for the vision embodied in the ASEAN Charter.

2. The ASEAN Charter

The ASEAN Charter is the document that gives legal personality to the ASEAN.[129] It envisions a single market base wherein there is free flow of services and goods among the Member States.[130] While it respects the independence and sovereignty of each nation,[131] it also espouses "adherence to multilateral trade rules and ASEAN's rules-based regimes for effective implementation of economic commitments and progressive reduction towards elimination of all barriers to regional economic integration[.]"[132]

The ASEAN Charter was signed on 20 November 2007, and it has been fully ratified by all 10 Member States.[133] Pursuant to Section 21, Article VII of the Constitution,[134] the Philippine Senate ratified the Charter on 7 October 2008, with the instrument of ratification deposited on 3 November 2007.[135] Therefore, as far as the Philippines (as well as the rest of the Member States) is concerned, the Charter is already legally binding — a source of both rights and obligations.

Even assuming that the Charter, by itself, does not contain specific obligations to liberalize the legal profession, this obligation is contained in subsequent instruments (such as the ASEAN Economic Community Blueprint),[136] which are also binding upon the Philippines.[137]

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128. Paul P. Enriquez, Crossing Borders: The Opening up of the Law Profession and the Clash of the Titans, at 36 (2001) (unpublished J.D. thesis, Ateneo de Manila University) (on file with the Professional Schools Library, Ateneo de Manila University).

129. ASEAN Charter, *supra* note 35, art. 3.

130. *Id.* art. 1, § 5.

131. *Id.* art. 2, §§ 2 (a) & 2 (e).

132. *Id.* art. 2, § 2 (n).

133. Working Group for an ASEAN Human Rights Mechanism, ASEAN Embarks on a New Era — ASEAN Charter Fully Ratified, *available at* http://www.aseanhrmech.org/news/asean-charter-fully-ratified.html (last accessed Feb. 15, 2016).

134. PHIL. CONST. art VII, § 21. "No treaty or international agreement shall be valid and effective unless concurred by at least two-thirds of all the Members of the Senate." PHIL. CONST. art VII, § 21.

135. *See also* Amita Legaspi, Senate Ratifies ASEAN Charter, *available at* http://www.gmanetwork.com/news/story/125486/news/nation/senate-ratifies-asean-charter (last accessed Feb. 15, 2016).

136. ASEAN Economic Blueprint 2, *opened for signature* Nov. 20, 2007 [hereinafter Blueprint].

The Charter mandates all Member States to "take all necessary measures, including the enactment of appropriate domestic legislation, to effectively implement the provisions of [the] Charter and to comply with all obligations of membership."[138] The Philippines, having ratified the ASEAN Charter, is bound to fulfill in good faith its obligations under such agreement.[139] Any serious breach or non-compliance shall be referred to and decided by the ASEAN Summit.[140]

3. Method of Ensuring Compliance under the ASEAN Charter

Most opine that the ASEAN Charter lacks teeth to enforce compliance among the Member States.[141] This view is aggravated by a provision allowing for flexible participation in the implementation of economic commitments through the use of the ASEAN Minus X (ASEAN-X) formula.[142] Under ASEAN-X, a Member State that is not ready to implement an economic policy may defer its participation.[143] However, such formula was only intended as a transitional tool; it does not give Member States the absolute prerogative to choose which programs they will participate.[144]

Further, it only means that those Member States that are ready to implement the economic arrangements can proceed to implement it ahead of the others.[145] It does not exempt the other Member States from

137. *See* Vienna Convention on the Law of Treaties art. 31 (a), *opened for signature* May 23, 1969, 1155 U.N.T.S. 331 (*entered into force* Jan. 27, 1980) [hereinafter VCLT]. Under Article 31, ¶ 2 (a), subsequent agreements entered into by the parties in a treaty in connection with the conclusion of such treaty (in this case, the ASEAN Charter) are also considered in distinguishing the purpose of and interpreting the treaty. Thus, any obligation included in such instruments (like the Blueprint) is also considered as a binding treaty obligation upon all the parties concerned. *Id.*

138. ASEAN Charter, *supra* note 35, art. 5, § 2.

139. VCLT, *supra* note 137, art. 26.

140. ASEAN Charter, *supra* note 35, art. 20, § 4.

141. Ralph A. Cossa, ASEAN Charter: One (Very) Small Step Forward, *available at* http://www.glocom.org/debates/20071122_cossa_asean (last accessed Feb. 15, 2016) & Edmund Sim, Putting "ASEAN-X" to Work for the AEC, *available at* http://aseanec.blogspot.com/2011/10/putting-asean-x-to-work-for-aec.html (last accessed Feb. 15, 2016).

142. ASEAN Charter, *supra* note 35, art. 21 § 2.

143. Sim, *supra* note 141.

144. *Id.*

145. *See* RODOLFO SEVERINO, SOUTHEAST ASIA IN SEARCH OF AN ASEAN COMMUNITY: INSIGHTS FROM THE FORMER ASEAN SECRETARY-GENERAL

implementing the arrangements — what they get is only a temporary reprieve.[146] Member States are still mandated to implement the changes.[147]

Any treaty must be interpreted in good faith, and in light of its object and purpose.[148] A treaty's object and purpose may be put into context not just through the text of the treaty itself, but also through any agreement or instrument that relates to the treaty and accepted by the parties as such.[149]

In this case the purpose of the ASEAN Charter, as expressed and even when taken as a whole, is to create a single market and a production base with free flow of goods and facilitates movement of persons.[150] The Charter was created in order to facilitate the creation of the ASEAN Economic Community (AEC).[151] This is further supported by other instruments and agreements entered into by the Member States, which were all enacted in order to facilitate the realization of the AEC.[152]

Thus, the option for flexible participation must be read in light of the obligation to realize the AEC. It cannot be interpreted as a blanket provision to allow Member States to opt out of participating in some economic initiatives or policies because such move runs fundamentally contrary to the Charter's (and the ASEAN's) purpose of establishing a single market and production base. While the Charter in and of itself does not provide for a list of sanctions in the event that a Member State does not comply with its obligations, it still provides for some form of mechanism to address such a violation.[153] Any perceived weakness within the Charter can be augmented by other instruments.[154] In fact, there are current plans to implement a more comprehensive system to monitor whether Member States have complied

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31 (2006) (citing Framework Agreement on Enhancing ASEAN Economic Cooperation art. 1, § 3, *opened for signature* Jan. 28, 1992).

146. *Id.*

147. *Id.*

148. VCLT, *supra* note 137, art. 31, § 1.

149. *Id.* § 3.

150. ASEAN Charter, *supra* note 35, art. 1 § 5.

151. Blueprint, *supra* note 136, at ¶ 2.

152. ASEAN Secretariat, ASEAN Economic Community Factbook, *available at* http://www.thaifta.com/thaifta/portals/0/asean_aecfactbook.pdf (last accessed Feb. 15, 2016) [hereinafter AEC Factbook] & ASEAN Agreement on the Movement of Natural Persons pmbl. & art. 1, *opened for signature* Nov. 19, 2012.

153. ASEAN STUDIES CENTRE, THE ASEAN COMMUNITY, UNBLOCKING THE ROADBLOCKS 10 (2008) [hereinafter ASEAN STUDIES CENTRE, ROADBLOCKS].

154. ASEAN STUDIES CENTRE, THE ROAD TO RATIFICATION AND IMPLEMENTATION OF THE ASEAN CHARTER 54 (Pavin Chachavalpongpun, ed., 2009).

with the ASEAN Economic Blueprint (Blueprint).[155] The Member States may also take recourse to the modes of peaceful settlement as espoused in the United Nations (U.N.) Charter.[156]

4. The ASEAN Economic Community

The Charter formed the basis for the creation of the Blueprint, which served as the foundation and set the guidelines for accelerating the establishment of AEC by 2015.[157] The AEC is the proposed result of the ASEAN Member States' move to deepen and broaden economic integration within the region.[158] They proposed to achieve this by establishing an ASEAN single market and production base, through a step-by-step process.[159]

Some were still skeptical whether the AEC can be achieved within schedule.[160] They opined that a stronger institutional structure is needed in order to achieve economic integration.[161] Others also doubted the readiness of the Philippines to be part of such a community.[162] Moreover, while the plan to establish the AEC has long been in motion, most people living in the ASEAN countries have little to no knowledge about the upcoming integration and the effects it will have on the region.[163] Kishore Mahbubani, former Singapore Ambassador to the U.N. and Dean of the Lee Kuan Yew School of Public Policy, pointed out that development in different sectors has been uneven — with some progressing towards the AEC goals, while others have regressed.[164]

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155. Association of Southeast Asian Nations, ASEAN to Develop Better Integration Monitoring System, *available at* http://www.asean.org/asean-to-develop-better-integration-monitoring-system (last accessed Feb. 15, 2016).

156. ASEAN Charter, *supra* note 35, art. 28.

157. *See* Denis H. Wei-Yen, *Towards an ASEAN Economic Community by 2015*, in ASEAN STUDIES CENTRE, ROADBLOCKS, *supra* note 153, at 15-18.

158. Blueprint, *supra* note 136, at ¶ 5.

159. *Id.* ¶ 6.

160. Philippine Star, *ASEAN economic integration in 2015 draws conflicting views in Phl*, PHIL. STAR, Apr. 24, 2014, *available at* http://www.philstar.com/headlines/2014/04/24/1315836/news-analysis-asean-economic-integration-2015-draws-conflicting-views (last accessed Feb. 15, 2016) [hereinafter Philippine Star, *ASEAN 2015*].

161. BRICK BY BRICK: THE BUILDING OF AN ASEAN ECONOMIC COMMUNITY 218 (Denis H. Wei-Yen, ed., 2007).

162. Philippine Star, *ASEAN 2015*, *supra* note 160.

163. ABS-CBN News, ASEAN people unaware of 2015 economic integration, *available at* http://www.abs-cbnnews.com/global-filipino/world/06/10/13/asean-people-unaware-2015-economic-integration (last accessed Feb. 15, 2016).

164. *Id.*

The AEC is part of the ASEAN's step-by-step commitment to realize a more cohesive regional unit that would greatly improve its worldwide competitiveness.[165] By pooling resources together to create a single, cohesive, and integrated production base, AEC hopes to make the region more dynamic and competitive.[166]

The plan to create a single market and production base is comprised of five main elements: (1) free flow of goods; (2) free flow of services; (3) free flow of investment; (4) free flow of capital; and (5) free flow of skilled labor.[167] All of these are the means to the end of establishing economic integration among the ASEAN, wherein the Member States would have a "convergence of interests ... through existing and new initiatives with clear timelines" geared towards economic growth and stability.[168] Aside from facilitating the free trade of goods and services, the AEC also aims to develop human resources and capacity building.[169]

Unlike goods, services are intangible; they are "characterized by government-imposed restrictions," which regulate both market access and the "nature and scope of operations of service providers."[170] Under the Blueprint, the free flow of services entails "substantially no restriction to ASEAN services suppliers in providing services and in establishing companies across national borders within the region, subject to domestic regulations."[171]

In other words, in order to establish the AEC, virtually all restrictions on the services sector must be removed.[172] However, the framers of the Blueprint realize that certain flexibility must co-exist with the liberalization goal in order to standardize the services sector around the region.[173] Thus, the liberalization of services must be coupled with certain regulatory

165. AEC Factbook, *supra* note 152, at xii & xiv. *See also* Ong Keng Yong, ASEAN Moves Forward to Build a Single Market, *available at* http://www.asean.org/asean-moves-forward-to-build-a-single-market-commentary-by-ong-keng-yong-for-the-asian-wall-street-journal (last accessed Feb. 15, 2016).

166. *Id.*

167. Blueprint, *supra* note 136, at ¶ 6.

168. *Id.* ¶ 5.

169. *Id.* ¶ 6.

170. Fernando T. Aldaba & Rafaelita M. Aldaba, ASEAN Economic Community 2015: Capacity-building Imperatives for Services Liberalization (Discussion Paper Series No. 2013-06 by the Philippine Institute for Development Studies) 14, *available at* http://dirp3.pids.gov.ph/ris/dps/pidsdps1306.pdf (last accessed Feb. 15, 2016).

171. *See* Blueprint, *supra* note 136, at ¶ 10.

