

LEGAL EDUCATION

Some impressions of legal education in Japan

As with most other aspects of Japanese society, the nature of the legal profession and process of legal education in Japan differ markedly from those in Australia. In this article, I share some of my impressions of legal education in Japan as an expatriate who has studied and is now employed at Hitotsubashi University in Tokyo.

The legal profession

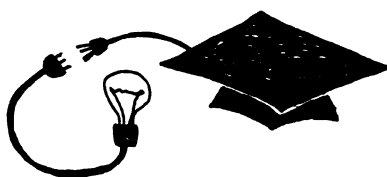
The Japanese legal community commands considerable respect as an exclusive and elite profession. As at April 1994, a mere 15,226 attorneys were registered nationwide to represent a population of some 123 million, which is said to be less than 5% of the number in the United States on a per capita basis. The majority of lawyers practise in Tokyo and Osaka, are sole practitioners or members of firms with two to four attorneys, and concentrate on litigation. As the rate of litigation in Japan remains low and many legal functions are performed by paralegals, most Japanese will never consult a lawyer. It is perhaps because of this lack of contact with lawyers and widespread recognition of the formidable effort necessary to pass the national bar examination that the public regards them with such awe.

Most lawyers are admitted to practice after passing the bar examination and completing a two-year training course and final examination at the Legal Training and Research Institute, which was established in 1947 as an agency of the Supreme Court. Associate professors and professors with five years' teaching experience at Japanese universities are exempted from the examination, but must still demonstrate their expertise before their applications for registration will be approved.

Foreign lawyers of five years' standing may advise Japanese clients with respect to law in their home jurisdictions, but are prohibited from employing or entering into partnerships with Japanese lawyers. Although the bar examination is open to all, it would be almost impossible for a person from a non-Japanese-speaking background to become one of the mere 2% of candidates who pass.

The bar examination has become increasingly popular in recent years and

since the number of successful candidates is fixed at 700 and there is no limit to the number of times candidates may attempt the examination, the average successful candidate passes on his/her sixth attempt at the age of 28. Many students pursue postgraduate studies as a means of buying time to attend special preparatory schools and attempt the examination. The knowledge gained in undergraduate courses alone is generally not sufficient to enable candidates to pass.



As a law degree is not a prerequisite to admission to the legal profession, the standards expected of undergraduate law students in Japan are much lower than Australia. There can be no comparison between the academic value of an Australian LLB degree and a Japanese one. Undergoing entrance examinations and writing my Masters dissertation in Japanese were a cinch compared to the pressure I endured at Monash!

Law undergraduates

In 1993, there were 534 public and private universities in Japan, of which a large proportion have established law schools. According to Ministry of Education statistics, some 28% of high school graduates (36.6 % of males and 19.0% of females) entered university and 8.2% (9.8% of males and 4.4% of females) continued to postgraduate level that year.

In Japan, the value of each university and the calibre of its students are judged on the basis of the institution's unofficial prestige ranking. Among law schools, those of the Universities of Tokyo and Kyoto are seen to be at the apex of the pyramid, with Hitotsubashi in third place (some would dispute this), and top-name private universities such as Waseda and Keio a fraction lower down the scale. As there are a large number of lesser universities at the base of the pyramid, every student who wishes to study law will be accepted

somewhere. Nevertheless, for reasons of pride and concern about future job prospects in a society which places great importance on academic record as judged from school name, most students aim to enter the 'best' university they can and may take the entrance examinations of their preferred universities several times before finally succeeding or compromising on their choice.

Having spent years forgoing many of the pleasures of youth for the sake of passing entrance examinations to junior and senior high school and then university, many first year students find the freedom of university life a temptation too great to resist. They know that the first two years are general education, any units failed can be made up for later, and many companies regard the entrance examination process as a screening process for employment and will hire them on the basis of their university's name without paying much, if any, attention to individual grades. The content of the degree is often of no significance to companies since they train new employees to perform whatever tasks they require, which are generally unrelated to their university studies. This is especially true of manufacturers; banks are said to place greater importance on high grades. Parents also accept that the four years of university may be the only respite students have between years of cramming for examinations and a future dictated by employers, and encourage their children to use the time profitably to fulfil dreams and engage in character-building pursuits. It is not surprising that club activities and part-time work often take precedence over study as a result.

During their third year at university, students concentrate on their major for the first time and begin to contemplate the daunting prospect of searching for a job, writing a graduation thesis, and making up for any failed units the following year.

Law examinations are typically no longer than 90 minutes in duration and involve the student answering a series of questions as succinctly as possible. Although the students are only required to write about two or three pages altogether, many of them will experience great difficulty in answering as they

will have attended few lectures and relied on the photocopied notes of friends to cram the night before.

I estimate from my exposure to students from various universities that only 10% of undergraduate students pursue their studies as diligently as the average Australian. I must stress, however, that those who are motivated to study abroad and/or continue to postgraduate level are a credit to their universities and the quality of research coming out of Japanese universities is impressive.