172. *Id.*

173. *Id.* ¶ 11.

mechanisms that will ensure that it would push the region to be more competitive while protecting it at the same time.[174]

In order to achieve this, the Blueprint requires each Member State to complete mutual recognition agreements amongst each other.[175] These mutual recognition agreements will allow each Member State to recognize another State's qualifications for certain occupations, such as architecture, accountancy, and medicine.[176] Lawyering is not included; however, the list is not exhaustive, and the Blueprint allows the Member States to propose and negotiate what other occupations may be covered by future mutual recognition agreements.[177]

The AEC was envisioned to be a staggered integration of service sectors throughout the years, substantially reaching its goal in 2015, but continuing onwards. Priority sectors for integration were also identified.[178] Nevertheless, the Blueprint mandated the removal of "substantially all restrictions on trade in services for all other services sectors by 2015."[179]

5. Respect for National Laws

Free flow of trade in services envisions a regional community without restrictions in establishing companies and providing services across each nation.[180] This means that the whole ASEAN region will be treated as one big local jurisdiction when it comes to establishing companies and providing services.

However, the envisioned free flow of trade in services is still subject to domestic regulations.[181] This is ASEAN's recognition that even though greater integration is needed in and beneficial to the region, this does not automatically eviscerate each Member State of its sovereignty in order to

174. *Id.*

175. *Id.*

176. *Id.*

177. *See* Blueprint, *supra* note 136, at ¶ 11.

178. *Id.* ¶ 10.

179. *Id.*

180. *Id.*

181. *Id.* & Mary Grace L. Riguer, ASEAN 2015: Implications of People Mobility and Services (Discussion Paper Series 2012 by the Institute for Labor Studies) 6, *available at* https://wuvuwa.by3302.livefilestore.com/y3mjytFK9wawTlNdhFjZpxjJDbM1W05nemXiVYGSA0EBxhFJnzj5IM91lwIUvahAGUvUIg_AqPt4UnVRk-2fqCSwNpQh23XX0S5Z7LyILi5ZgiuFQh45r9pOOPMsRtJ5Xk/WP%20s.2012%20No.%2014.pdf?psid=1 (last accessed Feb. 15, 2016).

protect its national interests.[182] Each country retains its identity and authority to protect its citizens as the ASEAN has always subscribed to the fundamental principle of respect for sovereignty.[183]

The mobility envisioned under the AEC is not total freedom, but "managed mobility" that would allow movement of natural persons across borders.[184] National barriers, though not necessarily completely eradicated, would have to be reduced to some degree to allow this kind of movement.[185]

Thus, what is intended by the AEC is not a total across-the-board integration, but a staggered one. The impending economic integration does not divest each Member State of its sovereignty and authority to establish its own laws, rules, and regulations.[186] The Blueprint expressly recognizes such State authority.[187] Hence, there is a need to address contradictions between regional commitments and national laws.[188] In particular, regional interest must be translated to national action.[189]

With regard to lawyering as a service, it is necessary that domestic laws are restructured to allow lawyers from other Member States to have access to other jurisdictions.[190] That is the bare minimum required to meet the obligations under the AEC agreement. What is required under the ASEAN economic integration agreement is access — not completely eradicating any difference among the local laws and regulations of each Member State.[191] Hence, Philippine laws that establish qualifications on who may practice law are valid and can still be upheld.

182. *See* S. Pushpanathan, *Appreciating, Understanding the ASEAN Concept*, THE JAKARTA POST, Aug. 9, 2003, *available at* http://www.asean.org/appreciating-understanding-the-asean-concept-by-s-pushpanathan-for-the-jakarta-post (last accessed Feb. 15, 2016) [hereinafter Pushpanathan, *ASEAN Concept*].

183. *Id.* & ASEAN Charter, *supra* note 35, art. 2, § 2 (a).

184. Riguer, *supra* note 181, at 8.

185. *Id.* at 42.

186. *See* Pushpanathan, *ASEAN Concept*, *supra* note 182.

187. *See* Blueprint, *supra* note 136, at ¶¶ 5-6.

188. S. Pushpanathan, *The Importance of Private Sector*, THE JAKARTA POST, Sep. 2, 2010, *available at* http://www.asean.org/opinion-the-importance-of-private-sector-by-s-pushpanathan-the-jakarta-post (last accessed Feb. 15, 2016).

189. *Id.*

190. Riguer, *supra* note 181, at 42.

191. *Id.*

6. Lawyering as a Service

The legal services sector is not one of the identified priority sectors.[192] Big deterrents to the integration of services in the region, especially when it comes to legal services, include the differences in curriculum, in the necessary requirements for licensure examinations, and in the media of instruction.[193] There is also the fear of depriving local firms and lawyers of their jobs upon opening the legal profession to foreign practitioners.[194]

Still, the goal was that by the end of 2015, there should be substantially no restriction to ASEAN lawyers practicing transnationally, and even establishing firms, among the different Member States.[195]

Essentially, the ASEAN Charter requires the legal profession around the ASEAN region to open itself for foreign practitioners from the region. This, however, runs contrary to the current practice of the legal profession insulating and protecting itself from outside interference and influence.[196] The level of protection granted by each Member State to its own legal profession differs at varying levels.[197] Some point out that the difference lies in the uneven economic developments of each Member State. An economically-developed State, like Singapore, is forced to open up its legal practice to foreign professionals in order to meet specified demand, while a less-developed economy, like Cambodia or Myanmar, is less likely to open its legal practice to foreign practitioners.[198]

192. Blueprint, *supra* note 136, at ¶¶ 16-18.

193. Rafaelita M. Aldaba, ASEAN Economic Community 2015: Labor Mobility and Mutual Recognition Arrangements on Professional Services (Discussion Paper Series 2013-14 by the Philippine Institute for Development Studies) 9, *available at* http://dirp3.pids.gov.ph/ris/dps/pidsdps1304.pdf (last accessed Feb. 15, 2016) & Suwannee Sirivejchapun, ASEAN Charter and ASEAN Lawyers (Workshop Paper for Thailand, 11th General Assembly of the ASEAN Law Association) 5, *available at* http://www.aseanlawassociation.org/11GAdocs/workshop6-thai.pdf (last accessed Feb. 15, 2016).

194. Sirivejchapun, *supra* note 193, at 6.

195. Muhammad Zaindi A. Hamid, The ASEAN Charter and the ASEAN Lawyers (Workshop Paper for Brunei, 11th General Assembly of the ASEAN Law Association) 5, *available at* http://www.aseanlawassociation.org/11GAdocs/workshop6-brunei.pdf (last accessed Feb. 15, 2016).

196. *Id.* at 5-6.

197. *Id.*

198. *Id.*

Another barrier is the diverse legal systems practiced among the Member States.[199] Further, different ethical rules and standards apply within the jurisdiction of each Member State.[200] In the Philippines, for example, much emphasis is put on passing the bar exams and there is little to no focus on teaching international law or regional law, and the practice thereof.[201]

Under the ASEAN Charter, all these barriers must be removed in order to fulfill the goals of the AEC.[202] Some see the eventual borderless legal practice as inevitable.[203] The ASEAN lawyer as envisioned, therefore, is one who is able to represent clients regionally, beyond his/her own domestic market.[204] Christopher Leong, Vice President of the Malaysian Bar, puts it best —

> If we move in this direction, it will not be unusual to see Indonesian lawyers representing Indonesian clients in Malaysia, or a Thai lawyer representing a Singaporean client in the Philippines, or a Bruneian lawyer representing an Indonesian client in Indonesia. This would give meaning to the term 'ASEAN lawyers' ... It is increasingly becoming common practice or preference for businesses or clients ... who have business interest in more than one country, to prefer having the services of an ASEAN lawyer or law firm, [t]hat is, [one] that can assist the client for all its needs anywhere the client goes in ASEAN. Therefore, an ASEAN lawyer must have [the] ability to operate anywhere in ASEAN.[205]

Leong, however, also recognizes that not all member States have fully accepted this concept.[206]

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199. *Id.*; Danilo P. Concepcion, ASEAN Law and the ASEAN Law Student (Workshop Paper from the Philippines, 11th General Assembly of the ASEAN Law Association) 3-4, *available at* http://www.aseanlawassociation.org/11GAdocs/workshop6-phil.pdf (last accessed Feb. 15, 2016); & Sirivejchapun, *supra* note 193, at 4.

200. Hamid, *supra* note 195, at 5-6; Concepcion, *supra* note 199, at 3-4; & Sirivejchapun, *supra* note 193, at 4.

201. Concepcion, *supra* note 199, at 3-4.

202. Christopher Leong, The ASEAN Charter and the ASEAN Lawyers (Workshop Paper from Malaysia, 11th General Assembly of the ASEAN Law Association) 11, *available at* http://www.aseanlawassociation.org/11GAdocs/workshop6-malaysia.pdf (last accessed Feb. 15, 2016).

203. Concepcion, *supra* note 199, at 5.

204. Leong, *supra* note 202, at 10.

205. *Id.* at 10-11.

206. *Id.* at 11.

7. Barriers to Integration — The Varying Legal Climates Around the Region

One of the biggest barriers to the AEC is the uncertain legal environment surrounding the region.[207] The different Member States each has different rules when it comes to the legal profession.[208]

For one, Malaysia has very restrictive rules on foreign lawyers practicing within their country, but its Bar Council has proposed amending their Legal Profession Act in order to give more opportunities for foreign lawyers to practice in Malaysia independently.[209] This is in contrast to Vietnam, where foreign lawyers are expressly allowed to practice law and foreign law firms are allowed to establish permanent local offices.[210]

Indonesia[211] and Singapore[212] both allow foreign lawyers to obtain limited licenses to practice law in their jurisdictions. However, Indonesia does not allow foreign law firms to establish local offices,[213] while Singapore allows them to do so.[214]

Thailand is very much like the Philippines; only Thai citizens are allowed to practice law in Thailand.[215] However, in Thailand, foreign lawyers may serve as business advisors, or act as arbitrators or an attorney-in-fact in an arbitration case.[216] They are also allowed to establish commercial associations with local lawyers, unlike in the Philippines.[217]

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207. ASEAN STUDIES CENTRE, ROADBLOCKS, *supra* note 153, at 3.

208. Hamid, *supra* note 195, at 5-6; Concepcion, *supra* note 199, at 3-4; & Sirivejchapun, *supra* note 193, at 4.

209. Leong, *supra* note 202, at 12-13.

210. Asia-Pacific Economic Cooperation, APEC economy: Vietnam; Jurisdiction: Vietnam, *available at* http://www.legalservices.apec.org/inventory/vietnam.html (last accessed Feb. 15, 2016).

211. Asia-Pacific Economic Cooperation, APEC economy: Indonesia; Jurisdiction: Indonesia, *available at* http://www.legalservices.apec.org/inventory/indonesia.html (last accessed Feb. 15, 2016) [hereinafter Indonesia Legal Services].

212. Asia-Pacific Economic Cooperation, APEC economy: Singapore; Jurisdiction: Singapore, *available at* http://www.legalservices.apec.org/inventory/singapore.html (last accessed Feb. 15, 2016) [hereinafter Singapore Legal Services].

213. Indonesia Legal Services, *supra* note 211.

214. Singapore Legal Services, *supra* note 212.

215. Sirivejchapun, *supra* note 193, at 4.

216. *Id.* & Asia-Pacific Economic Cooperation, APEC economy: Thailand; Jurisdiction: Thailand, *available at* http://www.legal services.apec.org/

Brunei Darussalam, perhaps, has the most liberal legal environment for foreign lawyers. The Legal Profession Act[218] explicitly allows lawyers from specific, different foreign jurisdictions to practice in Brunei.[219] Among these selected jurisdictions, only those advocates or solicitors active in Singapore or Malaysia are included from among the other Southeast Asian nations.[220]

In contrast, the Philippines has perhaps one of the most restrictive legal climates for foreign lawyers. The practice of law is absolutely restricted to Filipino citizens.[221] Foreign lawyers cannot even obtain a limited license as a foreign consultant because even giving advice on international law is within the ambit of practice of law, which is reserved for Filipino citizens.[222] Corollary to that, foreign law firms are also not allowed to establish permanent offices locally.[223]

C. Impact on the Practice of Law in the Philippines

LPO and the AEC both disrupt the status quo of the legal profession. Hence, these are met with doubt and hesitance, especially since these are geared towards changing the "conservative, risk-averse, partnership-based legal profession."[224]

Nevertheless, the liberalization of the Philippine legal services has been decidedly continuous, even if slow.[225]

At present, the Philippines has completed several mutual recognition agreements for different occupations, but not for lawyering.[226] The main

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inventory/thailand.html (last accessed Feb. 15, 2016) [hereinafter Thailand Legal Services].

217. Thailand Legal Services, *supra* note 216.

218. Legal Profession Act 2006, c. 132, § 3 (1) (Brunei).

219. *Id.* & International Bar Association, Brunei Darussalam International Trade in Legal Services, *available at* http://www.ibanet.org/PPID/Constituent/Bar_Issues_Commission/ITILS_Brunei_Darussalam.aspx (last accessed Feb. 15, 2016) [hereinafter IBA, Brunei].

220. IBA, Brunei, *supra* note 219.

221. Asia-Pacific Economic Cooperation, APEC economy: Philippines; Jurisdiction: Philippines *available at* http://www.legalservices.apec.org/inventory/Philippines.html (last accessed Feb. 15, 2016) [hereinafter Philippines Legal Services]; & LEGAL ETHICS, rule 138, § 1.

222. Philippines Legal Services, *supra* note 221.

223. *Id.*

224. George Beaton, Wrestling with the innovator's dilemma, *available at* http://www.globallegalpost.com/management-speak/wrestling-with-the-innovators-dilemma (last accessed Feb. 15, 2016).

225. *See* Concepcion, *supra* note 199, at 8.

problem faced by the Philippines with regard to mutual recognition agreements is the fundamental legal constraint enshrined in the Philippine Constitution restricting practice of professions (including the practice of law) to Filipino nationals.[227] Hence, it is difficult to enact laws for the compliance to the Philippines' obligations under the Blueprint.[228] Currently, the law needs to be revised to allow complete borderless practice.[229] Further, there are no clear procedures and guidelines for temporary special permits.[230]

III. A COMPARATIVE OVERVIEW OF THE PRACTICE OF LAW

There is no universal definition of practice of law. While most definitions from different jurisdictions retain some degree of commonality, there is no one unified or identical definition that is accepted around the world. Law does not exist in a vacuum, so any definition of law will reflect a particular jurisdiction's history, tradition, and culture. This leaves us with varied and diverse ways by which the practice of law is defined and interpreted. However, the privilege to practice law is generally recognized as grounded upon three things: ability, character, and responsible supervision.[231] Hence, all rules regarding what constitute practice of law, and who are allowed to practice law, revolve around upholding these three characteristics.

A. Practice of Law in the ASEAN Member States

There is no unified definition of practice of law among the ASEAN Member States. In fact, the definition of practice of law is quite varied in the region.[232] In Thailand, for example, there is no statute explicitly defining what practice of law is; however, the Thailand Lawyer's Act[233] declares that only licensed lawyers may "appear in court, prepare a complaint or an answer, appellate complaint or appellate answer for both Court of Appeal and the Supreme Court, motion, petition[,] or statement[ ] incidental to court proceedings on behalf of another person."[234] On the other hand,

226 Aldaba, *supra* note 193, at 2; & Aldaba & Aldaba, *supra* note 170, at 19.

227. Aldaba, *supra* note 193, at 17.

228. *Id.*

229. *Id.*

230. *Id.*

231. Gardner v. Conway, 48 N.W.2d 788, 795 (1951) (U.S.).

232. Hamid, *supra* note 195, at 5-6; Concepcion, *supra* note 199, at 3-4; & Sirivejchapun, *supra* note 193, at 4.

233. Thailand Lawyers Act, B.E. 2528, § 33 (1985).

234. *Id.* § 33. & International Bar Association, Thailand International Trade in Legal Services, *available at* http://www.ibanet.org/PPID/Constituent/Bar_Issues_Commission/ITILS_Thailand.aspx (last accessed Feb. 15, 2016) [hereinafter IBA, Thailand].

anybody can provide legal advice outside of the courts, but they are not considered as licensed lawyers, only legal consultants or advisors.[235]

Malaysia is similar to the U.S. in the sense that it is divided into different jurisdictions, each having their own requirements and regulations.[236] Nevertheless, practice of law is still not defined in any of them. Again, like in Thailand, what falls under the practice of law is couched in terms of what services are reserved for advocates and solicitors.[237]

B. Practice of Law in the Philippines

The Philippine Constitution restricts the practice of all professions in the Philippines to Filipino citizens, except in those instances prescribed by law.[238] This protective prohibition is reiterated in the Rules of Court, which provides that only those admitted to the Philippine Bar may practice law.[239] Under the Rules, in order for one to be admitted to the bar, an indispensable requisite is that one must be a Filipino citizen.[240] As of this writing, there are only few exceptions to this rule, all of which are limited to practice of law in specific, restricted circumstances.[241]

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235. *Id.*

236. International Bar Association, Malaysia International Trade in Legal Services, *available at* http://www.ibanet.org/PPID/Constituent/Bar_Issues_Commission/ITILS_Malaysia.aspx (last accessed Feb. 15, 2016).

237. *Id.*

238. PHIL. CONST. art. XII, § 14.

239. LEGAL ETHICS, rule 138, § 1.

240. *Id.* § 2.

241. *Id.* § 3; *See also* LEGAL ETHICS, rule 138-A (allowing a third-year law student to appear in court); *Id.* rule 138, § 33 (allowing "an official or other person appointed or designated in accordance with law to appear for the Government of the Philippines in a case in which the government has interest"); *Id.* § 34 (allowing an agent or friend to assist a party-litigant in a municipal court); 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 116, § 4 (allowing a local resident of good repute and probity to act as counsel de officio for the accused when a member of the bar is not available in such locality); National Labor Relations Commission, The 2011 Rules of Procedure of the National Labor Relations Commission, rule 3, § 6 (b) (May 31, 2011) (allowing a non-lawyer to appear before the National Labor Relations Commission or a Labor Arbiter under limited circumstances); The Cadastral Act, Act No. 2259, § 9 (1913) (allowing an agent to represent a lot owner in a proceeding under the Cadastral Act); & Department of Agrarian Reform Adjudication Board, Revised Rules of Procedure, rule VIII, § 1 (Sep. 1, 2009) (allowing a non-lawyer to appear before the Adjudication Board or any Regional or Provincial Agrarian Reform Adjudicator under limited circumstances).

The ability to engage in the practice of law is not considered as a right, but as a privilege limited only to a few who possess the necessary qualifications.[242] But what does it exactly mean to engage in the practice of law?

1. History of Practice of Law under Philippine Jurisdiction

The practice of law has undergone numerous changes throughout the history of the legal profession in the Philippines. Curiously, the practice of law is exclusively defined by jurisprudence.[243] There has never been a rule-based definition of practice of law in the Philippine jurisdiction.[244]

At first, the practice of law was equivalent to membership in the Philippine Bar.[245] Then came the case of *Philippine Lawyers' Association v. Agrava*,[246] which held that the practice of law is not limited to appearance before the courts, but also includes appearances before other offices, like the Patent Office, which require legal knowledge as well as the interpretation and application of legal principles.[247] Finally, *People v. Villanueva*[248] specified the requirement of habitually holding one's self out as a lawyer to the public and receiving payment for services rendered as such.[249]

These definitions already constitute a liberal view of what constitutes practice of law. However, the scope of practice of law has been expanded even more in the landmark case of *Cayetano*.

2. The Current Controlling Definition Under *Cayetano v. Monsod*

That question has been answered definitively, but not authoritatively and unanimously, by the case of *Cayetano*. The landmark case was hardly won by a decisive majority — five were of the opinion that Atty. Christian S. Monsod was engaged in the practice of law, four opined that he was not, two others voted to dismiss the case due to absence of grave abuse of discretion as to amount to lack or excess of jurisdiction, and two did not take

242. In Re: Al C. Argosino, 246 SCRA 14, 17 (1995).

243. AGPALO, *supra* note 27, at 33.

244. *Id.*

245. *See* In Re Del Rosario, 52 Phil. 399, 400 (1928).

246. Philippine Lawyers' Association v. Agrava, 105 SCRA 173 (1959) [hereinafter *Agrava*].

247. *Id.* at 178.

248. People v. Villanueva, 14 SCRA 109 (1965).

249. *Id.* at 112. (citing State v. Cotner, 87 Kan. 864, 864 (1912) (U.S.); & State v. Bryan, 98 N.C. 644, 647 (1887) (U.S.)).

part in the deliberations.[250] Nevertheless, such a decision (and its definition of what practice of law entails) forms part of the law of the land.[251]

Cayetano resolved the issue of whether or not Monsod's appointment as Commissioner of the Commission on Elections (COMELEC) was tainted with grave abuse of discretion, amounting to lack or excess of jurisdiction.[252] Atty. Renato L. Cayetano argued that the appointment was tainted with grave abuse of discretion, alleging that Monsod failed to meet one important criterion to become COMELEC Commissioner — he had not been engaged in the practice of law for 10 years.[253]

Justice Edgardo L. Paras, who wrote the majority decision, wrote that the Court was faced with "a controversy of far-reaching proportions."[254] He pronounced that the decision will "have a profound effect on the political aspect of [the Philippines'] national existence."[255] His words proved to be correct — if a tad conservative. It seems as if Justice Paras did not foresee the enormity of the effect of the Court's determination of what the practice of law entails.

As cited in *Cayetano*, "practice of law" means —

> [T]he rendition of services requiring knowledge and the application of legal principles and technique to serve the interest of another with his consent. It is not limited to appearing in court, or advising and assisting in the conduct of litigation, but embraces the preparation of pleadings, and other papers incident to actions and special proceedings, conveyancing, the preparation of legal instruments of all kinds, and the giving of all legal advice to clients. It embraces all advice to clients and all actions taken for them in matters connected with the law.[256]

What *Cayetano* tell us is that the practice of law has never been (and will never be) limited to appearing in court.[257] Thus, practice of law is —

> [A]ny activity, in or out of court, which requires the application of law, legal procedure, knowledge, training[,] and experience. 'To engage in the practice of law is to perform those acts which are characteristics of the profession. Generally, to practice law is to give notice or render any kind of

250. *Cayetano*, 201 SCRA at 236 (J. Gutierrez, Jr., dissenting opinion).

251. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386, art. 8 (1950).

252. *Cayetano*, 201 SCRA at 229.

253. *Id.* at 223.

254. *Id.* at 211.

255. *Id.* at 212.

256. *Id.* at 213 (citing BLACK'S LAW DICTIONARY 1394 (3d ed. 1933)).

257. *Id.* at 214 (citing 3 MANUEL V. MORAN, COMMENTS ON THE RULES OF COURT 665-66 (1953)).

> service, which device or service requires the use in any degree of legal knowledge or skill.'[258]

This liberal definition seems to have been the one intended by the 1986 Constitutional Commission, considering that, in one of its deliberations, it resolved that so long as lawyers employed in the Commission of Audit used their legal knowledge or training in its work, then it will be considered as being engaged in the practice of law.[259] These records, though not binding, are helpful in determining how to interpret the law.

The decision actually did not go into detail as to how or why Monsod's various occupations throughout the years equated to being engaged in the practice of law. The majority decision did, however, point out that, in the modern world, the practice of law transcends virtually all avenues, and that virtually anything, as long as there is application of the law, can encompass the practice of law.[260]

Justice Teodoro R. Padilla's main point in his dissent is that there is practice of law when four requisites concur: (1) habitually holding out one's self as a lawyer; (2) receiving compensation for legal services rendered; (3) application of law, legal principle, practice, or procedure; and (4) presence of an attorney-client relationship.[261]

His main contention with Monsod's appointment was that he was not habitually engaged in activities that would be deemed as within the practice of law.[262] This is also the main reason why Justice Hugo E. Gutierrez joins the minority in opposing Monsod's appointment.[263] According to Justice Gutierrez, what "[t]he Constitution requires [is] having been 'engaged in the practice of law for at least [10] years'... not ... having been 'a member of the Philippine bar for at least [10] years.'"[264]

Justice Padilla conceded that Monsod, in his diverse career path, must have performed tasks that would be "latitudinarianly considered [as] activities peculiar to the practice of law."[265] However, he argued that such activities were too sparse throughout the 10 years before he was appointed, to be constituted as engaged in the practice of law, which connotes "continuity, or

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258. *Cayetano*, 201 SCRA at 214 (citing 111 A.L.R. 23).

259. *Id.* at 214-15.

260. *Id.* at 214.

261. *Cayetano*, 201 SCRA at 232 (J. Padilla, dissenting opinion).

262. *Id.* at 233.

263. *Cayetano*, 201 SCRA at 240 (J. Gutierrez, Jr., dissenting opinion).