Hitotsubashi University

Hitotsubashi University was founded in 1875 and is the only Japanese university specialising exclusively in the social sciences, comprising four Faculties of Commerce, Economics, Law and Social Studies. As one of the nation's most prestigious universities, Hitotsubashi has entered into exchange agreements with many famous institutions worldwide, including ANU and the Universities of Melbourne and Queensland in Australia, and is popular among foreign students.

As at May 1995, 5173 undergraduate and 562 postgraduate students were enrolled in the University as a whole, which is comparatively few by Japanese standards. In the Faculty of Law, there were 1240 undergraduate students (of whom 280 were female and 9 foreign) and 61 Masters (25 female and 18 foreign) and 62 PhD (17 female and 15 foreign) candidates.

No surveys have been conducted about the class or family background of students, but most would come from middle-income families since the costs of preparing for the entrance examinations of prestigious universities in terms of tuition for preparatory schools and home tutors and of living in Tokyo for four years are high. (The Ministry of Education has reported that the average living expenses of university students in 1992 were ¥1,833,500 — over \$28,000 at current exchange rates — of which more than one-third constituted tuition and other school fees.)

In the usual Japanese fashion, undergraduates in their first and second years at Hitotsubashi undergo general education, which includes a comprehensive treatment of constitutional law and some introductory courses in civil and criminal law. Students are then required to enter one of three streams in public law (suitable for those interested in a career in government), private law (for those who wish to practise as lawyers),

and international law and relations (for those who hope to become diplomats or legal officers in international organisations). They also study subjects outside their specialisation, which reflects the Faculty's philosophy that any legal professional should be versatile.

One of my colleagues, who passed the bar examination as a Masters student and returned to the University as a member of staff after his admission to practice, has described the knowledge gained by him as an undergraduate student as a 'full menu', which proved more useful to him in preparing for the examinations than some of the curricula offered at other institutions would have. It is a source of considerable pride to the Faculty that a large number of graduates pass the bar examination each year.

In 1994, 16.7% of law graduates went on to careers in banking, 9.4% to the civil service, 8.0% to insurance companies, and 4.7% each to trading companies, manufacturers, and the media.

One special feature of the University, which has been imitated by many other institutions, is its seminar system, in which all students are required to participate in weekly seminars comprising up to 15 students and one member of staff. This system pays regard to individual abilities and personalities and provides students with the opportunity to cultivate close relationships with each other and their teachers.

Advice to Australian students

Finally, I offer some words of advice to Australian students who may be considering studying law in Japan.

As the study of law is dependent on the correct use and understanding of words, any student seriously contemplating study here should first acquire a reasonable competence in the language. Translations of the Codes and some key statutes are available and some excellent discourses on Japanese law have indeed been published in English, but the fact remains that most case law and research on Japanese law is accessible only in the original Japanese.

As to what constitutes 'reasonable competence' in Japanese, I can only advise that the more one knows, the better. From my own experience, four years' study at university in Australia, supplemented by a short period of intensive study of legal jargon, is sufficient to pass entrance examinations and pursue postgraduate studies in Japan, but still does not give one the ability to understand everything or express one-

self to the extent one could back home. Part of the problem is that the legal concepts discussed here are so different that no satisfactory equivalents exist in English for them. I have yet to find a professor who can translate English concepts such as 'negligence', 'recklessness', and 'innuendo' into Japanese! Language differences will always be a major headache, no matter how well one has mastered the language.

I recommend that all students study both Australian law and the Japanese language for at least three years before coming to Japan. Three years' full-time study in the two would give a student the minimum level of language competence necessary and a good understanding of the rudiments of Australian law, such as torts, contract, criminal, and constitutional law, a knowledge of which are expected here and can help one make sense of Japanese law. I attribute the successful completion of my postgraduate studies in Japan as much to the solid grounding I received in both Australian law and the Japanese language at Monash as to the great efforts of my supervisor and personal tutor to assist me at Hitotsubashi.

When selecting a university, students should investigate the existence of exchange agreements and availability of scholarships and, in the case of postgraduate students, attempt to find a professor specialising in the field they wish to research. I applied for a Japanese Government (Monbusho) postgraduate scholarship for two years (which I later extended to enable me to complete my Masters degree), nominating my supervisor at Hitotsubashi. I chose my professor 'sight unseen' because he appeared to be the pre-eminent authority on defamation and privacy law in Japan (as gauged from my perusal of Japanese law journals) and was affiliated with a prestigious university situated in my preferred location, Tokyo. I struck gold, but have heard horror stories elsewhere.

Monbusho also offers a reasonably generous one-year scholarship to undergraduate students, which I would recommend to anyone.

Life as a foreign student in Japan can at times be stressful, but the experience is a rich and fulfilling one which few regret and most potential employers will value highly. If you have the will and can find a way, by all means come!

John Middleton

John Middleton teaches Anglo-American law at Hitotsubashi University as Assistant to Professor Masao Horibe, Dean of the Faculty of Law.