264. *Id.*

265. *Cayetano*, 201 SCRA at 233 (J. Padilla, dissenting opinion).

a succession of acts."[266] In fact, as Justice Gutierrez pointed out, it is already well-settled in Philippine jurisdiction that "practice of law denotes frequency or a succession of acts."[267]

The majority decision in *Cayetano*, however, goes far and beyond this liberal definition of what is considered as "engaged in the practice of law." Thus, pursuant to *Cayetano*, a person is considered engaged in the practice of law as long as one does work wherein he uses legal knowledge.[268] Justice Isagani A. Cruz's dissent pointed out that this general definition would include virtually everybody — since the law practically covers everything and use of knowledge of the law is an almost daily occurrence.[269] According to Justice Cruz, this sweeping declaration of what is considered as the practice of law renders the "qualification practically toothless."[270] Under the majority opinion's decision, any activity may fall within the ambit of practice of law, no matter how peripheral or incidental, considering that "there is hardly any activity that is not affected by some law or government regulation the businessman must know about and observe."[271]

To this, the ponente, Justice Paras, answered that the main difference was that Monsod was a member of the Philippine bar — thus, he was first a lawyer before practicing law.[272] This statement, however, is a tautology. Such actions do not fall within the ambit of practice of law merely because they are done by a lawyer; these acts are in and of themselves considered as being engaged in the practice of law.

What is encompassed within the practice of law is a totally different subject matter as to who may be permitted to practice law in the Philippines.[273] This is also the same sentiment upheld by the Court in the later case of *Ulep v. The Legal Clinic*.[274] Otherwise, the laws prohibiting the unauthorized practice of law would be practically useless.

Such a sweeping declaration of what the practice of law entails, as indoctrinated in *Cayetano*, has far-reaching consequences especially in a

266. *Id.* (emphasis omitted).

267. *Cayetano*, 201 SCRA at 241 (J. Gutierrez, Jr., dissenting opinion).

268. *Cayetano*, 201 SCRA at 214-15.

269. *Id.* at 235 (J. Cruz, dissenting opinion).

270. *Id.* at 234.

271. *Id.* at 235.

272. *Cayetano*, 201 SCRA at 227.

273. *See* Ulep v. Legal Clinic, Inc., 223 SCRA 378, 402 (1993).

274. Ulep v. Legal Clinic, Inc., 223 SCRA 378 (1993).

modern and increasingly globalized world.[275] According to the Court, this was the "modern concept" of practice of law.[276]

This decision was critiqued in a Juris Doctor thesis submitted to the Ateneo de Manila University School of Law in 1993.[277] There, the author posits that the liberal interpretation done in *Cayetano* serves to merely blur the lines between what is considered practice of law and what is deemed as membership in the Bar.[278] He argues that the Court was erroneous in *Cayetano* by determining what is considered as the practice of law based on the definition of what is considered as unauthorized practice of law.[279]

IV. THE UNAUTHORIZED PRACTICE OF LAW

Everything flows, nothing stands still.

– Herakleitos of Ephesus

The practice of law, as it is currently defined under Philippine jurisdiction, enjoys pervasiveness in scope and breadth, especially compared to other jurisdictions. As can be seen in *Cayetano*, virtually any action that deals with the use of legal knowledge will fall under the ambit of practice of law.[280] Lawyering, as a profession, is imbued with public interest that not only is it accorded high respect; each aspect of it is also tightly controlled.[281]

The practice of law is a closely-guarded concern — not only as to what constitutes the practice of law, but also as to who may practice law in the Philippines.[282] The law mandates that only Filipino citizens may engage in the practice of law in the Philippines.[283] It is not considered as a right, but as a privilege limited only to a few who possess the necessary qualifications.[284]

Under Philippine jurisdiction, the scope of what practice of law entails is so broad as to include acts that non-lawyers can perform without the

275. *Cayetano*, 201 SCRA at 212.

276. *Id.* at 225.

277. Ramon Guerrero, A Critique on the Case of Cayetano v. Monsod (1993) (unpublished J.D. thesis, Ateneo de Manila University) (on file with the Professional Schools Library, Ateneo de Manila University).

278. *Id.* at 35.

279. *Id.* at 40.

280. *Cayetano*, 201 SCRA at 213.

281. AGPALO, *supra* note 27, at 4.

282. *Id.* at 5.

283. LEGAL ETHICS, rule 138, § 1.

284. *In Re: Argosino*, 246 SCRA at 17.

assistance of lawyers.[285] Nevertheless, there are ways to distinguish when a non-lawyer performs acts that constitute practice of law and when they do not. In another Juris Doctor thesis, the author enumerates four requisites that must concur in order that an act performed by a non-lawyer will not fall within the ambit of practice of law: (1)"the question is subordinate and incidental to a major on-legal problem;"[286] (2) the "services undertaken are not those customarily reserved to the members of the bar;"[287] (3) "no separate fee is charged for the legal advice or information[;]"[288] and (4) the work of the non-lawyer for the client, as a whole, must be considered.[289]

Nevertheless, the practice of law in the Philippines remains monopolistic.[290] And this monopoly has always been grounded on public interest and on the need to preserve public integrity.[291]

The law is clear — no foreigners may practice law in the Philippines.[292] However, societal norms, just like the law, are never static. Change, after all, is constant. What was deemed acceptable in the past may be deemed reprehensible in the future. Years ago, the world believed that only men had the right to vote. Today, the inherent right to vote of every person — both men and women — is universally accepted, and it is considered undue discrimination to prevent a person from exercising his or her right of suffrage on account of his or her sex.[293]

Similarly, circumstances abound now that warrant a second consideration of what the "practice of law" means in the Philippines. Specifically, two circumstances have emerged which warrant another look at how we define practice of law. First, is the emerging proliferation of LPO, and second, is the ASEAN Economic Integration of 2015.

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285. Ma. Cherry Joy V. Pamute, Recognizing Independent Paralegal Practice in the Philippines 28, (1996) (unpublished J.D. thesis, Ateneo de Manila University) (on file with the Professional Schools Library, Ateneo de Manila University).

286. *Id.* at 28-29.

287. *Id.* at 29.

288. *Id.*

289. *Id.*

290. *Id.* at 34.

291. Pamute, *supra* note 285, at 40. (citing PAFLU v. Binalbagan Isabela Sugar Co., 42 SCRA 302, 305 (1971)).

292. LEGAL ETHICS, rule 138, § 2.

293. Universal Declaration of Human Rights, G.A. Res. 217 A (III), arts. 2 & 21, U.N. Doc. A/810 (Dec. 10, 1948) & International Covenant on Civil and Political Rights, arts. 2, § 1 & 25 (b), *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171.

A. The Practice of Law vis-à-vis Legal Process Outsourcing

As it stands, LPO is legal in the U.S. because the offshore LPO companies are not considered as engaged in the practice of law.[294] Essentially, they consider the work done by the LPO companies as mere clerical work, which, at the most, amounts to work usually done by paralegals.[295] This perception, however, is quickly becoming an obsolete reality, given that LPO firms are now increasingly tasked to perform more than clerical work.[296]

Before, LPO firms were only tasked with clerical, even menial work: producing case briefs, technical and back office support.[297] Now, however, LPO firms are becoming increasingly formidable in their own right — leading projects, guiding the directions of cases, and choosing which theories to apply to solve legal problems.[298] They are becoming supervisors of transnational legal transactions instead of employees needing supervision.[299]

Until today, LPO companies are novel breeds that exist in a gray, undefined area in law. Its legitimacy (and the legitimacy of the work that it does) is unresolved. While nothing wrong is seen by some States, they give their stamp of approval only in one specific circumstance — in the firm-to-middleman model, where the LPO is hired by a firm and a lawyer is tasked to supervise the work done by the LPO.[300]

This strategy to give validity to an LPO is merely temporary and myopic. It is a stop-gap measure seeking to control the exponential development of LPOs until a more permanent solution is found.[301] States, ethics committees, practitioners, scholars, and bar associations cannot agree if LPOs should be officially legitimized, or if it should conclusively be banned and declared illegal.[302] Hence, different bar associations and ethics committees have tried to exert some sort of control over the "legitimization" of LPOs in the U.S.[303]

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294. *See* Formal Op. 08-451, *supra* note 47.

295. *Id.*

296. Robertson, *supra* note 6, at 134.

297. *Id.*

298. *Id.*

299. *Id.*

300. Pollak, *supra* note 60, at 107-09.

301. *See* Maya Karwande, Legal Process Outsourcing Efficient and Ethical?, *available at* http://www.ilw.com/articles/2008,0926-karwande.shtm (last accessed Feb. 15, 2016).

302. *Id.*

303. *Id.*

However, there is one thing on which they all agree — LPO is increasingly burgeoning across the globe. As it stands, laws, rules, and regulations cannot keep up with the proliferation and continued development of the LPO industry.[304] If no definite standards are promulgated with regard to the operation of the LPO industry, it will become infinitely harder, if not impossible, to control the legal profession.

Rules regulating the LPO are undeniably needed — the international legal community cannot let the LPO industry continue to advance and mature without imposing a checks-and-balances system to ensure that ethical issues are addressed.[305] The U.S. legal community has started policing, albeit scattered, the LPO industry.[306] The problem with this, however, is that it only affects the U.S. legal community.

In countries like the Philippines and India — the top destinations for LPO jobs and service providers[307] — the LPO industry continues to grow without a system of checks and balances to ensure that no laws are breached and no ethical rules are violated.[308] If this situation continues (if the LPO industry continues to grow unhampered), then the ethical issues that exist today will be exacerbated, and means and methods that can curb these issues and can provide solutions may not be enough to address the aggravated future issues.[309]

Most Filipino lawyers do not feel the need to address LPO. At present, working for an LPO firm is still not one of the mainstream career choices for a lawyer. Despite the Philippines being one of the top LPO service providers in the world, LPO remains a niche industry in the Philippines.[310] Most lawyers still focus on working for traditional law firms or the government. However, this does not obliterate the fact that LPO firms do exist and operate in the Philippines.[311] They may not be the popular choice, but they constitute a minority which has the potential of growing exponentially in a matter of just a few years.

Hence, it is imperative that the Philippine legal profession responds to the reality of LPO and the issues concomitant with it, before the LPO industry grows too big to be controlled and regulated.

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304. Terry, *supra* note 114, at 1384.

305. Daly & Silver, *supra* note 59, at 404-05.

306. Pollak, *supra* note 60, at 107-09.

307. Archer, *supra* note 55.

308. Daly & Silver, *supra* note 59, at 405.

309. *Id.* at 420-21.

310. Archer, *supra* note 55.

311. LegisPro, LPO *supra* note 24.

Primarily, the law is reactive. Laws are enacted in response to situations that have already taken place; rules and regulations are amended in reaction to situations that emerge after the original rule or regulation was passed. The law must necessarily reflect and address the current legal landscape.

In analyzing whether LPO is acceptable within the Philippine legal jurisdiction, two things must be examined: (1) what is being done by LPO firms; and (2) what or who are providing these services.

1. What Do LPO Firms Do?

This question can be answered in a multitude of ways, and each answer has a separate and distinct repercussion upon the Philippine legal profession. Presently, LPO firms provide services that can be classified in two broad groups: (1) law-related services, which encompass mostly administrative and back-office support work; and (2) legal services, which encompass services provided by bona fide lawyers.[312] Most LPOs have grown big enough that their work now involves legal services more often than law-related services.

An LPO firm providing law-related services cannot be classified as engaged in the practice of law. Providing office and technical support is not considered as engaged in the practice of law, whether in Philippine or U.S. jurisdiction.[313] However, this does not change the fact that LPO firms employ lawyers to perform these jobs.[314] Essentially, Filipino lawyers transcribe notes and perform secretarial work for American lawyers in the U.S. In this situation, there could be no violation of Philippine or U.S. law, because the LPO firm is neither considered as engaged in the practice of law in the Philippines, nor in the practice of law in the U.S.

If an LPO firm provides strictly law-related services, then it is essentially operating as a normal BPO company. Therefore, no ethical considerations or legal issues attach, except perhaps that the LPO firm's lawyers are being criminally "underused" since they do not practice law even if qualified to do so.

The problem arises when the LPO firm provides legal services. When LPO firms provide legal services, such as litigation support or preparing patent applications, or even directing the course and strategy during trial, they are considered as engaged in the practice of law.[315] There can be no bones about it — what they do is within the ambit of practice of law, whether it be the definition in the U.S. or in Philippine jurisprudence.

312. Daly & Silver, *supra* note 59, at 408.

313. Robertson, *supra* note 6, at 134.

314. *Id.*

315. Daly & Silver, *supra* note 59, at 408.

As of this writing, this practice is clothed with legality in the U.S. by the recommendation of the ABA and other State Bar Associations.[316] According to them, as long as an American lawyer supervises the work of the foreign lawyers, the LPO lawyer is merely considered as a foreign assistant to the American lawyer.[317]

The ABA guidelines, however, do not apply in the Philippine jurisdiction as these rules are meant to supervise and control the practice of law in the U.S.[318] They may legitimize the work that LPO firms do, but only insofar as they may be held liable under American law, not Philippine law. Moreover, at present, only the U.S. has this regulation. The U.K. and Australia, other countries that also outsource their work to LPO firms in the Philippines, do not have the same guidelines. Thus, when a Filipino LPO firm performs legal services for a law firm in the U.K. or Australia, applying either British or Australian law, the Filipino lawyers will be engaged in the unauthorized practice of law if they are not licensed to practice law in those countries.

If the set-up uses the "In-House" model, wherein a foreign corporation outsources essentially its whole in-house legal department to a LPO firm, there is little to no chance that there is lawyer supervision.[319] In this instance, there is no intermediary between the client and the local LPO company; hence, the LPO company cannot be considered as a mere "foreign assistant," and it is directly accountable to the client itself.[320]

In this particular case, if the company hires the LPO firm to apply Philippine law, technically, there is nothing wrong since the Filipino lawyers employed by the Filipino law firm are allowed to practice law in the Philippines. However, if the LPO firm is tasked to deal with situations that involve laws of other jurisdictions (such as filing patent applications in the U.S. or preparing for trial in the U.K.), then the Filipino lawyers will be engaged in the unauthorized practice of law, if they are not licensed to practice law in those foreign jurisdictions.

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316. *See, e.g.*, Formal Op. 2006-3, *supra* note 101; Los Angeles Co. Bar Ass'n Prof'l Responsibility & Ethics Comm. Formal Op. 518 (2006); San Diego Co. Bar Ass'n Legal Ethics Comm., Formal Op. 2007-1 (2007); N.C. State Bar Formal Op. 12 (2008); Florida State Bar Ass'n Comm. On Prof'l Ethics, Formal Op. 07-2 (2008); & Formal Op. 08-451, *supra* note 47.

317. *Id.*

318. *See generally* American Bar Association, ABA Mission and Goals, *available at* http://www.americanbar.org/about_the_aba/aba-mission-goals.html (last accessed Feb. 15, 2016).

319. Pollak, *supra* note 60, at 108-09.

320. *Id.*

Under the Philippine Code of Professional Responsibility (CPR), Filipino lawyers are prohibited from engaging in any practice that would aid in the unauthorized practice of law.[321] Here, the "unauthorized practice of law" is unqualified. Thus, it can be reasonably assumed that it is intended to proscribe the unauthorized practice of any law, not just Philippine law. This goes back to the tenet that the practice of law is a noble profession, and not profit-induced business.[322] The CPR is designed to ensure that Filipino lawyers adhere to the basic tenets of the legal profession with regard to responsibility, respectability, and accountability. It will be contrary to the spirit of the CPR to interpret it by limiting the proscription to unauthorized practice of Philippine law, while giving Filipino lawyers the leeway to practice foreign law without authority. Such an interpretation gives rise to an incongruent reality wherein the practice of law is partially protected while leaving room for it to be partially exploited.

Furthermore, allowing lawyers employed by LPO firms to perform services that fall within the ambit of practice of law without classifying them as lawyers or recognizing that they are engaged in the practice of law only gives rise to numerous ethical conundrums that are inimical to the interests of the clients and the legal profession.

As held in *Ulep*, those engaged in the practice of law are banned from advertising their profession, save for a few, restricted exceptions (such as being published in a reputable law list, or using a simple professional card that must only state basic information).[323] This rule is also a result of the principle that the practice of law is not a business.[324]

LPO companies, however, are businesses, which generally must advertise in order to attract customers. Given the competitive nature of the LPO industry (just like any other BPO), advertisement is necessary to establish market share.

The foregoing is the biggest concern with regard to the operation of LPO firms in the Philippines. In this jurisdiction, a corporation cannot engage in the practice of law.[325] This is the reason why primarily law firms are established as partnerships, and not as corporations. In a partnership, on one hand, each partner or associate is responsible and accountable to his or her own client. An LPO firm, on the other hand, operates as a business rather than as a traditional law firm. It hires employees rather than engaging associates. When a foreign law firm or corporation hires an LPO firm, it first

321. CODE OF PROFESSIONAL RESPONSIBILITY, canon 9 (June 12, 1998).

322. AGPALO, *supra* note 27, at 12–13.

323. *Ulep*, 223 SCRA at 405–06.

324. AGPALO, *supra* note 27, at 12–13.

325. *Id.* at 14–15.

hires the LPO company, which then assigns specific tasks to its lawyer-employees.

The difference, however, is that a corporation has a separate juridical identity while the law partnership does not.[326] A corporation cannot engage in the practice of law because the loyalty of its employees will be divided between the corporation and the client.[327] Currently, LPO companies operate as normal business corporations do — the client (either a foreign firm or a foreign company) hires the LPO company to do work. Thereafter, the local LPO company distributes the work to its different employees.

It is immaterial if the LPO firm practices foreign law or Philippine law; the bottom line is that a company cannot engage in the practice of law in general. If Sacha Baron Cohen's *Da Ali G show* case was given to a LPO firm in the Philippines, such company's actions in the case will amount to unauthorized practice of law.

This, then, is the crux of the problem. The basic inherent set-up of a LPO firm automatically pits it against Philippine rules regarding corporations practicing law. The other ethical issues only serve to aggravate the situation. A corporation masquerading as a law firm cannot work because of the characteristic ethical responsibilities integral and inseparable from the practice of law.

2. LPO vis-à-vis the case of *Ulep*

In the case of *Ulep*, the Supreme Court ruled with finality that corporations cannot engage in the practice of law in the Philippines.[328] In that case, The Legal Clinic, Inc. was a Filipino company that claimed to provide "legal support services" online through paralegals.[329] Mauricio Ulep filed a case against The Legal Clinic, Inc. for advertising its services, which he argued was proscribed under the CPR.[330] According to The Legal Clinic, the legal support services it provided do not constitute practice of law, and thus, fell beyond the prohibition against advertising legal services.[331] Because of the far-reaching consequences that the case would have on the legal profession, the Supreme Court required several associations to submit position papers regarding the issue.[332]

326. *Id.* & CIVIL CODE, art. 46.

327. AGPALO, *supra* note 27, at 14-15.

328. *Ulep*, 223 SCRA at 410.

329. *Id.* at 382.

330. *Id.*

331. *Id.*

332. *Id.*

According to the Integrated Bar of the Philippines (IBP), there is no difference between the legal support services performed by The Legal Clinic and legal services performed by lawyers, to wit —

> For who could deny that document search, evidence gathering, assistance to layman in need of basic institutional services from government or non-government agencies like birth, marriage, property, or business registration, obtaining documents like clearance passports, local or foreign visas, constitute practice of law?[333]

For the IBP, The Legal Clinic's actions were "highly unethical."[334] However, it did not elaborate on the difference between "legal support services" and "legal services."[335] Instead, the IBP hinged its point on the use of the name "The Legal Clinic" and the advertisements, which supposedly made it seem to be performing legal services.[336]

The Philippine Lawyers' Association agreed that The Legal Clinic was engaged in the unauthorized practice of law because the services it performed were legal services.[337]

The University of the Philippines Women Lawyers' Circle concurred, adding that there was virtually no paralegal system in the Philippines.[338] Thus, any act usually performed by a paralegal in other jurisdictions could only be properly performed by lawyers in the Philippines.[339]

The Philippine Bar Association opined that The Legal Clinic was practicing law as a corporation, which violates the rule that only natural persons can practice law in the Philippines.[340]

For the Federation International de Abogadas, the essence of practice of law is the "representation and advising of a particular person in a particular situation."[341] Thus, it will be considered as unauthorized practice of law once the paralegals employed by The Legal Clinic apply the law to a client's particular circumstances, and render advice based on such.[342]

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333. *Id.* at 383.

334. *Ulep*, 233 SCRA at 383.

335. *Id.* at 384.

336. *Id.*

337. *Id.* at 388.

338. *Id.* at 389.

339. *Id.*

340. *Ulep*, 233 SCRA at 387–88.

341. *Id.* at 395.

342. *Id.*

The Legal Clinic argued that the services it offered were "non-advisory" and "non-diagnostic."[343] The Court, however, found this distinction specious —

> In providing information, for example, about *foreign laws* on marriage, divorce[,] and adoption, it strains the credulity of this Court that all that respondent corporation will simply do is look for the law, furnish a copy thereof to the client, and stop there as if it were merely a bookstore. *With its attorneys and so called paralegals, it will necessarily have to explain to the client the intricacies of the law and advise him or her on the proper course of action to be taken as may be provided for by said law*.[344]

According to the Supreme Court, the practice of the The Legal Clinic falls squarely within the ambit of practice of law.[345] Thus, as long as the services involved the use of legal knowledge — even with regard to foreign law — in the Philippines, then it constitutes unauthorized practice of law. While this part may be *obiter dictum*, it, however, gives a deciding glimpse on the opinion of the Court regarding what constitutes the unauthorized practice of law in the Philippines. By the majority decision, it can be gleaned that the Court considers giving advice on foreign law as constituting practice of law (and therefore, unauthorized practice of law) in the Philippines. Given that there is no case law yet on the unauthorized practice of foreign law in the Philippines, the *Ulep* case is the closest indication we have on the Court's opinion on the matter and how it may probably decide in a possible case in the future.

In *Ulep*, the Court held that the fact of who performs the services is not controlling; the nature of services determine whether it constitutes practice of law or not.[346] This is decidedly different from the principle propounded by the majority opinion in *Cayetano*. On one hand, in *Cayetano*, the majority opinion defended its broad definition of practice of law by arguing that what differentiates practice of law from actions performed by non-lawyers is that the former is performed by lawyers.[347] On the other hand, *Ulep* recognizes that identifying what constitutes the practice of law is a totally different matter and it is not significant as to who is allowed to practice law.[348] One is not equivalent to the other.

First, actions and services that constitute the practice of law must be clearly defined. Next, who are allowed to practice law (i.e., perform those actions and services) must then be identified. If an act or a service that

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343. *Id.* at 396.

344. *Id.* at 400 (emphasis supplied).

345. *Id.*

346. *Ulep*, 233 SCRA at 402.

347. *Cayetano*, 201 SCRA at 227.

348. *Ulep*, 233 SCRA at 396–97.

constitutes the "practice of law" is performed by a person not allowed to practice law, then there exists unauthorized practice of law.

In the Philippines, since practically everything that involves the use of legal knowledge constitutes "practice of law" as defined in *Cayetano*, then any non-lawyer performing these acts would be considered as engaged in the unauthorized practice of law. That is what happened in *Ulep*. The Court first held that the services performed by The Legal Clinic fell within the scope of practice of law;[349] afterwards, it concluded that since these services were performed by paralegals, they were engaged in unauthorized practice of law.[350] Nevertheless, the Supreme Court only ordered The Legal Clinic to cease advertising.[351] There was nothing said on whether The Legal Clinic was shut down or its employees sanctioned.

The *Ulep* case demonstrates how all-encompassing the practice of law — and corollary to that, the unauthorized practice of law — is in the Philippines. With the introduction of LPO, the instances where there might be unauthorized practice of law (though unwittingly) multiply tenfold.

B. The Different Permutations of LPO Work

In order to appreciate the way LPO affects the Philippine legal profession, it would be helpful to detail just how LPO changes the way law is practiced by breaking down traditional jurisdictional barriers in the practice of law.

Imagine two lawyers: one, a Filipino, and the other, a British solicitor. Traditionally, the Filipino lawyer will only practice law in the Philippines. Moreover, he will only practice Philippine law, given that his practice is solely focused within the country. Parallel to that, the British solicitor, ideally, should only practice English law within the U.K. As the years pass, trade between the two countries increase. As trade increases, so do the instances wherein the two lawyers will be forced to interact. On one hand, the Filipino lawyer's client might want to export products to the U.K. On the other hand, a client of the British solicitor might consider expanding its business in the Philippines. Because of this, both lawyers will be forced to learn more about each country's rules, regulations, and legal systems.

The lowering of trade barriers opens more opportunities for escalated and intensified interaction between the two countries. This also means that, slowly but steadily, lawyers must familiarize themselves with the legal systems of other countries in order to keep up with their clients' expanding businesses. This change is inevitable and universal — it may be more apparent with those who represent businesses and corporate interests, as well

349. *Id.* at 400.

350. *Id.* at 402.

351. *Id.* at 410–11.

as private disputes and torts, but it may possibly affect those who are involved in criminal representation and litigation.

The birth and emergence of LPO only serves to accelerate and exacerbate this entanglement. With LPO, the breaking down of barriers of the legal profession ceases to be an afterthought, an inevitability due to amplified trade and business among different countries; with LPO, the legal profession becomes the main attraction — the trade in and of itself.

In the Philippines, the practice of law cannot be simplified to a mere trade interest. That would be anathema to its nature as a service imbued with public interest. This does not change the fact, however, that the legal profession is increasingly broken down and certain aspects of it are treated as products capable of being sold and exported.

In order to show how the legal profession is commercialized, it is worthy to examine the different permutations of the legal profession vis-à-vis LPO, and thereafter identify which aspects are problematic vis-à-vis what constitutes "practice of law" in the Philippines.

We go back to the Filipino and British lawyers: in a typical LPO set-up, the British solicitor will hire an LPO firm in the Philippines that employs the Filipino lawyer, and another colleague, this time, a non-lawyer. The British solicitor may send over two types of work: (1) executive legal work (which is traditionally limited to lawyers, e.g., case analysis, litigation support, etc.); or (2) clerical legal work (which is what paralegals would normally do, e.g., transcribing case notes, digesting cases, legal research, etc.). Further, the British lawyer may ask the LPO company to work on either foreign law (it may be British law or the law of a third country) or Philippine law (if, for example, the British lawyer represents a client with business interests in the Philippines).

The foregoing scenario is the typical scenario of an LPO set-up. The permutations increase when the personal qualifications of the lawyers employed by the LPO company are taken into consideration. For example, one lawyer may be qualified by the New York State Bar, while another may only be qualified to practice Philippine law. Given these multiple permutations, the next question, then, is: out of all these permutations, which constitute the unauthorized practice of law?

1. LPO Work as Unauthorized Practice of Law

If we go by the cases of *Cayetano* and *Ulep*, there are only two instances where there would be no unauthorized practice of law: (1) when a Filipino lawyer does either executive or clerical legal work with regard to Philippine law; and (2) when a Filipino lawyer does either executive or clerical legal work with regard to foreign law in which he is licensed to practice. All other instances constitute unauthorized practice of law.

First, no matter what type of legal work a Filipino non-lawyer does or what type of law he or she practices, it is considered as unauthorized practice of law. If a Filipino non-lawyer absolutely cannot practice Philippine law, then with more reason he cannot practice foreign law.[352] Because of the all-encompassing definition of "practice of law" in *Cayetano*, even mere clerical legal work is considered as practice of law in the Philippines.[353] This might not have been the intention of the Court, but it is certainly the effect of such a broad definition. Since the practice of law is reserved for lawyers, technically, a non-lawyer cannot do even mere clerical work because such would constitute unauthorized practice of law.

Such a situation may seem absurd, especially to lawyers from other jurisdictions where such clerical legal work is routinely done by paralegals and not lawyers. However, this is how the law stands in the Philippines by virtue of *Cayetano*.

The problems (and permutations) caused by the introduction of LPO in the Philippines will further expand once the ASEAN Economic Community is achieved.

V. THE PHILIPPINES' OBLIGATION UNDER THE ASEAN CHARTER

A. Answering to the Call of the 2015 ASEAN Economic Integration

The ASEAN Economic Integration is the ASEAN region's answer to the European Union (E.U.), albeit on a lesser scale. While the E.U. mandates total integration, the ASEAN model mandates limited integration that will still ensure greater (if not total) economic integration in the region.[354]

Historically, ASEAN nations are usually competitors when it comes to the international market, offering similar goods and services. With the institution of the AEC, ASEAN hopes to shift the focus from the Southeast Asian Nations' competing interests with each other, to providing a stronger base of trade and capital, thus presenting a united ASEAN before the international community.[355]

This is to be done by creating a single market and production base — where there is free flow of trade, capital, services, and skilled labor.[356] Of these areas, we must focus on the free flow of services, which includes legal services.

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352. LEGAL ETHICS, rule 138.

353. *See Cayetano*, 201 SCRA at 213-14.

354. ASEAN Charter, *supra* note 35, art. 1.

355. Blueprint, *supra* note 136, at ¶ 6.

356. *Id.*

1. Ensuring the Free Flow of Services among ASEAN Member States

In the Philippines, the legal profession is a "protected" profession. This means that practicing law is practically reserved for Filipino citizens.[357] In many ways, this limitation is prudent and reasonable. It stands to reason that Filipinos who study Philippine law intensively are the only ones qualified to practice law.[358] It has the underlying presumption that foreign nationals may not understand the reasoning or the nuances of the Philippine laws and jurisprudence. Thus, it is imperative that only members of the Philippine Bar (who should be a Filipino citizen) can engage in the practice of law in the Philippines.[359]

However, barriers among legal jurisdictions are now consistently and progressively breaking with the advent and development of the LPO industry. Since trade and economies across the globe are becoming more integrated, it only follows that the legal profession becomes so as well, since trade and business cannot exist without the law. Thus, the practice of law has ceased to be territorial in the sense that it is now easier (and imperative) for lawyers to be able to engage in transactions that cut across physical territorial boundaries. A lawyer in the Philippines may be engaged by a client based in the U.S. for its business operations in Singapore or Thailand.

Economic integration (especially at the level envisioned under the AEC) is virtually impossible without some level of integration of the different nations' legal services sector. The law is all-encompassing; it governs and affects every action that we do. Business relations are impossible to establish without governing laws. Companies and corporations cannot be founded without laws fixing their establishment, rights, and obligations. Services cannot be provided without laws delineating the duties of the service providers and the rights of the customers.

Because the law governs every transaction, legal services, therefore, are necessary for each business relation established. Thus, in any kind of integration of economy, there is a corollary integration of legal services implied, even if the latter is only implemented on a smaller scale. Still, there must be some sort of intersection that needs integration.

2. Insufficiency of Conflict of Laws

The law necessarily governs any business or economic activity. Currently, differences in legal jurisdictions and applications are settled via conflict of laws.[360] However, given that there is an inevitable significant increase (and

357. LEGAL ETHICS, rule 138.

358. AGPALO, *supra* note 27, at 39-40.

359. LEGAL ETHICS, rule 138.

360. ALICIA V. SEMPIO-DIY, HANDBOOK ON CONFLICT OF LAWS 1 (2004).

escalation) of integration among the ASEAN economies, conflict of laws will not suffice to solve problems arising from the different laws that govern each nation and business transaction.

Conflict of laws exists in order to address situations where different jurisdictions have conflicting rules about a single transaction.[361] It is used to address isolated cases or instances. More often than not, a conflict of laws situation exists when two completely unrelated legal jurisdictions apply to a contract or obligation, which is usually a single, isolated transaction.[362]

An economic integration means consistent and pervasive transactions among different states.[363] It encompasses consistent interaction between and among nations. Hence, it is just counterproductive and illogical to integrate the economy but continue to hold on to different legal rules and guidelines.

Further, this is consistent with one theory in conflict of laws — the theory of harmony of laws.[364] Under this theory, the end goal is to have a harmony of laws, wherein similar problems are given similar solutions under different jurisdictions all over the world.[365] Thus, the ideal situation is one wherein no conflict of laws exists. [366]

In order to facilitate a smoother integration into the AEC, it is essential that laws be changed when necessary to avoid persistent conflict of laws situations.

B. The Current Legal Services Landscape within ASEAN

As discussed, the current legal landscape in the Philippines is restrictive. First, only Filipinos may engage in the practice of law.[367] This restriction has long been established.[368] Second, the practice of law encompasses an expansive definition.[369] In the Philippines, any activity which typically involves the use of legal training is considered as "practice of law."[370] Otherwise, they will be

361. *Id.* at 26.

362. *Id.* at 4.

363. *See* Blueprint, *supra* note 136, at ¶¶ 5-6.

364. SEMPIO-DIY, *supra* note 360, at 20.

365. *Id.*

366. *Id.*

367. LEGAL ETHICS, rule 138.

368. Dacanay v. Baker & McKenzie, 136 SCRA 349, 350-51 (1985).

369. *Cayetano*, 201 SCRA 210.

370. Eleanor Balaquiao, *The Filipino Lawyer and The Enemy at the Gates: Rationalizing the Place of Legal Process Outsourcing in the Philippine Legal Matrix*, 85 PHIL. L.J. 303, 312 (2011).

considered as engaged in the unauthorized practice of law. Further, the different ASEAN Member States have different qualifications for lawyers.[371]

This dichotomy of legal requirements and qualifications need to be streamlined if there is to be an integration of the legal services sector within ASEAN. Ignoring the differences in the legal services landscape in each country would hamper the progress and success of economic integration. At present, the different Southeast Asian nations have recognized the need to liberalize the local legal services industry to comply with their obligations under the ASEAN Charter. Most have started to implement amendments.[372]

This does not mean that there needs to be complete and total identity among the laws of the different countries — that is not required by the integration. Such a proposition is unrealistic, unfeasible, and impractical.

We must take into consideration the fact that the legal services sector in each country is a product of particular circumstances, culture, and history. For example, bigamy is considered an offense in the Philippines.[373] However, in predominantly Muslim countries, men are allowed to marry more than one wife.

These differences are a natural consequence of the different cultures and circumstances of each country. Even if the economic integration is inevitable, this does not change the culture and history of the Member States. Hence, integration cannot uproot the entire local services sector of the Member States. It cannot strip the countries of their own cultures and histories. To do so is tantamount to destroying the identity of each country — and that is not the purpose of the economic integration.

Rather, what is required is to allow lawyers from other Member States access to a particular jurisdiction.[374] That is the bare minimum required to meet the obligations under the AEC agreement.

1. Protection versus Access

Under the Blueprint, the establishment of free flow of services among the Member States is subject to the caveat that such integration must respect the domestic regulations of each state.[375] The economic integration does not divest each State of its sovereignty and authority to establish its own laws,

371. Hamid, *supra* note 195, at 5-6; Concepcion, *supra* note 199, at 3-4; & Sirivejchapun, *supra* note 193, at 4.

372. *See, e.g.*, Leong, *supra* note 202, at 12-15.

373. An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815, art. 349 (1932).

374. Riguer, *supra* note 181, at 42.

375. Blueprint, *supra* note 136, at ¶ 20.

rules, and regulations.[376] The Blueprint expressly recognizes such state authority.[377]

The economic integration does not automatically make any domestic restriction illegal or a violation of the ASEAN economic integration agreement. As long as such restriction does not run contrary to an obligation under the agreement, then it is valid and shall be respected.

In this context, we must differentiate between protection and access. Member States are allowed to protect industries instilled with public and national interest. They may impose qualifications and restrictions as to who may engage or provide service in those protected industries. There is nothing under the Blueprint that restrains a Member-State from enacting domestic legislation to impose qualifications and restrictions on service providers. Of course, quality is still key; and the appropriate merits that should be possessed by potential service providers are best determined by the government of each State.

However, imposing restrictions and qualifications implies that such potential foreign service providers are first given access to the local services industry. They must be able to go through the qualification process — not halted at the gates.

Under the Blueprint, therefore, the Philippines has an obligation to allow the citizens of other Member States the opportunity to qualify to perform legal services in the Philippines.[378] It must not impose a blanket denial of opportunity to qualify, which is what the current law does. This law, then, runs contrary to the object and purpose of the AEC Blueprint.

While the AEC Blueprint expressly recognizes the inherent authority of each State to impose qualifications and restrictions, it does not permit the imposition of domestic legislation that would directly contravene its object and purpose. Thus, what is proscribed is the imposition of laws that would completely deny access to a Member-State's local services sector, not enacting measures to restrict or qualify who can provide such service.

2. National Protection versus Economic Liberalization

If a sector is imbued with public interest, a State is empowered to enact measures to protect such sector. The integration does not, in any way, divest the Member States of the power to enact restrictions and establish qualifications for service providers who wish to launch businesses in a particular country.

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376. *Id.*

377. *See* Blueprint, *supra* note 136, at ¶ 20.

378. *Id.* ¶ 33.

While it is true that the very object and purpose of the ASEAN economic integration is economic liberalization through the breaking down of barriers to trade, capital, services, and skilled labor, this does not mean that Member States are divested of their sovereign right to protect their own interests.[379]

Nationally-sanctioned protection of industries infused with public interest is a legitimate exercise of a State's sovereign right to protect its own citizens as well as champion its interests. This does not run contrary to the economic liberalization policy of the AEC. While economic liberalization is the objective of the upcoming economic integration,[380] this does not diminish a Member-State's inherent right to protect its own interests.

Moreover, the objective or goal is not complete and total integration.[381] The framers of the AEC Blueprint recognize that total integration, which translates to unfettered economic liberalization, is unrealistic at this point in time, which is why they did not follow the E.U. model of total economic integration.[382] Further, the interests and positions of the different Member States are too dissimilar and varying (at relative degrees) for a total economic integration to be feasible.[383] Thus, the Blueprint expressly recognizes that liberalization parameters must be set differently for "national treatment limitations."[384]

What is recognized is the need to unite the region in order to help the Member States in protecting their respective interests while pushing for a stronger, more dynamic presence in the worldwide economic stage. Thus, the AEC is the marriage of the ASEAN leaders' push to generate a stronger ASEAN presence while maintaining each Member-State's own identity, culture, and ability to protect its own interests.

Furthermore, the burgeoning existence of the LPO industry in the Philippines is a sign of the move towards economic liberalization. By opening the country's doors to more opportunities for professionals to engage in the practice of law, it serves to develop the country's economic interests on a global standpoint. Of course, this must be balanced with the tenet and principle that the law remains a profession imbued with public interest, and it must remain dignified and respected.

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379. *Id.* ¶¶ 11 & 14.

380. *Id.* ¶¶ 5-6.

381. *Id.*

382. *Id.* ¶ 11.

383. *See* Blueprint, *supra* note 136, at ¶¶ 7 & 61.

384. *Id.* ¶ 21 (vi).

3. Inevitable Need for Integration

At present, the focus of the integration is on the priority sectors (air transport, e-ASEAN, healthcare, tourism, and logistics).[385] Legal services are not expressly mentioned as a priority sector. However, given the importance of legal services and the legal profession in every aspect of trade, service, and business, it stands to reason that while there is no express mention of it as a priority sector, there is an implied necessity to integrate, or at the very least, streamline the different Member States' legal services hand in hand with such priority sectors.

Indeed, it would be futile to move for the integration of any sector (be it trade, capital, services, or skilled labor) if the legal services sectors of the Member States remain guarded and restricted from each other. Integrating the services sector without processing the integration of the legal services sector would just hinder the efficacy of the creation of the integrated AEC.

If the legal services sector of each Member-State remains stagnant, it would counter the object of pushing for the integration of the ASEAN community in the first place. Thus, there is a need to urgently fulfill the obligation to change the current legal services landscape in the Philippines.

If we continue with the total ban on access for foreign nationals to practice law in the Philippines, coupled with the expanded definition of "practice of law," the Philippines would violate the object and purpose of the ASEAN Charter and the integration, and run the risk of violating its other obligations under the AEC Blueprint.

C. Resolving the Conflict Between Protection and Liberalization

In the Philippines, there is a fundamental conflict between, on one hand, the protection of national industries and professions under the Constitution and, on the other hand, the country's obligation to liberalize the legal profession under the ASEAN Charter.

Perhaps the most prudent way to resolve this conflict is to change what the "practice of law" means in Philippine jurisdiction. The emergence of the LPO industry is a sign of the increased interconnectedness of countries and legal jurisdictions around the world. Boundaries and barriers are slowly being lowered, if not completely eradicated.

When the cases of *Cayetano* and *Ulep* were decided, the Supreme Court's sole consideration was the domestic laws of the Philippines. Back then, the issue of LPO was far from pressing. Technology, however, enabled easier and faster transfer of information. With globalization, legal jurisdictions of different countries are progressively growing to be more interconnected.

385. *Id.* ¶ 14.

It is easier for a company in the U.S. to hire a law firm (or a LPO company) in the Philippines to take care, not only of its local interests, of its legal service with regard to its interests on U.S. soil. These changing circumstances reflect a need to reassess the definition of "practice of law" in order to stay competitive and relevant in the world legal stage.

The all-encompassing definition of practice of law in the case of *Cayetano*, therefore, needs to be changed to adapt to the country's (and the legal profession's) changing circumstance.

VI. WHERE THE PROBLEM LIES

It is clear that the problems caused by the changes in the legal profession — both the emergence of LPO and the introduction of the AEC — can be solved by clearly defining "practice of law" in the Philippines.

If the definition is changed, then it will be clear as to what types of work must be limited to and reserved for Filipino lawyers, and as to what types of work may be performed by either foreign lawyers or non-lawyers.

A. Cayetano v. Monsod Does Not Reflect Reality

The problem with the doctrine in *Cayetano* is that it fails to reflect the exigencies of reality. The definition of the "practice of law" in the case is idealistic, burgeoned by the desire to protect the legal profession through ironclad restraints. However, the Author submits that the definition perpetuates incongruence of jurisprudence in real-life experience.

In reality, students of the law study statutes and cases, and make the corresponding application of these doctrines. They do legal research on a constant basis. Local law firms do hire paralegals to do clerical work and legal research. Even investigative journalists, to a certain extent, may do certain basic legal research and clerical legal work in order to write articles or books.

The knowledge, research, and application of law are too broad a field to limit to only lawyers. This is not only inconceivable but also practically impossible. Yet, if one would take the definition of practice of law in *Cayetano*, coupled with the restrictions of who may practice law based on the Rules of Court, it would present the ludicrous notion that these people are engaged in the unauthorized practice of law.

The definition in *Cayetano* must be changed, then, because it is unwieldy and too simplistic to reflect the realities and ongoing changes happening with the Philippine legal profession. It attempts to broaden what constitutes "practice of law" in order to protect the legal profession, but in doing so, it does the exact opposite: the broad definition perpetuates technical instances of unauthorized practice of law that remain unpunished and ignored. This is problematic on many levels.

First, it breeds confusion because the difference of what the law provides and what is happening in real life. Therefore, it cannot properly regulate what actually happens because to apply the law would lead to absurd situations (where a paralegal may be penalized for researching on a case and for making a report about it, or a law student may be penalized for writing and submitting a Juris Doctor thesis).

Second, and more importantly, it renders ineffectual the power of regulating and banning the unauthorized practice of law, which, in turn, fosters disrespect to the system.

In the U.S., the work of a paralegal (who essentially performs similar tasks as a lawyer) is not considered as practice of law if "the work is of a preparatory nature, such as research, investigation, [ ] assemblage of data[,] and others [that] will assist the employing attorney in carrying the matter to a completed product, either by his personal examination and approval or by an additional effort."[386]

Here, there is no such distinction, because under the definition of what constitutes practice of law, any and all application of legal knowledge is considered as practicing law. This may not have been the intention of the Court when it decided *Cayetano*; indeed, they may not have foreseen the far-reaching implications of having such a broad definition. At the time *Cayetano* was decided, the practice of law was severely limited by territorial jurisdictions and physical borders. Today, those borders are vanishing; and such is further accelerated by the advent of the AEC. Now, these borders are not just disappearing because of disruptive technology — they must be erased.

In view of the foregoing, the *Cayetano* doctrine must be abandoned and a more streamlined definition of what constitutes practice of law (and therefore, what constitutes unauthorized practice of law) must be put in place in order to regulate and protect the legal profession, especially in light of recent and upcoming changes.

B. Changing the Definition of "Practice of Law"

One fear about changing the definition of the "practice of law" is the removal of certain actions from the ambit of "practice of law," hence, opening the profession to acts of abuse.[387] Every aspect of the practice of law is controlled by the Judiciary.[388] By this nature, there are mechanisms in place to ensure that the practice of law is fully regulated.

386. Pamute, *supra* note 285, at 31.

387. *Id.* at 40.

388. AGPALO, *supra* note 27, at 28.

This fear, however, is unwarranted. Just because certain actions will not be considered as a "practice of law" does not mean that these will automatically be unregulated. While it is true that these would cease to fall within the exclusive jurisdiction of the Supreme Court, this means that it will be up to Congress to enact laws to ensure that such service sector is regulated.

Nevertheless, at present, the main problem with LPO companies in the Philippines is the broad definition of what constitutes "practice of law." Because of this, tasks that are normally considered as outside the practice of law in other jurisdictions are considered within the ambit of practice of law in the Philippines, hence, must only be performed by lawyers.

This disjunction is what makes LPO companies in the Philippines problematic. To foreign firms and clients in the U.S., what they are outsourcing is mere paralegal work. But to us, this work is considered as "practice of law." There are different expectations and realities at each end.

This incongruence also leads to confusion as to what standards or parameters apply, and as to which department of government should regulate the LPO industry. In effect, therefore, the LPO industry operates as a regular business or corporation, beyond the strict regulatory powers of the Supreme Court, even though it is engaged in the "practice of law."

C. Effect of the AEC to the Philippine Legal Landscape

The problems caused by the introduction of LPO in the Philippines will be exacerbated by the continuing movement towards a global market. As of this writing, the effects caused by LPO are minimally felt because it is not yet a well-established practice. However, with the breaking of barriers within the ASEAN region and the corresponding commercialization and expansion of the legal profession, LPO will play a bigger role and will have a bigger impact upon the Philippine legal landscape.

The instances of unauthorized practice of foreign law are mostly ignored because of its minimal impact to the Philippines. This is because legal profession is traditionally practiced within the Philippine jurisdiction and there are only a few instances where Filipino lawyers practice foreign law on Philippine soil. Similar to LPO, it remains a niche (yet lucrative) industry.

However, with the advent of the AEC, it gradually opens the whole Philippine services market (including legal services) to the rest of Southeast Asia. Corollary to that, the entire Southeast Asian region will also be open for Filipino lawyers.

Thus, it will be inevitable that Filipino lawyers who practice foreign law, or foreign lawyers who practice Philippine law will eventually become the norm. While it is true that they may only practice clerical legal work in each

other's jurisdictions, this does not erase the fact that in the Philippines, as it currently stands, clerical legal work might constitute practice of law.

VII. METHOD OF COMPLIANCE

Having discussed and expounded on the need to change the definition of practice of law in the Philippines, the Author now turns to how the Philippines can comply with its obligations by liberalizing the legal profession.

A. Regulating the Practice of Law

The best way to define with clarity what constitutes the practice of law is to delineate what actions are to be considered as engaging in the practice of law. The obligation to change the definition falls upon the government; the question is, which branch of the government?

Normally, such responsibility would fall within the legislative branch of the government which possesses the power to enact laws.[389] However, because of the peculiar nature of the legal profession and the practice of law, the responsibility suitable falls within the power of the Supreme Court.[390] The "power to promulgate rules concerning ... the admission to the practice of law and the [I]ntegrated [B]ar" belongs solely to the Supreme Court.[391]

The definition of what constitutes the practice of law does not involve a substantial right as it merely operates as a means to implement or regulate a privilege granted by law. Thus, it does not enlarge, abridge, or modify any substantial right, which is solely within the power of the Congress.[392] The sole authority of the Supreme Court to promulgate rules regarding the practice of law has been decided and upheld in several cases.

In *Javellana v. Department of Interior and Local Government*,[393] the Supreme Court upheld Section 90 of the Local Government Code[394] because it merely regulated the conduct of local officials — it did not regulate the practice of law.[395]

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389. PHIL. CONST. art. VI, § 1.

390. PHIL. CONST. art. VIII, § 5 (5).

391. PHIL. CONST. art. VIII, § 5 (5).

392. *See generally* Fabian v. Desierto, 295 SCRA 470, 492 (1998).

393. Javellana v. Department of Interior and Local Government, 212 SCRA 475 (1992).

394. An Act Providing for a Local Government Code [LOCAL GOVERNMENT CODE], Republic Act No. 7160, bk. I, tit. III, § 90 (1991).

395. *Javellana*, 212 SCRA at 482.

The Court was more decided in *In re: Cunanan, et al.*,[396] where it declared Republic Act No. 972[397] (popularly called the Bar Flunkers' Act of 1953) unconstitutional.[398]

The Bar Flunkers' Act of 1953 sought to amend the passing rate from 1946 to 1951, lowering it to 70%.[399] The Court called it a law of "far-reaching effects on the practice of the legal profession and the administration of justice."[400]

To support its position, the Court cited numerous examples of jurisprudence, not just from the Philippines,[401] but also from the U.S.[402] According to the Court, there is absolutely no precedent of upholding such a law in other jurisdictions, in fact all of such laws have been declared unconstitutional or without force and effect.[403] Thus, in the Philippine jurisdiction (as with others), "the act of admitting, suspending, disbarring[,] and reinstating attorneys at law in the practice of the profession is concededly judicial."[404]

The Court held in *In re: Cunanan* that only the Judiciary, through the Supreme Court, can decide who may practice law in the Philippines, and any attempt on the part of either the Executive or the Legislative to interfere with this function and power is a usurpation of the powers of a co-equal branch of the government.[405]

It is true that the Congress holds plenary legislative power,[406] which necessarily includes the power to repeal, alter, or supplement rules issued by the Supreme Court. This power, however, is entirely separate and distinct from the judicial power to promulgate the rules concerning the admission to the Bar. The authority to admit anybody to the practice of law (and the

396. In re: Cunanan, et al., 94 Phil. 534 (1954).

397. An Act to Fix the Passing Marks for Bar Examinations from Nineteen Hundred and Forty-Six Up to and Including Nineteen Hundred and Fifty-Five, Republic Act No. 972 (1953).

398. *In re: Cunanan*, 94 Phil. at 564.

399. *Id.* at 536 & R.A. 972, § 1.

400. *In re: Cunanan*, 94 Phil. at 539.

401. *See, e.g.*, In re Guariña, 24 Phil. 37 (1913).

402. *See, e.g.*, In re Day, 54 N.E. 646 (1899) (U.S.) & State v. Cannon, 240 N.W. 441 (1932) (U.S.).

403. *In re: Cunanan*, 94 Phil. at 542.

404. *Id.* at 545.

405. *Id.* at 551.

406. PHIL. CONST. art. VI, § 1.

concomitant responsibility of supervision over them) still vests primarily in the Supreme Court.[407]

Some argue that by altering Section 5 (5) of the 1973 Constitution[408] — which expressly allowed Congress the power to repeal, alter, and supplement the rules promulgated by the Supreme Court — the framers of the 1987 Constitution intended to entirely remove such power from Congress.[409] However, Congress's legislative power remains plenary, and the other departments of the government cannot circumscribe this.

Nevertheless, the power of the Congress is limited to repealing, altering, and supplementing the rules already in place; this is a corollary and inherent power to the promulgation of rules, but it does not take primacy over the inherent power of the Supreme Court to enact the rules.[410] These powers, if exercised within constitutional limits, are complementary to each other —

> [b]eing coordinate and independent branches, the power to promulgate and enforce rules for the admission to the practice of law and the concurrent power to repeal, alter[,] and supplement them may and should be exercised with the respect that each owes to the other, giving careful consideration to the responsibility which the nature of each department requires. These powers have existed together for centuries without diminution on each part; *the harmonious delimitation being found in that the legislature may and should examine if the existing rules on the admission to the Bar respond to the demands which public interest requires of a Bar endowed with high virtues, culture, training*[,] *and responsibility*.[411]

Thus, the "ultimate power" to determine who can engage in the practice of law belongs to the Judiciary.[412] Congress can merely prescribe the minimum conditions for such practice.[413] Further, according to Justice Alejo Labrador's separate opinion, there is a distinction between the Supreme Court's power to promulgate rules (and the corollary power of Congress to alter, repeal, or supplant those rules) and its power to admit a person to the Bar, which is exclusively under the Court's jurisdiction and over which Congress has no power.[414]

Thus, it is clear that whether Congress has the power to repeal the Supreme Court's rules, or whether it does not have the power to restrain

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407. *In re: Cunanan*, 94 Phil. at 551.

408. 1973 PHIL. CONST. art. VIII, § 5 (5) (superseded 1987).

409. Echegaray v. Secretary of Justice, 301 SCRA 96, 110 (1999).

410. *In re: Cunanan*, 94 Phil. at 551-52.

411. *Id.* at 552 (emphasis supplied).

412. *Id.* at 555.

413. *Id.* at 591 (J. Labrador, separate opinion).

414. *Id.*

admission to the bar, it is the Supreme Court that holds the primary power to promulgate rules regarding the practice of law. This is because of the "peculiar and intimate" relationship between the practice of law and the courts.[415] The power to supervise the practice of law is, and always has been, a judicial one.[416]

1. The Power to Promulgate Rules Regarding the Practice of Law

While the legislative power of the Congress is plenary, it is still subject to limitations set by the Constitution.[417] As held in *Vera v. Avelino*,[418] "any power, deemed to be legislative by usage and tradition, is necessarily possessed by [Congress], *unless the Organic Act has lodged it elsewhere*."[419]

Thus, the primary power to decide who is admitted to the Bar and to supervise the practice of law is vested upon the Supreme Court.[420] The power to administer justice is vested upon the Judiciary, and such administration of justice is irrevocably intertwined with the practice of law.[421] As early as 1959, the exclusive authority of the Supreme Court to promulgate rules regarding the practice of law was recognized in the *Agrava* case.[422]

This authority to regulate the practice of law necessarily includes the authority to provide the qualifications as to who may practice law.[423] Since the Constitution does not expressly impose a nationality requirement upon who may practice law in the Philippines, it stands to reason that the Supreme Court can enact rules as to the nationality of lawyers authorized to practice in the Philippines.

B. Who May Practice Law versus Scope of Practice of Law

Who may practice law is necessarily and unequivocally related to what is considered as the practice of law. The former is a consequence of the latter. The existence of lawyers is intrinsically based on what is considered as within

415. *In re: Cunanan*, 94 Phil. at 546.

416. AGPALO, *supra* note 27, at 28.

417. JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 1049 (1996).

418. Vera v. Avelino, 77 Phil. 192 (1946).

419. *Id.* at 212 (emphasis supplied).

420. In re: Atty. Marcial Edillon, 84 SCRA 554, 569 (1978).

421. *See generally* In the Matter of the Petition for Authority To Continue use of the Firm Name Ozaeta, Romulo, etc., 92 SCRA 1 (1979).

422. *Agrava*, 105 Phil. at 176.

423. AGPALO, *supra* note 27, at 28.

the ambit of the practice of law. That is why the Author asserts that the definition of "practice of law" in *Cayetano* is as circuitous as it is ineffectual.

Others argue that a lawyer may only be considered as engaged in the practice of law once an attorney-client relationship exists.[424] Again, this is a circuitous definition as an attorney-client relationship supposes that there is a lawyer, on one hand, and a client, on the other. Thus, it again depends the scope of practice of law to the existence of a lawyer.

An act does not become the practice of law simply because it is done by a lawyer. An act constitutes practice of law because of its nature, regardless of whether it is performed by a lawyer or a non-lawyer. Thus, it is not a question of "who" does the act which determines whether it falls within the scope of practice of law.

Hence, the regulation of the practice of law falls within the ambit of the Supreme Court's judicial power. Proof of this are the numerous cases which, taken altogether, form the scope and definition of "practice of law" in the Philippines. From the case of *United States v. Ney Et Al.*,[425] to *In re Del Rosario*,[426] to *Agrava*,[427] to *Ulep*,[428] and to *Cayetano*[429] — it has always been the Supreme Court which dictated and promulgated what constitutes the "practice of law."

Thus, though the power to enter into treaties is lodged with the Executive, subject to ratification by at least two-thirds of all members of the Senate,[430] the authority to promulgate the rules in the fulfillment of the Philippines' obligations under the ASEAN Charter falls within the domain of the Judiciary — the Supreme Court.

1. Separation of Powers

The principle of separation of powers mandates that one branch of the government cannot encroach upon the powers of another co-equal branch.[431] The principle may be violated either by one branch interfering

424. *Id.* at 39.

425. United States v. Ney et al., 8 Phil. 146 (1907).

426. *In Re Del Rosario*, 52 Phil.

427. *Agrava*, 105 Phil.

428. *Ulep*, 223 SCRA.

429. *Cayetano*, 201 SCRA.

430. PHIL. CONST. art. VIII, § 21. *See generally* USAFFE Veterans Association, Inc. v. Treasurer of the Philippines, 105 Phil. 1038.

431. Francisco, Jr. v. Nagmamalasakit na mga Manananggol ng mga Manggagawang Pilipino, Inc., et al., 415 SCRA 44, 133 (2003).

impermissibly with another's exercise of its constitutionally assigned function, or by one branch assuming another branch's function.[432]

Given that the power to promulgate rules concerning the practice of law is lodged firmly with the Supreme Court,[433] neither the Executive nor the Legislative branch have any authority or power to decide what constitutes practice of law in the Philippines. To do so would be to encroach upon a function and authority given by the Constitution to the Supreme Court.

Thus, in order to fulfill the country' obligations under the ASEAN Charter, as well as recognize and regulate the LPO industry in the Philippines (by changing the definition and scope of practice of law), it is the Supreme Court — not the Executive, through the President, nor the Legislative through the Congress — that must act.

VIII. CONCLUSION AND RECOMMENDATION

The definition of practice of law under Philippine jurisdiction is overly broad so as to prohibit a wide range of activities. The jurisprudential definition in *Cayetano* requires amendment in order: (1) to fulfill the Philippines' obligation to liberalize the legal services sector under the ASEAN Charter; and (2) to address the existence and regulate the conduct of the LPO industry.

"To the legal profession is entrusted the protection of property, life, honor[,] and civil liberties."[434] In order to comply with the country's obligation to liberalize the legal profession under the ASEAN Charter, it is imperative that the definition of what constitutes "practice of law" must be re-examined and changed. It does not end there, however. Standards must also be set to ensure that ethical and legal concerns concomitant with such liberalization are addressed and controlled so that it is not abused.

At this point in time, by denying complete access to foreigners to practice law in this jurisdiction, the Philippines is violating its obligation under the Blueprint. There is no question that the ASEAN integration is inevitable. It comes with the corollary duty to comply with the Philippines' duties in order to fulfill the object and purpose of the upcoming economic integration.

Given that the legal profession is imbued with public interest,[435] restrictions and qualifications should be established in light of the ASEAN integration. However, with the expanded definition of practice of law,

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432. Belgica v. Executive Secretary, 710 SCRA 1, 94 (2013).

433. AGPALO, *supra* note 27, at 28.

434. *In re: Cunanan*, 94 Phil. at 540.

435. AGPALO, *supra* note 27, at 4.

coupled with the absolute denial of access for foreign lawyers to practice law, virtually nobody except Filipino citizens can engage in legal services in the Philippines.

Narrowing the definition of "practice of law" is the most prudent way to meet this need. By doing so, it harmonizes the conflict between the need to protect the legal profession, on one hand, and the obligation to liberalize it, on the other. With this, foreign lawyers may perform certain legal services within the Philippines that would otherwise be restricted only to Filipino lawyers. It will also make it easier to regulate transnational practice of law, as envisioned under the AEC. This way, the mandate of limiting the professions to Filipino citizens (or the practice of law to Filipinos) under the Constitution will also be upheld. However, foreign lawyers will be allowed to perform specific legal services (for particular industries) which will not be considered as engaging in the "practice of law."

Further, under this framework, LPO firms may legally perform similar services (drafting of legal documents, filing applications, legal research) in the Philippines — without being considered as engaged in the unauthorized practice of law. They will be free to operate as businesses without the corollary ethical and legal considerations imbibed with the practice of law.

In effect, the legal profession must be streamlined, severing its purely business aspects from the service- and profession-oriented feature. Through this, the practice of law retains its core thrust — rendering of legal service — and is protected from violations and abuse. Also, the business-oriented side of the profession, those aspects which are corollary but not indispensable to the legal profession, are allowed to flourish without hindrance.

Nevertheless, standards must be set. Just because certain legal services will not be considered as within the ambit of "practice of law" does not mean that they will not be regulated. This way, the operations of LPO companies in the Philippines may be monitored and standardized.

In order to address the issues discussed in this Note, the Author recommends the amendment of the Rules of Court by adding a Rule particularly describing and delineating what constitutes practice of law, unauthorized practice of law, and the necessary guidelines for such.

The main problem with the *Cayetano* definition is that it is too broad, without setting legal parameters and limits. A specific, detailed, and streamlined Rule will clarify not only what constitutes practice of law, but who is allowed to practice it. Such Rule should compile the definitions laid down in jurisprudence and write it in a clear, concise manner, with its specific limitations. As to what constitutes the practice of law, the Colorado Court Rules Governing Admission to the Bar may serve as a good model.

However, in addition to such, the recommended Rule should also provide for qualifications and requirements as to how foreign nationals may

be allowed to practice law in the Philippines. Given the AEC, such a provision is pertinent to the integration in the context of the legal profession. Restrictions on the practice of foreign lawyers must also be put in place, such as disallowing them from appearing before Philippine courts, tribunals, or quasi-judicial bodies unless assisted by and in partnership with a Filipino lawyer, who must be the primary legal counsel.

Finally, in order to address the exercise of Filipino lawyers practicing foreign law via LPO or under the AEC, the recommended Rules must also describe what constitutes the unauthorized practice of law — both domestic and foreign.

It is only through appropriate rule-making that the Philippine legal community can keep up with how the legal profession is changing because of LPO industry, and with how it must adjust because of the AEC. Without it, there could be no harmonization between the mandate to protect and to regulate the legal profession, on one hand, and the obligation to liberalize it under the ASEAN framework, on the other.